CHAPTER – IV
PROTECTION OF HUMAN RIGHTS DURING THE INVESTIGATION

A) Introduction

The criminal justice system is really an old concept. It is concentrated more on the criminals and the methods of administering justice to them. It is a special kind of formalized social control. The purpose of criminal justice system in the society has something vital to do with the issue of what this given society expects to complete by dividing a conduct as criminal. Indeed the criminal justice system operates through certain criminal laws, rules, and regulations, which are meant to administer criminal justice in the country through its criminal justice system.

In order to comprehend and specify the objectives of criminal justice we have to know specifically what criminal justice means and needs, for which we must clearly identify the two basic components of criminal justice, namely criminal and justice. The term criminal has its root in the crime, so it is necessary to spell out exactly what crime is? Crime is an act that violates the criminal law. Thus legally a “crime” is an offence against the state punishable by fine, imprisonment or some other penalty. Criminal law can be defined-

“As a body of specific rules regarding human conduct that has been promulgated by political authority, which applies informality to all members of the classes to which the rules refer and which are enforced by punishment administered by the state.”

Criminal justice system from time immemorial, wanted to deter the people by inflicting very severe punishments to crime-doers, to cause fear in the people by its retributive approach to criminals with vindictiveness etc. This approach which took no notice of the crime-doers and their personality was resented against so much so that a shift from purely punitive approach to peno-correctional came into being. Here too, the criminal justice system was found to be more concerned with the punishment and through it, the system wanted to effect the correction of the crime-doer. The establishment of the jail system as early as in 1701 at Rome paved a way for enforcing the peno-correctional approaches to the criminals. In the earlier part of

1 See, Sutherland and Cressey, Criminology (1974), p.4
2 See, James Vada Ckumchery, The police, the people and the Criminal Justice, 1997, p.10
the development of jail system, one might see that only the punitive attitude dominated. But, due to strong public resistance and adverse criticisms, the punitive contents in jail life were mixed up with correctional contents. Thus the peno-correctional approaches came into being.

And finally, criminal justice system is social device for enforcement of the standards of conduct necessary to protect individuals and society. It operates by apprehending, prosecuting, convicting and sentencing those members of society who violate the basic rules of social living. This action by the criminal justice agencies against law breakers serves three distinct purposes beyond the immediate punitive one. 

i) It removes dangerous people from the society who pose a violent threat to its very survival.

ii) It deters others from criminal behavior, which in general creates conditions conducive for social living.

iii) It offers society an opportunity to transform lawbreakers or anti-social individuals into law-abiding citizens of future.

The parliamentary and presidential systems of western democracy both subscribe to these basic objectives of criminal justice administration. Actually, where the branch is significantly in the extent and the form of protections the respective systems offer to individuals in the process of determining guilt and imposing punishment. The Indian system, doing experiment in mixed political democracy, has to combine the efficiency and effectiveness of the British system with the civil liberties concept of American justice process.

B) **Ingredients of Criminal Justice System**

All criminal justice systems in democratic world have three separately organized parts;

i) The police as law enforcement agency;

ii) The courts; which, serve to establish the guilt or innocence of the apprehended person and, if his guilt is established, pass sentence upon him as provided by the sanctity of the code violated; and

iii) The prison and correctional system. Each one of the components of the criminal justice system shares certain common goals. They collectively

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exist to protect society, maintain law and order and prevent crime. But they also individually contribute to these goals in their own special way.4

Here we will discuss only about protection of Human Rights during the Investigation by the Police which is the first component of the Criminal Justice System.

C) Police as a Law Enforcement Agency

The police as a law enforcement agency is a component of the criminal justice system. The police is the first line of defence against social disorder and criminality. According to the Police Act, 1861 the police body is an “instrument for the prevention and detection of crime. Prevention, as an objective precedes detection. Prevention involves all the efforts directed towards eliminating the causes of crimes. The police have given various powers by the Criminal Procedure Code, 1973 and the Police Act, 1861. These can be used effectively to prevent crime being perpetrated in their presence or within their knowledge and as an adjunctive to the investigation of crime by keeping known criminal under control. It is in this view that the role of the police in the prevention of crime is to be appreciated.5 The most obvious function of the police is locate the persons who have committed crimes, by proper investigation, collect the evidences available against them, to arrest such persons and to bring them to the courts to be dealt with according to law. The powers of arrest, search etc, granted to the police are for this purpose only and are regulated by law6.

D) Power of Police under Criminal Procedure Code, 1973

The law of criminal procedure is meant to be complementary of criminal law and has been designed to look after the process of its administration. In view of this objective, the Criminal Procedure Code create the necessary machinery for the detection of crime, arrest suspected criminals, collection of evidences, determination of guilt or innocence of the suspected person. The Criminal Procedure also aims at providing due safeguards against possible harassment to the innocent persons in its process of shifting of burden of proof from criminals to non criminals. It further attempts to strike a just balance between the need to give wide powers to the functionaries under the Criminal Procedure Code to make the Investigative and

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4 See, Roberty D. Pursely, Introduction to Criminal Justice, 1977, p.7
5 See, Bawa P.S and K. Krishnamurthy’s Police Diaries, 2002 p.2
adjudicatory processes strong and effective and the need to control the probable misuse or abuse of these powers.  

E) **Role of police in the Prevention of Crimes**

There are certain provisions in Criminal Procedure Code, 1973 to prevent crime, when there are apprehensions of it. Certain persons can be arrested by the police under the condition when an Executive Magistrate receives information that any person is likely to commit a breach of peace or disturb the public tranquility.

Two things are necessary for this purpose i.e. that information must be received by Magistrate and to his satisfaction that there are sufficient grounds for proceedings the main condition for initiating an application is the imminence of breach of peace. The person, against whom such an application is taken out, is almost certain to perform a wrongful act. The object of the proceeding is preventive and not penal. Proceedings taken with a view to ensure good behavior in future and not to punish for offences committed in the past. Sections 107 to 111 of the Criminal Procedure Code under which the police may apply to the Magistrate for taking security from habitual offenders or persons likely to commit breach of peace or distributive of public tranquility or commit offence.

One of the main purposes of administration of criminal justice is prevention of crime. The Code with a view to prevent commission of crime enables those who are responsible for maintenance of law and order to take preventive measures so that crime may not be committed. For this purpose every police officer may interpose (active intervention) to prevent cognizable offences. Every police officer receiving information of a design to commit any cognizable offence, shall communicate such information to the police officer to whom he is subordinate and to any other officer whose duty is to prevent to take cognizance of the commission of any such offence. A police officer may arrest after knowing the design to commit an offence and it must appear to him that the commission of the cognizable offences could not be prevented otherwise than by arrest. Further, a police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to

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8 See, The Criminal Procedure Code, 1973, Sec.107
9 See, Ibid. Secs. 107 to 111
10 See, Ibid. Sec. 149
11 See, Ibid. Sec. 150
12 See, Ibid. Sec. 151
any public property, movable or immovable. Section 153 of the Criminal Procedure Code specially authorizes an officer-in-charge of police station to enter any place without a warrant enter any place within the limits of such for the purpose of inspection or searching for any weights or measures which he may have reason to believe is false.

**F) Position under the police Act, 1861**

The police administration remains responsible to the society for the maintenance of peace and law and order. Though modern civilization has advanced man in many ways, it does not seem to have weakened him further from crime. New threats to the peace, comfort, security and welfare of citizens, rapidly increasing urban criminals and ostensibly law abiding citizens, some of the office holders and political bosses, the use of modern science by criminals and increasing traffic congestion present problems to the police administration.

The policeman indeed is a guardian of the law. He is no guardian of the moral conduct of the individual except when these moral principles are endorsed by law of the land by being embodied in a statute. It is the duty of every police officer to prevent the commission of offence and public nuisance to apprehend all persons whom he is legally authorized to apprehend upon existing sufficient grounds.

Assembly of persons is not generally harmful. But if its purpose is unlawful then police is liable to give general direction and control if its purpose is a show or exercise of violence. The Superintendent of police may direct the conduct of assemblies and processions on the public road and streets. He may also issue a license on such an application specifying the name of licensee and defining conditions on which such assembly or procession is to be permitted. He may also regulate the extent to which music may be used in streets on the occasion of festivals and ceremonies.

Any Magistrate or District Superintendent of Police or Assistant District Superintendent of Police or any police officer-in-charge of a station may stop any procession which violates the conditions of a license and may order to disperse the

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13 See, Ibid. Sec. 152
14 See, Ram Lal Gupta, *Guide to Police Laws in India*, 1961, p. 4
15 See, The Police Act, 1861, Sec.23
16 See, Ibid. Sec. 30(1)
17 See, Ibid. Sec. 30 (4)
assembly and if the assembly neglects or refuses to obey any order shall be deemed to be an unlawful assembly.\(^\text{18}\)

It is the duty of the police to keep assemblies and processions only on public road and public streets, thorough fares, other places of public resorts etc and prevent obstructions on the occasion of assemblies and processions on public roads and streets, in the neighborhood of places of worship or when such public may be thronged or liable to be obstructed\(^\text{19}\). Every person opposing or not obeying the order shall be liable on conviction before a Magistrate, to fine not exceeding two hundred rupees.\(^\text{20}\)

Any person who commits on any road, street or thoroughfare any of offences namely; slaughtering cattle, furious riding, cruelty to animal, obstructing passengers, exposing goods sale, throwing dirt into street, being found drunk or riotous, neglect to protect dangerous places to the obstruction, inconvenience, annoyance, risk, danger or damage shall on conviction be liable to a fine not exceeding Rs. 50 or the imprisonment not exceeding eight days.\(^\text{21}\)

G) **Effect of Malimath Committee**

The Committee on Criminal Justice Reforms, headed by a Former Chief Justice of Karnataka and Kerala High Courts and former member of the National Human Rights Commission of India, Justice V.S. Malimath (Malimath Committee), submitted its report to the Government of India’s Ministry of Home Affairs in March 2003.

In its Report the Committee recommended following guidelines\(^\text{22}\) to reform the Criminal Administration of Justice as well as recommended effective suggestions for Investigation.

- a. The Investigation Wing should be separated from the Law and Order Wing.
- b. Grave and sensational crimes having inter-State and transnational ramifications should be investigated by a team of officers and not by a single IO.

\(^\text{18}\) See, Ibid. Sec. 30(A)
\(^\text{19}\) See, Ibid. Sec. 31
\(^\text{20}\) See, Ibid. Sec. 30
\(^\text{21}\) See, Ibid. Sec. 34
\(^\text{22}\) See, Shanker Gopalakrishnan, *Recommendations of the Malimath Committee on reforms of Criminal Justice system in India, Criminal justice System- Experiences from the United Kingdom, Visit of Lord Justice Robin Auld to India*, Published by British Council Division. 19-30 January 2004. p-72-75.
c. Sessions cases must be investigated by the senior most police officer posted at the police station.
d. Police Establishment Boards should be set up at the police headquarters for posting, transfer and promotion etc. of the District level officers.
e. Stringent punishment should be provided for false registration of cases and false complaints. Section 182/211 of IPC be suitably amended.
f. A panel of experts be drawn from various disciplines such as auditing, computer science, banking, engineering and revenue matters etc. at the State level from whom assistance can be sought by the investigating officers.
g. Law should be amended to the effect that the literate witness signs the statement and illiterate one puts his thumb impression thereon. A copy of the statement should be mandatorily given to the witness.
h. Audio-video recording of statements of witnesses, dying declarations and confessions should be authorized by the law.
i. Interrogation Centers should be set up at the District headquarters in each district, where they do not exist, and strengthened where they exist, with facilities like tape recording and or videography and photography etc.
j. The network of CFSL’s and FSL’s in the country needs to be strengthened for providing optimal forensic cover to the investigating officers. Mini FSL’s and Mobile Forensic Units should be set up at the District/Range level. The Finger Print Bureaux and the FSL’s should be equipped with well trained manpower in adequate numbers and adequate financial resources.
k. As the Indian Police Act, 1861, has become outdated, a new Police Act must be enacted on the pattern of the draft prepared by the National Police Commission.
l. Refusal to entertain complaints regarding commission of any offence shall be made punishable.

After due consideration the Parliament of India accepted some recommendations of the Committee by way of amendment in Criminal Law.

The crux of the recommendations of the Committee regarding Investigation is that a prompt and quality Investigation is therefore, the foundation of the effective Criminal Justice System. Police are employed to perform multifarious duties and quite often the important work of expeditious investigations gets relegated in
priority. A separate wing of investigation with clear mandate that it is accountable only to the Rule of Law is the need of the day.

Most of the laws, both substantive as well as procedural were enacted more than 100 years back. Criminality has undergone a tremendous change qualitatively as well as quantitatively. Therefore the apparatus designed for investigation has to be equipped with laws and procedures to make it functional in the present context. If the existing challenges of crime are to be met effectively, not only the mindset of investigators needs a change but they have to be trained in advanced technology, knowledge of changing economy, new dynamics of social engineering, efficacy and use of modern forensic science etc. Investigating agency is understaffed, ill equipped and therefore the gross inadequacies in basic facilities and infrastructure also need attention.

Some recommendations have been inserted or substituted in the Criminal law (i.e. IPC, Cr.PC and Indian Evidence Act) by the Criminal Law (Amendment Act) 2005 and The Criminal Procedure (Amendment) Act, 2008 but many recommendations are not yet accepted.

H) Police Act Drafting Committee

In October 2005, the central government set up a "Police Act Drafting Committee" (PADC) - commonly known as the Soli Sorabjee Committee - tasked to draft a new model Police Act. The PADC was mandated to take into account the changing role and responsibilities of the police and the challenges before it and draft a model act that could guide states while adopting their own legislation. The constitution of the PADC was prompted by the Prime Minister's concern expressed at the Conference of District Superintendents of Police in early 2005 that: "We need to ensure that police forces at all levels, and even more so at the grassroots, change from a feudal force to a democratic service"

The PADC submitted its Model Police Act, 2006 to the Home Minister on 30 October 2006. Some Important concerns regarding police reforms especially for Investigation are as under23:-

1) The State Government shall ensure that in all urban Police Stations, and those in the crime-prone rural areas, a Special Crime Investigation Unit, headed by an officer not below the rank of Sub-Inspector of Police, is created with an appropriate strength of officers and staff, for the investigating

economic and heinous crimes. The personnel posted to this unit shall not be diverted to any other duty, except under very special circumstances with the written permission of the Director General of Police.

2) The officers posted in Special Crime Investigation Units will be selected on the basis of their aptitude, professional competence and integrity. Their professional skills will be upgraded, from time to time, through specialised training in investigative techniques, particularly in the application of scientific aids to investigation and forensic science techniques.

3) Officers posted to Special Crime Investigation Units will normally have a minimum tenure of three years and a maximum of five years, after which they will be rotated to law and order and other assignments.

4) (1) The officers posted to the special crime investigating units will investigate crimes such as murder, kidnapping, rape, dacoity, robbery, dowry-related offences, serious cases of cheating, misappropriation and other economic offences, as notified by the Director General of Police, besides any other cases specially entrusted to the unit by the District Superintendent of Police.

(2) All other crimes will be investigated by other staff posted in such Police Stations.

5) Each Police Station shall be provided with an appropriate number of Crime Scene Technicians to promptly visit the scenes of crime along with the Investigating Officer concerned to spot and gather all available scientific clues. These Crime Scene Technicians will be Civil Police officers Grade II or Grade I, specially selected and adequately trained for the purpose.

6) Necessary legal and forensic advice will be made available to investigating officers during investigations.

7) The investigations of cases taken up by the Special Crime Investigation Unit personnel, over and above the supervision of the Station House Officer concerned, will be supervised at the district level by an officer not below the rank of Additional Superintendent of Police, who will report directly to the District Superintendent of Police. This supervisory officer may be assisted by an appropriate number of officers of the rank of Deputy Superintendent of Police, posted for the specific purpose of ensuring quality investigation on professional lines:

128
Provided that in smaller districts where the volume of work does not justify posting of an Additional Superintendent of Police, an officer of the rank of Deputy Superintendent of Police shall be posted for this purpose.

8) At the headquarters of each Police District, one or more Special Investigation Cells will be created, with the requisite strength of officers and staff, to take up investigation of offences of a more serious nature and other complex crimes, including economic crimes. These Cells will function under the direct control and supervision of the Additional Superintendent of Police mentioned in Section 128.

9) The officers and staff to be posted to this Cell shall also be selected and specially trained.

10) The Criminal Investigation Department of the state, created under Section 16 of Chapter II, shall take up investigation of such crimes of inter-state, inter-district or of otherwise serious nature, as notified by the State Government from time to time, and as may be specifically entrusted to it by the Director General of Police in accordance with the prescribed procedures and norms.

11) The Criminal Investigation Department will have specialized units for investigation of cyber crime, organized crime, homicide cases, economic offences, and any other category of offences, as notified by the State Government and which require specialized investigative skills.

12) The officers posted to the Criminal Investigation Department will be selected on the basis of their aptitude, professional competence, experience and integrity. They will undergo appropriate training upon induction, and their knowledge and skills will be upgraded from time to time through appropriate refresher and specialised courses.

13) Officers posted to the Criminal Investigation Department shall have a minimum tenure of three years and a maximum of five years.

14) The Criminal Investigation Department will be provided with an appropriate number of legal advisors and crime analysts to guide, advise and assist the investigating officers.

15) The Criminal Investigation Department shall be provided with adequate staff and funds. The head of this Department will be vested with financial powers of a head of the department.
16) The Crime Investigation Units in Police Station, the Specialised Investigation Cells at the district level and the Criminal Investigation Department shall be equipped with adequate facilities of scientific aids to investigation and forensic science including qualified and trained manpower, in accordance with the guidelines, if any, issued in this regard by the Directorate of Forensic Science or the Bureau of Police Research and Development of the Government of India.

But these recommendations have not been implemented yet.

I) Starting of Criminal Procedure with the occurrence of Offence

i) First Information Report (F.I.R)

The First Information Report (FIR) is the information recorded under section 154 of the Criminal Procedure Code. It is an information given to a police officer related to a cognizable offence. It is usually easy to tell the difference between cognizable offences and non-cognizable offences. Generally, serious offences with a minimum sentence of three years imprisonment are classified as cognizable. However, there are some exceptions to this general rule. The First Schedule of the Cr. PC contains a table in which offences are categorized as cognizable or non-cognizable. Examples of cognizable offences include the following:

- Murder and attempted murder;  
- Doing an act that endangers the life or personal safety of others;  
- Rape;  
- Kidnapping;  
- Robbery, theft and dishonestly receiving stolen property;  
- Criminal breach of trust by a public servant;  
- Trespassing;  
- Counterfeiting Indian coins, currency-notes or bank-notes, and

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24 See, Indian Penal Code, 1860, Sec.302
25 See, Ibid, Sec. 307
26 See, Ibid, Sec. 336
27 See, Ibid, Sec.376
28 See, Ibid, Sec. 363
29 See, Ibid, Sec. 392
30 See, Ibid, Sec. 379
31 See, Ibid, Sec. 411
32 See, Ibid, Sec. 409
33 See, Ibid, Sec. 447
34 See, Ibid, Sec. 232
• Rioting

FIR must be distinguished from information received after the commencement of the investigation which is covered under section 161 to 162 of the Criminal Procedure Code. It is well settled that the First Information Report is not a substantive evidence but can only be used to corroborate or contradict the evidence of the information given in court or to impeach his credit.

First Information Report is the first report based on which the police starts investigation. It is very important document in a criminal case. The information about the offence has been committed; this does not mean that it cannot be lodged elsewhere. Every information related to the commission of cognizable offence, if given orally to the officer-in-charge of a Police Station, shall be reduced to writing. Refusal to lodge a First Information Report on the ground that the place of crime does not fall within territorial jurisdiction of the Police Station amounts to dereliction of duty. Information about cognizable offence would have to be recorded and forwarded to the Police Station having jurisdiction. A message sent by telephone to the police officer and recorded by him in his station diary which disclosed information within Sec. 154 of Criminal Procedure Code, is popularly known as the First Information Report. A cryptic and anonymous offence cannot be treated as the First Information report.

Section 154 deals with information relating to a cognizable offence whereas Section 155 deals with information related to a non-cognizable offence. If any person gives an information of a non-cognizable offence to an officer-in-charge of a police station then he shall enter or have cause to enter the substance of the information in the book to be kept by such officer in the form of prescribed by the State Government.

The officer shall then refer the information to the Magistrate. The Code, therefore, enjoins that the police shall not investigate a non-cognizable case without the order of a competent Magistrate. Once such an order is given by the Magistrate, the police officer receiving the order may exercise the same power in

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35 See, Ibid, Sec. 489A
36 See, Ibid, Sec. 147
37 See, State of Bombay v. Rusy Mistry, AIR 1960 SC 391
39 See, The Criminal Procedure Code, 1973, Sec. 155(1)
40 See, Ibid, Sec. 155(2)
respect of the investigation as an officer-in-charge of Police Station may exercise in a cognizable case.\textsuperscript{41}

Where a case relates to two or more offences of which at least, one is cognizable, the case shall be deemed to be a cognizable case even though the other offences are non-cognizable.\textsuperscript{42}

In the case of a cognizable offence the police may hold an investigation irrespective of any order of the court. Court has no control over the investigation or over the action of the police holding such investigation.\textsuperscript{43} 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.\textsuperscript{44} Under section 156(3), a magistrate may order investigation into an offence by the police when no complaint has been made to him but he has information about a cognizable case. Section 156(3) enables a Magistrate to order the investigation of an offence of which he may have taken cognizance under Section 190 of Criminal Procedure Code.\textsuperscript{45} Once the learned Magistrate gives such a direction to the police to take cognizance of the offence and starts investigation. The investigation of a cognizable offence begins when a police officer-in-charge of a Police Station has reason to suspect the commission of a cognizable offence. Though the basis for the suspicion is essentially the First Information Report as recorded under Sec. 154, yet it is legally possible that the suspicion may be based on any other information of the police.\textsuperscript{46} This provision is really designed to keep the Magistrate informed of the investigation of such a cognizance of the offence so as to be able to control the investigation and if necessary to give appropriate direction under Sec 159. Every such report sent to a Magistrate, if the State Government so directs shall be submitted through such a superior officer of police as may be appointed by the State Government for this purpose.\textsuperscript{47} On receiving the report, the superior officer may give such directions to the officer-in-charge of the Police Station as he thinks fit and shall, after recording such instructions on such report, transit the same without delay to the Magistrate.\textsuperscript{48}

\textsuperscript{41} See, Ibid, Sec. 155(3)
\textsuperscript{42} See, Ibid, Sec.155(4)
\textsuperscript{43} See, Ibid, Sec.165(1)
\textsuperscript{44} See, Ibid, Sec. 156(2)
\textsuperscript{45} See, Ibid, Sec. 190
\textsuperscript{46} See, Ibid, Sec. 157 (1)
\textsuperscript{47} See, R.V. Kelkar, \textit{Lectures on Criminal Procedure}, 1990 p.54-55
\textsuperscript{48} See, The Criminal Procedure Code, 1973, Sec.158
ii) When the Police Refuses to Register the F.I.R.

In most circumstances the police are legally bound to register the F.I.R.\textsuperscript{49}. This is the case even if the offence was committed outside the police station’s territorial jurisdiction, in which case the police are required to record the F.I.R. and forward it to the concerned police station\textsuperscript{50}. In certain situations, the police may conduct a preliminary inquiry to establish the existence of a legitimate complaint. It is then within their powers to refuse to registering the F.I.R. immediately. In that case, they must make a general diary entry and depending on time constraints and the gravity of the offence, could make an on-the-spot verification.

However, the police sometimes refuse to register an F.I.R. If the police refuse to register the F.I.R, the informant should ask the police to at least to accept a copy of his or her statement. A letter on the station letterhead acknowledging receipt of the statement should be requested, which should be stamped and signed. Alternatively, the police should stamp and sign another copy of the statement and give it to the informant. The informant should also note down the name and rank of the officer who takes the statement.

There are also two official ways to deal with a refusal by the police to register an F.I.R:

First, the informant may take administrative recourse. This involves sending their statement in a letter, by post or person to the Superintendent of Police. The letter should clearly outline all the information relating to the offence and if the Superintendent is satisfied that the information discloses the commission of an offence, then he must investigate the case himself or assign the investigation to a police officer in the district.\textsuperscript{51} Places where the commissioner system of policing is prevalent, the communication should be addressed to the Deputy Commissioner of Police.

Second, the informant may take judicial recourse by lodging a complaint with a Magistrate.\textsuperscript{52} The complaint should be submitted in writing, setting out the details and context of what happened when the informant tried to lodge an FIR. A signed copy the informant’s statement and the statements of any witness should be included. The Magistrate may then take

\textsuperscript{50} See, State of Andhra Pardesh v. Punatiramulu, AIR 1993 SC p. 2644
\textsuperscript{51} See, The Criminal Procedure Code, 1973, Sec.154(3)
\textsuperscript{52} See, Ibid, Sec. 200
cognizance of the offence or may order investigation of the offence by the police. The Magistrate may direct the police to file an FIR for the purpose of starting the investigation. However, even if the Magistrate does not make such a direct order, it is the duty of the officer-in-charge of the police station to register the FIR in order to begin the investigation.

iii) **What if a false FIR is registered?**

The first thing that a person against whom a false FIR has been lodged should get a copy of the FIR. If the accusations are serious, he or she should seriously consult a lawyer. There are two ways in which a person can react to a false FIR:-

The first thing he or she can do is to make a complaint to a magistrate. The complaint should be written to the area magistrate, setting out all the facts regarding the false report. A copy of the FIR should be included and a request should be made that the Magistrate takes action to dismiss the proceedings. The complaint should be signed by the person against whom the FIR has been lodged and by any witness.

The Magistrate may then:

- Order the postponement of legal processes against the accused and either enquire into the case or direct an investigation into the matter;
- Issue either a summon or warrant for the accused to be brought before a court with regard to the matter, if he or she is of the opinion that there is sufficient ground for proceeding; or
- Dismiss the complaint against the accused if he or she deems there to be insufficient reason for proceeding.

Secondly a petition may be made to the High Court to stop the investigation and quash the FIR. If the allegations made in the FIR, taken at their face value and accepted in their entirety, do not constitute an offence, the criminal proceedings instituted on the basis of such FIR should be quashed by the High Court.

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54 See, Ibid. Sec.190 and 156(3) Madhu Bala v. Suresh Kumar, SCC 1997(8) p.476
55 See, Suresh Chand Jain v. State of Madhya Pardesh, SCC 2001 p.628
56 See, Ibid, Sec: 200
57 See, Ibid, Sec: 202
58 See, Ibid, Sec: 204
59 See, Ibid, Sec: 203
60 See, Ibid, Sec 482 and The Constitution of India, 1950, Art. 226
However, the filing of a writ petition is expensive and most victims of false FIRs or police harassment cannot afford to take this course of action. Additionally, the Supreme Court has advised the High Courts to use its power to quash an investigation very sparingly and only in rare cases.

In *State of Haryana v. Bhajan Lal*, the Supreme Court provided following illustrations of cases when the High Court can use its power to quash the FIR, including:

- Where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused;

- Where the allegations made in the FIR or complaint are so absurd and inherently improbable, on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused; and

- Where a criminal proceeding is manifestly attended with mala-fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with view to spite him due to private and personal grudge.

**iv) Investigation**

While investigating into an offence, the police will ordinarily go to the people who are acquainted with the facts and circumstances of the case without sending for them. But in certain cases the police may by a written order require the attendance of any person who appears to be acquainted with the facts and circumstances of the case. It may be noted that male person below fifteen years of age or woman shall not be required to attend at any place other that the place in which such male person or woman resides.

In relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relative or social worker of the locality.

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62 See, Talab Haji Hussain v. Madhukar Purshottam Mondkar, AIR 1958 SC p.376
65 See, Ibid, Sec.157 (1)
A police officer has given special order to examine orally any person supposed to be acquainted with the facts and circumstance of the case.\textsuperscript{66} Such person shall be bound to answer truly all questions relating to such questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.\textsuperscript{67} The police officer may reduce into writing any statement made to him in the course of an examination and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.\textsuperscript{68}

Section 162 (1) clearly says that:

“no statement made by any person to a police officer in the course of an investigation shall, if reduced to writing be signed by the person making it”.

The provision is intended as a statutory safe guard against improper police practices and a contravention of the provision will be considered as impairing the value of the evidence given by the person making and signing a statement before the police during the investigation of a crime.\textsuperscript{69}

Any confession made to a police officer is totally inadmissible in evidence.\textsuperscript{70} The statement recorded by the police in the course of the investigation cannot be used for any purpose other than those mentioned in Section 162 of the Code. Therefore, the Code provides a special provision for the recording of confessions and statements made before the Magistrate in the course of investigation.\textsuperscript{71} Magistrate shall before recording any such confession explain to the person making it that he is not bound to make confession and that will be against him and the Magistrate shall not record such confession or statement which he believes is not made voluntarily.\textsuperscript{72} If at any time before the confession is recorded the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorize the detention of such person in police custody.\textsuperscript{73}

Whenever an officer-in-charge of police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the

\begin{thebibliography}{99}
\bibitem{66} See, Ibid, Sec. 161 (1)
\bibitem{67} See, Ibid, Sec. 161(2)
\bibitem{68} See, Ibid, Sec. 161(3)
\bibitem{69} See, The Criminal Procedure Code, 1973, Sec.59
\bibitem{70} See, The Evidence Act, 1872, Sec.25
\bibitem{71} See, The Criminal Procedure Code, 1973, Sec.164(1)
\bibitem{72} See, Ibid, Sec. 164(2)
\bibitem{73} See, Ibid, Sec. 164(3)
\end{thebibliography}
purpose of an investigation into any offence which he is authorized to investigate may be found in place within the limits of the police station of which he is in-charge or to which he is attached and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible the thing for which search is to be made, search or cause search to be made, for such thing in any place within the limits of such station.74

If officer in-charge of a police station is unable to conduct the search in person and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search and he shall deliver to such subordinate officer an order in writing specifying the place to be searched and so far as possible, the thing for which search is to be made and such subordinate officer may thereupon search for such thing in such place.75

Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance to the offence and the owner or occupier of the place searched shall. On application, be furnished free of cost, with a copy of the same by the Magistrate.76

Whenever there is reason to believe that the delay occasioned by requiring an officer in-charge of another police station to cause a search to be made under sub-section (1) 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 a police officer making any investigation under this provision to search or cause to be searched any place in the limits of another police station in accordance with the provision of section 165, as if such place were within the limits of his own police station.77

A person arrested without a warrant cannot be detained by the police for more than 24 hours. If the police officer considers it necessary to detain such a person for a longer period for the purpose of investigation, he can do so only after obtaining a special order of a Magistrate.

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74 See, Ibid, Sec. 165 (5)
75 See, Ibid, Sec. 165(3)
76 See, Ibid, Sec.165 (5)
77 See, Ibid, Sec. 166 (3)
v) Police Custody

Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours 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 to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time forward the accused to such Magistrate.78

The Magistrate to whom accused person is forwarded, whether he has or not jurisdiction to try the case, from time to time, authorized the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

Provided that the Magistrate may not authorize the detention of accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but Magistrate shall authorize the detention of the accused person in custody for a total period exceeding:

- Ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;
- Sixty days, where the investigation relates to any other offence;

And on the expiry of the said period of ninety days or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail bond and every person released on bail.

No Magistrate shall authorized detention in any custody unless the accused is produced before him and no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police.

No magistrate shall authorize detention of the accused in custody of the police under this section unless the accused is produced before him in person for the

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78 See, Ibid, Sec. 167 (i)
first time and subsequently every time till the accused remains in the custody of the police, but the magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage.\footnote{See, Ibid, Sec. 167 (2) (i) inserted after The Code of Criminal Procedure (Amendment) Act, 2008}

In case of woman under eighteen years of age, the detention shall be authorized to be in the custody of a remand home or recognized social institution.

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, may, where a judicial Magistrate is not available transmit to the nearest Executive Magistrate, on whom the powers of a judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may note reasons to be recorded in writing, authorizes the detention of the accused person in such custody as he may thinks fit for a term not exceeding seven days in the aggregate and on the expiry of the period of detention so authorized, the accused person shall be released on bail except where an order for such further detention of the accused person has been made by a Magistrate competent to make such order and where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate shall be taken into account in computing the period.\footnote{See, Ibid, Sec.167 (2)(A)}

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in-charge of the police station or the police officer making the investigation, as the case may be.

A Magistrate authorizing detention in the custody of the police shall record his reason for doing so and any Magistrate other than Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.\footnote{See, Ibid, Sec. 167 (5)}
If any case triable by a magistrate as a summons case the investigation is not concluded within a period of six months from the date on which the accused was arrested the magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

Where any order stopping further investigation into an offence has been made, the Session Judge may, if he is satisfied on an application made to him or otherwise, that further investigation into the offence ought to be made and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.\(^\text{82}\)

vi) **Release of accused when evidence is deficient**

If upon an investigation, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground to justify the forwarding of the accused to a Magistrate, such officer shall, release person who is in custody, on his executing a bond, with or without sureties, and 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.\(^\text{83}\)

vii) **Cases sent to Magistrate when evidence is sufficient**

If upon an investigation, it appears to the officer in-charge of the police station that there is sufficient evidence or reasonable ground 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 bail-able and the accused is able to give security to him for his appearance before such Magistrate until otherwise directed.

When the officer in charge of a police station forwards an accused to a Magistrate or takes security for his appearance before such Magistrate, he shall send to such Magistrate any weapon or other article which is necessary to produce before him and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the facts and circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as

\(^{82}\) See, Ibid, Sec, 167 (6)

\(^{83}\) See, Ibid, Sec. 169
thereby directed and prosecute or give evidence (as the case may be) in the matter of
the charge against the accused.

If the court of the Chief Judicial Magistrate is mentioned in the bond such
court shall be held to include any court to which such Magistrate may refer the case
for enquiry or trial, provided reasonable notice of such reference is given to such
complainant or persons.

The officer in whose presence the bond is executed shall deliver a copy
thereof to one of the persons who executed it and shall then send to the Magistrate
the original with his report.84

viii) Submission of charge sheet to Magistrate

Every investigation shall be completed without unnecessary delay as soon as
it is completed. The officer in-charge of the police station shall forward it to the
Magistrate empowered to take cognizance of the offence, in the form prescribed by
the State Government stating:-85

a) The names of the parties;
b) The nature of the information;
c) The names of the persons who appear to be acquainted with the
circumstances of the case;
d) Whether any offence appears to have been committed and if so by whom;
e) Whether the accused has been arrested;
f) Whether he has been released on his bond and if so whether with or without
sureties;
g) Whether he has been forwarded in custody under section 178.

The investigation in relation to rape of a child may be completed within three
months from the date on which the information was recorded by the officer in-
charge of the police station.86

The officer shall also communicate in such manner as may be prescribed by
the State Government, the action taken by him, to the person, if any, whom the
information relating to the commission of the offence was first given.

84 See, Ibid, Sec.170
85 See, Ibid, Sec. 173
86 See, Ibid, Sec. 173(1A) inserted after The Code of Criminal Procedure (Amendment) Act, 2008
Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

When such report is in respect of a case where evidence is sufficient, 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 rely other than those already sent to the Magistrate during investigation;

b. The statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witness.

If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceeding 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 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 reason for making such request.

Where the police officer investigating the case finds it convenient to do so, he may furnish to the accused copies of all or any of the documents.\(^\text{87}\)

Notwithstanding in it shall be deemed to preclude further investigation in respect of an offence after a report has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of the police station obtain further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed.

Report submitted under Section 173 of Criminal Procedure Code is called ‘completion report’ or ‘charge-sheet’. The police charge-sheet corresponds to a complaint made by a private person on which criminal proceedings are initiated. Submission of charge-sheet means that the preliminary investigation and preparation of the case is over and the Magistrate can then take cognizance of the offence. After the filing of the charge-sheet and the posting of the case for further cross-examination there can be no further investigation into the case by the police.

ix) Arrest of a person

Arrest is a process of taking into custody of a person by another, where such later person is an officer of the state or a private person empowered to do so, under

\(^{87}\) See, Ibid, Sec. 173(3)
the authority of the law. The purposes of arrest are to ensure the presence of the accused in a court of law in case a charge is leveled against him in a court of law and to prevent him from continuing his unlawful activities in special cases. The fixing of the identity of the offender and arresting him is the aim of police investigation. Arrest is the outward and obvious signal for the completion of investigation in the vast majority of cases.\textsuperscript{88} During the course of investigation of a cognizable case the police officer can at any time feel the necessity of arresting the culprit. There may be only a suspicion against him.\textsuperscript{89} Arrests of the offender, especially of the dangerous and violent type, does have a highly beneficial effect on the moral of the society. Timely arrest of the accused person in serious cases is an essential step in investigation and failure in this regard considerably weakens the position of the prosecution.\textsuperscript{90}

Arrest means apprehension of a person by legal authority resulting in deprivation of his liberty. The arrested person is entitled to know the grounds of his arrest as soon as possible. Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. If the arrest is not for a non-bail-able offence, the police officer must also inform the arrested person that he is entitled to be admitted to bail and must also give him an opportunity to furnish bail.\textsuperscript{91} A police officer making an arrest without warrant shall without unnecessary delay send the person arrested before the officer in-charge of a Police Station.\textsuperscript{92} No police officer shall detain a person arrested without warrant for more than 24 hours excluding the time necessary for the journey from the place of arrest to the Magistrate’s court.\textsuperscript{93} This right has also been incorporated in the Constitution as one of the fundamental right.\textsuperscript{94} The fundamental right of protection against arrest is set forth in Article 22 of our Constitution. According to Article 22(1):

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" 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.
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(2) Every person who is arrested and

\textsuperscript{88} See, Ibid, Sec.41
\textsuperscript{90} See, Rambal Singh v. State CrLJ 1958, p.1402
\textsuperscript{91} See, The Criminal Procedure Code, 1973, Sec.50
\textsuperscript{92} See, Ibid, Sec.56
\textsuperscript{93} See, Ibid, Sec. 57
\textsuperscript{94} See, The Constitution of India, 1950, Art. 22(2)
detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrests 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 beyond the said period without the authority of a Magistrate.”

Power to arrest without a warrant is mainly and widely conferred on the police. A police officer may arrest without a warrant any person actually concerned or reasonably suspected to be concerned in a cognizable offence or any person found in possession of any implement of house breaking without any lawful excuse, who has been proclaimed as an offender by State Government in whose possession anything is found which may reasonably be suspected to be stolen property and who may be reasonably suspected of having committed an offence with reference to such property and obstructing a police officer in the discharge of his duties who have escaped from lawful custody, suspected of being deserted from any armed forces. Any person concerned in any act committed at a place outside India would be punishable as an offence for which he would be liable to be apprehended or detained in custody in India and being a released convict commit a breach of any rule made under Section 365(5) of Criminal Procedure Code.

Any officer in-charge of a police station may arrest without warrant any person belonging to one or more of the categories of person specified in section 109 and 110 of Criminal Procedure Code i.e. persons taking precaution to conceal their presence with a view of committing a cognizable offence; habitual robbers, house breakers, thieves etc. person habitually indulging in the commission of certain social and economic offences.

When any person in the presence of a police officer has committed a non-cognizable offence gives false name or address on demand of such officer, he may be arrested by such officer. Officer in-charge of police station shall report to the District Magistrate of about the person arrested without warrant and no person

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95 See, The Criminal Procedure Code, 1973, Sec.41(1)(a)
96 See, Ibid, Sec.41 (1)(b)
97 See, Ibid, Sec 41(1)(c)
98 See, Ibid, Sec. 41 (1)(d)
99 See, Ibid, Sec41(1)(e)
100 See, Ibid, Sec. 41(1)(f)
101 See, Ibid, Sec 41(1)(g)
102 See, R.V. Kelkar, Lectures on Criminal Procedure, 1990, p.26
103 See, The Criminal Procedure Code, 1973, Sec.42(1)
104 See, Ibid, Sec. 58

144
shall be discharged except on his own bond or on bail or under the special order of a Magistrate. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in India.

Every police officer while making an arrest shall, bear an accurate, visible and clear identification of his name which will facilitate easy identification; prepare a memorandum of arrest which shall be attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made, countersigned by the person arrested and inform the person arrested unless the memorandum is attested by a member of his family, that he has right to have a relative or a friend named by him to be informed of his arrest.

The State Government shall establish a police control room, in every district and at State level. The State Government shall cause to be displayed on the notice board kept outside the control rooms at every district, the names and addresses of the persons arrested and the name and designation of the police officer who made the arrests. The control room at the Police Headquarters at the State level shall collect from time to time, details about the persons arrested, nature of the offence with which they are charged, and maintain a database for the information of the general public.

x) Search and Seizure

If any person acting under a warrant of arrest or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into or is within, any place, any person residing in or being in charge of, such place shall on demand of such person acting as aforesaid or such police officer, allow him such free ingress thereto and afford all reasonable facilities for a search therein.

If ingress to such place cannot be obtained it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break or open any outer or inner door or

105 See, Ibid, Sec. 59
106 See, Ibid, Sec. 60 (1)
109 See, Ibid, Sec. 47 (1)
window of any house or place, whether that of the person to be arrested or any other person, if after notification of his authority and purposes and demand of admittance duly made he cannot otherwise obtain admittance.

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 facilities for withdrawing and may then break open the apartment and enter it.\textsuperscript{110}

Any police officer or other person authorized to make an arrest may 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.\textsuperscript{111}

(a) Searching with a Search Warrant

The court can issue a search warrant during any phase of the criminal investigation or trial.\textsuperscript{112} A search warrant is a written authority given to a police officer or other competent official to search for documents or persons wrongfully detained. Since a search constitutes a coercive invasion of privacy, courts have emphasized that the power to issue a search warrant should be exercised with great care and circumspection.\textsuperscript{113} Following reasons to issue a search Warrant:

- The court has reason to believe that a person issued with a summon will not or would not produce the document or thing required by the search warrant.\textsuperscript{114}
- A document or thing is not known to be in the possession of any particular person.\textsuperscript{115}
- The court considers that the purpose of the enquiry or trial will be served by a general search or inspection.\textsuperscript{116}
- The court has reason to believe that the search of a place will reveal stolen property, forged document, etc.\textsuperscript{117}

\textsuperscript{110} See, Ibid, Sec. 47(2)
\textsuperscript{111} See, Ibid, Sec. 47(3)
\textsuperscript{112} See, Ibid, Sec. 93(1)
\textsuperscript{113} See, Gangadharan v. Chellapan, Cri LJ 1985, p.1517
\textsuperscript{114} See, The Criminal Procedure Code, 1973, Sec. 93(1)(a)
\textsuperscript{115} See, Ibid, Sec. 93(1)(b)
\textsuperscript{116} See, Ibid, Sec. 93 (1)(c)
• The court has reason to believe that in any premises, any newspaper, book or document contains any matter, the publication of which is punishable for being seditious\textsuperscript{118} or obscene\textsuperscript{119} for maliciously insulting religion\textsuperscript{120}, for fostering enmity between groups or for making assertions prejudicial to national integrity,\textsuperscript{121} in accordance with the IPC.\textsuperscript{122}

• The court has reason to believe that a person has been wrongfully confined or that a woman or a female child has been abducted or unlawfully detained.\textsuperscript{123}

Under sec. 93(1) CrPC, the court is not bound to issue a search warrant whenever it is asked for; it may direct an investigation by the police before issuing the search warrant.\textsuperscript{124} Before it can issue a search warrant it must make an objective determination and careful deliberation. Under sec. 93 of CrPC, a warrant can be issued for a general search of premises, not for the purpose of finding any documents or objects in particular, but rather to make a roving enquiry to discover any document that might involve persons in criminal liability.\textsuperscript{125}

The police have to search in accordance with the search warrant.\textsuperscript{126} The warrant may limit the search to particular areas of the location in question, in which case the police are only allowed to search those areas.\textsuperscript{127}

\textbf{(b) Searching Without a Search Warrant}

In very exceptional circumstances, the law deems it necessary to empower certain police officers to carry out searches without first applying to the courts for authority.\textsuperscript{128} However, the circumstances under which this may occur are very few and there are safeguards to prevent its abuse. The police may only search without warrant under the following circumstances:-

• When the police are acting under an arrest warrant and believe that the person to be arrested has entered a place, the occupants of that place must

\begin{footnotesize}
\begin{enumerate}
\item[117] See, Ibid, Sec. 94
\item[118] See, Indian Penal Code, 1860, Sec. 124(a)
\item[119] See, Ibid, Sec. 292 and 293
\item[120] See, Ibid, Sec. 153A
\item[121] See, Ibid, Sec. 153B
\item[122] See, The Criminal Procedure Code, 1973, Sec. 95
\item[123] See, Ibid, Sec. 97 and 98
\item[124] See, Melicio Fernandes v. Mohan AIR, Goa 1966, p. 23, 26
\item[125] See, Paresh Chandra Sen Gupta v. Jogendra Nathroy, AIR Cal. 1927, p. 93, 94-95
\item[126] See, The Criminal Procedure Code, 1973, Sec. 93 (1)
\item[127] See, Ibid, Sec. 93 (2)
\item[128] See, Emperor v. Mohd. Shah, 48 Cri LJ p. 161, 163
\end{enumerate}
\end{footnotesize}
allow the police officers access to the premises and all reasonable assistance in conducting the search;¹²⁹

- When an officer in-charge of a police station or an investigation officer has reasonable grounds for believing that: (a) A specific thing necessary for the purposes of the investigation may be found in any place within the limits of his police station; (b) That the thing cannot otherwise be obtained without undue delay¹³⁰ and there is no time to obtain a search warrant¹³¹; and
- Any Magistrate may direct a search to be made in his or her presence of any place, for the search of which he or she is competent to issue search warrant¹³².

A search under Sec.165 Cr PC must be for a particular thing or document and does not include a general search.¹³³ Before searching, the police officer must justify his search in writing and specify the thing for which the search is being made.¹³⁴ A free copy of this record of reasons is available on application to the occupier of the searched premises from the nearest Magistrate.¹³⁵

In practice, the police usually do not obtain search warrants. Sometimes, they use Sec.165 CrPC to claim that an accused will escape arrest or that a search object will disappear.¹³⁶

(c) **Seizure**

‘Seizure’ means taking possession of the property by an officer under legal process. The power of the police to search a place carries with it the power to seize items found during the search. However, the police have wider powers than just those allowing them to seize items for which the search was specifically made. The police can take any property which is suspected to be stolen or which creates suspicion of the commission of a criminal offence.¹³⁷ A police officer can also seize articles found on a person during search on arrest where bail cannot be met for whatever reasons.¹³⁸

¹²⁹ See, The Criminal Procedure Code, 1973, Sec. 47 (1)
¹³⁰ See, Ibid, Sec.165
¹³² See, The Criminal Procedure Code, 1973, Sec.103
¹³³ See, Lal Mea v. Emperor 27 CriLJ p.542
¹³⁴ See, The Criminal Procedure Code, 1973, Sec.165(1)
¹³⁵ See, Ibid, Sec. 165(5)
¹³⁶ See, Sunetra Bose 1997 Cri LJ p.161,165
¹³⁷ See, The Criminal Procedure Code, 1973, Sec.102
¹³⁸ See, Ibid, Sec.51
However, the police are required to give the occupant or person searched a copy of a list of all items seized during a search, signed by the witnesses to the search.\textsuperscript{139} In addition, the police must report the seizure to a Magistrate with jurisdiction over the case.\textsuperscript{140} The court can also impound any document or object produced before it as the result of a seizure.\textsuperscript{141}

If a person’s property is seized and reported to a Magistrate and the property is not produced before a Criminal Court in the course of an enquiry and trial, the Magistrate has power to make an order to dispose of the property as they see fit, if the property was illegally obtained.\textsuperscript{142} Therefore, if the person entitled to the property is known, the Magistrate can order the property to be delivered to that person. If the owner is not known, the Magistrate can detain the property and issue a proclamation requiring any one with a claim to the property to appear before the Magistrate and establish their claim within six months.\textsuperscript{143}

Before deciding whether to make an order under Sec.457 Cr PC regarding the property, the Magistrate has a duty to hear the affected party.\textsuperscript{144} If no claimant appears after six months and the person in whose possession the property was found is unable to show that they acquired it legally, the magistrate can order that the property be at the disposal of the State Government. They may then sell it and deal with the proceeds of the sale as they see fit.\textsuperscript{145}

J) **Safeguards**

In the course of an investigation the police are not permitted to take a person’s photograph, finger prints or demand a sample of his or her handwriting, without permission of a Magistrate, unless he or she has been arrested or is considered habitual offender.\textsuperscript{146}

i) **Narcoanalysis and Polygraph Test**

The police do not have the power under law to compel a person to take a narcoanalysis and polygraph, commonly known as a “Lie Detector Test”. In Selvi &

\begin{itemize}
\item \textsuperscript{139} See, Ibid, Sec. 100(5), 100(7)
\item \textsuperscript{140} See, Ibid, Sec. 102(2)
\item \textsuperscript{141} See, Ibid, Sec. 104
\item \textsuperscript{142} See, Ibid, Sec. 457(1)
\item \textsuperscript{143} See, Ibid, Sec. 457 (2)
\item \textsuperscript{144} See, Shyam M. Sachdev v. State CriLJ 1991, p.300
\item \textsuperscript{145} See, The Criminal Procedure Code, 1973, Sec. 458
\item \textsuperscript{146} See, M.S. Syed Anwar and ors.v. Commissioner of Police, Bangalore and anothers Cri LJ1992, p.1666
\end{itemize}
Ors v. State of Karnataka\(^{147}\) the Supreme Court gave very important direction regarding narcoanalysis and polygraph test, the main points are as under:-

(a) Narcoanalysis test- Compulsory administration of technique is an unjustified intrusion into the mental privacy of an individual and would also amount to ‘cruel’, inhuman or degrading treatment’ with regard to the language of evolving international human rights norms.

(b) Narcoanalysis and Polygraph test- Violation of right against self-incrimination- Art.20(3) of Constitution of India protects an individual’s choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to be inculpatory or exculpatory.

(c) Narcoanalysis and Polygraph test- Violation of right against self-incrimination- No Lie Detector Tests should be administered except on the basis of consent of the accused and an option should be given to the accused whether he wishes to avail such test.

(d) Narcoanalysis and Polygraph test- Violation of right against self-incrimination- If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.

(e) Narcoanalysis and Polygraph test- Violation of right against self-incrimination- Consent should be recorded before a Judicial Magistrate and during the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.

The Supreme Court further held that the National Human Right Commission had published guidelines for the administration of Polygraph Test (Lie Detector Test) on an accused in 2000. These guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the ‘Narco-Analysis Technique’ and the ‘Brain Electrical Activation Profile Test’.

The NHRC has stated that, the use of this test by the police is ‘illegal and unconstitutional unless it is voluntarily undertaken in non-coercive circumstances,’ and that the only occasion on which its use could be

\(^{147}\) CRJ, 210(4), P.158
justified is where the suspect volunteers to take it without any police prompting whatsoever; for example, in order to clear his or her name. As a result of this, the NHRC has laid down guidelines according to which lie detector tests may take place. These are as under:-

1. No lie Detector Test should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.

2. If the accused volunteers for a Lie detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.

3. The consent should be recorded before a Judicial Magistrate.

4. During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.

5. At the hearing, the person in question should also be told in clear term that the statement that is made shall not be a ‘confessional’ statement to the Magistrate but will have the status of a statement made to the police.

6. The Magistrate shall consider all factor relating to the detention including the length of detention and the nature of the interrogation.

7. The actual recording of the Lie Detector Test shall be done by an independent agency (such as hospital) and conducted in the presence of a lawyer.

8. A full medical and factual narration of the manner of the information received must be taken on record.

ii) Right to Legal Representation

Anyone being interrogated, whether or not charged with a crime, is allowed to consult his or her lawyer of his choice. This is legal requirement under Art. 22 of the Constitution and the law of most states. However, the police are only obliged to wait for reasonable amount of time for an arrestee’s lawyer to arrive although an arrestee may be permitted to meet his or her lawyer during interrogation, this does not mean that the lawyer can be present throughout the interrogation. If for some reason a person does not have access to his or her lawyer during an interrogation, he

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148 See, NHRC guidelines relating to administration of polygraph test(lie detector test) on an accused, in NHRC important instructions/ guide lines 2000, New Delhi,p.59

149 See, Nandini Satpathy v. P.L Dhani ,AIR (SC) 1978, p.1075

or she should ask to be taken to a Magistrate immediately after the interrogation to confirm that no torture or other prohibited behaviour was used to extract statements or other evidence. While the police are not obliged to do this, the Supreme Court has strongly suggested that police must fulfill such a request.  

iii) Protection against Self Incrimination

A person is not required to answer questions that may be self incriminating regarding the commission of an offence whether the offence. This means that, while being questioned or interrogated a person does not have to provide information that might indicate that he or she is guilty of a Criminal offence. Suspects who are not formally charged are also entitled to this right during interrogation in custody. However, a person is still obliged to answer questions that are not self incriminating.  

iv) Abuse during Questioning

The police and authorities are clearly not allowed to make inducements (Bribes), threats or promises in the course of an investigation. The law also strictly prohibits torture or threats to people close to a witness or an accused. The police may not physically or psychologically intimidate an arrested person or one being questioned. Police officers have been and should be prosecuted and punished for torturing suspects during interrogation or questioning. Confession obtained by use of such methods should be excluded as evidence at trial.  

v) Duration Of Questioning

While the length of questioning will depend on the police involved and the nature of the alleged crime. If a person is not under arrest, it should be within working hours. In either case the interrogation should not be continuous- he or she should be allowed food, drink, rest and the use of appropriate facilities. While the matter of what amounts to excessive interrogation depends upon the circumstances. Interrogation for longer than three hours without a break may result in the court deeming statements made as involuntary and the court may disregard them. If the
person is not being held in custody, meaning he or she has not been formally
arrested, he or she may ask to leave. If the police refuses to let that person leave the
station, he or she is being illegally detained and may file a complaint with a
Magistrate.

vi) **Proper Use of Handcuffs**

The Supreme Court has set out procedural safeguard that should be observed
by the police. In extreme circumstances, Handcuffs have to be put on the prisoner.\(^{158}\)
Following are the directions:

- The detailed reasons for imposing the handcuffs must be recorded
  contemporaneously;
- The escorting officer must show the reason for handcuffing to the Judge and
  get his or her approval; and
- Once the Court directs that handcuffs shall be off, no escorting authority can
  overrule the Judicial Discretion.

As the Supreme Court has been quite clear on the specific circumstance in
which handcuffing is allowed, officers who handcuffs the person illegally, may be
charged with contempt of court and face disciplinary action. A person, who is
illegally restrained at the time of his or her arrest, may also pursue civil damage
from the delinquent officer.

vii) **Medical Examination**

When any person is arrested he shall be examined by a Medical Officer in
the service of Central or State Governments and in case the Medical Officer is not
available, by a Registered Medical Practitioner soon after the arrest is made. Where
the arrested person is a female, the examination of the body shall be made only by or
under the supervision of a female Medical Officer and in case the female medical
Officer is not available, by a female registered medical Practitioner.\(^{159}\)

The Medical Officer or a registered Medical Practitioner so examining the
arrested person shall prepare the record of such examination, mentioning therein any
injuries or marks of violence upon the person arrested and the approximate time
when such injuries or marks may have been inflicted.\(^{160}\)

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\(^{158}\) See, Prem Shankar Shukla v. Delhi Administration AIR(SC) 1980, p.1535,1541

\(^{159}\) See, The Criminal Procedure Code, 1973, Sec. 54(1) substituted after The Code of Criminal
Procedure (Amendment) Act, 2008

\(^{160}\) See, Ibid, Sec. 54(2)
Where an examination is made under sub section (1), a copy of the report of such examination shall be furnished by the Medical Officer or registered Medical Practitioner, as the case may be, to the arrested person or the person nominated by such arrested person. 161

Where the alleged crime is one which may result in evidence on or inside the body of the arrested person, the police may require the person to be examined by a Medical Practitioner. Such Medical examinations are only available in relation to crimes where bodily evidence may be important, eg. Murder, Rape, Assault, and some Drugs offences. 162

While in police custody the arrested person should be examined every 48 hours by a trained Medical Practitioner on a panel of approved Doctors appointed by the Director of Health Services of the State concerned 163

It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused. 164

viii) Remedies against Illegal Arrest and Detention

No person shall be arrested except in accordance with the provisions of the code or any other law for the time being in force providing for arrest. 165 A person whose rights have been violated while being arrested or held in custody may pursue several legal remedies.

a) Writ of Habeas Corpus

If a person is arrested or detained illegally he or she may petition to the Supreme Court or High Court than Supreme Court or High Court can order a writ of Habeas Corpus against the person who has detained such person without legal authority to bring such person in court and let the court know on what basis he has confined such person. If Court finds no legal justification of such act than court will order the person to be released. An application for Writ of Habeas Corpus can be made by a person who is detained and also by any other person on his behalf. 166

b) Compensation for Violation of constitutional Right

In an effort to curb illegal police conduct, the courts have awarded compensation to victim of human rights violation at the hands of the police and to

161 See, Ibid, Sec. 54(3)
162 See, Ibid, Sec. 53
the victims’ families. In the case of **Rudal Sah v. State of Bihar**\(^{167}\), the petitioner was released from jail after he was detained illegally for more than fourteen years after he was acquitted. The Supreme Court held that compensation for deprivation of a fundamental right can be granted under Art.32 of the Constitution. The petitioner was awarded thirty-five thousand rupees in compensation from the government.

Similarly in the case of **Nilabati Behra v. State of Orissa**\(^{168}\) the body of the petitioner’s son was found on a railway track after he had been taken into police custody. In this case the Supreme Court held that it has power under Art. 32 or the High Court has under Art.226 of the Constitution, to pass an order for monetary compensation, where the human rights and the fundamental freedoms have been violated by the state and its agencies during exercising their power. This is a remedy available in public law, based on strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The state of Orissa was ordered to pay the petitioner Rs. 1, 50,000.

c) Civil Damages

If a person is arrested illegally, he or she may bring a private, civil suit for damages against the person who makes the arrest.\(^{169}\) Under the common law of torts, the arrested person may be able to sue the delinquent officer for false imprisonment, assault or wrongful death, depending on the specific circumstance of the case. The same act may be both a civil wrong and a criminal act. Pursuing civil damages will not absolve the delinquent officer from the criminal charge stemming from the act in question.

d) Criminal Charge

Any public servant who has the authority to make an arrest and knowingly exercise this authority in contravention of the law to effect an illegal arrest, can be prosecuted under Sec. 220 IPC. A police officer or other person who makes an illegal arrest is guilty of wrongful confinement and could be punished with a prison term of up to 3 years or fine.\(^{170}\)

A police officer who uses violence against any person in his custody may be charged for offences under the IPC relating to criminal force, and will also be liable to punishment under section 29 of the Police Act, 1861. A person, who causes a

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\(^{167}\) AIR 1983 SC, p.1086

\(^{168}\) See, SCR 1993(2) p.581

\(^{169}\) See, Anwar Hussain v. Ajay Kumar Mukherjee AIR 1965 SC p.1651.

\(^{170}\) See, Indian Penal Code, 1860, Sec. 340, p.342-344
police officer to arrest another person without sufficient ground, may be ordered to pay compensation not exceeding 100 rupees to the person arrested.\textsuperscript{171}

If an arrested person’s rights are violated while in custody, he or she may file a complaint when brought before the Magistrate. In addition, criminal proceedings against the delinquent officer may be commenced by the filing of an FIR at police station. If the police officer in-charge of the station where the FIR was filed fails to act on it, the complainant may contact the Superintendent of police or the District Magistrate and request both an enquiry and additional legal action against the police officer.\textsuperscript{172}

\textbf{e) Complaint to the NHRC}

An aggrieved person may pursue in bringing charge against police officers who have violated his or her right by filing a complaint with the National Human Right Commission. The NHRC was created has been charged with investigating and intervening in case involving the violation of Human Rights including abuses committed by State Agencies.\textsuperscript{173}

A complaint to the NHRC may be written in Hindi, English or any other language included in the Eighth Schedule of the Constitution. There is no fee involved prescribed for filing a complaint.

\textbf{H) Sum-up}

To summaries we may say that the investigating agency i.e. police is an important organ of the criminal administration of justice. It is the first pillar of the criminal administration of Criminal Justice which has more responsibility upon its shoulders to protect the society from crime. The Indian criminal justice system provides huge power to the police; therefore, there is more chance to violate the Human Rights and legal Rights conferred by the various statutes. But there is remarkable position of the safeguards in the Criminal statute passed or amended by the Legislature. There are many provisions in the Constitution, CrPC, IPC, Indian Evidence Act and the Police Act etc., which tends to protect the people from the excess use of power by the police. Therefore, we find no hesitation to say that the Indian Criminal Administration of Justice provides several protections to an aggrieved person and also protects Human Rights during the investigation.

\textsuperscript{171} See, The Criminal Procedure Code, 1973, Sec. 358
\textsuperscript{172} See, Ibid Sec. 154 (3)
\textsuperscript{173} See, Protection of Human Rights Act, 1993, Sec.13