Chapter – IV

THE INVESTIGATIVE MACHINERY IN INDIA

Police force had always been in existence in India from time immemorial. The old Kingdoms like Maurya, Gupta, and Moghul, who ruled different parts of India, were preserved institutions responsible for the maintenance of law and order and collection of taxes. The imperialists also maintained an elaborate police system and the present police system is the successor of this system. Now it is well accepted that, no society can survive without law enforcement machinery.

In India, The Police Act was enacted in 1861, to re-organize the police and to make it a more efficient instrument for the prevention and detection of crime. Even after independence, the Act continues and the police in India function largely on the policy laid down in this act. As per the Constitution, police is a State subject.¹ The Government of India controls the C.B.I,² C.R.P.F ³ and the police forces of central administrative territories, under the residuary powers.⁴

Maintenance of law and order is entrusted with the State because the law enforcement machinery should have roots in the society so as to act quickly and efficiently. If the policeman is from another State, they may not act properly and efficiently due to many reasons like, language problem, unawareness of the terrain of the

¹ Constitution of India, List II- State List Entry 2. “Police (including railway and village police) subject to the provisions of entry 2A of List I”.
² Id. List I Entry 8
³ Id. List I Entry 2
⁴ Id. art.239. Administration of union territories are vested with the President of India.
locality, cultural differences and also people may mislead him in different ways.

Each state in India has its own police force, under the direct supervision of the concerned State government. The hierarchy of police administration in each State is determined as per the Police Act, 1861. Presently, Director General of Police is at the top followed by Inspector Generals and Deputy Inspector Generals. In each district, there will be one Superintendent of Police followed by a number of Deputy Superintendents/Assistant superintendents, a number of Circle Inspectors, and a number of Sub-Inspectors, Head Constables and Constables. Persons above the rank of Asst. Superintendents belong to the prestigious Indian Police Service, while the State governments appoint others. In metropolitan and major cities, police commissioners are appointed who has the powers of the SP. The entire system can be divided into four categories.

ii. Supervisory level - Addl.S.P, Dy.S.P, Inspectors
iii. Investigatory level - Circle Inspectors and Sub Inspectors
iv. Constabulary - Head constables and Constables

Police force in India is dominated by line functions. Senior officers command, middle ranks supervise, lower ranks execute.

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5 Though all the State governments have passed separate Police Acts, even now the 1861 Act is in force by virtue of article 372(1) of the Constitution. State governments passed Police Acts since police is included in List II- State List. These legislations are in tune with the 1861 Act.
Powers and Duties

The police are an organized body of individuals to maintain civil order and public safety and to investigate violations of law. Though the activity of the police is adapted to the kind of society that is to be policed, there are some common features inherent in the work of the police. In order to enforce the law and for investigation the society need police. This need is the deciding factor of the powers and duties of the police. Ample powers have been given to the police for the effective discharge of their duties. So, both power and duty are correlated. One is given to achieve the other.

i. Duties and Functions

In all the democratic countries police are the agents of the law of the land. Law entrusts the duties and functions to them. They are answerable to law for their actions. The Police Act, 1861 defined the duties of a policeman. In addition to this, procedural laws also impose certain duties for the effective law enforcement. The functions of the police can be divided into two basing on the time of its execution. First is the function before the fact, which includes maintenance of law and order and connected matters. Second is the function after the fact, which includes investigation and allied matters like arrest of the accused, search, seizure, interrogation and filing of final report.

Maintenance of law and Order

Policing are not confined to investigation of a crime alone. The prevention of crime is an important duty, which the police have

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6 The Police Act 1861, s.23
to perform along with other functions. The power enjoyed by the police for the maintenance of law and order is a pointer to their enormous responsibilities in this regard.

Historically, police force was constituted to maintain order in the community. The maintenance of public order in a country depends on the obedience, which the public accord to law of the land. Either people obey the law out of a sense of conviction or because they knew that, if not obeyed, the authorities will prosecute them. If law and order is properly maintained, that will show the capability of the police force in the State. Maintenance of law and order means, absence of violence and an orderly state of affairs in which the members of the society can peacefully pursue their normal vocation of life. The concept ‘law and order’ implies three things; viz., i) absence of violence in the society, ii) Order in the state of affairs of the society, and iii) Peace in the society. In short, maintenance of law and order means maintenance of rule of law. It signifies a state of tranquillity prevailing in the political society as a result of internal regulations enforced by the government, which they have established.

Maintenance of law and order is a basic need in an organized society. It is synonymous with public peace, safety and tranquillity. The effective enforcement of laws is a means to maintain law and order in the society. This preventive function of

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the police is a great task assigned to them. The lawmakers were aware of the difficulties in discharging this task. Hence, ample powers have been given to the police force to achieve the goal.

Realizing the importance of prevention of crime and safety and protection of the society, the drafters of the Code of Criminal Procedure earmarked ample powers to the law enforcement machinery and those powers are mentioned in Chapters X and XI of the Code.\(^\text{11}\) The purpose of granting these powers is to nip in the bud the conduct subversive to peace and public tranquillity.\(^\text{12}\) Along with this Police Act also contained several powers to preserve peace and security in the society.\(^\text{13}\) Apart from these statutory provisions, it is the basic duty of the police to prevent crimes.\(^\text{14}\) Within the framework of law, police can resort to various methods of crime prevention include data collection, intelligence, preventive arrest, surveillance and even computerization.\(^\text{15}\)

Whenever any breach of the peace which is about to occur or which is occurred is likely to be renewed the police, in order to prevent it, shall exercise the power. What action has to be taken and how much power is to be exercised, all depend upon the doctrine of necessity. If the threat is not obviated, how much harm it will cause to the society and the people is the deciding factor.\(^\text{16}\) In order to

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\(^{11}\) These chapters contained powers to deal with preventive actions of the police (Ss.149-153) and dispersal of unlawful assemblies (S. 129).


\(^{13}\) The Police Act s. 25 deals with power to take charge of unclaimed property; S.30 deals with power to regulate public assemblies and processions and licensing of the same; S.31 states the duty of the police to keep order in public roads. In spite of these powers the Kerala Police Act, 1960 deals with some more powers. Section 29 deals with duties and powers of the police.


\(^{16}\) *Austin and another v. Metropolitan Police Commissioner*, [2008] 1 All. E.R. 564.
avoid breach of the peace, police have the power to arrest, search and confine persons and also to regulate the public processions and harangues. They can control the traffic and make surveillance over bad characters. Beat patrolling and VIP security are also part of these. In short, police can even deny to a certain extent the liberty of the people for the common benefit of the society.\textsuperscript{17}

\textbf{Investigation of Crime}

Investigation into a crime is an important function of the police. Investigation involves arrest, interrogation, search, seizure, maintenance of case diary and assisting the prosecutor. Police have been armed with extensive powers, independent of any external intervention, to investigate a crime. It is the duty of everyone concerned to assist the police in their work.\textsuperscript{18} The police can question anybody who is acquainted with the facts of a case and all such persons shall be bound to answer truly all questions relating to the case.\textsuperscript{19}

Collection of evidence is the prime aim of investigation. So, any step taken by the police officer or the person authorized by a magistrate towards the collection of evidence in regard to an offence would fall within the ambit of the word ‘investigation’. Power of a police officer to investigate an offence depends upon whether the offence is ‘cognizable’ or ‘non-cognizable’.\textsuperscript{20} Whenever the police officer, in the case of a cognizable offence, received information regarding its commission, he must start the

\textsuperscript{17} \textit{Ibid.}
\textsuperscript{18} Cr.P.C. ss. 37 & 39. These sections deal with the duty of the public to assist the police and to give information of certain offences.
\textsuperscript{19} \textit{Id.} ss.160 & 161. police officers have ample power to require the attendance of witnesses and examine them.
\textsuperscript{20} \textit{Id.} ss. 2 (c) and 2 (l)
investigation. No order from the Magistrate is required for starting the investigation, unlike the non-cognizable cases. The proceeding of the police officer in such situation could not be questioned on the ground that he was not empowered to investigate the case. This empowers the police to execute their duty properly and efficiently. Investigation is a matter entirely within the powers of the police and the Court has no authority to interfere in the police investigation. Police have statutory power and right to conduct investigation in a cognizable offence suspected to have been committed by an accused and to bring the offender to book. In *State of Bihar v. P.P.Sharma* Court observed;

> The investigating officer is the arm of the law and plays pivotal role in the dispensation of criminal justice and maintenance of law and order. The police investigation is, therefore, the foundation stone on which the whole edifice of criminal trial rests – an error in its chain of investigation may result in miscarriage of justice and the prosecution entails with acquittal.

Police are given liberty to collect necessary evidence in any manner because of the strenuous task involved in the process. It is his duty to bring out the truth. Therefore, it needs hard work, ability to sort out necessary and important information, and intelligence to deal with different people associated with various stages of the crime. In the arduous process of investigation a heavy responsibility is devolved upon them to see that the innocent persons are not charged with an accusation.

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21 *Id*. s.156 (1) and (2)
23 1992 Supple. (1) SCC 222.
24 *Id*. at p. 258
ii. Powers

Police are invested with wide powers with ample discretion, which they can exercise without outside intervention. The powers and the discretion are commensurate with their functions. Maintenance of law and order and investigation in a crime are arduous tasks for which sufficient power is necessary. While taking measures to implement their functions, police have to respect the legal interests of various political, social and religious groups. Prevention of crime will help in preserving peace in the society. In this context, the Code contains a separate chapter dealing with the powers of police. Police can arrest a person, who is designing to commit a cognizable offence, without any order from the magistrate or without a warrant, in order to avoid the commission of crime. Similarly, police have the power to take actions for the protection of public property. In order to preserve order in the society, police can take various measures such as preventive arrests, regulation of physical training, assemblies and processions, prohibition of mass drill and carrying of swords and public harangues which may create unrest in the society.

The investigating officer would conduct an in-depth investigation to resolve the case. It is not an easy task. So, wide powers are given to the police to conduct the investigation, which is

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25 Cr. P. C. chapter XI. - Preventive Actions of the Police.
26 Id. s.151(1)
27 Id. s.152.
28 Id. s.151.
29 The Kerala Police Act, s.18A.
30 Id. s.20.
31 Id. s.21A.
32 Id. s.21.
33 Id. s.22.
not controllable either by the judiciary or the executive. Only in the case of violation of human rights, court can interfere in the process. The Code contains several provisions to ensure a fair investigation on the allegations against a person charged with criminal misconduct.

Police are given wide discretion to take appropriate decision regarding prosecution of a person. Once the police investigate and finds an offence having been committed, it is their duty to collect evidence for proving the offence. Once that is completed and the investigating officer submits report to the court to take cognizance of the offence, its duty ends. But, in between, police enjoy ample freedom in the areas of arrest and detention, interrogation, search and seizure and filing of final report.

Before the inception of PACE Act, 1984, the police had no general and clear powers for investigation in England. Prior to the PACE, the proceedings for different steps for investigation were set out in Judge’s rules, which is only an administrative order. But, in India, from the very beginning Code of Criminal Procedure is in use which contains elaborately the powers of the police. It defines each and every step of investigation and approves the individuality of the

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34 Magistrate cannot direct the police to submit a charge-sheet and compel the police to form a particular opinion on investigation and to submit a report according to such opinion. Abhinandan Jha v. Dinesh Mishra, A.I.R 1968 SC 117. Section3 of the Police Act,1861 provides that except as authorized under the provisions of the Act, no person, officer or court shall be empowered by the State Government to supersede or control police functionary… no executive order can emanate from a Magistrate superseding the final report. See also, State v. Heera, A.I.R. 1968 Raj. 233.


police institution. An analysis of the powers of Indian police points to the need for certain changes in the law to cope with the growing demands of the criminal justice system.

**Arrest and Detention**

Arrest is a tool in the hands of the police\(^{37}\) for bringing the alleged offender before a court of law. The decision to arrest a person is a personal decision to be taken by the police officer for which he is, in law, responsible. Arrest can be made in pursuance of a warrant issued by a magistrate or without a warrant but made in accordance with legal provisions permitting such warrant.\(^{38}\) In the case of cognizable offence arrests can be made without warrant from the magistrate. Arrest can be made either for ensuring the presence of the person before a judicial authority or to prevent the commission of a crime. The arrestee shall not be detained in custody for more than twenty-four hours. In the case of preventive arrest he should be released unless he is required under any other provisions of the Code or any other law for the time being.\(^{39}\) In the other case, he should be produced before a magistrate within the stipulated time. Sometimes arrest becomes necessary for obtaining the correct name and address of a person committing a non-cognizable offence.\(^{40}\) Other circumstances which necessitate arrest are, when a person obstructing a police officer in the discharge of his official duties\(^ {41}\) and when a person escaping lawful custody.

\(^{37}\) As per Sections 43 and 44 of the Code, a private person or a Magistrate can arrest an offender who in their presence committed a non-bailable offence.

\(^{38}\) Cr.P.C.s.2(c) and (1)

\(^{39}\) Id. s.151(2)

\(^{40}\) Id. s.42

\(^{41}\) Id. s.41(1)(e).
Chapter V of the Code deals with powers of the police officers to arrest. Sections 41, 42 and 46 give power to the police to arrest a person and even to use necessary force to effect the arrest. Police can require the assistance of any person in arresting or preventing the escape of any other person, whom such officer is authorized to arrest.\(^4\) Arrest becomes necessary when the summons procedure is reasonably likely to be ineffective or when the circumstance warrants. The seriousness of the offence will have a bearing on the decision of arrest. The necessity to arrest a person therefore requires that sufficient power be available to the police for the effective enforcement of law.

**Interrogation and Examination**

After the arrest and before the arrestee is produced before a magistrate police will interrogate, photograph, fingerprint, indict and will take him to places for the collection of evidence. Various investigative procedures carried out at this time. The main and the important procedure is the interrogation\(^4\) of the suspect. Formal interrogation by the police of a man in custody falls into two categories. One is the interrogation for the collection of evidence.

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\(^4\) *Id.* s.37.

Interrogation is accepted as a method of investigation of violation of laws from the time of genesis of man. God created Adam and Eve and put them in the Garden of Eden to till it and keep it. God commanded to them that they are free to eat of every tree in the garden except the tree of the knowledge of good and evil. But they violated the law and when Lord God came in search of them, they hid themselves from the presence of God. God asked them, “Where are you?” Adam replied, “I heard the sound of thee in the garden and I was afraid because I was naked; and I hid myself”. God asked, “who told that you that you are naked? Have you eaten of the tree of which I commanded you not to eat?” Adam said, “The woman whom thou gavest to be with me, she gave me a fruit of the tree, and I ate”. Then God asked Eve, “What is this you have done?” Eve said, “the serpent beguiled me, and I ate”. After this interrogation, God pronounced the judgment. This was the first interrogation in the history and it shows that before pronouncing the judgment the person may be given adequate opportunity to explain his position, because it is a process of evidence collection and may end in conviction. *The Holy Bible*, Genesis, 3:1-13
Often man has been taken into custody not because the police suspect him of guilt but under the firm belief that he knew something regarding the crime under investigation. In this case police are bothered only about the evidence. Second is the interrogation of the suspect/accused. In this case, police is very much concerned about the confession of the person. However, this confession is not admissible in evidence\textsuperscript{44} it may help the police in collecting required evidence without much effort. The best source of information regarding the crime is the suspect himself. For solving the issues the co-operation of the accused is highly essential. The police must have reasonable opportunity to interrogate the suspect in private, before he has a chance to fabricate a story or to decide that he will not cooperate.\textsuperscript{45} The outside interference is likely to reduce the possibility of cooperation from the accused in the interrogation process. Moreover, the best time for getting information from the suspect is immediately after arrest. Similarly, the witnesses or any other person who are acquainted with the incident also must be questioned immediately after the incident. The delayed questioning is not worthy and will not serve any purpose. The questioning may be examination of witnesses, and interrogation of the suspect.

Section 161 of the Code of Criminal Procedure extends all powers to the police to question any person\textsuperscript{46} who is acquainted with the facts and circumstances of the case. Corollary to the power of the police, such person is under a duty to answer truly all

\textsuperscript{44} Evidence Act, ss. 24 & 25. At the same time as per section 27 discovery on the basis of confession is admissible in evidence.


\textsuperscript{46} Any person includes accused person also. \textit{Abdul Razak v. Union}, 1986 Cri.L.J. 2018 (Bom.).
questions relating to the case. The power to examine persons who are supposed to be acquainted with the case is not absolute. It is subjected to three limitations. First, is that the person is not bound to answer questions which expose him to a criminal charge or to a penalty or forfeiture. This is in tune with the right of every person not to be compelled to be a witness against himself. Privilege against self-incrimination is a valuable right guaranteed by the Code and the Constitution.

Secondly, the police have no right to compel the person to sign the statement, which is reduced into writing under section 161 of the Code. This will enable the person to deviate from the statement, which is submitted by the police before the court purported to be made by the person examined. The object is to protect the accused from prejudices by the improper use of such statements recorded loosely or inaccurately. Moreover, police should not be allowed to trap the witnesses by recording statements according to their wishes and getting a signature from the deponent. If trapped in such a way, the deponent would find it difficult to deviate from the statement given to the police.

47 Cr.P.C. s.161(2) “Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture”.
48 Ibid.
49 Nandini Satpathi v. P.L.Dani, (1978)2 SCC 424. Court observed that the accused is entitled to keep his mouth shut if the answer sought has reasonable prospect of exposing him to guilt.
50 Cr.P.C. s.161(2)
51 Constitution of India, Art.20(3). “No person accused of any offence shall be compelled to be a witness against himself”.
Third, is the restrictions imposed on the use of the statements so recorded into writing by the police officer. These statements have no evidentiary value except the use of corroboration and contradiction under sections 157 and 145 of the Law of evidence respectively. No statements given to a police officer shall be used as evidence in a court of law because it is neither given on oath nor it is tested by cross-examination. This statement is not evidence of the facts contained therein and it cannot be considered as substantive piece of evidence.

Interrogation of the accused is an important process in the investigation of a case. Section 161 Cr.P.C. includes the examination of the suspect also, who may thereafter be the accused of the offence. The law presumes that the questioning is necessary for the effective enforcement of law and it seems that this view has been accepted by the public and at times by the court.

Wide powers of interrogation have been given to the police, because of several reasons. The police often secure valuable information during the course of interrogations. This information may be related to the same offence or regarding some other

53 The Law Of Evidence, s.157 states, “In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

54 S.145 states that, “A witness may be cross-examined as to the previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

offences. Sometimes, this information may help the police to explore evidence in some other offences and to find out the culprits of those offences. Hence, the interrogation process increases the power and efficiency of the police.

**Search**

Documents and other material objects necessary and relevant for the effective prosecution of a case should be made available to the agency, which conducts the investigation. When the summons to produce such documents or things fails, the Code empowers the police to conduct search of places suspected to contain such documents or things. In the case of emergency, police can make search without warrant. Though wide powers have been extended to the police, the Code strives to strike a balance between the interests of the individual and of the society by providing safeguards in favour of the individuals.  

Police have no authority to require the accused person to produce any documents or things under section 91 Cr.P.C, which are incriminating in nature. The search must be for a particular thing or document or specified material necessary for the purpose of investigation. No warrant for a general search can be issued. Moreover, the investigating officer must record the reasons for the search and if not, the search would be illegal. The copies of the record must be sent to the nearest Magistrate empowered to take cognizance of the offence forthwith. At the time of conducting the

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60 *Sitaram Ahir v. Emperor*, A.I.R. 944 Pat. 222, 224
search, two independent respectable inhabitants of the locality shall be procured for witnessing the search.

If the search procedures are not legal, the police officers may face legal consequences, but it will not vitiate the evidence procured. In Radhakrishnan v. State of U.P, \(^{61}\) the court has made following observations.

So far as the alleged illegality of the search is concerned, it is sufficient to say that even assuming that the search was illegal the seizure of the articles is not vitiated.\(^ {62}\)

In Prathap Singh v. Director, Enforcement, FERA,\(^ {63}\) also court has taken the view that, illegality of the search does not vitiate the evidence collected during such illegal search. So, any non-compliance of the provisions of Sec.100 or Sec.165 of the Code, by itself cannot be a ground for outright rejection of the prosecution case.\(^ {64}\) However, the effect of such non-compliance may have some bearing upon the appreciation of the evidence of the witnesses.\(^ {65}\) The judicial attitude in this regard is that, every deviation from the details of the procedure prescribed for search will not vitiate the trial.\(^ {66}\)

In Kuruma v. R.\(^ {67}\) Court evolved a test to ascertain whether the evidence collected is admissible or not. According to Lord

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\(^{62}\) Id. at p.824.

\(^{63}\) A.I.R. 1985 SC 989.


\(^{65}\) Matjog Dubey v. H.C.Bahri, A.I.R. 1956 SC 44.


\(^{67}\) [1955]I All.E.R. 236.
Goddard, if the evidence is relevant to the matters in issue, it is admissible and the court need not look into how they obtained it. He placed reliance on Crompton, J. observation that, “it matters not how you get it; if you steal it even, it would be admissible”. It seems that Lord Justice Crompton did not consider the fact that stealing is an offence. This view only encourages the police to use search as a weapon to procure evidence and under the guise, fabricate evidence.

A police officer may search a person or premises, if he has reasonable grounds for believing that there is possibility to find stolen or prohibited articles from the person or premises. The object of search is to dispel or confirm those suspicions. It can be conducted either with or without warrant. The Code empowers the court to issue a warrant for a general search of any place for the purpose of any enquiry or trial. Same time police officer can conduct the search without a warrant from the court, if the circumstances of the case require immediate search of a place. In the case of search with warrant there may arise no problem since there is judicial supervision. But in the case, search without warrant, the law enforcers may, sometimes, disregard the law and justify their actions as a weapon in the fight against crime. The police argue that the encroachments upon the rights of a person must be tolerated in the larger interest of the society. It is necessary that, before proceeding to a place for search, the police officer must record the grounds of his belief as to the necessity of such search and must also specify the things for which search is to be

68 8 Cox C.C. 501, quoted in ibid.
69 Cr.P.C. s. 93 Cr.P.C.
conducted.\textsuperscript{70} It is a safeguard against arbitrary or roving search. This may avoid the possibility of manipulation of records by a police officer and choosing his ‘grounds of belief’ after the search. The recording of reasons is an important step in the matter of search and to ignore it is to ignore the material part of the provisions governing searches.\textsuperscript{71}

**Filing of Final Report**

As per Sec. 173 of the Code, the police in India are under an obligation to file a report before the magistrate, immediately after the completion of the investigation. Though the section cast a duty upon the police, it is their privilege to file the final report containing all the relevant information for prosecuting the named offenders, if there is sufficient evidence.

The formation of an opinion, as to whether or not to place the accused on trial, is that of the investigating officers and the court cannot compel the police to form a particular opinion in the

\textsuperscript{70} *Sohan Lal v. Emperor*, A.I.R 1933 Oudh 305. The appellant, in this case, and his maid servant was prosecuted u/s.120(b), 240 and 243 IPC, alleging that they conspired together to deliver counterfeit of Queen’s coins and were in possession of such counterfeit coins. Police searched their house and confiscated 108 counterfeit coins from inside a well in the house. The trial court convicted them. The appeal of A2 was accepted and A1 was rejected by the sessions court. In the appeal he challenged the procedure of search adopted by the police as against the law. Allowing the appeal, the court said that the police officers are bound to record in writing the grounds of his belief as to the necessity for searching the house and in specifying clearly the articles or articles for which the search was to be made.

\textsuperscript{71} *State v. Rehman*, A.I.R 1960 SC 210. The deputy superintendent of central excise received information that the respondent and his father had cultivated tobacco but had not paid the excise duty payable to thereon. The deputy Superintendent and his party went to the house of the respondent and declared their intention to conduct search in the house. Then the respondent and another person obstructed the making of search; as a result, the dy.superintendent fall down and received some injuries. The respondent was convicted under sec.353 IPC. On appeal the session judge reversed the finding stating that the search had not been conducted in accordance with Sec.165 Cr.P.C and remanded the case for fresh enquiry. The magistrate acquitted the accused. The high court agreed with the findings of the lower court. The Supreme Court also affirmed the decision of the lower trial court Since, the search was made in contravention of the provisions of the Code
investigation and to submit a report, according to such opinion. This is so because, the manner and the method of conducting the investigation, are left entirely to the police. In *King Emperor v. Kwaja Nazir Ahmad* 72 Lord Porter observed:

The function of the judiciary and the police are complimentary, not overlapping and the combination of individual liberty with a due observance of law and order is not only to be obtained by leaving each to exercise its own function, always of course, subject to the right of the Court to intervene in an appropriate case when moved under sec. 491 of the Code of Criminal Procedure to give discretions in the nature of habeas corpus. In such a case as the present, however, the courts’ functions begin when a charge is preferred before it and not until then. 73

It is clear that, police have absolute control over the proceedings of this part of the investigation and no court can

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72 A.I.R. 1945 PC 18. In a partition case, the respondent, who was the Special Official Receiver of the Lahore high court, was appointed as receiver of the suit property. Since the parties were dissatisfied with the activities of the respondent, they applied to the court to remove him from receivership. They filed an affidavit before the court stating that the receiver persuaded them by means of fraudulent representations, to get him appointed as receiver in the case. The Sub-Judge refused the application. The High Court also dismissed the application. Then the lawyer representing one party in the suit written a complaint to the District Magistrate charging the respondent with a number of crimes and applied for his removal from receivership. The District Magistrate made an order for investigation. The respondent approached the High Court for staying of the investigation process and an interim stay was granted. Meanwhile, two complaints also filed before the police and they started investigation. The Chief Justice telegrammed to the District Magistrate to stop the investigation on a petition filed by the Queen. Again the respondent approached the court for stay. Interim stay granted. High Court called for all the records and heard the matter. The court decided to quash the proceedings and to prohibit the investigation. In appeal, the Privy Council found that the more serious aspect of the case is to be found in the resultant interference by the court with the duties of the police. Privy Council advised her Majesty to permit the police to proceed with the investigation.

73 *Id.* at p. 22.
interfere in such proceedings. With the filing of this report before the magistrate, the investigation in the case by the police comes to its natural end. Therefore, all the proceedings from the starting of the investigation until the submission of the final report under section 173 of the Code are under the control of the police. Based on the investigation, forming an opinion about the case, and filing of the report are the prerogatives of the police.

In *Abhinandan Jha v. Dinesh Mishra*\(^74\) the question, whether a Magistrate can direct the police to submit a charge sheet, was answered by the Supreme Court in favour of the police. Court observed:

> The Magistrate has no power to direct the police to submit a charge-sheet when the police have submitted a final report that no case is made out for sending the accused for trial. The function of the magistracy and the police are entirely different, and though in the circumstances mentioned earlier, the magistrate may or may not accept the report, and take suitable action, according to law, he cannot certainly infringe upon the jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view.\(^75\)

The final stage of the investigation, i.e., the formation of an opinion by the police as to whether a case is made out against the accused, is to be taken by the police and by no other authority. Even if the Magistrate under section 156(3) of the Code orders the investigation, the investigation is the prerogative of the police.\(^76\)

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\(^74\) A.I.R. 1968 SC 117.
\(^75\) *Id.* at p. 120.
\(^76\) *Nirmaljeet Singh Hoon v. The State of W.Bengal*, A.I.R.1972 SC 2639, 2650. It is an appeal against the order of the High Court dismissing the complaint filed by the appellant under sections 120 B, 406 and 420 IPC against respondents.
But, the police have no unfettered discretion to commence investigation. They can exercise the power of investigation only if they get the FIR or other material which prima-facie discloses the commission of a cognizable offence\textsuperscript{77}. Police have been given power of investigation to avoid interference from other quarters, to avoid fabrication of cases at the instance of some higher ups. Moreover, interruption may lead to unnecessary delay in the process. The present situation in India shows that there is inordinate delay in filing the final report before the Court by the police. Reason may be the non-completion of the investigation within the stipulated period. It may be the root cause for the defeat of prosecution in most of the cases in India. Heavy workload, deploying the police to other work is some reason for the delay in the investigation process. The only way out is to constitute a separate agency for investigation.

\textbf{Nature of Power}

The police are depicted as ‘citizens in uniform’. This is an indication of the real powers of the police. In 1929, the Royal Commission on Police Powers and Procedures observed:

> The police … have never been recognized, either in law or in tradition, as a force distinct from the general body of citizens…Indeed, a police man possess few powers not enjoyed by the ordinary citizen, and public opinion, expressed in Parliament and elsewhere, has shown great jealousy of any attempts to give increased authority to the police.\textsuperscript{78}

\textsuperscript{77} \textit{State of West Bengal v. Swapan Kumar Guha,} (1982) 1 SCC 561. The question in this case was whether the FIR lodged by the commercial tax officer, Bureau of Investigation, against the firm and its partners discloses an offence under section 3 of the Prize chits and Money Circulation Schemes (Banning) Act, 1978. Supreme Court allowed the appeal since the FIR does not disclose any offence against the respondents.

This observation was approved by the subsequent Commissions and all hold the principle that police men are ordinary citizens in uniform, some what elevated, and formed as a group with a duty to enforce the law in the society. Hence, they are given some powers, which an ordinary citizen does not have. This power, which is legal, transforms them into legal organization representing the State. When they exercise the power, it transforms the legal relations between State and the individual. So, their powers and duties are specifically defined and made known to all. If the police officer does not have the authority, their actions can be legally resisted, just as if they are private citizens infringing other’s rights. It is true that for police certain powers are granted, which are exemptions from criminal or civil liability, which otherwise would be unlawful acts. For example, a search of a person constitutes an assault unless a power is provided.

Considering the importance and complexities of the duties of the police, they have been granted exceptional powers. In the performance of their duty, an officer may use fire arms, run traffic lights, control vehicular traffic, regulate processions, enter premises without warrants, and take all steps to collect evidence in a case, conduct preventive arrest, decide whether to prosecute a person or not, take action against public nuisance. The exercise of the power depends on two things, viz., seriousness of the situation and necessity.

79 Niyamat Ali v. State of U.P. 1987 Cri.L.J. 1881; Poovan v. S.I.of police, Aroor, (1993)1 K.L.T. 454; Pedro v. Dis, [1987]2 All. E.R.59 where it is stated that, when a person is detained, he must be informed that, he was no longer a free man and the grounds on which he is detained. Otherwise cannot assume that the police man is acting in the execution of his duty.

The powers given to the police are unfettered and unconditional. The Supreme Court decision in *State of Bihar v. P.P.Sharma*\(^{81}\) is a pointer to the measure of power given to the police. The Court observed:

The Code demarcates the field of investigation exclusively to the executive to be vigilant over law and order. Police officers have statutory power and right as part to investigate the cognizable offence suspected to have been committed by an accused and bring the offender to book...Investigation is a tardy and tedious process. Enough power, therefore, has been given to the police officer in the area of investigatory process, granting him or her great latitude to exercise his discretionary power to make a successful investigation.\(^{82}\)

Considering the complexities and the difficulties involved in the investigation process, police have been given ample freedom to collect evidence in any manner he feels expedient in the case. It is his duty to search for the truth on behalf of the society. This justifies the granting of unfettered and unconditional power to the police. This does not mean that, the police can do whatever they wanted to do. It is unconditional in the sense that, the officer exercising the power is the sole judge of the situation. The officer is empowered to take a decision whenever it is necessary and it cannot be challenged in any court on the ground that ‘reasonable grounds’ did not exist. The legal position is that if an offence is disclosed, the court will not normally interfere with the investigation in the case.\(^{83}\) If the investigation is legal and on the basis of a *prima facie*

\(^{81}\) *Supra* n.23.
\(^{82}\) *Id.* at p. 258.
disclosed case, police is the sole authority to conduct the investigation. But, if they transgress the limits prescribed by the law, in order to protect the rights of the persons, court can interfere in the process. Even in such situations, court has no authority to direct the police about the *modus operandi* to conduct the investigation and to file the final report accusing somebody.\(^8^4\) This shows that areas have been carved out, wherein the court can interfere in the proceedings.\(^8^5\) In Bhajan Lal\(^8^6\) court observed:

> But if a police officer transgress the circumscribed results and improperly and illegally exercise his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is dear value of our Constitution.\(^8^7\)

The power to investigate into the cognizable offence is unfettered, but it should be exercised legitimately and in strict compliance with the provisions of the Code. Court has no authority to obliterate the investigation process, when the agency is within the legal bounds as mentioned in the Code. At the same time, safeguards are provided by the law to insure that the police are

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\(^8^6\) *Supra* n.84

\(^8^7\) *Id.* at p.620
exercising their power only when it is necessary and after giving
due consideration to the rights of the citizens or the accused.

Absolute powers are given to the police, in the sense that
there is no supervisory control over the exercise of this power by
another agency. It is independent of interference from the Executive
or the Judiciary. If it is proved that, serious prejudice is caused to
the suspect, then only the court can interfere and that too not to
question the authority of the police in any case. In *State of Haryana
v. Bhajan Lal* Supreme Court observed:

> Indeed a noticeable feature of the scheme
under chapter XIV of the Code is that a
Magistrate is kept in the picture at all stages
of the police investigation, but he is not
authorized to interfere with the actual
investigation or to direct the police how that
investigation is to be conducted.

If the offence is disclosed, the court must refrain from
interfering in the investigation process. If the court interferes in
such an area, there is every chance for derailing the investigation.
The result will be the acquittal of the accused to the serious
detriment of the welfare of the society and the causes of justice will
suffer. The Privy Council in *Emperor v. Kwaja Nazir Ahmad* while dealing with the statutory rights of the police with regard to
investigation of a cognizable case has made the following
observations:

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89 Supra. n. 84
90 Id.at p. 620.
…so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court.93

The courts in various subsequent decisions have acclaimed this view.94 The holding of all these decisions and the core of sections 15695, 15796 and 15997 of the Code is that, if a police officer has reason to suspect the commission of a cognizable offence, he must proceed with the investigation or depute one of his subordinate officers to investigate the case. If the police officer found that no sufficient ground exists to proceed with the investigation, he can dispense with the investigation altogether. It also makes clear that the field of investigation is exclusively within the domain of the investigating agencies over which the courts have no control. The court should not stifle or impinge upon the proceedings in the investigation, so long as the investigation

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93 Id. at p.22.
95 Section 156 of the Code deals with the power of the police officers to investigate cognizable cases.
96 This section deals with the procedure for investigation.
97 This section state the power of the magistrate to direct an investigation.
proceeds in compliance with the provisions of law relating to investigation. 98

As per the scheme of the Code, it is clear that interference of any sort in the investigation is not permitted irrespective of source from where it comes. The executive also cannot give directions to the police as to how they have to conduct an investigation. Lord Denning best described the power of the accusatorial police in R v. Metropolitan Police Commissioner. 99 It reads:

…in all these things he is not the servant of anyone save of the law itself. No minister of the Crown can tell him that he must or must not, keep observation on this place or that, or that he must or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone. 100

Police enjoy absolute freedom in the law enforcement matter without any interference from the government or from the judiciary. The Supreme Court in Nirmaljeet Singh Hoon v. State of West Bengal 101 observed:

The police authorities have under sections 154 and 156 of the Code a statutory right to investigate into cognizable offence without requiring any sanction from a judicial authority, and even the High Court has no inherent power under sec.561 A of the Code to interfere with the exercise of that statutory power. 102

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98 Supra n.84
100 Id. at p.769.
102 Id. at p.2650.
Statutes provide absolute freedom in conducting investigation and are beyond control so long as they are within the powers granted. Proper use of the power could not be subjected to supervision and control from any external force including the court. So long as the powers are used within the circumscribed limits of law, the police officials are made immune from criminal and civil liability.

To complete the investigation successfully it is better that the same officer who started the investigation shall be allowed to complete the same. Any undue interference in this regard from any quarters including court will topsy-turvy the entire process. In *Divine Retreat Centre v. State of Kerala*¹⁰³, the Supreme Court considered the same question and observed:

> High Court cannot in the exercise of its inherent jurisdiction change the investigating officer in the midstream and appoint any agency of its own choice to investigate into the crime on whatsoever basis and more particularly on the basis of complaints or anonymous petition addressed to a named judge…. Neither are the accused nor the complainant or informant entitled to choose their own agency to investigate a crime in which they may be interested.¹⁰⁴

So, once the investigation is started and there is no complaint against the investigating officer, court cannot interfere in the process by changing the officer.

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¹⁰³ (2008) 3 SCC 542. In this case the High Court on a letter written by one person, registered a case against the appellant and after changing the investigating officer appointed a team under the leadership of one Inspector General of Police to investigate the matter. Appellant challenged the order of the High Court in the Supreme Court.

¹⁰⁴ *Id.* at p. 560-61
The power granted to the police is a discretionary power. Discretion occupies a special place in the administration of criminal justice. It starts at the very inception of the criminal case and exists till the filing of the final report. The police exercise discretion whether to arrest or not, whether to investigate or not, and whether to prosecute or not. The courts cannot overrule the exercise of discretion unless there is a clear violation of law. In one case, House of Lords observed that, “police are not bound in all circumstances to act every time there is a breach of law”.\(^\text{105}\)

Therefore, it is for them to exercise their discretion properly for the utmost good of the society and for giving effect to the intention of the Parliament appearing in and from the circumstances of the relevant statutes.\(^\text{106}\) When the statutory provisions and case law are analyzed, one could reach the conclusion that the authority of the police is original, not delegated and is exercised at his own discretion by virtue of his office. He is a ministerial officer exercising statutory rights independently of contract.\(^\text{107}\) As far as investigation and allied powers are concerned, police officer is under no man or institution, but under the law alone. If the police officer decides not to investigate an offence, or if the investigation violates the basic rights of the common man, the court can intervene. If the officer conducting the investigation is within the realm of statutory provisions, nobody can question the procedure or his authority. Be it so, his powers are unfettered and unquestionable.

\(^{107}\) Attorney-General for New South Wales v. Perpetual Trustee Company, (1955) A.C. 477 at p. 489
The Abuse of Power

The criminal justice system is very keen in protecting the common man from abuses of police powers. The legislations provide several mechanisms to protect the rights of accused/suspect as well as ample powers to the police to contain criminal activities. While using these powers police should respect the rights of the common man and should not use the power to the prejudice of them.\(^\text{108}\) If the police abuse their authority by not complying with the dictates of law and if it is allowed any scrutiny, instead of ‘rule of law’ ‘police raj’ will prevail. Hence, the police have to follow the procedures prescribed in the law for the prevalence of ‘rule of law’. But, unfortunately, procedural violations by the law enforcement agency are rampant in India. Mainly, in the following areas where unfettered power is given to the police for the effective enforcement of law, violations are quite common.

Arrest and Custody

Arrest is the beginning of imprisonment, which is recognized as a necessary step in the administration of the criminal law.\(^\text{109}\) The exercise of the power of arrest is subjected to judicial scrutiny. The code makes it obligatory for the police to produce the person arrested without a warrant, before a judicial magistrate within 24 hours of the arrest.\(^\text{110}\) The police sometimes abuse their power of arrest by taking persons into custody and keep them in custody without a judicial order. Some times, they may not record the arrest.

\(^{108}\) Ram Lal Yadav v. State of U.P., 1989 Cri.L.J 1013 (FB). In this case the petitioner filed an application u/s. 482 Cr.P.C. to quash the FIR and the investigation on the basis of it and also to direct the opposite parties not to arrest the applicants in pursuance of the FIR. The application was referred to the full bench.


\(^{110}\) Cr.P.C s. 57.
Since the person is not under arrest, he cannot claim the rights available to the arrested persons. This may produce incalculable harm to the reputation and self-esteem of the person. So, apart from the power of arrest there should be sufficient reasons for the exercise of the power. In Joginder Kumar v. state of U.P. \textsuperscript{111} court observed:

There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided.\textsuperscript{112}

At the same time arrest and detention is a necessary evil, to protect the society from criminals and to ensure availability of the accused for prosecuting for the offence he had committed. But, enough safeguards are to be made to ensure that the recalcitrant officers do not flout the law. The remedy is not denial of the power but to make measures to avoid abuses.

If an arrest is not justified by legally acceptable grounds, it will amount to an unlawful detention. Police have the burden of proving that the arrest is justified by reference to the criteria laid down by law and they had acted legally. Moreover, detention resorted by police with out recording arrest for the convenience of investigation should be discouraged. Though the Code specifically mentioned when a police officer can arrest a person with or without warrant, this is the area, which invites criticism from all walks of life. This is for the reason that the police frequently abuses the power of arrest, thereby violates the human rights of the common

\textsuperscript{111} A.I.R.1994 SC 1349.

\textsuperscript{112} Id. at p.1354
man. In the case of cognizable offence, arrest can be made without warrant and in the case of non-cognizable offence, only with the permission of the court. As pointed out earlier the indeterminacy connected with the classification of offence into cognizable or non-cognizable makes it open to abuse by a police officer. He could put a cognizable offence along with a non-cognizable and effect arrest.

Every person arrested and detained in custody shall be produced before the Magistrate within a period of twenty-four hours.\(^{113}\) It is provided with a view to avoid violation of liberty of the arrestee unnecessarily. Magistrate’s authority is necessary to keep the arrested person in custody for a period exceeding twenty-four hours. All these provisions specifically deal with the production of an ‘arrested’ person before the Magistrate. The police by illegal practices often flout the constitutional/statutory guarantees. Often the police do not record arrest and the person under "custody" is denied the benefit of these provisions. Most of the arrests, in India, are ‘pretended arrests’ resorted as a punishment to the suspect to satisfy either a superior officer or a politician. Such practices are adopted even to fish out evidence against the person.

The procedural formalities and the insistence on the existence of specified conditions to effect an arrest are considered as the rights of the arrestee. The police frequently violate these rights. The right to be informed about the grounds of arrest,\(^{114}\) right

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\(^{113}\) Constitution of India, Article 22(2). Time for journey from the place of arrest to the court is excluded from the stipulated time.

\(^{114}\) Art.22(1), “No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice”. See also In Re Madhu Limaye, A.I.R 1969 SC 1014.
to consult a lawyer, right to have some one informed about his arrest, are not given due importance. In most of the times, arrest will not be recorded and so neither the grounds of arrest are informed, nor allowed to consult a lawyer, nor inform the arrest to the relatives of the person taken into custody. Though the Constitution guarantees these rights, due to abuse by the police it is frequently denied.

These illegal practices are even now followed, because of the excessive power granted to the police to arrest a person. The attitude of the public may be pointed out as a factor, which compels the police to effect arrest even in cases where it could be avoided. Generally, the public demands immediate action from the police and to arrest the culprits when some grave crime takes place. It often exerts pressure on police to resort to arrest to satisfy the outcry of the public. The people will be satisfied if someone is taken into custody. This attitude encourages the police to take persons into custody and keep them without any judicial scrutiny. Thus in India the law and order and crime control becomes highly arrest centred. Legal fight against the police illegality often becomes futile and fails to control the behaviour of police. Whenever the relatives of illegally detained person approaches the High Court with a

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115 Ibid
116 Cr.P.C. sec.50A (1), “Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other person for the purpose of giving such information.

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station. See also, Joginder Kumar v. State of U.P., A.I.R 1994 SC 1349.
habeas corpus petition, the police either produce him before a Magistrate or release him, in order to avoid further consequences.\textsuperscript{117}

Hand cuffing and parading is another problem, which an arrestee has to suffer. Handcuffing is held to be unwarranted and violative of Article 21.\textsuperscript{118} Even now, the police, under the pretext of extreme danger, resort to iron fetters, which is unreasonable and arbitrary. Verbal abuses, indecent behaviour, using of third degree methods during interrogation are part and parcel of police performance that add fuel to fire.

**Interrogation**

Justice Jackson is right in saying that, ‘Questioning is an indispensable instrumentality of justice’.\textsuperscript{119} Due to this, sufficient powers have been given to the police to question all persons who are supposed to be acquainted with the case. But this power is frequently abused by the police, there by violating the constitutional and legal rights of the persons and the accused. The abuses in this area are in three ways. Police will fabricate evidence by introducing stock witnesses. Secondly, police will require the attendance of the

\textsuperscript{117} Poovan v. S.I of Police, Aroor, 1993 (1) KLT 454. One Babukuttan was taken into custody by the SI of police Aroor at 1.30 p.m. on 22-01-1993 and locked him up in the station. Several persons intervened and offered sureties, the respondent did not pay any heed to that. On 01-02-1993 a habeas corpus petition was filed before the High Court by the father of Babukuttan. The Government Pleader submitted that a case against the detainee was registered on 01-02-93 and on finding that he was the real culprit, he was arrested on the same day and produced before the JFMC-II Cherthala and the court remanded him to judicial custody. It is also stated that, when producing before the magistrate he did not make any complaint against the police.

\textsuperscript{118} President, Citizen for Democracy v. State of Assam, A.I.R 1996 SC 2193, In this case Kuldip Nayyar, a journalist wrote a letter to the Supreme Court which was treated as a petition under Article 32 of the Constitution of India. The provocation for writing the letter was that he found seven TADA detenus put in one room in a hospital, hand cuffed to their bed. The room had bars and was locked. A posse of police men was posted outside with guns. The detenus have to pay for the medicine from their pocket. See, Prem Shanker Shukla v. State of Delhi Administration, A.I.R 1980 SC 1535.

\textsuperscript{119} Ashcroft v. Tennessee, 332 U.S. 143 at p. 160 (1944).
persons at the police station and will keep them in custody. Physical abuse is another area where police threaten or manhandle the persons to obtain evidence.\textsuperscript{120}

The criminal justice system insists that the interrogation must be fair and not oppressive and the answers must be voluntary and not induced. The present Indian situation reveals a pathetic condition of the custodial interrogation. Custodial interrogation is questioning by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. No provision in the Code or the Constitution empowers the police officer to effect a custodial interrogation without the prior sanction of the magistrate. The reason for this is aptly recorded by Justice Warren in \textit{Miranda v. Arizona}.\textsuperscript{121} According to him when the government seeks to punish an individual it must produce the evidence against him by its own independent labours, rather than by the expedient of compelling it from the accused’s mouth. \textit{Miranda} glorifies the rule against self-incrimination. If the police do not warn the accused about his right to silence during investigation, the evidence obtained from him have no value. Since this evidence is the fruit of the violation of the accused right, it shall be excluded from considering at the time of trial by the court. But the \textit{Miranda warning}\textsuperscript{122} is not accepted fully

\textsuperscript{120} \textit{Bhagawan Singh v. State of Punjab}, A.I.R. 1992 SC 1689. In this case the ASI and three constables went to a hotel and taken into custody some persons, brought them to Rambagh police station and interrogated them about the smuggled narcotic powder. They were kept in custody for three days and employed third degree methods on them. After three days they were dropped near a by-pass road. One person was unconscious and he was taken to hospital in car but, expired on the way. Others got themselves treated. Court convicted all of them. Supreme Court dismissed the appeal.

\textsuperscript{121} 384 U.S.436

\textsuperscript{122} The ‘Miranda warning’ as popularly known, states that, accused must be warned prior to any questioning that he has the right to remain silent, that anything he says
in India except sections 24\textsuperscript{123} and 26\textsuperscript{124} of the Indian Evidence Act. Though in India, the statement given to police officer is not admissible in evidence, if any material object is collected in consequence of the statement given by the deponent, that much of the statement, which leads to the discovery, is admissible. This is provided under section 27 of the Indian Evidence Act. But, the section never insists that the passing of information must be voluntary. In \textit{Paramjit Singh v. State of Punjab}\textsuperscript{125} the Supreme Court was confronted with a question whether the irregularities in the investigation is material and whether it will nullify the trial based on the erroneous investigation. Court observed:

\begin{quote}
This avoidable controversy need not detain us any further since it is well settled that even a default, if any, found in investigation, however, serious has no direct bearing on the competence or the procedure relating to the cognizance or the trial. A defect or procedural irregularity, if any, in investigation itself cannot vitiate and nullify the trial based on such erroneous investigation.\textsuperscript{126}
\end{quote}

Section 161 gives ample power to the police to interrogate the persons who are acquainted with the facts and circumstances of the case and such person shall be bound to answer truly all

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\textsuperscript{123} Evidence Act s.24 deals with induced confession which is irrelevant in criminal proceedings
\textsuperscript{124} S.26 deals with confession while in police custody which is not relevant in criminal proceedings.
\textsuperscript{125} A.I.R. 2008 SC 441.
\textsuperscript{126} \textit{Id.} at p. 446.
\end{flushright}
questions relating to such case except to those questions, which will have a tendency to expose him to a criminal charge. In the case of witnesses, they cannot evade from answering the questions, but, while questioning, the accused can remain silent. The Constitution clearly provides, as a fundamental principle that no person accused of a crime shall be compelled to be a witness against himself.\textsuperscript{127} So, the accused person may remain silent or may refuse to answer when confronted with incriminating questions. In \textit{Nandini Satpathy} court had given three directions to the police to be complied at the time of interrogation.\textsuperscript{128} The directions are i) if the accused person wants the presence of his lawyer beside him when the police interrogate him, this facility should be extended to him. But, police need not wait for a long time for his arrival than reasonable. ii) The police must warn the accused against self-incrimination and his right to silence. This must be recorded in the case diary and if the accused is literate take his written acknowledgement. iii) If the lawyer of the accused is not present at the time of interrogation, the accused must be taken to a magistrate or doctor or any other responsible non-partisan official after the examination, who must ascertain whether the accused suffered any duress, and must report all the conversations to the magistrate. These directions ought to have avoided to a large extent the abuses by the police during interrogation. However, the court has not made these directions mandatory, for the reasons best known to them only.\textsuperscript{129} In \textit{Ram Lalwani v. State}\textsuperscript{130}, the Delhi High Court ruled that the Supreme Court had given a prudent policy for the police and not a binding

\textsuperscript{127} The Constitution of India, art. 20(3).
\textsuperscript{128} Supra n. 49.
\textsuperscript{129} Id. at pp. 268-269.
\textsuperscript{130} 1981 Cri.L.J.97, 100 (Del.).
direction. In 1997, Supreme Court made the direction partly mandatory when given instruction to police to permit the arrested to meet his lawyer during interrogation.\textsuperscript{131} This right is given to promote the observance of the right against self-incrimination.\textsuperscript{132}

Though, the Constitution contains provisions against self-incrimination, the evidence will never be excluded on that ground. ‘Fruits of the poisonous tree’ is not that much poisonous in India, to kill the evidence. Denials of the rights, using third degree methods, fabrication of evidences are the fruits of the poisonous tree. Insisting a women to appear at the police station for questioning, arresting a women in the night without the aid of women police officers, denial of the right to consult a lawyer/doctor, using third degree methods to extract confession, fabricating evidences, long protracted questioning, long illegal incommunicado custody are certain means police resorted to achieve their object.

Using third degree method in the interrogation process is against human rights\textsuperscript{133} and Constitutional norms.\textsuperscript{134} If it is allowed,

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\item \textsuperscript{132} \textit{Nandini Sathpathy v P.L.Dani}, (1978)2 SCC 424 at p. 455.
\item \textsuperscript{133} The Universal Declaration of Human Rights, article 5 provides that, ‘no one shall be subjected to torture or to cruel, inhuman or degrading treatment’. Similarly, Article 7 of the International Covenant on Civil and Political Rights states that, “no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.\textsuperscript{135}
\item \textsuperscript{134} Constitution of India, Article 21 the expression of personal liberty is interpreted to protect the rights of the persons in police lock-ups. The Supreme Court evolved principles through judicial process, which is identical to the provision in the Universal Declaration of Human Rights. The earlier rule that the individual rights can be sacrificed for public order [\textit{A.K.Gopalan v. State of Madras}, AIR 1950 SC 27.] is corrected, after three decades in \textit{Maneka Gandhi v. Union of India}, A.I.R. 1978 SC 597. Now, whatever procedure is adopted by the Government to infringe the rights of the persons, it must be on the basis of a procedure which must be just, fair and not arbitrary or oppressive. In order to avoid custodial torture Supreme Court has given directions to the police in \textit{D.K. Basu v. State of West Bengal}, (1997) 6 SCC 642. In \textit{Kishore Singh v. State of Rajasthan}, A.I.R. 1981 SC 625. Court held
\end{itemize}
it will be an incentive for the law enforcers and they may not go in hunting evidence but to resort, induced confessions and fabricated evidences. Das Gupta, J. in the dissenting opinion in *State of Bombay v. Kathikal Oghad*\(^{135}\), observed:

It has been felt that the existence of such an easy way would tend to dissuade persons in charge of investigation or prosecution from conducting diligent search for reliable independent evidence and from sifting of available materials with the care necessary for ascertainment of truth.\(^{136}\)

The main object of this rule is to put an end to the practice of employing legal process to extract from a person’s lips an admission of his guilt. It employs mainly “to stimulate the prosecution to a full and fair search for evidence procurable by own exertion and to deter them from a lazy and pernicious reliance upon the accused’s confession”.\(^{137}\)

The present arrangement in this regard in our system is a compromise between two conflicting ideals. One is that no citizen

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\(^{135}\) (1962)3 SCR 10. The respondent along with another person charged for murder. Trial court convicted him. The identification of the accused was the most important question in the trial. One of the evidence was the alleged hand writing of the accused. In order to prove this police had obtained three specimen writings in three separate sheets of paper during the investigation. Expert compared the hand writings and opined that all the writings are of the same person. The specimen writings were obtained from the accused while he was in police custody. Plea of the accused was that he was forced to give those writings and it was a compelled testimony. High Court accepted the contention and acquitted the accused. Supreme Court held that there is no infringement of Article 20(3) in compelling an accused person to give his specimen signature or hand writing or impression of his thumb, finger, palm or foot to the investigating officer or under order of a court for the purpose of comparison. Even then the court denounced the short-cut adopted by the police.

\(^{136}\) *Id.* at p. 43.

shall be compelled by the authority to provide evidence against him in a criminal case. The other one is that the authority shall not be prevented from its important function of detecting criminals and proving their guilt.\textsuperscript{138}

This principle acts as a safeguard against improper and illegal police procedures. It is inhuman to force a person to make evidence against him and for which police is abusing their authority and to make a challenge against the constitutional norms. Mackenna, J. declared that:

\begin{quote}
Even if I could be sure that all or nearly all, the questioned persons would be guilty. I would still withold these powers on the ground of cruelty. For I think it cruel to compel a man to choose between confessing his guilt, committing perjury or standing mute and suffering whatever penalties you care to attach to his silence. To avoid such cruelty is in my eyes, one mark of a civilized community.\textsuperscript{139}
\end{quote}

The right to consult a lawyer\textsuperscript{140} is a constitutional claim in India. The purpose of this right is two fold, viz., to avoid self-incrimination\textsuperscript{141} and to defend the case properly. The arrestee can claim this right both at the pre-trial and trial stage. If the lawyers’ presence is admitted in the pre-trial stage, to a certain extent we can avoid the using of third degree methods in the interrogation process. If it is not allowed or if the arrestee does not want to exercise his right, then the only way to ascertain the non-use of third degree

\begin{footnotesize}
\begin{enumerate}
\item[\textsuperscript{139}] \textit{Id.} at p.667.
\item[\textsuperscript{140}] Constitution of India, Art. 22(1), “…nor shall he be denied the right to consult and to be defended by, a legal practitioner of his choice”.
\item[\textsuperscript{141}] \textit{Nandini Sathpathy v P.L.Dani}, (1978)2 SCC 424 at p. 455.
\end{enumerate}
\end{footnotesize}
methods during interrogation is to produce the person before an independent authority. This is exactly the reason why Krishna Iyer, J. directed the police to take the accused after the examination, to a Magistrate, doctor or other willing and responsible official. This will enable the detainee to tell such official without fearing the police, whether he suffered any duress from the police.\textsuperscript{142}

The doctrine of presumption of innocence is the basis of Indian criminal justice system. The Constitution of India guarantees the right against self-incrimination.\textsuperscript{143} This is in tune with the right guaranteed to a suspect/accused under the International Covenant of Civil and Political Rights.\textsuperscript{144} Various statutory provision are also in existence which aims at reducing/eliminating custodial violence and ill-treatment to elicit confession from an accused.\textsuperscript{145} The law makes inadmissible various forms of confession or testimony. What is prohibited is compelled testimony. Compulsion may take in different form. The accused could be beaten up or starved or he could be promised some advantage if confessed.\textsuperscript{146} The right against self-incrimination is widely violated by the police in India. Once taken into custody, police considers even an innocent person a

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{142} \textit{Id.} at p. 457.
\item \textsuperscript{143} Constitution of India, Art. 20(3), “No person accused of any offence shall be compelled to be a witness against himself”.
\item \textsuperscript{144} International Covenant of Civil and Political Rights, Article 14(2).
\item \textsuperscript{145} Indian Evidence Act ss. 24, 26 and 27, Code of Criminal Procedure ss. 162, 163(1) and 315
\item \textsuperscript{146} \textit{Yusufalli v. State of Maharashtra}, A.I.R 1968 SC 150. In this case the appellant tried to bribe the clerk of the Bombay Municipal Corporation for not executing the warrant against the appellant. A trap was laid and the appellant was caught red-handed.
\end{itemize}
\end{footnotesize}
criminal and every technique of torture will be employed to extract confession\textsuperscript{147}.

Search

Search though allowed by law as an inevitable step in the process of investigation it is circumscribed by specific requirements to be satisfied before the exercise of that power. The search shall be attended by two independent and respectable inhabitants of the locality.\textsuperscript{148} The occupant of the place of search or his representatives shall be permitted to attend the search.\textsuperscript{149} Whenever things are seized in the course of search, a list shall be prepared by the officer conducting the search and shall be signed by the witnesses.\textsuperscript{150} A copy of the list shall be given to the occupant of the premises or to his nominee. If the search is conducted without warrant, the police officer before proceeding to the search must record the grounds of his belief as to the necessity of the search and must specify the article for which the search is to be conducted. Search should not be a ‘fishing expedition’ to find out a ground to make evidence against a person. The police officer conducting the search may manipulate the records so as to make the occupant answerable to a charge. In the place of independent and respectable witnesses police may plant stock witnesses who could support them in the trial. Such practices undoubtedly compromise the insistence of the law and works against the interest of the accused. For instance in \textit{Hazara Singh v. State of Punjab},\textsuperscript{151} Supreme Court

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\textsuperscript{147} R.S.Saini, “Custodial Torture in Law and Practice with Reference to India”, 36(2) JILI 166 (1994) at p.177.  
\textsuperscript{148} Cr.P.C. s.100 (4)  
\textsuperscript{149} \textit{Ibid} s.100(6)  
\textsuperscript{150} \textit{Ibid}.s.100(5)  
\textsuperscript{151} (1971)1 SCC 529. In this case the appellant and five others were tried under sections 148,307 IFC and 25 Indian Arms Act, for being members of an unlawful assembly
\end{flushright}
refused to uphold the conviction of the accused on the ground that the recovery witnesses in the case was not independent. The court ruled that recovery witness who has been joining in the police raids and had been appearing, as witness for the police for the last fifteen years cannot be treated as an independent witness.

The prerequisites for the exercise of power of search are the safeguard of a citizens’ ‘fundamental right of privacy’. Since the search being an intrusion into the privacy of a person the law requires that it is to be done only if highly essential for the administration of justice. This is being guaranteed by insisting that to do a search there shall be an authorisation from a judicial officer in the form of a search warrant. While issuing a warrant an impartial judicial officer will stand in between police and the citizen. The request of the police for a search warrant will be scrutinised by the judicial officer and he will deny it in cases where there is no legally admitted grounds for justifying search. However, in cases of emergency, the police could by-pass the magistrate.152

After the search without warrant the police have to file before the magistrate the details of the search conducted along with the reasons for emergency search and the list of the names of respectable witnesses who are attended the search. This requirement

and in prosecution of their common object of attempt to commit murder the police party. The appellants were proceeding to Pakistan to smuggle cardamom. They were armed with weapons and when challenged by the police party, they fired shots from their weapon at the police party. They were convicted. High Court upheld the conviction. Supreme Court reversed the conviction and sentence.152

152 Cr.P.C. s.165. This section states that a police officer in charge of a police station or other police officer authorized to investigate the case can only exercise this power. If such officer is unable to conduct search in person he can direct his subordinate officer to conduct the search. The search must be for a particular thing or document necessary for the purpose of the investigation. It should not be a general search. The police must have reasonable grounds to believe that any specific thing necessary for the investigation can be found from the place and it cannot be obtained otherwise without undue delay.
is to be complied within a short period after the search. Needless to say, this enables judicial scrutiny in the matter as early as possible.

Fabrication of Evidence and Non-registration of cases

Investigating agency is very much interested in the outcome of the case. Their efficiency is very often judged by the result of the prosecution. This puts the investigating agency under pressure and they are forced to seek all measures to secure a conviction. This often drives the investigating agency to resort to illegal means and forge evidence to secure conviction. If the case is having communal or political overtones, where by the pressure on police is very heavy, this tendency becomes common.

Non-registration of cases by the police constitutes one of the most serious forms of violation of human right. In order to show that the criminal activities are under control, the reported crimes may not be registered so as to reduce the total number of crimes during a period. Corruption is another reason for the non-registration of cases. In order to register a case and to conduct investigation, the party should give bribe to the police. Another reason is the heavy workload of the police. They may not give importance to complaints, which are not so serious.

Non-registration of complaints is dereliction of duty, which is very serious since it is a negation of the rights of persons. This attitude will have an impact on the efficiency of police. In such a scenario, can we expect the police to maintain law and order properly? The courts are denouncing such situations seriously. The Supreme Court observed that, if it continues, the rule of law principle will proves to be one-way traffic for the police and will be
against the people. In Vishnu v. State of Maharashtra, where the SI of police did not register the FIR in a rape case, Supreme Court observed:

…but we are shocked to note that in a grievous offence like rape being reported to the police, the police officer concerned did not register the case despite the fact that the prosecutrix had categorically stated that the accused had forcible sexual intercourse with her which no doubt would lead to the losing of confidence of the public in the police establishment.

The police are accused of evil motives on refusing to register a case. In such situations, there are other ways to compel the police to register a case. The Supreme Court solved this problem saying that, “the provisions of the Code do not, in any way stand in the way of a magistrate to direct the police to register a case at the

153 Niranjan Singh v. Prabhakar Rajaram Kharote, A.I.R 1980 SC 785. The accused in this case, 2 Sub-Inspectors and eight constables of the city police station, Ahmed Nagar, pursuant to a conspiracy stopped the brother of the complainant, who was on his way to Shirdi. He was caught and removed from the truck, tied with rope to a tree nearby, and shot dead. No action was taken against the accused by the State Government. The a private complaint was filed and after taking oral evidence of witnesses, the court issued non-billable warrants against the accused. The accused’s contention was that, the victim was a criminal and he sustained injury in an encounter. The Magistrate denied bail., but the sessions court granted bail and it was affirmed by the High Court. Petitioner approached the Supreme Court. The Supreme Court refused to upset the order of the lower court but, vehemently criticized the lower courts and the Government.

154 2006 (1) SCC 283. In this case the prosecutrix was raped by the appellant. The police was informed and the Sub-Inspector of police came to the hospital and recorded the statements of the victim, mother and her brother. He made enquiry about her age. He did not register a case because the age of the prosecutrix as per the school record was more than sixteen years and she was a consenting party to sex.

155 Id. at p. 286.

156 Cr.P.C, s. 154(3) states that if a police officer refused to register the complaint, the complainant can send the complaint by post to the superintendent of police concerned and as per section 200 Cr.P.C the aggrieved party can directly file the complaint before the concerned Magistrate.
Loosing public confidence in the police is not a good sign of rule of law. People always look at police as a symbol of their safe living and protector of rights. But, some scrupulous officials, abusing their power inviting scathing criticism from all walk of life. This will demoralize the police agency as a whole and will impair their efficiency. Police have no discretionary power in registering a cognizable case. Even if police have no territorial jurisdiction, they shall record the complaint.

**Violation of Rights of Women**

When the suspect happens to be a woman, she has to face additional mode of torture like molestation, rape and indecent behaviour from the police, while in custody. Arrest and custody of women provide a chance to the police to abuse their power and violate the rights of the women folk. The illegal custody of women is uncivilized and should be deprecated in every sense. Because, the illegal custody of woman not only pave way for some men in uniform to satisfy their lust, but also against decency and integrity of the society. Though safeguards are provided in the Code and Constitution, the police flout most of them. The sad thing is that the women police are also no exception to this and, sometimes they assist the male members, violating the rights of the women. Arrest

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157 Madhu Bala v. Suresh Kumar, A.I.R 1997 SC 3104.

158 Section 154 Cr.P.C.

159 State of A.P. v. Punati Ramulu, A.I.R 1993 SC 2644. It was a case of murder. PW1 went to Narsaropet police station to report the incident. When he reached there the constable on duty informed him that the circle inspector had already received information and had left for the village. The police constable at the station refused to record the complaint presented by PW1 on the ground that the said police station had no territorial jurisdiction over the place of crime.

of women by male police officers and requiring the presence of women in the police station are quite common in India.\footnote{Picheswara Rao v. S.I.of police, 1997 Cri.L.J 1145. In this case a man and his daughter-in-law were taken to police station and detained there. Both were interrogated in connection with a civil case filed against the petitioner and the detained persons. Court observed that the police violated the rule that they should not interfere in civil matters and also section 160 Cr.P.C.}

\section*{Taking Citizens Rights Lightly}

Personal liberty is considered as the most cherished right under the Constitution. Liberty not only means liberty from bodily restraint but also include all those rights, which go to make up the personal liberty of a man.\footnote{Kharak Singh v. State of U.P, A.I.R 1963 SC 1295. The petitioner challenges the constitutional validity of Chapter XX of the U.P. Police Regulation and the powers conferred upon them by its several provisions on the ground that they violated the rights guaranteed to citizens by article 19(1) (d) and 21 of the Indian Constitution. Chapter XX gives power to prepare history-sheets and the personal records of criminals under surveillance.} When a person is arrested in violation of the principles of natural justice, it is an arbitrary arrest. Arbitrary and illegal arrest or custody is cruel and torture in custody is uncivilized. Both will ‘kill’ the rule of law. In \textit{Bhagawan Singh v. State of Punjab},\footnote{A.I.R 1992 SC 1689.} Supreme Court observed:

\begin{quote}
…If the custodians of law themselves indulge in committing crimes, then no member of the society is safe and secure. If police officers who have to provide security and protection to the citizens indulge in such methods, they are creating a sense of insecurity in the minds of the citizens. It is more heinous than a gamekeeper becoming a poacher.\footnote{\textit{id}. at p. 1693.}
\end{quote}

Indian law provides certain rights to the suspects/accused persons while in custody. These rights are absolute that no one can violate them with impunity. Besides the Constitutional rights, the
Indian Penal Code\textsuperscript{165}, Code of Criminal Procedure\textsuperscript{166} and the Indian Evidence Act\textsuperscript{167} carries certain rights, which the suspect/accused can enjoy. Right to life and right against self-incrimination are more important among them. The right to life cannot be deprived except on a procedure established by law and that procedure must be ‘just, fair and reasonable’.\textsuperscript{168} Custodial torture is an offence.\textsuperscript{169} It deprives person of the right to life, and is oppressive and arbitrary. One of the motives of custodial torture is to extract confession from the suspect. In \textit{Nandini Sathpati v. P.L.Dani},\textsuperscript{170} it was observed that if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect, but, sufficiently substantial applied by the police in obtaining information from the accused, it becomes compelled testimony violative of the right against self incrimination.

\textsuperscript{165} IPC s.330 – voluntarily causing hurt to extort confession or to compel restoration of property, and s.331 – voluntarily causing grievous hurt to extort confession, or to compel restoration of property.

\textsuperscript{166} Cr.P.C s.50(1) – right to know the grounds of arrest. Section 50(2)- information regarding right to be released on bail. Sections 56 and 76- right to be produced before a magistrate without delay. Section 57- right of not being detained for more than 24 hours without judicial scrutiny. Section 54- right to be examined by a medical practitioner.

\textsuperscript{167} Indian Evidence Act, ss.24 and 26 which deals with confession to a police officer and confession while in police custody.

\textsuperscript{168} \textit{Maneka Gandhi v. Union of India}, A.I.R 1978 SC 659. The passport of the petitioner was impounded under section 10(3) (c) of the Passport Act, 1967, which empowered the Government to do so in the public interest. The explanation of the Government was that her presence was necessary before the Commissioner of Enquiry in connection with various complaints against her. Petitioner challenged the validity of the section. Court upheld the validity of the section, but, held that Article 21 required a procedure established by law for depriving the persons right to personal liberty. That procedure shall not be arbitrary, unfair and unreasonable.

\textsuperscript{169} \textit{Supra} n.162.

\textsuperscript{170} A.I.R 1978 SC 1025. In this case the appellant was directed to appear at the vigilance police station, Cuttak for interrogation in connection with a corruption case filed against her. During the course of interrogation, she was given a long list of questions in writing of which she refused to answer and claimed protection of Art.20(3). On her refusal, she was prosecuted under section 179 IPC. Supreme Court held that section 160(1) of Cr.P.C. barred calling of women to police station for interrogation is violated in this case. Also stated that protection under Article 20(3) to remain silent while interrogation is available at the stage of police investigation also.
scrutiny of the legality of arrest and detention at the earliest is the very basis of our criminal trial. This is to put a limit on the police power to arrest a person on flimsy grounds.

Right to be informed of the grounds of arrest and right to consult a legal practitioner are also accepted as valuable rights by the Constitution. These rights extend an opportunity to the arrested person to apply for bail and also to make arrangements for his defence. Generally, police denied these rights to the arrested persons and torture them to procure evidence from him against himself. This is violative of the constitutional spirit and the democratic culture. Hence, the High Courts under article 226 and the Supreme Court under article 32 taking measures not only to protect the fundamental rights of the common man but also to control the cops from acting ultravires to Constitution.

**Human Rights Violations**

Article 21 of the Constitution ensures that there shall be no arbitrary denial of his life and liberty. If it is required it should be done only in accordance with the procedure established by law. After *Maneka Gandhi*, the procedure established by law must be 'right, just and fair and not arbitrary, fanciful and oppressive'. If the procedure is not just, fair, and reasonable it would be no procedure at all. This shows that the right to personal liberty cannot be curtailed even temporarily by a procedure, which is not reasonable, just and fair.

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171 Constitution of India, art.22 (1).
173 *Id.* at p. 660.
174 *State of Punjab v. Baldeo Singh*, A.I.R 1999 SC 2378. The question in this case was whether the compliance of section 50 of the NDPS Act is mandatory and if so, what
All legal systems recognize that the police may have to use force under certain circumstances. But, they have no authority to inflict brutality on a person who is in his custody, ignoring the law of the land. Human rights violations can be either personal abuse or denial of procedural rights. Personal abuse includes both physical and mental torture. Custodial torture is inhuman and against all norms of our criminal justice system.\textsuperscript{175}

The police in India practice illegal detention of woman relatives and children of the accused or alleged absconding accused as a means of forcing surrender of the accused.\textsuperscript{176} In this way, innocent people including children are kept in custody by the police. Another area of human rights violation usually occurs is the arrest and detention of children especially street children. They are ill treated and abused by the police. Caste driven violence is another area of rights violations where police silently participated.\textsuperscript{177}

Use of third degree methods by the police for extracting information from a suspect is wide spread in India. No provision in the criminal Acts which enables a police officer to inflict pain to the suspects in order to make evidence against him. Moreover, adoption

\textsuperscript{175} Supra n. 117.
\textsuperscript{176} SAHELI v. Commissioner of Police, Delhi, (1990)1 SCC 422.
\textsuperscript{177} There was allegation that the police participated in the Bombay and Gujarat riots. The PUCL report to the National Human Rights Commission on the communal violence in the State of Gujarat in 2002 states that, “The police, who obviously have received encouraging hints from the state government and the ruling party have failed to maintain law and order, and have rather played an antinational and unconstitutional role, becoming instrumental in destroying democracy and harmony among people”. www.pucl.org/Topics/Religion-communalism/2002/gujarat-nhrc-submission dtd. 02-11-2008.

Justice Sreekrishna Commission on Mumbai communal riots taken place in 1993 as an aftermath of babri masjid demolition specifically stated that, “Mumbai police was biased against Muslims and even helped Hindu mobs to attack Muslim houses”. en.wikipedia.org/wiki/Bombay_Riots dtd. 02-11-2008.
of extra legal methods in aid of investigation is prohibited because it violates Article 21 of the Constitution\textsuperscript{178}. It is very difficult to prove the custodial torture since the policemen are in charge of station records, which they can easily manipulate. Police employ different tools of torture for creating terror in the mind of the suspect. Death in police custody is one of the worst kinds of crimes in a civilized society, governed by the rule of law. Torture in custody flouts the basic rights of the citizens.\textsuperscript{179}

‘Encounter killing’ is a grave problem, which hits at the root of our democracy. Some police officers, especially in northern states, think that they born to kill and the khaki they wear authorize them to kill and they go beyond law to keep order. Most of the ‘encounters’ are fake encounters, where innocent, political opponents, complainants against police, members of other castes, terrorists and alleged criminals become prey for ‘cold-blooded murder’.\textsuperscript{180} Thus the police, who have to uphold the law, think themselves above it and set a disturbing precedent for a nation that claims to be civilized.


\textsuperscript{179} Solgabai Sunil Pawar v. State of Maharashtra, 1998 Cri.L.J 1505 at p. 1507-08. One Sunil Pawar was arrested by the police in connection with a robbery case and detained in custody. Next day, police informed his wife that Sunil committed suicide in police custody by strangulating himself and asked her to take possession of the dead body. She filed a petition before the Bombay High Court alleging that her husband had died of third degree torture by the police. She prayed for compensation and the court awarded compensation and asked the Government to realize the money from the erring officials.

Importance of Human Rights Protection

It can be said that the word ‘human’ involves certain rights, which are natural. Since these rights are not allotted to man by any agency, no one can deny it to him. But at the same time, the state has to protect every human being from oppressions and abuses. Justice Cardozo in *People v. Defore*\(^{181}\) observed that:

> The protection of the individual from oppression and abuse by the police and other enforcing officers is indeed a major interest in a free society.\(^{182}\)

Protection of the individual from oppression and abuse is the essence of human rights protection. This involves several aspects. First is the acceptance of rule of law. One of the fundamental features of Indian government is the check-and–balance system among its three branches, the executive, the legislature, and the judiciary. This check-and-balance system is based and depends on the doctrine of rule of law. The police decision-making is highly influenced by the rule of law. The Code of Criminal procedure not only gives ample power to the police, but also recognizes certain rights and privileges of the suspect/accused. It controls the actions of the police and defines the rights of the accused. Hence, the agencies of investigation should make themselves subject to law and every actions of it must be as per the law dictates. If it is in such a way, then it will exclude arbitrariness or in the alternative, courts can invoke the provisions of law and nullify the executive actions.

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\(^{181}\) (1926)242 NY 13.

\(^{182}\) quoted in *Joginder Kumar v. State*, A.I.R 1994 SC 1349
In *Chief settlement Commissioner, Punjab v. Om Prakash*,\(^{183}\)

Supreme Court observed that:

> In our Constitutional system, the central and most characteristic feature is the concept of the rule of law which means, in the present context, the authority of the law courts to test all administrative action by the standard of legality. The administrative or executive action that doesn’t meet the standard will be set aside if the aggrieved person brings the appropriate action in the competent court.\(^{184}\)

Rule of law is a formal concept, which demands that the exercise of power should be authorised by law. It also envisages that individuals should be able to plan their lives on the basis of clear, open and general laws. The principles of rule of law also ensure fairness in all proceedings. Though every society expects that criminal should be punished and innocent be spared, the conviction and sentencing of the guilty should not be by adoption of any means. The procedure adopted to declare that a person is guilty, must be fair, just, and reasonable.

Amongst the procedures envisaged for the administration of criminal law, the procedure for investigation is more important. It encompasses arrest, interrogation, search, seizure and filing of final report. There is a possibility of abuse of all these powers. The attempt from all quarters is to reduce/eliminate the possibility of abuse. This is evident in the international field also. For instance

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\(^{183}\) A.I.R 1969 SC 33. In this case land was allotted to the respondents in lieu of the land abandoned by them in Pakistan. On a complaint that they had allotted with excess lands, the managing officer cancelled the allotment of a large portion of the land allotted to them. They preferred appeal before the Asst. Settlement Commissioner, but was rejected. High Court allowed the writ petition. Appeal came to Supreme Court, which was dismissed.

\(^{184}\) *Id.* at p. 36.
Article 9 of the Universal Declaration of Human Rights, 1948, stipulates that: “No one shall be subjected to arbitrary arrest, detention or exile”. The concern to provide a fair deal to an accused is again reflected in Article 11(1), which states that: “Every one charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence”.

Third is to respect the person involved in the criminal process. This means prohibition against measures that involve torture, inhuman and degrading treatment or punishment. International Convention against Torture prohibits torture, and requires parties to take effective measures to prevent it in any territory under its jurisdiction. This prohibition is absolute and nothing can be invoked to justify torture. Torture can neither be justified as a means to protect public safety nor can be justified by orders of a superior officer.\(^{185}\) The thing, which prompts the adoption of such a principle of law, is the presumption of innocence. An accused is presumed to be innocent until guilt is established by applying legal rules.\(^{186}\) The police should realize that by virtue of being a suspect or an accused, one neither cease to be a human being nor his rights are forfeited. They are entitled to enjoy the rights, which are provided to them under the Indian Constitution as well as other existing laws. Hence, the person and his rights are to be respected.


Transparency in the actions of police is another important aspect, which goes in a long way in protection of human rights. Undue emphasis on the importance of the function of police and their crucial role in enforcement of law should not result in ignoring their lawlessness. The machinery of police is the creation of the society for the good of the society. The society expects a more efficient and law abiding police force. They expect transparency in the actions of the police. Transparency in the work will increase the accountability and efficiency.

**In Search of Police**

Police is responsible for the maintenance of peace and order in society. Undoubtedly the police shall be given due importance. Police force is inevitable in the modern society. In any democratic system, police should have independence in their actions. In the accusatorial system, the police is powerful and their authority is original, not delegated and can exercise their own discretion by virtue of their office. But the exercising of this authority, without the supervision from any other quarter, paved the way for abuses and consequently violation of human rights. The authority given to the police is to perform their duty independently and efficiently and without any interference. Every power possessed by the police, everywhere, lent itself to abuse. But the past experience shows that the uncontrollable power made this institution a worse one provoked all peace loving persons to speak against the system. Mulla, J. of the Allahabad High Court once observed:

> There is no single lawless group in the whole of the country whose record of crime comes any where near the record of that organized

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unit which is known as the Indian Police Force.\textsuperscript{188}

This observation made in the first half of the sixties shows the horrible condition of the then police force in India. This is the continuation of the colonial situation. The letter written by the Government of W. Bengal in 1901 to the Home department of the Government of India is a narrative of the pathetic condition of the police system that prevailed in those days. It reads:

In no branch of the administration in Bengal, is improvement so imperatively required as in the police. There is no part of our system of government, is reform, in anything like the same degree so urgently called for. The evil is essentially in the investigating staff. It is dishonest and it is tyrannical.\textsuperscript{189}

The present situation is worse than this. What is needed now is not improvement but complete revamping of the system. Police system continues to be as corrupt and oppressive even in post independent era. We are not an exception in this regard. The police in U.S and U.K are also proved to be ineffective in protecting the rights of citizens. The 1962 Royal Commission on Police in U.K. found:

There was a body of evidence, too substantial to disregard, which in effect accused the police of stooping to the use of undesirable means of obtaining statements and of occasionally giving perjured evidence in a court of law... The police sometimes use guile, and offer inducements, in order to obtain confessions in the belief that irregular

\textsuperscript{188} State of U.P. v. Mohammad Naim, [1964]2 S.C.R 363. Justice Mulla’s observations were quoted in this appeal, which is filed for expunging the observation.

means of securing the conviction of a person whom they believed to be guilty are justifiable in the public interest and that occasionally police officers colour, exaggerate or even fabricate the evidence against an accused person.\textsuperscript{190}

Law enforcers very often disregard the law. The picture in U.S. is in no way different. In U.S. illegalities during investigation are quite common. Wiretapping, false arrest, using of third degree methods and illegal search and seizure indicates the normal divergence between theory and practice.\textsuperscript{191}

Police rationalises their actions and considered himself or herself justifiable in resorting to methods ignoring legal provisions since they are dealing with “criminals”. Courts and the public often share this feeling of police. This results in ignoring police lawlessness as a routine matter and dismissing as one deserving no special attention. But, continuing in such lawlessness in the process of law enforcement will frustrate the very purpose of the constitution of this institution. Moreover, the ‘rule of law’ principle will be sidelined by the law enforcement agency. Every case of uncorrected and unredressed abuse of authority blemishes the society, which establishes the law enforcement machinery. While concerning the increase in crime, we should be concerned to ensure that the rule of law is upheld in the criminal investigation process.\textsuperscript{192}


\textsuperscript{191} Editorial note, “Judicial Control of Illegal Search and Seizure”, 60 Yale.L.J. p.144

\textsuperscript{192} 53 A.L.J. 626 at p.627.
It is a common belief among the police officers that ‘policing’ cannot be done according to the procedural rules, which gives and limits the powers of police. Rules have been introduced and gradually extended limiting police intrusion into citizens’ privacy. This may take place in the form of interrogation, search, seizure or arrest. The principle, ‘presumption of innocence’ not only outlawed the torture of suspects but also extended to any kind of inducement or coercion that undermines the voluntary character of the confessional statement. The burden of proof is resting on the prosecution and the standard of proof is beyond reasonable doubt. All these rules of investigation have been enacted by the legislature and developed by the courts to protect suspects from oppressive treatment by the police.

The police in the United States are required to recite the *Miranda*\(^{193}\) warning when suspects are arrested. Their counterpart in England is obliged to recite the warnings in the Police and Criminal Evidence Act.\(^{194}\) In India, they are obliged to conform to the dictates of the law and the Court rules in *D.K.Basu*\(^{195}\) and *Nandini Sathpathy*\(^{196}\) while arresting a person. So, it is for the police to restrain themselves when arresting, questioning, searching a suspect, from resorting into illegal methods. Instead, they have to implement procedures designed to safeguard rights of the suspects.


\(^{194}\) On the basis of the report of the Royal Commission on Criminal Procedure, (Philips Commission) Police and Criminal Evidence Act was passed in 1984 for regulating police powers and the operation of suspects’ rights.

\(^{195}\) (1997)1 SCC 416.

\(^{196}\) (1978)2 SCC 424.
Conclusion

The Indian executive virtually used the police to attain their objective and they became a tool in the hands of the politicians to oppress the political opponents. This is why even after fifty long years of independence; the Indian police could not win public confidence and enhance their capability in enforcing the law.

A police force cannot be effective in the control and investigation of the crime, if it is made a tool for all police functions of the State. The police force in India is usually entrusted with the work of traffic regulation, VIP security, maintenance of order and other civil duties and most of their time is devoted to other works. These duties to a certain extent need no special skill and hence, it will have an adverse impact on their work performance. Crime control and investigatory function need special skill, intelligence and impartiality. When the police are used for other purposes, they may not get sufficient time to involve in the investigation of a crime. So, it is high time to have a special organization for investigation with professional command and control.

Police are burdened with various duties and functions, which ultimately create a dispassionate attitude in the police to everything. They may consider crime control and investigatory function in par with other duties, and no adequate importance will be given to these functions.

From the discussions, we can conclude that two contrary influences are on the police in the accusatorial system. One is the growing demand for civil rights protection and secondly, the need to be responsive to all sections of the population. A great task, no doubt. So the State shall take measures to reform the police system to achieve desirable goals.