

Date: May 27, 2025

To,

The Superintendent
Matia Detention Centre
Goalpara, Assam

CC: Director General of Police,
Shri Harmeet Singh, IPS
Assam

Subject: Urgent representation regarding arbitrary detentions and non-compliance with Constitutional and legal safeguards

Respected Madam/Sir,

We, as social activists and human rights advocates working on the citizenship issue, are deeply disturbed by the ongoing, arbitrary, detention operations in Assam over the past several days, where numerous individuals, particularly Bengali-speaking Muslims, have been picked up and transferred to your detention facility or other sites in Assam. Information from **several villages in the state suggests that in an unlawful sweep operation, poor, marginalised women and men –possibly all belonging to a single ethnic group--have simply been picked up without following any due process of law and no information is being made public in this regard. Numbers are difficult to estimate given the cloak of secrecy that the Assam Detention & Police authorities have adopted but people (family estimates) suggest that the number may be a staggering 100-300!!!**

Our efforts to glean any information *about local residents of Assam and Indians who have been it appears illegally “disappeared” in this unlawful fashion –for the past several hours –at the Matia Detention Centre have achieved no success. Information is being denied, and family and well-wishers like us are bereft.* It has come to our notice through credible reports that fellow on-ground activists, family members and advocates have collected, that these arrests are being carried out without adherence to mandatory legal and constitutional safeguards. In particular, those detained have not been informed of the grounds of their arrest, and their families or legal representatives have not been notified of their detention or place of custody.

We write this letter to urgently bring to your attention the egregious violations of fundamental rights arising from such detentions, and to demand strict compliance with the binding directives laid down by the Hon'ble Supreme Court of India (Reference, DK Basu Case, 1996, Joginder Singh case (1994), Vihaan Kumar case (2025) and the judgements thereof), statutory provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023 (erstwhile Code of Criminal Procedure), and the National Human Rights Commission (NHRC) guidelines (2000).

I. Violation of fundamental rights under the Indian Constitution

Under Article 21 of the Constitution of India, every individual is guaranteed the right to life and personal liberty. Article 22(1) further mandates:

“No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.”

The current practice of clandestine detentions, denial of information, and obstruction of legal access constitutes a direct assault on these guaranteed rights.

II. Binding judicial guidelines

D.K. Basu v. State of West Bengal (1996)

The Hon'ble Supreme Court laid down binding guidelines to prevent custodial abuse and protect the rights of arrestees. Key directives include:

- Guideline (ii): *“That the police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.”*
- Guideline (iii): *“A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.”*
- **Guideline (v): “The person arrested must be made aware of his right to have someone informed of his arrest or detention.”**
- Guideline (vi): *“An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclosed the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.”*
- Guideline (xi): *“A police control room should be provided at all district and State headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.”*

A copy of the Supreme Court judgement in *D.K. Basu v. State of West Bengal* [1997 (1) SCC 416] has been attached and annexed as **Annexure A**

Joginder Kumar v. State of U.P. (1994)

The Court held:

“These rights are inherent in Articles 21 and 22(1) of the Constitution and require to be recognised and scrupulously protected. For effective enforcement of these fundamental rights, we issue the following requirements:

- *An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where he is being detained.*
- *The police officer shall inform the arrested person when he is brought to the police station of this right.*
- *An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.”*

The Court further stated that these protections flow directly from Articles 21 and 22(1) and must be strictly enforced. It is also the duty of the Magistrate to ensure compliance.

A copy of the Supreme Court judgement in *Joginder Kumar v. State of U.P.* [WP(Crl.) No. 9/1994] has been attached and annexed as **Annexure B**

Vihaan Kumar v. State of Haryana (2025)

In this recent and authoritative pronouncement, the Hon'ble Supreme Court held:

- Guideline a: *“The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1)”*
- Guideline b: *“The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved”*
- Guideline c: *“When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1)”*
- Guideline d: *“Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused.”*

- Guideline f: “*When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.*”

A copy of the Supreme Court judgement in *Vihaan Kumar v. State of Haryana* [Criminal Appeal @ SLP(Crl.) 13320 of 2024] has been attached and annexed as **Annexure C**

III. Statutory safeguards under CrPC and BNSS

- **Section 46 BNSS/ Section 49 (erstwhile) CrPC:** No unnecessary restraint to be used during arrest.
- **Section 47 BNSS/ Section 50 (erstwhile) CrPC:** Person arrested to be informed of grounds of arrest and right to bail.
- **Section 48 BNSS/ Section 50A (erstwhile) CrPC:** Arresting officer must inform a friend or relative of the arrested person, with BNSS adding that such information must also be provided to the designated district police officer.
- **Section 49 BNSS/ Section 51 (erstwhile) CrPC:** Procedure for search of arrested person; BNSS omits the word “whenever” from clause (ii) of subsection (1).
- **Section 55 BNSS/ Section 55 (erstwhile) CrPC:** Procedure when arrest is carried out by a subordinate without warrant.
- **Section 56 BNSS/ Section 55A (erstwhile) CrPC:** Health and safety of arrested person
- **Section 57 BNSS/ Section 56 (erstwhile) CrPC:** Duty to produce arrested person before a Magistrate or officer in charge of a police station.
- **Section 58 BNSS/ Section 57 (erstwhile) CrPC:** Person must not be detained beyond 24 hours; BNSS adds “whether having jurisdiction or not.”
- **Section 38 BNSS / Section 41D (erstwhile) CrPC:** Right of arrested person to meet an advocate of his choice during interrogation.

IV. NHRC guidelines on arrest (Published on NHRC website on January 11, 2000)

The National Human Rights Commission (NHRC) has comprehensively laid down guidelines to ensure that arrests are made in a lawful, transparent, and humane manner. These include:

- **Pre-arrest safeguards:** Arrest must not be conducted routinely. It should be preceded by a reasonable belief about the suspect's involvement in a cognizable offence. The NHRC emphasizes that arrest should be avoided in bailable offences unless the suspect is likely to abscond or tamper with evidence.

- **Communication of arrest:** The arrested person must be informed immediately of the grounds of arrest in a language they understand. The police must also inform a friend, relative, or other person nominated by the arrestee about the arrest and place of detention. These details must be recorded in a designated register and reported to district/state control rooms.
- **Medical examination:** The arrestee must be medically examined every 48 hours by a doctor on the state-approved panel. Injuries, if any, must be recorded at the time of arrest and at intervals during detention. A certificate of injury status must be issued at the time of release.
- **Access to legal representation:** The arrestee must be informed of the right to consult a lawyer of their choice and must not be denied access to legal assistance. Free legal aid must be made available.
- **Custody records and transparency:** All arrests must be recorded with complete details, including the identity of arresting officers. The place of detention and particulars of the detainee must be conveyed to the District/State Control Room and prominently displayed. Public display or parading of arrested persons is strictly prohibited.
- **Gender-specific safeguards:** Women must not be arrested after sunset and must be searched or examined only by female personnel. Children must not be subjected to force or intimidation, and their arrests must involve neutral observers to ensure dignity.
- **Post-arrest obligations:** Arrestees must be produced before a magistrate within 24 hours. Interrogation should occur only in designated and accessible premises, and the method of interrogation must respect the arrestee's dignity and protection against torture.

These comprehensive guidelines, which are consistent with constitutional protections and Supreme Court jurisprudence, are intended to bridge the gap between law and practice and to prevent abuse of police power.

A copy of the NHRC guidelines on arrest has been attached and annexed as **Annexure D**

V. Our demands

In light of the above legal framework, we collectively:

1. **Immediate provision of written grounds of arrest** to all persons detained in Matia Detention Centre or in any other police or detention facility in Assam.
2. **Immediate communication of arrest and location** to at least one friend, relative or legal representative of each detainee.
3. **Facilitation of legal access** to the detainees, and compliance with the right to consult a lawyer of their choice.

4. **Maintenance and disclosure of custody records** indicating who was informed and by whom, and particulars of all officials involved.
5. **Regular oversight by a Judicial Magistrate** to verify and record compliance with Articles 21 and 22 of the Constitution and relevant Bharatiya Nagarik Suraksha Sanhita, 2023 provisions.
6. **Display of information at control rooms and notice boards**, as required under D.K. Basu guidelines. We demand that immediate such detailed information is provided to us.

The practice of detaining individuals without notice or explanation to them or their families, and denying legal access, violates the Constitution, statutory law, and binding judgments of the Hon'ble Supreme Court. These are not mere administrative lapses but actionable breaches of fundamental rights.

We urge you to take immediate corrective steps to ensure strict compliance with all procedural and constitutional mandates. We reserve our right to seek judicial redress in case of continued non-compliance.

Yours sincerely,

Nanda Ghosh,

Adv Ashim Mubarak

Adv Dewan Abdur Rahim

Annexures:

Annexure A- A copy of the Supreme Court judgement in *D.K. Basu v. State of West Bengal* [1997 (1) SCC 416]

Annexure B- A copy of the Supreme Court judgement in *Joginder Kumar v. State of U.P.* [WP(Crl.) No. 9/1994]

Annexure C- A copy of the Supreme Court judgement in *Vihaan Kumar v. State of Haryana* [Criminal Appeal @ SLP(Crl.) 13320 of 2024]

Annexure D- A copy of the NHRC guidelines on arrest