CHAPTER - IV
MANDATED LEGAL FRAMEWORK FOR SPECIAL INVESTIGATING AGENCIES

(I) INTRODUCTION

“Rule of Law” is the guiding principle for running our nation efficiently and wisely. Our special investigating agencies also function according to well defined legal framework. “Constitution Law” which has been termed as the “Mother” of law is the most efficient guide for the functioning of ‘Law Enforcement Machinery’. Various powers, responsibilities duties and mode of function of various Special Investigating Agencies have been laid down in the Indian Constitution. Infact, there are other provisions contained in various statutes which lay down rules according to which the various special investigating agencies have to perform their duties and exercise their powers.

From an investigation point of view “Legal Frame Work” has both a restricted and a broad meaning. When we talk about the broad meaning, we intend to develop a definition of “Legal Frame Work” as broad as possible in order to achieve a detailed understanding of such an expression. A legal framework is the group of legal regulations on the investigating rights used by the Special Investigating agencies to investigate crimes. A legal framework supporting Special Investigating agencies can also be integrated by investigation regulations that authorize the special investigating agencies to use such powers on their own in order to achieve their goals.

Infact a legal framework supporting Special Investigating Agency can be seen as a group of constitutional, legislative, regulatory, jurisprudential and managerial rules. It is a procedural technique at hand aimed at promoting effective and useful investigations. It is very necessary that a legal framework includes effective mechanisms to ensure a full enforcement of the law and a full enforcement of civil rights.

A legal framework supporting Special Investigating Agency has to be structured in a way in which principles are included as follows:-

- It has to be straight forward;
- It has to be intelligible;
- It has to be clear;
- It has to include all investigation components, which are necessary to ensure the undertaking of successful investigation. We can say that any legal framework supporting any component, has to be composed of as many sufficient and detailed rules as necessary. We know that legal framework is the backbone for any crucial function of the government. This is more so where the law enforcement and intelligence activities of the State are involved. If the law enforcement and intelligence activities are conducted in an illegal, unreasonable and improper manner, then it would simply mean that there is violation of human rights and fundamental rights. The duties, functions, liabilities and rights of special investigating agencies must be specified in an unambiguous and proper manner. Hence, it shall be appropriate here to discuss the relevant provisions of all the relevant laws and provisions which govern the functioning of Special Investigating agencies, while enforcing the law. The constitution must be seen as the main legal norm of any state, which implies that it is not only mandatory, but has to be enforced and honored as well. Since, it is the highest law within legal systems so it validates all other norms within such legal system. Constitutional rules and principles cannot be violated or ignored by non constitutional norms.

The main provision regarding crime investigation and trial in the India Constitution is Article (20)3. In any criminal investigation, interrogation of the suspects and the accused plays a vital role in extracting the truth from them. Article 20(3) deals with the privilege against self incrimination. Article 20(3) says “No person accused of any offence shall be compelled to be a witness against himself”. The Special Investigating Agencies have to conduct their investigation keeping in mind, Article 20(3) of the Constitution.

Article 20(3) Consists of the following three components:-

1. It is a right pertaining to a person accused of an offence.
2. It is a protection against compulsion to be a witness; and
3. It is a protection against such compulsion resulting in his giving evidence against himself.

With the advancement of science and technology, sophisticated methods of lie detection have been developed, which help the investigating agencies in combating crime. There are three such main tests. The lie detection or the polygraph test, the P300 or the brain mapping test and the Nacro analysis or the Truth Serum Test. They are used for extracting confessions. Although such tests are a result of advancement in science but they also raise doubts regarding basic human rights. Legal questions are also raised about the validity of tests like Narco Analysis, with some upholding its validity in the light of legal principles and others rejecting it as a blatant violation of constitutional provisions. It has been alleged that Narco analysis is a blatant violation of Article 20(3) of the Indian Constitution. This procedure is conducted in government hospitals after a court order is passed instructing the doctors or hospital authorities to conduct the test, also the personal consent of the subject is required. In this age of ever increasing crime rate, such tests often render a lot of help to the investigation agencies. Hence, it is better that we blend Article 20(3) with this test in such a manner that no questions are raised as to its constitutional validity. The constitution of India raises the rule against self incrimination to the status of constitutional prohibition. The point here is that, the provision of Article 20(3), is to be availed by which person, to whom this right should be given or who is eligible under this right. Hence, Article 20(3) has to be interpreted very wisely with every new case erupting. Following are some case laws in context to Article 20(3):

In M.P. Sharma Vs. Satish Chandra\textsuperscript{59}, the Apex Court observed that since the words used in Article 20(3) were “to be a witness” and not “to appear a witness” the protection is extended to compelled evidence obtained outside the court room.

In Rojo George Vs. Deputy Superintendent of Police\textsuperscript{60}, the court while allowing a Narco analysis test observed that in present days the techniques used by the criminals for the commission of crime are very sophisticated and modern. The conventional method of questioning may not yield any result at all. Hence such tests

\textsuperscript{59} AIR 1954 SC 300  
\textsuperscript{60} 2006 (2) KLT 197 (ker)
are not unconstitutional as they are held under expert supervisor and with the consent of the person.

In *Dinesh Dalmia Vs. State*61, The Court observed that where the accused had not allegedly come forward with the truth, the scientific tests are resorted by the investigation agency, such a course does not amount to testimonial compulsion. Hence from the above cases, it is evident that conducting a Narco Analysis test does not violate Article 20(3) per se. It is only after conducting the test, if the accused divulges information which is incriminatory, then it will be hit by Article 20(3). Thus, there is no reason to prohibit such tests on grounds of unconstitutionality.

In the case *Nandini Sathpathy Vs. P.L. Dani*62 (2) the Supreme Court considered the legal basis of the police practice of interrogating suspects in the view of constitutional and legal safeguards available to a person against the unjust interrogations. In this case Mrs. Pathpathy, the accused, who was a suspect and yet not accused, was brought into the police custody in regards of the corruption charges levied against her. On her refusal to answer the questions which were put before her, she was charged with an offence under Section 179 of Indian Penal Code (I.P.C.). It was argued that her refusal to answer was justified on grounds of Article 20(3) of the Constitution and Section 161(2) of the Criminal Procedure Court (Cr.P.C.) 1973. The Supreme Court held that the expression “any person supposed to be acquainted with the facts and circumstances of the case” included an accused person who fills that role because the police suppose him to have committed the crime and must, therefore, be familiar with the facts. The court further held that the expression “accused of an offence” includes a person formally brought into the police diary as an accused person but it also includes a suspect.

In another case *State of Bombay Vs. Kathikalu Oghad*63, the question raised was “whether an accused person is furnishing evidence, when he is giving his specimen handwriting or impression of his fingers or palm or foot? It appeared that he is giving the evidence within the meaning of Section 9 and Section 11 of the Evidence Act. Just as an accused person is furnishing evidence and by doing so, is being a witness, when he makes a statement that he did or something or save

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61 2006 Cr L.J. 2401 (Mad)
62 AIR 1977 SC 1025
63 AIR 1961 SC 1808
something, so also he is giving evidence and so is being a “witness” when he produces a letter, the contents of which are relevant U/s 10 of Indian Evidence Act, or is producing the plan of a house where a burglary has been committed or is giving his specimen handwriting or impression of his finger, palm or foot. It has to be noticed however, that Article 20(3) does not say that an accused person shall not be compelled to be a witness against himself. It says that such a person shall not be compelled to be a witness against himself. The court held that the person is not furnishing evidence against himself in such a case.

The Apex Court gave firm directions to the investigating agencies in following the constitutional provisions provided under Article 20 of it. The court said that:

1. An accused person cannot be coerced or influenced into giving a statement pointing to her/his guilt.
2. The accused person must be informed of her/his right to remain silent and also of the right against self incrimination.
3. The person being interrogated has the right to have a lawyer by her/his side if she/he so wishes.\(^{64}\)
4. An accused person must be informed of the right to consult a lawyer at the time of questioning irrespective of the fact whether he/she is under arrest or in detention.
5. Last but not the least, women should not be summoned to the police station for questioning in breach of section 160(1) Criminal Procedure Code (Cr.P.C).\(^{65}\)

Thus forcing suspects to sign statements admitting their guilt violates the constitutional guarantee against self incrimination.\(^{66}\) Also it is inadmissible as evidence in a court of law.\(^{67}\)

In addition, causing hurt\(^{68}\) to get a confession is punishable by imprisonment up to seven years.\(^{69}\)

\(^{64}\) D.K.Basu Vs. State of West Bengal AIR 1997 S.C. 610
\(^{65}\) Children below 15 and women should not be summoned to the police station or to any place by an investigating office. They should be questioned only at their place of residence.
\(^{66}\) Under Article 20(3)
\(^{67}\) Section 25, Indian Evidence Act, 1872
\(^{68}\) Section 319 of the Indian Penal Code, 1860
A) LEGAL PROVISIONS UNDER LAW

(1) Constitutional Law

The main rules governing the working of Special Investigation Agencies have to be established at the constitutional level. The constitution contains some fundamental principles which ensure that the working of such investigating agencies is transparent and corruption free. Yet another very important Article in Indian Constitution which deals with the efficient way of working of Special Investigating Agencies is Article 21. Law is a living process, which changes according to the changes in the society, science, ethics and so on. The Legal system should imbibe developments and advances that take place in science as long as they do not violate fundamental legal principles and are for the good of the society. The criminal justice system should be based on just and equitable principles.

Article 21 says “No person shall be deprived of his life or personal liberty except according to procedure established by laws”. Right to life means, the right to live consistently with human dignity and decency.

Article 21 is strengthened from time to time in following forms:

(i) The right against bar fetters.\(^{69}\)
(ii) The right to legal aid.\(^{70}\)
(iii) The right to speedy trial.\(^{71}\)
(iv) The right against handcuffing.\(^{72}\)
(v) The right against custodial violence etc.

Article 21 is one such right which asserts the importance of due process. Due process lays down that the procedure for depriving a person of his life or liberty must be lawful, reasonable, fair and just. Due process means that no police officer has the right or the authority to effect the arrest of an individual merely because the person has been accused in a criminal case. Yet another case which forbids the

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\(^{69}\) Section 330, Indian Penal Code.
\(^{72}\) Hussainara Vs. Home Secretary 1980 (3) S.C.C. P. 68
\(^{73}\) Prem Shankar Vs. Delhi Administration 1980 (3) S.C.C. P. 526.
investigating agencies from tresspassing into the privacy of individuals and following arbitrary and indiscriminate ways to invade the privacy of general public is People’s Union for Civil Liberties (PUCL) Vs. Union of India & another.\textsuperscript{74}

In the above case People’s Union for Civil Liberties approached the Apex Court through a Writ petition, challenging the Constitutional validity of Section 5(2) of the Indian Telegraph Act, 1882, which authorizes the government to intercept messages “on the occurrence of any public emergency or in the interest of public safety, if it is satisfied that it is “necessary or expedient to do so” in five given situations in the interest of:-

(i) The sovereignty and integrity of India
(ii) The security of the state
(iii) Friendly relations with foreign states
(iv) Public order
(v) Preventing incitement to the commission of an offence.

In the above case, the main issue was; of tapping of politician’s telephones by the Central Bureau of Investigation (CBI). The Supreme Court observed that Article 21 of the Constitution i.e. Right to Life and Personal Liberty was being attacked also article 19 of the constitution is, ‘The freedom of speech and expression was being curtailed’.

In addition to above two articles i.e. 19 & 21, Article 17 of International Covenant on civil and political rights, 1966, which expressly forbids arbitrary interference with privacy, family, home or correspondence and stipulates that everyone has the right to protection of the law against such intrusions was also affected. Our Hon’ble Supreme Court gave certain directions to be followed by the investigating agencies during their investigations, they were as below:-

1- Tapping of telephones is prohibited without an authority order from Home Secretary, Government of India or the Home Secretary of the concerned State Government.\textsuperscript{75}

\textsuperscript{74} AIR 1997 SC 568
\textsuperscript{75} Under Section 5(2) of the Indian Telegraph Act, 1882.
2- That order, unless it is renewed shall cease to have authority at the end of two months from the date of issue. Though the order may be renewed, it cannot remain in operation beyond 6 months.

3- Telephone tapping or interception of communications must be limited to the address(es) specified in the order or to address(es) likely to be used by a person specified in the order.

4- All copies of the intercepted material must be destroyed as soon as their retention is not necessary under the terms of Section 5(2) of the Indian Telegraph Act, 1882.

Hence, the investigating agencies cannot assume themselves as strong, cogent and legally justifiable to interfere with this right. Proper procedure must be followed as intrusion into a person’s home, professional or family life in the name of investigation or domiciliary visits without a proper basis is not permitted.\textsuperscript{76}

**Article 22:** Due to ignorance of laws and the rights guaranteed by them, there is blatant misuse of authority by law enforcers. An investigating officer must know the limits and nature of their authority. The onus of bringing those who break the law, before the Criminal Justice System lies on the law enforcers. Over the years the Supreme Court has explained and elaborated various directions for law enforcement. These directions deal with various aspect of working of investigating agencies.

An officer who willfully or inadvertently ignores Supreme Court directions can be tried in court under relevant provisions of the *Indian Penal Code and under the Contempt of Courts Act, 1971*.

**Article 22(1)** of the Constitution laws down that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds of arrest nor shall she/he be denied the right to consult and be defended by a legal practitioner of choice. In an important case named *Joginder Vs. State of U.P. & others*\textsuperscript{77} a young lawyer named Joginder Kumar was detained illegally over a period of five days by the police authorities in the name of getting “some inquiries” from him. A Habeas Corpus writ petition was filed with the Supreme Court to find

\textsuperscript{76} Kharak Singh Vs. State of Uttar Pardesh and others 1964 (1) S.C.R. 332.

\textsuperscript{77} 1994 S.C.C. 260.
out his whereabouts. The court issued notices to the State of Uttar Pradesh and to the S.S.P. to immediately produce Joginder Kumar and answer why he was detained for five days without a valid reason.

Supreme Court has laid down certain directions in the issue pertaining to Article 22 of the Indian Constitution, it says that:-

1. Arrests are not to be made in a routine manner. The officer making the arrest must be able to justify its necessity on the basis of some preliminary investigation.
2. An arrested person should be allowed to inform a friend or relative about the arrest and where she/he is being held\textsuperscript{78}.
3. It is the duty of the Magistrate before whom the arrested person is produced to satisfy her/himself that the above requirements have been complied with.

The Supreme Court has made very clear that arrest should not be made, unless they are absolutely necessary and there is no other way except arresting the accused to ensure his/her presence before the Criminal Justice System or to prevent her/him from committing more crimes or tampering with evidence or intimidating witnesses. Unnecessary and unjustified arrests lead to harassment and loss of faith in the system.\textsuperscript{79}

At the same time, corruptly or maliciously detaining people without recording an arrest in punishable by a maximum sentence of seven years.\textsuperscript{80}

Yet in another case named \textit{Central Bureau of Investigation (CBI) Vs. Anupam J.Kulkarni}\textsuperscript{81} the Supreme Court has laid down detailed guidelines governing arrest of an accused when investigations cannot be completed within 24 hours. The court said in this case that when a person is arrested under Section 57 of Criminal Procedure Code (Cr.P.C.) he should be produced before the nearest Magistrate within 24 hours. The Judicial Magistrate can authorize the detention of the accused in such custody i.e. either police or judicial from time to time but the total period of detention cannot exceed 15 days in the whole. This is a welcome

\textsuperscript{78} “Article 22(1) of the Constitution.
\textsuperscript{79} Government of India, 1980 Page 31.
\textsuperscript{80} Section 220 Indian Penal Code, 1860
\textsuperscript{81} 1992(3) S.C.C. 141
ruling of Supreme Court which would save the under trial prisoners from the police atrocities and also promulgate speedy investigations.

It was in *D.K. Basu Vs. State of West Bengal*\(^2\) that the Supreme Court gave directions and certain guidelines to follow a proper procedure while arresting and interrogating suspects. These guidelines are based on Code of Criminal Procedure, 1973 (Cr.P.C.) provisions and are very much a part of regulations laid down in police manuals and rule books. The Supreme Court has gone to the extent to say that, failure to comply with these guidelines not only renders an officer liable for punishment through departmental action but also amounts to contempt of court.\(^3\)

Hence, the above discussed constitutional provisions i.e. Article, 20, 21 and 22 make it crystal clear that all the investigating and Special Investigating agencies have to comply and that too, in substance, with the mandated requirements, in order to function properly and wisely in discharge of their duties. The Special Investigating Agencies have been supplied with various powers and privileges which flow out of the constitutional provisions which are very much, the part of the fundamental rights.

The mandated legal requirements as provided under these articles are so indispensable, that even a minor infringement of any of these mandatory conditions is susceptible to writ jurisdiction of High Courts under Article 226 and that of the Supreme Court under Article 32 of the Constitution.\(^4\)

(2) **Criminal Procedure Code**

The Criminal Procedure Code 1973 (old 1898)

The Code of Cr.P.C. 1898 was enacted almost in the end of Nineteenth Country. The object of the Criminal Procedure Code is to ensure that the accused person gets a fair trial, simplify the procedure of criminal administration and speed up the investigation and trial as far as possible.

The dictum “Justice delayed is Justice denied” is even more so true in criminal cases rather than civil ones. The intention behind following this procedure

\(^2\) AIR 1997 SC 610
\(^3\) Proceedings under the Contempt of Court Act, 1971 can be started in any High Court.
is that in criminal trials “the accused shall be presumed innocent until guilt is proved by the prosecution beyond reasonable doubt”. Criminal Procedure Code ensure that the accused is not harassed at the hands of the whole system which caters to bring justice to the Criminal Justice System. With this view in our minds, let us go through the relevant provisions of Criminal Procedure Code (Cr.P.C.) for proper understanding of legal framework in respect of Special Investigating Agencies in the process of law enforcement.

Before amendment of 2008 & 2010, Section 41-

Cites cases and circumstances under which any police officer may without an order from a Magistrate and without a warrant arrest any person, when he has committed a cognizable offence.

After amendment of 2008 & 2010 Section 41 syas:--

A police officer is empowered to arrest a person in all cases of cognizable offences only when it is committed in his presence, in all other situations, if the offence is punishable with imprisonment less than 7 years, the amendment requires the police officer to record reasons in writing prior to effecting arrest and the reasons may be:-

(a) The arrest of accused is necessary to prevent commission of further crime.
(b) The arrest of accused is necessary for proper investigation.
(c) To prevent the tampering of evidence.
(d) To prevent the accused from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the police officer.
(e) To ensure the presence of the accused in the court.

The police officer can require the accused person to appear before it for investigation, if there are no such reasons mentioned above, by issuing a notice to him. It shall be incumbent on the accused persons on whom the said notice has been issued to comply with the terms of the notice. It shall be lawful for the police officer to arrest such person, who does not comply with the terms of the notice and does not appear before the police.
Referring to Section 41 of the Criminal Procedure Code (Cr.P.C.) Act, Chidambaram said:-

“This provision was severely criticized as capable of being misused and infact, was being misused”.

It was in D.K. Basu Vs. State of West Bengal\textsuperscript{85} case that our Hon’ble Supreme Court gave directions in the form of guidelines in respect of “Arrest and Interrogation” by the police and other agents. These guidelines were based on Code of Criminal Procedure Code, 1973 provisions. The Apex Court also said that failure to comply with these guidelines not only renders an officer liable for punishment through departmental action but also amounts to “Contempt of Courts”\textsuperscript{86}.

Section 46 is another important provision in Criminal Procedure Code (Cr.P.C.) with clearly prescribes a manner/mode of arrest by the investigating authorities.

Section 46 says that “the police officer or other person making the arrest shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action”\textsuperscript{87}.

After the code of Criminal Procedure (Amendment) Bill, 2008. Section 46 was provided with a proviso to sub section (1) of the Principal Act, which says:-

“Provided that where a women is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the women for making her arrest”.

Criminal procedure code puts a bar on unnecessary restraint while effecting arrest by the law enforcement officer through section 49. This means that human dignity must be upheld and minimal force should be used while arresting and searching suspects. Even though if the arrestee offers resistance, minimum force should be used in order to avoid injuries.

\textbf{Important Legal Provisions for Search And Seizure By Police}

\textsuperscript{85} AIR 1997 SC 610
\textsuperscript{86} Proceedings under the Contempt of Courts Act, 1971 can be started at any High Court
\textsuperscript{87} Section 46(1) Cr.P.C. 1973.
Section 47 of Criminal Procedure Code (Cr.P.C.) deals with search of place entered by person sought to be arrested. It gives absolute authority to any police officer having authority to arrest any person, who he believes to enter any place, by demanding free ingress there. However, if such ingress is not allowed on, notification of his authority and purpose, he may break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person.

Another Section 51 of Criminal Procedure Code (Cr.P.C.) deals with search of arrested person. Firstly whenever a person is arrested by a police officer under a warrant which does not provide for taking of bail or under a warrant which although provides for the taking of bail but the arrested person cannot furnish bail.

Secondly, whenever a person is arrested without warrant and cannot legally be admitted to bail or is unable to furnish bail, the officer making arrest may search such person and place in safe custody all articles other than necessary wearing apparel. A receipt showing the articles take in possession by the police officer shall be given to such person. Search of a female is to be done by a female only keeping in mind, regard to decency.

Decency does not mean that a male cannot even witness the search of a female.\(^{88}\)

An investigating officer has to keep in his mind, the above said legal mandates in order to follow and respect the basic or fundamental provisions of the Constitution.

National Human Rights Commission has also setup certain guidelines in relation to abuse of police powers, arrest and detention. These guidelines are based on existing laws, constitutional provisions, Supreme Court decisions and National Police Commission Recommendations.

**Legal Provision for Investigation of Offence by Police**

A very crucial provision provided by the Criminal Procedure Code which circumscribed limits of investigatory powers of the police officers, such that serious prejudice to the personal liberty and property of a citizen is withheld.

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\(^{88}\) Kamla Bai Vs State of Maharashtra, AIR 1962 (SC) P. 1189.
Section 154 deals with First Information Report. It says that if any information disclosing a cognizable offence is given at the police station, the officer in charge must register it.

Hon’ble Supreme Court has asserted that it is not open to the police to question the reasonableness or credibility of the information at FIR stage. It should be registered immediately. In case State of Haryana Vs. Bhajan Lal & Others  

A First Information Report was cancelled against Ch. Bhajan Lal on the order of cancellation of FIR by the High Court. It was cancelled on the ground that the allegations of disproportionate assets did not make up a cognizable offence. 

The Apex Court said in this case, that cancelling of the FIR by the High Court was bad both in law and on the facts. The court asserted that everyone must abide by the law and even judiciary cannot interfere with the investigation process until and unless the police officers have exercised their investigatory powers illegally.

Hence the police officers must register an FIR immediately or receiving information about a cognizable offence.

The Apex Court gave strict directions saying that the court will not as a rule interfere in the investigation process except in the following circumstances when the High Court can cancel the FIR and other proceedings carried out by the police.

1- Where the allegations in the FIR do not constitute any cognizable offence.
2- Where the allegations made in the FIR and the evidence collected by the police in support of the allegations do not point towards the guilt of the accused.

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89 AIR 1992 (SC) 604
90 Cognizable offences are mentioned in the First Schedule of the Code of Criminal Procedure, 1973 (Cr.P.C.).
91 By issuing a writ to protect the fundamental rights of a person under Article 226 of the Constitution or by using its powers under section 482 of the Cr. P.C., 1973 to prevent abuse of court process or secure the ends of justice.
3- Where investigation has been carried out by the police in a non-cognizable offence\(^\text{92}\) without the order of a Magistrate.

4- Where the Criminal Procedure Code (Cr.P.C.) or any other law expressly prohibits carrying out criminal proceedings against the accused.

5- Where criminal proceedings have been started with dishonest intent to take revenge from the accused.

Yet another important provision in Criminal Procedure Code (Cr.P.C.) 1973 is Section 156 which gives extensive power to the investigating authority to investigate into a cognizable offence without the order of a Magistrate or without a formal FIR. Even the Magistrate cannot prevent them from investigating\(^\text{93}\) once the police starts investigating.

The police has been provided with a statutory right to investigate and even the court cannot control or interfere with this right until and unless a charge sheet is preferred by the police after investigation. A court’s function to take action or not to take action begins only after investigation stage\(^\text{94}\).

The power to the Magistrate to order an investigation under Section 156(3) on Section 202(1) are very different. The former is exercisable at pre-cognizable stage while the latter is exercisable at post cognizance stage. The power under Section 156(2) can be involved by the Magistrate before he takes cognizance of offence under the Section 190(1) (a)\(^\text{95}\)

Section 157 of Criminal Procedure Code (Cr.P.C.) 1973 is yet another very crucial mandate for an investigating authority, which has to be followed religiously by them. Basically it is a manner in which an investigation needs to be conducted, where the commission of cognizable offence is suspected. The provision clearly states two conditions that must be satisfied before a police officer starts investigation.

1. She/he should have “reason to suspect” the commission of a cognizable offence.

\(^{92}\) Non cognizable offences are mentioned in the First schedule of the Cr.P.C., 1973.

\(^{93}\) S.N. Sharma Vs. Bipin Kumar Tiwari AIR 1970 SC 786

\(^{94}\) Shivbhat Vs. Emperor, AIR 1928 Bom 62.

\(^{95}\) D.Laxmi Narain Vs. Narain AIR 1976, S.C., P. 1672
2. She/he should satisfy her/himself about the “credibility of the information”.

The Code of Criminal Procedure (Amendment) Bill 2008 has added amended Section 157 and a proviso is added in sub section (1) after the proviso, which reads as follows:

“Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a women police officer in the presence of her parents or guardian or near relatives or social worker of the locality”.

The legislators of India are making full efforts by making such amendments in our statutes, in order to, not to leave any such void which facilitates the investigating authorities from giving false reasons for their inefficiency or arbitrary means to accomplish their duty.

Section 160 of Criminal Procedure Code (Cr.P.C.) 1973 basically intends to provide facility to the police to obtain evidence with regard to the crime being investigated. In certain cases the police may by a written order require the attendance of any person who appears to be acquainted with the facts and circumstances of the case. But this fact does not authorize the investigating officer to compel the person to give any statement which goes against his favour.

Proviso to Section 160(1) clearly states that no male or female under the age of 15 years be required to attend any police station. If such deviance is noticed, it must not be left unpunished, the Supreme Court said 96.

The investigating authorities cannot crawl over the jurisdictional area of their limits and if they do so, they cannot be left unpunished.

The court said that the Army and Army Officer under the Armed Forces (Special Powers) Act, 1958 can neither call upon any women offender to their Army Camp for interrogation nor can they requisition 97 her for attendance at any place other than her residence as provided under proviso to Section 160(1) of the Code. 98

97 In Niloy Dutta Vs. District Magistrate 1991 Cr. L.J. 2933
98 In Niloy Dutta Vs. District Magistrate 1991 Cr. L.J. 2933 (Gau)
The literal interpretation of this judgement, indicates that the term investigating authority not only includes police officials but also Army Officials. The Apex Court reiterated that the police should not extract information by using force.99

Again Section 163 of Criminal Procedure Code (Cr.P.C). 1873 very clearly states that any kind of inducement, threat or promise by any police officer or person in authority in order to have answers to their queries is not legally justifiable but if the person chooses to answer on his own will, he shall not be prevented. Section 163 uses the term person in authority and the explanation100 given for the term says:-

“The test to judge a person in authority is whether he has the authority to interfere with the matter.”101 A person in authority is generally the one who is engaged in the apprehension, detention or the prosecution of the accused or one who is empowered to examine him”102

The literal meaning of Section 163 can be summed up by saying that no investigating authority whether it is the police official, Army official or other employees of investigating agencies referred to as “Person in Authority” be legally justifiable in inducing, threatening or promising any person in order to elicit the answer to their queries. Thus the investigating authorities are under a dire need to follow the legal mandates of Section 163, lest suffer the consequences mentioned in penal provisions.

Another provision of Criminal Procedure Code (Cr.P.C.) which has the entire object of facilitating investigation is Section 167. The basic object of Section 167 is to put pressure on the prosecution to make every effort to ensure detention and punishment of crime quickly. The legislators wanted to prevent disappearance of material evidence, in order to prevent vexatious and belated prosecutions. Section 167 is invoked when the investigation cannot be completed in 24 hours fixed by Section 57 and there exists strong grounds for believing the accusation to be true, the officer incharge of the police station or the police officer making investigation shall forthwith transmit to the nearest judicial magistrate a copy of entries in the diary

100 The Code of Criminal Procedure, S.N. Mishra
101 Smith Vs. Emperor, AIR 1918 Mad 111
102 Ibid 80
relating to case and the accused as well. It is then that the Magistrate decides judicially on merits of the report in the diary to further detain the accused or not. He may further authorize the detention from time to time as per sub Section (2).

In the case C.B.I. Special Investigation Cell-I New Delhi Vs. Anupam J.Kulkarni.103 The Apex Court held that there cannot be any detention in the police custody after the enquiry of first fifteen days even in a case where some more offences either serious or otherwise committed by the accused in the same transaction come to light at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction. The legal mandates are to be followed strictly by the investigating authorities otherwise they would attract penal provisions for their omittance.

Section 172 mentions the legal mandate of keeping a diary of proceedings during the investigations. Such diary shall have entered day-by-day proceedings of investigations conducted by such police officer. The object of maintaining a case diary is to enable the court to check the method of investigation by the police. Any criminal court may send for the police diary of a case which is under injury or trial in that court.

Hence, the above provisions of Criminal Procedure Code (Cr.P.C.) justify in itself; of how important they are in guiding the law enforcement officer in discharging his duties efficiently and well within the legal mandates prescribed by our legal statutes.

(3) Indian Penal Code

The Indian Penal Code, 1860 sets out many penal provisions which impose a strict penalty against those persons who violate the lawful authority of investigating authorities/ officers and adopt arbitrary means to shred the criminal justice system such that the ends of justice are never met.

On literally interpreting the Indian Penal Code, one realizes that it basically contains provisions which warns the persons or the accused, against the penalties they may suffer on violating lawful authority of investigating officers. Chapter IX of Indian Penal Code, 1860 (of offences by or relating to public servants) states in a

103 1992 Cr. L.J. 2768 (SC)
very precise way that the ‘Public Servants’ on committing such mentioned crimes in
the chapter would attract such penalties. Literal meaning of the word ‘Public
Servant’\textsuperscript{104} means servant of the government.

Section 166 to Section 169 of the Code lists various offences committed by
the Public Servants in discharging their official duty.

Section 166 punishes a public servant who disobeys willfully to an express
direction of law with an intention to cause injury to any person. The provision
attracts a punishment of simple imprisonment for a term which may extend to one
year, or with fine or with both.

In the case \textit{B.S. Thind Vs. State of H.P.}\textsuperscript{105} It was held, where an
investigating officer recorded his satisfaction in writing that the search of a
particular premises was necessary because disputed documents might be found
there, his entry into such premises was held to be not in disobedience of law and
therefore he could not be prosecuted without sanction U/s 197 Criminal Procedure
Code (Cr.P.C.)

Section 167 clearly states that when a public servant frames a document
incorrectly and it is well within the scope of his official duty and he does it with the
intention of or knowledge to cause an injury to any person, then such an offence
draws a penalty of simple imprisonment for a term which may extend to one year,
or with fine or with both.

Section 167 is similar to section 218 Indian Penal Code which deals with
cases of framing incorrect record or writing with intent to save person from
punishment or property from forfeiture.

Section 168 is basically punishable for those public servants who are legally
bound not to engage in trade but still do so. They too attract a penalty of simple
imprisonment for a term which may extend to one year, or with fine or with both.
Such people (public servants) take unfair advantage over other traders of their
official position for advancing their trade Section 168 is enacted in order to have the
undivided attention of public servants in their respective duties. If they are allowed

\textsuperscript{104} Section 21 Indian Penal Code, 1860.
\textsuperscript{105} 1992 Cr.L.J. 2935
to trade they could easily obtain unfair advantages over other traders due to their official positions.

In the case

**Mulshankar MaganLal (1950), 52 Bom LR 648, (1950) Bom 707**

It was held that the word ‘trade’ covers every kind of trade, business, profession, or occupation.

The Supreme Court once again in the case

**State of Gujrat Vs. Mahesh Kumar Dhirajlal**¹⁰⁶ held that trade in its narrow sense means “exchange of goods for goods or for money with the object of making profit”.

In the above case a tracer in the office of Sub-divisional Soil conservation officer took earned leave and during that period of leave obtained training as an Electrical Signal Maintenance from the Railway Administration, it was held that he could not be convicted under this section as he had not engaged himself in any trade even through he was receiving stipend from the Railways during the period of his training.

It was this Ruling in Dhirajlal’s case that later on in the case **State of Maharashtra V Chandrakant Solanki** it was held that engaging oneself as an agent of an insurance company on commission basis does not amount to engaging in trade.

Section 169 punishes a public servant with simple imprisonment for a term which may extend to two years, or with fine, or with both, if such public servant purchases or bids for property which he is legally bound not to purchase. The provision is merely an extension of the principle enunciated in the section 168.

Another Chapter Provided in the Indian Penal Code 1860 is Chapter XI (of False Evidence and offence Against Public Justice) which has some provisions which again remind us of the lawful authority of the public servants which they must follow. Sec 220 to 223 provides punishment of public servants for their intentional omission to apprehend, or negligently suffering the escape of offenders. The

¹⁰⁶ 1980 GLJ 919 (SC) : AIR 1980 SC 1167
provision says that they are liable to punishment since they are bound to apprehend or keep in confinement, such offenders.

**Section 220 reads as under**

“Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting. Contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine or with both”

The provision is general in its application and is intended to prevent illegal commitments for trial or illegal confinement. All the ingredients of the section must satisfy, in order to bring home the charge under the provision. It must be shown that the accused corruptly or maliciously committed such person for trial or to confinement or kept him in confinement in exercise of that authority, knowing that in doing so he was acting contrary to law.

In the instant case

**Suryamoorthy Vs. Govindaswamy**¹⁰⁷

A police constable made the victims to alight from a bus and took them to a nearby street. The Supreme Court analysed the case very acutely and held that at the best it could amount to wrongful restraint but not wrongful confinement. Thus the conviction under the section was quashed.

Further Section 222 says that

“Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a court of Justice for any offence or lawfully committed to custody, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement shall be punished”…..

¹⁰⁷ 1989 Cr. L.J. 1451: AIR 1989 SC 1410 at p. 1415
Section 222 is almost similar to section 221 with the exception that the person to be apprehended has already been convicted or committed for an offence. It is an aggravated form of the offence made punishable by section 221. The last two sections 221 and 222 punishes those public servants who intentionally omit to apprehend the accused persons while in section 223 the principle laid down in section 221 and 222 is further extended.

The provision punishes a public servant who negligently suffers any person charged with an offence to escape from confinement.

Since section 223 reads as below

“Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence or lawfully committed to custody, negligently suffers such person to escape from confinement……”.

In order to attract this provision, unless the custody is lawful from which the accused person has escaped, no offence can be made under this section.

In the case of

Debi, (1907) 29 All 377

It was held that if a public servant has no right to keep a person in custody, he is not guilty of allowing that person to escape. Thus a lawful custody is a very important ingredient of section 223.

The provision is only for those cases where the person who is allowed to escape is in custody for an offence, or has been committed to custody. This is a provision which is not meant for cases, where a person has merely been arrested under a civil process.\textsuperscript{108}

Section 330 read as under

“Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct or for the purpose of constraining the sufferer or any person interested in the sufferer to restore

\textsuperscript{108} Tafaullah, (1885) 12 Cal 190.
or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished a term which may extend to seven years and shall also be liable to fine”.

Chapter XII of the Indian Penal Code, 1860 also provides us with two very important provisions i.e. section 330 and 331 which aims at controlling the atrocities committed by the police during investigations Section 330 and 331 punishes with imprisonment of either description for a term which may extend to seven years and ten years and also makes one liable to fine, if a person voluntarily causes hurt/grievous hurt to any person in order to extort a confession from such person in which he may be interested.

Such provisions in our statistics serve as a deterrence for those public servants/investigating officers who indulge in custodial violence and bring shame to our country’s law enforcing machinery.

The principle object of the legislature in enacting this section/provision is to prevent torture by police. Though the provision is of general nature in application yet it is very crucial in defining the limits for the public servants in discharging their duties efficiently and without being arbitrary.

**Sham Kant Vs. State of Maharashtra**\(^{109}\)

In the instant case, the accused i.e. the investigating officer and his assistant, had a suspicion about two persons in a case of theft. They subjected the suspects to torture to extort confession or information leading to detection of stolen properties. The court held them guilty under the offence of section 330 I.P.C. The provision is not only for the police men but for the general public also i.e. for everyone.

**In the case of Latifkhan**\(^{110}\)

The court went a step further and convicted a person (accused) who stood by and acquiesced in an assault on a prisoner, committed by another policeman for the purpose of extorting a confession. He was held for the abetment of the offence under section 330. Section 331 is a similar section as section 330 except that the hurt

\(^{109}\) AIR 1992 SC 1879

\(^{110}\) (1895) 20 Bom 394.
caused under this provision should be ‘grievous’ one. It is an exaggerated form of section 330.

The sections or provisions discussed above give us a clear idea about the well defined legal framework which the statute has prescribed for the public servants to followed. If the lawful authority steps out of such legal set up, they attract the penalties attached with their offences. And if they step out of their lawful authority, they have the criticism of all the nation in their lap. It affects not only the victims but the whole nation has to suffer with it. It becomes a universal topic of discussion, where every national has to rethink on their own law statutes and devise new laws in order to prevent such happenings in their nations too.

(4) The Indian Evidence Act, 1872

The Indian Evidence Act, 1872 contains substantive rules which guide the courts to come to some conclusion about the facts of the case and then to pronounce judgements thereupon.

The investigating officer has to keep in his mind the substantive rules of evidence before proceeding to conclude his investigations.

Some basic rules of evidence are being discussed below, which are very important for the investigating officers to follow. If the authority investigates, ignoring the rules of evidence, then whole work becomes inadmissible and they can even be liable to punishments set out forth in other statutes. The first provision being discussed is Section 25 of Indian Evidence Act.

Section 25 says “Confession to police officer not to be proved”. Any confession given to a police officer is not admissible in a court of law. The reason behind this rule is that India is a country where the investigating authority (Police officials of Special Investigating Agencies) quite often tortures the accused person in order to get answers which they are interested in. It is not surprising in a country like India, to accept the torture in police custody as very normal. Infact the word custodial torture is taken as a synonym for the word police. The legislators of India, then thought of a devise rule which would lower the rate of custodial torture and hence created Section 25 and 26 of Indian Evidence Act, unlike England where the
two sections 25 and 26 are missing. There are no corresponding provisions under the English laws.\textsuperscript{111}

In England a confession does not become inadmissible by reason of the mere fact that it is made to a police officer.\textsuperscript{112} However, in India, in view of the special circumstances obtained here, section 25 was enacted. Although the main object of the legislature in enacting the present section was to put a stop to the extortion of confessions by the police by malpractices.\textsuperscript{113}

But even now the legislature has not succeeded in this object, as the police officers still try to extort confessions by hook or crook.

Section 25 covers a confession made to a police officer before any investigation has begun or otherwise not in the course of an investigation.\textsuperscript{114} While statements made by an accused person in the course of investigation are excluded by Section 162 of the Code of Criminal Procedure. The rule enacted in Section 25 is given the fullest effect. Confession to a police officer is ruled out of evidence absolutely.

A confession made to a police officer is absolutely inadmissible in evidence without any limitation or qualification. It is not necessary that, at the time the incriminating statement was made, the maker should have been an accused person. The statement will be inadmissible even if the maker subsequently becomes an accused person.

The test is the position of the person when it is proposed to prove the confession, not his position at the time when he is alleged to have made it.\textsuperscript{115}

Section 25 does not limit its applicability only to confessions of offences with which the accused is charged. Thus a statement to a police officer, which if true, would only establish against the confessor, the offence of culpable homicide is inadmissible if the confessor is tried for murder.\textsuperscript{116}

\textsuperscript{111} The Indian Evidence Act” G.S. Pandey Third Edition P. 100.
\textsuperscript{112} Phipson, Ev. 7\textsuperscript{th} Ed. 258.
\textsuperscript{113} Q.E.V. Babul al, 6A509528 (FB) Steph, Inter. 165
\textsuperscript{114} Narayan Swami Vs. Emperor 1939 PC 47
\textsuperscript{115} Kartar Singh Vs. State 1952 Pepsu 98: 1952 Cr. L.J. 1090
\textsuperscript{116} Ali Gohar Vs. Emperor 1941 S 134 : 1961 IC 61
In the case *Aghnoo Nagesia Vs. State of Bihar*\(^{117}\)

The Court held that a confession may consist of several parts and may reveal actual commission of crime, the motive, the preparation, the provocation etc. If the confession is tainted, the taint attaches to the whole statement of the accused. Since the appellant’s FIR being a confessional statement to a police officer, no part of it could be admitted into evidence on account of bar in Section 25.

In other case *Ram Singh Vs. State of Maharashtra*\(^{118}\)

It was held that any confessional statement given by accused before police is inadmissible in evidence and cannot be brought on record by the prosecution and is insufficient to convict the accused.

The word “Police Officer” in section 25 of the Evidence Act is not used in the technical and restricted sense in which it is used in Section 1 of the Police Act. The expression is not limited to the officers of the regular police.\(^ {119}\) It includes the members of the special police and numbers of the criminal investigation Department Police officers of Indian States\(^ {120}\) and foreign countries\(^ {121}\) and members of the frontier constabulary\(^ {122}\) are included. Hence the special Investigating agencies working under the legal framework is exactly the same as is evident from section 25 of the Indian Evidence Act. The powers of the Special Investigating Agencies can in no way override the statutory provisions of the Indian Evidence Act as well.

Section 27 provides that when some fact is discovered as a result of an information given by the accused who is in the custody of a police officer, only so much of the information as is directly related to the facts discovered will be relevant.

Section 27 is based on the doctrine of confirmation by subsequent facts. The doctrine says “where, in consequence of a confession otherwise inadmissible, search is made and facts are discovered which confirm it in material points, then such discovery is a guarantee that the confession made was true. But only that portion of

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\(^{117}\) 1996(1) S.C.R. 134.
\(^{118}\) Q.E.V. Salemuddin Shaik 26 C 569 : 3 CWN 393
\(^{119}\) 1999 Cr. L.J. 3763 (Bom)
\(^{120}\) E.V. Anandrao Gangaram Phanse 49B 642: 89 IC 1046: 1925 B 529: 26 Cr. L.J. 1478
\(^{121}\) Mhabli Rama Sail V.E., 87 IC 520: 1924 B 480: 26 cr. L.J. 1984
\(^{122}\) Q.E.V. Nagla Kala, 22B 235.
the information can be proved which relates distinctly or strictly to the facts discovered.\footnote{123}{Dharma Vs. State, 1965 Ray LW 418}.

In the case of \textbf{Ram Kishan Vs. State of Bombay}\footnote{124}{1955 Cr.L.H. 196 208} it was held if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby, that the information was true and accordingly can be safely allowed to be given in evidence. Section 27 is founded on the principle that even though the evidence relating to confessional or other statements made by a person, whilst he is in the custody of a police officer is tainted and therefore inadmissible, if the truth of the information given by him is assured by the discovery of a fact, it may be presumed to be untainted and is therefore, declared provable in so far as it distinctly relates to the fact thereby discovered.\footnote{125}{State of Uttar Pardesh Vs. Deomon Upadhyana, 1961 (2) S.C.J. 334, 337.}

In case \textbf{Mohd. Inayatullah Vs. State of Maharashtra}\footnote{126}{1976 SC 483 (Paras 11, 12, 13 & 14).} the Supreme Court explained and stated the law as follows:-

Firstly Section 27 reads as under

Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be provided.

The Supreme Court said “the expression ‘provided that’ together with the phrase ‘whether it amounts to a confession or not’ shows that the section is in the nature of an exception to the preceding provisions particularly sections 25 & 26. It is not necessary in this case to consider if this section qualifies to any extent, Section 24 also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, about a relevant fact, in consequence of the information received from a person accused of an offence. The second condition is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only ‘so much of the information as relates distinctly to the fact thereby discovered is admissible. The rest of the information
has to be excluded. The word ‘distinctly’ means ‘directly’, ‘indubitably’ ‘strictly’, ‘unmistakably’. The word has been advisedly used to limit and define the scope of the provable information. The phrase ‘distinctly’ relates to the fact thereby ‘discovered’ and is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of the part and that part only of the information which was the clear immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the facts discovered.

Now it is fairly settled that the expression ‘fact discovered’ includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this. Infact in the case Jaffar Hussain Vs. State of Maharashtra.\textsuperscript{127} It was said about Section 27 that it seems to be so provided in the nature of a proviso to Section 26. Infact it is a kind of relaxation for the police officers, that the facts discovered as a result of information given by the accused are relevant. The legislators of Indian Evidence Act have been very intelligent in implementing this provision. All police officers are not bad and all of them do not subject the accused persons to torture hence this provision is very apt for those police officers who are in this category. If confessions to them are not relevant, then atleast, the discoveries have been made relevant. In the case State of Himachal Pradesh Vs. Jeet Singh,\textsuperscript{128} it was held by the Supreme Court that recovery of any incriminating article from a place which is open or accessible to others would not vitiates the evidence under Section 27 of the Evidence Act.

Yet in another Supreme Court case State of Rajasthan Vs. Teja Ram & Others\textsuperscript{129} The Apex Court held that if after the recovery of axes, used by the accused in committing crime are discovered as a result of their giving information, but the serologist fail to detect the origin of the blood, due to disintegration of the serum in the meanwhile, it does not mean that the blood on the axe would not have

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{127} AIR 1970, SC P. 1934
\item \textsuperscript{128} 1999 Cr. L.J. 2025 (SC)
\item \textsuperscript{129} 1999 Cr. L.J. 2588 (SC)
\end{itemize}
\end{footnotesize}
been human blood at all. The court said that such guess work that the blood would have been animal blood is unrealistic and far-fetched in the broad spectrum of the case.

Another provision in Indian Evidence Act which shows the importance of the legal framework setup by the legislators in the working of the police officers is Section 133.

Section 133 talks about an accomplice. It says that an accomplice shall be a competent witness against an accused person. When the investigating officer looses hope from every side i.e. there is nothing in their hands from no confessions, no discoveries and to no evidence, then the accomplice comes into picture. It is like an instrument in the hands of police to capture the real criminals in case of offences in which two or more offenders are involved. The legal framework has given them the liberty to question the accomplice and make them a strong witness in their case. This is nothing but strong impact of the legal framework which allows them to do so.

Section 133 of the Indian Evidence Act, 1872 is the only absolute rule of law dealing with accomplice evidence. Though it is not illegal to act upon the uncorroborated testimony of an accomplice but it is a rule of prudence to not to make it a rule of law. Thus it is unsafe to act upon the evidence of an accomplice unless it is corroborated in material respects so as to implicate the accused.

Accomplice evidence might seem untrustworthy to a layman, as accomplices are usually infamous witness. But their evidence is admitted owing to the necessity, as it is often impossible without having recourse to such evidence to bring the principal offenders to justice. Thus the accomplice evidence might seem unreliable but it is often a very useful and valuable tool in the hands of investigating agencies to detect crime, solve crime and deliver justice. In the case R.K. Dalmia Vs. Delhi Administration130 The Supreme Court held that “an accomplice is a person who participates in the commission of the actual crime charged against an accused. He is to be a participes criminis (who take part in crime). There are two cases however, in which a person has been held to be an accomplice even if he is not a participe criminis (who take part in crime). Receivers of stolen property are taken to be accomplices of the thieves from whom they receive goods in a trial for theft.

130 AIR 1962 SC 1821
Accomplices in previous similar offences committed by the accused on trial are deemed to be accomplices in the offence for which the accused is on trial, when evidence of the accused having committed crimes of identical type on other occasions be admissible to prove the system and intent of the accused in committing the offence charged.

Again in the case *Jaganath Vs. Emperor*\(^{131}\) The Court explained that an accomplice is a guilty associate or partner in crime or who in some way or the other is connected with the offence in question or who makes admission of facts showing that he had a conscious hand in the offence. In the instant case named “*State of Tamilnadu Vs. Suresh & another*”\(^ {132}\) The Supreme Court upheld the credibility of evidence of accomplice. The court said that the accused can be convicted on the evidence of an accomplice if it is not totally bereft of reassuring circumstances.

In case *Narain Chet Raj Chaudhary Vs. State of Maharastra*\(^ {133}\) The Hon’ble Supreme Court held that though conviction can be based on the illegal, yet the court will, as matter of practice, not accept the evidence of an accomplice without corroboration in material particulars. The law in England about the same branch is the same as in India.\(^ {134}\)

Thus we can sum up by saying that inspite of the problems and complexities associated with accomplice evidence, it must be borne in mind that accomplice evidence is of extreme importance and can often play the decisive role in a criminal trial. It can help the investigators to crack even the toughest of cases and can bring the whole truth out into the open and help the court bring the offenders to justice.

**(B) LEGAL PROVISIONS IN SPECIAL AND OTHER ENACTMENTS**

**(1) Delhi Special Police Establishment Act, 1946 (C.B.I.)**

The Government of India had realized the need to setup an organization to investigate offences during the World War-II. Due to the enormous expenditure incurred for purposes connected with war, a situation had arisen in which many

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\(^{131}\) AIR, 1942 Qudh 221


\(^{133}\) AIR 2001 SC 3352

\(^{134}\) Batuk Lal, Law of Evidence.
antisocial persons, both official and non official were enriching themselves dishonestly at the cost of the public and the government.

An Ordinance No. XXII of 1943 was promulgated which constituted a Special Police Force for the investigation of certain offences committed in connection with departments of Central Government. This ordinance lapsed on 30th September, 1946 and it was replaced by the Delhi Special Police Establishment Ordinance No. XXII of 1946 which was further replaced by the D.S.P.E. Act XXV of 1946, which came into force on 19th November 1946. Thus the Delhi Special Police Establishment Act of 1946, succeeded two ordinances which had been earlier passed by the Governor General. Ordinance No. XXII of 1946 was repeated by the Delhi Police Establishment Act, 1946 (XXV of 1946) which re-enacted the provisions of the ordinance. This Act was adopted and amended on more than one occasion.

First, came the Adaption of Laws order, 1950, enacted under Clause 2 of Article 372 of the Constitution of India on January 26, 1950. Two changes were introduced, the first was throughout the Act for the words “Chief Commissioner’s Province of Delhi” the words “State of Delhi” were substituted and secondly for the word “Provinces”, the words “Part A and C States” were substituted. This was merely to give effect to the establishment of “States” in place of provinces under the scheme of our constitution. Later in 1952 the long title was changed from “An Act to make provision for the constitution of special force for the State of Delhi for the investigation of certain offences committed in connection with matters concerning Departments of the Central Government etc.” “An Act to make provision, for the constitution of a special police force, in Delhi for the investigation of certain offences in Part C states”.

There was change in the preamble too. The Management to Advance Insurance Co. Ltd. Vs. Gurdasmal135 was an important case whereupon, on the amendment of the Constitution by the Seventh Amendment in the year 1956 many changes were introduced in the constitution. Previously the constitution specified the states as Parts A, B and C states and some territories were specified in Part D in the first schedule. After the amendment the distinction between parts A and B was

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135 AIR 1970 SC 1126
abolished. All states (previously Part A and B states) were shown in First Schedule
under the heading “The States and Part C States and Part D territories were all
described as Union Territories”. Thereupon an Adaption of Law Order, 1956 was
passed and in the Delhi Special Police Establishment Act, 1946 all references to part
C states were replaced by the expression “Union Territory”. Another significant
change made by the Amending Act was to remove from Section 2 the words “for the
State of Delhi” and all references to offences by the words committed in connection
with the matters concerning Departments of the Central Government were deleted.

Since we are concerned with the legal framework provided by the legislature
for the effective working of the Special Investigating Agencies, so some relevant
sections provided in the D.S.P.E. Act will be discussed here along. Section 3,4,5 and
6 of D.S.P.E. Act deal with the various rules and regulations which the investigating
agencies have to follow keeping in mind the basic motive / objective of the D.S.P.E.
Act, together with the father of law i.e. the Constitution of India.

Section 3 reads as under

Offences to be investigated by Special Police Establishment

“The Central Government may, by notification in the official Gazette,
specify the offences or classes of offences,¹³⁶ which are to be investigated by the
Delhi Special Police Establishment”.

The words “committed in connection with matters concerning Departments
of Central Govt. omitted by the D.S.P.E.

Section 3 provides for offences to be investigated by the Special Police
Establishment and says that the offences or class of offences to be investigated by
the agency may be specified by notification in the official gazette by the Central
Government.

In the case Moti Lal Vs. Central Bureau of Investigation¹³⁷ the court held
that the “Central Bureau of Investigation is authorized to investigate offences
punishable under Wild Life (Protection) Act, 1972”.

¹³⁶ Amendment Act, 1952 (XXVI of 1952).
¹³⁷ 2002 (4) SCC 713
The Central Bureau of Investigation is authorized to investigate the offences punishable under Wild Life (Protection) Act, 1972, by virtue of Section 3 of the D.S.P.E. Act, which notify under the official gazette, the class of offences under the Wild life (Protection), Act, 1972.

Thus the investigating officers under the D.S.P.E. Act can investigate into only those offences which are notified under the official gazette by the Central Government.

Section 4 of the D.S.P.E. Act reads as under

Superintendence and administration of Special Police Establishment

1. The Superintendence of the Delhi Special Police Establishment shall vest in the Central Government.

2. The administration of the said Police Establishment shall vest in an officer appointed in this behalf by the Central Government who shall exercise in respect of the Police Establishment such of the powers exercisable by an Inspector General of Police in respect of the police force in a State as the Central Government may specify in this behalf.

Section 4(1) clearly states that the Central Government shall be vested with the superintendence of the Delhi Special Police Establishment. Here the question which arises is what is the extent of the power of superintendence of the Central Government mentioned under Section 4(1) of the Act?

This was answered in the case of Vineet Narain Vs. Union of India.138 The Supreme court issued several guidelines, on a writ petition filed before it in public interest in Vineet Narain’ case. The Supreme Court held:-

“The Delhi Special Police Establishment Act, 1946 is an Act to make provision for the Constitution of a special police force in Delhi for the investigation of certain offences in the Union Territories for the superintendence and administration of the said force and for the extension to other areas of the said force in regard to the investigation of the said offences. Section 6 of the Act requires consent of the State Government to exercise powers and jurisdiction under the Act by the Delhi Special Police Establishment. This is because3 ‘Police’ is a State subject, being in list II

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Entry 2 of the Seventh Schedule. For this reason, the learned Attorney General contended that the power and jurisdiction of the State Police in respect of an offence within its jurisdiction remains intact and is not inhibited by the single directive, and that the Central Bureau of Investigation (C.B.I.) alone is inhibited thereby Section 2 of State Government to exercise powers and jurisdiction under the Act by the Delhi Special Police Establishment. This is because ‘Police’ is a State subject, being in list II Entry 2 of the Seventh Schedule. For this reason, the learned Attorney General contended that the power and jurisdiction of the State Police in respect of an offence within its jurisdiction remains intact and is not inhibited by the single directive, and that the Central Bureau of Investigation (C.B.I.) alone is inhibited thereby Section 2 of the Act deals with the constitution and powers of the Special Police Establishment (SPE). This is how the Central Bureau of Investigation (C.B.I.) has been constituted. Section 3 provides for offences to be investigated by the S.P.E. and says that the offences or class of offences to be investigated by the agency may be specified by notification in the official gazette by the Central Government”.

The meaning of the word “Superintendence” in Section 4(1) of the Delhi Special Police Act, 1946 determines the scope of the authority of the Central Government. Although the overall administration of the Central Bureau of Investigation (C.B.I.) resides in the Central Government, but at the same time the general superintendence over the functioning of the department and specification of the offences which are to be investigated by the agency is not the same. The superintendence is not the same because it does not include within it the control of the initiation and the actual process of investigation. The term “Actual process of investigation” when interpreted in the literal sense means the directions which the Central Bureau of Investigation (C.B.I.) follows in the process of conducting their investigations. Generally, when the Central Bureau of Investigation (C.B.I.) is empowered to investigate an offence by virtue of Section 3, the process of investigation includes, initiation which is governed by the statutory provisions which further again provide for the initiation and manner of investigation of the offences. Hence, we can say that the word “superintendence” in Section 5(1) does not include within it the control of the initiation and the actual process of investigation.
To be more simple and comprehensive, the jurisdiction of the Central Bureau of Investigation (C.B.I.) to investigate an offence is determined by the notification made by the Central Government under Section 3. Once the jurisdiction is attracted by virtue of the notification under Section 3, the real investigation is to be governed by the statutory provisions under the general law applicable to such investigations. The word “Superintendence” in Section 5(1) cannot be interpreted in such a wider sense, in order that it includes supervision of the real/actual investigation of an offence by the Central Bureau of Investigation (C.B.I.), contrary to the manner provided in the statutory provisions.

From the above we can make it that the Central Government cannot issue any such direction to the C.B.I. to curtail its jurisdiction to investigate an offence specified in the notification issued under Section 3 by a directive given under, Section 4(1) of the Act.

The jurisdiction of the Central Bureau of Investigation (C.B.I.) to investigate an offence is to be determined with reference to the notification under Section 3, solely. No other order, which does not even have the character of the notification issued under Section 3 can determine the jurisdiction of Central Bureau of Investigation (C.B.I.) to investigate an offence. We also know that the statutory jurisdiction cannot be subject to executive control.

In the absence of any statutory requirement of prior permission or sanction for investigation, it cannot be imposed as a condition precedent for initiation of the investigation once jurisdiction is conferred on the Central Bureau of Investigation (C.B.I.) to investigate the offence by virtue of the notification under Section 3 of the Act. The word “Superintendence” in Section 4(1) of the Act must be construed in a manner consistent with the other provisions of the Act and the general statutory powers of investigation, which govern investigation even by the Central Bureau of Investigation (C.B.I.).

Section 5 reads as under

Extension of powers and jurisdiction of Special Police Establishment to other areas
1. The Central Government may be order extend to any area (including Railway areas) in a state not being a union territory, the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under Section 3.

2. When by an order under sub-section (1) the powers and jurisdiction of members of the said Police Establishment are extended to any such area, a member thereof may, subject to any order which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.

3. Where any such order under sub-section (1) is made in relation to any area, then, without prejudice to the provisions of sub-section (2), any member of the Delhi Special Police Establishment or above, the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer-in-charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station.

The legal framework has provided for the extent of the jurisdiction of the Central Bureau of Investigation (C.B.I.), so that it can enforce its rights and privileges only within that extent.

Under Section 5, the central government has with the concurrence of the State Governments, by order, extended the jurisdiction of the D.S.P.E. division to all states. The D.S.P.E. Act was extended to Jammu and Kashmir by the Promulgation of the Jammu & Kashmir (Extension of Laws) Act, 1956. Under Section 5(1) the jurisdiction has been extended to Jammu & Kashmir also, with the concurrence of the State Government vide notification No. 25/3/6 Avd. I dated 1/4/1961. The

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139 Subs by the DSPE (Amendment) Act, 1952 (SSVI) of 1956
D.S.P.E. Act 1946 was extended to the Union Territories of Dadra Nagar Haveli, Goa, Damann, Diu and Pondicherry on 27/12/1962 and 1/10/1963 respectively.

The Special Police Establishment is a Special Investigating Agency for making enquiries and investigations into certain specified offences. It is supplementary to the State Police Forces and has concurrent powers of investigation in respect of the offences notified U/s 3 and Section 5 of the D.S.P.E. Act, 1946. The special police establishment is one of the divisions of the Central Bureau of Investigation (C.B.I.) and the nature of cases to be investigated by the D.S.P.E. has been specified.

In the case of A.C. Sharma Vs. Delhi Administration the Apex court held that the “setting up of Delhi Special Establishment by the Central Government under the D.S.P.E. Act does not by itself deprive the Anti-Corruption Branch (Delhi Administration) of its jurisdiction to investigate the offence of bribery and corruption against Central Government Employee in Delhi”.

Again in the case of L.Col. H.N. Tripathi Vs. State the court said that Central Bureau of Investigation (C.B.I.) constituted under the Delhi Special Police Establishment, 1946 has jurisdiction to investigate and file a case before a Special Judge, Anti Corruption Branch. Section 2-A of Jammu & Kashmir Prevention of Corruption Act does not bar the jurisdiction of the special police establishment to investigate in that state in review of the notification issued by the Central Government under the DSPE Act with the consent of the State Government. So, we can say that the D.S.P.E. Act does not deprive the State Police of their power to investigate against central government employees. The D.S.P.E. Act is a Central Act and provides for an agency for investigation for such offences committed by the Central Government Employees, but at the same time, there is no provision in the act to exclude jurisdiction of police officers of various states to investigate the said offences when committed by such employee in their states. Infact the Central Act of 46 is a limited Act as it provides for the investigation of such offences when committed by the Central government employees only and does not include the state government employees. Coming to Section 6 of D.S.P.E. Act, 1946, it is as under:-

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141 1988 Cr. L.J. 582.
Consent of State Government to exercise of powers and jurisdiction in a state

“Nothing contained in Section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area is a State, not being a Union Territory or railway area without the consent of the government of the State”\(^\text{142}\).

The Special Investigating Agencies can assume their role, powers, privileges only according to the mandated legal framework. They cannot cross over the barriers set by the legislature. If they do so, a chaos will be created in their working arena as well as the democratic setup.

Section 6 of the D.S.P.E. Act provides that no member of the said establishment can exercise powers and jurisdiction in any area in a state without the consent of the Government of that State. But the section does not specifically lay down that every member of the said establishment should be specifically authorized to exercise jurisdiction in that area. The Bombay High Court in the case of Major E.G. Barsay Vs. State of Bombay\(^\text{143}\) cleared the air in this respect by stating that “when a State Government can authorize a single officer to exercise the said jurisdiction, there cannot be any legal objection why it could not authorize the entire force operating in that area belonging to that establishment to make such investigation”. The matter of giving or withholding consent under Section 6 is an executive action of the government and as a rule it should be expressed to be taken in the name of the Governor in terms of Article 166 (1) of the Constitution. In the case of Gurnam Singh Vs. State\(^\text{144}\). The court went a step further and held that “even” if the consent was not properly given, a defect or illegality in investigation in investigation however serious had no direct bearing on the competence or the procedure relating to cognizance of trial of an offence. The Supreme Court considered the question as to whether consent envisaged under 6 of the D.S.P.E. would not be a condition precedent in a case where the court has given a direction to the Central Bureau of Investigation (C.B.I.) to investigate the case and observed.

“One of the controversies which loomed large before the division bench of the Calcutta High Court was as to the appointment of the D.I.G., Central Bureau of

\(^{142}\) Subs by the DSPE (Amendment) Act, 1952 (XXVI of 1952).

\(^{143}\) AIR 1961 SC 1762: 1961 (2) Cr. L.J. 828 (SC)

\(^{144}\) 1981 Cr. L.J. NOC 46 (Ray)
Investigation (C.B.I.) to inquire into the matter in the absence of proper consent of the State Government. That question has not been recanvassed before us and it has been accepted by the counsel for all the parties including the Additional Solicitor General that while Section 6 of the D.S.P.E. Act, 1946 would require the consent of the State Government before jurisdiction under Section 5 of that Act, is exercised by officers of that establishment, when a direction is given by the court in an appropriate case, consent envisaged under Section 6 of the Act would not be a condition precedent to compliance with the court’s direction. In our considered opinion, Section 6 of that Act does not apply when the court gives a direction to the Central Bureau of Investigation (C.B.I.) to conduct an investigation and counsel for the parties rightly did not dispute this position. In this view, the impugned order of the learned single judge and the appellate decision of the Division Bench appointing D.I.G., Central Bureau of Investigation (C.B.I.) to inquire into the matter would not be open to attack for want of sanction under Section 6 of that Act”.

Following the above decisions of the Supreme Court, the Gujrat High Court held “Thus it is clear that while a direction is given by the court in an appropriate case, consent as envisaged under Section 6 of the Act is not a condition precedent to compliance with the court’s direction and Section 6 of the Act does not apply when the court’s direction and Section 6 of the Act does not apply when the court gives a direction to C.B.I. to conduct an investigation, when the offences are already notified under Section 3, the powers and jurisdiction of the members of the C.B.I. are extended and they discharge the functions of a police officer in that area and they are vested with powers, functions and privileges and are subject to the liabilities of a police officer belonging to the Delhi Special Police Establishment Act”.

The Magistrate has powers under Section 156(3) or under 173(8) Cr. P.C. to direct the C.B.I. to make investigation and in such a case the question of obtaining sanction under Section 6 of the D.S.P.E. Act does not arise. However, a subordinate court cannot entrust the investigation to any authority except that referred to in Section 156 Cr. P.C. By now we know that U/s 5 and 6 of the D.S.P.E. Act, 1946 a situation arises, where a member of Delhi Special Police Establishment Act cannot operate within the territory of a state of the union of India without the consent of the

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145 Kanayalal V. Stae of CGujrat, 1989 Cr. L.J. 492 Guj.
State Government. In the case of **Indumati M.Shah Vs. Narendra Mulgibhai Asra**\(^{146}\) the High Court held that the Special Judge, Rajkot cannot entrust investigation into a private complaint by an officer not below the rank of D.I.G. of Central Bureau of Investigation (C.B.I.), I.B. Branch, New Delhi.

Another question raised, which again put the Central Bureau of Investigation (C.B.I.) into a vicious circle was answered in the case of **Kazi Lhendup Dorji Vs. Central Bureau of Investigation (C.B.I.)**\(^{147}\) The question raised in this case was can the Central Bureau of Investigation (C.B.I.) complete an investigation, on pending commenced prior to revocation, where the State Government withdraws consent? To this the court answered; order of revocation of consent granted U/s 6 of the D.S.P.E. Act for extension of powers and jurisdiction of Central Bureau of Investigation to a State will have prospective operation only and the Central Bureau of Investigation (C.B.I.) is competent to complete the investigation and filed final report. Investigation by the C.B.I. and further sought investigation in the case by the State Police.

The Supreme Court held that when once the investigation was undertaken by the Central Bureau of Investigation (C.B.I.), pursuant to a consent granted under Section 6 of the D.S.P.E. Act, it has to be completed, notwithstanding withdrawal of the consent. The further investigation is a continuation of such investigation which culminates in a police report under sub-section 8 of Section 173 Criminal Procedure Code (Cr.P.C.). The subsequent withdrawal of the consent would not entitle the State Police to further investigate into the case. It was further held that if any further investigation is to be made, it is the Central Bureau of Investigation (C.B.I.) alone which can do so, because it was the one which was entrusted to investigate into the case by the State Government. Any subsequent notification issued withdrawing the consent to enable the State Police to further investigate into the case is patently invalid and unsustainable in law and is liable to be quashed on the ground of malafide exercise of power.

Being the pinnacle of authority, the Apex Court can guide the Special Investigating Agencies in the public interest to work in a well defined legal setup. In

\(^{146}\) 1995 Cr. L.J. 918 (Guj).
\(^{147}\) 1994 SCC (Gu) 873
the case of State of Bihar Vs. Ranchi Zila Samta Party, a public interest litigation alleging large scale defalcation of public funds, fraudulent transaction and falsification of accounts to the tune of around Rs. 500 crores in the Animal Husbandry Department of the State of Bihar was filed. The High Court in the exercise of powers under Article 226 of the Constitution ordered to take away the investigation from the State Police to the Central Bureau of Investigation. The question which was raised before the Supreme Court was, whether the exercise of the power under Article 226 of the Constitution amounts to interference?

Does the power under Article 226 of the constitution cast a slur on the State Police and favour the Special Investigating agencies on the other hand?

To this the Supreme Court held that Article 226 of the Constitution was not to give any advantage to a political party or a group of people and also it did not cast slur on the state police. The High Court’s order to entrust investigation to the Central Bureau of Investigation (C.B.I.) was done to investigate corruption in public administration, misconduct by the bureaucracy, fabrication of official records and misappropriation of public funds. The directions given by the High Court were just and proper and called for no interference. The Supreme Court further held that “to alleviate the apprehensions of the State about the control of the investigation by the Central Bureau of Investigation (C.B.I.), it should be under the, overall control and supervision of the Chief Justice of Patna High Court and the Central Bureau of Investigation (C.B.I.) officers entrusted with the investigation shall inform the Chief Justice of the Patna High Court from time to time about the progress made in the investigation and may, if they need any direction in the matter of conducting the investigation obtain them from the Chief Justice”.

The Central Government can authorize further investigation by the D.S.P.E. with the consent of the State Government where, it feels or prima facie, can be seem that the investigations by the local police are not satisfactory. In the case of Central Bureau of Investigation Central Bureau of Investigation (C.B.I.) Vs. Rajesh Gandhi, the Supreme Court held that “There is no provision in law under which, while granting consent or extending the powers and jurisdiction of the Delhi Special

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148 1996 Cr. L.J. 2168 (SC)
149 1997 cr. L.J 63 (SC)
Police Establishment to the specified State and to any specified case any reason are required to be recorded on the face of the notification. If investigation by the local police is not satisfactory, a further investigation is not precluded.”

Hence, the Supreme Court in this case directed the Central Bureau of Investigation (C.B.I.) to further investigate the offences registered under the said F.I.R. with the consent of the State Government and in accordance with law. Hence we can sum up by saying that the D.S.P.E. Act gives wide powers to the Central Bureau of Investigation in order that they conduct their investigation with more accuracy, efficiently and within the well made up to legal frame work. All the above mentioned conditions must satisfy so that the investigations carried out by them do not attract any penal provisions provided by the statutory law. The special investigating agencies have to enjoy the confidence of the general public in order that they do not come under the scrutiny of the judiciary, which can easily pinpoint their arbitrary and illegal ways of working. The supreme court cannot easily let go any special investigating agency with malafide intentions of duping the people at large, because the legislature has enacted the D.S.P.E. Act for the C.B.I. and such other acts for other special investigating agencies, which leave no empty spaces, to be filled by the adverse actions of investigating agencies.

(2) Central Vigilance Commission (CVC) ACT, 1998

General

With the growth of corruption in the administrative system, a thought of serious concern arose, which led to the formation of the committee on prevention of corruption known as Santharam Committee to review the problem of corruption in administrative system and make suggestions. Since the committee had raised an important issue that the administration could not be a judge of its own conduct, hence the Central Vigilance Commission was formed as the Apex body for exercising General Superintendence and control over Vigilances matters in administration vide Cr. O.I. resolution dated February 11, 1964. For evolving and applying common standards in deciding cases, which involved reforming their Vigilance Work. Continued on lack of probity and integrity in administration, establishment of commission was considered, hence very essential.
Central Vigilance Commission comes under the Central Government and is recognized to be the Apex Vigilance Institution. It is free of control from any executive authority. It has been made a multi-member commission with statutory status with effect from 25th August, 1998. The Statutory status has been given to the commission upon the directions given by the Supreme Court in a PIL in Vineet Narayan’s Case.\(^{150}\)

Organisational Hierarchy

Central Vigilance Commission is a multimember body, consisting of a Central Vigilance Commissioner as its chairman and a maximum of four other Vigilance commissioners as its members. It was after the statutory status accorded to it by the government vide gazette of India Notification No. 44 of 25/08/1998, amended vide notification no. 47 of 22/10/1998, that it became a multimember body. The president appoints the Central Vigilance Commission (CVC) as well as the Vigilance Commissioner, by warrant under his hand and seal on the recommendations of a committee consisting of the Prime Minister, The Minister of Home Affairs, The Leader of the opposition in the house of People. It is assisted by secretary who is of rank of Additional Secretary to the Government of India, two Additional Secretaries of the rank of Joint Secretary to the Government of India and other staff.

The Commissioner functions through Chief Vigilance Officer within each ministry /department/ organization and the Vigilance units constitutes an important feature of the scheme for ensuring probity and integrity in public administration. For the purpose of exercising check and supervision on Vigilance and Anti-corruption work, these units are considered as an extension of set up of commission. One can make out their importance by under living the fact that nearly 75% of the cases referred to the commission for advice are those investigated by the Chief Vigilance Officer (C.V.O’s). Hence a Chief Vigilance Office (C.V.O) is an important field functionary in the Vigilance set up. The Commission shall consist of:

\(^{150}\) Vineet Narayan Vs Union of India, 1998 (1) CVC is an autonomous body hence it Crimes 12(S.C.) is free to control from any executive authority, monitoring all vigilance activity under the Central Government and admising various authorities in Central Government Organisations.
- A Central Vigilance Commissioner – Chairperson
- And not more than 2 Vigilance Commissioners – Members

Vide GOI Resolution on Public Interest Disclosure and Protection of Informer, dated April 2004, the Government of India has authorized the Central Vigilance Commission (CVC) as the Designated Agency to receive written complaints for disclosure on any allegation of corruption or misuse of office and recommended appropriate action.

The Central Vigilance Commissioner has its own Secretariat, Chief Technical Examiner’s Wing (CTE) and a Wing of Commissioner for Departmental Inquiries CDI.

**The Secretariat** – It consists of a Secretary of the rank of Additional Secretary to the GOI, one officer of the rank of Joint Secretary to the Cr. O.I., 10 officers of the rank of Director / Deputy Secretary, four Under Secretaries and office Staff.

**CTE Chief Technical Examiner’s Wing**

The Chief Technical Examiner’s Organisation Constitutes the technical Wing of the Central Vigilance Commission (India) and is manned by 2 Engineers of the rank of Chief Engineers (designated as Chief Technical Examiners) with importing engineering staff.

The main functions assigned to the above organization are:

- Technical audit of construction works of governmental organizations from a Vigilance angle;
- Investigation of specific cases of complaints relating to construction works;
- Extension of assistance to Central Bureau of Investigation (CBI) in their investigations involving technical matters and for evaluation of properties in Delhi;
- Last but not the least; tendering of advice / assistance to the commission and Chief Vigilance officers in Vigilance cases involving technical matters.

**CDI Commissioners for Departmental Inquiries**
There are (15) fifteen posts of Commissioners for Departmental Inquiries (CDI) in the Commission, 14 in the rank of Deputy Secretaries / Directors and one in the rank of Joint Secretary to Government of India.

In order to conduct oral enquiries relating to major penalty proceedings on behalf of the disciplinary authorities in serious and important disciplinary cases, there are commissioners for departmental enquiries (CDI) nominated in this behalf.

**Jurisdiction**

The jurisdiction of the Central Vigilance Commission (CVC) is co-terminus with the executive powers of the union. The jurisdiction of the Central Vigilance Commission extends to all Central Government Departments, Central Government Companies including nationalized Banks and Central Government organizations.

Clause 8(1) (g) of the Central Vigilance Commission (CVC) Act requires the commission to tender / give advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government Companies, Societies and local authorities owned or controlled by the Central Government or otherwise.

Thus, the types of cases to be referred to the Commission for advice, and also the status of the officers against whom the cases would be referred to the commission, may require a notification by the government in the rules to be framed under the Act or through administrative instructions on the recommendation made by the commission. Till the time the instructions are not notified the commission would continue to advise on vigilance cases against the following categories of employees under the Central Vigilance Commission (CVC) ACT.

**Commissioner’s Jurisdiction under Central Vigilance Commission (CVC) Act**

1. Members of All India Services serving in connection with the affairs of the union and Group A officers of the Central Government.
2. Board level appointees and other senior officers up to two grades below the Board level, in the Public Sector undertakings of the Central Government.
3- Officers of the rank of scale V and above in the Public Sector Banks.
4- Officers of the rank of Assistant Manager and above in the Insurance Sector (covered by LIC and GIC and from non-Life Insurance Companies in the public sector).
5- Officers drawing basic pay of Rs. 8700 / per month and above in autonomous bodies/local authorities or societies owned or controlled by the Central Government.

**Functions and Powers of Central Vigilance Commission (CVC)**

In terms of powers responsibilities, the Central Vigilance Commission (CVC) is competent to investigate to review the progress of cases pending for prosecution etc.

The powers and functions of the commission are defined in Chapter-III, Section 8 of the Central Vigilance Commission (CVC) Act 1998. They are listed below:-

(a) To exercise superintendence over the functioning of the DSPE (Delhi Special Police Establishment, in so far as it relates to the investigation of offences alleged to have been committed under the prevention of corruption Act, 1988.

(b) To inquire or cause an inquiry or investigation to be made on a reference made by the Central Government, wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under, Any Central Act, Govt. Company, society and any local authority owned or controlled by that Government, has committed an offence under Prevention of Corruption Act, 1988.

(c) To inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in Sub Section (2). Wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988.

(d) As per the directions of Hon’ble Supreme Court, The Central Vigilance Commission (CVC) would also review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988.
(e) To organize training courses for Chief Vigilance Officers (CVO’s) and other Vigilance functionaries in Central Government Organization.

(f) To scrutinize and approve proposals for appointment of Chief Vigilance Officer (CVOs) in various organizations and assess their work.

(g) To conduct, through its organization of the Chief Technical Examiner (CTE), independent technical examination mainly from vigilance angle, of construction and other related works undertaken by various Central Government Organizations.

(h) To tender advice to the Central Government corporations established by or under any Central Act, Government Companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government Companies, societies and local authorities owned or controlled by the Central Govt. or otherwise.

(i) To exercise superintendence over the vigilance administration of the various Ministries of the Central Government or Corporations established by or under any Central Act, Government Companies, societies and local authorities owned or controlled by that Government.

(j) Last but not the least, to review the progress of investigations by the DSPE into offence alleged to have been committed under the prevention of Corruption Act, 1988.

**Administrative Powers of Central Vigilance Commission (CVC)**

Clause 24 of the Central Vigilance Commission (CVC) Act, 1998 empowers the Commission to discharge the following functions insofar as those functions are not inconsistent with the provisions of the Acts.

(a) Commission’s advice in Prosecution cases. There are cases in which the Central Bureau of Investigation (CBI) considers that a prosecution should be initiated and that requires a sanction from the President under any law. In such cases, the commission tender’s an advice after considering the comments received from the concerned Ministry / Department / Undertaking, as to whether the prosecution should be sanctioned or not.
(b) Appointment of Chief Vigilance Officer (CVOs) – The Commission conveys the approval for the appointment of Chief Vigilance Officer (CVOs), and no such person is appointed who has been objected as being a Chief Vigilance Officer (CVO) by the commission.

(c) Writing ACRs of Chief Vigilance Officer (CVOs) – The Commissioner of Chief Vigilance Commission (CVC), assess the work of the Chief Vigilance Officer (CVO) and gives his report.

(d) Resolving difference of opinion between the Central Bureau of Investigation (CBI) and the administrative authorities.

The commission resolves the difference of opinion, if any, between the Central Bureau of Investigation (CBI) and the Competent administrative authorities.

(e) The Commission can entrust to one of the Commissioners for Departmental Inquiries, any oral enquiry in any departmental proceedings. The commission can examine the report of the Commissioners for Departmental Inquiries (CDI) and forwards it to the disciplinary authority with its advice as to further action.

(f) The Commission can review any of the procedures and practices of administration at any time, it considers suitable, provided it relates to the maintenance of integrity in administration.

(g) The Commission may make any surveys and collect statistics and information as may be necessary.

(h) The Commission may advise on the changing or replacement of any procedure or practice, which it thinks, could afford the scope for corruption or misconduct.

(i) Last but not the least it can initiate in prosecuting persons, who are found to have made false complaints of corruption against public servants.

**GENERAL**

The Chief Vigilance Commission (CVC) is the country’s top corruption watchdog empowered to conduct inquiries in departmental activities against public servants and is the designated agency to receive written complaints and recommend action in cases of graft or misuse of office by officials. Although the Chief Vigilance
Commission (CVC) is not an investigating agency but it either gets the investigation done through the Central Bureau of Investigation (CBI) or through Chief Vigilance officers in government offices.

It can undertake or have an inquiry made into any transaction in which a public servant is suspected or alleged to have acted for an improper purposes or in a corrupt manner or into any complaint that a public servant had exercised on refrained from exercising his powers with an improper or corrupt motive. Chief Vigilance Commission (CVC) is not merely satisfied with an arrangement to investigate and punish corruption and misuse of authority by individual officers. The Sanatham Committee said, that these above functions are indispensable but the Chief Vigilance Commission (CVC) should also inquire into and investigate

(a) Complaints against acts or omissions, decisions or recommendation, or administrative procedures or practices on the grounds that they are

(i) Wrong or contrary to law;
(ii) Unreasonable, unjust, oppressive or improperly discriminatory.
(iii) In accordance with a rule of law or a provision of any enactment or a practice that is or may be unreasonable,
(iv) Unjust, oppressive or in properly discriminatory based wholly or partly on a mistake of law or fact.

The above recommendations of Sanatham Committee were not accepted because of the reason that the above problem is big enough to require a separate agency or machinery to look into this problem. If Chief Vigilance Commission (CVC) was made to do this then, it would be overburdened with the consequence that it might be less effective in dealing with the above problem i.e. corruption.

The Chief Vigilance Commission (CVC) rolled along without making any visible dent on the problem of corruption in the country for nearly three decades i.e. 1964 to 1993. It was in 1993 that the Hawala Case came up in the scenario, bringing with it some serious gist of allegations.

The allegations said that Central Bureau of Investigation (CBI) and other agencies had failed to investigate and prosecute those who were giving financial support to terrorists by illegal & clandestine means. It was also said that Central
Bureau of Investigation (CBI) was deliberately protecting those persons as they were powerful and influential.

The Supreme Court felt that, this problem was posing as a serious threat to the unity and integrity of the nation and therefore some permanent measure had to be adopted to prevent such cases again in future. Hence in its final judgment on 17th Dec., 1997 and gave directions to establish institutional and other arrangements aimed at insulating the Central Bureau of Investigation (CBI) and the Directorate of Enforcement of the Ministry of Finance from outside influences.

(3) The Narcotics Drug & Psychotropic Substance Act, 1985

Drug law enforcement was introduced in India after the passing of the Narcotics Drug & Psychotropic Substance (NDPS) Act 1985. The Narcotics Drug & Psychotropic Substance (N.D.P.S.) Act is basically made to control, regulate and monitor the manufacture, distribution, important the manufacture, distribution, import, export an drugs.

Again, on 9th May 2001 the Narcotics Drug & Psychotropic Substance N.D.P.S) Act, 2001 was enacted. The present Act is quite exhaustive and runs into eighty three provisions and explanations thereunder. The Act was enacted to consolidate and amend the law relating to Narcotics Drugs and to make stringent provisions for the control and regulations of operations relating to Narcotics Drug and Psychotropic Substance.\(^{151}\) The Act extends to the whole of India. Sub Section (2) of Section 1 of the N.D.P.S. Act was amended by Act 9 of 2001 provide that the Act applies to all the citizens of India outside and to all persons on ships and aircrafts registered in India, wherever they may be. The legislators created this provision as they felt the need to take care of the provisions of Article 4 of the United Nationals Conventions against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 which requires that every party shall take such measure as may be necessary to establish its jurisdiction over the offences it has established in accordance with Article 3, paragraph 1 when inter-alia, the offence is committed on board a vessel flying its flag or an aircraft which is registered under its laws at the time the offence is committed and that each party shall also take measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with

\(^{151}\) See Preamble to Narcotics Drugs and Psychotropic Substance (Prevention) Act, 1985.
Article 3, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another party on the ground that the offence has been committed in its territory or on board a vessel flying its flag or an aircraft which was registered under its law at the time the offence was committed or that the offence has been committed by one of its nationals.

In an important case named Moh. Sadiq Vs. State\textsuperscript{152} The Jammu & Kashmir High Court stated as below:

“The Act was enacted to consolidate and amend the law regarding the narcotic drugs to make stringent provisions for the control and regulation of operation relating to narcotic drugs and psychotropic substances and for matters connected therewith. The drug dependence results in harm not only to the individual but also the society, resulting in emotional distress and physical illness”, if the drug is withheld. Physical dependence results in adaptive changes in body tissues with the result that when the drug is withheld, the adaptive changes are left unopposed resulting generally in a rebound over activities. The continuous non medical use of medical drugs particularly hereoin does not affect the addict, but ultimately harms the mankind. The bureaucratic trade in the narcotic drugs, if allowed to flourish would result in the whole society begin addicted to dangerous drugs. The intention of the lawmakers in the form of the Act was to nie the evil in the bud at the initial stage in countries when drug addiction has not been so extensive. Our country as whole and the State in particular is generally free from the trade of narcotics drugs. It is the social requirement of the society that effective / preventive measures are taken to control the trade and provide deterrent punishment by strictly following the directions of law enacted in this behalf”.

We know that drug abuse has serious social and economic effects. Drug abuse has become a global phenomenon now. To add to it, there is globalization and liberalization of economics cultivation and processing of drugs in an illicit way have their own adverse effects on the environment. The growth of crime rate is also directly proportional to the drugs abuse and trafficking. It was only after independence that the Narcotics Drug & Psychotropic Substance (N.D.P.S.) Act 1985 was enacted, keeping in mind the gravity of the problem of drug abuse. We

\textsuperscript{152} 1991 Drugs Cases 112
have to modify the law according to the changing needs of the society and since the law itself is a dynamic concept, so there is no harm doing the above. The Narcotics Drug & Psychotropic Substance (N.D.P.S.) Act 1985 was amended for the only reason of achieving its aims and objections.

Various investigating agencies have been laced with special powers and privileges to remove the tan sought to be avoided under the present Act. The powers are provided exclusively for the effective enforcement of the provisions of the Narcotics Drug & Psychotropic Substance (N.D.P.S.) Act.

We discuss here some very important provisions of the Act which confer exclusive powers to the investigating agencies. Section 37 (1) (a) of the Narcotics Drug & Psychotropic Substance (N.D.P.S.) Act 1985 reads as under:-

- Section 37-Offences to be cognizable and non bailable.

So every offence punishable under this Act is declared to be cognizable thereby entrusting more powers to the investigating officers to effectively suppress the violators of the provisions of the Act. The section seeks to provide that, it has to be read as overriding the procedure relating to offences against other laws specified in Part-II of the First Schedule of the code. But after the amendment which was made by the legislature in the year 2001, the provisions for granting the bail to the accused were liberalized and the bail depended upon the quantity of the contraband articles seized form the accused persons. By virtue of Section 37 all the offences under the NDPS Act are cognizable meaning thereby that the police can arrest the person who commits any of the offences without warrant. But for this section as per the scheme enshrined in Part-II of First Schedule to the Code of Criminal Procedure offences under Sections 8A, 26, 27, 32, 45, 47, 58 and 59(1) and offences relating to small quantity would have been non cognizable. All the offences under the Narcotics Drug & Psychotropic Substance (NDPS) Act are not non bail able. Although the marginal hearing of Section 37 mentions the expression “Cognizable” in the body of Section 37 but nothing is mentioned about non bail able nature of the offences under the Act. It was, however, observed in the statement of reasons for the amendment of the Act, that it provided deterrent punishment for doing trafficking offences and that even
though the major offences were non bailable by virtue of the level of punishment on technical grounds, yet drug offenders were released on bail.

Section 41 Power to Issue Warrant and authorization.

Section 41(2) reads as under:-

41(2) “Any such officer of Gazetted rank of the department of Central Excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the paramilitary forces or the armed forces as is empowered in this behalf by general or special order by the Central Government or any such officer of the revenue, drugs, control, excise, police or any other department of a State Government as if empowered in this behalf by general or special order of the State government, if he has reason to believe from personal knowledge or information given by any person taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure of freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or place, may authorize any officer subordinate to him but superior in rank to a peon, espy or a constable to arrest such person or search building, conveyance or place whether by day or by night or himself arrest such person or search a building, conveyance or place”. The basic idea behind the Section is that an investigating officer shall perform all the duties which are powered to him by virtue of being an investigating officer.

Section 42 of the Act gives power of entry, search, seizure and arrest without warrant or authorization to any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of Central Excise, Narcotics, Customs, Revenue, intelligence or any other department of the Central Government including para military or armed forces as is empowered in this behalf by general or special order by the Central Government or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs, central excise, police or any other department of a State government, as is empowered in this behalf.
Thus Section 41(2) and 42 deals with the procedure to the adopted by the enforcement authorities in order to combat the evil of drugs. The objectives enshrined under these provisions ensure that the persons are only searched with a good cause and also with a view to maintain veracity and authenticity of evidence obtained from such search. Section 41 of the Narcotics Drug & Psychotropic Substance (NDPS) Act is provided for the empowerment of officers for arrest, search and seizure.

Although it is an arguable point that Section 41(2) confers an unguided and arbitrary power upon an officer to issue authorization or make a search, the only conditions being that he has reason to believe in the existence of the facts mentioned therein, the said beliefs is practically a subjective satisfaction and can be abused. This section neither lays down any policy nor imposes any effective control on his absolute discretion. A deeper scrutiny of the provisions can have the effective check on the exercise of the powers by the officer. The legislature policy reflected in this sub section (2) is to empower the officers of the various law enforcement agencies to make coordinated efforts to achieve the object of detecting the contraventions of various prohibitions relating to drugs etc. Sub Section (2) of Section 41 does not say that such officer or such empowered officer shall give reasons thereof. Infact the power conferred on him is not subject to any such condition. Although he cannot make an arrest or search or authorize any officer to do so unless he has reason to believe the existence of the facts, but at the same time he is not compelled to give reasons. It is only open to the court to examine whether the reasons for the belief have any rational connection or not. The Hon’ble Court of India in Dr. Pratap Sigh’s Case\textsuperscript{153} observed that “The material on which the belief is grounded may be secret, may be obtained through intelligence or occasionally may be conveyed orally to informants. It is not obligatory upon the officer to disclose this material before him, on the mere allegation that there was no material before him on which his reason to believe can be grounded”.

Section 42 creates a statutory exception to the general rule that no search can be made without a warrant from the appropriate Magistrate. Undue delay in having a search warrant may defeat the very object of the search. In order to meet such

\textsuperscript{153} 1991 Drugs Cases
exceptional emergent cases it was necessary to empower the enforcement officers to carry out searches without warrant. Search without Warrant is a stringent process and can become arbitrary without imposing conditions, on the exercise of the power.

Section 42 clearly says that it is not every officer, who is authorized to carry out search without warrant only such officers as are mentioned in Section 41 are authorized to exercise this power. This empowered officer must reduce his reasons for belief into writing and send a copy thereof to his immediate superior official.

In the case S. Narayanappa Vs. The Commissioner of Income Tax\textsuperscript{154} the Hon’ble Apex Court pointed out that “the expression ‘reason to believe’ does not mean a purely subjective satisfaction on the part of the concerned officer. The belief must be held in good faith. It cannot be merely pretence. To put it differently, it is open to the court to examine the question whether the reasons for the belief gave a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the subjection. In other words, the existence of the belief can be challenged but not the sufficiency of the reasons for the belief”.

Hence, the officer concerned need not give reasons, but if the existence of belief is questioned in any collateral proceedings he has to produce relevant evidence not sustain his belief. In case State of Punjab Vs. Balbir Singh\textsuperscript{155} it was held that “it therefore emerges that the empowered officer while effecting the search or arrest without a warrant as provided under Section 41 and 42 (1) has to carry out search in accordance with Section 165 Criminal Procedure Code (Cr.P.C) but if he fails to record reasons, such a failure will not amount to an illegality vitiating the trial”.

Section 41, 42, and 43 are in the same league, empowering the investigating officers in search, arrest and seizure. Section 43 empowers the officer of any of the departments mentioned in Section 42 to detain and search any person whom he has reason to believe to have committed an offence punishable under this Act. It also empowers him to arrest such person and his company if such person has nay narcotic drug or psychotropic substance with him. Section 43 deals with the power of seizure and arrest in public places. It is slightly different from Section 42 in

\textsuperscript{154} AIR 1967 S.C. 523
\textsuperscript{155} AIE 1994 SC 1872
certain respects. The empowered officer while acting under Section 43, need not record any reasons of his belief. This section does not mention anything about the empowered officer having prior information given by any person or about recording the same, as compared to Section 42, Section 43 of the Narcotics Drug & Psychotropic Substance (NDPS) Act read with Section 100(4) Criminal Procedure Code (Cr. P.C.) contemplates that the search should be, as far practicable, be made in presence of two independent witnesses of the locality and if the designated officer fails to do so, the onus would be on the prosecution to establish that the association of such witnesses were not possible on the facts and circumstances of a particular case. The stringent minimum punishment prescribed by the Act clearly renders such a course imperative.

Section 51 of the Narcotics Drug & Psychotropic Substance (NDPS) Act clearly declares that the provisions of the Code of Criminal Procedure, 1973 shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act. We can sum up by saying that various powers entrusted to investigating officers under Sections 41, 42, 43, 50, 51 and 53, 55, 48, 68 etc. under this Act are somewhat same as are entrusted to police officers under the provisions of Criminal Procedure Code 1973.

Section 50 sets out conditions under which search of persons shall be conducted. The provision is basically a safeguard against vexations searches. It has the intention of protecting the interest of innocent persons. If we look into the depth of this provision, we realize that it is infact a weapon for the law enforcement agencies to fight against the allegations of not having made the unbiased investigations, search and seizures. The provisions of Section 50 does not apply to search of any luggage or vehicle of any person. It is on the ‘requisition’ of the person arrested, who is to be taken to the specified authorities. The compliance with the procedural safeguards contained in Section 50 of the Act intends to serve dual purpose; to protect a person against frivolous accusation and also to lend credibility to the search and seizure conducted by the empowered officer. Section 50 has been made in order to protect the interests of the citizens from irregular and illegal invasion of their liberty by the authorities.
Section 50 of the Act has been discussed at large in the case *State of Punjab & Baldev Singh* by the Hon’ble Supreme Court. The Court said “To be searched before a gazette officer or a Magistrate”, if the suspect so requires, is an extremely valuable right which the legislature has given to the concerned person having regard to the grave consequences that may entail the possession of illicit articles under the Act. It appears to have been incorporated in the Act keeping in view the severity of the punishment. The rationale behind the provision is even otherwise manifest. The search before a gazette officer or a Magistrate would impart much more authenticity and creditworthiness to the search and seizure proceedings. It would also verily strengthen the prosecution case. In the case *State of Punjab Vs. Balbir Singh* the Supreme Court referred to the decision of the American Court in *Miranda Vs. Arizona* in which it was propounded that the warning of the right to remain silent must be accompanied by the explanation that anything said could and would be used against the individual in court and held that when such is the importance of a right given to a person in custody in general, the right by way of safeguard conferred under Section 50 in the context is all the more important and valuable, therefore, it is to be taken as an imperative requirement on the part of the officer intending to search, to inform the person to be searched of his right that if he so chooses, he will be searched in the presence of a Gazetted Officer or a Magistrate and that the provisions of Section 50 are mandatory. In *Baldev Singh Vs. State of Punjab* The Apex Court said that it is an obligation of the empowered officer and his duty before conducting the search of the person of a suspect, on the basis of prior information, to inform the suspect that he has the right to require his search being conducted in the presence of a gazette officer or a Magistrate and the failure to so inform the suspect of his right would render the search illegal because the suspect would not be able to avail of the protection of Section 50. If the person concerned requires, that his search be conducted in the presence of a gazette officer or a Magistrate, the empowered officer is obliged to do so and failure on his part to do so would cause prejudice to the accused and also render the search illegal and the

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156 AIR 1999 SC 2378  
158 1996 (Vol. 384) U.S. 436  
159 AIR 1999 SC 2378
conviction and sentence of the accused based solely on recovery made during the search bad.

The searches under the NDPS Act should comply with Section 51 of the Act and provisions of Section 100 and 165 Criminal Procedure Code (Cr.P.C.) are applicable where the investigating agency has not joined the independent witnesses while conducting search and seizure under the Narcotics Drug & Psychotropic Substance (NDPS) Act, sometimes it is held that such search is illegal and cannot be acted upon. The provisions contained in sections 100 and 165 Criminal Procedure Code (Cr.P.C.) are procedural in nature and such breach does not render the evidence so collected illegal or inadmissible at the trial but what the court has to see is that it should examine the evidence so collected with caution and care. Section 52 reads as under Disposal of person arrested and articles seized

(1) Any officer arresting a person under Section 41, 42, 43 or 44 shall, as soon as may be inform him of the grounds for such arrest.

(2) Every person arrested and article seized under warrant issued under Sub Section (1) of Section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under Sub Section (2) of Section 41, 42, 43 or 44 shall be forwarded without unnecessary delay to:-
   (a) The officer incharge of the nearest police station or
   (b) The officer empowered under Section 53

(4) The authority or officer to whom any person or article is forwarded under Sub Section (2) or Sub Section (3) shall, with all convenient dispatch, take such measures as may be necessary for the disposal according to law of such person or article.

Section 52 is a corollary to Article 22 of the Constitution of India. Now we know that Article 22 guarantees the fundamental right of “protection against arrest and detention”. Since Section 52 is a corollary to Article 22, it enjoins upon the officer arresting a person under Section 41, 42, 43 and 44 of the inform him of the grounds of such arrest.
In the case Christie Vs. Leachinsky\textsuperscript{160} the house of Lords held that provisions of Section 52 are mandatory and non compliance would make the arrest or detention illegal.

“If a person is not informed of the grounds of his arrest, his further detention may become invalid or unlawful, but it cannot be said that his initial arrest itself becomes illegal”.

Hence, the provisions of Section 52 are held to be mandatory in this case. A contrary view was given by the Himachal Pradesh High Court in case State of H.P. Vs Sundershan & others.\textsuperscript{161} The Court held “Section 52 and Section 57 of the NDPS Act come into operation after the arrest and seizure under the Act. Somewhat similar provisions are also there in the Criminal Procedure Code (Cr.P.C.) If there is any violation of these provisions, then the court has to examine the effect of the same. In what context, while determining whether the provisions of the Act to be followed the arrest on search are directory or mandatory, it will have to be kept in mid that the provisions of a statute creating public duties are generally speaking directory. The provisions of these two sections contain certain procedural instructions for strict compliance by the officers. But if there is no strict compliance of any of these instructions, that by itself cannot render the acts done by these officers null and void and at 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 shown that such non compliance has caused prejudice and resulted in failure of justice. The empowered officers, however cannot totally, ignore these provisions and if there is no proper explanation for non-compliance or where the officers totally ignore the provisions then that will definitely have an adverse effect 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 non compliance or failure to strictly comply by itself will not vitiate the prosecution.”

\textsuperscript{160} 1947 (1) ALL E.R. 567
\textsuperscript{161} 1989 Cr. L.J. 1412
Hence Section 52 was held to be directory in nature. We can sum up by saying that the investigating officer under Section 52 has been empowered to perform his duty of informing the accused of his rights. Malfunctioning of the powers by the investigating officer may lead him into an adverse and difficult situation.

Section 57 of the Narcotics Drug & Psychotropic Substance (NDPS) Act reads as under:-

Reports of arrest and seizure. “Any person makes any arrest or seizure, under this Act, he shall within forty eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior”.

The basic idea behind this Section is to put a check on the law enforcing officers, so that they do not use their drastic powers arbitrarily. All the law enforcing officers have to make a report within 48 hours of every arrest or seizure made by him to his immediate superior. The purpose is to incorporate certain procedural instruction for a strict compliance by public functionaries. Failure to send the report within the prescribed time is considered to be a neglect of duty on the part of the concerned officers. The legislators intended, that the police officers or other officers, who may be authorized to investigate under Section 53 of the Act may not misuse the power and subsequently create evidence.

In Megha Ram Vs. State of Rajasthan\(^{162}\) The Rajasthan High Court stated as follows:-

“Compliance of this provision is meant to serve a dual purpose. On the one hand it affords an element of authenticity to the action taken by him in the cause of preventing commission of offences against the Narcotics Drug & Psychotropic Substance (NDPS) Act”.

The consciousness of compliance of this section puts, in a sense, a sort of check on the arbitrary exercise of powers of arrest and seizure by him (officer) under the Act and creates a sense of responsibility in him to act in accordance with relevant provisions of law so as not to be undermined in the estimation of his superior officers with regard to the discharge of his duties as a responsible officer. On the

\(^{162}\) 1997 Cr. L.J. 3091
other hand the communication of the information apprises the superior officers of
the position of offences against the Narcotics Drug & Psychotropic Substance
(NDPS) Act and also of the steps taken and compliance of the relevant rules made
by their subordinates in the administration of the said Act. While in another case
**Babu Rao Vs. State of Karnataka.**¹⁶³ The Karnataka High Court said that the
provisions requiring the person making arrest or seizure to make a full report to his
immediate superior officer within 48 hours bring into existence a document which
could be used for the purpose of cross examination in defence and would also bring
to an end the possibility of improving the prosecution version after that time. Thus
the legal framework sets a definite frame like the Section 57 of the Narcotics Drug
& Psychotropic Substance (NDPS) Act within which the public functionary has to
work so that the ends of justice are not defeated at any cost. Another very important
 provision of the Narcotics Drug & Psychotropic Substance (NDPS) Act which
widens the horizon of the powers enjoyed by the investigating officers is Section 68.

Let’s see what it reads

   **Section 68 Information as to commission offences**

   No officer acting in exercise of powers vested in him under any provision of this
act or any rule or order made there under shall be compelled to say where he got any
information as to the commission of any offence.

   On reading Section 68, it becomes very clear that the technicalities as contained
in the code have been removed under this Act for the objective of effective
enforcement of the various provisions of this Act. In fact it empowers the hands of
Investigating Officers acting in pursuance of provision of this Act.

   The officer may or may not disclose the source of any information as to the
source of any information as to the commission of any offence. The empower
officer’s discretion is absolute.

¹⁶³ 1993 Drug Cases (481) (Kar)
(4) The Prevention of Corruption Act, 1988

The prevention of corruption Act, 1947, was amended in 1964 based on recommendations of the Sanathan Committee. The present act is intended to make the existing anti-corruption laws more effective by widening their coverage and by strengthening the provision. The special investigating Agencies and the legal framework provided by the legislature for the working of such agencies is mainly concerned with the most crucial aspect, named investigation. Here in this act, we will be discussing the provisions relating to investigation in to the offences under the Act. Chapter IV deals with investigation into cases under the Act.

Section 17 is designed to give directions as regards to persons authorized to investigate.Section 17 reads as under:-

Persons authorized to investigate:-

Notwithstanding anything contained in the code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank.

(a) In the case of the Delhi Special Police Establishment, of an Inspector of Police.

(b) In the metropolitan area of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of Section 8 of the code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police.

(c) Elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank shall investigate any offence punishable under this act without the order of a Metropolitan or a Magistrate of the first class, as the case may be, on make any arrest therefore, without a warrant;

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

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164 Preamble to the prevention of Corruption Act, 1988
Provided further that an offence referred in clause (e) of sub-section (1) of Section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police. The Provision imbibes certain conditions which needs to be satisfied in order to have the investigating agencies fulfill all the criteria of working within the set legal framework.

When a case is to be investigated by an officer, other than the designated officer, he (officer) must get the order of the Magistrate to investigate the case. The magistrate should grant his permission only after exercising his judicial discretion as regard to the basic necessity or reasons underlying it.

The magistrate empowered to grant such permission should not take this authorization to be ‘just a formality’. It is only after the magistrate has applied his mind an judicial discretion as regard to such policy underneath it, that he should grant permission. It is the sole responsibility of the magistrate to authorize such investigations. At no cost he should surrender his discretion to any police officer.

In the case State of Madhya Pradesh Versus State of Mubarak Ali. The court held, “while in the case of an officer of assured status and rank, the Legislature was prepared to believe them implicitly, it prescribed an additional guarantee in the case of Police Officers below that rank, namely, the previous order of a Presidency Magistrate or a Magistrate of the first class, as the case may be. The Magistrate’s status gives assurance to the bonafides of the investigation. In such circumstances, it is self-evident that a magistrate cannot surrender his discretion to a Police Officer, but must exercise it having regard to the relevant material made available to him at that stage. He must, also be satisfied that there is sufficient reason, owing to the exigencies of administrative convenience, to entrust a subordinate officer with the investigation.

Where the magistrate passed the order authorizing an inspector of lower rank to investigate the case because the Deputy Superintendent of Police used to remain busy with the work and the case in question needed a whole time investigation, it was held that the order of the Magistrate was not mechanically passed and it was not illegal or improper.

165 AIR 1959 Cr. L.J. 920
In the case of Umesh Kumar Chaubey\textsuperscript{167} the Hon’ble High Court quashed the investigation and its report, on finding the investigation without an order. The court said that such investigation is illegal and unauthorized and therefore, the challan under section 173 Criminal Procedure Code (Cr. P.C.) is also unauthorized.

The legislature while enacting the provision laid stress on the implementation of requiring permission for investigating an offence by an officer other than the designated officer. The provision does not talk about any particular form of permission required for investigating an offence.

It was held in Manickam Chettiar\textsuperscript{168} that it is neither expedient nor reasonable to formulate any precise set formula of the language of the order which the Magistrate has to pass. The Supreme court and various High Courts have given various views on the effect of investigations in violation of Section 17 of the Prevention of Corruption Act.

In the case Manik Rao Abaji Thonge Versus State of Maharashtra\textsuperscript{169}

A case was investigated by an Inspector of Police, who had no authority to investigate as per section 5 A(1) (d) of the Prevention of Corruption Act. The Hon’ble High Court observed that neither contention was raised during the trial and nor any questions were put to the Inspector that he lacked the requisited authority under section 5-A to carry on the investigation. Taking into consideration, the view of the decision of the Supreme Court in the case of State of Haryana versus Bhajan Lal,\textsuperscript{170} the High Court rejected the contention that the prosecution and the resultant order of conviction and sentence is liable to be quashed on account of incompetence of the Inspector of Police to investigate the case.

Yet in another case, our Hon’ble Apex Court, interpreted the Section 17 of the Prevention of Corruption Act in a more understanding way.

In State Central Bureau of Investigation (CBI) Versus S. Bangarappa\textsuperscript{171} the Hon’ble High Court of Karnataka quashed the criminal proceedings instituted by the Central Bureau of Investigation (C.B.I) against the accused for an offence under

\textsuperscript{167} 2000 Cr. L.J. 1760 (MP) : 2000 (1) MPLJ 541
\textsuperscript{168} 1968 Cr. L.J. 256
\textsuperscript{169} 1993 cr. L.J. 3796 (Bom) : 1993(2) Crimes 881 (Bom.)
\textsuperscript{170} 1992, Cr. L.J. 527: AIR 1992 SC 604
\textsuperscript{171} 2001 Cr. L.J. 111.
Section 13(2) r/w 13(1) (e) of the Prevention of Corruption Act, 1988 on the ground that the investigation was not conducted in the manner prescribed under Section 17 of the Prevention of Corruption Act, since the investigation was conducted by an officer below the rank of Deputy Superintendent of Police. On appeal by the State, the Hon’ble Supreme Court observed that the order of the Hon’ble High Court was the result of a wrong understanding of the scope of Section 17 of the Act.

The Supreme Court referred to Section 17 clause (a) which permitted an Inspector of Police of the Delhi Special Police Establishment to investigate an offence punishable under the Act and further the proviso to the said section provided that an offence under Section 13(1) (e) of the Act shall not be investigated without the order of a police officer not below the rank of Superintendent of Police and that in this case the Superintendent of Police Central Bureau of Investigation (C.B.I.), Bangalore had issued an order authorizing the Inspector of Police to investigate the case against Bangarappa for the offence under Section 13(2) r/w 13 (1) (e) of the Prevention of Corruption Act, 988.

It has been very clearly stated in the second proviso to Section 17 that an order by the Superintendent of Police authorizing investigation for offence under Section 13 (1) (e) is mandatory, although no special mechanism or form of an order by the Superintendent of Police is mentioned in the proviso. The Superintendent of Police has to satisfy himself that it is necessary to investigate in the interest of the public and the concerned public servant. He need not write any reasons for it.

In the case named Rajinder Dass Gupta Versus Central Bureau of Investigation (C.B.I.)172 the Special Police Establishment, Delhi registered a case against the petitioner on a source information U/s 5(2) r/w 5(1) (e) of the Prevention of Corruption Act, 1947, on the allegation that the petitioner was in possession of assets disproportionate to his known sources of income. A perusal of the First Information Report showed that in the last para the Superintendent of Police, C.B.I. mentioned that the facts disclose commission of an offence, punishable u/s 5(2) r/w 5(1) (e) of the Prevention of Corruption Act against the petitioner and that a regular case was therefore registered and entrusted to Shri R.P. Sharma, Deputy Superintendent of Police, Central Bureau of Investigation (C.B.I.) for investigation.

172 2001 Cr. L.J. 2310 (Del)
After completing the investigation a charge sheet was filed against the petitioner who filed a petition before the Hon’ble High Court for dropping of proceedings and discharge him on the grounds that the investigation conducted by Central Bureau of Investigation (C.B.I.) were illegal, as the Superintendent of Police did not pass a separate order entrusting investigation to an authorized officer after registration of First Information Report (F.I.R.) and further that it was not a speaking order showing application of mind by the superintendent of Police. The special Judge however, dismissed the said petition. The petitioner took the matter to the Delhi High Court. The High Court dismissed the petition and said that there is no infirmity attached to the order passed in this case under second proviso to Section 17 of the Act. It was held, that because no reasons are assigned for entrusting the investigations to a lower rank officer, that doesn’t render an order illegal.173

(5) The Police Act, 1861

The basic aim of the police act was to organize the police and to make it as more efficient instrument for the prevention and detection of crime according to the preamble to the Police Act, 1861. The act was enacted during the times when almost the entire law making power was vested in the Governor General in council. It was a central act at that time. With the formation of British Parliamentary enactments, the powers were devolved to the provinces, which are now known as States. Both the police and law have been provincial subjects i.e. subjects within the legislative jurisdiction of the provinces (states). Since then the position has been consistently same. Though some states, in consonance with the constitution have actually passed their own Police Act in replacement of the present Act, while some other states passed supplementary enactments to enlarge the provisions of the said Act.

The word ‘Police’ includes all persons enrolled under the said Police Act and other local acts. The definition of the word ‘Police’ is not exhaustive.

In the case Public Prosecutor Versus Parma Shivam and others174 the Madras High Court said that in order to determine whether a person is a police officer or not, the material thing to consider, would be not the name given to him, nor the colour of the uniform he is required to wear; but his functions, powers and

173 State of Karnataka Vs. B.Naryana reddy, 2002 Cr. L.J. 845 (karn.).
duties. A police officer does not seize to be such merely because he is put into white khaddar uniform instead of one in Khaki drill.

In order to understand the Police Act, 1861, we need to study and discuss some basic obligations and duties of police officers as envisaged under the Police Act, 1861.

Section 9 reads as under

“No police officer shall be at liability to withdraw himself from the duties of his office, unless expressly allowed to do so by the District Superintendent or by some other officer authorized to grant such permission or without leave of the District Superintendent, to resign his office unless he shall have given to his superior officer notice in writing, for a period of not less than two months of his intention to resign.”

Basically this section aims at maintaining discipline among the police personnel by casting an obligation on them, to not to resign and discard their duties without leave or two months notice unless expressly allowed to do so by the District Superintendent or by any other officer authorized to grant such permission.

In the case named Satya Paul Kalra Versus The Deputy Inspector General of Police175, in this case the petitioner served a notice with his resignation. The Allahabad High Court held that Section 9 of the Police Act, contemplates two months notice before the resignation, hence the notice must precede resignation. The ruling sets out a definite rule for the police officers to comply with the provisions of Section 9 of the Police Act, 1861 before giving resignation and discarding their duty.

A police officer’s duty is a very stringent one and failure to comply with the duty also serves as a reason to be prosecuted. The police officers are like the general public looks upon. If the institution itself sets a malafide impression, that will certainly cast a negative impact on the general public, thereby toddling the image of the police force to the dust.

In the case Emperor Versus Nurul Hasan176 following were the facts

175 AIR 1964 ALL 121 at P 123
176 1919 (42) All 22; 17 ALI 873: 52 IC 63 : 20 Cr.L.J. 575: AIR 1919 All 35
A constable failed to return to duty on the expiration of casual leave and was prosecuted under Section 29 as a result of this. Section 29 reads as under:

Section 29 Penalties for neglect of duty etc.

He was committed and a fine of Rs. 30 was levied on him. At the same time, while his trial was pending he was suspended. After the conclusion of the trial, Superintendent of Police passed an order reinstating him and called upon him to return to duty. Orders were repeatedly sent to him to this effect and in spite of these orders he failed to return to his duty. As a consequence to this failure to return to his duty, the Superintendent of Police again ordered him to appear in Police Lines and then to give a two months notice as was required under Section 9. The constable failed to comply with the subsequent order as well and as a result was prosecuted under Section 29 of the Act.

The constable pleaded that as he had already been convicted, he was justified in disobeying subsequent order, calling him back to duty. He was convicted and sentenced to rigorous imprisonment for two months.

The case was referred to the High Court where it was contended that the conviction and sentence be set aside on the grounds that the constable's failure to return to duty was a single offence. The High Court held that the accused was not punished again for the same offence but for another similar offence. The court explained that, at first he was punished for his failure to return for his duty after casual leave and on the second occasion he was prosecuted for his failure to return to duty after he had been reinstated. There were two distinct and separate offences though similar in character.

Section 10 reads as below

Police officer not to engage in other employment – no police officer shall engage in any employment or office whatever other than his duties under this Act, unless expressly permitted to do so in writing by the Inspector General.

The basic idea behind enacting this section / provision is to inculcate the feeling of devotion towards one’s duty of police. A policeman is very different from a businessman. While a businessman in just interested in his sole profit, infact even in getting other’s profit, whereas as a policeman is interested just in the profit of
others, in fact at times he has to sacrifice his own profit in order to bring happiness into other’s lives.

In the case **Emperor Versus Sagar Singh**\(^{177}\)

A police constable and his brother, who was a hawaldar were running a grocery shop. They were prosecuted and convicted under Section 167 Indian Penal Code (I.P.C.), on the ground that they were public servants under Section 21 Indian Penal Code (I.P.C.) and as such were legally bound not to engage in any trade. In revision they pleased before the High Court that it was not established by the prosecution that as public servant they were legally bound not to engage in trade and that the provision, prohibiting police officers from trading contained in para 812 of the Bengal Police Manual was not a statutory one. The High Court without expressing its opinion on the point raised by the accused held that the words.

“any employment or office whatever” covered their case as any man can be employed or may employ himself in any kind of trade, business or occupation and that the conviction of the accused was not illegal as they were employed in running the shop.”

Section 20 reads as under

Authority to be exercised by police officers. “Police officers, enrolled under this Act shall not exercise any authority, except the authority provided for a police officer under this Act and any Act which shall hereafter be passed for regulating criminal procedure”.

A police officer exercising his authority, well within the authority provided for him shall not be interfered with, from any other authority, be it be the highest authority i.e. the judiciary.

As to the powers of the judiciary in regard to statutory right of the police to investigate, the Privy Council in **Emperor Versus Nazir Ahmed**,\(^{178}\) observed:-

“In their lordships opinion, however, the more serious aspect of the case is to be found in the resultant interference by the court with the duties of the police. Just as it is essential that everyone accused of crime should have free access to a court of

\(^{177}\) 16 Cr. L.J. 152: 43 IC 440

\(^{178}\) AIR 1945 PC 18 at Pg 22 referred to in State of West Bengal Vs S.N. Basak, AIR 1963 SC 447.
justice so that he may be duly acquitted if found not guilty of the offence with which
he is changed, so it is of the utmost importance that the judiciary should not interfere
with the police in matters which are within their province (authority) and into which
the law imposes upon them the duty of enquiry. In India as has been shown, there is
a statutory right on the part of the police to investigate the circumstances of an
alleged cognizable crime without requiring any authority from the judicial
authorities, and it would, as their Lordships think, be an unfortunate result if it
should be held possible to interfere with those statutory rights by an exercise of the
inherent jurisdiction of the court. The functions of the judiciary and the police are
complementary not overlapping and the combination of individual liberty with a due
observance of law and order is only to be obtained by leving each to exercise its own
function always of course subject to the right of the court to intervene in an
appropriate case when moved under section 491 Criminal Procedure Code (1898) to
give directions in the nature of Habeas Corpus. In such a case as the present,
however, the Court’s functions begin when a charge is preferred before it and not
until them. It has sometimes been though that Section 561-A (now Section 482
Criminal Procedure Code (Cr.P.C.) has given increase powers to the Court which it
did not possess before that section was enacted. But this is not so. The section gives
no new powers it only provides that those which the Court already inherently
possessed shall be preserved and is inserted, as their Lordships think, lest it should
be considered that the only powers possessed by the Court are those expressly
conferred by the criminal procedure code and that no inherent power had survived
the passing of that Act.

The aforesaid observations of the Privy Council, were also approved by the
Supreme Court and hence the Magistrate is not competent to stop or suspend the
police investigation after the same had been taken up.

The intention of the legislature was to equip the minds with the fact that,
once an authority is exercised lawfully, no other authority, however it may be
supreme could intervene in the lawfully working of that authority.

Section 20 of the Police Act expressly prohibit them (police officers) from
exercising the power of trying cases. The powers of a Magistrate to try cases cannot
be conferred upon the police officers. Hence the police officers have to do only those jobs which they are authorized to do.

Section 22 reads as under

Police officers always on duty and may be employed in any part of district-every police officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a police officer in any part of the general police district.

The provision declares that a police officer is always on duty and may be employed in any part of the State.

Although there are many duties performed by the Police but many of them have not been specifically provided in the Police Act. The main duty of the police are the prevention and detection of crime. The extent of the police power remains as the least defined of State powers.

Hence it has been held that an assault on a police officer deputed by the Superintendent of Police control traffic on a road leading from a public road to private place, while engaged in execution of duty is an offence under section 353 of the Indian Penal Code.\footnote{Emperor Vs. Gian Singh AIR 1928 Lah 230}

Section 23 enlists the general duties of police officers. It reads as under

“It shall be the duty of every police officer, promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the public peace, to prevent the commission of an offence and public nuisances to detect and being offenders to justice and to apprehend all persons whom he is legally authorized to apprehend and for whose apprehension sufficient ground exist: 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 or resort of loose and disorderly characters.”
The powers conferred on the police officers by this section are with regard to all offences, punishable under any Act whatsoever.\textsuperscript{180}

The different Police Acts in different states confer special powers and impose special duties on police officers.

The police officers are required to prevent commission of offences and to detect and bring offenders to justice. Police derives its power not only from the Criminal Procedure Code but also from the Police Act. Section 23 gives wider powers for preventing the offences and breaches of law in general.

In the case \textit{Mool Chand Versus State}\textsuperscript{181}

The court held that the power to detect and bring offenders to justice should not be circumscribed to offences which come only under the Indian Penal code. This will be too narrow an interpretation and not justified by the wording of the section.

Section 23 of the Police Act lays down details of some of the duties of police officers. It is duty of every police officer to prevent the commission of a cognizable offence.

Section 44 reads as under

“\text{It shall be the duty of the every officer-in-charge of a police station to keep a general diary in such form as shall, from time to time, be prescribed by the state government and to record all complaints, charges, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined}”.\textsuperscript{180}

Under section 172, Criminal Procedure Code, any criminal court send for the case diary as mentioned under Section 44 of the Police Act, for any enquiry or trial in such court and may use the diary not as evidence, but to aid it in such enquiry or trial.

\textsuperscript{180} Prem Shankar Vs. State AIR 1954 All 342; 1953 A.Cr.R. 305 ; 1953 AWR 680; 55 Cr. L.J.
\textsuperscript{181} Al 1956 Punj. 226 at 227
In the case **Abdul Rahim Versus State**

It was held that the impression gathered or the circumstances ascertained by a police officer on the spot are not required to be entered in the general diary and as such, they will not be relevant facts u/s 35 of the Indian Evidence Act.

Section 35 says that “an entry in any public or official book, or record made by a public servant in the discharge of his official duty is itself a relevant fact.”

The court said that these matters are appropriately to the mentioned in the diary of the case u/s 172 Criminal Procedure Code. Such matters have been specifically prohibited u/s 172 Criminal Procedure Code, from being used as evidence. Hence even though such matters have been recorded not in the diary of the case but in a general diary, yet since they properly fall written the purview of Section 172 Criminal Procedure code, the prohibition will apply and they cannot be used as evidence in that case. This section of the Police Act is complementary to Section 154 and 155 of the Criminal Code, 1973. The diary u/s 172 of the Criminal Procedure code is known as the ‘Case Diary’ or ‘Special Diary’, While u/s 44 Police Act, the diary maintained by the police is known as the ‘General Diary’, ‘Station Diary’ and also as “Roznamcha”. U/s 44 Police Act the general diary contains a more exhaustive list of matters. While the diary u/s 172 Criminal Procedure Code contains only a substance of the information relating to the commission of an offence u/s 154 and 155 of the Criminal Procedure code, 1973.

Thus it is the legal obligation of a police officer to maintain such general diary u/s 44 Police Act, 1861.

**6) The Arms, Act, 1959**

The law of arms has an important place in the armoury of laws. The Arms Act regulates and imposes restrictions on the rights of possession of Arms. The Arms Act regulates and monitors the manufacture, possession, use and transport of arms and explosives. In order to maintain law and order in the nation, the Arms Act have been and will be of extreme importance ever. Since we are concerned here with the wide range of powers conferred on the public servants (Police officers, investigating authorities for the furtherance of the object of the Act, so let me

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explain the range of powers conferred on the authorities under the Arms Act.

Section 19 of Chapter-IV reads as under:

Power to demand production of licence, etc:-

(1) Any police officer or any other officer specially empowered in this behalf by the Central Government may demand the production of his licence from any person who is carrying any arms or ammunition.

(2) If the person upon whom a demand is made refuses or fails to produce the licence or to show that he is entitled by virtue of this Arms Act or any other law for the time being in force to carry such arms on ammunition without a licence, the officer concerned may require him to give his name and address and if such officer considers it necessary, seize from that person the arms or ammunition which he is carrying.

(3) If that person refuses to give his name and address or if the officer concerned suspects that person of giving a false name or address or of intending to abscond such officer may arrest him without warrant.

Section 19 confers the authority on a police officer or any other officer, specially empowered by the Central Government to demand the production of the licence from any person carrying an arm or ammunition. 19(2) further says that if such person refuses or fails to produce the licence or cannot show that he is entitled to carry such arm without a licence, the officer is then enabled to require him to give his name and address. 19(3) empowers such officer to arrest such person without warrant, if the police officer feels that the name and address given by him are not true or if such person tries to escape.

It was held in the case of Pravesh Kumar Vs D.M. Shahyahanpur\(^{183}\).

That a police officer is entitled by virtue of the Arms Act to seize from that person the arms or ammunition which he is carrying. Again in the case of Gulzar Singh Vs. State of Maharashtra\(^{184}\).

The court held that there is no power to effect arrest in any other contingency except the conditions laid down in 19(3).

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\(^{183}\) 1955 All. L.J. 928 at pp 929, 930 (All)

\(^{184}\) 1976 Cr. L.J. 205 at pp. 206-208 (Bom).
Another section which grants power and privileges to the investigating agencies is section 37 and section 38. Section 37 reads as under:-

Arrest and Searches – Save as otherwise provided in this Act-

a) All arrests and searches made under this Act or under any rules made there under shall be carried out in accordance with the provisions of the [Code of Criminal Procedure, 1973, (2 of 1974)] relating respectively to arrest and searches made under that code;

b) Any person arrested and any arms or ammunition seized under this Act by a person not being a Magistrate or a police officer shall be delivered without delay to the officer-in-charge of the nearest police station and that officer shall…….

Section 37 supplements section 22, 23 and 24 of arms Act, 1959 which deals with search and seizure by Magistrate and police etc. The Act does not anywhere say that no search shall take place except in the presence of a Magistrate or any officer specially empowered by the Central Government. This is because it wants that the powers normally possessed by police officers under the Code of Criminal Procedure remain intact for the purposes of searches under the Arms Act in view of the fact that the provisions of the code of Criminal Procedure govern all searches made under the Act. Section 30 of the Arms Act, 1878 made a search illegal if it was not made in the presence of some officer specially empowered in this behalf by the Central Government. But Sec. 37 of the Arms Act 1959 has remained the restrictions imposed by section 40 of the Arms Act, 1878.

It was held in the case of

**Krishan Lal Vs. State (Delhi Administration)**[^1] that the ‘searchy’ mentioned in section 37 is a search which is conferred under the Code of Criminal Procedure and it follows as a necessary implication from the terms of this section that the jurisdiction in matter of search as created by the Cr. P.C. is retained under the Arms Act.

Section 37 makes it clear that a search by Police Officer cannot be conducted without a search warrant issued for the purpose by a Magistrate of the 1st Class or by the District Magistrate or Sub-Divisional Magistrate.

It was held in the case of Farydari Mistry Vs. State of Bihar\(^{186}\) that the raiding party has to produce the warrant before the person residing in the premises before conducting the search. It is a mandatory provision of law.

Since the conditions laid down in Section 37 are mandatory hence when a search is illegal, one can claim damages.

In the case **Hari Kishan Vs. State**\(^{187}\) it was held that if the provisions of section 37 are contravened without proper justification, the search and recovery may be viewed with suspicion. The irregularity or illegality in conducting the search thus only affects the probative value of the evidence of such persons (conducting search) relating to possession and recovery of unlicensed arms. The Supreme Court also took the view in the case of **Sunder Singh Vs. State of U.P.**\(^{188}\) that an irregularity in conducting the search and recovery would not affect the legality of the proceedings and it affects only the weight of the evidence.

Hence, an illegal search, done in the contravention of the provisions of section 37 lowers the probative value of the evidence of investigating agencies. Thus making them appear irresponsible with malafide intentions. Another provision in the Arms Act empowering the investigating agencies is Section 38.

Section 38 reads as under

Offence to be cognizable – Every offence under this Act shall be cognizable within the meaning of the [Code of Criminal Procedure, 1973 (2 of 1974)]

All the offences under the Arms Act have been made cognizable within the meaning of Code of Criminal Procedure. The offences are, therefore, open to be investigated by police even without an order of the Magistrate\(^{189}\).

In order, a criminal investigation is set in motion, there is no condition precedent which says that there has to be a receipt and recorded information. When a

\(^{186}\) 2003 (1) East Cr.C. 498 at p. 501 (Pat)

\(^{187}\) 1970 All. L.J. 1333 at p. 1336

\(^{188}\) A.I.R. 1956 S.C. 411.

cognizable offence is committed in the presence of the investigating officer himself he is not bound to take down in writing any information relating to the commission of the offence, since he has the information himself.\textsuperscript{190}

So, we can jot down by saying that though investigating agencies have been given wide range of powers and privileges under various major and minor acts, in order to accomplish their task of investigation with full care and dedication and also the powers conferred on them make sure that they do not act arbitrarily. But at the same time they are tied under various powers conferred upon them, thus making a boundary line for investigating agencies which is known by the name of legal framework.