**Rem and and its kinds**

**A comparative study of Pakistani and Indian Criminal Law**

Rem and is commonly called in common law jurisdictions as pre-trial detention. The detention and rem and of an accused is the process of keeping an accused, who has been arrested is either in police custody or judicial custody. In rem and accused is kept in custody without trial, is considered to be in contradiction to the idea that an accused is innocent until proven guilty and for this reason pre-trail detention is usually subject to safe guards and restrictions as to its permissible period. In situations where court cannot be persuaded the accused should released on bail unless the public safety is at risk.

**Meaning of Rem and (Reference to Black’s Law Dictionary)**

1. To rem and a prisoner means after a [preliminary](https://thelawdictionary.org/preliminary/) or partial hearing before a court or [magistrate](https://thelawdictionary.org/magistrate/), is to scud him back to custody, to be kept until the hearing is resumed or the trial comes on.
2. To rem and a case, brought into an [appellate court](https://thelawdictionary.org/appellate-court/) or removed from one court into another, is to send it back to the court from which it came, that further [proceedings](https://thelawdictionary.org/proceedings/) in the case, if any, may be taken there.

## ****PAKISTANI LAW****

Section 167 of  Criminal Procedure Code throw light on rem and. The section is read in conjunction with other sections 61, 62, 173 and 344 Cr.P.C. There are two kinds of rem and, one is physical rem and and second is judicial rem and. Physical custody of the accused is called in common language as physical rem and i.e when an accused is sent to custody of police, by magistrate, it is called physical rem and. Whereas when the accused is sent to judicial lock up/jail, it is called judicial rem and.

The Article 9 of the Constitution of Pakistan guarantee that no person would be deprived of life or liberty save as in accordance with law. According to Art.10 of Constitution of Pakistan provide a safeguard as to arrest and detention. The Courts should be mindful of the said Articles before rem anding the accused to police custody or postponing the commencement of trial.

The above discussed provisions of Cr.P.C. read in conjunction with the constitutional provisions reveal that police is duty bound to complete the investigations within 24 hours and if police fail to complete the investigations, police must present the arrested person to the magistrate along with application of physical rem and. It’s the discretion of the magistrate whether to send a person on physical rem and or judicial rem and subject to the following guide lines laid down by the High Court.

1. Discharge the accused at once on the grounds that there is no cause shown for further detention. (S.63 Cr.P.C.)
2. Rem and him to police custody for term not exceeding 15 days in whole and send copy of his order with reasons for making it to the Session Judge. ((S.167 Cr.P.C))
3. Proceed at once to try a caused himself. ((S.190 Cr.P.C))
4. Forward the accused to Session Judge. (S.190 Cr.P.C)

There are certain conditions for grant of rem and which are as follows:-

1. Physical rem and can only be given when presence of accused is absolutely necessary for the completion of inquiry.
2. In the case of physical rem and period should be as short as possible
3. In case of confession person must be sent to judicial custody.

Following are some important points which a magistrate/judicial officer  should keep in mind related to rem and:-

1. Magistrate should discourage tendency of police to take rem and to extort confession.
2. Magistrate can discharge the accused at the time of rem and.
3. Fifteen days rem and should not be allowed at one stretch.
4. Rem and in absence of accused is not only illegal but also violation of article 10 of the Constitution of Pakistan.

## CASE LAWS ON REM AND

A leading judgment in the context is **Ghulam Sarwar’s Case 1984 P.Cr.L.J 2588** wherein following guide lines have been laid down:-

1. Magistrate shall not authorize the police rem and except on strong and exceptional ground.
2. Magistrate shall record reasons.
3. Copy of order must sent to Session Judge
4. After expiry of 15 days magistrate shall requires the police to submit complete or incomplete challan and in case challan is not submitted, he shall refuse further detention of the accused and shall release him on bail with or without sureties.
5. Before granting police rem and magistrate shall assure about sufficient evidence.
6. No rem and in absence of accused.
7. Magistrate shall avoid granting rem and at his residence.
8. Opportunity should be given to accused to raise objection.
9. Magistrate shall examine police file.
10. If no investigation was conducted after having obtained rem and, the magistrate shall refuse to grant further rem and/adjournment.
11. In case complete challan is not submitted magistrate shall commence trial at strength of incomplete challan.
12. If challan not submitted within 2 months, the magistrate shall report matter to Session Judge and notice to SP Police of district.
13. No rem and for sock of cooperation which police.
14. Magistrate shll always give reasons for the grant of rem and and adjournment.
15. Rem and is very important because of brutal methods used by police during investigation or physical rem and. Further bail application can only be moved after accused send to judicial magistrate. Judicial rem and and physical rem and are different from each other. Section 167 of Cr.PC Pakistan applied on judicial rem and as well as physical rem and

It has been observed in a number of reported judgments that:-

* If final report cannot possibly be submitted before or after completion of investigation period prescribed under S.167 of Cr.P.C., the investigating Agency should strictly adhere to the provisions of S.173(1), Cr.P.C. and must submit interim challan through Public Prosecutor for trial and should not keep in custody the accused arrested in the case without any legal justification for indefinite period. **(2009 SCMR 181)**

* Magistrate who grants rem and is under legal duty to satisfy himself if under the circumstances rem and is to be granted or not. Liberty of a person cannot be curtailed and he has a legal right to explain his point of view before the Magistrate when rem and is to be granted and it is a sacred duty of a Magistrate to safeguard the rights of the people. Rem and is not to be granted automatically after the police makes such a request. **(PLD 2005 SC 86)**
* Rem and of female accused and her suckling baby to judicial custody as a matter of course deprecated. **(1991 MLD 518)**
* If an accused after having been challaned has been rem anded to judicial custody by the trial Court for being produced on the next date, poice cannot take away his custody from jail without taking permission from the said trial Court. **(1993 P.Cr.L.J 221)**

**Miscellaneous Case Law**

Accused once sent to judicial custody cannot be h anded over to police for subsequent and successive rem and at the same police station. **(Dil Muhammad V. The District Magistrate 1997 P.Cr.L.J 1204)**

Territorial Jurisdiction to be given supreme consideration to set the law in motion **2000 P.Cr.L.J 1576**. Such an order must be passed with all seriousness keeping in view the relevant law. Instructions about grant of rem and to police custody are incorporated in Chapter XXV of Police Rules, 1934. **2000 P.Cr.L.J 1576**. Magistrate while granting rem and under S.167 , Cr.P.C  should bear in his mind that a Police Officer arresting a person unjustifiably or otherwise than on a reasonable ground is guilty of an offence punishable under P.P.C. **1993 P.Cr.L.J 91**. Once challan is submitted in the Court under S.173, Cr.P.C the provisions of S.169 Cr.P.C cannot be invoked. **2000 P.Cr.L.J 25**. Offence U/s 380, suspects to be rem anded to police custody with the object of effecting recovery and should not be refused on the ground that material on record does not show that stolen property was in possession of accused and complainant has not disclosed his source of knowledge. **2004 YLR 447.** The magistrate duty bound to satisfy himself before deciding the matter of rem and. PLD 2005 SC 835. Grant or refusal must be by positive application of mind. **PLD 1999 Pesh. 39**. Accused challaned and rem anded to judicial custody-Police cannot take away his custody. **1993 P.Cr.L.J 221**. Duty of the court to inform accused about grounds of his arrest. Accused has a right to oppose his rem and and also ask for his release on bail. **1993 P.Cr.L.J 2066;** **PLD 1993 Pesh. 252**. Granting of rem and is a judicial function; reasons for rem and have to be stated in the rem and order. **1993 P.Cr.L.J 2066.** Report under section 167, Cr.P.C. is not binding on the Court. **1995 KLR (Cr. Cases) 453.**

**REMAND OF FEMALE ACCUSED**

**S.167 Sub Sections  5, 6 & 7 of Cr.P.C.**

1. Rem and of woman can be given only in case of Qatl and Dacoity and that too with reasoning.

1. Direction can be given to Police for investigation in prison in presence of an Officer of Jail and a female Police Officer;

Sub-sections 5 to 7 added by Code of Criminal Procedure (Second Amendment) Act.XX of 1994

1. If necessary to take out female from Jail request shall be made to the Magistrate by an Officer not below the rank of Sub-Inspector.

1. Permission shall be granted to take out her from jail in the company of female Police Officer appointed by Magistrate;

1. She shall not be kept out of prison between sunset and sunrise.

### **INDIAN PERSPECTIVE**

The comparable provision of Article 9 of the Constitution of Pakistan in Indian Constitution is Article 21 which guarantees the life and liberty of the person. The Article 22 of Indian Constitution provide safeguard as to arrest and detention.

**The Supreme Court of India in D.K. Basu V. The Stat of West Bengal (AIR 1997 S.C. 610)**has given somewhat identical directions to be followed scrupulously after the arrest of an accused person. Failure to comply with the said directions shall render the concerned Police Officer liable for Departmental action and he will also be liable to be punished for contempt of Court. All DSPE Officers arresting an accused must therefore, follow these guidelines. The directions of the Supreme Court are as follow:

1. The police personnel carrying out the arrest and h andling the interrogation of  the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who h andle interrogation of the arrestee must be recorded in a register.
2. That the police officer carrying out the arrest of the arrestee 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.
3. A person who has been arrested or detained and is being held in custody in a police station or interrogation center 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.
4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the legal Aid Organization in the District and the Police Station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon he is put under arrest or is detained.
6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose 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.
7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The “Inspection Memo” must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
8. The arrestee should be subjected to medical examination by trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a penal for all Tehsils and Districts as well.
9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.
10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
11. 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.

## ****COMPARISON OF PAKISTANI AND INDIAN LAW:****

There seems to be constitutional and judicial consensus that the physical rem and to be granted either by Area Magistrate or in his absence by duty Magistrate. In Pakistani law the police report has to be submitted within 17 days while as per Indian law it varies from 60 days, 90 days ranging up to 6 months. In offences punishable with death, imprisonment for life and offences punishable up to 1 years, challan has to be submitted within 90 days and can be extended upto 6 months, while in other offences the period is 60 days as per Indian law. During this period the accused is kept in detention and after expiry of that period, if challan is not submitted, the accused becomes entitled to bail automatically in Indian Laws, whereas in Pakistani law no such provision with regard to bail exists, in case of non-submission of challan. The law of both the countries with regard to physical rem and pertaining to male is similar, however Pakistani law deals the cases of female on different footing while Indian law treats female at par with male. However Indian law says that detention of a female under the age of eighteen years cannot be made in prison rather she has to be kept in rem and home or recognized social institution.

Relevant Law:

* High Court Rules & Orders Section 5, Chapter III, Vol. III
* Section 167 of the CODE OF CRIMINAL PROCEDURE, 1898 (PAKISTAN)
* Chapter XXV of Police Rules, 1934
* Lexically: rem and means to send a prisoner back to the custody, the act of sending back (a prisoner) into custody. (Encyclopedia law dictionary)