Legal Terms Used in Reception Order and their Relevance to Judicial Process

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ABSTRACT

Introduction: Law governs the admission and management of involuntary admissions of mentally ill persons who are admitted under the provisions of the mental health act. The court directs the doctor to take charge of such persons. In the further dealings of such person the medical officer of the psychiatric facility comes across legal terms, which require understanding so that patients could be dealt with properly. Various terms such as accused, under police custody, judicial custody, remand prisoner, or under trial prisoner are used to denote their legal status. It is imperative for the medical officer to understand the nuances in the meanings of these terms. There are many times when the relevant section under which the admission is ordered is not found in the reception order. In these cases the terminology by which the patient is mentioned throws a light on the status of the patient. Towards this aim a study was carried out to assess the awareness and understanding of such terms by the faculty and post-graduates of a tertiary care hospital that deals with the admission and care of such patients. Method: They were administered a questionnaire containing these terms and asked to provide the meaning of these terms. Results: The results showed that nearly half the faculty and students were not having clarity in awareness or understanding of the terms. Discussion: Hence these terms and their meanings were gleaned from various judgments. The proper meaning of these terms and their use in judicial process and their importance is discussed.

Key words: Judicial process, reception order, status of prisoner

INTRODUCTION

Forensic psychiatry has the status of a specialty in psychiatry in western countries. It is an orphan stage in India, given the least importance among psychiatric specialties. Law governs the involuntary admission and management of psychiatric patients. Psychiatrist has a higher chance of coming into contact with the law than any other specialties. Law is precise in its definitions and in its interpretation of the terms. Vagueness and lack of knowledge about the various terms will not be accepted. Most of the psychiatrist appears in a court as an expert. Hence, he needs to be precise in his understanding the nuances of the law governing the
management of the patients and also assist the court when required to do so.

In most of the postgraduate psychiatric institutions, exposure to forensic psychiatry is fulfilled by special postings in an institution where the practice of forensic psychiatry is carried out. This period may be a month. The quality of training in such circumstances has to be improved. In the field of forensic psychiatry perusal of research publications in Indian journals of psychiatry showed that only a few articles have been published. Teaching and training in forensic psychiatry are still in the toddler stage, and these issues have to be given prime importance, considering the future of psychiatry.\(^2\)

Frequently mentally ill persons accused of charges under various sections of the Indian penal code and are admitted at various taluk, district hospitals as well as in the psychiatry department of general hospitals and in nongovernment organizations for opinion and certification about their mental illness, by judiciary even though they are not forensic psychiatric units. These cases are referred to psychiatric units by the reception order of judicial magistrate. The reception order contains the status of the person as accused, detenu, police or judicial custody, remand prisoner, or under trial. Hence, it has become mandatory to have a basic knowledge of law for the psychiatrist to understand the reception order so that if they found it defective they can ask for revised reception order under Section 34 of MHA 1987.\(^1\) Awareness of the definitions of such terms and their use in the judicial process is the basis for forensic psychiatry.

Toward assessing the awareness of the meaning of the terms used in the reception order to denote the status of the prisoner a study was carried out among the faculty and students. All the doctors in the Institute of Mental Health where forensic psychiatry is practiced were taken up for this study.

**MATERIALS AND METHODS**

A survey form containing the words used in the reception orders to denote the status of the patient as accused, police custody, judicial custody, remand prisoner, and under trial was given to faculty and students to assess whether they are aware of the meaning of these terms which are used in reception orders.

The inclusion criteria were those who are willing to participate and exclusion being the newly joined postgraduate students who have not adequate exposure in forensic unit.

**RESULTS**

The result of the survey is given below [Table 1]. 20 members of the faculty and 30 students participated in the survey.

From the above results, it is evident among the faculty nearly 50% and among the students, more than 50% need that clarity in understanding about the terminologies used in the reception order.

The terminologies used in the reception order and their relevance in the judicial process were discussed for the psychiatrist to understand it in a better perspective.

**DISCUSSION**

The law is precise in defining the terms used, and the meanings of the various terms that are used in the reception order are given below.

**What is cognizable offence?**

Offence for which a police officer has the powers to arrest without a warrant is defined as a cognizable offence. Offences such as murder, rape, kidnapping, theft, robbery, and fraud are classified as cognizable.

**What is noncognizable offence?**

Offences such as simple hurt, verbal abuse, intimidation, and defamation are noncognizable offence. In such cases, police do not have the power to arrest or investigate without the orders of the court.

The term “Cognizability” in the Code (Code of Criminal Procedure, 1860)\(^3\) is not premised upon the quantum

**Table 1: Awareness of the terms and their meanings**

| Questionnaire                  | Yes | No | Don’t know |
|-------------------------------|-----|----|-----------|
| Accused as prisoner           |     |    |           |
| Faculty                       | 6   | 12 | 0         |
| students                      | 13  | 13 | 4         |
| Detenu as prisoner            |     |    |           |
| Faculty                       | 9   | 6  | 5         |
| students                      | 8   | 9  | 13        |
| Police custody as prisoner    |     |    |           |
| Faculty                       | 7   | 12 | 1         |
| students                      | 11  | 17 | 2         |
| Judicial custody as prisoner  |     |    |           |
| Faculty                       | 8   | 12 | 0         |
| students                      | 10  | 16 | 4         |
| Remand prisoner               |     |    |           |
| Faculty                       | 14  | 6  | 0         |
| students                      | 20  | 6  | 4         |
| Undertrial as prisoner        |     |    |           |
| Faculty                       | 16  | 4  | 0         |
| students                      | 18  | 9  | 3         |

Yes- aware of the term and their meaning, No- provided wrong response, Don’t know- professed ignorance
of punishment prescribed or the gravity of the crime but upon the need to arrest the person immediately, for example, to prevent the person from committing further offences. It is for this reason that a close nexus is maintained between cognizability and arrestability.[4]

**Accused**
Accused means a person who has been blamed for wrongdoing; specifically, a person who has been subjected to actual restraints on liberty through an arrest or a person against whom a formal indictment or information has been returned.[5]

**Detenu**
Detenu is a French word, it was in use in English from the 19th century, and it means in English as “Person held in custody,” a detainee.[5] Oxford Advanced Learner’s Dictionary (online).[6]

**Remand**
“To send back( a prisoner or accused person) in to custody as to await further proceedings”.[6] When a person is taken in to custody and produced before the court within 24 hours as per the law, the court remands the said person to either police custody or judicial custody till the trial. This person is now a remand prisoner. The implication is that such person is in safe custody so that investigation of the alleged crime could be carried out and trial could be conducted at a future date as investigations could not be completed with in twenty four hours.[7]

**Remand prisoner**
A prisoner who is sent back into custody (or sometimes admitted to bail) to await trial or continuation of their trial.[6] When a person is remanded in custody, it means that they will be detained in a prison until a later date when a trial or sentencing hearing will take place or until bail is granted by the court.

**Judicial custody versus police custody**
The process regarding detention of a criminal is performed as follows; the suspect is arrested by the police after following a report or lead. The suspect is detained for investigation and then presented to the court. The judicial magistrate has three options, can post bail, send the accused back to police custody, or he stays under the protection of judicial custody. The difference between these two being, police cannot interrogate the accused while in judicial custody unless the court permits.[9]

**Under trial**
A person who is appearing in a law court because they have been accused of committing a crime.[10]

Under trial, prisoners are detenu’s confined in prison mainly under nonbailable offences and persons who are unable to produce sufficient sureties in cases of bailable offences. It is the result of an arrest for an alleged offence not followed by the grant of bail.

**Criminal prisoner**
It means any prisoner duly committed to custody under the writ, warrant or order of any court or authority exercising criminal jurisdiction, or by order of a court-martial.[11]

**Convicted criminal prisoner**
It means any criminal prisoner under sentence of a court or court-martial and includes a person detained in prison under the provisions of chapter VIII of the code of criminal procedure, 1882 (10 of 1882)[3] or under the Prisoners Act, 1871 (5 of 1871).[11]

The legal terms mentioned in this article although appears to be elementary to understand, but it is not so due to the lack of definition for them in the procedural acts or in any statute. This is emphasized by the fact that High court and Supreme court judges while writing judgments were forced to refer the dictionaries to quote, the writings of Honorable Supreme Court justice.[12] Vikramajit Sen J., “Unfortunately, the terms custody, detention, or arrest have not been defined in the Cr.P.C.[3] and we must resort to few dictionaries to appreciate their contours in ordinary and legal parlance.”

In a case of cognizable offence, the investigation process sets in motion when police register an FIR under the code of criminal procedure Section 154, any police officer-in-charge may, without the order of a magistrate investigate any cognizable cases (Section 156). No police officer shall detain in custody, a person arrested without a warrant for a period not longer than 24 hours (Section 57). Section 167 is the procedure when investigation cannot be completed in 24 h, then the police officer making the investigation shall forward the accused to the nearest magistrate. The magistrate may time to time authorize the detention of the accused in such custody as magistrate thinks to fit.[3]

“Accused,” is defined as a person charged with an infringement of the law for which he is liable, if found guilty, to be punished. Turning now to the code itself, which perhaps is the safest guide, Chapters XVIII, XIX, XX, XXI, XXII, and XXIII, which deal with trials and enquiries preliminary to commitment, the expression “accused” is always used to denote the person proceeded against.[13]

The accused is entitled to be acquitted if at the end of and on the whole of the case if there is a reasonable
doubt created by the evidence given by either the prosecution or the prisoner.\[14\]

The word “arrest” is derived from the French “Arreter” meaning “to stop or stay” and signifies a restraint of the person. When used in the legal sense in the procedure connected with criminal offences, an arrest consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence.\[15\]

The meaning of custody discloses that the concept is created for controlling of a person's liberty in the course of a criminal investigation, or curtailing in a substantial or significant manner a person’s freedom of action.\[12\]

The word custody is of elastic semantics, but its core meaning is that the law has taken control of the person, in the context of Section 439 Cr.P.C. is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court. He can be in custody not merely when the police arrest him, produce him before a magistrate and get a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions.\[16\]

Arrest is a mode of formally taking a person into police custody, but a person may be in the custody of the police in other ways. What amounts to arrest is laid down by the legislature in express terms in Section 46, Cr.P.C., whereas the words “in custody” which are to be found in certain sections of the Evidence Act only denote surveillance or restriction on the movement of the person concerned, which may be complete, as, for instance, in the case of an arrested person, or may be partial.\[17\]

A person is placed in judicial custody when he is arrested and produced before the magistrate or appears before the magistrate or surrenders to the court. Hence it cannot be assumed that all those who have been placed under custody are arrested. On the other hand all those who are arrested are produced before the court for being placed in custody. So the term custody will have these nuances of difference. This may be important in judicial matters. Hence, the meaning of the term custody to be taken with reference to the context in which it is used.\[15\]

It appears custody; detention and arrest are sequentially cognate concepts. On the occurrence of a crime, the police are likely to carry out the investigative interrogation of a person, in the course of which the liberty of that individual is not impaired, suspects are then preferred by the police to undergo custodial interrogation during which their liberty is impeded and encroached upon. If grave suspicion against a suspect emerges, he may be detained in which event his liberty is seriously impaired. Where the investigative agency is of the opinion that the detainee or person in custody is guilty of the commission of a crime, he is charged of it and thereupon arrested.\[12\]

The word accused is used in the code in the chapters that deal with the trials and enquiries preliminary to commitment. A person who is accused of a crime is subjected to actual restraints on liberty through an arrest, taken into custody, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. Then he is produced before the judicial magistrate for remand. During this phase itself if the judicial magistrate suspects the unsoundness mind of the accused he can refer him to a psychiatric facility for evaluation of his mental status under Section 328 of Cr.P.C. Hence, when a person presents with the reception order with the status as accused, it means he is an accused, arrested, and produced before magistrate for further detention, it implies that he was not given bail, and he is under arrest, and he is a prisoner.

Some of the reception orders mention the status of the patient as accused/detenu; this gives more clarity as the status as the accused is in detention; and hence, he is a prisoner.

Following the arrest when the accused is produced before the magistrate, he has three options, namely, (1) police custody (2) magistrate or judicial custody (3) release him on bail. The judicial magistrate decides any one of them based upon the situation. The act of sending back the accused into custody to await the trial or continuation of the trial is called remand. He is a remand prisoner until a date when a trial or sentencing hearing takes place or until bail is granted. Hence, both the categories of accused in police custody or judicial custody mean they are remand prisoner. Further remand prisoner means the charge sheet against the accused was not filed before the magistrate by the investigating officer as the investigation was not completed.

From the Flow Chart 1, four situations can be inferred: 1. When the accused is produced before the court for remand, as discussed earlier, the judicial magistrate may order for evaluation of the accused about his mental health (Section 328 of Cr.P.C). Due to reasons of unsound mind, instead of sending him to prison he is sent to a psychiatric facility. However, as already discussed, the accused is arrested and produced before the magistrate for remand; hence, the accused is still a prisoner.
2. The second one is, as per the judicial magistrate orders when the accused is in police custody after being remanded and whilst being interrogated the police officer has doubts about the mental status of the accused he reports to the magistrate who can then, an order under Section 328 to be detained in the psychiatric facility.

3. The third situation is when the accused is in detention under judicial custody as a remand prisoner, and when the question of the mental status of the accused is brought to the notice of the magistrate, Cr.P.C 328 is invoked.

4. Technically, a trial begins after the preliminary matters in the action have been resolved, and the jury or court is ready to begin the examination of the facts. At this stage, if magistrate or court is of the opinion that the person cannot make his defense consequent to his unsoundness of mind, the trial is stopped, and he will be referred to psychiatric facility under Section 329 of Cr.P.C, and his status is under trial.

For the purpose of completion, the Flow Chart 1 is written till the outcome of the trial, but this article is, to understand the meaning the words used in the reception
order and their relevance in the process of judicial trial; hence, only that part was discussed.

Hence, the above discussions can be summarized as:

1. Status of the person charged of a criminal offence
   He is an accused of a crime until either the investigating agency is satisfied of his innocence and releases him from the case or he is proven not guilty and acquitted by the court. In the judicial process whatever may be the status either remand prisoner or under trial prisoner or released on bail till the judgment he is an accused. From the time of inquiry till he is produced before magistrate for custody, he is an accused, arrested, and under detention; hence, a detenue. Then if not released on bail either he is in remanded in police custody or judicial (magistrate) custody and hence till charge sheet is filled he is a remand prisoner. Once charge sheet is filled and the process of the trial begins he becomes under trial. Undertrial prisoner, if bail is not given. Then status is changed either as acquittal or convict as per judgment. Convicted criminal prisoner is one who has been convicted by the court and is punished to undergo a sentence.

2. Stage in the process of trial
   It can be divided into three phases
   i. From the time of inquiry till charge sheet is filled before judicial magistrate by the investigating officer
   ii. Here, the status is any one of the following accused or remands prisoner (police custody and judicial custody)
   iii. Once charge sheet is filled and trial commences he becomes under trial
   iv. Following the judgment, either acquitted (acquitted as the charges against him is not proved or guilty but acquitted due to insanity) or if convicted then convicted criminal prisoner.

3. Status of custody
   From the time of arrest, if bail is not granted he is in custody and detained as a prisoner whatever may be the stage of the trial.

4. Release
   The accused can be released on bail at any point in the trial process by judicial magistrate based upon the circumstances such as completion of the investigation and illness. However, still he is under the purview of the judiciary. Total release from the case occurs once he is acquitted of the charges against him.

From the above discussions, it is evident all the categories accused, detenue, police custody, judicial custody, remand prisoner, and under trial are at different stages in the investigation process and court proceedings. Hence, when a person reports with reception order with any one of the above-mentioned status, it means he is still a prisoner.

**CONCLUSIONS**

The meanings of various terms enumerated above have distinct difference in their meanings. A medical officer should know the exact legal meanings so that he can manage the patients in the hospital, adopt the proper procedure in discharging and transferring him to the right place as well as assist the court in carrying out its functions.

**Suggestions**

A manual to narrate the procedures to be followed in the case of compulsorily detained patients can be produced by the Indian psychiatric society. Continuing Medical Educations exclusively with forensic psychiatry topics is another approach and encouraging more research publications in this field will help to enrich knowledge.

**Acknowledgment**

We sincerely acknowledge the contributions of Mr. Babu Rangasamy B.L. Lawyer, Chennai High Court and Dr. T.V. Asokan, M.D (Psy), Professor, Department of Psychiatry, SRM Medical College, Chennai for their valuable suggestions and guidance.

**Financial support and sponsorship**

Nil.

**Conflicts of interest**

There are no conflicts of interest.

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