



**PROBLEMS IN THE CRIMINAL INVESTIGATION WITH  
REFERENCE TO INCREASING ACQUITTALS:  
A STUDY OF CRIMINAL LAW AND PRACTICE IN ANDHRA  
PRADESH**

**SUBMITTED  
BY**

**DR.K.V.K.SANTHY  
CO-ORDINATOR  
NALSAR UNIVERSITY OF LAW  
JUSTICE CITY, SHAMEERPET – 500 078  
R.R.DISTRICT, ANDHRA PRADESH, INDIA**



**Problems in the criminal investigation with reference to increasing acquittals:**  
**A Study of Criminal Law and Practice**

**Research Team**

Project Director : Professor Veer Singh, Vice Chancellor,  
NALSAR, University of Law

Project Coordinator : Dr. KVK Santhy,  
Assistant Professor, (Criminal Law)  
NALSAR, University of Law

Project Chief Executive : Prof. Madabhushi Sridhar, NALSAR  
NALSAR, University of Law

Researcher : Mr.D.Balakrishna, Asst.Professor of Law  
NALSAR, University of Law

**Student Researchers** : Ms.Nidhi Malik, BA LLB (Hons.) 5<sup>th</sup> year  
Ms.Sruthi Namburi, BA LLB (Hons.) 3<sup>rd</sup> year  
Ms.Arushi Garg, BA LLB (Hons.) 3<sup>rd</sup> year  
Ms.Shuchita Thapar, BA LLB (Hons.) 3<sup>rd</sup> year  
Ms.Harmanpreet Kaur, BA LLB (Hons.) 3<sup>rd</sup> year  
Ms.Himabindu Killi, BA LLB (Hons.) 3<sup>rd</sup> year  
Ms. Prianca Ravichander, BA LLB (Hons.) 3<sup>rd</sup> year  
Ms.Prarthana Vaidya, BA LLB (Hons.) 3<sup>rd</sup> year

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Dr. KVK Santhy,  
Project Coordinator  
NALSAR University of Law  
Justice City, Shameerpet – 500 078  
R.R.District, Andhra Pradesh  
India.

# **Executive Summary**

## **Executive Summary:**

The need for better administration of Criminal Justice has been felt by humanity since the dawn of civilization and continues to be the goal of human endeavour. One of the essentials of administration in modern democracies is the system of Criminal Justice. A number of institutions have been developed in course of time to administer justice to the people. In the operative part of the system of Criminal Justice there are four distinct components or constituent elements, namely; the Police, that is the investigative agency; the Prosecution, that is the agency to pursue a case in a court of law on behalf of the society; the courts, that is the Judiciary to try and decide about the guilt or innocence of a certain person and the Prison and correctional institutions.

I. The fundamental functional basis for the Criminal Justice System is the 'law of the land'. The very process of law in a democratic society ensures a measure of public sanction for law through the consent expressed by their elected representatives. The entire criminal justice system in our country therefore revolves round the Criminal Law enacted by the Union Parliament and the State Legislatures. After laws are made by the legislative institutions their enforcement is taken up by various agencies set up for the purpose by the Government. The Police steps in at this stage as the primary law enforcing arm of the state-machinery. Enforcement by Police is primarily an exercise of taking due notice of every serious infraction of law as soon as it occurs and then proceeding with ascertainment of the connected facts thereof including the identity of the offender. This particular task in the system of Criminal Justice is aptly called as '**Investigation**'.

II. **Object of the Study:** Quality of the governance and peace is assessed by just one measure, i.e., the conviction rate. It is alarming that the present conviction rate is approximately 4%, while rate of the incidence of the crime is always increasing. Because of this the criminal justice process is now at cross roads and is apprehended as almost on the verge of collapse. In this regard the Justice V S Mallimath Committee has suggested seven years ago that the entire criminal justice system needs an over haul. This research work is a modest step in quest of suggesting improvement of the investigating system in direction of overhauling the system in direction of those suggestions. The researching NASLAR team has selected the first stage of the criminal process i.e., investigation and tried to analyze to what extent a defective investigation will lead to a wrong acquittal and also to make an enquiry into various other factors impacting the process of investigation such as delay in filing of charge sheet, illegal search and seizure, improper recording of 161 statements etc. The NALSAR team also focused on understanding the kind of hurdles the key role players in the field of investigation are experiencing in the field and to find out the ways and means to gear up the system towards a new direction with new goals and objects of better administration of criminal justice machinery. All through the process the team also was also looking at the aspect of whether there is any need in changing the present criminal procedure relevant to this aspect.

III. **Latest statistics of crime from Andhra Pradesh:** The total number of cases under investigation in the entire state as on 30.04.2010 is 58876 cases, in Hyderabad City, 12034 cases and in Cyberabad 2842 cases. Pending trial cases: Total no of pending trial cases in the entire state as on 30.04.2010 for the year 2010 is 322176 cases, in Hyderabad 261116 cases and in Cyberabad 31133 cases. As on 31.05.2010 for the year 2010 IPC cases registered are 40079 cases out of which in 2430 cases the accused was convicted, in 488 cases the accused was acquitted and 14980 cases are pending for trial. For the year 2009 total no of registered cases are 91040. Out of which the accused was convicted in 13549 cases, acquitted in 6182 cases and 50385 cases are pending. Total conviction percentage in Andhra Pradesh for the year 2007 is 37.81%, for the year 2008 the percentage is 42.88%, for the year 2009 the percentage is 47.53%, and for the year 2010 the percentage is 55.11%. There is an increase in the conviction percentage from the year 2007 to 2010 but the rate of increase is dismal.

In the city of Hyderabad including Cyberabad, there is a significant increase in the incidence of crimes such as murders, murder for gain, culpable homicide, dacoities, robberies, burglaries and riotings (detailed statistics are available in the annexure –V).

IV. **Methodology Adopted:** The project was completed in five stages.

- In the **first stage** the research team studied the literature relating to the investigation. The team could get a fair understanding about various kinds of investigation followed in various special laws apart from the general criminal procedure, CrPC. The powers given to the police department by the law to conduct the investigation are enumerated and analysed. Various technical aspects involved in the forensic investigation were also focused upon. The research team studied all the National Police Commission reports to learn the suggestions made by them to improve the quality of investigation.
- In the **second stage** the research team studied cases decided on various issues pertaining to investigation by the Supreme Court from 1950 to 2009. The case summary is provided in the part –II of the Report. It is found in the survey of cases that the police report consists of two parts. The first part is confidential and is only submitted for the courts perusal. The second part of report is open to the public. The research team perused the records of one year i.e. 2006-2007. The research team perused the records of grave offences such as Murder, Rape, Dacoity, Kidnap and Abduction. The team took the permission from the Chief Metropolitan Sessions judge to study the records. The team has further classified the cases to be perused on the basis of conviction and acquittal. The team has gone through the records of the cases in which the accused was acquitted. It is found that the investigating officers generally file all relevant and required documents. But there is delay in the submission of the same. The team could find all documents like sketch of the crime scene, doctor's report, any other documents relevant. It is found that in all cases there is an inordinate delay in filing the or forensic experts' report.

- In the **third stage** the research team studied the process of investigation followed in other countries such as United States, United Kingdom, France, Switzerland, Germany etc and tried to understand the system of Investigation existing there and noted the important points of difference from the Indian System.
- In the **fourth stage** the research team has conducted empirical study in Hyderabad Secunderabad districts. Team has concentrated on important areas of investigation such as FIR, Section 161 statements, maintenance of case diary, filing of charge sheet, medical reports from forensic department etc,. The team has distributed questionnaires to all police stations, courts, prosecutors and some criminal law practitioners. 60 % of the people only responded to our questionnaires whereas many of the recipients did not respond to it. The data received from the key role players was analysed and interpreted by the research team.

**The following are the observations made by the team from the data interpretation of the study.**

1. At least 40 % of the cases are lost because of the faulty investigation.
2. Legal advisor is needed to be appointed in all police stations to help the investigating officers. This helps the Police in collection of correct evidence and to not to waste the time in collecting unwanted evidence or inadmissible evidence.
3. Regarding the recovery of stolen property the police officers had a problem of admissibility of evidence if the identity of the goods is changed.
4. Most important cause for the delay is non cooperation of the public in general.
5. To collect the evidence, the 'clues' teams are working only in city limits. The number of Clues Teams have to be raised so that investigation is improved in districts also.
6. Many cases registered in the police stations are of civil nature.
7. The delay in filing of charge sheet is one of the reasons for the wrong acquittals.
8. The case diaries are not maintained properly for lack of time and it is also affecting the out come of a criminal case.
9. Some formalities mentioned in CrPC such as getting independent and respectable witnesses is difficult and because of not getting them the genuine cases are also lost.

10. On some issues the judiciary and the police has expressed diametrically opposite views such as recovery of the stolen property. The police pointed out that the court rejects the ingot recovery, where as the judges said; 'if the entire process is explained to the court along with sufficient proofs, for example, if a gold chain is lost and the person melts it, then if the police can produce the evidence that the chain was melted in some goldsmiths shop and produce evidence to that effect they will admit the ingot recovery'. In the same manner views about recording of section 161 statements are also conflicting; judges say that police doesn't do it properly and the statements recorded are the statements of the police and not of the witness. This is the main reason for loosing the cases. Whereas the police simply deny this and say that they always record the statements properly.
11. The crime scene is disturbed by the people generally by the time police reaches the crime scene because of which crucial evidences like finger prints, hair follicles and other things are lost.
12. Delay in forensic experts in sending the medical reports to the police leads to delay in the submission of charge sheet.
13. Witnesses turn hostile and don't cooperate with police during the trial.
14. Judges felt that interference of media in matters of investigation should be restricted otherwise it would hamper the investigation.
15. Judges opined that in cases of damage to public property no charge sheet is being filed.
16. Scientific investigation has to be developed and used in all cases.
17. In the **fifth stage**, a consultation workshop was conducted, where prominent and experienced persons from different fields of criminal justice machinery, such as High Court Judges, Senior Public Prosecutors, Senior Criminal Lawyers, senior police officers participated in the workshop and contributed valuable suggestions from their rich experience.. The suggestions emerged in the workshop are the following:
  - i. In Murder cases statements recorded under sec 161 along with the inquest report, statements recorded through audio video electronic means shall be submitted to the court immediately. (Objective: This will help in preventing the alteration in the statements by the witnesses. By following this procedure the scope of manipulation in the statements could be minimized to a great extent. The acquittal rate is high because of hostile witnesses).
  - ii. The general practice in recording of statements is that it is done at the time of the inquest, and produced for the first time when the charge sheet is filed. A better practice would be to record the

statements audio visually and transmit the same to the competent court simultaneously. This will help avoid any possibility of manipulation.

- iii. Separation of law and order from the wing of investigation is essential at organizational level. (Objective: The investigative branch will have free time, independence and expertise to focus on the investigation only. Lack of sufficient human resource is cited as reason for not doing it. Senior Police officers stated that separation was experimented in Cities like Hyderabad and proved good. For mofussil areas, it was felt that the two functions were interlinked deeply for which separation may not be a solution.
- iv. If the witnesses are taken to nearest magistrate to record their statement before the magistrate, witnessed may fear to deny. Fear of law and some legal consequences must also be instilled in the mind of witnesses so that they do not deviate from the statements they have made before. However, sometimes even decoy statements are recorded- forcing witnesses to stand by which might be detrimental to the general interests of justice.
- v. All acquittals cannot be attributed to weak investigation. Because most of the cases are settled before the stage of conclusion reached. The consumption of long time in trial, and repeated attendance and waiting at court will dilute the initial enthusiasm of complainant and witnesses to fight the case, and that will force them to get into some sort of settlement. In the process justice is casualty. Even otherwise, witnesses turn hostile and depositions water-down the earlier witness, making courts become helpless but to acquit.
- vi. Record reasons for the delay for registering FIR itself on the day of registration itself.
- vii. Create awareness among police personnel as to relaxed practice of registering FIR. (Lack of awareness among the police personnel as to the procedures and notifications relaxed the process of registration of FIR even in absence of seniors is main reason. Since almost 55% cases are civil in nature, the police personnel do not bother to know the need for registering the FIR without looking for senior. Delayed registration often results in diluting gravity of offences such as theft or extortion to something that is not a grave crime. In rural areas specifically, false accused are often included in FIR. This is why earlier, village local body used to record and forward the complaint. Absence of the senior at SHO need not be a reason for delay because it is possible to consider HC or Senior Constable if the seniors are not available as SHO, for registration.)
- viii. Use the Information Technology to communicate the copy of FIR. There should be a nodal agency to supervise this activity. Sending FIR by Fax and email to the SDPO, and considering SP as

- responsible officer regarding complaints, will solve the delay problem. But anonymous FIR might pose problems in such a case.
- ix. There must be a person or an independent & impartial agency to help the illiterate in processing complaint. (Reason: Where the IT facilities are not available and people are poor and illiterate, this measure does not go a long way in redressing problem. The unfortunate reality today is that the police is perceived as promoting the interests of the rich.)
  - x. The SDPO has to first register the FIR and then proceed to the scene of offence, where the job of SDPO is reconstruction of the scene of offence. But this must follow and not precede registration of FIRs. In civil cases, most of the proof is documented so this is not such a great problem. But for crimes, Law does condone delay of even one or two days, even if police take time to verify bona fides. This is due to unnecessary over anxiety to make case strong, they make case very weak.
  - xi. Separating high profile accused cases from others is unconstitutional as it will be in violation of principle of equality under Article 14.
  - xii. Measures to ensure Police accountability are very important
  - xiii. Practice of waiting permission of superior officer for registration has to be immediately curbed. Superiors exercise this power to permit indiscriminately which is very bad in law. Unfortunately the prevalence of malpractice is due to connivance and lack of supervision and it must be remedied. This practice is strictly followed in some special legislation such as Prevention of Atrocities against SC, ST Act. Under no Act permission is a requirement.
  - xiv. Encourage written complaint so that minimisation of gravity of offence is curbed. The problem of the minimisation of the gravity of any one particular offence generally arises only in the case of an oral complaint – the question does not arise in a written complaint.
  - xv. There must also be institutional checks in both the law and the police manual to rectify the charge if the gravity of the offence has been minimised.
  - xvi. It should be mandatory for issuing receipt for complaint or furnishing a copy of FIR immediately would serve the purpose.
  - xvii. Further training to police as to their attitude with the people is most important
  - xviii. A related issue is accessibility to police stations is logistical problem is a very real one, and must not be ignored while dealing with substantive lacunae in the law. It was highlighted that the falsity of the complaint is not to be tested or verified when an FIR is being lodged. Yet, this is often done. Often the police feel that they are being diligent by making sure that the FIR is *pukka*. So time expended on travelling and investigation complicates the

issue besides causing delay in the registration of FIR. The suspicion that police might have tutored the witnesses and the complainant to give information according to their convenience will arise. This suspicion will be highlighted in cross examination, which weakens the case.

- xix. The problem with the above practice is that even though the statement of witness is truthful he might not be believed later in a court of law due to the delay surrounding registration of the complaint. This results in an acquittal for the accused. A higher rate of conviction will involve timely lodging of FIRs. In such a circumstance, the whole village will know who has committed the crime, and an acquittal will only serve to erode their faith in the system.
- xx. Practice of seniors instructing juniors not to register case until the superior advises or permits has to go. Only when the people come with a recommendation from a “contact” is this done without hitches. Often the senior officers themselves direct that no complaint should be registered without their assent.
- xxi. It must also be noted that there is nothing making it mandatory for FIRs to be recorded in English. This must not deter the officers of a lower rank in allowing for registration of complaints.
- xxii. As on today there are 3,25,000 cases pending trial in AP. However there are 394 lower courts only to hear this high number of cases. There are 25,000 non-bailable warrants that have been issued at different times. The number of acquittals is so high that people apprehend that we are a drifting democracy. According to the Malimath committee, for rape cases the conviction rate is 10.3%; 23% for murders, 50% in cases of Robbery (but mainly brought about by admissions) and 7.5% for cheating. These low rates are indicative of a failing institution. In the UK these rates are higher because there are tie-ups with NGOs to provide for extensive counselling and support to the victims as well as witnesses.
- xxiii. There is need for counseling at police stations for processing complaints.
- xxiv. There must be victim-witness support programs in each and every police station limits.
- xxv. On section 161 statements, it was suggested that the provision to get them signed by the person making them should be incorporated into the present code of criminal procedure. This is in practice in most of the developed countries. People abroad are shocked that we are still following the age old law. This was one of the important recommendations of the Malimath Committee. Videographing can help to prove that there was no coercion while recording these statements. However, the efficiency of this safeguard is highly questionable.

- xxvi. Genuine and prompt entries in General Diary under section 172 are essential.
- xxvii. An increase in manpower and increase in number of Scientific Experts for all clues teams in entire state is essential.
- xxviii. Investigation can also be improved by providing Travelling allowance/dearness allowance to witnesses which might act as an incentive to people to come forward and give evidence.

**V. On the basis of the entire study the research team is forwarding the following suggestions:**

1. **Appointment of a legal officer to assist the Investigation:** A legal officer may be appointed for all levels of the police to render advice and guidance on the legal aspects of investigation to strengthen the utility of the documents collected by the Investigating Officer.
2. **Alternative to the appointment of Legal Officers:** as an alternative to the appointment of legal officers the state can allow the Investigating officer to consult the prosecutor during the investigation and take advice, which will help to improve the legal quality of investigation. This is suggested inspite of the SC's declaration that prosecutor shall not interfere with the investigation. In our research it is found that the police officers don't know the nuances of the law of evidence and the case cant stand the vigorous cross examination of the defence counsel.
3. **Setting up of prosecution houses:** Special provisions shall be made to protect the witnesses in the Courts of Justice. There shall be a provision for a "Prosecution house" in the court complex with police protection, so that the complainant/victim is not left at the mercy of the perpetrator of crime or exposed to their threats and terror for lodging of a complaint or deposing against. This move might help to minimize the hostile witnesses problem.
4. **Networking the Police Stations with the Criminal Courts:** Networking all the police stations and linking with trial courts will improve the situation a lot as there will be immediate transmission of documents, by which possibility of manipulating or changing the documents would drastically reduce.
5. **Verification of the truth of FIR:** At the outset the police officers present at the police station should immediately register the complaint without probing into the falsity or otherwise of the complaint. Suspecting the complainant should not become a stumbling block in discovering reality. The falsity of the complaint is not to be tested or verified by the police officers at the threshold of FIR lodging.
6. **Recording Reasons for delay by IO:** If the IO records the reasons for the delay in lodging of FIR if any, that might help the prosecution in getting the delay condoned. While conducting the survey of cases in number of cases we have observed that the defence counsel raised an objection whenever there is a slightest delay in lodging of FIR and in some cases the cases were quashed on this ground. By observing the above precaution this problem could be solved to some extent.

7. **Protection of the crime scene:** Besides reaching the scene of crime, the Investigators also should see that the crime scene is not disturbed by the people generally before police reached so that the crucial evidences like finger prints, hair follicles and other things are properly secured and documented. While conducting the survey of cases in the nampally criminal courts we found that very often the crime scene is disturbed and crucial evidence is lost.
8. **Panch Witnesses:** Regarding the panch witnesses a change could be introduced in code of criminal procedure as two 'independent witnesses' instead of two '**respectable inhabitants of the locality**'. Alternatively is suggested to go for govt panch witnesses, ie. The Govt may appoint some officers as govt panchs who work under the DPP(prosecutorial system and not as a part of police department to ensure fairness).
9. **Sec 161 Statements:** The statements may be in question answer format. Now these statements are not recorded when they are stated to the police officer,the statements are mostly doctored by the IO and all the statements would more or less will be the same for all the witnesses in a case. When these statements are shown to the witness for the first time in the court to verify they are obviously are not in a position to identify their own statements and the court declares the witnesses as hostile or they loose the credibility. In 70% of cases the cases are lost because of improper registration of 161 statements. This move might help to improve the situation.
10. **Hostile Witnesses:** To avoid the problem of witnesses turning hostile and frustrating entire criminal justice system including the efforts of the police, every effort should be made to support the witnesses, secure their morale, provide safety to their physical being and make it easy and respectful for them to depose truth in court hall. Witness support systems, honouring their needs and respecting their time is needed.
11. **Witnesses shall not be summoned by courts:** According to sec 100 (5) panch witnesses should not be summoned to the court and shall not put to unnecessary harassment. Awareness about this provision shall be given to the public to encourage them to come forward for being a witness.
12. **Mandatory recording of statements of witnesses in the presence of the Magistrate:** All important witnesses to grave offences such as murder, rape, dacoity etc shall be immediately and mandatory taken to the nearest magistrate to record their statements before magistrate. This might help the prosecution in preventing the witnesses from turning hostile.
13. **Police –Prosecution:** The coordination and cooperation in between prosecutors and police has to be established in a methodical and meticulous manner at micro and macro level. There should be no speedy communication of important documents to the prosecutor in the right time so as to remove suspicions about genuineness of the case to secure the convictions.
14. **Prompt filing of Charge-sheet:** There should be a very comprehensive and cohesive effort by all means to drastically reduce the delay in filing of charge sheet. The research team found that this is one important reason for the wrong acquittal.

15. **Case Diary:** Every arrangement should be made to see that the case diaries are maintained properly for any reason such as lack of time as that affects the outcome of a criminal case.
16. **The problem of Stock Witnesses:** Situation where stock witnesses and stock panchs or sometimes stock advocates will worsen the trial and destroy the case. We need to avoid this situation.
17. **Presence of IO in the Trial:** Investigating officer shall be present all through the trial to provide the necessary inputs to the court.
18. **Recovery of the stolen property:** Changes shall be made in the criminal procedure in order to restore the recovered property to the owner as soon as possible. At present the recovered property is sent to malkhana where it lies for years. By the time the property is restored to the owner it would become useless for him.
19. **Forensic Experts:** Since forensic evidence is growing as a significant component of every crime investigation, the number of forensic experts should be increased as those experts working in Hyderabad and Secunderabad are over burdened resulting in inordinate delay in preparing the medical report and sending it to prosecutor. It is found that this delay leads to delay in the submission of charge sheet, which destroys the case. Unanimously all the prosecutors and police officers said that there is inordinate delay in getting the FSL report. Hence it is suggested to recruit more number of Forensic Experts. They must be made available to the rural areas of the state also. This might expedite the process and strengthen the prosecution case.
20. **Collection of scientific Evidence:** Using scientific evidence is very essential. Though clue teams are working in city limits to secure scientific evidence, there is a need to increase number of clue teams to investigate the crimes in districts also.
21. **Increasing the number of Scientific Experts:** the number of scientific experts shall be increased to meet the needs of the state.
22. **Increasing the Police personnel:** The police personnel are absolutely insufficient to handle the growing rate of crimes and increasing the staff should be the immediate concern of the Government.
23. **Increasing the number of police stations and courts:** Number of courts and police stations shall be increased to the tune of the increasing population. (Mallimath committee observed that an investigating officer on an average investigates 45 cases in a year. Whereas in AP the Investigating officer is attending to 145 cases approximately in a year which is relatively very high).
24. **Training to Police Personnel (Investigating Officers):** There is need for increasing levels of awareness through intensive training in law (IPC and CrPC) besides local laws, special laws, special procedures and related aspects for Police Officers on regular basis. These training programmes shall also include aptitude test as an important component of the content. This might help the police personnel to get closer to the public and to be sensitive towards them. The standards of the training shall be raised. It is found that now the police personnel are attending the training programmes only for the sake of promotions, otherwise they are not really helpful for them for their professional life.

25. **Separation of Law and Order Wing:** This suggestion is been given by number of committees including mallimath committee and national police commissions. But the Government did not respond till today. The first step the government should take is to improve the quality of investigation to prevent collapse of the entire criminal justice system.
26. **Providing adequate funds and infrastructure to Investigating Officers:** There is a dire need to increase the allocations and resources for implementing the safeguards under CrPC and other practices such as furnishing a receipt or copy of FIR to the complainant etc. In our research we found that some police stations doesn't have stationery, mobile phones, jeeps etc. they have to depend on the local people for these bare minimum things and are obliged to give undue favours to them in future.
27. **Salaries and Allowances:** Salaries and allowances of the police personnel should increase to match their work and needs. We found in our research that the incentives provided for the IO are commensurating the challenges taken up by them.
28. **Counseling in the Police Stations:** There must be a counseling provision in police station and there shall be a psychiatrist in each Jail to counsel the under trial prisoners.
29. **Securing the cooperation of Public:** Since the members of general public are scared of the court process, they do not come forward to sign the panchnama or Inquest report. If the police officers sign it, it will loose its credibility and validity and become the sole reason for acquittal. Hence it is suggested to create awareness among the public about Sec 100(5) of CrPC where it is mentioned that the witnesses need not be summoned to the court.

The research team found that the poor or improper investigation is the substantial cause leading to wrong acquittals in about half of criminal cases prosecuted. The higher judiciary including the Supreme Court opined many a time that faulty investigation was sole cause for the quashing of charges. What came out in the research is that this conclusion is not true because the team discovered some vital weaknesses in investigation which are fatal to the prosecution. The research led to finding the following areas as grey spots which urgently require through improvement. They are: prompt registration of FIR, drafting of s161 of Statements, communication of documents to the prosecutor without any delay, need for scientific investigation, increasing strength of the cyber forensics department and infra structure, increasing the police personnel at all levels, imparting training to the police on a regular basis updating them with the developments in the technology, separating the investigation from other duties of police, providing legal assistance to the investigating officers, avoiding frequent transfers of Investigating officers, networking the police stations with the courts for the transmission of documents etc.,.

# **Part I**

## **Study of Literature – Comparative Study of other countries**

## **The conceptual study of Criminal Investigation**

The fundamental basis for Criminal Justice System is the law of the land. The very process of law in a democratic society ensures a measure of public sanction for law through the consent expressed by their elected representatives. The entire criminal justice system in our country therefore revolves round the Criminal Law enacted by the Union Parliament and the State Legislatures. After laws are made by the legislative institutions their enforcement is taken up by various agencies set up for the purpose by the Government. Police comes at this stage as the primary law enforcement agency available to the State. Enforcement by Police is primarily an exercise of taking due notice of the infraction of laws as soon as it occurs and ascertaining the connected facts thereof including the identity of the offender. This particular task in the system of Criminal Justice is known as ‘Investigation ‘.

### **Some Important Provisions of Law for Investigation in Andhra Pradesh:** **Standing Orders from Police Manual for Investigating officers:**

VI. **Latest statistics of crime from Andhra Pradesh:** total number of cases under investigation in the entire state as on 30.04.2010 is 58876 cases, in Hyderabad City is 12034 cases and Cyberabad is 2842 cases. Pending trial cases : total no of pending trial cases in the entire state as on 30.04. 2010 for the year 2010 is 322176 cases, in Hyderabad 261116 cases and in Cyberabad 31133 cases. As on 31.05.2010 for the year 2010 IPC cases registered are 40079 cases out of which in 2430 cases the accused was convicted 488 cases the accused was acquitted and 14980 cases are pending for trial. For the year 2009 total no of registered cases are 91040. Out of which the accused was convicted in 13549 cases and acquitted in 6182 cases and 50385 cases are pending. Total conviction percentage in Andhra Pradesh for the year 2007 is 37.81%, for the year 2008 the percentage is 42.88%, for the year 2009 the percentage is 47.53%, the percentage for the year 2010, the percentage is 55.11%. There is an increase in the conviction percentage from the year 2007 to 2010 but the increase is dismal.

In the city of Hyderabad including Cyberabad, there is an increase in the incidence of crimes such as murders, murder for gain, culpable homicide, dacoities, robberies, burglaries and riotings ( statistics are available in the annexure –V).

## **I. THE CONCEPT OF INVESTIGATION**

Investigation as a matter of Criminal Procedure refers to all that happens prior to one's being accused of a crime before a Judge or a Magistrate.

Technically speaking, Investigation is an inquiry into the circumstances of the commission of an offence, and it is conducted by Police Officers in the largest number of cases according to the Principles and Procedures established by law. There are several other officers and institutions also to whom authority is given by law to inquire into the cases of commission of offences as also with regard to various other matters, such as, the affairs of the State, the irregularities committed by the administrators, the belief held by

the people, and the events which have become matters of public importance. As an aspect of the system of Criminal Justice, Investigation is a matter of great significance.

### **1.1 - MEANING AND DEFINITION OF 'INVESTIGATION':**

The term 'Investigation' stands for a search that is made to find out the truth of the matter. It is an inquiry that is carried out through a large number of methods, involving in the process, quite a good number of the faculties of the investigator. The various meanings given to the word 'Investigation' in modern dictionaries convey the idea that 'Investigation' means taking cognizance of something by physical or mental vision.

According to Webster's New Dictionary,

**"To see is the most general of the terms used in place of the verb 'to investigate'. It is used to imply little more than the use of the organs of vision but more commonly it implies a recognition or appreciation of what is before one's eyes. The term may imply the exercise of other powers that the sense of sight, including a vivid imagination."**<sup>1</sup>

According to Richard Ward, the author of 'Introduction to Criminal Investigation, the primary function of the Criminal investigator is to gather information, determine the validity of this information, identify and locate the perpetrator of the crime, and provide evidence of his guilt for a Court of law. Inherent in this function is a responsibility to protect the innocent.

The means by which the investigator carries out his functions may be classified in two ways: internal and external.

Internal refers to the process of logic, expertise, intuition, experience, and knowledge that he brings to the investigations;

External refers to the tools, scientific aids, additional personnel, and Other resources that he brings to bear on the investigation."

According to Paul B Weston, the author of 'Criminal Investigation: Basic Perspectives' <sup>2</sup> Criminal Investigation is a lawful search for people and things useful in reconstructing the circumstances of an illegal Act or omission and the mental State accompanying it. It is a probing from the known to the unknown, backward in time, and its goal is to determine truth as far as it can be discovered in any post-factum inquiry.

According to Charles M. Bozza, "Criminal Investigation is a probing from known to the unknown and a step by step reconstructive process of what has occurred. Its theory is based solely upon logical sequences and it can be utilized for any Police function.... A Criminal investigator usually is a person who collects facts to accomplish a goal. The goal may be to locate the guilty, to gather evidence for prosecution, to identify witnesses, or to see if a crime has in fact been committed. The important methods of Criminal investigation are the techniques used by the investigator to establish facts related to investigation; perception, observation or scientific theories and facts"<sup>3</sup>.

Section 4(h) of the Code of Criminal Procedure 1973 gives the definition of the term 'investigation' thus:

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<sup>1</sup> Webster's New Dictionary of Synonyms : 1978, P.717-718.

<sup>2</sup> Richard H Wood: "Introduction to Criminal Investigation: Addison Wesley Publication Company (1975), P. 15.

“Investigation” includes all the proceedings under the Code for the collection of evidence conducted by a Police officer or by a person (other than a Magistrate) who is authorized by Magistrate in this behalf.”

The definition of the term ‘investigation’ in the present Code of Criminal Procedure is the same as was there in the old Code of Criminal Procedure, 1898.

According to judicial interpretation, investigation consists generally of the following steps:

1. Proceeding to the spot;
2. Ascertainment of the facts and circumstances of the cases;
3. Discovery and arrest of the suspected offender;
4. Collection of evidence relating to the commission of the offence which may consist of: (a) the examination of various persons (including the accused) and the reduction of the statements into writing, if the officer thinks fit; (b) the search of places or seizure of things considered necessary for the investigation are to be produced at the trial; and

5. Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial, and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173.<sup>3</sup>

In Directorate of Enforcement Vs. Deepak Mahajan <sup>4</sup>, the Supreme Court said:

“The expression ‘investigation’ has been defined in Section 2(h). It is an inclusive definition. It being an inclusive definition the ordinary connotation of the expression ‘Investigation’ cannot be overlooked. An ‘Investigation’ means search for material and facts in order to find out whether or not an offence has been committed. It does not matter whether it is made by the Police officer or a customs officer who intends to lodge a complaint”.

In N H Dave, Inspector of Customs Vs. Mohammed Akhtar the Gujarat High Court while examining a case of investigation under Section 104 of the Customs Act said,

“The expression ‘investigation’ has been defined in Section 2(h). It is an inclusive definition. No doubt, it will not strictly fall under the definition of ‘investigation’ in so far as the inclusive part is concerned. But then it being an inclusive definition the ordinary connotation of the expression ‘investigation’ cannot be overlooked”<sup>5</sup>.

## **1.2 : INVESTIGATION AND RELATED MODES OF INQUIRY:**

### **1.2.1: Autopsy:**

Autopsy refers to the dissection of a dead body for the purpose inquiring into the cause of death. It is a post-mortem examination to determine the cause, seat or nature of a disease. This kind of examination is normally required by statute for deaths by violent or unnatural means<sup>6</sup>.

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<sup>3</sup> Paul B. Weston: “Criminal Investigation, Basic Principles” Prentice Hall, 4<sup>th</sup> Edition (1974), P.1

<sup>4</sup> H N Rishbud v. State of Delhi, AIR 1955, SC 196.

<sup>5</sup> (1994) CrLJ 2269.

<sup>6</sup> (1984) 15 E L T, 353, Gujarat.

The term autopsy came into use early in the history of modern medicine to distinguish the opening of the human body by human agents from the much commoner practice of dissecting animals.

#### **1.2.2: Inquest :**

In the jurisprudence of foreign countries, inquest, in its broadest sense, means a judicial inquiry, but the term is usually applied specially to an investigation by jury.<sup>7</sup>

The most familiar application of the term at present is to the inquiry performed by a Coroner with the aid of a jury into the cause of an unexplained or possible suspicious death. It is a Criminal proceeding that takes the form of a preliminary investigation, rather than a trial involving an individual guilt or innocence.

#### **1.2.3: Inquisition :**

Inquisition, in the Middle Ages, was a method adopted by the tribunals set up by the Catholic Church, with very wide powers for the suppression of heresy. Early Christianity had combated heresy by peaceful methods. When Christianity became the official religion of the Roman Empire during the 4th century a change came in the powers and Procedures of the concerned tribunals in dealing with the offence of heresy.<sup>8</sup>

#### **1.2.4: Discovery :**

Discovery is a kind of procedural device employed by a party to a civil or Criminal Action, prior to trial, to require the adverse party to disclose information that is essential for the preparation of the requesting party's case and that the other party alone knows or possesses.<sup>9</sup>

#### **(V) Pre-Sentence Investigation:**

A sentence in Criminal law is a judgment formally pronounced by a judge or Court after an accused person is found guilty in a Criminal prosecution. It formally declares the legal consequences of a confession of guilt or conviction. While determining a specific sentence the judge considers several objectives. These include the idea of exposing the Criminal to treatment of training that will convert him into a satisfactory citizen.<sup>10</sup>

#### **(VI) Inspection :**

Inspection is a general term used to inquire into various things. It refers to examination, scrutiny, investigation, checking over, looking into, or viewing the purpose of ascertaining the quality, authentic City or conditions of an item, product, document, residence, business etc.<sup>11</sup>

#### **(VII) Commission of Inquiry:**

A commission of inquiry is appointed by the Government to inquiry into any definite matter of public importance and it performs such functions as may be specified in the Government.<sup>12</sup> Section 3 of the Commissions of Inquiry Act 1952 says,

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<sup>7</sup> Black's Law Dictionary: (1979), Page 122.

<sup>8</sup> Black's Law Dictionary: (1979), Page 122.

<sup>9</sup> Mant A Keith : "Official Medico Legal Investigation" (1971), P 8.

<sup>10</sup> Collier's Encyclopaedia : William Kelley, Volume 3, P 128.

<sup>11</sup> The Guide to American Law, P. 197.

<sup>12</sup> Black's Law Dictionary, P 716.

“The appropriate Government may when it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by a House of the People or as the case may be, the Legislative Assembly of the State, by notification in the Official Gazette, appoint a commission of inquiry for the purpose of making an inquiry into any definite matter of public importance and perform such functions and within such time, as may be specified in the notification”.

According to Section 4 of the Commissions of Inquiry Act, the Commission shall have the Power of a civil Court while trying a suit under the Code of Civil Procedure 1908 in respect of the following matters, namely;

- (a) summoning and enforcing the attendance of any person from any part of India and examining them on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or any copy thereof from any Court or fees;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) any other matters which may be prescribed.

#### (VIII) Judicial Inquiry:

Inquiry does not always mean a judicial inquiry. Whether it does or does not, depends on the context in which it is used. The definition in the Code is not exhaustive. Under the Code it means not only an inquiry into an offence but also inquiries into matters which are not offences. Proceedings under Chapter X are inquiries with the meaning of Section 2 of the Code.

### **1.3 - CRIMINOLOGY AND CRIMINAL INVESTIGATION :**

Criminology is the science that deals with crimes and Criminals whereas investigation is an endeavor to discover the truth by the application of that science. The realm of criminology and Criminal investigation is so manifold and diverse that it is hardly possible to touch even the fringe of the various problems within the limited scope of a single chapter. Considerable progress has been made in subjects like Interrogation, Modus Operandi Handwriting, Finger print, Foot-Print, Ballistics, Microscopy, Blood analysis etc., yet nobody is in a position to say that he has known or said the last word on this vast and ever-growing science of criminology.

### **1.4 - PROSECUTION AND INVESTIGATION:**

In countries where Criminal proceedings move through the mechanism of Adversary System the accused is presumed innocent until proved guilty and he has the right to assistance of a counsel from the time he is arrested. The Procedure for determining the guilt is that of competitive presentations by the Prosecution as a legal representative of the State, countered by the defence counsel as a representative of the accused.<sup>13</sup>

The office of the Public Prosecutor is responsible for a Criminal case from the point where it is received from the Police through its termination by trial. The prosecutor

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<sup>13</sup> Dr U P D Kesari : “Lectures on Administrative Law” (8<sup>th</sup> Edition, (1988), P.154.

has the responsibility of determining whether a formal charge should be lodged and if so what specific crime should be charged<sup>14</sup>.

A complex set of factors is involved in the decision to charge. The single most important factor is the seriousness of the crime, the Prosecutor will refuse to proceed if there is dearth of evidence. He will decide to take up the case if there is strong evidence furnished to him.

In the adversary system, followed in most of the Common Law countries, evidence has a very important role to play, and the function of collecting the evidence is assigned to the investigating agency i.e., the Police. In many cases the policemen has to appear in Courts to testify as a witness, if the accused does not plead guilty. He may also be required to prosecute the charge. In the United States, it is only in very minor cases that the Policemen Act as prosecutors presenting the evidence against the accused. In England, the Policemen Act as Prosecutors in all except the most serious cases. In both the countries, when the Policemen does not so Act, the burden of prosecution is entrusted to a professionally trained lawyer called the prosecuting officer.

In India where the Adversary system is followed, evidence has a very important role to play in the administration of justice and the function of collecting the evidence is assigned to the Police. The Police officer has to appear as a witness before the Court. In a few cases, however, he can appear as Prosecutor.

Section 302 of the Code of Criminal Procedure 1973 contains the following rule with regard to permission to conduct prosecution. It says;

“(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a Police officer below rank of Inspector; but no person, other than the Advocate General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do without such permission;

Provided that no Police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader”.

A Police officer that has taken any part in the investigation of an offence cannot be permitted to conduct the case in respect of that offence. If he does, the trial gets vitiated.

In the case *Lakshminarayan Vs. State* it was held that there is nothing wrong in principle if an officer of the Excise Department is detailed to conduct the prosecution in a class of cases before a Magistrate. But if he has investigated a particular case, it is improper for him to conduct it in Court, as he will in fact be a witness in the case.

### **1.5 - INVESTIGATION AND INQUIRY:**

Section 4(k) of the Code of Criminal Procedure 1898 defined the term ‘Inquiry’ thus:

“Inquiry includes every inquiry other than a trial conducted under this Code by a Magistrate or Court”.

Section 2(g) of the present Code of Criminal Procedure defines the term ‘Inquiry’ thus:

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<sup>14</sup> Encyclopaedia of Crime & Justice, Volume 2, P 450.

“Inquiry means every inquiry, other than a trial, conducted under this Code, by a Magistrate or Court”

## **1.6 - INVESTIGATION AND TRIAL:**

### **1.6.1 Trial :**

The fundamental concept of trial is the determination of guilt or innocence of the person who is tried and it can and only in one or the other of the recognized forms; conviction, acquittal, discharge, that is, finding him guilty or not guilty or finding that there is no case against him or that the charge is groundless; trial is stopped by withdrawal of prosecution or tender of pardon.

### **1.6.2 Inquiry and Trial :**

Inquiry and trial are used in many Sections of the Code in close juxtaposition and apparently intended to signify two different things. They are not used in any general or popular sense.

The term inquiry means inquiry before a Magistrate preliminary to trial, which regularly results in charge or discharged and does not include trial. It includes not merely the taking of evidence and on the consideration of that evidence the conclusion to charge or discharge of the accused.

Trial commences after the accused is charged. It covers the entire proceeding beginning with the case being called for hearing till the judgment is delivered. It follows therefore that a proceeding in which a Court cannot pass a final order would not be a trial.<sup>15</sup>

### **1.6.3 Investigation and Trial:**

At any moment in the trial of a case either by the Magistrate or a Court of Session it may become necessary to throw light on a certain matter. In that case the Court may use the Police to obtain further information. The Court may in its discretion instruct the Prosecution to obtain further information and the Prosecution would not be an investigation under Chapter XIV of the Code of Criminal Procedure in the ordinary sense, but it would in effect be hardly distinguishable<sup>16</sup>.

## **1.7 CRIMINAL INVESTIGATION BY SCIENTIFIC METHODS**

Science and Technology both have exerted their influence on the methods of criminal investigation. In Western countries particularly, the methods of scientific investigation have had a profound effect on the methods adopted by the Police for crime detection and crime prevention. All that realizes if a criminal investigator has to register success in his pursuit of combating the crime problem he should adopt scientific methods of investigation whenever and wherever possible in preference to the crude and old fashioned methods of investigation. The image of the police today in fact depends upon

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<sup>15</sup> . Miller Frant : “Prosecution, the Decision to Charge a Suspect with Crime” (1974) P.14.

<sup>16</sup> U C Sarkar : “Commentaries on the Code of Criminal Procedure”1973, P.70.

its ability to solve the problem of crime by modern methods of investigation. The police therefore very often resort to scientific aids than human aids in its task of combating the crime problem.

The modern investigator is not the same person as he was years ago, authorized by law to investigate into facts and circumstances of the case with the help of human aids and has several agencies at his command to help him probe into the matter.

This chapter is devoted to a study of the contribution which Science and Technology have made to the system of investigation and thus to the system of criminal Justice. It is divided into four sections. Section A gives a description of the Nature and Scope of Forensic Science, Section B describes the various branches of Forensic Science in vogue at present thanks to the contribution of Science and Technology; Section C describes the various methods and instruments used in particular matters, and Section D describes the methods of scientific investigation obtaining in India.

The object of this chapter is to note the transformation, which has taken place in the system of investigation; the factors, which are responsible for the change, and the impact, which this change has on the system of investigation. In short, it is an evaluation of the system of investigation with reference to the scientific and technological progress of the modern days.

## **SECTION – A: THE NATURE AND SCOPE OF FORENSIC SCIENCE:**

### **I – FORENSIC SCIENCE:**

#### **(i) Meaning & Definition of Forensic Sciences :**

The term ‘Forensic’ is derived from the Latin word ‘Forensis’ which means belonging to courts of justice or to public discussion and debate. ‘Forensic Science’ would, therefore, mean the science, which is used in the courts of justice. ‘Forensic Science’ can be defined more broadly as that scientific discipline which is directed to the recognition, identification, individualization, and evaluation of physical evidence by the application of the principles and methods of natural sciences for the purposes of administration of criminal justice<sup>17</sup>.

Forensic Science embraces all branches of physical and natural sciences, chief among them being Chemistry, Biology, Physics and Geology. Over the years it has developed its own branches, which are more or less the exclusive domain of forensic science. Anthropometry, Fingerprints, Documents, Ballistics, Odontology, serology are essentially the subjects covered by the discipline of Forensic Science, as an aid to the administration of criminal justice.

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<sup>17</sup> Richardson James R : ‘Scientific Evidence for Police Officers’ Ohio, 1963, page 3.

## **(ii) The Origin and Development of Forensic Science:**

Forensic Science today is an integral part of the criminal justice administration. Started with the humble beginning it is today a well-recognized multi-disciplined science serving the cause of justice<sup>18</sup>. The revolutionary development in science and technology that has taken place over the years, has progressively improved the methods and tools of forensic science. During the last few decades there have been significant developments in the field of Forensic Science throughout the world.

Although the true beginning of modern forensic science and its practical application can be traced back to the middle of the nineteenth century, the medico-legal investigation of certain suspicious violent deaths in colonial America is as old as mid-seventeenth century, when Coroners used to hold inquests in order to ascertain the cause of death.

In the year 1691 when Governor Henry Sloughter of New York died under suspicious circumstances following a very tense political period, the Provincial Council ordered an autopsy. Dr. Johannes Kerfbyle performed the post-mortem examination witnessed by five local physicians and in his report stated that the late Governor died of a defect of his blood and lungs occasioned by some glutinous tough tumor in the blood and made oath that they knew no other cause of death<sup>19</sup>.

Criminal Investigation in its present day significance started at the end of the 18<sup>th</sup> century and took a concrete shape in 1824 when Hans Gross, Professor of Criminology in the University of Prague, who rightly has been termed as the 'Father of Modern School of Scientific Investigation' published his book on the subject. He dealt with certain qualities essential to an investigating officer, mentioned the various ways how the veracity of a witness has to be adjudged, how to make use of the experience of experts in the examination of the dead body; traces of blood, stains on weapons and other objects found at the spot and refer to the various practices of criminologists. He also indicated how various offences like murder, theft, burglary, arson and fraud should be investigated and in fact left no possible subject without a most thorough examination which cannot but be read with advantage even after more than a century.

In the early 19<sup>th</sup> century students began receiving education in medical jurisprudence. In 1832, Dr Theodore R Beck, a lecturer at the College of Western District of the State of New York published his authoritative work, 'Elements of Medical Jurisprudence' which emphasized the need for adequate post-mortem examination of unnatural deaths.

In 1911, Faurot became the first person in the United States to introduce fingerprinting in a court. His testimony in a burglary case caused the defendant to change

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<sup>18</sup> Introduction to Forensic Science Eidd. By William Exkart, 1967, page 55.

<sup>19</sup> Beveridge : 'The Art of Scientific Investigation', New York, 1957.

his plea from not guilty to guilty. During the following years fingerprinting gradually became an accepted practice.

## **SECTION - B : THE VARIOUS BRANCHES OF FORENSIC SCIENCE :**

**1 – ANTHROPOMETRIC MEASUREMENTS:** The Bertillon system advanced criminal identification to a considerable degree. Invented by Alphonse M. Bertillon and perfected in 1882, these anthropometric measurements were based on the theory that certain structures of the body remain constant and unchanged in size throughout adult life. Three sets of measurements were taken: (1) based upon the entire body, (2) based on the head, and (3) based upon the extremities. Bertillon divided the body into six regions, each identified by a Roman numeral to simplify the locating of marks and scars. His description data included weight, color of eyes and hair, complexion and the shapes of face, ears and nose. Marks and scars, including moles and tattooing were listed, together with their size and shape. Bertillon also devised three sets of colour standards employing artificial eyes, silk threads and porcelain glass for the identification of the colors of eyes, hair and skin<sup>20</sup>.

**2 - FINGERPRINTING :** Epidermic (friction) surfaces of the skin exists in human beings on the inner palmer surfaces of the fingers and palms of the hands and on the inner planter surfaces of the toes and soles of the feet. They consist of ridges and creases, on the purposes of which physiologists are not yet in agreement. Monkeys, apes, gorillas and orangutans also possess them and similar surfaces are found among some birds. A fingerprint is the impression left upon any surface with which the finger comes in contact under pressure.<sup>5</sup>

**3 - TOXICOLOGY :** Poisons have played an important part in crimes, from early times, as a silent weapon of destroying life secretly and mysteriously. Many death occur as a result of poisoning. The police are called upon to investigate into cases of suspected poisoning to establish whether it is a case of accidental, suicidal or homicidal poisoning.

The investigation of cases of poisoning is one of the most difficult task confronting the Police because the symptoms of different kinds of poisoning may simulate those of various diseases. The investigation is further complicated by the easy availability of variety of poisons, the small amount of poison available for examination and the difficulty in their extraction and identification.

Toxicology is the science of poisons, it deals with the nature, origin, properties, mode of administration, physiological action, the signs and symptoms, extraction and identification of poisons. The extraction of poison and its identification is the chief concern of the forensic toxicologist.

**4 - ODONTOLOGY :** Identification of dead bodies, especially in mass disasters like fires, explosions, floods, airplane disasters etc. is one of the most difficult task for the

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<sup>20</sup> Andre A. Mauseens, 'Fingerprint Techniques, New York, Chilton, Book Co., 1971, page 46.

law enforcement agency. This is particularly true when the bodies are charred, dismembered, mutilated or have reached extreme stage of decomposition. In such situations identification can be achieved through dental characteristics. Even in crimes like burglary, sexual crimes etc. bite marks on      Odontology is that branch of anatomical science, which deals with various aspects of teeth. Forensic Odontology is the application of the knowledge and principles of dentistry in the administration of criminal justice. Forensic Odonotology is a new and upcoming branch, which is gaining recognition and acceptance as a means of identification. This branch of science is known to have solved very many cases of identification involving skeletal remains and dental marks.<sup>21</sup>

**5 - POLYGRAPHY (LIE DETECTION) :** In recent times a good deal of use is made of lie detectors for the purpose of criminal investigation. It is necessary therefore to describe the correct idea underlying this method of investigation, the function that a lie detector performs when used for the purpose of investigation. There is however a certain misconception about the lie-detector that it is an instrument that can readily distinguish truth from falsehood and thereby give a lay investigator an accurate idea as to when his suspect is telling a lie. There is no such machine in existence. There is also no instrument, which can tell that one portion of a statement is false, and another true. Nor is there a machine that can ring a bell or light a bulb to indicate that a suspect under interrogation is telling a lie.<sup>7</sup> But scientifically speaking, when a man tells a lie there occur some physiological changes, which, if correctly read, give an indication of his mind. Such changes may be reflected not only in the expression of his face but also in the variations of his respiration, blood pressure and skin-resistance. The lie-detector merely records such physiological changes. Thus, the machine, popularly known as the lie-detector can only record physiological reactions of the suspect with regard to some crucial and non-crucial questions and thereby give the expert interpreter some data for drawing certain inferences with regard to the statements made by a suspect during interrogation.<sup>8</sup>

The idea of detecting a lie in accordance with the present day lie detection methods occurred to Benussi in 1914. The greatest contribution in the field was, however, made in 1921 by Larson who conducted lie-detection tests with several hundreds of suspects at Berkely, California. He invented the first composite instrument that could continuously and simultaneously record the changes in blood pressure, pulse and respiration rates. In 1926, Professor Keeler effected considerable improvements on this instrument and subsequently equipped it with the Psychogalvaograph. In recent times, Professor Keeler's Polygraph has been further improved upon both in its instrumentation as well as in testing technique. The contribution of John E Reid of America in this field is most outstanding. Keeler's Polygraph (Model 302) which is supposed to be the best lie-detector machine is in use in most parts of the USA.

**6 - BLOOD IDENTIFICATION :** Blood is one of the most important and most frequently encountered evidence in criminal investigation. It can be found in almost

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<sup>21</sup> Richard Saferstein : Introduction to Forensic Science, Prentice Hall, Inc. N J 1977.

every type of criminal activity involving physical violence like murders, assaults, rape etc.

The important places for the location of blood are the scene of occurrence, the culprit, the victim, the weapon of offence, the vehicle and the route taken by the culprit. After determining the origin of blood the stain is further examined to associate it with a particular individual. The modern serological techniques have divided blood into three constituent classes for the discrimination of human blood. These are : (1) the blood grouping and typing antigens, (2) the polymorph enzymes, and (3) the polymorph proteins.

The system most intensively used in routine forensic examination is the ABO system discovered by Landsteiner in 1900. The next best known is the Rh system. This system is, however, not found useful in the analysis of dried bloodstains. It is more often used in disputed paternity cases in which whole blood analysis is involved. The third system, i.e., MNS system despite its great potential value to the crime laboratory, poses similar problems as Rh system

**7 - DNA FINGERPRINTING :** Every individual possesses a unique genetic code, sometimes referred to as the genome. The code provides the information from which our bodies are built. With few exceptions, notably the red blood cell, every living cell in the body contains the complete genetic code. The code is contained as a separate package within the cell called the nucleus. Forty six chromosomes are used to hold the code and these are made of a chemical DNA (Deoxy-Ribonucleic Acid). DNA itself has four basic building blocks, which are represented by the letters C T G and A. The building blocks form the chromosomes by joining together in long ribbon-like structures. The structure formed is called a 'Double Helix' because, two ribbons of building blocks twine around each other. The ribbons complement each other and are referred to, therefore, as 'complementary strands'. This is an extremely important property of DNA, if it is used to identify sequences of interest, i.e., 'Probe' the DNA.

Dr Alex Jeffery of the Liecestershire University and his team innovated the DNA test in the year 1985 which is capable of replace the age old conventional blood group testing. According to Dr Eric S Lander, an eminent scientist in DNA technology, the basis for the DNA seems to be that barring identical twins the possibility of human beings having identical DNA sequences is ruled out, as three thousand million nucleotides which people inherit from each parent about one thousand is the site of variation in the population.<sup>22</sup>

In the matters of fixing the paternity or maternity of a child and also in cases of homicide and rape, DNA Fingerprinting evidence is considered to be decisive.

Blood grouping test only facilitates in excluding a person that he is not the father of the child but cannot positively lead to a conclusion that a particular person is the

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<sup>22</sup> Fried E Inban, Scientific Police Investigation, New York Book Company, 1972.

father. By virtue of DNA Fingerprinting technology, which is the foolproof method, the paternity of a child can conclusively be established with 100 per cent certainty.<sup>23</sup>

### **SECTION – C : THE METHODS AND INSTRUMENTS USED IN FORENSIC SCIENCE IN VARIOUS MATTERS OF INVESTIGATION**

Today there are many scientific instruments and scientific methods and scientific instruments used in Forensic Science Laboratories for the investigation of offences. Some of the instruments, which are currently in use in the Forensic Science Laboratories, may be described as follows:

1. **SPECTROGRAPH**: Ultra-violet emission spectrograph is an indispensable instrument in criminalistic studies. A Forensic Scientist confidently lays his hands on it to determine the trace and gross chemical constituents of inorganic origin for the purpose of identification and comparison of physical clues like glass, paint, soil, dirt, dust, debris, metallic fragments, etc., collected in the course of crime investigation. A few milligrams of the sample is quite enough to carry out the examination and that too in a very short time. A permanent record of the examination in the form of Spectrogram is obtained for demonstration, if desired, in the court.
2. **SPECTROPHOTOMETER** : In the examination of physical clues, mostly of organic nature, the Forensic Scientist conveniently makes use of Spectrophotometer. Depending on the type of material under examination, this instrument can be used to scan through a wide range of Electro Magnetic Spectrum, namely Ultraviolet, Infrared and Visible regions. It is used in the examination of dyes, drugs, insecticides, oils, solvents and various other organic substances present separately or in combination.
3. **GAS CHROMATOGRAPH**: This instrument is a recent addition to the armory of criminalistics, which is extensively used in Police Crime Laboratory. It finds its use in detecting substances, which are volatile, like organic solvent. Complex mixture of volatile organic can be isolated with ease. Denaturants used in rectified alcohol's, alcohol in blood, volatile organic poisons, inflammable substances used in arson or homicides, gas chromatography. Micrometer quantity of the substance will suffice to carry out the examination.<sup>24</sup>
4. **ELECTROPHORESIS**: It is a comparatively simple instrument, yet very useful to a criminalistician. It finds wide applicability in forensic analysis and is mainly used in the examination of physiological fluids, separation of alkaloids, inks, dyes and such other materials that from charged ions or particles in solution. Electrophoretic pattern of sera from different animal species differs considerably and this is found very useful in characterizing animals of different species.<sup>25</sup>

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<sup>23</sup> John Zoderman : Crime Lab , John Wiley & Sons Inc. USA 1990.

<sup>24</sup> S Adhya : Human DNA Fingerprint, Journal of Indian Academy of Forensic Science, Calcutta, Volume 30, July 1991.

<sup>25</sup> Dr H L Bani : Documentation Examination (Article published in SvP NPA Magazine, December 1985).

5. **X-RAY DIFFRACTION:** The various instruments referred above are disadvantageous from one point of view. The sample material analyzed is destroyed and is thus irrecoverable. In X-Ray diffraction analysis, however, the sample material remains intact. In crime investigation work, minute quantities of clue materials are available for analysis. These, at times, may have to be preserved for evaluation of evidence by courts. It is here the X-Ray diffraction instrument is of a particular advantage.

6. **MASS SPECTROMETER :** This is yet another instrument, which provides further sensitivity in the determination of various organic and inorganic substances. Unlike spectrometers mentioned earlier, this instrument works on different principle. The substance to be analyzed is transformed into ions by ionic sources like thermal ionization, electron bombardment, etc. The transformed ions, which consist of electrically charged particles of different masses, are made to pass through a magnetic field, which separates different ions according to their masses. Thus a spectrum of lines corresponding to different masses of various elements is obtained. This spectrum helps to determine the substance both qualitatively and quantitatively<sup>26</sup>.

7. **NEUTRON ACTIVATION ANALYSIS:** Criminologists have never lagged behind in adopting latest scientific techniques in crime investigation work. Neutron activation analysis is the latest development in the scientific field. Its utilization to the fullest extent by the Forensic Science Laboratories has not yet been achieved. It is yet in its preliminary stage.

It is a method wherein minute quantity of inorganic material is irradiated with nuclear particles, mostly neutrons obtained from Reactor source. The irradiated sample then gets disintegrated with the emission of high energy electromagnetic radiation's called gamma-rays.

8. **DOCUMENTS EXAMINATION:** Starting from birth certificate and thereafter every human activity is connected with some type of documents or to her. These very documents are today most prevalent causes of crime through which the society suffers crores of rupees worth of economic losses. The nation's economy pays dearly due to frauds, forgeries, counterfeiting, forged cheques, embezzlements etc. Surprisingly this large white-collar crime is comparatively much less dramatic than the violent crime involving guns, bombs and explosives. In the drive against economic crime, the suspect documents are basic crime-exhibits whose examination is now receiving priority in the application of most reliable scientific methods<sup>27</sup>.

Historically, profession of questioned documents examination had a beginning in Europe during 1800's and at that time, photographers managed it only. The courts were

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<sup>26</sup> Leonard : Criminal Investigation & Identification, Springfield, III, Charles E Ohars, 1971.

<sup>27</sup> Duncan J H : 'Introduction to Fingerprints, London, Butterworth, 1942.

reluctant to accept their findings because they often made mistakes. Legal acceptance of such examinations only commenced about 75 years ago due to the pioneering efforts of Albert S Osborn who helped the profession to develop on scientific lines. The earlier followers of this profession were called “hand writing experts” (a term common in India even today) and primarily dealt with comparison of handwritings and forgeries by simple means. With industrial and economic advancement, the documents remained no longer confined to handwritten texts and today questioned documents over a wide variety of written, typed, Photostat, photographed, stamped, printed and inscribed materials involving diverse technological processes. Meanwhile, gradual development of forensic science as a discipline during the last four decades led to introduction of basis disciplines and their methods in all its branches including the questioned documents examination.

Questioned documents examination, today, is utilizing diverse basic scientific technologies to move from semi-subjective analysis to a State of objective scientific comparison in ever-increasing measure. This advancement continues unabated in several specific areas where either sophisticated instrument have been specially designed or the available advanced scientific methodology has been successfully adopted to give accurate and specific answers to questions which were otherwise beyond solution. The old concept of “hand-writing expert” has been replaced by a “questioned document examiner”, who is not a mere technician but a scientist in his own right with vast resources of applied science at his disposal. This new trend of development is revolutionizing document examination and one of the significant advances is optical comparators<sup>28</sup>.

**9. OPTICAL COMPARATORS:** Both examination and comparison of documents for forgery, erasures, alterations etc. have involved non-destructive examination using visible, ultra-violet and infrared spectral regions of light. For such lengthy examinations, a variety of individual equipment including microscopes, ultra-violet viewers, infrared image converters and photographic equipment have been utilized in the past.

**10. THE USE OF DOGS:** For a long time now, guard dogs have been used in many countries to help the police with certain task, but the use of dogs because of their sense of smell, to assist the police in search of missing persons and tracking down fugitives is a recent one. More recently still, dogs are being successfully trained to detect narcotics and even explosives. The experience of police in using the dogs and the scientific inquiries about their sense of smell has increased the number of things for which dogs may be used. Dogs are subjected to a number of wide-ranging and complicated tests, and their sense of smell has been evaluated by mean of an olfactometer which as its name implies makes it possible to measure even the slightest smell detected by a dog.

A dog’s sense of smell is the most developed of its five senses; to use the technical term, dogs are macrosmatic animals while human beings are microsmatic, i.e., they have little sense of smell. The reasons for the difference are attributable to the

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<sup>28</sup> B S Nabar : ‘Forensic Science’ (1994), pag 10-12.

morphology of the dog's olfactory organs and the part of its brain that deals with olfactory stimuli.

**11. IDENTIFICATION OF ALCOHOL, DRUGS, NARCOTICS AND POISONS:**

Alcohol is responsible for more deaths by direct toxic action than any other poison or all other poisons together. Incidents of mass deaths due to consumption of illicit liquors are very common in India and other countries. Lay men often use the term 'alcohol', which means alcohol, which is the active ingredient of various drinks, liquors and spirits. Methyl alcohol, which is not meant for human consumption, is frequently used to denature ethyl alcohol. Drunkards on account of its cheapness and ready availability often clandestinely consume this denatured spirit.

In suspected drunkenness cases, especially related to traffic accidents and other criminal offences, the forensic laboratory is often called upon to determine alcohol contents in blood and urine.

In the implementation of prohibition laws of the states and other excise acts, it becomes necessary to examine fermented wash, illicit liquor, varnish etc. for its alcoholic contents.

**12. IDENTIFICATION OF ADULTERATION OF FOOD:** Adulteration in food and foodstuffs is one of the common acts of black marketers, hoarders and profiteers. The main intent in of the unscrupulous businessman is to make their products attractive, acceptable and saleable so that they can make easy money. Consumption of adulterated foodstuff may often lead to loss of lives of innocent citizens.

Adulteration and misbranding are offences under the Prevention of Food Adulteration Act and Indian Penal Code. Police are often called upon to investigate offences under Food Adulteration Act.

**13. PHOTOGRAPHY IN POLICE WORK :** Photography is an important aid in criminal investigation. For a long time photography was mainly used in the identification of criminals. In the recent years, photography has made such advances that it has become indispensable to every type of police work.<sup>16</sup>

**14. FOOTPRINTS:** Footprint is a general term used for bare footprint or impression and shoeprints or impression. The examination of footprints as an aid to identification is an art as old as civilization. Footprints often afford good clues particularly in India, where the majority of the people still go about bare-footed. They may be caused by; bare foot or may be left by footwear. In the latter case they are known as footwear prints.

The footprints and shoeprints may establish the presence of the culprit at the scene of crime.

**15. PROTRAIT PARLE:** In police investigations it has always been a problem to identify a wanted suspect, or missing persons or those required for the purposes of

alienation from inquiries. A police officer is required to be proficient in observation and description to enable him to memorize the faces and features of persons or criminals so that he can recognize them when he sees them at any time subsequently, and to write down the descriptions of convicted or suspected criminals in such a manner that other officers can recognize or identify them when seen by them later.

## **SECTION - D : SCIENTIFIC METHODS OF INVESTIGATION IN India**

In India, the authorities have gradually introduced the system of scientific investigation in the criminal justice system of the country. Scientific investigation now is an area in which the Governments at the Union as well as at the State levels have been taking keen interest to adopt new methods of scientific investigation. Here is a brief description of the developments regarding scientific methods introduced in the system of investigation in India.

### **I - DEVELOPMENT IN PRE-INDEPENDENCE INDIA :**

#### **i) Chemical Examiners' Laboratories :**

Towards the latter half of the 19<sup>th</sup> century, Government had established Chemical Examiners' Laboratories at Madras in 1849, at Calcutta in 1853 at Agra in 1864 and at Bombay in 1870, followed by the establishment of similar laboratories in other State headquarters. The task of such laboratories was limited in nature; they undertook simple chemical analysis of poisons in Viscera, blood etc.

#### **ii) Fingerprint Bureau :**

The Fingerprint was established by Sir Edward Henry, I G P, Bengal, in Calcutta in 1897 and by 1910 State Finger Print Bureau were established in many States, consequent upon the report of the Police Commission which had recommended the setting up of CID units at the State level.

#### **iii) Examiner of Questioned Documents :**

In 1906 the Government Examiner of Questioned Documents was established at Simla and in 1910 the Serologist and Chemical Examiner to the Government of India was established at Calcutta.

#### **iv) Other Scientific methods adopted by the CID Branches of State Police :**

In many states, the scientific examination of firearms, footprints and photography was undertaken to a limited extent in the CID branches of State Police.

## **II – DEVELOPMENTS IN POST-INDEPENDENCE INDIA**

The idea of improving the system of criminal investigation by scientific methods received a further fillip when the Central Government started the scheme of “Modernization of Police Force” in 1969-70. The pattern of assistance under this scheme to every State was 75 % loan and 25 % grant.

At present there are Eighteen State Forensic Science Laboratories. These laboratories have been found inadequate to render prompt and efficient service. This prompted many States like Tamil Nadu, Maharashtra, Andhra Pradesh, Uttar Pradesh, Gujarat etc., to extend the facilities to regions by setting up Regional Forensic Science Laboratories. Some States have extended these facilities to the district level and in metropolitan towns by setting up mobile laboratories. Thus, it can be seen that there has been a constant endeavor, for the last two decades, to expand the existing forensic institutions to serve and strengthen the administration of criminal justice.

### **i) Institutions under the Center :**

1. The Central Forensic Science Laboratory, under CFI, BPR&D Calcutta, Hyderabad, Chandigarh.
2. The Central Forensic Science Laboratory under CBI, New Delhi.
3. The Government Examiners of Questioned Documents, CFI, BPRD at Simla, Calcutta and Hyderabad.
4. The Central Fingerprint Bureau, under NCRB, New Delhi.
5. The Serologist and Chemical Examiner to the Government of India, Ministry of Health, Calcutta.
6. The General Manager of the Mint, at Calcutta, Bombay and Hyderabad.
7. The General Manager, India Security Printing Press, Nasik and Bank Note Press, Dewas.
8. The Controller of Stamps and Stationery.
9. National Institute of Criminology and Forensic Science under MHA, New Delhi. It is an institute imparting training to Police, Judicial and Correctional Service Officers and Scientific Personnel from the States and Central Forensic Laboratories.
10. Office of the Chief Controller of Explosives established in 1898 in Nagpur.
11. Central Detective Training School at Calcutta, Chandigarh and Hyderabad.

### **ii) At the State Level :**

The State Forensic Science Laboratories exist in the following statement:

|    |                       |    |      |
|----|-----------------------|----|------|
| 1. | West Bengal, Calcutta | .. | 1952 |
| 2. | Maharashtra, Bombay   | .. | 1958 |
| 3. | Rajasthan, Jaipur     | .. | 1959 |
| 4. | Tamil Nadu, Madras    | .. | 1959 |
| 5. | Kerala, Trivandrum    | .. | 1961 |
| 6. | Orissa, Bhubaneswar   | .. | 1962 |
| 7. | Bihar, Patna          | .. | 1963 |

|     |                           |    |      |
|-----|---------------------------|----|------|
| 8.  | Jammu & Kashmir           | .. | 1964 |
| 9.  | Madhra Pradesh, Sagar     | .. | 1964 |
| 10. | Assam, Gauhati            | .. | 1967 |
| 11. | Karnataka, Bangalore      | .. | 1967 |
| 12. | Uttar Pradesh, Lucknow..  |    | 1969 |
| 13. | Haryana, Madhuban         | .. | 1973 |
| 14. | Gujarat, Ahmedabad        | .. | 1974 |
| 15. | Andhra Pradesh, Hyderabad |    | 1976 |
| 16. | Punjab, Chandigarh        | .. | 1981 |
| 17. | Meghalaya, Shillong       | .. | 1986 |
| 18. | Himachal Pradesh, Simla   | .. | 1987 |

The basic structure of most of the Forensic Science Laboratories in the Centre and the State consists of a number of functional divisions each based on one area of specialization. But most of them have all or some of the following divisions in them:

- Ballistics
- Biology
- Chemistry
- Documents
- Lie Detector
- Physics
- Serology
- Toxicology

## INVESTIGATING AGENCIES

### A – INVESTIGATING AGENCIES UNDER THE GENERAL LAW

The major share of responsibility for investigation in the present day system of administration is assigned to the Police. This can be explained by a reference to the Police functioning in India and other countries.

The Code of Criminal Procedure 1973 is by far the most important statute in India on the process of investigation. The Code defines Investigation with reference to proceedings under the Code for the collection of evidence conducted by the Police.

Police Force has been constituted by the Union Government so far under more than one enactment, and for more than one purpose. Following are some of the enactments of the Central Legislature under which the Police Force has been constituted for the purpose of performing, among other things, the function of investigation.

#### (i) Police Force Constituted under The Police Act, 1861:

In order to organize the Police and to make it a more efficient instrument for the prevention and detection of crime the Central Legislature passed in the year 1861 the Police Act. In this Act the word ‘Police’ includes all persons who shall be enrolled under the Act. The entire Police administration under a State Government, for the purposes of the Police Act, is deemed to be one Police force and consists of such number of officers and men, and shall be constituted in such manner as may from time to time be ordered by the State Government.

Under Section 23 of the Police Act it is the duty of every Police Officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the Public Peace, to prevent the commission of offences and public nuisances, to detect and bring the offenders to justice, and to apprehend all persons whom he is legally authorized to apprehend and for whose apprehension such ground exists, and it is lawful for every Police Officer to enter and inspect drinking shops, gaming house of other places of resort of loose and disorderly characters.<sup>1</sup>

**(ii) Delhi Special Police Establishment :**

In the year 1946 the Central Legislature passed an Act to make provision for the constitution of a special force for the investigation of certain offences in the Union Territories. The Act provided for the superintendence and administration of the said force and for the extension to other areas the powers and jurisdiction of the members of the said force in regard to investigation of the said offence.

The Delhi Special Police Establishment is a Central Police Force constituted to investigate offences of bribery and corruption committed by officers or others in the Departments of Central Government.

The Central Government may by notification in the official gazette specify the offences or classes of offences, which are to be investigated by the Delhi Special Police Establishment.

The superintendence of the Delhi Special Police Establishment is vested in the Central Government, and the administration of the said force is vested in an officer appointed by the Central Government who may exercise such powers as are exercisable by the Inspector General of Police in respect of the forces in a State.

The Central Government may by order extend to any area (including railway areas) in a State the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences which are within the purview of the Delhi Special Police Establishment.<sup>2</sup>

**(iii) Central Bureau of Investigation:**

The Central Bureau of Investigation is the prime agency for investigating cases relating to corruption by Central Government employees. It was constituted through a resolution of the Government of India passed on April 1, 1963 as regulated by the Delhi Special Police Establishment Act 1946. The objects and functions of the Central Bureau of Investigation have been mentioned in the resolution, which reads as follows:

“The Government of India have had under consideration the establishment of a Central Bureau of Investigation for the investigation of crimes at present handled by the Delhi Special Police Establishment including specially important cases under the Defence of India Act and Rules particularly of boarding, black-marketing and profiteering in essential commodities which may have repercussions and ramifications in several states; the collection of intelligence relating to certain types of

Crimes; participation in the work of the National Central Bureau connected with the International Criminal Police Organization; the maintenance of crime statistics and dissemination of information relating to crime and Criminal s; the study of specialized crimes of particular interest to the Government of India or crimes having all-India or inter-State ramifications or of particular importance e

from the social and the coordination of laws relating to crime. As a first step in that direction the Government of India have decided to set up with effect from 1<sup>st</sup> April, 1969 a Central Bureau of Investigation at Delhi with the following six Divisions namely; Investigation and Anti-Corruption Division (Delhi Special Police Establishment, Technical Division; Crime Records and Statistics Division; Research Division; Legal and General Division; Administration Division.

The Charter of functions of the above said Divisions will be as given in the annexure. The assistance of the Central Bureau of Investigation will also be available to the State Police Forces on request for investigating and assisting in the investigation of inter-State crime and other difficult Criminal cases”.<sup>3</sup>

**(iv) Central Reserve Police Force:**

The Central Reserve Police Force Act 1949 is an Act dealing with the subject of Police. The aim, object and purpose of the said Act were to create a body of men for performing the functions, which are enforceable by members of the Police. The only difference is that all members of the Central Reserve Police Force are armed, and the various Sections of the Act authorize and impose strict military discipline for the members of the Central Reserve Police Force. The object of their creation is the performance of functions, which are performable by the Police in a more efficient manner.

**B - INVESTIGATION BY PERSONS OTHER THAN POLICE OFFICERS:**

Section 202(1) of the Code falling under Chapter XV of the Code of Criminal Procedure with the caption “Complaints to Magistrates” envisages that any Magistrate on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under Section 192 of the Code can direct an investigation to be made by a Police officer or “by such other person as he thinks fit”.

**C - INVESTIGATION BY MAGISTRATES :**

Investigation in Criminal matters is in most of the procedural systems a function of the Police. But even where the law confers the Power on the Police to investigate it confers a similar Power sometimes on Magistrates and persons other than the Police. In France, Spain and West Germany the Penal Codes confer powers on the Magistrates to investigate. But the Magistrates, owing to the dearth of manpower, skill and experience, delegate the routine matters to the Police or other non-legal personnel and retain the right to investigate important or sensitive cases.

The institution of the investigating Magistrate is characteristic of continental Criminal Procedure. In United States a recommendation was made to adopt the Procedure of the Magistrates rather than the Police conducting Criminal investigations, but the recommendation was not accepted. France, Italy and Spain still retain the investigating Magistrate but West Germany abolished that office in 1975 because it was no longer regarded as necessary.

A Spanish statute requires that the investigating Magistrate be informed within twenty-four hours of all Acts of investigation performed by the Police and that he collects the transcripts of Police protocols. In practice, the Magistrate delegates the function to the Police. Thus, the primary responsibility in Spain for conducting the investigation resides with the Police, despite the statutory mandate that it should be done by the investigating Magistrate. The reason why the Magistrate delegates the responsibility to

the Police is that the Magistrate cannot single-handedly conduct or even control the investigation as long as the Police monopolize the requisite manpower, equipment and experience.

In India, the function of investigation in most of the matters is that of the Police. The law however confers Power on certain matters on certain special category of officers to investigate though their powers are not so vast as those of the Police officers. Even the Magistrates have the Power to inquire into certain matters, as can be seen from the following provisions of the Code of Criminal Procedure, 1973.

Under Section 159 of the Code of Criminal Procedure a Magistrate, on receiving report from an officer in charge of Police Station that a certain case is not of a serious nature and that there is no sufficient ground for making an investigation on the spot, may direct an investigation or if he thinks fit at once proceed or depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry into the case or dispose of the case in the manner provided in the Code.

Under Section 176 of the Code of Criminal Procedure 1973 the Magistrate has the Power to hold an inquiry into the cause of death either instead of or on addition to the investigation held by a Police officer.

Under Section 202 of the Code of Criminal Procedure, any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a Police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding.

#### **D - OTHER AGENCIES EMPOWERED TO INVESTIGATE :**

The task of investigating into crimes is not the sole monopoly of a particular branch of Government whether it is the Indian legal system or any other legal system of the world. Almost all the three branches of Government; the legislative, the executive and the judiciary exercise the Power of investigation independently or share the Power with some other branch of Government. Of course, the major share of responsibility for investigation, under the general principles of Criminal Procedure is that of the Police, but there are a number of statutes, which assign the duty of investigation to other agencies of Government including the administrative, legislative and judicial branches.

This chapter examines the hypothesis that the task of investigation is not the monopoly of the Police but of various departments of Government in total disregard of the theory of separation of powers. The various agencies working in India and other countries to perform the task of investigation in various matters are the following:

##### **(a) Agencies in India :**

##### **(1) THE HUMAN RIGHTS COMMISSION :**

The Protection of Human Rights Act 1993 provides for the constitution of a National Human Rights Commission and the State Human Rights Commission for better protection of Human Rights.

The National Human Rights Commission is assigned the duty to perform all or any of the following functions, namely;

- (a) Inquire suo motu or on a petition presented to it by a victim or any person on his behalf into the complaint of violation of Human Rights or abatement thereof, or negligence in the prevention of such violation by a public servant;
- (b) Intervene in any proceeding involving any allegation of violation of Human Rights ending before a Court, with the approval of the Court;
- (c) Visit under intimation to the State Government any jail or any other institution under the control of the State Government where persons are detained or lodged for the purposes of treatment, revision or protection.

Under Section 14 of the Act, the Commission may, for the purposes of conducting any investigation pertaining to the inquiry, utilize the services of any person or investigation agency of the Central Government or the State Government with the concurrence of the Central Government as the case may be.

For the purposes of investigating into any matter pertaining to the inquiry any officer or agency whose services are utilized may, subject to the direction and control of the Commission summon and enforce the attendance of any person and examine him, require the discovery and production of any document, and requisition any public record or copy thereof from any office.

Under Section 17 of the Act the Commission may call for information or report from the Central Government or any State Government or any other authority or organization subordinate thereto within such time as may be specified by it, provided that if the information or report is not received within the time stipulated by the Commission it may proceed to inquire into the complaint of its own.

Under Section 18 of the Act the Commission may take any of the following steps upon the completion of the inquiry held under this Act, namely;

- (i) Where the inquiry discloses the commission of violation of human rights by negligence in the prevention or violation of Human Rights by a public servant it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other Act as the Commission may deem fit against the concerned person or persons.
- (ii) Approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
- (iii) Recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim of the members of his family as the Commission may consider necessary.

## **(2) NATIONAL COMMISSION FOR SCHEDULED CASTES AND SCHEDULED TRIBES :**

The Constitution sixty-fifth Amendment Act 1990 amended Article 388 of the Constitution to provide for the establishment of a commission known as the National Commission for Scheduled Castes and Scheduled Tribes to perform the following functions, namely:

- (a) to investigate and monitor all matters relating to the safeguards provided for the scheduled castes and scheduled tribes under the Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- (b) to inquire into specific complaints with respect to deprivation of rights and safeguards of the scheduled castes and scheduled tribes;

- (c) to participate and advise on the planning process of socio-economic development of the scheduled castes and scheduled tribes and to evaluate the progress of their development in the Union and in the States;
- (d) to present to the President annually and at such other times as the Commission may deem fit, reports upon the working of these safeguards, and
- (e) to make any such reports/recommendations as to the measures that should be taken by the Union or any State for the effective implementation of these safeguards and other measures for the protection, welfare and socio-economic development of the scheduled castes and scheduled tribes.

Under Clause 6 of Article 388 of the Constitution the President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the Action taken or proposed to be taken on the recommendations relating to the case and the reasons for the non-compliance, if any, of such recommendations.

Under Clause 8 of Article 388 the Commission, while investigating any matter or inquiring into any complaining shall have all the powers of the civil Court trying a suit and in particular the Power of summoning and enforcing the attendance of any person from any part of India and examining him on oath; requiring the discovery and production of any document; receiving evidence on affidavits; requisitioning any public record or copy thereof from any Court or office; and issuing commissions for the examining or witnesses and documents.

### **(3) THE NATIONAL COMMISSION FOR MINORITIES :**

This Commission has been constituted under the National Commission for Minorities Act 1992 to perform all or any of the following functions, namely –

- (a) Evaluate the progress of the development of minorities in the Union and States;
- (b) monitor the working of the safeguards provided in the Constitution and under the laws enacted by Parliament and the State Legislatures;
- (c) make recommendations for the effective implementation of the safeguards for the protection of interests of minorities by the Central Government or the State Government;
- (d) look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authority;
- (e) cause studies to be undertaken into the problems arising out of any discrimination against minorities and recommend measures for their removal;
- (f) conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities.

Under sub-Section 2 of Section 9 of the Act the Central Government shall cause the recommendations of the Minorities Commission referred to above to be laid before each House of Parliament along with a memorandum explaining the Action taken or proposed to be taken on the recommendation and the reasons for the non-compliance, if any, of any of such recommendations.

While performing any of the functions referred to above, the Minorities Commission shall have the Power to summon and enforce the attendance of any person from any part of India and examine him on oath; require the discovery and production of any document; receive evidence on affidavits; requisition any public record or copy

thereof from any Court or office; and issue commissions for the examination of witnesses and documents.

**(4) THE NATIONAL COMMISSION FOR WOMEN, 1990:**

This Commission has been constituted under the National Commission for Women Act 1990 to perform all or any of the following functions, namely;

- (a) Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;
- (b) present to the Central Government annually and at such other times as the Commission may deem fit, reports upon the working of these safeguards;
- (c) make any such reports/recommendations for the effective implementation of these safeguards for improving the conditions of women by the Union or any States;
- (d) review from time to time the existing provisions of the Constitution and other laws affecting the women and recommend amendments thereon so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislation;
- (e) the up the cases of violation of the provisions of the Constitution and all other laws relating to women with the appropriate authorities; and
- (f) look into complaints and take suo motu notice of matters relating to deprivation of women's rights, and non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development, non-compliance of policy decisions, guidelines or instructions aimed at mitigating the hardship and ensuring welfare and providing relief to women and take up the issues arising out of such matters with appropriate authorities, call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the issues so as to recommend strategies for their removal; make periodical reports to the Government on any matter pertaining to women.

**(5) NATIONAL COMMISSION FOR BACKWARD CLASSES :**

This Commission has been constituted under the National Commission for Backward Classes Act, 1993 to examine the requests for inclusion of any class of citizens as a Backward Class in the lists and bear complaints of over-inclusion or under-inclusion and tender such advice to the Central Government as it deems appropriate. The advice of the Commission shall ordinarily be binding upon the Central Government.

The Commission while performing its function has the Power to summon and enforce the attendance of any person from any part of India and examine him on oath; require the discovery and production of any document; receive evidence on affidavits; requisition any public record or copy thereof from any Court or office and issue commissions for the examination of witnesses and documents.

**INVESTIGATION AGENCIES UNDER THE SPECIAL LAWS AND LOCAL LAWS:**

When the Indian Penal Code was enacted it was made clear that the Code shall not affect the special jurisdiction or the Special Law or the Local Law. Section 5 of the Code said:

“Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any Special or Local Law”.

The Code of Criminal Procedure, 1973, which continues the rule that was there in the earlier Codes, says:

(1) All offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.”

The provisions of both the substantive law of crimes as well as the procedural law of crimes admit of a special rule for inquiry, investigation and trial of offences punishable under the Special laws or Local laws.

The Special laws mostly deal with socio-economic offences. These offences are different in nature from the conventional type of offences. Owing to the peculiar character of these offences, the principles of liability in regard to these offences are different from what they are with regard to conventional type of offences. Likewise, the procedural rules are also different from what they are about the traditional offences.

The Special Laws enacted so far provide for new types of offences, new methods of inquiry and investigation and new Procedure for their trial. The enforcement machinery created by these Special Laws also is different from what it is in under the ordinary law, e.g., the Customs Act, the Foreign Exchange Regulation Act, the Narcotic Drugs & Psychotropic Substances Act provide for a new machinery for the investigation of offences.

In certain cases, no doubt, the Special Laws provide for the same Procedure to be followed as is followed in the case of conventional offences under the Code of Criminal Procedure. However, special Procedure has to be followed wherever the Special Laws in respect of the offences punishable provide it under the Special Laws.

Further, the Special Laws and the Local Laws in certain cases empower the Police to investigate the offences, and in certain others they set up a new institution altogether to investigate the cases. A brief description is given herein of the investigating agency<sup>3</sup> is set up under the Special Laws and the Local Laws.

**(A) - INVESTIGATING AGENCIES UNDER SPECIAL LAWS :**

**I - Investigating Agency under the Prevention of Food Adulteration Act, 1954 :**

The Prevention of Food Adulteration Act 1954 empowers the Central Government to appoint Food Inspectors, and the powers given to them are to take samples of Articles of food from persons selling such Articles, and sent such samples to the Public Analyst.

Under Section 8 of the Act the Central Government or the State Government may by notification in the official gazette appoint such person as it thinks fit having the prescribed qualifications to be Public Analysts for such local area as may be assigned to them by the Central Government or the State Government as the case may be.

The Act empowers the Central Government to constitute a committee called the Central Committee for Food Standards to advise the Central Government and the State Government on matters arising out of the administration of Act and to carry out the functions assigned to them under the Act.

Under Section 4 of the Act the Central Government may by notification in the official gazette establish one or more Central Food Laboratory or Laboratories to carry out the functions entrusted to the Central Food Laboratory by this Act.

The Central Government may after consultation with the Committee make rules prescribing:

- (a) the functions of the Central Food Laboratory and the local area or areas within which such functions may be carried out.
- (b) the Procedure for the submission to the said laboratory of samples of Articles of food for analysis or tests, the forms of laboratory reports thereon and the fees payable in respect of such reports; and
- (c) such other matters as may be necessary or expedient to enable the said laboratory to carry out these functions.

**II – Investigating Agencies under the Foreign Exchange Regulation Act, 1973 :**

In the year 1973 the Union Parliament passed the Foreign Exchange Regulation Act with the object of consolidating and amending the law regulating certain payments, dealing in foreign exchange and security transactions indirectly affecting foreign exchange and import and export of currency and bullion, for the conservation of foreign exchange resources of the country and their proper utilization in the interest of the economic development of the country.

According to Section 3 of the Act there shall be the following classes of officers of enforcement, namely;

- (a) Directors of Enforcement;
- (b) Additional Directors of Enforcement;
- (c) Deputy Director of Enforcement;
- (d) Assistant Director of Enforcement, and
- (e) Such other classes of officers of enforcement as may be appointed for the purposes of the Act.

Under Section 4 of the Act the Central Government may appoint such persons as it thinks fit to be officers of enforcement; it may authorize the Director of Enforcement or the Additional Director of Enforcement or a Deputy Director of Enforcement or the Assistant Director of Enforcement, to appoint officers of enforcement below the rank of Assistant Director of Enforcement.

An officer of enforcement may, subject to such limitations and conditions as the Central Government may impose, exercise the powers and discharge the duties conferred or imposed on him under the Act.

These various classes of enforcement officers are empowered to search suspected persons, arrest them and stop and search conveyances if they have reasonable belief that a person is Acting in contravention of the law laid down in the Foreign Exchange Regulation Act.<sup>2</sup>

### **III – Investigating Agencies under the Narcotic Drugs and Psychotropic Substances Act, 1985:**

Under Section 4 of the Narcotic Drugs and Psychotropic Substances Act 1985 the Central Government may take all such measures as it deems necessary or expedient for the purpose of preventing and combating the abuse of narcotic drugs and psychotropic substances. It may constitute an authority or a hierarchy of authorities by such name or names as it deems necessary for the purpose of exercising such powers of the Central Government under this Act and for taking measures with respect to matters, and subject to the Control of the Central Government, as are necessary in the interest of the Act.

Under Section 5 the Central Government may appoint a Narcotics Commissioner and may also appoint such other officers with such designations as it thinks fit for the purpose of the Act. The Narcotics Commissioner may exercise all powers and perform all functions relating to the superintendence of the cultivation and production of Opium and perform such other functions as are entrusted to him by the Government. Besides the Central Government, the State Government also may appoint such officers with such designations, as it thinks fit for the purposes of the Act.

Under Section 53 of the Narcotics Drugs & Psychotropic Substances Act 1985 the officers of the Central and State Governments may be invested with the powers of an officer in charge of Police Station to investigate into offences punishable under the Act.

Similarly, the State Governments may also invest any officer of the Departments of Drugs Control, Revenue, or Excise or any class of such officers with powers of an officer in charge of Police station of r the investigation of offences under the Act.<sup>3</sup>

### **IV - Investigation into offences Punishable under Prevention of Corruption Act, 1957:**

Section 5-A of the Prevention of Corruption Act 1947 deals with nvestigation into cases under the Act. It says:

“Notwithstanding anything contained in the Code of Criminal Procedure 1898, no Police officer below the rank:

- (a) in the case o the Delhi Special Police Establishment of an Inspector of Police;
- (b) in the presidency-towns of Calcutta and Madras, of an Assistant Commissioner of Police;
- (c) in the Presidency-town of Bombay, of a Superintendent of Police; and
- (e) elsewhere, of a Deputy Superintendent of Police;

shall investigate any offence punishable under Section 161, Section 165 or Section 165-A of the Indian Penal Code or under Section 5 of this Act, without the order of a Presidency Magistrate of the First Class, as the case may be, or make any arrest therefore without a warrant;

Provided that if a Police officer not below the rank of an Inspector or of Police is authorized by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Presidency Magistrate of the First Class, as the case may be, or make any arrest therefor without a warrant;

Provided further an offence referred in clause (e) of sub-Section (1) of Section 5 shall not be investigated without the order of a Police officer not below the rank of a Superintendent of Police”.<sup>4</sup>

**(B) - INVESTIGATION AGENCIES UNDER LOCAL LAWS:**

**Investigation by Police Constituted under the Andhra Pradesh (Andhra Area) District Police Act 1859:**

The Andhra Pradesh (Andhra Area) District Police Act 1859 was passed for the better regulation of Police within the Andhra area of the State of Andhra Pradesh. In this Act, the word ‘Police’ includes all persons appointed under the Act.

Section 21 of the District Police Act enumerates the duties of the Police Officer to be the following:

“Every Police officer shall, for all purposes be considered to be always on duty and shall have the powers of a Police Officers in every part of the General Police District. It shall be his duty to use his best endeavors and ability to prevent all crimes, offences and public nuisances; to preserve the peace, to apprehend disorderly and suspicious characters; to detect and bring offenders to justice; to collect and communicate intelligence affecting the public peace; and promptly to obey and execute all orders and warrants lawfully issued to him”.

**Investigation by Police Constituted under The Andhra Pradesh (Telangana Area) District Police Act, 1329 Fasli:**

The Andhra Pradesh (Telangana Area) District Police Act 1329 was passed to make the district Police in Telangana area a more powerful instrument for the prevention and detection of crimes.

According to Section 3 of the Act the entire establishment of the Police force within the area to which this Act extends including the persons mentioned in Section 4 of this Act should constitute one Police force.

According to Section 19 of the Act the duties of a Police officer have been are the following:

- (a) To execute forthwith all orders and warrants of arrest lawfully issued to him by a competent authority;
- (b) To collect and communicate intelligence respecting public order;
- (c) To prevent offences and public nuisances;

- (d) To detect offenders and have them convicted and to apprehend all persons whom he is legally authorized to apprehend and for whose apprehension sufficient ground exists.

According to Section 20 of the Act a Police officer may lay information before a Magistrate and apply for summons, warrant of arrest, search warrant or such other lawful order as he may by law issue against any person committing an offence”.

(a) **Investigation by City Police:**

The Hyderabad City Police Act was passed to consolidate the law relating to the Hyderabad City Police so as to make the Hyderabad City Police an effective means for prevention and detection of crimes, maintenance of peace and investigation into circumstances.

According to Section 4 of the Act, for the City of Hyderabad there shall be appointed a Police force and its strength and constitution shall be as may be prescribed in accordance with the orders of the Government issued in this behalf from time to time. The control and supervision of the said Police Force is vested in the Commission for the City of Hyderabad who is appointed by the Government

According to Section 29 of the Hyderabad City Police Act, it shall be the duty of every Police officer –

- (a) promptly to serve every summons and execute every warrant or other order lawfully issued to him by any competent authority and to endeavor by every lawful means to give effect to the lawful commands of his superior;
- (b) as far as possible to obtain intelligence concern the commission of cognizable offences, or designs to commit such offences, and to bring such information to the notice of his superior officer; and to take such Action consistent with law and with the order of his superiors, as shall be calculated to punish the offenders under law or prevent the commission of cognizable offences, and within his view of non-cognizable offences;
- (c) to prevent as far as possible the commission of public nuisance;
- (d) to apprehend persons whom he is legally authorized to apprehend and for whose apprehension there is sufficient reason;
- (e) to aid other Police officers when called on by them or if necessary in the discharge of their duties in such manner as would be lawful and reasonable;
- (f) to discharge every duty imposed upon him by law for the time being in force ;

According to Section 46 of the Hyderabad City Police Act, every Police officer of the rank superior to that of a constable may perform any duty assigned by any law or by a lawful order to nay officer subordinate to him and where any duty has been imposed on any subordinate, every superior officer, when it shall appear to him necessary, may aid such subordinate or supplement his duties or may issue any other order in suppression of his order or may prevent him in the performance of his duties whenever it shall appear to him necessary or expedient so to do for giving convenient effect to the law or for avoiding an infringement thereof.

(b) **Investigation by Village Police:**

In August 1974 the Andhra Pradesh Legislature passed the Andhra Pradesh Village Police Act to consolidate and amend the law relating to the establishment of the system of village Police in the State of Andhra Pradesh.

A village Police officer, according to Section 2(u) of the Act means, the head of a village, by whatever designation locally known, who is appointed as the head of the village Police under Section 3. For the purposes of the Act, the District Magistrate or any officer authorized by him in this behalf may appoint one or more village servants as village Police for each village, and the Police Patel, village headman, village munsif, tribune officer or other head of the village by whatever designation locally known, as the head of the village Police of that village.

The duties of village Police officer have been described in Section 5 of the Act as follows:

- “Every Police officer shall –
- (a) reciprocally communicate all information regarding any offences committed or any gang of robbers or strangers of suspicious appearance having entered or taken refuge in the village;
  - (b) report promptly to the nearest Executive Magistrate having jurisdiction over the village and to the Police officer in charge of the nearest Police station –
    - i) the matter specified in clause (a)
    - ii) all offences committed in the village, and
    - iii) all matters connected with public peace and tranquility;
  - (c) afford such assistance and facility as may be necessary or required by any Police officer in the discharge of his duty;
  - (d) obey and execute all lawful orders issued to him by the concerned Executive Magistrate or the Police officer;
  - (e) prevent, to the best of his ability, the commission of any offence or public nuisance within the limits of the village; and
  - (f) take measures consistent with law to bring offenders to justice
- The village Police officer has the authority to require the Karnam and any village servant to aid him in the discharge of his duties under the Act

c) **Investigation by Excise Officers:**

In the year 1968 the Andhra Pradesh Legislature passed the Excise Act to consolidate and amend the law relating to the production, manufacture, possession, transport, purchase and sale of intoxicating liquor and drugs, the levy of duties of excise and countervailing duties on the alcoholic liquors for human consumption.

Section (2), sub-Section (11) defines an “Excise Officer” to mean the Commissioner, the Collector or any officer or other person lawfully appointed or invested with powers under the relevant provisions of this Act.

Section 34 to 37 of the Act prescribe penalties for offences like illegal import, misconduct of licensees, adulteration by licensed vendor and rendering denatured spirit fit for human consumption etc.

Section 56 of the Act is the principal Section regarding investigation by the Excise officers. It says, “Any excise officer not below the rank of an Excise Sub-Inspector may, as regards offences under Section 34, Section 35, Section 36 or Section 37

exercise within such areas may be notified in this behalf, powers conferred on an officer in charge of a Police station by the provisions of the Code of Criminal Procedure.

According to Section 57 of the Act, if, on any investigation by an excise officer, not below the rank of an Excise Sub-Inspector it appears that there is sufficient evidence to justify the prosecution of the accused, the investigating officer shall submit a report, which shall, for the purposes of Section 190 of the Code of Criminal Procedure 1973, be deemed to be a Police report, to a Magistrate having jurisdiction to inquire into or try the case and empowered to take cognizance of offences on Police report.<sup>4</sup>

d) **Investigation by Lok Ayukta:**

In October, the Andhra Pradesh Legislature passed the Andhra Pradesh Lok Ayukta and Upa-Lok Ayukta Act, to make provision for the appointment and functions of Lok Ayukta and Upa Lok Ayukta for investigation of administrative Action taken by or on behalf of the Government of Andhra Pradesh or certain Local and Public Authorities in the State of Andhra Pradesh (including any omission and commission in connection with or arising out of such Action.

Under Section 7(1) of the Act, the Lok Ayukta may investigate any Action, which is taken by, or with the general or specific approval of, or at the behest of –

- i) a Minister or a Secretary, or
- ii) a Member of either House of the State Legislature; or
- iii) a Mayor of the Municipal Corporation constituted by or under the relevant law for the time being in force; or
- iv) any other public servant, belonging to such class or Section of public servants, as may be notified by the Government in this behalf after consultation with the Lok Ayukta, in any case where a complaint involving an allegation is made in respect of such Action, or such Action can be or could have been, in the opinion of the Lok Ayukta, the subject of an allegation.

Under sub-Section 2 of Section 7 of the Act, the Upa Lokayukta may investigate any Action which is taken by, or with the general or specific approval of, any public servant, other than those referred to in sub-Section (1), in any case where a complaint involving an allegation is made in respect of such Action, or such Action can be or could have been, in the opinion of the Upa Lokayukta, the subject of an allegation.<sup>5</sup>

e) **Investigation by the Home Guards:**

In February 1948, the Andhra Pradesh Legislature passed the Home Guards Act to constitute a volunteer organization for use in emergencies in the State of Andhra Pradesh.

Under Section 3 of the Act the State Government may constitute for each of the areas specified the Act a volunteer body called the 'Home Guards', every member of which shall have such powers and discharge such duties in relation to the protection of persons, the security of property, and the preservation of public order or tranquility as may be assigned to him by or under the Act.

The Commissioner of Police in the Cities of Hyderabad and Secunderabad, and the District Superintendent of Police in the district concerned may, at any time, call out in such manner and through such officer as may be prescribed, any Home Guard for the cities for training or discharging any duties assigned to him by or under the Act.

A Home Guard when called out for duty has the same powers, privileges and protection as an officer of the Police appointed under the Hyderabad City Police Act or the Andhra Pradesh (Andhra Area) District Police Act, as the case may be.<sup>6</sup>

### **The process of investigating Officers under the Code of Criminal Procedure, 1973:**

The Code of Criminal Procedure 1973 confers various kinds of powers on various kinds of investigating officers. But the major chunk of investigator powers is conferred on the Police officers only. By virtue of the enormous powers given to them position of the principal investigating officers in the system of investigation existing in our country. Here is descriptions of the powers given to the various officers under the Code of Criminal Procedure 1973.

### **I. Powers of the Police Officers:-**

#### **(1) The Power to Arrest:-**

Generally, arrest takes place in three situations; arrest on a warrant, arrest on suspicion of Criminal Activity, or arrest in the Act of committing a crime. The first is often routine and involves little excitement, although it may involve surprise. In the second and third, violence potentiality present and sometimes it does occur.

Arrest is but the first episode in the journey of an individual through the system of justice, when he is involved in any Criminal Activity. Later events determine whether he emerges a convicted Criminal or a free man. The proceedings involved in the process of arrest explain to a great extent the nature and scope of the system of investigation.

As on today, arrest with or without warrant depending upon the circumstances of a particular case is governed by the Code of Criminal Procedure.

#### **(2) The Power to require Attendance of Witnesses:**

The law authorises a Police officer making an investigation to require the attendance before himself of any person (within certain limits), who appears to be acquainted with the circumstances of the case, but no male under fifteen years or woman shall be required to attend at any place other than the place in which such male or woman resides. The relevant provisions of the Criminal Procedure Code run as follows:

Sec. 160 Police Officer's Power to require attendance of witnesses:

- (1) Any Police officer making an investigation under this chapter may, By order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required; Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides;
- (2) The State Government may, by rules made in this behalf, provide for the payment by the Police of the reasonable expenses of every person, attending under sub-Section (1) at any place other than his residence;

**(3) Power to examine Witnesses and to record the statements:**

A Police officer making an investigation can examine the person acquainted with the facts of the case and reduce the statement by such person in writing. Section 161 of the Code of Criminal Procedure 1973 is to the same effect.

**Section 161: Examination of Witness by Police:**

- (1) Any Police officer making an investigation under this chapter, or any Police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, Acting on the requisition of such officer, may examine orally person supposed to be acquainted with the facts and circumstances of the case.
- (2) Such person shall be bound to answer truly all questions relating to such cases put to him by officer, other than questions the answers to which would have a tendency to expose him to a Criminal charge or to a penalty or forfeiture;
- (3) The Police Officer may reduce into writing any statement made to him in the course of an examination under this Section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement the records.

No oath or affirmation is required in an examination under the above Section.

**(4) The Power to Search and seize:**

**The Meaning and Definition of Search:**

Search means looking for something, going all over to find something, which is hidden. In common parlance, the word 'raid' is used to signify a search.

The concise Oxford Dictionary defines 'Raid' as a sudden attack made by a military party or a sort of predatory incursion means sudden descent of Police upon suspected premises or illicit goods or sudden entry of Police or any other law enforcement, agency into a building to search and/or seize contraband or incriminating good or arrest of a person wanted by the Police in a crime, or recover and liberate a person illegally detained or confined.

Under Section 47 of Cr. P.C., not only a Police officer but any person Acting under a warrant of arrest can enter any premises so long as he has reason to believe that the person to be arrested has entered into any place. He has, however, to request the person in charge of the building/premises, who shall on demand of the Police officer or any other person so Acting allow him free ingress into the premises and afford him all reasonable facilities for search.

Under Section 49 the Police may break open any door or window in order to liberate himself or any other person.

Section 47 and 49 lay down the guidelines to be followed by the Police in raiding premises in pursuit of offenders. These are just an extension of the provisions of Section 46 of the Code of Criminal Procedure, which authorize the Police to use all means necessary to effect arrest of the offender.

Section 58 empowers the Police officer to search a person in any place in India.

Search can be conducted by a Police officer on the strength of a search warrant issued by the Magistrate under Sections 93 to 95(a) of the Code of Criminal Procedure for the search and seizure of stolen Articles, counterfeit things etc.

Warrant can also be issued by a Magistrate under the provision of the Code of Criminal Procedure for recovering persons who are wrongfully confined or restoring abducted females.

Section 93 of the Criminal Procedure makes provision for two kinds of searches, viz., general search and particular search. A general search means a search not in respect of specific documents or things which the officer considered were necessary or desirable for the purpose of investigation in hand, but roving enquiry for the purpose of discovering documents or things which might involve persons in Criminal liability.

Before taking up Section 93 it is necessary to refer to Section 91 and Section 92 because Section 93 relates back to the provisions of the preceding two Sections.

Section 91 occurring in Chapter VII of the Code of Criminal Procedure dealing with matters of process to compel the production of documents etc. reads as follows:

**Section 91 : Summons to produce document or other thing:**

“(1) Whenever any Court or any officer in-charge of a Police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court officer, such Court may issue a summons, or officer a written order, to the person in whose possession or Power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, and at the time and place stated in the summons order”.

Section 92 reads as follows:

**92. Procedure as to letters and telegram:**

(1) If any document, parcel or things in the custody of a postal or telegraph authority is, in the opinion of the district Magistrate, Chief judicial Magistrate, Court of Session or High Court wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code such Magistrate or Court may require the postal or telegraph authority, as the case maybe, to deliver the document parcel or things to such person as the Magistrate or Court directs”.

**The Police Officer’s Power to search while investigating into an offence:**

Sections 165 and 166 the Code of Criminal Procedure 1973 give Power, in certain circumstances, to an officer in charge of Police station to search or cause to searched places while investigating into the offences:

**Section 165 Search by Police Officer:**

- (1) Whenever an officer in-charge of a Police station or a Police officer making an investigation has reasonable grounds for believing that anything necessary for the purpose of an investigation into any offence which he is authorized to investigate may be found in any place within the limits of the Police station of which is in charge, or to which he is attached, and that such things cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the ground of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search or cause search to be made, for such thing in any place within the limits of such station.
- (2) A Police Officer proceeding under sub-Section (1) shall, if practicable, conduct the search in person.

- (3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.
- (4) The provisions of this Code as to search warrants and the general provisions as to searches contained in Section 100 shall, go far as may be, apply to a search made under this Section.
- (5) Copies of any record made sub-Section (1) or sub-Section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence, and the owner or occupier of the place searched shall, on application be furnished, free of cost, with a copy of the same by the Magistrate.

In India, the method of Coroner's Inquest is governed by the provisions of the Code of Criminal Procedure. According to the Code, when any person dies while in the custody of the Police it is obligatory on the nearest Magistrate to hold an inquest. Section 176 of the Code of Criminal Procedure is to the same effect. It runs as under:

**Section 176 Inquiry by Magistrate into Cause of Death :**

(1) When any person dies while in the custody of the Police the nearest Magistrate empowered to hold inquest shall, and in any other mentioned in sub-Section (1) of Section 174, any Magistrate so empowered may, hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the Police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

(2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover because of his death, the Magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this Section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.

Explanation : In this Section, the expression "relative" means parents, children, brothers, sisters and spouse.

## **II. Powers of Investigation Officers in Regard to Socio Economic offences :**

### **UNDER SPECIAL LAWS:**

The special laws are the laws dealing with a particular subject which may be enacted by the Union or the State Legislatures depending upon their legislative competence. The legislature may in the exercise of its Power of enacting such law create new offences and may also lay down a new Procedure for the inquiry, investigation and trial of such offences. In most of the cases, the special laws set up a new machinery for

investigation and endow the investigation officers with certain powers, which conventionally belong to the Police officers. This is a new trend in the system of investigation. However, the powers given to them are not as vast as are the powers belonging to the Police officers. The investigating officers under the special laws have to take, at certain stage of investigation the aid and assistance of the Police officers. They have also to take the help and assistance of the scientific agencies, which have a new system altogether of detecting the Criminality. Further, in certain matters the provisions of the Code of Criminal Procedure are made applicable to the proceedings of the investigation officers. Here is a description of the powers belonging to the investigation officers under the special laws.

#### **Powers of the Investigation Officers Under the Prevention of Food Adulteration Act 1954:**

Section 10 of the Prevention of Food Adulteration Act 1954 enumerates the powers of Food Inspectors, who are officers empowered to enforce the provisions of the Act.

Sub-Section 1 of Section 10 says that the Food Inspector shall have the Power to take samples of any article of food from any person selling such article or from any person who is in the course of conveying, delivering or preparing to deliver such article.

Sub-Section 2 of the Section 10 empowers the food Inspector to enter and inspect any place where any article of food is manufactured or stored for sale or exhibited for sale or where any adulterant is manufactured or kept and take such samples of Articles of food for analysis.

Under sub-Section 4 of Section 10 of the Act, if any article intended for food appears to any food Inspector to be adulterated or misbranded he may seize and carry away or kept in safe custody of the vendor, such article in order that it may be dealt with as provided in the Act and he shall take a sample of such article and submit the same for analysis to a public Analyst.

Under Sub-Section 6 of Section 10 of the Act any adulterant found in the possession of manufacturer or distributor or dealer or any article food or in any of the premises occupied account to the satisfaction of the food Inspector, the books of accounts or their documents found in his possession or control and which would be useful for or relevant to any investigation or proceeding under this Act may be seized by a Food Inspector and sample of such adulterant for analysis to a public analyst.

The Food Inspector, in exercising the powers of entry upon and inspection of any place under this Section has to follow, as far as may be, the provisions of the Code of Criminal Procedure 1973 relating to the search or inspection of a place by a Police officer execution search warrant issued under that Code.

The Food Inspector, in exercising the powers of entry upon and inspection of any place under this Section has to follow, as far as may be, the provision of the Code of Criminal Procedure 1973 relating to the search or inspection of a place by a Police officer executing a search warrant issued under that Code.

Under sub-Section of Section 10 of the Act, any Food Inspector may exercise the powers of a Police officer under Section 42 of the Code of Criminal Procedure 1973 for the purpose of ascertaining the true name and residence of the person from whose possession such adulterant was seized.

**Powers of the Investigation officers under the Customs Act, 1962:**

Chapter XII of the Customs Act 1962 contains the powers of the investigation officers. The various powers bestowed on these offices are the following:

**Sec. 100: Power to search suspected persons entering or leaving India etc.**

(1) If the proper Officer has reason to believe that any person to whom this Section applies has secreted about his person any goods liable to confiscation or any documents relating thereto, he may search that person.

**Sec. 101: Power to search suspected Persons in certain other cases:**

(1) Without prejudice to the provisions of Section 100, if an officer of customs empowered in this behalf by general or special order of the collector of customs, has reason to believe that any person has secreted about his person any goods of the description specified in sub-Section (2) which are liable to confiscation, or documents relating thereto, he may search that person.

**Sec. 102 Persons to be searched may require to be taken before gazetted officer of customs or Magistrate:**

(1) When any officer of customs is about to search any person under the provisions of Section 100 or Section 101 the officer of Customs shall, if such person so requires, take him without unnecessary delay to the nearest gazetted officer of customs or Magistrate.

**Section 103: Power to Screen or x-ray bodies of suspected persons for detecting secreted goods:**

- (1) Where the proper officer has to believe that any person referred to in sub-Section (2) of Section 100 has any goods liable to confiscation secreted inside his body he may detain such person and produce him without unnecessary delay before the nearest Magistrate.
- (2) A Magistrate before whom any person is brought under sub-Section(1) shall, if he sees on reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person.
- (3) Where any such Magistrate has reasonable ground for believing that such person has any such goods secreted inside his body and the Magistrate is satisfied that for the purpose of discovering such goods it is necessary to have the body of such person screened or x-rayed, he may make an order to that effect.

**Section 104: Power to stop and search conveyance:**

(1) where the proper officer has reason to believe that any aircraft, vehicle or animal in India or any vessel in India or within the Indian customs waters has been , is being or is about to be used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vehicle , animal or vessel or in the case of an aircraft, compel it to land, and

—

- (a) Rummage and search any part of the aircraft, vehicle or vessel;

- (b) Examine and search any goods in the aircraft, vehicle or vessel or on the animal;
- (c) Break open the lock of any door or package for exercising the Power conferred by clause (a) and (c) if the keys are withheld.

**Section 106-A Power to Inspect:**

Any proper officer authorized in this behalf by the collector of customs may, for the purpose of ascertaining whether or not the requirements of this Act have been complied with, at any reasonable time, enter any place intimated under Chapter IV-A or Chapter IV-b as the case may be, and inspect the goods kept or stored therein and require any person found therein, who is for the time being in charge thereof, to produce to him, for his inspection the accounts maintained under the said Chapter IV-A or Chapter IV-B as the case maybe, and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not such goods have been illegally exported.

**Section 107: Power to examine persons:**

Any officer of customs empowered in this behalf, by a general or special order of the collector of customs, may, during the course of an enquiry in connections with the smuggling of any goods –

- (a) require any person to produce or deliver any document or thing relevant to the enquiry;
- (b) examine any person acquainted with the facts and circumstances of the case.

**Section 108: Power to summon persons to give evidence and produce documents:**

Any gazetted officer of customs shall have the Power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making in connection with the smuggling of any goods.

**Section 11. Seizure of goods, documents and thing:**

If the proper Officer has reason to believe that any goods are liable to confiscation under this Act he may seize such goods;

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.<sup>7</sup>

### **III. POWERS OF THE INVESTIGATION OFFICER UNDER THE PASSPORT ACT 1967:**

Section 14(1) of the Passport Act 1967 deals with the Power of search and seizure. It says, “any officer of customs empowered by a general or special order of the Central Government in this behalf and any officer of Police not below the rank of sub-Inceptor may search any place and seize any Passport Travel document from any person against whom a reasonable suspicion exists that he has committed any offence punishable under Section 12 of the Act.

Sub-Section 2 of Section 14 says, the provisions of the Code of Criminal Procedure 1973 relating to seizures under this Section.

### **IV POWERS OF INVESTIGATION OFFICERS UNDER THE FOREIGN EXCHANGE REGULATION ACT 1973:**

Certain classes of officers are appointed by the Central Government to constitute a directorate of enforcement for the purposes of giving effect to the provisions of the Act. These officers are invested with various kinds of powers, such as the following: -

#### **Section 34 Power to search suspected persons and to seize documents:**

If any officer of enforcement authorized in this behalf by the Central Government, by general or special order has reason to believe that any person has secreted about his person or in anything under his possession, ownership and control any document which or proceeding under this Act, he may search that person or such things and seize such documents.

#### **Section 35 Power to arrest:**

If any officer of Enforcement authorized in this behalf by the Central Government by general or special order has reason to believe that any person in India or within the Indian customs water has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

#### **Section 36: Power to stop and search conveyance:**

If any officer of enforcement authorized in this behalf by the Central Government, by general or special order, has reason to believe that any document which will be useful for, or relevant , any investigation or proceeding under this Act, is secreted in any aircraft or vehicle or on any animal in India or in any vessel in India or within the Indian customs waters, he may, at any time stop any such vehicle or animal or vessel or, in the case of any aircraft, compel it to stop or land, and –

- (a) Rummage and search any part of the aircraft, vehicle or vessel;

- (b) Examine and search any goods in the aircraft vehicle or vessel or on the animal;
- (c) Seize any such document as is referred to above;
- (d) Break open the lock of any door or passage for exercising the powers conferred by clause (a)(b) and (c) if the keys are withheld.

**Section 37 : Power to search premises :**

If any officer of enforcement, not below the rank of an Assistant Director of Enforcement, has reason to believe that any documents which in his opinion will be useful for, or relevant to, any investigation or proceeding under this Act, are secreted in any place, he may authorize any officer of enforcement to search for and seize or may himself search for and seize such documents.

**Section 38: Power to seize documents:**

Without prejudice to the provisions of Section 34 or Section 36 or Section 37 if any officer of enforcement authorized in this behalf by the Central Government, by general or special order, has reason to believe that any document or thing will be useful for, or relevant to, any investigation or proceeding under this Act or in respect of which a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has taken place, he may seize such document or thing.

**Section 39 : Power to seize documents etc.**

Without prejudice to the provisions of Section 34 or Section 36 or Section 37 if any officer of enforcement authorized in this behalf by the Central Government, by general or special order, has reason to believe that to any investigation or proceeding under this Act or in respect of which a contravention of any of the provisions of this Act or of any rule, direction or order made there under has taken place, he may seize such document or thing.

**Section 40 : Power to summon persons to give evidence and produce documents:**

Any gazetted officer of enforcement shall have Power to summon any person whose attendance he considers necessary either to give evidence or to produce a document during the course of any investigation or proceeding under this Act.

**Section 43 : Inspection:**

Any officer of Enforcement not below the rank of an Assistant Director of enforcement specially authorized in writing by the Director of Enforcement in this behalf, or any officer of the Reserve Bank specially authorized in writing by the

Reserve bank in this behalf, may inspect the books and accounts and other documents of any authorized dealer.

**Section 45 : Power of Police officers and other officers to enter, search etc.**

Notwithstanding anything contained in the Code of Criminal Procedure 1898 any Police officer not below the rank of a sub-Inspector of Police or any other officer of the Central Government in this behalf may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected of having committed or of committing or of being about to committing or of being about to commit a contravention of the provisions of sub-Section (1) of Section <sup>8</sup>.

**V. INVESTIGATION INTO OFFENCES PUNISHABLE UNDER PREVENTION OF CORRUPTION ACT, 1946:**

“Section 5-A the prevention of Corruption Act says:“

(2) If from information received or otherwise, a Police officer has reason to suspect the commission of an offence which he is empowered to investigate under sub-Section (1) and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any banker's books then, notwithstanding anything contained in any law for the time being in force, he may inspect any banker's books in so far as they relate to the accounts of the person suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and take or cause to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the Police officer in the exercise of his powers under this sub-Section.

Provided that no Power under this sub-Section in relation to the accounts of any person shall be exercised by a Police officer below the rank of Superintendent of Police unless he is specially authorized in this behalf by a Police officer of or above the rank of a Superintendent of Police.

Explanation: In this sub-Section, the expression “bank” and “bankers books” shall have the meanings assigned to them in the Bankers' Books Evidence Act.

**VI POWERS OF THE INVESTIGATION OFFICERS UNDER THE NARCOTIC DRUGS & PSYCHOTROPIC SUBSTANCES ACT, 1985:**

Under Section 4 of the Narcotic Drugs & Psychotropic substances Act 1985, the Central Government may take all such measures as it deems necessary or expedient for the purpose of preventing and combating the abuse of narcotic drugs & psychotropic substances. It may constitute an authority or a hierarchy of authorities by such name or names as it deems necessary for the purpose of exercising such powers of the Central Government under this Act and for taking measures with respect to matters as are necessary in the interest of the Act.

Under Section 5 of the Central Government may appoint a Narcotics Commissioner and may also appoint such other officers with such designations, as it thinks fit for the purposes of the Act.

The Narcotics Commissioner may exercise all powers and perform all functions relating to the superintendence of the cultivation and production opium and for such other functions as may be entrusted to him by the Government. Besides the Central Government, the State Governments also may appoint such officers with such designations, as they think fit for the purposes of the Act.

Under Section 53 of the Narcotic Drugs & Psychotropic substances Act 1985, the officers of the Central Government and the State Governments may be invested with the powers of an officer in-charge of a Police station to investigate into offences punishable under the Act. Section 53 reads as follows:

(1) The Central Government, after consultation with the State Government, may by notification in the official gazette invest any officer of the Department of Central excise, Narcotics, Customs, Revenue, Intelligence or Border Security Officers or any class of such officers with the powers of an officer in charge of a Police station for the investigation of offences under the Act.

(2) The State Government may, by notification in the official gazette, invest any officer of the Department of Drugs Control, Revenue or Excise or any class of such officers with the powers of an officer incharge of a Police station for the investigation of offences under the Act.

According to Section 51 of the Narcotic Drugs & Psychotropic Substances Act 1985, the provisions of the Code of Criminal Procedure shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests and the search and seizures made under this Act. FN

## **VII POWERS OF THE INVESTIGATION OFFICERS UNDER THE DELHI SPECIAL POLICE ESTABLISHMENT ACT 1946**

Under Section 2(2) of the Delhi Special Police Establishment Act 1946, the Delhi Special Police Establishment any subject to any orders which the Central Government may take in this behalf, have through out the Union Territory in relation to the investigation of such offence and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which Police officers of that union territory have in connection with the investigation offences committed therein. When exercising such powers the officer of the Delhi Special Police Establishment is deemed to be an officer in charge of a Police station.

## **VIII THE POWERS OF THE NATIONAL COMMISSION FOR SCHEDULED CASTES AND SCHEDULED TRIBES:**

It is the duty of the national commission for scheduled castes and scheduled tribes to investigate and monitor all matters relating to the safeguards for scheduled castes and scheduled tribes under the on situation or any other law for the time being in force or under any order of Government and to evaluate the in force or under any order of Government and to evaluate the working of such safeguards. It has also a duty to inquire into compliance with respect to deprivation of rights and safeguards of the scheduled castes and scheduled tribes, and to participate and advice on the planning process.

The Commission, while investigating into any matter referred to above or inquiring into any specific complaint referred to above has all the powers of a civil Court, in particular with reference to the following matters, namely;

- (a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) Requiring the discovery and production of any document;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy thereof from any Court of office.

The Commission has to present to the president of India annually and at such other times as the Commission may deem fit, reports upon the working of the safeguards of the Scheduled Castes & Scheduled Tribes, and to make any such reports and recommendations as to the measures that should be taken by the union or the State governments for effective implementation of these safeguards.

## **IX POWERS OF THE NATIONAL COMMISSION FOR BACKWARD CLASSES**

The national commission for Backward Classes has been constituted to examine requests for inclusion of any class of citizens as a Backward Class in the lists and hear complaints of over-inclusion or under-inclusion and tender such advice to the Central Government as it deems appropriate. The advice of the commission is ordinarily binding upon the Central Government.

Under Section 10 of the Act by which the national commission is constituted, the commission shall have all the powers of civil Court trying a suit, and in particular in respect of the following matters, namely;

- (a) Summoning and enforcing the attendance of any person from any part of Indian and examining him on oath;
- (b) Requiring the discovery and production of any document;
- (c) Receiving affidavits on affidavits;

- (d) Requisitioning any public record or copy thereof, from any Court or office.

## **X POWERS OF THE NATIONAL COMMISSION FOR WOMEN:**

The National Commission for women has been set up under a parliamentary law. One of the functions assigned to the commission is to investigate and examine all matters relating to the safeguards provided for the women under the constitution and other laws.

While investigating in matter falling within the purviews of the national commission for women, it can exercise all the powers which a civil Court may exercise while trying a suit and in particular with respect of the following matters, namely;

- (a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) Requiring the discovery and production of any document;
- (c) Receiving evidence on affidavits;
- (d) Requisition any public record or copy thereof from any Court or office;

The Commission has to present to the Central Government annually and at such other times as it may deem fit, reports upon the working of the safeguards guaranteed to the women; it may make any report/recommendation for the effective implementation of the safeguards for improving the conditions of women by the union or the State Governments.

Under Section 10 of the national Commission for Minorities Act 1992 the commission shall, while performing any of the functions mentioned above, have all the powers of a civil Court trying a suit and in particular, in respect of the following matters, namely;

- (a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) Requiring the discovery and production of any document;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy thereof from any Court or office;
- (e) Issuing commissions for the examination of witnesses and documents.

The Commission has to make recommendations for the effective implementation of the safeguards for the protection of interests of minorities by the Central Government or the State Government. It has to make periodical reports or special reports to the Central Government on a matter pertaining to minorities and any particular difficulty faced by them. The Central Government shall cause such recommendations to be laid before each house of parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendation relating to the opinion and the reasons for non-compliance with any of such recommendations.

## **XI POWERS OF THE NATIONAL COMMISSION FOR HUMAN RIGHTS**

The National Commission for Human Rights has been constituted to inquire *suo mottu* or on a petition presented to it by a victim or any person on this behalf any complaint of the violation of human rights or abatement thereof, or negligence in the prevention of such violation by the public servants to intervene in any proceeding involving in any allegation of violation of human rights pending before a Court with the approval of such Court, to visit under intimation to the State Government any jail or other institution under the control of the State Government where persons are detained or lodged for the purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon, and review the safeguards provided by or under the constitution or any law for the time being in force.

Under Section 13 of the Protection of Human Rights Act 1993, the Human Rights Commission, while inquire into complaints under the Act has all the Power of a civil Court trying a suit under the Code of civil Procedure 1908 and in particular in respect of the following matters, namely;

- (a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) discovery and production of any document;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy thereof from any Court or office;
- (e) Issuing commissions for the examination of witnesses or documents;
- (f) Any other matters which may be prescribed;

Under sub-Section 4 of Section 13 of the Act, the commission shall be deemed to be a civil Court and when any offences described in Sections 175, Section 178, Section 179 and Section 180 or Section 228 of the Indian Penal Code is committed in the view or presence of the commission the commission may after recording the facts constituting the offence and the statement of the accused, as provided for in the Code of Criminal Procedure 1973 forward the case to Magistrate having jurisdiction to try the case. Further, according to sub Section 5 of Section 13 of the Act, every proceeding before the commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of and for the purpose of Section 196 of the Indian Penal Code, and the commission shall be deemed to be a civil court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure.

Upon the completion of inquiry the commission may take any of the following steps; namely;

- (1) Where the inquiry discloses the commission of violation of Human Rights or negligence in the prevention or violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other Action as the commission may deem fit against the concerned person or persons;

- (2) Approach the supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
- (3) Recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the commission may consider necessary;

## **C- POWERS OF INVESTIGATION OFFICERS UNDER THE LOCAL LAWS**

Local law is a law applicable to a particular part of India. Criminal law being a concurrent subject the State legislature are competent to enact Criminal law in the form of substantive as well as procedural laws on the subject falling within the their legislative competence. There are a number of statutes passed by the Andhra Pradesh legislature like the legislature of the several states in India, according to which the investigation officers may exercise certain powers. In the category of investigation officers are the Police officers first, and then there are a number of other officers who have been given similar powers. There are rules according to which the investigation officers may exercise powers by seeking the aid and assistance of other agencies also. Here is a brief description of the powers of investigation officers under the statutes enacted by the Andhra Pradesh Legislature.

This part consists of the analysis of the supreme court judgments. The decisions wherein the supreme court gave suggestions to improve the investigation and where in it pointed out at the lacunae in the investigation which led to an acquittal were selected and discussed.

## **INVESTIGATION IN AUSTRALIA**

### **Introduction:**

A peculiar feature of the Australian Constitution is the fact that it lacks a Bill of Rights. Consequently, the source of rights is either ordinary legislation or principles of common law. However, care has been taken to ensure that most safeguards for human rights, particularly those in Article 14 of the International Covenant on Civil and Political Rights are guaranteed by law in most states.<sup>29</sup> While federal control over criminal law is extremely curtailed, the central government has laid down a Model Criminal Code so that they can facilitate uniformity between states regarding recognition of offences. This is important because in many cases, federal crimes have not in fact been addressed through codes and the practice followed by most courts is then to apply the state law on the relevant subject. So very often, even though the crime is federal, the suit can end with

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<sup>29</sup>As far as UN human rights instruments and other international documents go, they do not become a part of domestic law automatically, and need to be enacted by specific legislation, a process that has not been carried out with too much enthusiasm thus far. In recent times, this gap has been sought to be bridged by relying on what are popularly referred to as the "Bangalore Principles", i.e., resort to the relevant international instruments to which Australia is a party if there is any ambiguity in domestic law: <http://www.odpp.nsw.gov.au/speeches/Ireland%20-%20national%20pros%20conf%2019.5.011.htm>, last visited on 30<sup>th</sup> June, 2010.

different consequences depending on what state the trial is conducted in.<sup>30</sup> This Model Criminal Code deals with procedure only indirectly and most clear provisions for investigation provided in a federal statute are found in the Crimes Act, 1914<sup>31</sup>. The scope of this study is confined mainly to these procedures.

It is pertinent to note that no investigation affects the legal professional privilege.<sup>32</sup>

### **Search Procedures:**

Under the Act, the issuing officer for a warrant is either the magistrate or a justice of the peace or other person employed in a Court of a State or Territory who is authorised to issue a warrant for search or arrest.<sup>33</sup> Such a warrant can be issued if there are reasonable grounds for suspecting the presence of evidential material, or when there will be such grounds within the next 72 hours. If the search extends to a person and not a place either an ordinary search or a frisk search is allowed, depending on what is specified in the warrant. If the use of firearms is suspected by the person applying for a warrant, this suspicion must be made explicit. Applicants from the Australian Federal Police are also expected to state details of warrants that have been issued before in relation to the same person. The warrant must specify the offence being investigated, the person or place being searched, the time of expiry, the hours during which it can be used, the evidence sought, the person to whom it is issued, whether or not it authorises seizure and to what extent the powers of seizure are exercisable. Successive warrants can be issued for the same premises of persons.<sup>34</sup> It is mandatory to make available to the person being searched or the occupier of the premises being searched, a copy of the warrant.<sup>35</sup> It is to be noted that photographs can only be taken for purposes incidental to the search or if the permission of the occupier of the premises is taken in writing.<sup>36</sup> A receipt must be issued for anything seized during the course of the search.<sup>37</sup> A warrant can be issued by telephonic or electronic means if it is an urgent situation or it is felt that delay in the issuance of a warrant will prejudice the investigation.<sup>38</sup> However, no warrant can authorise a trip search or a search of body cavities of a person.<sup>39</sup>

In serious and urgent circumstances the search of conveyances without a warrant is also permitted if the thing being searched for is connected to an indictable offence (an

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<sup>30</sup> <http://www.isrcl.org/Papers/Goode.pdf>, last visited on 30<sup>th</sup> June, 2010.

<sup>31</sup> Hereinafter referred to as “the Act”.

<sup>32</sup> Part IAA, Division 4, Section 3ZX, the Act.

<sup>33</sup> Part IAA, Division 1, Section 3C, the Act.

<sup>34</sup> Part IAA, Division 2, Section 3E, the Act.

<sup>35</sup> Part IAA, Division 2, Section 3H, the Act.

<sup>36</sup> Part IAA, Division 2, Section 3J, the Act.

<sup>37</sup> Part IAA, Division 2, Section 3Q, the Act.

<sup>38</sup> Part IAA, Division 2, Section 3R, the Act.

<sup>39</sup> Part IAA, Division 2, Section 3S, the Act.

offence punishable by more than 12 months of imprisonment).<sup>40</sup> This search must be conducted in public.<sup>41</sup>

In case the suspected crime is a terrorist act, the powers are even more extensive.<sup>42</sup> These enhanced powers operate either on the basis of reasonable suspicion of the police officer on a case by case basis or if the area has been declared to be a prescribed security zone.<sup>43</sup>

## Arrest

A constable is permitted to make an arrest in pursuance of an investigation in cases connected to an indictable offence.<sup>44</sup> In some cases an arrest without warrant is also allowed. An example of this would be if the person is in the process of committing an offence.<sup>45</sup> A person who is not a constable is also allowed to arrest a person committing an indictable offence (or a person who *has* committed an indictable offence). Such an arrest is also allowed to be made if the serving of summons is not likely to ensure the appearance of the person in court, prevent repetition of the offence, affect evidence or witnesses or preserve the safety or welfare of the arrestee.<sup>46</sup> A warrant for arrest can only be granted by the issuing magistrate based on a statement made under oath or when the warrant is sought for the purposes of making an extradition. Such a warrant may also be issued if the issuing officer feels that there are reasonable grounds for doing so or, if he has asked for additional information regarding the reasons for arrest, the information has been furnished to him.<sup>47</sup> Reasonable force may be used to enter the premises where such arrest is to be made. Unless there is the threat of loss of evidence or impossibility of arrest, such force cannot be used in a dwelling house between 9 p.m. and 6 a.m. on any given day.<sup>48</sup> Only proportionate force can be used against the person but even the causing of death is permissible if the person is attempting to flee or it is imperative, in order to prevent death or serious injury to another person.<sup>49</sup> All arrestees are to be informed of the grounds of their arrest.<sup>50</sup> They can be subject to a frisk search or an ordinary search on the grounds of carrying seizeable items<sup>51</sup> or evidentiary material<sup>52</sup> respectively. On reasonable grounds of suspicion of finding seizeable items or evidentiary material, a strip search is also allowed to be conducted.<sup>53</sup> This can only be done in accordance with the safeguards that have been laid down in connection with strip searches. For instance, they

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<sup>40</sup> Part IAA, Division 3, Section 3T, the Act.

<sup>41</sup> Other safeguards have also been provided such as the use of proportionate force in confiscating containers: Part IAA, Division 3, Section 3U, the Act.

<sup>42</sup> Part IAA, Division 3A, the Act.

<sup>43</sup> Part IAA, Division 3A, Subdivision B, Section 3 UB, the Act.

<sup>44</sup> Part IAA, Division 4, Section 3V, the Act.

<sup>45</sup> Part IAA, Division 4, Section 3W, the Act.

<sup>46</sup> Part IAA, Division 4, Section 3Z, the Act.

<sup>47</sup> Part IAA, Division 4, Section 3ZA, the Act.

<sup>48</sup> Part IAA, Division 4, Section 3ZB, the Act.

<sup>49</sup> Part IAA, Division 4, Section 3ZC, the Act.

<sup>50</sup> Part IAA, Division 4, Section 3ZD, the Act.

<sup>51</sup> Part IAA, Division 4, Section 3ZE, the Act.

<sup>52</sup> Part IAA, Division 4, Section 3ZF, the Act.

<sup>53</sup> Part IAA, Division 4, Section 3ZH, the Act.

must be conducted in a private area, by a person of the same sex.<sup>54</sup> Identification material (such as fingerprints) can be taken only when stringent conditions have been specified<sup>55</sup> and such material must be destroyed as soon as possible, for instance, if proceedings in connection to the offence have been discontinued.<sup>56</sup> Identification parades can be made if the suspect agrees, but must be made if it is reasonable to do so or the suspect so requests.<sup>57</sup> A photo identification can replace this process if it is felt that an identification parade would be prejudicial, unreasonable or futile in the light of the changed appearance of the accused. Refusal to allow a parade can also be dealt with through photo identification.<sup>58</sup> With the consent of the suspect (and his or her guardian) or the permission of the magistrate, an age identification exercise can be conducted in case of a Commonwealth offence or if the age is a relevant factor in the case.<sup>59</sup>

### **Collection of Related Documents and Information**

A written notice can also be issued by an authorised Australian Federal Police Officer to any person to provide relevant documents if it is believed by him or her that the documents in question are connected to the investigation of a terrorist act.<sup>60</sup> A Federal Magistrate can authorise this in case of other serious offences also on balance of probabilities.<sup>61</sup>

### **Controlled Operations**

‘Controlled Operation’ is an expression used to describe a covert operation by a law enforcement agency carried out for the purpose of gathering evidence that may lead to the identification and prosecution of a person for a criminal offence. Such operations are most commonly employed by Commonwealth law enforcement agencies in connection with investigations surrounding the importation of narcotic goods.<sup>62</sup> A major controlled operation is one which involves infiltration into an organised criminal group by an officer for over seven days, or that lasts for three months, or that involves collection of evidence for a suspected crime that involves threat to human life.<sup>63</sup> Such operations can be conducted only with the permission of authorising officers, as defined under Part IAB, Division 2, Section 15GH of the Act. Such permission is revocable.<sup>64</sup> Officers engaging in controlled operations have immunity from criminal responsibility for conduct in the course of, and in pursuance of a controlled operation. Such immunity does not extend to death, serious injuries or sexual offences.<sup>65</sup> This protection also does

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<sup>54</sup> Part IAA, Division 4, Section 3ZI, the Act.

<sup>55</sup> Part IAA, Division 4, Section 3ZJ, the Act.

<sup>56</sup> Part IAA, Division 4, Section 3ZK, the Act.

<sup>57</sup> Part IAA, Division 4, Section 3ZM, the Act.

<sup>58</sup> Part IAA, Division 4, Section 3ZO, the Act.

<sup>59</sup> Part IAA, Division 4, Section 3ZQB, the Act.

<sup>60</sup> Part IAA, Division 4, Section 3ZQN, the Act.

<sup>61</sup> Part IAA, Division 4, Section 3ZQO, the Act.

<sup>62</sup> <http://www.uplink.com.au/lawlibrary/Documents/Docs/Doc72.html#Introduction>, last visited on 30<sup>th</sup> June, 2010.

<sup>63</sup> Part IAB, Division 1, Section 15GD, the Act

<sup>64</sup> Part IAB, Division 2, Section 15GY, the Act.

<sup>65</sup> Part IAB, Division 3, Section 15HA, the Act.

not extend to other processes of investigation.<sup>66</sup> Unauthorized disclosure of information collected in a controlled operation also leads to penalty.<sup>67</sup> However, certain important documents connected with the controlled operation are to be kept as records by the chief officer of an authorizing agency (for example, each formal application made to the authorizing officer).<sup>68</sup>

Some changes in the regime have been introduced with the Crimes Legislation Amendment (Serious and Organised Crime) Act, 2010. This statute responds to concerns that there is a real risk of insufficient protection for persons authorised under State or Territory controlled operations laws who commit Commonwealth offences. The new controlled operations regime recognises corresponding State and Territory laws – removing the need to seek a separate Commonwealth authorisation. Further, the Act provides for retrospective protection for evidence obtained from, and persons who participated in, validly authorised State or Territory controlled operations.<sup>69</sup>

### **Assumed Identities**

The use of assumed—or false—identities is an important law enforcement tool allowing operatives to protect their real identity and infiltrate criminal groups, often at great personal risk. A law enforcement or intelligence agency can apply to the chief officer mentioned in order to use or acquire an assumed authority for the process of investigation.<sup>70</sup> An authorization must be in writing in the form approved by the chief officer and signed by the person granting it.<sup>71</sup> Once an assumed identity is authorized the chief officer of the intelligence agency or law enforcement agency can apply for corresponding changes to be made in the register of births, deaths and marriages.<sup>72</sup>

The immunity and rights of people assuming identities different from their actual ones is decided by the Crimes Legislation Amendment (Serious and Organised Crime) Act, 2010. The new assumed identities regime will recognise things done in relation to an assumed identity authorised under a corresponding state or territory law as well as the central law. The safeguards and accountability measures for the new assumed identities regime in some cases exceed the protections provided in the model laws. For example, a person who has an assumed identity will commit an offence if he or she fails to return evidence of an assumed identity when requested to do so. This will act as a deterrent to those who may seek to use their false identity after the authorisation has ceased.<sup>73</sup> As of before, misuse of assumed identity and information collected thereunder as part of the investigative process is punishable under Part IAC, Division 6, Subdivision A of the Act of 1914.

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<sup>66</sup> Part IAB, Division 3, Section 15HC, the Act.

<sup>67</sup> Part IAB, Division 4, Section 15HK, the Act.

<sup>68</sup> Part IAB, Division 3, Section 15HP, the Act.

<sup>69</sup> ag

<sup>70</sup> Part IAC, Division 2, Section 15KA, the Act.

<sup>71</sup> Part IAC, Division 2, Section 15KC, the Act.

<sup>72</sup> Part IAC, Division 2, Section 15KG, the Act.

<sup>73</sup> ag

## Commonwealth Offences

A Commonwealth Offence refers to an offence against a Commonwealth law, or an offence with a federal element.<sup>74</sup> The investigation period for a person under 18 years of age, an Aborigine or a Torres Strait Islander may extend to 2 hours while for any other person it is 4 hours. If a person is arrested multiple times within 48 hours, the cumulative investigation period cannot exceed the limit prescribed unless the later arrest was for an offense committed after the first investigation period or that arose in different circumstances to those in which any Commonwealth offence to which the first arrest relates arose, and for which new evidence has been found since the first arrest. In these circumstances the second arrest must not be the pretext to investigate the first offence. The person must be released within the investigation period and also brought before a judicial officer within that period (or if that is not possible, then at least as soon as practicable).<sup>75</sup> An application can be made to extend investigation period.<sup>76</sup> Unless there is a law to the contrary, it is the duty of the investigating officer to inform the accused of his right to remain silent, and that anything he says or does can be used as evidence against him.<sup>77</sup> He must also be informed of his right to communicate with a friend or relative, and a legal practitioner. The officer himself must attempt to make available the services of a legal practitioner to the accused.<sup>78</sup> For aboriginal persons and Torres Islanders, if the person is unable to arrange for a legal practitioner, the investigating officer must inform an aboriginal legal aid organization. Such an interview can only be carried out in the presence of an 'interview friend'.<sup>79</sup> This last condition is mandated in case of persons below 18 years of age also.<sup>80</sup> These requirements can be waived in certain conditions, for instance, if concealment or fabrication of the evidence is going to be the likely result.<sup>81</sup> The officer is also obligated to inform the arrestee of any persons who might have been looking for him, and must then proceed to inform such persons unless he gauges that they are not his friend or relative, or if the arrestee himself refuses the provision of such information.<sup>82</sup> Investigating officers may also appoint interpreters if they feel it will facilitate clearer communication.<sup>83</sup> In case of foreigners, the consular office of the person must be informed immediately.<sup>84</sup> *No person can be subject to cruel, degrading or inhuman treatment while in the custody of the investigating officer.*<sup>85</sup> It is mandatory also to make tapes to prove the relay of information to the arrestee where this was required.<sup>86</sup> Records of confessions and admission are permissible in restricted scenarios (for instance, if the confession or admission was made in circumstances where

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<sup>74</sup> Part IC, Division 1, Section 23B, the Act.

<sup>75</sup> Part IC, Division 2, Section 23C, the Act.

<sup>76</sup> Part IC, Division 2, Sections 23D and 23E, the Act.

<sup>77</sup> Part IC, Division 3, Section 23F, the Act.

<sup>78</sup> Part IC, Division 3, Section 23G, the Act.

<sup>79</sup> Part IC, Division 3, Section 23H, the Act.

<sup>80</sup> Part IC, Division 3, Section 23K, the Act.

<sup>81</sup> Part IC, Division 3, Section 23L, the Act.

<sup>82</sup> Part IC, Division 3, Section 23M, the Act.

<sup>83</sup> Part IC, Division 3, Section 23N, the Act.

<sup>84</sup> Part IC, Division 3, Section 23P, the Act.

<sup>85</sup> Part IC, Division 3, Section 23R, the Act.

<sup>86</sup> Part IC, Division 3, Section 23U, the Act.

it was reasonably practicable to tape record the confession or admission—the questioning of the person and anything said by the person during that questioning was tape recorded).<sup>87</sup>

## **Forensic Procedures**

Forensic procedures are carried out on different suspects depending upon how they can be classified. For instance, in the case of an incapable person, an intimate or non-intimate forensic procedure cannot be carried out without the consent of a magistrate.<sup>88</sup> These procedures must be carried out within a fixed time limit.<sup>89</sup> Conducting a forensic procedure is also allowed in most cases with the informed consent of the suspect as long as he or she is not a child or an incapable person.<sup>90</sup> In case of aboriginal people, the consent can only be taken in the presence of an interview friend (unless this right is waived) or if the procedure is conducted under the direction of a senior constable who believes the person will not be prejudiced by such a procedure.<sup>91</sup> The suspect must be informed that the giving of consent is going to be recorded, the purpose for which the procedures are being carried out, the offence suspected, the manner in which the procedures are to be carried out and the suspect's other rights (to refusal, to have a doctor of his choice present at the time of the procedures etc.)<sup>92</sup> While ordinarily the consent of the magistrate or the senior constable (in case of a non-intimate process) is required, this procedure can be expedited in cases of urgency through what are called 'interim orders' when the requirement of the presence of the suspect at the hearing can be dispensed with.<sup>93</sup> The procedure must be carried out in private. The presence of people of the opposite sex or those who are not required is forbidden. The excessive removal of clothing or visual inspection is forbidden.<sup>94</sup> The process of questioning, and executing forensic procedures must not overlap.<sup>95</sup> Such a procedure must not be carried out in a cruel, inhuman or degrading manner.<sup>96</sup> Only people qualified enough to carry out a forensic procedure, as specified in the Act, are permitted to do so.<sup>97</sup> The samples collected should be such that part of them can be made available to the suspect also.<sup>98</sup> A person can also volunteer to undergo a forensic procedure.<sup>99</sup>

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<sup>87</sup> Part IC, Division 3, Section 23V, the Act.

<sup>88</sup> Part ID, Division 2, Section 23WC, the Act.

<sup>89</sup> Part ID, Division 2, Section 23WCA, the Act.

<sup>90</sup> Part ID, Division 3, the Act.

<sup>91</sup> Part ID, Division 3, Section 23WG, the Act.

<sup>92</sup> Part ID, Division 3, Section 23WJ, the Act.

<sup>93</sup> Part ID, Division 3, Section 23XB, the Act.

<sup>94</sup> Part ID, Division 6, Section 23XI, the Act.

<sup>95</sup> Part ID, Division 6, Section 23XIA, the Act.

<sup>96</sup> Part ID, Division 6, Section 23XK, the Act.

<sup>97</sup> Part ID, Division 6, Section 23XM, the Act.

<sup>98</sup> Part ID, Division 6, Section 23XU, the Act.

<sup>99</sup> Part ID, Division 6, Section 23XWQ, the Act.

## Conclusion

The Australian investigative process is extremely creative. The provisions relating to Assumed Identities and Controlled Operations in particular are worth emulating so that people who put so much at stake during covert operations have some kind of security.

It is also heartening to note that while reasonable force is a caveat all investigating officers need to remind themselves of personally, the Commonwealth has gone one step further in guaranteeing indemnity in cases where seizure causes some kind of damage.

To ensure smooth investigation, regulating procedures such as has been done in the case of forensics in the Australian Code is perhaps also something that needs to be addressed in India.

### CRIMINAL INVESTIGATION IN GREAT BRITAIN

The process of criminal investigation in Great Britain has essentially codified by two statutes, being the Police and Criminal Evidence Act<sup>100</sup> of 1984, as well as the more specific Criminal Procedures and Investigations Act<sup>101</sup> of 1996.

To give a brief background of both, PACE was enacted to institute a basic legal framework within which police officers could more effectively control crime. However, it is applicable not only to police officers but to any person who may at some point be connected with a criminal investigation, such as Revenue or Customs officials. It covers many heads, such as

- a. The Power to Stop and Search
- b. Powers of Entry, Search and Seizure
- c. Powers of Arrest and Detention amongst others.

This legislation, however, requires the issuance of Codes of Practice by the Home Secretary to be put into practice.<sup>102</sup> Although the legislation is fairly wide ranging, it was also widely criticised for giving a surfeit of power to the police. Eventually, a need for greater specificity arose, leading to the enactment of the CPIA in 1996. The CPIA is a more specific legislation, with heads such as

- a. Investigations
- b. Preparatory Hearings
- c. Committals, Transfers, etc.

falling under it. The CPIA may now be considered the primary source of law relating to investigation in the UK today.

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<sup>100</sup> Henceforth known as PACE.

<sup>101</sup> Henceforth known as CPIA.

<sup>102</sup> It has also been amended significantly by the Serious Organised Crime and Police Act of 2005. However, the major amendments have come from the Chapter relating to Arrest, thus making it insignificant in this context.

To curb abuse in the system, the UK government also decided in 2000 to pass the Regulation of Investigatory Powers Act<sup>103</sup> which essentially regulates the powers of public authorities to carry out surveillance and investigation work. The act was especially drafted keeping in mind strong technological improvements over the past few years, and it specifies both agencies which may carry out each type of investigative work as well as the permissible reasons for undertaking such investigation. It has unfortunately been mired in controversy, and has also been amended several times, most recently in February 2010.

- s. 22 of the CPIA defines a Criminal Investigation as “an investigation undertaken by police offices with a view to it being ascertained
- a. whether a person should be charged with an offence, or
  - b. whether a person charged with an offence is guilty of it

To better understand the procedural aspects governing this important task, it would perhaps be best to begin with an understanding of how the provisions of each individual act govern the investigative process, which, as mentioned above, can relate to both questions of commission and of guilt.

#### **A. Police and Criminal Evidence Act**

- i. Part I of the said Act deals with the provisions relating to the power to stop and search any person for stolen or prohibited articles which a constable has reason to believe may be found on the person stopped. The permissible locations for such a search are very wide ranging, restricting for effective purposes only a person’s place of dwelling. Even if a person is within a home or a yard, as long as it can be proven that the constable had reason to believe the person being searched does not reside there, he or she may be searched. He subsequently also has the power to seize any article found with such person. The officer is required to make a written record of such search as soon as practicable after the actual search.
- ii. Part II of the Act deals with the powers relating to entry, search and seizure. If a constable believes that a serious arrestable offence has been committed, and that there is material on premises specified which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and that the material is likely to be relevant evidence ; and that it does not consist of or include items subject to legal privilege, excluded material or special procedure material, he may apply to a Justice of Peace to issue a warrant authorising a constable to enter and search the premises. This is only necessary if the person to whose dwelling access is desired appears to be unwilling to allow such access without the production of a warrant. If in the course of such search relevant evidence is found, he may then seize this evidence in pursuance

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<sup>103</sup> Henceforth known as RIPA.

of his investigation. The next three parts of the act deal with arrest and detention and thus are not strictly relevant here.

- iii. Part V of the Act deals with the questioning and treatment of persons by the police. It details how a person who is in custody/is taken into custody may be searched and questioned, and what level of search is considered acceptable. This section, however, does not allow for strip-searching except in the case of drug offences, and then only in the presence of a trained professional of the same sex. A search may be performed if an officer of at least the rank of superintendent believes it necessary to procure evidence. It also provides for the taking of samples, etc.

The remainder of the parts have limited relevance to the topic of investigation. We pass now to the CPIA.

## **B. Criminal Procedures and Investigation Act**

We shall here look at a more codified expression of the rules relating to the procedure of investigation into crimes. The model adopted with the introduction of this Act has seen a shift in focus from adversarial to more inquisitorial.

However, only the provisions of Part II of this Act, being s.22-s.27 are strictly relevant to Criminal Investigations. Part I of the Act lays down rules relating to disclosure of information in criminal proceedings which have been rather controversial, and were amended by the Criminal Justice Act of 2003.

- i. **Section 22** of the Act talks about the definition of a criminal investigation, as discussed above. It also defines for us material, and the recording of evidence.
- ii. **Section 23** of the act is exceedingly important, putting the burden on the State to procure a reasonable and fair model of investigation, while recording all material evidence.
- iii. **Section 24** of the Act gives various **examples of disclosure provisions** to be included in the code of practice. The disclosure is having regard to the concept of revealing material to a person who is involved in the prosecution. It describes what material is sensitive and cannot be revealed and when the material has to be disclosed.
- iv. **Section 25** provides for the operation and revision of the code to be prepared by Secretary of State under this Act. He has to publish the code in the draft form and lay it before each house of Parliament and bring it into operation as appointed by order. Sub section (4) provides time to time revision of the code by Secretary of State.
- v. **Section 26** gives the effects of the code. It provides that any person other than police officer conducting an investigation shall in discharging the duty have

regard to any relevant provisions of the code which would apply if the investigation were conducted by police officers. Failure to comply with the code does not render the person liable to any criminal or civil proceedings.

- vi. **Section 27** gives the relevance of common law rules as to criminal investigations. Where a code prepared rules of common law which were effective immediately before the appointed day shall not apply in relation to the suspected or alleged offence. Also rules of common law which relate to revealing of material by a police officer or other person charged with the duty of conducting an investigation with a view to it being ascertained whether a person should be charged with an offence or whether a person charged with an offence is guilty of it to a person involved in the prosecution of criminal proceedings shall not apply.

The provisions of this part do not truly lay down substantive rules governing investigation, but make provision for a Code of Practice to be framed by the Secretary of State. A broad framework has been laid down to give direction to the executive, but the burden remains on them. This code has indeed been framed, and has been applicable with prospective effect from when it came into force. It sets out the manner in which police officers are to record, retain and reveal to the prosecutor material obtained in a criminal investigation and which may be relevant to the investigation, and related matters. The investigations which it covers are of three types, being;

- a. Investigations into crimes that have been committed;
- b. Investigations whose purpose is to ascertain whether a crime has been committed, with a view to the possible institution of criminal proceedings; and
- c. Investigations which begin in the belief that a crime may be committed, for example when the police keep premises or individuals under observation for a period of time, with a view to the possible institution of criminal proceedings

It lays down defined roles for a variety of persons, being a disclosure officer, the officer in charge of an investigation, an investigator, the prosecutor etc. It discusses in extensive detail the duties and responsibilities of each of these persons separately, such as the recording of evidence etc.

The disclosure officer must prepare a schedule of all relevant material at the end of the investigation, whether specifically relevant to the prosecutor or not. There remains a continuing duty of disclosure on the Prosecutor to disclose all relevant materials in the public interest if they fit the test for disclosure (i.e. are relevant and not sensitive).

The two Acts discussed above give wide ranging powers to the police for investigation. We now proceed to an Act which lays fetters upon the police powers.

### **C. The Regulation of Investigatory Powers Act**

This act was enacted to “make provision for and about the interception of communications, the acquisition and disclosure of data relating to communications, the carrying out of surveillance, the use of covert human intelligence sources and the acquisition of the means by which electronic data protected by encryption or passwords may be decrypted or accessed; to provide for Commissioners and a tribunal with functions and jurisdiction in relation to those matters, to entries on and interferences with property or with wireless telegraphy and to the carrying out of their functions by the Security Service, the Secret Intelligence Service and the Government Communications Headquarters; and for connected purposes.”

It essentially specifies the ways and means communications may be intercepted and by who, in a wide variety of situations. The positive feature of this act is how technologically updated and complex it is, taking on board the requirements of the information age.

To take a single example, one can look at the interception of a communication (typically through wire taps and reading post). This may be done for a variety of reasons such as in the interests of national security, for the purpose of preventing or detecting serious crime and for the purpose of safeguarding the economic well-being of the United Kingdom. The persons who may exercise this power are Defence Intelligence Staff, GCHQ, HM Revenue and Customs, Secret Intelligence Service, Security Service and territorial police forces. The authorisation required is either of the Home Secretary or the Cabinet Secretary for Justice.

To conclude, it is necessary to discuss the factors distinguishing the United Kingdom system of investigation from the one prevalent in India, focusing specifically on those advantages which could be usefully incorporated into our own system. Firstly, the fact that the requisite technological advances have been taken on board in the formulation of laws, something that Indian law is sorely lacking. Second, the strength of the duty to disclose is something which would lend transparency to the India system, as well as lessening the imbalance between the prosecution and defence – however, without the discretionary power to decide as to what constitutes sensitive information. Thirdly, the strong separation of duties between the Disclosure Officer and the Investigating officer puts a fair amount of personal pressure on each, strengthening the likelihood of a fair investigation.

A strong feature of the English system is the level of reliance on the Executive and the Police forces. While this may be unsuitable in an Indian context, it is a feature which must not be overlooked.

## Introduction

The onus of investigation at the federal level falls primarily on the investigative agencies that have been set up under the Department of Justice. Title 28, United States Code, Section 533 authorises the United States Attorney General to appoint officials for investigation for all matters falling within the jurisdiction of the Department of State or the Department of Justice, as the Attorney General may deem fit. However, this does not compromise the ability of any agency to conduct such an investigation themselves when they have been so authorised by law.<sup>104</sup> The Department itself is led by the Attorney General, who is nominated by the President and confirmed by the Senate and is a member of the Cabinet. The current Attorney General is Eric Holder.

## Limitations

The federal structure of the USA has resulted in different regimes of investigations and trial at the federal and state level respectively. The scope of this paper is restricted to investigations only for federal crimes. While the agencies are many in number, at both the state and federal levels,<sup>105</sup> the scope of this study has been confined to five main agencies.

## The FBI

Arguably the most famous of these investigative agencies, the Federal Bureau of Investigation (FBI) has residuary powers and can hence its mandate authorises it to “all federal criminal violations that have not been specifically assigned by Congress to another federal agency”.<sup>106</sup> Title 18, United States Code, Sections 3052 specifically authorizes Special Agents and officials of the FBI to make arrests, carry firearms, and serve warrants<sup>107</sup> while section 3107 authorises seizures under warrant for violation of federal statutes.<sup>108</sup> The information and evidence gathered in the course of that investigation are conveyed to the appropriate U.S. Attorney or Department of Justice official who decides whether or not prosecution is desirable. If an ordinary citizen informs the FBI of an alleged federal crime, the investigation for the purposes of ascertainment of facts can be carried out by the FBI but the facts must then be presented before the appropriate US Attorney to see if prosecution is to be pursued.

Once arrested by the FBI, a person is photographed, fingerprinted and a voluntary statement is sought from him or her. They are detained till the first court appearance. Arrests can be made as long as there are reasonable grounds to suspect the commission of a felony violation. Wiretapping is permitted provided a probable cause for the

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<sup>104</sup> <http://codes.lp.findlaw.com/uscode/28/II/33/533>, last visited on 28<sup>th</sup> June, 2010.

<sup>105</sup> The Department of Defense lists 17 at the federal level itself: <http://www.dodig.mil/INV/DCIS/fleolink.htm>, last visited on 28<sup>th</sup> June, 2010.

<sup>106</sup> <http://www.fbi.gov/aboutus/faqs/faqsone.htm#anchor463575>, last visited on 28<sup>th</sup> June, 2010.

<sup>107</sup> <http://codes.lp.findlaw.com/uscode/18/II/203/3052>, last visited on 28<sup>th</sup> June, 2010.

<sup>108</sup> <http://codes.lp.findlaw.com/uscode/18/II/205/3107>, last visited on 28<sup>th</sup> June, 2010.

commission of any of the felony violations specified for the purpose has been established before an impartial federal judge who must then proceed to closely monitor the process by which such wiretapping is carried out. The application to the Court itself must be authorised by any of the government officials legally competent to authorise the same.<sup>109</sup> The use of deadly force too is permissible if there is imminent danger of death or serious physical injury. It is generally preceded by a verbal warning.

The use of informants by the FBI is permitted but recommended only in special cases. With respect to organisational crimes the Enterprise Theory of Crimes is sought to be implemented. For instance, in cases of drug trafficking, it will be not just the individual but the entire enterprise that will be targeted.

It is to be noted that State and local law enforcement agencies are not subordinate to the FBI but work in conjunction with them when a common problem is being investigated.

In addition, the FBI has the additional function of conducting background investigations on all persons who apply for employment with the FBI. Additionally, the FBI conducts background investigations for other government entities, such as the White House, Department of Justice, Administrative Office of the U.S. Courts, and certain House and Senate committees. The subject of a background investigation may request the contents of his or her report. Although these are generally regarded as classified materials, government agencies apart from the one that requested such an investigation can apply for access to these reports.

Despite detailed legal safeguards, the FBI has been criticised on many counts. While one extreme accuses them of having overstepped many constitutional guarantees, the Umar Farouk Abdul Mutallab elicited reactions from the other extreme when Joe Lieberman, erstwhile chairman of the Senate Homeland Security Committee joined other Republicans in condemning the FBI for having given the benefit of the Miranda rights to a would-be suicide bomber and insisted his transfer at one to military custody and proceedings. The requirement is for intelligence officers to be consulted before it is decided whether the accused in such cases is to be treated as a criminal (subject to FBI investigation) or an Unprivileged Enemy Belligerent (UEB) who is to be transferred to the Department of Defense.<sup>110</sup> In what seems, at best to be a murky justification, Democrat John Podesta retaliated by saying that a preliminary investigation had in fact been carried out, and only when it was clear to them that Mutallab would not talk was the Miranda warning given to him.<sup>111</sup> This seems to be a sad mockery of the rights of the accused under investigation.

Even besides allegations of widespread human rights abuses, there have been criticisms levelled against the agency for lapses arising from an excessive dependence on

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<sup>109</sup> Title 18, United States Code, Section 2516, available at [http://www.law.cornell.edu/uscode/18/usc\\_sec\\_18\\_00002516----000-.html](http://www.law.cornell.edu/uscode/18/usc_sec_18_00002516----000-.html), last visited on 28<sup>th</sup> June, 2010.

<sup>110</sup> <http://www.politico.com/news/stories/0110/31969.html>, last visited on 28<sup>th</sup> June, 2010.

<sup>111</sup> [http://www.huffingtonpost.com/2010/02/07/john-podesta-gop-criticis\\_n\\_452626.html](http://www.huffingtonpost.com/2010/02/07/john-podesta-gop-criticis_n_452626.html), last visited on 28<sup>th</sup> June, 2010.

technology. Despite elaborate fingerprinting and profiling, it was reported that the FBI database failed to recognise that a man apprehended for minor offenses was using an alias and was actually a wanted sex offender. The same person was later prosecuted against on allegations of multiple murders.<sup>112</sup>

## **The USA PATRIOT Act**

Congress passed the USA PATRIOT Act (the Act) in response to the terrorists' attacks of September 11, 2001. It creates new crimes, new penalties, and new procedural efficiencies for use against domestic and international terrorists. Although it is not without safeguards, critics contend some of its provisions go too far. Although it grants many of the enhancements sought by the Department of Justice, others are concerned that it does not go far enough.<sup>113</sup>

The primary among these are provisions relating to wiretapping and electronic surveillance. While the procedure described above in relation to the FBI is the norm in most cases, the Supreme Court has placed some matters beyond the constitutional protection of the Fourth Amendment which generally leads to protection of privacy in such matters. These include, *inter alia*, telephone records and third party email storage. In addition, the use of pen registers and trap and trace devices is allowed on court order,<sup>114</sup> and even without that in case of emergency, for subject to ratification by a court order within 48 hours.<sup>115</sup> These standards were greatly relaxed. Most telephone, email and financial record were now available at the issuance of a National Security Letter (NSL) issued by the FBI, without the need for a court order,<sup>116</sup> although with the protection of a sunset provision dissolving these provisions on 31<sup>st</sup> December, 2005.

An often-ignored dimension because of the one-sided implementation of the USA PATRIOT Act is the fact that some safeguards have actually been strengthened. For instance, penalties for violation of prevalent wiretapping laws have been augmented and reinforced. An Inspector General reviews complaints of civil liberties under the legislation.

In addition to this, changes have been made under the Foreign Intelligence Surveillance Acts. Before, an order could be obtained as long as the purpose was to obtain foreign intelligence information. However, this was not required to be the only purpose and information obtained with relation to other offences was admissible. This was criticised as being a fraudulent way of bypassing the protections that are otherwise

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<sup>112</sup> <http://www.encyclopedia.com/doc/1P1-108381836.html>, last visited on 28<sup>th</sup> June, 2010.

<sup>113</sup> <http://www.fas.org/irp/crs/RL31377.pdf>, last visited on 29<sup>th</sup> June, 2010.

<sup>114</sup> 18 USC 3121, <http://www.tscm.com/penreglaw.html>, last visited on 29<sup>th</sup> June, 2010.

<sup>115</sup> 18 USC 3125, [http://www.law.cornell.edu/uscode/html/uscode18/usc\\_sec\\_18\\_00003125----000-.html](http://www.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00003125----000-.html), last visited on 29<sup>th</sup> June, 2010.

<sup>116</sup> For instance, it treats stored voice mail as electronic communication rather than as telephone conversations that generally have a higher degree of protection. Another provision extends the use of pen registers to emails despite the fact that an email can be dramatically more revealing than a telephone number, which is all that is permitted to be recorded in case of a telephone conversation.

provided in law. Now, collection of foreign intelligence information is required to be a “significant purpose” and not even “the purpose”, thus relaxing the safeguard further.

Other changes in the process of investigation include allowing “sneak and peek” warrants which allow an investigating officer to enter, conduct a full fledged investigation, take photographs, copy documents, download or transmit computer files and then leave without any tangible evidence of even having gone there. The Posse Comitatus rule, that forbids the use of force to execute civilian law except in cases relating to biological, chemical or nuclear weapons has been relaxed further and made inapplicable in case of “weapons of mass destruction.” Moreover, nationwide execution of search warrants (as opposed to execution solely on the district which falls under the issuing magistrate’s jurisdiction) has been allowed. The Attorney General has been allowed to collect DNA samples of all those accused of acts of terrorism. In view of the sweeping definition of terrorism in the USA PATRIOT Act, these developments are a weighty concern.

The statute has been embroiled in controversy since its inception, with Michael Moore alleging in his documentary Fahrenheit 9/11 that none of the Senators had actually read the Bill before enacting it. The problem was complicated by the illegal use of the provisions, culminating in a court order that ordered the recovery of almost 1,00,000 pages of records that had been collected during investigation by the FBI.<sup>117</sup> A Department of Justice audit conducted in 2007 itself concluded that the USA PATRIOT Act had been abused on about 1,000 occasions. The audit pointed out the indiscriminate use of NSLs by the FBI, with a record 56,000 being issued in 2004.<sup>118</sup> In fact, in the case of hacker Adrian Lamo, the FBI went to the extent of apologising to journalist Ted Bridis acknowledging that the subpoena threatened to be issued to him, and the notice asking him to preserve transcripts of interviews with Lamo was illegal.<sup>119</sup> Similar notices had been sent to other reporters as well.<sup>120</sup> The widespread abuse of this legislation has done much to consolidate its image as a draconian law and opposition to it remains staunch and ardent.

## **The Secret Service**

The Secret Service's mission is two-fold: protection of the president, vice president and others; and investigations into crimes against the financial infrastructure of the United States. Consequently, the Secret Service has primary jurisdiction to investigate threats against Secret Service protectees as well as financial crimes, which include counterfeiting of U.S. currency or other U.S. Government obligations.<sup>121</sup> In pursuance of the exercise of these functions, officials of the Secret Service are given extensive powers, including the power to make arrests without warrant for any offense against the United States

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<sup>117</sup> <http://www.firstamendmentcenter.org/news.aspx?id=18689>, last visited on 28<sup>th</sup> June, 2010.

<sup>118</sup> <http://www.guardian.co.uk/world/2007/mar/09/usa>, last visited on 29<sup>th</sup> June, 2010.

<sup>119</sup> [http://www.usatoday.com/tech/news/computersecurity/2003-10-08-lamo-apology\\_x.htm](http://www.usatoday.com/tech/news/computersecurity/2003-10-08-lamo-apology_x.htm), last visited on 29<sup>th</sup> June, 2010.

<sup>120</sup> [http://www.theregister.co.uk/2003/09/29/fbi\\_bypasses\\_first\\_amendment/](http://www.theregister.co.uk/2003/09/29/fbi_bypasses_first_amendment/), last visited on 29<sup>th</sup> June, 2010.

<sup>121</sup> <http://www.secretservice.gov/faq.shtml>, last visited on 29<sup>th</sup> June, 2010.

committed in their presence, or for any felony cognizable under the laws of the United States if they have “reasonable grounds to believe that the person to be arrested has committed or is committing such felony.”<sup>122</sup> Secret Service forensic services personnel conduct analyses of evidence, some of which includes documents, fingerprints, false identification documents, and credit cards, to assist in USSS investigations. In 1971, Congress established criminal penalties for a person who “knowingly and willfully obstructs, resists, or interferes with an agent of the United States engaged in the performance” of USSS’s protection mission.<sup>123</sup>

Additionally, in 1994, Congress mandated that the US Secret Service provide forensic and technical assistance to the National Center for Missing and Exploited Children.

Since 2002, the Secret Service acts under the direction of the Department of Homeland Security. Before this, it was under the aegis of the Department of the Treasury.<sup>124</sup>

More than the legal allocation of powers, corruption is a problem the Secret Service seems to be grappling with, and not so successfully. The process of investigation of accused Nazi death camp guard John Demjanjuk is alleged to have been vitiated after the testimony of a forensics expert of the Secret Service was found to be in absolute contrast with his statement in Munich.<sup>125</sup> Accused of being a guard at a Nazi death camp Sobibor, is charged with assisting in the murder of 27,900 Jews and others at Sobibor. The trial is likely to be the last major Holocaust trial.<sup>126</sup> The official, Larry Stewart, testified to the veracity of a Nazi-issued ID card to the accused.<sup>127</sup>

It has also been argued that since the functions of the Secret Service are both protective and investigative, too much stress is laid on the former at the cost of the latter. This prejudice is reflected also in the allocation of funds. The argument goes that an independent enquiry should look into the dual mission of the Secret Service to examine its efficiency. Cost overruns in the financial year 2009-2010 have done nothing to dispel such apprehensions. Suggested solutions include transferring the investigative powers to the FBI. Still, it is noteworthy that in the past 45 years, it has successfully managed to safeguard the lives of all its protectees.<sup>128</sup>

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<sup>122</sup> 18 USC 3056, [http://www.law.cornell.edu/uscode/718/usc\\_sec\\_18\\_00003056----000-.html](http://www.law.cornell.edu/uscode/718/usc_sec_18_00003056----000-.html), last visited on 29<sup>th</sup> June, 2010.

<sup>123</sup> 84 Stat. 1892.

<sup>124</sup> <http://www.fas.org/sgp/crs/homesec/RL34603.pdf>, last visited on 29<sup>th</sup> June, 2010.

<sup>125</sup> <http://www.independent.co.uk/news/world/europe/demjanjuk-witness-accused-of-perjury-in-german-court-2003615.html>, last visited on 29<sup>th</sup> June, 2010.

<sup>126</sup>

<http://www.google.com/hostednews/ap/article/ALeqM5hIH0N3mJ1HhKJrBMWn3uUa8WpghAD9GD0SN80>, last visited on 29<sup>th</sup> June, 2010.

<sup>127</sup>

<http://www.google.com/hostednews/ap/article/ALeqM5hIH0N3mJ1HhKJrBMWn3uUa8WpghAD9G72M000>, last visited on 29<sup>th</sup> June, 2010.

<sup>128</sup> Supra, n. 21.

## Drug Enforcement Administration

The mission of the Drug Enforcement Administration (DEA) is to enforce the controlled substances laws and regulations of the United States. This entails Investigation and preparation for the prosecution of major violators of controlled substance laws operating at interstate and international levels, and of criminals and drug gangs who perpetrate violence and terrorize citizens through fear and intimidation.<sup>129</sup> While it has exclusive jurisdiction over US investigations conducted abroad, it shares jurisdiction at the national level with the FBI.

The role played by the DEA is somewhat questionable. An extreme reaction was the Oklahoma city bombings of 1995 where Timothy McVeigh attacked the regional offices of the FBI, DEA and the Bureau of Alcohol, Tobacco, Firearms and Explosives for having conducted raids that he regarded as unjustified intrusions on the civil liberties of people.

Once again, corruption is a problem of epic proportions with the Venezuelan Justice Minister Pedro Carreno going on record to accuse the DEA of developing ties with drug traffickers which resulted in a suspension of Venezuelan ties with the agency in 2005.<sup>130</sup>

## National Security Agency

The National Security Agency or the NSA has two interconnected missions: Signals Intelligence (known as SIGINT) and Information Assurance. Gathering secret information from abroad falls within the ambit of SIGINT. Through Information Assurance, America's national security information and systems are protected from theft or damage by others. Taken together, the SIGINT and Information Assurance missions are essential to a third function: enabling Network Warfare, a military operation. Coding and decoding is often done in collaboration with the Central Security Service (CSS).<sup>131</sup>

While investigative powers are extensive, procedures are curtailed by constitutional guarantees. Executive Order 12333 of the US mandates that, *“Agencies within the Intelligence Community shall use the least intrusive collection techniques feasible within the United States or directed against United States persons abroad. Agencies are not authorized to use such techniques as electronic surveillance, unconsented physical search, mail surveillance, physical surveillance, or monitoring devices unless they are in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such procedures shall protect*

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<sup>129</sup> <http://www.justice.gov/dea/agency/mission.htm>, last visited on 29<sup>th</sup> June, 2010.

<sup>130</sup> [http://www.nctimes.com/news/national/article\\_3dfbdc93-dccc-5da4-bbb0-94e240d6fda0.html](http://www.nctimes.com/news/national/article_3dfbdc93-dccc-5da4-bbb0-94e240d6fda0.html), last visited on 29<sup>th</sup> June, 2010.

<sup>131</sup> [http://www.nsa.gov/about/faqs/about\\_nsa.shtml](http://www.nsa.gov/about/faqs/about_nsa.shtml), last visited on 29<sup>th</sup> June, 2010.

*constitutional and other legal rights and limit use of such information to lawful governmental purposes.*"<sup>132</sup>

The executive order, however, prohibits the collection, retention, or dissemination of information about U.S. persons except pursuant to procedures established by the head of the agency and approved by the Attorney General.

All procedures adopted by the NSA are subject to the approval of the Attorney General. Human experimentation too, is forbidden except when conducted with the informed consent of the subject and in consonance with the Department of Health and Human Services.

### **United States Army Criminal Investigation Command**

The United States Army Criminal Investigation Command (CID) has been set up to investigate and deter serious crimes in which the Army has an interest. It is the CID's prerogative to investigate felony level crimes (e.g. death, rapes, war crimes) and provide investigative support to field commanders. While the CID performs investigative function during both peace and war, in times of war its contingency functions allow for a greater investigative powers.

In deference to constitutional and Privacy Act rights the CID does not provide any formation regarding an ongoing investigation. This also has the fringe benefit of preventing potential suspects from fleeing or destroying evidence. Once the investigation is concluded it is passed on to the appropriate legal authority for disposition and adjudication. Once a person is formally charged with a crime, the information becomes public. Generally, the death of a soldier is investigated by the CID apart from a combat death, death as a result of an air crash (unless sabotage is expected), attended deaths (*i.e.*, death of a patient under the care of a physician) and other incidents that fall squarely within the jurisdiction of other investigative agencies. In the last of the aforementioned cases, a collateral investigation may still be conducted by the CID.

The CID's powers of arrest too are extensive. Arrests or "apprehensions", as they are referred to in military law, may be carried out by CID accredited supervisors and special agents (whether military or civilian) based on probable cause to believe that person has committed an offense under the Uniform Code of Military Justice. Commission of such an offence during the course of duty provides immunity. The apprehension of a civilian in a military installation, with or without a warrant, is also permitted in case there is probable cause to believe that there has been the violation of a federal law. The use of the CID by civilian authorities is also permitted as long as there is a substantial link to a criminal act connected to the Army. While administrative investigations (the ascertainment of facts on the basis of which recommendations are passed) are not within the domain of the CID, their findings might be made use of by them for criminal investigative purposes.<sup>133</sup>

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<sup>132</sup> <http://www.tscm.com/EO12333.html>, last visited on 29<sup>th</sup> June, 2010.

<sup>133</sup> <http://www.cid.army.mil/faqs.html>, last visited on 29<sup>th</sup> June, 2010.

An example of the recent invocation of the services of the CID includes the recent case of Bradley Manning, an Army intelligence officer accused of leaking classified documents that threaten the national security of the US. As of now, the investigation into this allegation continues.<sup>134</sup> Allegations made in a congressional report, that protection to supply of resources to American troops in Afghanistan comes at the cost of bribes to warlords who might be funding the Taliban are also under the scrutiny of the CID.<sup>135</sup>

## Conclusion

Images of gruesome torture from Abu Ghraib might have shocked and revolted the worlds but the conditions in US prisoners across the country is not even remotely different. Subject to humiliation and sexual harassment on a daily basis, records of the whole process of investigation of the detainees has exposed the flimsy cover over the murky practices that are carried on as a matter of fact in most prisons in the country.<sup>136</sup> It is this element of torture that is one of the biggest and widespread flaws of the whole system of investigation in the US.

Another problem at the macro level would be the conflict that arises in the jurisdictions of the various investigative agencies.<sup>137</sup> To resolve this problem collaboration has been encouraged. One such effort would be the setting up of websites to facilitate communication and collaboration between the various agencies.<sup>138</sup> Task forces comprising personnel from various diverse agencies is also an effective means. The Joint Interagency Coordination Group, formed after the 9/11 attacks, viewed by some as a failure of interagency cooperation is a step taken in the same direction.<sup>139</sup>

The main thing that one can hope to learn from the US process of investigation is splitting up of the investigative process into various specialised agencies who will then work in cooperation with each other. Of course, there lies the danger of slipping into the same pit that the US seems to be trapped in at the moment—cluttering the system with many agencies with overlapping jurisdictions. But if this is avoided, the process of investigation is likely to become more efficient.

Special units such as the Greyhounds force have often been set up to deal with specific problems, but permanent, statutory agencies would go a long way in bringing about stability in the government since the level of expertise acquired over the years by such a body is likely to be much more.

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<sup>134</sup> <http://www.newsweek.com/blogs/declassified/2010/06/17/u-s-investigators-still-assessing-potential-damage-from-huge-alleged-wikileaks-document-dump.html>, last visited on 29<sup>th</sup> June, 2010.

<sup>135</sup> <http://www1.voanews.com/english/news/usa/US-Defense-Officials-Questioned-About-Afghan-Trucking-Contract-96960954.html>, last visited on 29<sup>th</sup> June, 2010.

<sup>136</sup> <http://www.informationclearinghouse.info/article8451.htm>, last visited on 29<sup>th</sup> June, 2010.

<sup>137</sup> <http://www.defense.gov/news/newsarticle.aspx?id=59601>, last visited on 29<sup>th</sup> June, 2010.

<sup>138</sup> For instance, <http://www.usacops.com/help.html#1>, last visited on 29<sup>th</sup> June, 2010.

<sup>139</sup> <http://www.accessmylibrary.com/article-1G1-141576770/joint-interagency-cooperation-first.html>, last visited on 29<sup>th</sup> June, 2010.

## CRIMINAL INVESTIGATION IN FRANCE

Before we enter into the substance of a Comparative Law discussion between Indian and French investigative procedures, it is necessary to note the significant differences between the basic framework of the systems followed by each. India relies on the adversarial ideal, placed within a legal model that combines civil and common law. This may be contrasted with France, a civil law country with a strong inquisitorial tradition. These differences will necessarily impact upon the procedures they have laid down for the conduction of a criminal investigation.

The law relating to investigation is essentially codified in the French version of the Criminal Procedure Code, known as the *Criminal Procedure Code Penale* of 1959 – a mammoth enactment, comprising upwards of 800 sections. Many amendments have been made to this code, most recently in 2004.

Investigation is the hallmark of the pre-trial stage, and with the inquisitorial system, is something that the judge takes an active interest in. The objective of the entire process is to at the end arrive at a conclusion – generally written in a file or *dossier* - based on available evidence.

Investigation is carried on in France by two branches of the Police, rather than any more specific investigation agencies. These are the *Gendarmerie National* and the *Police National*, having a combined total of over 200,000 employees. The agents of these two forces, acting under the direction of the Public Prosecutor or the *Procureur de la Republic* gather the initial level of evidence. Although, from the 19<sup>th</sup> century the police were assumed to have a merely assistant role in investigation to the magistrate in charge of examination, today they are assuming a steadily more independent role.

There exist, essentially, three types of enquiry which the Police has the power to carry out.

These include

### **A. Preliminary Enquiry**

**Sections 75-78** – When a complaint is received, or information delivered which may be considered to be non-flagrant, an officer of the police may begin with basic or preliminary enquiries on his own motion – even when no prior notification has been made to, or permission received from, the Prosecutor or any other judge. Being a procedure that is relatively recent – dating from 1959 – this form of investigation is considered to be much less coercive than any other form of police inquiry. Potential witnesses make statements at the Police Station itself, out of free will, and are not administered an oath. No material evidence may be examined without the prior and express consent of the owner of such evidence – however, ever since 1985, the provision to call for expert evidence from requisitely qualified individuals has been permitted, who then make statements under oath. There is no provision made for the harsher reaches of a

criminal investigation, such as search and seizure unless the express permission of the owner of the house has been obtained – and even then, such search must be carried out only within the hours between 6 am and 9 pm. Searches without the consent of the householder are only permitted in cases of terrorist or drug offences where the order of a judge then becomes necessary.

However, the non-coercive nature of such a search is not all encompassing, and there do exist exceptions to it. Two major exceptions which may be identified are the extensive power of the police to conduct an identity check at any point to detain any person for the purpose of conducting an “identity check”. The circumstances that govern this power are elaborated in Article 78.2. Furthermore, there also exist provisions which say a judicial police officer may, where it is necessary for an inquiry, arrest and detain any person against whom there exist one or more plausible reasons to suspect that they have committed or attempted to commit an offence, for an initial period of 24 hours, which can be extended to 48 hours with the authority of a prosecutor, and a maximum of 96 hours (only in exceptional cases, as in cases of drugs and terrorism).

Prior to reforms which came into force in 1993, there was no right to notify a friend or relative, no right to the assistance of a lawyer and there was no requirement that those rights which actually existed (such as the right to remain silent) were to be communicated. This led to wide critique, eventually stemmed by amendments in 1993.

The next type of investigation which may be undertaken is

### **B. Flagrant Offence Inquiry**

**Sections 53-74** – This is the form of enquiry conducted in the case of grave offences. These offences either may have been committed already or are in the course of commission.

If knowledge of a flagrant, or grave offence comes to the notice of any officer of the police, it becomes his duty to communicate the reception of such knowledge directly to the Chief State Prosecutor and then proceed to collection of evidence. He has wide powers to do this – he may seal off the area, and detain potential witnesses. Other powers include that of conduction of identity checks, the ability to compel the attendance of potential witnesses and then subject them to intense questioning. Procedures such as search and seizure can be conducted free from the requirement of taking consent, and in the case of drug offences, there are no prescribed hours for conduction. Reports of technical experts, as above, can also be obtained. The public also holds the power to apprehend a suspected person, provided he is immediately henceforth brought before an appropriate authority (citizen’s arrest) if he is seen during the commission of an offence. In serious cases, the chief state prosecutor or a deputy may visit the scene of the offence and take charge of investigations. In the rarest of cases, the examining magistrate may himself decide to visit the scene of the offence and take charge of the investigation himself.

The third type of investigation has less to do with the powers of police and more with judicial powers;

### **C. Enquiry under a Rogatory Commission**

A rogatory commission is a legal device for the seeking of information which is issued by an examining magistrate who has already opened an instruction. It is thus taken out of the scope of the 'preliminary' investigation discussed previously. Such a commission may be addressed to another examining magistrate, or an officer of the judicial police or specialist police units dealing with organised crime, art theft, arms trafficking etc. It may include instructions to carry out specific enquiries or it may be couched in general terms. An officer of the judicial police acting under a rogatory commission has exactly the same powers as the examining magistrate.

Once the enquiry has been completed at the level of the police, it then proceeds to the office of the Prosecutor. The examining magistrate then begins with the exercise of his powers. The first question to be answered is whether the prosecution finds it to be worth their time to prosecute the case in question based on the evidence thus far discovered. The prosecutor has the chance to turn down prosecution even on a case that may be easily won, on the ground that pursuing a trial may prove to be against the public interest. The prosecutor can also aim to find a settlement between the parties. Here it is pertinent to note the peculiar character of the French criminal justice system wherein the decision to proceed further may emanate from the alleged victim or from the prosecutor. The victim can go forward with a civil action even if the prosecutor decides to close the case. Thus, a victim in France has two options in terms of procedure – he may proceed before a civil or a criminal judge. Even though only those who personally and directly suffer damage because of the offence may initiate a civil action, the words 'personal' and 'direct' have been construed broadly to include the victim's parents and children as well. The victim must approach the appropriate court, acting much like the public prosecutor.

However, the above process is not directly connected with the investigative arena, so not much time is required for dealing with it. We instead proceed to discuss the office of the "investigating magistrate" – a peculiarity of the French system.

#### **A. Powers of the investigating/examining magistrate (judge d' instruction):**

According to Article 81 of the CCP, the powers of the examining magistrate are fairly widespread - 'he may proceed, in accordance with the law, to all investigative steps that he deems useful for the discovery of the truth'. For the pursuance of this goal, he can require performance of a number of things - he can interview witnesses, carry out searches and seizures, and take evidence from the scene of the crime. Furthermore, he can order expert tests (eg. Mechanical, chemical, DNA) as well as telephone wiretaps. An unusual feature to be found in French criminal law is that the investigating magistrate can order psychiatric and personality exams, since the inquiry into personality has developed

from greater penological interest in the post-war era and is considered as important as the inquiry into culpability.

The investigating magistrate also has a hand in determining the physical freedom of the persons who are subject to questioning. He has the ability to place them under judicial control, which may entail placing them under house arrest, not allowing them to drive a car, summoning them to regular meetings with the authorities, prohibiting them from receiving or meeting certain persons, or subjecting them to various measures of treatment and follow-up. In addition to these measures, the judge can order that a guarantee or bond (*cautionnement*) be filed with the court clerk to ensure against flight. If the investigating magistrate determines that it is necessary to place in detention a person who is undergoing questioning, he must refer the matter to a specialised magistrate, the *juge des libertes et de la detention*, who will rule on the request after a hearing in which the lawyer for the accused as well as a representative of the prosecution is present. Provisional detention as a rule lasts four months in the case of misdemeanours and one year in the case of felonies, subject to a complex system of extensions with ceilings.

#### B. Checks on the investigating magistrate's powers:

Though the investigating magistrates powers seem very close to being unfettered, the counsel for the parties generally keep check on them so as to minimise arbitrariness. The lawyers are entitled the ongoing right of access to the case file and to attend the questioning of their client, and may also request further investigative measures, seek a dismissal, and institute appeals against certain decisions to the Chamber of Investigation – the second organ of control. This court can also order additional investigative measures and, under certain circumstances, replace one investigating magistrate with another. Their own decisions are mostly subject to a specific appeal which will be heard by the Criminal Chamber of the *Cour de Cassation* or the French Superior Court.

#### C. Debate on the abolition of the office of investigating magistrate:

Recently, there has developed a lot of debate over the desirability of retaining the office of investigating magistrate, especially considering the fact that this long-held institution has been abolished in some countries that have long adhered to it – Germany and Italy being prime examples amongst these. Although several reasons are advanced for the furtherance of this idea, such as an overabundance of bureaucracy and slowness, the general weakness of the system compared to the police who are better equipped and more specialised, and the conflict regarding the merging of powers of investigation and adjudication, there are still those who adhere to it because they argue that the procedures of appeal to the investigating magistrate, which were also subject to criticism, are precisely the type of mechanism that will help preserve an independent judicial institution that can control the judicial police. Interestingly, in common law countries, which have no investigating magistrate, there is some sentiment in favour of introducing it.

Considering the differences between the two systems, to recommend a mechanical import of the provisions of one into the other seems to be a mindless enterprise. Rather, if a more wholesale shift to a model with a greater emphasis on the inquisitorial role of the judge is made, it may have the tendency to improve criminal justice in this country.

## **Part II**

# **Study of Supreme Court Cases (1950-2010)**

### **Decisions of Supreme Court From 1950-2010:**

The research team has conducted a survey of judgments given by the Supreme Court regarding various facets of Investigation for a span of 60 years. Some important decisions are discussed here under:

***Evidence cannot be deemed inadmissible on the ground that it was not mentioned in the FIR as being left by the accused at the place of occurrence, where it corroborates the evidence.***

**Jagtar Singh v. State of Punjab & Ors<sup>140</sup>.**

In this case, the deceased was killed by the handle of a tractor. The fact that the accused left the tractor at the place of occurrence was left out of the FIR. The High Court held that because of this omission, the recovery of the tractor was no help to the prosecution case. On that ground, it acquitted the defendant. The Supreme Court overturned the judgment of the High Court, stating that the FIR is not expected to contain all the details. There is no room for doubt that the tractor was left at the place of occurrence by the accused whilst running away with its handle. The handle itself was recovered as well. Taking into the whole of the evidence, the Supreme Court convicted.

**2. Testimony of a witness cannot be rejected merely one ground that his/her name was not mentioned in the FIR, especially when the witness has suffered injuries.**

**Bhagwan Singh & Ors. v. State of MP<sup>141</sup> :**

In an altercation, the deceased was killed. The lower court acquitted on the ground of self-defense. It ignored the testimony of three eye-witnesses on account of one not being mentioned in the FIR and all being relatives of the deceased. The High Court, in reversing the acquittal, held the three to be natural witnesses as the testimony was corroborated by medical evidence. It also stated that the mere leaving out of a witness' name in the FIR does not make the testimony inadmissible. The Supreme Court upheld the High Court's findings.

**No acquittal only because of faulty investigation:**

**State of UP v. Jagedo and Ors.<sup>142</sup>:**

The High Court reversed the decision of the Sessions Court; thereby, acquitting eight persons of the crime of murdering two individuals. According to the Supreme Court, the High Court acquitted based on improper reasons. It claimed the investigation was faulty. But the Supreme Court held that even assuming the investigation was faulty, there was still a strong case for the prosecution. The High Court ignored the evidence of three eye-witnesses, stating that they had motive for supporting the prosecution case. The Supreme Court stated that most witnesses are family members or close associates as they are ones who have reason to be present on the scene of occurrence. Simply because a motive can be attributed to eye-witnesses is not enough to ignore the evidence. The

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<sup>140</sup> 1988 CrLJ 866: AIR 1988 SC 62

<sup>141</sup> 2002 CrLJ 2024: AIR 2002 SC 1621

<sup>142</sup> 2003 CrLJ 844: AIR 2003 SC 660

evidence put forth was consistent and the version of the witnesses tallied with each other. On this ground, the Supreme Court restored the Sessions Court's judgment.

***Inordinate delay in Investigation by itself is not sufficient to seek quashing of the FIR:***  
**State of Andhra Pradesh v. P.V. Pavithran<sup>143</sup>:**

The case having been registered in March 1984, the prosecution did not file its report under Section 173 until the appellant filed the petition for quashing the proceedings in November 1987. The respondent resisted stating that the delay occurred due to the dilatory tactics adopted by the respondent, and the case was a complicated and time-consuming one. The High Court accordingly quashed the FIR. The Supreme Court held that no general and wide proposition of law could be formulated that says that whenever there is ordinate delay on the part of the investigation agency in completing the investigation, it would become a ground for quashing the FIR or proceedings arising there from.

***A general diary entry that discloses a cognizable offense can be treated as FIR.***  
**Superintendent of Police, CBI & Ors. V. Tapan Kr. Singh<sup>144</sup>:**

The High Court, on revision petition, quashed the investigation on the basis of G.D. Entry, FIR, cause under the Prevention of Corruption Act, and the search and seizure conducted. The question was whether the report the Superintendent received from a reliable source on telephone that the respondent was corrupt could be considered as information under 154. The High Court stated that the GD entry did not disclose the commission of a cognizable offense, therefore, investigation pursuant to it was illegal. FIR lodged after investigation had begun was in part illegal. The Supreme Court allowed the continuance of the investigation stating that if the GD could be used as an FIR and did in fact disclose a cognizable offense.

***Police officer is an informant himself, not a disqualification to conduct the investigation:***  
**State rep. by Inspector of Police, Vigilance, and Anti-corruption, Tiruchirapalli, TN v. V. Jayapaul<sup>145</sup>:**

The High Court quashed the proceedings on the ground that the police officer, who had laid/recorded the FIR regarding the suspected commission of certain cognizable offenses by the respondent, should not have investigated and submitted the final report. The Supreme Court differed, stating that there is no principle or binding authority that states the moment a competent police officer makes out an FIR incorporating his name as the informant on the basis of information received, it forfeits his right to investigate. The impugned order of the High Court was set aside.

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<sup>143</sup> 1990 CrLJ 1306; AIR 1990 SC 1266

<sup>144</sup> 2003 CrLJ 2322

<sup>145</sup> 2004 CrLJ 1819; AIR 2004 SC 2684

**Court refused the explanation of delay in sending the FIR to the magistrate that the two days were holidays**

**State of Rajasthan v. Teja Singh & Ors.<sup>146</sup>:**

The High Court observed the FIR was sent two days after registration to the Court of the Magistrate. It also noted that an alleged eye-witness was examined five days after registration despite his being around the entire investigation. The prosecution explained the delay by stating that FIR was registered on Independence Day, and the following day the Courts were still closed as it was a Sunday. The High Court and the Supreme Court rejected this reasoning as the requirement of law is that the FIR should reach the Magistrate without any undue delay. The matter with the eye-witness coupled with issues of corroboration of other witnesses and the undue delay resulted in the Supreme Court upholding the acquittal.

***Defect in investigation cannot be a ground of acquittal.***

**Ram Bali v. State of UP<sup>147</sup>:**

The Sessions Court convicted two accused persons. The High Court acquitted one. The Supreme Court, after analysing allegations of faulty investigations stated that, “in the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.” The defect in investigation pointed out in this case was that the gun was not sent for forensic testing.

**Incompetency of the officer to carry on investigation extends only to quashing the investigation, and not the FIR.**

**State of Haryana & Ors. V. Ch. Bhajan Lal & Ors.<sup>148</sup>:**

The Supreme Court overturned the High Court’s decision to quash the FIR, but quashed the commencement as well as the entire investigation on the ground that the third appellant is not clothed with valid legal authority to take up the investigation and proceed with the same. Appeal was dismissed, stating that the State Government was at liberty to direct a fresh investigation.

**Proceedings should be quashed where the violation of the provision of the CrPC by summoning a woman to the police station leads to the possibility of self incrimination.**

**Nandini Satpathy v. P.L. Dani & Anr.<sup>149</sup>:**

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<sup>146</sup> 2001 CriLJ 1176: AIR 2001 SC 990

<sup>147</sup> 2004 CrLJ 2490 : AIR 2004 SC 2329

<sup>148</sup> 1992 CrLJ 527: AIR 1992 SC 604

<sup>149</sup> 1978 CrLJ 986: AIR 1978 SC 1025

The Supreme Court held that the police officer shall not summon the female accused to the police station but examine her according to terms of the proviso to Section 160(1). The prosecution proceedings were quashed as she had already been called in for investigation.

**Testimony of the witness given in court will not be rejected merely because his signatures were obtained on the testimony recorded in the course of the investigation**

**State of UP v. M.K. Anthony<sup>150</sup>:**

The Supreme Court restored the Session Judge's decision of conviction and overruled the decision of the high court. The High Court had rejected the testimony of witnesses whose signatures had been obtained on the testimony recorded in the course of investigation, which amounts to violation of 162. No attempt had been made to verify this fact by referring to the case diary. Assuming even that the signature had been obtained, it does not render evidence inadmissible. It merely cautions the court to the matter and may necessitate an in-depth scrutiny of the evidence.

***Court should refrain from interfering with investigation at a premature stage of investigation.***

**Director, Central Bureau of Investigation & Ors. v. 'Niyamavedi' represented by its Member K. Nandini, Advocate & Ors.<sup>151</sup>:**

In this case, the petitioners had, as directed by the Division Bench, produced for perusal of the Court case diaries of the Kerala State Police as well as of the C.B.I. relating to the investigations carried out in respect of the said crimes including the statements recorded in the course of investigation and certain video cassettes in that connection. These were perused by the Division Bench in chambers. However, a reference at some length has been made in the course of the judgment to the material disclosed in the course of investigation, presumably, in order to examine the contention relating to the alleged involvement of the first respondent in the crimes in question. Clearly, under the CrPC, 1973, only a very limited use can be made of the statements to the police and police diaries, even in the course of the trial, as set out in Sections 162 and 172 of the CrPC.

The Supreme Court stated that the Division Bench, therefore, should have refrained from disclosing in its order, material contained in these diaries and statements, especially when the investigation in the very case was in progress. It should also have refrained from making any comments on the manner in which investigation was being conducted by the C.B.I., looking to the fact that the investigation was far from complete. Any observations which may amount to interference in the investigation, should not be made. Ordinarily the Court should refrain from interfering at a premature stage of the investigation as it may derail the investigation and demoralise the investigation. In short

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<sup>150</sup> 1985 CrLJ 493: AIR 1985 SC 48

<sup>151</sup> 1995 CrLJ 2917

the adverse comments against the C.B.I., were, to say the least, premature and could have been avoided.

**When the Police officer stated that no one was willing to stand as witness in a trial situated in a different state, he cannot be doubted.**

**Manish Dixit & Ors. v. State of Rajasthan<sup>152</sup>:**

The police officer stated that there was no independent witness to the recovery of the revolver because no one was willing to get involved. The Supreme Court held that this is entirely possible as traders in the populous area would know about the sufferings involved in a criminal trial, especially where the trial is to take place in another state altogether. For this reason, he cannot be doubted.

**Extending the police remand for further period after the first 15 days period has expired is not permissible.**

**Budh Singh v. State of Punjab<sup>153</sup>:**

The High Court violated the statutory provision by authorizing police remand for a period of seven days after the expiry of the first 15 days. Hence, the Supreme Court reversed the order and held that the mandate of Section 167, Criminal Procedure Code, 1973 postulates that there cannot be any detention in police custody after 15 days.

**Cancellation of bail after filing of charge sheet not permissible where accused was released on account of non filing of charge sheet by the police.**

**Bashir & Ors. v. State of Harayana<sup>154</sup>:**

The Sessions and High Court refused bail to the appellants. But as challan was not filed within 60 days from the date of arrest, they were given bail. When the challan was filed, a petition was filed for the cancellation of bail and granted by the Sessions Court. The High Court refused to change the Sessions Court's judgment. The Supreme Court held once bail is granted, it can be cancelled only on grounds known to law. The receipt of the charge sheet in court by itself is no ground for cancellation. The appellants were released on bail.

**167(5) is mandatory and to be complied with:**

**Hussainara Khatoun & Ors. v. Home Secretary, State of Bihar<sup>155</sup>:**

A writ of habeas corpus was filed disclosing a number of under-trial prisoners languishing in jail for no other reason than failure to make bail. The Supreme Court noticed that 167(5) was probably not followed wherein the Magistrate is to make an order stopping further investigation if not completed within 6 months of arrest. The

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<sup>152</sup> 2001 CriLJ 133: AIR 2001 SC 93

<sup>153</sup> 2001 CriLJ 2942

<sup>154</sup> 1978 CrLJ 173: AIR 1978 SC 55

<sup>155</sup> 1979 CrLJ 1036: AIR 1979 SC 1360

investigating officer has to satisfy the Magistrate that for special reasons and in the interest of justice the investigation has to continue. It would seem that since arrestees are in jail longer than they would have ever served as a sentence, this provision is not complied with. The Court ordered a closer look into in the cases.

**Additional documents can be allowed to be submitted subsequent to the charge-sheet.**

**Central Bureau of Investigation v. R.S. Pai & Anr.**<sup>156</sup>:

The Special Court rejected an application for the production of additional documents. CBI appealed. The Supreme Court held that while it is apparent that the investigating Officer is required to produce all the relevant documents at the time of submitting the charge-sheet, because there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or charge-sheet, it is always open to the Investigating Officer to produce the same with the permission of the Court. In our view, considering the preliminary stage of prosecution and the context in which Police Officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which prosecution proposes to rely, the word 'shall' used in Sub-section (5) cannot be interpreted as mandatory, but as directory.

**Case diary of another case not pertaining to the trial in hand can be summoned if the court trying the case considers that said production is necessary or desirable for the purpose of trial, under Sec 91.**

**State of Kerala v. Babu & Ors.**<sup>157</sup>:

The Sessions Court granted the application of the defendant to summon the case diary to confront a witness with a previous statement, under 161, found in another case and to recall said prosecution witness. This allowance was challenged by the High Court which agreed that there was no bar in law to summon the case diary of a case even other than the one being tried, for the purpose of contradicting the evidence of the prosecution witnesses. The Supreme Court agreed and held that the appeal fails.

***FIR need not contain all details. New accused can be added after the registration of FIR:***

**Rotash v. State of Rajasthan**<sup>158</sup>

In this case, the appellant is the brother-in-law of Pitram. Both of them are alleged to have murdered Moosa Ram (Brother of Mali Ram and Pitram). Mooli Devi is their mother. The motive for commission of the said offence by Pitram was said to be that Moosaram used to harass his wife. The appellant was not initially named in the FIR filed based on Mali Ram's statements. He was added later on based on the statements made by Mooli Devi. Thus, the truthfulness of the FIR was challenged.

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<sup>156</sup> 2002 CrLJ 2029; AIR 2002 SC 1644

<sup>157</sup> 1999 CrLJ 3491; AIR 1999 SC 2161

<sup>158</sup> 2007 Cri. L. J. 758 SC

Commenting upon the challenge, the Supreme Court held, “The First Information Report, as is well known, is not an encyclopedia of the entire case. It need not contain all the details. We, however, although did not intend to ignore the importance of naming of an accused in allegedly the First Information Report, but herein we have seen that he had been named in the earliest possible opportunity. Even assuming that P.W.1 did not name him in the First Information Report, we do not find any reason to disbelieve the statement of Mooli Devi-P.W.6. The question is as to whether a person was implicated by way of an after-thought or not must be judged having regard to the entire factual scenario obtaining in the case.” He was convicted under 302 r/w 34 of the IPC.

**When an anonymous complaint is received, no investigating officer would initiate investigative process immediately thereupon:**

**Shashikant v. CBI and Others<sup>159</sup>**

Appellant made an anonymous statement alleging corrupt practices and financial irregularities against some officers in his department. On the basis of a source information, a preliminary inquiry was conducted in which the statements of various officers were recorded. However, the investigating officer was of the opinion that it was not necessary to register a First Information Report. CBI recommended for holding of departmental proceedings against the concerned officers. Appellant, however, in the meanwhile, was transferred by an order dated 20.05.2005. He approached the Central Administrative Tribunal contending that the said order of transfer was mala fide and being an outcome of his complaint and statements made in the inquiry conducted by the first respondent. By an order dated 17.08.2005, the application filed by Appellant was dismissed. He then approached the High Court by way of a Writ Petition. The Court felt that “since the Petitioner is aggrieved by his transfer and having failed before the CAT, he has invoked the extraordinary criminal jurisdiction of this Court by filing the present Writ Petition. In our opinion, this is nothing but an abuse of process of Court.” The suit was thus dismissed. He then appealed to the Supreme court where he contended that even in a case where the Investigating Officer may exercise his option of closing a case, it would be obligatory on his part to comply with the provisions of Section 157(1)(b) of the Code of Criminal Procedure. The question which arises for consideration is as to whether it was obligatory on the part of the first respondent to lodge a First Information Report and carry out a full- fledged investigation about the truthfulness or otherwise of the allegations made in the said anonymous complaint. The Supreme Court after extensive discussion held, “When an anonymous complaint is received, no investigating officer would initiate investigative process immediately thereupon. It may for good reasons carry out a preliminary enquiry to find out the truth or otherwise of the allegations contained in them.”

**The police officials ought to register the FIR whenever the facts brought to its notice show that cognizable offence has been made out :**

**Aleque Padamsee and Others v. Union of India and Others<sup>160</sup>**

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<sup>159</sup> 2007 Cri. L. J 995 SC

<sup>160</sup> 2007 Cri. L. J. 3729 SC

The present case is a Writ filed in the Supreme Court under Art.32 of the Constitution. The petitioners stated that they approached this Court because of inaction of official respondents in not acting on the report lodged by two persons namely, Sumesh Ramji Jadhav and Suresh Murlidhar Bosle. The basic grievance is that though commission of offences punishable under the Indian Penal Code (Inflammatory communal speeches), 1860 was disclosed, the police officials did not register the FIR and, therefore, directions should be given to register the cases and wherever necessary accord sanction in terms of Section 196 of the Code of Criminal Procedure, 1973. The Supreme Court after a discussion of various provisions related to police powers of investigation held that, "The correct position in law, therefore, is that the police officials ought to register the FIR whenever the facts brought to its notice show that cognizable offence has been made out. In case the police officials fail to do so the modalities to be adopted are as set out in S.190 read with S.200 of the Code." However, the merits of the case were not discussed by the Honorable Court.

**Delay in lodging of FIR lead to acquittal:**

**Dilawar Singh v. State of Delhi<sup>161</sup>**

In this case, 5 people ran away with the donation box of a Kali Mata Ki Mandir (which contained Rs.5,000/-) on 8.8.1984, after tying up the priest Balwant Singh with a rope. When he tried filing an FIR the police refused to register it. He wrote to the Prime Minister but to no avail. Finally the complaint was filed on 31.8.1984. After going through the evidence, the learned Magistrate came to the conclusion that there was material to proceed against the appellant, Ram Saran and the three others. Accused Dilawar Singh pleaded innocence. High Court dismisses appeal filed by appellant and upheld conviction under S.495, S.392 and S.397 of the IPC on the ground that PW1's order was clear and cogent. The appellant challenged the delay in filing of the petition.

The Supreme Court held, "In criminal trial one of the cardinal principles for the Court is to look for plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the Court at the earliest instance. That is why if there is delay in either coming before the police or before the Court, the Courts always view the allegations with suspicion and look for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the prosecution case." The court after extensive discussion of cases held, "the offence under S. 397 IPC has clearly not been established. In addition, the ingredients necessary for offence punishable under Sections 392 and 452 have not been established in view of the highly inconsistent version of the complainant PW 1. The conviction needs to be set aside and the appeal deserves to be allowed."

***Delay in lodging FIR by itself would not be sufficient to discard the prosecution version unless it is unexplained and such delay was coupled with the likelihood of concoction of evidence:***

***Silak Ram and Another v. State of Haryana<sup>162</sup>***

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<sup>161</sup> 2007 Cri. L. J. 4709 SC

Three accused persons faced trial for alleged commission of offence punishable under S. 302 read with S. 34 of the Indian Penal Code, 1860 for causing homicidal death of Jagbir. They were convicted by Additional Sessions Judge (First), Bhiwani, Haryana and each was sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/- with default stipulation. There was a delay in filing FIR which was challenged by the appellant. The prosecution explains the delay in the following manner “Due to the flood water in the village and in the surrounding areas of the village and also on account of fear, they could not go to the Police Station immediately.” The High Court confirmed the conviction and sentence. On an appeal to the Supreme Court, after looking at the facts, it held, “Delay in lodging FIR by itself would not be sufficient to discard the prosecution version unless it is unexplained and such delay was coupled with the likelihood of concoction of evidence. There is no hard and fast rule that delay in filing FIR in each and every case is fatal and on account of such delay the prosecution version should be discarded. The factum of delay requires the court to scrutinize the evidence adduced with greater degree of care and caution.” Deciding thus, the Supreme Court dismissed the appeal.

**The accused is not entitled to any copy of the so called 'gist's' of interrogation and they are not deemed to be Sec 161 statements:**

**State of NCT of Delhi v. Ravi Kant Sharma and Others**<sup>163</sup>

Challenge in this Appeal is to the direction given by the Delhi High Court directing that if the gist's of the interrogation can be regarded as statements under Section 161(3) of the Code of Criminal Procedure, 1973, although in summary form, then the same would have to be supplied over the accused i.e. the respondents herein. Respondents filed a petition under Section 397 and Section 401 read with Section 482 of the Cr.P.C. regarding the opinion expressed by the trial court during recording of cross examination of PW 193 (Inspector Sukhwinder Singh) with regard to submissions alleged to have been made by PW 166 (Rakesh Bhatnagar). This opinion/direction was questioned by the appellant because in terms of such opinion/direction the prosecution has been directed to supply copies of 'gist's' of statement said to have been recorded while interrogating PW 66. Stand of the appellant is that these are not statements which fall within the meaning of Section 161(3) of the Cr.P.C. and, therefore, the accused is not entitled to any copy of the so called 'gist's'. On appeal to the Supreme Court, it held, “The direction of the High Court as contained in the impugned order is not a definite one. It only refers to Shamshul Kanwar's case (supra) and concludes that if the 'gist's' can be regarded as statements under Section 161 Cr.P.C. although in summary form they would have to be made over to the accused. It does not factually find out that as to whether the gist's can be regarded as statements in view of the position of law stated above. It did not take note of the specific stand of the appellant about separate maintenance of case diaries.” Thus, the observations of the High Court were set aside and appeal was allowed.

**A First Information Report although need not be encyclopedic, but all the details known to the informant have to be disclosed:**

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<sup>162</sup> 2007 Cri. L. J. 3760 SC

<sup>163</sup> 2007 Cri L. J. 1674 SC

**Ramesh Baburao Devaskar v. State of Maharashtra<sup>164</sup>:**

In this case there was rivalry between two groups and after a member of one of the groups was killed it was alleged that murder was committed by people belonging to the other group.

Issues brought up in this case are:-

- a) The FIR was ante dated and ante timed.
- b) The FIR was hit by Sec 161 of the CrPC as despite having knowledge of all details the first informant did not furnish them and lodged another report.
- c) The question that then arises is whether the second FIR can be treated as the first FIR.
- d) Another thing called into question was why only one accused was named in the panchnama rather than all the accused.
- e) The FIR reached the Magistrate three days after it was lodged thus not respecting the provisions of Sec 157 of the CrPC. Here the SC reversed the judgment of the High Court and set the accused free on the basis that there was not enough evidence to convict and testimonies of some PW's cannot be relied upon as the names of the accused did not appear in the First Information Report. Observations made by the Court: A First Information Report although need not be encyclopedic, but all the details known to the informant have to be disclosed. In this case PW-9 did not say that he was not aware of the details. FIR should not be too sketchy so as to make initiation of investigation on the basis thereof impossible.(Para 10,11).
- f) A First Information Report cannot be lodged in a murder case after the inquest has been held. The reason for insisting of lodging of First Information Report without undue delay is to obtain the earlier information in regard to the circumstances in which the crime had been committed, the name of the accused, the parts played by them, the weapons which had been used as also the names of eye-witnesses. Where the parties are at loggerheads and there had been instances which resulted in death of one or the other, lodging of a First Information Report is always considered to be vital(Paras 14 and 15).
- g) Proof of motive by itself may not be a ground to hold the accused guilty. Enmity, as is well-known, is a double edged weapon. Whereas existence of a motive on the part of an accused may be held to be the reason for committing crime, the same may also lead to false implication. Suspicion against the accused on the basis of their motive to commit the crime cannot by itself lead to a judgment of conviction.(Para 22)

**Case diary has to be properly maintained otherwise it may lead to a wrong acquittal :**

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<sup>164</sup> 2008CriLJ372

### **Hari Yadav v. State of Bihar<sup>165</sup>:**

The case highlights the problems in maintaining the case diary and its admissibility. The facts of the case are as follows: there was a property dispute between two groups and fighting ensued where one of the accused hit the deceased on the head after which the person died nearly 20 days later.

Issues brought up in the case:-

the accused took the plea that there was no hospital in the vicinity of the place of the incident and that the deceased was taken out of hospital without the permission of the doctor. This was mentioned in the case diary but was not brought up before the High Court.

The Supreme Court refused to accept this contention and dismissed the appeal of accused.

Observations made by the SC:-

It is, however, significant that the aforementioned quotation was made from the purported note made by somebody which formed part of the case diary. The said document was not proved. Attention of the investigating officer was not drawn thereto. No such question appears to have been raised before the High court. We are really at a loss to understand as to how reliance has been placed thereupon on the basis of a piece of paper which appeared in the case diary. We deprecate such a practice.

### **The accused was accused of committing fraud and was evading arrest by absconding to US:**

#### **Dinesh Dalmia v CBI<sup>166</sup>**

Issues involved in the case:-

- Whether an application for bail can be made after the expiry of the period of 60 days from the date of arrest on the fact that no further charge sheet has been filed.

The court here denied the bail application of the accused and made the following observations:-

- The object of enactment of such proviso in Section 167 Cr. P.C. is to have control over a lethargic, delayed investigation, especially keeping a person in custody. It is a specific direction to the police to collect material without any delay. If sufficient incriminating materials are not collected against the accused with the crime alleged. It safeguards the interest of such accused person. If materials are collected and reported to the Magistrate within the period stipulated by filing charge sheet, then the scope of proviso to Section 167 extinguishes and an accused can claim bail only on merit.(Para 22)
- Concededly, the investigating agency is required to complete investigation within a reasonable time. The ideal period therefore would be 24 hours, but, in some cases, it may not be practically possible to do so. The Parliament, therefore,

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<sup>165</sup> 2008 CriLJ 821

<sup>166</sup> 2008 CriLJ 337

thought it fit that remand of the accused can be sought for in the event investigation is not completed within 60 or 90 days, as the case may be. But, if the same is not done with the stipulated period, the same would not be detrimental to the accused and, thus, he, on the expiry thereof would be entitled to apply for bail, subject to fulfilling the conditions prescribed therefore.

- Such a right of bail although is a valuable right but the same is a conditional one; the condition precedent being pendency of the investigation. If the investigating officer finds sufficient evidence even against such an accused who had been absconding, in our opinion, law does not require that filing of the charge sheet must await the arrest of the accused.
- Indisputably, the power of the investigating officer to make a prayer for making further investigation in terms of Sub-section (8) of Section **173** is not taken away only because a charge sheet under Sub-section (2) thereof has been filed. A further investigation is permissible even if order of cognizance of offence has been taken by the Magistrate.

**The functions of the Magistrate and the police are entirely different, and the Magistrate cannot impinge upon the jurisdiction of the police, by compelling them to change their opinion so as to accord with his view:**

**Sanjay Bansal \$ Anr. v. Jawaharlal Vats \$ Ors.<sup>167</sup>**

Here the petitioner went to the High Court claiming that no just and fair investigation has been done in the case of his son sustaining fire arm injuries as the other side are very influential.

Issues brought up here are:-

- Here the High Court directed the Magistrate concerned to take into account the statement of the injured and the injury report press a proper and appropriate order in accordance with law within a week thereafter and till then the final report No. 32 of 2006 shall not be given effect to and in case the final report has already been accepted the same shall be treated to have been rejected.

Here the Supreme Court dismissed this order of the HC by saying that it was not bound by law to do so. The observations made were:-

- In Abhinandan Jha and Anr. v. Dinesh Mishra <sup>168</sup>, this Court while considering the provisions of Sections 156(3), 169, 178 and 190 of the Code held that there is no power, expressly or impliedly conferred, under the Code on a Magistrate to call upon the police to submit a charge sheet, when they have sent a report under Section 169 of the Code, that there is no case made out for sending up an accused for trial.
- The functions of the Magistrate and the police are entirely different, and the Magistrate cannot impinge upon the jurisdiction of the police, by compelling them to change their opinion so as to accord with his view.

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<sup>167</sup> 2008CriLJ428

<sup>168</sup> 1968CriLJ97

**Case 5: Animireddy Venkata Ramana and Ors. V. Public Prosecutor, H.C. of .P.<sup>169</sup>**

The facts are that due to an enmity between two groups the deceased and his son were attacked in a bus by the members of the other group.

Issues in the case:-

- Non-production of the general diary by itself cannot be a ground for disbelieving the entire prosecution case particularly when apart from a solitary statement made by PW-3 in his note, no other evidence has been brought on records to show that statement of any witness had been recorded under Section 161 of the Code

Observations of the court

- The investigating officer was informed about a reported assault. A report to that effect might have been noted in the general diary but the same could not have been treated to be an FIR. When an information is received by an officer in charge of a police station, he in terms of the provisions of the Code was expected to reach the place of occurrence as early as possible. It was not necessary for him to take that step only on the basis of a First Information Report. Information received in regard to commission of a cognizable offence is not required to be preceded by a First Information Report. Duty of the State to protect the life of an injured as also an endeavour on the part of the responsible police officer to reach the place of occurrence in a situation of this nature is his implicit duty and responsibility.
- In the First Information Report all the accused persons were named and overt acts on their part were also stated at some length. Each and every detail of the incident was not necessary to be stated. A First Information Report is not meant to be encyclopedic. While considering the effect of some omissions in the First Information Report on the part of the informant, a court cannot fail to take into consideration the probable physical and mental condition of the first informant. One of the important factors which may weigh with the court is as to whether there was a possibility of false implication of the appellants. Only with a view to test the veracity of the correctness of the contents of the report, the court applies certain well-known principles of caution.
- Once, however, a First Information Report is found to be truthful, only because names of some accused persons have been mentioned, against whom the prosecution was not able to establish its case, the entire prosecution case would not be thrown away only on the basis thereof. If furthermore the purported entry in the general diary, which had not been produced, is not treated to be a First Information Report, only because some enquiries have been made, the same by itself would not vitiate the entire trial. Enquiries are required to be made for several reasons; one of them is to ascertain the truth or otherwise of the incident and the second to apprehend the accused persons.

**Case 6 : Divine Retreat Centre v. State of Kerala<sup>170</sup>**

The High Court in exercise of its inherent jurisdiction cannot change the Investigating Officer in the midstream and appoint any agency of its own choice to investigate into a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions addressed to a named Judge:

The facts are such that an anonymous letter received by the judge of a High Court was ordered to be treated as a suo moto criminal case and the judge issued directions that the investigation should be done by a Special Investigating Team than by an investigating officer:

Issues involved in the case:-

- The respondents contented that the procedure followed was suffered from infirmities.
- Can the HC in its inherent jurisdiction under Sec 482 of the CrPC direct an investigation

The most important point brought forward in this case by SC is that investigation of an offence is the field exclusively reserved for the Police Officers whose powers in that field are unfettered so long as the power is legitimately exercised.

- “In our view, the High Court in exercise of its inherent jurisdiction cannot change the Investigating Officer in the midstream and appoint any agency of its own choice to investigate into a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions addressed to a named Judge. Such communications cannot be converted into suo motu proceedings for setting the law in motion. Neither the accused nor the complainant or informant are entitled to choose their own investigating agency to investigate a crime in which they may be interested.”

**Ashok Kumar Chaudhary v. State of Bihar<sup>171</sup>:**

The prosecution case cannot be thrown out merely on the ground of delay in lodging the F.I.R.

The facts here are that the appellants were convicted under Sec 324 of the IPC and filed an appeal with the SC challenging the HC’s order of conviction.

Issues raised here were:-

- Whether a relative per se is ‘interested’ witness?
- Whether delay in filing of FIR can adversely affect the prosecution’s case?

The court decided that

- “Insofar as the question of credit-worthiness of the evidence of relatives of the victim is concerned, it is well settled that though the Court has to scrutinize such evidence with greater care and caution but such evidence cannot be discarded on the sole ground of their interest in the prosecution. The relationship *per se* does not affect the credibility of a witness. Merely because a witness happens to be a

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<sup>170</sup> 2008CriLJ1891

<sup>171</sup> 2008CriLJ3030

relative of the victim of the crime, he/she cannot be characterized as an "interested" witness."

- "It is trite that mere delay in lodging the first information report is not by itself fatal to the case of the prosecution. Nevertheless, it is a relevant factor of which the Court is obliged to take notice and examine whether any explanation for the delay has been offered and if offered, whether it is satisfactory or not. If no satisfactory explanation is forthcoming, an adverse inference may be drawn against the prosecution. However, in the event, the delay is properly and satisfactorily explained; the prosecution case cannot be thrown out merely on the ground of delay in lodging the F.I.R. Obviously, the explanation has to be considered in the light of the totality of the facts and circumstances of the case."

**Case 7 : Naresh Kavarchand Khatri v. State of Gujarat \$ Anr.<sup>172</sup>**

**High Court doesn't have the power or jurisdiction to transfer an investigation from one Police Station to another. The power of the court to interfere with an investigation is limited:**

The facts of the case are that the respondent had assured that the child of the first informants would be admitted in their institution and on that pretext, collected a huge amount from them. The children of the first informant took admission after depositing the admission fee and miscellaneous charges etc. However, their admission was later on cancelled.

Issues involved in the case:

- Whether High Court has jurisdiction to transfer an investigation from one Police Station to another?

The court held that

- "The power of the court to interfere with an investigation is limited. The police authorities, in terms of Section 156 of the Code of Criminal Procedure, exercise a statutory power. The Code of Criminal procedure has conferred power on the statutory authorities to direct transfer of an investigation from one Police Station to another in the event it is found that they do not have any jurisdiction in the matter. The Court should not interfere in the matter at an initial stage in regard thereto. If it is found that the investigation has been conducted by an Investigating Officer who did not have any territorial jurisdiction in the matter, the same should be transferred by him to the police station having the requisite jurisdiction.
- It is of some significance that the High Court exercised its jurisdiction even without notice to the petitioner. The investigation has to be carried out on the basis of the allegations made. The first informant is required to be examined; statements of his witnesses were required to be taken; the accused were also required to be interrogated."

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<sup>172</sup> AIR2008SC2180

### **1. ARJUN SINGH v. STATE OF HIMACHAL PRADESH<sup>173</sup>**

#### **The Identification parade is necessary part of the investigation:**

In this case a woman had allegedly been raped by 6 men. A Test Identification Parade had been conducted by the then judicial magistrate but it was opined by the judges that it didn't meet the requirements of law and hence had no evidentiary value. Further, the woman didn't know any of the accused but had only heard the names by which they had been addressing each other. The accused had been detained on the basis of his name and the identification by the woman, in the test identification parade which had been struck down as unlawful. Hence, in absence of any other evidence, the basis for investigation report was defeated and he was acquitted.

### **2. ZINDAR ALI SK v. STATE OF WEST BENGAL & ANR<sup>174</sup>**

This is a rape case where the accused Zindar ali was after the prosecutrix Chandmoni Khatoon and asked her to marry him. Upon her refusal he committed forcible sexual intercourse with her and then repeatedly raped her for the next 2-3 days. The woman then went to complain to the police who high-handedly advised her to settle the matter amicably with the accused. Following this she got an order from the chief judicial magistrate, which ordered police to register the case. In spite of the order the police began investigation only after 5 months. This delay (inspite of timely reporting by the woman) was fatal because all the quality of medical evidence (recorded only after 6 months post the incident) was highly compromised. The court in this case severely criticized the investigation and considered it very 'shabby' and 'unsatisfactory', which was ridden with discrepancies. However, the defence was not given the advantage of bad investigation and the accused was convicted.

### **3. OM PRAKASH v. STATE OF UTTAR PRADESH<sup>175</sup>**

#### **Discrepancies in the investigation such as delay in lodging of FIR, confusion about the time of starting the investigation and recording of 161 statements lead to the acquittal of the accused:**

In this case, the accused, along with some others, had allegedly killed the deceased with firearms, over a dispute between their families. There were a lot of discrepancies regarding the attack and the injuries so caused. Further, there were grave discrepancies regarding the recording of the F.I.R. and even as to when the investigation actually began. This confusion had lead to delay of the post-mortem as well. Added to this, the seizure memo didn't have the date on it and it was found that the original inquest report had not been recorded. The cumulative effect of these factors was that the evidence against the accused was seen as unreliable and hence he was acquitted.

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<sup>173</sup> AIR 2009 SC 242

<sup>174</sup> 2009 Cri.L.J. 1324

<sup>175</sup> 2009 Cri.L.J. 782

**4. VAKIL PRASAD SINGH v. STATE OF BIHAR<sup>176</sup>**

**Right to speedy investigation is recognized as fundamental right under article 21 of constitution of India:**

In this case, the investigation had firstly been done by a police officer who had no jurisdiction over the case. Added to this, after the direction of the High Court, the investigation had been delayed for 17 years, without any sufficient explanation. This was held to have violated the constitutional guarantee for speedy investigation and trial of the defendant, which was given by Article 21 of the Constitution. Hence, keeping in mind the delay, the pending proceedings against the defendant were declared as unwarranted and they were quashed.

**5. POOJA BATRA v. UNION OF INDIA & ORS<sup>177</sup>**

**Inconclusive investigation and hence no detention:**

This case related to section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. It dealt with the question of Preventive Detention. The impugned detention order had been passed by the authority after having considered 8 Bills of Entry for different consignments. It was said that the authorities were free to reopen the case with relation to those 8 Bills of Entry but it was found that those consignments had already been cleared under proper orders. This was referred to by the court as an ‘inconclusive investigation’ and hence no detention could be passed.

**6. KISHAN LAL v. DHARMENDRA BAFNA<sup>178</sup>**

**Absence of coordination between various investigating agencies leads to uncertain results:**

The case related to cheating wherein the appellant had given a big amount of money to a group consisting of 5 brothers, who were the directors of a family business, with the aim of purchasing gold. The brothers then refused to return the money and didn't even give him the gold. After the investigation began there were a lot of lapses and grievances that were noted and so further investigation was ordered. The problem was the validity of the order of further investigation. It was held that the power to investigate is a statutory power conferred on the investigating officer and hence any interference by the court was not permissible. Besides this, it was also found that the investigating police officer did not have jurisdiction over the case. At the later stages, it was also found that the case was simultaneously being investigated by two different investigating agencies. This had lead to confusions and hence to uncertain results.

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<sup>176</sup> 2009 Cri.L.J. 1731

<sup>177</sup> 2009 Cri.L.J. 2797

<sup>178</sup> 2009 Cri.L.J. 3721

**7. MOTILAL & ANR v. STATE OF RAJASTHAN<sup>179</sup>**

**Faulty investigation lead to dismissal of the appeal:**

This case revolved around the murder of one Gyan Chand by 8 persons, on the day of election of the Assembly election constituency. The basic issue brought before the court is ante dating of the F.I.R. The inquest report was dated 11<sup>th</sup> Nov, 1993 at 10:30 am but at the F.I.R. was dated as 11<sup>th</sup> Nov, 1993 at 10:50 am. Further, the magistrate received it only on 16<sup>th</sup> Nov, 1993 and no explanation was given for this delay. Besides these discrepancies, there was also ambiguity regarding the place of incident as well. This investigation was considered as 'faulty' by the court and the appeal was dismissed.

**8. SURESH CHANDRA v. STATE OF MADHYA PRADESH<sup>180</sup>**

**Investigating officer of the case had fabricated false evidence by surreptitiously inserting the timings in various documents lead to the dismissal of appeal:**

During the course of the trial, the Sessions Judge came to a conclusion that the Investigating officer of the case had fabricated false evidence by surreptitiously inserting the timings in various documents prepared during the investigation including the memorandum, spot map, Panchnama and Seizure Memo. It was found that the certified copies, issued to the counsel of the accused, did not contain those timings. Later the I.O. admitted to the interpolation and it was concluded that his counsel had witnessed the same. Hence, the accused was held guilty on grounds of fabrication of evidence, and the appeal was dismissed.

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<sup>179</sup> 2009 Cri.L.J 4288

<sup>180</sup> 2009 Cri.L.J 4288

**Part III**  
**Survey of Cases**  
**2007-2008**

# **SURVEY OF CASES**

The research team has conducted the survey of cases after analyzing the decisions given by the Supreme Court.

The purpose of this exercise is to see where the investigation is not going in a proper direction, whether the procedure is properly followed by the investigation agencies and to understand whether the violation of the procedure is the cause for acquittal.

The research team comprising of the coordinator of the project, three research assistants visited Secunderabad Criminal Courts for two months. First the team took permission from the Chief Metropolitan Sessions judge to peruse the records. As the copy of records cant be given to third party he permitted to check the records in the court premise.

As per the proposal only grave offences were selected by the team decided in the year 2006 – 2007. Offences such as Rape, Dacoity, Murder were selected by the team. The team could study cases in which the accused was acquitted. The list of the cases perused is given in the Annexure V.

During the survey it was observed that there is delay in submitting the case diry to the court and the judge was under pressure from the accused to grant bail. In all murder cases the documentation is good such as the charge sheet contained the FIR, 161 statements recorded from the witnesses, wound certificate from the forensic department, sketch of the scene of offence etc,

On record the procedure is followed meticulously by the investigation officers. Such as taking the signatures of two respectable inhabitants from the locality on the panchnama , seizure list, inquest report etc,

The cases are mostly ended up in acquittal for lack of evidence, incoherency in the deposition of the witnesses during cross examination etc,

It was observed that many cases were not preferred for an appeal to the high court by the state.

# **Part IV**

## **Summary of Workshops**

### **Expert Consultation Meetings on Required Changes in Criminal Investigation:**

The research team had conducted three consultation meetings one in the Andhra Pradesh High Court ( March 22<sup>n</sup> 2010), the second one in the Nampally criminal courts complex (28<sup>th</sup> March, 2010) and the third one in the NALSAR City( 31<sup>st</sup> August, 2011) Office.

Experts in the field of criminal law including senior criminal law practitioners, senior police officials, experienced Public Prosecutors, academicians, Judges from sessions court and the High Court attended this meeting and made important suggestions to improve the quality of the investigation. The following were found to be the cause leading to wrong acquittals.

**I. Non Registration of FIR:** It was observed that in practice no senior responsible police officer is available in the concerned police station as since most of them are involved in making security arrangements for the high dignitaries of the state. The practical problem posed from the side of the police dept is that most disputes in the city are civil in nature and the complainants try to make it a criminal case in order to get speedy remedy.

- a. Prompt registration of FIR will also address the problem of minimising the gravity of the offence while registering the case.
- b. While discussing issues of non registration of FIRs, allegations included non registration, delayed registration, negating gravity of offences through non registration, not furnishing a copy to the complainant despite requirement to do so and false implication. Unfortunately delay is a frequent problem, even in cities.
- c. Record reasons for the delay for registering FIR itself on the day of registration itself. Create awareness among police personnel as to relaxed practice of registering FIR. (Lack of awareness among the police personnel as the procedures and notifications relaxed the process of registration of FIR even in absence of seniors is main reason. Since almost 55% cases are civil in nature, the police personnel do not bother to know the need for registering the FIR without looking for senior. Delayed registration often results in diluting gravity of offences such as theft or extortion to something that is not a grave crime. In rural areas specifically, false accused are often included in FIR. This is why earlier, village local body used to record and forward the complaint. Absence of the senior at SHO need not be a reason for delay because it is possible to consider HC or Senior Constable if the seniors are not available as SHO, for registration.) **Mr.Venkat Rao, Former IG, Hyderabad :**

- d. Use the Information Technology to communicate the copy of FIR. There should be a nodal agency to supervise this activity. Sending FIR by Fax and email to the SDPO, and considering SP as responsible officer regarding complaints, will solve the delay problem. But anonymous FIR might pose problems in such a case. **Mr.Venkat Rao, Former IG, Hyderabad :**

- e. There must be a person or an independent & impartial agency to help the illiterate in processing complaint. (Reason: Where the IT facilities are not available and people are poor and illiterate, this measure does not go a long way in redressing the problem. The unfortunate reality today is that the police is perceived as promoting the interests of the rich.) **Mr.Venkat Rao, Former IG, Hyderabad** The SDPO has to first register the FIR and then proceed to the scene of offence, where the job of SDPO is reconstruction of the scene of offence. But this must follow and not precede registration of FIRs. In civil cases, most of the proof is documented so this is not such a great problem. But for crimes, Law does condone delay of even one or two days, even if police take time to verify bona fides. This is due to unnecessary over anxiety to make case strong, they make case very weak. **Mr.Venkat Rao, Former IG, Hyderabad :**
- f. Separating high profile accused cases from others is unconstitutional as it will be in violation of principle of equality under Article 14. **Mr.Venkat Rao, Former IG, Hyderabad :**
- g. Measures to ensure Police accountability are very important **Mr.Venkat Rao, Former IG, Hyderabad :**

**II. Recording and Submission of 161 Statements by the police :** In Murder cases statements recorded under sec 161 along with the inquest report, statements recorded through audio video electronic means shall be submitted to the court immediately. (Objective: This will help in preventing the alteration in the statements by the witnesses. By following this procedure the scope of manipulation in the statements could be minimised to a great extent. The acquittal rate is high because of hostile witnesses).

**Padmanabha Reddy (Senior Advocate, High Court, Hyderabad).**

- 1) Recording of 161 statements by Court may not be viable because of the burden of cases, increase in work, etc. The proposed section 164B in 2006 amendment bill regarding statements also pose practical problems. Magistrates will have no time at all if they are all implemented properly. They will be doing nothing but this. But, as was indicated there must be a reason for their inclusion into the original code. They are in the nature of safeguards. **P.Surendra Babu Reddy, Senior Judge, Director AP Judicial Academy:**
- 2) On section 161 statements, it was suggested that the provision to get them signed by the person making them should be incorporated into the present code of criminal procedure. This is in practice in most of the developed countries. People abroad are shocked that we are still following the age old law. Offcourse this was one of the important recommendations of the Malimath Committee. Videographing can help to prove that no coercion was present. However, the efficiency of this safeguard is highly questionable. **Dr.Umapathi, IG, Trafficiking, Central Crime administration, Hyderabad:**
- 3) Signature of witness on 161 statement will not improve situation or increase the value or decrease the suspicion of duress. It will worsen the situation. (Mr

Padmanabha Reddy has also reiterated this point). 161 statement must be in the same tone and tenor of the person giving the statement. Any change will damage the case. There are valid reasons for not taking the signature of the person testifying under section 161 of the CrPC. Even if signature taken, the question of its value arises. Since these statements need not be recorded in presence of accused, they can still say given under duress etc. So perhaps a signature will not help because the witness can always claim later that he did not actually sign. He can also claim to have signed at instance of police on blank paper, or that he is too illiterate to know what was written on the paper. There are thus many problems surrounding the statements made to admissibility of statements made to police during investigation. Regarding complaints itself, there is so much controversy surrounding signatures that to provide for such a measure in case of statements under section 161 may only worsen the existent conditions. **Mrs Sri Vani, Public Prosecutor, Hyderabad:**

- 4) The mandate to furnish copies of statements made under section 161 also leads to delays due to resource constraints sometimes. Perhaps changing this to a questionnaire format will help to cut down delays. This has been done in the UK and has resulted in increased conviction rate. It is also a more convenient process. **Mr.K.Ravinder Reddy, Advocate, Criminal Law:**

**III. Separation of law and order** : Separation of law and order from the wing of investigation is essential at organizational level. Thereby the investigation branch will have free time, independence and expertise to focus on the investigation only. Lack of sufficient human resource is cited as reason for not doing it. Senior Police officers stated that separation was experimented in Cities like Hyderabad and proved good. For mofussil areas, it was felt that the two functions were interlinked deeply for which separation may not be a solution. **Padmanabha Reddy (Senior Advocate, High Court, Hyderabad).**

- 1) **Three wings of Police:** A fear of the law and respect for it, can perhaps be cultivated by separating law and order, security and investigation into three separate agencies. **Dr.Umapathi, IG, Trafficiking, Central Crime administration, Hyderabad:**
- 2) **Compulsory recording of the statements made by the witnesses under Sec 164:** If the witnesses are taken to nearest magistrate to record their statement before the magistrate, witnessed may fear to deny. Fear of law and some legal consequences must also be instilled in the mind of witnesses so that they do not deviate from the statements they have made before. However, sometimes even decoy statements are recorded- forcing witnesses to stand by which might be detrimental to the general interests of justice. **Padmanabha Reddy (Senior Advocate, High Court, Hyderabad):**
- 3) **General causes for the wrong acquittal other than Investigation:** All acquittals cannot be attributed to weak investigation. Because most of the cases are settled before the stage of conclusion reached. The consumption of long time in trial, and repeated attendance and waiting at court will dilute the initial enthusiasm of complainant and witnesses to fight the case,

and that will force them to get into some sort of settlement. In the process justice is casualty. Even otherwise, witnesses turn hostile and deposition water-down the earlier witness, making courts become helpless but to acquit. **Padmanabha Reddy (Senior Advocate, High Court, Hyderabad):**

- 4) **Lack of training to police personnel:** Informant may give delayed report, registration officers cannot be blamed for that. Institutional checks are also there to curb delays. All information relating to cognisable offence is to be registered in the ordinary course, but generally, the constables on duty cannot discern what cognisable is and what is not. But they are trained in criminal law, and they know basic concepts of law. Any senior police officer present in the station has the garb of the SHO –he need not necessarily be Inspector/sub-inspector and he can register FIRs. Occasionally, the delay is because of the undesirable practice of requiring the lower officer to seek the permission of the commissioner for registration of FIRs. **Hanmanth Reddy, Former IG of Police Hyderabad**
- 5) **Training to police personnel in relevant laws :** Often the provisions and safeguards are present in the CrPC but the investigating officers don't know about them.
- 6) **Enquiry by IO before the registration of FIR:** the Investigating officers generally tend to verify the correctness of the information given in the FIR. Often the police feel that they are being diligent by making sure that the FIR is correct in its contents. So time expended on travelling and investigation complicates the issue besides causing delay in the registration of FIR. The suspicion that police might have tutored the witnesses and the complainant to give information according to their convenience will arise. This suspicion will be highlighted in cross examination, which weakens the case.
- 7) The problem with the above practice is that even though the statement of witness is truthful he might not be believed later in a court of law due to the delay surrounding registration of the complaint. This results in an acquittal for the accused. A higher rate of conviction will involve timely lodging of FIRs. In such a circumstance, the whole village will know who has committed the crime, and an acquittal will only serve to erode their faith in the system. **Justice Chandra Kumar, Judge High Court, Hyderabad.**

#### **IV. Sources and infra structure in the police stations in villages and interior areas :**

The issue of resources has to be addresses in Police Stations located in the interior areas of Andhra pradesh. Minimum needs such as stationery is also not available in some police stations. It is important to provide the resources before asking the police to give copy of FIR to the complainant. There is no stationery grant for many police stations **Mr.K.Ravinder Reddy, Advocate, Criminal Law:**

**V. Non cooperation of the complainant :** Often the investigation itself cannot be carried out because midway through it the complainant stops cooperating. This happens if suspects include family members or related people. **Mrs G.Kalyani, Senior Public Prosecutor, Nampally Criminal Courts, Hyderabad**

**VI. Investigation in Rape Cases:** There must be victim-witness support programs in each and every police station limits. Rape victims specially might be apprehensive about facing cross examination but there should be enough budget allocations as in UK to deal with these problems through third party NGOs. In the UK, a 35 million pounds budget is spent for this purpose. In India also, it is suggested that every one rupee spent on the police, at least 0.1 rupee should be invested on such a scheme. In UK, this led to a dramatic difference with a 93% rape conviction rate, and a 96% manslaughter conviction rate. **Dr.Umapathi, IG, Trafficking, Central Crime administration, Hyderabad:**

**VII. Need for recruitment of police personnel to reduce the burden of the existing investigating officers:** Again, the number of FIRs registered is staggering (12,000 for the Banjara Hills station in a single year). Police doesn't have the time to investigate all cases properly. Brain mapping techniques are also not allowed due to a legal bar. This has led to a situation where every person who commits a crime knows that he is absolutely immune from the penal sanctions. **Dr.Umapathi, IG, Trafficking, Central Crime administration, Hyderabad:**

**VIII. Police custody and Judiciary Custody:**

Apart from this the issue of differences between judicial and police custody were discussed. It was pointed out that if a special police department is to be kept under the control of the judiciary, there will be barriers in investigation because there will be a conflict between the police under the executive and that under the judiciary. In any case it was felt that there are enough safeguards in place for people under judicial custody. It is only when they are under police custody that the abuses start.

**IX. Genuine and prompt entries in General Diary under section 172 is essential.**

A concern raised was that the case diary that is expected to be maintained on a day to day basis under section 172 of the CrPC is not often maintained, or is filled in fictitiously. Even while discussing charge sheet it was pointed out that other documents relating to the investigation such as the seized documents are not submitted to the prosecution by the investigating officer files are kept for years together. Hardly any evidence is collected and even when it is, it is not sent with the charge sheet, as is the requirement in law.

- Prompt collection of evidence and immediate sending to court along with chargesheet is required.

**X. Forensic Investigation in Andhra Pradesh:**

But it is to be noted that even these teams are marred by a lack of manpower. In all of AP there is one scientific expert for all the clues teams. Increase manpower and increase number of Scientific Experts for all clues teams in entire state. **Mr U Ram Mohan, ACP Cyber crime cell:**

**XII. Allowances to Witnesses to improve the Investigation:** can also be improved by providing Travelling allowance/dearness allowance to witnesses so that an incentive can be given to people to come forward and give evidence. **Mr U Ram Mohan, ACP Cyber crime cell:**

### **XIII. Stock Witnesses:**

It was observed by many participants including the public prosecutors that in all most all cases police/investigating officers depends upon the stock witnesses or planted witnesses and the courts thereby loose faith in the credibility of the investigation, searches and seizures.(**Mr U Ram Mohan, ACP Cyber crime cell**):

The distinguished experts who gave their valuable suggestions are included in this report. Some of the experts are Mr Goda Raghuram, Justice High Court, Mrs Vijaya Lakshmi, Chief Metropolitan Sessions Judge, Nampally, Mr Bala Subrahmanyam, DIG Intellegence, Mrs Sumathi, SP , Cyber Crime Cell etc, have made the following observations with regards the lacunae in the criminal investigation.

The following are some miscellaneous observations and suggestions made by the participants.

1. It must also be noted that there is nothing making it mandatory for FIRs to be recorded in English. This must not deter the officers of a lower rank in allowing for registration of complaints.
2. There is need for increased amount of awareness through intensive training in law (IPC and CrPC) besides local laws, and related aspects for Police Officers on regular basis.
3. A legal officer must be appointed for all levels of the police to render advice and guidance on the legal aspect of investigation to strengthen the utility of the documents recorded at police station.
4. There is a dire need to increase the allocations and resources for implementing the safeguards under CrPC and other practices such as furnishing a receipt or copy of FIR to the complainant etc. A simple example is that a single DNA kit costs about 10,000-12,000 rupees, where as the demand for the DNA testsis rapidly increasing. There are neither enough money or DNA (only 30 or 40 kits are available) kits to speed up the tests.
5. In the Courts of Justice, there must be a provision for a “Prosecution house” so that the complainant/victim is not left at the mercy of the perpetrator of crime or exposed to their threats and terror for lodging of a complaint.
6. There is need for counselling at police stations for processing complaints.
7. Strong witness –victim support systems shall be developed.
8. 161 statements shall be in question answer form to reduce the time consumption and introduction of unnecessary statements by police.
9. Changes shall be made in the procedure in order to restore the recovered property to the owner as soon as possible.
10. Number of courts and police stations shall be increased to the tune of the increasing population.
11. Regarding the panch witnesses a change could be introduced as two independent witnesses instead of two respectable inhabitants of the locality.
12. Investigating officer can consult the prosecutor during the investigation and take advice
13. Investigating officer shall be present all through the trial.
14. Salaries and allowances of the police personnel should increase to match their work and needs.

15. Networking the police stations and linking with trial courts will improve the situation a lot as there will be immediate transmission of documents, by which possibility of manipulating or changing the documents would drastically reduce.
16. There must be a counselling provision in police station and there must be a psychiatrist in each Jail.
17. Bare confessions without any recovery will not in any way help strengthening the case. Confession must lead to recovery of some material to make it admissible.
18. Situation where stock witnesses and stock panches or some times stock advocates will worsen the trial and destroy the case. We need to avoid this situation.
19. Today there are 3,25,000 cases pending trial in AP. However there are 394 lower courts only for that many cases. There are 25,000 non-bailable warrants that have been issued at any times. The number of acquittals is so high that today we are a drifting democracy. As per the Malimath committee, for rape cases the conviction rate is 10.3%; 23% for murders, 50% in cases of Robbery (but mainly brought about by admissions) and 7.5% for cheating. These low rates are indicative of a failing institution. In the UK these rates are higher because there are tie-ups with NGOs to provide for extensive counselling and support to the victims as well as witnesses.
20. With all these practical problems the situation in Andhra Pradesh is better than some States in North India. There is a low crime rate in the north because the registration of FIRs itself is not done for investigation to start! It was pointed out that this is a problem of non-reporting of the incidence of crime and non-registration of the case, both. Moreover, in the northern part of India, the Local Panchayat system is very strong. Even in rape cases, the cases are settled through panchayat's rewards by giving some compensation to the rape victim.
21. It was also raised that investigation is actually carried out by separate agencies for high profile cases. This results in separation between law enforcement and investigation only for people of a certain status. Perhaps the constitutional validity of such a practice is also suspect.

# **Part V**

## **Emperical Study in Hyderabad and Secunderabad**

In the fifth stage the Research team on the basis of the study of literature and the suggestions made by various high courts and the Supreme Court could indentify the major issues with the investigation. For the category of police officers two questionnaires are prepared, one for the police officers of the cadre of Sub Inspector of police and another for the cadre of Deputy Superintend of Police and Superintend of police.

The team has prepared separate questionnaires for all the key role players depending upon their involvement and contribution to the investigation.

**1. Distribution of the Questionnaire:** After formulating the questionnaire, the university has dispatched the questionnaire them to the following role players:

- a) Judges of criminal court
- b) Criminal Law Practitioners
- c) Police Officers
- d) Prosecutors

The questionnaires were distributed to criminal law practitioners, Judges, Prosecutors in the trial courts, sessions courts of Secunderabad and Ranga Reddy District Courts. Similarly, in case of police officers and complainants, questionnaire were distributed to all police stations of Secunderabad, Hyderabad, and Ranga Reddy Districts either in person or by post.

After the preparation and dispatch of the questionnaires and after receiving filled in questionnaires embarked upon the task of decoding and encoding the various responses. The research team has used the services of its faculty and well equipped researchers for this purpose. The team tried to determine the various trends in responses to various questions.

**1.1. Universe of Study:** Secunderabad, Hyderabad and Ranga Reddy Districts in the State of Andhra Pradesh:

**1.2. Sampling Frame :**

- 1. The list of Judges, Advocates and Prosecutors and their addresses would be collected from the respective courts,
- 2. The list of police officers, complainants and collected from the websites of the hyderabad police
- 3. The list and addresses of Forensic doctors can be obtained from the Osmania general hospital and central Forensic Laboratory Hyderabad.

**1.3 Sampling Procedure :** Random Sampling

**1.4. Sampling Size :**

**Number of Courts:** There are approximately 30 criminal courts in Secunderabad , Hyderabad and Ranga Reddy Districts which include Magistrate Courts,

Metropolitan Magistrates, Metropolitan Sessions Courts, and Dist Sessions Court and Special courts (for NDPS Act etc...).

**Total number of Judges = 50**

**Number of Police Stations:** The number of police stations in the universe are approximately 80. We have sent approximately 20 to 21 questionnaires to each police stations. We could get responses from 47 police stations only and that too one or two people per police station responded. Many Hyderabad police stations are very busy and looked over burdened. It was very difficult to obtain the appointment of the police officials. After sending questionnaires the research team members themselves visited the police stations and interviewed the police officers. Some police officers felt that without the permission from the higher authorities they cannot answer our questions.

**Number of Public Prosecutors:** Approximately the number of public prosecutors is 35 in the universe. We could get responses from 20 public prosecutors.

**1.5. Units of Observation:** Judges, Advocates, Prosecutors, Police officers.

**1.6. Period of Study:** One year.

**1.7. Method of Data Collection:**

For data collection University has adopted three methods ie., Interview, Questionnaire and survey methods.

- 1. Interview Method :** In case of Judges, and senior police officers Interview method was adopted. The research team could really extract a lot of information through this method.
- 2. Questionnaire Method :** Questionnaires were distributed in person or sent through post to all other kinds of units like advocates, Prosecutors, Police officers.

The questionnaire was a mixture of open and closed ended questionnaires.

**1.8. Approximate number of questions of the questionnaire:** 15-20.

**1.9. Approximate time taken to complete the interview:** one hour

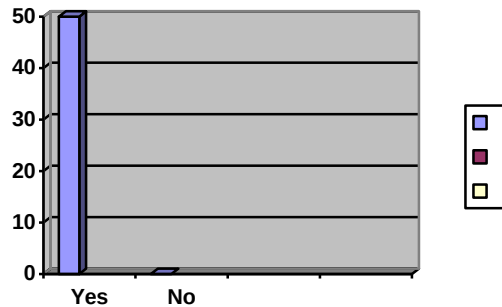
**1.10. Coding :** Pre-coded questions can bias the findings towards the researcher's, rather than respondent's way of seeing the things. The other disadvantage is that the respondent may feel restrictive and frustrating if they are not given a free choice to express their feelings and suggestions. So the questions are not pre coded. But for few questions where the answers sought may be specific, the question would be a closed ended one and the possible options and codes allotted to them are as follows: **The questionnaires are provided in the annexure.**

### Questionnaire to Judges:

**Judges from Nampally Criminal Courts of all cadres including metropolitan magistrates and Sessions judges = 30**  
**Judges from Ranga Reddy Courts = 20**  
**Total no of Judges interviewed = 50**

1. Do you think that if the law and order wing should be separated from the investigation wing to improve the quality of investigation?

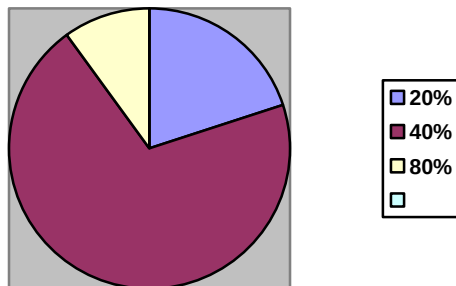
A) Yes/ No                      **Yes = 50**



**All the judges are of the opinion that there shall be a separate wing for investigation so that the investigating officer can concentrate on the investigation without any deviations. Now the investigating officer is over burdened with bandobast duties and it is severely hampering the process of investigation.**

2. On average how many cases end up in acquittal because of the defective investigation?

A) 20 %                      b) 40 %                      c) 60 %                      d) 80%  
**20% = 10                      40% = 35                      80% = 5**

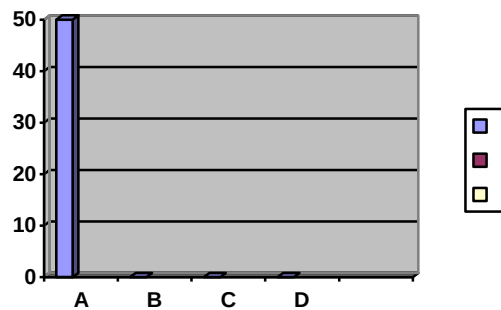


**Majority of judges felt that approximately 40% of cases are leading to wrong acquittals.**

3. What are the loopholes in the present investigation process?

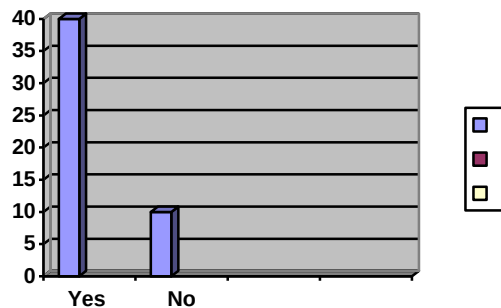
A) Lack of proper training  
B) The law is not tailored properly to deal with the present needs

- C) Courts and police don't trust the police  
 D) Any other  
**A = 50**



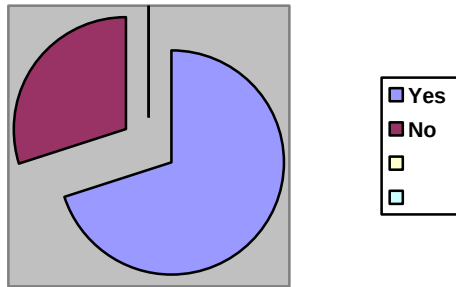
**All the judges are of opinion that lack of proper training is one of the reasons for the defective investigation.**

4. If for some genuine reason the IO is not able to procure the attestation of an independent witness on the inquest and search and seizure lists, would it affect the prosecution case? If yes what are the changes to be made in the law to overcome the problem?  
 Yes / No      **Yes = 40**      **No = 10**



**Majority of judges ( 80 % ) are of the opinion that the attestation factor affects the prosecution case? But they are of the opinion that there is no problem with the law and it need not be changed.**

5. Do you think that granting anticipatory bail or bail would affect the process of the investigation? Do you suggest any changes in the existing law in this regard?  
**Yes = 35**      **No = 15**

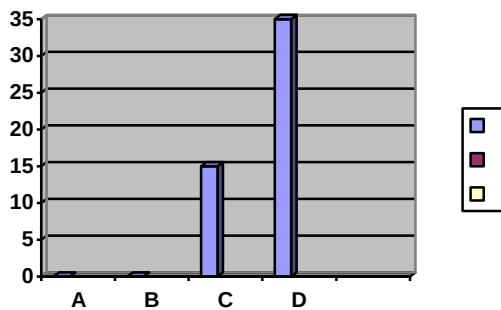


**Some Judges are of the opinion that the grant of anticipatory bail affects the prosecution case heavily in cases relating to cheating and white collar crimes. 70% of judges are of the opinion that the granting of anticipatory bail affects the investigation process.**

6. Does the judge have a role to play in conduct of the investigation? Yes/No if yes then what is the nature of the role ?

a) advisory b) corrective; C) supervisory d) No interference

**C = 15 D = 35**



**70 % of judges felt that the Judge has no role to play in the investigation. Any order given by the judge is unwarranted.**

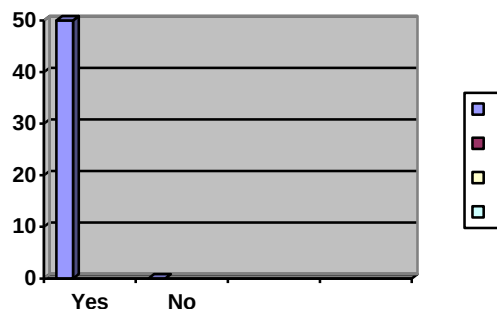
7. How do you ensure speedy investigation?

**All the judges said that they will not follow absolutely the principle of 'No Interference'.**

8. Does delay in filing the charge sheet affect the prospect of the case? Yes/ No Sometimes if yes then How often?

**Yes/No**

**Yes = 50**



**All the Judges are of the opinion that delay in filing of charge sheet would adversely affect the prosecution case.**

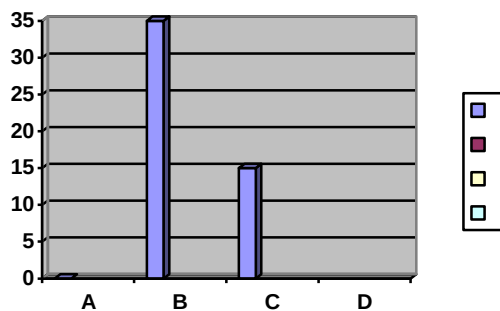
9. What are the problems in your opinion are an investigating officer is facing in the present system to complete the investigation?

A) **Recording of 161 statements leading to acquittal. All judges felt that the true version of the witnesses is not recorded by the investigating officer. The statements shown in 161 statements doesn't stand the test in the trial because the witnesses can't support the document as they are unaware of the content and most of the cases are lost on this very ground.**

10. How good the relationship between the prosecution and police as far as Investigation is concerned?

A) Good                      b) Average                      c) Bad                      d) Cant say

**B = 35                      C = 15**



**70 % of Judges are of the opinion that the relation between prosecution and police is not very good. The investigating officer is not in a position to supply the documents and other evidence in time to support the prosecution case and may be this could be a reason for more number of acquittals.**

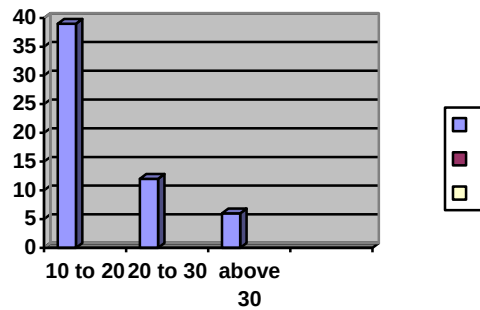
### **Questionnaire to Police officers (Station House Officers)**

**Number of SHOs = 37**

1. How many cases are registered in your police station (approximately) in a month?

Ans:

**10 -20 = 39      20-30 = 12      above 30 = 6**



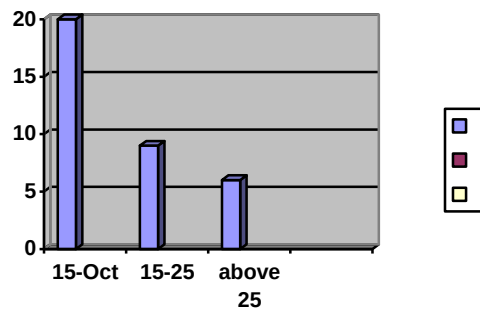
**Approximately 80% of police officers gave the information that they register 20 cases per month on average. It depends and in some polices stations the number is higher than this.**

2. How many cases are disposed off after completing the investigation in a month?  
And how many are pending?

**10-15 = 20**

**15-25 = 9**

**above 25 = 8**



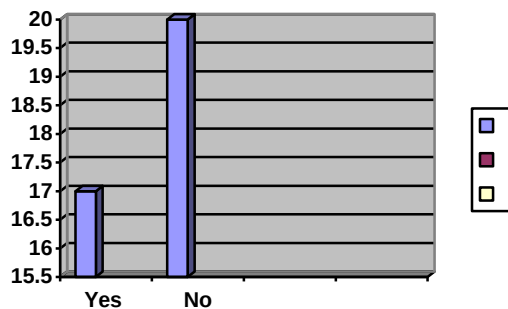
**Approximately 50 % of the police officers said that the disposal of the cases after completing the investigation is at about 20 cases per month.**

3. Do you have sufficient strength of police personnel to investigate properly all the cases?

**Ans: Yes / No**

**Yes = 17**

**No = 20**



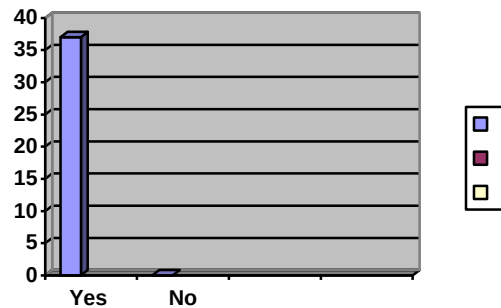
**50% of the police officers said that in the state of Andhra Pradesh new recruitment is made and if that personnel joins the force they will have**

**enough number of police officers but as of now the police strength is not sufficient to meet the present demands and needs of the investigation.**

4. Do you receive Training in (a) forensic investigation (b) any training orientation program in special offences such as offences by women, organized crime, terrorist related crimes, drugs , and cyber crimes etc ?

(Yes/No no of programmes attended till date in your service)

**Yes = 37**

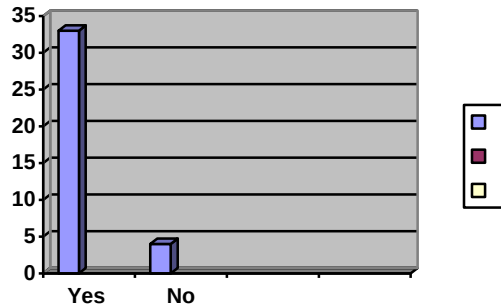


**All police officers told that they attend the training programmes regularly. Some police officers felt that the training programmes are not up to the mark and standards have to be raised.**

5. What are the problems being faced by the investigating officer during the search and seizure ?

- A) Attestation of independent witnesses
- B) Threat of illegal search
- C) Presenting the stolen goods in the goods after recovery
- D) Any other

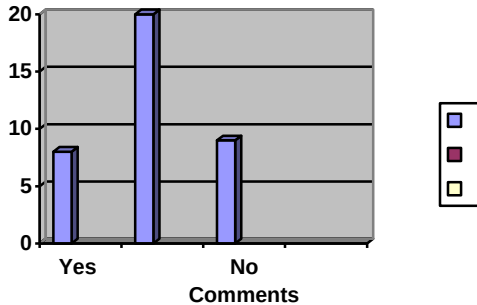
**A = 33      B = 4**



**Approximately 90 % police officers opined that getting respectable independent people as witnesses is very difficult. People refuse to come forward for the fear of attending the court proceedings.**

6. Do you suggest any changes in the existing procedure relating to Inquest and panchnama in CrPC?

**Yes = 8      No = 20      No Comments = 9**

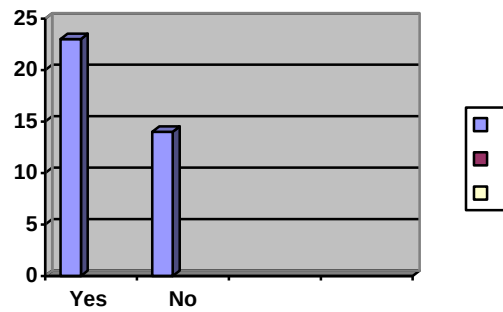


**Only 8 police officers out of 37 felt that there shall be a change in the procedure. Rest of them felt that the procedure is good. But the awareness shall be spread in the society that by coming forward to be a witness in panchnama or inquest they would not be harassed by the court.**

7. Does the grant of 'Anticipatory bail' affect the process of Investigation?

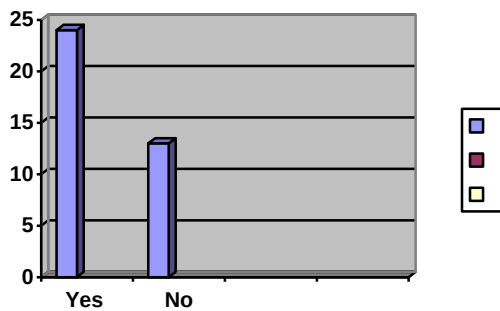
Yes / No

**Yes = 23      No = 14**



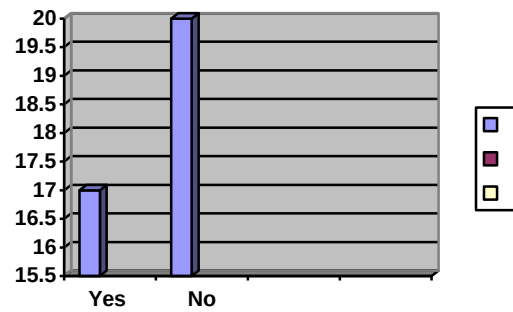
**62% of station house officers felt that granting of bail hampers the investigation Process and high profile accused generally will buy the witnesses eventually they will turn hostile for the prosecution case which may lead to an acquittal of the case finally.**

8. Does 161 statements impact on the acquittal of a criminal case ?  
**Yes / No      Yes = 24      No = 13**



**64% of station house officers opined that improper registration of 161 statements would lead to an acquittal in a criminal case. Generally the investigating officer himself doesn't record these statements. Some other police constable will do this work because the investigating officer is overburdened and doesn't find time to do all this work.**

9. Whether a Forensic Expert assists IO in collecting the material evidence like finger prints, blood etc during the investigation?  
**Yes / No      Yes = 17      No = 20**



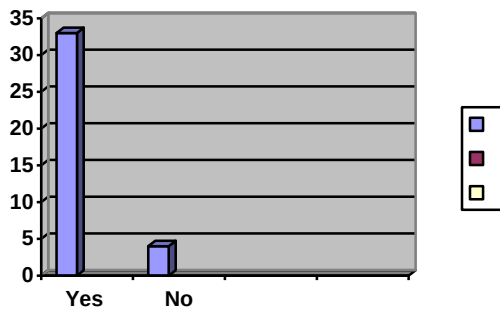
10. Do you think improper maintenance of case diary by IO such as having loose sheets in the CD will lead to an acquittal in a criminal case?

**Yes / No      Yes = 32      No = 3      No Comments = 2**

**86% of station house officers felt that the improper maintenance of the case diary could be one of many reasons for the acquittal.**

11. Are there any departmental guidelines issued to Investigating Officers to maintain the case diary? If yes what is the nature of the guidelines? Can a copy of the same be provided?

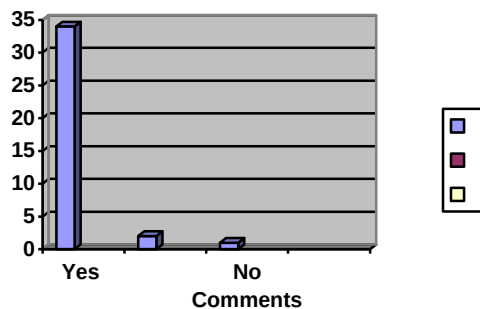
**Yes / No      Yes = 33      No = 4**



**91% of station house officers told that the departmental guidelines are available in AP Police manual and they follow the same.**

12. Is there any time limit prescribed by the department to complete the investigation?

**Yes/No      Yes = 34      No = 2      No comments = 1**



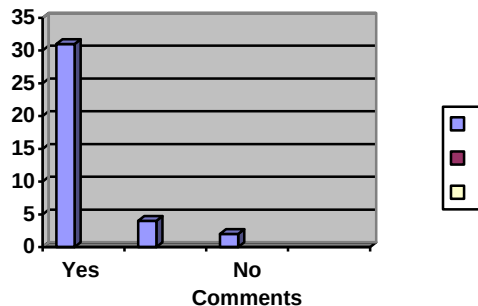
**91 % of station house officers said that the time prescribed in Sec 167 CrPC is followed strictly. In case of extension of time they inform the higher ups periodically giving reasons time to time.**

13. Who will supervise and check the delay in the investigation?

Ans: the superintendent of the police generally supervises in districts and in the city limits commissioner will do the same.

14. Does the Prosecutor/ legal advisor help the IO in conducting the investigation?

**Yes = 31      No = 4      No comments = 2**



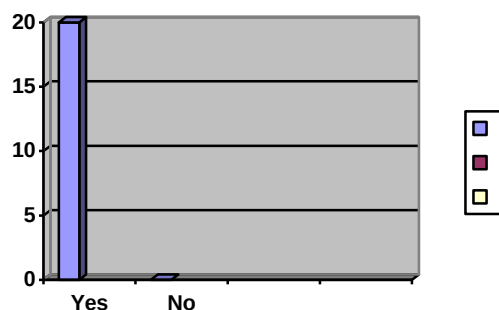
**83 % of station house officers told that they take the help of prosecutor and the legal advisor available in all serious cases. Whereas in non serious cases they don't.**

## **Questionnaire to Public Prosecutors**

**No. Of Public Prosecutors:20**

1. Does the Investigation officer attend the court proceedings in person or delegates the duty to someone else? (Yes/ No). If yes what would be the impact of it on the outcome of the case?

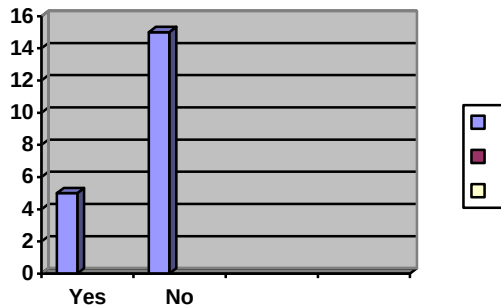
**Yes = 20**



**100 % prosecutors said that the investigating officer generally doesn't attend the court proceedings due to over work load and they depute some police constable for this job.**

2. Do you guide the police officer as how to conduct the search and seizure?

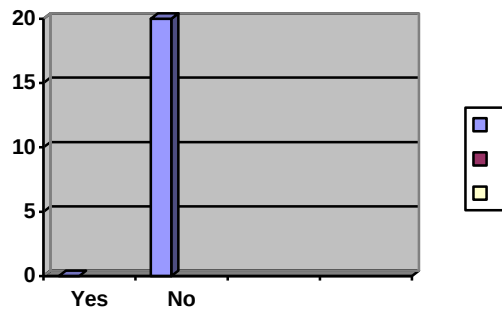
**Yes = 5      No = 15**



**75 % of prosecutors told that they don't advise the police officers in any issue relating to investigation as it is prohibited by the law and also Supreme Court categorically said that the prosecutors shall refrain from doing so.**

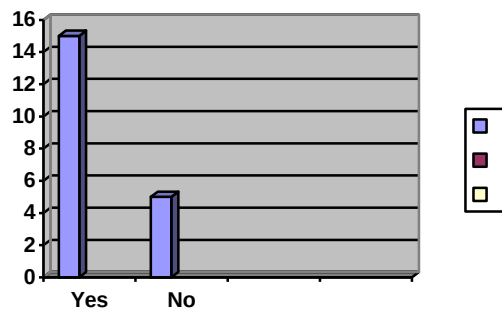
3. Do you have any control over the Investigation process?

**A) No = 20**



4. Does the IO take your advice while preparing the charge sheet?

**Yes = 15      No = 5**

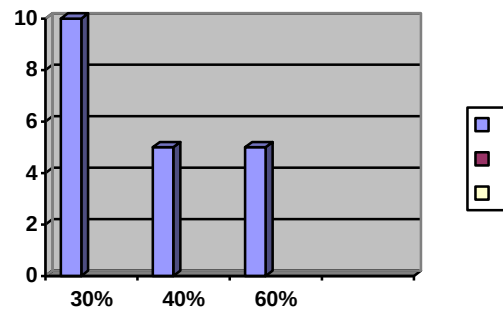


**75 % of the prosecutors told us that they advise the investigating officers in serious case but off the record.**

5. Do you think that improper drafting of the charge sheet by the IO affects the prosecution case? Yes/No. If yes then how much percentage of cases are affected?

A) 20% B) 30% C) 40% D) 60% E) 80 %

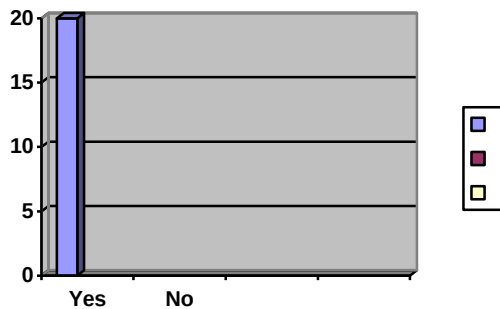
**30% = 10      40% = 5      60% = 5**



**50 % of the prosecutors felt that 30 % of cases are ending up in wrong acquittal.**

6. Does the delay in submitting the charge sheet affect prosecution case? How?

**A) Yes = 20**

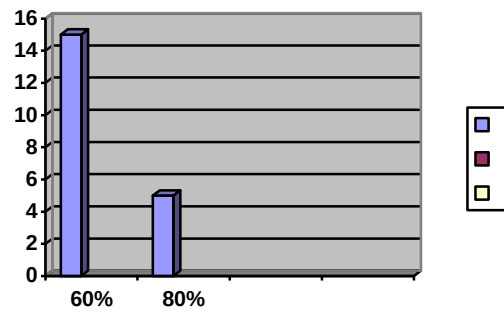


**100 % prosecutors felt that the delay in submitting the charge sheet will have an adverse effect on the outcome of the case.**

7. On average how many cases end up in acquittal because of the defective investigation?

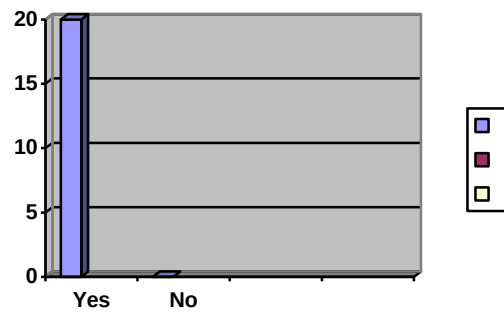
a) 20%      b) 40 %      c) 60 %      d) 80 %

**60% = 15      80% = 5**



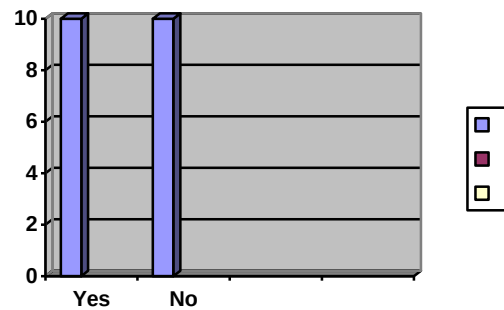
8. Do you receive and impart Training in a) forensic investigation b) prosecution in special offences such as organized crime, terrorist related crimes, drugs, and cyber crimes etc?

**Yes = 20**



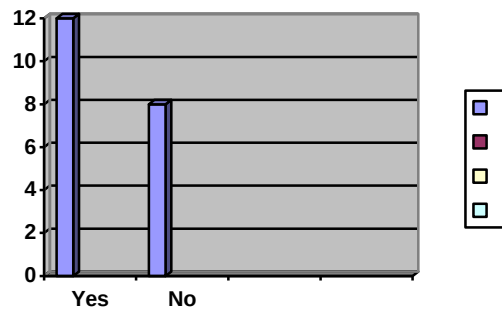
9. Does the grant of Anticipatory bail affect the investigation?

**Yes = 10      No = 10**



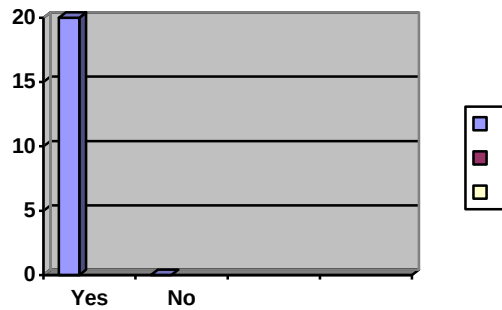
10. Do you think improper maintenance of case diary by IO will lead to an acquittal in a criminal case?

**Yes = 12      No = 8**



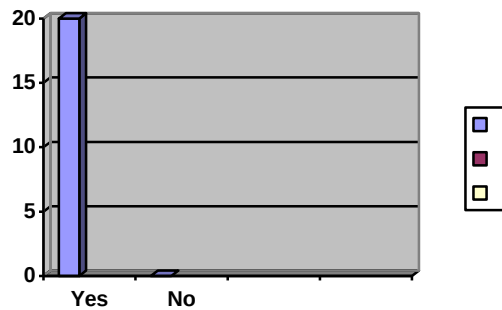
11. Do you think that a Prosecutor / legal advisor should guide an IO in conducting the investigation?

**Yes = 20**



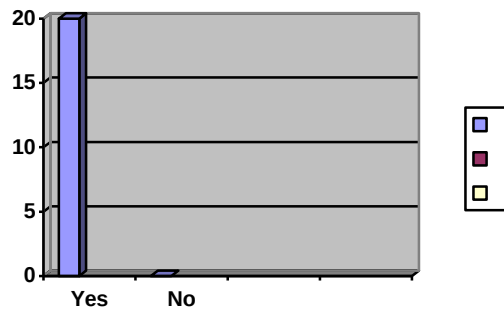
12. Does the frequent transfer of the Investigating officer affect the investigation of the case?

**Yes = 20**



13. Do you suggest to separate the law and order wing from the investigation?

**Yes = 20**



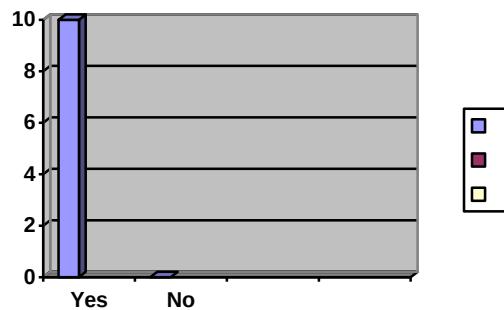
## **Questionnaire to Police officers (SP, DCP, IG, DIG)**

**Number of Police Officers = 10**

**The research team tried to contact 25 high rank police officers and distributed the questionnaire. But only 10 police officers could spare time.**

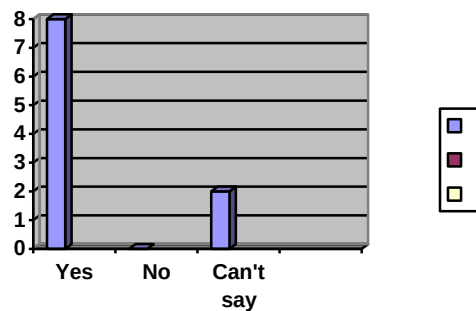
1. Do you suggest to separate the law and order wing from the investigation?

**Yes /No      Yes = 10      No = 0**



2. Do you think that a defective investigation will lead to acquittal of a case?

**A) Yes   b) No   c ) can't say      Yes = 8      No = 0      Can't say = 2**

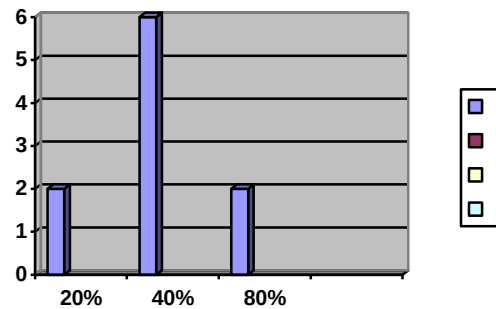


**80 % of the police officers opined that the defective investigation will lead to a wrong acquittal of the case and 20 % are not very sure about it.**

3. On average how many cases end up in acquittal because of the defective investigation?

A) 20 %      B) 40%      C) 60 %      D) 80%

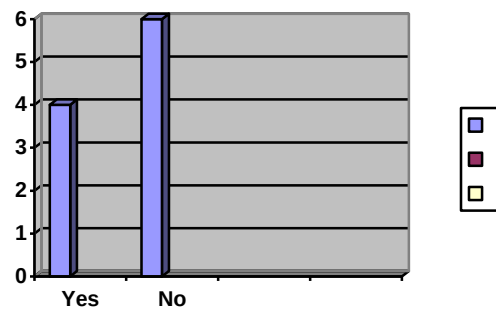
**20% = 2      40% = 6      80% = 2**



**60 % of police officers opined that 40 % of cases end up in acquittal because of defective investigation.**

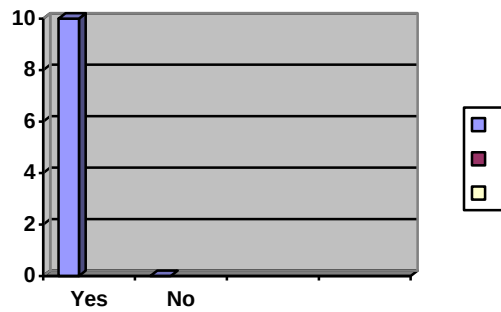
4. Do you have sufficient strength of police personnel to conduct the investigation properly?

**Yes / No      Yes = 4      No = 6**



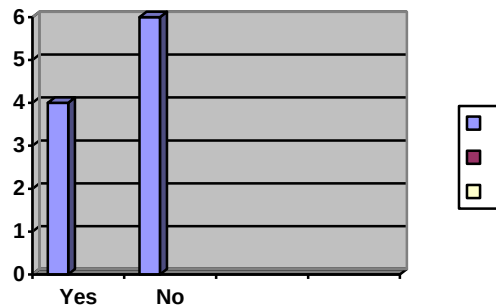
5. Do you receive and impart training in a) forensic investigation b) Investigation in special offences such as offences by women, organized crime, terrorist related crimes, drugs, and cyber crimes etc?

**Yes/No      Yes = 10**

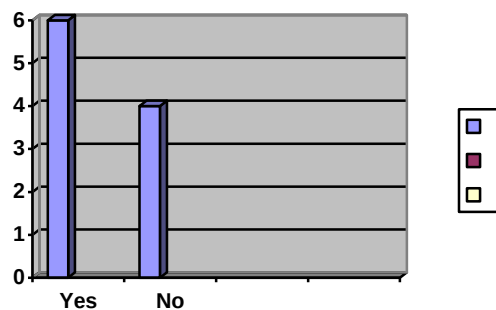


**100 % of police officers felt that they are receiving training in various branches of investigation. Some of them felt that the standards of the training have to be raised and it should be rigorous than what it is now.**

6. Does the grant of Anticipatory bail affect the investigation?  
**Yes / No                      Yes = 4              No = 6**

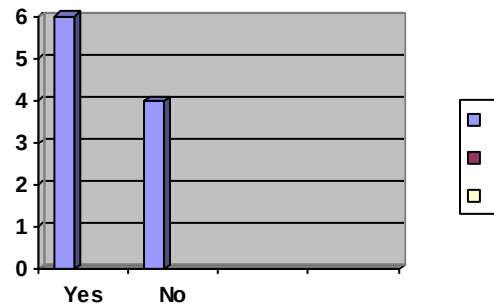


7. Do you think that 161 statements impact on the acquittal of a criminal case?  
**Yes / No                      Yes = 6              No = 4**



**60% of police officers felt that improper registration of 162 statements will have an adverse impact on the outcome of the case. 40% felt that it is not the case.**

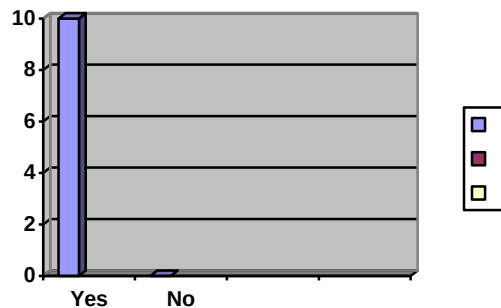
8. Whether the Forensic Expert assists is required to an IO in collecting the material evidence like finger prints, blood etc in all cases?  
**Yes / No                      Yes = 6              No = 4**



**60% of police officers felt that the assistance of forensic experts is necessary. In city limits the clue teams are existing but not sufficient to deal with all cases and particularly in the districts the clues teams are not available.**

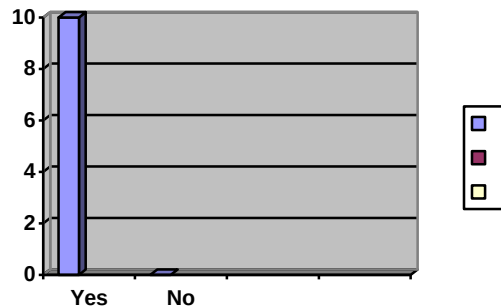
9. Is there any checking mechanism available in the department to supervise the process of investigation?

**Yes/No                      Yes = 10      No = 0**



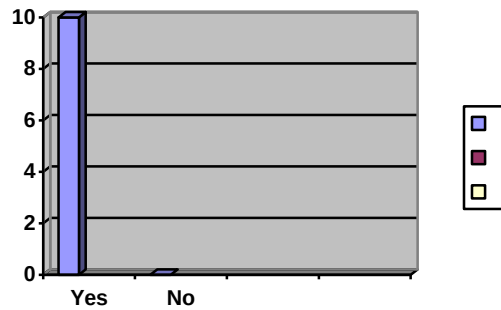
10. Do you think that a fixed tenure given to high level police officers such as SP, DIG and DGP etc would help in speedy investigation?

**Yes/No                      Yes = 10      No = 0**



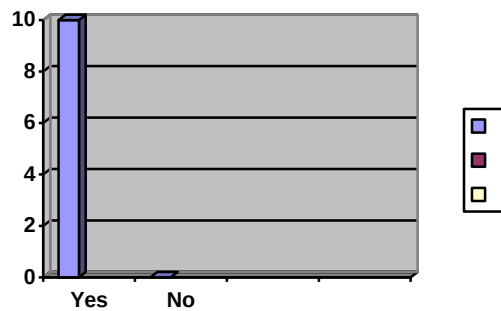
11. Do you think improper maintenance of case diary by IO will lead to an acquittal in a criminal case?

**Yes/No**                      **Yes = 10**      **No = 0**



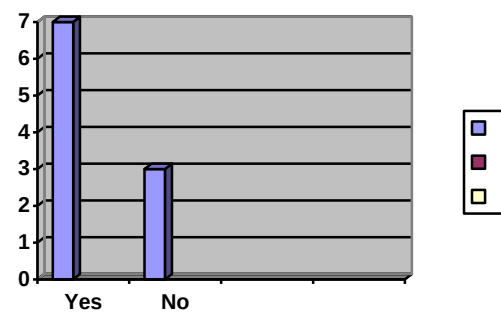
12. Do you think that a Prosecutor / legal advisor should guide an IO in conducting the investigation?

**Yes/No**                      **Yes = 10**      **No = 0**



13. Is it proper to make the Investigating officer accountable for the delay in the investigation if the delay is inordinate?

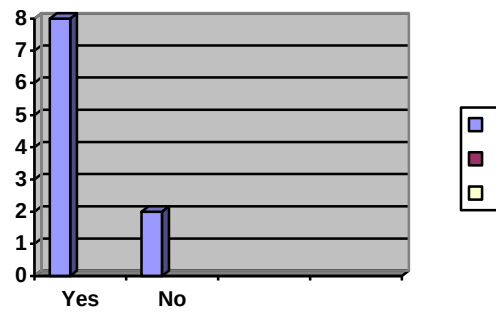
**Yes/No**                      **Yes = 7**      **No = 3**



Reasons:

14. Does the frequent transfer of the Investigating officer affect the investigation of the case?

**Yes/No**                      **Yes = 8**      **No = 2**

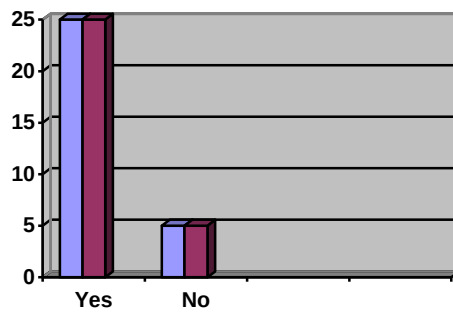


## Questionnaire to Criminal Law Practitioners

**Number of Advocates :30**

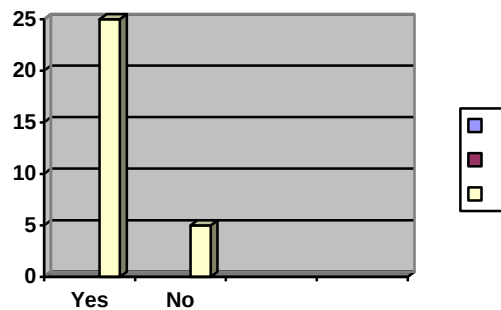
1. Does the Investigation officer attend the court proceedings personally or delegates the duty to someone else? (Yes/ No). If 'No' what would be the impact of it on the outcome of the case?

**Yes = 25      No = 5**



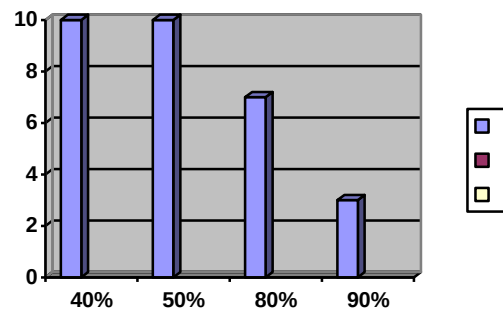
2. Does the delay in submitting the charge sheet affect the outcome of the case?  
How?

**Yes = 25      No = 5**



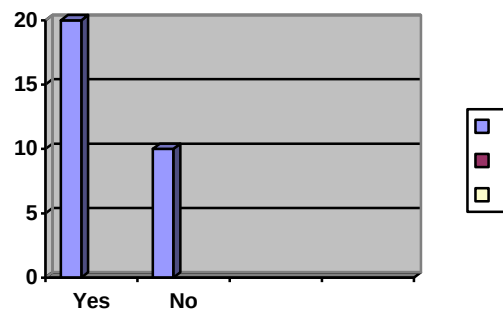
3. On average how many cases end up in acquittal because of the defective investigation?

**40% = 10      50% = 10      80% = 7      90% = 3**



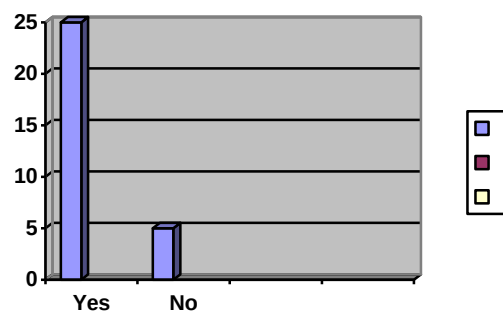
4. Does the grant of Anticipatory bail affect the investigation?

**Yes = 20      No = 10**



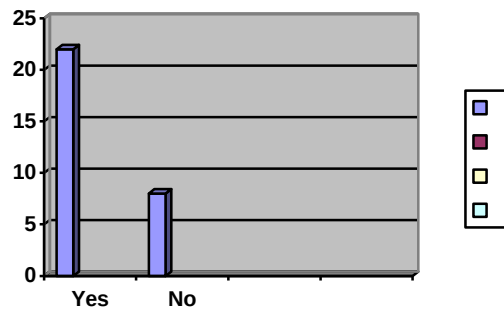
5. Do you think improper maintenance of case diary by IO will lead to an acquittal in a criminal case?

**Yes = 25      No = 5**



6. Do you think that a Prosecutor / legal advisor should guide an IO in conducting the investigation?

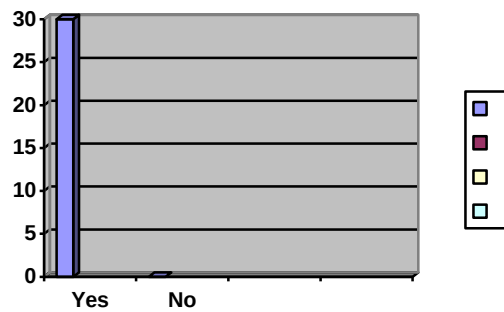
**Yes = 22      No = 8**



7. Does the frequent transfer of the Investigating officer affect the investigation of the case? What are your suggestions to overcome this problem?

Total = 30

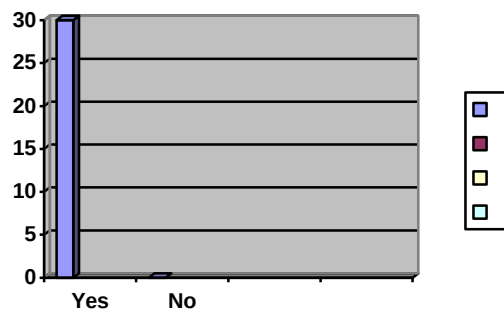
**Yes = 30**



8. Do you suggest to separate the law and order wing from the investigation?

**Total = 30**

**Yes = 30**



Many advocates felt that there shall be a follow up of the IO even after the completion of Investigation and because of non follow up also the cases are ending up in acquittal.

## **Part VI**

# **Observations, Conclusions of the Study**

## **Observations, Conclusions of the Study:**

### **I. The following are the some of the observations made by the Supreme Court on Investigation:**

1. In Jagtar Singh v. State of Punjab & Ors<sup>181</sup>. It was pointed that Evidence cannot be deemed inadmissible on the ground that it was not mentioned in the FIR as being left by the accused at the place of occurrence, where it corroborates the evidence.
2. Testimony of a witness cannot be rejected merely one ground that his/her name was not mentioned in the FIR, especially when the witness has suffered injuries.
3. In Padmanabhan Vijaykumar alias Vijayan and Ors. v. State of Kerala<sup>182</sup> the sc held that because the FIR was recorded under the instruction of the sub-inspector, is not safe to rely upon. Prosecution fails on faulty investigation. But corrected itself in the case State rep. by Inspector of Police, Vigilance, and Anti-corruption, Tiruchirapalli, TN v. V. Jayapaul<sup>183</sup> and said that Police officer is an informant himself, not a disqualification to conduct the investigation.
4. In State of UP v. Jagedo and Ors<sup>184</sup> It was held that Faulty investigation and eye-witnesses with possible motive to help the prosecution is not enough to acquit.
5. In State of Andhra Pradesh v. P.V. Pavithran<sup>185</sup> it was clarified by the Supreme Court that Inordinate delay in investigation by the investigation agency by itself is not sufficient to seek quashing of the FIR.
6. In Superintendent of Police, CBI & Ors. V. Tapan Kr. Singh<sup>186</sup> it was held that a 'general diary entry' that discloses a cognizable offense can be treated as FIR.
7. In State of Rajasthan v. Teja Singh & Ors<sup>187</sup> The supreme Court refused the explanation of delay in sending the FIR to the magistrate that the two days were holidays and acquitted the accused.
8. In Ram Bali v. State of UP<sup>188</sup> it was categorically said by the Supreme Court that any defect in investigation cannot be a ground of acquittal.
9. In UOI & Anr, v. W.N. Chadha<sup>189</sup> the SC clarified that at the stage of investigation the accused doesn't have any right of prior notice or of being heard.

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<sup>181</sup> 1988 CrLJ 866: AIR 1988 SC 62

<sup>182</sup> AIR 1993 SC 2641

<sup>183</sup> 2004 CrLJ 1819: AIR 2004 SC 2684

<sup>184</sup> 2003 CrLJ 844: AIR 2003 SC 660

<sup>185</sup> 1990 CrLJ 1306: AIR 1990 SC 1266

<sup>186</sup> 2003 CrLJ 2322

<sup>187</sup> 2001 CrLJ 1176: AIR 2001 SC 990

<sup>188</sup> 2004 CrLJ 2490 : AIR 2004 SC 2329

10. In *State of Haryana & Ors. V. Ch. Bhajan Lal & Ors*<sup>190</sup> It was held that incompetency of the police officer to carry on investigation extends only to quashing the investigation, and not the FIR.
11. In *Nandini Satpathy v. P.L. Dani & Anr*<sup>191</sup> The sc held that the investigation proceedings should be quashed where the violation of the provision of the CrPC by summoning a woman to the police station leads to the possibility of self incrimination.
12. In *State of UP v. M.K. Anthony*<sup>192</sup> it was held that the testimony of the witness given in court will not be rejected merely because his signatures were obtained on the testimony recorded in the course of the investigation.
13. In *Director, Central Bureau of Investigation & Ors. v. 'Niyamavedi' represented by its Member K. Nandini, Advocate & Ors*<sup>193</sup> held that Court should refrain from interfering with investigation at a premature stage of investigation.
14. In *Manish Dixit & Ors. v. State of Rajasthan*<sup>194</sup> it was held that a Police officer stated that no one was willing to stand as witness in a trial situated in a different state. He cannot be doubted.
15. In *Budh Singh v. State of Punjab*<sup>195</sup> it was held that Police remand for further period after the first 15 days period has expired is not permissible.
16. In *Bashir & Ors. v. State of Harayana*<sup>196</sup> it was held that cancellation of bail after filing of charge sheet not permissible where accused was released on account of non filing of charge sheet by the police.
17. In *Central Bureau of Investigation v. R.S. Pai & Anr.*<sup>197</sup> It was held that additional documents can be allowed to be submitted subsequent to the charge-sheet.
18. In *State of Kerala v. Babu & Ors.*<sup>198</sup> it was held that case diary of another case not pertaining to the trial in hand can be summoned if the court trying the case considers that said production is necessary or desirable for the purpose of trial, under Sec 91.

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<sup>189</sup> 1993 CrLJ 859: AIR 1993 SC 1082

<sup>190</sup> 1992 CrLJ 527: AIR 1992 SC 604

<sup>191</sup> 1978 CrLJ 986: AIR 1978 SC 1025

<sup>192</sup> 1985 CrLJ 493: AIR 1985 SC 48

<sup>193</sup> 1995 CrLJ 2917

<sup>194</sup> 2001 CriLJ 133: AIR 2001 SC 93

<sup>195</sup> 2001 CriLJ 2942

<sup>196</sup> 1978 CrLJ 173: AIR 1978 SC 55

<sup>197</sup> 2002 CrLJ 2029: AIR 2002 SC 1644

<sup>198</sup> 1999 CrLJ 3491: AIR 1999 SC 2161

19. The Supreme Court categorically said in *Shashikant v. CBI and Others*<sup>199</sup> that When an anonymous complaint is received, no investigating officer would initiate investigative process immediately thereupon.
20. In *Silak Ram and Another v. State of Haryana*<sup>200</sup> the Sc said that Delay in lodging FIR by itself would not be sufficient to discard the prosecution version unless it is unexplained and such delay was coupled with the likelihood of concoction of evidence:
21. In *State of NCT of Delhi v. Ravi Kant Sharma and Others*<sup>201</sup> the Sc said that the accused is not entitled to any copy of the so called 'gist's' of interrogation and they are not deemed to be Sec 161 statements
22. In *Sanjay Bansal \$ Anr. v. Jawaharlal Vats \$ Ors.*<sup>202</sup> the sc felt that the functions of the Magistrate and the police are entirely different, and the Magistrate cannot impinge upon the jurisdiction of the police, by compelling them to change their opinion so as to accord with his view
23. In *Divine Retreat Centre v. State of Kerala*<sup>203</sup> it was observed by the supreme court that the High Court in exercise of its inherent jurisdiction cannot change the Investigating Officer in the midstream and appoint any agency of its own choice to investigate into a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions addressed to a named Judge.
24. In *Naresh Kavarchand Khatri v. State of Gujarat \$ Anr.*<sup>204</sup> Sc held that the High Court doesn't have the power or jurisdiction to transfer an investigation from one Police Station to another. The power of the court to interfere with an investigation is limited.
25. In *ARJUN SINGH v. STATE OF HIMACHAL PRADESH*<sup>205</sup> the court felt that the Identification parade is necessary part of the investigation and in this case the entire investigation was quashed because of non identification of the accused.
26. In *OM PRAKASH v. STATE OF UTTAR PRADESH*<sup>206</sup> it was observed that discrepancies in the investigation such as delay in lodging of FIR, confusion about the time of starting the investigation and recording of 161 statements lead to the acquittal of the accused.

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<sup>199</sup> 2007 Cri. L. J 995 SC

<sup>200</sup> 2007 Cri. L. J. 3760 SC

<sup>201</sup> 2007 Cri L. J. 1674 SC

<sup>202</sup> 2008CriLJ428

<sup>203</sup> 2008CriLJ1891

<sup>204</sup> AIR2008SC2180

<sup>205</sup> AIR 2009 SC 242

<sup>206</sup> 2009 Cri.L.J. 782

27. In *VAKIL PRASAD SINGH v. STATE OF BIHAR*<sup>207</sup> Right to speedy investigation is recognized as fundamental right under article 21 of constitution of India:
28. In *SURESH CHANDRA v. STATE OF MADHYA PRADESH*<sup>208</sup> the SC felt that the IO should always give a true account of facts of investigation otherwise it may lead to a wrong acquittal. Investigating officer of the case had fabricated false evidence by surreptitiously inserting the timings in various documents lead to the dismissal of appeal.

**II. The following are the observations made by the team from the data interpretation of the empirical study.**

1. A Legal advisor may be appointed in all police stations to help the investigating officers. This helps them in collection of correct evidence and to not to waste the time in collecting un wanted evidence or inadmissible evidence
2. Regarding the recovery of stolen property the police officers said that they have a problem of admissibility of evidence if the identity of the goods is changed.
3. Causes for the delay : the important cause is non cooperation of the public, they are scared of the court process.
4. To collect the evidence clues teams are working in city limits, but the number of clue teams shall be raised so that they are available in districts also.
5. The law and order wing shall be separated from the investigation wing.
6. The police personnel is not sufficient to handle the rate of crime in the city.
7. Many cases registered in the police stations are of civil nature.
8. Atleast 40 % of the cases are lost because of the faulty investigation.
9. The delay in filing of charge sheet is one of the reasons for the wrong acquittals.
10. Non supply of important documents to the prosecutor and not providing the same in the right time is also one of the reasons for the faulty acquittal.
11. The case diaries are not maintained properly for lack of time and it affects the out come of a criminal case.
12. Some formalities mentioned in CrPC such as getting independent and respectable witnesses is difficult and because of not getting them the genuine cases are also lost many times.

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<sup>207</sup> 2009 Cri.L.J. 1731

<sup>208</sup> 2009 Cri.L.J 4288

13. On some issues the judiciary and the police has delivered exactly the opposite views on certain issues. For example, recovery of the stolen property. The police said that the court rejects the ingot recovery where as the judges said that if the entire process is explained to the court along with sufficient proofs for example, if a gold chain is lost and the person melts it then if the police can produce the evidence that the chain was melted in some goldsmiths shop and produce evidence to that effect they will admit the ingot recovery. The same way about recording of 161 statements judges said that police doesn't do it properly and the statements recorded are the statements of the police and not of the witness. This is the main reason for loosing the cases. Whereas the police say that they record the statements properly.
14. The crime scene is disturbed by the people generally by the time police reaches the spot because of which crucial evidences like finger prints, hair follicles and other things are lost.
15. Forensic experts delay in sending the medical reports to the police which leads to delay in the submission of charge sheet.
16. Witnesses turn hostile and don't cooperate with police during the trial.
17. The funds allotted to department of police to conduct the investigation is not adequate and the facilities such as mobile phones, jeeps are also not available in many rural police stations is very less.
18. Scientific investigation should be developed and used in all cases.

### **III. Observations from the Workshops conducted:**

In the last stage three workshops are conducted, where all prominent and experienced persons from all fields of investigation such as High court judges, Senior Public Prosecutors, Senior Criminal Law Advocates, senior police officers attended the workshop and aired their views. The suggestions made in the workshops are the following:

- 1) In Murder cases statements recorded under sec 161 along with the inquest report, statements recorded through audio video electronic means shall be submitted to the court immediately. (Objective: This will help in preventing the alteration in the statements by the witnesses. By following this procedure the scope of manipulation in the statements could be minimised to a great extent. The acquittal rate is high because of hostile witnesses).
- 2) The general practice in recording of statements of witnesses is that it is done at the time of the inquest, and produced for the first time when the charge sheet is filed. A better practice would be to record the statements audio

visually and transmit the same to the competent court simultaneously. This will help avoid any possibility of manipulation.

- 3) Separation of law and order from the wing of investigation is essential at organizational level. (Objective: The investigative branch will have free time, independence and expertise to focus on the investigation only. Lack of sufficient human resource is cited as reason for not doing it. Senior Police officers stated that separation was experimented in Cities like Hyderabad and proved good. For mofussil areas, it was felt that the two functions were interlinked deeply for which separation may not be a solution.)
- 4) If the witnesses are taken to nearest magistrate to record their statement, witnessed may fear to resile from the statements made. Fear of law that some legal consequences will follow for resiling the statement must also be instilled in the mind of witnesses so that they do not deviate from the statements they have made before.
- 5) All acquittals cannot be attributed to weak investigation. There are other reasons supporting wrong acquittals such as out of court settlements. The inordinate delay in conducting the trial, and summoning the witnesses for repeated attendance and waiting at court will dilute the initial enthusiasm of complainant and witnesses to fight the case, and that will force them to get into some sort of settlement. In the process justice is casualty.
- 6) If reasons are recorded by the IO for the delay for registering FIR itself on the day of registration itself it will strengthen the prosecution case.
- 7) There is a need to create awareness among police personnel as to prompt registration of FIR without waiting for the permission of the senior officers. (Lack of awareness among the police personnel as the procedures and notifications relaxed the process of registration of FIR even in absence of seniors is main reason. Since almost 55% cases are civil in nature, the police personnel do not bother to know the need for registering the FIR without looking for senior. Delayed registration often results in diluting gravity of offences such as theft or extortion to something that is not a grave crime. In rural areas specifically, false accused are often included in FIR. This is why earlier, village local body used to record and forward the complaint. Absence of the senior at SHO need not be a reason for delay because it is possible to consider HC or Senior Constable if the seniors are not available as SHO, for registration.)
- 8) Use the Information Technology to communicate the copy of FIR. There should be a nodal agency to supervise this activity. Sending FIR by Fax and email to the SDPO, and considering SP as responsible officer regarding complaints, will solve the delay problem. But anonymous FIR might pose problems in such a case.

- 9) There must be a person or an independent & impartial agency to help the illiterate in processing complaint. (Reason: Where the IT facilities are not available and people are poor and illiterate, this measure does not go a long way in redressing problem. The unfortunate reality today is that the police is perceived as promoting the interests of the rich.)
- 10) The SDPO has to first register the FIR and then proceed to the scene of offence, where the job of SDPO is reconstruction of the scene of offence. But this must follow and not precede registration of FIRs. In civil cases, most of the proof is documented so this is not such a great problem. But for crimes, Law does condone delay of even one or two days, even if police take time to verify bona fides. The over anxiety shown by IO to make case stronger, makes the case very weak.
- 11) Separating high profile accused cases from others is unconstitutional as it will be in violation of principle of equality under Article 14.
- 12) Serious cases are handled by Central Crime Station with modern technology including videography of the interrogation.
- 13) Measures to ensure Police accountability are very important. The Investigation is generally monitored by the SP of the district.
- 14) In the state of AP the research team has found a unique practice of waiting for the permission of superior officer for registration of FIR. Superiors exercise this power to permit indiscriminately which is very bad in law. Unfortunately the prevalence of malpractice is due to connivance and lack of supervision and it must be remedied. This practice is strictly followed in some special legislation such as Prevention of Atrocities against SC, ST Act. But, under no Act permission is a requirement.
- 15) Most of the criminal law practitioners felt that It should be mandatory for issuing receipt for complaint or furnishing a copy of FIR immediately would serve the purpose.
- 16) Many participants of the workshop felt that some special training shall be imparted to change the attitude of the police with the people is important.
- 17) A related issue is accessibility to police stations which is a logistical problem and is a very real one, must not be ignored while dealing with substantive lacunae in the law.
- 18) The falsity of the complaint is not to be tested or verified by the police officers when an FIR is being lodged. Yet, this is often done. Often the police feel that they are being diligent by making sure that the FIR is *pukka*. So time expended on travelling and investigation complicates the issue besides causing delay in the registration of FIR. Thereby the suspicion that police

might have tutored the witnesses and the complainant to give information according to their convenience will arise. This suspicion will be highlighted in cross examination, which weakens the prosecution case. The problem with the above practice is that even though the statement of witness is truthful he might not be believed later in a court of law due to the delay surrounding registration of the complaint. This results in an acquittal for the accused. A higher rate of conviction will involve timely lodging of FIRs. In such a circumstance, the entire village will know who has committed the crime, and an acquittal will only serve to erode their faith in the system.

- 19) Some criminal law practitioners observed that the practice of seniors instructing juniors not to register case until the superior advises or permits has to go. Only when the people come with a recommendation from a “contact” is this done without hitches. Often the senior officers themselves direct that no complaint should be registered without their assent.
- 20) Prosecutors suggested that language cant be a barrier in registering the FIR and It must also be noted that there is nothing making it mandatory for FIRs to be recorded in English. This must not deter the officers of a lower rank in allowing for registration of complaints.
- 21) A high rank police official noted that today there are 3,25,000 cases pending trial in AP. However there are 394 lower courts only for that many cases. There are 25,000 non-bailable warrants that have been issued at any times. The number of acquittals is so high that today we are a drifting democracy. As per the Malimath committee, for rape cases the conviction rate is 10.3%; 23% for murders, 50% in cases of Robbery (but mainly brought about by admissions) and 7.5% for cheating. These low rates are indicative of a failing institution. In the UK these rates are higher because there are tie-ups with NGOs to provide for extensive counselling and support to the victims as well as witnesses.
- 22) Some senior police officers felt that there is need for setting up counseling stations at police stations for processing complaints.
- 23) There must be victim-witness support programs in each and every police station limits.
- 24) On section 161 statements, it was suggested that the provision to get them signed by the person making them should be incorporated into the present code of criminal procedure. This is in practice in most of the developed countries. People abroad are shocked to learn that we are still following the age old law in this regard. Offcourse this was one of the important recommendations of the Malimath Committee. Videographing of interrogation can help to prove that no coercion was present during interrogation. However, the efficiency of this safeguard is highly questionable.

- 25) Genuine and prompt entries regarding the investigation in General Diary under section 172 are essential.
- 26) Increase manpower and increase number of Scientific Experts for all clues teams in entire state.
- 27) Investigation can also be improved by providing Travelling allowance/dearness allowance to witnesses so that an incentive is made available to people to come forward and give evidence.

**From the research conducted the research team found that the following are the reasons for the delay in criminal investigation which are leading to wrong acquittals.**

1. **Non cooperation of Public:** Non cooperation of the public, they are scared of the court process. The general public doesn't come forward to sign the panchnama or inquest report. If the same is signed by the police officer it loses its credibility and there by may turn out to be one of more reasons for the wrong acquittal.
2. **Collection of scientific Evidence :** To collect the evidence clues teams are working in city limits, but the number of clue teams shall be raised so that they are available in districts also.
3. **Lack of enough Police personnel:** The police personnel is not sufficient to handle the rate of crime in the city.
5. **Chargesheet:** The delay in filing of charge sheet is one of the reasons for the wrong acquittals.
6. **Police –Prosecution:** The coordination and cooperation in between prosecutors and police is lacking. Non supply of important documents to the prosecutor and not providing the same in the right time is also one of the reasons for the faulty acquittal.
7. **Case Diary:** The case diaries are not maintained properly for lack of time and it affects the out come of a criminal case.
8. **Protection of the crime scene:** The crime scene is disturbed by the people generally by the time police reaches the spot because of which crucial evidences like finger prints, hair follicles and other things are lost.
9. **Forensic Experts:** the number of forensic experts working in Hyderabad and Secunderabad are over burdened. Hence there is inordinate delay in preparing the medical report and sending it to prosecutor. It is found that this delay leads to delay in the submission of charge sheet.
10. **Hostile Witnesses:** Witnesses turn hostile and don't cooperate with police during the trial.
11. **Lack of Funds:** The funds allotted to department of police to conduct the investigation is not adequate and the infra structural facilities such as mobile phones, jeeps are also not available in many rural police stations.
12. Bare confessions without any recovery will not in any way helps strengthening the case. Confession must lead to recovery of some material to make it admissible

**On the basis of the entire study the research team is forwarding the following suggestions:**

1. **Training to Police Personnel :** There is need for increased amount of awareness through intensive training in law (IPC and CrPC) besides local laws, and related aspects for Police Officers on regular basis.
2. **Appointment of a legal officer to assist the Investigation:** A legal officer must be appointed for all levels of the police to render advice and guidance on the legal aspect of investigation to strengthen the utility of the documents recorded at police station.
3. **Providing adequate funds and infrastructure to Investigating Officers:** There is a dire need to increase the allocations and resources for implementing the safeguards under CrPC and other practices such as furnishing a receipt or copy of FIR to the complainant etc.
4. **Setting up of prosecution houses:** Special provisions shall be made to protect the witnesses in the Courts of Justice. There shall be a provision for a “Prosecution house” in the court complex with police protection, so that the complainant/victim is not left at the mercy of the perpetrator of crime or exposed to their threats and terror for lodging of a complaint.
5. **Changing the format of 161 statements:** 161 statements shall be in question answer form to reduce the time consumption and to avoid the introduction of unnecessary statements by police.
6. **Recovery of the stolen property:** Changes shall be made in the criminal procedure in order to restore the recovered property to the owner as soon as possible. At present the recovered property is sent to malkhana where it has to lie for a long time. By the time the property is restored to the owner it becomes completely dysfunctional and useless.
7. **Increasing the number of police stations and courts:** Number of courts and police stations shall be increased to the tune of the increasing population. Mallimath committee observed that an investigating officer on an average investigated 45 case in a year. Whereas in AP the Investigating officer is attending to 145 cases approximately in an year which is relatively high.
8. **Panch Witnesses:** Regarding the panch witnesses a change could be introduced in code of criminal procedure as two ‘independent witnesses’ instead of two ‘respectable inhabitants of the locality’.

9. **Sec 161 Statements:** The statements may be in question answer format. In 70% of cases the cases are lost because of improper registration of 161 statements. This move might help to improve the situation.
10. **Alternative to the appointment of Legal Officers:** as an alternative to the appointment of legal officers the state can allow the Investigating officer can consult the prosecutor during the investigation and take advice it will help to improve the quality of investigation.
11. **Presence of IO in the Trial:** Investigating officer shall be present all through the trial to provide the necessary inputs to the court.
12. **Salaries and Allowances:** Salaries and allowances of the police personnel should increase to match their work and needs.
13. **Networking the Police Stations with the Criminal Courts:** Networking all the police stations and linking with trial courts will improve the situation a lot as there will be immediate transmission of documents, by which possibility of manipulating or changing the documents would drastically reduce.
14. **Counseling in the Police Stations:** There must be a counseling provision in police station and there shall be a psychiatrist in each Jail to counsel the under trial prisoners.
15. **The problem of Stock Witnesses:** Situation where stock witnesses and stock panchs or sometimes stock advocates will worsen the trial and destroy the case. We need to avoid this situation.
16. **Witnesses shall not be summoned by courts:** According to sec 100 (5) panch witnesses should not be summoned to the court and shall not put to unnecessary harassment. Awareness about this provision shall be given to the public to encourage them to come forward for being a witness.
17. **Increasing the number of Scientific Experts:** the number of scientific experts shall be increased to meet the needs of the state. They must be made available to the rural areas of the state also.
18. **Separation of Law and Order Wing:** the is the first step the government should take to improve the quality of Investigation, otherwise the entire criminal justice system may collapse within no time.

# **Part VII**

## **Suggestions**

### **Reasons for the delay in the Investigation & Suggestions**

After the empirical study and analyzing the contributed thoughts from richly experienced judicial and police officers besides the lawyers, and based on the conclusions the research team could bring out the following suggestions to strengthen in criminal investigation so that investigation defects themselves should not result in acquittals.

The research team conducted interviews with different ranks of police officers, Judges – from both the subordinate and higher judiciary, Criminal Law Practitioners and could collect from their practical wisdom. These thoughts are crystallized, analysed as part of this research project and forwarded as suggestions for improvement of investigation to secure convictions.

1. **Appointment of a legal officer to assist the Investigation:** A legal officer may be appointed for all levels of the police to render advice and guidance on the legal aspects of investigation to strengthen the utility of the documents collected by the Investigating Officer.
2. **Alternative to the appointment of Legal Officers:** as an alternative to the appointment of legal officers the state can allow the Investigating officer to consult the prosecutor during the investigation and take advice, which will help to improve the legal quality of investigation. This is suggested inspite of the SC's declaration that prosecutor shall not interfere with the investigation. In our research it is found that the police officers don't know the nuances of the law of evidence and the case cant stand the vigorous cross examination of the defence counsel.
3. **Setting up of prosecution houses:** Special provisions shall be made to protect the witnesses in the Courts of Justice. There shall be a provision for a "Prosecution house" in the court complex with police protection, so that the complainant/victim is not left at the mercy of the perpetrator of crime or exposed to their threats and terror for lodging of a complaint or deposing against. This move might help to minimize the hostile witnesses problem.
4. **Networking the Police Stations with the Criminal Courts:** Networking all the police stations and linking with trial courts will improve the situation a lot as there will be immediate transmission of documents, by which possibility of manipulating or changing the documents would drastically reduce.
5. **Verification of the truth of FIR:** At the outset the police officers present at the police station should immediately register the complaint without probing into the falsity or otherwise of the complaint. Suspecting the complainant should not become a stumbling block in discovering reality. The falsity of the complaint is not to be tested or verified by the police officers at the threshold of FIR lodging.
6. **Recording Reasons for delay by IO:** If the IO records the reasons for the delay in lodging of FIR if any, that might help the prosecution in getting the delay condoned. While conducting the survey of cases in number of cases we have observed that the defence counsel raised an objection whenever there is a slightest delay in lodging of FIR and in some cases the cases were quashed on this ground. By observing the above precaution this problem could be solved to some extent.

7. **Protection of the crime scene:** Besides reaching the scene of crime, the Investigators also should see that the crime scene is not disturbed by the people generally before police reached so that the crucial evidences like finger prints, hair follicles and other things are properly secured and documented. While conducting the survey of cases in the nampally criminal courts we found that very often the crime scene is disturbed and crucial evidence is lost.
8. **Panch Witnesses:** Regarding the panch witnesses a change could be introduced in code of criminal procedure as two 'independent witnesses' instead of two '**respectable inhabitants of the locality**'. Alternatively is suggested to go for govt panch witnesses, ie. The Govt may appoint some officers as govt panchs who work under the DPP(prosecutorial system and not as a part of police department to ensure fairness).
9. **Sec 161 Statements:** The statements may be in question answer format. Now these statements are not recorded when they are stated to the police officer,the statements are mostly doctored by the IO and all the statements would more or less will be the same for all the witnesses in a case. When these statements are shown to the witness for the first time in the court to verify they are obviously are not in a position to identify their own statements and the court declares the witnesses as hostile or they loose the credibility. In 70% of cases the cases are lost because of improper registration of 161 statements. This move might help to improve the situation.
10. **Hostile Witnesses:** To avoid the problem of witnesses turning hostile and frustrating entire criminal justice system including the efforts of the police, every effort should be made to support the witnesses, secure their morale, provide safety to their physical being and make it easy and respectful for them to depose truth in court hall. Witness support systems, honouring their needs and respecting their time is needed.
11. **Witnesses shall not be summoned by courts:** According to sec 100 (5) panch witnesses should not be summoned to the court and shall not put to unnecessary harassment. Awareness about this provision shall be given to the public to encourage them to come forward for being a witness.
12. **Mandatory recording of statements of witnesses in the presence of the Magistrate:** All important witnesses to grave offences such as murder, rape, dacoity etc shall be immediately and mandatory taken to the nearest magistrate to record their statements before magistrate. This might help the prosecution in preventing the witnesses from turning hostile.
13. **Police –Prosecution:** The coordination and cooperation in between prosecutors and police has to be established in a methodical and meticulous manner at micro and macro level. There should be no speedy communication of important documents to the prosecutor in the right time so as to remove suspicions about genuineness of the case to secure the convictions.
14. **Prompt filing of Charge-sheet:** There should be a very comprehensive and cohesive effort by all means to drastically reduce the delay in filing of charge sheet. The research team found that this is one important reason for the wrong acquittal.

15. **Case Diary:** Every arrangement should be made to see that the case diaries are maintained properly for any reason such as lack of time as that affects the outcome of a criminal case.
16. **The problem of Stock Witnesses:** Situation where stock witnesses and stock panchs or sometimes stock advocates will worsen the trial and destroy the case. We need to avoid this situation.
17. **Presence of IO in the Trial:** Investigating officer shall be present all through the trial to provide the necessary inputs to the court.
18. **Recovery of the stolen property:** Changes shall be made in the criminal procedure in order to restore the recovered property to the owner as soon as possible. At present the recovered property is sent to malkhana where it lies for years. By the time the property is restored to the owner it would become useless for him.
19. **Forensic Experts:** Since forensic evidence is growing as a significant component of every crime investigation, the number of forensic experts should be increased as those experts working in Hyderabad and Secunderabad are over burdened resulting in inordinate delay in preparing the medical report and sending it to prosecutor. It is found that this delay leads to delay in the submission of charge sheet, which destroys the case. Unanimously all the prosecutors and police officers said that there is inordinate delay in getting the FSL report. Hence it is suggested to recruit more number of Forensic Experts. They must be made available to the rural areas of the state also. This might expedite the process and strengthen the prosecution case.
20. **Collection of scientific Evidence:** Using scientific evidence is very essential. Though clue teams are working in city limits to secure scientific evidence, there is a need to increase number of clue teams to investigate the crimes in districts also.
21. **Increasing the number of Scientific Experts:** the number of scientific experts shall be increased to meet the needs of the state.
22. **Increasing the Police personnel:** The police personnel are absolutely insufficient to handle the growing rate of crimes and increasing the staff should be the immediate concern of the Government.
23. **Increasing the number of police stations and courts:** Number of courts and police stations shall be increased to the tune of the increasing population. (Mallimath committee observed that an investigating officer on an average investigates 45 cases in a year. Whereas in AP the Investigating officer is attending to 145 cases approximately in a year which is relatively very high).
24. **Training to Police Personnel (Investigating Officers):** There is need for increasing levels of awareness through intensive training in law (IPC and CrPC) besides local laws, special laws, special procedures and related aspects for Police Officers on regular basis. These training programmes shall also include aptitude test as an important component of the content. This might help the police personnel to get closer to the public and to be sensitive towards them. The standards of the training shall be raised. It is found that now the police personnel are attending the training programmes only for the sake of promotions, otherwise they are not really helpful for them for their professional life.

25. **Separation of Law and Order Wing:** This suggestion is been given by number of committees including Mallimath Committee and national police commissions. But the Government did not respond till today. The first step the government should take is to improve the quality of investigation to prevent collapse of the entire criminal justice system.
26. **Providing adequate funds and infrastructure to Investigating Officers:** There is a dire need to increase the allocations and resources for implementing the safeguards under CrPC and other practices such as furnishing a receipt or copy of FIR to the complainant etc. In our research we found that some police stations doesn't have stationery, mobile phones, jeeps etc. they have to depend on the local people for these bare minimum things and are obliged to give undue favours to them in future.
27. **Salaries and Allowances:** Salaries and allowances of the police personnel should increase to match their work and needs. We found in our research that the incentives provided for the IO are commensurating the challenges taken up by them.
28. **Counseling in the Police Stations:** There must be a counseling provision in police station and there shall be a psychiatrist in each Jail to counsel the under trial prisoners.
29. **Securing the cooperation of Public:** Since the members of general public are scared of the court process, they do not come forward to sign the panchnama or Inquest report. If the police officers sign it, it will loose its credibility and validity and become the sole reason for acquittal. Hence it is suggested to create awareness among the public about Sec 100(5) of Cr.PC where it is mentioned that the witnesses need not be summoned to the court.

The research team found is that the poor or improper investigation is the substantial cause leading to wrong acquittals in about half of criminal cases prosecuted. The higher judiciary including the Supreme Court opined many a time that faulty investigation was sole cause for the quashing of charges. What came out in the research is that this conclusion is not true because the team discovered some vital weaknesses in investigation which are fatal to the prosecution. The research led to finding the following areas as grey spots which urgently require through improvement. They are: prompt registration of FIR, drafting of s161 of Statements, communication of documents to the prosecutor without any delay, need for scientific investigation, increasing strength of the cyber forensics department and infra structure, increasing the police personnel at all levels, imparting training to the police on a regular basis updating them with the developments in the technology, separating the investigation from other duties of police, providing legal assistance to the investigating officers, avoiding frequent transfers of Investigating officers, networking the police stations with the courts for the transmission of documents etc.,

# **ANNEXURES**

**Problems in the criminal investigation with reference to increasing  
acquittals: a study of Criminal Law and Practice  
Questionnaire to Police officers (Sub- Inspector of Police, CI)**

Date

Name of the Police Officer

Designation:

Address:

Experience :

1. How many cases are registered in your police station (approximately) in a month?

Ans:

2. How many cases are disposed off after completing the investigation in a month?

Ans:

3. Do you have sufficient strength of police personnel and reasonable time to investigate properly all the cases?

Ans: Yes / No

4. Do you receive Training in (a) forensic investigation (b) any training orientation program in special offences such as offences by women, organized crime, terrorist related crimes, drugs , and cyber crimes etc ?

(Yes/No , no of programmes attended during the entire service : )

5. What are the problems being faced by the investigating officer during the search and seizure ?

A)

B)

C)

D)

6. Is Inquest it very important for an IO in conducting the investigation? Yes/No, What are the problems being experienced by you during conducting 'Panchnama'/ Inquest?

A)

B)

C)

7. Do you propose any changes in the existing procedure relating to Inquest in CrPC?

A)

B)

C)

8. Does the grant of 'Anticipatory bail' affect the process of Investigation?

Yes / No

9. Does 161 statements impact on the acquittal of a criminal case ?

Yes / No

10. Whether a Forensic Expert assists you in collecting the material evidence like finger prints, blood etc during the investigation?

Yes / No

11. Do you have any departmental guidelines to maintain the case diary?

Yes / No

12. Do you think improper maintenance of case diary such as having loose sheets in the CD will lead to an acquittal in a criminal case?

Yes/No

13. Is there any time limit prescribed the department to complete the investigation?

Yes/No

14. Who will supervise and check the delay in the investigation?

Ans:

15. What is your opinion about the investigation conducted under according to Sec 200?

16. Does the Prosecutor/ legal advisor help you or the IO in conducting the investigation?

17. What are the general causes for the delay in the investigation?

Project Coordinator

Dr KVK Santhy

Asst Professor of Criminal Law

Signature of the researcher:

**Problems in the criminal investigation with reference to increasing  
acquittals: a study of Criminal Law and Practice**

**Questionnaire to Judges:**

Date:

Name of the Judicial Officer

Designation:

Address:

Experience :

1. Do you propose to separate the law and order wing from the investigation in order to improve the system?  
A) Yes/ No
2. Do you think that a defective investigation will lead to acquittal of a case?  
A) Yes / No
3. On average how many cases end up in acquittal because of the defective investigation?  
A)
4. What are the loopholes in the present investigation process?  
A)  
B)  
C)
5. If for some genuine reason the IO is not able to procure the attestation of an independent witness on the inquest and search and seizure lists, would it affect the prosecution case? What are the changes to be made in the law to overcome the problem?  
Yes / No  
A)  
B)
6. Do you think that granting anticipatory bail or bail would affect the process of the investigation? Do you propose any changes in the existing law in this regard?  
  
A)  
B)
7. What is the role of the court or judge in conducting the investigation (Do you guide or advise the IO in investigation)?  
A)
8. How do you ensure speedy investigation?  
A)
9. Delay in submitting the charge sheet may affect the prospects of the case. Do you agree?

Yes/No

10. What are the problems an investigating officer is facing in the present system to complete the investigation?  
A)  
B)  
C)
11. How good the relationship between the prosecution and police as far as Investigation is concerned?  
A) Good                      b) Average                      c) Bad                      d ) Cant say

Project Coordinator  
Dr KVK Santhy  
Asst Professor of Criminal Law

Signature of the researcher:

**Problems in the criminal investigation with reference to increasing acquittals: a study of Criminal Law and Practice**  
**Questionnaire to Forensic Experts**

Name of the Forensic Expert:

Date:

Designation:

Address:

Experience :

1. How many cases do you handle every month? And what is the disposal rate?  
A)
2. Are you over burdened and do you propose to increase the number of forensic experts in the state? Does it ensure speed in the investigation process?  
A)
3. Do we have enough number of Ballistic, DNA, Cyber Crime and other kinds of specialized Experts in Hyderabad ?  
A) Yes / No
4. Is the coordination proper between the three wings of criminal justice ie, police, courts and forensic department?  
A) Yes / No
5. Is there any conviction in your knowledge given by the court only on the basis of the forensic evidence?  
A)
6. Do you guide or advise the Investigating officer in the collection of material evidence from the crime scene?  
A)
7. How reliable are the Narco Analysis and brain mapping tests in conducting the investigation?  
A)
8. According to you should the IO be given training in forensic science ?  
A)
9. Are you imparting any training programmes to IOs in this regard ?  
A)

10. What are the reasons for the delay in the investigation in your opinion?  
A)

11. What are the measures do you suggest to speed up the investigation?  
A)  
B)  
C)

12. What are the problems and difficulties you face during conducting the forensic investigation?  
A)  
B)  
C)

Project Coordinator  
Dr KVK Santhy  
Asst Professor of Criminal Law

Signature of the researcher:

**Problems in the criminal investigation with reference to increasing acquittals: a study of Criminal Law and Practice**

**Questionnaire to Public Prosecutors**

Name of the Public Prosecutor:

Date:

Designation:

Address:

Experience :

1. What are the major areas where the investigating officer commits mistakes which may affect the Investigation adversely?  
A)  
B)
2. Does the Investigation officer attend the court proceedings personally or delegates the duty to someone else? (Yes/ No). If yes what would be the impact of it on the outcome of the case?  
A)
3. Do you guide the police officer as how to conduct the search and seizure? (articles or material evidence or any other evidence important to prove the guilt of the person)?  
A) Yes /No
4. Do you have any control over the Investigation process?  
A) Yes/ No
5. Does the IO take your advice while preparing the charge sheet and do you think that improper drafting of the charge sheet affects the case adversely?  
A) Yes/ No
6. Does the delay in submitting the charge sheet affect prosecution case? How?  
A) Yes/No  
B)  
C)
7. If the Investigation officer is delaying in submitting the charge sheet, what measures do you take to ensure the speedy submission of the same?  
A)
8. What are the gaps existing in the coordination between the systems of police and prosecution?  
A)  
B)
9. On average how many cases end up in acquittal because of the defective investigation?  
%

10. Do you receive and impart Training in a) forensic investigation b) any training orientation program in special offences such as offences by women, organized crime, terrorist related crimes, drugs, and cyber crimes etc? How do you acquire the specialized knowledge?  
Yes/No
11. Does the grant of Anticipatory bail affect the investigation?  
Yes / No
12. What are the problems faced by IO during conducting 'Panchnama'/ Inquest, Do you propose any changes in the existing procedure in CrPC ?  
A)  
B)
13. Do you think improper maintenance of case diary by IO will lead to an acquittal in a criminal case?  
Yes/No
14. Do you think that a Prosecutor / legal advisor should guide an IO in conducting the investigation?  
Yes/No
15. Does the frequent transfer of the Investigating officer affect the investigation of the case? What are your suggestions to overcome this problem?  
Yes/No
16. Do you propose to separate the law and order wing from the investigation?  
Yes /No

**Project Coordinator**

Dr KVK Santhy

Asst Professor of Criminal Law

**Signature of the researcher:**

**List of Invitees for the Workshop:**

1. Shri S.Umapathi, Addl DG
2. Shri Nagarjuna Reddy, Senior Judicial Officer
3. Sumathi , SP Cyber Crime Cell.
4. Shri U Ram Mohan(ACP, Cyber Cell)
5. Shri Bala subrahmanyam(DIG, Intellegence)
6. Shri Ranga Das , Advocate, Lakdikapool, Hyderabad
7. Shri Uma Maheswar Rao , Advocate
8. Shri Lakshmi Narayana, Advocate
9. Shri Padmanabha Reddy
10. Shri Shiv Prasad, DCP Alwal, Secunderabad.
11. Shri Surendra Babu Reddy, Director AP Judicial Academy
12. Shri Dr KPC Gandhi, Former Director AP Forensic Labs
13. Shri Kalyani, Public Prosecutor, Namapally Criminal Courts
14. Shri Justice Goda Raghuram, Judge High Court.
15. Shri Honourable Justice Chandra Kumar, Judge High Court.
16. Shri Vani Public Prosecutor, Nampally Criminal Courts
17. Shri Vijaya Lakshmi, Chief Metropolitan Sessions Judge, Nampally Criminal Courts.
18. Shri Krishna Reddy , Criminal Practitioner, Ranga Reddy Courts.
19. Shri Mattapally Srinivas (RR)
20. Shri A.K.Khan, City Police Commissioner.
21. Sri P Ravinder Reddy, Criminal Law Practitioner, Ranga Reddy Dist
22. Sri Srinath Reddy, President Lawyers Association, Nampally Criminal Courts, Hyd.
23. Sri Ravinder Reddy, Public Prosecutor, Ranga Reddy Dist, Hyderabad.
24. Sri Venkat Rao, Former IG
25. Sri Hanumanth Reddy, Former IG
26. Sri Charan, Lawyer
27. Mr. KLB Kumar, Lawyer
28. Mr. Govardhan Reddy, ACP
29. Mr.Arjun, CCS ( Central Crime Station), Hyderabad.
30. Mr. Venkat Prasad, Judge
31. Mrs Vijaya Lakshmi, MSJ, Hyd
32. Miss Madhavi, Lecturer
33. Prof.M.Sridhar Acharyulu, Professor of Law,NALSAR
34. Mr D.Bala Krishna, Asst Professor of Law, NALSAR
35. Arushi, 3<sup>rd</sup> year B.A., LL.B. (Hons.)
36. PRARTHANA, , 3<sup>rd</sup> year B.A., LL.B. (Hons.)
37. K.Hima Bindu, , 3<sup>rd</sup> year B.A., LL.B. (Hons.)
38. Sruthi Namburi, , 3<sup>rd</sup> year B.A., LL.B. (Hons.)
39. Harman Preeth Kaur, , 3<sup>rd</sup> year B.A., LL.B. (Hons.)
40. Priyanca Ravichander, , 3<sup>rd</sup> year B.A., LL.B. (Hons.)

### **Recent Amendments made to Code of Criminal Procedure:**

There are four Acts amending the Code of Criminal Procedure since 2001.

1. The Code of Criminal Procedure (Amendment) Act, 2001 (50 of 2001)
2. The Code of Criminal Procedure (Amendment) Act, 2005 (25 of 2005)
3. The Criminal Law (Amendment) Act, 2005 (2 of 2006)
4. The Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009)

### **Maintenance Right and 2001 Act**

Some changes are made in the provisions under sections 125, 127 by 2001 amendment to streamline the right of dependents such as wife and children to maintenance.

### **Changes by 2005 Act**

Section 46 is amended to prohibit arrest of women before sunrise and after sunset, except in exceptional circumstances which have to be reported by the woman police officer with prior permission of magistrate.

Section 50A is inserted to impose obligation of person making arrest to inform about arrest to any of his friends, relatives or others. Arrested persons have to be informed of their rights after arrest, and compliance of the rule of informing shall be made entered into a book. Magistrate also is obliged to verify this and satisfy himself.

Section 53A is added to make it mandatory to conduct medical tests on accused of rape as follows:

*“53-A. Examination of person accused of rape by medical practitioner.—(1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed, by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.*

*(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:—*

*(i) the name and address of the accused and of the person by whom he was brought,*

(ii) the age of the accused,  
(iii) marks of injury, if any, on the person of the accused,  
(iv) the description of material taken from the person of the accused for DNA profiling, and

(v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in Section 173 as part of the documents referred to in clause (a) of subsection

(5) of that section.”.

Section 164 A is introduced to conduct medical examination of the victim of rape.

164-A. *Medical examination of the victim of rape.*—(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent, shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:—

(i) the name and address of the woman and of the person by whom she was brought;

(ii) the age of the woman;

(iii) the description of material taken from the person of the woman for DNA profiling;

(iv) marks of injury, if any, on the person of the woman;

(v) general mental condition of the woman; and

(vi) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigating officer who shall forward it to the Magistrate referred to in Section 173 as part of the document referred to in clause (a) of subsection (5) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

*Explanation.*—For the purposes of this section, “examination” and “registered medical practitioner” shall have the same meanings as in Section 53.’.

### **Identification and Inquiry**

Section 54A is added which provides for identification of person arrested court may direct, on request of police officer, him to subject himself to be identified by other persons.

Section 176 is amended to provide that if a person dies or disappears or rape is alleged to have been committed on any woman an inquiry shall be held by the Magistrate having jurisdiction.

### **Changes by 2006 Amendment**

By 2006 amendment a new chapter on Plea Bargaining was introduced with sections 265A to 265L. Though, it is notified to come into force with effect from 5<sup>th</sup> July 2006, mostly it remained un-implemented.

The Amendment Act 2009 (the Bill prepared in 2006) brought very significant changes in criminal procedure.

This Act addresses the issues of witnesses turning hostile, and recognition of and compensation to victims. It also provides for fast trial in some cases and amends the process of arrest, investigation and trial.

According to CrPC, during the investigation of a cognizable case (a) a statement made by a witness to a police officer may be recorded in writing by the officer and (b) a statement or confession may be recorded on oath in front of a Metropolitan or Judicial magistrate. A statement made to a police officer does not need to be signed by the person making the statement. It cannot be used as evidence in trial except to contradict that witness. A statement given on oath adds to a case but is not sufficient to convict an accused.

The Act provides that statements given to police, if written down, shall be signed by the person making the statement. It shall be forwarded without delay to the magistrate empowered to take judicial notice of the case. A copy of the statement shall be provided to the person giving the statement. All material witnesses in an offence punishable with death or imprisonment for 10 years or more shall be produced in front of the nearest Metropolitan/Judicial magistrate for recording their statement. The magistrate shall ensure that the statement is not being made under any inducement, threat or promise. If a witness deviates from his statement as given before a magistrate and if this is detrimental to the prosecution case he may be tried by a fast track procedure. If he is found guilty he

would be punished with imprisonment for a term between three months and two years, and may also be fined.

### **Changes by 2009 Amendment: Investigation and Trial of Rape Cases**

The 2009 Amendment provided that the investigation in case of a rape shall be conducted at the house of the victim, as far as practicable by a woman police officer. A victim below the age of 18 years shall be questioned in the presence of her parents or a social worker of the locality. Investigation in case of a rape of a child may be completed within three months from the date of registration of the First Information Report. Inquiry or trial in rape cases, as far as possible, shall be completed in two months from the date of the examination of witnesses. The trial of rape and custodial rape, so far as practicable, shall be presided over by a woman judge.

### **Death Sentence**

If a woman sentenced to death is pregnant, the sentence shall be commuted to life imprisonment.

### **Arrest Procedure**

The Law Commission has suo mottu reviewed the provisions relating to arrest, in the wake of the Supreme Court Judgment in the D.K. Basu vs State of West Bengal (1997) 1 SCC 416, with a view to clearly delineate and regulate the power of arrest without warrant, vested in the police by section 41 and other provisions of the Criminal Procedure Code and submitted its One Hundred Seventy Seventh Report (2001). Based on these recommendations the Bill, 2006 which became Act 2009 made certain changes. These amendments will incorporate provisions to the Code of Criminal Procedure Code, 1973 like - exercise of power of arrest after reasonable care and justification; right of the arrested person to have his advocate present during the investigation; issuance of notice of appearance for investigation instead of arresting the person; avoiding of touching the body of female accused by male police officers; examination of arrested persons by medical practitioner soon after the arrest; health and safety of the arrested person to be the duty of person having his custody; arrest to be made strictly according to the Code; case diary to contain statement of witnesses etc.

### **Views of Members/witnesses**

Parliamentary Standing Committee on Home Affairs considered the amendments proposed and gave a report. The members expressed following views.

(i) Under sub clause (ii) (b) of clause 5, a police officer is empowered to arrest a person for proper investigation of the offence or for the reason that detention of such person in custody is in the interest of his safety. Arresting a person in the interest of his safety is highly objectionable as the provision is likely to be misused by the Police;

(ii) The words ‘credible information’ in clause 5 (i) (b) are liable to be misused as it gives a free hand to police officer to arrest people without warrant. The words “who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made” in the existing code are more appropriate and thus may be retained;

(iii) Clause 6 (New Section 41A) proposes to provide that the police officer may, instead of arresting the person concerned, issue to him a notice requiring him to appear before the Police Officer issuing the notice, or at such other place as may be specified in the notice and to cooperate with the Police Officer. Police will never arrest an accused but he would just send a notice to the accused to come over the police station or any other place where he may be arrested. Secondly, if he defies the notice he is exposed to prosecution for not responding to the notice of the public servant. Anticipatory bail application is also circumscribed inasmuch as when the police officer calls the accused he has no option but to appear and surrender;

(iv) In Section 54 (clause-8), it has been suggested that the words “registered medical practitioner” should be substituted by the words “registered government medical practitioner”. ([http://rajyasabha.nic.in/book2/reports/home\\_aff/128threport.htm](http://rajyasabha.nic.in/book2/reports/home_aff/128threport.htm) (7 of 24)9/6/2007, 128th Report of Committee on Home Affairs)

### **Changes in law of Arrest**

Significant changes in arrest procedure were introduced by Amendment Act 2009. Generally the CrPC does not require the police to state the reasons for arrest for cognizable cases. The Act 2009 amends this by requiring police officers to state the reasons for arrest in case of offences punishable with imprisonment up to seven years. The police may arrest based on credible information only in cases where the offence is punishable with death or imprisonment in excess of seven years.

The Act directed that instead of arresting a person, the police officer may issue a “notice of appearance” to the person requiring him to present himself as specified in the notice. On complying with the terms of the notice, a person would not be arrested. While making an arrest the police officer should be easily identifiable by name. He shall also prepare a memorandum of arrest which shall be attested by a family member or a respectable member of the locality where the arrest is made. If it is not so attested, the arrested person shall have the right to have a family member or a friend named by him informed of his arrest.

A male police officer shall not touch a woman while arresting her. After arrest, a woman shall be examined by a woman doctor. During investigation, if a woman below the age of 18 years needs to be detained, she shall be detained in a remand home or a recognised social institution.

An arrested person is entitled to meet his advocate during interrogation but not have his advocate present throughout the interrogation. An arrested person would be examined by a doctor. A copy of the medical report shall be furnished to the arrested person or to a person nominated by him.

The Amendment Act 2009 makes it mandatory for a person having custody of an accused person to take reasonable care of the health and safety of the accused person.

It also mandates that the Police control rooms shall be established at the state and the district level. Notice boards kept outside district control rooms shall display the name and addresses of all arrested persons and the name and designation of the police officers making the arrests.

### **Recording of Statement**

The 2009 Act provides that all statements/confessions made before a police officer/magistrate may be recorded by audio-video electronic means. An accused person may also be produced before a magistrate by means of a video link rather than being produced in person.

Prior to 2001 there were ten amendments to Code of Criminal Procedure, 1973 (Act 2 of 1974) which came into force on 1<sup>st</sup> April, 1974. Changes in brief with regard to FIR Arrest and Bail, in brief, are as follows:

### **FIR**

Investigation into crime is always a complicated process because of its combination with law, practice besides combat with criminals. Search of evidence to link crime to criminal is the important component of the investigation. Nothing starts if there is no information. First information sets the 'law' in motion. FIR is a very peculiar document, which is neither a complaint nor a report, nor even a combination. But it has elements of information disclosing occurrence of a crime, criminal, if any, basic details of crime and other relevant points which could be available at the first instance. Prompt registration of FIR can lead to successful investigation and prosecution. Section 154 providing for FIR remained same. Whether FIR can be registered to start investigation against police for an encounter resulting in killing extremist? Is it necessary for the police who killed to prove that it was done in self defence? These were very important aspects that were examined thoroughly Andhra Pradesh High Court all the questions in affirmative, in 2009. This decision is under a challenge before the Supreme Court.

### **Investigation: Statements u/s 161**

As per the 2009 amendments, statements under Section 161 can also be recorded by audio-video electronic means. Under Section 164 a confession also could be recorded by audio-video electronic means.

The statements of witnesses recorded during the course of investigation under section 161 shall be inserted in the case diary. (172 (1A))

The investigation in relation to rape of a child may be completed within three months from the date of FIR. (s 173 (1A)). Another proviso is added to Section 157

facilitating recording of statement of the victim at residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.

Section 164A is added by 2005 amendment, which says where rape or attempt to commit rape is being investigated, when it is proposed to get the person of the woman examined by a medical expert, such examination shall be conducted by registered medical practitioner of Government hospital or in his absence, by any other registered medical practitioner with her consent within 24 hours from time of receiving information. Such medical practitioner has to give detailed report without delay as to her name, age, description of material or DNA, marks of injury, general mental condition, other material particulars in material detail. Such report also shall state reasons precisely for conclusions arrived at. It should also record consent by her or obtained on her behalf. Time of commencement and completion of examination also shall be recorded. It has to be immediately forwarded. Without the consent, such examination would be rendered unlawful.

### **Changes in Law of Arrest: New Statutory Rights for Arrested**

The law of arrest underwent important changes. The new amended law, under Section 41A, has considered arrest as one of the methods of procuring the presence of accused and if his presence is possible, the legislators intended, the arrest should be avoided. Besides arrest, this approach also would help in reducing the possibility of detention prior to trial.

*No arrest for less serious offences:* For all those offences for which seven or more years of imprisonment are prescribed, the arrest is made mandatory while, for all other lesser offences, notice of appearance would suffice.

*Notice of appearance, not arrest:* Arrest might become necessary only when accused fails to comply with the notice of appearance. Section 41A prescribed these rules.

### **Proposed Amendment Bill 2010**

However, due to heavy protest from lawyer's community, this change was not notified. The Government made a reference in the matter to the Law Commission of India to take the initiative to bring about a consensus on the issues. The Law Commission discussed the issues with all concerned including the Chairperson(s) of some of the Bar Councils and the Chairman of the Bar Council of India. After holding consultations, the Law Commission recommended further amendment in the provisions of amended section 41 of the aforesaid Act to make it compulsory for the police to record the reasons for making an arrest as well for not making an arrest in respect of a cognizable offence for which the maximum punishment is up to seven years. The Law Commission also suggested further changes in the newly inserted section 41A of the Code of Criminal Procedure Act, 1973 (inserted by Act 5 of 2009) to make it compulsory for the police to

issue a notice in all such cases where arrest is not required to be made under clause (b) of sub-section (1) of the amended section 41. It was also suggested that the unwillingness of a person who has not been arrested to identify himself and to whom a notice has been issued under the aforesaid section 41A could be a ground for his arrest. It has been decided to accept the suggestions of the Law Commission of India and to amend the Code of Criminal Procedure Act, 1973 as amended by the Code of Criminal Procedure (Amendment) Act, 2008, by introducing the Code of Criminal Procedure Amendment Bill, 2010.

By this bill a proviso is proposed to be added to section 41. "Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest."

In Section 41A, (a) in sub-section (1), for the words "The police officer may", the words "The police officer shall" shall be substituted;

(b) for sub-section (4), the following sub-section shall be substituted, namely:—  
"(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice."

### **Rights of Arrested persons**

The amendment brought in 2009 also added 41B and 41C incorporating the judicial pronouncements as provisions of law reducing the rigour of harsh power of arrest and providing for protection of human rights.

The other important provisions gave several rights to the arrested person.

*Right to know:* The arrested person has right to know the name of arresting officer, which means he should bear an accurate, visible and clear identification of his name to facilitate easy identification.

*Right to memorandum of arrest:* Police officer has to prepare a memorandum of arrest which is to be attested by at least one witness, who is a member of family.

*Right to inform a friend:* The right of arrested to have a relative or a friend named by him to be informed of his arrest were also created.

*Right to have advocate of his choice:* Arrested also was given a right to meet an advocate of his choice during interrogation. (Section 41B)

*Right to medical examination:* Section 54 is replaced with a new section providing a right to arrested to get examined by medical officer.

*Right to health and safety:* Section 55 A is added which imposed a duty to health and safety of arrested person.

Thus there are eight important changes in law of arrest:

- (a) Power of arrest must be exercised after reasonable care and Justification.
- (b) Arrested persons to have right of having his advocate present during Investigation.
- (c) Notice of appearance to be issued for investigation instead of arresting the person.
- (d) Avoiding touching of the body of the female accused by male police officers.
- (e) Arrested person to be examined by medical practitioner soon after the arrest.
- (f) Health and safety of the arrested person to be the duty of person having his custody.
- (g) Arrest to be made strictly according to the code.
- (h) Case diary to contain statement of witnesses.

### *Producing in person*

Under Section 167 new proviso is added. Magistrate shall authorize detention of accused in custody of police only when he is produced before him in person for the first time and subsequently every time. Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage.

### *Remand home custody for woman*

In case of a woman under 18 years of age, the detention shall be authorized to be in the custody of a remand home or recognized social institution.

## **Bail**

Amendment in 2006 removed the hardship of securing security bonds for a poor arrested person and allowed him to be released on execution of bond. If a person arrested is indigent and is unable to furnish surety, instead of taking bail from such person, he can be discharged on executing a bond without sureties for his appearance (Section 436). Section 436A provided for release of undertrial prisoners on personal bonds with or without sureties, if they complete one-half of the maximum period of sentence specified for that offence under that law. This is not applicable for offence for which the punishment of death has been specified as one of the punishments under that law.

Section 438 which directed the grant of bail to person apprehending arrest, is amended by Amendment 2005. This amendment provided for certain grounds that could be taken into consideration before deciding to grant or reject the anticipatory bail. Those grounds are: nature and gravity of accusation, antecedents of applicant with reference to previous conviction, possibility of fleeing away from justice and where the accusation

has been made with the object of injuring or humiliating the applicant by having him so arrested.

These major changes brought by various Amendments are discussed in this revised book.

It is sincerely attempted to add all significant developments in the law by both legislation and judiciary on these aspects of FIR Arrest and Bail. I hope it will serve the readers better than the first edition. I thank Mr. S.P. Gogia and Mr. Sunil Gogia and his staff for their keen interest in making this book comprehensive and attractive.

- **Madabhushi Sridhar**

## Meeting of Experts

To elicit views on rationalizing the Procedural Law of Investigation:

We, faculty of NALSAR with BPRD are working on possibility of changes in law, procedure and systems in investigation of crimes. During study we came across divergent views on certain issues, based on which following questions are framed. We solicit your gracious presence and valuable views on these questions which, I believe will enrich the research and help improving the systems to achieve better results.

1. Why police does not register a case? What to do, if improperly rejected? How to exercise discretion? Any guidelines or best practices?
2. How to curb the planting of evidence by police or with connivance of police?
3. Whether Judiciary has to supervise or advise or guide the investigation? Propriety of Judicial supervision or Judicial correction of investigation.
4. Developing better practices of supervision within police over investigation.
5. Using technology in collection of evidence
6. Measures to improve efficiency in the investigating process through developing systems, besides training.
7. Proposed changes in recording the Section 161 statements, and their utility in trial.
8. Problems in filing charge sheet, possibility of regulating and ensuring the timely filing: Analysing the impact of delayed filing on the result of the prosecution.
9. Separation of investigation from Law & Order wing or introducing a special cell exclusively to investigate within every police station or at District level to work under a monitoring cell at State level center. (coordination between various special investigation cells such as cyber, white collar, terrorist, trafficking, drugs etc)
10. Is there any need to change the procedure with regarding investigation of crimes against women such as sexual assault, dowry death?
11. Immunizing police and judiciary to face Media influence on the investigation and prosecution.
12. Restoration of stolen but recovered property, ingot recovery: is there a need to change the law.
13. Political Control over the Police? According to the National Police Commission, the manner in which political control has been exercised over the police in this country has led to gross abuses, resulting in erosion of rule of law and loss of police credibility as a professional organisation. What to do?
14. Judicial custody and control of the judiciary. How to differentiate judicial custody from police custody?
15. Is there any need to simplify the procedural law for search and seizure?
16. How to expedite the forensic reports?

