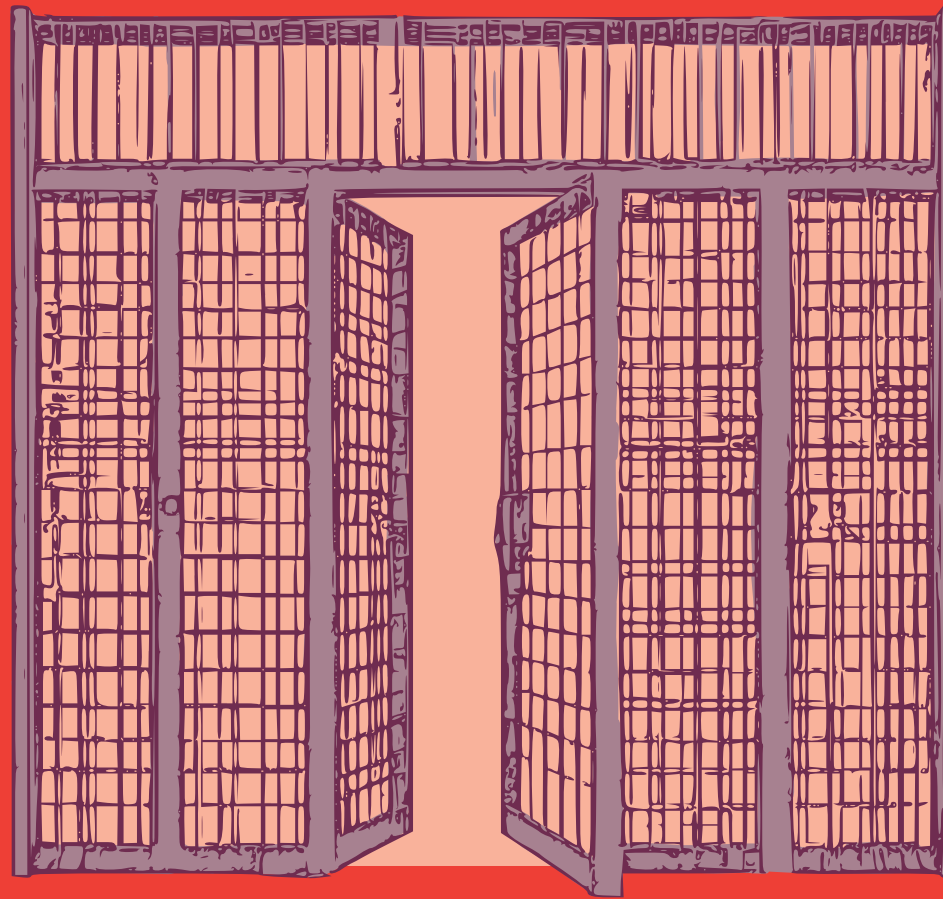


MAGISTRATES & CONSTITUTIONAL PROTECTIONS

An ethnographic study of first production
and remand in Delhi courts



Jinee Lokaneeta & Zeba Sikora

KEY CONCLUSIONS

THIS ETHNOGRAPHIC STUDY of magistrate courts of Delhi draws attention to two aspects of the criminal legal process that have received inadequate focus, but are critical for ensuring the protection of life, liberty, safety and dignity of an accused on arrest and during further detention.

Everyday Functioning of the Magistrate Courts

Though situated at the very bottom of the judicial hierarchy, the judicial magistrate courts play a significant constitutional function, where every person arrested must be produced within 24 hours of arrest.

Focus on the Pretrial Phase

The emphasis of the study is on the pretrial phase of the criminal legal process, particularly during first production and remand, and the constitutional values and substantive protections at stake in these proceedings.

First Production and Remand

The study considers the public performance of magistrates at first production and remand hearings through courtroom observations in magistrate courts in Delhi. First Production and Remand refers to the due process procedures whereby the constitutional protections of the accused — life, liberty, dignity and safety — under Article 21, can be reviewed by the magistrate under Article 22 (2) of the Constitution of India.

Ethnographic Approach

Observing the courtroom proceedings over a period of three months between — November 2022 to February 2023 — allowed the team of **eight** researchers to consider the functioning of courts at this stage, beyond questions of compliance with procedural requirements. Researchers focused on the role of multiple court actors, and observed the manner in which courtroom dynamics and social hierarchies mediated the experience of the accused in the courtroom.

Artefacts of the Arrest Memo and Medico-Legal Certificate (MLC)

Observations attested to the prominence of two key procedural requirements at first production and remand, the Arrest Memo and MLC. Both these artefacts were originally introduced to ensure transparency and accountability in police action and the safety of the accused on arrest and in detention. Rather than thinking of these safeguards as bureaucratic documents, we define them as artefacts that were introduced as creative mechanisms to address concerns with liberty and safety of the accused at this stage, and function as a starting point for the judicial scrutiny of the magistrate at first production and remand — making it a substantive protection and not only a technical requirement.

Engagement of Magistrates

Most magistrates ensured the presence of the Arrest Memo and/or the MLC in the file during production and whether the required details were filled in. The system thus acknowledges that the Arrest Memo and MLC are important to protect the accused from illegal detention and torture in this vulnerable phase of custody. .

Engagement with Paperwork

- Paperwork may not always be a comprehensive or even an accurate record of the experience of the accused. Meaningful engagement with the artefacts is key to ensuring that the paperwork corresponds with the actual experience of the accused on arrest.
- The absence of a standard format for Arrest Memo or the MLC contributes towards the lack of clarity about the information necessary to protect the rights of the accused at this stage.
- There are gaps in information arising from an absence of information in the forms. For example, in the Arrest Memo in use in Delhi, there is no column for age.
- The focus of the court was on ensuring that compliance with procedure was reflected on paper. Even where violations were noticed, they were absorbed and corrected on paper, while its impact on the rights of the accused was overlooked.
- Since first production and remand are seen as a procedural requirement where paperwork is prioritised, the court administrative staff, particularly the naib court, appear to take on an unusually important role in these proceedings. They are key actors coordinating productions and checking that the paperwork are in order.

Experience of the Accused

- Magistrates rarely interact with the accused to ascertain their well-being beyond a brief query. Unless the magistrate embarks on a meaningful interaction with the accused, their family, and the remand lawyers, they are unable to ensure the actual protection of the accused's rights.
- The entire system is organised such that the onus is on the accused to themselves draw the magistrate's attention to violations experienced in custody.
- The examination of the MLC is not taken as an opportunity to probe the origin of injuries — by the police or the public — and to ensure the continued well-being of the accused.
- There is an absence of an Inspection Memo or record of injuries/condition of the accused on arrest.
- Accused are produced from police custody by police officers from the same police station investigating their case. There is no separation between the police and the accused at this stage in order to create an environment that is conducive to the accused to raise their concerns about possible police violence, that even the most sympathetic magistrate cannot overcome.
- The focus of the jurisprudence at pretrial stage regarding first production and remand appears to be more concerned with questions of unnecessary arrest and detention, while issues of custodial violence and safety of the accused are inadequately addressed.

Role of Remand Lawyers

Despite 'remand lawyers' (a special category of legal aid lawyers) being especially appointed to ensure legal representation at the pretrial stage, they were noticed to be usually absent from court. First productions and remand were usually carried out in the absence of legal representation, often in magistrates' chambers without any public gaze on the proceedings.

Workload of Magistrates

Structurally, first production and remand proceedings do not appear to be accorded proper time in the daily workload of the magistrate. In the already burdened work day of the magistrate, first production and remand matters are heard at random, in parallel to or in between other proceedings in the court; contributing to the absence of remand lawyers and legal representation. The heavy workload of magistrates, and the perception of these pretrial proceedings as unimportant, might result in magistrates not treating each and every production matter before them as unique and warranting a careful inquiry into the detention and well-being.

Invisibilisation in Causelist

Production matters are not even mentioned in the cause list, the most publicly visible document of the schedule of a magistrate court. While these are not the only category of matters excluded from the cause list, its exclusion appears to undermine the substantive importance of this procedural requirement.

LIMITS OF ENGAGEMENT

Magistrate courts are primarily focused in the first level analysis namely (ensuring presence of artefacts in the case files). There was not enough effort to verify the contents of the paperwork, or inquire with the accused present in court or with the family of the accused. Very rarely did magistrates treat these artefacts as a starting point of their inquiry, to ascertain the reality of the experience in custody, and to ensure that the constitutional purpose behind the safeguards had been substantially felt by the accused. The public performance of ensuring compliance with statutory safeguards and ensuring realisation of constitutional rights is not given its due importance.

Consequences of Violations

While there are constitutional and statutory protections to be followed on arrest and in custody, there is an absence of clear guidance about the tools available for magistrates to deal with the violation of these safeguards at first production and remand.

Future directions

- This study offers a starting point for conversations, interventions and further research on magistrate courts and remand hearings, and district courts in general.
- With extended periods of pretrial detention in the new criminal law framework¹, there is need for urgent attention to ensure that statutory safeguards are implemented substantively and systemic faultlines addressed effectively. While the new criminal laws intend to bring about

changes in the structure of the magistracy², the organisation and work structure of a magistrate remains unchanged.

- The implication of not providing relief for violations of safeguards at the pretrial/ first instance has the potential of undermining the integrity of the criminal justice system.
- The significance of the role of the magistrate in ensuring the life, liberty, safety and dignity of the accused has also been overlooked in jurisprudence. There also remain gaps in the law regarding what amounts to a violation of safeguards on arrest and remand, and the consequences of the same. ■

¹ See S.187 of the Bharatiya Nagarik Suraksha Sanhita, 2023 which is due to replace the Code of Criminal Procedure, 1973 in July 2024, as part of the complete overhaul of criminal laws in India.

² A different system of judicial hierarchy of Metropolitan Magistrates in Metropolitan areas, including Delhi (Section 16 to Section 19, CrPC) has been excluded under the Bharatiya Nagarik Suraksha Sanhita, 2023 (due to be enforced in July 2024).

हवालात



LOCK UP
झाण्डावासी फाउण्डेशन
बन्दी गृह
नई दिल्ली

