CHAPTER-VI
6. DUTIES:

There are several types of duties of Police Force. Looking to the other Government organizations there are fixed or limited duties but in police force there are varieties of work in the duties even though they are having less salary/remuneration in comparison of other employments.

6.1 General duties of Police Forces are as under:

GENERAL DUTIES OF THE POLICE:

- Execution of orders and processes.
- Prevention and Investigation of crime.
- Prevention of public nuisances.
- Arrest.
- Assistance to another Police officer.

Co-operation between police of adjacent territories in the matter of pursuing cases of abducted persons.

Co-operation between the Railway and District Police in the Investigation of crime.

Conferences of Police officers.

Co-operation between the Railway police and Railway officials.

Co-operation between Railway Protection Force and Government Railway Police.

Assistance to disabled persons.

Health and comfort of persons in custody.

Damage by fire, animals, etc.

Control of traffic.

Barriers on streets for checking vehicles and their drivers.

1. BOMBAY POLICE ACT, POLICE MANUAL AND STANDING ORDERS FOR POLICE FORCES.
Maintenance of order in streets and public places.
Duties of the Police in the matter of enforcing regulations in connection with Epidemic Diseases.

- Enforcement of Police regulations for preventing breach of peace.
- Stray cattle and unclaimed property.
- Hydrophobia and Stray Dogs.
- Duties under special or local laws.
- Duties of the Inspector-General of Police.
- Duties of the Commissioner of Police.
- Duties of Deputy Inspector-General of Police.
- Duties of Superintendent of Police.
- Duties of the Deputy Commissioners of Police.
- Duties of Sub-Divisional Police Officers.
- Duties of the Supdt. of Police in the commissionerate area.
- Duties of Circle Police Inspectors.
- Duties of Inspector of Police in the commissionerate.
- Duties of Home Inspectors.
- Duties of Sub-Inspectors.
- Duties of Sub-Inspectors of Police in the commissionerate.
- Duties of second Sub-Inspectors.
- Duties of Head constables.
- Duties of the Police Armourers and Assistant Armourers.
- Duties of constables.
- Superiors competent to perform duties of subordinates.
- Investigations by ordinary Police in the spheres of special branches of the Police.

**MAINTENANCE OF ORDER:**

- District Magistrate’s responsibility.
- Prompt reports to Govt. relating to riots.
- Special reports of important events.
- Strikes and lockouts.
- Reports regarding hunger-strikes of prisoners.
Police action during industrial unrest.
Police action during railway strike and other eventualities on railway.
Maintenance of law & order during general elections.
Preventive measures in case of threatened communal trouble.
Principles to be observed in opposing troops or armed police to hostile mobs.
Type of ammunition to be used for Law and Order duties.
Use of fire arms in dispersing an unlawful assembly.

**PREVENTIVE ACTIONS.**

Record of crime and criminals.
Village crime register and village conviction register.
Confidential note on the village.
History sheets.
Register of suspects visiting village.
Police Station conviction registers.
Known criminals register.
Identification of Habitual offenders.
Village patrolling.
Road patrolling.
Travelling Police Guard on Night Passenger Trains.
Wandering gangs.
Action against Gangs of Foreigners.

**Preventive Actions to be taken by Police Officers:**

According to **CrPC-149**, Police to prevent cognizable offences.—Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

According to **CrPC-150**, Information of design to commit cognizable offences.—Every police officer receiving information of a design to commit any cognizable offence shall communicate, such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.
According to **CrPC-151** Arrest to prevent the commission of cognizable offences.—

(1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention, required or authorized under any other provisions of this Code or of any other law for the time being in force.

According to **Cr PC-152** Prevention of injury to public property.—

A police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal or injury of any public landmark or buoy or other mark used for navigation.

In other cases of prevention of crime the police has powers to make report to the Executive Magistrate u/s, **107 of CrPC**. Security for keeping the peace:-

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, [with or without sureties,] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.
6.2 INVESTIGATION OF CRIME:

Free use of telegrams by the Police in matters relating to crime. Now it is upgraded and FAX, WIRELESS and COMPUTER massages are conveyed by the police authorities.

Stoppage of Railway trains at non-stop stations and detachment of a railway carriage in a case of serious crime.

Identity of Police officers proceeding outside jurisdiction.
Investigation in military lines.
Treatment of certain offences for Police purposes.
Complaints referred to Police by Magistrates.

Cases referred to Police by Magistrates otherwise than on complaint.

First information of a cognizable offence.
Kidnapping, abduction or missing person’s cases.
Procedure when jurisdiction doubtful.
Prosecution and Court Proceedings.  

DUTIES OF THE POLICE UNDER CERTAIN SPECIAL OR LOCAL ACTS AND AID TO OTHER DEPARTMENTS.

Archeological Remains.
Details to be noted and reported in connection with Aircraft.
Checking of baggage on receipt of warning regarding bomb scare.
Registration etc. of private firearms of Police officers.

1. REPORT OF THE COMMITTEE ON POLICE TRAINING, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, P.315-317.
The crime problem has proven to be resistant to a multitude of social control strategies. One of the strategies most frequently advocated by politicians, police, and others in the effort to control crime is the expansion of police employment. However, the empirical relationship between crime rates and police employment has seldom been the subject of systematic analysis by social scientists. That relationship constitutes the primary focus of this topic. Our structural models of violent and property crime incorporate several determinants of crime rates identified in earlier ecological studies (density, racial composition, and poverty population composition), in addition to measures of age composition, population size, and police employment.

A number of possible casual relationships may exist between crime rates and police employment; (1) increased crime rates may cause increased police employment; (2) increased police employment may cause increased crimes rates; and (3) crime rates and police employment may be relationships may be spurious. Just as there are a number of possible causal relationships between these two variables, there are also alternative theoretical perspectives which might help explain these relationships. First, the relationship between crime and police employment may be viewed from a labeling, or societal reaction, perspective. Specifically, high-crime rates may be interpreted by citizens as indicating a break-down in, or threat to, social control. Societal reaction may then take the form of increased demand for social control—i.e., police services. From this perspective, then, it is reasonable to hypothesize that crime rates should be positively related to police employment. Moreover, when crime is viewed as the dependent variable, the labeling perspective would still suggest a positive relationship. That is, from a societal reaction perspective, an expansion in the “labeling system” should, theoretically, increase the number of people labeled (or potentially labeled). Therefore, as the number of police per capita increases, so should the amount of crime which can be processed. From this perspective, police employment data are an organizational variable and provide as estimate of the system’s “processing capability.” From a societal reaction perspective, then, one would hypothesize a “spiral effect,” with high crime rates leading to

1. Report of the committee on Police Training, Ministry of Home Affairs, Govt. of India, P. 321
increased police employment which, in turn, leads to higher crime rates. An alternative theoretical perspective that of deterrence, would suggest a different kind of reciprocal relationship between crime rates and police employment. To the extent that expanded police employment is perceived as increasing the probability of punishment, there should theoretically, be a corresponding reduction in crime rates.¹

POLICE INVESTIGATIONS:

A person was presumed, to be innocent, until proved guilty in accordance with the procedure, laid down by the law. The State was almost put in the same position, as the accused. It had to prove its case, in reasonably independent tribunals, or the courts, before the guilt of a person could be proven and the punishment awarded.

In fact, the State was and is, still at a disadvantage, because neither the statements recorded by its investigating agency nor the confession, made before it, are admissible in law. Thus, theoretically and even actually, if an accused person committed a murder and confessed the same to the highest police functionary in the State, that is the Director General of Police, this confession, will not be admissible in law courts. The evidence of a top police officer is even worse than useless. But if such confession is made, before a criminal or a person, wanted by the law, this will be admissible and creditworthy, so far as our legal system is concerned. Apart from this, the State provides legal aid to the criminals, who cannot afford a lawyer of their own. This bounty is, against and at the expense of the taxpayer. Thus, the taxpayer not only has to pay for nabbing and prosecuting the criminal, but also for helping him to get out any legal harm, that may come his way. One can understand the citizen paying to get the guilty punished. But it appears a bit too thin for the citizen, paying for the accused to evade the punishment for crime committed by him. Thus, the double sufferer is the innocent citizen who has to pay twice for no fault of his own. The courts in the country are cluttered with the cases and due to the sheer larger volume of numbers, it is not possible to dispose of the present work load, for decades to come, even assuming, that no case is added, for the next ten years. If the cases are allowed to drag on, as is happening now, a stage is bound to come when the people

¹. POLICE WORK, Strategies and Outcomes in Law Enforcement, Edited by DAVID M. PETERSEN, Page No. 79.
Will take the law in their own hands. There is a limit, to which the patience of the people can be stretched. The case of patience, being exhausted, happened in Bhagalpur in Bihar, when the entire town, went on strike, in favour of the policemen, who had allegedly been suspended, for committing atrocities on the dacoits. This was a case, where people had exhausted their patience, with the criminal justice system. They were in favour of a summary public trial, even though in the eyes of law, such a proposition has no place. This only highlights the need of law, to keep pace with the social changes.

**Manning the Police Outpost:**

Police outpost is a curious institution. It generally consists of a Sub Inspector or Head Constable and some Constables. It has no legal authority to register a case. It is a poor substitute of a police station. It only communicates the offences which take place, in its jurisdiction. The Head Constable cannot investigate a case unless specially empowered or acting as the officer in charge of the police station. The outpost does not even have the strength to maintain the law and order, because one or two of the constables are used for sentry duty. This is one of the old practice continued, everywhere in Gujarat State.

**The Sentry on Duty: A Wasteful Practice:**

A person complained to a police constable on duty at an outpost about a quarrel. He requested his intervention in resolving the dispute. The police constable replied that as he was all alone, on sentry duty he could not leave the post. The complainant pleaded for immediate intervention, as the quarrel otherwise would assume serious proportion. The Constable true to the sentry duty, thought otherwise. He considered it more important, to stick to the outpost office, rather than to save a life. The complainant in desperation after having failed to persuade him to act, stabbed the Constable. The Constable survived the attack, after a dozen stitches, and three weeks of agonizing stay in the hospital. The point to be observed here is that the police is bogged down in routine duties laid down, by the antiquated orders, which nobody has thought fit to amend.

There is no reason, as to why the vast manpower used, just for standing for sentry duty, cannot be diverted to real and effective policing, or for updating the
police records, for effective control on crime and criminals. It is time for police to muster enough grit to dump some of the wasteful practices. Such practices should have been discarded long ago. Policing is becoming more and more difficult day by day, not only for the policemen, but for the public as well. The expectation of the people has been aroused, after the literacy. They expect much more, from their democratically elected representatives, than from the civil servants. The civil servants have many times, to perform the work, of brakes. Nobody ordinarily wants to be stopped and least of all the public representatives, because it is likely to give an impression of dependence, as well as leaning on the bureaucracy. Policemen get caught, in the whirlpool of the state policies, which they neither frame, nor have been consulted before they were framed. The responsibility of the implementation lies elsewhere, other than in the police department in this case.

**Cyber Crime: Prevention & Investigation:**

Cyber crime has become a reality in India. Airlines are defrauded to lakhs of rupees by tempering with the computerized booking records. In the arms drop case of Purulia, the main players used Internet for the International Communication Computer hackers got into the Bhabha Atomic Research Centre and stolen data. Many other cases are being investigated. Law enforcement officials throughout the World are severely handicapped in tackling the new wave of Cyber Crimes. The biggest impediment they face is total anonymity which the Internet provides to an intelligent hacker. In this article, the challenges that law enforcement agencies are facing vis-à-vis cyber crime and methods of prevention have been highlighted.

1. **The Scenario:**

Cyber Crimes have become a reality in India, too. Indian Airlines was defrauded to the tune of several lakhs of rupees, by tampering with the computerized booking records. In the arms drop case of Purulia, the main players used Internet for the International Communication, planning and logistics. Computer hackers have also got into the Bhabha Atomic Research Centre [BARC], Computer professionals, who prepared the Software for M.B.B.S. Examination, altered the data and gave an upward revision to some students in return for a hefty fee.
A few other cases being investigated in India include loss of 1.39 crores to a nationalized bank where the Computer records were manipulated to create false debts and credits; loss of 2.5 lakhs due to computerized creation of false bank accounts in another nationalized bank, a MTNL official manipulated computer terminals by reversing the electronic telephone meter systems, thereby allowing some companies to make overseas calls without paying.

2. Challenges for Law Enforcement Officers in Investigation of Cyber Crime:

Law enforcement officials throughout the World are severely handicapped in tackling the new wave of Cyber Crimes. The biggest impediment they face is total anonymity which the Internet provides to an intelligent hacker. Getting Internet account in fake names is easy. Moreover accounts can be used and discarded even before the authorities know that a criminal activity has taken place. This renders the problem more intractable for the law enforcement agencies.

Furthermore, there is an International connotation to Computer Crime. The hackers are not hampered by borders and geographical limitations. Traditional jurisdiction doesn’t mean anything any more.

3. Technical, Legal, & Operational Challenges to The Law Enforcement Agencies in Investigation of Cyber Crime:

The Challenges that law enforcement agencies face today to battle with Cyber Crime can be divided into three categories:

(a) **Technical Challenges** that hinder law enforcement’s ability to find and prosecute criminals operating On-line.

(b) **Legal Challenges** resulting from laws and legal tools needed to investigate Cyber Crime; and

(c) **Operational Challenges** to ensure that a net work of well-trained, well-equipped investigators and prosecutors who work together even across national borders.

All three types of challenges require significant resources and a sound legal and policy framework in which to address them. The needs and challenges
confronting law enforcement “are neither trivial nor theoretical.” The law enforcement agencies have to prepare themselves to meet these challenges.

(a) Technical Challenges:

When a hacker disrupts air traffic control at a local airport, or when a child pornographer sends computer files over the Internet, or when a cyber talker sends a threatening e-mail to a school or a local church, or when credit card numbers are stolen from a company engaged in e-commerce, investigators must locate the source of the communication. Everything on the Internet is communication, from an e-mail to an electronic heist. Finding an electronic criminal means that law enforcement must determine who is responsible for sending an electronic threat or initiating an electronic robbery. To accomplish this, law enforcement must, in nearly every case, trace the “electronic trail” leading from the victim back to the perpetrator. Tracing a criminal in the electronic age, however, can be difficult, especially if we require international cooperation if the perpetrator attempts to hide his identity, or if technology otherwise hinders our investigation.

Earlier law enforcement rarely needed to be concerned about fighting crime across international borders. This is no longer the case. We know too well the daily challenges we face when combating criminals who do not respect national borders. As networked communications and e-commerce expand around the globe, businesses and consumers become more and more vulnerable to the reach of criminals. The global nature of the internet enables criminals to hide their identity, commit crimes remotely from anywhere in the world, and to communicate with their confederates internationally. This can happen in nearly any type of crime, from violent crime, terrorism, and drug-trafficking, to the distribution of child pornography and stolen intellectual property, and attacks on e-commerce merchants.

Criminals can choose to weave their communications through Internet service providers in a number of different countries to hide their tracks. As a result, even crimes that seem local in nature might require international assistance and cooperation. For example, a computer hacker in Oslo might attack the computers of a corporation located only a few miles away. Yet, it is very possible that the OKOKRIM might have to go to American, French, or Danish law enforcement.
officials for help in finding this criminal. This would happen if the hacker routes his communications through service providers in New York, Paris, and Copenhagen before accessing his victim’s computer.

Naturally, criminals like these, who weave communications through multiple countries, present added complexities to governments trying to find criminals. Mutual legal assistance regimes between governments anticipate sharing evidence between only two countries, that is, the victim’s country and the offender’s country. But when a criminal sends his communications through a third, or fourth, or fifth country, the processes for international assistance involve successive periods of time before law enforcement can reach data in those countries, increasing the chances the data will be unavailable or lost, and the criminal will remain free to attack again.

At the same time, the global nature of the Internet makes it easy for a criminal armed with nothing more than a Computer and modem, to victimize individuals and businesses anywhere in the world without ever setting foot outside his or her home. The recent denial of service attacks serve as a good example of how easy it can be for cyber criminals to commit crimes across borders, as well as how technical and infrastructure challenges have made international cooperation a necessity.

**Electronic Fingerprint:**

While less sophisticated cyber criminals may leave electronic “fingerprints,” more experienced criminals know how to conceal their tracks in cyberspace. With the deployment of anonymous software, it is increasingly difficult and sometimes impossible to trace cyber criminals. At the same time, other services available in some countries, such as pre-paid calling cards, lend themselves to anonymous communications. All of these technologies make identifying criminals more difficult, even though they have other benefits.

**(b) Legal Challenges:**

The second type of challenge we face as investigators and prosecutors is in the legal arena. Deterring and punishing computer criminals requires a legal structure that will support detection and successful prosecution of offenders. Yet the laws defining computer offences, and the legal tools needed to investigate criminals using
the internet, often lag behind technological and social changes, creating legal challenges to law enforcement agencies. In addition, some countries have not yet adopted computer crime status.

Hacking and virus-writing and proliferation are not simple pranks, but injuries that have significant security and financial consequences. At a time when the number of crimes carried out through the use of computer technology is increasing at an alarming rate, it is especially important that law enforcement officials around the world demonstrate that such crimes will be punished swiftly and with an appropriate degree of severity. When one country’s laws criminalize high-tech and computer-related crime and another country’s laws do not, cooperation to solve a crime may not be possible. Inadequate regimes for international legal assistance and extradition can therefore, in effect, shield criminals from law enforcement.

(c) Operational Challenges:

In addition to technical and legal challenges, law enforcement agencies around the world face significant operational challenges. The complex technical and legal issues raised by computer-related crime require that each jurisdiction have individuals who are dedicated to high-tech crime and who have a firm understanding of computers and telecommunications. The complexity of these technologies, and their constant and rapid change, mean that investigating and prosecuting offices must designate investigators and prosecutors to work these cases on a full-time basis, immersing themselves in computer-related investigations and prosecutions.

We also should have dedicated high-tech crime units that can and will respond to a fast-breaking investigation and assist other law enforcement authorities faced with computer crimes.

In addition, because of the speed at which communication technologies and computers evolve, prompting rapid evolution in criminal tradecraft, experts must receive regular and frequent training in the investigation and prosecution of high-tech cases.
4. **Create A Cyber-Sensitive Police Force:**

The focal point of any crime investigation, including Cyber Crime, rests with the law enforcers. The strategy to combat these crimes lies in creating a Cyber Police Force for which adequate empowerment in terms of training, infrastructure, motivation and other logistics are required. A beginning should be made in Police Training Colleges, throughout India, where Computer Training should be included as a part of the curriculum. This computer Training should, apart from teaching Data Entry and Computerizing Police Records, should also teach investigation of crimes in Cyberspace.

5. **Awareness Education to Specific Target Groups:**

The Internet is a totally new and unique form of communication and is full anonymity. There is no signature or photos IDs on the Internet. Therefore, it is very difficult to identify the Cyber-Criminals. Hence, it is always better to create awareness and educate specific target groups like parents, teachers and Internet users on the darker side of the Internet so that it is easy to monitor the users.

6. **Police Training in Cyber Crime and Need for A Knowledge Management Cell:**

(i) The exponentially increasing number of PC users and Internet users, coupled with an army of Computer literate unemployed/underemployed youth would inevitably give rise to Computer Crime in couple of years in our own cities. Police Stations in our country should be equipped sufficiently to properly investigate such a case. We should propose laws on Cyber Terrorism and Cyber Pornography to be passed by the legislature. While the biggest source of knowledge for this agency would be the knowledge residing in the minds of employees of the organizational database [including all the reports, documents, registers etc.], the agency would have other sources of information as well, like primary data collection from the field the secondary data collection from the books/magazines, libraries, publications, training reports, and the Internet.

(ii) The knowledge would range from that required for policy making (e.g. suggesting a new Cyber Code for prevention and investigation of Computer Crimes)
to simple operational matters of day-to-day importance (e.g. how to hold effective meetings in community Policing programmes).

(iii) The agency mostly would work proactively. It would also cater to specific issues referred to it.

(iv) This agency would neither be a policy formulating and performance evaluator body, nor would it be an implementing body. It would only be knowledge support system for both of the above named functions.

7. **Need for An Expert Group: Computer Investigation Support Group:**

The growing number of cases in CBI and State Police where computers ranging from digital diaries and notebooks to computer networks are encountered, would perhaps underline the need for setting up in the Central Bureau of Investigation (CBI) and in State Police Hqrs and CID and Detective Department a COMPUTER INVESTIGATION SUPPORT GROUP consisting of Police Officers who are trained and experienced in computer hardware software technology, electronics and telecommunications. Such a unit could also be a Computer Crime or Technological Crime Investigation Unit, on the lines of similar units existing elsewhere in the world, such as in the RCMP (Canada) or the FBI (USA). The Group should be equipped with the required Computer Forensic analysis tools including Hardware and Software. While CBI has already made a beginning, the State Police have yet to gear up their resources on this issue. It may be surprising that Computer forensics, which is a growing and specialized area in Forensic Science and Technology, the world over, is yet to catch the attention of Forensic Experts in India. The BPR&D has developed a programme.

8. **Investigation of Computer Crime: Special Considerations:**

- Investigation calls for knowledge beyond the usual expertise of most IOs.
- Involvement of experts with specialized knowledge and skills, useful as well as important.
- Special-purpose evidence collection kit.
O  **Diskettes for storage of files**

- Cassette tape drives/hard disks
- Set of utility software
- Operating manuals & instructions for different OSs and Programming languages
- Modem
- Camera & Videography equipment
- Anti-virus softwares
- Seals, packing materials etc.

9.  **Conducting Search:**

A person conducting a computer search should have high-level technical skills for success. A well meaning investigator with amateur skills could inadvertently, but irretrievably, damage the data. When in doubt, rely only on experts. It may be a useful advice to associate and get the cooperation of the computer experts from the victim organization, or target computer system group even if belonging to the suspects or accused, because they will be more conversant with the systems they use than even the experts. Such cooperation could also save valuable time of the experts.

10.  **Computer Forensics for Investigation:**

  o  Use of computer science for investigation and judicial purposes in handling computer crime.

  o  Concerned with:

      - Making the computer equipment in question operate properly
      - Retrieval of information
      - Unblocking ‘deleted’ or ‘erased’ data storage devices
      - Bypassing or defeating password
      - Deciphering encrypted data
      - Detecting the presence of known virus
11. Some Important Steps in Forensic Examination:

O Printing out the directory which gives valuable information about the files

• Examination of contents of each file
• Reading the file in ‘read only’ mode, to avoid allegations of tampering
• Documentation of each step thoroughly
• Authentication of data, photographs and images printed out, for use as evidence in a court.

12. Computer Forensics:

Computer Forensics, a new branch of Forensic Science, is the scientific collection, examination, analysis and presentation of information held on or retrieved from storage media in such a way that it can be used as a potential legal evidence. The evidence sought might be from a wide range of Computer Crime or misuse, including violations of intellectual property rights and fraud. To discover data that resides in a Computer System, or recover deleted, encrypted or damaged file information, the Computer Forensic Scientist can draw on an array of methods. The information generated during the course of the examination would be of help in the investigation of crime and deposition in the courts of law. Computer Forensic approach should include well defined procedures to address various tasks involved in the investigation of digital evidence and the ability to repeat tests to arrive at the same conclusion by any other competent authority. The expectations from Computer forensics are divergent from the more traditional forensic science branch like Forensic Physics, Toxicology etc.

13. Forensic Investigation of Digital Evidence:

Forensic investigation of digital evidence can be divided into three main areas, which are: 1. Embedded system, 2. Open System & 3. Communication system. In Information Technology, modernization and obsolescence is the norm and not an exception. The reasons for the difference in perception is the very high rate at which the Computer Technology changes. In about 18 months time, the processing speed doubles and a system is totally obsolete in a few years. New forms and techniques of data storage are continuously being developed. Similar changes have also taken place
in Computer applications, which affected the type of information being stored in
Computers. The frequent changes in technology and protocols provide opportunity to
both hi-tech criminals as well as to forensic investigators. Therefore, Computer
Forensic methods would not have the time to establish themselves like the traditional
forensic methods. Further, the speed with which Information Technology changes
cannot be maintained in Computer security matters, thereby providing undue
advantage to a criminal, compared to a Computer Forensic Scientist.


Investigators are required to be conversant with the basics of computer and
information technology, including telecommunications, for an effective inspection of
the computer systems in site, for retrieval of data from the computer system, and in
making seizures of the storage media such as floppies, magnetic tapes or hard disks
and in the seizure of computer systems.

As technology develops, so the capacity for abuse and misuse increases. The
Computers can be associated with almost any crime, from theft and fraud to
paedohilia and murder. Electronic data found on Computers can provide the key to
successful investigation and prosecution. Investigation of crime and forensic analysis
thereafter is an extremely complicated affair, if the crime is committed by
unauthorized access to the computer Network, since the number of places where the
evidence could be searched is unlimited. For example when a cheque is forged, that
would be the only disputed instrument or crime exhibit. On the other hand, in
Computer related white-collar crimes, the same evidence could be found in different
formats. Take the case of investigation of distribution of pornographic material,
where the evidence, in the form of images, can be stored in different formats. A
document could be stored in a Computer in different types of files. The probable
sources of obtaining the paper-based evidence were few in numbers, which in case of
Computer based evidence have increased manifold. A small Floppy Disk could
contain such huge amount of evidence that was unthinkable a few years ago. With the
rapid increase in capacity of storage media, the work of forensic scientists has grown
disproportionately. There would be a spurt of white-collar crimes where Computers
are used rather than paper and ink. This would be the future challenge for forensic
scientists and they have to quickly gear up to face these challenges.
15. **The Computer Crime Evidence:**

15.1 **Preserving Electronic Evidence:**

Before a computer expert is called in, the investigator has to preserve the electronic evidence and protect it from tampering and destruction. Even after the seizures are made, the data will have to be retrieved from the computers and analysed to convert the data into information or evidence, which can be made admissible in a Court of Law. The enormous storage capacity of the Computer, and the fact that electronic data is easily perishable, makes computer search and seizure operations extremely sophisticated and complicated. Major problems arise when the data is encrypted or access to the systems or files is prevented through passwords, or when the storage media gets damaged or corrupted with the introduction of viruses.

15.2 In white-collar crime investigations, the evidence would often be paper based, which cannot exist in many forms. It is, therefore, not a very tedious job to look into a number of documents and verify the authenticity of the writing to fix their authorship. Unlike paper evidence, the digital evidence can exist in many forms on a Computer Disk, which can be discovered either in the earlier versions or in alternate forms, or at different places in different formats. For example, an image can be scanned and stored in different formats and converted from one to another, with the knowledge that an image files could be subjected to a thorough examination and evidence discovered. Digital evidence could also be found in more than one places like on a single Computer or on a Local Area Network or on the internet. Computers provide large storage space for a person to hide the information and make it difficult for others to search. The facility to store the same data in different formats makes the task more difficult. It is like searching a needle in a haystack. Most of the software vendors have incorporated many security features that enable the user to hide or protect their files. These features, if not disabled properly, would lead to loss of information that could be vital for investigation. A Computer Forensic Scientist is aware of the different types of Hardware and Software that may be in use in the suspect environment. Though they may appear to be different, the architecture of many of the systems are similar and an expert is in position to quickly come to terms with the new surrounding and help in the investigation.
16. **Recovery & Protection of Computer Crime Evidence:**

Unlike paper evidence, Computer evidence can often exist in many forms, with earlier versions still accessible on a Computer disk. Knowing the possibility of their existence, even alternate format of the same data can be discovered. The discovery process can be served well by a knowledgeable expert identifying more possibilities that can be requested as possibly relevant evidence. In addition, during on-site premises inspections, for cases where Computer disks are not actually seized or forensically copies, the forensic expert can quickly identify places and signs to look for, and additional information sources for relevant evidence. These may take the form of earlier versions of data files (e.g. memos, spreadsheets) that still exist on the Computer’s Disk or on back-up media, or differently formatted versions of data, either created or treated by other application programmes (e.g. word processing, spreadsheet, e-mail, timeline, scheduling, or graphic).

17. **The Process of Investigation and Consistency of Evidence:**

Investigation is the first step in finding out truth. A complaint made to the police, of a cognizable offence, under the Indian Penal Code, can only lead to the investigation. During the investigation and in an effort to find out the truth, some angularities slip in, or are slipped in, to help the accused person. It brings a bad name to the police. The lapses of a few tarnish the entire department. Sometimes, the complainants exaggerate the gravity of the offences and falsely implicate individuals. This tendency finds pronounced expression, in mass participation offences, like riot cases. In such cases, the complainants try to involve all the male members of a family, including children of tender age, and old and infirm people. Different parts are attributed to the small children, and old people to implicate them in the criminal investigation and the cases. Often, the number of injuries, in an occurrence indicates the participation of a much smaller number of persons, than what are said, to have jointly taken part, in an attack. Another feature is, that investigating officer, almost invariably adheres to the version of the occurrence, as given in the First Information Report (FIR). This is irrespective of, his actual findings, in the investigation. The investigation officer is afraid of departing, in any manner, from the story set out in the First Information Report, however, false or improbable it may be. He is apprehensive, of failure of the case, in the court, on this account. He feels that it is
more important for evidence to be consistent, than to be probable, and in accordance with the human nature.

The investigator fears the complainant. If the story of the complainant is not accepted in entirety and the investigator starts finding out what the truth in regard to an occurrence, and collect evidence in support of it, regardless of the desire of the complainant, the complainant might start a campaign of vilification against the investigator. There is a likelihood, of a spate of complaints against him to the superior officers. The higher authorities prefer the safe, conventional and time tested method of going to the court, with a case in accord, with the First Information Report and produce such evidence as supports it entirely, leaving the discovery of the truth to the court.

**Determining the Criminality or Innocence of the Act:**

The Court has to depend, on the investigating agency, to lay bare the truth. Passing on the buck, is a wrong approach. It is an abandonment of the task of the investigator. It needs courage of conviction; in the initial stages to put the matters right and insist on the truth, being brought out. The other defects are, the false implication, or the use of weapon, more dangerous than the accused carried. It is generally noticed that when the medical report, negates use of such a weapon, or the part played by the person, carrying it, are put before court the guilty are let off, because of the use of wrong weapon, attributed to him, or the wrong parts assigned to him. Occasionally, this kind of defect, recoils on the whole case. Doubts are cast, whether the occurrence was witnessed, by the persons claiming to have witnessed it, or that it happened under conditions, when the assailants were visible, or could be recognized. Other type of cases in which the accused too have been injured, though they themselves may have been aggressors and injuries may have been caused by the complainant and his men also are likely to have no prospects of success. This is so, as initially no effort is made, at the time of recording of the First Information Report, whether the other parties also received injuries at the relevant time.

It is also a fact, that the complainant will, rarely mention the fact, of the accused, having been injured. Even if he does so, the investigating officer seldom, makes an effort, to find the truth, as he himself wants to prove the guilt of the accused. Even if the informant divulges this fact, to the investigation officer, the
investigator omits to mention the fact in the records, leaving it to be denied, or explained according to the needs of the situation. The investigator seldom realizes that where both the parties in the fight have received injuries, the circumstance in which each party is injured is of vital importance. The criminality or the innocence of an act, has to be determined, not by the act itself, but mainly by the circumstances in which it was done. It is best to have, a fairly complete picture, of the entire occurrence in the First Information Report (FIR) itself. This is in order to allay any criticism that there was not only an omission to explain the injuries of the accused, but a studied attempt to conceal any fact. It has been observed, even during investigation, instead of frankly coming out with the case, that the accused persons also received injuries at the hand of the deceased or the complainant and their helpers, grossly improbable stories like the injuries having been accidentally received at the hands of their own party are introduced. In some cases, the fact of their having received injuries is concealed and when the injuries are proved, by the entries made in the jail records, it becomes, too late, to explain. The investigating officer need remember that if the accused are really aggressors and the prosecution really admits it and also the fact that the accused were also injured in the fighting, it would inspire more confidence in the mind of the courts. The case would have better chances of success.¹

CHEMICAL, PHYSICAL & BIOLOGICAL MICROTRACES:

UNNOTICED VITAL EVIDENTIARY CLUES IN CRIME INVESTIGATIONS.

In the present day’s society, the main forte of the judicial proof – oral evidence – has been rendered not only rare but also highly undependable and unreliable. Quite a few of them jump the fence for money, fear of retaliation by the accused, self-interest and moral values on individual level. In the present trend of committing crime, the accused is very much aware about the usual incriminating evidence like finger print, foot print, blood stain, hair, etc. that he is likely, to pick up or leave at crime scene. He, therefore, while committing a crime, takes care of not leaving the usual evidence, which could be used against him. Occurrence of such

gross evidentiary clues is now dwindling. Micro traces involve in all types of biological, chemical and physical entities, the only thing which is common between them being their minute size and amount. Their nature and constitution varies from one place to another or one case to other. According to the French Scientist, Sir Edmond-Locard, “Whenever two entities come into contact, there is an exchange of traces mutually”. This is known as the ‘Principle of exchange’. In other words, it means that when a culprit and his object of crime come into contact with the victim or the object surrounding him, they leave traces. Similarly, the criminal and his object pick up traces from the same contact. Therefore, an exchange of trace matrix always takes place between the culprit and the victim or deceased, weapon of offence and the crime scene. These micro traces need to be identified to the original source i.e. the criminal and weapon of offence, and if linked with the victim or deceased and objects surrounding him at the crime scene, then involvement of the culprit in the crime could be established without reasonable doubt.

These days, criminals commit crimes in a sophisticated matter. Hence, they are likely to leave and carry minute traces. It is high time for investigation officers to shift their focus on a thorough search of these minute traces and connect the criminal with the crime as effectively as the gross evidences, perhaps more subtly. Since micro traces are exchanged in all the crimes and often remain unnoticed by the accused, hence these are to be vital clues in the identification of the accused and his associates with the deceased and the crime scene. Micro trace evidence can have as high evidentiary potential as any other piece of evidence. The smallest clue material can be identified and matched with the possible source of origin, with the help of the latest science and technology.

**Types of micro traces:**

There is a large variety of micro traces. However, these involve all types of chemical, physical and biological entities, the common denominator being their small size. These have to be minute particles in traces, which are figured in crime investigation. In general these can be microorganisms, organic and inorganic, plant materials or from animal origin, in the solid, liquid and gaseous states. During crime investigation, these micro traces are found in the following types more frequently:
Dust:

Dust is the minute particle residue of the universe that is crumbling under the forces of nature and human beings. Since these particles are characteristics of their source, easily transferred between objects and persons, and as transfer is difficult to prevent, dust has special significance in forensic science. It is a general name for all types of substances in extremely small size particles. Therefore, it represents the environment of a place, nature of soil, mineral, weather condition, its fauna and flora. Study of dust indicates the activities of the accused, the victim, movement of objects of the accused and the victim, like vehicle, clothing, and weapon of offence, stolen property through various places, climes and terrain. It is the most variable micro trace, which changes from place to place and person to person. It is a result of environment of a place, geographical feature of the land and activities of man on it.

Generally, dust consists of traces from the animal origin like ting particles of feathers, hair, skin, bone, flesh, and blood, other body fluids, excreta, etc. Nature of dust depends upon profession or business of the person; hence it is very much significant for the identification of culprit and victim. Accordingly, their surrounding objects and dead bodies for example of a miller, textile mill worker, farmer, carpenter, safe breaker and coal miller may carry flour of various grains, fibrous fluff, soil or plant materials, wood dust, saw dust and coal dust respectively. Dust is a heterogeneous mixture; it may contain anything and everything in traces, therefore, source of these traces could be as the followings:

- **Human origin materials**: Such as hair, skin, flesh, bone fragments, nail, blood and other body fluids, etc.
- **Animal origin materials**: Like blood, excreta, bones, insect fragments, feathers, hairs, skin, furs, horny parts, flesh, etc.
- **Plant origin materials**: Such as bark, twinges, leaves, flowers, pollen, seeds, starches, woods, hairs, fibers, etc.
- **Earth Materials**: Like rust, diatoms, soil, sand, pieces of stone, minerals, metals, etc.
- **Artificial substances**: Like glass, mortar, paint, enamel, paper, sawdust, dyes, chemicals, plastic material, food materials, synthetic fibers and materials, salts, polythene, etc.

- **Other Materials**: Such as microorganism, sub-life materials, etc.

**Soils:**

Soils are frequently available in most of the outdoor crimes. These are earth materials and have great significance as evidence in forensic investigations. Since the natural constituents of soil differ from place to place, its individuality can easily be established. Further change in its constitution also takes place as wind may take away or bring fine soil particles, plant, animal or even human materials. Appropriate examination of soil can provide a linkage of the culprit and his objects to the victim or deceased and his object and also the crime scene.

**Fibers:**

Exchange of fibers frequently takes place between the culprit, the victim or deceased and the scene of crime. Every one in the world is surrounded by fibers and therefore, transfer and pick-up of fibers take place even in his routine functioning. Possibility of such transference and cross transference is much more during criminal activities. Mutual exchange, once established, clinches the crime against the accused, as it provides the necessary corroboration, especially in cases of offences against person, to the main evidence of the victim and the eyewitnesses. Fibrous evidence remain unnoticed, hence, the culprit does not destroy it and also remains unhampered. They can provide excellent evidence against the culprit even after long period of time. Although fibrous evidence has been considered to offer no individualized features, but due to their chemical composition, their manufacturing process, optical properties, presence of dyes, dimensions and presence of impurities, these can be highly individualistic.

**Glass:**

Glass is said to be supper-cooled liquid, consisting of a variety of oxides. It is one of the commonest micro traces, found in most of the criminal activities with unlimited variety. Its evidentiary value has great importance due to the following factors:
- **Found in various crimes** Minute particles of glass are always occur at crime scenes of hit and run, house breaking, theft from the vehicles, show-rooms, shooting through glass window or door, rape cases where bangles are broken, brawls where glass bottles have been used as weapons.

- **Highly individualistic nature** Glass has almost unlimited compositions, hence a single manufacture can produce more than one lac formulations. Raw materials used for its manufacture also create large variations, therefore, the compositional variations are found even in one batch to another.

- **Durability and inertness**: If it is not taken away, the evidence remains undestroyed and uncontaminated for a long period. Consequently, it can be collected and examined even at a later day if found at the crime scene, on the accused or deceased and their objects.

- **Remain unnoticed**: Minute glass particles often remain unnoticed by the accused as pickup on his clothing, shoe-soles, vehicle, hair or other objects. Carpet and floor of the room, sofa-cover, and bed-sheet may also contain these particles and remain unnoticed.

**LOCATION OF MICRO TRACES:**

The most common denominator of various micro traces is their small size and amount. Often they remain unnoticed not only by the culprit, but sometimes by the investigating officer also. Therefore, a different kind of approach is required to locate these traces. Investigating officer should know their possible locations during investigation process. The main sources for the micro traces are as the followings:

**Crime Scene:**

It is the richest source of trace evidence because both the culprit and the victim come into contact with the crime scene almost in all the criminal activities. Blood stains, semen, other body fluids like saliva on cups, glasses, cigarette stubs, ash from cigarette or bidi, dust, fibers, leftover garments, shoes, weapon of crime, vehicle or other objects always carry trace evidence. These are vital evidences to link the culprit with the crime scene as well as the victim. Apart from trace evidence left at the scene, the culprit carried away some traces from the scene also, which provides
matching evidence. The culprit may carry tiny glass fragments, dust leaves, seeds, pollen, fibers, and sand for a long time in his shoes, clothing, and hair, on vehicle or on his body. These pieces of trace evidence can be matched with the similar samples preserved from crime scene.

**Victim:**

The victim or deceased may carry trace evidence transferred from the culprit and crime scene as well as his own body or objects. In a close range shooting case, he may contain gunpowder residues at and around the entry wound or on his working hand in a suicide case. Dust, soil, hair, fibers, oil, grease, paint and glass fragments may be found on the body or clothing in a hit and run case. In case of killing by poisoning, middle marks or even traces of poison at the point of administration may also be found. The victim may also provide matching evidence such as thread or wool fibers, feather fragments which can be matched to the traces that the culprit has picked up from the victim.

**Culprit:**

The most important task for the investigating officer is to locate trace evidence on the culprit and his objects. The culprit may carry tiny evidence on his clothing, hair, shoes, underneath of nails, private parts in case of sexual offence, vehicle, weapon of offence, and pocket of clothing, etc. Traces may be in the form of stains of blood, semen or other body fluid material and dust particles sticking on his body or clothing. Sometimes he may carry the traces of drug or liquor even in his breath, blood or body. The culprit definitely comes into contact with the victim and crime scene; consequently, he carries matching evidence to the traces left at the crime scene or with the victim or his objects.

**Weapon of offence:**

Tell-tale micro traces are often on the weapon with which crime is committed. In the gunshot case, firearm may contain gunshot trace; it may contain blood, skin, hair, flesh or even tiny bone particles sticking at the muzzle end or inside the barrel. Besides blood stain, the sharp edged weapons such as knife, razor, and axe may
contain tiny hair on them. In many cases, traces left by the weapon in the form of marks and injuries on the victim or deceased may provide the trace evidence.

**Vehicle involved:**

In the today’s crime, most of the criminals use vehicle to escape from the crime scene as early as possible. Sometimes transportation of dead body, stolen properties, contraband goods, or even kidnapped person is carried out by the vehicle. The vehicle involved in the crime often carry traces of blood, other body fluids like saliva, dust, hair, fibers, cigarette stubs, cigarette ash, perspiration, etc. Soil, mud, dust or sand picked up by the vehicle from the crime scene provides a useful link between the vehicle, crime scene, the victim and thereafter with the criminal.

**Significance of micro traces:**

Micro traces like any other piece of evidence has high evidentiary value and can help the criminal investigation as described below:

- Identification of vehicle, weapon of offence, the victim and object surrounding him and the crime scene.
- On the basis of examination results, the suspect and his objects linked or de-linked with the victim or the crime scene.
- Statements made by the accused, the victim or the eyewitness can be verified.
- Provides leads to investigation, such as homicidal, suicidal or accidental nature of the incident can be decided at the initial stages.
- Helps in the reconstruction of the crime scene, especially in hit and run, suspicious death cases.
- Modus operandi and sequence of events can be decided on the basis of micro trace examination.
- Provides guidelines for further investigation and collection of evidences.
18. Duties of a Sub-Inspector Investigator:

Investigation is a laborious process. The amount of time spent is directly proportionate to his total workload. Beyond a humanly possible workload, the quality of the work is bound to suffer. The number of investigations which can reasonably be handled by an investigating officer should be fixed with reference to the capacity and quality of cases. At the present the duties of the Sub-Inspector or officer incharge of a police post, are generally, as under:--

Patrolling and surveillance over the bad characters.
To make law and order arrangements for various religious festivals and fairs, and political parties meetings and VIP visits.
To conduct enquiries into the numerous complaints and representations of the public.
To make enquiries in respect of firearms licenses applications.
To serve court processes and execute warrants.
To make arrangements for elections to Parliament, State Assembly, Local bodies and panchayats.
To make security arrangements during the visit of the VIPs.
To handle communal or civil disturbances or other agitations as well as the students agitations and agitation of Government employees, and other section of the community.
To conduct morning parade for the staff and allocate duties to them and to ensure that the same are performed efficiently and well by the staff and to keep the staff under control and discipline.
To make preparation and maintenance, of various crime records, of the Police Station, as laid down in various orders and the police manual.
To deal with law and order situations, which may arise from time to time, on various issues, not necessarily concerned with the police or policing directly.
To look after, the court cases of the Police Station.
To conduct inquest into the cases of natural or suspicious deaths reported in his Police Station. He also has to look into those cases, which may give an impression of foul play, as the margin between the unnatural death and murder is very thin.
To maintain liaison with the local officers like the medical officer, the executive magistrate, the local respectable citizens of the locality.

To have the identification parades of the suspects and the accused conducted. He also has to have the stolen property identified.

To ensure the safe custody of the arms and ammunition, government property and records.

To maintain all the records in the police station.

To appear before the Court of Law at the time of the trial of the cases investigated by him even though at the time of trial he may be transferred at a very far away i.e. 800 kms. Away from his previous police station.

The above list of the duties is only illustrative and not exhaustive. This indicates the heavy workload of the investigator, hardly leaving him any time, for sustained investigating work.

The Police Commission also noted as it was urged by the investigators themselves as well as senior police officers and others that even the norms of 40 to 50 investigations recommended by the Police Commission in 1970-71 was on the high side and that even these norms have now been stretched almost to a breaking point. Against the heavy workload, heaped on the Sub-inspector of Police, the Second Police Commission analyzed the time available for the Sub-Inspector to collect evidence which is the raison d’ etre of the investigation. It observed: “In a year, a Sub-Inspector can get 30 days earned leave and 24 days casual leave. I feel that this leave should be given to a sub-inspector, in view of the difficult and exciting nature, of his duties, which he has to perform, round the clock, but is not being given freely, as it should be owing to increasing pressure of duties and shortage of manpower.¹

**Norms of Cases Inspected per Investigator:**

A sub-inspector is thus left with 311 (365-30+24) days in a year. During this period he has mainly:

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1. INSIDE INDIAN POLICE by JOGINDERSINGH p.93-94.
To attend the monthly staff meeting at the District headquarters this takes another 12 days in a year.

To make security and other law and order arrangements during fairs, festivals, VIP visits, agitations, flood, processions, to maintain law and order during Board and university examinations etc, which occupy at least 120 days in a year at an average rate of 10 days per month.

To attend for deposition in old court cases in various courts of states at least 48 days in a year at an average rate of 4 days per month.

An actual period of $311 - (52+12+120+48) = 79$ days is only thus available to an investigator for completing 40 to 50 cases per year, as the case may be. The availability of the Investigating Officer, on working days, for attending the court and the headquarters, assuming that he is not taking any holidays for his personal and family work an average time of 2 to 3 days, is in effect available, to an investigator for completing the investigation. During this period of 3 days, per case for investigation, the investigating officer, has to visit the scene of crime, at least once, if not more, organize raids and searches, collect and pursue clues, prepare case diaries and other relevant documents, contact witnesses and comply with other procedural requirements of the investigation. Each of these steps, of investigation, is time consuming. It requires concentrated attention. Only then the quality of investigation can be improved. Obviously, this average period of 3 days per case, for investigation, is grossly inadequate, for a thorough and proper investigation.

One solution in big cities, with a population of over one lakh, where functional separation exists, between ‘law and order’ and investigation, the norms should be reduced to 24 cases for investigations per year per investigating officer. And in the urban and rural police stations, the norms should be 30 cases for investigations, per year per investigator. The strength of the investigators at each police station should be fixed in accordance with the norms suffested above or any other norm, which the Department or the Government may fix. The numerical strength, of investigators, at each police station should be, reviewed every year, by the government in consultation, with the State Police Chief so that the cases are investigated efficiently.

It should be ordered, that at least one important or complicated case, per year, would be investigated by each Superintendent of Police, himself. This is to ensure,
that the Superintendent of Police, is in touch with the ground reality and the pitfalls in the investigation. This considerably improved the quality of investigation. With the expanding scope of police investigations growing complexity of crime, and the continuous advances, in the methods of tackling them, there is a need for scientific and constant evaluation and up-gradation of the police procedures, practices and operations followed in the fields of investigation, prosecution and prevention of crime. The amount of time spent is directly based on the seriousness of each case.¹

19. **PROCEDURE FOR INVESTIGATION:**

If, from information received or otherwise, an officer-in-charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report, and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and if necessary to take measures for the discovery and arrest of the offender:

Provided that --

- when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer-in-charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;
- if it appears to the officer-in-charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

In each of the cases mentioned in clauses (a) and (b), the officer-in-charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section and, in the case mentioned in clause (b) of the said

1. INSIDE INDIAN POLICE BY JOGINDERSINGH. p.95-96.
proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

Commencement of investigation by Police Officer.—the commencement of investigation by a police officer is subject to two conditions, firstly, the police officer should have reason to suspect the commission of a cognizable offence as required by Section 157 of Cr PC. The Police Officer should subjectively satisfy himself as to whether there is sufficient ground for entering on an investigation even before he starts an investigation into the facts and circumstances of the case as contemplated under clause (b) of the proviso to Section 157(1) of Cr PC.

Investigation by Police—Sub-section (1) of Section 157 of Cr PC indicates the basis on which investigation may be commenced. The words clearly indicate that before the Police Station Officer of the Police Station commences an investigation he must be satisfied whether from the information received by him or otherwise there is reason to suspect that a cognizable offence has been committed. This shows that he has to apply his mind independently in order to find out whether he should or should not commence investigation and in order that he may form an opinion independently under sub-section (1) of Section 157 of Cr PC, there must be facts necessary for raising a suspicion that one or more cognizable offence or offences have been committed. If such facts are not available to the P.S.O. of the Police Station and what is communicated to him is mere allegation devoid of facts constituting the offence he would not be in a position to independently apply his mind for the purpose of taking action under sub-section (1) of Section 157 of the Cr PC. It is not as if on a vague allegation which is not accompanied by a statement of facts showing the commission of a cognizable offence can be a sufficient basis of commencing the investigation.

Investigation—Factious rioting—I.O. guilty of offence punishable under section 192, IPC.—Accused was assaulted by deceased. Immediately in retaliation accused assaulted deceased and caused his death. Case and counter case was made out. Both the incidents took place at the same time and at the same place. Investigation should be conducted by one and the same I.O. I.O. had misused powers of recording the statement of witness under Section 161(3), Cr PC and deliberately manipulated the statements to benefit the accused at the time of trial. I.O. was guilty
PROCEDURE WHEN INVESTIGATION CANNOT BE COMPLETED IN TWENTY-FOUR HOURS.

Whenever any person is arrested and detained in any custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

The Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused in custody under this paragraph for a total period exceeding—
ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;
sixty days, where the investigation relates to any other offence and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed
to be so released under the provisions of Chapter XXXIII of Cr PC for the purposes of that Chapter,
No Magistrate shall authorize detention in any custody under this section unless the accused is produced before him;
No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police.

Notwithstanding anything contained in sub-section (1) or sub-section (2), of section 167 of Cr PC, the officer-in-charge of the police station or the police officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate may, for reasons to be recorded in writing, authorize that detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorized, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for, such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2).

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in-charge of the police station or the police officer making the investigation, as the case may be.

Alteration of remand order from Section 167(2) to Section 309 not proper.—If challan is filed before the expiry of the maximum period for which an accused be detained in custody under section 157 further remand to custody can be ordered under Section 309. No maximum period of remand is provided for under Section 309. The
Magistrate, however, cannot postpone the release of an accused under Proviso (a) to Section 167(2) after the expiry of 90 days or 60 days, as the case may be, just to enable the police to file the challan and to alter the detention under Section 167 to one under Section 309. If the accused of his own or on being told of his right by the Magistrate is prepared to furnish bail, the Magistrate must order the accused to be released on bail, without waiting for the challan and must release him when bail is furnished. (Umashankar v. State of Madhya Pradesh, 1982 Cri LJ 1186 at 1189 (MP).)

MEDICAL EXAMINATION OF THE VICTIM OF RAPE:

Under Section 164-A of Cr.PC 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 woman 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.

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—

The name and address of the woman and of the person by whom she was brought;
The age of the woman;
The description of material taken from the person of the woman for DNA profiling;
Marks of injury, if any, on the person of the woman;
General mental condition of the woman; and
Other material particulars in reasonable detail.

The report shall state precisely the reasons for each conclusion arrived at.
The report shall specifically record that the consent of the person competent to give such consent on her behalf to such examination had been obtained.

The exact time of commencement and completion of the examination shall also be noted in the report.

The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate referred to in Section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.

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.

Objects and Reasons of 2005 Amendment.—This clause seeks to insert new Section 164-A in the Code to provide for a medical examination of the victim of a rape 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.

**EXAMINATION OF ACCUSED BY MEDICAL PRACTITIONER AT THE REQUEST OF POLICE OFFICER.**

According to Section 53 of Cr PC the investigating agency has powers to Examine the accused by medical practitioner under the following circumstances:-

1. When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of Sub-Inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.
2. Wherever the person of a female is to be examined, under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

3. “examination” shall include the examination of blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;

EXAMINATION OF PERSON ACCUSED OF RAPE BY MEDICAL PRACTITIONER:

The Section 53-A in Cr P C is amended by the Code of Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005). This clause assigns vide powers to the I.O. The Section 53-A reads as under :- [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.

EXAMINATION OF ARRESTED PERSON BY MEDICAL PRACTITIONER AT THE REQUEST OF THE ARRESTED PERSON.

According to Section-54 of Cr PC the arrested person has a right to request for his Medical Examination.

(1) When a person who is arrested, whether on a charge or otherwise, alleges, at the time when he is produced before a Magistrate or at any time during the
period of his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body, the Magistrate shall, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice.

(2) Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the registered medical practitioner to the arrested person or the person nominated by such arrested person.

IDENTIFICATION OF PERSON ARRESTED:

Section 54-A is amended in Cr P C by the Code of Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005) for Identification of person arrested.—Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction, may on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit.

OBLIGATION OF PERSON MAKING ARREST TO INFORM ABOUT THE ARREST, ETC. TO A NOMINATED PERSON.

One important section is also inserted by Code of Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005) as [Section 50-A. Obligation of person making arrest to inform about the arrest, etc. to a nominated person.—(1) Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information. (2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station. (3) An entry to the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government. (4)
It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub section (2) and sub-section (3) have been complied with in respect of such arrested person.]

**RECORDING OF CONFESSIONS AND STATEMENTS:**

Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under S.164 of Cr PC or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:

Provided that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

**RELEASE OF ACCUSED WHEN EVIDENCE DEFICIENT:**

If, upon an investigation, it appears to the officer-in-charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial. (Cr PC 169).

If the police has submitted a report (final) under Section 169, certainly the Magistrate cannot take cognizance on a police report. But he can take cognizance under Section 190(1) (c) sue motto. He can take cognizance on a complaint filed by the person concerned. (Abhinandan Jha v. Dinesh Misra, AIR 1968 SC 117).

Acceptance of final report judicial act.--When a final report is submitted, and the Magistrate accepts it he acts a Court. The acceptance of the final report is a judicial act.

Action by Magistrate at final report.—When a final report is submitted the Magistrate can either direct that further investigation be made under Section 156(3) of the Code or take cognizance of the offence under Section 190(1)(b) of Criminal
Final report submitted by police.—The Magistrate has no power to call upon the police to submit a charge-sheet, if the police have submitted final report under Section 169, Cr PC that no case was made out for sending up an accused for trial. (Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117).

The provisions of Sections 169 and 170 Cr PC do not apply to investigation under some other law.

Magistrate cannot order for charge-sheet.—the opinion of the officer-in-charge of the police station whether the accused should or should not be sent for trial is final. On the submission of a report under this Section, a Magistrate has no power to call for a charge-sheet from the police officer concerned. (Abhinandan Jha v. Dinesh Misra, AIR 1968 SC 117). But he can order the police to continue the investigation. (Nirmal Singh v. State of U.P., 1979 Cri LJ 226.)

Under Cr PC 168 when any subordinate police officer has made any investigation, he shall report the result of such investigation to the officer in charge of the police station. The Section puts the responsibility of an investigation on the officer-in-charge of the police station. If an investigation is made by some subordinate police officer he shall submit the result of his investigation to the officer-in-charge of the police station, and he will forward the report to higher authority. (H.N.Rishbud v. State of Delhi, AIR 1955 SC 196).

REPORT OF POLICE OFFICER ON COMPLETION OF INVESTIGATION:

Every investigation under Cr PC shall be completed without unnecessary delay.

As soon as it is completed, the officer-in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government stating,---

The names of the parties:
The nature of the information;
The names of the persons who appear to be acquainted with the circumstances of the case;
Whether any offence appears as to have been committed and, if so, by whom;
Whether the accused has been arrested;
Whether he has been released on his bond and, if so, whether with or without sureties;
Whether he has been forwarded in custody under Section 170.

The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

Where a superior officer of police has been appointed under Section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

When such report is in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate along with the report,—

All documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
The statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate exclude that part from the copies to be granted to the accused and stating his reasons for making such request.
Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents inferred as above.

Nothing in Section 173 of Cr PC shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

It is a well settled law that when the report is filed under Section 173(2)(1), Cr PC by the Police after investigation before the Magistrate, two different situations may arise. The report may be a charge-sheet (positive report) or may be a referred report (negative report). In the case of charge-sheet, the Magistrate may do one of the following three things:

he may accept the charge-sheet and take cognizance of the offence and issue process, or
he may disagree with the report and drop the proceeding, or
he may direct further investigation under Section 156(3) and require the police to make a further report.

In the case of referred report, the Magistrate again has an option to adopt one of the three courses as mentioned below:

he may accept the report and drop the proceedings; or
he may disagree with the report by taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process, or
he may direct further investigation to be made by the police under Section 156(3), Cr PC.
DIARY OF PROCEEDINGS IN INVESTIGATION:

Every police officer making an investigation under Cr PC shall day-by-day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Any criminal court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the police officer, who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of Section 161 or Section 145, as the case may be, of the Indian Evidence Act, 1872, shall apply.

Failure to keep police diary—Evidence of police officer not admissible.—Section 172 of Cr PC does not deal with any recording of statements made by witnesses and what is intended to be recorded is what the police officer did, namely, the places where he went, the people he visited and what he saw, etc. It is Section 161, Cr PC which provides for recording of such statements. Assuming that there is failure to keep a diary as required by Section 172, Cr PC, the same cannot have the effect of making the evidence of such police officer inadmissible and what inference should be drawn in such a situation depends upon the facts of each case.

Non-examination of investigation officer—Not per se vitiate criminal trial.—FIR was lodged almost within half an hour of the incident by the injured witness who apart from discomfort on account of injury sustained by him was likely to be completely upset at the unfortunate incident of killing of his close relation before his eyes. In such circumstances, omission to mention of the fact of leaving the arms of the deceased by the accused just at the time of firing is understandable. (Behari Prasad V. State of Bihar, AIR 1966 SC 2905).
Use of diary by the Court.—A Court can send for a police diary of a case and can look into it for aid in such enquiry and trial. He is not to be influenced by the case diary in the decision of the case. (*Jyoti Jivan v. State, AIR 1964 Cal. 59*).

**STATEMENT OF POLICE NOT TO BE SIGNED: USE OF STATEMENTS IN EVIDENCE: Cr PC 162.**

No statement made by any person to a police officer in the course of an investigation under Cr PC, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved may be used by the accused and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act 1872 and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872, or to affect the provisions of Section 27 of that Act.

**SEARCH BY POLICE OFFICER:**

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 purposes 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 he is in charge, or to what he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of the belief and specifying in such writing, so far as possible, under S.165 Cr PC, 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. A Police Officer proceeding, shall, if practicable, conduct the search in person.

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.

The provisions of Cr PC as to search-warrants and the general provisions as to searches contained in Section 100 shall, so far as may be, apply to a search made under this section. Copies of any record made 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.

SEARCH OF ARRESTED PERSON:

Wherever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail, the officer making the arrest or, when the arrest is made by private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the police officer shall be given to such person.

Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

Whenever during the Investigation is the officer is of the opinion that the evidence is available outside India, then to collect this evidence for the purpose of the
case the two new sections are inserted in the Cr P C vide Criminal Amendment Act 2005 as under :-

[Section 166-A. Letter of request to competent authority for investigation in a country or place outside India.—

(1) Notwithstanding anything contained in this Code, if, in the course of an investigation into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that evidence may be available in a country or place outside India, any Criminal Court may issue letter of request to a Court or an authority in that country or place competent to deal with such request to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to forward all the evidence so taken or collected or the authenticated copies thereof or the thing so collected to the Court issuing such letter.

(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation.]

[Section 166-B. Letter of request from a country or place outside India to a Court or an authority for investigation in India.—

(1) Union report of a letter of request from a court of an authority in a country or place outside India competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to an offence under investigation in that country or place, the Central Government may, if it thinks fit—

i. forward the same to the Chief Metropolitan Magistrate or Chief Judicial Magistrate or such Metropolitan or Judicial Magistrate as he may appoint in this behalf, who shall thereupon summon the person
before him and record his statement or cause the document or thing to
be produced; or

ii. send the letter to any police officer for investigation, who shall
thereupon investigate into the offence in the same manner,

as if the offence had been committed within India.

(2) All the evidence taken or collected under sub-section (1), or authenticated
copies thereof or the thing so collected, shall be forwarded by the Magistrate or police
officer, as the case may be, to the Central Government for transmission to the Court
or the authority issuing the letter of request, in such manner as the Central
Government may deem fit.]

A new Chapter in Criminal Procedure Code is inserted by CHAPTER VII-A
in 2005 for RECIPROCAL ARRANGEMENTS FOR ASSISTANCE IN CERTAIN
MATTERS AND PROCEDURE FOR ATTACHMENT AND FORFEITURE OF
PROPERTY.

In this Chapter there are certain provisions for the person to produce the
documents and transfer of persons alleged. The heading of the sections are as under:-

Section 105-A. Definitions. Section 105-B. Assistance in securing transfer of
persons. Section 105-C. Assistance in relation to orders of attachment or forfeiture of
property. 105-D. Identifying unlawfully acquired property. 105-E. Seizure or
attachment of property. 105-E. Seizure or attachment of property. 105-F.
Management of properties seized or forfeited under this Chapter. 105-G. Notice of
forefeiture of property. 105-H. Forfeiture of property in certain cases. N 105-I. Fine
in lieu of forfeiture. 105-J. Certain transfers to be null and void. 105-K. Procedure in
respect of letter of request. 105-L. Application of this chapter.¹

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CRIMINAL TRIALS AND INVESTIGATIONS BY P.C.BANERJEE p.265-278.
Interrogation seeks to acquire information from a person. Since the person being interrogated is often not comfortable with the process or even willing to divulge information, the interrogation process is different from a conversation. Conversationally, information is freely exchanged and offered. However, interrogation is a less compliant process. Interrogation can take different forms, but these all have a similar aim: to control the subject in such a way that he or she yields to pressure and provides the information being asked for.

Information can be obtained by the use of pain. Torture is centuries old. In medieval times, as a few examples, victims were stretched on a rack, burned with hot branding irons, stoned, or uncomfortably shackled. But over the past century, techniques and technologies of physical and psychological torture have been “refined”. Information can now be obtained without leaving a physical trace of the trauma of torture.

Newer methods of torture have been driven by the need for speed in obtaining the information, and, in the case of governments, in disguising the torture from organizations like Amnesty International that can hinder the information-gathering process.

Torture Components.

The techniques and technologies of torture can be grouped into three categories: hardware, software, and live ware. The term “hardware” refers to the equipment used; software refers to the techniques of torture that are taught to interrogators. Torture live ware refers to the human element of torture, typically the interrogator.

Torture hardware.

Examples of torture hardware include shackles for the arms, legs, and even thumbs, whips, canes, beating devices (i.e., clubs, rubber hoses), water, electrical
generators to administer electroshocks, and devices that suspend someone painfully above the ground. In fact, the list of physical harm that can be inflicted is long. Any possible route to inflict pain that can be conceived of has been used.

Machines that generate intolerable noise (“white noise”) or bright pulses of ultraviolet light are sometimes used. Hardware can also have a chemical nature. Some drugs can cause physical discomfort, pain, and disruptions to the body’s biochemistry. Examples include curare, insulin, and apomorphine. Drugs such as these differ from psychoactive drugs that alter thought processes or biochemical activity in the brain. Food and water deprivation, or maintaining an uncomfortable position for a long time, can also induce biochemical changes.

Electromagnetic radiation can also be a means of torture. Studies in animals have shown that electromagnetic waves of certain wavelengths can destroy lung and brain cells. While not necessarily lethal, these effects are debilitating and can be painful. Electromagnetic stimulation can have other nonlethal effects on humans. Extreme emotions of rage, lust, and fatigue can be caused.

The most widely used torture hardware is electro-shock. Pulses of energy, which are therapeutically useful in some medical treatments, have been adapted as a torture technique. The application of electricity stimulates muscle activity to such an extent that involuntary and painful muscular contractions occur. Longer pulse of electricity produce successively greater debilitation. For example, a five-second discharge from a cattle prod can completely immobilize someone for up to 15 minutes.

Torture software.

The use of intimidation, threats, harsh and comforting language, and even silence are all techniques that, when combined with the hardware of torture can extract information from a victim. Such interrogation techniques have become standard operating procedures for interrogators. Indeed, manuals have been written for interrogators.

Technical and technological orchestration of torture.

Interrogation techniques are intended to “soften up” the victim, depleting the physical and mental resources that can be used to resist the pressure to reveal
information. This is also known as breaking of the spirit. Depriving someone of sleep and sensory stimulation (by keeping them in a dark and soundless environment, akin to solitary confinement) can cause extreme anxiety, intense fear, and paranoia.

The behavior of the interrogator is an important part of the process. For example, a comforting word or supplying water and food can make a victim grateful enough to yield to a request for information. Conversely, degrading or demeaning behavior can cause the victim to give up.

Torture as practiced by terrorist organizations, military and paramilitary forces, and by other government agencies is seldom a haphazard affair. The task of breaking someone’s spirit involves the coordination of activities and the use of certain techniques and technologies at certain times.

The torture process can begin at the moment of arrest or kidnapping. Taking someone by surprise is more jarring than if someone has time to physically and mentally prepare him or herself for arrest. The majority of people are at their lowest ebb both physiologically and psychologically in the early morning or near bedtime. A surprise detainment at those times is especially jarring.

The feeling of disorientation and fear can be heightened during transport to wherever the victim is to be detained. For example, the use of blindfold or a hood deprives someone of visual cues that can help them maintain a sense of control.

The next phase is usually detention. Time spent along in unfamiliar surroundings, deprived of familiar and comfortable clothing, wondering about what is to come can be disorienting and terrifying. Also the detainee is forced to rely on his or her own mental resources, which can lead to self-doubt and fear.

Removing the stimuli for senses like sight and sound can be used during this and other phases of torture. Human physiology and behavior is largely governed by the input of information. If sensory stimulation is lacking, physical and mental deterioration often occurs. For example, a study was done where subjects were immersed in body-temperature water up to their necks. Their heads were hooded to blind them. After just a few hours, sensations of tension gave way to hallucinations.
Conversely, stimulating senses such as smell—by, for example, the lack of toilet facilities—can prove overwhelming.

The threat of torture can be as effective as the actual pain in destroying resistance. This is because many people are able to tolerate pain more so than they believe they can. Once the reality occurs, victims may even draw strength from their ability to withstand the torture. Once physical torture has begun, the threat of death can also help the victim. Indeed, death can be a welcome relief from the pain. If however, the torture is perceived as unending, information can be volunteered in the hopes of ending the suffering.

Pain is an inherent part of torture. Because people have different tolerances to pain, or are more sensitive to some forms of pain than to others, torture can be tailored to exploit the sensitivities of the victim.

The techniques and technologies of torture are pervasive and widespread. As newer technologies are developed for other humane purposes, it is likely that these will be adapted for the inhumane purpose of torture.

**Electronic Surveillance: A Matter of Necessity?**

Criminal investigations are becoming increasingly more difficult as criminal targets become even more sophisticated. The challenge for criminal investigators is to keep pace by using increasingly sophisticated investigative techniques. One extremely successful technique has been electronic surveillance, both silent video **electronic surveillance** and interception of wire, oral, or electronic communications. No jury can ignore watching defendants commit crimes before their very eyes or hearing the defendants talk about their crimes in their own voices. This article focuses on investigators’ obligation to demonstrate the necessity for **electronic surveillance** before the court will authorize its use.

**POLICE OFFICERS POWERS TO ARREST THE PERSON WITHOUT WARRANT:**

According to Cr PC 41, Police may arrest without warrant in under mentioned circumstances:-
(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or

(b) Who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; or

(c) Who has been proclaimed as an offender either under Cr PC or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) Who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) Who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India, which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule, made under sub-section (5) of section 356, or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.
(2) Any officer-in-charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of persons specified in Section 109 or Section 110.

According to Section-42 of Cr PC Arrest on refusal to give name and residence:--

(1) When any person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence, refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required:

Provided that, if such person is not resident in India, the bond shall be secured by a surety or sureties resident in India.

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

6.3 DUTIES IN COMMUNAL RIOTS:

Dealing with Religious Fracas:

Parliamentary democracy is sought to be derailed by mixing politics with religion. As a result, the communalism has moved to the centre stage of national and state politics. Whether it is Ram-Janam-Bhoomi, Babari Masjid, Muslim personal law or cow-protection, religious conversions with or without foreign influences, all these issues, have the potential of sparkling off communal riots. The fissiparous and divisive forces are out to weaken the national and state solidarity and sovereignty of the country. The most convenient tool with these forces is to whip up communal feelings, during a festival. These trends do not auger well, for the unity and integrity
of our country. Past experiences suggest, that the communal riots have erupted, mostly coinciding with religious processions. It is of paramount importance, to lay down some guidelines, which could be useful to the District Superintendents of Police, their Circle Officers and others concerned. However, the guidelines can never cater, to all kinds of situations or contingencies. Therefore, these will vary from place to place, time to time and situation to situation.¹

**Policing the Religious Processions:**

In the past, provocative gestures have led to serious communal riots. The genesis of the trouble could be the religious processions, taken out by members of different communities. Policing of religious processions is of great importance for the maintenance of communal harmony, peace and law and order. The object of policing processions should be (i) to give a sense of security to the percussionists, as well as to the general public; (ii) to ensure proper observance of schedules and movement by processionists; (iii) to ensure safe and secure passage of the procession.

These objectives can be achieved, provided police arrangements, are formulated methodically and executed in a planned manner. The police officers and men, should not only be impartial, but should also appear, to be impartial, in their attitudes and actions. This will enable them, to win the confidence, of the members of different communities. A body of men, comprising more than five persons, moving through a public thoroughfare in observance with any religious rite/ritual can be termed as a religious procession. There are various classifications of religious processions.²

**Classification of Processions:**

Many processions of Hindus, Muslims, Sikhs, Christians, Jains and Buddhists, are taken out on fixed dates and routes. They are pre-arranged according to the prevalent traditions and customs. These are organized by religious bodies and have

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¹ INSIDE INDIAN POLICE BY JOGINDERSINGH p.134.

² INSIDE INDIAN POLICE BY JOGINDERSINGH p.135.
more or less fixed timings. These have a definite destination. Prominent examples of religious processions are:

- Processions taken out during Dussehra by Hindus,
- Ramnavmi processions,
- Janmashtami processions,
- Durga Pooja idol immersion processions
- Kali Pooja idol immersion processions
- Saraswati Pooja Idol immersion processions
- Ganesh Chaturthi processions
- Holi processions
- Ravidas Jayanti processions

Dr. Ambedkar Jayanti processions though it commemorates one of the recent political leaders, but it has acquired a religious nature.

- Processions of Sikh in honors of their Gurus
- Sobha Yatra, Rath Yatra, Jal Yatra, etc.
- Eid-Milad-un-Nabi procession
- Moharram processions and their various variations,

**Occasional Religious Processions:**

These are not regular annual features. These processions are taken out to commemorate special events for example:

**Installation of new idols in a temple.**

To commemorate centenary of any saint or any religious event;

- Processions taken out during periodical occurrences like Kumbha Mela, etc.

**Protest Processions on Religious Issues:**

Recently a number of processions have been taken out either in protest against alleged atrocities on coreligionists or in support of the cause of their faith, for example: (i) The processions taken out against alleged atrocities on Christians (ii) Processions taken out on the issues of Ram-Janam-Bhumi/Babari Masjid (iii) Processions taken out on the issues of Godhara incident in Gujarat (iv) Funeral
processions of assassinated religious leaders, taken out by the deceased co-religionists
(v) The processions to protest against the arrest of Political Leaders.¹

Reasons for Processions Turning into Riots:

These processions require special police arrangements because of their nature. As the elements of animus already exist, these processions can easily turn into a violent agitation, leading to riots. They call for, well thought out police arrangements, as otherwise, they can snowball into any law and order situation.

This can take place due to the following reasons:

Irresponsible and emotionally surcharged leadership may direct the procession, against persons of other faiths, in order to seek revenge, for real or imaginary wrongs.

Any provocation either caused by persons within the procession, to persons of other communities, or caused to the processionists, by members of the other communities, like music before the mosques, reciting or singing, throwing of unclean articles like pork, beef that may hurt the religious sentiments of a community, on the procession.

Change in routes and timings, causing trouble to other communities.

Coinciding of two processions, of different faiths, or different factions, of the same faith, on the same route.

Passing of the procession, by the side of any Pandal or platform, where rituals of other faiths, are being carried out.

Violation of sanctity of any religious place before the procession is taken out, or during the procession.

Use of offensive placards, or rising of offensive slogans during the procession.

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1. INSIDE INDIAN POLICE BY JOGINDERSINGH p.135-136.

Police Arrangement to Counter any Eventualities during Processions:
The police arrangements should cover; (a) Pre-procession preparations; (b) Arrangements during the processions; and (c) Post procession analysis and appraisal.¹

**Pre-Procession Arrangement.**

The in charge of the area, should prepare a calendar, which will consist of, all regular, organized traditional religious processions. However, no calendar of occasional or protest processions can be made. These will have to be dealt with, as and when they are taken out. The police officers should prepare calendars, for their own areas. Religious processions vary from place to place and hence no uniform calendar can be prepared for the entire state. This calendar, should be kept under the table top, and displayed prominently in the police station, so that every day, the staff including the official incharge, are able to glance it. This way no procession will be lost sight off. They should be entered in a register, to be called festival register. Before any procession is due, the register should be studied, well in advance, to find out various implications. After perusing the festival register, the routes of procession, should be physically checked by officers, and in cases of important processions, personally by Superintendent of Police, it would be desirable if the concerned Magistrate is also taken along.

The inspection of route should take place, a few days in advance, so that in case any obstruction has come up, the same could be removed. The removal of any obstruction, in close proximity, to the event, is well-neigh impossible. However, if it is done sufficiently in advance, then generally there is least opposition. For example, if a ‘Peepal’ tree branch which has come up on the route fixed for TAZIA procession is cut, during Moharram days, it can create protest from the Hindus. Contrarily, if a MAHAVAT is directed, discreetly to take his elephant, two months in advance, on the spot and get the branch eaten up, by the elephant, it would not create any opposition, and the purpose would be served.

1. INSIDE INDIAN POLICE BY JOGINDERSINGH p.137.
The organizers of processions should be contacted, in advance, so that their plans and programmes are known for better planning. Personal contact with the organizers, creates a personal rapport between them and the police. It helps in tiding over many delicate situations. Sometimes, especially during Dussehra and Moharram, Akharas participate in the procession, and carry blunt and sharp-edged weapons, without licence. Their licences should be checked. Most of the Akharas do not possess any licence. Sometimes they resist the idea of licence. However, if the organizers are contacted a month in advance, this can be straightened out. Some permanent marking should be affixed to these weapons, so that these are not replaced, at the time of procession.

Valuable assistance can be obtained from voluntary bodies. They should be contacted in advance. Generally Peace Committee meetings, should be held, a few days in advance, of the event. The help of voluntary bodies like Mohalla Defence Committees, Peace Committees or Civil Defence Committees should be enlisted. Details of volunteers, for various sections of processions, should be prepared. There should be an attempt, to create a group of influential and well meaning persons, who can act, as intermediaries, between police and processionists. Any direct intervention of police, can lead to confrontations. Influential persons of the area, especially those belonging, to the same faith, will prove to be very useful.

Many a time, there are elements, which are not directly concerned with the processions but have an important bearing on it for example, idol makers of Durga, Kali, Ganesh, Saraswati, Rathyatra or Tazia-makers. There is a growing tendency of increasing the size of idols or Tazia, every year, by the organizers of the processions, to beat their rivals taking out similar processions. If these people are contacted before the event, they can be briefed, about the clear specifications based on previous year’s measurements. They could be requested, to adhere to the same. A fortnight before the installation of the idols, Bazaar Band Masters, shop-keepers hiring out loud speakers, float-makers, etc. should be contacted, and told about their expected conduct and role, during the procession.

The police staff duty charts, with clear assignments, of each person, at a specific area or route procession, should be prepared. The staff should be briefed in advance. A site plan prepared to a scale, on a hard board, showing sensitive points on
the route, tall buildings, traffic intersections, etc. would be very useful and should be prepared for every police station. If possible, sand models, should be prepared. This will useful for briefing of the men. Video graphing the route will be more helpful. It will make things very clear. Arrangements for traffic diversion should be well thought out and necessary publicity given through newspapers or posters, TV, Radio about the programme. It will help avoiding congestion and inconvenience to the public. The possibility of disturbance, during the procession should be accepted, as a likely risk. Contingency plans must be made to tackle it by; (i) diversion of procession, on to a safer route, in case of major breakout of trouble; (ii) rushing of fire brigade, in case of acts or arson; (iii) abandoning of, the route of processionists, to prevent their committing arson or looting. It has been observed, that many a time, if a just or unjust demand, of the processionists, is not met by the administration, they leave the idols/Tazias on the route, as protest and leave the procession. This creates a very delicate situation, as any direct attempt by police, to remove them, would invite allegations of sacrilege. In such cases, help of the intermediary and voluntary bodies, should be sought.

The contingency plan should also cater for scotching rumors, isolations, or segregation of troubled areas, taking possession of a large number of cycles, or other vehicles, and other articles left behind, at the time of panic or policed action. The method for their disposal can also be planned in advance. Similarly the place of interception of the procession, if required, should also be decided earlier. In the pre-procession stage it should be ensured, that provision of fire brigade and ambulance for medical cover is made. Similarly weapons to be carried, along with ammunition; tear smoke shells, should be circulated in advance. It would be desirable, to have a public address system for directing the procession, or scotching communal rumours, etc. Some policemen could be provided with loud hailers, while accompanying the procession. Action plan should include rouding up, in advance of anti-social elements. The complacent attitude of the officers should be discouraged. All developments of interest must be reported to the senior officers, through the fastest means available. Any attempts of suppression of information should be viewed seriously. Rehearsal, for dealing with any possible riot, should be don’t, atleast a fortnight in advance. Any rehearsal close to the event might create panic. The riot equipment boxes should be checked up and brought up to-date. Some help-centers
may be set up, on the route of processions, to render medical help, to the old and infirm persons, or those sustaining injuries during the procession. Wherever curfew is proposed, the service of orders U/s. 144 Cr.P.C. should be given at least a week in advance and signatures of organizers must be obtained. Special vigil should be exercised on the anti-social, anti-national and communal elements. Preventive arrests wherever necessary should be made in advance.

The police should become more visible, tone up the routine duties, like checking up hotels, dharamshalas, railway stations, bus stations, arms and ammunition dealers, and cinemahalls, etc. However, it should be done very carefully and tactfully. Any highhandedness, during these checking, can prove counter-productive. It may create trouble during the processions. Senior officers must brief the policemen; not to nurse, any bias or prejudice, against any community. This will help, in rebutting the allegation, that policemen of one community have shown vengeance, or are guilty of inaction, against another community. The following points must be made known to every policeman on duty:

The background of the procession legends and traditions associated with it.

**Time Schedule:**

Route and sensitive points on the routes,

Organizers and other personalities connected with the procession;

Elements and developments to be watched carefully;

Communication available to them, if any telephone is available near their duty points, the same should be known by them, apart from the wireless or cellular phones; and

**Emergency Plans.**

**Arrangements during the Procession:**

The posting of men should be done, at least one hour in advance, so that they become familiar with the spot. In this way, they can keep a watch, on the movements of people, who form the procession. While checking up-to-date information, should be given to men on the spot. During these hours, the policemen and the volunteers
would be able to know each other by face and name. This would ensure better cooperation between them. At the head of the procession, besides the regular force, small squads of policemen either with motor vehicles, motor cycles or cycles or mounted police should be kept. They should function as the alerting teams and precede the procession. They should go, five to seven minutes in advance, altering all the policemen on duty, to stop or divert the traffic and sharpen their vigilance. Special attention should be given to the tail end, of the procession. Generally trouble starts, after the main body of the procession, has passed the sensitive spot. Hence proper control, over the last portion of procession, needs to be maintained. Wherever feasible, a police officer and magistrate in a vehicle should be in the front, and rear of the procession. During processions there is a tendency among policemen to speak up simultaneously. This jams up the Radio traffic and urgent messages get blocked. Hence, all persons handling Radio equipment should be trained to maintain proper Radio discipline. Roof top duty should be assigned in pairs. The force posted there should be provided binoculars and wireless sets after training in the use of simple code, or walkie-talkies or flag signaling. For these duties, the best men should be selected. They would be working, as watchmen for the entire force. Use of video cameras, placed strategically, will deter miscreants and also faithfully record the conduct of procession. It would also be useful subsequently, for training, briefing purposes and evidentiary purposes. These Video Cameras should be located, in such a manner, that various portions of processions, as well as locality, are filmed simultaneously. For large processions, four to six Video Cameras would suffice. Close Circuit TV, would enable the senior officers, at the control room, to monitor the procession. Open and concealed, use of tape-recorders would also help in deterring irresponsible elements, from indulging in provocative slogan shouting.

The Reserve Force with full proper equipment should be positioned beforehand. The officer’s in charge of various sections of procession should be fully aware, of their positions and strength. Along with this reserve force, some local leaders of various communities should also be collected. In case it is necessary, their services may be utilized, on need basis to control the procession without resorting to the use of force. Otherwise at the time of emergency, precious time would be wasted in searching and locating them. Response time of the reserve force should be fixed. The response time, should also take into account, the likely time to be taken, if the
movement is to be done on foot. It would be useful, to carry out mock exercises, for summoning the Reserve Force, to check their efficiency, in arriving at the allocated place.¹

**Arrangements after Dispersal of Procession:**

Generally after a procession has reached its destination, the policemen think, that their task has been completed. They leave their duty posts, or slacken their vigilance. This has to be guarded against. In fact greater vigilance is required, as persons returning individually, or in small groups, after dispersal of the procession, become more vulnerable, to mischief-mongers. Atleast for one hour after the dispersal, the staff on duty should be alert. If procession is to start or continue in night-time, then proper lighting arrangements should be ensured. Throughout the route, alternate supply of electricity, should be provided to meet the exigency in case of any sabotage of break down of regular electric supply.²

**6.4 CRIMES AND DEVELOPMENT:**

Every developing nation has to pay the price of development and one price tag is the increase in crime. Industrialization also gives rise to new economic and political conflicts. Unless there is an anticipation and preparation to meet this kind of situation in a developing society, the tensions are bound to increase leading to a serious situation affecting all sections of society.

The process of change in socio-economic and political order sometimes can give a psychological shock. The price of development has been paid by the state all over the country and the process of social and economic transformation gets complicated depending upon the period in which it takes place. Change is the immutable law of life and all nations whether they are capitalists or socialists, experience it.

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1. INSIDE INDIAN POLICE BY JOGINDERSINGH p.138-143.
2. INSIDE INDIAN POLICE BY JOGINDERSINGH p.145
In Gujarat State Industrialization in recent times has affected the social structure. One effect of the transformation has been that the principle of institutional legitimacy has been considerably diluted. Expectations of the people have been aroused as a result of change, which is coming over the Gujarat Polity. Crime faithfully follows the development, though development by itself is not criminogenic. Development leads to the migration of people from the rural to the urban areas and increase in literacy rates. Mass education makes the common man aware of his rights and an educated man can approach the higher officers for the redress of his grievances effectively.

Another effect of the phenomenon of the urbanization is the growing impersonalisation in the day to day conduct of human affairs too. Whenever there are riots, the shops and cars are damaged, though their owners have nothing to do with the issue in dispute. Poverty breeds crime and accentuates in the situation. It is the impersonalisation, which helps the crime. Anything which is the symbol of prosperity becomes the target of attack. Crime is the product of: (1) motivation, and (2) opportunity. Unless these factors aid, no criminal can indulge in any crime. Generally speaking, the crimes are committed in the awareness area of the criminal. For dealing with the crime and criminal and riots situations, the police presence at the flag marches has a limited role, at the best having the effect of a sedative. Any Police Crime Prevention strategy will have to lay a great stress, on strengthening the police stations both quantitatively and qualitatively.

Criminals and gangsters are not born over-night. They start by committing marginal crimes, like bootlegging and prostitution, unlike serious crimes like murder. In such cases, the prima facie victimless nature of the crimes, of marginal category, tends to reduce the involvement of the society. Most of these marginal crimes are aimed at meeting economic ends. Such criminal acts (the marginal crimes like smuggling, bootlegging, and prostitution) provide services and goods which though illegitimate, have a demand. A section of the society has a vested interest, in such crimes. Enormous discretion is available to the police functionaries at grassroots level in handling such crimes and the senior officers of the police department also do not regards the occurrence of such crime as a threat to the existing set-up and at the best they have only a mildly intolerant attitude of such crimes. Sometimes even the policies behind marginal crimes are not clear. For instance if gambling is immoral,
then why there are state run lotteries or race courses which provide a good deal of revenue to the government. Similarly if the consumption of liquor is a health hazard, then why do we have state liquor selling shops?

Thus concepts of social or marginal crime undergo changes due to societal frictions, caste considerations and religious frictions.

Reforming the Inadequacies of Police:

There can not be prevalence of peace, stability and development in society without proper law and order. Jawaharlal Nehru observed: “A strong army and efficient police are likely to do more for Indian self esteem and Independence than any result that could possibly come from planning. The major problem in India is that of development, we must never lose sight of that objective. The army and the police only provide the background, because they create the conditions in which that development is possible…..In India there is hangover of old days when the police was distrusted and considered, as something apart from the citizen. This may be the attitude of suspicion, which has influenced the pattern of national planning, in which the police does not fit in. All the countries hold strong and efficient police service, which is necessary for the well being of the community, to a greater degree, than any other public service in peace time”.

Is the police coming upto the expectations of the people? Do common people perceive, as to what policemen expect from them and of them? Are the two parties satisfied with each others’ performance and whether something more can be done?

No other executive wing of the government has come in for so much criticism as police. Despite the fact that the present police system was given its shape by the colonial rulers, its inadequacies and shortcomings had been the subject matter of intensive debates even then. In fact, the police is only a part of the criminal justice system in the country. It can only take the suspect/accused before the court of the law and it is for the courts to judge the guilt and award punishment. The gathering of evidence depends only on the cooperation and assistance given by the people.
Non-cooperation by Citizens:

Now the question arises why people do not cooperate with the criminal justice system in providing the necessary assistance. The police alone cannot deliver the goods unless reforms in all the wings of the criminal justice system, like the Judicial and Prosecution system are affected. The drawbacks in the existing criminal justice system are best explained by a letter written by a District and Sessions Judge, to the National Police Commission who said:

“The biggest single hurdle which inhibits the citizen from coming forward to help the police is the deplorable conditions prevailing in the courts of law. The lot of witnesses appearing on behalf of the State against a criminal is certainly pitiable. More often than not the case in which he is to appear is adjourned on one pretext or the other. This is invariably done at the end of the day after keeping the witness waiting for the whole day. While fixing the next date the convenience of all concerned, except the witness is kept in view. If the witness fails to turn up on the next date, coercive steps are taken against him. If he appears on the adjourned date, the chances are that the case will be adjourned again.”

“When ultimately the evidence is recorded, the witness is browbeaten by an overzealous defence counsel or declared hostile or unreliable by the prosecution. After undergoing this agonizing experience, the witness is not compensated for the loss of the earning of the day. Even the out of pocket expenses incurred by him are seldom reimbursed.”

“The most difficult problem faced by a witness in our courts is the complete lack of any amenity or facility to make the long wait bearable. What to talk of drinking water, and urinals, etc. in most courts, there is no place where a man can sit unless he forgets all about his dignity and squats on the floor of the verandah or under a tree. The sight of people sitting under the blazing sun or in torrential rain is also not so uncommon, as it may seem to be. Chairs and benches for the conveniences of the witnesses are nowhere available.

“It is small wonder then that disinterested persons fight shy of extending a helping hand to the police and only those persons agree to come to its aid who have an axe to grind. A man going to the railway station or a bus stand to catch a train or
to board a bus has to spend an hour or so. Yet he demands and gets basic amenities like drinking water, and a place to sit, but a man who has to wait for 5 to 6 hours in a court of law is not provided with any of these facilities.

“The plight of a witness is further aggravated by the fact that he is required to prick up his ears so as not to miss his name being called in a most unceremonious manner by the court usher. A prisoner suffers for some acts of commission but a witness suffers for no fault of his own. All his troubles arise because he was unfortunate enough to be on the spot when the crime was being committed and at the same time “foolish” enough to remain there till the arrival of the police. It is for these reasons that people do not take the victim of a road accident to hospital or come to the help of a lady, whose purse or gold chain is being snatched in front of their eyes. If some person offers help in such cases, he is to appear as a witness in a court and has to suffer not only indignities and inconveniences but also has to spend time and money for doing so. Sometimes the witnesses incur the wrath of hardened criminals and are deprived of their lives or limbs.”

Thus, unless reforms are brought about in all the limbs of the criminal justice system, the improvement in one will not be of much consequence. It is for the reformers to take up the challenge and unshackle the system from the past burden of laws, traditions and customs which have outlived their utility in the present age.¹

6.5 TERRORISM AND ORGANISED CRIME:

Organization is a fact of life. Every crime has some kind of planning and organization, behind it, though it may be the handiwork of one man. Terror means extreme fear or governance by intimidation. Among the universally accepted features, are governing, by terror of capital punishment, and the law of private defence, which gives all citizens the right to kill to defend life and property. Dictionary, however, defines terrorism as an organized system of intimidation, especially for narrow political ends. Bank robberies, bombings, kidnappings and hijackings of aircrafts, are all categorized as terrorist acts. Most of these activities are unrelated to any

1. INSIDE INDIAN POLICE BY JOGINDERSINGH Ch.6 p.149-154.
Philosophy of revolutionary action. The use of force is legally and morally justified. However, according to provisions of general international law, in the legitimate resistance to oppression and tyranny, acts of terror both governmental and private are prohibited by international human rights documents. The terrorist may be often willing to sacrifice his own life. The terrorist anticipates retaliation from the government forces. Very rarely, he may be naïve enough, to think that the government will not strike back.

But a civilized government feels, that they have a responsibility to ensure that both over-reaction and under reaction are avoided in dealing with the terrorist. It is essential that both the officials and public, at large are educated, with the ideas relevant to the positive approach. The Human Rights Activists feel that no one be encouraged to take a blindly authoritarian view, even while using force against force. The answer to the question, whether terrorism at all poses, a threat to India’s body politic, is positively yes, without giving in to any fear psychosis. My intention here is not to justify terrorism, but to try to understand the phenomenon.

Definitions:

T.P.Thornation distinguishes between ‘enforcement terror’ and ‘agitational terror’. Enforcement terror is used by those in power and wish to suppress challenges to their authority. The agitation terror is used by the terrorists who wish to disrupt the existing order and ascend to political power themselves. It is the same as ‘the regime of terror’ and ‘the siege of terror’. Terrorism, in short is designed to influence political behavior by extra-normal means, entailing the use or threat of violence.

Terrorism may achieve political ends by, either mobilizing sympathy or by immobilizing the forces, of the authorities. But the authorities have the initial advantage because of the inertia, which characterizes the normal political relationship between authority and citizenry. There is a distinction between four types of terrorism: criminal, psychic, war, and political terrorism. Political terror isolated acts, which are neither systematic nor organized. They are often difficult to prevent. Therefore, neither an isolated act, nor a series of random acts, is terrorism. On the other hand, political terrorism is a sustained policy of organized terror, either on the part of the state, or a movement or faction entailing some organizational structure.
There is some kind of theory or ideology of terror, however rudimentary or preposterous, behind the actions. Political terrorism can be revolutionary terrorism, sub-revolutionary terrorism, and repressive terrorism.

**Political Philosophy of Violence:**

Since the dawn of history man has used violence against his own kind. During the past fifty years, mankind has survived about 1500 armed conflicts all over the world. Theoretical justification for all this violence can be seen in socialism-communalism; radical nationalism-fascism; and anarchism-syndicalism.

Karl Marx declared that the purposes of society are essentially economic. Economic and technological relationships define social and political structures and determine the patterns of change. The dominant class in any society is that, which controls the means of production. The rest of the population is dependent upon the controlling group for survival. They can be organized, manipulated, and exploited by the dominant class. The state is an integral part of the political and legal order. Its class character can be changed, through class struggles, peaceful where possible, violent where not, before the forces of production, can be liberated from the quest, for more and more profit and utilized for the benefit of the entire community, in which the economic exploitation, of man by man is no longer possible. Marx believed that the movement towards socialism is a movement towards democracy. Political democracy must be strongly defended, against all detractors and enemies but from the point of view of democracy as a way of life, it is necessary but not sufficient. Political democracy must be used, to achieve complete democracy, by extending democratic values of the principles, into economic and social life.

**Religious Philosophy of Violence:**

Since the purpose to discuss the phenomenon of terrorism and not to justify it, we should also briefly examine the attitude of the various religions to violence and terror. Jehovah the Gold of the Hebrews was a God of holiness, love, power and wisdom as well as great dread and wrath who inflicted terrible punishments on those who ignored the way of life he set before them.
In the Gita Lord Krishna reveals to Arjuna, “it (the soul) is not born and it
does not die. It is birthless, constant eternal and ancient; it is not slain when the body
is slain – there is no greater good fortune for a Kshatriaya than a righteous battle”
Thiru Valluvar says in the Kural, “It is a soldier’s virtue to be pitiless in battle. But
when an enemy is in distress, to render him help, is the edge of the soldier’s sword”
(i.e. kindness to a foe in distress cuts him to the quick). Again, “of what use is it, to
die amidst weeping relatives, and of age or sickness? One should eagerly seek a
death. This is followed by a different kind of tears, tears of grateful admiration from
the eyes of the kind whom one served.” Thus, all religions approve of killings,
executed in obedience to law or God’s direct command. Some terrorists believe, that
failing God’s direct command, the next best thing is, the command of priests, or some
other charismatic fascist, who may be called a saint. If every terrorist had the benefit
of personal counsel, from a Sri Krishna, then there will be no danger, at all, to society.

Philosophy of the Constitution:

It is best to remember that terrorism in India and Gujarat State today, has
passed through the various phases, from the use of crude weapons to RDX and AK-47
rifles and tactics like mass killings by bomb blasts and hijacking of the National
Airlines’ Aircrafts. We have a Constitution based on principles of justice, social,
economic and political, liberty of thought, expression, belief and worship; equality of
status and of opportunity; and fraternity assuring the dignity of the individual and the
unity of the nation. Protection of interest of minorities has received specific attention
to the constitution. Universal adult franchise has been established. The Directive
Principles of State Policy aim at social and economic development with political
democracy as the base. The Constitution of India provides safeguards, for expression
of criticism, dissent and protest. But it is as a matter of concern that it also appears to
have enabled fascist elements, to organize themselves. This speaks of deficiencies in
understanding and implementing of the Constitutional provisions. The Constitution
itself needs a review, to meet the challenge of the times. It is essential to have a look
very briefly at the different movements resorting to violence and terrorism, in the
country in recent times. There are the insurgencies in greater Assam that is to say in
the present day Assam, Nagaland and Mizoram as well as in Manipur and Tripura
(and also the movement in Jharkhand) the Naxalite activities in Bihar, Madhya
Pradesh and Andhra Pradesh and Jammu and Kashmir. The Punjab had extremism eating into its vitals for over a decade. It ended, when it found, that the State had broken its back.

As for the Naxalites their ideological predicament is well-known. They are alienated from the main Marxist movement, by their rigid adherence to the sole efficacy of violent means, to achieve their objectives. The different Naxalites groups are engaged in peddling their own interpretations, of Marxism-Leninism-Maoism. It may become possible, to harness their idealism, by sufficiently well informed action, education, and motivation. A combined approach only can help.

**Suggestions to Counter Terrorism:**

We should attempt to find long-term solutions to the underlying causes of terrorism by boldly acknowledging the inequities in society providing the objective causes of terrorism. Some suggestions are as follows:

- Increase the size and powers of the security forces.
- Introduce capital punishment for terrorist activities.

Enact legislations limiting rights of assembly and increasing controls over the public by means of identification cards, etc.

Establish a third force to cope with terrorist attacks. This involves policy decisions about the role of the police in anti-terrorist operations; about how early to commit military forces and civil military relations.

- Announce a policy of “no negotiations” with terrorists.
- Increase physical and peripheral security.
- Introduce press censorship to control sensationalism.
- Introduce pros internment without trials.

Special legislation authorizing the above or other measures.

Make it illegal for individuals or private organizations to pay ransom to terrorists.

Promote international treaties providing for extradition or trial of captured hijackers, etc.
Research and develop alternatives to hostage negotiations.

Involve the so called Human Rights Activists to ensure that terrorist group be encouraged to adhere to the norms of Human Rights.

Develop and deploy highly intrusive technologies as prfe-emptive moves, e.g. monitoring and surveillance.

Since we are dealing with human behavior, the policy makers must assess the contribution that can be made by the behavioral sciences. Effective measures need to be taken for stopping the flow of external aid to the terrorist. This will include all forms of diplomatic efforts designed to preclude the terrorists gaining further foreign support.¹

6.6 POLICE DISCRETION:

Social Responsibilities of the Police:

Duties of the Police Officers: “It shall be the duty of every police officer promptly to obey and execute all orders and warrant lawfully issued by him by any competent authority: to collect and communicate intelligence affecting the public nuisance; to detect and bring offenders to justice and apprehend, and for whose apprehension sufficient ground exists, and it shall be lawful for every police officer, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking shop, gaming house or other place of resort, for loose and disorderly character.” Thus, it may be seen that specific duties are assigned to the police, under the law of the land, and the scope of the discretion is rather limited as the word “shall” in the language of Section 23 of the Police Act, of 1861 it reflects. However, the social responsibility, cast on the police, has added a new dimension, to the police work and relationship with the society. The organized police is defined “as a response to the problems of social science in modern societies” by David J Bordua in the International Encyclopedia of Social Science. The expectations of the society, from the police are infinite, including in their social sphere, with which the Police

¹ INSIDE INDIAN POLICE BY JOGINDERSINGH ch.7 p.155-166.
Ordinarily, have nothing to do. The people requisition the services of the police for all kinds of jobs, like rescue of people’s cats and other pets from the wells or the removal of a dead dog or dead body from the roadside, or to trace the missing child or elopement of the girl with her boy friend, or complaints against the neighbors for throwing rubbish or hanging clothes at their place earmarked for somebody else, for preventing cruelty to the animals, or practice of untouchability, or prevention of publication of harmful publications. It is worthwhile to mention, that the police are called upon to enforce, amongst other works the acts mentioned in previous chapter.

**The Use of Discretion by Police:**

It is also true that in present day, society there is no respite, from dangers emanating from various quarters, in unpredictable situations. At the face of it, there appears to be justification for widening the field of police activities. This is, how it should be, to ensure enjoyment, of the fundamental rights, as enshrined in the Constitution. The police have to be careful, in balancing the rights of the people, so that, the rights of some individuals, do not violate the rights of others. In some matters, the police tend to use their discretion, to assess whether the breach of the law is only technical. However, use of discretion, can lead to the misuse of responsibility. In any case, the atmosphere in the state is such, that it does not inspire the police to use their discretion, lest they be misunderstood. Like the rest of the administration, the police also tend, to play safe and not take chances for inviting allegations. More often then not, they do not use their discretion, and let the cases, even weak and unsubstantiated ones, to be taken to the courts, so that the blame for not punishing the wrong doers does not stick to them.

To serve democracy, the police system has to contribute, to the upholding of the principles of liberty, equality and freedom of expression. They have a paramount ethical and moral responsibility to ensure that enforcement and non-enforcement of the laws is done impartially and equally, without regard to the social standing, religion, caste, creed or class. This is the only way, in which the police can earn the respect of all sections of the society.

The police is required to function under the Rules of Law. Supreme Court observed: “Crime is contagious. If the Government servant becomes a law breaker, it
breeds contempt for the law. To declare that in the administration of criminal law, the ends justify the means,—is to declare, that the Government servant may commit crime, in order to secure the conviction of a private criminal,—would bring terrible retribution. Against this pernicious doctrine, the court must resolutely set its face. It is better that some criminals should escape the law than that the government officer should play an ignoble part. This however, should not be interpreted, to mean that the police are being told to fold up their hands and remain passive, when anti-social elements, suddenly grow in wealth. Instead they should be active and intelligent enough to track down those, who hold the nation’s wealth, peace and security in jeopardy. The only insistence is that means must also be as good as ends.” (Prem Chand vs. Union of India, 1981, Cr. L J 5 (SC). The above landmark judgments of the Supreme Court is a clear indication of the direction on which the police should function and exercise its discretion, that is in conformity with the laws and spirit of liberal understanding of the issues.

The television, radio, and press have added a new dimension to the activities of the police. They are constantly under watch. The policeman more often than not is called upon to take decisions on the spot, and is liable to be exposed to public criticism. He is damned either way for taking a decision or for not taking a decision. This is the predicament he faces. In his job he has to do tight rope walking and strike a balance between the demands of the citizens and the often vexatious political interference. To some, he appears to be taking too drastic an action, in some situations and to some he appears not to be taking action at all, for the same situation. He has to do all this within the four corners of law and still exercise his discretion for the betterment of society and still come upto the expectations of the people. The role of the policeman is basically coercive in the enforcement of the laws. Yet it is expected of him, not to enforce it, in some situations. With a vigilant press and ever active citizen’s groups, the work of the police is under constant close examination. His failures to come up to the people’s expectations, can no longer be hidden under the carpet.¹

¹. INSIDE INDIAN POLICE BY JOGINDERSINGH CH.8 P.167-178.
6.7 TREATMENT OF JUVENILE DELINQUENTS:

Juveniles, if not prevented from committing crimes, only graduate to serious crimes, and to that extent, it is essential that the Juvenile Justice Act 1986 and Juvenile Justice (Cadre Protection) Children Act, 2000, should be enforced effectively. This is an Act, to provide for the care, protection treatment, development and rehabilitation of neglected and delinquents and for the adjudication of matters, relating to juveniles. It was enacted by the Parliament in 1986 and replaced Acts like Children’s Act of 1960 and similar Acts of Madras, Bombay and Calcutta promulgated in 1920s. Recently Juvenile Justice (Care & Protection) Children Act, 2000 imposed in the country. The justice system as available for adults was unsuitable, for being applied to juveniles. It was also felt, that it was necessary that a uniform juvenile justice system should be available throughout the country, which should make adequate provision, for dealing with all aspects, in the changing social, cultural and economic situation, in the country.

Under this Act any police officer, organization or any other person, may take charge of a neglected child, and produce him before the board, or if information is placed before the police, about the neglected child, the PSO will enter it in a register, and if he does not propose to take charge, he shall forward the copy of the entry, to the board. If there are parents or guardian, of the neglected child, the police officer may report to the board, which will issue notice to the parents, why the child should not be dealt with as a neglected child, who has been neglected. The board may make orders, directing the juveniles, to be sent to juvenile homes, or they may make an order, to keep the child under the care of a parent, or a guardian or a fit person after demanding a bond.

If the juvenile, is accused of bailable or non bailable offence, he should be released, on bail, with or without surety but, he shall not be so released, if there appears reasonable ground, for believing that he is likely to be associated with any known criminal, or be exposed to moral danger, or that his release would defeat ends of justice.

The police officer, on arresting a juvenile shall, as soon as after the arrest inform: i) the parent or guardian and direct him to appear in the court where the
juvenile is to be produced; ii) the probation officer, of such arrest will collect information history background on the juvenile, so as to help the court.

**Difficulties Faced in Implementing the Act:**

The implementation of this Act shows the following difficulties:

The policemen, who are supposed to take charge, of these neglected children, do not have time, to look after these offences, as seriously as the Act would warrant. The Policeman is more worried, about terrorism, VIP Security, airport, railway security and order duties rather than implementing this Act. Nor is he mentally equipped, to treat the children, in a soft manner given the present training methods, in the State. Perhaps women police would suit the job, but even they are reported to be tough and aggressive, and hence, not suitable for the job of handling the children with compassion, and softness they deserve. Further are in meager number.

The number of destitute and neglected children, in our country, is so large that, it is impossible to effectively bring them, to juvenile homes. Even if some of them, undergo training and discipline of training institutions, it would be well nigh impossible, for probation officers to move around, and keep track of these youngsters. The value of probation officers is generally not appreciated by the District Magistrates and Superintendents of Police, for whom this is a low priority work. The result is that nobody in practice, takes the work done by them, seriously. It is performed very ineffectively, as nobody is there to supervise and show interest in their job.

The higher ups in the State Administration, viz. the Political Executives, Administrative Executives and Police Executives, need to be conscientised about this Act. Otherwise, the power that is vested in them, to form juvenile courts, special homes, will remain a dream for a long time to come. Without this conscientisation, top executives of the State, are likely to brush aside, the importance of this social legislation. It is seen, that even where a few institutions are established by the State, they are being run, perfunctorily and shabbily.

The Act contemplates, that members of the board and magistrates, of the juvenile court should have special knowledge, of child psychology and child welfare. Such qualified persons, are not so easily available, and so to that extent it may not be
possible for the government, to form the courts and boards, as fully expected in the Act. The Act is self defeating in this aspect. There is possibility for circumventing of the scheme demanding establishment of juvenile board or court by sheltering under the provision Section 7(2) where Divisional Magistrates, Sub-Divisional Magistrates and J.M.F.C.s are permitted to exercise powers of court and board. Even where such boards have been formed, there is no evidence to show, that they have complied with, the expectations anywhere in the State.

At times, due to lack of guarding these juveniles, lodged in various homes, the juveniles tend to run away, from the homes. It is very difficult to get these juveniles back once again and placed in the homes by the police. Further, the authorities in various homes do not report the desertion of children, from homes.

**Heartless Homes:**

Whereas the Act contemplates, such institutions as special homes, juvenile courts, juvenile homes, observation homes and after care organizations, to be constituted by the State Government, what in practice, is found, is given in an article in the Indian Express under the heading “Heartless Homes”. It is mentioned, that the State of orphanages and destitute homes would shock the most hardened of humans. Destitute and orphaned children are kept in government, semi-government and non government’s homes. ¹

**6.8 Cases Ending in Acquittals:**

In case of Baldeo vs. State (1969 AIR pages 756) the Court observed:

“In a case, relating to a fight in which both the parties are proved to have received injuries and the injuries of either party cannot be regarded as negligible in number and nature, ascertainment of the manner, in which the fight began and developed, is essential for deciding the guilt or innocence of a party. In such a case, the acts done by a party, would not by themselves, show their criminality or justification, and they would take their legal complexion entirely from the

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¹ INSIDE INDIAN POLICE BY JOGINDERSINGH CH.11 P. 237-248.
Circumstances, in which they are proved to have been done. Determination of the true sequence of events, therefore, becomes a matter of vital importance in a case of this kind and if the court, on consideration of all relevant matter, is in the end, left in a state of reasonable doubt and uncertainty as to the origin of the fight, and as to whether a situation had arisen in which the acts, with which a party is charged, became justified in law, the court cannot hold that party guilty."

Another type of case, which normally ends in acquittal, is the one, in which there is a “free fight”, between the parties, equally determined on their rights. They meet only for settling their avowed rights. When both the cross cases, are sent up for trial by the court, such cases end in acquittal. The reason is obvious, for the acquittals. The prosecution witnesses, in one case, are the accused in the other and vice versa. The witnesses in cross cases, tend not only to exaggerate but also indulge in falsehoods. They keep their safety in the cross cases in view. They attribute aggression to the other party and assume the role of injured innocence.

The Benefit of Doubt:

Vary rarely does an investigator, in such a case examine, or succeed in getting, an impartial witness. The result is, that such cases, end in unmerited and undeserved acquittals. There is no definite evidence, produced, before the court to reach any conclusion, regarding the truth of the matter. The result is, that benefit of doubt is given to the parties and the cases end in acquittal. The proper course for handling such cases would be to find out independent witnesses. Such witnesses would be in a position to give the true version, of the incidents to the court. They can be produced as common eye-witnesses, even though their version, may conflict with the partisan witnesses in the court. This is the only way, in which the court can be assisted, to find out the truth. Cases relating to the quarrels and fights over the land and other properties, are very common. The acquittal in such cases is common due to the inadequate attention paid to the revenue records to establish the frights of the parties. False records also lead to the benefit of doubt, being given by the court to the accused. Investigation in such cases requires knowledge, of the village and other revenue or municipal records. Copies of the same by the competent authority are the best evidence. The deficiencies in the investigation have to be made good, before the case is filed before the Court.
Essentials for a Post-Mortem Report:

A witness before a Commission indicated the imperfections in the medico-legal work in the following words: “In my opinion, the present forms prescribed, for the post-mortem examination and preparation, of injury report, are defective in some ways. Strangely enough, in the injury report, there is a column for mentioning the probable weapons, by which the injury was caused, but there is no such column in the post-mortem report form. Such a column is essential, for the post-mortem examination form as well. The data on which the information, regarding the age of the injured and the weapon, with which they are caused, are not mentioned, either in the post-mortem report, or in the injury report with the result, that it leads to useless cross examination and to the employment, of more conjectures, by the doctors. In my opinion, the data on which, all those matters are formed, should be mentioned. The data regarding the features of the dead body, on the basis of which, time since death, is determined, is not properly given in the post-mortem report. I think, it should give this data. A detailed description, of the contents, of the stomach, the small intestine and the large intestines and the bladder, seems to be absolutely necessary, and these details are entirely excluded in the post-mortem reports, that usually go to the court. The parts in which faucal matter is found and the estimated quantity of the matter, should be invariably given. It should also be indicated, in which part, of the small intestine, his food had been found. The urine found in the bladder should be weighed and its quantity mentioned in the report.

The time since death, in my opinion, should be described in terms of hours, upto 36 hours and thereafter in terms of days or parts thereof. Post-mortem examination reports, in regard to firearm injuries, are of a most unsatisfactory nature, and they often lead to wholly unmerited acquittals. The reports do not show any proper appreciation, of the distinction between scorching, blackening and penciling. No proper light, is thrown, in the post-mortem reports on the shape, direction of the injury and the track of the bullet. Doctors performing the post-mortem examination, and doing medico-legal work, have very inadequate idea, of dispersal and distances, or anything pertaining to ballistics.¹

¹ AIR VOLUME 1969 page 756-762.
Sometimes the cases ending in acquittals due to negligency of Public Prosecutors. In the cases tried by Court of Sessions the Public Prosecutor appears on behalf of the State government appointed under Section 24 of Cr P C but there is no criteria or written examination for selection of such public prosecutors. This post is purely political post. For the wider interest of the society the appointment should be made by the written examination as well as oral examination for public prosecutors of Sessions Court. To secure the proper presentation of the cases of the State a new Section 25-A is inserted by the Code of Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005) but the implementation has not been made in the Gujarat State. The Section is as under:-

[25-A. Director of Prosecution.—]

(1) The State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.

(2) A person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, only if he has been in practice as an advocate for not less than ten years and such appointment shall be made with the concurrence of the Chief Justice of the High Court.

(3) The Head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the Head of the Home Department in the State.

(4) Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.

(5) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (1), or as the case may be, sub-section (8), of Section 24 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.

(6) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (3), or as the case may be, sub-sections (8), of Section 24 to conduct cases in District Courts and every
Assistant Public Prosecutor appointed under sub-section (1) of Section 25 shall be subordinate to the Deputy Director of Prosecution.

(7) The powers and function of the Director of Prosecution and the Deputy Director of Prosecution and the areas for which each of the Deputy Director of Prosecution have been appointed shall be such as the State Government may, by notification, specify.

(8) The provisions of this section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecutor.]

Objects and Reasons of 2005 Amendment—This clause seeks to insert a new Section 25A empowering the State Government to establish the Directorate of Prosecution, the Director of Prosecution shall function under the administrative control of the Head of the Home Department in the State.

Now-a-days the Public Prosecutors in the Judicial Magistrate Court, in the Court of Sessions and in the High Court are working under the control of legal department of the state. The police force is working under the control of the Home Department. So for better transmission and control both the agencies should be under the control of the same department.

6.9 Information in Cognizable Cases:

Every information relating to the commission of a cognizable offence, if given orally to an officer-in-charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

A copy of the information as recorded under sub-section (1) of S.154 of Cr.P.C. shall be given forthwith, free of cost, to the informant.

Any person aggrieved by a refusal on the part of an officer-in-charge of a police station to record the information referred to in sub-section (1) of S.154 of Cr.P.C. may send the substance of such information, in writing and by post, to the Superintendent of Police concerned, who, if satisfied that such information discloses
the commission of a cognizable offence, shall either investigate the case himself or
direct an investigation to be made by any police officer subordinate to him, in the
manner provided by the Cr.P.C., and such officer shall have all the powers of an
officer-in-charge of the police station in relation to that offence.

FIR—Inaction of police officials in registering FIR.—Whenever any
information is received by the police about the alleged commission of offence which
is a cognizable one there is a duty to register the FIR. There can be no dispute on that
score. The correct position in law, therefore, is that the police officials ought to
register the FIR whenever 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 in Section 190 read with Section 200 of the Criminal Procedure Code.

Any telephonic information about commission of a cognizable offence, if any,
irrespective of the nature and details of such information cannot be treated as first
information report. If the telephonic message is cryptic in nature and the officer-in-
charge, proceeds to the place of occurrence on the basis of that information to find out
the details of the nature of the offence if any, then it cannot be said that the
information which had been received by him a telephone shall be deemed to be a FIR.
The object and purpose of giving such telephonic message is not to lodge the first
information report but to make the officer-in-charge of the police station to reach the
place of occurrence.

Section 157 of Cr.PC requires that FIR should be forwarded to the Magistrate
“forthwith”, what is the consequence if it is not forwarded forthwith? Non-compliance
with that direction need not necessarily provide room for an inference that FIR was
concocted. On the ground of delay it is not permissible to quash the FIR unless the
delay is intentional and can be assigned to the prosecution. The delay in
communicating the FIR to the Magistrate does not minimize the importance of FIR.
FIR is not a substantive piece of evidence. It could be used for contradiction and
corroborator to the statement of the author of FIR in Court. Information under S.154
must not be vague but definite enough to enable the police to start investigation.

It is evident that after lodging the FIR, the informant’s right to pursue
investigation or to know the result of such investigation is not lost. He has right and
locus to pursue the investigation by the Police upon his information given under
Section 154 of Cr.P.C., so that the offence is lawfully investigated and the culprit is brought to book for being tried and punished by the competent court.\(^1\)

**Police Officers Powers to Investigate Cognizable Cases:**

Any officer in-charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII of the Code. The police officer has a power to investigate the case u/s., 156(1) of the Code. No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. Any Magistrate empowered under Section 190 of the code may order such an investigation as above-mentioned u/s.156 (3) of the Code. If there are indications that some cognizable offence has been committed, the Magistrate can direct police to investigate without examination the complainant or his witnesses’ u/s.156 (3) of the Code.

Cognizance of “Police Report”.—under the circumstances, the Police was required to submit its report under Section 173 of Cr.P.C. It is only on receipt of “Police Report” that the Magistrate could take cognizance of the offence under Section 190(1)(b) of Cr.P.C.

Court’s Supervisory power over police investigation and prosecution.--In India too the investigation police have to work under the supervision of the Magisterial Court even though they do not get the Court’s protection if there is any undue obstruction or interference, political or otherwise, with their work of investigation. As a matter of fact the scheme of Chapter XII, of the Cr.P.C. too shows that while investigating a case the investigating officer acts under the control and supervision of the Magistrate. Under Section 156, Cr.P.C. the Magistrate can ask him to investigate a case. Under Section 157, Cr.P.C. the investigating officer is required to send an intimation to the Magistrate when a cognizable case is reported, under Sections 158 and 159, Cr.P.C. the Magistrate can direct him to investigate a case.

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which he has refused to investigate, under Section 164 Cr.P.C. he is required to get a statement or confession recorded by Magistrate, under section 165, Cr.P.C. he is required to send to the Magistrate the grounds for conducting a search without a warrant, under section 167, Cr.P.C. he is required to forward the accused to the Magistrate and apply to him not only for time but also for remanding of the accused to judicial or police custody, under Section 169, 170 and 173, Cr.P.C. the investigating officer is required to report the result of the investigation to the Magistrate under different circumstances and also to forward the exhibits of the case to him, and under Section 174, Cr.P.C. he has to send an intimation and an inquiry report to the Magistrate in all cases of unnatural deaths.

Now, it is moot point as to why the investigating police who have been so squarely placed under the supervision and control of the Magistrate should not also get the benefit of protection of the law of contempt of courts in case there is an attempt to interfere with their statutory duties; for, an investigation is nothing but a preliminary step to help the ultimate judicial process before a court of law. Prior to the enactment of the new Contempt of Courts Act, 1971, publication of a statement which had a tendency to prejudice the mankind in favour or against a party in a case under investigation amounted to contempt of Court if the accused had been arrested or his arrest was imminent. The same position holds good in regard to withdrawal of cases en masse on political grounds; for, the power to withdraw a case has been given under Section 321, Cr.P.C. to the Public Prosecutor and not to any political boss or to the District Magistrate.

The duty of an investigating officer is not only to bolster up the prosecution case with such evidence as may enable the Court to convict the accused, but to bring out the real and unvarnished case so that justice may be done. The primary duty of the police, thus is to collect and sift the evidence of the commission of the offence to find whether the accused committed the offence or has reason to believe to have committed the offence and the evidence available is sufficient to prove the offence and to submit his report to the competent Magistrate to take cognizance of the offence. It is the duty of the investigating agency to collect all materials relatable to the case and counter-case and ultimately form an opinion on the materials so collected and the opinion so formed may result in filing of a positive or negative report. It is the duty of the Court, on the materials so placed to frame charges against the accused.
Investigation conducted by police who is himself complainant and witness to crime would not vitiate automatically.

Since police officer, on whose report crime is registered is not de facto complainant, hence he is competent to carry out investigation.

Even if there is irregularity in investigation, the trial cannot be held to be illegal unless it is shown that miscarriage of justice has been caused to the accused on account of the illegal investigation.

Power of an officer-in-charge of police station to investigate a cognizable case.—An officer-in-charge of a police station can investigate a cognizable case without any order from any Magistrate. He can investigate whether all the offences are cognizable or one of them is cognizable. Accused has no right to interfere into matter as to who should investigate the offence he is charged with.

Investigation of cognizable offence by police—Magistrate cannot stop investigation.—The power of police to investigate any cognizable offence is uncontrolled by the Magistrate, but it is only in cases where the police decided not to investigate the case that the Magistrate, can intervene either direct an investigation, or, in alternative himself proceed or depute a Magistrate subordinate to him to proceed to enquire into the case. The power of police to investigate has been made independent of any control by the Magistrate.¹

6.10 EXAMINATIONS OF WITNESSES BY POLICE:

Any police officer making an investigation under Cr.P.C. 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 any person supposed to be acquainted with the facts and circumstances of the case.

Such person shall be bound to answer truly all questions relating to such case put to him by such 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.

¹ CRIMINAL TRIAL AND INVESTIGATION BY banerjee Page 198 to 210.
The police officer may reduce any statement made to him in the course of an examination and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

**In Balakrishan V. State of Rajasthan**, it was observed as under:-

“The words ‘at any enquiry or trial in respect of any offence under investigation’ imply that such a statement cannot be used during any enquiry or trial for the offence. But the use of such a statement recorded under Section 161, Cr PC is not prohibited for any other purpose or in a subsequent stage of the same case after when the trial is concluded…”

The witness, whose statement was not recorded under Section 161 of CrPC, can be permitted to be produced before the Court. Such witness is competent witness. An Investigating Officer is not bound to record the statements of witnesses that seems clear from sub-section (3) of Section 161 of CrPC. But, if he does reduce the statements into writing he must make a separate record of the statement of each of the person whose statement he records. In other words, if a police officer examines a number of witnesses, he cannot record a condensed version of the examination of all of them or a précis of what the witnesses are supposed to have said. He must record what each witness says. He cannot, for example, record the witnesses ‘A’, ‘B’, and ‘C’ said so and so. Neither can he lawfully do what police officers frequently do that is, record the statement of ‘A’ and then add that witnesses ‘B’ and ‘C’ corroborate what ‘A’ says. Now, the settled law is that failure to comply with the provisions of Section 161(3) might affect the weight to be attached to the evidence of the witnesses.

The right of examining orally ‘any person supposed to be acquainted with the facts and circumstances of the case’ is conferred on any police officer making an investigation under Section 161(1) of CrPC, ‘any person’ in the Section includes an accused person consequently an accused also can be examined. But, the accused cannot be compelled to answer questions that materially incriminate him or her in the pending or imminent investigations or prosecutions.

If an accused wants the presence of a lawyer at the time of his interrogation the police should allow him to engage a counsel for that purpose. (Ram Lal Wani v. State, 1981 Cri LJ 97; Gian Singh v. State, 1981 Cri LJ 100.)
The FIR as well as the statement given by the injured to the Investigating Officer is not admissible as dying-declaration under Section 32 of the Evidence Act and in Court’s view, the said conclusion is unassailable.

A person summoned to answer under this section shall not be compelled to answer those questions the answer of which would make him or her liable to criminal charge, penalty or forfeiture.

Investigation in the case being completed within the statutory period of 90 days and a further report being filed by the Investigating Officer after further material was available to him, it cannot be said that he submitted charge-sheet in installments and the accused does not become entitled to get bail as a matter of right.

POLICE OFFICER’S POWER TO REQUIRE ATTENDANCE OF WITNESSES:

Any Police Officer making an investigation under the CrPC 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.

The State Government may, by rules made in this behalf, provide for the payment by the public officer of the reasonable expenses every person, attending at any place other than his residence.

An investigating officer can summon a person only by an order in writing. The absence of an order in writing as required by this Section is no doubt an irregularity. It would certainly justify the failure or refusal of the suspect to obey the order, but if the person summoned complies with the order the irregularity is waived.

Investigating machinery could require even a witness to appear at different places where investigation is required to be carried out. Person called upon to assist
investigation machinery could not refuse to go to such place on ground that it amounted to denial of his personal liberty.

It is not essential for an investigating officer to summon a witness before examining him. Any person present at the time of investigation may be examined. Section 160 of Cr PC does not authorize the requisitioning of production of document. The person on whom legal requisition has been served under this Section must appear at the place and time given by the investigation officer. Disobedience of such order is punishable under Section 174, I.P.C. If the requisition order is not valid in the sense that it does not give the date, place and time of appearance, the disobedience would not be punishable.

‘Any person’ mentioned in Section 160(1) Cr PC means and includes ‘any accused person’ and they could be summoned to appear as witnesses since such a summons issued to an accused in a case under investigation by the Investigating Officer is not at all vocative of the Article 30(3) of the Constitution of India. (Pulavar B.M. Senguttuvan v. State, 2004 Cri LJ 558 at 562 (Mad.))

POLICE TO ENQUIRE AND REPORTS ON SUICIDE, ETC.

When the officer-in-charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal, or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighborhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted. (Under section 174 of Cr P C).
The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

When,--

The case involves suicide by a woman within seven years of her marriage; or the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or The case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or There is any doubt regarding the cause of death; or The police officer for any other reason considers it expedient so to do,

he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

Dowry death—Police how to investigate.—It would be of a considerable assistance if an appropriately high priority was given to the investigation of dowry cases, if a special magisterial machinery was created for the purpose of the prompt investigation of such incidents and efficient investigative techniques and procedures were adopted taking into account the peculiar features of such cases. A female police officer of sufficient rank and status in the police force should be associated with the investigation from its very inception.

If the inquest report is not sent with the dead body to the doctor it may be inferred that the police prepared it afterwards. If the inquest report is unreasonably delayed the genuineness of FIR becomes doubtful.\(^1\)

\(^1\) CRIMINAL TRIALS AND INVESTIGATION BY P.C.BANERJEE. p.216 to 218.
6.11 INFORMATION AS TO NON-COGNIZABLE CASES AND INVESTIGATION OF SUCH CASES:

When information is given to an officer-in-charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer-in-charge of a police station may exercise in cognizable cases.

Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable. (Cr PC 155).

Complaint was filed alleging criminal intimidation under Section 506, IPC which was non-cognizable offence. Police had investigated into case without having any order from competent Magistrate. Based on report of such an investigation order taking cognizance of offence was without jurisdiction and liable to be set aside.

Which police officer to investigate.—the investigation of a non-cognizable offence is limited in its application to a police officer receiving such order. No other police officer can investigate. Any police officer may be ordered to investigate. He may or may not be an officer-in-charge of the police station. It means Court can order to investigate into the matter to Dy.S.P. Also by his designation or by name.

Who can order investigation.—Sub-section (2) of S.155 Cr PC requires a Magistrate to have both territorial jurisdiction and a power to try or to commit before he can make an order to investigate.
Who could file application for investigation into non-cognizable case.— Application for investigation into non-cognizable case could be filed by complainant. Section 155(2), Cr PC does not provide that but for the Police Officer no other person could approach Magistrate for seeking his direction under aforesaid section. *(Kunwar Singh v. State of UP 2007 Cri LJ 1364 (All)).*

**6.12 DUTIES OF POLICE OFFICERS UNDER BOMBAY POLICE ACT 1951.**

According to section-28, POLICE OFFICERS TO BE DEEMED TO BE ALWAYS ON DUTY AND TO BE LIABLE TO EMPLOYMENT IN ANY PART OF THE STATE.(1) Every Police Officer not on leave or under suspension shall for all purposes of this Act be deemed to be always on duty, and any Police Officer or any number or body of Police Officers allocated for duty in one part of the State may, if the State Government or the Inspector-General so directs, at any time, be employed on Police duty in any other part of the State for so long as the services of the same may be required there.

*Chapter-vi.(B.P.Act 1951) EXECUTIVE POWERS AND DUTIES OF THE POLICE.*

According to **Section 64 DUTIES OF A POLICE OFFICER**:- It shall be the duty of every Police Officer-

- promptly to serve every summons and obey and execute every warrant or and other order lawfully issued to him by competent authority, and to Endeavour by all lawful means to give effect to the lawful commands of his superior;
- to the best of his ability to obtain intelligence concerning the commission of cognizable offences or designs to commit such offences, and to lay such information and to take such other steps, consistent with law and with the orders of his superiors as shall be best calculated to bring offenders to justice or to prevent the commission of cognizable, and within his view of non-cognizable, offences;
- To prevent to the best of his ability the commission of public nuisances;
To apprehend without unreasonable delay all persons whom he is legally authorized to apprehend and for whose apprehension there is sufficient reason;
To aid another Police Officer when called on by him or in case of need in the discharge of his duty, in such ways as would be lawful and reasonable on the part of the officer aided;
To discharge such duties as are imposed upon him by any law for the time being in force.

According to Section-65. Power to enter places of public resort.-

(1) Every Police Officer may, subject to the rules and others made by the State Government or by a person lawfully authorized, enter for any of the purposes referred to in section 64 without a warrant, and inspect any place of public resort which he has reason to believe is used as drinking shop, or a shop for the sale of intoxicating drugs or a place of resort of loose and disorderly characters.

(2) Power to search suspected persons in a street.—When in a street or a place of public resort a person has possession or apparent possession of any article which a Police Officer in good faith suspects to be stolen property, such Police Officer may search for and examine the same and may require an account thereof, and should the account given by the possessor be manifestly false or suspicious, may detain such article and report the facts to a Magistrate, who shall thereon proceed according to Cr PC or other law in force.

According to Section-66. DUTIES OF POLICE OFFICERS TOWARDS THE PUBLIC.—It shall be the duty of every Police Officer,—

to afford every assistance within his power to disabled or helpless persons in the streets, and to take charge of intoxicated persons and of lunatics at large who appears dangerous or incapable of taking care of themselves;
to take prompt measures to procure necessary help for any person under arrest or in custody, who is wondered or sick and whilst guarding or conducting any such person, to have due regard to his condition;
to arrange for the proper sustenance and shelter of every person who is under arrest or in custody;
In conducting searches, to refrain from needless rudeness and the causing of unnecessary annoyance;
In dealing with women and children to act with strict regard to decency and with reasonable gentleness;
To use his best endeavors to prevent any loss or damage by fire;
To use his best endeavors to avert any accident or danger to the public.

According to Section-67. Police to regulate traffic, etc. in streets.—it shall be the duty of a Police Officer—

to regulate and control the traffic in the streets, to prevent obstructions therein and to the best of his ability, to prevent the infraction of any rule or order made under this Act or any other law in force for observance by the public in or near the streets;
to keep order in the streets and at and within public bathing, washing and landing places, fairs, temples and all other places of public resort and in the neighborhood of places of public worship during the time of public worship;
to regulate resort to public bathing, washing and landing places, to prevent overcrowding thereat and in public ferry-boats and, to the best of his ability, to prevent the infraction of any rule or order lawfully made for observance by the public at any such place or on any such boat.

According to Section-68. Persons bound to conform to reasonable orders of Police:--All persons shall be bounded to conform to the reasonable directions of a Police Officer given in fulfillment of any of his duties under this Act.

According to Section-69. Power of Police Officer to restrain, remove, etc:-
A Police Officer may restrain or remove any person resisting or refusing or omitting to conform to any direction referred to in Section 68 and may either take such person before a Magistrate or, in trivial cases, may release him when the occasion is past.

According to Section 70. Enforcement of orders issued under Sections 37, 38, or 39:-Whenever a notification has been duly issued under Section 37 or an order has been made under sections 38 or 39, it shall be lawful for any Magistrate in a District or Police Officer to require any person acting or about to act contrary thereto to desist or to abstain from so doing, and in case of refusal, or disobedience, to arrest
the person offending. Such Magistrate or Police Officer of such notification, or order as aforesaid, and the thing seized shall be disposed of according to the order of any District Magistrate having jurisdiction at the place.

According to Section-71. Duty of Police to see orders issued under sections 43, 55, 56, 57 or 63AA are carried out:- It shall be the duty of the Police to see that every regulation and direction made by any authority under sections 43, 55, 56, 57, or 63AA are duly obeyed to warn persons who from ignorance fail to obey the same and to arrest any person who willfully disobeys the same.

According to Section-72. When Police Officer may arrest without warrant:- Any Police Officer may, without any order from a Magistrate and without a warrant, arrest-

Any person who has been concerned in an offence punishable under section 121 or against whom reasonable complaint has been made or credible information has been received or a reasonable suspicion exists, of his having been concerned in such offence;

Any person who contravenes a rule or order under clause (x) of sub-section (1) of section 33 or an order or notification under sections 36, 37, 56, 57, or 63AA.

(2A) any person who contravenes any order made under sub-section (1) of section 63A;

Any person who commits an offence punishable under section 122 or section 136.

NOTES.

Guidelines for arrest:--To check the abuse of police power, transparency and accountability are possible safeguards to be insisted upon. Training needs to be restructured, attitude and approach of police also need a change. Presence of counsel of arrestee during interrogation may deter the police from using third degree methods for interrogation. It is, therefore, appropriate to issue necessary requirements to be followed in all bases of arrest or detention till legal provisions are made in that behalf

According to Section-78. Power of Police Officer to unsaddle the animal or unload:--When a Police Officer in good faith suspects that any animal being employed in any work or labour is, by reason any sore, unfit to be so employed, he may require the person in charge of such animal to unsaddle or unload it for the purpose of ascertaining whether any sore exists and, if any person refuses to do so, may himself unsaddle or unload the animal or may cause the same to be unsaddled or unloaded.

According to Section-79. Power of Police to arrest without warrant when certain offences committed in his presence:--Any Police Officer may, without an order from a Magistrate and without a warrant, arrest any person committing in his presence any offence punishable under section 117 or section 125 or section 130 or sub-clause (i), (iv) or (v) of section 131 or clause (i) of section 135 in respect of contravention of any order made under section 39 or 40.

According to Section-80. Other power of arrest:--

(1) Any Police Officer specially employed in this behalf by a competent authority may arrest without warrant for an offence specified in section 110.

(2) Any Police Officer may, on the information of any person in possession, or charge of any dwelling house, private premises, or land or ground attached thereto, arrest without warrant any person alleged to have committed therein or thereon an offence punishable under section 120.

According to Section-81. Refusal to obey warning or to accompany Police:-- A Police Officer may arrest without warrant any person committing in his presence in any street or public place any non-cognizable offence punishable under this Act, or under any rule there under and for which no express provision has been made elsewhere or under any other law for the time being in force, if such person—

after being warned by a Police Officer persists in committing such offence, or Refuses to accompany the Police Officer to a Police Station on being required so to do.
According to Section-82. Police to take charge of unclaimed property:--

(1) The Police shall take temporary charge—

of all unclaimed property found by, or made over to them, and also

Of all property found lying in any public street, if the owner or person in charge of such property on being directed to remove the same, refuses or omits to do so.

(2) [In any area for which a Commissioner has been appointed] the property of which the Police have taken charge under sub-section (1) shall be handed over to the Commissioner.

A Police Officer has to discharge his duties for the provisions of following sections of Bombay Police Act 1951 also.

According to Section-83. Police has to take possession of Intestate property over four hundred rupees in value:--

(1) [In any area under the charge of a Commissioner] if any property of the nature referred to in section 82 appears to have been left by a person who has died intestate, and not to be under four hundred rupees in value, the Commissioner shall communicate with the Administrator-General with a view to its being dealt with under the provisions of the Administrator-General’s Act, 1913 or other law for the time being in force.

(2) [In areas outside the charge of a Commissioner] the property shall be delivered to the police-Patel, if any, of the town or village in which the same was found, and a receipt therefore taken from the police-Patel, who shall forward such property to the Magistrate to whom such police-Patel is subordinate. If in any such case there be no police-Patel of such town or village, the Police shall forthwith report to such Magistrate as the Magistrate of the district shall, from time to time, appoint in this behalf, and act thereafter as the said first mentioned Magistrate shall direct.

According to Section-84. Intestate property over four hundred rupees in value:--If the property regarding which a report is made to a Magistrate under section 83 or under section 19 of the Bombay Village Police Act, 1867, appears to such
Magistrate to have been left by a person who has died intestate and without known heirs and to be likely, if sold in public auction, to realize more than four hundred rupees net proceeds, he shall communicate with the District Judge with a view to its being dealt with under the provisions of section 10 of Bombay Regulation VIII of 1827 (a Regulation to provide for the formal recognition of heirs, etc.) or other law in force.

According to Section-85. Procedure in other cases:--

(1) In any case not covered by section 83 or 84, the Commissioner, or the Magistrate concerned, as the case may be, shall issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto [to appear before himself or some other officer whom he appoints in this behalf within three months from the date of such proclamation and establish his claim within a period not exceeding three months after such appearance:

Provided that the Commissioner, the Magistrate or the concerned officer, may, in any appropriate case, for reasons to be recorded in writing, extend the said period of three months for establishment of the claim by such further period and subject to such conditions as he may deem fit.]

(2) Power to sell perishable property at once: - If the property, or any part thereof, is subject to speedy and natural decay, or consists of live-stock, or if the property appears to be of less value than [fifty rupees], it may be forthwith sold by auction under the orders of the Commissioner, or the Magistrate concerned, as the case may be, and the net proceeds of such sale shall be dealt within the same manner as is hereinafter provided for the disposal of the said property.

According to Section-86. Delivery of property to person entitled: -

(1) The Commissioner, or, the Magistrate concerned, as the case may be, shall on being satisfied of the title of any claimant to the possession or administration of the property specified in the proclamation issued under sub-section (1) of Section 85, order the same to be delivered to him, after deduction or payment of the expenses properly incurred by the Police in the seizure and detention thereof.
(2) **Power to take security:** - The Commissioner or the Magistrate concerned, as the case may be, may, at his discretion, before making any order under sub-section (1), to take such security as he may think proper from the person to whom the said property is to be delivered, and nothing hereinabove contained shall affect the right of any person to recover the whole or any part of the same from the person to whom it may have been delivered pursuant to such order.

According to **Section-89. Police officer may take charge of stray cattle:**-[In any area outside the charge of a Commissioner] a Police Officer may take charge of any animal falling under the provisions of the Cattle Trespass Act, 1871 which may be found straying in a street, and may take or send the same to the nearest pound, and the owner and other persons concerned shall thereon become subject to the provisions of [that Act].

According to **Section-90. Power to establish cattle-pounds and appoint pound-keepers:**-

(1) [In any area under the charge of a Commissioner], the Commissioner shall, from time to time, appoint such places as he thinks fit to be public pounds, and may appoint to be keepers of such pounds Police officers of such rank as may be approved by the State Government.

(2) Every pound-keeper so appointed shall, in the performance of his duties, be subject to the direction and control of the Commissioner.

According to **Section-90A. Penalty for allowing cattle to stray in street or trespass upon private or public property:**-

(1) Whoever in [any area under the charge of a Commissioner] allows any cattle which are his property or in his charge to stray in any street or to trespass upon any private or public property shall, on conviction, be punished-

for the first offence, with imprisonment for a term which may extend to one month or with fine which may extend to three hundred rupees or with both;

For the second or subsequent offence, with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees or with both.
(2) The Magistrate trying the offence under sub-section (1) may order:--

(a) that the accused shall pay such compensation, not exceeding two hundred and fifty rupees as the Magistrate considers reasonable, to any person for any damage proved to have been caused to his property or to produce of land by the cattle under the control of the accused trespassing on his land; and also

(b) That the cattle in respect of which an offence has been committed shall be forfeited to the State Government.

(3) Any compensation awarded under sub-section (2) may be recovered as if it were a fine imposed under this section.

(4) An offence under this section shall be cognizable).

According to Section-91. Impounding of cattle:- It shall be the duty of every Police Officer, and it shall be lawful for any other person, to seize, and take to any such public pound for confinement therein, any cattle found straying in any street or trespassing upon any private or public property in [any area under the charge of a Commissioner].

According to Section-92. Delivery of cattle claimed:- If the owner of the cattle impounded under Section 91 or his agent appears and claims the cattle, the pound-keeper shall deliver them to him on payment of the pound-fees and expenses chargeable in respect of such cattle under section 94.

According to Section-95. Powers as to inspection, search and seizure of false weights and measures:-

(1) Notwithstanding anything contained in Cr PC, any Police Officer generally or specially deputed, in [any area under the charge of a Commissioner], by the Commissioner and elsewhere, by the District Superintendent or any other officer specially empowered in that behalf by the State Government, may without warrant enter any shop or premises for the purpose of inspecting or searching for any weights or measures or instruments for weighting or measuring used or kept therein.

(2) If he finds in such shop or premises weights, measures or instruments, for weighing or measuring which he has reason to believe are false, he may seize the
same and shall forthwith give information of such seizure to the Magistrate having jurisdiction, and if such weights, measures or instruments shall be found by the Magistrate to be false, they shall be destroyed.

(3) Weights and measures purporting to be the same denomination as weights and measures, the standards whereof are kept under any law from time to time in force shall, if they do not correspond with the said standards, be deemed to be false within the meaning of this section.

According to Section-97. A superior Police Officer may himself perform duties imposed on the inferior; etc:--A Police Officer of rank superior to that of constable may perform any duty assigned by law or by a lawful order to any officer subordinate to him; and in case of any duty imposed on such subordinate, a superior where it shall appear to him necessary, may aid, supplement, supersede or prevent any action of such subordinate by his own action or that of any person lawfully acting under his command or authority, whenever the same shall appear necessary or expedient for giving more complete or convenient effect to the law or for avoiding as infringement thereof.

According to Section-98. Emergency duties of Police:--

(1) The State Government may, by notification in the Official Gazette, declare any specified service to be an essential service to the community:

Provided that such notification shall remain in force for one month in the first instance, but may be extended, from time to time, by a like notification.

(2) Upon a declaration being made under sub-section (1) and so long as it remains in force, it shall be the duty of every Police Officer to obey any order given by any superior officer in relation to employment upon or in connection with the service specified in the declaration; and every such order shall be deemed to be a lawful order within the meaning and for the purposes of this Act.

According to Section-159. No Magistrate or Police Officer to be liable to penalty or damage for act done in good faith in pursuance of duty:--No Magistrate or Police Officer shall be liable to any penalty or to payment of damages on account of an act done on good faith, in pursuance or intended pursuance of any duty imposed or
any authority conferred on him by any provision of this Act or any other law for the
time being in force or any rule, order or direction made or given therein.¹

6.13 Establishment of National Investigating Agency:

After the grievous attack on Bombay City by Pakistani Terrorists in 2008 it was a badly need to make more powerful the agencies of investigation. The Central Government established a new agency named NATIONAL INVESTIGATING AGENCY. NOW-A-DAYS in the cases of terrorism or in the cases of SEDITION registered under section 124-A of Indian Penal Code 1860, the N.I.A. investigates the cases.

1. BOMBAY POLICE ACT 1951.