CHAPTER 6
INVESTIGATION

Investigation is one of the important pretrial stages in the administration of criminal justice. It is basically an art of unearthing hidden facts with the purpose of linking up different pieces of evidence for the purpose of successful prosecution. It means a systematic, minute and thorough attempt to learn the facts about something complex or hidden and it is often formal and official.

Section 2(h) of the Code of Criminal Procedure provides:

"'investigation' includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf."

The definition as such is not comprehensive or exhaustive. The Codes, which were previously in force also, contained the same definition. The definition

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2 The Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973, Chapter II, para 2. This paragraph opens with the sentence: "Investigation of crime is a highly specialised process requiring a lot of patience, expertise, training and clarity about the legal position of the specific offences and subject matter of investigation and socio-economic factors."
3 Halmyn’s Encyclopedia Dictionary, 1972, p.836; Liberty Oil Mills v. Union of India, AIR 1984 SC 1271 at 1283: "'investigation' means no more than the process of collection of evidence or the gathering of material.", Krishna Swami v. U.P., (1992)4 SCC 605 at p.646, per K Ramaswamy, J. (descending), lays down: "investigation is the discovery and collection of evidence to prove the charge as a fact or disproved." State v. Pareswar Ghazi, AIR 1968 Ori 20 at p.24, lays down: "investigation in its ordinary dictionary meaning is, in the sense ascertaining of facts, sifting of materials and search for relevant data."
4 The Indian Evidence Act, 1872, s.3 provides: "'fact' means and includes:" (1) anything, state of things, relation of things, capable of being perceived by the senses; (2) any mental condition of which any person is conscious."
5 The Code of Criminal Procedure, 1973; The Indian Evidence Act, 1872, s.3 provides: "'Evidence' means and includes:" (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence. (2) all documents produced for the inspection of the Court; such documents are called documentary evidence."
conveys two ideas of radical importance: (i) the collection of evidence by the proceedings prescribed and (ii) which to be done by a police officer or by a person, other than a magistrate, who is authorized by a magistrate to do so.\(^6\)

Articulating the procedural scheme set up by the Code, the Supreme Court\(^7\) declared that the investigation of an offence generally consists of:

1. Proceeding to the spot,
2. Ascertaining 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:
   a. the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit,
   b. the search of places or seizure of things considered necessary for the investigation or 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 by the filing of a charge-sheet under s. 173.\(^8\)


\(^{7}\) H.N. Rishbud v. State of Delhi, AIR 1955 SC 196. See also Chauhankuty v. S.I. of Police, 1988 SCC (Cri) 549.

\(^{8}\) S.M. Bose v. State of Bihar, (1968) 3 SCR 563: The “proceedings under this Code” are five in number. And the “collection of evidence”, that is step No.4, is only one of the five-fold proceedings. It may be noted, however, that an investigation is one and indivisible. A permission enables the officer concerned not only to lay a trap but also to hold further investigation (pp. 566 & 567).
6.1 Commencement of investigation

An officer in charge of a police station can initiate investigation:

(1) on receiving information as to the commission of any cognizable offence,

(2) otherwise he has reason to suspect the commission of any cognizable offence or

(3) upon the order of a magistrate empowered to take cognizance of any offence under section 190 of the Code.

6.2 Classification of offences and power to investigate

The Code classifies various offences and cases into cognizable and non-cognizable ones and confers power to police to arrest without warrant for the purposes of cognizable offences and cases. The same classification is made the basis to

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9 The Code of Criminal Procedure, 1973, s.2(o) provides: "officer-in-charge of a police station' includes, when the officer-in-charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present." s.2(s) provides: "police station' means any post or place declared generally or specifically by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf." The officer in charge of the police station should have territorial jurisdiction in that area where the offence is occurred. If he has not, on receiving information, he should not register the FIR, but should write in the Daily Diary Reg. No. 1 of the police station, or on a separate sheet and forward it to the officer in charge of the police station in whose jurisdiction the offence is occurred.

10 Id., s.157 (1). See also infra n.14.

11 Ibid, see also Jayantilal Jagvira Mulji and Ors. v. Emperor, AIR (31) 1944 Bom 139.

12 Id., s.156 (3).

13 Id., s.2(n). It provides: "'offence' 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 the Castle Trespass Act, 1871 (Act 1 of 1871), section 20." See also the Indian Penal Code, 1860, s.40 and the General Clauses Act, 1897, s.3(38).

14 Id., s.2(c). It provides: "'cognizable 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".

15 Id., s.2(f). It provides: "'non-cognizable offence' means an offence for which, and 'non-cognizable case' means a case in which, a police officer has no authority to arrest without warrant.

16 Generally speaking, all serious offences are considered as cognizable. The seriousness of the offence depends upon the maximum punishment provided for the offence. Subject to certain reasonable exception offences punishable with imprisonment for not less than three years are taken as serious offences and are made cognizable. It is the responsibility of the State (and hence the police) to bring the offender to justice in the cases involving cognizable offences.
determine the police officer’s power as to investigation. Any officer in charge of a police station thus has power to investigate any cognizable case without an order of a magistrate.\(^{17}\) The court cannot interfere with this power, for the court’s function begins only when a charge is preferred before it not until then.\(^ {18}\) The police have no power to investigate a non-cognizable case without the order of a competent magistrate.\(^ {19}\)

Whenever a police officer is ordered by a magistrate to investigate a non-cognizable case, he may exercise the same powers in respect of investigation (except the power to arrest without warrant) as a police officer-in-charge may exercise in a cognizable case.\(^ {20}\)

Where a case involves two or more offences of which at least one is cognizable, it shall be deemed to be a cognizable case despite that other offences involved are non-cognizable.\(^ {21}\) For all these purposes ‘magistrate’ means ‘judicial magistrate’.\(^ {22}\)

### 6.3 Investigation on receiving information

In most of the cognizable cases, usually investigation is initiated on receiving information by police officer-in-charge of a police station. In such cases certain procedures shall be complied with as to recording of the information so received and lodging of the first

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\(^{17}\) Id, s.156 provides: “(1) Any officer-in-charge of a police station may without the order of a Magistrate investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. (3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned.”


\(^{19}\) Id, s.155(2) r/w, s.3(1)(a) provides that a police officer has neither the duty nor the power to investigate the cases involving only non-cognizable offences without the authority conferred by a judicial magistrate. Barring certain exceptions, the non-cognizable offences are considered more in the nature of private wrongs and therefore the collection of evidence and the prosecution of the offender are left to the initiative and efforts of private citizens and the State is not responsible to investigate and prosecute in such cases unless otherwise ordered by the competent judicial magistrate.

\(^{20}\) Id, s.155(3).

\(^{21}\) Id, s.155(4).

\(^{22}\) Id, s.3(1); See also Banteswar Singh v. State of Bihar, 1992 Cri.LJ 2122 (Pat).
information report. In the second and third means of initiation of investigation no such procedure pertaining to the first information report need be followed. 23

6.4 Information to police

Any person can give information to the police as to the commission of a cognizable offence. 24 It shall be given to an officer in charge of a police station in whose jurisdiction the offence has been committed. 25 The information can be given either orally or in writing. 26 If given orally, it shall be reduced to writing by such officer in charge or under his direction, and be read over to the informant. 27 Every such information whether given in writing or reduced to writing shall be signed by the person giving it. 28 The substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. 29

A copy of the information so recorded shall be given forthwith, free of cost to the informant. 30 Any person aggrieved by a refusal on the part of the police officer in charge to record the information as to the commission of a cognizable offence may send

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23 Liberty Oil Mills v. Union of India, AIR 1984 SC 1271 at 1283.
24 Generally speaking it should be the duty of every citizen to report to the authorities any crime, which he knows to have been committed. However minor offences are not usually coming within the scope of this duty. Section 39 imposes a duty on every person who is aware of the commission of, or of the intention of any other person to commit certain offences. Moreover, section 40 casts a duty on village-officers and village-residents to report certain matter to the police or to the magistrate.
25 Id. s.154(1): If the police officer-in-charge has no territorial jurisdiction, he shall not register the FIR on receipt thereof, rather he has to write it in the Daily Diary Reg. No.II of the Police Station or on a separate sheet and forward it to the police officer-in-charge of police station in whose jurisdiction the offence has been committed.
26 Ibid.
27 Ibid.
28 Ibid.
29 Ibid: The book so prescribed is called Daily Diary or Roznameha Reg. No.2. According to the Indian Police Act, 1861 (Act V of 1861), s. 44, Daily Diary is required to be kept for recording therein all complaints and charges preferred, the names of the complainants, the offence charged, the weapons or property taken from their possession and names of witnesses who shall have been examined. The book in which the substance of the information is entered is called 'station diary' or 'general diary'.
30 Id. s.154(2): There was no such a provision in the 1898 Code. It has been introduced in the present Code in pursuance of the recommendation of the Law Commission of India vide its 41st Report, vol.1, p.68, para 14.3.
the substance of such information, in writing and by post to the Superintendent of Police concerned. The Superintendent shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by the Code, if satisfied that such information discloses the commission of a cognizable offence. Such officer conducting investigation shall have all the powers of an officer in charge of the police station in relation to that offence.

The statement so recorded is usually mentioned in practice as the first information report or popularly abbreviated as FIR. The object of the first information report is to set the criminal law in motion. When information is given to a police officer-in-charge as to the commission of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book prescribed for this purpose and shall refer the informant to the magistrate for the police lack power to investigate non-cognizable case without an order of a magistrate.

6.5 Report to magistrate

Where a reasonable suspicion of the commission of a cognizable offence exists, whether on the basis of the first information report or on any other information of the police, the officer in charge must immediately send a report of the circumstances creating the suspicion, to a magistrate having jurisdiction to take cognizance of such an offence on a police report. The law envisages to keep the magistrate informed of the

31 Id. s.154(3).
32 Ibid.
33 Hazis v. State of Bihar, 1972 CriLJ 233, at p.236. Sometimes it may happen that more than one person go at or about the same time and make statement to the police about the same cognizable offence. In such a situation the police officer will have to use common sense and record one of the statements as the FIR.
34 Id. s.155(1) & (2).
35 Id. s.157(1).
investigation, but he is not authorized to interfere with the actual investigation or to direct the police how that investigation is to be conducted.\(^{36}\)

6.6 Proceeding to spot

The police officer in charge shall then proceed in person, or shall depute his subordinate officer, not below the rank prescribed by the State Government in this behalf, to proceed to the spot for further proceedings.\(^{37}\) It is however not necessary for the police officer in charge to proceed in person or depute a subordinate officer to make an investigation on the spot in two circumstances. Firstly, when the information as to the commission of the offence is given against any person by name and the case is not of a serious nature.\(^{38}\) The police in such a case is required to state in his report to the magistrate his reasons for not proceeding to make an investigation on the spot.\(^{39}\) Secondly, when it appears to the police officer in charge that there is no sufficient ground for entering on an investigation.\(^{40}\) As in the earlier case the police officer is required to state in his report to the magistrate his reasons for not proceeding to investigate the case. He is further required to notify immediately to the informant, if

\(^{36}\) The Law Commission of India, 41\(^{st}\) Report, vol.1, p.67, para 14.1. Failure to send a report to the magistrate as required by the provision is a breach of duty and may go to show that the investigation in the case was not just, fair and forthright and that the prosecution case must be looked at with great suspicion. However, the non-compliance of ss.154 and 157 does not constitute a ground to throw away a prosecution case but it does emerge as a factor to be seriously reckoned with while appreciating the entire evidence. Its non-observance is bound to suffer some adverse inference against the prosecution. See Mahabir Singh v. State, 1979 CriLJ 1159 (Del HC); Gabriel Re, 1977 CriLJ 135 (Mad HC); V.A. Victor Immanuel v. State of T.N., 1991 CriLJ 2014 (Mad HC). The time at which the report is received by the magistrate concerned goes a long way in coming to the proper conclusion as to time at which the FIR might have been written, lodged or registered. See Swaran Singh v. State, 1981 CriLJ 264 (P&H HC); Kanaljit Singh v. State of Punjab, 1980 CriLJ 542 (P&H HC); Pala Singh v. State of Punjab, (1972) 2 SCC 640.


\(^{38}\) Id, s.157(1), proviso (a).

\(^{39}\) Id, s.157(2). If the police officer makes a wrong assessment as to the seriousness of the case, the superior police officer through whom the report is sent to the magistrate, can always give appropriate directions to the officer in charge of the police station to set right the course of his action.

\(^{40}\) Id, s.157(1), proviso(b).
any, in the manner prescribed by the State Government, the fact that he would not
investigate the case or cause to be investigated.41

6.7 Ascertainment of facts and circumstances

The police officer conducting investigation on proceeding to the spot shall
prepare a detailed statement ascertaining the facts and circumstances of the spot where
the cognizable offence is alleged or is informed to have been committed. The statement
is popularly called as scene mahazar.

6.8 Inquest

Inquest is the ascertainment of the cause of death when it is homicidal.
suicidal or accidental.42 Its object is merely to ascertain whether a person has died under
suspicous circumstances or has suffered an unnatural death and if so what is the
apparent cause of death. The question as to how the deceased was assaulted or who
assaulted him or under what circumstances he was assaulted does not come within the
scope of inquest.43 An officer-in-charge of a police station or some other police officer
specially empowered by the State Government holds inquest in cases where a person
has committed suicide or has been killed by another or by an animal or by machinery or
by an accident, or has died under circumstances raising a reasonable suspicion that some

41 Id. s.157(2). This would enable the informant to approach a magistrate or a superior police officer for
redress, if he feels aggrieved by the view taken by the police officer in charge. As the report to the
magistrate is to pass through the superior police officer, he can issue appropriate instruction to the
station house officer. By virtue of section 159 the magistrate may direct an investigation or may at
once proceed, or depute any magistrate subordinate to him to proceed, to hold a preliminary inquiry
into, or otherwise to dispose of the case in the manner provided in the Code.

Prosecution in England, 1960, p.3: It is to investigate death, an incident which deserved particular
attention because it was an especial source of profit.

In Budhish Chandra v. State of U.P., 1991 CriLJ 808 (All HC), it has been held that the lapses in
filling up the inquest form do not destroy the prosecution case. However the Supreme Court in
Jaharlal Das v. State of Orissa, (1991) 3 SCC 27 has held since the circumstances that the deceased
was last seen in the company of the accused was not mentioned in the inquest report, the same is not
established beyond reasonable doubt. It is apparent that the section does not admit this interpretation.
other person has committed an offence. Any district magistrate or sub-divisional magistrate and any other executive magistrate specially empowered in this behalf by the State Government or the district magistrate holds inquest as mandatory when any person dies while in the custody of the police or the case involves suicide or death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman. Any such magistrate has discretion to hold an inquest either instead of, or in addition to, the investigation held by the police officer. In the cities of Bombay and Calcutta inquest is held by the coroner.

6.9 Inquest by police

The police officer on receiving information as to any death, warranting inquest, shall immediately give intimation thereof to the nearest executive magistrate empowered to hold inquests and proceed to the place where the body of such deceased is. He shall there make an investigation, in the presence of two or more respectable inhabitants of the neighbourhood and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body stating in what manner, or by what weapon or instrument (if any), such marks appear to have inflicted.

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45 Id. s.176(1) & 174(1).
46 Id. s.176(1).
47 The coroners are appointed under the Coroners Act, 1871, s.3, to inquire into the cause of death in case the death of any person has been caused by accident, homicide, suicide, or suddenly by means unknown, or that any person being a prisoner has died in prison and that the body is lying within the place for which the coroner is so appointed. The coroner is deemed a public servant within the meaning of the Indian Penal Code. Moreover the inquiry into death held by the coroner is deemed a judicial proceeding within the meaning of s.193 of the Indian Penal Code.
49 Ibid.
The report shall be signed by such police officer and other persons or by so many of them as concur therein and shall be forthwith forwarded to the district magistrate or the sub-divisional magistrate. The police officer may by order in writing summon two or more persons as aforesaid for the purpose of the said investigation. He may as well summon any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to answer truly all questions other than incriminating ones. It is not necessary at all for the police officer to record the statements of the witnesses or to get such recorded statements signed on the inquest report and incorporate the same in it. The police officer, however, shall not require any such person to attend a magistrate's court if the facts do not disclose a cognizable offence.

The police officer shall forward the body for post-mortem examination to the nearest civil surgeon, or other qualified medical man appointed in this behalf by the State Government, when:

i. the case involves suicide by a woman within seven years of her marriage,

ii. the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman,

iii. the case relates to the death of a woman within seven years of her marriage and any relatives of the woman has made a request in this behalf,

iv. there is any doubt regarding the cause of death, or

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50 Id. s.174(2).
51 Id. s.175(1).
52 Ibid.
53 Ibid.
54 It would rather introduce an element of chaos and confusion demanding an explanation from the prosecution regarding the statements made therein. See Nirpal Singh v. State of Haryana, (1977)2 SCC 131.
55 The Code of Criminal Procedure, 1973, s.175(2).
the police officer for any other reason considers it expedient so to do.\textsuperscript{56}

He shall so do if and only if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.\textsuperscript{57} It is implied that when there is no doubt as to the cause of death the police officer has discretion for not sending the body for post-mortem examination by the medical officer.\textsuperscript{58} This discretion shall however be exercised prudently and honestly.\textsuperscript{59}

The inquest report is a document of vital importance and has to be prepared promptly because it has to be handed over to the doctor along with the dead body to be sent for post-mortem examination. If the facts about the occurrence are mentioned in the inquest report, it would go to show that by that time the true version of the occurrence had been given therein. If, however, the facts of the incidents are not mentioned in the inquest report it might mean that till that time the investigating officer making the inquest was not definite about the factual position.\textsuperscript{60} The inquest report is not substantive evidence.\textsuperscript{61}

\textsuperscript{56} Id, s.174(3).
\textsuperscript{57} Ibid.
\textsuperscript{58} Id, s.174(3).
\textsuperscript{59} K.P. Rao v. Public Prosecutor, A.P., (1975)2 SCC 570. This discretion of the police officer is completely taken away in cases falling under clauses (i), (ii) and (iii) of sub-sec(3) of s.174. The police officer shall send the dead body of the woman for post mortem examination in such cases if the state of weather and the distance admit of its being so sent without risk of such putrefaction on the road as would render such examination useless.


\textsuperscript{61} Adi Bhumiuni v. State, AIR 1957 Ori 216. In Pandurang v. State of Hyderabad, AIR 1955 SC 216, the Supreme Court raised the question as to how far inquest report is admissible except under the Indian Evidence Act, 1872, s.145; Maruthamuthu Kudumbar, Re, ILR 50 Mad 750; Hunsraj v. Emperor, AIR 1936 Lah 341: The statements of witnesses during such inquiry are governed by s.162 as is obvious from that section itself; However, Mukunda v. State, AIR 1957 Raj 331 laid down that it can be used for corroboration of the evidence given by the police officer making it.
6.10 Inquest by magistrate

A magistrate holding inquest shall have all the powers in conducting it, which he would have in holding inquiry into an offence. He shall record the evidence taken by him in connection with the inquest according to the circumstances of the case. Whenever it is expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the magistrate may cause the body to be disinterred and examined. He shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry. The expression ‘relative’ means parents, children, brothers, sisters and spouse.

6.11 Arrest

Arrest used simply to be a mechanism for bringing offenders to court. This is no longer so. The police typically want to arrest suspects to facilitate investigation and prosecution. Arrest and subsequent detention is now frequently used as part of the investigation, not as the culmination of it. Its purpose is often to secure the evidence, which used to be secured before the arrest took place.

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63 Id. s.176(2).
64 Id. s.176(3).
65 Id. s.176(4).
66 Id. s.176(4), Explanation.
68 Id. p.68; see Glanville Williams, 'Arrest', 14 MLR 489 (1951).
69 Id. p.71; Patric Devlin, The Criminal Prosecution in England, (1960), p.68: Arrest and imprisonment are in law the same thing. Any form of physical restraint is an arrest and imprisonment is only a continuing arrest.
70 Ibid. Arrest is used to secure attendance of the accused at the time of trial and as a preventive or precautionary measure in respect of a person intending to commit a cognizable offence, or a habitual offender or an ex-convict, or a person found under suspicious circumstances [ss.151, 41(2) r/w ss. 110, 41(1)(h), 41(1)(b) and (d)]. It may sometimes become necessary to obtain correct address of a person committing a non-cognizable offence (s.42). A person obstructing a police officer in discharge of his duties is liable to be arrested to put a stop to such obstruction [s.41(1)(e)]. So also a person escaping from lawful custody should be liable to be arrested and re-taken in custody.
The Code doesn’t define the expression ‘arrest’. It is the taking or apprehending of a person and restraining him from his liberty. It means the deprivation of a person of his liberty by legal authority or at least by apparent legal authority. It consists in the seizure or touching of a person’s body with a view to his restraint. Words may, however, amount to an arrest if, in the circumstances of the case, they are calculated to bring, and do bring, to a person’s notice that he is under compulsion and he thereafter submits to the compulsion. An arrest can be made either with a warrant or without.

6.12 Arrest with warrant

A warrant of arrest has significance in cognizable as well as non-cognizable cases. A police officer can arrest only with a warrant in a non-cognizable case, while he has discretion to arrest without warrant in cognizable cases and for certain other grounds. As from the scheme set up by the Code an arrest with warrant is used only as a process to compel attendance in the court and it has no relevance in investigation.

A warrant of arrest is a written order issued by a court under the Code directing one or more police officers or some other person or persons to arrest the body
of the person named in it.\textsuperscript{77} It shall be signed by the presiding officer of the court.\textsuperscript{78} It shall bear the seal of the court.\textsuperscript{79}

Every such warrant shall remain in force until it is cancelled by the court which issued it, or until it is executed.\textsuperscript{80} It may be executed anywhere in India.\textsuperscript{81} When a warrant is directed to more officers or persons than one, it may be executed by all, or any one or more of them.\textsuperscript{82} A warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.\textsuperscript{83} The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and if so required, shall show him the warrant.\textsuperscript{84} The police officer or other person executing a warrant of arrest shall subject to the provision as to security for appearance,\textsuperscript{85} without unnecessary delay bring the person arrested before the court before which he is required to produce such person.\textsuperscript{86} Provided that such delay shall not in any case exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the magistrate's court.\textsuperscript{87}

\textsuperscript{77} Id. ss.70(1) & 72.
\textsuperscript{78} Id. s.70.
\textsuperscript{79} Ibid.
\textsuperscript{80} Id. s.70(2).
\textsuperscript{81} Id. s.77. Yet s.78 provides that when a warrant is to be executed outside the local jurisdiction of the court issuing it, such court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any executive magistrate or district superintendent of police or commissioner of police within the local limits of whose jurisdiction it is to be executed. He shall forward along with warrant, the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the court acting under s.81 to decide whether bail should or should not be granted to the person. Ss.79 to 81 are also applicable to a warrant of arrest to be executed outside the jurisdiction of the court issuing it.
\textsuperscript{82} Id. s.72(2).
\textsuperscript{83} Id. s.74.
\textsuperscript{84} Id. s.75.
\textsuperscript{85} Id. s.71.
\textsuperscript{86} Id. s.76.
\textsuperscript{87} Ibid.
6.13 Arrest without warrant

Any police officer may without an order from a magistrate and without a warrant arrest any person who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned. There are also several other grounds for arresting a person without a warrant for other purposes than investigation.

6.14 Deputing subordinate to arrest

When any officer in charge of a police station or any police officer making an investigation requires any officer subordinate to him to arrest without warrant (other than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made and the officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order so required by such person, shall show him the order.

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88 Id. s.41(1)(a); Kajal Dev v. State of Assam, 1989 CriLJ 1209 (Gau HC). What is a reasonable complaint or suspicion or what is credible information must depend upon the facts and circumstances in each case. The words “reasonable” and “credible” have reference to the mind of the police officer receiving information and such information must afford sufficient materials for the exercise of an independent judgment at the time of making arrest. See also Subod Chandra Roy v. Emperor, ILR 52 Cal 319; K.V. Mohammed v. C.Komand, AIR 1943 Mad 218; Tribhuvan Singh v. Rex, AIR 1949 Oudh 74; Bhaskaran v. State, 1987 CriLJ 653 (Del HC).

89 Arrest is used to secure attendance of the accused at the time of trial and as a preventive or precautionary measure in respect of a person intending to commit a cognizable offence, or a habitual offender or an ex-convict, or a person found under suspicious circumstances (s.s.151, 41(2) r/w ss. 110, 41(1)(b), 41(1)(b) and (d)). It may sometimes become necessary to obtain correct address of a person committing a non-cognizable offence (s.42). A person obstructing a police officer in discharge of his duties is liable to be arrested to put a stop to such obstruction [s.41(1) (c)]. So also a person escaping from lawful custody should be liable to be arrested and re-taken in custody.

90 Id. s.55(1).
6.15 Arrest how made

In making arrest the police officer or other person\(^91\) making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.\(^92\) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.\(^93\) However, the person effecting arrest shall not have any right to cause death of a person who is not accused of an offence punishable with death or with imprisonment for life.\(^94\) Again, the person arrested shall not be subjected to more restraint than is necessary to prevent his escape.\(^95\)

6.17 Additional powers for effecting arrest

The police officer or other person having authority to arrest a person under a warrant or otherwise has reason to believe that the person to be arrested is within or has entered any place, he may search there.\(^96\) Any person residing in, or being in charge of such place shall, on demand afford all reasonable facilities for the search.\(^97\) If ingress to such place is not be obtained it shall be lawful for a person acting under a warrant or for a police officer to enter such place and search therein and in order to effect an entrance into such place to break open, any outer or inner door or window of any house or place whether that of the person to be arrested or of any other person, if after notification of...
his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance. 98

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it. 99

Any police officer or other person authorized to make an arrest may break open, any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein. 100

6.18 Pursuit of offenders

A police officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest, pursue such person into any place in India. 101 A police officer’s power to arrest is ordinarily limited to the police district. 102 The former power to an extent supplements the latter. If a person in lawful custody escape or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in India. 103

98 Id. s.47(1) & (2).
99 Id. Proviso to s.47(2).
100 Id. s.47(3).
101 Id. s.48.
102 The Police Act, 1861, s.22.
103 The Code of Criminal Procedure, 1973, s.60(1). The person effecting such re-arrest has the same powers and duties as mentioned in sections 46 and 49.
6.19 Extradition

The investigation officer can also get the accused extradited if he is abroad.

The Extradition Act, 1962 provides for the procedure to be adopted for the surrender or return to India of accused or convicted person who is in a foreign State or commonwealth country. When a person accused or convicted of an extradition offence committed in India, is or is suspected to be, in any foreign State or a commonwealth country, the Central Government may make a requisition for his surrender to India. Such requisition shall be made to a diplomatic representative of that State or country at Delhi, or to the Government of that State or country through the diplomatic representative of India in that State or country. If neither of these modes is convenient, the requisition shall be made in such other mode as is settled by arrangement made by the Government of India with that State or country. Moreover, a Magistrate in India is empowered to issue warrant for the apprehension of any such person who is or is suspected to be in any

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104 The Extradition Act, 1962, [Act No.34 of 1962], s.19; s.2(e) provides: “'foreign State' means any State outside India other than a commonwealth country, and includes every constituent part, colony or dependency of such State;” s.2(a) provides: “'commonwealth country' means a commonwealth country specified in the First Schedule and such other commonwealth country as may be added to that Schedule by the Central Government by notification in the official Gazette, and includes every constituent part, colony or dependency of any commonwealth country so specified or added.”

105 Id, s.19(1); s.2(c) provides: “'extradition offence' means-
(i) in relation to a foreign State, being a treaty State, an offence provided for in the extradition treaty with that State;
(ii) in relation to a foreign State other than a treaty State or in relation to a commonwealth country an offence which is specified in; or which may be specified by notification under, the Second Schedule”;
106 Id, s.19(1); s.2(d) provides: “'treaty State' means a foreign State with which an extradition treaty is in operation”;
107 Id, s.19(1)(a) & (b)
108 Ibid.
commonwealth country. Any such person who is surrendered or returned by a foreign State or commonwealth country may be brought into India and delivered to the proper authority to be dealt with according to law.

6.20 Post arrest procedures

Whenever a person is arrested by a police officer under a non-bailable warrant or under a bailable warrant but the arrestee cannot furnish bail, and whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail or is unable to furnish bail, and the officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles other than necessary wearing apparels found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the police officer shall be given to such person. Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

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108 Id, s.19(2). It provides: "A warrant issued by a Magistrate in India for the apprehension of any person who is or is suspected to be, in any commonwealth country to which chapter III applies shall be in such form as may be prescribed.

109 Id, s.20; For a general discussion on different aspects of extradition see Michigan v. Doran, 439 U.S. 282, 58 L.Ed.2d 521(1978) per Blackmun J., joined by Brennan and Marshall, JJ., laid down: "The extradition process involves an 'extended restraint of liberty following arrest' even more severe than that accompanying detention within a single State. Extradition involves, at a minimum, administrative processing in both the asylum State and the demanding State, and forced transportation in between. It surely is a 'significant restraint on liberty'. For me, therefore, the Amendment's language and the holding in *Gerstean* mean that, even in the extradition context, where the demanding State's 'charge' rests upon something less than an indictment, there must be a determination of probable cause by a detached and neutral magistrate, and that the asylum State need not grant extradition unless that determination has been made. The demanding State, of course, has the burden of so demonstrating.'

110 Id, s.51(1).

111 Id, s.51(2).
The search should be conducted in the presence of witnesses.\textsuperscript{112} The witnesses should be independent and respectable. The power is available if and only if the arrested person is not released on bail. After search all the articles other than necessary wearing apparel found upon the arrested person are to be seized. The person exercising the power is under legal obligation to give a receipt acknowledging the articles taken in possession by the police. However, it will not make the search-evidence inadmissible simply for some irregularities in making the search.\textsuperscript{113}

6.21 Power to seize offensive weapons

The officer in charge of the police station or other person may take from the person arrested any offensive weapons which he has about his possession.\textsuperscript{114} The weapons so seized shall be delivered to the court or the officer before which or whom the officer or person making the arrest is required by the Code to produce the person arrested. The power to seize can be exercised by any person effecting arrest.\textsuperscript{115}

6.22 Medical examination of the arrested

An arrested person can be subjected to medical examination.\textsuperscript{116} For that he must be arrested on a charge of committing of an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence. The medical examination shall be conducted by a registered medical practitioner or any person acting in good faith in his aid and under his direction. It shall

\textsuperscript{112}The Police Rules (Rules framed under the Police Act).
\textsuperscript{113}Kamalabai v. State, 1990 Cri LJ 258 (All HC).
\textsuperscript{114}The Code of Criminal Procedure, 1973, s.52.
\textsuperscript{115}Ibid.
\textsuperscript{116}Id. s.53.
be so done by the registered medical practitioner or such other person at the request of a police officer not below the rank of sub-inspector. It shall be lawful to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.\textsuperscript{117} Whenever the person of a female is to be so examined, it shall be made by, or under the supervision of a female registered medical practitioner.\textsuperscript{118} This provision makes such medical examinations lawful so as to save it from the scope of the fundamental right against self-incrimination.\textsuperscript{119} The medical examination takes various forms depending upon the nature of the case.\textsuperscript{120} Even if an accused is released on bail, the medical examination of his person can be done.\textsuperscript{121}

\textsuperscript{117} Id., s.53(1).
\textsuperscript{118} Id., s.53(2). As to the meaning of the expression "registered medical practitioner", the explanation to the section provides: "In this section and in s.54, "registered medical practitioner" means a medical practitioner who possess any recognised medical qualification as defined in clause (h) of s.2 of the Indian Medical Council Act. 1956 (102 of 156), and whose name has been entered in a State Medical Register".
\textsuperscript{119} The Law Commission of India at its 37th Report on the Code of Criminal Procedure, 1898 at page 205 has expressed the view that the decision of the Supreme Court in Kathikalu v. State, AIR 1961 SC 1808, has the effect of the privilege under Article 20(3) only to testimony written or oral. See also Anil A. Lokhande v. State of Maharashtra, 1981 Cri.LJ 1725 (Bom. HC.); Ananth Kumar Naik v. State of A.P., 1977 Cri. Lj 1797 (AP HC); Jansheel v. State of U.P., 1976 Cri.LJ 1680 (All HC). In all these decisions, relying on the principles of laid down in Kathikalu case. It has been held that s.53 is not violative of Article 20(3) and that a person cannot be said to have been compelled "to be a witness" against himself if he is merely required to undergo a medical examination as contemplated under section 53.
\textsuperscript{120} Neeraj Sharma v. State of U.P., 1993 Cri. Lj 2266 (All HC); Anil A. Lokhande v. State of Maharashtra, 1981 Cri.LJ 123 (Bom. HC.); Ananth Kumar Naik v. State of A.P., 1977 Cri. LJ 1797 (AP HC); Jansheel v. State of U.P., 1976 Cri.LJ 1680 (All HC). The expression 'examination of the person' is not confined only to the examination of the skin or what is visible on the body. Even examination of some internal organs for the purpose of collecting evidence comes within the purview of this section. It includes X-ray examination, taking electrocardiograph and testing of blood, sputum, semen, urine, hair etc. The condition that the medical examination has to be done at the instance of a police officer not below the rank of sub-inspector does not debar other superior officers or the court concerned from exercising the power if necessary. It is open to the court to issue direction or to grant approval or permission to the police for carrying out further examination. See also State of Maharashtra v. Dryanoba, 1979 Cri.LJ 277 (Bom HC).
\textsuperscript{121} Thaniel Victor v. State of T.N., 1991 CriLJ 2416 (Mad HC); Anil A. Lokhande v. State of Maharashtra, 1981 Cri.LJ 125 (Bom. HC.); Ananth Kumar Naik v. State of A.P., 1977 Cri.LJ 1797 (AP HC). Even after the release on bail, he is still a person arrested on a charge of committing an offence. Furthermore, such person while released on bail is notionally in the custody of the court.
Similarly, the Identification of the Prisoners Act, 1920 contributes certain procedures. It empowers a police officer to take measurements including finger impressions and foot-print impressions of a person arrested in connection with an offence punishable with imprisonment which may extend to one year or more.\textsuperscript{122} If in the opinion of a magistrate it is expedient to direct any person to allow his measurements or photographs to be taken for the purpose of investigation or proceeding under the Code, he may make an order to that effect, provided that the person at some time or other has been arrested in connection with such investigation or proceeding.\textsuperscript{123}

The law as well envisages the medical examination of a person arrested, whether on charge or otherwise upon his request. If he alleges at the time when he is produced before a magistrate or at any time during the period of his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence against his body, and requests to do so, the magistrate shall direct the examination of the body of such person by a registered medical practitioner unless the magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice.\textsuperscript{124}

\textbf{6.23 Arrestee's rights}

(a) Right to know grounds of arrest:

Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offences for which he is

\textsuperscript{122}The Identification of the Prisoners Act, 1920, s.4
\textsuperscript{123}Id. s.5.
\textsuperscript{124}The Code of Criminal Procedure, 1973, s.54.
arrested or other grounds for such arrest. When a subordinate officer is deputed by a police officer in charge or any police officer making investigation to arrest a person such subordinate officer shall, before making the arrest, notify to the person to be arrested the substance of the order in writing requiring to arrest given by the superior police officer and if so required by such person shall show him the order. And, in case of arrest to be made under a warrant, the police officer or other person executing the warrant of arrest shall notify the substance thereof to the person to be arrested and if so required, shall show the warrant.

Besides, the Constitution confers on this right the status of a fundamental right. Article 22(1) provides:

“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.”

The right of arrestee to be informed of the grounds of arrest forthwith is precious. Its timely information enables him to move the proper court for bail or to resort to the remedies available to check the illegality involved in arrest and detention. It is meant to afford the earliest opportunity to the arrested person to remove any mistake, misapprehension or misunderstanding in the minds of the arresting authority and, also to know exactly what the accusation against him is so that he can

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125 Id, s.50(1).
126 Id, s.55; Ajith Kumar v. State of Assam, 1976 CriLJ 1303 (Gauhati). Non compliance with this provision will render the arrest illegal.
127 Id, s.75; Sathish Chandra Rai v. Joda Nandan Singh, ILR 26 Cal 748; Abdul Gafur v. Queen Empress, ILR 23 Cal 896. If the substance of the warrant is not notified, the would be unlawful.
128 Poovan v. S.I of Police Areor, 1993(1) KLJ 569.
exercise the second right, namely of consulting a legal practitioner of his choice and to be defended by him.\textsuperscript{129}

(b) Information as to the right to be released on bail:

Where a police officer arrests without a warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail.\textsuperscript{130}

(c) Right to be taken before a magistrate or officer in charge of police station without delay:

A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions as to bail, take or send the person arrested before a magistrate having jurisdiction in the case, or before the officer in charge of a police station.\textsuperscript{131} The arrested person should not be confined in any place other than a police station before he is taken to the magistrate.\textsuperscript{132}

The procedure as to arrest with warrant is a bit more different. The police officer or other person executing a warrant of arrest shall subject to the provision as to security\textsuperscript{133} without unnecessary delay bring the person arrested before the court before

\textsuperscript{129}Madhu Limaye, Re (1969) I SCC 292; Christie v. Lavelinsky, (1947) I All ER 567. See also, Harikrishnan v. State of Maharashtra, AIR 1962 SC 911: The grounds of arrest should be communicated to the arrested person in language understood by him, otherwise it would not amount to sufficient compliance with the constitutional requirement. In Tarapal Dey v. State of W.B., AIR 1951 SC 174, it is made clear that the words 'as soon as may be' in Art.22 (1) would mean as early as is reasonable in the circumstances of the case however the word 'forthwith' in s.50(1) of the Code creates a strict duty on the part of the police officer making the arrest and would mean immediately.

\textsuperscript{130}Id, s.50(2).

\textsuperscript{131}Id, s.56

\textsuperscript{132}K.N.Chandrasekharan Pillai, R.V. Kelkar’s Criminal Procedure, 3\textsuperscript{rd} ed., p.61.

\textsuperscript{133}The Code of Criminal Procedure, 1973, s.71.
which he is required by law to produce such person.\textsuperscript{134} Such delay shall not in any case exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the magistrate court.\textsuperscript{135}

(d) Right of not being detained beyond twenty-four hours without judicial scrutiny

No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a magistrate authorising further detention exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the magistrate’s court.\textsuperscript{136}

This right is a fundamental right as well.\textsuperscript{137} Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody without the authority of a magistrate.\textsuperscript{138} Similarly in the case of arrest with warrant the police officer or other person executing the warrant shall without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person.\textsuperscript{139}

\textsuperscript{134} Id. s.76.
\textsuperscript{135} Ibid.
\textsuperscript{136} Id. s.57.
\textsuperscript{137} The Constitution of India. Art.22(2).
\textsuperscript{138} Ibid.
\textsuperscript{139} The Code of Criminal Procedure, 1973, s.76; In Mohd. Sulemain v. King Emperor, 30 CWN (FB). Per Rankin, J. it has been explained that this provision has been enacted with a view (i) to prevent arrest and detention for the purpose of extracting confessions, or on a means of compelling detenues to give information, (ii) to prevent police stations being used as though they were prisons. (iii) to afford an early recourse to a judicial officer independent of police on all questions of bail or discharge. Again in Dwaraka Das Hariidas v. Anbulal Ganpathira, 28 CWN 850, it has been held that this precautionary provision is designed to secure that within not more than 24 hours some knowledge of the nature of the charge against the accused, however incomplete the information may be. See also Khuri (II) v. State of Bihar, (1981)1 SCC 627; Sharifbai v. Abdul Razak, AIR 1961 Bom 42; State of Punjab v. Ajay Singh, AIR 1956 SC 10.
(e) Right to consult a legal practitioner:

It is a fundamental right that every person who is arrested is entitled to consult a legal practitioner of his choice and the state shall not deny it.\textsuperscript{140} There are umpteen number of decisions by the Supreme Court casting constitutional obligation on the state to provide free legal aid to an indigent accused. This obligation does not arise only when the trial commences but also attaches when the accused is for the first time produced before the magistrate, as also when he is remanded from time to time.\textsuperscript{141} This right begins from the very moment of the arrest.\textsuperscript{142} The consultation with the lawyer may be in the presence of police officer but not within his hearing.\textsuperscript{143} In \textit{D.K. Basu v. State of W.B.}, the Supreme Court has laid down certain guidelines to be observed indispensably by police officers or such other persons effecting arrest.

6.24 Procedure when investigation cannot be completed within twenty-four hours of arrest

Whenever a person is arrested and detained in custody and it appears that the investigation cannot be completed within the stipulated twenty-four hours\textsuperscript{144} and there are grounds for believing that the accusation or information is well founded the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit a copy of the entries in the case diary to the nearest judicial magistrate and shall at the same time forward the accused to such magistrate.\textsuperscript{145} The magistrate to whom an accused is so forwarded may authorize the

\textsuperscript{140}The Constitution of India, Art.22(1).
\textsuperscript{142}\textit{Moti Bai v. State, AIR 1954 Raj 241; Sudhasindhu De v. Emperor, ILR 62 Cal 384; Llewelyn Evans, Re ILR 50 Bom 741.}
\textsuperscript{143}\textit{Sunder Singh v. Emperor, 32 CriLJ 339.}
\textsuperscript{144}The Code of Criminal Procedure, 1973, s.57.
\textsuperscript{145}Id, s.167(1).
detention of the accused from time to time in such custody as such magistrate thinks fit for a term not exceeding fifteen days in the whole. The magistrate can exercise this power irrespective of whether he has or has not jurisdiction in the case. If the magistrate has no jurisdiction in the case and considers further detention unnecessary he may order the accused to be forwarded to a judicial magistrate having jurisdiction.

The magistrate may authorise the detention of the accused beyond fifteen days otherwise than in police custody if he is satisfied that adequate grounds exist for doing so. The total period of detention of the accused in all such custody shall not be exceeded: (i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than ten years, and (ii) sixty days, where the investigation relates to any other offence.

On the expiry of the period of ninety days or sixty days, as the case may be, the accused shall be released on bail on his furnishing bail. So long as the accused does not furnish bail he shall be detained in custody notwithstanding the expiry of the period stipulated. The magistrate shall not so authorise detention in any such custody unless the accused is produced before him. If any question arises whether an accused

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146 Ibid, s.167(2).
147 Ibid; However, in Balakrishna v. Emperor, AIR 1931 Lah 99, it was held that in the absence of any difficulties like long distance etc., the police should approach for the purposes of remand a magistrate having jurisdiction to try the case.
148 Ibid, s.167 (2).
149 Ibid, s.167(2), proviso, cl.(a).
150 Ibid.
151 Ibid, s.167(2), Explanation I.
152 Ibid, s.167(2), proviso, cl.(b); In Bal Krishna v. Emperor, AIR 1931 Lah 99 and Chadayam Mukki v. State of Kerala, 1980 CriLJ 1195, it has been made clear that the object of requiring the accused to be produced before the magistrate is to enable him to decide judicially whether remand is necessary and also to enable the accused to make any representation to the magistrate to controvert the grounds on which the police officer has asked for remand. In order to facilitate the proof of the fact that the accused was produced before the magistrate may obtain signature of the accused on the order authorizing detention. See also R. K. Singh v. Bihar, (1986)2 Scale 1256; Ramesh Kumar Ravi v. State of Bihar, 1987 CriLJ 1489 (Pat HC).
was produced before the magistrate, it may be proved by his signature on the order
authorising detention.\textsuperscript{153}

Where a Judicial Magistrate is not available, the police officer-in-charge or
the police officer making investigation if he is not below the rank of Sub-Inspector
transmit a copy of the entry in the case diary and shall at the same time forward the
accused to the nearest Executive Magistrate on whom the powers of a Judicial
Magistrate or Metropolitan Magistrate have been conferred.\textsuperscript{154} Such Executive
Magistrate may for reasons recorded in writing authorise the detention of the accused in
such custody as he may think fit for a term not exceeding seven days in the aggregate.
He shall transmit to the nearest Judicial Magistrate the records of the case together with
a copy of the entries in the case diary transmitted to him by such police officer before
the expiry of the period of detention so authorised by him.\textsuperscript{155}

On expiry of the period of detention so authorised the accused shall be
released on bail except where an order for further detention of the accused has been
made by a magistrate competent to make such order.\textsuperscript{156} Where an order for such further
detention is made, the period during which the accused was detained in custody
pursuant to the order of the Executive Magistrate shall be taken into account in
computing the total periods stipulated.\textsuperscript{157}

\textsuperscript{153} Id. s.167(2), Explanation II.
\textsuperscript{154} Id. s.167(2-A).
\textsuperscript{155} Id. s.167(2-A), proviso.
\textsuperscript{156} Id. s.167(2-A).
CriLJ 79 (MP HC); \textit{High Court of A.P. v. Chaganti Sathyarayana}, (1986)1 Scale 1037. Thus if the
magistrate authorizes detention on the very date of arrest of an accused then the period of detention is
to be computed from the date of his arrest.
The nature of the custody can be altered from judicial custody to police custody and vice versa, but the detention in police custody shall not exceed fifteen days.\footnote{This limit is not applicable when there is a series of different cases requiring investigation against the same accused as held by the Punjab and Haryana High Court in S. Harisingran Singh v. State of Punjab, 1984 CriLJ 253.} After the period of detention in police custody, the accused can be kept in judicial custody or any other custody as ordered by the magistrate for the remaining period.\footnote{State of Delhi Administration v. Dharam Pal, 1982 CriLJ 1103.} The magistrate has full discretion to order detention in police custody or judicial custody even during the fifteen days permitted to authorise detention in police custody.\footnote{M.R. Venkataraman, Re, AIR 1948 Mad 100. It is pertinent to note that the magistrate can remand the accused person even to Military, Naval or Air Force custody if such accused person is subject to Military, Naval or Air Force law as laid down by the Delhi High Court in State (Delhi Admin.) v. Dharam Pal, 1982 CriLJ 1103.}

The magistrate has to apply his judicial mind while deciding whether or not the detention of the accused in any custody is necessary.\footnote{Bir Bhadra Pratap Singh v. D.M., AIR 1959 All 384; E.P.Subbu Reddy v. State, AIR 1969 AP 281.} He shall record his reasons in support of the order authorising detention in custody of the police.\footnote{The Code of Criminal Procedure, 1973, s.167(4).} The magistrate should consider all available materials including the copy of the case diary before authorising detention.\footnote{In Madhu Limaye, Re (1969)1 SCC 292, it has been held that the order of detention is not to be passed mechanically as a routine order on the request of the police for remand.} Any magistrate other than the chief judicial magistrate making such order shall forward a copy of his order with his supporting reasons to the chief judicial magistrate concerned.\footnote{The Code of Criminal Procedure, 1973, s.167(3).}

6.25 Collection of Evidence

(a) Examination of witnesses by police

An investigating police officer can by order require the attendance before him any person for the purpose of his being examined as witness.\footnote{Id, s.160.} The order requiring
attendance must be in writing. Only those persons appearing to be acquainted with the facts and circumstances of the case and being within the limits of police station of such police officer or within the limits of any adjoining police station can be so required to attend for being examined.166

A male person below fifteen years of age or a woman, however, shall not be required to attend any place other than the place in which such person or woman resides.167 Any person so required is bound to attend before the officer pursuant to the order.168 Any intentional omission to attend on the part of any person so required by the police, amounts to an offence and he is liable to be prosecuted.169 However, the police officer has no authority to use force to compel attendance of such person; nor does he have any power to arrest or detain such a witness. Similarly no magistrate has any power to issue any process compelling a person to attend before a police officer.170

The police officer may examine orally any person supposed to be acquainted with the facts and circumstance of the case.171 He may as well examine the accused.172 The accused, even after his remand to judicial custody can subject to his

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166 Ibid.
168 Id. s.160(1).
169 The Indian Penal Code, 1860, s.174.
170 Queen Empress v. Jogendra Nath Mukerjee, ILR 24 Cal 320. See also M.N. Sreedharan v. State of Kerala, 1981 CriIJ 119 (Ker HC). As to expenses of such witness any State Government, if it so desires may make rules and provide for payment by the police officer, of the reasonable expenses of every person attending or required at any place, other than such person’s residence, as provided under section 160(2) of the Code. In the Joint Committee Report, it has been made clear that as the payment of expenses to persons attending before police officer would involve substantial financial burden on the State Government, it is appropriate to leave the matter entirely to the State Government to make rules for such a provision.
171 The Code of Criminal Procedure, 1973, s.161(1). It shall be done by a police officer making investigation of the case or on the requisition of such officer, by any police officer not below such rank as the State Government may by order prescribe in this behalf.
172 The words “any person”, include any person who may be accused of the crime subsequently. See Dima Nath Ganapath Rai, Re, AIR 1940 Nag 186; Pakala Narayana Swami v. Emperor, AIR 1939 PC 47. The expression any person supposed to be acquainted with the facts and circumstances of the case includes an accused person who fills that role because the police suppose him to have committed the crime and must therefore, be familiar with the facts. See Nandini Satpathy v. P.L. Dani, (1978)2 SCC 424; Mahain Moulal v. State of Bihar, (1972)1 SCC 748.
right to silence, be questioned by the police with the permission of the magistrate in any place and manner which do not amount to custody in the police.\textsuperscript{173}

The person being examined by a police officer shall be bound to answer truly all questions relating to that case put to him by such officer.\textsuperscript{174} He is, however, not bound to answer such questions, the answer to which would have a tendency to expose him to criminal charge or to a penalty or forfeiture.\textsuperscript{175}

Though any person, including an accused is required to answer truly all questions relating to the case under investigation put to him by the investigating police officer, there is legal and constitutional protection to such person against incriminating questions.\textsuperscript{176} The accused may remain silent or may refuse to answer when confronted with incriminating questions by virtue of the fundamental right that no person accused of any offence shall be compelled to be a witness against himself.\textsuperscript{177}

If an accused person expresses the wish to have his lawyer by his side when the police interrogate him, this facility shall not be denied to him. However, the police need not wait more than for a reasonable while for the arrival of the accused's advocate. The police must invariably warn and - record that fact - about the right to silence against incrimination; and take his written acknowledgement where the accused is literate. After

\textsuperscript{173} Gian Singh v. State (Delhi Admnl), 1981 CriLJ 100 (Del HC).
\textsuperscript{174} The Code of Criminal Procedure, 1973, s.161(2).
\textsuperscript{175} Ibid. It is quite important for effective investigation that every person questioned by the police officer must furnish, and must be under a legal duty to furnish all information available with him to police. Logically, the law must also require that the information is not false or misleading. If a person being bound to answer truly all questions relating to such case refuses to answer any such question demanded to him, he shall be liable to be punished under section 179, IPC. Further if such a person gives an answer which is false and which he either knows or believes to be false or does not believe it to be true, he is liable to be punished under section 193, IPC for giving false evidence. Probably, such a person is also liable to be punished under section 177 for furnishing false information.
\textsuperscript{176} Id, s.161(1) and the Constitution of India, Art.20(3).
\textsuperscript{177} Nandini Saupaha v. P.L. Dauli (1978)2 SCC 424: it has been held that the area covered by Art. 20(3) and section 161(2) is substantially the same and section 161(2) is parliamentary gloss on the constitutional gloss. The Supreme Court in this case has extensively considered parameters of section 161(2) and the scope and ambit of Art 20(3).
an examination of the accused, where lawyer of his choice is not available the police officer must take him to a magistrate, doctor, or other willing and responsible non-partisan official or non-official and allow secluded audience where he may unburden himself beyond the view of the police and tell whether he has subjected to duress, which should be followed by judicial or some other custody for him where the police can not reach him. The collector may briefly record the relevant conversation and communicate it to the nearest magistrate.\textsuperscript{178}

The police officer may reduce into writing any statement made to him in the course of the examination of a person, and if he does so, he shall make a separate and true record of the statement of each such person, whose statement so recorded.\textsuperscript{179} The police officer has wide discretion to record or not to record any statement made to him during investigation. This appears to be necessary also.\textsuperscript{180}

No statement made by any person to a police officer in the course of an investigation, if reduced to writing be signed by the person making it.\textsuperscript{181} The contravention of the provision will be considered as impairing the value of the evidence given by person making and signing a statement before the police during the investigation of a crime.\textsuperscript{182}

\textsuperscript{179} The Code of Criminal Procedure, 1973, s.161(3).
\textsuperscript{180} The Law Commission of India in its 41\textsuperscript{st} Report on the Code of Criminal Procedure, 1898, vol.1 (at pp. 69 & 70) has opined that a police officer investigating crime has to question, and then to examine orally, a large number of persons may of whom may have no useful information to give, and much of the information is later found to be pointless. It would be too great a burden on him if he should be required by law to reduce into writing every statement made to him; nor would it serve any purpose apart from distracting attention from the main work. Further this discretion is in practice is not being abused, nor have we heard any complaint that it is abused. There has been no lack of complaint that the record prepared by the investigating police officer is not accurate, but no serious complaint that the statements of material witnesses are not recorded.
\textsuperscript{181} The Code of Criminal Procedure, 1973, s.162(1).
\textsuperscript{182} Zahiruddin v. Emperor, AIR 1947 PC 75; Joint Committee Report, p.XVI.
During investigation, the statements of witnesses to be recorded as promptly as possible. Unjustified and unexplained long delay on the part of investigating officer in recording a statement of a material witness during the investigation may render the evidence of such witness unreliable.\textsuperscript{183}

6.26 Use of the statements made to the police during investigation

A statement recorded by police officer during investigation is neither given on oath nor is it tested by cross-examination. Such statement is not evidence of the facts stated therein and therefore is not considered as substantive evidence.\textsuperscript{184} If the person making such statement is examined before the court at the time of trial or inquiry his former statement, if duly proved, may be used by the accused, and with the permission of the court by the prosecution to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872.\textsuperscript{185} When any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.\textsuperscript{186} It shall not be used for any other purpose than that of ss.27 and 32(1) of the Indian Evidence Act, 1872.\textsuperscript{187} An omission to state a fact or circumstance in the statement so recorded by the police may amount to contradiction, if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs. Whether any omission amounts to contradiction in the particular context shall be a question of fact.\textsuperscript{188} The object of the section is to protect the accused both against overzealous police officers and untruthful witnesses.\textsuperscript{189}

\textsuperscript{183} Balakrishna v. State of Orissa, (1971)3 SCC 192; Thangaraj, Re, 1973 CriLJ 1301; Attuuddin v. State of U.P. (1973)4 SCC 35. See also, Ganesh Bhaven Patel v. State of Maharashtra (1978)4 SCC 371: It has been held that inordinate delay in the registration of FIR and further delay in recording statement of material witness would cause a cloud of suspicion on the credibility of the entire warp and woof.


\textsuperscript{185} The Code of Criminal Procedure, 1973, s.162.

\textsuperscript{186} Ibid.

\textsuperscript{187} Id, s.162(2).

\textsuperscript{188} Id, s.162. See also, Asan Thurayil Baby v. State of Kerala 1981 CriLJ 1165 (Ker HC); State of U.P. v. M. R. Anthony (1985)1 SCC 505.

6.27 Confessions and statements

Admitting the offence in terms or at any rate substantially all the facts constituting the offence is confession.\(^{190}\)

Any confession made by an accused to the police is not admissible in evidence against the person making it.\(^{191}\) On the other hand confession made to a judicial magistrate is substantive evidence. Any metropolitan magistrate or judicial magistrate may record any confession or statement made to him by an accused.\(^{192}\) Any such magistrate can record it irrespective whether or not he has jurisdiction in the case.\(^{193}\) It can be recorded in the course of investigation or at any time afterwards, but before the commencement of the inquiry or trial.\(^{194}\) Even a police officer on whom any power of a magistrate has been conferred, under any law for the time being in force, shall not record any confession.\(^{195}\) The magistrate shall before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him.\(^{196}\) The magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.\(^{197}\) The magistrate shall not authorise the detention of the person appearing before him in police custody if at any time before the confession is recorded, states that he is not willing to make the confession.\(^{198}\) Any


\(^{191}\) The Indian Evidence Act, 1872, s.25.

\(^{192}\) The Code of Criminal Procedure, 1973, s.164(1).

\(^{193}\) Ibid.

\(^{194}\) Ibid; Any investigation under Chapter XII of the Code and any other law for the time being in force is covered by the provision.

\(^{195}\) Id, s.164(1), proviso.

\(^{196}\) Id, s.164(2). The provision is in conformity with s.24 of the Indian Evidence Act, 1872. It provides: "Confession caused by inducement, threat or promise when irrelevant in criminal proceedings. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid evil of a temporal nature in reference to the proceedings against him."

\(^{197}\) Ibid.

\(^{198}\) Id, s.164(3).
such confession shall be recorded in the manner provided for recording the examination of the accused. 199 The confession so recorded shall be read over to the person making it. The magistrate shall ascertain whether he admits that the recorded confession is correct. It shall then be signed by the person making it. The magistrate shall make a memorandum stating that he has duly complied with all such legal requirements in the manner prescribed, at the foot of such record. 200

A statement (other than a confession) shall be recorded in such manner provided for the recording of evidence as is, in the opinion of the magistrate, best fitted to the circumstances of the case. 201 The magistrate has power to administer oath to the person whose statement is so recorded. 202 The magistrate so recording a confession or statement shall forward it to the magistrate by whom the case is to be inquired into or tried. 203

6.28 Order to produce documents or things

Whenever any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purpose of any investigation by or before him, he may issue a written order to the person in whose possession or power, such document or thing is believed to be, requiring him to attend and produce it or to produce it, at the time and place stated in the order. 204

199 Id. s.164(4). The manner of recording the examination is provided under s.281.
200 Id. s.164(4). The sub-section provides the memorandum as: "I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him. (Signed) A.B., Magistrate."
201 Id. s.164(5).
202 Ibid.
203 Id. s.164(6).
204 Id. s.91(1). Under this section any court can issue summons to produce documents or other things, whose production is necessary or desirable for any inquiry or trial by or before him. Sub-sec.(2) provides: "Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same." Sub-sec.(3) provides: "Nothing in this section shall be deemed—(a) to affect ss.123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) or the Banker's Books Evidence Act, 1891 (13 of 1891); or (b) to apply to a letter, post card, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."
When any document, parcel or other thing in the custody of a postal or telegraph authority is necessary for any investigation, the police officer can get it delivered to him by means of a requisition made by the District Magistrate, the Chief Judicial Magistrate, the court of session or the High Court, addressing such authority.\textsuperscript{205} Pending the order in such requisition proceeding, the police officer can make use of the power of any other magistrate, whether executive or judicial, or of any commissioner of police or district superintendent of police to make requisition to the postal or the telegraph authority to cause search to be made for and detain such document, parcel or thing necessary for the investigation.\textsuperscript{206}

If evidence necessary for investigation is available in a country or place outside India, the investigating officer can very well procure it.\textsuperscript{207}

\textsuperscript{205} Id. s.92(1).

\textsuperscript{206} Id. s.92(2).

\textsuperscript{207} The Code of Criminal Procedure (Amendment) Act, 1990 introduced ss.166-A and 166-B for achieving this task. S.166-A provides: "Letter of request to competent authority for investigation in a country or place outside India. - (1) Notwithstanding anything contained in this Code, if, in the course of an investigation into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that evidence may be available in a country or place outside India, any Criminal Court may issue a letter of request to a Court or an authority in that country or place competent to deal with such request to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to forward all the evidence so taken or collected to the Court issuing such letter.

(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation under this chapter."

S.166-B provides: "Letter of request from a country or place outside India to a Court or an authority for investigation in India. - (1) Upon receipt of a letter of request from a Court or an authority in a country or place outside India competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to an offence under investigation in that country or place, the Central Government may, if it thinks fit---

(i)forward the same to the Chief Metropolitan Magistrate or Chief Judicial Magistrate or such Metropolitan Magistrate or Judicial Magistrate as he may appoint in this behalf, who shall thereupon summon the person before him and record his statement or cause the document or thing to be produced; or

(ii)send the letter to any police officer for investigation who shall thereupon investigate into the offence in the same manner, as if the offence had been committed within India.

(2) All the evidence taken or collected under sub-sec.(1), or authenticated copies thereof or the thing so collected, shall be forwarded by the Magistrate or police officer, as the case may be to the Central Government for transmission to the Court or the authority issuing the letter of request, in such manner as the Central Government may deem fit."
6.29 Search and seizure

In certain situations collection of evidence can be achieved only by adopting the procedure of search. A search can be done either with or without warrant. A search warrant is a written authority given to police officer or other person by a competent magistrate or court for the search of any place either generally or for specified things or documents or for persons wrongfully detained.\(^{208}\) A search being a coercive method involving invasion of the sanctity and privacy of a citizen’s home or premises, the power to issue search warrant should be exercised with all care and circumspection.\(^{209}\)

6.30 Search with warrant

Any court may issue a search warrant:

(a) where it has reason to believe that person to whom a summons or an order\(^{210}\) or requisition\(^{211}\) has been or might be, addressed, will not or would not produce the document or thing as required thereby or

(b) where such document or thing is not known to the court to be in the possession of any person, or

(c) where the court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection.\(^{212}\)

The person to whom such warrant is directed may search in accordance with law.\(^{213}\) The court may, if it thinks fit, specify in the warrant the particular place or part

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\(^{208}\) K.N. Chandrasekharan Pillai, \textit{R.V. Kelkar's Criminal Procedure}, 3\(^{rd}\) ed., p.69.

\(^{209}\) Kalinga Tubes Ltd. v. D.Suri, AIR 1953 Ori 153; Gangadharan v. Chellappan, 1985 CriLJ 1517 (Ker HC); Bimal Kanti Ghosh v. Chandrasekhar Rao, 1986 CriLJ 689 (Ori HC); Sitpulil v. Chalidramolu II, 1988 CriLJ 308 (Ker HC).

\(^{210}\) The Code of Criminal Procedure, 1973, s.91.

\(^{211}\) \textit{Id}, s.92(1).

\(^{212}\) \textit{Id}, s.93(1).

\(^{213}\) \textit{Ibid}
thereof to which the search or inspection shall extend. The person charged with the execution of such warrant shall then search or inspect only the place or part so specified. No magistrate other than a district magistrate or chief judicial magistrate shall grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority.

The search shall be made in the presence of two or more independent and respectable witnesses. They shall be the inhabitants of that locality where the place to be searched is situate. If no inhabitant of that locality is available or is willing to be a witness to the search, the inhabitants of any other locality may be made such witnesses. They shall be called upon before making the search, either by order in writing or otherwise. Any person who, without reasonable cause, refuses or neglects to be a witness to the search when called upon by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under s.187 of the Indian Penal Code, 1860.

A person residing in, or being in charge of any closed place liable to search or inspection, shall on demand of the officer or other person executing the warrant, and on production of the warrant allow him free ingress thereto and afford all reasonable facilities for a search therein. If he refuses or omits to do so the officer or other person executing the warrant may break open any outer or inner door or window of any house or place in order to effect an entrance or liberate himself or any other person who having

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214 Id. s.93(2).
215 Ibid.
216 Id. s.93(3).
217 Id. s.100(5) r/w (4).
218 Id. s.100(5).
219 Ibid.
220 Ibid.
221 Id. s.100(8).
222 Id. s.100(1).
lawfully entered for the purpose of making arrest, is detained therein.\textsuperscript{223} Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched.\textsuperscript{224} If such person is a woman, the search shall be made by another woman with strict regard to decency.\textsuperscript{225}

The officer or other person shall prepare a list of all things seized in the course of such search and of the places in which they are respectively found. The witnesses shall sign it.\textsuperscript{226} No such witness shall be required to attend the court as a witness of the search unless specifically summon by it.\textsuperscript{227} The occupant of the place searched, or some person in his behalf, shall in every instance, be permitted to attend during the search and a copy of the list signed by the witnesses shall be delivered to such occupant or person.\textsuperscript{228} When any person is searched as aforesaid a list of all things taken possession of shall be prepared and a copy thereof shall be delivered to such person.\textsuperscript{229}

6.31 Search without warrant

A magistrate competent to issue a search warrant under six circumstances mentioned above may direct a search to be made in his presence if he considers it advisable and in such a case it would not be necessary to formally issue a search warrant.

6.32 Search by police officer during investigation

An officer in charge of a police station or police officer making an investigation may search or cause search to be made in any place within the limits of his station for anything necessary for the purpose of investigation into any offence which he is authorised to investigate whenever he has reasonable ground for believing that such

\textsuperscript{223} Id. s.100(2) t/w s.47...
\textsuperscript{224} Id. s.100(3).
\textsuperscript{225} Ibid.
\textsuperscript{226} Id. s.100(5).
\textsuperscript{227} Ibid.
\textsuperscript{228} Id. s.100(6).
\textsuperscript{229} Id. s.100(7).
thing may be found there and in his opinion such thing cannot be otherwise obtained
without undue delay. He shall record in writing, the grounds of his belief and specify
in writing, so far as possible the thing for which the search is to be made before
search. He shall if practicable conduct the search in person. He may, however,
require any officer subordinate to him to make the search if he is unable to conduct the
search in person, and there is no other person competent to make the search present at
the time. He shall record his reasons for so doing before deputing his subordinate
officer. He shall also deliver to such subordinate officer an order in writing, specifying
the place to be searched and so far as possible, the thing for which the search is to be
made. Such subordinate officer may thereupon search for such thing in such place.

The search shall be conducted in accordance with the governing legal
provisions. Copies of any record made as aforesaid shall forthwith be sent to the nearest
magistrate empowered to take cognizance of the offence. The magistrate shall furnish a copy
of the same, free of cost to the owner or occupier of the place searched, on application.

This provision does not permit a general search. A promiscuous entry into
the houses is not permitted to an investigating officer simply to satisfy himself as to the
truth of an allegation made by a complainant or an accused or a witness.

230 Id. s.165(1).
231 Ibid.
232 Id. s.165(2).
233 Id. s.165(3).
234 Id. s.165(4).
235 Id. s.165(5).
236 Lal Mea v. Emperor, AIR 1925 Cal 663; Ram Parves Ahir v. Emperor, AIR 1944 Par 228; Sithu Ram
Ahir v. Emperor, AIR 1944 Pat 222.
669; Emperor v. Mohammed Shua, AIR 1946 Lah 456; Prahap Dej v. Director of Enforcement, (1985)3
SCC 72; Sohanlal v. Emperor, AIR 1933 Oud 305; State v. Satya Narayana Mallik, AIR 1965 Ori
136; State v. Reheman, AIR 1960 SC 210; Sanchaita Investments v State of W.B. AIR 1981 Cal 157;
Sya Gopal v. Sarraghun Bohra, 13 CriLj 763; Utagar Singh v. Emperor, AIR 1932 Oud 249; Medhoo
16 CriLj 819; Heerhal v. Ram Dular, AIR 1935 Nag 237.
6.33 Search by police officer in the limits of another police station

An officer-in-charge of a police station or a police officer not being below the rank of sub-inspector making an investigation may require an officer in charge of another police station, whether in same or a different district, to cause a search to be made in any place in any case in which the former officer might cause such search to be made, within the limits of his own station. Such officer on being so required shall conduct search and forward the things found, if any, to the officer at whose request the search was made.

Whenever there is reason to believe that the delay occasioned by an officer in charge of another police station to cause a search to be made as contemplated under the provisions heretofore, might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police station or police officer making any investigation (under this chapter) to search, or cause to be searched any place in the limits of another police station (in accordance with the provisions of s.165) if such place were within the limits of his police station. Any officer conducting a search (under sub-sec 3) shall forthwith send notice of the search to the police officer in charge of the police station within the limits of which such place is situate, and shall also send to the nearest magistrate empowered such notice a copy of the list (if any, prepared under section 100). He shall also send to the nearest magistrate empowered to take cognizance of the offence, copies of the records (referred to in sub secs.1 and 3 of Sec 165). The owner or the occupier of the place searched shall, on application, be furnished free of cost with a copy of such records that sent to the magistrate.

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238 The Code of Criminal Procedure, s.166(1).
239 Id, s.166(2).
240 Id, s.166(3).
241 Id, s.166(4).
242 Id, s.166(5).
6.34 Procedure on completion of investigation

On completion of the investigation, it is for the investigating police officer to form an opinion as to whether or not there is a case to place the accused before the Magistrate for trial. If, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground to justify the forwarding of the accused to a magistrate, such officer shall forward the accused under custody to a magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial or if the offence is bailable and the accused is able to give security shall take security from him for his appearance before such magistrate on a day fixed and for his attendance from day to day before such magistrate.\(^{243}\) As soon as the investigation is completed, a report which is commonly called as 'charge sheet' or 'chellan' is to be submitted to the magistrate having jurisdiction. Every investigation shall be completed without unnecessary delay.\(^{244}\) On completion of investigation, the officer in charge of the police station shall forward to the magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government stating: -

(a) (i) the names of the parties;

(ii) the nature of the information;

(iii) the names of the persons who appeared to be acquainted with the circumstances of the case;

(iv) whether any offence appears to have been committed and if so by whom;

(v) whether the accused has been arrested;

\(^{243}\)Id, s.170(1).
\(^{244}\)Id, s.173(1).
(vi) whether he has been released on his bond, if so whether with or without sureties;
(vii) whether he has been forwarded in custody to a Magistrate having jurisdiction. 245

Where a superior officer of police has been appointed for the purpose the report shall be submitted through that officer. 246 Such superior officer may, pending the orders of the magistrate direct the orders of the Magistrate direct the officer in charge of police station to make further investigation. 247

The police officer submitting the report is also required to communicate in the manner prescribed by the State Government the action taken by him to the to the person, if any, by whom the information relating to the commission of the offence was first given. 248 The police officer shall forward to the magistrate along with the report

(a) All documents or relevant extract thereof on which the prosecution proposes to relay other than those already sent to the Magistrate during investigation;

(b) The recorded statements of all the persons whom the prosecution proposed to examine as its witnesses. 249

If the police officer is of opinion that any part of such statement is not relevant to the subject matter of the proceedings or that its disclosure to the accused is not essential in the interest of justice and is expedient in the public interest, he shall indicate that part of

245 Ibid., s.173(2)(i).
246 Ibid., s.173(3).
247 Ibid.
248 Ibid., s.173(2)(ii).
249 Ibid., s.173(5). See also State of Haryana v. Mehal Singh, 1978 CriLJ 1810, it was held by the Punjab and Haryana High Court that investigation of an offence could not be considered to be in conclusive merely for the reason that the investigating officer, when he submitted his report under s.173(2) to the Magistrate still awaited the reports of the experts or by some charge, either inadvertently or by design, he fails to append to the report such documents of statements under s.161 all through those were available with him when he submitted the police report to the Magistrate.
the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request. 250

Thus if it appears to the officer in charge of the police station, on completion of the investigation, that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a magistrate, such officer shall if such person is in custody release him on his executing a bond, with or without sureties, as such officer may direct to appear if and when so required before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial. 251 The police officer shall report to the Magistrate having jurisdiction. 252 In case the Magistrate disagrees with such report and is of opinion that there is adequate evidence to put the accused persons on trial he may either take cognizance of the offence or direct the police officer to make further investigation. 253

The Magistrate receiving the report has no power to direct the police to submit a particular kind of report. 254 If the Magistrate considers the conclusion reached by the police officer as incorrect, he may direct the police officer to make further investigation. 255 He may or may not take cognizance of the offence disagreeing with the police, but cannot compel the police officer to submit a charge sheet so as to accord with his opinion. 256

250 Id., s.173(6).
251 Id., s.169. The police can carry on the investigation even after the release of the accused (under s.169) and if sufficient evidence against the accused if found, submits a report under s.173 and gets the person re-arrested.
252 Id., s.173(2).
255 Id., s.156(3).
6.35 Who shall conduct investigation

The police is the only agency to conduct investigation. Though the definition of investigation implies that any person (other than magistrate) authorised by a magistrate in this behalf can conduct investigation, the procedural scheme set by the Code as narrated above does not contemplate any investigation by any person other than police.257

257 The Code of Criminal Procedure, 1973, ss.2(c), 41, 56, 57 and Chapter XII do not contemplate involvement of any person other than police officer to take part in any procedure forming part of investigation.