CHAPTER 7
POLICE INVESTIGATION SPECIAL REFERENCE TO
CRIMINAL JUSTICE SYSTEM

7.1 INVESTIGATION

The manner in which police investigations are conducted is of critical importance to the functioning of the Criminal Justice System. Not only serious miscarriage of justice will result if the collection of evidence is vitiated by error or malpractice, but successful prosecution of the guilty depends on a thorough and careful search for truth and collection of evidence which is both admissible and probative. In undertaking this search, it is the duty of the police to investigate fairly and thoroughly and collect all evidence, whether for or against the suspect. Protection of the society being the paramount consideration, the laws, procedures and police practices must be such as to ensure that the guilty are apprehended and punished with utmost dispatch and in the process the innocent are not harassed. The aim of the investigation and, in fact, the entire Criminal Justice System is to search for truth. To achieve this objective, the investigating officers must be properly trained and supervised and necessary scientific and logistical support should be made available to them.

The police perceive themselves psychologically and morally bound to do everything possible to curb crime and investigate the cases successfully to meet the peoples’ expectations. In this process the police often resort to short cut methods and exhibit negative traits of police sub-culture, namely, rudeness, use of third degree methods, defensiveness in face of criticism, lack of innovativeness etc.

Even though investigation is the foundation of the Criminal Justice System it is unfortunate that it is not trusted by the laws and the courts. Sections 161 and 162 of the Code provide that the statements of the witnesses examined during investigation are not admissible and that they can only be used by the defense to contradict the maker of the statement. The confession made by accused is also not admissible in evidence. The statements recorded at the earliest stage normally have greater probative value but can’t be used in evidence. The observations of the courts in several criminal cases show that the Judges are reluctant to accept the testimony of police officers. Such is not the position in other countries. This is a historical legacy of the colonial rulers. It is common knowledge that police often use third degree
methods during investigation. There are also allegations that in some cases they try to suppress truth and put forward falsehood before court for reasons such as corruption or extraneous influences political or otherwise. Unless the basic problem of strengthening the foundation is solved the guilty continue to escape conviction and sometimes even innocent persons may get implicated and punished. It is therefore necessary to address ourselves to the problems and strengthen the investigation agency.

7.2 DIFFICULTIES OF THE INVESTIGATING OFFICERS

The Committee has interacted with a cross-section of the police officers at all levels and in different States. The police officers have mentioned the following difficulties before the Committee in ensuring speedy, effective and fair investigation:

1. Excessive workload due to inadequacy of manpower and long working hours even on holidays and the absence of shift system;
2. Non co-operative attitude of the public at large;
3. Inadequacy of logistical and forensic back up support;
4. Inadequacy of trained investigating personnel;
5. Inadequacy of the state-of-the-art training facilities in investigation, particularly in- service training;
6. Lack of coordination with other sub-system of the Criminal Justice System in crime prevention, control and search for truth;
7. Distrust of the laws and courts,
8. Lack of laws to deal effectively the emerging areas of crime such as organised crime, money laundering etc.
9. Misuse of bail and anticipatory bail provisions;
10. Directing police for other tasks which are not a part of police functions;
11. Interrupting investigation work by being withdrawn for law and order duties in the midst of investigation.
12. Political and executive interference;
13. Existing preventive laws being totally ineffective in curbing criminal tendencies of hardened criminals and recidivists.

7.3 QUALITY OF INVESTIGATION

The Committee is required to address itself primarily to the role of the Police in investigating crimes. The word ‘investigation’ has been defined in section 2(b) of
the Criminal Procedure Code as: All the proceedings under the Code for the collection of evidence by a police officer or by any other person (other than a Magistrate) who is authorized by the Magistrate in this behalf.

Investigation is basically an art of unearthing the truth for the purpose of successful detection and prosecution. In the words of the Supreme Court (in H.N. Rishbud v/s State of Delhi: AIR 1955 SC 196: 1955 SCJ 283,) the investigation generally consists of the following steps:

1. Proceeding to the spot;
2. Ascertainment of the facts and circumstances of the case;
3. Discovery and arrest of the suspected offender;
4. Collection of evidence relating to the commission of the offence which may consist of the examination of:
   a) various persons (including accused) and the reduction of statements into writing, if the officer thinks fit;
   b) the search of places and seizure of things considered necessary for the investigation and to be produced at the trial; and
5. Formation of the opinion as to whether on the materials collected, there is a case to place the accused before a Magistrate for trial and, if so, taking the necessary steps for the same for the filing of a charge sheet u/s 173 Cr.P.C.

The standard of police investigation in India remains poor and there is considerable room for improvement. The Bihar Police Commission (1961) noted with dismay that “during the course of tours and examination of witnesses, no complaint has been so universally made before the Commission as that regarding the poor quality of police investigation”. Besides inefficiency, the members of public complained of rudeness, intimidation, suppression of evidence, concoction of evidence and malicious padding of cases. Almost in the same vein, the Punjab Police Commission (1961-62) bemoaned poor quality of police investigation. A frequent complaint relating to the method of investigation received by the Punjab Police Commission was that all cases were not investigated by one officer but several officers in succession.

The West Bengal Police Commission (1960-61) also referred to noticeable deterioration in the standard of investigation. The Second West Bengal Police
Commission (1988) reaffirmed the downward trend and observed that during the intervening years the standard of investigation had further gone down. Many cases did remain undetected. It also observed that conviction figures had also gone down.

7.4 INADEQUACY OF STAFF

In the first place, there is inadequacy of the investigating staff. The police officers are hard pressed for time with multifarious commitments and, thus, not able to devote adequate time for investigational work. A sample survey done at the instance of the National Police Commission (Fourth Report of the National Police Commission-page 3) in six States of the country revealed that on an average, the investigating officer is able to devote only 27% of his time on investigational work, while the rest of the time is taken by other duties connected with the maintenance of law and order, VIP bandobust, petition enquiries, court attendance, collection of intelligence and other administrative work. The Committee on Internal Security constituted by the group of Ministers (GOI) in the wake of Kargil conflict in 2000 was informed by the DGP, Uttar Pradesh, of the startling fact that the police could devote only 13% of its time on investigations. Similarly, a random survey done at the instance of Second West Bengal Police Commission revealed that a Sub-Inspector of an urban police station in West Bengal, on an average, spent 20-25% of his time on investigational work; a Sub- Inspector in Calcutta City spent about 41% his time on it and a Sub Inspector in rural areas spent 16 to 18% of time in investigative work due to long distances involved. Inadequate number of I.Os. coupled with low percentage of their time being devoted to investigational work, resulting in perfunctory and delayed investigations, paved way for the acquittal of the accused.

An investigating officer on an average, investigates 45 cases in a year. There is, however, a wide variation amongst States, with the workload of IO ranging from a low of 12.7 cases in Orissa to a high of 145.3 cases in Andhra Pradesh. The National Police Commission had suggested a workload of 60 cases per IO. Given the heavy commitment of police officers in law and order, VIP security and other ‘Bandobast’ duties, there is need for fixing a more realistic norm. It may be apt to add that the prevailing norms regarding workload of 10 in the CBI are two cases per year in the Central Units and 4 cases per year in the Territorial Units. The Committee has interacted with police officers at the highest level as well as at the executive level. It has also discussed relevant issues with SHOs and there immediate supervisory officers and seen their work regarding investigation in some States. On the basis of
observations and interaction, the Committee is of the opinion that for improving quality of investigation, the workload of an IO (or a team of IOs) should not exceed 10 cases per year. This norm is suggested for investigation of serious crimes.

7.5 SEPARATION OF INVESTIGATION WING FROM LAW & ORDER WING

As of now, the police have a combined cadre of Officers and men who perform both investigational and law and order duties, resulting in lack of perseverance and specialisation in investigations, especially of the serious cases. It needs to be emphasised that the duties of the police as prescribed in section 23 of the Indian Police Act, 1861, have become totally out-dated. Much water has flown down the Ganges since then. Terrorism, particularly State sponsored terrorism from across the borders, has drastically changed the ambit and role of police functions and duties in certain parts of the country. Besides, organised crime having inter-State and trans-National dimensions has emerged as a serious challenge to the State authority. This has compelled the Police Departments to divert a large chunk of their resource to these areas, leaving as much less for the routine crime work.

The need for expeditious and effective investigation of offences as contributing to the achievement of the goal of speedy trial cannot be gain said. The investigation of crime is a highly specialised task requiring a lot of patience, expertise, training and clarity about the legal position of the specific offences and subject matter of investigation. It is basically an art of unearthing hidden facts with the purpose of linking up of different pieces of evidence for successful prosecution. The Committee is of the view that investigation requires specialisation and professionalism of a type not yet fully achieved by the police agencies. It is basically an art of unearthing hidden facts with the purpose of linking up of different pieces of evidence for successful prosecution. The Committee is of the view that investigation requires specialisation and professionalism of a type not yet fully achieved by the police agencies.

The National Police Commission by a sample survey in six States in different parts of the country found that an average IO was able to devote only 30% of his time to investigational work while the rest of the time was taken in other duties. The National Police Commission stopped short of categorically recommending separation of the investigation wing from the law and order wing but recommended restructuring of the police hierarchy for increasing the cadre of IOs.
The Law Commission of India discussed this issue threadbare in its 154th report and categorically recommended separating the investigating agency from the law and order police. The Law Commission adduced the following grounds in support of its recommendations:

1. It will bring the investigating agencies under the protection of judiciary and greatly reduce the possibility of political or extraneous influences;
2. Efficient investigation of cases will reduce the possibility of unjustified and unwarranted prosecutions;
3. It will result in speedier investigation which would entail speedier disposal of cases;
4. Separation will increase the expertise of the investigating officers;
5. The investigating police would be plain clothes men and they would be able to develop good rapport with the public;
6. Not having been involved in law and order duties entailing the use of force, they would not provoke public anger and hatred which stand in the way of public police cooperation in tracking down crime and criminals and getting information, assistance and intelligence from the public.

The Committee on Police Reforms constituted by the Government of India under the chairmanship of Sri K. Padmanabhaiah also recommended separation of investigation from the law and order wing. We feel that the long standing arguments whether crime and law and order should be separated should be ended once and for all. Most police officers are agreed that they should be separated but feel that the separation may not be practical. We are of the view that such a separation should be made in urban areas in all States as a beginning. Separation of crime from law and order will lead to greater professionalism and specialisation and will definitely improve the quality of investigation. In UP, this separation has already been put into effect in municipal and bigger towns from April, 2000. Maharashtra is also in the process of doing it. The rest of India must follow suit.

It has been brought to our notice that separation in the two wings has already 94 been effected in certain large cities in the country. In Chennai Police Commissioner’s office, there are separate police stations for Law and Order and crime. The Crime Police Stations in Chennai register and investigate cases relating to property offences. The rest of the offences are handled by the Law & Order PSs.
There are separate Assistant Commissioner of Police to supervise the work of respective police stations. The work of both types of PSs in coordinated by the territorial Dy. Commissioner of Police. In other urban areas, in the State, the above system prevails. The rural PSs, however, work in a traditional system.

The Tamil Nadu pattern is being followed in Andhra Pradesh also. In cities/big towns, namely, Hyderabad, Vishakhapatnam, Vijaywada, Rajhmundry, Guntur and Eluru etc., there are separate PSs for law an order and crime, though both types of PSs function from the same building. While investigation of offences relating to property are taken up by the Crime PSs, investigation of other offences is handled by the law and orders PSs. Unlike, Chennai, the work of both types of PSs is supervised by the territorial supervisory officers i.e. SDPOs, DCPs etc. Hyderabad City Police Commissionerate also has a Central Crime Police Station which takes up investigation of important crimes. In the rural areas, the traditional system prevails.

We have given a serious thought to the matter and are of the view that all serious crimes, say sessions triable cases, and certain other classes of cases are placed in the domain for the Crime Police and the remaining crimes including crimes under most of the Special and Local laws are handled by the Law and Order Police. The Committee strongly feels that:

1. The staff in all stations in urban areas should be divided as Crime Police and Law and Order Police. The strength will depend upon the crime & other problems in the PS area.

2. In addition to the officer in-charge of the police station, the officer in-charge of the Crime Police should also have the powers of the officer in-charge of the police station.

3. The investigating officers in the Crime Police should be at the least of the rank of ASI and must be graduates, preferably with a law degree, with 5 years experience of police work.

4. The category of cases to be investigated by each of the two wings shall be notified by the State DGP.

5. The Law & Order police will report to the Circle officers/SDPO. Detective constables should be selected, trained and authorised to investigate minor offences. This will be a good training ground for them when they ultimately move to the crime police.
6. A post of additional SP (Crimes) shall be created in each district. He shall have crime teams functioning directly under him. He will carry out investigations into grave crimes and those having inter district or inter state ramifications. He shall also supervise the functioning of the Crime Police in the district.

7. There shall be another Additional SP (Crime) in the district who will be responsible for
   a) collection and dissemination of criminal intelligence;
   b) maintenance and analysis of crime data;
   c) investigation of important cases;
   d) help the Crime Police by providing logistic support in the form of Forensic and other specialists and equipment. Investigations could also be entrusted to him by the District SP.

8. Each state shall have an IG in the State Crime Branch exclusively to supervise the functioning of the Crime Police. He should have specialised squads working under his command to take up cases having inter District & and inter-state ramifications. These could be
   a) cyber crime squad;
   b) anti terrorist squad;
   c) organized crime squad;
   d) homicide squad;
   e) economic offences squad;
   f) kidnapping squad
   g) automobile theft squad;
   h) burglary squad etc.

   He will also be responsible for
   a) Collection and dissemination of criminal intelligence
   b) maintenance and analysis of crime data
   c) Co-ordination with other agencies concerned with investigation of cases.

7.6 INVESTIGATION BY A TEAM

   It has come to the notice of the Committee that investigations of even grave and sensational crimes having inter-State and even trans- national ramifications are being conducted by a single IO. The Committee feels that by virtue of the nature of such cases, application of a single mind is not enough to respond to the modern needs
of the art and science of investigation — may it be inspection of site, picking of the clues and developing them and handling of other multidimensional related matters.

The investigation of all such crimes needs to be conducted by a team of officers, the size and level of the team depending on the dimensions of the case, with the senior most officer working as the leader of the team. This would ensure continuity between investigative efforts as also proper appraisal of evidence and application of law thereto. It will also avert or minimise the scope of misuse of discrimination by the police and ensure greater transparency in the investigations. Integrity of the team, needless to mention would obviously be higher.

7.7 LEVEL OF THE INVESTIGATING OFFICER

It may be apt to point out that the rank of the IO investigating a case also has a bearing on the quality of investigation. The minimum rank of an SHO in the country is SI. However, some of the important police stations are headed by the officers of the rank of Inspector. It has been observed that investigations are mostly handled by lower level officers, namely, HC and ASI etc.. The senior officers of the police stations, particularly the SHOs generally do not conduct any investigations themselves. This results in deterioration of quality of investigations.

While no hard and fast rule can be laid down as to the rank of the IO for a particular type of case, the Committee, however, recommends that, as far as possible, all Sessions triable cases registered in the police stations should be investigated by the senior most police officers posted there, be they SIs or Inspectors. This has obvious advantages as they will be able to do a better job because of their superior intelligence, acumen and experience and control over the resources.

7.8 INSULARITY AND INTEGRITY OF THE INVESTIGATING AGENCY

Another important aspect impacting on the quality of investigation is the insularity of the investigating officers and the supervisory ranks. For fair and impartial investigation, it is imperative that the investigating machinery is immune from political and other extra influences and acts in consonance with the law of the land and the Constitution. It has, however, been observed that the people in authority think nothing of wielding influence to scuttle and, even thwart, criminal investigations or to bend them to suit their political or personal conveniences. What is worse is that in certain States, the ‘Desires System’ in the posting of District and Thana level police officers is ruling the roost. The things have come to such a pass that no transfer can be
affected without the ‘desire’ of the local MLA and MPs and certainly not always for altruistic reasons or in public interest. This practice, wherever it prevails, is not desirable in any wing of the Government and certainly not in the Police Department and needs to be discontinued.

It is strongly felt that the investigating officers should have the requisite independence responsible to act according to law and the constitution. Mere change of mind set would not suffice unless appropriate legal backing is provided in this regard.

Integrity of the I.O has a vital bearing on the integrity of the investigation conducted by him. The misconduct of the IOs has often been overlooked due to misplaced and misconceived service loyalties. The Committee feels that the Dist. Supdts. Of Police, Range Dy.I.Gs and the DGPs must ensure that the IOs function with utmost integrity and bad elements amongst them are identified and excluded from investigative process. This would necessitate strengthening of the Police Vigilance set-ups at the State level and constitution of a similar mechanism at the Range/District. level.

7.9 PLACEMENT POLICY OF INVESTIGATING STAFF

Another related aspect is frequent transfer of cases from one IO to another and from District. Police to the Range Office or the State Crime Branch due to extraneous considerations. This practice not only demoralizes the initial investigating officer or agency but also cools the trail of investigation and renders immunity to the criminals, at least temporarily, from penal consequences. The Committee is of the opinion that:

a) The National Security Commission at the national level and the State Security
Commissions at the State level should be constituted, as recommended by the National Police Commission. Constitution of the aforesaid Commissions would give an element of insularity to the police forces in the country and invoke faith and trust of the people in its functioning.

b) Police Establishment Boards consisting of DGP and 3 to 4 other senior police officers should be set up at the Police Headquarters in each State. Posting, transfer and promotions etc. of District. level officers should be made on the recommendation of such Boards, with the
mproviso that the Government may differ with the recommendations of such Boards for reasons to be recorded in writing.

c) No case should ordinarily be transferred from one 10 to another or from District. Police to the Range office or the State Crime Branch by the competent authority unless there are very compelling and cogent reasons for doing so and such reasons should be recorded in writing by the concerned authority.

d) The ‘superintendence’ of the Police in the State vests in the State Govt. As there are allegations, not always unfounded, of misuse of this power for extraneous considerations, it would be desirable to delimit the ambit and scope thereof by adding an explanation underneath section 4 of the Indian Police Act, as recommended by the NPC, to the following effect:

e) Explanation: The power of superintendence shall be limited to the purpose of ensuring that the police performance is in strict accordance with law”.

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Understandably format of a new Police Act is already under consideration of the Govt. of India. We feel that this exercise should be completed without loss of any time.

7.10 SUPERVISION

Another important reason for the decline in the quality of investigation is lack of effective and timely supervision by the senior officers. There is a hierarchy of officers above the SHO who are empowered to monitor and guide the investigations in terms of section 36 Cr.P.C., namely, Deputy SP, Additional SP, Superintendent of Police and even the Range DIG. But most of them do not devote adequate time and energy to supervisory work. This has been affirmed in a study conducted by the BPRD in respect of murder cases of Faridabad, Gurgaon, & Union Territory, Delhi, which resulted in acquittals during the period 1984-86.
Further, it has to be pointed out in view of our fractured polity and social dissonances, it has now become a regular feature to embellish the FIRs and statements, giving incorrect facts and circumstances, with the objective of roping in innocent persons for political reasons or to settle personal scores. This happens even in grave offences like murder and rape etc. Witnesses and victims even make false statements before the Magistrates u/s 164 Cr.P.C. It is, therefore, the duty of the supervisory officers to properly guide the investigations right from the beginning so as to ensure that innocent persons are exculpated and the real guilty ones brought to justice. It is easier said than done. It needs hard work, professional expertise, and to top it all, moral courage to call a spade a spade, unmindful of the parties and pressure groups involved. The I.O alone, lowly in rank, cannot do it; he needs professional and moral support of his seniors, which, unfortunately, is missing either due to professional inaptitude or political compulsions.

The Committee feels that the quality of investigations would not improve unless the supervisory ranks in the police hierarchy i.e. Circle Officers/ District Supdt. of Police/Range Dy.IGP, pay adequate attention to the thorough and timely supervision over the progress of individual investigations. The National Police Commission in para 27.35 of its 4 report observed that effective supervision of an investigation would call for:

1. Test visit to the scene of crime;
2. A cross check with the complainant and a few important witnesses to ensure that their version has been correctly brought on police record and that whatever clues they had in view have been pursued by the police;
3. Periodic discussion with the investigating officers to ensure continuity of his attention to the case; and
4. Identification of similar features noticed in other cases reported elsewhere, and coordinated direction of investigation of all such cases.

Needless to say, supervision ensures proper direction, coordination and control and this helps efficiency. Effective supervision by the District Superintended of Police and Circle Officers also reduces the utilisation of opportunities and misuse of coercive powers vested in the officers from the SHO down to the constabulary, to the minimum. If the supervision of the District. SP and the CO is lax and ineffective, it is bound to breed inefficiency and corruption in the force. The efficiency and honesty of the force depends largely in the manner in which superior officers discharge their
responsibilities through example and precept. Thus, close and constant supervision by
senior officers over the work of subordinate officers is absolutely essential. Close
supervision of individual investigations is also essential to check the canker of
corruption.

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which superior officers discharge their responsibilities through example and precept. Thus, close and constant supervision by senior officers over the work of subordinate
officers is absolutely essential. Close supervision of individual investigations is also
essential to check the canker of corruption.

Some of the areas in which Supervisory Officers can play a vital role are enumerated below:

1. Crimes are freely registered.
2. Crimes are registered under the appropriate sections without minimizing the
certainty for the sake of statistics;
3. There is no minimization or lessening of the value of property in order to
reduce supposed police responsibility;
4. Complaint, if made orally, is recorded at once carefully and accurately in plain
and simple language by the senior most officer present in the police station or
by someone to his dictation without omitting any of the important and relevant
details.
5. There is no interpolation while writing complaints and if any fact is omitted, it
is written afresh at the bottom, and if anything is scored out, it is done neatly
with initials and date and in such a manner that it could be read;
6. If investigation is refused u/s 157(1)(b), it is done on proper grounds;
7. The investigation in all cases is prompt, thorough and sustained;
8. Final reports are submitted without delay and charge-sheets are accompanied
by complete evidence that is to be led at the trial;
9. Cases are not routinely closed as false unless there are reasons to do so and in
case it is decided to close the case, steps are taken to prosecute the accused u/s
182 or 211 IPC;
10. After the case has gone to the Court, its progress is watched and it is ensured
that the witnesses, including the investigating police officers, attend the Court
on the due dates and depose properly and that the Public Prosecutors perform
their duties competently;
11. They should coordinate with the neighboring police stations or neighboring Districts.
    and even States in investigation of Inter District or Inter-State crimes;
12. Investigation is kept on the right track and no extraneous influences and political and otherwise are allowed to influence it;
13. Investigations are conducted in an honest and transparent manner;
14. Scientific aids to investigation are optimally utilized in investigations and that FSL experts are taken to the spot in specified crimes for preservation and collection of evidence.
15. Articles/exhibits seized in investigation are sent to the FSL for expert opinion and that such opinion is promptly obtained and cited as evidence along with the charge sheet.
16. The Medico Legal Reports are obtained from the experts quickly so as to reach a fair and just conclusion in a case;
17. Case diaries are properly maintained as per law and entries in the General Diary;
18. The power of arrest is not abused or misused;
19. The human rights of the accused are protected
20. The witnesses coming to the police station are not made to wait for long hours and they are disposed of as promptly as possible;
21. Third degree methods are avoided in the investigation;
22. The inbuilt system of timely submission of case diaries etc. to supervisory officers is reinforced and investigations completed expeditiously.

The mandate of the supervisory officers enumerated above is only illustrative and not exhaustive. In cases of grave crimes, supervisory officers have to coordinate with other Districts and other States police forces and may when necessary undertake tours to places outside their jurisdictions. Given the present crime scenario, the supervisory officers must, lend a helping hand to because of their superior caliber, better mobility and superior contacts.

The Circle Officers should be left alone to concentrate on their primary job of supervision, and investigations generally, should be conducted by the Inspectors, Sub Inspectors and AS! etc. posted in the police stations. Nonetheless, both the COs and the IOs need to be made responsible and accountable for ensuring correctness of investigation.
7.11 INADEQUATE TRAINING

Crime investigations is a specialized work where the I.Os can perform their duties properly only when they are properly trained and possess necessary skills and expertise. There is, thus, great need to develop and sharpen investigative skills of the officers through regular training programmes at the induction stage and periodical in-service training courses. These are two main problems in this regard: lack of training institutions, let alone state-of-the-art institutions; and more importantly, lack of willing trainers. Presently, there are three Central Detective Training Schools at Calcutta, Chandigarh and Hyderabad. Most of the States also do have their own training institutions but the present training facilities appear to be unable to cater to the total requirements of training. Further, the existing training institutions impart the training in old disciplines. As the complexity and nature of crime is changing fast, training facilities in emerging disciplines such as forensic accounting and information technology etc need to be developed and imparted to the I.Os.

The Committee is of the view that:

1. Adequate number of Training Institutions should be set up by the State Governments as also by the Central Government for initial training of various ranks of the police personnel as also for inservice training. These instructions should focus on:
   a) Protection of scene of crime;
   b) Collection of physical evidence there from with the help of experts, including forensic experts;
   c) Inculcating the art of interrogation of suspects and witness;
   d) Developing the art of collection, collation and dissemination of criminal Intelligence;
   e) Developing and handling informers etc.

2. The trainers should be handpicked by a Committee constituted by the DGP and officers having professional skills and aptitude alone should be inducted in the Training Institutions. They need to be given adequate monetary incentive and a fixed tenure, say of three years. The old system of 30% of the basic pay to the trainers may be revived.

3. Facilities should be developed for imparting training in modern disciplines such as Forensic Accounting, Information Technology, Cyber Crime, Economic and Organised Crimes etc.
7.12 COMPREHENSIVE USE OF FORENSIC SCIENCE FROM THE INCEPTION

It can hardly be gainsaid that the application of forensic science to crime investigation must commence from the stage of the very first visit by the IO to the crime scene so that all relevant physical clues, including trace evidence, which would eventually afford forensic science examination, are appropriately identified and collected. This can best be done if the IO is accompanied to the crime scene by an appropriately trained scientific hand. The standard practice in most of the advanced countries is to provide such scientific hands, variously designated as ‘Field Criminalists’, ‘Scene of Crime Officers’ (SOCO), Police Scientists etc., in the permanent strength of each police station. In some cases, these personnel are drawn from scientific cadre, while in some others, they are policemen themselves, specially selected for their flair for scientific work and their academic background of science subjects. These personnel are then provided indepth training in crime scene management and in the identification of different types of scientific clues to be looked for in different types of crimes.

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The present level of application of forensic science in crime investigation is some-what low in the country, with only 5-6% of the registered crime cases being referred to the FSLs and Finger Print Bureau put together. There is urgent need to bring about quantum improvement in the situation, more so when the conviction rate is consistently falling over the years in the country and the forensic evidence, being clinching in nature, can reverse the trend to some extent.

There are only 23 Central Forensic Science Laboratories /Forensic Science Laboratories and about 17 Regional Laboratories in the country. On the other hand, USA has about 320 Forensic Science Laboratories (including private sector
Laboratories). It would, thus, appear that the number of Forensic Science Laboratories in the country is grossly inadequate and certainly not commensurate with our requirements. The Committee strongly feels that Forensic Science facilities in India need heavy augmentation.

It may be added that a National Seminar on “Forensic Science; Its Use and Application in Investigation and Prosecution; was organised by this Committee and the Bureau of Police Research and Development at Hyderabad on 27 July 2002. A number of Judges (including High Court Judges), Senior Police Officers and Directors of most of the Central and State Forensic Science Laboratories of the country participated in the seminar and made valuable suggestions for improving the Forensic Science scenario in the country. The members of the Core Group constituted by this Committee formulated the recommendations in this matter and submitted to our Committee. The Committee is of the opinion that the following recommendations of the Core Group should be implemented:

1. Police Manuals and Standing Orders of different States/Union Territories need to be amended to make the use of Forensic Science mandatory, as far as practicable, in investigation of all grave and important crimes such as those involving violence against the persons, sexual offences, dacoity, robbery, burglary, terrorists crimes, arson, narcotics, poisons, crimes involving firearms, fraud and forgery and computer crimes.

2. Police Manuals and Standing Orders should mandate the supervisory officers to carefully monitor and scrutinize, if or not the IOs have exploited the possibility of the use of forensic science in the investigation of each crime right from the threshold of investigation.

3. The State Governments should immediately create appropriate forensic science facilities in each District. This should include one or more Mobile Forensic Science Units, depending on the size of the District, the incidence of crime, terrain and communication conditions in each District. Each unit should have a Forensic Expert, a Finger Print Expert, a Photographer and a Videographer. The job of these mobile units would be not only to identify, collect and preserve the evidence but also to tender necessary opinion, on the spot, to the IO, if scientifically feasible.

4. Each police station should be provided with a set of Scientific Investigation Kits for identification and lifting of scientific clues from the crime scene.
5. Arrangement should also be made to create proper facilities for packaging, storage and preservation of scientific clue material collected from the crime scene or suspects, to ensure their protection against contamination, degradation or damage at the police station or in the District Headquarters. Standard material for packaging and preserving scientific evidence should be supplied for this purpose from time to time by the State FSLs.

6. Appropriate number of Regional FSLs at the headquarters of each Police Range should be set up by the State Govt.

7. The Central and State FSLs are facing acute shortage of men power. According to a study conducted by NICFS, the vacancies in the FSLs range from 17 to 71% of the sanctioned posts of scientists. The Governments concerned should take appropriate steps to fill up these vacancies. Further, the sanctioned strength itself is pegged at far below the yardsticks formulated by BPR&D. The States must, therefore, revise the sanctioned strength of their respective FSLs in the light of the BPR&D guidelines.

8. There are virtually no facilities for training of Forensic Scientists in the country and they mostly learn on the job. It must be noted that a trained scientist is far more productive than several untrained or semitrained hands. We, therefore, recommend that NICFS should take upon its shoulders the responsibility of imparting professional training to the scientific personnel. We also recommend that NICFS must expand and strengthen its core facilities in emerging areas such as forensic DNA, Forensic Explosives and Computer Forensics etc.

9. The Finger Print Bureau in the country are generally undermanned and are storing and analyzing data manually. The analysis and retrieval, therefore, takes a long time and the storage capacity is also limited. We, therefore, recommend that modern electronic gazettes must be used in collection, storage, analysis and retrieval of finger print related data.

10. Most of the FSLs suffer from financial crunch. The budgetary position of the FSLs should be reviewed and sufficient funds should be made available to them.

11. A mandatory time limit should be prescribed for submission of reports to the police/Courts by the FSLs.
12. A national body on the pattern of Indian Council of Medical Research should be constituted in the country to prescribe testing norms for the FSLs and ethical standards for the forensic scientists.

13. Forensic Science, unfortunately, has not assumed the status of an academic discipline in India. We recommend that the UGC should consider creating the departments of Forensic Science in at least all the major universities. Later, Forensic Sciences could be introduced as subjects at the school level. Funds should also be ear-marked and allotted for research in these departments.

14. A polygraph machine for lie detector test should be provided in each district. The regular use will obviate the need for extra legal methods of interrogation.

7.13 MEDICO LEGAL SERVICES

The Medico Legal Services play an equally important role in the investigation of crime and prosecution thereof. The state of Medico Legal Services in the country is far from satisfactory. One of the main contributory factors for this is that the entire apparatus of the Medico Legal Services is administratively controlled by the Department of Health under the State Governments who are not concerned with the police or with the Criminal Justice System. Even, the Forensic Medicine Departments attached to the Medical Colleges are in a poor and neglected state. The Doctors doing Medico Legal work i.e. conducting postmortems of dead bodies and preparing Injury Reports etc. are also a dispirited lot and in a poor state of morale. They feel forsaken by their parent departments and not owned up by the Police departments for which they seemingly work. Keeping in view the prevailing scenario, the Committee recommends that:

1. On the pattern of Tamilnadu, a Medico Legal Advisory Committee should be set up in each State under the Senior Most Medico Legal Functionary/Professor of Forensic Medicine/Police Surgeon, with at-least two Board members, including one from the State FSL. One of the main tasks of this Committee would be to resolve the differences of opinion between the Medico Legal Professionals and the Forensic Experts.

2. The condition of mortuaries is dismal all over the country. Appropriate mortuary rooms with adequate infrastructure and equipment should be made available to each Medical College.

3. At places where there are no Medical Colleges, Medico Legal work is being done by the Doctors who are not adequately trained in such work.
Resultantly, they often turn out sub-standard reports which create confusion for the IOs as well as for the Courts. The State Governments must prepare a panel of qualified Doctors, adequately trained in Medico Legal work, and post them in the Districts and other Mufassil Hospitals for attending to such work.

4. The State Government must prescribe time-frame for submission of Medico Legal reports. We recommend the following time frame:
   a) Injury Report : 6 hours;
   b) Postmortem Report : 24 hours

5. There has been a tendency on the part of some Medico Legal experts to reserve their opinion as to the cause of death etc., pending receipt of the reports of FSLs on toxicological examination even in cases where it is possible for them to give a definite opinion about the cause of death. This tendency should be eschewed.

7.14 DELAYED SUBMISSION OF EXPERT REPORTS

The report of FSL experts and Medical Jurists play a seminal role both at the investigation stage and at the trial stage in the determination of facts. The police and the court complain that these reports are not being submitted in time by the experts concerned. The delay hampers the investigations and delays trials. Certain State Governments have laid down the time frame for submission of reports by the experts but these norms are not being adhered to partly due to inadvertence and partly due to over-loading of these institutions.

7.15 REGISTRATION OF CASES

According to the section 154 of the Code of Criminal Procedure, the officer incharge of a police station is mandated to register every information oral or written relating to the commission of a cognizable offence. Non registration of cases is a serious complaint against the police. The National Police Commission in its 4th report lamented that the police “evade registering cases for taking up investigation where specific complaints are lodged at the police stations”. It referred to a study conducted by the Indian Institute of Public Opinion, New Delhi, regarding “Image of the Police in India” which observed that over 50% of the respondents mention non registration of complaints as a common practice in police stations.
The Committee recommends that all complaints should be registered promptly, failing which appropriate action should be taken. This would necessitate change in the mind-set of the political executive and that of senior officers.

There is yet another aspect that needs consideration. Section 154 Cr.P.C. provides that it is the officer in-charge who will register a case relating to commission of a cognizable offence. The SHO are often busy in investigational and law and order duties and are also on tours in connection with court appearances etc. In their absence from the police stations, the informants are made to wait till their return. It causes avoidable harassment to the informant and also results in the disappearance of evidence. We, therefore, recommend that the State Governments/DGPs must issue firm instructions to the field formations to the effect that a case shall be registered by the SHO of the police station if he is present at the police station and in his absence by the senior most police officer available at the station, irrespective of his rank.

There are two more aspects relating to registration. The first is minimization of offences by the police by way of not invoking appropriate sections of law. We disapprove of this tendency. Appropriate sections of law should be invoked in each case unmindful of the gravity of offences involved. The second issue is relating to the registration of written complaints. There is an increasing tendency amongst the police station officers to advise the informants, who come to give oral complaints, to bring written complaints. This is wrong. Registration is delayed resulting in valuable loss of time in launching the investigation and apprehension of criminals. Besides, the complainant gets an opportunity to consult his friends, relatives and, sometimes, even lawyers and often tends to exaggerate the crime and implicate innocent persons. This eventually has adverse effect at the trial. The information should be reduced in writing by the SHO, if given orally, without any loss of time so that the first version of the alleged crime comes on record.

7.16 INVESTIGATION OF COGNIZABLE AND NON-COGNIZABLE OFFENCES

Section 2(c) of the Code defines ‘Cognizable Offence’ and ‘Cognizable case’ as follows: “Cognizable Offence” means an offence means an offence for which, and “Cognizable case” means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant”. 

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It says that those offences which are specified in the schedule to the Code in which police officer can arrest without warrant are cognizable offences. But when we look at the Schedule we find that there is no enumeration of offences where police officer can arrest without warrant. This is a patent anomaly. However the Schedule specifies the offences which are cognizable and which are not. It also gives information about punishment for each offence, whether the offence is bailable or non-bailable, and the name of the court where the offence can be tried.

The question for examination is as to whether the distinction between cognizable and non-cognizable offences is conducive to satisfactory dispensation of criminal justice.

‘Offence’ as defined in Section 2 (n) means:- Any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act, 1871 (1 of 1871).

Whenever any offence is committed it results in the invasion of the rights of the citizen and the victim is entitled to complain about such invasion. In this connection the Code makes a distinction between cognizable and non-cognizable offences. Cognizable offences are by and large serious in nature.

Section 154 provides that any information received in the police station in respect of a cognizable offence shall be reduced into writing, got signed by the informant and entered in the concerned register. Section 156(1) requires the concerned officer to investigate the facts and circumstances of such a case without any order from the Magistrate in this behalf. If Magistrate receives information about commission of a cognizable offence he can order an investigation. In such cases citizen is spared the trouble and expense of investigating and prosecuting the case.

However, the position is different so far as non-cognizable offences are concerned. They are regulated by Section 155 of the Code. When a citizen goes to the concerned police station complaining about commission of a noncognizable offence the police officer is required to enter the substance of the information in the relevant register and refer the informant to the Magistrate. Subsection 2 of Section 155 says that the police officer shall not investigate such a case without the order of the Magistrate. In such cases the citizen is forced to approach the Magistrate to file his complaint. The Magistrate will examine the complainant and the witnesses present and
decide whether there is sufficient ground for proceeding further. The burden of adducing evidence during trial is on the accused.

The offences that are non-cognizable include Public servants disobeying law to cause injury to any person; bribery during election; giving or fabricating false evidence; escape from confinement; offences relating to weights and measures; some offence affecting public health, safety, convenience and morals; causing miscarriage; causing heart; buying or disposing of any person as a slave; rape of wife under 12 years; dishonest misappropriation; cheating; mischief; forgery; making or using documents resembling currency notes or bank notes; offences relating to marriage; criminal intimidation; causing annoyance in a state of intoxication in a public place etc. These are some of the offences which seriously affect the citizens. Some of them carry imprisonment from a few months to imprisonment for life. Offence under Section 194 I.P.C carries death sentence. Quantum of punishment prescribed indicates the seriousness of the crime and its adverse affect on society. But even such serious offences adverted above are non-cognizable. There is no good reason why such offences should not be investigated without the order of the Magistrate.

The object of the penal law is to protect life, liberty and property of the citizen. All citizens who are victims of crimes punishable under the Indian Penal Code are entitled to be treated fairly, reasonably and equally. By categorizing large number of offences as non-cognizable, unreasonable burden has been placed on the citizens by requiring them to investigate the case, collect evidence and produce them before the Magistrate. The citizen would be also obliged to engage a lawyer to conduct his case as he may not be familiar with court procedures. Sometimes witnesses will not be willing to co-operate with the complainant. The complainant would be required to spend a lot of time to investigate. This is not easy for a private citizen who has no training in investigation. Thus a heavy burden, financial and otherwise is placed on the victims of non-cognizable offences.

A common citizen is not aware of this artificial distinction between cognizable and non-cognizable offences. There is a general feeling that if anyone is a victim of an offence the place he has to go for relief is the police station. It is very unreasonable and awkward if the police were to tell him that it is a non-cognizable offence and therefore he should approach the Magistrate as he cannot entertain such a complaint.
It has come to the notice of the Committee that even in cognizable cases quite often the Police Officers do not entertain the complaint and send the complainant away saying that the offence is not cognizable. Sometimes the police twist facts to bring the case within the cognizable category even though it is non-cognizable, due to political or other pressures or corruption. This menace can be stopped by making it obligatory on the police officer to register never complaint received by him. Breach of this duty should become an offence punishable in law to prevent misuse of the power by the police officer.

The present classification of offences as cognizable and non-cognizable on the basis of the power to arrest with or without order of the Magistrate is not based on sound rational criteria. Whether in respect of any offence arrest should be made with or without the order of the Magistrate must be determined by relevant criteria, such as the need to take the accused immediately under custody or to prevent him from tampering with evidence, or from absconding or the seriousness of the crime, and its impact on the society and victim etc.

Because of the burden placed on investigating and producing evidence large number of victims of non-cognizable offences do not file complaints. They stand deprived and discriminated. This is one of the reasons for the citizens’ losing faith and confidence in the Criminal Justice System. As justice is the right of every citizen it is not fair to deny access to justice to a large section of citizens by classifying certain offences as non-cognizable. Law should provide free and equal access to all victims of crimes. This can be done by removing the distinction between cognizable and non-cognizable offences for the purpose of investigation of cases by the Police Officer.

Considerable time of court is now being spent in dealing with registration of complaints regarding non-cognizable offences. The time saved can be utilized for dealing with other judicial work.

This may contribute to more aggrieved persons filing complaints thereby increasing the work-load of the police. As the state has the primary duty to maintain law and order, this cannot be a good reason against the proposed reform.

Another apprehension is that this may encourage false and frivolous complaints. An experienced police officer will not find it difficult to summarily dispose of such frivolous complaints without undue waste of time.
7.17 REGISTRATION OF FALSE CASES

According to crime in India Report 2000 false cases registered constituted 6.55% of the total cases disposed of during 2000. False registration of cases results in wastage of police resources, time and effort and also causes harassment to the opposite party. This tendency needs to be curbed. The Committee recommends that institution of a false case either with the police or with a Court must be made an offence punishable with imprisonment which may extend to 2 years.

7.18 CRIME SCÈNE VISITATION

Investigation involves several stages and the crime scene visitation is one of the most important of them, excluding perhaps, white-collar crimes. Recognizing this need, the Police Manuals in most of the States have mandated immediate dispatch of an officer to the scene of crime for inspecting it, preserving the evidence and preparing the site plan etc. Such inspection of scene crimes should be done by a team consisting of forensic scientist, fingerprint experts, crime photographer, legal advisor etc. and not just by a single investigating officer.

In the National Seminar on “Forensic Science”: Use and Application in Investigation and Prosecution” held on 27 July, 2002, at Hyderabad held under the auspicious of this Committee, in which Judges, senior police officers, senior forensic scientists and Medical Jurists had participated, the forensic scientists lamented that their services were not being utilized for crime scene visitation as a result of which valuable forensic evidence is being lost.

In this context, the Committee is of the opinion that:

1. The scene of crime must be visited by the investigating officer with utmost dispatch;
2. The IO must photograph/video graph the scene of crime from all possible angles or get it done by an expert;
3. He should preserve the scene of crime so that no evidence is lost due to disturbance by the inmates of house or curious onlookers, including VIPs;
4. The Investigating Officer should either prepare the sketch or plan of the scene of crime himself or get it done by a Patwari or an expert, if deemed fit;
5. The investigating officer should take along-with him a Forensic Scientist and Finger Print Expert or any expert of the relevant discipline to collect physical evidence from the scene of crime. If it is, somehow, not possible due to
exigencies of the situation, the Investigating Officer should preserve the scene of crime and immediately requisition the services of forensic experts for the above purpose.

7.19 RECORDING OF STATEMENTS OF WITNESSES – SECTION 161 & 162 OF THE CODE

Section 161 deals with examination of witnesses by the police during investigation and Section 162 provides that statements of witnesses recorded by the police shall not be required to be signed by the witnesses and further that such statement can be used by the accused and with the permission of the court only for the purpose of contradicting the witness in accordance with Section 145 of the Evidence Act. In other words such statement cannot be used as a previous statement for the purpose of corroborating the maker. This flows from the distrust of the police about their credibility. Several measures have been recommended in this report to remove that distrust and to ensure credibility of the police. These measures include among others, separation of the investigation wing from the law and order wing, insulating it from political and other pressures so that the investigating officers can function impartially, independently and fearlessly by constituting the State Security Commission as recommended by the National Police Commission Volume VIII Chapter III, improving professionalism and efficiency of the investigating officers, etc. Once that is done it paves the way to repose trust and confidence in the investigating officers. This would justify suitably amending Sections 161 and 162 of the Code to enable the statements of witnesses recorded during investigation being treated on par with any previous statements and used for corroborating and contradicting the witness. Section 161(3) gives discretion to the police officer to reduce the statement of the witness into writing. The Law Commission in its 14th Report has observed that if the statement of a witness is not reduced in writing, the whole purpose of section 173 would be defeated by a negligent or disinterested police officer. The Commission, therefore, recommended that the police officer should be obliged by law to reduce to writing the statement of every witness whom he has examined. This view was emphasized in the 37th Report of the Law Commission. It went on further to suggest that statement of every witness questioned by the police u/s 161 Cr.P.C. must be recorded, irrespective of whether he is proposed to be examined at the trial or not.
The Committee is of the view that the investigating officer should be mandated to reduce to writing the statements made to him in the narrative or questions and answers form. Section 163(3) should be suitably amended.

As per section 161 Cr.P.C., a witness is not mandated to accord his signatures on a statement made by him to the police. This has often encouraged witnesses to turn hostile at the trial due to threats, fear or greed and giving a version different from the one given to the Investigating Officer. This happens as the witness has not signed his statement before the police. In the 41st Report, the Law Commission recommended that where the person can read the statement recorded by the police, his signature can be obtained after he has read the statement. The Law Commission also favoured sending the witnesses to the Magistrate for recording his statement on oath under section 164 Cr.P.C.

In the circumstances, the Committee is of the opinion that:

1. Section 161 Cr.P.C. should be amended to make it obligatory to record statements made by the witnesses during investigation in the narrative or in the question and answer form. The statement should be read over if admitted correct should be got signed by the witness;
2. a copy of the statement should be immediately given to the witness.
3. Section 162 of the Code should be amended so that the statement can be used both for corroboration and contradiction.

7.20 VIDEO/AUDIO RECORDING OF STATEMENTS OF WITNESSES, DYING DECLARATION AND CONFESSIONS

Frequent changes in statements by the witnesses during the course of investigation and, more particularly, at the trial are really disturbing. This results in miscarriage of justice. Hence, modern science and technology should be harnessed in criminal investigation. Tape recording or video recording of statements of witnesses, dying declarations and confessions would be a meaningful and purposive step in this direction. Unfortunately, the existing law does not provide for it. It is understandable as these facilities did not exist at the time when the basic laws of the land were enacted. Now that these facilities are available to the investigating agency, they should be optimally utilized.

Section 32 of the Prevention of Terrorism Act, 2002, provides that a police officer of the rank of Superintendent of Police may record a confessional statement of
an accused either in writing or on a mechanical or electronic devices like cassettes, tapes or sound tracks from out of which sound or images can be reproduced. Such evidence has been rendered admissible at the trial. A similar provision exists in section 18 of the Maharashtra Control of Organised Crime Act, 1999.

The Committee is of the view that the law should be amended to provide for audio or video recording of statements of witnesses, dying declarations and confessions etc. and about their admissibility in evidence. A beginning may be made to use these modern techniques at least in serious cases

7.21 FACILITIES FOR INTERROGATION

It can hardly be over emphasized that interview of witnesses and interrogation of suspects/accused should be done in a professional manner so as to elicit the truth. This is possible only when the Investigating Officer possesses professional competence, has adequate time at his disposal and the interview/interrogation is conducted in a proper ambience. The police stations in the country are generally small and located in crowded areas, particularly in the urban centres. Some of them are even operating out of tents. Neither the investigating officer nor the witnesses/suspects/accused have any privacy in this atmosphere. The Committee, therefore, feels that a room equipped with proper facilities such as video cameras, voice recorders etc. should be set apart in each police station for the purposes of interrogation/interview.

7.22 ARREST OF ACCUSED

Criminal Procedure Code deals with the arrest of a person. Section 41 of Cr.P.C. is the main section providing for situations when the police may arrest without warrant. Section 42 empowers a police officer to arrest a person who commits an offence in his presence or where such person has been accused of committing a non-cognizable offence, and he refuses to give his name and residence or gives false name or residence to the officer. Section 43 speaks of a situation where an arrest can be made by a private person. Section 44 deals with arrest by a Magistrate. Section 47 enables the police officer to enter a place if he has reason to believe that the person to be arrested has entered into that place or is within that place. Section 48 empowers the police officer to pursue offenders into any place in India beyond his jurisdiction. Section 50 creates an obligation upon the police officer to communicate to the person arrested person full particulars of the offence for which he has been arrested. Sections
53 and 54 provide for medical examination of the arrested person at the request of the police officer or at the request of the arrested person, as the case may be. Section 56 provides that the arrested person shall be produced before the Magistrate within 24 hours, exclusive of the journey time.

Despite constitutional safeguards provided in Article 22 of the Constitution, there are often allegations of misuse of power of arrest by the police. At the same time, we are not unaware that crime rate is going up in the country for various reasons. Terrorism, drugs and organised crime have become so acute that special measures have become necessary to fight them not only at the national level but also at the international level. A fine balance, therefore, has to be struck between the interests of the society and the rights of the accused.

The National Police Commission in its 3rd Report, referring to the quality of arrest by the police in India had mentioned that power of arrest was one of the chief sources of corruption in the police. The report suggested that by and large nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the prison department.

Notwithstanding the above, the Commission took the view that the arrest of a person may be justified during the investigation of a cognizable case in one or other of the following circumstances:

1. The case involves a grave offence like murder, dacoity, robbery, rape etc. and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims.
2. The accused is likely to abscond and evade the processes of law.
3. The accused is given to violent behavior and is likely to commit further offence, unless his movements are brought under restraint.
4. The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

In England, the Royal Commission suggested the following criterion for arrests:

1. the person’s unwillingness to identify himself so that a summon may be served upon him.
2. the need to prevent the continuation or repetition of that offence.
3. the need to protect the arrested person himself or other persons or property.
4. the need to secure or preserve evidence of or related to that offence or to obtain such evidence from the suspect by questioning him.

5. The likely-hood of the person failing to appear at Court to answer any charge made against him”.

The Royal Commission also recommended the Ontario Scheme wherein the police officers issue ‘Appearance Notice’ to the accused, whereupon the concerned persons are required to appear before the police, thereby obliterating the need of their arrest.

The Indian Penal Code divides offences into four categories namely;

   a) non-cognizable and bailable;
   b) cognizable and bailable;
   c) cognizable and non bailable;
   d) non cognizable and non bailable.

A police officer is empowered to arrest in category (ii) i.e. cognizable and bailable offences but this arrest is only a technical one and the arrested person is required to be released on bail as soon as he furnishes sureties. This power, therefore, is not open to much abuse. The real power of arrest lies in category (iii) offences i.e. cognizable and non bailable offences, which, it is alleged, is open to misuse. The number of such offences in the IPC is. (offences relating to the Army, Navy and Air Force), which are 23 in number and in which arrests are rarely made, are excluded only 34 offences remain in which the police is empowered to arrest and detain in custody. In view of the spiraling crime graph in the country and the menace posed by terrorism, organized crime and drug mafia, the Committee is of the view that power of arrest is necessary for dealing with serious crimes.

Power of arrest is often misused. The person arrested apart from suffering considerable inconvenience, also suffers by loss of his image in the society. Even if ultimately he is found to be innocent that damage done to the arrested person can not be undone. There is an erroneous impression in the minds of the police that the first thing for him to do is to arrest the suspected person even without making any inquiry. It may be necessary to arrest the person when the offence involved is fairly serious and the accused is likely to abscond or evade the process of law or there is reasonable apprehension of the accused committing offences or when he would be a serious threat to the victim, or witnesses, or is likely to tamper the evidence, or when it is
necessary in the circumstances to restore a sense of security in the locality and similar other considerations as pointed out by the Law Commission in its 154th report.

In the opinion of the Committee no arrest shall be made by the police if 1) the punishment is fine only or 2) fine is an alternative punishment to imprisonment.

However a person suspected of being involved in, or accused of having committed an offence, shall be bound to give his name, address, and such other particulars on demand by a Police Officer, and if so called upon, shall be liable to appear in the Police Station on any date and time intimated to him by the Police Officer, and on his failure to do so, he shall be liable to be arrested by such officer, in order that his name, address or other particulars may be ascertained. Section 42 of the Code be amended by substituting the word “any” for the words “of non-cognizable”.

Bailable offences are now specified in the first schedule to the Code. Now that the Committee has recommended that no arrest shall be made in respect of certain offences consequential amendments shall be made in the column relating bailability. No modification is suggested regarding bailability of other offences specified in the schedule.

As the Committee has recommended removal of the distinction between cognizable and non-cognizable offence consequential amendments may be carried out. In the First Schedule, for the expression ‘Cognizable’ the expression ‘arrestable without warrant’ and for the expression ‘non-cognizable’ the expression ‘arrestable’ with warrant or order” shall be substituted.

In the light of the anomaly pointed out by the committee in first schedule, the removal of the distinction between cognizable and non-cognizable offences and amendments regarding arrestability of offences the Committee suggests that the first schedule be amended providing columns for the following: -

1. Section
2. Offence
3. Punishment
4. No arrest / arrestable with warrant or order / arrestable without warrant or order.
5. Bailable or non bailable
6. Compoundable or non-compoundable
7. By what court triable. Consequential amendments shall be made to part-II of the first Schedule in respect of offences against other laws.

7.23 MECHANISM FOR COLLECTION OF CRIMINAL INTELLIGENCE

The present day crime situation in India is of alarming concern to the police force and enforcement agencies of the Central Government. To tackle the challenge of terrorism (including narco-terrorism anti terrorist-funding), organised crime, drug trafficking, economic crimes such as bank-scams etc. and crimes having inter-State and trans-national ramifications, new strategies are called for. What is of immediate concern is to have accurate and real time intelligence on organised crime activities so as to prevent major catastrophes in the future.

While a structured system for collection and dissemination of political intelligence exists in the States and at the Central level, no such system, however, is in place as far as the criminal intelligence is concerned. This deficiency has definitely hampered the crime control effort and calls for immediate remedial action.

The Committee feels that concrete steps ought to be taken to institutionalize criminal intelligence system and recommends that:

1. An apex body at the national level headed by an officer the rank of DGP/IGP to be called the National Bureau on Criminal Intelligence should be set up. Its head office and permanent secretariat would be at Delhi. It would consist of officers drawn from all parts of the country and representing a cross-section of the police forces and central investigating agencies. The main task of this body would be to collect, collate and disseminate information about major criminal gangs operating in the country involved in organised crime, terrorism, narco terrorism, cyber crimes, wild life crimes and environmental crimes, economic crimes etc. Its exact charter would be determined by the Central Government. This body would function as a Clearing House of the criminal information regarding specified grave crimes and would have a computerised data base, accessible to all State Police forces/central agencies.

2. A similar body may be set up at the State level. It may be headed by an IGP/DIGP level officer, responsible to the DGP through the head of the State Crime Branch. This agency would also have a computerised data base accessible to the national level body, its counter-parts in other States and all Districts. within the respective States.
3. The State Governments/DGPs should set up Criminal Intelligence Cells in each District. An Additional SP level officer may head this Cell in each district on full time basis. The District MOB may be merged into this Cell. This Cell will collect information through the police stations as well as through its own staff and will have a computerized data base.

4. A Criminal Intelligence Unit should be set up in each police station. It may consist of Core Intelligence Unit of 3 or 4 ASI/HC, well trained and motivated for the work and equipped with adequate transport and communication facilities.

The Committee feels that it would be useful to involve the public spirited and politically neutral NGOs with record of moral rectitude and the Community Liaison Groups or other such organisations by whatever name called in the collection of criminal intelligence at the police station and District level.

7.24 CONSTITUTION OF SPECIALIZED UNITS AT THE STATE AND THE DISTRICT LEVEL

In addition to the above, the Committee feels that specialized squads are necessary for investigating cases of murder, burglary, economic offences, forgery, robbery, dacoity, kidnapping for ransom and automobile thefts etc. The National Police Commission vide para 49.82 of its report had recommended constitution of such specialized teams. The Committee suggests the constitution of the following specialized squads at the State level:

1. Homicide Squads;
2. Burglary Squads;
3. Economic Offences and Forgery Squads;
4. Robbery/Dacoity Squads;
5. Kidnapping/Missing Persons Squads;
6. Automobile Thefts Squads;
7. Squads for tracking criminals.

The State Govts. must make available adequate manpower, mobility, equipment and other logistical support to these squads.

Teams of investigating officers should also be available with the Addl.SP (Crime) in each district. This has been dealt with in detail earlier.
Besides, the Committee feels that for better management of crime work, at least 2 Addl. Ss. P. should be exclusively ear-marked for this purpose in a District. One Addl. SP would deal with crime prevention, criminal intelligence, tracking of criminals, surveillance, collection of crime statistics and empirical studies etc. He will also carry out investigations specially entrusted to him. The second one would personally investigate heinous crimes occurring in the District. The Committee feels that these measures would result in improvement in detection percentage of the above class of cases, the quality of investigation would improve and higher rate of conviction would be secured.

**7.25 USE OF EXPERTS IN INVESTIGATION**

Investigation of crime is a highly specialized and complex matter, requiring a lot of expertise, patience and training. Given the complexity of crime, it is not possible for the police officers themselves to understand various facets of crime and conduct competent investigations all by themselves. They would need help of experts from various disciplines such as Auditing, Computer Sciences, Banking, Engineering, Revenue services and so on.

The Committee feels that a pool of competent officers from the above disciplines should be created at each Police Headquarters to render assistance in investigation of crimes all over the State. The State Governments may either second these officers from their parent departments to the Police Department; on a tenure basis or a cadre of such officers may be created in the Police Departments themselves.

**7.26 COORDINATION AMONGST INVESTIGATORS, FORENSIC EXPERTS AND PROSECUTORS**

No case can succeed at the trial unless it is properly investigated and vigorously prosecuted. Forensic experts evidently play a key role both at the investigation stage as also at the prosecution stage.

The investigators, forensic experts and prosecutors should act in cooperation with each other.

The mechanism of integration between the investigators and the forensic experts can be implemented at the following stages:-

1. Initial investigation i.e., at the crimes scene level;
2. Search of the suspects, suspects’ premises and collection of physical evidence there-from;
3. Framing request for laboratory analysis;
4. Interpreting the analytical results of the laboratory;
5. Evaluating the probative value of the result in accordance with prosecution needs;
6. Pre-trial discussion with the prosecutors;
7. Offering the testimony before the Court;
8. Prosecutors’ arguments on the case;
9. Review of effectiveness of forensic evidence as indicated in the judgment.

7.27 NEED FOR NEW POLICE ACT

Law is an important instrument for prevention and control of crime. The Committee feels that for effectiveness of the Criminal Justice System, not only certain new laws need to be enacted but the deficiencies in the existing laws, which adversely affect investigation and prosecution of cases, need to be rectified. After a careful consideration of the matter, the Committee suggests the enactment of the following new laws:

The police system in the Country is functioning under the archaic Indian Police Act which was enacted in 1861 for the perpetuation of the British Empire. The police now have an obligation and duty to function according to the requirements of the Constitution, law and democratic aspirations of the people. Further, the police is required to be a professional and service-oriented organisation, free from undue extraneous influences and yet be accountable to the people. Besides, it is necessary to have the police force which is professionally controlled and is politically neutral, non-authoritarian, people friendly and professionally efficient. The National Police Commission had recommended enactment of a new Police Act for achieving the above objectives about two decades back. The Central Govt., however, has not taken any action. The Committee strongly feels that a new Police Act may be enacted by the Central Govt. on the pattern of the draft prepared by the National Police Commission.

7.28 POLICE REMAND

1. Section 167 (2) Cr. P. C., provides for a maximum of 15 days in police custody. It is not possible to fully investigate serious crimes having inter-state ramifications in this limited period. The law should be amended to provide for
a maximum police custody remand of 30 days in respect of grave crimes where punishment is more than five years.

2. As per section 167 Cr.P.C., the accused is liable to be released on bail if the charge sheet is not filed against him within 90 days from the date of his arrest. It is not always possible to investigate a case comprehensively within this period particularly cases having inter-State or trans-national ramifications. This results in accused involved in grave crimes being enlarged on bail. It would be desirable if the law is amended to provide another 90 days to the investigating agencies in case of grave crimes if, on the report of the investigating officer, the court is satisfied that there are sufficient reasons for not filing the chargesheet within the initial period of 90 days.

3. Under Section 167(2) an accused cannot be taken on police custody remand after the expiry of first 15 days from the date of his arrest. This has emerged as a serious handicap in sensitive investigations. This issue was deliberated upon by the Law Commission of India which recommended in their 154 report that the law should be amended to enable the CBI to take the accused in the police custody remand even after the expiry of the first 15 days so long as the total police custody remand of the accused does not to exceed 15 days. In our view, such discrimination between the State Police and CBI would not be justified. The law, therefore, is required to be amended to on the lines permitted to C.B.I.

Many times accused are admitted in Hospitals during police custody on health grounds and stay there for several days. During this period interrogation of accused is not possible. Thus the police officer is handicapped in investigation. To overcome this difficulty a suitable provision be made in Section 167(2) to exclude the period of hospitalization or such other cause for computing the period available for police custody.

7.29 ANTICIPATORY BAIL

A Session Court or High Court is empowered to grant anticipatory bail u/s 438 Cr.P.C. irrespective of the fact whether it has the jurisdiction to hear the matter or not. Further, the law does not require the Public Prosecutor being heard, irrespective of the gravity of the offence. This provision has been often mis-used by rich and influential people. The Govt. of Uttar Pradesh has dispensed with this provision through a local amendment. After considering the pros and cons of the matter, we are of the view that the provision may continue subject to the following conditions:
a) that the Public Prosecutor would be heard by the court; and
b) that the petition for anticipatory bail should be heard only by the court of competent jurisdiction.

7.30 MISCELLANEOUS

The police often have to take into police custody the accused persons who are in the judicial custody of another judicial magistrate. The standard practice is to request the Executive Magistrate to issue the Production Warrant. Generally, the Executive Magistrate does issue the Production Warrant to be executed by the Jail Authorities where the criminal is lodged. Some Magistrates, however, decline to issue the Production Warrants on the ground that there is no specific provision in the Cr.P.C. It is a fact that there is no express provision in the Cr.P.C. We, therefore, recommend that this ambiguity be removed and a clear provision incorporated in the Cr.P.C.

The police have to arrange Test Identification Parade for the identification of the accused by chance witnesses as also for the identification of the stolen property. This practice has been going on far decades, without there being an express statutory provision either in the Cr.P.C. or the Evidence Act. At present, such T.I. Parades are being brought within the ambit of Section 9 of the Evidence Act. But there is no prescribed procedure for holding the T.I. Parade. We recommend that an express provision should be made in the Cr.P.C. for arranging a T.I. Parade.

Several provisions in the Cr.P.C., like Sections 93 to 95 and 100 deal with searches and they enjoin the police officers to call for independent and respectable inhabitants of the locality or of another locality if no such inhabitant of the said locality is available or willing to be a witness to search etc. There are also other provisions where presence of such witnesses is required in documents prepared by the police. Enactments like Prevention of Food Adulteration Act, Excise Act which contain a minimum sentence of imprisonment do not provide for the presence of witnesses from the locality or neighbourhood. The Committee therefore suggests that the investigation agency should be able to secure the presence of independent witnesses in cases where such presence is required. This will totally do away with the witnesses of the localities reluctance to give evidence or becoming hostile etc. and the incorporation of the word “independent witnesses” will exclude the presence of stock witnesses which is a charge generally leveled against such witnesses by the defence.
7.31 THE INDIAN EVIDENCE ACT

Section 25 of the Indian Evidence Act provides that no confession made to a Police Officer shall be proved against a person accused of any offence. This bar applies to recording of confession by a police officer irrespective of his rank. This provision deprives the Investigating agency of valuable piece of valuable evidence in establishing the guilt of the accused. Confessions made before the Police have been made admissible in different parts of the World. Singapore, which virtually follows the same system as ours, has empowered the Sergeant-level officers to record confessional statements.

In India, confessions made to certain law enforcement agencies under the following provisions are admissible in evidence.

1. Section 12 of the Railway Protection Force Act, 1957;
2. Section 8 and 9 of the Railway Property Unlawful Possession Act, 1996; and
3. Section 108 of Customs Act, 1962;
4. Section 18 of TADA of 1987 (the Constitutionality of the same is upheld by the Supreme Court in KARTAR SINGH v STATE OF PUNJAB: (1994) 3 SCC. 569. The Act has since lapsed.
5. Section 18 of the Maharashtra Control of Organised Crime Act, 1999;

We may also point out that the Law Commission in its 48th Report had recommended that the confession recorded by a Superintendent of Police or a higher ranking Officer should be admissible in evidence subject to the condition that the accused is informed of his right to consult a legal practitioner.

The Committee has made several recommendations in this Report to improve the credibility of the investigating Police and to improve its efficiency and professionalism and insulate it from external pressures. These reforms would ensure that interrogation and criminal investigation would be done on a scientific basis and not by use of impermissible means such as third degree methods. Officers of the level of Superintendents of Police or higher level officers are entrusted under the laws referred to above to record confessions fairly and without subjecting the accused to duress or inducement. If the confession is audio/video recorded, it would lend further assurance that the accused was not subjected to any form of compulsion. It is not our case that the conviction should be based only on a confession. The confession should be considered by the courts along with other evidence.
Hence, we recommend that section 25 of the Evidence Act may be suitably substituted by a provision rendering admissible, the confessions made before a Police Officer of the rank of Superintendent of Police and above. Provision should also be made to enable audio/video recording.

7.32 IDENTIFICATION OF PRISONERS ACT, 1920

Section 4 and 5 or the Identification of Prisoners Act, 1920, empower a Magistrate to permit taking of finger prints, foot prints and photographs of a convict or of an accused arrested for an offence punishable with imprisonment of one year or more. There is no law binding the accused to give his specimen writings or blood samples for DNA finger printing. Similarly, under the existing law, an accused cannot be compelled to give the samples of his hair, saliva or semen etc. Sections 45 and 73 of the Evidence Act, are not comprehensive enough to admit of such samples being taken on Court orders. Due to be above lacunae, it is difficult to build up a strong case, based on forensic evidence, against the accused. In fact, section 27 of POTA, 2002 makes a specific provision in this regard. It is, therefore, essential that a specific provision is incorporated in the Cr.P.C. and the Evidence Act empowering a Magistrate to order an accused to give samples of hand writing, fingerprints, footprints, photographs, blood, saliva, semen, hair, voice etc, for purposes of scientific examination.

7.33 PHYSICAL SURVEILLANCE AND INTERCEPTION OF WIRE, ELECTRONIC OR ORAL COMMUNICATION

Close watch over the movements of suspects/criminals by the police is an effective means of prevention and detection of crime. The police have been mounting surveillance over suspects/criminals for the above purpose. The Apex Court decision in Govind vs State of MP (AIR 1975 SC 1378) has observed that considering the object for which surveillance is made, it cannot be said that surveillance by the police is an unreasonable restriction on the right to privacy. It is now an established fact that electronic devices are being used by the criminals to run their criminal enterprises. Section 14 of the Maharashtra Control of Organised Crime Act, 1999, and sections 36 to 48 of the POTA, 2002 provide for such surveillance.

The provision in Maharashtra Act has been recently struck down on the ground that the powers are vested only in the Centre. The Committee feels that
adequate statutory provisions be made providing for electronic surveillance and interception in criminal cases.

7.34 SPREAD OF AWARENESS

Citizens who may have to participate in the Criminal Justice System as complainants/informants, victims, accused or witnesses are often not aware of their rights and obligations. They also do not know whom and how to approach and what to expect from them. Awareness of these matters will help the citizens to assert their rights and to protect themselves from unreasonable, arbitrary and corrupt officials. Therefore, the Committee recommends that rights and responsibilities of the complainants/informants, victims, accused and witnesses and the duties of the concerned officials be incorporated and annexed as Schedules to the Code. The Committee further recommends that leaflets incorporating the same in the regional languages of the respective States should be printed and made available free of cost to the citizens.