Chapter 4
INVESTIGATION OF DRUG CASES

4.1 Introduction

4.2 Scope of this Chapter

4.3 Meaning of Investigation

4.4 Various stages of Investigation:
   4.4.1 F.I.R.
   4.4.2 Station diary
   4.4.3 Search, seizure and arrest
   4.4.4 Panchanama
   4.4.5 Examination of witnesses by police
   4.4.6 Statement made to the police and their role in criminal trial

4.5 Procedure of Investigation under NDPS Act, 1985:
   4.5.1 Introduction
   4.5.2 Investigating officers under NDPS Act.
   4.5.3 Powers of Investigating officers
   4.5.4 Procedure of investigation under NDPS Act.
   4.5.5 The English law under search and seizure
   4.5.6 Procedural aspects of search and seizure, difference between them
       Cr.P.C. and under NDPS.

4.6 Difficulties in investigating NDPS cases:
   4.6.1 Legal difficulties
   4.6.2 Field work related difficulties
   4.6.3 Other practical difficulties

4.7 Causes of Acquittal:
   4.7.1 Technical ground
   4.7.2 Unnecessary delay in the examination of important witnesses
   4.7.3 Lack of Public co-operation
   4.7.4 Method of investigation
   4.7.5 Statement made by witnesses
   4.7.6 Political interference
4.8 **Suggested Reforms:**

4.8.1 Need an independent Agency to supervise the recording the statements of the police.

4.8.2 Giving copies to statements to witnesses

4.8.3 Witness should be allowed to read his statements to refresh his memory

4.8.4 The statement of the witness in his own handwriting and should be signed by the witnesses

4.8.5 Recording statements of witnesses

4.8.6 Facilities for Interrogation

4.8.7 Separation of investigation wing from Law and order.

4.8.8 Need of special training to investigation officers

4.8.9 Manipulation in case diary and police statements.

4.8.10 To increase the staff

4.8.11 To increase the police image and their relationship and interaction with the general public

4.8.12 Need to increase the number of forensic science laboratories

4.8.13 Need of co-operation amongst investigators, forensic expert and prosecutors

4.8.14 Spread of Awareness

4.8.15 Speedy investigation

4.9 **Summary**
Chapter 4
INVESTIGATION OF DRUG CASES

4.1 Introduction:
As a key agency of the criminal justice administration the police is responsible for performing multi-faceted functions such as the prevention of crime, maintenance of law and order, conduct of investigation of crimes, production of under-trials before the courts and post sentence surveillance over the criminals etc. In a rule of law of society, the police functions within the legal framework of the constitutional and the municipal laws that comprises mainly of the Constitution of India, The Code of Criminal Procedure,1973, The Indian Evidence Act,1872, The Protection of Human Rights Act,1993 and the Police Act etc. The main function of the police is proper investigation. It is half the secret of success in any case.

4.2 Scope of this chapter:
The investigation of crime is not aimed at convicting anyone other than the persons who committed such crime. It is truly search for truth and the investigator must always struggle for just that the true facts in any case. The investigator must protect the innocent and prosecute those guilty of criminal acts. The duty of police is to prevent and detect crime and bring the accused before court. The main object is to collect all material necessary for establishing the accusation against the offender.\(^1\) It is hazardous and unsafe for the court to base or sustain the conviction when nature of the investigation is highly trained.\(^2\) Today the investigation system is not trusted by the laws and the courts. The manner in which the police investigates are critical importance to the functioning of criminal justice system.

4.3 Meaning of investigation:
Section 2(h) of Criminal Procedure Code, defines the term investigation as under:

\(^1\) S. P. Tyagi, Criminal Trial, 3\(^{rd}\) Edn, 2008, Vinod Publications (P) Ltd., P.191
\(^2\) Gupta's Criminal Jurisprudence, Edn 2000, Vinod Publications (P) Ltd.
“Investigation includes all the proceedings under the Code of Criminal Procedure for the collection of evidence conducted by a police officer or by any person (other than a magistrate, who is authorized by a magistrate in this behalf)”.

Investigation starts after the police officer receives information in regard to an offence. The duty of the police is to prevent and detect crime and to bring the accused before the court. In safeguarding out freedoms, the police plays an important role. Society for it defence needs a well trained and well disciplined force of police whom it can trust. The police of course must act properly. They must obey the rules of right conduct. They must not extort confession by threats or promises. They must not search a man’s house, premises without authority.

4.4 Various stages of Investigation:

In the criminal cases, following are the stages of investigation -

Offence → Investigation → Trial → Judgment

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• F.I.R.
• Station diary
• Search, seizure and arrest
• Panchanama
• Statement of witnesses by police
• Statement made to police and their role in criminal trial

4.4.1 F.I.R. (First Information Report):

Investigation starts after the police officer receives information in regard to an offence.

First information report is an important document. It is not means that it contains every detail of the case for the prosecution. Every information relating to the commission of cognizable offence, if

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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. Courts have regarded the F.I.R. as the foundation of the prosecution case.

4.4.2 Station Diary:

Station diary is maintained at every police station and it is a permanent record of events in the police station or events reported to the police. It is maintained under the police manual and standing orders. Every officer must record his movement in the station diary particularly his arrival and departure. If he leaves for investigation, he has to make a diary entry. If he returns to the police station after investigation, he has to make a diary entry about the progress of investigation. This is to enable the senior police officer to know what the staff is doing. This is also to keep a check over them.

4.4.3 Search, seizure and arrest:

It consist all these steps such as -

1) Proceeding to the spot
2) Ascertainment of the facts and circumstances of the case
3) Discovery and arrest of the suspected person
4) Collection of evidence relating to the commission of the offence which may consist of -
   a) The statement of the various persons (including the accused)
   b) The search of places or seizure of thing considered necessary for the investigation and to be produced at the trial and
   c) Formation of the opinion as to whether on the materials there is a case to place the accused before a magistrate for trial and if

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4 P. P. Joy, How to get an acquittal in Criminal Cases, Edn. 2009, Karnataka Law House, pp.2, 3
so, taking necessary steps for the same by the filing of a charge-sheet under Section 173 of Criminal Procedure Code.

4.4.4 Panchanama:

The assistance of any independent witness which is available at the relevant time is taken and such witnesses are treated as Panch. Panchanama is written by police officer in the presence of panch witnesses and they signed thereon is called as ‘Panchanama’. There are various types of Panchanama such as Arrest Panchanama, Seizure Panchanama and Spot Panchanama. It is a document which records evidences and findings that an investigating officer makes at the scene of an offence/crime. Such document so prepared needs to be signed by the investigating officer. Different law enforcing agencies draw panchanama according to the specific needs of the Act under which it is being drawn. Therefore, one would find differences in the approach of officers in the panchanama under the IPC, Customs Act, NDPS Act etc.⁵

4.4.5 Examination of witnesses by police (Section 161 of Cr.P.C.):

i) Any police officer making an investigation under 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 acquitted with the facts and circumstances of the case.

ii) 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.

iii) The police officer may reduce in to writing any statement made to him in the course of an examination under this section, and if he

does so, he shall make a separate and true record of the statement of each. Such person whose statement he records.

4.4.6 Statement made to the police and their role in criminal trial:
The statement recorded under section 164 of Cr.P.C. and Section 161 of Cr.P.C. etc. is to give an idea to the accused as to what precise case he has to meet during his trial. The accused has to prepare himself for his defence. He must know who the witnesses against him are and what is according to the police, the version of the witnesses which has landed him before the court.

4.5 Procedure of Investigation under NDPS (Narcotic Drugs and Psychotropic Substances) Act, 1985:

4.5.1 Introduction:
The Narcotic Drugs and Psychotropic Substances Act, 1985 was enacted as a special Act on lines of socio-economic offences Acts. The Act gave enormous powers to the investigating officers.

4.5.2 Investigating officers under NDPS Act:

- **Officers under Central government**: Officer (Superior in rank to a peon, sepoy or constable) of gazetted rank of the department of central excise, narcotics, customs, revenue, intelligence or any other department of the Central government, officer of the paramilitary forces or the armed forces to be empowered in this behalf by general or special order of the Central government or

- **Officers under state government**: Officer (superior in rank to a peon, sepoy or constable) of the revenue, drugs, control, excise, police or any other department of a state government to be
empowered in this behalf by general or special order of the state
government.6

4.5.3 Powers of Investigating officers:

Chapter V of the NDPS Act (Section 41 to 68) sets out the
powers as well as procedures for the investigation of offences under
the Act. This chapter empowers officers duly authorized by the central
government or a state government to issue warrants, to enter and
search premises, to stop and search conveyances, to seize, “narcotic
drugs and psychotropic substances”, to take statements and to arrest
persons suspected of having committed an offence, punishable under
the Act.

The power to issue search and arrest warrants is in terms of
Section 41, been vested both in magistrates as well as in specially
designated. Gazetted officers of the central and state government.
This is designated to ensure both timely and effective action in
response to any information. In addition, both the central and state
governments are authorized to entrust any officer duly empowered
under the Act. With the powers of an officer-in-charge of a police
station for the investigation of offences under the Act.

It needs to be noted, however, that while the powers to search,
seize, arrest etc. are inherent in the Act, all these are subject to both the
substantive and procedural safeguards mandated by the Code of
Criminal Procedure, in relation, inter-alia to the presence of
independent witnesses at a search the drawing up of search list or
panchanamas, and the constitutional obligation to produce an arrested
person before a magistrate within 24 hours.7

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6 Surendra Malik and Sudeep Malik, Supreme Court on Narcotics and Drugs, Edn.2011, Eastern Book
Company

7 An article, An Investigative Procedure in NDPS, website www.google.co.in
4.5.4 Procedure of investigation under NDPS Act:

The procedure for search and seizure under sections 41, 42 and 50 are mandatory in nature.

Under Section 41(1), only an empowered magistrate can issue warrant of arrest or for the search in respect of offences punishable under chapter IV of the Act.

According to Section 41(2), when an empowered magistrate has reason to believe that such offences have been committed or such substances are kept or concealed in any building, conveyance or place when such warrant for arrest or for search is issued by a magistrate, only empowered officers duly authorize officer can act under the provisions of NDPS Act.

According to Section 41(3), such officer shall have all the powers of entry, search, seizure and arrest with warrant or authorization.

According to Section 42(1), the empowered officer if has a prior information given by any person, that should necessarily be taken down writing. But if he has reason to believe from personal knowledge that offences under chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc., he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. If such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief. To these extents, these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial.

According to Section 43, the empowered officers of any department shall have power of seizure and arrest in public place, it
includes any public conveyance, hotel, shop or other place which is used by public.

On prior information empowered officer acting under Section 41(2) or Section 42 should comply with provisions of Section 50 are mandatory. On prior information, the empowered officer authorize officer while acting under Section 41(2) or 42 should comply with the provisions of Section 50 before the search of the person is made, such person should be informed that if he so requires he shall be produced before a gazette officer or magistrate as provided there under. It is obligatory on the part of such officer to inform the person to be searched. Failure to inform the person to be searched and if such person so requires failure to take him to the gazetted officer or the magistrate, would be a question of fact. It is an imperative requirement on the part of the officer intending to search to inform the person to be searched in his right that if he so chooses, he will be searched in the presence of a gazetted officer or a magistrate. Thus, the provision of Section 50 is mandatory.8

4.5.5 The English law under search and seizure :-

Under the English law, a search of any suspected premises can be conducted only on the basis of a search warrant.

In emergency cases, a superintendent of police or other officer of equal or superior rank may give a written order to enter the place, if need be, by force. Nowhere has it been laid down that a search is required to be conducted in the presence of at least two respectable inhabitants of the locality.

In Scotland, the testimony of one officer is required to be corroborated by another officer. There are some built-in-safeguards provided in the law itself in that although search warrant may be

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8 Surendra Malik and Sudeep Malik, Supreme Court on Narcotics and Drugs, Edn.2011, Eastern Book Company
granted on sworn information under over 50 Acts of parliament, in each case, the direction given in the Act must be observed.

A comparison of the English and Indian law on the subject will reveal the uncertainty of the law maker to ensure that the police powers of search and seizure conferred on police are controlled. But the safeguards provided by the law of both the countries are substantially different.

The English law requires that the bonafide of the search should be examined before the search is undertaken and for that purpose, requires that sworn information be placed before the justice or other legally competent authority, or operate under the restrictions referred above, the Indian law, have given powers to search even without a warrant in emergency cases, requires the presence of two independent members of the public to witness the search and to sign the memorandum. The logical sequence of this requirement is that, it is “Panch” witness who can either support or damage the evidence of recovery, while giving evidence in the court, and the court is called upon in such cases, to weigh the evidence of the police officer against that of a suborned witness. This would show, once again, the fundamental difference in the basic attitude of law in both the countries.⁹

4.5.6 Procedural aspects of search and seizure, difference between them under Cr.P.C. and under NDPS:

1) According to Cr.P.C., search and seizure are carried out by police officer in normal course of investigation into offence or suspected offence.

   According to NDPS Act, if there is chance of recovery of Narcotic drugs or psychotropic substance, the empowered officer


79
from such stage onward should carry out investigation as per provisions of NDPS Act (Section 50).

2) If a police officer without any prior information has contemplated under the provisions of the NDPS Act makes a search or arrest a person in the normal course of investigation into an offence or suspected offence as provided under the provisions of Cr.P.C. and when such search is completed at that stage, Section 50 of NDPS Act would not be attracted and the question of complying with the requirements there under would not arise.

If during such search or arrest there is a chance of recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should be informed the empowered officer. Thereafter, the empowered officer proceeds in accordance with the provisions of the NDPS Act. If that police officer is an empowered officer, then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act.

3) The provisions of the Cr.P.C. shall be applicable in so far as they are not inconsistent with the NDPS Act to all warrants, searches, seizure or arrests make under the Act.

But when a police officer carrying on the investigation including search, seizure or arrest empowered under the provisions of Cr.P.C. comes across a person being in possession of the narcotic drugs or psychotropic substances then two aspects will arise.

If he happens to be one of those empowered officer under the NDPS Act, then he will also must follow thereafter the provisions of the NDPS Act and continue the investigation provided thereunder.

If on the other hand if he is not empowered officer then the obvious thing should do that he must informed to the empowered
officer under the NDPS Act who should thereafter proceed from that stage, in accordance with the provisions of the NDPS Act.

But at this stage the question of restoring to Section 50 and informing the accused person that if he so wants, he would be taken to a gazetted officer. Thus would not arise because by them search would have been over.

According to NDPS Act in Section 50, the steps contemplated there under namely informing and taking him to the gazetted officer should be done before search. When the search is already over in the usual course of investigation under the provisions of Cr.P.C., then the question of complying with Section 50 would not arise.

4) According to Cr.P.C., empowered officer or an authorized officer under Section 41(2) carrying out search would be doing, so under Section 100 and 165 of Cr.P.C. However, if there is no strict compliance with provisions of Cr.P.C., search would not be illegal.

According to NDPS Act, under Section 42(2) such empowered officer who takes down any information to writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance of this provision the same affects the prosecution case, to that extent it is mandatory.

5) Under Cr.P.C., if there is delay whether it was under or whether the same has been explained or not, will be a question of fact on each case. If a police officer even if he happens to be an ‘empowered’ officer while effecting on arrest or search during normal investigation into offences purely under the provisions of Cr.P.C. tells to strictly comply with the provisions of sections 100 and section 165 of Cr.P.C. The requirement to accord reasons such failure would only amount to an irregularity.
Under NDPS Act, if an empowered officer of an authorized officer under Section 41(2) of the Act carries out a search, he would be doing so under the provisions of Cr.P.C. namely Section 100 and 165 of Cr.P.C. and if there is no strict compliance with the provisions of Cr.P.C, then such search would not per be illegal and would not vitiate the trial.

6) Under the provisions of Cr.P.C. when the police acting as empowered therein and while exercising surveillance or investigating into other offences, had to carry out the arrest or search or searches they would be acting under the provisions of Cr.P.C. At this stage, if there is any non-compliance of the provisions of Sections 100 or 165, Cr.P.C. that by itself can not be ground to reject the prosecution case outright.

The effect of such non-compliance will have a bearing on the appreciation of evidence of the official witness and other material depending upon the facts and circumstances of each case. In carrying out such searches, if they come across any substance covered by the NDPS Act the question of complying with the provisions of the said Act including Section 50 at that stage would not arise.

Under the provisions of NDPS Act, when the contraband seized during such arrest or searches attracts the provisions of NDPS Act then from the stage, the remaining relevant provisions of NDPS Act would be attracted and further steps have to be taken in accordance with the provisions of the said Act.

7) Under the provisions of NDPS, neither Section 41(2) nor Section 42 mandates such empower officer to record the grounds of his belief. It is only proviso to Section 42(1) read with Section 42(2) which makes it obligatory to record grounds for his belief. To that extent, the provisions are mandatory.
Under the provisions of Cr.P.C., the empowered officer though is expected to record reasons of belief as required under Section 165 failure to do so can not vitiate the trial particularly when Section 41 or 42 does not mandate to record reasons while making a search. Section 165 in the context has to be read along with Section 41(2) and 42(1) where under he is not required to record his reasons.

8) Under NDPS Act, steps under Section 52 that every person arrested and article seized under Section 41, 42, 43 or 44 shall be forwarded without unnecessary delay to the officer-in-charge of the nearest police-station or the officer empowered or the authority or officer, take such measures as may be necessary for the disposal according to law of such person or article.

Steps under Section 57 that, whenever any person makes any arrest or seizure under this Act, he shall within 48 hours next after such arrest or seizure, make a full report of all particulars of such arrest or seizure to his immediate official superior. The provisions of Section 52 and 57 which deals with the steps to be taken by the officer after making arrest or seizure under Section 41 are by themselves not mandatory. If there is non-compliance or if there are lapses like delay etc. then the same has to be examined to see whether any prejudice has been caused to the accused and such failure will have bearing on the appreciation of evidence regarding arrest or seizure as well as on merits of the case. Section 52 and 57 comes into operation after the arrest and seizure under the Act.

The provisions of these two sections show certain procedural instructions for strict compliance by the officers.

Under the provisions of Cr.P.C. similar provisions are there. If there is any violation of these provisions, then the court has to examine the effect of the same.
But if there is not strict compliance of any of these instructions that by itself can not render the act done by these officers null and void and of the most it may affect the probative value of the evidence regarding arrest or search and in some cases. It may invalidate such arrest or search. But such violation by itself does not invalidate the trial or the conviction if otherwise there is sufficient material. Therefore, it has to be show that such non-compliance has caused prejudice and resulted in failure of justice. The officers however, can not totally ignore these provisions and if there is no proper explanation for non-compliance or where the officer totally ignore the provisions then that will definitely have an adverse affect on the prosecution case and the courts have to appreciate the evidence and the merits of the case bearing these aspects in view. However, a mere non-compliance or failure to strictly comply by itself will not vitiate the prosecution.\(^\text{10}\)

4.6 **Difficulties in investigating NDPS cases**:

Enforcement agencies face number of difficulties in the implementation of the Act. It can be classified into -

4.6.1 Legal difficulties

4.6.2 Field work related difficulties

4.6.3 Other practical difficulties

4.6.1 **Legal difficulties**:

a) **Difficulties in finding independent witnesses**: It is very difficult to find independent witnesses who volunteer themselves during searches and seizures due to a variety of reasons such as

- Threats from the accused.
- Long period of time taken in attending courts.
- Lack of concern for the problems posed by drugs to the society.

\(^\text{10}\) State of Punjab Vs Balbir Singh, (2004) 8 SCC; an article, Search and Seizure, website, www.google.co.in
Many times, the accused even bribe the witnesses to turn hostile to the prosecution. ‘Nakas’ are organized at a number of places, it is difficult to associate an independent witnesses at every Naka. The law, however, requires an independent witness even to search a vehicle or person during a naka. It is difficult to associate witnesses in each and every case.

b) **Possession of precursor chemical is not an offence** : A plain reading of Sections 9A,25A and 54 of NDPS Act such as –

According to Section 9A:

1) If the central government is of opinion that having regard to the use of any controlled substance in the production or manufacture of any narcotic drug or psychotropic substance, it is necessary or expedient so to do in the public interest, it may, by order, provide for regulating or prohibiting the production, manufacture, supply and distribution thereof and trade and commerce therein.

2) Without prejudice to generality of the power conferred by sub Section (1), an order made thereunder may provide for regulating by licenses, permit or otherwise, the production, manufacture, possession, transport, import inter-state, export inter-state, sale, purchase, consumption, use, storage, distribution, disposal or acquisition of any controlled substance.

According to Section 25A, punishment is given for contravention of orders made under Section 9A.

According to Section 54, in trial under this Act, it may be presumed unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of -

(a) Any narcotic drug or psychotropic substance or controlled substance.

(b) Any Opium Poppy, cannabis plant or coca plant growing on any land which he has cultivated.
(c) Any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or concealed substance or

(d) Any material which has undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substances or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured for the possession of which he fails to account satisfactorily.\footnote{Surendra Malik and Sudeep Malik, Supreme Court on Narcotics and Drugs, Edn. 2011, Eastern Book Company, pp.43, 50, 69}

It does not give the impression that unauthorized possession of a precursor chemical is an offence. The law only requires persons such as manufacturers, importers, exporters, consumers and dealers to maintain records and file reports to the Zonal Director of narcotic control bureau. The seller only is responsible to ensure the identity and purpose of the buyer. He is under no obligation to intimate the purpose of the buyer to the Zonal Director of Narcotic Control Bureau. On the other hand, if there is shortage of the precursor chemical, there is no adverse presumption against the person regarding it has been diverted for illegal manufacture of drugs. Thus, neither a person found with excess stocks of any controlled substance nor one found with deficient stocks of these substances can be prosecuted under the law. A rebuttable presumption must be introduced that if any person is found with unexplained stocks of a controlled substance, it shall be presumed to be meant for sale to illicit drug manufacturers conversely, if the stocks are found to be short, it should be presumed that the short precursors have been diverted for illicit manufacture of drugs.
c) **Bail Provisions**: One of the key features of the NDPS Act is stringent bail provisions. Courts can not grant bail to those accused of offences under commercial quantities.

- **Section 19**: Any cultivator licensed to cultivate the opium poppy on account of the Central Government who embezzles or otherwise illegally disposes of the opium produced or any part thereof or

- **Section 24**: Whoever engages in or controls any trade whereby a narcotic drug or a psychotropic substance is obtained outside India and supplied to any person outside India without the previous authorization of the central government or otherwise than in accordance with the condition of such authorization, or

- **Section 27-A**: “Whoever indulge in financing, directly or indirectly, any of the activities of illicit traffic in relation to narcotic drugs and psychotropic substances”. And for offences involving commercial quantities. The term ‘commercial quantities’ applies only to drugs and not precursors under the NDPS Act. If precursor chemicals are seized in large quantities from a person, the strict bail provisions under Section 37 of the NDPS Act, 1985 do not apply. There is need to include offences under Section 25-A in Section 37 of the NDPS Act, 1985.

d) **Pre-trial disposal**: Section 52-A of the NDPS Act provides for the pretrial disposal of the narcotic drugs and psychotropic substances but not of controlled substances. Precursor chemicals are useful to the society and their early disposal avoids in deterioration, minimizes wastage and contributes to the exchequer. Hence, pre-trial disposal should be made applicable to controlled substances as well. If the accused are acquitted in the trial, the sale proceeds can be returned to the owner in lieu of the seized substance.
4.6.2 Field work related difficulties\textsuperscript{12}:

a) **Drug Detection kits**: Drug detection kits cost between Rs. 3000 to 4000 it's life of 6 month from the date of manufacture. State police often do not have funds for the kits and when they are supplied, they expire within 3-4 months from the date of supply as some time is lost in supplying the kits to the field formation. Field officers are often not even trained in using these kits. Adequate supply of kits, quick disbursal and training are essential for effective use of kits.

b) **Lack of training in identification of precursors**: Most police officers are not aware about precursors. Hence, even if they find a precursor being diverted or transported, they may not even realize the significance of it. Police officers need to be trained on these issues.

c) **Report of the doctor under Section 27 of NDPS Act, 1985**: Consumption of narcotic drugs and psychotropic substances is an offence under the NDPS Act but no investigating officer knows how to prove it. Doctors in government hospitals are not trained in identifying whether the suspect consumed drugs. It is observed that the doctor takes time to test the suspect, it is too late to get an accurate report. Often, doctors of government hospitals and dispensaries give reports only on the general medical conditions of the accused which does not help in prosecuting the case in a court of law.

d) **Malkhana**: Narcotic Control Bureau issued detailed instructions on storage and disposal of seized drugs. These instructions require such drugs to be stored in a proper Malkhanas under the supervision of a gazette officer. State police often do not follow these instructions and store them in the Malkhanas of the police stations which have inadequate storage facilities with little security.

\textsuperscript{12} An article, Observation and Recommendations of Working Group II, website, www.google.co.in
Secret Service Funds: Secret service funds meant for collecting intelligence are grossly inadequate with the state police and if information has to be collected on any major syndicate, substantial money will be required. If the secret service funds with the state police are improved, it can be achieved in terms of busting drug syndicates.

f) Reward for seizure of precursors: Rewards are major incentives to both informers and officers. However, as per the existing reward policy, no reward is available for seizure of precursor chemicals. Precursors may be included in the reward scheme.

4.6.3 Other practical difficulties:

a) Honest errors by the police as well as witnesses: The witnesses and the police may commit honest errors while giving or recording the statements. The errors can be wrong identity or wrong description of the accused. It can also be an error in the sequence of events.

b) No independent Agency to supervise the recording the statements of the police: At no point of time, any agency, independent of the police oversees the correctness completeness, caliber or honesty of investigation or comes out of a random check with witnesses.

c) Statement recorded by the police during the course of investigation: The police have no powers to give oath. They are only the investigation agency. They have no power to give punishment. The statement which they record are a part of investigation. At the time of deciding the application for bail, the court has to arrive at a conclusion that there is reason to believe that the accused has been guilty of an offence punishable with death or imprisonment with life or any other sentence. The court gives such enormous importance to the statement recorded by the police at the time of the application for bail. The bail can be
rejected on the statements recorded by the police during the course of investigation. But the same statement is not believed at the state of trial. This is a paradox.\textsuperscript{13}

d) Community's Support: Without proper support from the community, it is not possible for the police to implement crime control measures effectively. Information is the most important of the law enforcement and information depends on the people. There is criticism of the police without proper understanding by the society of their moral and professional problems. The inadequacy of the strength and resources, the tremendous pressure of work, are making police work extremely difficult.\textsuperscript{14}

e) Difficulties regarding procedure and evidence: There are some problems faced by the police. Flowing out of certain provisions of criminal procedure code and the Indian Evidence Act. Under Cr.P.C it is required that whenever the police enter any premises for the purpose of search and seizure, they must be accompanied by at least two respectable inhabitants of the locality. Since it is not always possible to find two respectable persons willing to associate with the police for the purpose, the police find themselves in a different situation and hence try to observe the formality with the co-operation of some 'respectable' persons who might be dubious character and reputation. Court being aware of such police practices treat the evidence produced by search and seizure with utmost suspicion and even genuine prosecution cases are adversely affected in the process.

f) Judicial and public image of the police: The image of an Indian police is full of adverse comments made against them for their dishonesty, corruption, unscrupulous methods in investigation and

\textsuperscript{13} Shrikant Bhat, Principles and Practice of Criminal Law, 1\textsuperscript{st} Edn. 2009, Snow White Publication
\textsuperscript{14} K. D. Gaur, Criminal Law and Criminology, Edn.2002, Deep and Deep Publications, p.60
general lack of efficiency. It has utterly failed to secure the confidence and cordial co-operation of the people.

g) **Extra workload**: There is a common complaint of the police officers that the department has extra workload such as traffic arrangements, protection of V.I.P the growth of crime, new types of offences are increasing day by day, population is increasing at the same time, and crimes are increasing. The police officers can not concentrate properly in each case.

h) **Strength of police staff**: With the growth of the population, with the growth of crime, need to increase the police staff. The police department is very small.

4.7 **Causes of Acquittal**:

4.7.1 **Technical ground**:

Under the investigation, the possession and search are very important. Because stringent punishment have been provided for the offences under the Narcotic Drugs and Psychotropic Substances Act, 1985. In most of the offences, the minimum punishment of rigorous imprisonment for 10 years and fine of rupees one lakh. Therefore, the government in its wisdom, has imposed corresponding strict special procedure to be adopted at the time of search, seizure and arrest of the culprits. Under these procedure, some provisions are mandatory and some provisions are directory. Large number of cases instituted for various offences under the Act have ended in acquittal not on merits but on technical grounds of non compliance of mandatory provisions of section 42 and 50 of the Act. And in some cases on the prejudice caused to the accused for non-compliance of the directory provisions of section 52, 55 and 57 of the Act.

4.7.2 **Unnecessary delay in the examination of important witnesses**:

It creates doubt in the mind of the court and the evidence of such witness may be rejected by it.
4.7.3 Lack of Public co-operation:

People are generally not willing to testify against the offender due to risk of threats and violence and tiresome criminal law procedure. People are unwilling to help police in crime detection and apprehending the offender due to fear of possible harassment of the instance of police officials. The lack of sense of social responsibility among people is also one of the reasons to increase such crimes.

4.7.4 Method of investigation:

Many police officers do not have sufficient training in the matter of investigation. There are no sufficient trained facilities in investigation. There is unnecessary delay by the need of obtaining reports from the chemical examiners. Lack of theoretical and practical knowledge results into miscarriage of justice. While investigating, defective record of facts results into prosecution case.

4.7.5 Statement made by witnesses:

The percentage of acquittals in such cases has a high figure and this is not always due to the police being unable to place adequate evidence before the court. What often happens is that the witnesses when they appear to give evidence by deposing to a version different from that given by them in their statements to the police. The holiness of the oath has almost disappeared and persons seem prepared readily to make false statement on oath in court of law.

4.7.6 Political Interference:

Political interference at the stage of investigation has become a routine affair. A policeman ought to know that he derives his powers from the law of the land and of an agent of the law, he must honestly exercise his powers given by the law in accordance with the best his discretion and conscious and not to please any executive authority. The recent criminalization of politicians provides undesirable protection to professional offenders and all sorts of fulls and pressures
are exerted on the police to be lenient with the offender and sometimes they are even compelled to drop the proceeding against the criminal.

4.8 Suggested Reforms:

4.8.1 Need an independent Agency to supervise the recording the statements of the police:

For the quality of investigation, effective supervision is essential. There is hierarchy of officers, the duty of the supervisory officers will to guide properly in the investigation right from the beginning so as to ensure the innocent persons are exculpated and the real guilty ones brought to justice.\(^\text{15}\)

4.8.2 Giving copies to statements to witnesses:

A copy of the F.I.R. must be given to the informant forthwith and free of cost. If this is so, why can not copy of the statement be given to the witness, there is no law which prevents the police from giving such a copy. But if someone asks the police that they can not give the copy.\(^\text{16}\)

4.8.3 Witness should be allowed to read his statements to refresh his memory:

The witness can refresh his memory in the witness-box by reading his statements recorded by the police. Pancha witness can read panchanama in the witness-box before giving evidence. It is particularly important because the cases come for hearing after years, minor details like description of the accused, the clothes he wore, number of articles, quantity, colour, can not be recollected after a lapse of such a long time. The witness therefore shall be allowed to refresh

\(^{15}\) Malimath Committee Report, p.98  
\(^{16}\) Shrikant Bhat, Principles and Practice of Criminal Law, 1\(^{st}\) Edn.2009, Snow White Publication, p.438
his memory in the witness-box. By itself, this fact should not reduce the value of his evidence.\(^1\)

4.8.4 **The statement of the witness in his own handwriting and should be signed by the witnesses:**

The witness who is willing to write out his own statement, should be allowed to do so. In an effort to encourage more stability in testimony, the law commission as well as the Maharashtra. Police commission recommended that statements made to the police, should be signed by the witness as, if they were literate.

4.8.5 **Recording statements of witnesses:**

Recording statement of witnesses by the police during investigation shall not be required to be signed by the witnesses and further that such statement can be used by the accused and with the permission of the court only for the purpose of contradicting the witnesses. To remove this distrust and to ensure credibility of the police, the 41\(^{st}\) report of the law commission recommended that where the person can read the statement recorded by the police, his signature can be obtained after he has read the statement, and sending the witnesses to the magistrate for recording his statement on oath. Frequent changes in statements, by the witnesses during the course of investigation and more particularly, at the trial are really disturbing this results in miscarriage of justice. Hence, modern science and technology should be used in such cases as tape recording or video recording of statement of witnesses would be meaningful and purposive steps in this direction.\(^2\)

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\(^{1}\) Shrikant Bhat, Principles and Practice of Criminal Law, 1\(^{st}\) Edn. 2009, Snow White Publication, p.438

\(^{2}\) Malimath Committee Report, pp.111-112
4.8.6 Facilities for interrogation:

Interview of witnesses and interrogation of suspects or accused should be done in a professional manner. So as to elicit the truth. This is possible only when investigation officer possesses professional competence, has adequate time at his disposal and interview or interrogation is conducted in a proper manner. A room equipped with proper facilities such as video cameras, voice recorders etc. should be set apart in each police station for the purpose of interrogation or interview.¹⁹

4.8.7 Separation of Investigation wing from law and order:

An investigation is a preliminary step to help the ultimate judicial process before a court of law. It will bring the investigating police under the protection of the judiciary. It will reduce the possibility of political or other types of interference with police investigation. It will result in speedier investigation and as such a speedier overall disposal of cases as the investigating police would be completely relieved from performing law and order duties, V.I.P. duties and such other miscellaneous duties which causes unnecessary delay in investigation of cases. Separation will increase the expertise of the investigating police, it will result in more of successful detections and state prosecution.²⁰ According to the 14th report on reform of judicial administration 1958, the law commission of India observed that the Investigation staff should be separated form the law and order staff to enable the investigating officer to devote undivided attention to investigation work. It will provide additional strength to the police establishment which needs an increase in must of the states.

¹⁹ Malimath Committee Report, p.113
Adequate number of training institutions should be set up by the State governments and also by the Central Government for the training of various ranks of police officers. Lack of legal knowledge results into lack of knowledge in handling and collecting of material evidence, neglect of important evidence for prosecution. They are not competent to use scientific knowledge. Thus, lack of investigative experts, lack of proper legal advise, lack of technical advise are the main causes for acquittals. Therefore, there should be expertise police officers in investigation work.

4.8.9 Manipulation in case diary and police statements:

Case diary and police statements are both very important documents. Though Section 172 of Cr.P.C. does not require the case diary to be written on the spot but many police regulations require that it should not only be prepared simultaneously as the investigation proceeds. But also dispatched to the scrupulously followed as their non-observance may even lead to manipulation subverting the cause of justice. If the proceedings are not recorded form day to day and writing of the diary is postponed it may create confusion as in the overlapping events of the next day. The investigating officer is likely to ignore or forget many things of the previous day or his memory may get lost thereby making accurate recording difficult. Superior officer should therefore insist on strict observance of this rule so that investigating officer must give a satisfactory explanation for it in the case diary so that investigation does not come under a cloud of suspicion.

4.8.10 To increase the staff:

There is inadequacy of investigating staff. The police officers are hard pressed for time with multifarious commitments and thus, not
able to devote adequate time for investigation at work. The National Police Commission had suggested a workload of 60 cases per investigational officer.  

4.8.11 To increase the police image and their relationship and interaction with the general public:

To improve the existing situation, the National Police Commission suggested that the training should imparted to the policemen which includes inculcating a democratic sense and idealism to understand that unnecessarily not to threat to public as well as inculcating the idea that police is basically to help the public. These targets require improve training and orientation programmes for the police personnel.

4.8.12 Need to increase the number of forensic science laboratories:

At present, the forensic science laboratory is very low in the country. The report of FSL plays important at the investigation stage and trial stage in the determination of the facts. Delay investigation results into delay trial.

4.8.13 Need of co-operation amongst investigators, forensic experts and prosecutors:

If the case is not properly investigated, the case can not succeed at the trial. Forensic experts evidently play a key role both at the investigation stage as also at the prosecution stage. Therefore, the investigators, forensic experts and prosecutors should act in co-operation with each other. For this purpose, the following stages can be implemented.

i) Initial investigation, at the crime scene level.

ii) Search of the suspect, suspect’s premises and collection of evidence.

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21 Malimath Committee Report, p.91
iii) Framing request for laboratory analysis
iv) Interpreting the analytical results of the laboratory
v) Evaluating the probative value of the result in accordance with the prosecution needs.
vi) Pre-trial discussion with the prosecutors
vii) Offering the testimony before the court
viii) Prosecutors argument on the case
ix) Review of effectiveness of forensic evidence as indicated in the judgement.22

4.8.14 Spread of awareness:

Citizens who may have to participate in the criminal justice system as complainants/informants/victim/accused/witnesses are often not aware of their rights and obligations. They also do not know whom and how to approach and what to expect from them. Awareness of these matters will help the citizens to assert their rights and to protect themselves from unreasonable, arbitrary, and corrupt officials. The rights and responsibilities of the complainants, informants, victims, accused, witnesses and the concerned officials be incorporated and annexed as schedules to the Code and it should be in the regional languages of the respective states and it should be printed and made available free of cost to the citizens.23

4.8.15 Speedy Investigation:

The speedy investigation is beneficial both to the prosecution as well as to the accused. It is also in the largest interest of the society. The Code of Cr.P.C. provides that every investigation under this chapter XII shall be completed without unnecessary delay. The fundamental right of the accused to speedy trial enshrined in Art. 21 of

22 Malimath Committee Report, p.119
23 Malimath Committee Report, p.124

98
the Constitution is applicable not only to the proceeding in court but also includes within the proceeding of police investigation.

4.9 Summary:

The work of investigation involves a visit to the location of the crime by investigating officer regarding of testimony, making of arrest wherever possible and desirable. The job of investigation is quite different and challenging. The investigating officers have to devote time to other kinds of routine work also, their quantity is also not very large in view of the large population within their areas and the variety of problems in the Indian set up. In very few cities in India, there have been provided with forensic laboratories with the result that sometimes the relevant objects are to be sent over a long distance for expert analysis and report. The problem created by the lack of cooperation with the police by the people is a most serious and of great complexity and therefore, requires to be examined in depth. People in India are generally not willing to testify against their friends, relatives or neighbours. There is a universal tendency among people to keep away from the problems of others. The qualitative and quantitative degree of investigations depends on the activities of the police, the resources available and valuations and strategies. There is a continuous link in the investigation and prosecution. Thus, there should be closely co-ordinated in order to successful prosecution.