CHAPTER – III
STATUTORY RIGHTS AND DUTIES OF PUBLIC SERVANTS

A. INTRODUCTION

There are various laws starting from the constitution the Ground norm, which reveal that what are the supposed duty of Public servants. In other words, what are the Rights and Duties of the Public Servants while discharging their public duties. So that we can come to the decision that whether an act committed by a public servant is exceeding the statutory limit or is within. If it is exceeded it is a legal wrong which may amounts to an offence. We will discuss here public officers as Public Servants.

Apart From Police there are other Public servants like C.B.I, criminal Investigation Department of respective State governments, Interpol, Directorate of Enforcement, Narcotics Control Bureau, Revenue intelligence etc functioning under the authority of Central or State Governments as the case may be. Every such agency plays its own role in the investigation of offences under several major and minor criminal Acts. the relevant provisions of such Acts have already been discussed in previous chapter These public servants contribute a lot in the overall law enforcement system of the country In case of crimes which are not deemed to be of serious nature and which are easily investigatable by the Police, generally other public servants like C.B1 or the C.I.D or Intelligence Bureau have no role to play. But in complex case and cases of general public importance having their impact on two or more states or cases of political importance like incident of assassinations of late Prime Minister Smt. Indira Gandhi and later his son late Prime Minister Sh. Rajiv Gandhi, the service of central public servants like C.B.I. or I.B. etc. are required so as to solve the cases and to capture and to punish the real culprits Hence, for the purpose of understanding the functioning of all these Public servants their role in law enforcement is necessary to be analyzed in the following lines.

B. ROLE OF POLICE OVERALL

a) General
The Police are primarily concerned with the maintenance of law and order and security of person and property of individuals. It therefore plays a vital role in criminal Justice system. Police duties have increased enormously and are becoming more and more diversified. The modern police must protect the public against physical dangers, rescue lives, regulate traffic and preserve law and order in the streets and public places. It also has a definite duty with regard to the prevention of juvenile delinquency and atrocities against women and children. Police Force has always been an indispensable appendage of State organization in almost all the civil societies of the world. Only the person of proven abilities and those having thorough knowledge of local region and its people were recruited in the Police Force so that they could tackle the problem of law enforcement efficiently. However, with the progress of civilization and development of knowledge, the dimensions of police functions have extended beyond limits. Now it has assumed the role of a social service organization in the modern welfare states like India and has no longer remained a mere watch-dog agency. In the modern social and political scenario, Police Organization has been massively changed. Today it functions in various forms and through various wings to tackle different types of problems.

(i) Women Police Officer

With the overall change in women’s participation in every sphere of social and political activities and organizations, the participations of women in police functions was also felt seriously. Hence, women police has also been recruited in the police establishment from the year 1947. They mainly deal with the offences relating to juveniles and women delinquents. The Indian Women Police mainly perform the functions of escorting women offenders from one place to another or arrest and apprehend them. It is also a part of their duty to maintain order and discipline in the fairs functions and gathering exclusively meant for women folk. Further, the services of women police are frequently utilized for helping the Pardanashin Ladies in obtaining Passports, etc. It is also worth noting that in recent times the dowry deaths and bride-burning incidents in India have necessitated women police to gear up its investigating machinery to suppress these crimes. It is also significant to note that India has the credit of setting up the first women Police station in the world which was set up at Calicut in the

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577 “Criminology and penology”, Prof. N.V. Paranjape, Tenth edition, Chapter XVI.
state of Kerala on Oct. 27, 1973. The Center Reserve Police Force is also raising women’s battalion in an Endeavour to create a Force of Female Police to be deployed in specific situations.

(ii) **Home Guard Police**

This is an auxiliary Police establishment which was needed to help the regular police in times of flood, famine or other calamities. The services of home guards are also utilized in times of emergency for helping the police to restore law and order. Both men and women between the age group of 16 to 40 years can he recruited as home guards. They are imparted basic training in physical exercises, drill and gun-firing. They have a prescribed uniform and badges. The entire organization is divided into divisions companies and platoons.

(iii) **Criminal Investigation Department (C.I.D.)**

In one of the important branches of the Police is the Criminal Investigation Department, popularly known as the C.I.D., which assists the regular investigating police in the investigation of complicated cases.\(^{578}\) It was originally formed upon the recommendations of the Police commission 1902-1903 set up by Viceroy Lord Curzon. The C.I.D. is meant to assist the regular police in investigation work, but ordinarily it deals only with cases which are too complex for the local police or which relate to organized crime over an extensive area such as organized dacoities, poisoning gangs, counterfeiting, back frauds and other modern crimes planned and executed by masterminds. The Finger Print Bureau is also maintained by the C.I.D. The success of the C.I.D. in cases handled by it is due to the special abilities of its trained officers. The department is in charge of the Inspector General of Police (C.I.D.). It is also to be noted that the State C.I.D. is separate from the Central Bureau of Investigation (C.B.I.) which is directly under the control of government of India, but at appropriate time the C.I.D. collates with the C.B.I. in important matters. In Haryana, The C.I.D. is as old as the organized Police Department because collection of intelligence is a very vital instrument for maintenance of law and order. The state C.I.D. is based at the city Panchkula and is presently headed by Sh. Anant Kumar Dhull, I.P.S. DG/CID Police. He is assisted by other officers.

\(^{578}\) “Police Officer’s Companion”, Anand Swarup Mishra, First edn. p. 130.
(iv) Government Railway Police (G.R.P.)

This is also a separate branch of the General Police Force and is enrolled under the police Act 1861. It recruits its all staff of constabulary. Its main duties in respect of Railways generally correspond to those of the District Police, i.e. prevention and detection of crime on Railways. It is responsible for dealing with crimes on trains passing through state territory for controlling passenger traffic, maintenance of orders in train halted at stations and in trains and for assisting the traveling public.

(b) Duties and Responsibilities (Obligations)

Crime Investigation being the primary and major responsibility of police organization it has to collect facts, evidences, witnesses and other cognate materials which influence the process of truth searching in the establishment of guilt or crime complicity therein. The police are being the first to arrive on the scene of crime. It has to play a crucial role in the area of criminal Justice administration. The Constitution contains some provisions in favour of accused or arrested persons and in that connection certain obligations or responsibilities on the part of Police officers are implied. Police owe its duties and responsibilities under various statutes like Criminal Procedure Code, 1973 the police Act 1861 as adapted by a State, the Indian Penal Code 1860 which are discussed herein below:

(i) Under the code of criminal procedure 1973

(I) Preventive Functions of Police

The foremost task assigned to the police is to make investigation and arrest of law breakers and suspected criminals and take them into custody in order to prevent crime. The preventive functions of the police are contained in the Code of Criminal Procedure. However the Legal limits of arrest and detention of suspect are also defined in the Criminal Procedure Code, 1973 vide sections 57, 167, 169 and 170(2) of the Code which are already discussed in previous chapter In this connection the National Police commission has suggested that a new section 50-A be added to chapter 5 of the Code, requiring the police to give intimation about the arrest to anyone who may reasonably he named by the arrested person for sending such information, so that necessary

arrangements for release on bail etc. may be made by the interested person or persons. The Constitution of India vide article 22 and article 21 also provides safeguards against the arbitrary use of preventive powers by the police or by the executive through police.

(II) **Interrogation of Offenders and Suspects**

While exercising its duties of Interrogation of offenders and suspects the police may “Frisk and interrogative the criminals or suspects.” It “Frisking” implies searching the pockets and clothing of the suspects as a measure of safety and security while enforcing law against him. It differs from a search which is a legal process meant for collection evidence against the offenders. Section 52 of the code contains this power to frisk the suspects. But the police power to interrogate the suspect is subject to certain limitations contained in section 156 of the code. The police must observe certain safeguards while interrogating a suspect. The questioning must not be cohesive or too intermediating. They are under an obligation not to extract admission or confession by cohesive or third degree methods. This is well supported by the legal principle of criminal law that the suspect is under no obligation to speak or answer questions, and anything done or said by the police officials to make him feel that he is under an obligation, it will amount to transgression of the legal limits of the power of interrogation by the police.

(III) **Maintaining Inquest Register**

The police are duty bound to record information in the inquest Register in case a person dies under unnatural or suspicious circumstances. The law on this point is contained in section 174 of the code as soon as intimation regarding death in unnatural or suspicious circumstances is received at the police station, it has to be recorded and forwarded to a competent Magistrate as in the case of cognizable offence. The Magistrate in pursuance of section 174 of the code would hold the enquiry himself or in addition to police investigation. In this way inquest investigation is a preliminary on-the-spot enquiry by police officer into cases of unnatural or suspicious deaths with a view to recording a finding as to the apparent cause of death.

(IV) **To Assist the Prosecutor in the Court**

The Police must also actively assist the prosecutor to conduct prosecution of cases in law courts. The reason is that the success in prosecution largely depends upon the
promptness and ability with which the investigation is conducted by the police.

(V) **Identification and Laboratory Research etc.**

In addition to the usual functions of protecting life and liberty of persons and apprehending criminals the police also have to deal with special division of police for finger printing, photography and otherwise identifying criminals and for filing records. The increasing vehicular traffic in urban areas has also put heavy duty upon the police of regulating traffic flow in the interest of public safety.

(VI) **Controlling Juvenile Delinquencies In the Area**

Child care being a development function of a Welfare state like India, the police has an important role to play in controlling Juvenile delinquencies. In this area also police has to perform its duties in all the three important stages namely preventive stage, trial stage and the rehabilitation stage. Though there are other agencies which may function in this area, but it is only the police organization which is duty bound to prevent and control ever increasing quantum of Juvenile crime in India. That is why the national Police Commission has recommended setting up of Special Police squads for tackling Juvenile delinquencies. Taking initiative of the recommendation of the National Police Commission Police Juvenile Bureau into metropolitan cities of Mumbai, Kolkata, Chennai and Delhi have already been functioning.\(^580\)

(VII) **Other Obligations:**

1. To uphold and protect human rights.
2. To contribute towards winning faith of the people.
3. To strengthen the security of persons and property.
4. To facilitates movements on highways and curb public disorder.
5. To deal with major and minor crises and help those who are in distress.

(ii) **Under the Police Act, 1861**

The obligations of police officers under this Act are discussed as under:

(I) According to Section 8 of the police Act a police officer has to surrender to the competent authority his enrollment certificate upon ceasing to be a police officer.

(II) Section 9 says that police officer shall not withdraw from the duties of his office unless allowed to do so by competent authority, nor shall he resign without giving

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to his superior at least two months notice of his intention to resign.

(III) Section 10 expressly declares that a police officer is under an obligation not to engage in any other employment without permission of the Inspector General.

(IV) Section 22 is a unique section among all the laws relating to police. It declares that police officer is always on duty and may be employed in any part of the State. The words used in this section clear the position of the police officers in respect of the nature of their duties and obligation towards the public at large. The reason apparently lies in the fact that police is supposed to protect the life and liberty of the members of the public and which requires to be protected at every moment of time. There can be no interval in respect of ultimate need of protection of one’s own life and liberty, i.e. why police is supposed to he always on duty.

(V) Section 29 says that upon ceasing to be a police officer he shall deliver up his enrollment certificates, the clothing and other necessary wearing apparels which were supplied to him for the execution of his duty. Failure to do so is punishable with imprisonment or fine or both.

(VI) As per Section 29-A police officer is under an obligation not to remain absent from his duties without reasonable cause and he should have reported for duty on the expiration of leave.

(iii) **Under the Police Regulations (Powers & Duties)**

The U.P. Police Regulations lay down duties of police officers in various situations and circumstances. Some of these obligations are discussed as following which are taken out of chapter XXVIII of the aforesaid regulations.

I. Para 372 lays down that Every police officer enrolled under Section 8 of the Police Act, 1861, must inform the Superintendent of Police of the fact that any of his near relations has taken up trade or private employment within the limits of his jurisdiction.

II. Para 373 lays down those Police Officers of all grades are not to aid members of the public in the supply of labour or carriage of provisions for any purpose whatsoever. Also, they must not interfere with the person or property of any class of the population.

III. Para 373A lays down that Policemen not to consume intoxicants while on duty.
IV. Para 379 lays down that all gazette officers shall keep a horse of proper size unless exempted by the Inspector General. Circle inspectors and subinspectors who receive a horse allowance must also maintain a suitable horse.

V. Para 380 lays down that while under treatment, a police officer shall not leave the hospital without permission of the medical officer in charge of the Hospital or on duty.

VI. Para 381 lays down that all applicants for medical leave or for extension of leave on medical certificate must inform the Superintendent of Police of their intention to apply for a medical certificate.

VII. Para 382 lays down that Under – officers and constables who fall ill when on duty or who are ill when due to return to duty, must apply for admission to the district police hospital or for treatment at the nearest dispensary, if the police hospital is out of easy reach. Officers of higher rank are not obliged to seek admission to police hospitals, but while on leave they must inform the Superintendent of police of their intention of obtaining a medical certificate.

(iv) **Other Obligations (General)**

Police have numerous other obligations in different fields of their work, and these are interspersed in many enactments, rules manuals and Government’s administrative instructions. Some of these obligations are given below as illustrative instances:

I. **Conduct in Private Life: paragraph 1058 of the Manual of Government orders (1981) deals with this subject.** It enjoins upon government servants (and police officers are covered by that expression) the obligation to maintain proper standards of decency to take notice of unbecoming conduct even though provision on this points has not been specifically made in the government Servants Conduct Rules.

II. **Sympathetic treatment of weaker sections of society:** This has been emphasized in Government circular D.O. No. 47/II-Ga 1972, dated 06-01-1972, addressed to District Magistrates and Superintendents of Police (with copy to I.G. of Police) in it reference was made to earlier instructions laying stress on sympathetic treatment of backward classes and neglected sections of society. Regret was expressed that in spite of these instructions complaints were being received that
proper treatment was not being accorded to the weaker sections of society The said D.O directed that wherever such people were subjected to ill-treatment or excesses, effective legal action should be taken against persons responsible for the same.

III. Maintaining Communal Peace: Police officers of all ranks are expected to give special attention to communal peace within their jurisdiction. In Government circular 110 No. 19/5/69 Appt. (A), dated 6-6-1969, it has been laid down that in the annual confidential reports on Superintendents of Police, Deputy Superintendents, Inspectors and Sub-Inspectors remarks should also be recorded about their performance concerning their maintaining communal peace. (The provisional of this D.O. have been made applicable to Executive Magistrate, Sub-Divisional Magistrates and Deputy Collectors also). This obligation can more effectively be discharged under the umbrella provided by newly added section 153-A in the Indian Penal Code, 1860\textsuperscript{581} which makes punishable the act of promoting enmity between different groups on grounds of religion, race, place of birth, residence, language etc. and doing Acts prejudicial to maintenance of harmony. If such an offence is committed the section provides punishment of offender with imprisonment which may extend to three years or with fine or with fine or with both. Moreover, if such an offence is committed in place of worship etc. it shall be punished with imprisonment which may extend to five years and shall also be liable to fine. The offences under this section are classified as cognizable, non-bailable and non-compoundable thereby sufficiently strengthening the hands of the police to take note of the matter immediately, investigating into the same and putting the real culprits behind the bars.

(c) **Power of Police Officers**

It is well know that duties and responsibility can be properly performed/discharged only if the necessary powers are given to discharge these duties and responsibilities, hence, whereas a number of duties and obligations are entrusted to the polices at the same time they have also vested with various powers to effectively perform their duties and obligations. These powers are

\textsuperscript{581} Substituted by Act 35 of 1969, Section 2, for the former section.
discussed in the following lines:

(i) **Power to arrest without warrant:**
Section 41, 42, 43, 46, 48 etc. enumerate the powers of police officers to arrest suspected persons as well as mode of arresting such persons. Section 41 enlists the category of cases in respect of which any police officer may without an order from a Magistrate and without a warrant arrest any person if such person falls in any of the categories mentioned in this section. A more elaborate classification of cases where a police officer may arrest a person without a warrant is specified in schedule I of the Code Section 46 inter alia contains the mode for arrest and declares that a police officer should not use more restraint then is necessary under particular circumstances of a case; hence, police has to use its powers of arrest with great caution and circumspection.

(ii) **Power of Search of arrested person:**
Section 51 empower the police officer making the arrest of or when the arrest is made by a private person, the police officer to whom he makes over the person arrested to search such person and place in safe custody all articles, other than necessary wearing apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the police officer shall be given to such person.

(iii) **Power to seize offensive weapons:**
Under section 52 of the Code the officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person and shall deliver all weapons so taken to the court or officer before which or whom the officer or person making the arrest required by this Code to produce the person arrested.

(iv) **Power to get examination of accused by Medical Practitioner:**
Under section 53 of the Code, A police officer not below the rank of Sub Inspector may request a registered Medical Practitioner possessing any recognized medical qualification. to make such an examination of the arrested person as is reasonably necessary in order to ascertain the facts which may afford evidence as to the commission of an offence on the charge of which a person is
arrested for the purpose of examination of accused person by Medical Practitioner, such police officer may use such force as is reasonably necessary for that purpose.

(v) **Arrest in pursuance of Warrant**

A police officer or any other police officer whose name is endorsed upon the warrant by the police officer to whom warrant is directed may execute such warrant at any place in India.\(^\text{582}\)

(vi) **Power to seize Property:**

Any police officer may seize any property which may be alleged or suspected to have been stolen or which may be found under circumstances which create suspicion of the commission of any offence; however, if such police officer as aforementioned is sub-ordinate to the officer in charge of a police station he shall forthwith report the seizure to that officer.\(^\text{583}\)

(vii) **Arrest to prevent the commission of cognizable offences:**

Under section 151 of the code a police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented, subject to the same condition that such person shall not he detained in custody for a period exceeding 24 hours from the time of his arrest unless authorized according to provisions of the Code or any other law for the time being in force.

(viii) **Power to Inspect weights and measures:**

Any police officer in charge of a police station may, without a warrant, enter an place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false, and he may seize the same.

(ix) **Power to Investigate into offences:**\(^\text{584}\)

As and when any information relating to the commission of a cognizable offence

\(^{582}\) Section 74 and 77 of the Code of Criminal procedure, 1973.


is received by officer in charge of a police station, he after duly recording such information in the book kept by such officer in the form prescribed by the State government, may investigate such case without the order of a Magistrate, which a court having jurisdiction over a local area within the limits of such station would have power to enquire into or try under the provisions of chapter 13 (Jurisdiction of Criminal Courts). The power of investigation by the police is an unfettered power and it shall not at any stage, be called in question on ground that the case was one which such officer was not empowered under section 156 to investigate, however, any Magistrate empowered under section 190 may order such an investigation as above mentioned. The idea underlying the above provision is that if the police investigate, the Magistrate cannot prevent them from investigating\textsuperscript{585} and if the police don’t investigate the Magistrate can order the investigation.\textsuperscript{586}

(x) \textbf{Power of Superior officers of Police}

Section 36 declares that police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station, e.g. the Inspector General of Police will have jurisdiction extending over the whole of the State.\textsuperscript{587}

(d) \textbf{Control Mechanism}

The present day Police Department is under the overall charge of the Director General and Inspector General of Police who is responsible to the State Government through the Home Minister and above him the Chief Minister and finally the council of Ministers. The control mechanism within the police department may be briefly discussed as following:

(i) \textbf{District Establishment}

In each District of normal size there is a Superintendent of Police, while in the bigger Districts there is Senior Superintendent of Police in addition to the Superintendent of Police. The Senior Superintendent or the Superintendent as the case may be is responsible for the efficiency and discipline of the police Force in

\textsuperscript{587} State of Bihar vs. J.A.C. Soldhana, 1980, Cr. L.J. p. 98 (S.C.)
the whole District. Further under the Superintendent of Police there may be assistant Superintendent of Police and Deputy Superintendent of Police who assist the Superintendent of Police in the discharge of his duties. Then come Reserve Inspectors and Circle Inspectors. The Reserve Inspectors are in charge of the district Police Lines and are responsible among other things for the safe custody of arms and ammunition and other police stocked in the lines. The Circle Inspector’s principle duty is to supervise the prevention and investigation of crime by the officer in charge of the police station (Sub-Inspector) in his circle. Hence, at District level the most important subordinate functioning within hierarchy of District Police Establishment is the Sub-Inspector in charge of a police station.

(ii) **State Establishments**

Director-General-cum-Inspector-General of Police is the expert advisor to Government on all questions of Police administration at State level and for this purpose he has direct access to the Home (Police) Minister. There are other higher ranks of the police to assist the Head of the Department designated as Director General and Inspector General of Police, In Haryana there are following Designations of the Inspectors- General at State level in charge of the different branches:

(I) I.G.P., Law and Order
(II) I.G.P., Crime against Woman
(III) I.G.P. State Crime Branch
(IV) I.G.P. Telecom Communication
(V) I.G.P. and Principal, Police Training College, Madhuban
(VI) I.G.P. Police Technical Service
(VII) I.G.P. C.I.D.
(VIII) I.G.P., Special Branch
(IX) I.G.P., Intelligence Department
(X) I.G.P., Security

(e) **Police Commissioner System**

In the police commissioner system, a senior experienced and a mature police officer is directly in charge of Policing and is not simply a Supervisor. He has complete
authority over his Force and is functionally autonomous. He is directly accountable to the Government. The public has not to run to different authorities i.e. District Magistrates and Superintendent of Police, to process their application for Licenses, Permits etc. which avoids delay and inconvenience to public. In 1981 the National Police Commission recommended that in large cities with population of 5 lakhs or above, the system of Police Commissioner as it existed in Mumbai, Kolkata, Delhi, Chennai, Nagpur, Pune, Hyderabad, Ahmedabad and Bangalore should be introduced: thereupon, number of States have introduced the Police Commissioner system for better and effective maintenance of law and order, prevention and detection of crimes and regulation of Traffic. It enables the police administration to take on the spot decisions without having to wait for the orders from the District Magistrate who may or may not be easily available at the time when the situation is tense and warrants prompt action.

(f) Major achievements

(i) Lid off Mirage mystery; (three arrested)

The Delhi Police crime branch achieved a major breakthrough in case where some accessories of the fighter jet Mirage-2000, went missing from the Nizamuddin Railway station two years ago (in December, 2001) in a mysterious manner. In this connection they have arrested three persons and recovered a brake parachute from their possession.

(ii) Conviction of accused in parliament attack case

The announcement of judgment in Parliament attack case within one year of the incident on Dec 16, 2001 and the award of death sentence to three accused Mohd Afzal, Shaukat Hussain and Sayeed Abdul Rehman Geelani with five year jail in term to Afsan Guru alias Navjot Sandhu, represents a testimony of the professional brilliance, dedication and industry of the investigation team of the special cell, Delhi Police.

(iii) BSF Killed Ghazi Baba, the Master Mind of Attack on Parliament

The BSF (Border Security Force) adding one more feather in the cap of the Indian public servants, has on August 30, 2003 killed the December 13, 2001 mastermind Ghazi Baba. The incident took place in Srinagar where after a 10-hour encounter with the BSF,

588 The State of Maharashtra and Bihar have introduced the same. The system has already been extended to Surat, Rajkot, Baroda, Mysore, Madurai, Vishakhapatnam etc.
589 “Lid off Mirage Mystery; three arrested”, NCR tribune, July 12, 2003.
590 “Mission Statement”, R.S. Gupta, Chief of Police, Department of Police, Delhi (India).
the security forces blasted the house with mortars and rockets.

C. POWER AND ROLE OF CENTRAL BUREAU OF INVESTIGATION (C.B.I.)

(a) General

The Central Bureau of Investigation is the Premier Investigation Police agency in India. It traces its origin to the Special Police Establishments (SPE.) which was set up in 1941 by the Government of India. The functions of SPE, then were to investigate cases of bribery and corruption and transactions with the war and supply department of India during World War II. Even after the end of the war, the need for a central government agency to investigate cases of bribery and corruption by Central Government employees was felt; hence, the Delhi Special Police Establishment Act was brought into force in 1946. The C.B.I.’s power to investigate cases is derived from this Act. It is an elite force playing a major role in preservation of values in public life and in ensuring the health of the National economy. It is also the nodal police agency in India which coordinates investigation on behalf of Interpol Member Countries. Over the years C.B.I. has built up an image of professionalism and integrity. The services of its investigating officers are sought for all major investigations in the country. C.B.I as an organization is held in high esteem by the Supreme Court, the High Courts, the Parliament and the Public. The C.B.I. has to investigate major crimes in the country having inter-state and international ramifications. It is involved in collection of criminal intelligence pertaining to three of its main area of operation which are Anti-Corruption, Economic crimes and Special crimes. The Anti-Corruption division of the C.B.I has handled cases against Chief Ministers., Ministers, Secretaries to Governments, Officers of the All India Services, C.M.D.’s of Banks, Financial Institutions, Public Sector undertaking etc in all the following broad categories of criminal cases are handled by the C.B.I.

(a) Cases of corruption and fraud committed by public servants of all Central Govt. Departments, Central Public Sector Undertakings and Central Financial Institutions.

(b) Economic crimes, including bank frauds, financial frauds, Import Export & Foreign Exchange violations, large-scale smuggling of narcotics, antiques, cultural property and smuggling of other contraband items etc.
(c) Special Crimes, such as cases of terrorism, bomb blasts, sensational homicides, kidnapping for ransom and crimes committed by the mafia/the underworld and other criminal gangs etc.

(b) **Powers, Privileges and Liabilities**

The legal powers of investigation of C.B.I. are derived from the DSPE Act, 1946. This Act confers concurrent and coextensive powers, duties, privileges and liabilities on the members of Delhi Special Police Establishment (C.B.I.) with Police Officers of the Union Territories. The Central Government may extend to any area, besides Union Territories, the powers and jurisdiction of members of the C.B.I. for investigation subject to the consent of the Government of the concerned State Govt. While exercising such powers, members of the C.B.I. above the rank of Sub Inspector shall be deemed to be officers’ incharge of Police Stations of respective jurisdictions. The C.B.I. can investigate only such of the offences as are notified by the Central Government under the DSPE Act. Basically C.B.I. has to investigate following types of cases:

(i) Cases which are essentially against Central Govt. Employees or concerning affairs of the Central Govt.

(ii) Cases in which the financial interest of the Central Govt. are involved.

(iii) Cases relating to the breaches of Centrals laws with the enforcement of which the Government of India is mainly concerned.

(iv) Big cases of fraud, cheating, embezzlement and the like relating to companies in which large public funds are involved and similar other cases when committed by organized gangs or professional criminals having ramifications in several States.

(v) Cases having inter-state and international ramifications and involving several official agencies, where from all angels it is considered necessary that a single investigating agency should be in-charge of the Investigation.

(c) **Control Mechanism**

The overall control over organization of the C.B.I. is vested in a Director. The other ranks associating or in subordination to the Director are special Director/addi. Director, Joint Director, Deputy Inspector General of Police, Superintendent of Police,
Deputy Superintendent of Police, Inspector, Sub Inspector, Assistant Sub Inspector, head Constable and Constable. Presently the total sanctioned police strength in the C.B.I. including all ranks is 4075 and the sanctioned strength of Administrative staff is 1282. C.B.I. has also a sanctioned strength of 230 law officers, 189 technical posts, 117 forensic scientists and 199 group D and canteen staff.

(d) Cyber Crime Research and Development Unit

The C.B.I. in August, 2000 set up “Cyber Crime Research & Development Unit” (CCRDU) to collect and collage information on cyber crimes reported from different parts of the country.

The function of this newly created unit is to liaise with State Police and other enforcement agencies and to collect information on cases of Cyber Crime reported to them for investigation and also find out about the follow-up action taken in each case. The unit will also liaise with software experts to identify areas which require attention of State Police for prevention and detection of such crimes with a view to train them for the task. It will collect information on the latest cases reported in other countries and the innovations employed by Police Forces in those countries to handle such cases.

The Unit will maintain close rapport with the Union Ministry of Information Technology (GOI) and the Interpol HQ, Lyons for achieving its objective of giving the needed thrust for collection & dissemination of information on Cyber Crime.

(e) Major Achievements by CBI

(i) First Cyber Crime Conviction

Designated court convicted an engineer but released him on probation for one year on furnishing a personal bond of Rs. 20,000/- and surely of similar amount. The designated C.B.I. court convicted the accused engineer under sections 418, 419 & 420 of I.P.C. but took a lenient view due to his young age and qualification. The accused was arrested in July last year by cyber cracking shell of the C.B.L on charge of defrauding an American National of 578 $ by misusing her credit card through the bank.

(ii) C.B.I.’s Report on Cricket Match Fixing

C.B.I. enquiry has revealed a thriving player-bookie nexus in India for nearly a decade. It has enquired into the role and functioning of B.C.C.I. to evaluate whether it

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592 C.B.I.’s Report on Cricket Match Fixing and Related Malpractices (Section 5), Cricinfo.com, a web
could have prevented the mal practices. C.B.I. enquiry has disclosed that, consequent to the commercial success of Reliance World Cup in 1987, the coffers of the Board started overflowing with big money coming in through Sponsorships and Television rights. A perusal of the board financial statement discloses that from a profit of Rs. 5.06 lakhs in the financial year 1987-88 the profits soared to Rs 837 crores in the financial year 1998-99. In normal circumstances this happy situation should have been reflecting in the performance of Indian Team in the International Arena. This has not however happened in the Indian Context, On the other hand, B.C.C.I started a process of commercialization of Cricket without any reason as to how this money could be ploughed back to ensure better performance on the field. Some of the policies of the B.C.C.I. during the post decade which have directly contributed to match fixing and related malpractices are detailed below.

(iii)  Corruption Case involving two Judges

Recently C.B.I. has booked two Judicial Officers, one being Jalandhar District & Sessions Judge, R.M. Gupta and other Judicial Magistrate, (First Class) S. Bhardwaj. During investigating in this case C.B.I. has recorded two confessional statement made by two key witnesses in this case These two witnesses are one, Paramjit Singh, Superintendent with the labour Court and second, Stender Singh alias Babu, Clerk. Further the report of the Central Forensic Science laboratory (C.F SL) on cassettes containing conversation between Judicial Officer S.S Bhardwaj and complainant Gurvinder Singh Samra become the main evidence for the C.B.I. the charge-sheet against both, the Judicial officers has already been filed and the case is still pending before a competent court for further trial.

(iv)  Lakhu Bhai Pathak’s Case

In august 1987, C.B.I. registered a case against Chandraswami and other under section 120-B read with section 420 I.P.C. on a complaint from Sh. Lakhu Bhai Pathak of UK It was alleged with the complaint that in 1983 the appellants came in contact with the complainant Lakhu Bhai Pathak and led him to believe that they wielded sufficient influence in India to secure for him lucrative contracts in India. The appellants induced

the complainant in Dec. 1983, to pay one lakh US. Dollars for procuring a contract which amount was paid to them by two cheques which were handed over to Chandraswami.

(v) **Corruption Case Against Anil Sharma**\(^{594}\)

Anil Sharma was an MLA. and former Minister of Himachal Pardesh Government. C.B.I. registered and investigated a case against him for offence under section 13(2) of prevention of corruption Act for depositing unaccounted wealth, far, in excess of his known sources of income 11 was alleged that the respondent has made assets through illegal means and that in the opinion of C.B.I., there was evidence of transfer of assets in the name of respondent by his father, Sukharam who had also been a Minister. High Court granted him bail but the Supreme Court set aside the anticipatory bail orders of the High Court. Upon C.B.I.’s expression of apprehension that the respondent would influence the witnesses.

(vi) **Bank Fraud Case**\(^{595}\)

It has been observed at Chairman/M.D. or Executive Director of a Private Bank operating under licence issued by RBI are covered under the definition of public servant – Section 46(A) of Banking Regulation Act clearly state that such employees of Banking Company shall be deemed to be a public servant.

**D. INTERPOL**

(a) **General Introduction**

India is one of the oldest members of Interpol, having jointed the organization in 1949. The Central Bureau of Investigation which is a Federal/Central investigation agency functioning under the Central Government. Department of Personnel & training is designated as the national Central bureau of India the director of the Central Bureau of Investigation is the ex-officio Head of the NCB-India. All matters relating to the NCB India are, however, dealt with the Minister of Home Affairs, Government of India.

The Government of India, Ministry of Home Affairs vide is circular letter dated 18.03.1949. Intimated to all State Governments and Union Territories that the Intelligence Bureau will serve as the ICPO-INTERPOL National Central Bureau of India Subsequently, vide its circular letter dated 17.10.1966, the Government of India, Ministry

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\(^{595}\) CBI, Bank Securities and Fraud Cell vs. Ramesh Gelli & Others, 2016(1), LH(P&H), 525.
of Home Affairs to all the State Governments and Union Territories conveyed its decision that the Central Bureau of investigation will henceforth be the representative of this country for the purposes of correspondence with the ICPO-INTERPOL. Accordingly, the Interpol work was transferred from Intelligence Bureau to the Central Bureau of Investigation. To deal with this work, a Wing designated as “Interpol Wing” was created in the Co-ordination Division of the Central Bureau of Investigation. All correspondence with the General Secretariat of the ICPO-INTERPOL and other National Central Bureaus is presently being conducted by the Interpol Wing of the C.B.I. located at Block No. 4, CGO Complex, Lodhi Road, New Delhi-110003.

(b) **Role and Functions**

All the State Police forces and other law enforcement agencies in India have a link through Interpol New Delhi to their counterparts in other members countries prepared to assist in dealing with criminal investigations. There is a daily inflow and outflow of communications between Interpol New Delhi and National Central bureaus of Member countries which ranges from:

(i) A compassionate request to locate and notify the next-of-kin a death.
(ii) Request to search for a mission person;
(iii) Criminal history requests for any number of reasons.
(iv) Request to carry out investigations in cases of fraud, commercial crime, trafficking in narcotics Drugs and
(v) Criminal code offences up to murder.

In regard to enquires emanating from ICPO-INTERPOL General Secretariat and other National Central Bureaus, the Interpol wing of the C.B.I. makes further reference to the Interpol liaison officers of State/U.T. and other agencies to obtain the information and then transmits it back to the General Secretariat and the requesting National Central Bureau for convenience and expeditions disposal. It is of utmost importance that the work related to the ICPO-INTERPOL is dealt with promptly in a spirit of courtesy and goodwill with a desire for mutual assistance.

E. **CENTRAL VIGILANCE COMMISSION (C.V.C.)**

(a) **General**

On expressing serious concern on the “Growing menace of corruption in
administration led to the formation of the committee on prevention of corruption known as Santhanam Committee to review the problem and make suggestion. The committee had raised an important issue that the administration could not be a Judge of its own conduct. Therefore, the Central Vigilance Commission was constituted as an Apex body for exercising General Superintendence and control over Vigilance matters in administration vide Government of India resolution dated February 11, 1964. The establishment of the commission was considered essential for evolving and applying common standards in deciding cases involving lack of probity and integrity in administration.

C.V.C. is recognized to be the Apex Vigilance Institution, free of control from any executive authority, monitoring all vigilance activities under the Central Govt. and advising various authorities in central Govt. organizations in planning, executing, reviewing and reforming their vigilance work. It has been made a multi member commission with statutory status with effect from 25th August, 1998. It shall consist of Central Vigilance Commissioner to be the chairperson and not more than four vigilance commissioners to be the members. The statutory status has been given to the commission upon the directions given by the Supreme Court in a PIL in Vinnet Narayan’s case.596

(b) Power and Functions of C.V.C.

(i) The basic powers and functions of the commission as defined in chapter 3 (Section 8) of C V C ordinance 1998 are “to exercise Superintendence over the functioning of the 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”.

(ii) As per directions of the Hon’ble Supreme Court, the C.V.C. would also review the progress of applications pending with the competent authorities for sanction of prosecution under the prevention of Corruption Act, 1988.

(iii) To scrutinize and approve proposal for appointment of Chief Vigilance Officers in various Organization and assess their work.

(vi) To conduct, through its organization of the Chief Technical Examiner, independent technical examination mainly from vigilance angle, of construction and other

related works undertaken by various Central Government organizations; and

(v) To organize training courses for Chief Vigilance Officers and other vigilance functionaries in Central Government organizations.

(vii) 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 Center Act, Government Company, society and any local authority owned or controlled by that Government has committed an offence under Prevention of Corruption Act, 1988;

(c) Organizational Hierarchy and Control Mechanism

After the commission has been accorded statutory status by the Government vide gazette of India notification no. 44 of 25/08/1988, amended vide notification no 47 of 22/10/1998, now it is a multimember body consisting of Central vigilance commissioner as its Chairman and a maximum of four other vigilance commissioners as its member. The appointment of C.V.C. as well as that of the Vigilance Commissioner is required to be made by the President 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 and other staff.

There are 13 Commissioners for Departmental Enquires (C.D.I.) who are nominated to conduct oral enquires relating to major penalty proceeding on behalf of the disciplinary authorities in serious and important disciplinary cases.

The commission functions through Chief Vigilance Officers within each ministry/department/organization and the Vigilance units constitute an important feature of the scheme for ensuring probity and integrity in public administration. These units are considered as an extension of set up commission for the purpose of exercising check and supervision on vigilance and Anti-corruption work. Their importance is particularly underlined by the fact that nearly 75% of the cases referred to the commission for advice are those investigated by the C.V.Os. Hence a C.V.O is an important field functionary in the vigilance setup.
F. OTHER INVESTIGATION AND PREVENTIVE AGENCIES

(a) General

The Government of India maintains a number of Central agencies for Prevention, Investigation, Training of various agencies and recording and updating the data’s relating to crime. The role of some of these agencies like Central Bureau of Investigation, Interpol, C.V.C. and Police Force in each state and their role towards enforcement of law have already been discussed above, in the following lines, it is necessary, for the sake of present study, to discuss the nature, scope and role of certain other Central/State Public servants towards enforcement of law.

(b) The Intelligence Bureau (I.B.)

The I.B. is the Indian Government’s Domestic Intelligence agency. Its functions are very uncertain and of very complex nature. Moreover its operations are outside the purview of audit or enquiry. In addition to Domestic Intelligence responsibilities, the I.B. is particularly entrusted with intelligence collection in Border Areas. The I.B. was also entrusted with other external Intelligence responsibilities as of 1951. The Indian Telegraph Act authorized the surveillance of communications including monitoring telephone conversations and interception personal mail in case of public emergency or in the interest of the public safety or tranquility”. These powers have been used by every State Government. It has been reported that as many as 5,000/- letters from abroad are office Act. The I.B. has also employed Officers who submit letters and opinion pieces under assumed names, to ensure that newspapers carry the Government’s point of view. The intelligence Bureau procures Information which is more often than not related to the Security of the current Government rather than of the nation. Imposition of Central Rule in Tamil Nadu in 1990 which is a political step taken under pressure from the Congress (I) Party, following a series of reports filed by the Intelligence Bureau (I.B.) that reveal the growing informal relationship between the followers of the DMK and LTTE. Although the I.B. had established Karunanidhi’s sympathy towards the LTTE, it was unaware of the group’s plan to assassinate Rajiv Gandhi.

(c) National Security Guards (NSG)

The National Security Guards (NSG) has been set up for handling terrorists, kidnappers, saboteurs, anti-hijacking operations, recovery of hostages, VIP security, etc. It is a trained and motivated Force equipped with high standards of professional competence for effectively dealing with terrorist activities in the country. It also trains state police commandos to upgrade their capability to meet the terrorist threats and carry out bomb detection/diffusion operations.

**(d) Central Reserve Police Force (CRPF)**

The Central Reserve Police Force is an Armed Force of the Union of India for internal security management. This Force was raised in 1939 as the Crown Representative’s Police and was renamed as Central Reserve Police Force in 1949. CRPF has 137 battalions, 10 RAF battalions, 2 Mahila battalions, 5 Signal battalions and one Special Duty Group. The CRPF assist the state police forces in the maintenance of law and order. Presently its major commitments are in the northeast and Jammu and Kashmir.

**(e) Central Industrial Security Force (CISF)**

The Central Industrial Security Force (CISF) was established in 1969. It provides security to Industrial undertakings of the Government, starting from about 3,000 personnel the Force now numbers over 96,000. This Force has the responsibility to provide sophisticated security to both property and personnel deployed in industrial complexes of Central Government. The Force is governed by the CISF Act of 1968 and a set of Rules called CISF Rule of 1969. CISF is presently stationed in 233 public sector undertakings.

**(f) National Crime Records Bureau**

National Crime Records Bureau collects and disseminates information on crimes in India. BCRBm located in New Delhi under the Ministry of Home Affairs (MHA), Government of India, is a nodal agency committed to use of Information Technology for modernization of Indian Police. NCRB has installed 740 server based computer systems at every District Crime Records bureau (DCRB) and State Crime Records Bureau (SCRB) across the country under a modernization project of MHA by the name “Crime Criminal Information System (CCIS)” This will help NCRB maintain national level Database of Crimes, Criminals and Property connected/involved in crime.
NCRB is the first organization to have installed the Automatic Finger Print Identification system (AFIS) called FACTS in India, which presently only a few countries in the world may claim to have Digitized fingerprints database would also be maintained at NCRB. In near future, CCIS integrated with AFIS, would be one of the biggest network computer system in India in the aid of Criminal Justice System.

(g) **Directorate of Enforcement**

The parliament has enacted the Foreign Exchange Management Act, 1999 to replace the Foreign Exchange Regulation Act, 1973. This Act came into force on the 1st day of June, 2000. To investigate violation of provisions of the Act, the Central Govt. have established the directorate of Enforcement with one Director and other officers of the Enforcement.

The Directorate of Enforcement is mainly concerned with the enforcement of the provisions of the Foreign Exchange management Act to prevent leakage of foreign exchange which generally occurs through the following malpractices.

(i) Remittances of Indians residing abroad otherwise than through normal banking channels, i.e. through compensatory payments.

(ii) Acquisition of foreign currency illegally by person in India.

(iii) Non repartition of the proceeds of the exported goods.

(iv) Unauthorized maintenance of accounts in foreign countries.

(v) Under-invoicing of exports and over-invoicing of imports and any other type of invoice manipulation.

(vi) Siphoning off of foreign exchange against fictitious and bogus imports

(vii) Illegal acquisition of foreign exchange through Hawala.

The law enforcing machinery including the public servants have to function according to well defined legal frame work. The Powers, duties, responsibilities and mode of functioning of various public servants are laid down in Indian Constitution and in various other statutes that may be in force in the country at a given time. Among all such laws regulating and guiding the functioning of law enforcement machinery and more particularly that of public servants “Constitution” appears to be the Mother of all other laws which govern the principles and procedures according to which the law enforcing machinery has to function. A number of other provisions contained in various
general and specific laws lay down scope and rules according to which the various public servants have to perform their respective duties and exercise their powers. Hence, it shall be appropriate here to discuss the relevant provisions of all the relevant laws and provisions which govern the functioning of public servants while enforcing the Law.

**CONSTITUTION OF INDIAN (RELEVANT PROVISIONS)**

**ARTICLE 20(3)** says “No person accused of any offence shall be compelled to be a witness against himself”. It shall be appropriate here to clarify about the stage from which the immunity is available under above provision of the Constitution. As quoted by a renowned expert\(^598\) on constitutional matters, the protection is available to a person accused of an offence not merely with respect to the evidence to be given in the court room in the course of the trial but it is also available to him at the previous stage if any formal accusation has been made against him which might in the normal course result in his prosecution. Further, the clause does not require formal accusation by the issue of a process by the court. In a number of cases\(^599\) it has been held that immunity would commence from the moment a person is named in the First Information Report, or a complaint against him would in the normal course result in prosecution or a show cause notice is issued under the foreign exchange regulations. Moreover, if a person has been named by officials who are competent to launch a prosecution against him as having committing an offence, he is accused of an offence within the meaning of clause (3) above.

From the above, it flows that the right of the accused against self accusation commences from the stage of police interrogation, continues during investigation and that immunity extends beyond the particular offence for which the investigation or trial is going on to other offences, pending or imminent, which may deter him from voluntary disclosure of criminology matter. It should also be remembered that compulsion is an essential ingredient of cause (3). It has been held to take place where the person making the statement has been starved or beaten.\(^600\)

**Article 21 of I.P.C.**

This article says “No person shall be deprived of his life or personal liberty except

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\(^{598}\) Acharya Dr. Durga Das Basu, Constitutional Law of India, VII Edition.


according to procedure established by laws”. Since conviction in a criminal case leads to deprivation of life or personal liberty, it means that entire procedure by which a crime is tried and punished must be lawful, that each and every aspect of the procedure must be warranted by a constitutionally valid law and must be followed strictly. Right to life means something more than “mere animal existence” and includes the right to live consistently with human dignity and decency even in a rescue home or prison. Right to life or personal liberty is strengthened from time to time in following forms:

(i) The right against bar fetters
(ii) The right to legal aid
(iii) The right to speedy trial
(iv) The right against handcuffing
(v) The right against custodial violence etc.

Article 22 of Constitution

This article provides for protection against arrest and detention in certain cases. It provides safeguards against the arbitrary use of preventive powers by the executive i.e. police as well as other Public Servants. By virtue of clause 1 & 2, it casts a bounden duty upon arresting officers that arrested person must be taken promptly before nearest magistrate without any loss of time and under no circumstances the arrested person can be detained in a police custody for more than 24 hours unless he is produced before the nearest magistrate within such period of 24 hours of his arrest and the necessary orders are taken from such magistrates for further custody either with police or in Jail as per law for the time being in force. Further the reasons for arrest must also be communicated to the persons arrested and he should be given opportunity to engage the counsel of his choice for defending his case. The above mentioned constitutional requirements in respect of arrestee are mandatory and non compliance gives rise to a right to be released by a writ of habeas corpus.

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THE CODE OF CRIMINAL PROCEDURE 1973 (OLD 1898), The Indian PENAL CODE, 1860 AND THE INDIAN EVIDENCE ACT, 1872

The Indian Penal Code 1860, The Evidence Act, 1872 and the Code of Criminal Procedure 1898 were enacted long before India got a Constitution and the citizens got their fundamental rights. The intention behind adopting this procedure is that in a criminal trial, the accused shall be presumed innocent until guilt is proved by the prosecution beyond any reasonable doubt. The main intention is to ensure that it is not only the criminal is punished but the accused is not subjected to undue harassment or excesses during the course of investigation or in the assessment of the seriousness of the offence. Hence in this view of the legal fiction, the relevant provisions of all these three Acts are necessary to be discussed here for proper understanding of legal framework in respect of public servants in the process of enforcement of law.

(1) The Code of Criminal Procedure 1973

A) Provisions relating to arrest without warrant

I. Section 41 enlists cases and circumstances under which any police officer may without an order from a magistrate and without a warrant arrest any person. This section is a depository of general powers of the police officers to arrest.609

II. Section 42 provides for arrest of a person on his refusal to give his name and residence where such person has either committed or accused of committing a non-cognizable offence in the presence of police officer.

III. Section 43(2) provides that a police officer shall re-arrest a person who has already been arrested by any private person who has in his presence committed a non-bailable and cognizable offence or is a proclaimed offence or a proclaimed offender and private person has made over such arrest to such police officer.

IV. Section 46 provides mode/manner of arrest. The police officer or other person making the arrest shall actually touch or confine the body of the person to be making arrested, unless there be a submission to the custody there be a submission to the custody by word or action.610 However if such forcibly resists the endeavor to arrest him, or attempts to evade the arrest, the police officer or

610 Section 46(1)
other person may use all means necessary to effect the arrest.\textsuperscript{611} Hence mere keeping a person or confining him in a police station or restricting his movements within the precincts of a police station amounts to arrest.\textsuperscript{612} Also as has been held by the Supreme Court\textsuperscript{613} that a person (accused) himself approaching and giving information there by submitting to the custody by action comes within the meaning of section 46(1).

V. Section 48 strengthens the hands of police by empowering them to without warrant any person whom he is authorized to arrest, peruse such person into any place in India. Hence any arrest made in this manner shall be legal.

B) **Provision providing safeguards while effecting arrest without warrant**

(i) Section\textsuperscript{49}\textsuperscript{614} puts a bar on unnecessary restraint while effecting arrest. It says that the person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

(ii) Section 50 mandates that person arrested should be informed of grounds of arrest and of his right to bail in cases of bail able offences. Sub Section (i) provides that every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. Sub Section (ii) further states that where a police officer arrest without warrant any person other than a person accused of a non bail able offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf. The provisions of this section are mandatory. This section confers a valuable right of an arrestee and non-compliance with it amounts to disregard of the procedure established by law.\textsuperscript{615}

(iii) Section 55(I) provides the procedure when police officer deputes subordinate to arrest without warrant. “when any officer in charge of a police station or any police officer making an investigation under chapter XII requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence)
any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made and the officer so required shall before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.” However in view of sub Section (ii) the general powers of arrest as conferred under section 41 are not affected by special power (of arrest) given under this section.616

(iv) Section 57 states that no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not in the absence of a special order of a magistrate under Section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s Court.

(v) Section 58 states that officers-in-charge of police stations shall report to the district Magistrate, or if he so directs, to the District Magistrate or if he so directs, to the Sub-Divisional Magistrate the cases of all persons arrested without warrant, within the limits of their respective stations whether such persons have been admitted to bail or otherwise.

C) Provision relating to search and seizure by Police under Cr. P.C.

(I) Section 42 provides for search of place entered by a person sought to be arrested. If any police officer having authority to arrest has reason to believe that the person to be arrested has entered into or is within any place, any person residing in, or being in charge of such place shall on demand of such police officer allow him free ingress there to and afford all reasonable facilities for a search therein. However if such ingress is not allowed to them in order to effect an entrance into such place the police officer shall 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, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

(II) Section 51 provides for search of arrested person. It provides that 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 provides for the taking of bail but the person arrested cannot furnish bail and whenever a person is arrested without warrant, and cannot legally be admitted to bail, or is unable to furnish bail, the officer making the arrest may search such person and place in safe custody all articles other than necessary wearing apparel, found upon him and here an article is seized from the arrested person a receipt showing the articles taken in possession by the police officer shall be given to such person. It also provides that whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency. Here regard to decency does not mean that a male cannot even witness the search of a female.  

(III) Section 52 provides for power to seize offensive weapons. It provides that officer or other person making any arrest under this code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

(IV) Section 53 provides for examination of accused by Medical Practitioner at the request of police officer. Section 53(1) provides that when a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose. Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of a female registered medical practitioner.

D) Provision relating to preventive action of the police under Cr. P.C.

The foremost task assigned to the police is to make arrest of law breakers and suspected criminals and take them into custody in order to prevent crime. That is why the

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code with a view to prevent commission of crimes contains the preventive powers of the police mentioned in chapter XI thereof.

I. Section 149 provides that every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence. The word ‘Interpose’ here connotes active intervention and not merely a prohibition by word of mouth. But it does not cover all sleeping orders that would be unreasonable interference with the liberty of citizens.\textsuperscript{618} A police officer cannot pass any oral order he thinks desirable because that would mean that his word is law.\textsuperscript{619}

II. Section 151 provides that a police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented. Further no person arrested under sub-section (i) shall be detained in custody for a period exceeding 24 hours from the time of his arrest unless his further detention is required or authorized under any other provisions of this Code or of any other law for the time being in force.

E) Provision relating to investigation of offences by Police

I. Section 154 deals with recording of information relating to commission of a cognizable offence which is generally called as First Information Report or in short the F.I.R. This section casts a mandatory duty upon officer in charge of a police station to have the information reduced into writing and signed by the person giving such information and further that the substance of the information so received to be entered in a book to be kept by such officer in such from as the State Government may prescribe in this behalf. It also provides that a copy of the information so recorded shall also be given forthwith free of cost to the informant. However, First Information Report is not defined in the Code; so it may be defined in the following manner:

I. It is an information which is given to the police officer;

II. Information must relate to a cognizable offence;

\textsuperscript{618} Raghnath v. State 2 Cr. L.J. p. 899.

\textsuperscript{619} Emperor v. R. Vinayak Dhulekar A.I.R. 1925, ALL p. 165.
III. It is an information first in point of time;

(ii) It is on the basis of this information that investigation into the offence commences;

It was held in case\textsuperscript{620} that when information disclosing a cognizable offence is laid before the officer in charge of a police station he has no option but to register the case on the basis thereof. Regarding the territorial jurisdiction of the police station for the purpose of recording F.I.R. the position needs to be clarified. The Supreme Court in a case\textsuperscript{621} held that refusing to record the complaint on the ground that the said police station has no territorial jurisdiction, was dereliction of duty on the part of the constable from recording information about the cognizable offence and forwarding the same to the police station having jurisdiction over the area in which the crime was said to have been committed.

**The Indian Penal Code 1860 (Important Provisions)**

Indian Penal Code also provides various provisions under which persons or accused are warned to be penalized on violation of lawful authority of investigating officers being the public servant as such. These provisions may be discussed in brief as follows:

a) Section 174 makes non attendance in obedience to an order from public servant, punishable with simple imprisonment for a term which may extend to one month or with fine which may extends for 500/- Rs. or with both

b) Section 179 makes refusal to answer public servant authorized to question punishable with simple imprisonment for six months or with fine of Rs. 100/- or with both.

c) Section 182 makes giving false information, with intent to cause public rant to use his lawful power to the injury of another person, punishable with imprisonment of either description up to six months or fine up to 1000/- Rs or with both.

d) Section 203 makes giving false information respecting an offence committed, severally punishable with imprisonment of either description extending to 2 years or with fine or with both.


\textsuperscript{621} State of A.P. v. Punati Ramube, 1993 Cr. L.J. p. 3684 S.C.
e) Section 216 strictly provides for punishment depending upon the nature of the
offence committed by the offender, on harboring such offender who has escaped
from custody or whose apprehension has been ordered. If such harbored offender
has committed the offence punishable with death, the harbourer shall be punished
with imprisonment of either description extending to 7 years and shall also be
liable to fine. In case of offences punishable with imprisonment for life on
imprisonment for 10 years the harbourer shall be punished with imprisonment of
either description extending to three years with or without fine.

f) Section 222 also provides for punishment of public servant including Public
servants for their intentional omission to apprehend offenders under sentence or
lawfully committed, to which public servant is bound to apprehend.

g) Section 330 & 331 lay down that an act of torture to extract information is a
criminal offence for which the police officer in question can be awarded with a
punishment extending up to 10 years imprisonment, depending upon the
seriousness of the injury caused.

The Indian Evidence Act-1872 (Relevant Portion)

a) Section 25 categorically declares in clear terms that “no confession made to a
Police Officer shall be proved as against a person accused of any offence,” And
Section 26 further declares that “no confession made by any person whilst he is in
the custody of a Police Officer, unless it e made in the immediate presence of a
Magistrate, shall be proved as against such person.” The provisions of above two
sections are peculiar to this country. There are no corresponding provisions under
the English Laws. The reasons for enactment of sections 25 & 26 are to
prohibit the use of confession obtained by torture. As a matter of general practice
the Police officers in India have been using third degree methods to extort
confessions. They believe that without severe tortures it is not possible to
ascertain whether a particular person arrested by them is or is not the real
criminal. But this belief is false and misleading. Conversely due to fear of
unbearable torture quite often an accused person confesses crime which he has not
committed, because he knows that if he did not do so he will be beaten and

tortured in several ways. On the other hand, due to practice of severe torture the real criminals get hardened and commit more and more heinous crimes either by way of escaping from the lawful custody or after their release by the court.

b) Section 27 provides some relief to the Police officers to collect material evidence from the accused persons while in their custody. This provision seems to be so provided in the nature of a proviso to section 26.\textsuperscript{623} It provides that when some fact is discovered as a result of information given by the accused person who is in the custody of a Police officer so much of the information as is directly related to the facts discovered thereby will be relevant under this section.

c) Section 28 clears the picture in respect of non use of police’s practice of torture and other types of mal-treatments to the accused persons. It provides that “if such a confession as is referred to in Section 24 is made after the impression caused by any such inducement, threat or promise has in the opinion of the court been fully removed, it is relevant.”

d) Section 133 provides another instrument in the hands of Police/prosecution to capture the criminals in case of offences in which two or more offenders are involved. It provides that an Accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony partner in crime or who, in some way or other, connected with the offence in question or who makes admissions of facts showing that he had a conscious hand the commission of the offence.

THE POLICE ACT 1861 (ESSENTIAL PROVISIONS)

The object of the act was “to organize the police and to make it a more efficient instrument for the prevention and detection of crime.”\textsuperscript{624} Originally it being a central act and enacted at a time when almost the entire law making power was vested in the Governor-General-in-Council. Subsequently with the gradual devolution of powers to the provinces (now states) by virtue of British Parliamentary enactments, Police and law and order became provincial subjects, i.e. subjects within the legislative Jurisdiction of the provinces. This position has been continued by the constitution of India and the various

\textsuperscript{624} See preamble to the Police Act, 1961.
states possess the legislative Jurisdiction of the provinces. This position has been continued by the constitution of India and the various states possess the legislative and executive powers concerning “public order” and Police (including railway and village police)” in respect of their territorial jurisdiction vide entries 1 & 2 in list 2-State List in Schedule 7 to the Constitution. Hence, in consonance with the Constitutional position some states 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. According to the present act and other local acts the word “Police” includes all persons enrolled under the said acts. The word “includes” shows that the definition is not exhaustive. However, it has been explained by the Madras High Court\textsuperscript{625} that in order to determine whether a person is 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 duties. A police officer does not seize to be such merely because he is put into a while Khadar Uniform instead of one in Khaki Drill. Now let us discuss the obligations and duties of Police Officers as envisaged by the Police Act 1861.

a) Section 9 casts an obligation on a Police officer not to resign without leave or two months notice unless expressly allowed to do so by the District Superintendent or by some other officer authorized to grant such permissions. Hence, it ensures maintaining of discipline among Police Personnel.

b) Section 10 prevents a police officer not to engage himself 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. This provision seems to he enacted for the purpose of maintaining impartiality in the functioning of Police system.

c) Section 22 presents the true nature of Police functions. It states that “Every Police officer shall for the purposes of this Act 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”. A comparable provision about all Government servants exists in U.P. fundamental rule 11\textsuperscript{626} which states “Unless in any case it be otherwise distinctly provided the whole time of a government servant is at the disposal of the

\textsuperscript{625} Public Prosecutor v. Parma Shivam and other, A.I.R. 1953, Mad. p. 917.

\textsuperscript{626} “Police Officer Companion” Anand Swarup Mishra, at p. 413.
Government, and he may be employed in any manner required by proper authority, without claim for additional remuneration ......”.

d) Section 23 enlists the general duties of police officers and Section 29 lays down the penalties for neglect of duties upon them.
e) Section 44 provides for every police officer to keep a general diary for recording therein all complaints and charges preferred the names of all persons arrested etc. for the similar purpose as envisaged under section 172 of Criminal Procedure 1973.

RIGHTS AND DUTIES UNDER OTHER SPECIAL ENACTMENTS

1) The Arms Act, 1959

This Act was enacted to consolidate and amend the law relating to Arms and ammunition for the purpose of licensing and use of the same in lawful manner. For furtherance of the object of the act there are certain provisions which confer power upon Police officers to exercise the same for larger public good.

a) Section 19 in chapter IV of the Act lays down power of Police Officer to demand production of license etc., from any person who is carrying any arms or ammunition. It further provides that where a person upon whom a demand is made by a Police Officer refuses or fails to produce the license etc., 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 and if that person refuses to give his name arid 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.

b) Section 37 lays down arrest and searchers under this Act somewhat in similar manner as provided in the Code of Criminal Procedure 1973, hence the provisions contained in the code may be applied mutatis mutandis in respect of provisions of this Act.

c) Section 38 further declares that every offence under this act shall be cognizable within the meaning of the Code of Criminal Procedure 1973 thereby conferring power upon Police officers to be exercisable in accordance with the Code.

2) The Immoral Traffic (Prevention) Act 1956
Under this Act which is enacted for the prevention of immoral traffic in the form of prostitution,

There are certain provisions which call for appointment of special police officer for proper functioning of the Act. These provisions may be discussed in brief as follow:

a. Section 13 sub section 1 & 2 provides for appointment of Special Police officer not below the rank of an Inspector of Police in respect of an area or areas as per scheme of the Act to combat the offenders. It also provides appointment of trafficking Police officers for the purpose of investigating any offence under this Act or under any other law for the time being in force dealing with sexual exploitation of persons and committed in more than one State, who shall exercise all the powers and discharge all the functions as are exercisable by Special Police Officers under this Act.

b. Section 14 declares that offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of Code of Criminal Procedure 1973 and any arrest without warrant may be made only by the Special Police Office or under his direction or guidance or subject to this prior approval and so on.

c. Similarly Section 15 provides for search without warrant by the Special Police officers or the trafficking Police officers as the case may be, on belief of reasonable grounds that an offence punishable under this act has been or is being committed in respect of person living in an premises and that search of the premises without warrant can’t be made without undue delay.


This Act has been enacted by repealing its old Act namely the prevention of Corruption Act 1947. The present Act is mainly enacted to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. For the purpose of present discussion we are mainly concerned to discuss about the provisions relating to investigation into offences under the Act. Hence in chapter IV section 17 is designed to give direction as regards to persons authorized to investigate. The section provides investigation of offences by some selective ranks of Police Officers. It provides that “notwithstanding anything contained in the code of criminal Procedure, 1973, no police officer below the rank:
(a) In the case of Delhi Special Police Establishment of an Inspector of Police;
(b) In the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan are notified as such under sub-section(l) of section 8 of the code of Criminal Procedure, 1973, 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 Magistrate or a Magistrate of the first class, as the case may be, or make any arrest thereof without a warrant:

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

4) The Prevention of Terrorism Act, 2002

This Act has been enacted to make provisions for the prevention of and for dealing with terrorist activities and for the matters connected therewith. Among other provisions the powers of investigating officers are contained in section 7 of the act which is discussed as following:

(a) Section 7(1) provides that if an officer (not below the rank of Superintendent of Police) investigating an offence committed under this Act, has reason to believe that may property in relation to which an investigation is being conducted represents proceeds of terrorism. he shall with the prior approval in writing of the Director General of Police of the state in which such property is situated make an order seizing such property and where it is not practicable to seize such property make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order or of the Designated Authority before whom the properties seized or attached are produced and a copy of such order shall be served on the person concerned.

(b) Section 7(2) provides that for the removal of doubts it is hereby provided that where an organization is declared as a terrorist organization under this Act and the investigating officer has reason to believe that any person has custody of any
property which is being used or is intended to be used for the purpose of such terrorist organization he may by an order in writing seize or attach such property.

(c) Section 7(3) provides that investigating officer shall duly inform the Designated Authority within forty eight hours of the seizure or attachment of such property.

(d) Section 7 (4) provides that it shall be open to the Designated Authority before whom the seized or attached properties are produced either to confirm or revoke the order of attachment so issued.

(e) Section 7(5) provides that in the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority, when the investigating officer notifies his report and places it at the disposal of the Designated Authority.

(f) Section 7(6) provides that the investigating officer may seize and detain any cash to which this chapter applies if he has reasonable grounds for suspecting that-

(i) It is intended to be used for the purposes of terrorism.

(ii) It forms the whole or part of the resources of an organization declared as terrorist organization under this Act:

Provided that the Cash seized under this subsection by the Investigating Officer shall he released not later than the period of torts eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such Authority passes an order allowing its retention beyond forty eight hours.

5) The narcotics drug and psychotropic substances act, 1985

This Act was enacted to consolidate and amend the law relating to Narcotics Drugs, to make stringent provisions for the control and regulations of operations relating to Narcotics drug and Psychotropic substances. For effective implementation of the Provisions of the Act, certain special provisions have been provided to equip the Public servants with special powers and procedure to combat the evil sought to be avoided/removed under the present Act. These provisions are discussed in brief as following:

(a) Section 51 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, arrest, searches and seizures made under this Act. In this way

627 See Preamble to the Narcotic Drugs and Psychotropic Substances (Prevention) Act, 1985.
the various powers entrusted to investigating officers under section 41 to 50 and 52, 53, 55, 56 etc. under this Act are somewhat same as are entrusted to Police Officers under the provisions of Criminal Procedure Code, 1973.

(b) As per Section 37(1) (a) every offence punishable under this act is declared to be cognizable thereby entrusting more powers to Investigating Officers to effectively combat the violators of provisions of the Act.

(c) Section 41(2) and Section 42, the officers of gazette rank of the Departments of Central Excise, narcotics, Customs, Revenue Intelligence or any other Department of the Central Government including the Para-military forces or the Armed forces as may be 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, so authorized by such Government may perform duties of Investigating officers under this act.

(d) Section 68 further strengthens the hands of the Investigating Officers acting in pursuance of provisions of this Act, by wards contained in this Section. It declares “No officer acting in exercise of power vested in him under any provision of this Act or any rule or order made their under shall be compelled to say whence he got any information as to the commission of any offence.” On reading the language of this section it is clear that the technicalities as contained in the code have been removed under this Act for the purpose of effective enforcement of the provisions of this Act.

6) **Other Minor Criminal Acts**

(a) The Dowry Prohibition Act, 1961, by way of Section 8 declares that the code of Criminal Procedure 1973 shall apply to offences under this Act. As if they were cognizable offence for the purposes of investigation of such offences, but only for purposes other than matter referred to him Section 42 of the Code and for arrest of a person without a warrant or without an order of a Magistrate. It further declares that every offence under this Act shall be non-bailable and non-compoundable, hence, the police officers may exercise within the limits as provided under Section 8 above, all the powers and perform all the duties which are entrusted to them in the code for the proper enforcement of provisions contained in this Act.
The Scheduled Castes and the Scheduled Tribes (prevention of atrocities) Act 1989 entrusts obligations upon Investigating Officers to enforce provisions of the Act in a more effective manner than as provided in the Code. Section 17 which provides for preventive action to be taken by the law and order machinery, entrusts duties upon any Police Officer not below the rank of a Deputy Superintendent of Police on receiving information that a person or a group of persons not belonging to the Scheduled Castes or the Scheduled Tribes, residing in or frequenting any place within the local limits of his jurisdiction is likely to commit an offence or has threatened to commit any offence under this Act and of the opinion that there is sufficient ground for proceeding such Police Officer may declare such an area to be an area prone to atrocities and take necessary action for keeping the peace and good behavior and may take preventive action. For the purpose of strict enforcement of provisions of this Act Section 18 provides that Nothing in Section 438 of the code shall apply in relation to any case involving the arrest of any person or an accusation of having committed an offence under this Act in this way this Section bars the application of section 43% of the code which relates to anticipatory bail. The enforcement provisions contained in this Act have been further strengthened by way of section 20 of the Act which declares the overriding effect of this Act upon other laws for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.