CHAPTER 3

OBJECTIVES OF THE INVESTIGATION AND CRIMINAL TRIAL

The essential object of criminal law is to protect society against criminals and law-breakers. For this purpose, the law holds out threats of punishments to law-breakers and as well as attempts to make actual offender suffer the prescribed punishment. It provides machinery for the detection of crime. All civilized societies are characterised with some sort of criminal justice systems consistent to the ideals and values they cherish. Apart from viewing the notion of justice as something time bound and culture oriented, the governments in these societies tend to objectify the codes of criminal law and identify the dispensation of criminal justice with the enforcement of this criminal law and its procedures. The criminal penology and the procedures that it seeks to prescribe have to be inspired by high ideals of individual security and social cohesion, if not social solidarity. The law books operative in Criminal Justice System of a country may not specify the theory of Criminal Justice,1 but a deeper analysis of Criminal Code establishment may offer the following justifications for the creation of Criminal Justice System in a country at various levels of its government:

1. The violators of public morality need to be punished, because public morals provide the cement which keeps the society in a minimal state of togetherness and civilized conduct.

2. Common civilians need to be protected against unjustified and avoidable risks to their person and property because in ail societies there are some diseased individuals, who do not permit the streets to be safe.

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1 Unlike the civil law the criminal law aims at the survival value of human society and its basic tenets stress upon individual behaviour norms that foster social intercourse and deter mutual annihilation.
3. Then, the possibility of private vendetta being always there, the victims or aggrieved persons need a public redress of their grievances and this has to be provided under an objective system of law and its coercive enforcement.

4. If these offenders of law violators go unpunished, there is a possibility of recurrence of undesirable or criminal acts in any society and the criminal law seeks to deter these offenders, who might take to a life of crime or career in criminality.

5. Punishment or deterrence being methods to deal with deviance the criminal Justice System confronts the human aspect of the problem, the ultimate solution of which lies in rehabilitating the offenders and converting them into law observing citizens.

6. The state or its organ- the Government is the custodian of public morality and its Criminal Justice Institutions are the agencies to maintain norms through law enforcement. The government of the day must provide an effective deterrence against the political offenders, who might subvert the very basis of law and consequently the maintenance of order in society.

All these professed goals or objectives of Criminal Justice System in a country and more especially in a developing society purport valid reasons for the codification of criminal law, but when probed in depth, they tend to be mutually inconsistent. In fact, their pursuit requires varying and even incompatible actions on the part of the government of the day to ensure justice to its citizens. For instance, how can an offender be punished as well as reformed simultaneously by the same system, especially when disproportionate punishments to a variety of criminals tend to breed recidivism rather than cure of antisocial behaviour of the criminals? Moreover, research in criminal psychology demonstrates that punishment seldom changes behaviour and more often than not, it only temporarily suppresses the anti-social behaviour punished.
Besides being mutually inconsistent, the goals of criminal justice system demand a prioritisation of these goals. The state or government has to decide which specific goal or goals it must strive to attain in dealing with specific categories of offences. Not only this, even the goals of the legislature in enacting a particular law will differ from those of the prosecutors or judges, who will ultimately enforce them. Many laws are enacted for regulatory convenience or to proclaim legislature’s views about public morality. For instance, offenders against prohibition Law may be good moral citizens and may not be in need of any rehabilitation whatsoever.

Moreover, the multiplicity of goals makes the evaluation of criminal justice system difficult. The system may be called a failure from the point of view of deterrence but might be deemed as effective in terms of punishments inflicted upon offenders, actually apprehended, convicted and sentenced. Even while making the streets safer, it is possible that the law might be yielding negative results and help in contributing to increase in recidivism. Despite all talk about reformation of offenders the universally agreed upon purpose of the criminal law in any society, is to vindicate public morality and punishment constitute the core of its design and operation. Even the correctional system has been primarily designed to administer punishment not rehabilitation. It is incredibly interesting to see that the system which shows meticulous concern for the basic human rights and dignity of the defendant during the trial and prior to conviction exhibits utter disregard to the same rights and human dignity of the criminal after conviction by the law courts.

Criminal justice system operates in accordance with specific criminal statutes. The penal statutes prescribe the acts of commission or omission and make them punishable. The implicit purpose is to define a crime and its constituent elements, so that a prosecution can be based on it and the violator may be brought to book. Naturally, a valid criminal statute must satisfy certain constitutional or legal requirements. Some of these requirements are:

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2 The available data can prove contradictory positions.
a) The Criminal law should define the offence and the penalty in a clear and un-ambiguous manner.

b) The Criminal law should be interpreted by the courts, strictly against the accused, or in favour of the defendant as a general rule of construction to ensure its enforceability.

c) The Criminal law represents the will of the legislature and must ultimately be effectuated. Consequently, the criminal statutes should prescribe certain types of behaviours which have their effects on the overall system.

d) This prescribing power also known as 'Police Power' of the law is the intrinsic power of the state in its capacity as protector of health, morals and public welfare of citizens.

All these constraints within which the legislature makes laws tend to be loose and flexible. Broadly speaking the types of behaviour which the criminal statutes seek to prohibit are either these behaviours that most people will agreeably call anti-social (e.g. aggression against persons or property) or non-conformity to a regulatory behaviour (failure of file an accident report) or violative to moral standards.3

Legislatures in democratic societies all over the world have a tendency to overreact to crime news. But their over enthusiasm to stricter enforcement of criminal law is frequently counter productive. Strict punishment against aggressive or anti-social offences is what people will normally welcome, but offences designed to produce social conformity or to legislate morality will always create problems in the realms of criminal law making and criminal law enforcement.

Some of these problems arise from the fact that legislatures in practice have to delegate an enormous amount of their legislative authority to administrative agencies like police or regulatory departments, which in turn

3 Eg. gambling, prostitution and drug abuse.
create voluminous regulations of self-defeating nature. The idea behind having a government of law has been to protect citizens from the abuse of power or insolence of office. The government of laws often enforces laws as they are written not necessarily as their drafters might have intended. The standardised rules of construction interpret these laws in a way which the average man of commonsense finds violative of their objectives. Moreover, the legislatures suffer from a natural tendency to cure human problems through the magic of law making. Left to them, they may like to wipe out cancer by making it a crime to develop malignancy.

Whether a consenting prostitute taking to the life of vice is a victim or not, might evoke genuine controversy, but even in this case the real victim is society. Disagreements over moral issues are endemic and a legislature cannot decide whether abortion is just a form of cold blooded murder on a harmless consequence of a woman’s right over her own body. The actual morality and wishes of the people are generally not in consonance with the public pronouncements on these issues.4 Such laws gradually bring a corrupting influence on police personnel and legislators. The non-enforceability of these laws ultimately erodes popular faith in the majesty of law and poses a serious threat to the integrity of the entire criminal justice system. The so called victimless sex crimes may implicate the posting of policemen in the bedrooms of adult citizens and it has led to other sorts of political and social problems in the Western Society of the post war period. In some States of U.S.A. prostitution was reduced from mis-demeanour to a violation and what is criminal is not prostitution but soliciting for prostitution. This old legal maxim that ‘No, man’s life or property is safe while the legislature is in session’ represents the common man’s dread or horror against ‘legislation of morality’ in the west.

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4 The popularly appealing concept of ‘Legislation of morality’ has added a whole new area, which modern criminologist call the area of ‘Victimless Crimes’.
There are several ways of classifying criminal offences and some methods of classification can be called to have more practical consequences than others in the administration of criminal justice. For instance one significant criterion of this classification can be “their seriousness” as measured by the length and rigor of the authorised sentences. Notwithstanding the relativity of gravity, a criminal offence in a civilized society represents some act or omission, prescribed by law and punishable by fine, imprisonment, death, forfeiture of office or some other suitable penalty. Naturally, even under ‘gravity’ category such crimes can be further sub-classified as infractions, violations, misdemeanours and felonies. The criminal law ordains different sets of punishments for these different sub-categories.

Penologists have classified offences in terms of the victims also. There are criminal offences against people and homicide, assault, rape and robbery fall in this sub-category. Then, there are other sorts of offences, which may be called offences against property such as larceny, arson and forgery. Offences against the dignity of the state, like tax evasion, bribery etc. represents another variety of crimes. Offences against public morality and ‘Victimless Crimes’ are other two varieties of crimes, which besides being on the increase all over, often tend to overlap because of the definition of the term victim. Most of these offences fall into more than one of the above sub-categories. Such a classification leads the courts and legislatures to view ‘offences against people’ more seriously than those primarily against property.\(^5\)

The offences jure also called as offences of mental culpability and offences of strict liability respectively. The former category i.e. malum in Se includes crimes which are bad in their very nature. Acts such as murder and rape are wrong and immoral, no matter one knows the laws or not. The malum prohibitum offences on the other hand are bad merely because the penal statutes prohibit them.

\(^5\) Another way of classifying criminal offences follows the system of malum in Se v. Malum Prohibitum crimes.
The classical theory of criminal law views malum in Se Crimes as voluntary acts or omissions accompanied by a culpable mental state. This criminal intent is called as the mens rea or guilty mind in criminal procedure. The statutes are expected to define this criminal state of mind (mens rea) as a part of the 'corpus delecti' (body of the crime). The usual terms employed by the statutes to describe this mental state are: intentionally, knowingly, recklessly and criminal negligence. In case of strict liability the mental state of the defendant is not very relevant. Even in malum prohibitum offences, the only mental state required is that the criminal act itself be intended and not the result of accident, loss or lack of capacity to form intent. The penal laws show reasonable precision in defining mental state, yet there are operational difficulties in applying them on individual cases. For instance intentionally means that a criminal has the conscious objective of performing a certain conduct or affecting a certain result. Similarly, the term knowingly implies that the offender is aware of the nature of his or her conduct and the existence of certain specified facts or circumstances. Recklessly is defined as an awareness and conscious disregard of the substantial and unjustified risk emanating from a certain circumstance that exists or a certain result that follows there from. Recklessness is generally distinguished from criminal negligence on the ground that in the latter case the risk is not perceived, while in the former it is perceived and still disregarded. To prove criminal negligence the attorney must demonstrate a much more extreme and cavalier type of behaviour than is necessary to prove a case of civil negligence.\textsuperscript{6}

Being a subjective experience, the psychologists are brought in to discover whether the defendant suffers from some defect of reason or a mental disease, damaging rational faculty. The principle of substantive law involved here is that a mentally ill defendant is not excused from criminal liability as an act of grace on the part of the state just because he is mentally incapacitated. He is excused because he has not committed the crime in

\textsuperscript{6} Long back Justice Cardzo, confronted with the problem of defining mental culpability, compared the state of a man’s mind with the state of his digestion.
question due to the lack of capacity to form the mental state required by the law. To determine criminal responsibility, the mental states of the defendant at the time of the commission of the offence, the trial and the execution of the sentence have to be distinguished. The lack of capacity at any stage may jeopardise the right of representation by the consul, who needs the cooperation of his client at every stage of the criminal justice process.

The world of crime knows no stereotype. Even the general types occur constantly in connection with a wide variety of other specific criminal behaviours. The general ones like attempt, conspiracy, criminal solicitation and criminal facilitation also need specific precision in the language of substantive law. For instance, crime of attempt is committed when a person with the intent to commit a crime engages in conduct tending to, but falling short of its commission. Generally in case of forcible rape, where corroborative evidence is not available, the defendant might still be convicted for an attempted rape. In most of the Anglo-Saxon countries, an attempt to commit a crime is regarded as a crime, one degree lower than the completed offence. But criminologists are of the view that “Law does not punish evil thoughts” and hence any attempt that does not go beyond the planning stage is not amount to an attempt. It must come dangerously close to completion. A conspiracy is an agreement between two or more persons to commit a crime. It involves an overt act for furtherance of the criminal plan in which co-conspirators are principals to the crime. Similarly, criminal solicitation has been defined as a crime, where in a person solicits, requests, commands, importunes or otherwise, attempts to cause another to commit, a crime. If X solicits Y to commit a crime and Y does it, both of them are equally guilty of the crime solicited as well as the additional crime of conspiracy. But if Y refuses to agree to commit the crime solicited, then there has been no conspiracy and X is guilty only of criminal solicitation. Criminal facilitation goes a step further and here the defendant extends the range of inchoate criminal culpability to the situation in which a person knowingly provides another with the means and opportunity to do so. A less common non-specific
type of crime is called “Compounding crime”. It means accepting money or other considerations in exchange for not prosecuting for a criminal offence. Criminal law in most of the Anglo-Saxon countries of this World gives special treatment to mentally disturbed people, which includes juvenile delinquents, youthful offenders and wayward minors. It is a ‘conclusive presumption’ in substantive rule of law that minors are incapable of committing crime and a conviction as a juvenile delinquent is not a conviction of crime. The immature person needs protection from his own conduct. The youthful offender’s treatment entitles the defendant to get his record sealed, and the Jury is instructed to keep deliberations and the case confidential. The theory is that the defendant has indeed learned his lesson and any further commitment would serve no useful purpose. This leads to the conclusion that the principles of criminal liability can render a criminal behaviour as non-criminal in the Criminal Justice system of a country.

The defences on grounds of lack of mental capacity, age of the defendant and criminal liability of the mistake are pertinent to the judicial process. Mistakes on the part of the defendant can be mistakes of law and mistakes of facts. The mistake of law is no defence in a criminal prosecution, unless the mistake is based on a specific order, or decision or interpretation. It is not a matter of defendant’s good faith. Everybody is probably not deemed to know the law, but what is more significant here is the dictum that ignorance of the law is no excuse. Mistakes of fact on the other hand can be accepted as valid defence, if they negate the required criminal intent, or if, had the facts been as the defendant believed them to be, they could have constituted the defence of justification.

Intoxication is not a defence ‘per se’ but if the defendant offers evidence of it, the fact tends to negate the required mental state for commission of crime. Similarly the defences of infancy and mental illness

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7 In U.S. several States have enacted way-ward minor statutes popularly known as laws of PINS (People in Need of Supervision).
both involve a lack of criminal responsibility popularly known as ‘Ordinary
defences’. Here again, lack of culpability can be distinguished from lack of
capacity to commit crime. Duress, entrapment and renunciation are regarded
as ordinary defences of justification. Further they are treated as ‘Affirmative
defences’ in which case the burden of proof lies with the people and they had
to sustain this burden beyond a reasonable doubt. Unlike the ordinary defences
the affirmative defence puts the defendant in a better position to establish the
facts by having the burden of proof limited to proving the defence by a
preponderence of the evidence.

The affirmative defence of duress involves the claim that the defendant
was forced to commit the offence by the use or threatened use of physical
force and the force was of such a nature that a person of reasonable firmness
would have been unable to resist. Mere blackmail or threat to expose illegal
or immoral conduct without physical force does not amount to duress. Similarly,
defence of entrapment implies that the defendant was engaged in the
prescribed conduct because he was induced to do so by a public servant or his
collaborator. Here inducement does not mean merely giving an opportunity to
the defendant to do a wrong. The affirmative defence of renunciation
represents the principle of ‘locus penitentiae’ (a place of repentence). It
involves a complete and voluntary renunciation of criminal purposes prior to
the commission of crime by the defendant. Law requires that in this case the
defendant should establish the fact that he withdraw from participation before
the actual occurrence of the crime and that he made substantial efforts to
prevent the commission of the crime. This renunciation of criminal purpose is
neither competent nor voluntary, if it is motivated by a belief that
circumstances exists which make Commission of the Crime more difficult or
detection and apprehension more likely. Similarly, a decision to postpone the
criminal act or to transfer the effort to another victim may also vitiate
prosecution and the whole process of conviction.

Actually the concept of justice in human history through all times and
all climes has been rotating around the definition of the term due. Plato
envisaged it as a Notion of duty very much implicit in his doctrine of ethical man and his expanded socio-ethical organism called the State. The entire rubric of Anglo-Saxon Jurisprudence from which emanates the notion of ‘Rule of Law’ in the West has developed around this basic concept of ‘Liberty Loving Rational Man, whom the authority of the State should not harass and still less punish, unless proved guilty. The theory of Natural Rights as posited by John Locke endows him with three fundamental Rights i.e. the rights to life, liberty and estate, which were championed as sacrosant and inviolable. The later democratic theory of the state and Constitutional government keeps this ‘natural Rights man’ of John Locke in the Centre and urges upon the theory of justice to serve an end of dignity of this individual. To protect, ensure and defend the life of his person against assailants and murderers was regarded as criminal justice. To guarantee and enhance his freedom and equality (which was a part of his right to life) was called the rule of law. The notion of civil justice in society took care of the individual’s property - movable as well as immovable. This fundamental premise of Anglo-Saxon jurisprudence contributed to the growth of democratic thought and practice in the West for centuries. The security and freedom oriented notion of justice developed its nuances with the passage of time. The convention of rule of law as a part of democratic credo established that ‘nobody can be punished unless proved guilty’ meaning thereby that ninety nine guilty persons may be acquitted but one innocent citizen should not be allowed to go the gallows. Naturally, the sorting out of this innocent (whose rights created the government and not the vice versa) has to be meticulous and the institutions of Police, Bar, Bench and the Jail were created accordingly. Then again, these institutions may not fall a prey to the rich and the strong in society, a number of rational procedures and working systems like Bail, Parole, Prosecution,

* The Romans being imperialist conquerors interested in administering a ramshackle and polyglot empire added conventional and rational dimensions to the theory of law which later developed as an adjunct to the theory of ‘Jus Naturale’ and ‘Jus Gentium’.
Trial, Witnesses, evidences etc. were devised to avoid the miscarriage of Justice.

Gradually the institution of Bar emerged as defender of people's life liberty and property. The Judiciary with the cooperation of the police and the Bar was given the role to defend law, protect rights and ensure justice. Even people's cooperation in the process was not only ensured through evidences and witnesses, but given a proud place through the system of Jury and Honorary Magistrates. Thus the institutions of law, police, Bar Bench and jail represent the five basic institutional arrangements in the field of Criminal Justice and the imperial masters tried to plant, nurture and evolve the majesty of law in the colonies, no matter the socio-cultural ethos consistently remained hostile and unconducive to their growth.

Quite contrary to this accusatorial philosophy of Anglo-Saxon Justice, the socialist countries have developed an opposite theory of law called as inquisitorial philosophy of justice. Professing Marxian Justice these societies talk of the class character of the state and class bias in the administration of Anglo-Saxon justice or rule of law. Here the State envisions law as a positive tool of engineering social change. The notions of individual dignity and freedom are ridiculed as bourgeois platitudes and the Bar and the Bench are summarily dismissed as right reactionaries upholding the interests of the propertied classes. According to this philosophy of justice the executive power of the State during the phase of dictatorship of the proletariat will be used to dismantle the citadels of capitalism and feudalism in society and the so-called notions of open market. Bar and independent judiciary will not be allowed to sabotage the socialist revolution in the name of fundamental freedoms of the individual. Philosophy apart, these political systems endow too much power to their police to handle revolutionary crimes but the theories of conventional crime in their judgement reflect the contradictions of class

9 The police in the West was designed as 'Citizen Police' and 'Limb of Law' rather than an 'Executive Arm of the State'.

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character of Bourgeois Societies. Having revolutionised, the notion of law these societies have designed a different kind of police force with very different notion of Bar and the Bench. Even the jails have been replaced by concentration camps and labour work centres.\textsuperscript{10}

Like mixed economy, mixed polity and mixed cultures the Criminal Justice System in developing countries like India represents a new mix. This is no getting away from this hybrid philosophy of democratic socialist justice but the proportions and critical and their quantsms can threaten to negate one another. Unlike social justice the relativity of the concept of criminal justice is more directly linked with the nature of polity and because India professes to establish a “Democratic Socialist and Secular” State under its Republican Constitution (the quality of these mixable variables of the two systems and their viable and workable proportions need some conceptual clarity. Even if the system is heavily over weighed in favour of Parliamentary democracy with fundamental rights, the variables which obstruct, (if no sabotage) the growth of a socialist order in the administration of criminal justice need to be identified and operationalised. The Indian scene of Criminal Justice Administration today is characterised with obvious contradictions that expose the inadequacies of the system. A synthetic approach to evolve a coordinate machinery of criminal justice some what more free from the present day institutional conflicts and penological ills of procedures is the need of the times, if the abortion of law and miscarriage of justice are to be prevented in the midst of increasing incidence of rape of society by the rich and the strong.

1. Object of Criminal Trial

Every criminal trial is a voyage of discovery in which the truth is the quest. It is the duty of the presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. The adversary system of trial being what it is there is an unfortunate tendency for a

\textsuperscript{10} The net result has been evolution of a new method of administration of criminal justice through summary trials and the organisation of ‘Peoples courts’ at Soviet and Commune levels.
Judge presiding over a trial to assume the role of Referee or an Umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inequitable distortions flowing from combative and competitive elements entering the trial procedure. If a criminal Court is to be an effective instrument in dispensing Justice, the presiding Judge must cease to be a spectator and mere recording machine.\(^{11}\) He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. But this he must do, without unduly trespassing upon the functions of the public prosecutor and the defence counsel.\(^{12}\)

The public interest demands that criminal justice should be swift and sure, that the guilty person should be punished while events are still fresh in the public mind and that the innocent should be absolved as early as, is consistent with a fair and impartial trial.\(^{13}\) It has been said times without number that the criminal law is a matter of substance and not of technical form and the criminal procedure must be a handmaid of Justice and not an obstacle in its administration. The hands of the courts are not to be easily tied up by the fetters of technical procedure so as to prevent them from arriving at the root of the matter.\(^{14}\)

The Code of Criminal Procedure is a code of procedure and like all procedural laws is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord our notions of natural justice.\(^{15}\)

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\(^{11}\) Ram Chandra v. The State of Haryana, AIR 1981 SC 1036.

\(^{12}\) Ibid.

\(^{13}\) M.S. Sherif v. The State of Madras, AIR 1954 CrLJ 1019.

\(^{14}\) Parasuram Jha v. The State of Bihar, 1986 CrLJ 1266 at 1267-1268.

In getting true fruits of real object of criminal trial, it must always be kept in view that a criminal trial is not like a fairy tale wherein one is free to give flight to one’s imagination and phantansy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witness. Every case in the final analysis would have to depend upon its own facts. Although the benefit to every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.16

The primary object of a criminal trial is to ensure ‘fair trial’. A fair trial has naturally two objects in view: it must be fair to the accused and must also be fair to the prosecution. The trial must be judged from this dual point of view.17 In a criminal case, the Court has to consider the triangulation of interests. It involves taking into account the position of the accused, the victim and his or her family and the public. The purpose of criminal law is to permit everyone to go about their daily lives without fear of harm to person or property.18

Further, it is to be borne in mind that criminal trial is meant for doing justice to the accused, victim and the society so that law and order is maintained.19 Hence, as observed by this Court in State of U.P. v. Anil Singh,20 it is necessary to remember that a judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. One is as important as the other. Both are

19 Ambika Pd. v. State (Delhi Admn.), 2000 SCC (Cri) 522.
public duties which the judge has to perform. Hence, we would only state that it is unfortunate state of affair that police officers resulted from their own statements and disposed something contrary before the Court. Equally, it is unfortunate that Investigating Officer has not stepped into the witness box without any justifiable ground. But this conduct of the investigating officer or other hostile witnesses cannot be a ground for discarding the evidence of PW 5 and PW 7 whose presence on the spot established beyond reasonable doubt. They have suffered injuries and their evidence is corroborated by medical evidence. It is also in conformity with what has been stated in the FIR. In any case, investigating officer is not at all material witness for the purpose of establishing whether accused or the complainant party was the aggressor. Not only have that, accused examined the defence witnesses for establishing their say. Hence, non-examination of the investigating officer cannot be a ground for holding that injured witnesses should not be believed.

The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public Justice can be ensured only when expeditious trial is conducted. Another object behind criminal law is to maintain law, public order, stability as also peace and progress in the society.21

The law of appreciation of evidence in a criminal trial has to dovetail two conflicting demands, namely, on one hand, the fundamental canon of criminal jurisprudence viz. the presumption of innocence of an accused till he is found guilty and on the other, requirements of the society for being shielded from the hazards of being exposed to the misadventures of person alleged to have committed a crime.

The object of criminal trial is to convict a guilty person when the guilt is established beyond the reasonable doubt, no less than it is Court's duty to acquit the accused when such guilt is not so established. The correct approach of a judge conducting criminal trial should be that no innocent should be punished and no guilty person should go unpunished. It is no judicial heroism to blindly follow the oft repeated saying, let hundred guilty men be acquitted but let not one innocent be punished. It is undesirable to acquit a guilty person and/or punish an innocent. Any exaggerated devotion to benefit of doubt is disservice to the society.

In A.R. Antulay v. R.S. Nayak, the Supreme Court have summarised the principles of law in the following succinct and felicitous language in dealing with the doctrine of locus standi in criminal law and object of criminal trial. Any one can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. Locus standi of the complainant is a concept foreign to criminal jurisprudence saves and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principles get excluded by such statutory provision. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into Strait-Jacket formula of locus standi unknown to criminal jurisprudence save and except statutory exception.

To materialise the real object of criminal trials every Court should make every effort to disengage the truth from the falsehood and to sift or separate the grains from the chaffs rather than take the easy course of rejecting the entire prosecution case merely because there are some embellishments. It is equally settled that where the grains and the chaffs are so inextricably mixed up that in the process of separation, the Court will have to

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24 AIR 1984 SC 718.
reconstruct an absolutely new case for the prosecution, then the principle to make an attempt to separate the grains from the chaffs and the truth from the falsehood will not apply.\textsuperscript{25} It is also not part of the Court’s conduct to enter upon a roving inquiry in the middle of criminal trial on matters which are collateral to the main issue.\textsuperscript{26}

To sum up, the duty to be discharged by a criminal Court in a trial is indeed difficult, especially when it has to see to the conflicting claims and has to strike a just balance which will on the one hand, take care that no innocent person is punished, but at the same time would see that people do not lose faith in the rule of law due to blind adherence to the dictum that let hundred guilty men escape. To speak with Vicount Simon held miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent. Therefore, our rules of criminal justice remind the courts of their solemn duty on the one hand to punish a crime and on the other hand to find and punish the real offender so that no innocent life is extinguished or impaired.\textsuperscript{27}

2. Basic Principles of Interpretation as to Criminal Trial and Penal Statutes

One of the cardinal principles which should always be kept in mind in our system of administration of justice in criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of the burden, the courts cannot record a finding of the guilt of the accused. Another golden thread which runs through the web of the administration of justice in criminal cases is that of two views are possible on the evidence adduced in the

\textsuperscript{25} Prafulla Bora v. State of Assam, 1988 CrLJ 428 at 430.
\textsuperscript{26} Bhagwan Singh v. The State of Punjab, AIR 1952 SC 214.
\textsuperscript{27} M.T. Singh v. The State of Manipur, 1984 CrLJ 536 at 537, 541 and 542.
case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be accepted.28

If the words are capable of two constructions, one of which is more favourable to the accused than the other, the Court will be justified in accepting one which is more favourable to the accused. There can be no justification, however, for adding any words to make provision of law less stringent than the legislature has made it.29 Similarly in Pohalya Molya Valvt v. The State of Maharashtra,30 it was observed by the Supreme Court that when two constructions are possible in a criminal trial the one beneficial to the accused will have to be adopted.

When there is doubt or ambiguity in the applicability or in the interpretation of the statute, the principle to be applied in construing a penal act is that such doubt or ambiguity should be resolved in favour of the accused.31 A man should not be put in peril on an ambiguity when, therefore, a penal statute is uncertain or ambiguous or at least capable of two interpretations, the benefit of the ambiguity should be given to the accused.32

In a criminal trial the provisions of the penal Section have to be very strictly construed and in case of ambiguity or possibility of two views the benefit of construction must be in favour of the accused.33 It is a fundamental right of every person that he should not be subjected to greater penalty than what the law prescribed, and no ex post facto legislation is permissible for escalating the severity of the punishment. But if any subsequent legislation would downgrade the harshness of the sentence for the same offence, it would be a salutary principle for administration of criminal justice to suggest that the

30 AIR 1979 SC 1949.
said legislative benevolence can be extended to the accused who awaits judicial verdict regarding sentence.\textsuperscript{33}

In order to interpret any penal statute the principle applicable is that the penal statute must strictly be construed in favour of the subject, but not beyond the literal and obvious meaning in a particular statute.\textsuperscript{34} If the statute creates an offence and imposes a penalty of fine and imprisonment, the words of the Section must strictly be construed in favour of the subject. One should not be concerned so much with what might possibly have been intended as with what has been actually said in and by the language employed.\textsuperscript{35}

In \textit{M.V. Joshi v. M.U. Shimpi},\textsuperscript{36} while laying down guidelines as to interpretation of penal statutes, the Supreme Court observed that when it is said that all penal statutes are to be construed strictly it only means that the Court must see that the thing charged is an offence within the plain meaning of the words used and must not strain the words. In construing a penal statute it is also a cardinal principle that in case of doubt, the construction favourable to the subject should be preferred. But these rules do not in any way affect the fundamental principles of interpretation, namely that the primary test is the language employed in the Act. When the words are clear and plain the Court is bound to accept the expressed intention of the legislature.

Provisions in criminal statutes meant for the protection of the accused persons are to be considered mandatory because the laws in India protect the innocent to the greatest degree likewise when statutes provide for the doings of acts or for exercise of power or authority they are generally assumed as mandatory or presumptory irrespective of the phraseology used though manifest intention of the legislature may replace the assumption.\textsuperscript{37}

\begin{footnotesize}
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\item \textsuperscript{33} \textit{State through C.B.I. Delhi} v. \textit{Gian Singh}, AIR 1999 SC 3450.
\item \textsuperscript{34} \textit{Kamal Kant Singh} v. \textit{Chairman, M.D. Bennett Colman Co.}, 1988 (1) Crimes 106 at 109.
\item \textsuperscript{35} \textit{W.H. King} v. \textit{The Republic of India}, AIR 1952 SC 336.
\item \textsuperscript{36} AIR 1961 SC 1494.
\item \textsuperscript{37} \textit{Ram Narain} v. \textit{B. Nath}, 1961 (1) CrLJ 553 (555).
\end{itemize}
\end{footnotesize}
If a statute creating or increasing a penalty is capable of two constructions, it should be construed so as to operate in favour of life and liberty. Laws should not be construed, however, as intending to prevent punishment unless no other alternative is permissible or where a statute forbids a thing affecting the public but is silent as to any penalty the doing of that thing is punishable as at common law. In the case of Dal Chand v. Municipal Corporation, Bhopal, the Supreme Court observed that there are no ready tests or invariable formula to interpret a particular provision of statute whether it is mandatory or directory. The broad purpose of the statute is important.

The object of the particular provision must be considered. The link between the two is most important. The weighing of the consequence of holding a provision to be mandatory or directory is vital and, more often than not, determinative of the very question whether the provision is mandatory or directory. Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of.

The use of the word ‘shall’ is not conclusive or decisive to determine the question whether a particular provision is directory or mandatory. The two considerations for regarding a provision as directory are:

(i) Absence of any provision for the contingency of particular provision not being complied with or followed; and

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39 AIR 1983 SC 303.
(ii) Serious general inconvenience and prejudice that would result to the
general public if the act of the government or an instrumentality is
declared invalid for non-compliance with the particular provision.40

It is also correct that the use of the word ‘may’ would normally indicate
that the provision was not mandatory. But in the context of a particular
statute, this word ‘may’ connotes a legislative imperative.41

The form of the provision cannot be considered to be conclusive though
in the absence of a contrary indication in the context the use of the word
’shall’ (except in its future tense) prima-facie suggests imperative intent. The
question is, however, one of the intentions of the Parliament, which can be
ascertained by considering the whole of the provision, its object and purpose,
its previous history, and the consequences, which would flow from construing
it one way or the other; it can also be inferred on ground of policy and
reasonableness. It is well settled principle of interpretation of statutes that in
criminal matters, law as it exists on the date of commission of offence has to
be taken into consideration. Any subsequent amendments in substantive law
cannot have a retrospective effect.42

It is equally settled that the Appellate Court is entitled to take into
consideration any change in the law. There can be no doubt that the
substantive right of parties cannot be taken away by a subsequent amendment
unless specifically enacted by legislature, but procedural law can always have
a retrospective application.43 It is also a cardinal principle of interpretation
that the operative part should be given such a construction which would make
the exception carved out by the provision necessary and a construction which
would make the exception unnecessary and redundant should be avoided.44

It is the duty of the Court to construe the code with reference to the modern needs, wherever this is permissible, unless there is if any in such code or in the particular Section to indicate the contrary. Penal laws, howsoever, deterrent are inadequate to prevent crimes unless there is change brought about in the way of life, thinking and outlook of the members of the communities against each other in villages and cities of this country.\textsuperscript{45}

In \textit{State of Punjab v. Amor Singh},\textsuperscript{46} Justice Krishna Ayer, moved one step further by observing that rule of law must run close to the rule of life and the Court must read in an enactment; language permitting, that meaning which promotes the benign intent of the legislation in the preference to the one which perverts the scheme of the statute on imputed legislative presumptions and assumed social values valid in a prior era. An aware Court informed of this adaptation in the rules of forensic interpretation, hesitates to nullify the plain object of law unless compelled by its language.

It is also the cardinal principle of interpretation that it must change with the changing society, keeping in view various problems facing the society from time to time.\textsuperscript{47} It is the duty of the Court in construing a statute to give effect to the intention of the legislature. If, therefore, giving a literal meaning to a word used by a draftsman, particularly in a penal-statute would defeat the object of the legislature, which is to suppress a mischief the Court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will advance the remedy and suppress the mischief.\textsuperscript{48}

To elucidate the legal position further their Lordships of Supreme Court in \textit{Darshan Singh Balwant Singh v. The State of Punjab},\textsuperscript{49} held that it is a cardinal rule of interpretation that the language used by the legislature is the

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  \item AIR 1974 SC 994.
  \item Maxwell on Interpretation of Statutes, pp. 221-224, 226.
  \item AIR 1953 SC 83.
\end{itemize}
true depository of the legislative intent and that words and phrases occurring in a statute are to be taken not in an isolated or detached manner dissociated from the context, but are to be read together and construed in the light of the purpose and object of the act itself.

The foremost task of the Court is to ascertain the intention of the legislature. Having done so that Court must strive to so interpret the statute as to promote and advance the object and purpose of the enactment. For this purpose the Court when necessary, may even depart from the rule that plain words should be interpreted according to plain meaning. The proof of legislative intention can be found and gathered from the language which the legislature uses. It is permissible that ambiguities in the statute can undoubtedly be resolved by resort to extraneous aids. But the Court is not competent to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature.

Further, it is not permissible to conclude that the language used in a particular Section cannot be regarded as strictly accurate. Such an interpretation is not permitted for ‘the words of an Act of Parliament’ must be construed so as to give sensible meaning to them. It is also necessary that the interpretation or construction whichever is in favour of the constitutionality of statute must be accepted and the Court should give liberal interpretation to Section to avoid constitutional invalidity.

In Kedar Nath Singh v. The State of Bihar, a Constitution Bench consisting of six Judges, cautioned the courts that it is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them

51 Gurubux Singh Sibbia v. State of Punjab, AIR 1980 SC 465 (This leading case deals with the provisions of anticipatory bail).
52 Tota Ram v. The State of Bombay, AIR 1954 SC 496.
55 AIR 1962 SC 955.
unconstitutional, the Court would lean in favour of the former construction. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used but also take into consideration the antecedent history of the legislation, its purpose and mischief it seeks to suppress.

Another principle of construction of statute is that the construction which is in harmony with the Section should be accepted by the courts. But the question of harmonious construction will arise only in those cases where the words used in different clauses of an enactment are incoherent and carry different meanings. The words are then harmonised in such a manner that they may project the object for which the enactment was made.56

Whether a statute would have prospective or retrospective effect their Lordships of Supreme Court in Mahdeo Lai v. Administrator General,57 observed that statutory provisions creating or taking away substantive right are ordinarily prospective; they are retrospective only if by express words or by necessary implication the legislature has made them retrospective and the retrospective operation is only limited to the extent to which it has been so made by express words or necessary implication.

Even when the express language of the statute under interpretation is capable of two interpretations, one retrospective and other prospective, then it should be construed as prospective only.58 While construing a particular statute the courts should primarily look at the language employed in the Section and give effect to it.59 In Gurbaksh Singh Sibia v. State of Punjab60 the Apex Court of India held that words of width and amplitude ought not to be cut down so as to read into the language of the statute restraints and

56 Ram Chandra v. State, 1977 CrLJ 783 (All).
57 AIR 1960 SC 936.
59 Ram Krishna v. The State of Delhi, AIR 1956 SC 476.
60 1980 SCC (Cri.) 561.
conditions which the legislature itself did not think proper or necessary to impose.

The presumption that the same words are used in the same meaning is, however, very slight, but it is proper if sufficient reasons can be assigned to construe a word in one part of the Act in a different sense from that which it bears in another part of the Act. The Supreme Court in *Tahsildar Singh v. State of U.P.*, while explaining the guidelines for interpreting a proviso attached to a Section laid down that the proper course is to apply the broad general rule of construction, which is that a Section or enactment must be construed as a whole, each portion throwing light if need be on the rest. The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause saving clause, and proviso, taken and construed together is to prevail unless the words are clear, the Court should not so construe the proviso as to attribute an intention to the legislature to give with one hand and take away with the other. To put in other words, a sincere attempt should be made to reconcile the enacting clause and the proviso and to avoid repugnancy between the two.

A penal provision which is enacted to suppress the activities of smuggling should be liberally construed to suppress the mischief. While interpreting a particular provision of a statute the help of the preamble may be taken only in cases where there is ambiguity in that provision, otherwise not. It is an elementary rule that the entire Section must be read together, particularly the context in which it appears. No part of the Section has to be omitted. In other words, the statute must be read as a whole. The same principle applies to different parts of the same Section as well.

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62 *AIR 1959 SC 1012*.
In a penal clause has to be construed strictly and also harmoniously according to the intent of the statute. But where the language employed by the legislature to express its intention is specific and precise, the provisions of the statute have to be construed assigning natural meaning to the words and such meaning need not be extended.68

3. Concept of Fair and Speedy Trial

The sole aim of the law is approximation of justice and assurance of fair trial is the first imperative of the dispensation of justice. It cannot be denied that one of the most valuable rights of our citizens is to get a fair and impartial trial free from an atmosphere of prejudice. Article 21 of the Constitution makes it obligatory upon the State not to deprive any person of his life or personal liberty except according to procedure established by the

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law.\textsuperscript{69} It is, therefore, obligatory on all the citizens that while exercising their rights they must keep in view the obligations cast upon them. If accused persons have a right to a fair trial then it necessarily follows that they have a right to be tried in an atmosphere free from prejudice or else the trial may be vitiating on this ground alone.\textsuperscript{70}

The concept of fair trial has a very impressive ancestry, is deep rooted in the history, enshrined in the Constitution, sanctified by religious philosophy and juristic doctrines and embodied in the statutes intended to regulate the course of a criminal trial. Its broad features and ingredients have in course of time, been concretised into well recognised principles, even though there are gray areas, which call for further legal thought and research.\textsuperscript{71}

In law the expression justice comprehends not merely a just decision but also a fair trial. A denial of fair trial is denial of justice. One of the contents of natural justice, which is much valued, is the guarantee of a fair trial to an accused person. A fair trial is as important as a just decision. Neither the one nor the other can be sacrificed. The two are closely interlinked. The way to justice, on occasions, may be long and laborious. But we have to go all that way, because that is the only surest way. Short cuts to justice, though quite tempting, are full of dangerous possibilities. Judges know by experience that the first impression may not always be right impression and truth may be hidden behind imposing facades. In courts of law nothing can or should be taken for granted. Everything must be tested-tested by the laws of the land which are the quint essence of experience of life; if it is oral evidence it must be tested by cross-examination and if it is a question of probabilities, it must be tested by comparing the various versions put forward by the concerned parties, which means that those parties should have had reasonable opportunity to put forward their versions. In short, fair trial which is not the same thing as a trial strictly in accordance with the rules of procedure is a

\textsuperscript{70} Subhash Chand v. S.M. Agrawal, 1984 CrLJ 481 at 484.
\textsuperscript{71} Ajay Kumar v. State, 1986 CrLJ 932 at 928.
must. A denial of fair trial is a denial of justice. In other words, the mode and 
the manner in which the accused is to be tried shall not occasion a failure of 
Justice.

‘Procedure established by law’ are words of deep meaning for all lovers 
of liberty and Judicial sentinels. Amplified, activist fashion, ‘procedure’ 
means ‘fair and reasonable procedure’ which comports with civilized norms 
like natural justice rooted firm in community consciousness, and not primitive 
processual barbarity nor legislated normative mockery.

In Mrs. Menaka Gandhi v. Union of India, the Supreme Court 
explained: ‘Procedure established by law’, with its lethal potentiality, will 
reduce life and liberty to a precarious play-thing if we do not ex-necessitate 
import into those weighty words an adjectival rule of law. civilized in its soul, 
fair in its heart and fixing those imperatives of procedural protection absent 
which the processual tail will wag substantive head. Procedure which deals 
with the modalities of regulating, restricting or even rejecting a fundamental 
right falling within Article 21 has to be fair, not foolish, carefully designed to 
effectuate, not to subvert, the substantive right itself. Thus, understood 
‘Procedure’ must rule out anything arbitrary or reaklish or bizarre. A valuable 
constitutional right can be canalised only by civilized process.

It has further been observed in this case that the principle of 
reasonableness, which legally as well as philosophically, is an essential 
element of equality or non-arbitrariness, pervades Article 14 like a brooding 
omnipresence and procedure contemplated by Article 21 must answer the test 
of reasonableness in order to be in conformity with Article 14. It must be 
“right and just and fair” and not arbitrary, fanciful or oppressive, otherwise it 
would be no procedure at all and the requirement of Article 21 would not be 
satisfied.

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74 AIR 1978 SC 597 at 658.
Recording of evidence by Video conferencing is advancement in science and technology which permit one to see, hear and talk with someone for away, with the same facility and ease as if he is present before you. Thus, so long as the accused and/or his pleader are present when evidence is recorded by video conferencing that evidence is being recorded in the 'presence' of the accused. Recording of such evidence would be as per 'procedure established by law'.

Article 21 of the Constitution conferred a fundamental right upon every person not to be deprived of his life or liberty except In accordance with due procedure prescribed under law and it is not enough to constitute compliance with the requirements of that article that some semblance of a procedure should be prescribed by law but procedure should be reasonable, fair and just. If a person is deprived of his liberty under a procedure which is not reasonable, fair and just, such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release.

The Tribunals (and Courts also) should follow law of natural justice and the law of natural justice requires that a party should have opportunity of adducing all relevant evidence on which he relies, Evidence should be given. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence has not strictly been followed. A calm and detached atmosphere is the basic and fundamental requirement of a fair trial and when the calm and detached atmosphere, of fair and impartial judicial trial would be wanting, the case should be transferred, as even if Justice were done it would ‘not be seen to be done’.

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To sum up, ‘Procedure’ in Article 21 means fair, not formal procedure.\textsuperscript{79} One of the components of fair procedure in the administration of criminal Justice is that the accused has the opportunity of making his defence by a legal practitioner of his choice. This is his constitutional right under Article 22 of the Constitution, and in order to give effect to this constitutional right, it has now been embodied in the Directive Principles of State Policy as provided under Article 39A of the Constitution, that the State shall secure equal justice and free legal aid by a suitable legislation or scheme or any other way to ensure that the opportunities for securing Justice are not denied to any citizen by reason of economic or other disabilities. That right has also been statutorily accepted and incorporated in Section 303 of the Criminal Procedure Code, 1973 which provides that any person accused of an offence before a Criminal Court or against whom the proceedings are initiated under this Code may have his right to be defended by a pleader of his choice. That right, therefore, should not be interfered with.\textsuperscript{80}

Reviewing the entire case law, pronounced by the Apex Court on speedy justice in \textit{Ramchandra Rao v. State of Karnataka},\textsuperscript{81} a Constitution Bench of seven judges has held that In its zeal to protect the right to speedy trial of an accused, the Court cannot devise and almost enact bars of limitation beyond which trial shall not proceed and arm of law shall lose its hold though the legislature and the statutes have not chosen to do so. Bars of limitation, judicially engrafted, are, no doubt, meant to provide a solution to the aforementioned problems. But a solution of this nature gives rise to greater problems like scuttling a trial without adjudication, stultifying access to justice and giving easy exit from the portals of justice. Such general remedial measures cannot be said to be apt solutions. For two reasons held, such bars of limitation uncalled for and impermissible: first, because it tantamounts to impermissible legislation – an activity beyond the power which the

\textsuperscript{79} Madhav Hoskot v. State of Maharashtra, AIR 1978 SC 1548 at 1554.
\textsuperscript{80} Somappa Hanaman Tappa v. The State of Karnataka, 1986 CrLJ 1201 at 1202.
\textsuperscript{81} 2002 CrLJ 2547.
Constitution confers on judiciary, and secondly, because such bars of limitation fly in the face of law laid down by Constitution Bench in *A.R. Antulay’s case*,\(^3\) and, therefore, run counter to the doctrine of precedents and their binding efficacy. Prescribing periods of limitation at the end of which the trial Court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and, further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, cannot be done by judicial directives and within the arena of the judicial law-making power available to constitutional courts, however, liberally Court may interpret Articls 32, 21, 141 and 142 of the Constitution. The dividing line is fine but perceptible. Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated, in a given case or set of cases, depending on facts brought to the notice of Court. This is permissible for judiciary to do. But it may not, like legislature, enact a provision akin to or on the lines of Chap. XXXVI of the Code of Criminal Procedure, 1973.

Therefore, the dictum in *A.R. Antulay’s case* is correct and still holds the field. The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in *A.R. Antulay’s case* adequately take care of right to speedy trial. Court upholds and re-affirms the said propositions. The guidelines laid down in A.R. Antulay’s case are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a strait-jacket formula. Their applicability would depend on the fact-situation of each case. It is difficult to foresee all situations and no generalization can be made. It is neither advisable, nor

\(^3\) AIR 1992 SC 1701.
feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in various decisions could not have been so prescribed or drawn.

The criminal Courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time as prescribed by the directions made in Common Cause Case (I), Raj Deo Sharma Case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the Courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their Judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay's case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any Court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the Court to terminate the same and acquit or discharge the accused. The Criminal Courts should exercise their available powers, such as those under Ss. 309, 311 and 258 of the Code or Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial judge can prove to be better protector of such right than any guidelines. In appropriate cases jurisdiction of High Court in Articles 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable directions. This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary quantitatively and qualitatively by providing requisite funds, manpower and infrastructure.

At the most period of time prescribed in ‘common cause’ cases can be by the Courts in seisin of the trial or proceedings to act as reminder when they may be persuaded to apply to their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration several relevant factors as pointed out in AIR 1992 SCW 1872
and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time limits cannot and will not be treated by any Court as a bar to further trial or proceedings and as mandatorily obliging the Court to terminate the same and acquit or discharge the accused.  

While considering the question of delay in trial the Court has a duty to see whether the prolongation was on account of any delaying tactics adopted by the accused and other relevant aspects which contributed to the delay. Number of witnesses examined, volume of documents likely to be exhibited, nature and complexity of the offence which is under investigation or adjudication are some of the relevant facts. There can be no empirical formula of universal application in such matters. Each case has to be judged in its own background and special features if any. No generalisation is possible and should be done. It has also to be borne in mind that the Criminal Courts exercise available powers such as those under Sections 309, 311 and 258 of the Criminal Procedure Code to effectuate right to speedy trial. In the present case these aspects have not been considered by the High Court while quashing the proceedings. Therefore, the order of the High Court quashing proceedings merely on ground that there was unnecessary delay in conclusion of the trial would not be proper.

Apex Court in a judgment reported in _Seeta Hemchandra Shashittal v. State of Maharashtra_, 84 in which it has been held that this Court has emphasised, time and again, the need for speeding up the trial as undue delay in culminating the criminal proceedings is antithesis to the constitutional protection enshrined in Article 21 of the Constitution. Nonetheless the Court has to view it from pragmatic perspective and the question of delay cannot be considered entirely from an academic angle.

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83 _State through C.R.I. v. Dr. Narayanwaman Nerukar, 2002 CrLJ 4099 (SC)._  
84 AIR 2001 SC 1246.
The accused cannot be allowed to get scot-free because the prosecution has failed to produce the witnesses on the date fixed by the trial Court. Every State has its own problems. The huge number of pending cases is one of the reasons behind this delay in trials in State of U.P. Courts are over burdened. The second ground is lack of sufficient strength of officers in the trial courts. These are the problems, which the judicial system of this state is presently facing. The district Court is functioning with insufficient number of judicial officers. Therefore, delay in trial is unavoidable. It cannot be squarely put on the shoulders of the Court. These accused persons are on bail. These are some of the features which cannot be overlooked while considering the guidelines set by the Apex Court in the decision reported in Raj Deo Sharma’s case.\(^{55}\)

The Bar Council of India and the State Bar Councils must play their part and lend their support to put the criminal system back on its trail. Perjury has also become a way of life in the law courts. A trial judge knows that the witness is telling a lie and is going back on his previous statement, yet he does not wish to punish him or even file a complaint against him. He is required to sign the complaint himself which deters him from filing the complaint. Perhaps law needs amendment to clause (b) of Section 340 (3) of the Code of Criminal Procedure in this respect as the High Court can direct any officer to file a complaint. To get rid of the evil of perjury, the Court should resort to the use of the provisions of law as contained in Chapter XXVI of the Code of Criminal Procedure.

It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only that a witness is threatened; he is abducted; he is maimed; he is done away with; or even bribed. There is no protection for him. In adjourning the matter without any valid cause a Court unwittingly becomes party to miscarriage of Justice. A witness is then not treated with respect in the Court. He is pushed out from the crowded courtroom by the peon. He waits for the whole day and then he finds

\(^{55}\) AIR 1999 SC 3524.
that the matter adjourned. He has no place to sit and no place even to have a glass of water. And when he does appear in Court, he is subjected to unchecked and prolonged examination and cross-examination and finds himself in a hapless situation. For all these reasons and others a person abhors becoming a witness. It is the administration of justice that suffers. Then appropriate diet money for a witness is a far cry. Here again the process of harassment starts and he decides not to get the diet money at all. High Courts have to be vigilant in these matters. Proper diet money must be paid immediately to the witness (not only when he is examined but for every adjourned hearing) and even sent to him and he should not be left to be harassed by the subordinate staff. If the criminal justice system is to be put on a proper pedestal, the system cannot be left in the hands of unscrupulous lawyers and the sluggish State machinery. Each trial should be properly monitored. Time has come that all the courts, district courts, subordinate courts are linked to the High Court with a computer and a proper check is made on the adjournments and recordings.86

To have speedy justice is a fundamental right which flows from Article 21 of the Constitution. Prolonged delay in disposal of the trials and thereafter appeals in criminal cases, for no fault of the accused, confers a right upon him to apply for bail. This Court, has time and again, reminded the executive of their obligation to appoint requisite number of judges to cope with the ever increasing pressure on the existing judicial apparatus. Appeal being a statutory right, the trial Court’s verdict does not attain finality during pendency of the appeal and for that purpose his trial Is deemed to be continuing despite conviction. It is unfortunate that even from the existing strength of the High Courts huge vacancies are not being filled up with the result that the accused in criminal cases are languishing in the jails for no fault of theirs. In the absence of prompt action under the constitution to fill up the vacancies, it is incumbent upon the High Courts to find ways and means by taking steps to

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ensure the disposal of criminal appeals, particularly such appeals where the accused are in Jails, that the matters are disposed of within the specified period not exceeding 5 years in any case. Regular benches to deal with the criminal cases can be set up where such appeals are listed for final disposal.

We feel that if an appeal is not disposed of within the aforesaid period of 5 years, for no fault of the convicts, such convicts may be released on bail on such conditions as may be deemed fit and proper by the Court. In computing the period of 5 years, the delay for any period, which is requisite in preparation of the record and the delay attributable to the convict or his counsel can be deducted. There may be cases where even after the lapse of 5 years the convicts may under the special circumstances of the case, be held not entitled to bail pending the disposal of the appeals filed by them. We request the Chief Justice of the High Courts, where the criminal cases are pending for more than 5 years to take immediate effective steps for their disposal by constituting regular and special benches for that purposes.

Right of speedy trial is an integral part of fundamental right guaranteed by Article 21 of Constitution of India. Free legal aid and speedy trial are two basic requirements, preconditions and essential ingredients of a fair, just and reasonable criminal trial. The concept of a fair trial has not been static but has been a dynamic one, which has been evolving and has grown over the years. A fair trial in modern parlance must be a trial, based on an equally fair investigation on the basis of material which is before hand disclosed to the accused, in a public place, exposed to public gaze, by a judge, who is bound by oath to do justice without fear, favour, ill-will or affection, in an environment which is free from hostility or bias, by judicial vision which is not clouded by elements that may sully the judicial steam, such as pre-

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conceived notions, religious, parochial, ideal, ideological, communal, caste, class or political commitments or affiliations on the basis of evidence of witnesses, who are truthful, and in a manner which guarantees to the person accused the essential procedural safeguards such as the right to cross-examine, right to counsel of his choice, if necessary, at state expense, right to produce witnesses, as also other material, and generally the right to be fully heard.

It must above all be a speedy trial without being a rushed one. A delayed or a rushed trial equally suffers from the vice of denial of justice. A facet of the fair trial, is and this is the crowning glory of the judicial system that the trial must not only be fair but must also appear to be so. The appearance facet of the trial is as important as the reality of it and in a sense, even more important so that if an impartial observer of the scene honestly felt or reasonably believed that the accused was not being fairly tried there would be denial of a fair trial. The principle is at times stretched further. If the accused himself came out of the Court room and reasonably believed that he had been unfairly dealt with there was perhaps no fair trial. The fair trial is a concept which is not merely confined to the procedural safeguards but must extend also to the substantive content of the trial. In this wider meaning the concept could encompass not only the manner of the trial but also the ultimate decision at the trial. This is important because a fair trial would cease to be a fair trial if it led to an unfair conclusion.

Thus, the conviction of an innocent person of a trial, which otherwise satisfied all the requirements of a fair trial, would be a negation of a fair trial. Similarly, a fair conclusion may be arrived at even in a trial which was not fair. There are various components of the judicial process. It involves the executive wing of the State, the judicial wing of the State, as indeed the legislative wing of the State. In every trial all these are on trial alongwith the accused. Was the trial based on a just and fair and truthful investigation? This would be trial of the investigation limb of the State. Was the prosecuting

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91 Audy alteram partem means 'rule of fair hearing'.
branch of the State acting in a just and fair manner in the conduct of the trial? Were the witnesses true to the oath by which they bound themselves? Each of them is also on the trial. So is the Presiding Officer at every trial. Was he just and fair in the way he conducted the trial and ruled on that conclusion of it? In a sense the entire system is on trial.92

It is patent, that the dominant object of Article 21 will be frustrated to the core, if the accused is indulged in seeking protection under the cloak of delayed trial and agonies.22 In my view, the Court must take into account the totality of the facts and circumstances of each case to do a complete justice between the parties. *Ipsa facta* denial of right to speedy trial should not be readily inferred at the cost of the prosecution and total disregard of the circumstances.22

Of late, the decision of the Supreme Court in the case of *Abdul Rehman Antulay v. R.S. Nayak*, is of utmost importance where the guidelines have been provided by the Supreme Court in a case where trial has been delayed. The Court has come to a finding that right to speedy trial of an accused when infringed, the charges of the conviction, as the case may be, shall be quashed. But, this is not only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of Justice.

The dominant object of Article 21 will be frustrated to the core, if the accused is indulged in seeking protection under the cloak of delayed trial and agencies without balancing his right of speedy trial and prosecution’s right to prosecute the Criminal Procedure.93 While determining whether undue delay has occurred one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the Court concerned, prevailing local conditions and so on - what is called, the systematic delays. It is true that it is the obligation of the state to ensure a

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speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of pedantic one.\textsuperscript{94}

Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily and inordinate delay may be taken presumptive proof of prejudice.\textsuperscript{95}

Even apart from Article 21 Courts have been cognizant of undue delays in criminal matters and wherever there was inordinate delay or where the proceedings were pending for too long and any further proceedings were deemed to be oppressive and unwarranted, they were put to an end by making appropriate orders. Whether the delay would result in infringement to right of fair trial would depend on the facts and circumstances of each case and no outer limit beyond which prosecution should be halted can be fixed. However, where no charge for offence under Section 420, Penal Code was framed even after ten years from filing of the challan and eighteen years from the date of occurrence, and the accused was not in any way responsible for the said delay, the proceedings were liable to be quashed.\textsuperscript{96}

Unexplained delay of eight years in commencing the trial by itself infringes the right of the accused to speedy trial.\textsuperscript{97} For a speedy trial of a criminal case the procedure to be followed by the trial Courts whenever an objection is raised regarding maintainability of any material or any item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage of the final judgment.\textsuperscript{98}

It is no doubt true that a guilty person should not escape but at the same time his trial should complete within a fair and reasonable time. It is to be

\textsuperscript{94} Abdul Rehman Antulay v. R.S. Navak, (1992) 1 SCC 225.
\textsuperscript{96} Gangaram v. State of Rajasthan, 1994 CrLJ 2125.
\textsuperscript{97} Santosh De. v. Archana Guha, 1994 CrLJ 1975 at 1977.
seen that delay has been caused on account of the accused or by the prosecution, and for balancing conflicting rights and duties Court is to see that a person accused in crime are not indefinitely be harassed, for completing the trial.99

The concept of speedy trial has within its sweep the right to speedy disposal of bail applications.100 The facts of this case impel us to say how easy it has become today to delay the trial of criminal cases. An accused so minded can stall the proceedings for decades together, if he has the means to do so. Any and every single interlocutory is challenged in the superior courts and the superior courts, we are pained to say, are falling prey to their stratagems.

We expect the superior courts to resist all such attempts. Unless a grave illegality is committed, the superior courts should not interfere. They should allow the Court which is seized of the matter to go on with it. There is always an appellate Court to correct the errors. One should keep in mind the principle behind Section 465 of Criminal Procedure Code Any and every irregularity or infraction of a procedural provision cannot constitute a ground for interference by a superior Court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself. Such frequent interference by superior courts at the interlocutory stages tends to defeat the ends of justice instead of serving those ends. It should not be that a man with enough means is able to keep the law at bay. That would mean the failure of the very system.101

It has further been observed in this case102 that access to justice and the consequential right to a fair trial, though part of the fundamental human rights, guaranteed by the Constitution, and incorporated in the statute regulating the procedure for the conduct of a trial, and sought to be reinforced

102 1986 CrI3 at 940-941.
by high sounding principles of fair play is however, by no means easy and does not necessarily have a smooth or straight course.

The course of justice and fair trial is beset with numerous impediments which tend to sully the course of justice and put obstructions in the path of a fair trial. These impediments stem both from internal and external sources. There are internal obstacles which flow from the surroundings, the infrastructure, as also the laws, rules, procedure, the practice and the conventions, all of which collectively form part of the justice system. The defective laws, dilatory procedures, improper and illegal practices, corruption of the Court system, the incompetence or lack of probity of the judicial and other Court personnel, the bias, the prejudice that they may nurture the ill-will or affection, for one side or the other, that they nurse the hostility against or the tilt for one or the other of the parties, based on improper motivation whether of political affiliation, religious, communal, regional, caste or other affinities, tend to subvert the system. The internal factors take myriad forms, which vary from class, caste and cousin psychosis to transfer of judges, official, cases, changes of roster and tampering with the system of listing, for ulterior objects, unconnected with the exigencies of administration of justice. Sometimes, the caste or class composition of judges determines for the litigants the Section of the bar which would be best suited to be entrusted with the brief before such judges.

Courts presided over by certain judges come in course of time to acquire an association with certain tilts, preferences and prejudices having regard to the background and known attitudes of judges to men and matters. In their anxiety to serve the interest of the clients by means, fair or foul, unscrupulous members of the bar adopt ingenious methods to make sure that their cases are listed before judges of their choice. There are then external factors, which tend to disturb the course of justice. There are compulsions flowing from those in authority or centres of power, pressures from influential quarters, mild friendly suggestions based either on void threats or reprisal or tacit promise or a reward. Some of these incentives, compulsions and
pressures are obvious, while there are others which are more sophisticated and almost indiscernible, sometimes too subtle to be perceived, much less detected.

The institution of an independent judiciary is no doubt a great bulwark against both internal and external pressure and therefore a built in safeguard that justice would be administered without ‘fear or favour’, ‘ill will or affection’. Unfortunately, however, there has been a growing realisation in practically all democratic systems, governed by the rule of law, that the independence of judiciary may perhaps be myth rather than a reality. There are, it is said, independent and fearless judges, but there has been no dearth of judges, who are neither independent nor fearless. There may be those who still are afraid of the ‘stick’ and lured by the ‘carrot’. It is nevertheless a beautiful myth because it sustains the democratic system and maintains faith of the people in the institution, which, if shaken, may induce the people to take to the streets for justice.

The assumption that holding a trial in public is a fundamental right and a direction for holding it in a Jail is violative of that, stands negatived by Naresh v. State of Maharashtra\textsuperscript{103} which though recognises the Importance of the public trial nevertheless recognises that even in the interest of justice, total unrestricted public trial cannot always be insisted. Of course such power is to be exercised sparingly and with caution. But the broad proposition that the mere holding of a trial in jail is violative of fundamental right must be rejected. It should be borne in mind that very rarely does the High Court exercise to direct any particular case to be tried in jail. When it does so it is done only because of overwhelming consideration of public order, internal security and a realisation that holding of trial outside jail may be held in such a surcharged atmosphere as to completely spoil and vitiate the Court

\textsuperscript{103} AIR 1967 SC 1.
Mere pendency of civil proceeding cannot ipso facto block criminal proceedings. To adopt course that with pendency of civil proceedings criminal proceedings shall also be stayed, may, in fact, defeat the ends of Justice keeping in view the long delay that usually occur in disposal of civil suit, thereby enabling a guilty culprit to be at large with Impunity for years and in the meanwhile Intervening factors like witnesses suffering loss of memory after such a long time or not being available and the like coming in, to provide an escape route of such an accused In the criminal proceeding.  

It is a dispute relating to property. It is not the function of the Criminal Courts to have anything to do with disputes relating to property. It is the function of the Civil Court to decide the rival claims. It is true that the litigants are always eager to cut the Gordian knot of protected litigation by launching out prosecution. But the Courts should be slow to entertain matters which are properly within the jurisdiction of the Civil Courts. When a party has two remedies-civil and criminal, then he is noc debarred by seeking remedy in criminal Court. It is now not disputed that the right of speedy trial is the fundamental right enshrined under Article 21 of Constitution of India and therefore, the delay in conclusion of the trial amounts to violation of the fundamental rights. On account of delay in trial, proceedings can be quashed.

When the offences under Sections 166, 500 and 506 Indian Penal Code punishable with imprisonment of seven years or fine or both and when allegations in complaint were that accused was threatening to kill complainant then complaint filed beyond three years could not be said to be time barred. When the contents of complaint itself shows that dispute between the parties basically one of a civil nature then permitting criminal proceedings to

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131 Court on its Own Motion v. Smt. Kailash Rani, 1993 CrLJ 2109.
continue against the accused persons would be nothing short of an abuse of the process of Court.\textsuperscript{135}

When complaint was filed for offences of fabrication of Wills, and when question regarding genuineness of Wills pending for determination in Court, then criminal proceedings should be stayed.\textsuperscript{156} No doubt ordinarily when parallel, civil and criminal proceedings are pending, criminal proceedings should proceed. However, which proceeding should be preferred in a given case will depend upon the facts of each case. This Court has already given guidelines and principles in case of two parallel proceedings, so that trial Court could determine as to what approach the Court should adopt. Following guidelines enunciated by this Court earlier may be reiterated.

(i) As between a civil suit and criminal proceeding, criminal matters require to be accorded precedence.

(ii) The possibility of conflicting decisions in the civil suit on the one hand and the criminal proceedings on the other, is not a relevant consideration, inasmuch as the decision of one Court is not binding on the other or even relevant except for certain limited purposes, such as sentence or damages.

(iii) The only relevant consideration is the likelihood of embarrassment to the accused person.

(iv) The Court faced with the question of stay of criminal case till the disposal of a civil suit must take into account the circumstances that a civil suit would drag on for a number of years and that it would be undesirable to stay a criminal case from two standpoints. Firstly, public policy and public interests demand that criminal Justice should be swift and sure and that the guilty should be punished while the events are still fresh in the public

\textsuperscript{135} \textit{Anil Kumar v. Ajay Butail}, 1992 CrLJ 2282 at 2286 (HP).

mind and that the innocent should be absolved as early as possible is consistent with a fair and impartial trial. Secondly, it is undesirable to let things slide till memories of witnesses have grown too dim to be trusted.

(v) No hard and fast rules can be laid down. And, notwithstanding the aforesaid considerations, there might be peculiar circumstances which might justify special considerations on the fact pattern of an individual case. For example the civil case might be well near its conclusion and it might be more expedient and just to stay the criminal case.

As observed by this Court earlier “Ordinarily there would be a very few occasions on which a Criminal Court would be justified in staying the criminal case. To stay a criminal case would be an exception rather than a rule. There may be cases involving the facts which would justify the staying of criminal proceedings and the ultimate anxiety in final analysis would be to see as to whether the accused person would be really embarrassed in his defence or not”137 Pendency of civil suit in respect of same offence is no ground to quash FIR.138

5. Judicial Restraint

The judge has the inherent power to act freely upon his own conviction on any matter coming before him, but it is a principle of highest importance to the proper administration of justice that the judge must exercise his powers within the bounds of law and should not use intemperate language or pass derogatory remarks against other judicial functionaries, unless it is absolutely essential for the decision of the case and is backed by factual accuracy and legal provisions.

137 Babu Bhai v. Mukta Sayar, 1992 CrLJ 2103 at 2105 (Gujarat).
Judges must be circumspect and self disciplined in the discharge of their judicial functions. The virtue of humility in the judges and a constant awareness that investment of power in them is meant for use in public interest and to hold the majesty of rule of law, would to a large extent ensure self restraint in discharge of all judicial functions and preserve the independence of judiciary. It needs no emphasis to say that all actions of a judge must be judicious in character. Erosion of credibility of the judiciary in the public mind, for whatever reasons, is greatest threat to the independence of the judiciary. Eternal vigilance by the judges to guard against any such latent internal danger is, therefore, necessary, lest we suffer from self-inflicted mortal wounds. We must remember that the constitution does not give unlimited powers to anyone including the judge of all levels.

The societal perception of judges as being detached and impartial referees is the greatest strength of the judiciary and every member of the judiciary must ensure that this perception does not receive a set back consciously or unconsciously. Authenticity of the judicial process rests on public confidence and public confidence rests on legitimacy of judicial process. Sources of legitimacy are in the impersonal application by the judge of recognised objective principles which owe their existence to a system as distinguished from subjective moods, predilections, emotions, and prejudices. It is most unfortunate that the order under appeal founders on the touchstone and is wholly unsustainable.

By the very nature of their office, the judges of the Supreme Court or the High Court cannot enter into a public controversy and file affidavits to repudiate any criticism or allegations made against them. Silence as an option becomes necessary by the very nature of the office which the judges hold. Those who criticize the judges in relation to their judicial or administrative work must remember that the criticism even if outspoken, can only be of the judgment but not of the judge. By casting aspersions on the judges personally or using intemperate language against them, the critics, whoever they may be strike a blow at the prestige of the institution and erode its credibility. That
must be avoided at all costs. Shethna, J. must be presumed to be aware of this and yet he permitted himself the liberty to make intemperate comments and disparaging and derogatory remarks against the Chief Justice and his Brother Judges as also the former Chief Justices of that Court including the present Chief Justice of India who cannot reply or respond to the unfounded charges. It is not merely a case of lack of judicial restraint but it amounts to abuse and misuse of judicial authority and betrays lack of respect for judicial institution. Besides when made recklessly (as in the instant case) it amounts to interference with the judicial process.

The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are permitted to be made against brother judges with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from outside forces but also from those who are an integral part of the system. It is well said that dangers from within have a much larger and greater potential for harm, than dangers from outside. We alone in the judicial family can guard against such dangers from within. One of the surer means to achieve it is by the judges remaining circumspect and self-disciplined in the discharge of their judicial functions. We have been really distressed by the manner in which the learned judge has acted. We do not wish to say anymore on this aspect.139

There is procedure established by law governing the conduct of trial of a person accused of an offence. A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and he is to be guided strictly by rules of law. If he finds the person guilty of an offence he is then to address himself to the question of sentence to be awarded to him in accordance with the provisions of law.140

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140 State of Maharashtra v. Rajendra Jawanmal Gandhi, 1997(2) SCC (Cri) 269.

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6. **The Article of Interrogation**

The aim of interrogation of suspects is not only to obtain confession but also to learn true facts and circumstances and other details of the offence, such as date, time, place, in pose and manner of its commission, identity of the accomplices and to develop information leading to recovery of property and unearthing of any other crime in which the suspect participated.

Interrogation of the victim, witnesses and suspects is one of the primary aids to proper investigation, which itself is milling but a search for the truth. Scientific interrogation is a valuable tool in the hands of an Investigating Officer to arrive at truth. Intelligent and careful questioning is useful in sifting information on incrimination matters and bringing to light evidence against the suspect by completing or confirming information already received through other sources.

Interrogation is an important part of investigation and helps a lot in detecting crime and criminal. It is the hardest part of investigation. Jacob Fisher in his book describes investigation as the search for truth by use and development of many arts. During investigation, the Investigation Officer has to interrogate a victim, suspects and culprits to collect the desired information having a bearing on the investigation of a particular case. He is required to bring to book the offenders by collecting evidence and interrogation is one of the means in the chain of sources of intelligence. The Interrogating officer should, therefore, be fully conversant with law and procedure and facts of the case.

He should be equipped with his tools like an artisan and should know the important ingredients which constitute an ill fence. The interrogator should place himself in the same in the same position as that of an accused and act accordingly by understanding human nature and behaviour. Enthusiasm, initiative and perseverance should be his cardinal virtues. He should be able to get the answer which he desires but at the same time he should be prepared to meet a contrary situation. He should not twist facts as a
story based on twisted facts often falls through. While interrogating the suspect, the Police Officer should not talk in a superior manner with the suspect, who may feel annoyed and may not answer questions correctly. Due respect should be shown to the person who by the virtue of his position accepts it to win his confidence otherwise information will not be forthcoming. Firmness coupled with courtesy and politeness should be followed and interrogating officer must have the sense to evaluate the personality of the suspect.

Interrogation is the art of questioning a person who is suspected to have committed a crime or having been involved in a crime. Interrogation is an interaction of two minds, the mind of the interrogator and the mind of the suspect. This goes on till one mind triumphs over the other mind. Interrogation aims at not only establishing guilt but also at establishing innocence. Interrogation is an art and is a delicate process of extracting lulling information having a bearing on the crime by examination and cross-examination of an individual (victim, witness and suspect). Interview is also the process of obtaining information from people who have knowledge of a particular offence. But there is a fine distinction between the two:

(i) Interview is a tool to gain information, whereas interrogation is a process of testing that information.

(ii) In an interview, the person (victim or witness) usually comes forward to provide the information within his knowledge, but in interrogation, the individual (hostile witness and suspect) would be interested in withholding information at any cost.

(iii) Interview is normally held in a friendly atmosphere whereas interrogation may take place in an unfriendly and hostile environment due to non-co-operative attitude of the suspect or the witness where the interrogator has to wage a mental fight to get the required information from one who is not willing to part with it.

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Interrogation is of two types viz. (a) Preliminary Interrogation and (b) Detailed Interrogation. Requirements and circumstances of each case would determine whether a preliminary or a detailed interrogation should be resorted to. Preliminary interrogation is a short-term effort and comprises the spot element of shock or surprise that the suspect may be having immediately after the arrest and also when time may be the limiting factor.

There is no hard and fast rule to distinguish on the spot interrogation and short-term interrogation. When the time is not that short and the questioning is not sketchy, as in the case of short-term interrogation, preliminary interrogation may give valuable hints for detailed interrogation. Secondly, information resulting from preliminary interrogation may be useful in the discovery of incriminating material in rounding up dangerous elements or associates connected with the crime especially requiring the law and order machinery to take preventive action in case of affecting peace and tranquility or communal harmony. It may also prove useful in properly sizing up the individual and thus providing a valuable aid in detailed interrogation. The detailed interrogation of the individual expects to extract all the useful information that he has with him.

The primary object of interrogation is not as is often supposed to obtain a confession from a suspect. It is rather to obtain truthful information. The interrogator should be vigilant about false confessions made under duress which, if swallowed, would put him into shame and jeopardy. "The examination of an accused person is the most difficult of all tasks for an investigator who appreciates its value", says Hans Gross, the renowned expert on Criminal Investigation. "Who, what, when, where, why and how of interrogations are all of considerable importance to the criminal interrogator". Hans Gross further argues.

The three major aspects of criminal investigation are (1) to identify the criminal, (2) to locate and apprehend him (3) and to prove his guilt in the Court. During the course of investigation, an investigator depends on three
major tools available to him which are instrumentation, information and, interview and interrogation. Instrumentation helps him to identify or eliminate a suspect by the use of scientific technology thereby analyzing the collected physical evidences whereas the information is transformed into intelligence to identify, locate and apprehend him. But the significance of interview and interrogation cannot be discarded as it plays major role in investigation whenever there is little or no physical evidence.

The difference between interview and interrogation is that an interview is conducted in a cordial atmosphere where a witness is more comfortable physically and psychologically. On the other hand, whenever a person is questioned in an uncomfortable atmosphere (interrogation room) where he is under the psychological pressure, it is an interrogation. Interrogator, in this case, has more psychological advantage than his suspect. Interrogation is a kind of psychological warfare between interrogator and suspect. Only when an interrogator overpowers a suspect psychologically, he gets a confession or the facts of a case which is not possible otherwise.

6.1 Importance of Interrogation

It may relate getting direct or indirect information about a particular criminal. Generally, if may be called probing in the dark unless enough effort has gone already into basic enquiries about the suspect and adequate scientific analysis of the scene crime or any criminal occurrence. The objective of an interrogator should be to do a wide spectrum analysis of everything, every individual, every witness who is in any way concerned with, or involved directly or indirectly in a crime. The task becomes though not insurmountable but considerably difficult if inadequate and not properly analysed data from the scene of occurrence is available and if the identity of accused or suspects is totally shrouded in mystery. In such cases, the interrogator has to rely heavily upon a probing enquiry where the stops are none. In such case, it is always advisable to have enough data well analysed, enough computer backing and updating and more than adequate knowledge about the surrounding situation and environment at time of occurrence in order to
become heavily armed with all requirements for a successful interrogation of a suspect or interview of a witness. The leads have to be worked out by the investigating team on which the interrogator has to depend and the interrogator must keep his ears, eyes and mind open in order to assimilate whatever he gets from outside and from his scientist colleagues.

6.2 Basic Principles of Interrogation

Scientific interrogation requires use of mind and not the muscles, brains and not the brawns. In this battle of wits, barbarous methods must be avoided at all costs. Following are some of the basic principles of scientific interrogation:

(i) Interrogation must be conducted at a safe, secure and secluded place and not at the house of the individual because a man’s home is his castle.

(ii) Interrogation requires a lot of patience and confidence.

(iii) It demands continuity, consistency and determination.

(iv) It must be done legally and in a humane manner. The third degree method should be avoided as we are living in a democratic country and human dignity is supreme as is enshrined in the fundamental rights embodied in the Indian Constitution. Section 29 of the Police Act, 1861 and Article 20 (3) of the Constitution specifically forbid the use of third-degree method. Article 20 (3) provides that no person accused of any offence shall be compelled to be a witness against himself. It means that no compulsion of threat, indictment or any kind of duress should be practiced on the person to get the confessional statement. In Great Britain and the United States of America, the rights of an individual are protected even when he is accused of having committed a grave crime. Similarly, in India also the Supreme Court has been very zealously guarding individual’s rights. In a
recent case, the Supreme Court emphasized that in the course of questioning to obtain confessional statements, there must not be any mental coercion, atmospheric pressure, compelled testimony or frequent threats of prosecution.\textsuperscript{141}

Sections 311 and 330 of the Indian Penal Code, 1860 also make it a crime to confessions even with the so called objective of detecting an offence. The investigating officer must not forget that ends must justify the means. It is wrong for a police officer, or for that matter for any other person, to commit an offence in order that offence by another person may be detected. Interrogation is difficult to teach and learn in academic classes. It can be learnt only by seeing and doing. It requires rare qualities also. Interrogation is an art and it needs an artistic touch, which is more often than not, inherent. Some of the good interrogators have never read a book nor attended a lecture, nor even witnessed a demonstration. They are born interrogators.

6.3 Types of Police Interrogations

An interrogation can occur at the police station in jail or at the scene of a crime. There are two types of police interrogation:

- **Custodial interrogation**: A custodial interrogation is an interrogation of a person in custody who is reasonably suspected of being directly involved in or responsible for an offence. The person being interrogated is not free to leave police custody.

- **Non custodial interrogation (also called an interview)**: A non custodial interrogation is the gathering of information by police from a person who is not yet officially considered a suspect for the offence being investigated. A non custodial interview does not require the

\textsuperscript{141} Nandini Satpathy v. P. K. Dani and Others.
police to read the suspect his Miranda rights in order to use statements as evidence at trial.

6.4 Kinds of Interrogates

The Police officers are likely to come across the following types of interrogates in the investigation of various cases of crimes:

(i) Victims, witnesses and suspects in connection with investigation of crimes.

(ii) Political activists and trade union leaders disturbing peace and law and order.

(iii) Foreign nationals overstaying or entering the country through illegal means.

(iv) Enemy agents indulging in espionage, sabotage, subversion and their associates/contacts.

(v) Activists of organizations preaching communalism.

(vi) Activists of organizations having faith in violence and militancy like Anand Margis, Extremists and Insurgents.

(vii) Activists of organizations advocating sedition like Babbar Khalsa, Dal Khalsa, Khalistan Commando Force, Khalistan Zindabad Force, Lashkar-e-Toiba and Hizbul Mujahideen etc.

(viii) Individuals or groups indulging in political blackmail like quarrels and hijackers.

(ix) Lone individuals-especially of insane mind like Lalvani in India, Lee Harvery Oswald in the USA, who are the potential dangers to the safety of the VIPs.

(x) Smugglers.

(xi) Naxalites.
(xii) Spies.
(xiii) Casual offenders, who have committed some offence under a sudden temptation or some sudden impulse.
(xiv) Regular criminals.
(xv) Hardened criminals.
(xvi) Persons involved in Economic offences, corruption cases etc.

All these individuals have some personality traits.

They may be talkative, reserved, emotionally disturbed, hyper-sensitive, indifferent or desperate. Interrogation requires identification of the weakest spot in the character of the individual and continuously hammering at that weak link to make him part with the information he wants to conceal. In order to effectively deal with the individuals having different traits, the interrogators are required to counter different behaviours.

6.5 Type of Interrogation

(i) The Bully: The bully behaviour like shouting at the top of voice to establish control or thumping the desk loudly may prove useful in the case of hostile witnesses and suspects especially those belonging to lower Sections of the society.

(ii) The Big Brother or Sympathetic Type: The polite, friendly and understanding attitude may really prove to be an asset in the case of emotionally disturbed individuals.

(iii) The Human Vulture Type: The quiet, emotionless behaviour and putting questions like a machine may create a feeling of nervousness in the minds of certain individuals forcing them to blurt out the truth.

(iv) The School Master Type: The behaviour to impress upon the guilt and its being against the norms of society may work
miracles in the case of the emotionally disturbed and those having a feeling of remorse.

6.6 Legal Aspects of Interrogation

Following are some of the legal aspects of interrogation:142

1) The right to life and personal liberty is one of the fundamental rights conferred by the Constitution of India on all citizens of the country.

2) Article 21 of the Constitution prescribes that no person shall be deprived of his life and personal liberty, except according to the procedure established by law.

3) Law forbids a police officer to use more than the minimum force required to deal with a particular situation.

4) Sub-Section (2) of Section 46 of the Criminal Procedure Code, 1973 denies the power to cause death of the person sought to be arrested by the police officer, even if he is resisting or evading arrest, unless the person concerned is accused of an offence punishable with death or imprisonment of life.

5) Section 176 of the Criminal Procedure Code, 1973 lays down that when any person dies while in the custody of the police, an inquest shall be conducted into the cause of death by a Magistrate. When such an enquiry is held, the Magistrate is required to inform the relatives of the deceased and to allow them to remain present at the enquiry.

6) The instructions contained in the police manuals of different states regarding prohibiting or restricting the use of force by the police while effecting arrest, interrogation suspects and accused or during any other stage of police inquiry or investigation,

should be brought to the notice of all police officers for strict compliance and, if necessary, refresher courses may be conducted for the police personnel.

7) Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest, to the Court of the Magistrate and that no such person shall be detained in custody beyond the said period without the authority of the Magistrate as prescribed in Section 57 of the Criminal Procedure Code, 1973.

8) No person, who is arrested, shall be detained in custody without being informed of the grounds for such arrest, nor shall be denied the right to consult and to be defended by a legal practitioner of his choice (Section 50 of the Cr. P.)

9) The police shall also inform the person arrested in a bailable case that he is entitled to be released on bail and that he may arrange sureties on his/her behalf.

10) Criminal Procedure Code, 1973 confers upon the arrested person the right to have himself medically examined.\(^{143}\)

11) Police personnel found guilty of using third degree method are likely to render themselves liable to exemplary punishment.

12) Senior officers should continually guide investigating officers during inspections and meetings and impress upon them the need for adopting correct and prescribed methods of investigation.

\(^{143}\) Section 54, Criminal Procedure Code, 1973
13) Seniors police officers must be clearly told that it is their personal responsibility to ensure that the police force under their command behaves in a humane manner.

14) Any lack of promptness, if exhibited by the police personnel/officers in carrying out these instructions, should be adversely commented upon in their character rolls while making the annual assessment. Suitable adverse entries should also be made in the character rolls of police personnel found guilty of misconduct apart from inflicting any other punishment.

15) The Superintendents of police stations, and other inspecting officers, while inspecting police stations, should specifically check and comment upon the state of police-public relations in the area in their inspecting notes.

16) Whenever any such incident is reported, officially or even in the press, prompt action should be taken. If a prima-facie case is established, not only a criminal case should be instituted against the accused police personnel, but they should also be suspended forthwith. Further, if while making enquiries, it is even suspected that the presence of the police personnel complained against is likely to affect the enquiries, they should be transferred to distant places. In certain cases, the evidence may not be sufficient to launch a criminal case but may be adequate enough to start departmental proceedings. In such cases, departmental proceeding should be completed expeditiously and deterrent punishment awarded.

17) Publicity should be given promptly to all steps taken by the State government/Union Territory Administration in each and every such incident in which an enquiry is made and action taken against the police personnel. At the same time, it should also be ensured that similar Publicity is also given, and that too equally
promptly, whenever any incident, highlighted in the press, is found to be either baseless or highly exaggerated.

18) There is a necessity to bring about a qualitative change in the approach and behaviour of the police towards the general public in order to inspire trust and confidence of the people. Induction level and in-service training curricula must incorporate conservation of human rights to initiate an attitudinal change in the functioning of the police forces.

The Supreme Court of India while delivering a path breaking judgement in the recent case of *D.K. Basu vs State of West Bengal*¹⁴⁴ has laid down the following requirement to be followed in all cases of arrest or detention, till legal Processes are made on that behalf as a measure to prevent all types of custodial violence. The requirements laid down by the apex Court are as follow:

1) The Police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such Police personnel who handle interrogation of the arrestee must be recorded in a register.

2) That the Police Officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by atleast one witness who may either be a member of the family of the arrestee or a respectable person of the locality where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

3) A person who has been arrested or detained and is being held in custody in a Police Station or interrogation centre and other lock-

up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

4) The time, place of arrest and venue of custody of the arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district and the Police Station of the area concerned telegraphically within a period of a 8 to 12 hours after the arrest.

5) The person arrested must be made aware of his rig’ to have someone informed of his arrest or detention soon as he is taken under arrest or is detained.

6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the Police Officials in whose custody the arrestee is.

7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The inspection memo must be signed both by the arrestee and the Police Officer effecting the arrest and its copy provided to the arrestee.

8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by doctor on the penal of approved doctors appointed by Director, Health of the State or Union Territory concerned. Director, Health Services should prepare such a penal for all tehsils and districts as well.
9) Copies of all the documents, including the memo of arrest referred to above, should be sent to the Illaqa Magistrate for his record.

10) The arrestee must be permitted to meet his lawyer during interrogation though not throughout the interrogation.

11) A Police Control Room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest and at the Police Room it should be displayed on conspicuous notice board.

What one should not do in interrogation is as important as one what should do. However, the following factors must be kept into consideration.

(i) Do not put leading questions as far as possible.

(ii) Do not fall a prey to the cover story prepared by the suspect.

(iii) Do not make false promises. You cannot keep a person under illusion for all time.

(iv) Do not be misled by the emotional outbursts of ‘actor’ suspects.

(v) Do not discard any information considering it to be unimportant or irrelevant.

(vi) Do not arrive at a conclusion before the suspect.

(vii) Do not fall in the net of the suspect trying to play one interrogator against the other.

(viii) Do not put vague, complex or ambiguous questions,

(ix) Do not give meaningless guarantees or rewards.

(x) Do not accept any information at its face value, passed on voluntarily, even if it appears self-incriminating.
(xi) Do not have unnecessary optimism.

(xii) Do not forward the suspect to the Court without proper and thorough interrogation.

(xiii) Do not lose temper if the suspect is hostile, rude, abusive or non-cooperative.

(xiv) Do not censure the conduct of the suspect.

(xv) Do not have a pre-conceived bias.

7. Salient Features of Investigation

The object of investigation is not merely to enable the Court to record conviction but to bring out the unvarnished truth. Under the law the investigator is enjoined upon to unearth the crime. The duty of the police is to prevent and detect crime and to bring the accused to justice even though he is a police officer. It should not be tainted and aimed at to save the accused and not to bring him to justice. The main object of investigation is to bring home the offence to the offender. The essential part of the duties of an investigating officer in this connection is, apart from arresting the offender, to collect all materials necessary for establishing the accusation against the offender.

As early as in the year 1933, it was observed by the Allahabad High Court that true object of investigation of a crime is to discover the truth and not simply to obtain conviction; to bring out in evidence by the prosecution, as a duty, everything in favour of an accused and lay before the Court all the evidence even though some of that evidence may result in acquittal of the accused. It is the duty of committing and the trial judge to be solicitous in the interests of the accused.

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148 Shakul v. Emperor, 34 CrLJ 689.
The Lordships of the Supreme Court, stressing the importance of fair and impartial investigation, in *Jamuna Chaudhary v. The State of Bihar*, observed that the duty of the investigating officer is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth.

Though it may be against the police officials, the investigation should not be tainted and aimed at to save the accused and not to bring him to justice. Under the law, the investigator is enjoined upon to unearth the crime and as soon as he receives the information about the crime he is to proceed to spot, ascertain the facts and circumstances of the case and arrest the suspected offender, collect the evidence relating to the commission of the offence, examine various persons including the accused, reduce their statements into writing, to search the places and take into possession the things considered necessary for the investigation and to be produced at the trial and then his opinion as to whether on the material collected from any accused is to be placed before a Magistrate for commitment and to file a charge-sheet under Section 173, Criminal Procedure Code.

The duty of the police is to prevent and detect crime and to bring the accused to justice. In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well led, well trained, and well disciplined force of police whom it can trust; and though of them to be able to prevent crime before it happens or if it does happen, to detect it and bring the accused to justice. The police of course must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man’s house without authority. They must not use more force than the occasion warrants.

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151 Lord Denning master of the Rules in his book titled “The Due Process of Law”, 1980 in Chapter 1 of part three, has observed about the role of the police.
In cases of crimes against women, the criminal justice system including the investigating agency and the Court must also display greater sensitivity to criminality and avoid on all counts soft justice.\textsuperscript{152} Their Lordships of the Supreme Court in \textit{Daguda v. State of Maharashtra},\textsuperscript{153} has observed that the courts should nip in the bud the tendency of the police officers to use third degree methods against the accused persons during investigation in the larger interest of justice. Courts must guard against all excesses.

When investigation carried out is not fair, and then no importance can be attached to records of investigation.\textsuperscript{154} Stern action should be taken against investigating officers for false investigation.\textsuperscript{155} In \textit{Aziz Ahmed v. State},\textsuperscript{156} it was held by a Division Bench of Allahabad High Court that they attach great importance to the impartial investigation. Investigating Officer should rule out the possibility of fabrication and his conduct should dispel suspicion.

Once investigation is held as being unfair, unjust and reckless, it is bound to cast its shadows upon the veracity of the prosecution case with all its evil consequences.\textsuperscript{157} When role of investigation officer was found to be wholly dubious and speaks of his connivance with the accused persons, non-impleadment of such accused persons creates a dent in the prosecution case.\textsuperscript{158} The investigation officer should not adopt indifferent attitude in investigating dowry death cases.\textsuperscript{159}

To sum up where the entire evidence is of a partisan character, impartial investigation can lend assurance to the Court to enable it to accept such partisan evidence. But where the investigation itself is found to be tainted the task of the Court to sift evidence becomes very difficult.\textsuperscript{160}

\textsuperscript{153} AIR 1977 SC 1579.
\textsuperscript{154} 1974 WLN (UG) 396 (Raj).
\textsuperscript{155} \textit{Sher Singh v. State}, 1980 CrLJ (NOC) 64.
\textsuperscript{156} 1976 CrLJ 10.
\textsuperscript{157} \textit{Rajendra v. State}, 1988 AllCrR 323.
\textsuperscript{159} \textit{Lichhamadevi v. State of Rajasthan}, AIR 1988 SC 1785.
Investigation tainted with suspicion is always fatal to the prosecution case. His conduct should be above board.

In case of murder in which where fair and undisputed investigation from local police is doubtful, Court can direct C.B.I, to investigate & report. Court can also grant compensation.

The quality of nation’s civilization can be largely measured by the methods it uses in the enforcement of criminal law and going by the manner in which the investigating agency acted in this case causes concern to us. In every civilised society the police force is invested with the powers of investigation of the crime to secure punishment for the criminal and it is in the interest of the society that the investigating agency must act honestly and fairly and not resort to fabricating false evidence or creating false clues only with a view to secure conviction because such acts shake the confidence of the common man not only in the investigating agency but in the ultimate analyses in the system of dispensation of criminal justice. Let no guilty man go unpunished but let the end not justify the means the courts must remain ever alive to this truism. Proper results must be obtained by recourse to proper means; otherwise it would be an invitation to anarchy.

7.1 Meaning of Investigation

According to Section 2(h), Criminal Procedure Code investigation includes all the proceedings under the Code of Criminal Procedure for the collection of evidence conducted by a police officer or by any person (other than a Magistrate), who is authorised by a Magistrate in this behalf. Investigation starts after the police officer receives information in regard to an offence and it consists of the following steps:

1) Proceeding to the spot;

2) Ascertaining the facts and the circumstances of the case;

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162 Shri Bihar Timung v. UOI, 1991 (3) Crimes 354 (Gauhati).
3) Discovery and arrest of the suspected offender;

4) Collection of evidence relating to the commission of the offence which may consist of:

(i) The examination of various people including the accused and recording their statements, if the investigating officer thinks it necessary;

(ii) The search of places, seizure of things considered necessary for the investigation and to be produced at the time of the trial; and

5) Formulation of opinion as to whether it is a fit case for the accused to be sent up for trial and, if so, taking steps to file charge-sheet.\textsuperscript{164}

The word investigate used in Section 157 of the Evidence Act is not to be understood in the narrow sense in which the word is used in the Criminal Procedure Code. It must carry its ordinary dictionary meaning in the sense of ascertainment of facts, shifting of materials and search for relevant data.\textsuperscript{165} In cases under The Prevention of Corruption Act laying a trap is a part of investigation.\textsuperscript{166} It is well settled that discovery and arrest of the suspected offender is one of the essential steps in the course of an investigation.\textsuperscript{167}

The final step in investigation—formation of opinion as to whether accused should be charge-sheeted or not, taking of search warrant, shifting of materials and search for relevant data come within the purview of the term investigation. But mere submission of charge-sheet\textsuperscript{168} or examination of books by custom officer\textsuperscript{169} is not investigation.

\footnotesize
\textsuperscript{165} Sarju v. State of W.B., 1961 (2) CrLJ 71.
\textsuperscript{166} S.N. Bose v. The State of Bihar, AIR 1968 SC 1292.
\textsuperscript{167} Nika Ram v. State of H.P., 1972 SCC (Cri.) 635.
\textsuperscript{168} Public Prosecutor, Hyd. v. M. Pd., 1968 CrLJ 63 (AP).
\textsuperscript{169} Hosshide v. Emperor, 41 CrLJ 1940 at 329 (Cal.).

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When information regarding a cognizable offence is furnished to the police that information will be regarded as the FIR and the steps taken by the police pursuant to such information would amount to investigation as defined in Section 2(h) of the Code of Criminal Procedure, 1973. If it is deemed that such steps amount to investigation, statements made by any person to a police officer during such investigation may come within the scope of Section 162 of the Code of Criminal Procedure.

Once a police officer forms a definite opinion that there are grounds for investigating a crime, an investigation under the Code of Criminal Procedure has started. Anything said or done subsequently must be held to have been done or said during investigation. It is well established that the discovery and arrest of the suspected offender is one of the essential steps in the course of an investigation. Further, taking out warrant of arrest, arresting the accused, search and seizure etc. form some part of an investigation. The arrest and detention of a person for the purpose of investigation of the crime form an integral part of the process therefore. But a proceeding for the collection of evidence would be an ‘Investigation’ only if it were a proceeding under the Code of Criminal Procedure, 1973.

An ‘Investigation’ is a proceeding under the Code of Criminal Procedure within the meaning of the third clause of Section 93(1). From this point of view a general search warrant issued by a Magistrate in aid of investigation under the Code is valid. Section (n) of the Code and Section 40 of the Indian Penal Code defined the term ‘Offence’. Offence means any act or omission which includes a thing made punishable under the Indian Penal Code, or any special or local laws with imprisonment for a term of six months or upwards whether with or without fine. Therefore, an act or

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omission or a thing made punishable by the Penal Code or under only special
or local law is an offence punishable under the relevant law.

Section 154 In Chapter XII of the Code, contemplates laying of
information of cognizable offences either orally or in writing to an officer of a
police station who is enjoined to reduce it into writing, if made orally or under
his direction and the substance thereof entered in the book kept in the police
station in the manner prescribed by the state government. The officer incharge
of the Police Station is prohibited to investigate only into non-cognizable
cases without an order of the Magistrate concerned under Section 155(2). But
if the facts disclose both cognizable and non-cognizable offence, by operation
of sub-Section 4 of Section 155, the case shall be deemed to be a cognizable
case and the police officer shall be entitled to investigate without any order of
the Magistrate into non-cognizable offence as well. Section 156 gives
statutory power to a competent police officer or a subordinate under his
direction to investigate into cognizable offences. In cases of cognizable
offences receipt or recording of a First Information Report is not a condition
precedent to set in motion of criminal investigation.

Section 157 provides the procedure for investigation. If the police
officer in-charge of the police station on receipt of information or otherwise,
has reason to suspect the commission of a cognizable offence and is
empowered to investigate, he shall proceed in person or shall depute one of
his subordinate officers not below the rank of the prescribed officer to the spot
to investigate the facts and circumstances and if necessary to take measures
for the discovery and arrest of the offender. The provisos (a) and (b) thereof
give power in cases of minor offences to depute some other subordinate
officer or if the investigating officer is of the opinion that there is no
sufficient ground for entering on investigation, he shall not investigate the
case.

Investigation consists of diverse steps - (1) to proceed to the spot; (2) to
ascertain the facts and circumstances of the case; (3) discovery and arrest of
the suspected offender; (4) collection of evidence relating to the commission

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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 (Section 161 Criminal Procedure Code); (b) the search of places and seizure of things necessary for the investigation to be proceeded or at the trial (Section 165, Criminal Procedure Code etc.) and (c) recovery of the material objects or such of the information from the accused to discover, in consequence, thereof, so much of information relating to discovery of facts to be proved (Section 27 of the Indian Evidence Act).

On completion of the investigation, if it appears to the investigator that there is sufficient evidence or reasonable ground to place the accused for trial, the investigating officer shall forward to the Court a report in that regard alongwith the evidence and the accused, if he is in the custody to the Magistrate. If on the other hand he opines that there is no sufficient evidence or reasonable grounds connecting the accused with the commission of the offence he may forward the report to the Magistrate accordingly.

The Magistrate is empowered to consider the report and on satisfying that the accused prima facie committed the offence, take cognizance of the offence and would issue process or warrant to the accused, if on bail, to appear on a date fixed for trial or to commit him for trial to the Court of Session. It is not incumbent upon the Magistrate to accept the report of the investigating officer that there is no sufficient evidence or reasonable ground to connect the accused with the commission of the crime; he may direct further Investigation or sua motu the investigator may himself submit supplemental charge-sheet under Section 173(8) if he subsequently becomes aware of certain fact or itself or through a subordinate Magistrate to make further enquiry or to take cognizance of the offence upon consideration of the material so placed before him and take further steps as aforesaid. Then only proceedings in a criminal case stand commenced. Taking cognizance of the offence is coterminous to the power of the police to investigate in the crime. Until then there is no power to the Magistrate except on a private complaint in a cognizable and non-cognizable offence to direct the police to investigate
into the offence. The magistrate is not empowered to interfere with the investigation by the police. In *King Emperor v. Khawaja Nazir Ahmad*, the Judicial Committee of the Privy Council held that the function of the Judiciary and the police are complementary, not overlapping and “the Court’s functions begin when a charge is preferred before it and not until then.”

There are some relevant provisions as to investigation in the Code of Criminal Procedure found in Sections 4(1) and (2) (Procedure to be adopted for investigation of offences under the Indian Penal Code and other law), 36 (Power of superior officers of police to investigate an offence), 41 to 60 (Provisions of arrest during investigation), 82 to 90 (Provisions as to proclamation and attachment), 91 to 105 (Provision of search and seizure during investigation), 154 (Investigation of a cognizable offence), 155 (Investigation of non-cognizable offences), 156 (Police Officer’s power to investigate a cognizable case. This Section also deals with the power of the Magistrate to order for investigation); 157 (Procedure for investigation), 158 (Submission of report of investigation through superior officer of police and transmission of such report to the Magistrate), 159 (Power of the Magistrate to hold investigation and or preliminary Inquiry), 160 (Police officers powers to require attendance of witnesses for the purpose of investigation), 161 (Examination of witnesses by police during investigation), 162 (Use of statements recorded by the Investigating officer during investigation in evidence during trial), 163 (Police officer should not offer or make or cause to be offered or made to the witnesses to be examined by him during investigation), 164 (Recording of confession of accused and statements of witnesses), 165 (Issue of search warrant for the purposes of investigation, procedure when investigation cannot be completed in twenty four hours), 168 (Report of investigation by subordinate Police Officer), 169 (Release of accused when evidence is deficient), 170 ( Provision of sending the case to Magistrate when evidence is sufficient), 171 and 172 (Diary of proceedings in

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174 71 Indian Appeal 203.
investigation), 173 (Submission of charge-sheet of final report on completion of investigation), 173(8) (Provision for further investigation), 436 to 450 (Provision as to bail and bail bonds), 457 (Disposal of case property during investigation), 461(b) (About the Irregularity as to order of investigation passed by a Magistrate who is not authorised to pass such order), 465 (Effect of error, omission or irregularity in investigation, and 482 (Quashing of investigation) of the Code of Criminal Procedure, 1973.

7.2 Division of Offences into Cognizable and Non-Cognizable Offences

For purposes of investigation offences are divided into two categories cognizable and non-cognizable. When information of the commission of a cognizable offence is received or such commission is suspected, the appropriate Police Officer has the authority to enter on the investigation of the same (unless it appears to him that there is no sufficient ground). But where the information relates to a non-cognizable offence, he shall not investigate it without the order of the competent Magistrate.\footnote{Avinash Madhukar v. State, 1983 CrLJ 1833.}

Any officer-in-charge of police station may, without the order of a Magistrate investigating any cognizable offence which a Court having jurisdiction over the local area within the limits of such station would have the power to investigate into or try under the provisions of Chapter XIII (Section 156, Code of Criminal Procedure). But no Police Officer shall investigate a non-cognizable case without the order of the Magistrate having power to try such case or commit the case for trial (Section 155(2), Code of Criminal Procedure).

When a case relates to two or more offences of which at least one is cognizable, the whole shall be deemed to be a cognizable.\footnote{Ram Krishan Dalmia v. State, AIR 1958 Punj 172.} If some of the offences in a complaint are non-cognizable and some cognizable, then the Magistrate ordering investigation by police under Section 156(3), Code of...
Criminal Procedure, commits no illegality.\textsuperscript{177} The police has statutory right to investigate a cognizable offence. Section 154, Code of Criminal Procedure, 1973, deals with the information in a cognizable offence and Section 156, Code of Criminal Procedure with investigation into such offences and under these Sections the Police has the statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate and this statutory power of the Police to Investigate cannot be interfered with by the exercise of power under Section 401 (old Section 439) or under the inherent power of the Court under Section 482, Code of Criminal Procedure, 1973.\textsuperscript{178}

The power of the police to investigate any cognizable offence is uncontrolled by the Magistrate, and it is only in cases where the police decide not to Investigate the case that the Magistrate can intervene and either direct an investigation, or, in the alternative, himself proceed or depute a Magistrate subordinate to him to proceed to enquire into the case. Further, the use of the expression “as he thinks fit” in Section 159 makes it clear that Section 159 is primarily meant to give to the Magistrate the power of directing the police to decide not to investigate the case under the proviso to Section 157(1), and it is in those cases that, if he thinks fit, he can choose the second alternative of proceeding himself or deputing any Magistrate subordinate to him to proceed to hold a preliminary enquiry as the circumstances of the case may require. The Code does not give any power to Magistrate to stop investigation.\textsuperscript{179}

When an information is received disclosing a cognizable case and the case is investigated and charge-sheet submitted for a non-cognizable offence, the Investigation would-be valid. In such investigation, there is no evasion of Section 155(2), Code of Criminal Procedure, 1973.\textsuperscript{180} Once, an investigation by the police is ordered by a Magistrate, the Magistrate cannot place any

\begin{footnotes}
\item[180] Kanti Lal Takat Mal Jain v. State, 1970 CrLJ 799 (Bom.).
\end{footnotes}
limitations on it or direct the officer conducting it as to how to conduct it.\textsuperscript{181} Prior obtaining of sanction under Section 197, Code of Criminal Procedure, is necessary only for taking cognizance of an offence by the Magistrate. But it is not necessary for investigating a cognizable offence.\textsuperscript{182} Section 156(3), Code of Criminal Procedure, refers to Judicial Magistrate and not to the Executive Magistrate; therefore Executive Magistrate cannot direct investigation of a cognizable offence.\textsuperscript{183}

7.3 Effect of Investigation Conducted by a Police Officer in a Non-Cognizable Offence

The provisions of Section 155(2), Code of Criminal Procedure cannot be rendered nugatory by regarding police report as a valid report under Section 190(l)(b) of the Code of Criminal Procedure.\textsuperscript{184} The provisions of Section 155(2) of the Code of Criminal Procedure, 1973 are mandatory. Where objection to non-conformance with those provisions, is taken before termination of the case, the illegality is material one not curable under Section 465 (old Section 537), Code of Criminal Procedure and vitiates the ultimate order passed in the case.\textsuperscript{185}

Section 155(2) of the Code of Criminal Procedure, 1973 prohibits investigation by a Police Officer into a non-cognizable offence without the order of a Magistrate. A violation of this provision would stamp the investigation with illegality. This defect in the investigation can be obviated and prejudice to the accused avoided by the Magistrate ordering investigation under Section 202 of the Code. The report of a Police Officer following an investigation contrary to Section 155(2) could be treated as a complaint under Section 2(d) and Section 190(l)(a) of the Code if at the commencement of the investigation the Police Officer is led to believe that the case involved

\textsuperscript{181} Nirmal Jit Singh Hoon v. The State of W.B., AIR 1972 SC 2639.
\textsuperscript{182} Emperor v. Nazir Ahmad, 46 CrLJ 1945 at 413.
\textsuperscript{185} Lai Chand v. The State, 1964(2) CrLJ 115.
commission of a cognizable offence or if there is doubt about it and investigation establishes only commission of a non-cognizable offence. If at the commencement of the investigation it is apparent that the case involved only commission of a non-cognizable offence, the report followed by the investigation cannot be treated as a complaint under Section 2(h) and Section 190(l)(a) of the Code. Whenever a report of a Police Officer relating to a non-cognizable offence is brought to the notice of a Magistrate, he has to look into the matter and apply his judicial mind and find out whether (a) it is a case where re-investigation has to be ordered under Section 202 of the Code, or (b) whether it could be treated as a complaint under Section 2(h) and Section 190(l)(a) of the Code and if so cognizance could be taken, (c) whether it is a case where the report cannot be treated as a complaint under Section 2(h) and Section 190(l)(a) of the Code or (d) it is a fit case for taking cognizance taking into consideration all the attendant circumstances. If these aspects are not brought to the notice of or adverted to by the Magistrate at that stage and trial is concluded, the trial cannot be said to be vitiated on account of the defect as the defect in the investigation precedent to trial could be cured by Section 465 of the Code of Criminal Procedure unless failure of justice has been occasioned thereby.186 The net outcome of various decisions on the subject is as under:

1) When a non-cognizable case is investigated and charge-sheet is submitted, it shall in view of amended definition of the term police report given in Section 2(h) be treated as complaint.187

2) Where a non-cognizable offence was investigated without an order from a Magistrate and the Magistrate took cognizance on charge-sheet submitted by a Police Officer and the trial without objection proceeds and ends in conviction, the "illegality would not per se vitiate the trial and conviction unless prejudice or

miscarriage of justice is established by the accused. Such irregularity would be curable under Section 465, Code of Criminal Procedure, 1973.  

3) Where an investigation in a non-cognizable offence was conducted in violation of Section 155(2), Code of Criminal Procedure, i.e. without the order of the Magistrate and the objection as to such illegality was taken before termination of the trial into conviction, then the illegality would be material and would vitiate the conviction. Such illegality would not be curable under Section 465, Code of Criminal Procedure.  

4) When the investigation into a cognizable offence was conducted but on investigation only a non-cognizable offence was made out then there was no need to take prior permission of the Magistrate. A Magistrate can take cognizance of offence on the basis of police report though such report indicates only a non-cognizable offence as indicated in F.I.R.  

5) When a report discloses a cognizable and a non-cognizable offence, then entire case is to be deemed as a cognizable case and the alleged irregularity in Investigation of a non-cognizable offence without the order of a Magistrate would no longer exit.  

6) If some of the offences in a complaint are non-cognizable and some cognizable, then Magistrate ordering investigation by police under Section 156(3). Code of Criminal Procedure, commits no illegality.  

Provision of Section 155(2) Criminal Procedure Code is mandatory and police report filed in violation of this provision is no police report but such

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police report could be entertained as complaint. An order to investigate a non-cognizable case can only be passed by the Magistrate before he takes cognizance of an offence. If the Magistrate takes cognizance of an offence then he cannot order investigation under Section 155(2) of the Code of Criminal Procedure, but he is empowered to pass such order under Section 202, Code of Criminal Procedure. It may, further, be stated here that a case can be sent for police Investigation under Section 202, Code of Criminal Procedure, only after the Magistrate takes cognizance of an offence under Section 190(1)(a), Code of Criminal Procedure."

7.4 Who to Start Investigation

It is always an officer-in-charge of a Police Station who is to register a cognizable case and to start investigation of an offence which occurs within the limits of his jurisdiction. If he cannot himself proceed to the spot of investigation then he is to depute one of his subordinates for this purpose. If the officer deputed is below the rank of A.S.I, then officer in charge is invariably to take up the investigation in hand and get completed by himself or by one of his A.S.I,’s. An investigation conducted by Head Constable is always to be verified and completed by the officer-in-charge of P.S. Similarly all officers superior in rank to an officer in charge of a Police Station can conduct investigation under Section 36 CrPC S. 168 CrPC further lays down “When any subordinate Police Officer has made any investigation under this Chapter (XII), he shall report the result of such investigation to the officer Incharge of Police Station”. The officer so deputed enjoys all the powers given to him as Police Officer under various provisions of law. It may be material to point out in this connection that “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 (156 Criminal Procedure Code) to investigate” (156 (2) Criminal

Procedure Code An officer superior in rank to officer in charge and having jurisdiction in that area can investigate. Sections 36, 156(2) Criminal Procedure Code immunize his investigation from any illegality or absence of power.

A police officer who is an eye-witness of the occurrence should, however, not investigate. It was held in Bhagwan Dayal 1968 CrLJ 1028 that the practice of investigation being conducted by the same officer, who happens to be an ocular witness, is looked with disfavour. When the same officer who claims to have witnessed the incident, investigates then his evidence has got to be looked with great caution. Mr. Justice A.S. Bains of Punjab High Court in Naresh Kunvi 1984 (1) CLR 653, where A.S.I. Gurdial Singh was the complainant as well as the investigating officer in case of red handed capture of accused in pursuit after he had snatched a gold chain and attracted to spot by alarm raised by the victim, it was held that investigation should have been handed over to senior officer, especially when accused had injuries on his person. Reliance was placed on 1964 Cr.L.J. 497 Gopal Krishan where it was held, “where the complainant officer is going to be examined at the trial as a principal witness conversant with the facts of the case, it is completely improper on the part of the complainant officer to take upon himself the investigation of case”.

S. 156 provides investigation of offence of criminal breach of trust. Commissioner of police failing to perform his duties. Complainant can approach jurisdictional Magistrate by filing private complaint to seek appropriate direction and have cognizance of offence. It is not necessary that High Court should exercise jurisdiction under Article 226 in each and every such case and issue direction to investigation agency.

7.5 When to Start Investigation

An officer in charge of a police station can start investigation under Section 156(1) Criminal Procedure Code into a cognizable offence without orders of a magistrate after registration of F.I.R. under Section 154 Criminal
Procedure Code. The statutory right of police to start investigation is admitted one. No sanction of Court is necessary for exercising this right under certain circumstances, even the presence of F.I.R. is not a condition precedent. In *Emperor v. Khawaza Nazir Ahmed*, this right of police has been acknowledged and discussed.

The statutory right of police to investigate into the circumstances of any alleged cognizable offence cannot be interfered with by the Court in exercise of powers under Section 439 or 561 of Criminal Procedure Code. The Court has no power to stop the investigation but only High Court can issue a writ of mandamus to restrain the police from misusing its powers where High Court under Article 226 Constitution of India is convinced that power of investigation has been exercised by a Police Officer malafide.

This point also arose in *State of Bihar v. J.A.C. Saldhana*, observed, “There is a clear cut and well determined sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department, the superintendence over which vests in the State Govt. It is duty of police to collect evidence for purpose of proving the offence. “The Court only comes in when after investigation it takes cognizance of offence under Section 190. High Court cannot give directions to close investigation/case”.

In *State of West Bengal vs. Sanpat Lall*, the Supreme Court held that order of High Court to entrust investigation to Special Officer of C.B.I was not without notice to Govt. It was held, “It is for police to investigation under scheme of law. It is not ordinarily subject to normal supervisory power to give directions to investigating agency. Court had, however, residuary power to give direction investigating agency to where requirements of law are not being complied with and investigation is not being completed”. It can give

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195 AIR 1945 PC 18.
196 1970 CrLJ 764.
197 1980 CrLJ 98.
directions to speedily complete it. But, the Supreme Court while upsetting the
decision of Delhi High Court, Trial Court was directed to direct C.B.I, for
proper investigation of case of in exercise of powers under Section 173 (8)
Criminal Procedure Code. It was a case of tortual death of person by police in
police custody. The police registered case under Section 302 but converted it
to 304 within hours of registration of case even without waiting for Post
Mortem Report. Case was further converted to Sections 323/34, held police
had acted in partisan manner to shield real culprits and even challan was
given.\footnote{199}

Report filed by investigating authority stating that no offence was
made out against accused. Magistrate has power either to accept or decline to
accept that report. Interference by Govt by directing investigation authority to
submit charge-sheet for offences which were held to be not made out is
impermissible. Govt at most can direct by virtue of Section 3 of police Act the
investigating authority to make further investigation under S. 173(8).\footnote{200}
Merely because a police officer has the right to arrest, it is not necessary to
arrest every person who is accused of having committed a non-bailable and
Cognizable offence.\footnote{201} High Court has power under Section 482 CrPC to quash
FIR even after filing of charge-sheet.\footnote{202}

\section*{7.6 When Court can interfere in Investigation}

It was observed by the Privy Council, “The functions of police and
judiciary are complementary, not overlapping and the combination of
individual liberty with a due observance of law and order is only to be
obtained by leaving each to exercise its own functions, always of curse,
subject to the right of Court to intervene in an appropriate case when moved
under Section 491 Criminal Procedure Code to give direction in the nature of

\footnotesize\textsuperscript{199} AIR 1988 SC 1323.
\footnotesize\textsuperscript{200} M. Satyanarayanan v. Govt. of A.P., 1997 CrLJ 3741 (AP).
\footnotesize\textsuperscript{201} K.K. Mohandas v. State of Kerala, 2006(3) RCR(Cri) 723.
\footnotesize\textsuperscript{202} Gian Chand v. State of Punjab, 2003(2) RCR(Cri) 385.
habeas corpus".\textsuperscript{203} The Supreme Court had to intervene and transfer investigation to C.B.I, as police was turning a murder case of bride burning into suicide.\textsuperscript{204}

Otherwise as discussed earlier it is accepted law that Court cannot interfere in investigation. The power of police of investigate is uncontrolled. Thus it is only in appropriate cases when investigation is malafide, the Court can interfere to avoid miscarriage of justice only in exceptional cases. The High Court can also not interfere in investigation under Article 227 Constitutions of India which empowers High Court superintendence only on judicial or quasi judicial tribunals; the investigating agency is none.

The power of police to investigate cognizable case is not controlled by Court. Even the offences under Sections 417, 467 of forgery etc, which are cognizable can be investigated by policy inspite of the bar under Section 195(1)(b)(ii). The bar will apply only if document is given in Court but if it is forged earlier to the institution of suit then offence is already born prior to suit and the police has right of investigation. The forged will was bases of mutation and declaration suit was filed later. The right of police to investigate was conceded. Document forged outside Court presented in Court. The bar under Section 195 is not attracted and police can investigate.

There is only one exception when Court can stop further investigation of a case. Section 167(5) Criminal Procedure Code says that when a case is triable as a summons case and the investigation is not concluded within a period of 6 months from the date of the arrest of accused, the magistrate shall make an order stopping futher investigation unless, the investigating Officer satisfies him that continuation of investigation was necessary. Session Judges can vacate such an order and sanction further investigation on application of police under Section 167(6) Criminal Procedure Code.

\textsuperscript{203} AIR 1945 PC 18.
\textsuperscript{204} AIR 1983 SC 826.
There are certain offences in which sanction for prosecution under Section 197 Criminal Procedure Code or some others provisions of Local and Special Law is required. For investigation of these, however, the sanction is not necessary before starting of investigation. Sanction for prosecution is always got after close of investigation and before submission of charge sheet. Court has no inherent right under Section 561A (now 482) Criminal Procedure Code to interfere in investigation, it being statutory right of police to investigate cognizable offences. The proceedings before the police in investigation are proceedings over which the police alone have full control and neither the magistrate nor even the High Court has power to interfere with such proceedings.

A police officer is empowered to investigate into any cognizable offence without the order of a magistrate. In respect of non-cognizable offence, the police officer has no power without an order from a Magistrate to commence the investigation. Where a Police Officer has received information about or has reason to suspect the commission of a cognizable offence, he must forthwith send a report of the same to a magistrate empowered to take cognizance of such offence upon a police report and to proceed in person or depute one of his subordinate officers to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offenders (Section 157). A magistrate receiving report from Police Officer relating to the commission of a cognizable offence may direct an investigation or if he thinks fit, at once, proceed or depute any magistrate subordinate to him to proceed, to hold a preliminary enquiry into or otherwise to dispose off, the case in manner provided by Code (Section 159). Power is also conferred upon certain magistrates to record statements or confessions in the course of investigation (Section 164). When a search is made by the investigating officer, the record of the search must be sent to the nearest magistrate empowered to take cognizance of the offence (Section 165).

If an investigation cannot be completed within 24 hours the Investigating Officer must send the accused for remand to the nearest
magistrate together with a copy of entries in the diary relating to the case and the power is conferred upon the magistrate whether or not he has jurisdiction to try the case to authorize the detention of the accused in such custody as the magistrate thinks fit (Section 167). If Investigating officer upon investigation comes to the conclusion that there is no sufficient evidence or reasonable ground of suspicion to justify forwarding of the accused to magistrate, if such person is in custody, to 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 (Section 169). If it appears to the Investigating Officer that there is sufficient evidence or reasonable ground, the officer is bound to forward the accused in custody to a magistrate empowered to take cognizance of offence upon a police report and to try the accused or commit him for trial, (Section 170).

An Investigating Officer must maintain a diary of his proceedings setting forth the time at which the information reached him, the time at which he began and closed his investigation, the places or places visited by him and a statement of the circumstances ascertained through his investigation and a criminal Court in course of a case under enquiry or trial in such Court, has the power to call for the police diaries for the purpose of aiding it during such enquiry or trial (Section 172). It is also prescribed that every investigation shall be completed without delay and as soon as it is completed, the Investigating Officer shall forward to magistrate empowered to take cognizance of the offence on a police report, a report setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case (Section 173).

There is no provision in the Code of Criminal Procedure, by which Sessions Judge can direct police to get accused identified during investigation.\textsuperscript{205} An accused cannot be compelled to give his specimen

\textsuperscript{205} \textit{Hira v. State}, 1980 AllCrR 327.
handwriting during investigation for being examined by the expert. A step further, an accused cannot be directed to give his specimen signature and handwriting in open Court pending investigation. Even Section 73 of the Evidence Act does not permit a Magistrate to direct an accused at investigation stage to give his specimen handwriting and signature because if the case is under investigation there is no present proceeding before the Court nor Section 5 of The Identification of Prisoners Act does so permit.206

For removing doubts it may be submitted here that during trial Court can direct a person facing trial to give his signature and handwriting. It is not hit by Article 20(3), the Constitution of India.207 Similarly when the matter is at investigation stage, Court is not entitled to pass any order by issuing summons or warrant against the accused for the production of a document or thing in his custody which is incriminatory against him.208 Though general search warrant can be issued for conducting search in premises even in possession of accused under Section 93(1)(c) of the Code of Criminal Procedure, 1973, and it would not hit Article 20(3) of the Constitution but accused cannot be compelled to be a party to such search.209

An accused cannot be asked to take oath when he volunteers to get his statement recorded under Section 164, Code of Criminal Procedure. Such a confession is bad in law and is inadmissible in evidence. The fact of administering other at the recording of confession virtually means that the maker is compelled to give evidence against him, placing him in the status of a witness at the stage of investigation in violation of Article 20(3) of the Constitution of India.210 If there is any mode of pressure subtle or crude, mental or physical, direct or indirect but sufficiently substantial, applied by the police men for obtaining information from an accused strongly suggestive

of guilt, it becomes compelled testimony violative of Article 20(3) of the
Constitution.211

While it is open to the High Court, in appropriate cases, to give
directions for prompt investigation etc., the High Court cannot direct the
investigating agency to submit a report that is in accord with its views as, that
would amount to unwarranted interference with the investigation of the case
by inhibiting the exercise of statutory power by the investigating agency.212

In S.N. Sharma v. Bipen Kumar Tiwari,213 first information was lodged
implicating the Additional District Magistrate (Judicial) and the police started
investigation. On an application made to the Judicial Magistrate having
jurisdiction, the Magistrate decided to hold an inquiry himself under Section
159, Criminal Procedure Code and directed the police to stop further
investigation. The order was quashed by the High Court holding that the
power to hold inquiry was given to the Magistrate under Section 159 only
where the police did not proceed with the investigation in circumstances
mentioned in Section 157 of the Code, but the Code did not give any power to
the Magistrate to stop investigation by the police. This was upheld by the
Supreme Court.

7.7 Can a Magistrate on Receiving a Complaint, Order for Registration
of Case and Investigation

There is nothing illegal in ordering investigation by a magistrate under
Section 156 (3) Criminal Procedure Code without examining complainant on
receipt of complaint and without taking cognizance. In Devarpalli v.
Narayana Reddy,214 it was held by Supreme Court that the magistrate is not
bound to take cognizance under Section 190. He can send case to police for

T.N., 1985 CrLJ 1376.
213 AIR 1970 SC 786.
214 AIR 1976 SC 1672.
registration and investigation under Section 156(3) Criminal Procedure Code without taking cognizance. No reasons are necessary to be given.

The examination of complainant is not necessary. This power to order investigation is different from the power to direct investigation under Section 202(1) Criminal Procedure Code. If the magistrate applies his mind for purposes of proceeding under Section 200 and the succeeding Section in Chapter XV of the Code, he is said to have taken cognizance of the offence within the meaning of Section 190(1) (a). After that he cannot switch back to pre-cognizance stage and avail of Section 156(3). Even if an offence exclusively triable by Court of Session is disclosed, the complaint can be still sent to police under Section 156(3) by the magistrate but without taking cognizance.

The magistrate after he sends complaint to Police under Section 156(3) has no power to recall the complaint, discharge the accused; or interfere with investigation or direct it to be in a particular way. In Sarup Ram’s case, Magistrate had adjourned the complaint for recording the statement of complainant on the next date. On next date, he sent the complaint for investigation under Section 156(3) Criminal Procedure Code without recording complainant’s statement. Held order was legal as no cognizance had been taken. The magistrate can order registration of F.I.R. while sending case under Section 156(3) Criminal Procedure Code but cannot order police to send challan.

The police are not bound to register the case when received from Magistrate under Section 156(3) Criminal Procedure Code. Its report after investigation under Section 156(3) Criminal Procedure Code also will not have the status of report under Section 173 Criminal Procedure Code. The disagreement of the Police with the complaint on investigation under Section 156(3) Criminal Procedure Code does not debar the complainant from asking

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215 1977 CrLJ 1420.
the Court to act upon his complaint. He is not required to put in fresh complaint or narazi petition since the report of police does not amount to dismissal of his complaint or final adjudication in this case.217

In this case police on receipt of complaint under Section 156(3) had found the complaint to be false. The magistrate acted on the complaint, examined the complainant under Section 200 Criminal Procedure Code and one witness afterwards and summoned the accused. Held the order was legal. This case of Tula Ram went in Appeal to the Supreme Court on a certificate granted by High Court under Article 134(1)(C) of Constitution. It was held by Supreme Court in Tula Ram v. Kishore Singh,218 as under:

1) That a magistrate can order investigation under Section 156 (3) only at pre-cognizance stage i.e. before taking cognizance under Sections 190, 200, 204 and where a magistrate decides to take cognizance under the provisions of Ch. 14, he is not entitled in law to order any investigaion under Section 156 (3) though in cases not falling within proviso to Section 202 he can order investigation by the police which would be in the nature of an enquiry as contemplated by Section 202 of the Code.

2) Where a magistrate chooses to take cognizance or adopt any of the following alternatives:

   (a) he can persue the complaint and if satisfied that there are sufficient grounds for proceeding he can straight way issue process to the accused but before he does so he must comply with provisions of Section 200 and record the evidence of complainant and his witness.

   (b) the magistrate can postpone the issue of process and direct an enquiry by himself.

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218 AIR 1977 SC 2301.
(c) the magistrate can postpone issue of process and direct any other person or an investigation by the Police.

3) In case the magistrate after considering the statements of the complainant and the witness or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding, he can dismiss the complaint.

4) Where a magistrate orders investigation by Police before taking cognizance under Section 156 (3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straight way issued process against the accused or apply his mind to the complaint filed before him and take action under Section 190 described above (i.e. by summoning complainant and his witness and then issuing process to accused.)

If the complaint is sent to police for enquiry and report under Section 202 Criminal Procedure Code then the magistrate has no power to recall it and send it under Section 156(3) Criminal Procedure Code. Similarly after receipt of report under Section 202 Criminal Procedure Code he cannot send the complaint for investigation etc. under Section 156(3) Criminal Procedure Code. This question arose in Jug Lal,\(^{219}\) and was held that magistrate cannot switch back to Section 156(3) Criminal Procedure Code. F.I.R. was quashed. Even a search warrant can be issued without taking cognizance. The magistrate can also issued warrant for production before taking cognizance. If after cognizance has been taken the magistrate wants any investigation, it will be under Section 202 of the Code.

Under Section 310 (1) Criminal Procedure Code, "Any judge or magistrate may, at any stage of any enquiry or trial or other proceedings after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed or any other place which it is in opinion

\(^{219}\) 1976 PLR 480.
necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection”.

The local inspection is of the topography of the plan in which the offence was alleged to have been committed or its local peculiarities for the purpose of properly appreciating the evidence which was already on record. In case *State of H.P. v. Het Ram*, Judges had inspected spot on a date and time unconnected with the time of incident for purpose of deciding if witnesses could identify accused in darkness. Held, this was quite illegal.  

It was held in Kirsam Kumar, normally a Court is not entitled to make a local inspection, and even if such an inspection is made, it can never take place of evidence or proof but is really meant for appreciating the position at the spot. According to *Deva Sait v. State*, the Magistrate should not do anything which reduces him to the position of a witness. He should not conduct investigation at the spot and make enquiries from people but only record his observations.

### 7.8 FIR Cannot Be Quashed Under Inherent Power

In *Kurukshetra University v. State of Haryana*, purporting to act under inherent powers preserved under Section 482 of the new Code, the High Court quashed a First Information Report lodged with the police. This was strongly condemned by the Supreme Court. Chandrachud, J. giving the decision of a Division Bench of the Supreme Court, observed:

> It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, it could quash a First Information

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220 AIR 1976 SC 214.
221 Decision in 1974 CrLJ 871 was reversed.
222 AIR 1985 SC 1664.
223 1959 CrLJ 751.
224 AIR 1977 SC 2229.
Report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any Court in pursuance of the FIR. It ought to be realised that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.

The special leave petition filed before us states in paragraph 18 that after the judgment of the High Court it has become impossible for the university to maintain law and order in its campus, as the police have been obdurately refusing to accept any complaint lodged by the university against ex-students and outsiders who enter the campus at any time of the day and night and stay in the hostels without the necessary permission. It is the bounden duty of the police to record the complaints lodged by the University and to enquire into them, in accordance with law. If any cognizable offence is disclosed, the police cannot refuse to act on the complaint lodged by the University for the Reason merely that the orders issued by university are not binding on outsiders.

Unless the investigation is complete and police file final report, the averments in FIR cannot be said to be false. The Supreme Court in State of Bihar v. Murad All Khan, has held:

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225 Chittiappa v. State, 2001 CrLJ 3555 (Kant).

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It is held that jurisdiction under Section 482, Criminal Procedure Code, which saves the inherent power of the High Court, to make such orders as, may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is, the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the Court or not.

In Municipal Corporation of Delhi v. R. K. Rohtagi,\(^\text{227}\) it is reiterated:

It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is

\(^{227}\) AIR 1983 SC 67 at 70.
constituted. In other words, the test is that taking
the allegations and the complaint as they are,
without adding or subtracting anything, if no
offence is made out then the High Court will be
justified in quashing the proceedings in exercise of
its powers under Section 482 of the present Code.

In Municipal Corporation of Delhi v. P.D. Jhunjunwala, it was
further made clear:

As to what would be the evidence against the
respondents is not a matter to be considered at this
stage and would have to be proved at the trial. We
have already held that for purpose of quashing the
proceedings only the allegations set forth in the
complaint have to be seen and nothing further.

However, when the allegations in the FIR even if they are taken on their
face value and accepted in their entirety, do not constitute the offence alleged
it would be legitimate for the High Court to hold that it would be manifestly
unjust to allow the process of the Criminal Court to be issued against the
accused. However, ordinarily the statutory power of the police to investigate
cannot be interfered with by exercise of the power under Section 397 or under
the inherent power of Court.

Chapter XI of Code of Criminal Procedure applies equally to cases,
cognizable and non-cognizable; only in non-cognizable cases the police
officer is not to take up investigation without the order of a Magistrate. But
when he does take up the investigation in non-cognizable cases, the
investigation which he holds become an investigation under Chapter XI
provided the requirements of Section 155(3) are complied with. If a police
officer is otherwise authorised to investigate a non-cognizable case, that

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228 AIR 1983 SC 158 at 159.
power of investigation will not by itself, attract the provisions of this Chapter. Thus a police officer may be authorised to investigate non-cognizable cases under the Opium Act. But this power of investigation does not necessarily bring the investigation under Chapter XI.\footnote{231} The word ‘offence’ includes an intended offence or an offence imminently likely to take place.\footnote{232}

In an investigation under sub-Section (3), Section 162 is attracted.\footnote{233} Under Section 155, Criminal Procedure Code a police officer cannot investigate a non-cognizable case and cannot submit a report with reference to it without the order of a Magistrate. If a police officer on his own motion as where he has seen the alleged offence committed makes a formal report or complaint in respect of a non-cognizable offence, it will amount to a complaint within the meaning of Section 2(d), for there is no provision by which he can in such a case make a police report.\footnote{234}

Where police investigated a non-cognizable offence without the orders of a Magistrate in violation of the express prohibition in Section 155(2) and the learned Magistrate took cognizance of the case on the police report, it was held, following the principles laid down in \textit{H.N. Rishbud's case}\footnote{235} that the illegality of the investigation did not vitiate the trial unless miscarriage of justice had been caused thereby.\footnote{236} A police officer is not competent to make an investigation into a non-cognizable offence would not be illegal if it is made during the investigation of a cognizable offence.\footnote{237} It is incumbent upon a Police Officer, who investigates a non-cognizable case under the order of a Magistrate, to keep the diary, for which provision is made in Section 172.\footnote{238}

\begin{itemize}
\item \footnote{231} \textit{Naresh Chandra Das v. Emperor}, 44 CrLJ 145 (1961) 64 Bom LR 274.
\item \footnote{232} \textit{Miyabhai v. State}, AIR 1963 Guj 188.
\item \footnote{233} \textit{Public Prosecutor v. A.V. Ramiah}, AIR 1958 AP 392.
\item \footnote{234} \textit{H.N. Rishbud v. State of Delhi}, AIR 1955 SC 196.
\item \footnote{235} \textit{M. Ahamad Kaya v. E. Mhurgesa son & Co.}, AIR 1958 Ker 194.
\item \footnote{236} \textit{Ram Krishna v. State}, AIR 1958 Punj 172.
\item \footnote{237} \textit{Hira Lal v. Emperor}, 1918 CrLJ 517
\end{itemize}
The provision in Section 155 requiring an order of the Magistrate for investigation cannot be treated as directory.\textsuperscript{239} Even if an investigation into non-cognizable offence under Section 132 of the Customs Act discloses cognizable offence during investigation, the investigation and charge-sheet is vitiated when initially the investigation was started into a non-cognizable offence. The material non-conformation with the procedure established under Section 155(2) vitiates the charge-sheet\textsuperscript{240}.

However, the defect has got to be pointed out at the commencement of the trial. Where in a non-cognizable offence the investigation was done by the police without the order of the Magistrate, but the defect was not brought to notice of or adverted to by the Magistrate at the commencement of the trial and the trial has been concluded the trial cannot be vitiates on the ground of the defect as the defect in the investigation precedent to trial could be cured by Section 465 of the Code unless failure of justice had been occasioned thereby.\textsuperscript{241}

The bar under sub-Section (2) of Section 155 is attracted even in respect of the offences under the Special Acts. Therefore, investigation of an offence under Section 124 of the Bombay Police Act without the sanction of the Magistrate is illegal.\textsuperscript{242} However, such a sanction of the Magistrate is necessary in the investigation of the offence under the Special Act only in cases in which investigation has to be made under the Criminal Procedure Code.\textsuperscript{243}

In \textit{Ram Krishna v. State},\textsuperscript{244} Falshaw, J., observed that the provisions of Section 155(1), Criminal Procedure Code must be regarded as applicable to those cases where the information given to the police is solely about a non-cognizable offence. Where the information discloses a cognizable as well as a

\textsuperscript{239} 1981 CrLJ 1958.
\textsuperscript{240} ILR (1973)1 Cal 519.
\textsuperscript{242} 1983 CrLJ 1833.
\textsuperscript{243} 1979 CrLJ 539.
\textsuperscript{244} AIR 1958 Punj 172.
non-cognizable offence the police officer is not debarred from investigating any non-cognizable offence which may arise out of the same facts. He can include that non-cognizable offence in the charge-sheet which he presents for a cognizable offence.  

While discussing the investigation into cognizable offences the Supreme Court in *State of West Bengal v. Sampatilal* has held that in the case of cognizable offences the receipt and recording of an information report is not a condition precedent to the setting in motion of a criminal investigation. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Article 226 of the Constitution to give directions in the nature of habeas corpus. In the case of cognizable offence, the Court's functions begin when a charge is preferred before it and not until then and, therefore, the High Court can interfere under Section 541-A only when a charge has been preferred and not before. As the police have, under Sections 154 and 156 a statutory right to investigate a cognizable offence without requiring the sanction of the Court to quash the police investigation on the ground that it would be an abuse of the powers of the Court would be to act on treacherous grounds. The High Court cannot appoint special officer when the police investigation is pending.

The territorial jurisdiction of the police under Section 156 is conterminous with that of the jurisdiction of the Magistrate to take cognizance. Therefore, offences forming some transaction committed at places B and K can be investigated by the officer-in-charge of a police station at B also for offence committed at place K by persons.

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245 1985 CrLJ 410.
246 AIR 1985 SC 195.
247 1983 CrLJ 934.
An investigation by the police necessarily involves harassment to some person and infringement on the liberty of the people. The process can start only when there is reason to suspect that a cognizable offence has been committed. Chandrachud, C.J. observed in *State of West Bengal v. Swapan Kumar*,248 that the police could not reasonably suspect commission of a cognizable offence unless the FIR disclosed the commission of such offence. If the facts stated in the FIR did not constitute a cognizable offence, no investigation could be taken up by the police. His Lordship observed:

The condition precedent to the commencement of investigation under Section 157 of the Code is that the FIR must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under Section 157 of the Code. Their right of inquiry is conditioned by the existence of reasonable offence and they cannot, reasonably, have reason so to suspect unless the FIR prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on and the rule in Khzvaja Nazir Ahmed will apply. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the FIR does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received.

There is no such thing like unfettered discretion in the realm of powers defined by statutes and indeed, unlimited discretion in that sphere can become a ruthless destroyer of personal freedom. The power to investigate into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code”. Once an offence is disclosed, an investigation into the offence must necessarily follow in the interest of justice. If, however, no offence is disclosed, an investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party.

248  *AIR 1982 SC 949.*
whose liberty and property may be put to jeopardy for nothing. The liberty and property of any individual are sacred and sacrosanct and the Court zealously guards them and protects them.

Sub-Section 156 cannot cure an irregularity in investigation under a Special Act and this follows from the words under this Section. What Section 156(2), Criminal Procedure Code cures its investigation by an officer not empowered under that Section i.e., however, it has been held in *State of Uttar Pradesh v. Bhagwant Kishore Joshi*,240 that a defect or illegality in investigation does not affect the competence or the procedure relating to cognizance or trial and the latter cannot be set aside unless the illegality brings about a miscarriage of Justice.250

However, it has been held that in view of Sections 156(2), 460 and 465, Criminal Procedure Code which are not applicable to Special Acts, an invalid or improper investigation and arrest under the Act do not affect the Magistrate’s jurisdiction relating to cognizance and trial and the result of the trial is not vitiated unless prejudice is caused to the accused by the illegality of investigation and arrest.251 Sub-Section (2) cures the irregularity committed by an officer of a police station to investigate a cognizable offence when he investigates into an investigation of a case not within his local jurisdiction. If lack of territorial jurisdiction of the officer-in-charge is not taken at an early stage, but after prosecution evidence was over, the trial has been held to be not vitiated.252

The Supreme Court in the case of *Sevi v. State of Tamil Nadu*,253 has observed that the First Information Report Book is supposed to be at the police station all the time. If the officer-in-charge is not satisfied on the information received by him that a cognizable offence has been committed and wants to verify the information, his duty is to make an entry in the general

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240 AIR 1964 SC 221.
250 (1975) 1 SCR 1157.
253 1982 Bihar CrC 67.
diary, proceed to the spot of occurrence and take a complaint at the spot from someone who is in a position to give a report about the commission of a cognizable offence. Thereafter, the ordinary procedure is to send the report to the police station to be registered at the police station. It would be an extraordinary conduct on his part to carry the FIR Book with him to the place of occurrence.

In *Vinod Kumar v. State of Punjab*,\(^\text{254}\) a Full Bench of the High Court held that the mere language of the FIR did not conclude the matter. If through defective recording, the FIR did not disclose commission of an offence, but the police came into possession of material which disclosed commission of a cognizable offence, the investigation should be continued. On the other hand, though the FIR contained allegation of commission of cognizable offence but it was subsequently manifest that no such offence was committed or it was found that there investigation was mala fide exercise of the power such investigation should be quashed by the High Court in exercise of its inherent power. Sandhawalia, C.J., giving the decision of the Full Bench,\(^\text{255}\) held:

*If the first information report discloses no cognizable offence whatsoever, it would give the Court jurisdiction for entering into an enquiry for quashing the proceedings. However, this is no warrant for holding that either because a defective first information report has been recorded or at the time of commencing the investigation, the information was cryptic, yet the subsequent information must be quashed irrespective of all other considerations. Indeed the true test appears to be that when challenged the investigation agency, even on the basis of all the material collected by it, is unable to show that there is reason to suspect*

\(^{254}\) AIR 1982 P&H 372.

\(^{255}\) Ibid.
commission of a cognizable offence, it would be then and then alone that the inherent jurisdiction can warrant the quashing of investigation itself, being a patent harassment to the accused. It deserves highlighting that the core of the jurisdiction herein is the Court that it amounts to a clear abuse of power by the police.

Where in a case where the accused is charged for conspiracy to extort money under fear of injury, the prosecution has failed to conduct identification parade and material witness dies before commencement of investigation and that there being no evidence to show that the accused entered into criminal conspiracy to commit alleged offences, the acquittal of accused by High Court cannot be interfered with under Article 136 of Constitution of India.\textsuperscript{261}

7.9 Circumstances in which Investigation may be quashed

The circumstances, in which an investigation could be quashed, were stated\textsuperscript{257} as follows:

(i) when the first information report, even if accepted as true, discloses no reasonable suspicion of the commission of a cognizable offence;

(ii) when the materials subsequently collected in the course of an investigation further discloses no such cognizable offence at all;

(iii) when the continuation of such investigation would amount to an abuse of power by the police thus necessitating interference in the ends of justice; and

(iv) that even if the first information report or its subsequent investigation purports to raise a suspicion of a cognizable

\textsuperscript{257} AIR 1982 P&H 372.
offence, the High Court can still quash if it is convinced that the power of investigation has been exercised mala fide.

In the leading case of Emperor v. Khwaja Nazir Ahmed,258 the Privy Council observed that if no cognizable offence is disclosed and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation.

In R.P. Kapur v. State of Punjab,259 the Supreme Court held cases may also arise where the allegations in the FIR or the complaint even if they are taken at their face-value and accepted in their entirety do not constitute the offence alleged. In such cases no question of appreciating evidence arises it is a matter merely of looking at the complaint or the FIR to decide whether the offence alleged is disclosed or not". In Pratibha Rani v. Suraj Kumar,260 the Supreme Court really upheld the decision of the Full Bench of the Punjab High Court in Vinod Kumar Sethi v. State of Punjab,261 that the High Court under Section 482 Criminal Procedure Code can quash an investigation if no offence is disclosed in the FIR. The Supreme Court only reversed the judgment of the Punjab High Court to the extent that the latter had ruled that stridhan is partnership property between husband and wife. However, the Supreme Court observed (in para 57) “it is well-settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482, Criminal Procedure Code to quash a FIR or complaint the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. In case no offence is committed on the allegation and the ingredients of Sections 405 and 406, Indian Penal Code are not made out the High Court would be justified in quashing the proceedings”.

258 AIR 1945 PC 18.
259 AIR 1960 SC 866.
260 AIR 1985 SC 628.
261 AIR 1982 Punjab 372.
It seems clear from these observations that the Supreme Court and Privy Council have consistently held that while the power under Section 482, Criminal Procedure Code is to be sparingly exercised and normally the High Court to interfere with the investigation where the ends of justice so require. In fact the very language of Section 482, Criminal Procedure Code supports this view, for it permits the High Court to interfere when there is “abuse of the process of the Court or in the ends of justice”. In fact a recent judgment of the Supreme Court, State of Punjab v. Kailash Nath, has reiterated that the High Court can interfere with the investigation and quash the FIR. In that case the FIR was filed 6 years after the incident and the Supreme Court held that the High Court rightly quashed it. In view of this ruling of the Supreme Court it is evident that the 7-Judge Full Bench decision is not good law.

Where FIR for dowry demand was lodged by girl at ‘K’ but no action was taken by the police. Complaint was given by her mother later on to police at place ‘C’. Held, that though subject-matter of complaint may be the same, but the information were different and there could be no question of construing complaint at as being hit by Sections 162(3) and 156. Therefore, registration of complaint and investigation conducted by the police at place C was not illegal.

7.10 Report of Investigation by Subordinate Police Officer

When a subordinate police officer makes an investigation under Chapter XII, Criminal Procedure Code he shall report embodying the result of his investigation to the officer-in-charge of a police station and it is the duty of the officer-in-charge of the police station to place before the Magistrate such report as soon as possible to test the veracity of the subordinate police officer.

There are three different reports made by a police officer to a Magistrate, viz., (i) a preliminary report under Section 157; (ii) a subordinate
police officer’s report under Section 168 to the officer-in-charge of a police station; and (in) a final report under Section 173(2). In case of the first two reports the case may be struck-off by the Magistrate discharging the accused if the investigation report does not disclose the commission of any offence. The drama then moves on to the second Act which may show either the trial or the inquiry. If the Magistrate is competent to deal with the case and proceeds on the investigation report, it becomes a drama of trial. Where the case is exclusively tribal by the Court of Session or where the Magistrate needs a judicial inquiry before trial, it becomes an act of inquiry.265

7.11 Distinction between Investigation and Inquiry

A clear distinction is made by the Code between an inquiry and an investigation. An inquiry relates to a proceeding held by a Court or a Magistrate, while an investigation relates to the steps taken by a police officer or a person, other than a Magistrate, who is authorised by a Magistrate for the purpose.266 An inquiry starts by asking questions, i.e., interrogation, rather than by inspection or, figuratively, by a study of available evidence. But an investigation is a thorough attempt to learn the facts about something complex or hidden.267

The object of investigation is to direct evidence, whereas an inquiry aims at determining the truth or falsity of certain facts.268 An inquiry may be judicial or non-judicial but an investigation can never be judicial. Finally, an inquiry may start with shadowy beginnings and vague rumours, while an investigation starts when a police officer forms a definite opinion that there are grounds for investigating crime.269

266 Hoshide v. Emperor, AIR 1940 Cal 97.
268 35 SWN 623.
269 Sirojuddin v. State, AIR 1968 Mad 117.
7.12 FIR not being Substantive Evidence – Effect

The Supreme Court in *State of Bombay v. Ritsy Mistry*,270 observed that the first information report is the information recorded under Section 154 of the Criminal Procedure Code. It is information given to a police officer relating to the commission of an offence. It is also information given by an informant on which the investigation is commenced. It must be distinguished from information received after the commencement of the investigation which is covered by Sections 161 and 162: of the Criminal Procedure Code. It is well-settled that the first information report is not substantive evidence, but can only be used to corroborate or contradict the evidence of the informant given in Court or to impeach his credit. It follows that a Judge cannot place such a report before the jury as substantive evidence, but can only refer to that portion of it which had been used for one or other of the aforesaid purposes.271

If the first information is given by the accused himself, the fact of his giving the information is admissible against him as evidence of his conduct under Section 8 of the Evidence Act. If the information is a non-confessional statement, it is admissible against the accused as an admission under Section 21 of the Evidence Act and is relevant. But a confessional first information report to a police officer cannot be used against the accused in view of Section 25 of the Evidence Act.272

Magistrate cannot ask police to submit charge-sheet. In *R.M. Chatterjee v. Havildar Kure Singh*,273 the Supreme Court has observed that the provisions of the Criminal Procedure Code do not empower the Magistrate to ask the police to submit a charge-sheet. If, however, the Magistrate is of opinion that the report submitted by the police requires further investigation, the Magistrate may order investigation under Section 156(3) of the Criminal Procedure Code. Directing a further investigation is entirely different from

270 AIR 1960 SC 391.
271 See also (1965) 2 SCA 367.
asking the police to submit a charge-sheet. Furthermore, Section 190(1)(c) of the Criminal Procedure Code empowers the Magistrate to take cognizance of an offence notwithstanding a contrary opinion of the police. It has been emphasised in several decisions that it is of the utmost importance that the judiciary, should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of enquiry. It is for the police to form their opinion and the final step in the investigation is to be taken only by the police and no other authority. The Magistrate cannot call upon the police to submit a charge-sheet when they have sent a report, that there is no case for sending up the accused for trial because that would be dictating to the police to form opinion in accordance with that of the Magistrate. Such a course is not desirable.

High Court can prevent exercise of power of investigation mala fide. The Supreme Court, however, pointed out in *S.N. Sharma v. Bipen Kumar*, that if a police officer exercised the power of investigation mala fide he could be prevented from doing so by the High Court by an order under Article 226 of the Constitution. The Court observed:

Counsel appearing on behalf of the appellant urged that such an interpretation is likely to be very prejudicial particularly to officers of the judiciary who have to deal with cases brought up by the police and frequently give decisions which the police dislike. In such cases, the police may engineer a false report of a cognizable offence against the Judicial Officer and may then harass him by carrying on a prolonged investigation of the offence made out by the report. It appears to us that though the Code of Criminal Procedure gives to the police unlimited power to investigate all cases

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274 AIR 1970 SC 786.
where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers.

The Magistrate can take cognizance of offence even if police report is to the effect that no case was made out. The Magistrate can ignore the conclusion arrived by the Investigating Officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190 and direct the issue of process to the accused. The Magistrate is not bound to follow procedure laid down in Sections 200 and 202, Criminal Procedure Code.275

In Mathew Areeparmitil v. State of Bihar 276, Supreme Court observed that cases in which neither charge-sheet has been submitted nor investigation has been completed during the last three years, the accused should be released forthwith subject to reinvestigation of fresh facts and they shall not be arrested without permission of the Magistrate and where permission is given, they should be released on execution of personal bond. A Magistrate has no power to issue a warrant for the arrest and production of a person in order that such person may give evidence before the police during an investigation under Chapter XII, Criminal Procedure Code.277

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276 1985 CrLJ 357 (SC).
277 1981 CrLJ 119 (Ker).
7.13 Investigation When cannot be Completed within 24 hours-

Procedure

The provisions of Section 167, Criminal Procedure Code are supplementary to Section 57. The object of the Section is to see that the person arrested by the police is brought before a Magistrate with the least possible delay in order to enable the latter to judge such person has to be kept further in the police custody and also to enable such person to take any representation in the matter.278 Under Section 167 a Magistrate does not make cognizance of a case, the object is to prevent abuses by the police.280 Unless the accused has been arrested Section 167 has no application. He can neither be remanded to jail custody nor can he be given in police custody if the accused surrendered in Court.281

In the case of Kashmeri Devi v. Delhi Administration, Supreme Court observed:

After hearing learned counsel for the parties and on perusal of the record we are satisfied that prima facie the police have not acted in a forthright manner in investigating the case, registered on the complaint of Sudesh Kumar. The circumstances available on record prima facie show that effect has been made to protect and shield the guilty officers of the police who are alleged to have perpetrated the barbaric offence of murdering Gopi Ram by beating and torturing. The appellant has been crying hoarse to get the investigation done by an independent authority but none responded to her complaint. The Additional Sessions Judge while

281 1977 CrLJ 1230.
282 AIR 1988 SC 1323.
considering the bail application of Jagmal Singh, Constable, considered the autopsy report and observed that Doctor had postponed giving his opinion regarding the cause of death although the injuries were ante-mortem. The learned Sessions Judge referring to a number of circumstances observed that the Investigating Officer had converted the case from Section 302 to Section 304 of the Indian Penal Code on flimsy grounds within hours of the registration of the case even without waiting for the postmortem report. The learned Sessions Judge further observed that it was prima facie case of deliberate murder of an innocent illiterate poor citizen of Delhi in police custody and investigation was partisan.

We are in full agreement with the observations made by the learned Sessions Judge. As already noted during the pendency of the writ petition before the High Court and special leave petition before this Court the case was further converted from Section 304 to Sections 323/34, Indian Penal Code. Prima facie the police have acted in partisan manner to shield the real culprits and the investigation of the case has not been done in a proper and objective manner. We are, therefore, of the opinion that in the interest of justice it is necessary to get a fresh investigation made through an independent authority so that truth may be known".
7.14 Police Can Make Further Investigation Even After Cognizance is taken

After investigation by the police is completed the stage of cognizance by the Magistrate followed by inquiry or trial is reached. But even after cognizance is taken by the Magistrate, power of further investigation by police when circumstances so warrant, has been preserved for the police under sub-Section (8) of Section 173 of the new Code. Such provision did not exist in the earlier Code and it was held in some cases that after cognizance was taken by the Magistrate further action by the police was barred. The Supreme Court, however, held in *Ram Lai Naluang v. State (Delhi Admn.)*\(^2\) that even under the old Code such investigation was not barred. The Court explained the legal position as follows:

Ordinarily, the right and duty of police would end with the submission of a report under Section 173(1), Criminal Procedure Code upon receipt of which it was up to the Magistrate to take or not to take cognizance of the offence. There was no provision in the 1898 Code prescribing the procedure to be followed by the police, where after the submission of a report under Section 173(1), Criminal Procedure Code and after the Magistrate had taken cognizance of the offence, fresh facts came to light which required further investigation.

There was, of course, no express provision prohibiting the police from launching upon an investigation into the fresh facts coming to light after the submission of the report under Section 173(1) or after the Magistrate had taken cognizance of the offence. As we shall presently point out, it was generally thought by many High Courts, though doubted by a few, that the police were not barred from further investigation by the circumstance that a report under Section 173(1) had already been submitted and a Magistrate had already taken cognizance of the offence. The Law Commission in its 41st report recognized the portion and recommended that the right of the police to

\(^2\) AIR 1979 SC 1791.
make further investigation should be statutorily affirmed.... Accordingly, in the Criminal Procedure Code, 1973, a new provision, Section 173(8), was introduced.

Anyone acquainted with the day-to-day working of the criminal Courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and defence that the police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolute persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has good alibi, is it not the duty of the agency to investigate the genuineness of the plea and submit a report to the Magistrate?

After the investigating agency has greater resource as its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused, in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as separate case. What action a Magistrate is to take in accordance with the provisions of the Code of Criminal Procedure in such situation is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceedings before the Court is really not very great substance, since whatever the police
may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation”.

But notwithstanding that the police has the statutory power to investigate, the Supreme Court has pointed out that it would be desirable that the police should inform the Magistrate and obtain his formal permission before proceeding with further investigation if cognizance has already been taken by the Magistrate. The Supreme Court went on to observe in the same case:

“We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a Court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light”.

In a case involving the killing of the District Magistrate in his office, better investigation is expected and the State should have taken great care to ensure that every loophole in the investigation was plugged at the right time in accordance with law. It is unfortunate that lapses have occurred. In *Hussainara Khatoon v. State of Bihar*, the Supreme Court observed:

> We also find from Section 167(5) of the Code of Criminal Procedure, 1973 that if in any case triable by Magistrate as a summons case, the investigation is not concluded within a period of six months

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285 AIR 1979 SC 1360.
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 satisfied the Magistrate that for special reasons and in the interests of justice to continuation of the investigation beyond the period of six months is necessary. We are not at all sure whether this provision has been complied with, because there are quite a few cases where the offences charged against the under-trial prisoners are tribal as summons cases and yet they are languishing in jail for a long number of years far exceeding six months.

We, therefore, direct the Government of Bihar to inquire into those cases and where it is found that the investigation has been going on for a period of more than six months without satisfying the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period of six months is necessary, the Government of Bihar will release the undertrial prisoners, unless necessary orders of the Magistrate are obtained within a period of one month from today.

We would also request the High Court to look into this matter and satisfy itself whether the Magistrates in Bihar have been complying with the provisions of Section 167(5). In Babulal v. State of Rajasthan,26 the Rajasthan High Court held: “Section 167(5) is mandatory in character and it is the duty enjoined upon the Magistrate by the law to see that no investigation is continued in a summons case beyond six months from the date of arrest of the accused without his permission. The Magistracy and the police officers have

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to pay proper regard to this salutary provision of law which has been enacted not only in the interest of undertrials but also in the interest of society”.

In *Jai Shankar Jha v. State,*287 a Division Bench of the Calcutta High Court held:

In view of Section 167(5), CrPC the investigation beyond the period of six months can be continued only if 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. This satisfaction of the Magistrate must take place before the expiry of the period of six months.

In *Meet Singh v. State of Punjab,*288 it was held:

The word ‘special’ has to be understood in contradistinction to word ‘general’ or ‘ordinary’. Now what does term ‘special’ connote? ‘Special’ means distinguished by some unusual quality; out of the ordinary289 Webster defines ‘special’ as particular; peculiar; different from others; designed for a particular purpose, occasion, or person: limited in range; confined to a definite field of action. Thus anything which is common to a large class governed by the same statute cannot be said to be special to each of them.

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287 1982 CrLJ 744.
288 AIR 1980 SC 1141
Following observations of the Supreme Court in *Hussainara Khatoon v. State of Bihar*,²⁹⁰ may be noticed:

“Our attention has also been drawn to Section 468 of the Code of Criminal Procedure, 1973 which in sub-Section (1) provides that except as otherwise provided else-where in the Code, no Court shall take cognizance of an offence of the category specified in sub-Section (2) after the expiry of the period of limitation and under sub-Section (2) the period of limitation is six months if the offence is punishable with fine only, one year if the offence is punishable with imprisonment for a term not exceeding one year and three years if the offence is punishable with imprisonment for a term not exceeding three years. It would, therefore, be seen that the under-trial prisoners against whom charge-sheets have not been filed by the police within the period of limitation provided in sub-Section (2) of Section 468 cannot be proceeded against at all and they would be entitled to be released forthwith, as their further detention would be unlawful and in violation of their fundamental right under Article 21.

7.15 **Prolonged Delay in Investigation is Violative of Article 21 of Constitution**

A callous and inordinately prolonged delay of ten years or more (which does not arise from the default of the accused or is otherwise not occasioned by any extraordinary or exceptional reason) in the investigation and original trials of pending cases for capital offences punishable with death would

²⁹⁰ AIR 1970 SC 1360.
plainly violate the constitutional guarantee of a speedy public trial under Article 21.291

However, in the variegated kaleidoscope of life, no absolute mathematical precision is either possible or immutable. Therefore, some element of empirical decision making is inevitable in this context. Thus as regards the investigation and original trials of capital offences in future a time frame of five years would be more than reasonable. To formalise the principle, it must be held that a callous and inordinately prolonged delay of five years or more (which does not arise from the default of the accused or is otherwise not occasioned by any extraordinary in-exceptional reasons) in investigation and original trials for capital offences registered hereinafter would plainly attract the constitutional guarantee of speedy public trial under Article 21.292

In order to keep the scales even on one hand the rules of presumptive prejudice are mathematically absolute in the sense of creating any bar in a citizen in an exceptionally peculiar context from showing that in fact the right to speedy trial has been defeated in a period lesser than the one indicated. Indeed, they lay down the outer limit whereafter grave prejudice to the accused must be presumed and the infraction of the constitutional right assumed unless expressly rebutted. It is not to be understood that in a lesser period than the one indicated above for presumptive prejudice an accused person may not in a peculiar case be able to establish circumstances pointing to the patent prejudice which may entitle him to invoke the guarantee of speedy public trial under Article 21 of Constitution. It is equally and manifestly true that the rule of presumptive prejudice is not an absolute or conclusive one but is plainly rebuttable. It is permissible and, indeed, the right of the prosecution to show that gross delay was occasioned not only by its own default but equally by the contribution and the machinations of the accused persons themselves. Indeed, as in the field of equity so in the area of the somewhat sacred constitutional rights the accused petitioner must come

with clean hands. He cannot possibly be allowed to take any advantage of his own wrong. Therefore, where the delay in extending the trial and defeating its speedy course has been occasioned by the absconding of the accused or by such other obstructive and delaying tactics adopted by him including those of resorting to a series of untenable proceedings in the trial Court in the superior courts, these are all factors which have to be taken into consideration for determining the issue of the denial of a constitutional right for such conduct. Nor can the Courts be wholly oblivious of the common experience regarding the time which should generally ordinarily be occupied by the litigative process both in the courts of law and in the investigation before the police.

Equally, it is possible for the prosecution to show that extraordinary and exceptional circumstances of a particular case rendered the delay not only inevitable but beyond its control and was thus justifiable. To highlight afresh, the essence of the rule herein is one of presumptive prejudice arising, from the passage of the prescribed period of time as an outer limit but plainly rebuttable for justifiable causes or by the defaults of the accused person himself.293

The speedy investigation is beneficial both to the prosecution as well as to the accused. It is also in the larger interest of the Society. Section 173(1), Code of Criminal Procedure provides that every investigation under this Chapter XII shall be completed without unnecessary delay. The fundamental right of the accused to speedy trial enshrined in Article 21 of the Constitution is applicable not only to the proceedings in Court stricto sensu but also includes within Its sweep the proceeding police investigation and trial which are equally mandated by both the letter and the spirit of the Code of Criminal Procedure, 1973.294

A prolonged prosecution is clearly violative of the fundamental right of speedy public trial, guaranteed under Article 21 of the Constitution and is

liable to be quashed.295 In Nimeon Sangamia v. Horn. Secy., Govt. of Meghalaya,296 Apex Court of India has stressed on the Importance of expeditious disposal of cases Including Investigation and trials. It was observed therein that the Criminal Procedure Code in Sections 167, 209 and 307 has emphasised the importance of expeditious disposal of cases Including investigations and trials.

Delay in investigation assists an accused to square up the witnesses.297 Offences should be promptly investigated after the FIR has been lodged. This is particularly so in the case of serious offences. Delay in investigation caused mischief and harassment.298

But it should be remembered that the question of delay in investigation in a case is relative one depending on various factors, Including the nature and extent of the prejudicial case.299 The trial Magistrates and Sessions Judges are duty bound to enquire fully into the circumstances of the delay and consider its bearing on the prosecution story.300

The Supreme Court in State of Bihar v. Uma Sharma Kotoriwal,301 considered the question of delay contributed by the accused. This was a case where the accused were themselves to be partly blamed for long delay of twenty years because of several revision petitions preferred by them, yet the Supreme Court maintained quashing of proceedings by the Patna High Court, as correct.

Successive investigations are permissible in the Code of Criminal Procedure. With the enforcement of the new Code of Criminal Procedure, 1973, a new provision as to “further investigation” in form of Section 173(8)

296 AIR 1979 SC 1518.
300 2 Bom.LR 1092.
has been introduced. Under Section 173(8) of the Code of Criminal Procedure, even after the Magistrate has taken cognizance of an offence, if fresh facts come to the light which requires further investigation, the police can investigate again and file a subsequent charge-sheet.

In D.D. Patel v. State of Gujarat, it was observed that not only fresh disclosure of evidence, further investigation is permitted but even if the material already collected in the original investigation had been misunderstood by the Police Officer at the time of the first charge-sheet; a second charge-sheet may be submitted on the same facts.

Magistrate is not bound to accept the final report submitted by the police. If he disagrees with the report, he may direct further Investigation. But he cannot ask for submission of charge-sheet instead of final report. State Government having otherwise power of superintendence, comprising the power to direct further Investigation under the Police Act, Section 3, which is neither curtailed, limited or denied by Section 173(8) of the Code, and can direct further investigation by an officer superior in rank to an officer in charge of a police station.

Notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173, Code of Criminal Procedure, the right of the police to further investigation is not exhausted and the police can exercise such right as often as necessary when fresh information comes to light. Police has power to make further investigation and send another report to Magistrate even though earlier report was filed requesting magistrate to drop the matter and same was dropped. The Magistrate Is empowered to order further investigation in a case and direct the

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302 Ram Lal Naluang v. State (Delhi Admn.), AIR 1979 SC 1791.
304 1980 CrLJ 29.
305 Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117.
307 K.V. Kandasamy v. The Dy. SP. of Police, 2000(1) Crimes 27 (Mad.).
accused to appear before the Medical Officer for his examination. After cognizance of the offence was taken by the Magistrate on receipt of police report, the police could not further investigate into offence without permission of the Magistrate.

Neither the informant nor the accused can claim as a matter of right a direction from the Court commanding further investigation by the investigating officer in exercise of powers under Section 173(8), Code of Criminal Procedure after a charge-sheet was filed. The Magistrate is empowered to direct Investigating officer to make additional report or reports. An additional charge-sheet can be filed by a Police Officer keeping in view the provisions of Section 173(8) of the Code of Criminal Procedure.

Law is well settled that the police have the right to re-open the investigation even after the submission of the charge-sheet under Section 173, Code of Criminal Procedure, if such facts come to light. The police have the right to file a supplementary charge-sheet after a final report under Section 173 of the Code of Criminal Procedure was filed. If a Police Officer after laying charge-sheet gets further information, he can still investigate and lay further charge-sheet. If fresh facts come to light after a final report, Magistrate’s permission is not necessary for further investigation. The Police Officer has a right to bring to the notice of the Magistrate that the charge was laid against a wrong person.

In Namasi V. Ayam v. State, it was held that if a Police Officer after he lays a charge-sheet gets Information or additional information, he can still investigate and lay further charge-sheet. Where the first report made by the police to the Magistrate, though was incomplete, contained all the particulars and details of the witnesses, are merely formal witnesses, the first report is in

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311 Bachu Bhai v. State, 25 (2) GLR 897.
312 In Re. State of Kerala, 1973 CrLJ 1288.
313 1982 CrLJ 707.
fact a complete report as required by Section 173(2)(i), Code of Criminal Procedure and it is not vitiated by the mere fact that the supplementary report is filed subsequently.

Section 173(8), Code of Criminal Procedure has been newly added in order to make it expressly clear that merely because an investigating officer has sent a police report to the Magistrate, he will not stand precluded from making further investigation in the case and submitting to a further report or reports to the Magistrate regarding the additional evidence gathered by him in the further Investigation. Because of this express provision, it should not be taken that if a Police Officer had committed an error in giving full and proper particulars regarding the names of the parties, the nature of the information, the names of the witnesses etc. in his first report, he cannot correct the mistake by filing second report. When the Code provides for even further investigation being done after a report is filed before a Magistrate, there can be no bar whatever for the police filing a second or revised report on the materials gathered during the investigation especially when the second report is intended to set right certain mistakes or omissions in the first report. The matter should therefore, be viewed in its proper perspective.314

If investigation by the local police is not satisfactory, a further investigation is not precluded under Section 173(8) of the Criminal Procedure Code, 1973. There is provision for further investigation in respect of an offence after a report under sub-Section (2) has been forwarded to the Magistrate.315 The investigating agency is not precluded from further investigation in respect of an offence inspite of forwarding a report under Section 173(2) of Criminal Procedure Code on a previous occasion. This is clear from Section 173(8) of the Code of Criminal Procedure.316

315 CBI v. Rajesh Gandhi, AIR 1997 SC 93; T. Subhnammal v. State, 2000 (2) Crimes 165 (Mad.). In all these cases the High Court has directed further investigation while exercising its power under Section 482 Cr.P.C.
It is desirable that investigating agency should take permission of Magistrate, for further investigation under Section 173(8) CrPC but mere absence of such permission would not vitiate further investigation. Scope for further investigation under Section 173(8), CrPC cannot be stretched to extent where it appears to Court that entire purpose of further investigation was not bona fide. The Magistrate can be taken even after acceptance of final report provided reopening of the order further investigation case should not be malafide.\textsuperscript{317}

Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the Court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. In such a situation the power of the Court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the Court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the Court would only result in encumbering the Court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As law does not require it, we would not burden the magistrate with such an obligation.\textsuperscript{318}

Normally the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or charge-sheet, it is always open to the Investigating Officer to produce the same with the permission of the Court. Considering the preliminary stage of prosecution and the context in which Police Officer is required to forward to

\textsuperscript{317} Mahima Mishra v. State of Orissa, 2001 (4) Crimes 137 (Orissa).

the Magistrate all the documents or the relevant extracts thereof on which prosecution proposes to rely, the word ‘shall’ used in sub-Section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the Investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Further, the scheme of sub-Section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to Investigation. In such cases, there cannot be any prejudice to the accused.319

In application for reinvestigation further investigation it need to be alleged that earlier investigation was not honest - Failure to indicate that earlier investigation was not honest would be ground to hold that reinvestigation was done with oblique motive.320

When the Magistrate has erroneously accepted final report without affording opportunity to the complainant and when the case is remanded back then magistrate, could in exercise of the powers under Section 173(8) Code of Criminal Procedure direct the C.B.I, to further investigate the case and collect further evidence keeping in view of the objections raised by the appellant to the investigation and the ‘new’ report to be submitted by the Investigating Officer would be governed by sub-Sections (2) to (6) of Section 173, Code of Criminal Procedure.321

Though it is within the province of Special Judge to order further investigation under Section 173(8) of Criminal Procedure Code, 1973 but he

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320 S.N. Dube etc. v. N.B. Bhorir, AIR 2000 SC 776.
cannot specify any particular officer to conduct such investigation. But when the Police Officer after examining as many as ten witnesses referred the case as “mistake of fact” and has submitted final report and Magistrate has accepted such final report, then such order is a judicial order and the case cannot be re-opened by the police officer by filing charge-sheet after investigation. The second revised report contemplated under Section 173(8) of the Code is only in case where the charge-sheet is filed and subsequently revised or additional charge-sheet is contemplated on the further materials available, and not in a case where the case was already referred as mistake of fact and accepted by Court.323

It was observed in *Namasi V. Ayam v. State*,324 that there must be limit for investigation of the complaint by the police. The police cannot at the instance of one officer after enquiry; say that there is no case against the petitioner and that report having been accepted by the Magistrate, subsequently at the Instance of another Police Officer, as in this case the inspector of Police says that there is a case against the petitioner.

Once cognizance of offence is taken by the Magistrate investigating officer cannot submit additional report.325 This view taken by Allahabad High Court does not appear to be correct as it runs counter to the provisions of Section 173(8), Code of Criminal Procedure, 1973 and the mandate is given by the Apex Court of India in *Ram Lal Narang v. State of U.P.*,326 The right of investigating agency to further investigation does not come to an end even after committal of the case. The investigating agency can submit its additional report to the Magistrate and when a report is sent to the Magistrate, it is for

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324 1982 CrLJ 707.
326 AIR 1979 SC 1791.
him and the Sessions Court to consider as to what use they want to make of it.327

Though the Magistrate is competent to grant permission for further investigation, but the permission to conduct further investigation cannot be given as a matter of course and it would certainly not be given if the wrong complaint can be remedied by resorting to other provisions of the Code. In rare cases, it may be permissible to a Court to permit the police to make further investigation even after it has taken cognizance of the crime by suspending cognizance, which in turn is to be exercised on the basis of well recognised principles.328 Mere non-obtaining of prior permission of Magistrate for further investigation would not render proceeding defective.329

Section 173 (8) of the Code of Criminal Procedure, 1973, even enables the police to carry on the investigation even after the submission of the final report contemplated by Section 173(2) and it would still be a part of the case. Section 173(8) if read with Section 167 (5) of the Code of Criminal Procedure makes the provision contained in Section 167 (5) of the Code of Criminal Procedure, highly redundant and opposed to the principle laid down in Section 173(8) of the Code of Criminal Procedure. Section 173 does not exclude a summons case. If it is so, there appears to be some contradiction in Sections 173 and 167 (5) of the Code. I (The learned Judge) trust this incongruity will be remembered as early as possible.330

While deciding Special Leave Petition against an order of the High Court rejecting the writ petition of the complainant under Section 226 of the Constitution for transferring the investigation from the Crime Branch of the Delhi Police to Central Bureau of Investigation, the Supreme Court transferred the case to C.B.I, for proper investigation in exercise of powers

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conferred under Section 173(8) of the Code of Criminal Procedure. It cannot be said that in very case of re-investigation the Court is bound to stay the further Judicial proceedings pending in that Court. No hard and fast rule or proposition can be laid down. It is a matter which has to be left to the discretion of the Court concerned which is to be exercised by him taking into consideration the facts and circumstances of that particular case.

The Magistrate has a power to accept further documents even before the charge is framed provided they are relevant and admissible in evidence. Although police has a statutory right to investigate afresh and collect fresh evidence and material as and when necessary, but when the exercise of such right is questioned on ground of abuse, the Court has power to interfere. Sub-Sections (1) and (2) of Section 173 of the Code envisage completion of police Investigation without unnecessary delay and submission of police report in the prescribed form to a Magistrate empowered to take cognizance of the offence, as soon as it is completed. But from a bare reading of Sub-Section (8) of the said Section, it is clear that nothing in the said Section precludes further Investigation in respect to an offence even after report under Sub-Section (2) of the said Section has been forwarded to the Magistrate. It also provides that upon such investigation, the officer in-charge of police station may forward to the Court even more than one reports with regard to such investigations. To all such reports, provisions of other sub-Sections of the said Section would apply as they apply in relation to reports forwarded under Sub-Section (2) of the said Section. Thus, there is no legal bar against further investigation by the police and filing of further report after the Court has taken cognizance on an offence of the filing of a charge-sheet by police.

However, as regards the procedure to be adopted by the trial Court on submission of the supplementary charge-sheet, viz. to hold trial on it as a part

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335 Nirmal Selvaraj v. Union of India, 1993(3) Crimes 642 (Delhi).
of the case being tried by him or make such other directions in accordance with law, we find from the impugned order that in the present case the trial Court has not taken any decision in that behalf. We are of the considered view that it should be left to the discretion of the trial Court who would proceed further in accordance with the provisions of the Code and shall pass such orders as may appear, just and proper, keeping in view the equities of the matter like the nature of the further Investigations, visa-vis its relevance to the matter already under trial before him, its stage etc.\footnote{336} For the view taken by us, we derive support from the following observations in \textit{Ram Lal Narang v. State of U.P.},\footnote{337} wherein the Supreme Court was dealing with almost similar points. Sub-Section (8) of Section 173, Code of Criminal Procedure, 1973 is only permissive in character.

Neither informant nor accused can claim further investigation after filing of charge-sheet as of right. It should be resorted only in exceptional cases. Such an exceptional case will only prove the general rule that normally investigations terminate with the filing of the charge-sheet In Court.\footnote{338} Under Section 173(8), Code of Criminal Procedure permission can be granted to send incriminating objects for lying in Court for analysis.\footnote{339} Further investigation by the police during pendency of trial in a Court of Session cannot be interfered by the High Court merely on the ground of absence of permission of the Court concerned when there is no other illegality in the order.\footnote{340}

Where on the basis of evidence obtained subsequent to forwarding of a report under sub-Section (2) of Section 173, the investigating officer forwarded a report on the basis of which cognizance of an offence was taken addition to the cognizance of offences taken earlier, the action of the Magistrate could not be said to be invalid. It would ordinarily be desirable that the police should inform the Court and seek formal permission to make

\footnotesize{\begin{itemize}
\item \textit{Ibid.}
\item 1979 CrLJ 1346.
\item \textit{Chandra Shekhar v. State}, 1993 CrLJ 3052.
\end{itemize}}
further investigation when fresh facts come to light. But mere absence of such permission would not make the order of the Magistrate taking cognizance vulnerable.

When a first charge-sheet has been submitted to Court and after its submission a second charge-sheet in form of supplementary charge-sheet but it was submitted not on the basis of further or subsequent investigation but on re-consideration of evidence already before investigating agency prior to submitting first charge-sheet then such subsequent charge-sheet cannot said to be supplementary charge-sheet. Cognizance of offence on basis of such charge-sheet by Court is bad in law. Obtaining of fresh and further evidence is a condition precedent for submission of supplementary charge sheet.341

When the Magistrate has erroneously has accepted final report without affording opportunity to the complainant and when the case is remanded back then magistrate, could in exercise of the powers under Section 173(8), Code of Criminal Procedure direct the C.B.I, to further investigate the case and collect further evidence keeping in view of the objections raised by the appellant to the Investigation and the new report to be submitted by the Investigating Officer would be governed by sub-Sections (2) to (6) of Section 173 Code of Criminal Procedure.342

7.16 Effect of Omissions, Illigilities and Irregularities in Investigation

To start with, the Code of Criminal Procedure, 1973 or 1898 while laying down the omissions or irregularities which either vitiate the proceedings or not, does not anywhere specifically say that a mistake committed by a Police Officer during the course of investigation can be said to be an illegality or Irregularity. Investigation is certainly not an Inquiry or trial before the Court and the fact that there is no specific provision either way in Chapter XXXTV (Irregular proceedings) with respect to omission or mistakes committed during the course of Investigation except with regard to

341 Yamina Pathak v. State of Bihar, 1994 CrLJ (NOC) 140 (Orissa).
the holding of an inquest is a sufficient indication that the legislature did not contemplate; any irregularity in investigation as of sufficient importance to vitiate or otherwise from any infirmity in the inquiry or trial.\textsuperscript{343}

Irregularities in conduct of investigation are not intended to vitiate the trial before the courts. The Magistrates are expected to decide cases on the evidence produced before them.\textsuperscript{344} Their Lordships of the Supreme Court in \textit{H.N. Rishbud v. State of Delhi},\textsuperscript{345} observed as follows:

\begin{quote}
A defect or illegality in investigation, however serious has no direct bearing on the competence or the procedure relating to cognizance or trial. If cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of Justice.
\end{quote}

In another case the Apex Court of India has held that even if there is any irregularity in the investigation that would not vitiate the trial or the conviction, in the absence of evidence that the accused has been prejudiced.\textsuperscript{346} No proceedings against the accused can be quashed solely on the ground of illegal investigation. The Court should go into the question whether the illegal investigation had resulted in prejudice to the accused.\textsuperscript{347}

Any irregularity even illegality committed in the course of investigation does not by itself affect the legality of the trial by an otherwise competent

\textsuperscript{344} \textit{State v. Dhanpal}, 1967 CrLJ 1450.
\textsuperscript{345} AIR 1955 SC 196: 1956 CrLJ 526.
Court unless miscarriage of justice has been caused thereby.\textsuperscript{348} Non-compliance with the provisions of an order issued by the Home Department of a State directing to conduct investigation against the police for torture and causing death by a person of the rank of Assistant and Deputy Superintendent of Police or by the S.D.M. does not make the Investigation illegal. Such standing order does not make the Investigation of the case illegal.\textsuperscript{349} Any defect or irregularity in investigation, however serious, has no direct bearing on the competency of the procedure relating to cognizance or trial of the offence. Besides, under Section 465, Code of Criminal Procedure it has to be shown that irregularity or illegality in investigation has brought about miscarriage of justice.\textsuperscript{350}

It is necessary for the accused to throw a reasonable doubt that the prosecution evidence is such that it must have been manipulated or shaped by reason of the irregularity in the matter of investigation, that he was prevented by reason of such irregularity from putting forward his defence or adducing evidence in support thereof, but where the prosecution evidence held to be true and where the accused had to say full in the matter, the conviction obviously cannot be set aside on the ground of some irregularity or illegality in the matter of investigation, there must be a sufficient nexus, either established or probablised, between the conviction and irregularity in the investigation.\textsuperscript{351}

Further, when the irregularity committed by a former investigation has since been rectified by a subsequent investigation, then it could not be held that the accused had been prejudiced by the illegality committed by the police in the first stage of the investigation.\textsuperscript{352}

\textsuperscript{348} A.C. Sharma v. Delhi Admn., 1973 CrLJ 902.
\textsuperscript{349} State of A.P. v. Venu Gopal, AIR 1964 SC 33.
\textsuperscript{351} State of U.P. v. Bhagwant Kishore Joshi, AIR 1964 SC 221.
\textsuperscript{352} Ibid.
In cases of defective investigation the Court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating Officer if the investigation is designedly defective. To acquit solely on that ground would be adding insult to injury. Defective investigation cannot be made for acquitting accused.

Where the prosecutrix was raped, but the investigating agency failed to trace the car or its driver, the failure of the investigating agency cannot be a ground to discredit the testimony of the prosecutrix. The prosecution had no control over the investigating agency and the negligence of an investigating Officer could not affect the creditability of the statement of the prosecutrix.

If the clothes worn by the injured or the victims were not recovered by the investigating team that perhaps would have provided a handle to the defence to attack the prosecution case. But no investigating agency would normally take the trouble to seize the clothes worn by witnesses at the time they saw the occurrence merely because their clothes too had collected stains of blood during any post event activities. At any rate, the said omission on the part of the investigating agency is not a flaw of that type to invite the consequence of jettisoning his testimony.

The defective investigation cannot be made a basis for acquitting the accused if despite such defects and failures of the investigation, a case is made out against all the accused or anyone of them. It is unfortunate that no action can be taken against the investigating officer at the stage who, in all probabilities, must have retired by now. Omission on the part of the investigating agency to seize the clothes worn by a witness which were smeared with blood during the rescue operation is not a flaw of that type to invite the consequence of Jettisoning his testimony.

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356 Ibid.
In the instant case discrepancy in regard to the lodging of the FIR is certainly there and the conduct of the investigating Officer in carrying out the investigation of the case has also been commented upon by the trial Court but the consequences of such discrepancies or defective or doubtful investigation is not necessarily only one leading to discredit the main prosecution case if the prosecution evidence inspires and circumstances lead to such a conclusion and the prosecution story rings true. No doubt that in that event it would be necessary to evaluate as to what extent such faulty Investigation or discrepant statement on certain facts relating thereto, shall cause damage to the prosecution case as a whole.357

A mere illegality does not affect a trial unless the illegality is shown to have caused a miscarriage of justice. The illegality in the investigation should be cured by ordering a fresh investigation from the stage where the investigation is held defective. Thus, the failure of the investigating officer to send the requisite information to the Magistrate as required by the proviso to Section 5A, Prevention of Corruption Act, 1947, where it is not contended to have caused any miscarriage of justice, is inconsequential and does not affect the validity of the trial.358 Investigation by a police officer not empowered to investigate in contravention of Section 5A of the Prevention of Corruption Act, 1947, does not necessarily vitiate the trial.359

A defect or illegality in investigation, however serious has no direct bearing on the competence or the procedure relating to cognizance or trial.360 Non-compliance with the provisions of Section 161(3), Code of Criminal Procedure affects the weight to be attached to evidence, but it would not render the evidence inadmissible.361 For a defective investigation trial is not vitiated.362

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357 Dharmendra Singh v. State of Gujarat, 2002 CrLJ 2631 (SC)
358 Shiv Pujan Misra v. The State of U.P., 1961 (2) CrLJ 58 (All.)
359 Pramod Chandra v. Rex, AIR 1951 All 546.
When information regarding a cognizable offence is furnished to the police that information will be regarded as the FIR and the steps taken by the police pursuant to such information would amount to investigation as defined in Section 2(h) of the Code of Criminal Procedure. If it is deemed that such steps amount to investigation statements made by any person to a police officer during such investigation may fall within the scope of Section 162 of the Code. Thus, all enquiries held by the police subsequent to the information regarding a cognizable offence would be treated as an Investigation even though the formal registration of FIR takes place only later. Non-registration of FIR on the information regarding the commission of a cognizable offence, received by a police officer, may be an irregularity, which would not vitiate the proceedings, and when such investigation would not lead to miscarriage of justice the proceedings are not liable to be quashed in exercise of the inherent powers under Section 482 of the Criminal Procedure Code, 1973.363 Irregularity in investigation is a curable defect.364 But if an officer knowing that he has no power to investigate a case, investigates the case then irregularity cannot be cured.365

If the police officer commits irregularity in recording statements of witnesses during investigation, then such irregularity, is curable under Section 465, (old Section 537) Code of Criminal Procedure.366 Failure to comply with Rule 102, U.P. Police Regulations relating to submission of police case diary cannot in any way interfere with the legality of a trial.367 Maintaining of case diary is not obligatory. It is a curable defect.368

A breach of Sections 162 and 172, Code of Criminal Procedure does not vitiate the trial. Here it may be stated that Section 162 deals with statements to police not to be signed and use of such statement in evidence, whereas

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Section 172 provides provision for diary of proceedings in investigation.\textsuperscript{369} The signing of statements does not render the evidence of a witness inadmissible, nor does the fact that the evidence is given by a witness who has signed the statement vitiate the whole proceedings. But the value of his statement may be seriously impaired as a consequence of the contravention of the statutory safeguard against improper practices.\textsuperscript{370}

If an objection with regard to the illegality is taken by the accused persons at the earliest stage then the trial Court cannot ignore it.\textsuperscript{371} The Court shall not place any reliance on investigation conducted by unauthorised persons.\textsuperscript{372} Antecedent illegality or irregularity in detection of crime or registration of the case or investigation on inquiry, if any, are not matters to be considered at that stage when the complaint was filed by a competent person and cognizance was taken and the Magistrate issued process on the requisite satisfaction.\textsuperscript{373}

Investigation conducted by a police officer who is not empowered to conduct it is not illegal as to render the criminal trial of the accused vitiated.\textsuperscript{374} If instead of properly pursuing the investigation, it is shown that the investigation in the case suffers from callousness, lack of incisiveness and unreasonable dilatoriness, the case diary cannot assume the same importance while judging the evidence of witnesses at the trial whose statements had been recorded therein. A conclusion of Imperfect or mala fide investigation with remissness or lack of zeal must, however, be borne out from the evidence and cannot be assumed by surmises or on the basis of some inconsequential delay in unimportant steps in the course of the investigation or while recording of the statements of the witnesses with regard to minor details. Also, some delay in arresting some of the accused persons could not be a circumstance

\textsuperscript{371} Mohinder Singh v. Chandra Man, 1984(3) Crimes 523 at 525-526.
\textsuperscript{372} Daud Munda v. State of Bihar, 1984(3) Crimes 606.
\textsuperscript{373} Excise Inspector v. Raghavan, 1989 (1) CrLJ 294.
\textsuperscript{374} Lal Chand v. State of Rajasthan, 1984 Raj.LW 596.
suggesting malafides on the part of the investigating officer as, on the basis of the statements made in First Information Report or in the statements of some witnesses which could not be the all and all of a case, an investigating officer might choose to make further verification before effecting the arrest of some persons. Apart from the statements of witnesses made in the course of investigation, an investigating officer may gather some other materials against an accused person for which he may take steps to search for him for the purpose of interrogation of arrest.\[^{375}\]

If on a proper evaluation of the various facts and circumstances, it transpires that apparent inconsistencies in the case of the prosecution are solely the result of remissness on the part of the investigating officer and not of any improvement or prevarication on the part of the prosecution witnesses, there would be no Jurisdiction for discarding the accusation.\[^{376}\] If it is established that the investigating police officer had not faithfully recorded the statements of the witnesses and his conduct is unreliable, the Court has to weigh the evidence of prosecution witnesses given in the Court without attaching importance to the statements recorded in the case diary in course of investigation.\[^{377}\]

Defective investigation cannot be a ground of acquittal if the rest of the evidence clearly establishes the prosecution case.\[^{378}\] Once cognizance has been taken by the Magistrate, it will be totally immaterial as to who investigated the case.\[^{379}\] If there being a specific law in a local or special Act which confers jurisdiction only upon a departmental officer, the Police Officers can have no jurisdiction to investigate an offence under such Act.\[^{380}\] The officers empowered under Section 53 of the Narcotic Drugs and Psychotropic Substances Act, 1985, for purposes of investigating the offences under the Act

\[^{376}\] Chandra Kant Luxman v. State of Maharashtra, 1974 CrLJ 309.
\[^{378}\] Surendra v. State of Orissa, 1977 CrLJ 182 (Ori.).
\[^{379}\] Shyam Lal v. State of U.P., 1984 All CC 26 (Sum.).
are required to file the compliant to the Magistrate and not to submit the charge-sheet as they are not Police Officers.\textsuperscript{341}

When the U.P. Police Regulation requires that a case under Prevention of Corruption Act shall be investigated by an officer of higher rank than the one charged, even then the State Government conferred power to investigate on an officer of co-equal rank (of the person charged) and the error was detected before submission of charge-sheet by such officer of coequal rank, then It was held that the investigation Is illegal, and the case should be re-investigated.\textsuperscript{382}

The provision of Section 5A of the Prevention of Corruption Act, 1947 is mandatory and not directory and investigation conducted in violation thereof is illegal. But trial would not be vitiated in the absence of miscarriage of justice.\textsuperscript{383} Section 156(1), Code of Criminal Procedure empowers any officer in-charge of a police station to investigate any cognizable offence without the order of the Magistrate. Sub-Section (2) of Section 156 of the Code further provides that 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 Section 156 to investigate. Their Lordships of Supreme Court in \textit{H.N. Rishbud v. State of Delhi},\textsuperscript{384} has explained in detail the legal position in this connection. It was held therein that sub-Section (1) of Section 156 is a provision empowering an officer in-charge of a police station to investigate a cognizable case without the order of a Magistrate and delivering his power to the investigation of such cases within a certain local jurisdiction. It is the violation of this provision that is cured under sub-Section (2). Obviously sub-Section (2) cannot cure the violation of any other specific statutory provision prohibiting investigation by an officer.

\begin{itemize}
\item \textsuperscript{382} Surendra Pal Singh v. State of U.P., 1987 CrLJ 1188 (All.).
\item \textsuperscript{383} Munna Lal v. State of U.P., AIR 1964 SC 28.
\item \textsuperscript{384} AIR 1955 SC 196 at 203.
\end{itemize}
of a lower rank that of a Dy. S.P. unless specifically authorised. The same view was endorsed in some other decisions by the Apex Court of India.

Whether conviction can be set aside if any disregard of statutory provisions in matter of investigation is made out where no prejudice is caused to the accused, conviction cannot be set aside. The Supreme Court in the case of State of U.P. v. Bhagwant Kishore Joshi, has observed that the High Court had set aside the conviction on the ground that the first state of the investigation was contrary to the provisions of the Prevention of Corruption Act. In the appeal by the State, the contention raised on behalf of the respondent was that whenever there is consistent disregard of the provisions of the Code of Criminal Procedure in the matter of investigation it must be held almost in all cases that it has prejudiced the accused in the matter of trial, for ostensive it would enable a police officer below the rank of Deputy Superintendent of Police to make an investigation free from the statutory safeguards designed to prevent the abuse of police power to secure the necessary information and thereafter to take the requisite permission of the Magistrate and then to shape his investigation to achieve the desired result or to implement his scheme.

The Supreme Court further held that this practice, if it exists, must be condemned. The question, however, is: does this infringement of the statutory provisions of the Act in the matter of investigation, without more, invalidate the trial? If the Court were to accept the broad proposition advanced on behalf of the respondent, it would be disregarding the provisions of Section 535 of the Code of Criminal Procedure, 1898 ignoring an honest body of compelling evidence on the basis of the dereliction of duty by the police. The question is not whether in investigating an offence the police have disregarded the provisions of Act, but whether the accused has been prejudiced by such disregard in the matter of his defence at the trial.

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386 AIR 1964 SC 110.
It is, therefore, necessary for the accused to throw a reasonable doubt that the prosecution evidence is such that it must have been manipulated or shaped by reason of the irregularity in the matter of investigation, or that he was prevented by reason of such irregularity from putting forward his defence or adducing evidence in support thereof. But where the prosecution evidence has been held to be true and where the accused had full say in the matter, the conviction cannot obviously be set aside on the ground of some irregularity or illegality in the matter of investigation, there must be sufficient nexus either established or probabilised, between the conviction and the irregularity in the investigation.

**Manu Sharma’s Case**

On August 3, 1999, Delhi police filed the charge sheet in the Court of Metropolitan Magistrate, wherein Siddharth Vashisht, alias Manu Sharma, was named the main accused and charged under Sections 302 (murder), 201 (destruction of evidence), 120(b) (criminal conspiracy), and 212 (harbouring suspects) of the Indian Penal Code; and Sections 27, 54 and 59 of the Arms Act. While other accused, like Vikas Yadav, Coca-Cola Company officials Alok Khanna and Amardeep Singh Gill (destroying evidence of the case and conspiracy); Shyam Sunder Sharma, Amit Jhingan, Yograj Singh, Harvinder Chopra, Vikas Gill, Raja Chopra, Ravinder Krishan Sudan and Dhanraj, were all charged variously under Sections 120(b), 302, 201 and 212 of the Indian Penal Code (for giving shelter to the accused and destroying evidence).³⁸⁷

Manu Sharma gave a statement to the Police, which was taped, in which he admits shooting Jessica Lall. “The idea at that time was to shoot in challenge. It was embarrassing to hear that even if I paid a thousand bucks I would not get a sip of drink”. This audiotape was obtained and aired by the TV channel NDTV, but it does not constitute legal testimony. Subsequently, however, the confession was retracted, and a not guilty plea was entered in the trial.

³⁸⁷ http://jurisonline.com
Manu Sharma is the son of one of the leading politicians in the state of Haryana, Venod Sharma, who belongs to the Congress Party. Earlier a minister in the National Cabinet, Venod Sharma was a minister in the Haryana government at the time the trial judgement was announced. Subsequently, a sting operation by the newsmagazine Tehelka exposed how Venod Sharma paid bribes to win over key witnesses.

The Jessica Lall murder case went up for trial in August 1999, with Manu charged with murder and his friends charged with related crimes such as destroying evidence and sheltering criminal suspects. Four of the witnesses who had initially said they had seen the murder happen eventually turned hostile. Shayan Munshi, a model and friend who was serving drinks beside Jessica Lall, changed his story completely; as for earlier testimony recorded with the police, he said that the writing was in Hindi, a language he was not familiar with, and it should be repudiated. Karan Rajput and Shivdas Yadav also had not seen anything, while Parikshit Sagar said he had left the place before the incident. In a conversation with the sister of Jessica, Karan Rajput is alleged to have played a tape-recording discussing with some friends how Venod Sharma’s people had “won over” several witnesses already. Also, it appears that the cartridges used in the murder were altered. Although the gun was never recovered, these cartridges were for some reason sent for forensic evaluation, where it turned out that they had been fired from different weapons. This led to a further weakening of the prosecution case.388

Shayan Munshi is the son of a well-known ophthalmologist in Kolkata, where he studied at the reputed Don Bosco School. An aspiring model and an acquaintance of Jessica Lal’s, Shayan Munshi was serving behind the bar with Jessica when the shooting occurred. In his initial statement he said unequivocally that Manu Sharma had fired the gun twice, once into the air, and once at Jessica. This testimony was recorded by the police in their First Information Report (FIR), which Shayan signed. However, during the trial he

388 Ibid.
claimed that he did not know Hindi and that he was not aware of what he had signed. At the trial, Shayan said that Manu Sharma had fired only once and that also into the air. He described Manu’s clothes carefully. Subsequently, he said that another bullet, fired by someone else, was the one to hit Jessica. About this man’s dress, he was evasive, and saying only that he was wearing a “light-coloured” shirt. This led to the “two-gun theory” - with the forensic report said that the bullets were fired from different weapons. Following the acquittal, there was intense pressure on Shayan Munshi, who was already launched on a successful modeling career. He was involved in hosting a cooking show on TV and other activity. On May 13, 2006, he was detained at Calcutta airport as he was about to board a flight for Bangkok, along with his wife Peeya Rai Chowdhary.

After extensive hearings with nearly a hundred witnesses, a Delhi trial Court headed by Additional Sessions Judge S. L. Bhayana, acquitted 9 accused in Jessica Lall Murder case, on February 21, 2006. Those acquitted were, Manu Sharma, Vikas Yadav, Manu’s uncle Shyam Sundar Sharma, Amardeep Singh Gill and Alok Khanna, both former executives of a multinational soft drinks company, cricketer Yuvraj Singh’s father Yograj Singh, Harvinder Chopra, Vikas Gill and Raja Chopra. In all, of the 12 accused, two, Ravinder Kishan Sudan and Dhanraj were absconding while the trial Court discharged Amit Jhingan at the time of framing of charges.

The ground for the acquittals according to the Court was one, “The police failed to recover the weapon which was used to fire at Jessica Lal as well as prove their theory that the two cartridges, emptied shells of which were recovered from the spot, were fired from one weapon.; “all three eyewitnesses listed by the police in its charge sheet, namely, Shiv Lal Yadav, an electrician at Tamarind Court, actor Shyan Munshi and Karan Rajput, a visitor at the restaurant that night, turning hostile during the trial”, in addition to this the police also failed to establish a complete chain of the circumstances leading to the incident and trace the murder weapon which according to it, was used in the crime. Throughout his 179-page case verdict, Additional
Sessions Judge (ASJ) S L Bhayana said that police sought to ‘create’ and ‘introduce false evidence’ against Sharma. The judgment repeatedly hints that the prosecution may have attempted, from the very beginning, to fabricate the evidence and present false witnesses, so as to render the case indefensible. In conclusion, he agrees with “the counsel for the accused that on April 30, 1999 the police had decided to frame the accused,” read the judgment. The judgment faulted the police for deciding on the accused first and then collecting evidence against him, instead of letting the evidence lead them to the murderer. Since the prosecution had failed to establish guilt beyond doubt, all nine accused were acquitted.

After the verdict many experts pointed fingers at the flaws in the Indian Evidence Act of 1872, especially Sections 25-29. Section 25 provides, “Confession to police officer not to be proved”. No confession made to a police officer shall be proved as against a person accused of any offence. Section 26 states that “Confession by accused while in custody of police not to be proved against him”. No confession made by any person while he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate, shall be proved as against such person. Though, the clauses were initially added for the protection of the defendants from giving confession under police torture, it was later exploited by many a guilty defendants as well, as in this case, where many a witnesses withdrew their testimony, after first giving it to the police during interrogation. On April 18, 2006, the a division bench comprising Justice Manmohan Saran and Justice J. M. Malik released Manu Sharma on Rs 1 Lakh (USD 2000) bail. They also pulled up the Delhi Police and urged them to ensure minimal delays in the re-trial process.

On March 25, 2006, the Delhi High Court admitted an appeal by the police against the Jessica Lall murder acquittals, issuing bailable warrants against prime accused Manu Sharma and eight others and restraining them from leaving the country. This was not a re-trial, but merely an appeal based

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389 On March 25, 2006, the Delhi High Court admitted an appeal.
on evidence already marshalled in the lower Court. On December 15, 2006, the High Court bench of Justice R.S. Sodhi and Justice P.K. Bhasin, in a 61 page judgement held Manu Sharma guilty based on existing evidence. The judgement said that the lower Court had been lax in not considering the testimony of witnesses such as Bina Ramani and Deepak Bhojwani: “With very great respect to the learned judge, we point out that this manner of testing the credibility of the witness is hardly a rule of appreciation of evidence... Obviously, this reflects total lack of application of mind and suggests a hasty approach towards securing a particular end, namely the acquittal”. In particular, the key witness Shyan Munshi came in for serious criticism, and may be facing criminal proceedings. The judgement says, of his repudiating his own FIR: “[Munshi] is now claiming that the said statement was recorded in Hindi while he had narrated the whole story in English as he did not know Hindi at all... We do not find this explanation of Munshi to be convincing”. Regarding Munshi’s testimony about the two-gun theory, the judgement says: “In Court he has taken a somersault and came out with a version that there were two gentlemen at the bar counter. We have no manner of doubt that on this aspect he is telling a complete lie. “All 32 witnesses who turned hostile have been asked to appear before the Court to explain why they should not be tried for perjury. On December 20, 2006, Manu Sharma was awarded life imprisonment. The other accused, Vikas Yadav and Amar Deep Singh Gill, were awarded four years of imprisonment for destroying evidence. On the 19th April 2010, the Supreme Court of India has approved the life sentence for the guilty. The two judge bench upholding the judgement of the Delhi High Court stated that, “The prosecution has proved beyond reasonable doubt the presence of Manu Sharma at the site of the offence”. Senior advocate Ram Jethmalani, appearing for Manu Sharma alias Siddharth Vasisth, in the Supreme Court, assailed the High Court verdict which had set aside the trial Court judgement acquitting the accused. He alleged that the High Court Bench had made up its mind to hold Sharma guilty. Solicitor General Gopal Subramanium submitted that there was sufficient evidence
against Manu Sharma for his involvement in the crime. Finally the accused has been convicted for life imprisonment by the Supreme Court.

Investigation into the Kanishka Bombing 1985

The arrest of three Sikh terrorists in Vancouver, Canada for their alleged role in the bombing of an Air India (AI) flight on June 23, 1985 marks a crucial stage in the 15-year investigation carried out by the Canadian authorities in cooperation with the Indian government into the incident. The AI flight 182 Kanishka on June 23, 1985 from Toronto with a brief stopover at Montreal was en route to New Delhi when it exploded off the coast of Ireland while it was preparing to land at the Heathrow airport. The mid-air explosion which killed all the 329 people on board is widely considered to be one of the world’s deadliest acts of terrorism and civilian aviation sabotage. Investigations reveal that it was one of two related bomb explosions allegedly carried out by Sikh terrorists. The other explosion occurred at the Narita airport in Tokyo killing two people.390

The long drawn-out investigation, still in progress, into the AI flight bombing has been carried out by the Royal Canadian Mounted Police (RCMP) in conjunction with police authorities in India, North America, Europe and Asia.391 The RCMP arrested another unidentified suspect on October 29, 2000 and released him on bail after interrogating him for nearly 24 hours. The two terrorists arrested on October 27 identified as Ripudaman Singh Malik and Ajaib Singh Bagri have been remanded to judicial custody in Vancouver. Two other terrorist, Talwinder Singh Parmar and Inderjit Singh Reyat have been declared as co-conspirators in both the incidents. Talwinder Singh Parmar, a Babbar Khalsa terrorist was killed by the Punjab Police in 1992. Inderjit Singh Reyat was sentenced in 1991 to serve a 10-year imprisonment for manufacturing the bomb intended to blow-up the AI flight. Both Ripudaman

390 http://jurisonline.com
391 After a 15-year probe, the RCMP on October 27, 2000 arrested two Sikh terrorists based in Canada for their alleged role in the incident.
Singh Malik and Ajaib Singh Bagri been charged on eight counts including criminal conspiracy and fist-degree murder.

Canadian authorities after protracted investigations have made a preliminary ascertainment to the effect that the flight was destroyed through a bomb that passed through the security-check at the Vancouver airport onto a Canadian Pacific airline. The bomb then found its way to the AI flight Kanishka in Toronto. Indications are that an unidentified suspect brought air tickets in Vancouver that allowed the two bomb-laden suitcases to pass through airport security. No passenger boarded the flight with these tickets. One of the two suitcases was transferred in Toronto to AI flight 182. The other suitcase was to have been transferred to an AI flight from Japan to India. But, the bomb exploded prematurely at the Narita airport in Tokyo killing two baggage handlers. The unidentified suspect was arrested in Canada as early as November 1985 but was released due to lack of evidence. Inderjit Singh Reyat was found guilty of manslaughter and making explosive substances among other charges and received a 10-years sentence and a firearm prohibition of 5 years for his role in the Narita airport incident.

The Canadian authorities, in the aftermath of the bombing, suspected Sikh terrorists of planting the bombs in revenge for ‘Operation Blue Star’, the 1984 security forces raid aimed at flushing out terrorists from the Golden temple in Amritsar. According to an RCMP spokesperson, the bombings were planned and organised in Canada. The Canadian probe, the longest and one of the costliest - the RCMP is reported to have already incurred an expenditure of 30 million Canadian dollars - was also a complex investigative process as it had too many people to interrogate in various countries. Moreover, in the initial phase, the authorities were unsure about the place or origin of the bombs - Canada, India or elsewhere. In the light of the evidence gathered so far and the recent arrests, the RCMP is in the process of planning arrests of at least four other suspects. The RCMP also believes that the release of a third suspect-although unidentified, sources claim that it was Hardiyal Singh Johal, a 'prominent' member of the Sikh community in British Columbia- would not
be a setback to the ongoing investigation process and the formal charging of
the suspects in the British Columbia Supreme Court.

Immediately after the 1985 bombing of the Kanishka, the Indian
government had instituted the Justice B.N Kirpal Commission of Inquiry. The
main agenda of the Kirpal Commission was to explore whether AI flight
182 had crashed due to an explosion, a machine failure, or human error. It
arrived at a clear conclusion that the AI flight had exploded in mid-air and had
fallen into the ocean because of a bomb which had planted in Canada. The
Central Bureau of Investigation (CBI), which had assisted the RCMP in its
probe also constituted a investigation process. The CBI findings established
that the bombing was the handiwork of Babbar Khalsa International (BKI), a
terrorist outfit in Punjab and the mastermind was Talwinder Singh Parmar, a
frontranking leader of the same outfit. Since the main area of investigation is
in Canada, the CBI was largely associated in collecting information,
documents and evidence sought by the RCMP.

Official sources in India have reported that the while the Indian
government views the arrests of the terrorists as a positive development, it
would wait for the completion of the probe by the Canadian authorities before
deciding on any future course of action. Reports also indicate that the
government has so far not made any official request for the extradition of the
arrested suspects as the offence was committed in Canada and the trial is also
due to take place in the same country. Moreover, there are no proceedings
pending against the arrested terrorists in India. Now the Canadian govt.
promised to pay the compensation to the victim.

8. Power of the Magistrate under Section 156(3)

Though an officer-in-charge of a police station is armed with a statutory
right and power to investigate a cognizable offence without the permission of
Magistrate, but he on account of number of reasons, often does not choose to
investigate the report of each and every cognizable offence. Hence, the

392 Ibid.
framers of the Code of Criminal Procedure in their wisdom empowered a Magistrate, who is authorised to take cognizance of an offence to make order to investigate a cognizable offence. Under the provisions of Section 156, Code of Criminal Procedure, party should be informed about findings of investigation.\textsuperscript{393}

The Allahabad High Court in \textit{Bholanath v. State},\textsuperscript{394} held that under Section 156 Criminal Procedure Code a police officer-in-charge of a police station can investigate only those cases which relate to the local area. Under this Section, the police officer is not empowered to investigate cases which do not relate to his circle. The detailed facts, as stated earlier, would inevitably show that there was an anxiety on the part of the Madurantakam police to clutch at jurisdiction, which they did not possess.\textsuperscript{395}

Any magistrate empowered under Section 390 Criminal Procedure Code may order an investigation and the Police Officer can start investigation under Section 156 (3) Criminal Procedure Code The Session Judge has, however, no such right (11 CrLJ 330, \textit{King v. Ali}). Now the question arises whether this power of magistrate is to be exercised before taking cognizance of the case or afterwards only. The words of Section 156(3) Criminal Procedure Code are silent on this point. According to Section 190 Criminal Procedure Code a magistrate takes the cognizance of the case upon receiving a complaint of facts which constitute an offence. Then he is to proceed with the complaint by examination of the complainant under Section 200 Criminal Procedure Code and then by proceeding under Sections 202 to 204 Criminal Procedure Code. The magistrate can order investigating under Section 156 (3) on a private complainant even if cognizance by him is barred under Section 195 (1) (b) (ii).

Whenever a magistrate directs an investigation on a ‘complaint’, the police have to register a cognizable case on that complaint treating the same as the FIR and comply with the requirements of the police Rules. Therefore,

\textsuperscript{393} \textit{Saroja v. State of T.N.}, 1991 CrLJ 755 at 756 (Mad.).  
\textsuperscript{394} 1956 All LJ 700.  
the direction of a Magistrate asking the police to “register a case” makes an order of investigation under Section 156 (3) cannot be said to be legally unsustainable. Indeed, even if a Magistrate does not pass a direction to register a case, still in view of the provisions of Section 156(1) of the Code which empowers the police to investigate into a cognizable ‘case’ and the rules framed under the Police Act, it is duty bound to formally register a case and then investigate into the same. The provisions of the Code, therefore, does not in any way stand in the way of Magistrate to direct the police to register a case at the police station and then investigate into the same. When an order for investigation under Section 156 (3) of the Code is to be made the proper direction to the police would be to register a case at the police station treating the complaint as the First Information Report and investigate into the same.396

Non-production of necessary evidence and material witness resulted in acquittal of accused. It reflects negligence on part of investigation agency and is depreciable. Court requested Secretary to Government to direct heads of police department and agencies in change of police training to see that degree of professionalism and responsibility is ensured in respect of investigation of all criminal cases. Investigating agency also directed to be informed that they would be personally held responsible and accountable if requisite evidence is not forthcoming before Court.397

Quashing of two complaints is in respect of same offence. Investigation already commenced in respect of first one but Second complaint containing additional allegations, which were not in first one, can be legally filed in Court. Registration of Second F.I.R. by police does not amount to abuse of process of law.398 Case already instituted on basis of first complaint. Order directing second investigation during pendency of first investigation is not proper. Criminal investigation is not made in scientific manner. State

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396 Madhu Bala v. Suresh Kumar and another, 1997 CrLJ 3757 (SC).
397 State v. Krishna & another, 1998 CrLJ 165 (Kant).
398 Manak Chand v. State, 1998 CrLJ 1950 (Raj.)
Government directed to constitute a committee to examine various aspects and submit concrete suggestion for implementing scheme for scientific investigation. High Court also expressed desirability to videograph the entire investigation. Police at place of first informant would have territorial jurisdiction to register and investigate alleged offence of cheating.\textsuperscript{399} Court should refrain from interfering with the investigation unless it is done contrary to the procedural safeguards and by violation of the rights of an accused.

Police submitted a report under Section 169 Criminal Procedure Code that no case was made out against accused. Magistrate has no power to direct to submit a charge-sheet. It is, however, open to Magistrate to order further enquiry, but cannot direct that police must submit charge-sheet.\textsuperscript{400} In complaint case Magistrate can direct the police to register FIR and investigate in the following circumstances:

(i) Where some ‘investigation’ is required which is of a nature that is not possible for the private complainant and which can only be done by the police upon whom statute has conferred the powers essential for investigation,

(ii) Where the full detail, of the accused are not known to the complainant and the same can be determined only as a result of investigation, or

(iii) Where recovery of abducted person or stolen property is required to be made by conducting raids or searches of suspected places or persons, or

(iv) Where for the purpose of launching a successful prosecution of the accused, evidences is required to be collected and preserved.

To illustrate by example, cases may be visualized where for production before Court at the trial (a) Sample of blood soaked

\textsuperscript{399} Vijayander Kumar v. State of Rajasthan, 1999 CrLJ 1849 (Raj.)
\textsuperscript{400} M.C. Abraham v. State of Maharashtra, 2003(1) Crimes 302 (SC)
soil is to be taken and kept sealed for fixing the place of incident; or (b) recovery of case property is to be made and kept sealed; or (c) recovery under Section 27 of the Evidence Act; or (d) preparation of inquest report; or (e) witnesses are not known and have to be found out or discovered through the process of investigation.

(v) Where the complainant is in possession of the complete details of all the accused as well as the witness who have to be examined and neither recovery is needed nor any such material evidence is required to be collected which can be done only by the police no “investigation” would normally be required and the procedure of complaint case should be adopted.\(^401\)

Criminal complaint regarding cognizable offence filed before Magistrate. Magistrate without taking cognizance can direct the police under Section 156 (3) Criminal Procedure Code to investigate and register FIR. Even if there in no direction of Magistrate, it is duty of police to register FIR, if complaint disclosed cognizable offence.\(^402\)

### 8.1 Scope of Magistrate’s Power under Section 156(3)

When a complaint is instituted before a Magistrate for an offence instead of taking cognizance on the complaint under Section 190(1)(a), Code of Criminal Procedure, the Magistrate can ask for investigation under Section 156(3), Code of Criminal Procedure.\(^403\)

In *S.N. Sharma v. Bipen Kumari*, their Lordships of the Supreme Court observed that the power of police to investigate any cognizable offence is uncontrolled by the Magistrate, but it is only in cases where the police decided not to investigate the case, the Magistrate can intervene either direct an investigation, or in alternative himself proceed or depute a Magistrate.

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\(^{403}\) *Dayud Bhai Hassan Ali v. Abbas Bhai*, 1972 CrLJ 970.


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subordinate to him to proceed to enquire into the case. The same view was taken by the Allahabad High Court in *Mahmood Butt v. State.*

Under Section 156(3), Code of Criminal Procedure, only the Magistrate and not the Sessions Judge is empowered to order for investigation of a case. But once the Magistrate gives such a direction and the police takes cognizance of the offence and starts investigation, the Magistrate having directed such investigation cannot tinker with or hamper with investigation started by the police by a subsequent order of recall of his order under Section 156(3), Code of Criminal Procedure.

The power conferred upon the Magistrate under Section 156(3), Code of Criminal Procedure can be exercised by the Magistrate even after submission of a final report by the investigating officer. The Magistrate can direct investigation under Section 156(3), Code of Criminal Procedure, though offences, shown in complaint are exclusively triable by the Court of Sessions. But Magistrate is not authorised to direct investigation in such cases under Section 202(1), Code of Criminal Procedure. Proviso 2, Section 202, Code of Criminal Procedure would bar his discretion.

The power under Section 156(3) of the Code is to be exercised judicially. In case, the Chief Judicial Magistrate thinks that there is no reason to order any investigation on the facts which are alleged in an application although the facts alleged disclose a cognizable offence, he is bound to give reasons for his conclusion. He is not supposed to pass just a cryptic and non-speaking order that he was of the view that the applicants were free to lodge complaint if they so desired. The order, in the present case, does not give any reason which persuaded the Chief Judicial Magistrate, Varanasi, not to direct

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405 1973 CrLJ 764.
the Police Officers concerned to register the case on the basis of the application of the applicants.410

Under Section 156(3), Code of Criminal Procedure, Magistrate is empowered to order for police investigation on a complaint at a pre-cognizance stage. The Magistrate can also direct a police officer to register a case against the accused.411

The question “whether a Magistrate besides directing Investigation in a complaint case at pre-cognizance under Section 156(3) Code of Criminal Procedure, 1973 can also direct a police officer to register a case against the accused”, was raised before the Punjab and Haryana High Court. Answering the said question in affirmative the High Court has held that:

Section 154 of the Code is mandatory and the Police Officer has to act on the information received with respect to the commission of a cognizable offence. In case he does not act on that Information, sub-Section (3) gives the aggrieved party a right to give in writing the information to the Superintendent of Police and on that basis, investigation has to be carried out. Whenever information of a cognizable offence is given to the police, a case has to be registered. Adjudged from that angle, even if the Magistrate had not ordered for registration of a case, it was the duty of the Police, who was primarily concerned with the matter of investigation to register the case and proceed with the investigation. The order asking the registration of the case may at best be described to be surplusage, but will not vitiate the order of Magistrate.

Government in exercise of their executive powers can authorise any superior police officer to investigate a case, and such directions can be issued by the higher officer to his subordinate officer in the police department. When any police officer referred to in Section 36 of the Code conducts the investigation that cannot be called in question as without authority. In

appropriate cases the High Court can issue directions under Article 226 of the Constitution for causing investigation to be made by such officers because such officers have the power to investigate. But such power of the Government or the higher officer in the department is quite different from the scope contained in Section 156(3) of the Code. There is no provision in the Code or in any other statute which confers power on a Magistrate to direct any officer other than an officer in-charge of a police station to conduct investigation. Therefore order of Magistrate forwarding a complaint against police personnel including DIG of Police filed before him to the Inspector General of Police to conduct investigation in exercise of powers under Section 156 is held without jurisdiction and quashed.412

Under Section 156(3), Code of Criminal Procedure, a Magistrate is empowered to direct police to make investigation, even when District Magistrate had ordered magisterial investigation.413 The question for determination before the Allahabad High Court was “whether a Magistrate under Section 156(3), Code of Criminal Procedure, 1973 is empowered to direct police only to investigate a case” or whether he can direct the police first to register a case against a person and investigate it.

Answering the said question the said High Court has held that - It has not been disputed before me that the learned Magistrate was competent in law to issue a direction to the local police to make an investigation in exercise of his power under Section 156(3), Criminal Procedure Code. However, exception has been taken to the direction made by the learned Magistrate for registration of the case for the purpose of such investigation. It is common knowledge that before a case is investigated by the police, it has to be registered for statistical and other allied purposes. Registration of a case is at best a ministerial act of the police and the actual investigation, which is made by the police on a direction issued by the competent Magistrate, is done in pursuance of the provisions of Section 156(3), Criminal Procedure Code.

413 Mandhala Samrat v. State of U.P., 1990 ACC 1 (Hindi Section) (All.).
Therefore, a direction to the police for registration of the case in addition to the direction for investigation under Section 156(3) cannot be said to vitiate the order of investigation passed by the competent Magistrate.\footnote{Chhitaria v. State of U.P., 1994(1) Crimes 1 at 2 (All.).}

In *Mandhata Sanvat v. State of U.P. & Others*,\footnote{1988 ACC 1 (Hindi Section): (Approved and affirmed in Chhitari v. State of U.P., 1994(1) Crimes 1 at 2 (All.).} the learned Chief Judicial Magistrate on a complaint made under Section 156(3) Criminal Procedure Code had found that a prima facie case for investigation was made out and, therefore, he directed the Station Officer Kotwall, to register a case for Investigation and submit a report after investigation in the light of the allegation made in the complaint. It was clearly laid down in this reported case that such a direction simply meant that the case had to be investigated in the same manner was required under Section 156(1), Criminal Procedure Code. Hence, no illegality was found in such a direction.

The police has to investigate the offence in the same manner as if the offence was actually reported to the police under Section 154(1), Criminal Procedure Code after a close scrutiny of the provisions contained in Chapter XII of the Code of Criminal Procedure it could be said that while investigating into an offence under the orders of the Magistrate under Section 156(3), Criminal Procedure Code, the officer in-charge of the Police Station was obliged to register the case in the book meant for the same. In our opinion ( Judges of the Allahabad High Court), even if there was no direction of the Magistrate to register the case, the officer in-charge of the police station is under legal obligation to register the case for the purpose of investigation in the same manner as if it was reported to him under Section 154(1), Criminal Procedure Code.\footnote{Suraj Mai v. State of U.P., 1993 ACC 81 (D.B.): Chhitaria v. State of U.P., 1993 ACC 764.}

When an application under Section 156(3) Criminal Procedure Code is presented to a Magistrate for registration of the case by the police, then Magistrate has to apply his mind for satisfying himself that the facts alleged in

\footnote{Chhitaria v. State of U.P., 1994(1) Crimes 1 at 2 (All.).}
\footnote{1988 ACC 1 (Hindi Section): (Approved and affirmed in Chhitari v. State of U.P., 1994(1) Crimes 1 at 2 (All.).}
the application disclose cognizable offences and they (facts) require investigation by the police. At this stage Magistrate does not take cognizance of the case. Further, while investigating into an offence under Section 156(1), Criminal Procedure Code under the orders of Magistrate under Section 156(3), Criminal Procedure Code the police does not act as delegate of the Magistrate. The investigation, thus, carried out is not an investigation by or on behalf of the Magistrate.

Whenever a Magistrate directs an investigation on a ‘complaint’ the police has to register a cognizable case on that complaint treating the same as the FIR and comply with the requirements of the Rules. It, therefore, passes our comprehension as to how the direction of a Magistrate asking the police to ‘register a case’ makes an order of Investigation under Section 156(3) legally unsustainable. Indeed, even if a Magistrate does not pass a direction to register a case, still in view of the provisions of Section 156(1) of the Code which empowers the Police to investigate into a cognizable “case” and the Rules framed under the Indian Police Act. 1861 it (the police) is duty bound to formally register a case and then investigate into the same. The provisions of the Code, therefore, does not in any way stand in the way of a Magistrate to direct the police to register a case at the police station and then investigate into the same. In our opinion when an order for investigation under Section 156(3) of the Code is to be made the proper direction to the Police would be ‘to register a case at the police station treating the complaint as the First Information Report and investigate into the same.\(^\text{417}\)

The question arises that when a Magistrate is approached by a complainant with an application praying for a direction to the police under Section 156(3) to register and investigate an alleged cognizable offence, why should he:

\(^{417}\) Madhu Bala v. Suresh Kumar, 1997 (2) SCC (Cri) 146: AIR 1997 SC 3104.
(a) grant the relief of registration of a case and its investigation by the police under Section 156(3) Criminal Procedure Code and when should he

(b) treat the application as a complaint and follow the procedure of Chapter XV of Criminal Procedure Code.

The scheme of Criminal Procedure Code and the prevailing circumstances require that the option to direct the registration of the case and its investigation by the police should be exercised where some “investigation” is required, which is of a nature that is not possible for the private complainant, and which can only be done by the police upon whom statute has conferred the powers essential for investigation, for example:

1) where the full details of the accused are not known to the complainant and the same can be determined only as a result of investigation, or

2) where recovery of abducted person or stolen property is required to be made by conducting raids or searches of suspected places or persons, or

3) where for the purpose of launching a successful prosecution of the accused evidence is required to be collected and preserved. To illustrate by example cases may be visualised where for production before Court at the trial (a) sample of blood soaked soil is to be taken and kept sealed for fixing the place of incident; or (b) recovery of case property is to be made and kept sealed; or (c) recovery under Section 27 of the Evidence Act; or (d) preparation of inquest report; or (e) witnesses are not known and have to be found out or discovered through the process of investigation.

But where the complainant is in possession of the complete details of all the accused as well as the witnesses who have to be examined and neither recovery is needed nor any such material evidence is required to be collected
which can be done only by the police, no “investigation” would normally be required and the procedure of complaint case should be adopted. The facts of the present case given below serve as an example. It must be kept in mind that adding unnecessary cases to the diary of the police would impair their efficiency in respect of cases genuinely requiring Investigation. Besides even after taking cognizance and proceeding under Chapter XV the Magistrate can still under Section 202 (1) Criminal Procedure Code order Investigation, even though of a limited nature.418

8.2 Comparison of the Provisions of Sections 154 (3) and 156(3)

A comparison of Sections 154(3) and 156(3) of the Code will also be relevant for appreciating and resolving the controversy in the present case. The legislature under Section 154(3) of the Code has given power to the Superintendent of Police to order investigation on being approached by a person aggrieved by refusal to record the information. The Superintendent of Police on being satisfied that information disclosed the commission of cognizable offence could investigate into the offence himself or could depute any police officer. Under Section 156(3) the only thing mentioned is that any Magistrate empowered under Section 190, Criminal Procedure Code can direct investigation which means that a Magistrate should be competent to take cognizance of the offence under Section 190 and if he comes across any information disclosing commission of a cognizable offence, he could direct investigation. The information may reach him in any manner, Including through a person aggrieved by refusal on the part of an officer in-charge of the police station to record the Information as in the present case. The power of the Magistrate to order investigation under Section 156(3) is thus much wider than the Superintendent of Police contemplated under Section 154(3) for directing Investigation. But, in all such cases, recording of Information in the book kept in the police station or registration of the case is necessary step for investigation of the case under Sections 156(3) and 157, Criminal Procedure

Code when the investigation is directed either under Sections 154(3) or 156(3) the informant remains the same, the report or information comes to the officer In-charge of the police station with the command of the higher authority or the learned Magistrate to compel such officer to investigate Into the offence. The legislative intent behind both the aforesaid provisions appears to be to provide protection to the public and a special care in respect of the victim of cognizable offences and not to leave the investigation of such offences at the whim and sweet-will of the officer in-charge of the police station.419

8.3 Can the Police re-open Investigation after the Report under Section 173 Criminal Procedure Code in Challenging the Accused

This is permitted as laid in Section 173(8) Criminal Procedure Code, “Nothing in this Section shall be deemed to preclude further investigation in respect of an offence after a report under sub-Section (2) has been forwarded to the magistrate and where upon such investigation, the officer-in-charge of the Police Station obtains further evidence, oral or documentary, he shall forward to the magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of Sub-Section (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under Sub-Section (2)”.

If fresh facts come to light, police can look into these to arrive at truth. Fresh charge-sheet can be then filed. In it was held the police have the right to reopen the investigation even after submission of charge sheet under Section 173 CrPC if fresh facts come to light. Such “fresh investigation can be made even after commitment proceedings had commenced and even after commitment proceeding had been terminated” and no prior permission of Court were necessary.420 Similarly it was held that the number of investigations into a case is not limited by law and when one has been completed, another may be begun on further or fresh information received.

420 Prosecuting Inspector Kenojhar v. Mina Ketan Mahato, 1952 CrLJ 1635 (Orissa).
Even after sending report under Section 173 Criminal Procedure Code the officer-in-charge of Police Station, a Suprident of Police can order for sending charge-sheet against the accused Court as held in 1966 Patna 268. It was further held that there is no bar to the investigation by the Police after the submission of a final report under Section 173 Criminal Procedure Code.

Police is authorized under Section 173 (8) to further investigation and submit fresh challan if fresh and further oral or documentary evidence comes to light. The Court seized of the case, will be informed about the reopening of the investigation by the Police. In Deepak Dwarka Dass Patel,\textsuperscript{421} Gujarat High Court held that it was not necessary that there should be a fresh investigation and discovery of new material for lodging an additional charge sheet in the case. If the very material is misunderstood by the Police Station Officer and if he has received proper light from the superiors he can certainly file an additional charge-sheet though strictly speaking there may be any further investigation and collection of new material. Investigation does not come to stands till after challan under Section 173.

Even after filing a charge-sheet Investigation Officer or Officer-in-charge may undertake a further investigation. If he does so, further evidence collected by him shall be forwarded to the magistrate along with a further report. But the informant or accused cannot claim as of right a direction from a Court commanding further investigation. Party cannot choose investigation agency as C.B.I, Court in writ jurisdiction can lay responsibility of investigation on C.B.I.

The Court cannot prohibit further investigation under Section 173 (8) Criminal Procedure Code as police enjoy unbridled powers of investigation. In the case of \textit{C. Lohithakshan v. State of Kerala},\textsuperscript{422} Police wanted to send material to forensic laboratory under Section 173 (8), Court granted it and

\textsuperscript{421} 1989 CrLJ 614.

\textsuperscript{422} 1980 CrLJ 29.
said it cannot prohibit further investigation. In Ram Lai Narang’s case,\textsuperscript{423} it was observed “the police have a statutory right and duty to investigate these rights are not circumscribed by any person of superintendence or interference by the Magistrate...it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation”.

There are however, legal disabilities as contained in Article 20 (2) of the Constitution of India and Section 300 Criminal Procedure Code indirectly barring fresh investigation on the same facts. Court has no power to order reinvestigation after challan, on its own initiative. It must try case as put up by police. The Court cannot order police to reinvestigate a case even after a challan has been sent up. It was held in Jitendra Nath,\textsuperscript{424} that sub-Section (8) of S. 173 of the new Code; which is a new one has not been introduced for the purpose, of filing up lacuna if any in the prosecution case and for the purpose to empower the magistrate to order further investigation by the police. In Emp.v. All,\textsuperscript{425} the police had challaned an accused. The accused moved the D.M. that the case was false against him and should be withdrawn. D.M. directed the police to make further investigation. It was held on revision against the order that Police cannot hold further investigation on such an order and especially with a view to find evidence in favour of the accused.

\textbf{8.4 Is the Police Empowered to Investigate, Arrest and Finally Send a Charge Sheet on Orders under Section 202 Criminal Procedure Code for Report or is it Merely to Report}

The answer to these questions warrants a detailed discussion of law as there is conflict of rulings on this point. Under Section 202 Criminal Procedure Code a magistrate after taking cognizance of case and recording a statement of the complainant can direct an investigation to be made by a Police officer for purposes of ascertaining whether or not there is sufficient ground for proceeding against the accused named in the complaint.

\begin{itemize}
\item \textsuperscript{423} AIR 1979 SC 1791.
\item \textsuperscript{424} 1976 CrLJ 1296.
\item \textsuperscript{425} 1932 Lah 611.
\end{itemize}
It has been held in the following cases that the police can only make a report as desired under Section 202 Criminal Procedure Code and cannot arrest or send charge sheet itself.

(a) *Isaf Nasya v. Emp.*,\(^{426}\) in this case complaint was filed before D.M. Rungpore under Section 366 Indian Penal Code. After recording complainant's statement under Section 200 Criminal Procedure Code D.M. passed on the case for enquiry to police adding that in case of evidence, a charge sheet may be sent to the magistrate concerned. The police submitted a charge sheet as a result of an investigation. It was held that order of D.M. was illegal and that D.M. should pass appropriate orders under Sections 203 and 205 Criminal Procedure Code on the report of the Police (followed in 1949 Cal. 58 and 1952 CrLJ 552 (Cal)).

(b) This ruling at 'a' was followed by Bombay High Court in *Nur Mohd v. Emp.*,\(^{427}\) where it was held that the only action that police can take is to make a report the magistrate and has no power to arrest the accused or send him up for trial on a charge sheet.

(c) *Ulfat Khan v. Emperor*,\(^{428}\) Hon’ble Justice Jowala Parshad held that having once taken cognizance on a complaint the magistrate cannot act otherwise than under Section 200 to 203 Criminal Procedure Code and he can direct the Police to make enquiry under Section 202 (Criminal Procedure Code but he cannot direct the police to treat the complaint as F.I.R.).

There are, however, following rulings which support the proposition that police can exercise its powers of investigation, arrest and submission of charge sheet when ordered to make enquiry under Section 202 Criminal Procedure Code.

\(^{426}\) 1928 Cal. 24.
\(^{427}\) 1929 B 72.
\(^{428}\) 1928 Pat. 359.
(a) On a complaint to magistrate that certain persons had robbed the complainant of bottle of liquor and some cash, the magistrate recorded the statement of the complainant and ordered the police to take cognizance under Section 379 Indian Penal Code and make a quick enquiry and report by 08.02.22. The Police duly made the enquiries, arrested accused and sent him upon a charge sheet resulting in conviction of the accused. The Sessions Judge acquitted the accused on the ground that arrest was illegal. Govt, went in appeal and it was held by the D.B. that even if the order was made under Section 202 Criminal Procedure Code the Police had power to arrest the accused and send up a charge sheet as a magistrate’s order under Section 202 Criminal Procedure Code directing the police to enquire into a cognizable case does not debar the police from exercising their powers of arrest and investigation in regard to the same subject matter as of complaint Emp. v. BholaBhagat.\textsuperscript{429}

(b) It was held that police on receiving information in a complaint forwarded for enquiry under Section 202 CrPC can investigate under Section 156 Criminal Procedure Code, GopalNaik v. Alagirisami Naik.\textsuperscript{430}

(c) It was held that power given to the police by Section 156 Criminal Procedure Code is not affected when order to investigate under Section 202 Criminal Procedure Code is made and though it is not open to the magistrate when a complaint has been made to him, to direct the police to make a charge in the same case but it is open to Police to do so if they think proper. Rashid Ahmed v. Emp.\textsuperscript{431}

\textsuperscript{429} 1923 Pat. 547.
\textsuperscript{430} 1931 Mad. 770.
\textsuperscript{431} 1932 Lah. 579.
The power of the police to make the arrest, seize the articles and investigate under Section 156(1) Criminal Procedure Code can be exercised even when complaint is sent under Section 202 Criminal Procedure Code Mohammad Sultan Bhatt.\textsuperscript{322}

It, therefore, follows from the above that consensus of opinion of different High Courts is in favour of the view that an order under Section 202 Criminal Procedure Code does not debar police from exercising powers under Section 156 Criminal Procedure Code of investigation, arrest and challenging the accused. But in this connection the following observation will be useful.

1. The police should avoid registration of the case unless there is a clear and specific order of magistrate in this respect. It should also avoid arrest and submission of final charge sheet i.e. challan as far as possible, unless and until the accused is a desperate one and the fact warrant an immediate action. It is always better to send report.

2. The Magistrates who take cognizance of the complaint should also avoid sending complaints to police except for special reasons. In 1952 Cr.LJ. 1196 (VP) Kedar Ram vs. RamBharosa it was held “The Cr.P.C. gives the option of moving the police or filing a complaint. Often the former is more expeditious and by filing complaint the complainant incurs expenses, suffers delay, risks and disappearance of clues and traces and allows the witness to remain unexamined for some time. These are important in assessing the evidence. When complainant comes to the Court directly, even in a cognizable case, it is obvious that he does not choose to go to the police and should not be driven back to them unless it is in the public interest that the police should inquire or investigate”.

\textsuperscript{322} 1977 CLR 88 (J&K).
The Punjab High Court has ordered that only such cases and cases in which there were special reasons to do so shall be referred to the Police under Section 202 Criminal Procedure Code (CH. 1.B Rules and Orders of Punjab High Court Vol. III; P.R. 25.11). It is further laid down that Superintendent of Police shall decline to accept for references in which provisions of Section 202 Criminal Procedure Code and the instructions of High Court referred to above have not been strictly complied with.

8.5 Custodial Torture

For purposes of investigation, torture of accused persons to effect recoveries or to elicit confession should always be avoided. The easy method of resorting to torture in custody is condemnable. In D.G Vaghela, High Court held, “it must be recognized by all concerned that under our Constitution and in our system of administration of justice, torture in any form for the purpose of investigation into crime is not justified. It is, barbarous, in human which has got to be eliminated. To thwart this, healthy provisions in our Constitution are created in Articles 20, 21, 22 in respect of accused. Specific statutory provision is made in this behalf in Section 54 Criminal Procedure Code. It enjoins upon the Magistrate to examine the body of accused when he complains torture in custody. He can also order his medical examination without fee and with fee if he wants to get himself examined by a private doctor”.

In Sunil Batra v. Delhi Administration, Supreme Court held that Articles 14, 19 and 21 Constitution of India outlawed torture in India. Similarly when Police justified blinding of dacoits in custody in Bihar that it was welcomed by people, the Supreme Court in 1982 CrLJ 982 condemned it and ordered prosecution of Police Officers.

The investigation should always be completed as speedily as possible. Quick investigation is necessary in the interest of prosecution as otherwise

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433 1985 CrLJ 974 (Gujarat).
434 1978 CrLJ 1741.
when the case comes for trial the very delay in investigation may make it
difficult for the prosecution witness to remember the details with the result
than even truthful witness would bungle in cross-examination and the
prosecution fail for that reason.

Custodial violence - use of third degree methods by the police for
extracting information from a suspect-Amounts to negation of Article 21-
Custodial death- State vicariously liable to i pay compensation to the relatives
of the victim. Affected family entitled to invoke the extraordinary writ
jurisdiction of the Court.

Article 21.22 (IV Custodial deaths-Any form of torture or cruel,
inhuman or degrading treatment- Fall within inhibition of Article 21. Whether
it occurs during investigation, interrogation or otherwise Supreme Court
issued the requirement to be followed in all cases of arrest or detention till
legal provisions are made in that behalf as preventive measures.435

Pendency of civil dispute between parties, A man and A woman taken
to police station by police and interrogated on Complaint made by one party
to said dispute- Police not acting with prescribed procedure of law and
interfering in civil matters. Directions given to District superintendent of
Police to take notice of allegations made and take suitable action. For
successful investigation, a Police Officer needs to possess many qualities.
These may inherent in him or may be acquired. It is often said “That the
successful detective is born and not made”. This dictum is however, not
correct. Any officer can cultivate good qualities by hard work, devotion to
duty, attention to details and by developing confidence. There is no short cut
to glory. “No great work at all has ever come into the world save as the fruit
of years of earnest unremitting toil”.

The investigator must be a keen observer having a camera eye. He must
be well versed in investigation technique and fully aware of his power which
he derives from different Acts and Rules. He must be resourceful and

\* \* \* 

determined to meet any criminal and any situation. He must be a man of integrity not to spare the criminal. He must be efficient, honest and painstaking.

The most important qualification is the ability to make friends and secure the co-operation of others. Such friends can be sources for useful information. There should be no prejudices to make friends. They can be from any class, taxi drivers, waiters, hawkers, kabarias, and can be made daily during investigation by coming into contact with them and by earning their goodwill through courteous and impartial but firm attitude. Most intricate cases are solved through useful and timely information from these friends. A good turn done to a criminal will forever win him over to an Investigating Officer.

The investigator of crime must know every man in his Illaqa and every part of his Illaqa. He must be an astute reasoner and logician. He must be a psychologist to read people, motives and to arrive at just conclusions without prejudices. He must cultivate the faculty of open mindedness, must be absolutely accurate and with his just acts must win the confidence of all. In short, a good investigator besides being mentally and bodily fit should possess a veritable encyclopedic knowledge, a good memory and be a student of life. For reliance on scientific aid in his work, he must understand the requirements of the chemist, pathologist, toxicologist, biologist, physicist and metallurgist. He must be possessing faculty to reconstruct crime from the traces.

It will be interesting quote well-known Police Officer as to which quality they attach more importance. Duncan Mathison, Captain of Detectives at San Francisco: "A detective after all, is only a police officer possessed of a sound judgement with the ability to apply it along sound practical business lines to the solution of a criminal case. Whatever success I have met with has been accomplished by strict attention to duty and hard work. There is no other formula for success.

John Wilson Murray Inspector C.I.D. Toronto, “As a matter of fact the detective business is plain, ordinary business, a railway manager’s business. It
has its own peculiarities because it deals with crime, with the distorted, imperfect, diseased members of social body. A good detective must be quick to think, keen to analyses, persistent, resourceful and courageous. But the best detective in the world is human being, neither half devil nor half god, but just a man with the attributes or associates that make him successful in his business”. G.W. Walling Chief of New York Police said, “he must be endowed with courage and intelligence, have alacrity and adaptability and above everything a good memory”.

Major Arthur Griffiths: “The best detective is he who has that infinite capacity for taking pains which has been defined as the true test of genius. It is not by guesses or sensational snap shots that crimes are unearthed but by the slow process of routine, almost common place, inquiry after the most minute and painstaking investigation of the traces-often of the most minute characteristic, left upon the theatre of the deed”. W.T. Shore - “In Outline, the qualifications that must be possessed and sedulously trained by a detective officer are persistence, quick wittedness, memory, powers of observation, accuracy, tact, all always supported by commonsense.

Avoid annoyance, pride, superior attitude, jealousy, non co-operation, prejudices, intimidation, high handedness and torture. Be calm, patient, firm courteous and self confident. Master facts, situations and your subordinates who may not torpedo good work done by you, made friends, win enemies, create good relations, good reputation for your honesty, integrity devotion to duty and efficiency. Above all be humane and just. Success will follow.

Defective investigation may not be taken into consideration if there was impeaching evidence to establish the offence.\footnote{V. Vinay Kumar v. State of A.P., 2006 CrLJ 1701 (AP).}

(i) In the case of a defective investigation, the Court has to be circumspect in evaluating the evidence-But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the
investigating officer if the investigation is designedly defective.
1995 (5) SCC 518 relied;

(ii) If primacy is given to such designed or negligent investigation to
the omission or lapses by perfunctory investigation or omissions,
the faith and confidence of the people would be shaken not only
in the law enforcing agency but also in the administration of
justice.\textsuperscript{437}

In a faulty investigation, the Court has full authority and power to order
investigation into a particular aspect of the matter, but it can not direct the
Investigating officer to investigate in a particular manner. In cases of
defective investigation, the Court has to be circumspect in evaluating the
evidence but it would not be right in acquitting an accused person solely on
account of the defect and to do so would tantamount to playing into the hands
of the investigating officer if the investigation is designedly defective.\textsuperscript{438}
Police officer who registered FIR can himself take up investigation. Such
investigation could only be assailed on the ground of bias or real likelihood of
bias on the part of the investigating officer.\textsuperscript{439}

8.6 Reaching the Spot

1. Ensure the scene of crime has not been interfered with. Contact
the man who reached the scene first.

2. Do not allow any unauthorized person to meddle in the
inspection of scene. The overzealous helper is usually the
criminal’s good friend. Crowding and thoughtless interfering
always result in destruction of clues.

3. Do not leave inspection of scene to your subordinates, especially
those who are untrained.

\textsuperscript{437} Zahira H. Sheikh v. State of Gujarat, 2006 (3) SCC 374 (SC)
\textsuperscript{438} Amar Singh v. Balwinder Singh, AIR 2003 SC 1164.
\textsuperscript{439} State rep. by Inspector of Police (Vig.) and Anti Corruption v. Jayapaul, 2004
CrLJ 1819.
4. Do not touch anything. The negligence in handling obliterates finger prints. Use gloves or hankerchief. Nothing capable of bearing finger prints should be handled without proper precautions.

5. Do not take anything to be trivial. The inspection must be through and minute. Articles should be carefully examined and preserved.

6. Search should be clockwise or anti clockwise and systematically for clues and traces such as hairs, fibres, blood etc.

7. Remember that scene of crime is not confined to the immediate location but includes as much of the surrounding area as may be necessary to fully understand the exact circumstances surrounding the commission of crime. Search must be made along the line of approach and departure of culprits. Special attention to be paid to all obstacles such as hedges, walls, barbed wire, nearby ponds etc.

8. Always make search for traces in the presence of respectables who may later appear as witness in Court.

9. While searching for traces always think of:
   (i) The sort of traces that may be available, keeping in view the type of crime,
   (ii) Where these are most likely to be found out,
   (iii) How best to preserve them intact and unaltered for examination by expert. Identity by Dog Tracking can be used. In case of any trace left by accused in the shape of any article touched by him or left by him, a Dog Squad be immediately requisitioned. Police Dogs are used in Trailing and tracking the culprits. A dog along with his trainer is summoned. The Dog sniffs smell from articles touched by
culprit, or from articles left by him or from the perspiration of his feet left on the ground. The smell remains for a few hours. The Dog follows the smell and leads to capture of culprit. The trainer can give evidence in case of capture of culprit. The evidence is relevant 1972 CrLJ 362. There must be evidence that police Dog had scented the articles 1988 CrLJ 89.

Dog tracking evidence is admissible but not of much weight Tracker dog’s evidence cannot be likened to the type of evidence accepted for scientific experts describing chemical reactions, blood test and the action of bacilli, because the behaviour of chemicals, blood corpuscles and bacilli contains no element of conscious volition or deliberate choice. 440

Evidence of sniffer dog-Conviction by trial Court based upon circumstantial evidence with a complete chain of a large number of circumstances, evidence of constable who deployed the police dog for tracking down the culprits of murder held that criminal courts, need not bother much about the evidence based on sniffer dogs due to inherent frailties adumbrated above although this Court cannot disapprove the investigating agency employing such sniffer dogs for helping the investigation to track down criminals. 441

10. The possible traces and what they lead to and what expert should be addressed to for their examination is indicated in the chart below to facilitate to search them:

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<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Trace</th>
<th>Purpose</th>
<th>Experts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Finger print (Crimes against person and property; murder, burglary, theft, dacoity etc.)</td>
<td>For fixing identity of criminal</td>
<td>Director Finger Print Bureau</td>
</tr>
<tr>
<td>2.</td>
<td>Foot Marks (Crimes against person and property by unidentified culprit viz., murder, burglary, dacoity, robbery etc.)</td>
<td>For establishing presence of accused at scene of crime</td>
<td>1. Finger Print Expert when ridge patterns are visible, 2. Director Scientific Laboratory when comparison of moulds is called for.</td>
</tr>
<tr>
<td>3.</td>
<td>Tool Marks. (Burglary, wire cutting cases, hatchet marks on skull in murder cases etc.)</td>
<td>For identification of weapons and tools used</td>
<td>3. Tracker Director Scientific Laboratory</td>
</tr>
<tr>
<td>4.</td>
<td>Teeth Marks, (on food, fruits, skin etc.) (Rape, sex, murders, theft of estables etc.)</td>
<td>To identify criminal</td>
<td>-do-</td>
</tr>
</tbody>
</table>
| 5.     | (a) Tyre Marks. (Crime by motor vehicle etc.)  
(b) Skid marks  
(c) Deviation marks | To identify vehicle  
(b) For speed and application of brakes  
(c) If driver tried to avoid accident.                                                     | -do- Machine                                      |
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Purpose</th>
<th>Responsible Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Mould Marks on counterfeit coin</td>
<td>To identify mould used.</td>
<td>Mint Master, Calcutta</td>
</tr>
<tr>
<td>7</td>
<td>Different kinds of apparatus used for counterfeiting coins</td>
<td>To identify criminals and if counterfeiting is possible.</td>
<td>Mint Master and Director Scientific Laboratory.</td>
</tr>
<tr>
<td>8</td>
<td>Cut marks on articles (wire theft cases).</td>
<td>To identify instruments used by comparing striations on cut surfaces e.g. wire etc.</td>
<td>Director Scientific Laboratory Director Sc. Lab.</td>
</tr>
<tr>
<td>9</td>
<td>Marks indicating struggle</td>
<td>To establish method to which crime was committed For proving ownership</td>
<td>--do--</td>
</tr>
<tr>
<td>10</td>
<td>Filed out number on metals, resusciation of numbers, designs, trade mark etc. (Car theft, machinery or cycle theft etc.)</td>
<td>For proving ownership</td>
<td>--do--</td>
</tr>
</tbody>
</table>
| 11| Marks of writing on bolting paper, carbon, charred documents, obliteration eradication, etc. inks and different kinds of Forgeries simulating old document | Top Prove                                                              | 1. Director Scientific Laboratory 
2. Hand Writing Expert 
3. Examiner of Documents |
| 12 | Any form of dust, dirt, soil ashes, animal and vegetable material, grass seeds found on shoes, saw dust etc | 1. To establish trade of suspect  
2. To fix presence at scene  
3. To chemically analyses ashes for poisons etc. | 1. Director Sc. Lab.  
2. To fix presence at scene  
3. Chemical examiner |
| 13 | Portions of metal or filing in clothing etc. | 1. To establish profession.  
2. To establish commission of counterfeiting. | 1. Director Sc. Lab.  
2. Mint Master  
3. Metallurgist |
| 14 | Blood stains, seminal stains (murder, hurt, rape cases). | To establish identity of criminal, spot, contact etc | Chemical examiner |
| 15 | Chemical stains, (abortion, theft etc.) | 1. To indicate profession if on clothes etc.  
2. Contact with materials of various kinds paper, ink etc. | Director Scientific Laboratory |
| 16 | Paint, oil, Greece marks, glass pieces | 1. To establish identity of vehicles  
2. Arson cases.  
3. Instrument is used in burglary land breaking etc. | Director Sci. Lab. |
<p>| | | | |</p>
<table>
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<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>Hair, human or animal (theft of animal, rape, murder hurt, gang cases, contact cases.)</td>
<td>To prove presence, contact association</td>
<td>--do--</td>
</tr>
<tr>
<td>18</td>
<td>Feather etc. (theft of birds furs etc.)</td>
<td>To prove identity of different kinds of birds.</td>
<td>--do--</td>
</tr>
<tr>
<td>19</td>
<td>Textiles, clothing, fibres</td>
<td>1. To compare with cloth of suspect. 2. To prove colour textile if torn etc. 3. To prove from particular cloth.</td>
<td>Textile Expert</td>
</tr>
<tr>
<td>20</td>
<td>Wood splinters, asbestos fibres, fragment of materials etc</td>
<td>To prove identity with stolen articles.</td>
<td>Principal Forest Institute for Wood; Directors Sc. Lab for others.</td>
</tr>
<tr>
<td>21</td>
<td>Fire arms, cartridges empties, bullets powder stains stray pellets, Bullet marks for direction, Pell marks indicating spread, signs of burnin or friction mark on clothing marks of power on hand etc.</td>
<td>1. to fix if fired from particular weapon, direction, distance from which fired 2. If serviceable 3. components of powder 4. type, make, mark of arms and ammunition etc.</td>
<td>Ballistic Expert Sc. Lab.</td>
</tr>
<tr>
<td>No.</td>
<td>Description</td>
<td>Purpose</td>
<td>Expertise</td>
</tr>
<tr>
<td>-----</td>
<td>------------------------------------</td>
<td>------------------------------------------------------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>22</td>
<td>Explosive</td>
<td>1. To prove nature type and quality, if dangerous live or exploded</td>
<td>Govt. Inspector; of Explosive</td>
</tr>
<tr>
<td>23</td>
<td>Bones</td>
<td>1. To prove height, build of person</td>
<td>Professor of Anatomy</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Sex of person.</td>
<td>Medical College</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Race of person.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>4. Age of person.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cause of death etc.</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Stamps, postage, revenue etc.</td>
<td>To prove forery</td>
<td>1. Manaer Govt. Stamps and Security Printing press, Nasik Road, Nasik (Bombay)</td>
</tr>
<tr>
<td></td>
<td>(forgery cases). Forgery of currency notes and its material.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Machinery and its component parts.</td>
<td>It failed due to defect in machinery or negligence of operator</td>
<td>1. Principal Engineering College</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2. Any Mechanic</td>
</tr>
<tr>
<td>26</td>
<td>Poisons (may be in tumblers, glass bottles, paper, phials, sweets, vomits, faeces etc.)</td>
<td>To fix nature, type and quantity used.</td>
<td>Chemical Examiner</td>
</tr>
</tbody>
</table>

11. Such physical evidence should be preserved. It helps in identifying the criminal and aids in his arrest. If the evidence is of such a nature that scientific evaluation is necessary, it should be forwarded to the laboratory for necessary tests. The nature of
such evidence will determine the manner in which it is to be handled, packed and despatched without obliterating and spoiling the prints, stains, liquids, etc.

12. The Officer when examining the scene should make very careful notes in writing the scene and its condition. Memory alone must not be relied upon. Record all facts, the time of day, date, location, the description of area, weather, indoor in chronological order.

13. Crime Scenes may be photographed or sketched or both. A number of shots should be taken to get all the possible useful information to make out how crime was committed and what were the main spots of physical evidence. Close ups should also be taken of the articles of evidence that leave bearing on the case e.g. weapons etc. Special techniques should be used in photographing finger prints foot prints, tool marks etc.

14. Prepare a sketch which is another form of keeping the scene alive. The importance of examination of scene and sketch cannot be better described than in the words of Mr. Justice Khosla of Punjab High Court in Cr. Revision 1348 decided on 05.08.85 (Khushi Ram v. State). “If more information on a number of points had been available. It would have been possible to give a clear finding one way or the other e.g, S.I. who went to the spot soon after the occurrence should have noticed if there were any skid marks on the road showing the places where the brakes were applied. A more accurate plan of spot should have been prepared including the exact spot where the bus left the metalled portion of road and also where it stopped. The place where the boy was run over should have been indicated and also the place where the boy was sitting in the original instance. None of this information appears on the plan which is rough and hastily sketched. That being the case, I must give benefit of doubt to the petitioner
because I cannot hold that he was driving the bus rashly”. For a good sketch, the following consideration should be kept in view;

(i) Determine the direction of the compass. Show it on sketch.

(ii) Don’t draw sketch partly from measurement with the tape and partly from distances guessed at sight. Accuracy must be kept in view.

(iii) Never depend upon memory to fill in certain details later at home or police station.

(iv) Always prepare a separate sketch.

(v) Scale must be drawn, on sketch.

(vi) Nothing irrelevant should be shown on it. It should portray those items which have a bearing on the investigation being conducted. “The inclusion of unnecessary details will result in the cluttered or crowded sketch and tends to hide or obscure the essential items”.

(vii) Don’t’s forget to describe the following:

   (a) The spot of occurrence.

   (b) The direction from which culprits came.

   (c) The direction in which they escaped or left.

   (d) The places from where the witness saw.

   (e) The points where traces were found like location of weapon, finger prints, body, blood etc. The distance of these points should be shown from ‘two’ reference points thereon.

(viii) For a room show:

   (a) Direction of rooms and its dimensions.
(b) If walls are at right angle together with their thickness.

(c) doors, windows, ventilators etc.

(d) height, position of fire place, skylights etc.

(ix) In case of a larger portion of a building or land or village determine how much of the space should be included in it. Do not make a vast sketch. Show all material points.

(x) (a) in important cases; two plans should be prepared by a qualified Police Officer or other suitable agency to be submitted with challan and to be kept with Police file.

(b) In case of heinous crime, viz murder, riot connected with land disputes, if occurrence takes place outside Abadi, a plan should be got prepared from Patwari who should give the details of land and the other important points. The Patwari can show the points based on the statement of witness as to where the witness were and what material traces they observed. This will not be hit by Section 162 Criminal Procedure Code. “The investigating officer should avoid being present with the Patwari to avoid the legal implications of Section 162 Criminal Procedure Code.

(c) The notes can be made by Investigating Officer in red ink what he observed on the map prepared by Patwari or draftsman.

(d) The site plan without scale prepared by the Investigating Officer should also be attached with challan in addition to the plan prepared by Patwari
If occurrence in such cases happened *inside village abadi* the plan can be got prepared from a draftsman. Legal Implications are discussed below (Site Plan-relevant under Section 9 Evidence Act).

1. Marks or points based upon statement of witness on plan prepared by Patwari or draftsman but not in the presence of police Officer are relevant.

The admissibility of such observation made by Patwari arose in *Santa Singh v. State*,442 it was held therein that this evidence was neither hearsay as PWs appear in case and state that they showed the places to the Patwari when Patwari corroborates them, nor it is inadmissible under Section 162 Criminal Procedure Code. It was not unusual to have a plan drawn by a draftsman and this is not done to avoid Section 162 Criminal Procedure Code. If the draftsman is asked to prepare a sketch map of the place of occurrence, and if after ascertaining from the witness where exactly the assailant and victim stood at the time of the commission of the offence and the draftsman measures the distance between the two places thus shown to him and puts down on the plan and further, it is legal evidence and admissible. *This pointing out should not be in the presence of Police Officer.*

### 8.7 The Site Plan prepared by Police Officer will denote two things

1. What the Investigating officer saw himself, observed and found on the spot for example blood or any other clues etc. Such evidence is the direct or the primary evidence in the case and is the eye of law the best evidence, admissible under Section 60 Evidence Act.443

2. Statement contained in the site plan prepared by investigating officer not relevant. The Investigating Officer, if what he depicts on the plan is not based on officer’s personal observation but on information received from others, it would not be admissible in

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442 1956 CrLJ 390 (SC).
evidence as being hearsay and as being hit by Section 162 Criminal Procedure Code. Thus the description in the site plan of what is said to have happened at a particular point shown in the plan, not being based on the investigation officer’s observation, but on information received from others is inadmissible in evidence. The sketch map would be admissible so far as it indicates all that the sub-inspector saw himself at the spot.

As held in *Ram Lal Singh v. State,*444 “A sketch map of the scene of happening especially if prepared early is an invaluable piece of evidence; but it should show features and objects which are actually seen [and whenever possible measured] by police officer and note gist of the statement under Section 162 Criminal Procedure Code. Especially in regard to blood marks, qualitative measurements as to numbers and size are essential, certainly they should wherever controversy is likely about the location and nature be sent for chemical and serological examination”. The notes on the site plan are not substantive evidence. Whatever is shown on the site plan must be deposed to by the witnesses; otherwise it will be inadmissible in evidence.445

These notes based upon the statements being inadmissible under Section 162 Criminal Procedure Code could only be used for the purpose of contradicting the prosecution witnesses concerned in accordance with Section 145 Evidence Act, and for no other purpose as held in *Jit Singh* 1976 SC 1421. “Therefore where this was not done and witness were never confronted and contradicted with this record [distances given on site plan by Police Officer] the notes on the site plan could be used to contradict the account given by the Court in regard to distance from which they saw occurrence.

9. **National Investigating Agency under the NIA Act, 2008**

Over the past several years, India has been the victim of large scale terrorism sponsored from across the borders. There have been innumerable

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444 1958 CrLJ 1402 (MP).
incidents of terrorist attacks, not only in the militancy and insurgency affected areas and areas affected by Left Wing Extremism, but also in the form of terrorist attacks and bomb blasts, etc., in various parts of the hinterland and major cities, etc. A large number of such incidents are found to have complex inter-State and international linkages, and possible connection with other activities like the smuggling of arms and drugs, pushing in and circulation of fake Indian currency, infiltration from across the borders, etc. Keeping all these in view, it has been felt that there is need for setting up of an Agency at the Central level for investigation of offences related to terrorism and certain other Acts, which have national ramifications. Several experts and Committees, including the Administrative Reforms commission in its Report, have also made recommendations for establishing such an Agency. The Government after due consideration and examination of the issues involved, proposes to enact a legislation to make provisions for establishment of a National Investigation Agency in a concurrent jurisdiction framework, with provisions for taking up specific cases under specific Acts for investigation.

At present NIA is functioning as the Central Counter Terrorism Law Enforcement Agency in India.446

An Act to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations and for matters connected therewith.

9.1 Constitution of National Investigation Agency

Notwithstanding anything in the Police Act, 1861 (5 of 1861.), the Central Government may constitute a special agency to be called the National Investigation Agency for investigation and prosecution of offences under the

446 NIA Act was enacted on 31.12.2008 and the National Investigation Agency (NIA) was born.
Acts specified in the Schedule. The superintendence of the Agency shall vest in the Central Government. The administration of the Agency shall vest in an officer designated as the Director-General appointed in this behalf by the Central Government who shall exercise in respect of the Agency such of the powers exercisable by a Director-General of Police in respect of the police force in a State, as the Central Government may specify in this behalf.

9.2 Investigation of Scheduled Offences

On receipt of information and recording thereof under Section 154 of the Code relating to any Scheduled Offence the officer-in-charge of the police station shall forward the report to the State Government forthwith. On receipt of the report under sub-Section (1), the State Government shall forward the report to the Central Government as expeditiously as possible. On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency. Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence. Notwithstanding anything contained in this Section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, suo motu, direct the Agency to investigate the said offence. Where any direction has been given under sub-Section (4) or sub-Section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency. For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be

447 Section 3 of NIA Act, 2008.
448 Section 4 of NIA Act, 2008.
the duty of the officer-in-charge of the police station to continue the investigation.449

9.3 Power to transfer investigation to State Government

While investigating any offence under this Act, the Agency, having regard to the gravity of the offence and other relevant factors, may, if it is expedient to do so, request the State Government to associate itself with the investigation; or with the previous approval of the Central Government, transfer the case to the State Government for investigation and trial of the offence.450 While investigating any Scheduled Offence, the Agency may also investigate any other offence which the accused is alleged to have committed if the offence is connected with the Scheduled Offence.451 The State Government shall extend all assistance and co-operation to the Agency for investigation of the Scheduled Offences. Save as otherwise provided in this Act, nothing contained in this Act shall affect the powers of the State Government to investigate and prosecute any Scheduled Offence or other offences under any law for the time being in force.

The Central Government shall, by notification in the Official Gazette, for the trial of Scheduled offences, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification. Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the Central Government whose decision in the matter shall be final. A Special Court shall be presided over by a judge to be appointed by the Central Government on the recommendation of the Chief Justice of the High Court. The Agency may make an application to the Chief Justice of the High Court for appointment of a Judge to preside over the Special Court. On receipt of an application under sub-Section (4), the Chief Justice shall, as soon as possible and not later than seven days, recommend the name of a judge for being appointed to preside over the

449 Section 6 of NIA Act, 2008.
450 Section 7 of NIA Act, 2008.
451 Section 8 of NIA Act, 2008.
Special Court. The Central Government may, if required, appoint an additional judge or additional judges to the Special Court, on the recommendation of the Chief Justice of the High Court. A person shall not be qualified for appointment as a judge or an additional judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge in any State. For the removal of doubts, it is hereby provided that the attainment, by a person appointed as a judge or an additional judge of a Special Court, of the age of superannuation under the rules applicable to him in the service to which he belongs shall not affect his continuance as such judge or additional judge and the Central Government may by order direct that he shall continue as judge until a specified date or until completion of the trial of the case or cases before him as may be specified in that order. Where any additional judge or additional judges is or are appointed in a Special Court, the judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Special Court among all judges including himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.\textsuperscript{452}

9.4 Jurisdiction of Special Courts

Notwithstanding anything contained in the Code, every Scheduled Offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it was committed. If, having regard to the exigencies of the situation prevailing in a State if,-

(a) it is not possible to have a fair, impartial or speedy trial; or

(b) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor or a judge of the Special Court or any of them; or

\textsuperscript{452} Section 11 of NIA Act, 2008.
(c) it is not otherwise in the interests of justice,

the Supreme Court may transfer any case pending before a Special Court to any other Special Court within that State or in any other State and the High Court may transfer any case pending before a Special Court situated in that State to any other Special Court within the State. The Supreme Court or the High Court, as the case may be, may act under this section either on the application of the Central Government or a party interested and any such application shall be made by motion, which shall, except when the applicant is the Attorney-General for India, be supported by an affidavit or affirmation.453

When trying any offence, a Special Court may also try any other offence with which the accused may, under the Code be charged, at the same trial if the offence is connected with such other offence. If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorised by this Act or, as the case may be, under such other law.

The Central Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors454. A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this Section unless he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

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453 Section 13 of NIA Act, 2008.
454 Section 15 of NIA Act, 2008.
A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts. Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-Section (1) of Section 260 or Section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of Sections 263 to 265 of the Code shall, so far as may be, apply to such trial.

Provided that when, in the course of a summary trial under this sub-Section, it appears to the Special Court that the nature of the case is such that it is not desirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to, and in relation to, a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial, under this Section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding one year and fine which may extend to five lakh rupees. Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

Subject to the other provisions of this Act, every case transferred to a Special Court under sub-Section (2) of Section 13 shall be dealt with as if such case had been transferred under Section 406 of the Code to such Special Court.

(5) Notwithstanding anything contained in the Code, but subject to the provisions of Section 299 of the Code, a Special Court may, if it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the
accused or his pleader and record the evidence of any Witness, subject to the right of the accused to recall the witness for cross-examination.

9.5 Protection of Witnesses

Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held in camera if the Special Court so desires. On an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, if the Special Court is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret. In particular, and without prejudice to the generality of the provisions of sub-Section (2), the measures which a Special Court may take under that sub-Section may include-

(a) the holding of the proceedings at a place to be decided by the Special Court;
(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;
(c) the issuing of any directions for securing that the identity and address of the witnesses are not disclosed; and
(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner.

(4) Any person who contravenes any decision or direction issued under sub-Section (3) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to one thousand rupees.

455 Section 17 of NIA Act, 2008.
No prosecution, suit or other legal proceedings shall be instituted in any Court of law, except with the previous sanction of the Central Government, against any member of the Agency or any person acting on his behalf in respect of anything done or purported to be done in exercise of the powers conferred by this Act.\textsuperscript{456}

The trial under this Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case against the accused in any other Court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall, if necessary, remain in abeyance.\textsuperscript{457}

Where, after taking cognizance of any offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any Court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence under Section 20.

\textbf{9.6 Appeals}

Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law. Every appeal under sub-Section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal. Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, sentence or order including an interlocutory order of a Special Court. Notwithstanding anything contained in sub-Section (3) of Section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail. Every

\textsuperscript{456} Section 18 of NIA Act, 2008.
\textsuperscript{457} Section 19 of NIA Act, 2008.
appeal under this Section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from. Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days: Provided further that no appeal shall be entertained after the expiry of period of ninety days.458

Anti Terrorist Squad (ATS), Mumbai registered an FIR under Sections 120B, 489A & 489C Indian Penal Code related to recovery of high quality Fake Currency Notes of the denomination of Rs. 1000 and Rs. 500 amounting to Rs. 3.45 Lacs. The Central Government having regard to the said offence being a scheduled offence under the National Investigation Agency Act, 2008 and offence connected to the scheduled offence under Section 8 of the said Act in exercise of the powers conferred by sub Section 5 of Section 6 read with Section 8 of the NIA Act, 2008, on 03/06/2009 suo moto directed NIA to take up the investigation of the ATS.459 David Coleman Headly (US citizen) and Tahawwur Hussain Rana (Canadian citizen) and others who entered into a criminal conspiracy with members of LeT and HUJI to commit terrorist attacks in New Delhi and other places in India, under Section 121A, 120-B IPC, UAP Act and Section 18 SAARC Convention (Suppression of Terrorism) Act, 1993 Section 6(2).460

10. Police and Criminal Justice System

Police in all political systems has been and remains to be the central agency of criminal justice system, no matter how the concept is defined in the respective frameworks of law. Historically, police has been responsible for the enforcement of law and maintenance of order. Law and order being somewhat synonymous in the developed societies of the west allowed the police to take care of crime and vice which represented the violation or non-enforcement of

458 Section 21 of NIA Act, 2008.
459 Case FIR No. 03/09 at NIA was registered on 16/06/09 under Sections 120B, 489A, 489B & 489C IPC. During the investigation, Section 17 of UAP (Act) has also been added.
460 Case FIR No. 04/09 at PS NIA was registered on 11.11.2009.
law. Police symbolised the law and yielded coercive legal sanctions to bring the deviant and the criminal to book. As the philosophy of democratic liberalism and its concomitant notion of civil liberties got strengthened in the west, judiciary emerged on the scene as a guardian of the constitutional law and defender of fundamental rights of the citizens. Yet, unlike the police in the colonial world, the west did not question the primary role of the Police i.e. to protect the citizens, which was another name of proper law enforcement.

Although the western history the institution of police has been viewed as a conscience keeper of society. Even the worst critics of police in the West when they detest police brutalities and condemn police ways, they admit and concede that police as an agency is more important than judiciary and much of the quality of criminal justice is nothing but levels of police performance. The check and balance and the aroused levels of social conscience are a great help but in situations when chips are down and the violators of law take to abuse of human body and public property no other agency but the police has to brave the hazards and defend the law for the survival and continuance of society.

The secondary responsibilities of police, like help in traffic regulation, counselling the citizens, how to be effective in law enforcement or to offer a stand by in the areas of entertainment may be a subject of debate, but its primary duty in preventing violent violations of law or civil liberties like murder, rape, arson, grievous hurt, suicide, cruelty or vandalism leading to damage of public or private property are simply basic in a civilized society. The other agencies of criminal justice enter the scene to see that innocent citizens may not get trapped in and adequate punishment is administered to the guilty or accused whom the police apprehended as a suspect.

All the grandiose theories of criminal justice represent an advance in humane and liberal values, but they do not deny that police should be prompt and harsh with all those who are a threat to the life, liberty and property of the citizens. As law enforcement agency the police in all societies developing or developed has to preserve and protect the very basic need of human survival
and social intercourse, and when pushed to the rock bottom, this is probably what all the criminal justice system has been all about.

In modern conditions, and in particular in large societies which have undertaken the positive task of providing for the welfare of the community, it is a necessary and, indeed, invitable practice for the Legislature to delegate power to the Executive to make rules having the character of legislature. But such subordinate rule making, however extensive it may in fact be, should have a defined extent, purpose and procedure by which it is brought into effect. A total delegation of legislative power is therefore in-admissible. To ensure that the extent, purposes and procedure appropriate to Police Working are observed, it was desire that it should be ultimately controlled by a judicial tribunal independent of the exclusive authority responsible for the making of the subordinate legislation.

Judicial control of police regulations may be greatly facilitated by the clear and precise statement in the parent legislation of the purposes which such subordinate legislation is intended to serve. It may also be usefully supplemented by supervisory committees of the legislatures before or after such subordinate legislation comes into effect. The possibilities of additional supervision over rules and procedure by an independent authority, such as the Parliamentary Commissioners for Civil and Military Administration in Denmark, are worthy of study by other countries. In the ultimate analysis the enforcement of duties whether of action or restraint owed by the executive must depend on the good faith of the latter, which has the monopoly of police force within the State; this is even true of countries which possess the advantageous traditional power of the courts to commit to prison for contempt its orders. But only the need to omissions and illegal acts of the Executive need to be subject to review by the Courts.461

461 A ‘Court’ is here taken to mean a body independent of the Executive, before which the party aggrieved by the omission or act on the part of the executive has the same opportunity as the Executive to present his case and to know the case of his opponents.
The classical western view has been that it is not sufficient that the executive should be compelled by the courts to carry out its duties and to refrain from illegal acts. The citizen who suffers loss as a result of such omissions or illegalities should have remedy both against the wrong doing individual agent of the State if the wrong would ground civil or criminal liability if committed by a private person) and in any event in damages against the State. Such remedies should be ultimately under the review of Courts, of the country concerned. The ultimate control of the courts over the Executive is not inconsistent with a system of administrative tribunals as is found in many (especially Common Law) countries. But it is essential that such tribunals should be subject to ultimate supervision by the courts and (in as far as this supervision cannot generally amount to a full appeal on the facts) it is also important that the procedure of such tribunals should be assimilated, as far as the nature of the regular courts in regard to the right to be heard, to know the opposing case and to receive a motivated judgment.

The prevention of illegality on the part of the executive is as important as the provision of machinery to correct it when committed. Hence it is desirable to specify a procedure of enquiry to be followed by the executive before taking a decision. Such procedure may prevent action (being within andmitted sphere of discretion allowed by the courts) if taken without such a procedure might result in grave injustice. The courts are expected to supplement the work of legislatures in insisting on a fair procedure antecedent to an executive decision in all case where the complainant has a substantial and legitimate interest.

The other view is that criminal justice administration in a society is a relay race and each agency participating in it just passes the buck to the other runner. The responsibility being collective, it is difficult to apportion the credit or the blame about the quality to any one agency. Yet, the roles being different in each case, the dependent roles can be separated from the primary role. The police was designed to play this primary role and it becomes self-defeating, if other agencies start reviewing the role of their colleagues in
police department and vice versa. The separation of powers theory and the doctrine of checks and balance were expected to indicate the rules of the game, but the game was never intended to be played between the police and the judiciary with criminals getting Scott free in the process.

The colonial philosophies of criminal justice developed some of these inconsistencies because of the assumed difference in the levels of integrity of colonial masters and black natives. Consequently, judiciary was devised as an insulated mechanism keeping an overview over the society as well as the police. This colonial philosophy could not help or prevent the police in having a key-role in prevention, detection, investigation and prosecution processes of criminal justice, but paradoxically enough it decided to refuse to give that high or central status which Western Police System enjoys in its Criminal Justice Administration. An American and still less an Englishman can never think of policeman as a second fiddle or somebody to be made fun of. Police is a friend and without a sympathetic police officer, policing a Society against law violators and criminals no other agency can ensure Criminal Justice to the victim.

A double check by the courts through attorneys is merely to enhance civil liberties and guarantee the processes of rule of law. But this in no way detracts the central role of police and the quality of police performance in contributing to the attainment of objectives in criminal justice administration. After all a criminal can be sentenced or punished adequately or equitably only on the basis of a fair trial, which in turn has to be enacted around irrefutable documentary evidences or witnesses. Discretionary pockets apart, these documents or affidavits or circumstancial evidences on which the lawyers base their cross examinations are collected by the police at one stage or the other. Naturally, if the police organisation has officers of skill, talent and integrity much of the trial and sentencing is a confirmation of investigational


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Unlike judiciary the police organisation was expected to be closer with the natives and was going to be influenced much more seriously by the social ethics of the natives.
findings of the policeman. The dilemma here is real because, if the Court agrees with the police it becomes an accomplice in perpetrating injustice and if it decides to distrust and interrogate the police itself, then there are two varieties and two levels of criminals against whom even if the innocent can be defended, the real guilty also can not be punished. Hence the police as the first and the foremost agency of criminal justice administration have to be in the forefront and this role is very much implicit in the functions which the police is law bound to perform in a criminal situation. To put it more lucidly the police role in criminal justice administration in any society is significant because:

1. The policeman is the first to arrive on the scene and while applying law in a specific given situation he enacts a legal scene in the parameters of which the later legal battles are foughts by the learned counsels.

2. Investigation being the primary and major responsibility of police organisation; it collects facts, evidences, witnesses and all other cognate materials which materially influence the process of truth searching in the establishment of guilt or crime complicity therein.

3. Howsoever detailed and near the law, the discretionary range of police judgement in choosing and rejecting is so wide and varied that it can be well compared with a judicial discretion and no future review by any agency can recreate a criminal situation, if the police allowed it to get white washed or distorted in its initial stages.

4. The fairness and procedural sophistication of a Court trial is very necessary or culling the truth but the Court can not play the police and any other agency requested to play a second police is a very limited check on the First Police Commissioned with the

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On the contrary, if the police department is manned with petty people, low in calibre and fibre, having ingenuity for corruption, distortion and partisanness the entire investigational and prosecution processes can be master minded to render the later trial as a mere sham of the Kangroo Court.
responsibility of investigation. Moreover, the trial being a thorough juristic battle in a given field can not undo much what the police purports to present before the Law Court.

Obviously, the police remain and perhaps have to be the central agency of criminal justice administration in all societies by virtue of the nature of its functions. The other agencies can do a thorough and cautious review but the real quality of criminal justice in its ultimate depends and is determined by the quality, of commitment and performance of the police. The British and the American police are the standing examples ar.d the Court systems in both the countries by and large tend to endorse the police judgement in combating crime with a sense of thankfulness.464

As westerners inspired by Roman jurisprudence they were by and large interested in replicating Western Institutions in their colonies but the fear of native violence and their perception of Eastern Societies was a great constraint in designing the Western Institutions like police and judiciary in post mutiny India. The philosophies of liberalism and colonial nativism created a chasm in their thinking and Indian Police is the typical victim of this lack of commitment to any specific ideology. They did believe that police is the limb of law and is a law enforcement agency first and the last, yet, in their unconscious they always conceded that a native police can not be trusted in a colonial situation where large scale law breaking may assume massive proportions of violent nature.

The Angle Saxon jurisprudence compelled them to accept that all human lives including that of the natives are sacrosanct but police as an executive arm of the state will be too fragile to participate in the administration of criminal justice which should be presided by a special kind of independent and insulated judiciary, having a stern watch on police deeds. This ambivalent philosophy resulted in very unique characteristics of Indian

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464 The history of Indian Police represents an anchronistic development in Indian Administration which the British evolved since 1857
police system such as (a) dual policing by armed and unarmed police forces (b) central and uniform laws in the area of criminal justice to be enforced by a provincial system of police force and (c) absence of local or citizen policing to strengthen the agencies of criminal justice in their day to day functioning. When Sir Charles Neipier reformed and reorganised the Indian Police even his best efforts fell quite short of what his counter part Sir Robert Peel did for the British Police.

The frame of colonial fears and suspicion of natives was so narrow that the very nature of police functions ruled out the philosophy of citizen police and only a judiciary with limited contact with Indian society was trusted and strengthened to play the guardian of citizen’s liberties. The later administrative growth of the bureaucratic system was further conditioned by the growth of National movement in India. The extremist and terrorist movements of the earlier decades made the imperial rulers extra cautious about their personal security and the honour of their women folk and they tightened their grip on the Indian police by further subjugating it to the civilian arm of the I.C.S. white bureaucracy. This tradition of double subordination of police to administrative bosses in the Ministry of Home and judicial guardians in law courts eroded the very clan of the Indian police force and today having suffered a century of distortions and perversions, the policemen have come to stay as perverse, if not sick participants in the realm of criminal justice administration, where they are still denied the central position of a law enforcement officer

Free India in its Republican constitution has made very bold and historic pronouncements in liberalism and civil liberties. The democratic polity has ensured fundamental rights to all its citizens with a tacit judicial guarantee of an independent Court system. The right to equality envisages equality before law and guarantees the equitability and equity of the procedures established by law. The right against exploitation is an independent fundamental right of the Indian citizen. Yet, when all these rights and freedoms are political and legal facts the founding fathers have done very
little to create the infra-structure of police and criminal justice system to make these rights meaningful and enjoyable. Of course, constitution represents the higher law of the land and the police system comes under the subordinate system of law to be evolved by future legislatures.

But the Indian experience of last 37 years makes this inconsistency all the more glaring. The colonial police machine and out-dated police procedures of work remain unchanged due to the risks inbuilt in police reform⁸ the other partners of the criminal justice system have relatively charged without receiving desirable police inputs in the criminal justice administration.

It is highly disquieting to any police watcher in the area of criminal justice administration that when Indian society has taken to the path of modernisation its police system officers a very halting response to the volume and phenomenon of crime generated by the violent conflicts of social change.⁴⁶ The so called modernisation of Indian Police has caused an appreciable automation and even computerisation but the junk machine which needs to be discarded has not even been adequately lubricated to keep pace with the speed of social change in a developing society.

The crime figures of last three decades in India reveal that practically every sort of crime is on the increase. The causes of this increase are so obvious and perhaps no efficient machinery of criminal justice can bring the figures down for some time till the quick thrusts of social change are absorbed by the strength of the system. To move slower with plans of industrialisation, urbanisation and modernisation might be another Gandhian way of keeping peace and equilibrium in society. Caught in the dilemma of quicker change without an adequate administrative apparatus to cope with concomitant violence implicit in the effort, it seems like a price of development.

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⁴⁶ The police controls and overviews and above all the police procedures of work have remained basically unchanged in free India and the core laws like Indian penal code, and the criminal procedure code of India do not provide much lee way even to the most idealistic and ambitious police officer to play a role which his counterpart in the West plays almost as a routine".
But then, any civilized society and government with a police and criminal justice system worth their names has to do something about it to smoothen the transition. Again, these agencies of criminal justice can impart justice and protect lives and liberties of people only when they are inspired by a sense of social purpose and understand their social responsibility in an increasingly law violating society. If criminal justice means giving the criminal and the victim their due with probable deterrence of crime in society the administrators of criminal justice have to realise that crime escalation as a phenomenon is the reflection of some of the following forces working at cross purposes in Indian society:

1. An authority bias against soft and self defeating policies of the government.

2. Liberation of women and a radical shift in value transformation, generated by cultural modernization.

3. Increasing-industrialisation leading to urban system of dwelling which causes a strain on family system and on all that goes with it.

4. Enhancement in the number of ‘affluent pockets’ and ‘Poverty Islands’ which pose serious and violent threats to personal life and public property even in medium size towns all over the country.

5. Political vandalism, accentuated by the erosion of Gandhian values of struggle in the younger generation, accompanied by a corresponding imperviousness of the ruling elites.

6. Gradual disappearance of confidence in the integrity and fairness of the machinery of criminal justice, which seems so apparently tilted in favour of the rich and the strong in a society, where a majority of citizens live below the poverty line.

All these factors of crime escalation are interdependent and perhaps most of them represent a destiny of a developing society where social change cannot be without some violence, unless accompanied with some sort of equity. Most of these factors fall in the realm of political policy and may
cause honest ideological differences of opinion. But then, there is a unanimity about the growing infectivity of criminal justice administration, which intact should play the ‘stabilizer’ till other factors get absorbed by political development and cultural modernisation. This fraility of criminal justice system can he traced back partly to its historical conditioning but in most of the cases it can be attributed to the lack of updating the system, which in place of having a crack down on criminals some time seems too sophisticated or too disjointed to hold any terror or deterrence for them.

Notwithstanding the availability of political pressures, organised corruption and systematic inefficiency, which enable the criminals to compete and even out do the efforts of the administration, the system is extra-ordinary handicapped in having a police organisation which is not only ill equipped but getting increasingly politicised and demoralised to pay the first link of the complicated interlinked criminal justice mechanism.

The role of police in the administration of criminal justice in India is paradoxically central as well as peripheral. The law assigns to it the major responsibility of law enforcement which includes prevention of vice and crime in society and maintenance of public order, whenever and wherever it is threatened. The police force traditionally enjoys a wide array of powers to deal with the violators and probable breakers of law even before the occurrence of actual crime. They are expected to take preventive measures to prompt criminal menace and create conditions conducive for law abidingness and enjoyment of civil liberties.

The victims of crime or those related to them or just witnesses are expected to call the police for registration of a specific case of criminality. The police officer has to arrive on the scene of actual occurrence of crime, collect evidences, witnesses, and affidavits and investigate the legal aspects of the case for prosecution in a law Court. Even at the time of the trial in the law Court the investigating police officer along with the prosecution staff has to defend his findings and make efforts to get the suspect convicted by the judge, who sits as a reviewing officer interpreting the law in a detached
manner with the help and advise of the learned members of the bar representing both the sides. The procedures being elaborate under the system of rule of law expect the police to prepare a legal case and put up a neat and effective legal battle to justify its endeavours in netting the suspect or the accused. Of course the Court is always free to accept or reject or give any amount of weightage to police effort as it deems propet, yet the police effort prepares the basic ground along with its parameters where in the legal battles of the Attorneys are supposed to be fought.

The decisive role of competent and efficient police initiative or the lack of it is apparent to any watcher of criminal justice administration. But in the Indian situation where the police have to operate with lots of constraints, hunches and inadequacies the dilemmas of a police officer investigating serious crime are too many to be outlined. Some of them are:

1. Police preventive measures viewed in their historical perspective are regarded as harassing and hence an obvious threat to the civil liberties guaranteed by the Constitution. For instance, a watch over former, criminal tribes or rural migrants to the cities will be deemed as an obnoxious and a prejudiced behaviour of the police, unwilling to concede equality and freedom to the poor and the weak.

2. Enhancement of police duties and responsibilities with a corresponding increase in the rate of crime brings too much pressure on police job and as their priorities of work get politicised or mixed up the police response to crime reporting by victims and citizens becomes halting, slow and even evading. Burking or non-registration of crime is a very special kind of police crime in India which attracts little legal attention, but a lot of popular condemnation of the police in India can be attributed to it.

3. The police explanation for their halting response to crime reporting is offered in the availability of inadequate police strength in police stations and the absence of means to be mobile. Genuine or fake the delay in response on the part of police in reaching to the scene of
crime distorts the situation, and permits the criminals to be in an advantageous position. Obviously, the time being critical, the delay renders the reenactment of the crime scene quite difficult even for the most efficient and well intentioned police officer.

4. The major job of police investigation of crime in India is still done by petty, ill-paid and ill-equipped notice functionaries. Being low in the hierarchy without much professional pride they are susceptible to pressures and allurements and can vitiate the whole truth in such a manner that even the best of the judges can not undo their mischief. Thai being so the common man who can be harassed and tortured by the police in more than one way can not afford to cooperate with the police. Popular support to police task in crime detection and crime investigation, which happens to be the corner stone of criminal justice administration in any country is still a hope and aspiration of law makers in India. The common man distrusts and abhors police as a coercive arm of the government and dreads to work with a policeman even for the most cherished ends of legal and social justice.

5. The popular cooperation to police investigations being not spontaneous or willing for whatever reasons, the police officer on the scene has to resort to extra legal methods to complete the legal requirements of lies in his investigation. This does not necessarily represent malafide intentions. It is a part of the game and the fulfilment of police duties requires several statements to be recorded for presentation before the law courts. The police discretion here is immense and a nasty police officer can twist the whole investigation in such a way that the later Court probes may find the facts incontrovertable. The witness based system of Court trials after months or years tends to become a farce and the written documents prepared by police officer on the spot often tend to win the battle in
which every body (except the poor victim) loses interest with the passage of time.

6. The quality of police investigations of criminal cases suffer a good deal because of low automation and poor quality of forensic facilities made available to the police. Most of the common place equipments like cameras, tape recorders, video tapes, slides, projectors, wireless, Xerox machines and radar screens are not made available to the Indian police. The police computers are still in infancy and an average police station still remains deprived of the incredible assistance which b science can offer in detecting crime. Instruments like lie detector, working through polygraphs are neither expensive nor unworkable in Indian conditions of police stations and Court rooms. It is the sheer inertia which does not allow the system to modernise.

7. Not only the police investigations are widely handicapped and prone to abuse in the absence of massive use of scientific instruments, the old laws present a wide variety of police discretion in preparing the legal records of the case. The colonial classifications of offences such as cognizable and non-cognizable and non-bailable, compoundable and non-compoundable continue to bedevil the citizens and the victims and the police investigating officer by playing a simple and petty trick of applying one clause on the situation or not establishing crime under a particular clause of the Criminal Procedure Code can change or forordain the entire tenor and temper of the trial which as the case proceeds in prosecution becomes significantly different and materially relevant. The complexity of law permits police abuse and later a systematic juristic prostitution of law to much consternation of the judges.

8. Paradoxically enough when the law in India in the absence of local government base and jury system gives almost exclusive and total powers of detection and investigation of crime and vice to the police
agency, it does not trust the police as a partner or participant in criminal justice administration. As soon as the case stands challenged the prosecution job is undertaken by a quasi judicial agency which is increasingly being made independent of police administration in most of the states. The statements recorded by police or taken in police presence only are not accepted as valid or true by trial judges in law courts. Historically the courts tend to view police organisation as abators of crime and enjoy putting police officers in the dock as a bunch of organised criminals inside the frame of law. The separation and independence of prosecution agency from the police renders the police quite apathetic in their crime investigations and when the legal experts of prosecution agency complain that police investigations are incomplete and weak, the investigating policemen retort that prosecutors have no interest and motivation in fighting out a case in which they are not involved as executive officers or paid attorneys at the Bar.

9. The historical exploitation of police by the executive and now by the political masters in the new context of independence demoralises a force which does the harzor does job of fighting crime and combating violence. Naturally, frustrations take over a cops which is popularly condemned for the faults of others. Everyday they experience that the criminals they net in after risking their lives at let off because of the procedures that are slanted in favour of the rich, the strong and the respectables.466

10. The low image of police organisation in popular estimation and irresponsible criticism of police work by all Sections of Indian society disturbs the younger and self- respecting officers, who find

466 This low state of police morale vis a vis the appalling social realities of the bar and the lower courts gives the policeman a psychology of Better than others and he thinks that his ‘Bad job’ is good because the others are doing ‘worse’ and are regarded better.
their difficult job unrewarding. Naturally, the police service ends up by recruiting the personnel lesser in quality and integrity as compared to other services. These relatively lesser qualified and ill equipped officers vested with too many powers to handle crime and then confronting a hostile society and politics create a situation in which police participation in the administration of criminal justice becomes either too reluctant or too perverse to meet the ends of justice. They are condemned for political pliability, administrative corruption and appalling insensitivity to issues of moral integrity, human conscience and social responsibility of ensuring justice to the victims of crime.

All these factors contribute in creating a complex social political situation in which police does what it is not supposed to be doing and does not do what it is expected to accomplish as a law enforcement agency of the government. The circle being vicious, is not easy to cut and when the police can legitimately blame the society, the law makers, the bar, the law courts and the political climate in general for escalation in crime and its failure in arresting the same, all these agencies in turn keep painting the police as the real villain of peace, whose incompetence and misdeeds keep the society under constant specter of crime. To a lay citizen or an actual victim of crime it is immaterial how the onus can be fixed or quantum of blame can be determined. Even if the police have failed in the administration of criminal justice by its criminality the other agencies have not done their bit to help the police or understand its predicaments in the changing context of social order.

The police as the first runner of the relay race materially contributes to the quality of criminal justice and if the administrative machine does not provide the conditions conducive for honest and rewarding police work in the area of criminal justice how can it live up to the standards of honesty and quality which the law prescribes and the society and its courts expect from its police system. Unfortunately, history has been too hard and too problematic with the Indian police. The legacies, unless radically overthrown, can not
permit the reshaping of the police organization which produces a particular type of muscle philosophy and power culture of its own. As a prisoner of the past and still more a captive of the present day environment the India police system confronts a hostile people, angry legislators, questioning judges and hysterical victims. No amount of fault finding with others or perverse comparisons of performance can acquit it. But once again the mere hostility or ruthless criticism of police delinquency can not improve matters for police as well as for the criminal justice system. The latter can not be redesigned to fit in the former. Conversely, the former also can not be allowed to continue to erode the base of the former, if the system has to deliver the goods. Difficult it is, but it is quite workable to redesign a New Police Organisation in free India which can be consistent to the ideals of democracy, rule of law and social justice.

The talk of police reform touches a hornet’s nest because it is one organisation which everybody wants to control and boss over. It represents the might of the state and political masters, civilian bureaucrats and the judiciary does not like to concede parity or autonomy to police simply because the reform robs away much of the glamour, prestige and power of ruling a developing society. All sorts of arguments are paraded to which establish police subordination and inferiority, the converse of is perhaps more true in an exercise of self perpetuation. But if the people in a society get a police they deserve then the Indian society must launch a civil struggle to earn a better police force for the enjoyment of their civil liberties. The law and independent courts only restore, (never finally ensure) civil liberties to citizens. The seamy side of criminal justice can improve a good deal if the following police reforms Vis a Vis other agencies of criminal justice administration are discussed and introduced after a public debate through democratic forums.

1. The colonial police philosophy being incongruent with the notion and concept of criminal justice in a liberal democracy needs to be replaced by a democratic philosophy of citizen police. Citizen

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police philosophy implies two things (i) representative police force and (ii) a responsible Policeman. Democratic responsibility of police means a system of multiple controls leading to the ultimate control of law and the people. But then, this further warrants an autonomous police organisation, responsible to the legislature rather than to the executive under the overall supervision of the judiciary. The Japanese Police have this kind of organisation and its astounding success puts some of the western police systems to reassessment. The citizen police philosophy means making police the limb of law in place of the Arm of the Executive, which is at the root of several inconsistencies and abuses in the administration of criminal justice.

2. The role and contribution of Police in improving the quality of criminal justice in India has to be viewed from the point of law enforcement and hence within the frame of Blue Books. A democratic and self respecting Police has to be trusted with wide powers in the area of criminal justice but to avoid a corresponding abuse, a network of multiple controls and availability of the best kind of human material for police jobs has to be ensured. The legislators should amend or rewrite the laws in such a manner that:

(a) The Police service attracts the best of the human clay and preserves it in the highest state of morale and integrity by a system of inbuilt incentives.

(b) The Police system is vested with powers commensurate to the job it is expected to perform. It is trusted and not handicapped because of its past performance.

(c) The Police autonomy is subjected to an extremely rigorous scrutiny by several institutions, including an effective control by press. Parliament and people in the community.
3. To salvage the police from its present position of subordination and
distrust in the administration of criminal justice it will be
imperative, if the police organisation is restructured on a three tier
basis. The Union Police Agencies take up difficult, complicated and
National Crimes of interstate nature. The bulk of criminal cases are
handled at the level of the state. But the hitherto neglected tier of
local police is created and strengthened in the country side to ensure
justice to the weaker Sections of society. This local police has to
have technical facility and mechanical aids with better quality of
committed policemanship which is not difficult to evolve once the
idea of a ‘Polite but Firm’ or ‘Accessible but Unbendable’ Police
catches up without much experiment.

Thus, to improve the quality of police performance and participation in
the administration of criminal justice in India it is necessary that the
subordinate status of Police is changed into a partnership status without much
delay As this current status is very much embedded in law and legal books
that govern the criminal justice system of the country, the initiative for
change has to come from law makers. But they again can change or amend
law in obedience to certain norms or philosophies which issue into institutions
and procedures. The legislators in India are to be constantly educated and
pressurized by public opinion to accept that democracy is not merely a system
of elections and civil liberties are not only to be restored by the judiciary but
equally ensured by the executive, including the police.

If police violates the law or perpetrates injustice in the name of law
enforcement and crime prevention, the entire administration of justice gets
paralyzed Police protection to criminals, notwithstanding the most
sophisticated judicial counter checks is the surest guarantee of social anarchy.
The rich and strong that always tend to monopolise and dominate over the
administration of justice in all societies can be restrained only when police
identifies itself with the poor and the weak. A weak police system,
vulnerable to pressures and allurements erodes people faith in democratic governance and the efficacy of Parliamentary institutions.

The Republican constitution of free India and the Fundamental Rights that it seeks to envisage and guarantee to all citizens without any distinctions of colour, caste, sex or creed will have meaning and content only when the law of the land smacks equity and justice and the police who have the primary duty of enforcing these laws have the capacity and competence to live up to the high ideals of a liberal constitution. Naturally, no reform in criminal justice administration of India will be worth an effort unless the first and a primary partner of the team offer his willing cooperation to play the game according to rules.

10.1 Police and Administration of Juvenile Delinquency in India

Child care is a developmental function of the welfare State. The welfare State, democratic or otherwise, must ensure social security and future well-being to all, especially those who fall in the tender years. The Universal Declaration of Human Rights proclaims that ‘childhood is entitled to special care and assistance. It is a paradox that every advancement of civilization in the form of urbanization and modernisation (often confused with development), brings a fresh wave of tension to the lives of children, who represent the continuity of civilization. In the so-called developed world of the West they are the natural victims of permissiveness, alcoholism and neurotic tension that threatens to destabilize family and marital relationship of the spouses.

The agricultural societies of the third world may not have the similar problems of broken homes or children outside the wedlock, but they confront even graver problems of populous families in poverty, where children are made to suffer the roost. Of course, the village community in India, which usually acts as a check against waywardness provides some sort of gainful employment to its children and most of them look after their younger kids, graze cattle and help parents and elders in their domestic chores. But then difficulties arise when parents decide to migrate, step parents
take to ways of torture or relatives and acquaintances tempt them with a
design to misuse or accidents diseases, calamities and superstitions leave
them physically handicapped and mentally retarded. Naturally, the rural areas
in India have a sizeable number of identified and unidentified children, who
for one reason or the other, have to suffer a diseased or neglected existence.

The callousness of society hardens their delinquent ways into a regular
life of crime and social disapprobation. The street dwellers in cities provide a
slum culture to their new borns, who are inadvertently pushed to take to the
life of crime, beggary and immorality. The metropolitan dehumanisation of
the cities and the gradual disappearance of voluntary agencies of altruistic
welfare from public life keep on adding their share of cruelty to the lives of
those innocent millions, who still lack reason and strength of the body to play
the ‘Brute Game’ of life in their pre-juvenile years.

Studies in juvenile delinquency have identified innumerable factors that
generate deviance and delinquent behaviour among non-adults. Lack of
parental affection or over protectionism, mishandling, bad company, economic
insufficiency, poor ethical inputs, impact of violent and sexy movies,
tempting surroundings of vice-dens, torture, tutlege of the hoodlums and
callous apathy of society can be enumerated as some of the potential variables
against which all children need to be insured. The statistics about registered
crime brings home the enormity of the problem in all countries. Similarly, the
kinds of offences the juveniles are capable to commit and find involved are
incredible and the annual steep rise of the graph is simply alarming. The table
below provides the picture of the juvenile delinquent of India:
Juveniles Apprehended

<table>
<thead>
<tr>
<th>Year</th>
<th>Boys</th>
<th>Girls</th>
<th>Total</th>
<th>% of Girls</th>
</tr>
</thead>
<tbody>
<tr>
<td>1966</td>
<td>62,823</td>
<td>4,434</td>
<td>67,257</td>
<td>6.6%</td>
</tr>
<tr>
<td>1969</td>
<td>74,092</td>
<td>4,776</td>
<td>78,868</td>
<td>6.1%</td>
</tr>
<tr>
<td>1970</td>
<td>94,617</td>
<td>4,228</td>
<td>98,845</td>
<td>4.3%</td>
</tr>
<tr>
<td>1971</td>
<td>97,887</td>
<td>5,432</td>
<td>1,03,141</td>
<td>5.3%</td>
</tr>
<tr>
<td>1972</td>
<td>1,20,953</td>
<td>7,228</td>
<td>1,28,181</td>
<td>5.6%</td>
</tr>
<tr>
<td>1973</td>
<td>1,22,192</td>
<td>5,550</td>
<td>1,21,142</td>
<td>4.3%</td>
</tr>
<tr>
<td>1974</td>
<td>1,32,125</td>
<td>8,514</td>
<td>1,40,639</td>
<td>6.1%</td>
</tr>
<tr>
<td>1975</td>
<td>1,32,587</td>
<td>9,312</td>
<td>1,41,899</td>
<td>6.6%</td>
</tr>
<tr>
<td>1976</td>
<td>1,24,564</td>
<td>9,404</td>
<td>1,33,968</td>
<td>7.0%</td>
</tr>
</tbody>
</table>

Percentage change over

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1966</td>
<td>+98.3</td>
<td>+112.1</td>
<td>+99.2</td>
<td></td>
</tr>
<tr>
<td>1975</td>
<td>- 6.1</td>
<td>+ 1.0</td>
<td>-5.6</td>
<td></td>
</tr>
</tbody>
</table>

Unlike India, the western world has shown tremendous awareness of the problems of juvenile delinquency, which is qualitatively different in its contents and manifestations. In France, the Surate Rationale, the Gendarmerie Nationale and the Paris Prefecture of Police co-operate with juvenile courts and the Surate Nationale has 33 juvenile squads with a compliment of 120 officers for combating the problem of delinquency in the major provincial cities and towns. In Germany W.P.K. (Weibliche Kriminalpolizei) was established as early as 1930 and has been working as a police department for the Juveniles in all the States of the Federal Republic. Vienna has a Police Youth Hostel to house children below the age of 16 years, pending disposal of their cases by law courts. Although there is no special federal police department for juveniles in U.S.A., most of the States have

467 The Criminal Justice Act of 1948 in U.K. envisaged a scheme of police attendance centres at police stations for the young.
Juvenile Aid Bureaus, Youth Bureaus and Special Service Bureaus. As the police in U.K. and U.S.A. enjoys a discretion to send or not to send juvenile cases to law courts, the study reveals that on an average, out of 17,00,000 cases annually handled by the U.S. police departments; only 4,25,000 cases go before the Juvenile Courts. Japan is one country which has created an exclusive and central agency of juvenile police extending its organisation to all prefecturates and police stations. The agency established in the year 1953 has proved extremely effective and useful through its D.P.A. (Delinquency Prevention Area) Programmes, which on an average cover an area of 10,000 square kilometres and a population of 35,00,000 citizens dwelling thereupon.

In India a dozen important central law exist, which deal with the problems of juveniles. In addition, there are scores of State laws which take care of the problems of children in their respective jurisdictions. The major Acts - like I.P.C., CrPC, the Suppression of Immoral Traffic in Women and Girls Act partially deal with the various facets, of the problem, but other exclusive Acts like the Children’s Act (LX of 1960), the Probation of Offender Act (XX of 1958), “The Factories Act (LXIII of 1948) and the Orphanage and Other Charitable Homes Act (X of 1960) provide the broad frame within which the States have worked out their own supplements.

To meet the requirements of the aforesaid laws most of the States of the Union have created short-term and long term institutions. The short term institutions are called by various names, such as Remand Homes, Observation Homes, Reception Homes, Children’s Homes and Auxiliary Homes. These short term institutions provide immediate Shelter and provisional care to the transients in the legal process. The long term institutions have a higher and a bigger objective of permanent rehabilitation and after care. They are known by varying names such as Industrial Schools, Borstal Schools, Reformatory Schools, Fit Persons Institutions, Bal Mandirs and Vigilance Homes in
different States of the Union. These institutions have facilities for liberal education up to VI standard and provide for food, clothing, medical aid, indoor recreation and vocational training to their inmates failing in different age groups for varying lengths of time.

In the Indian situation when the law enjoins upon the State to look after the personality and health of the child, it does not entrust the Police with any major responsibility in the area. The Central Social Welfare Board and its counterparts in the States along with their other multifarious duties look after the enforcement of various pieces of legislation regarding children that exist on the statute book. In pursuance to some of the requirements of the laws three distinct kinds of services for the juveniles, namely (a) the Juvenile Courts, (b) the Probation Service and (c) the aftercare and followup services, have sprung up in varying degrees in different states of the Union. These juvenile services come into play only when the juvenile is caught in an overt act. There is no concept of discovering a potential delinquent for purposes of reformation and removal of causes of delinquency. The approach is, by and large, bureaucratic and rules-bound. In the absence of social orientation the juvenile services appear on the scene or intervene only to discover that the juvenile has already hardened into a life of crime without any hope of resurrection. Due to lack of resources and manpower, the juvenile services in the present are pressed into service only when the field agencies of the social welfare departments or police stations in the districts pass on certain specific and proven cases of potential delinquency to these institutions rendering aforesaid services. The Metropolitan cities of Calcutta, Bombay and Madras have some of the best of these institutions and the most efficient juvenile services in the country, although their coverage and resources do not even touch the fringe of the colossal problem. The growing awareness of the task of reclaiming the erring children and to salvage them from deviation is the basic

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468 In the year 1967 the State of Maharashtra alone had 123 such long term institutions, Gujarat had 28 and the State of West Bengal and Union Territory of Delhi had one each.
police responsibility all over the world. No organisation other than the police can and should be more interested in checking on juveniles from becoming delinquents or in reforming them from their state of fallability. The problem does not affect other departments as seriously as it does to the police, because the juvenile delinquents in their later adulthood are a real menace to the police. Conversely, the police stand to gain the most, if the juveniles are handled properly and are saved from a life of crime and vice in time.

Notwithstanding its professional limitations and scanty resources, the police organization should come forward to undertake this job, even if it entails added labour and extra expenditure. The collaboration of other auxiliary agencies like Juvenile Courts, the probation service and aftercare homes of the departments of Social Welfare can be ensured only when the police is entrusted with a legal responsibility of specific and exclusive nature. The impact of all these cumulative efforts under the aegis of police alone can make a good beginning in the field of effective child care system in India.

To involve police in the administration of child care in a country like India requires a lot of conceptual clarity and organisational mapping. It is still more necessary because the problems are unique and a very tall objective of child welfare is to be achieved with almost negligible resources and in minimum possible time. There is need to create Police Juvenile Bureau as a specialised unit of State and District Police Organisations with their field agencies in urban towns and cells in selective rural police stations to coordinate the administration of delinquency.

Children in any society are a prize possession of the family and no state howsoever totalitarianism, can take away the fundamental right of the individual to procreate and the right of the child to demand family conditions for his upbringing. These categories besides being nebulous can be further broken up into sub-categories on the basis of age, sex, social profiles and domicile. The Social Welfare Departments, administering the Childern’s Acts and other allied pieces of social legislation have an overall responsibility and must-devise specialised agencies for these specific categories. The police
organisation, which primarily deals with the control of crime and prevention of vice, has to be vitally concerned with the administration of delinquency, which in practice cannot be separated from the administration of welfare of other kinds of children, namely, neglected, the handicapped and the orphan. Even in this very narrow and specific area of administration of delinquency, the police administration has to deal with the problem at three distinct stages, each stage involving the cooperation of other agencies, but leaving the initiative and even major responsibility of administration to the police. These stages and agencies are:

Obviously, police has a role at all the three stages, but its functioning in the field of removal of delinquency will be largely handicapped, if other agencies do not respond in time of their sincere efforts go unco-ordinated. The present system of child care in most of the States is characterised with this kind of bureaucratic unaccountability. The arrangement is self-defeating largely because the administration of delinquency being very low in police-Priorities, does not provide the necessary inputs to activise the working of other sister agencies in administration. The police, besides being a viable field agency have a house to house coverage through its Beat System of stations. It can and should play a key role at the preventive stage and also in the trial and rehabilitation of the known delinquents. After all, the first contact of a potential juvenile is always with the police. The poor conditions of police stations can shock the child beyond redemption. At present every juvenile delinquent has to go to the police stations (for howsoever brief the period may be) before he is sent to the Children’s Home. During investigation formalities he has to remain in the contact of traditional policemen, who are used to dealing with the hardened criminals only. It is highly injurious to the health of the juvenile and there is a case that such child ten who have ever

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469 Their is anarchic diarchy or triarchy without any effective field organisation to initiate action for the enforcement of Children’s Act or even identifying the potential delinquents for purposes of correction.
been to a police station before should be handled only by trained and sympathetic police personnel of a specialised bureau.

The other agencies like the voluntary organisations, Juvenile Courts and Social Welfare Homes etc. enter at later stage only. Their co-operation, assistance and specialised services are certainly of immense value to the police, but administratively speaking, it is only the police organisation which can and hence should be duty-bound to prevent and control the ever-increasing quantum of juvenile crime in the country.

To accomplish this it is being suggested here that there should be a Police Juvenile Bureau every State Police Headquarters, directly under the charge of a D.I.G. Police. The existing Metropolitan Units, notwithstanding their present status, may continue to be administered by their respective Police Commissioners but they may be affiliated with the State P.J.B. for their allied operations. Every urban town with a population of three lakhs and above should automatically be allowed to have the specialised unit of this bureau. The bureau may have its functional cells in the district office of the police under the S.P., and if necessary, some police officers may be earmarked for juvenile aid work in selected rural and urban police stations also.

Obviously, a similar organisation in a smaller or bigger form can be envisaged for the P.J.B. at the district level and in the Metropolitan cities also. The level of officials and the size of the various cells and wings or units may be worked out as per-functional needs of the new organisation. Actually, it is a fallacy to contend that rural areas in India do not suffer from the scourge of juvenile delinquency. Unidentified problems in the countryside cause a bigger damage and a welfare state cannot afford to be complacent about them. The P.J.B. at the district should involve itself in the live problems of the field, while the Headquarter Organisation of the Bureau should handle administrative problems and provide feedback to its district units. The actual organisation of the P.J.B. at all levels will ultimately depend
upon the functions which the State government or the State Police Organisation will like to entrust to this specialised agency.

A seminar on Juvenile Delinquency: Role of the Police, organized by C.B.I. in 1966 recommended that: “In every city with a population of one lakh and more a special unit, headed by an inspector of police and consisting of adequate staff, including women police, should be created... For cities with a population of five lakhs, there should be an adequate number of units under the charge of a Deputy S.P-The I.G.P. and the S.P. at the levels of the State and the-District should have Advisory Committees and be assisted by a S.P. and a Deputy S.P. respectively. Broadly speaking the following functions can be envisaged for the P.J.B. at the Police Headquarters in the State:

1. The bureau should undertake prevention of delinquency at all levels and in all forms. It should conduct surveys, identify individual child and collect socio-economic data about his family background. It should direct the Police Station to maintain detailed records and send periodical and statistical reports about children, (i) delinquent-(ii), likely to be delinquent, and (iii) factors responsible for delinquency in each case. Similarly, information about truants, vagrants, and children lost or missing, abducted or kidnapped etc. may be collected at the District P.J.B. For onward transmission to the State Bureau. The Bureau may take necessary steps to discover missing children and should keep in touch with the families of the children, lost or kidnapped by the gang of criminals in or outside the State.

2. The P.J.B. must undertake initiative in co-ordination work in the field of juvenile delinquency. It should invite periodic meetings of parents, social welfare officers and social workers, police officials, jail superintendents, probation officers and judges of Juvenile Courts to discuss common problems and identify roles for each agency. The co-ordination cell of the P.J.B. at both the levels should be in constant touch with these participants in the administration of
juvenile delinquency and specific cases may be referred to the relevant agencies after their collective examination in the sub-committees of the bureau.

3. As juvenile delinquency is essentially a police problem and its unchecked growth has wider ramifications in the world of criminal justice, it will be advisable for the P.J.B. to develop specialised counselling services and undertake consultancy work of highly skilled nature. The Bureau may have the services of trained psychologists, lawyers and medical jurists to advise its clients about problems of personality, habit, recidivism, rehabilitation, Court cases and jail problems. The socio-legal counselling as a service for the juveniles can be one of the specialised and technical functions of the bureau, which the other agencies in the district and in the State may gainfully borrow, if and when required.

4. The Bureau may undertake independent research studies in the areas of delinquency and correction. It may sponsor two separate kinds of training programmes; one for the police officers and social workers engaged in the task of prevention and correction of delinquency and another for the delinquent children, who may learn various kinds of useful arts during their training period to lead a meaningful life as adults in future. There can be combined and mixed training courses and the experience thus gained can be creatively used by researchers attached to the Bureau.

The Police Juvenile Bureau is not a very original or radical idea. The Metropolitan cities of India are quite familiar with its working. What is being suggested here is a scheme of making this specialised agency a part and parcel of the regular State police administration-urban as well as rural. The Bureau may be an administrative agency to begin with, but it can be envisaged as a growing centre of multifarious activities through all sorts of attached institutions and technical branches for specialised jobs. Looking to the delicate nature of the emotional problems that juvenile world has, it can
be contended that such Bureaus should increasingly be placed under the charge of motherly women. As a feminine preserve, they can certainly prove more purposive and the absence of masculine callousness can positively contribute to their enhanced efficiency and goal-getting.

The common functions of the juvenile aid police bureau are enforcement of the Children’s Acts, patrolling of delinquency areas, including picking up of destitutes and restoration of runaway children to parents, conducting of field enquiries and surveys and undertaking parent counselling. Their staff maintains close liaison with Reception Homes and Boys Clubs. However, Investigation of crimes committed by Juveniles continues to be the responsibility of the local police in all the Metropolitan cities. It is not worthy that more than half of the juvenile bureaus in U.S.A. have police women on their staff. Male police officers usually deal with the work of law enforcement, while the police women look to the preventive aspect of police duties in relation to juveniles.

It is a truism to say that Police organisation in India today has neither an adequate coverage nor does it possess the requisite expertise to undertake these additional and difficult functions. Finding their own house in disorder and now under fire, it is understandable that senior police officers do not want to overburden their organisation with functions in a field alien to the cops. Similarly, some of the agencies of the State Social Welfare departments, which quite recently have entered into this vacuum, are gradually developing vested interests in the game. They do not have any field organisation or a beat system with positive functions to enforce social legislation, but may not like that the police may step-in into the domain which they presently administer with impunity. The usual arrangements of police corruption, overwork, police culture, police company and third degree methods used by police are the alibis to sabotage action. The fact of the matter is that juvenile delinquency is a

470 The Juvenile Aid Police Bureau (J.A.P.U.) in Bombay, the Juvenile Police Aid Bureau (JPAB) in Calcutta and the Juvenile Aid Police Unit (JAPU) in Madras are headed by Deputy Commissioners of Police in Bombay and Calcutta and by Assistant Commissioner of Police in Madras.
growing menace in a modernising society like India and only a different kind of police with knowledgeability and commitments can hold a satisfactory answer to the vexed question.

The students of Criminal Justice in India know that social welfare departments of the States are ill-equipped and ill-organised to deal with the problems of delinquency effectively. They already have their hands full with assorted problems of all categories of children-neglected, diseased, handicapped and orphaned. In the absence of effective machinery in the field, the legislation pertaining to children is observed more in breach and the police do not feel concerned -or duty-bound to take cognizance or action in the matter. The poor enforcement of children’s Act and other laws lies at the root of the malady, which ipso facto renders other agencies as simply dysfunctional.20

The creation of Police Juvenile Bureau at the levels of the district and the State Headquarters can provide the much needed mechanism to initiate action and co-ordinate efforts, which though well-intentioned, do not yield desired results today. With an adequate machinery in its own organisation and exclusive legal responsibility, the police in India will take more interest in the preventive rather than in the correctional aspects of juvenile delinquency which alone can save the child from undesirable exposures and retrieve him without causing injury to his personality. Moreover, it will improve the police image suo motto because positive functioning like child care, when handled by expert police women, will happily shock the society in appreciating the new role of the police.

Similarly the participation of policemen and police women of the bureau in Aftercare Programmes through Boys Clubs and Recreation centres etc. till the delinquents attain a certain age of find some employment, will positively contribute to the fair image of the police organisation. The involvement of police along with voluntary agencies and other social service organisations in the total child care programmes will project the police in her new image of a citizen police. It is quite understandable that the present
policemen will find it embarrassing for sometime to work in this new area, but gradually the experience will reveal that the job is not only exciting, but highly challenging and satisfying as well. Similarly to a layman, the achievements of the P.J.B. in a State may not look very spectacular, but its long range impact upon the patterns of future crime and profiles of future criminals will be tremendous and worth the experiment. After all, police cannot afford to take an ostrich like attitude towards crimes involving criminals in tender age groups. It has to equip itself for the problems of the future and the establishment of Police Juvenile Bureaus in the State Police Organisations of the country will certainly be an appropriate and worthwhile gift from the present generation of police reformers to the posterity; unborn in the international year of the child.

11. Criminal Justice Administration: An Agenda for Reform

The present day criminal justice system in India is a queer amalgam of Mughal and British systems based on the mediaeval and modern notions of individual’s life, dignity and person. The Indian Police Act, 1861 also represents this psychological dilemma of rulers, who on the one hand were inspired by the noble philosophy of liberalism but on the other hand were confronted with the stark problems of running a colonial administration. The compromises symbolised a heroic task and as such most of the delicate things had to be left to chance and conventional evolution. Later, the history of the freedom struggle did not leave enough scope for administrative experimentation. The law was placed in a conservative iron mould and the socio-cultural ethos of rural India gradually shaped the police system and the legal and extra legal procedures of the Bar and the Bench in their present form.

Independent India has by and large continued with the colonial Blue Books and has maintained the procedures of Criminal Justice with regard to

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[47] Immediately after the Sepoy Revolt of 1857 the Englishmen decided to enact the three base Blue Books of Indian Penology i.e. Cr. P.C, I.P.C. and the Indian Evidence Act. All of them were authored in the post-Mutiny era.
investigation, prosecution and Court trials in their historic frame. It is partly because of the euphoria for development, but more especially because of the formidable problems that reforms in this sensitive area of regulatory administration threaten to involve. The political masters in free India have satisfied themselves with minor legal amendments of inconsequential nature. But when this has been so, the Indian society has outgrown the Indian Police Act of 1861 and more than a century old criminal procedure code of India. Developmental thrusts of urbanisation and affluence coupled with violence of social change have let loose all sorts of new waves of crime against the human body which the existing system of criminal justice finds itself too fragile to cope with.

Democracy has not only eroded Indian people’s faith in the majesty of outdated laws but has put the political integrity of its varied functionaries under serious interrogation. The Intra-Institutional conflicts and inter-institutional dys-functionalism of the system are increasingly being witnessed and challenged in public. “The persons of law are no longer in a position to convince the people about the truth of their lies”. The opaque house of Indian Judiciary finds the contempt of Court provisions of law/unteachable in the face of the ‘contempt of people’ in the popular courts of press and public opinion. No alibis of overwork and increasing social disorganisation can justify the languishing of undertrials for decades. The procedure orientations of criminal justice administration are fast losing their rationale because of the unethical practices rampant in the system which is goal-defeating.

The Indian people are becoming relatively more aware and intolerant to litigation costs, dilatory procedures, political interventions and legal privileges and favours bestowed upon the litigants belonging to rich and the powerful Sections of society. The infighting obtained between the police and the judiciary in the system tends to benefit the criminal and its impact vitiates the entire procedural system of prosecution and trial in the courts. The disjointed machinery of Criminal Justice after more than a century of its
working’ and that too in free India needs an identification of some of its problems at various institutional levels.

The Law Commission of India itself being a conservative body, staffed with lawyers tends to have developed a vested interest in status quo. Moreover, the facts reveal that more cumbersome and complicated procedures have been prescribed in the name of legal reforms in the Justice System. The Parliamentary committees have been weak and ineffective and even the basic laws which stand as items on the Union list of the constitution have been taken up by the Indian Parliament in an ad hoc and piece meal manner.

The Indian Police Act 1861 is an anti-diluvian Coercive Structure of Authority and not withstanding a plethora of reports by state and National Police Commissions; the basic structure of Indian Police is highly centralised, quasi-political and non-specialised. The constabulary at lower levels is rustic, muscle-oriented, power hungry and exploitative. The procedures of police work are based on distrust and are followed with an eye on the judicial and organisational behaviours of their seniors. The petty police functionaries, who write FIRS conducts field investigations and prepare legal documents for prosecution. They are too low to understand the high social responsibility involved in the discharge of their quasi-legal professional duties. Their Training in law tends to prepare them to communicate only with the vakils and the judges and that too at the cost of the victim and the society.

The present system of legal education in Indian universities leaves enough to be desired. The fast deteriorating academic standards apart, the ethics of the new generation of advocates has a real challenge in the growth of inflationary economy and respect commanding materialistic values of Indian society. Naturally, the bar being a free trade in legal aid is liable to develop

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472 Except a few minor and need-based amendments the bulk of the ‘Penological Books, in India remain where they were in 1861.
473 The Constitution as the higher law of the land swears by the ‘Dignity of the Individual’ but the lower laws of the land stay incongruent with these laudable professions.
its own black market, more easily accessible to the neo-rich or the anti-social elements in Indian society.

The professional competition at the bar has become intense and as a historical ally of politics, the nuances of the latter tend to infiltrate more conveniently in the bar room. Like most other professions success has become the criterion of competence and eminence in the legal professions also. Consequently, the competent and the quite honest specialist is at a great disadvantage. This deplorable fact of vanishing species from the bar rooms obstructs the processes of administration of criminality in the four walls of the temple of justice.

To write about the Indian Judiciary is itself a great threat to the liberty of the citizen. The rigid and procedure-oriented approach emanates from the accusitional philosophy of Anglo-Saxon Justice and has contributed to the evolution of certain kinds of judicial behaviours. The sensitivity, insularity, legal training and the professed political neutrality of the judiciary have resulted in the conditioning of a particular kind of Criminal Justice System with which the policemen, the vakils and even the medical jurists have acculturised themselves in their perverse interests. Empirically it has resulted in the accumulation of huge arrears of Court cases, inordinate delays in disposals, relaxed policies of bails and parole, crooked evidences, concoated witnesses and a kind of intellectual apathy towards the social responsibility of the judiciary. The criminal reform and the deterrence of crime being watch words, victimology still seems to be a new democratic area, alien to Indian judicial thinking.

Here again the colonial class system operates. The recent studies done by criminologists establish that Indian jails have grown into new crime factories producing hardened criminals. The horrendous state and horrifying

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474 Recently Justice K. Ayer has spoken and written a good deal and pointed out loopholes in the policies and practices of the Indian courts with regard to bails, parole, evidences, witnesses, cross examinations and sentencing policies of Indian judges.
stories of prison management hardly need any documentation. Reform and rehabilitation of criminals are more or less a rhetoric for academic seminars. The organisation is outdated. The untrained personnel is callous and has low morale. The budgets are meagre and the jail manuals drafted in the 19th century are handling criminals in the eighties. People have little awareness and the social norm has been against all softness and experimentation with the convicts.

The criminal justice administration in any society is after all a relay race. The law makers guarantee the basic security of person to the citizen. The police apprehend and bring the law violater to book. The bar helps the free citizen to preserve his freedom and the bench imparts justice by inflicting punishment on the guilty and protection to the innocent. The prisons house the criminals and strive to reform ana rehabilitate them. If one partner in the race is sluggish or non-co-operative the entire system is bound to collapse. As always the failures of the organic system will be attributed to segmental break-downs but this is no gratification to say that police organisation is better than prison organisation or judiciary is more honest than the police in India. The totality of the administrative organism has developed creeks and pathologies and it is in view of the overall democratic social change that the maladies have to be diagnosed and prescriptions attempted.

Most of the maladies of the criminal justice administration in India primarily originate from the accusitional philosophy of justice which the institutional milieu of a developing society can ill afford in the present context of democracy. The Constitution guarantees the fundamental rights. The infrastructure of the bar, the nature of organised crime and the politics of vested interests have articulated themselves so strong during the last century that every partial remedy proposed leads to a deeper organic malady of desperate variety. The educated elites have so many stakes in the criminal justice system of the country that apparently when they keep the bogey of penal reforms alive; they continue to work for the preservation and strengthening of status quo. Meanwhile the segmental crises have deepened and the
compartmental problems in each realm, which seem exclusive, have become overwhelming. Some of these problems are:

11.1 The Legislative Realm

(a) Indian People in general do not understand the niceties of law. They have by and large failed to generate democratic pressures on their law makers to initiate nucleus change in the area of criminal justice. Even the basic policy pronouncements and purposive revisions of legal enactments do not seem anywhere on the anvil.

(b) The Parliamentary control over executive is too ad hoc and ineffective to bring the latter face to face with the realities of criminal justice system. The occasional criticism of police or opposition invectives on judicial failings has yielded some laudable pronouncements, binding no one to nothing.

(c) There has been little co-ordination between the Law Commission, the Parliamentary Committees, the State Legislature and the National Parliament. They have not been in a position to develop a national consensus on major issues that bedevil the criminal justice administration of the country.

(d) Empirically speaking the legislatures in India is functionally dominated by the luminaries of the legal profession. They have by and large shown apathy to social change and to innovations in the systems of police and law courts which represent their Primary vocational pursuits even as politicians.

11.2 The Executive Realm

1. The executive in free India even during Nehru days of stability and competence was obsessed with the problems of development. It has remained lukewarm to commit itself of the basic change of policy in the area of regulatory administration. Rather, it has apprehended
avoidable dangers to the democratic system by being harsh with vested ‘interests’ operating in the field of Criminal Justice in India.

2. The Police machine in free India has been politically over-used and in turn it has also over mastered the art of circumventing procedures of Criminal Justice administration in league with its political masters. The police Constabulary which was historically trained to attain non-goals has abused its craft and skills to pursue anti-goals with in the frame work of the system. Over work, foul image, poor service conditions, muscle building and legal Training have encouraged the policemen to dupe the Judiciary through their Quasi-Judicial Police work of crime investigation which is regarded as an Executive job in India.

3. The prison reforms have attracted attention but neither the Legislature nor the executive could assign them the priority they deserved. Manned by petty people of low vision, the Prison in India is an alienated place with little legal inputs for change, and rehabilitation. Actually, the most difficult reform has been left to the care of the most reluctant with almost little initiative in policy making and no discretionary funds for innovation.

11.3 The Judiciary

1. While playing its historical role quite admirably the Judiciary in India has gradually and inadvertently become the prisoner of the bar. The bar bench relationship, being what it is, has robbed the latter from being dynamic, purposive and time bound in imparting Justice.
2. The professional competence and legal training of Judges have generated a very special kind of judicial behavior too insensitive to social change and popular-criticism.\textsuperscript{475}

3. The Bar which has a role in fretting facts and showing light to the Bench has cashed upon the Police Judiciary conflicts in India. It has over sanctified the procedures of evidence, witnesses, Bails, cross-examinations, appeals, exhibits and Court rulings to the extent that the system has been ossified and Justice has become a purchasable Commodity of Benthamite description. The learned counsels represent the capitalism of intellect, exploiting the illiterates and the ignorants in the country. The rich and the powerful classes have their natural allies in the Bar with the result that there exists a favourable tilt in the frame of law for the so called respectable citizens, who appear as witnesses and surities against the interests of the poor, the weak and the innocent.

4. The age old procedures followed in Court trials in India are so humiliating that no self respecting citizen will like to compromise the dignity of his person as a willing witness. The raped women is expected to risk scandalisation because the law presumes that all suspected rapist respect women, unless proved otherwise in the Court of a Magistrate and that too in the presence of Vakils, cross examining the victim in lieu of fabulous fees, advanced by the socially decent criminals.

11.4 The People

1. The Indian society by and large hates Court going and accepts Vakils as a catastrophe. Yet, paradoxically enough the lawyers have been the most venerable and flourishing people in India. The society respects their role in democratic Politics and has been

\textsuperscript{475} It is fairly conditioned by the anglo-Saxon norms of law and procedures of Justice which create “End Means dichotomy”.
relatively more lenient to the perversions of the Bar as compared to the evil doings of Police and Politicians.

2. The popular inertia has obstructed the procedures of Criminal Justice. Highly educated people do not come forward to cooperate as witnesses. They avoid police and courts partly because of the harassing images of the latter but still more because the concept of Participatory Justice was never tried in a colony. The rich and the powerful classes alone were acceptable to the British rulers and conventionally they remained participants in crime and Criminal Justice administration of the Country.476

Naturally, this inconvenient partnership has developed into a strange bed fellow relationship. The legislatures condemn the Police for crime resurgence, the Police with tongue in their cheeks hold the Judiciary responsible for letting off the criminals, whom they round up at great risk. The Judiciary bemoans the lack of updating of laws and the Parliament which alone can do it in a democracy lashes out against the lapses of all these at all levels. The common man thinks that the politicians have pushed the country into a blind alley. He vociferously denounces the criminalisation of politics and politicisation of crime in India. But the politician also pleads his helplessness in the democratic system, which is a genuine threat to his prolonged survival as a representative. Thus the vicious circle indulges in a nefarious game e.g., of passing the Buck. The segmental crises keep cumulating into a systemic ‘crisis of crises’. The remedy also lies in an organic cure and concerted effort for which even the thought processes have not yet been generated. Here are a few suggestions to size up the chaos.

1. The Ministry of Law and Justice at the Centre should be reorganised as a policy coordinating mechanism with an Independent Division of

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476 Thus free India inherited a legacy of British penology, colonial Police and alienated Judiciary which she has allowed to coexist and work with her Parliamentary institutions based on adult suffrage.
Criminal Justice 477. This Division may have four wings each looking after (1) Penology, (2) Police, (3) Judiciary and (4) Prisons. The Minister of Justice must initiate the new shift in Philosophy and Policy which may issue in a Policy statement to be approved by the Parliament. Victimology as a new focus of National Policy towards Criminal Justice must stir a National dialogue through press and Research studies. Once this policy and its administrative and legal implications are thrashed out it should result in Basic segmental reforms which each wing of the Union Ministry of Justice should implement as well as coordinate. A democratic consensus for a major reform in regulatory administration is a pre-requisite for this and this can be arrived at through a dialogue, research and debate on various issues by all Sections of Indian Society. The Ministry must listen and respect the views of non-legal professions and prepare a Blue Print of Penological, administrative, procedural and other allied reforms, which need to be processed in due phases at the national and state levels.

2. To attain this long range but vital objective- orientation in Criminal Justice Administration the Penology wing of the Ministry of Justice should undertake the historic task of “Re-authoring” (Not more amending) the three Basic Acts i.e. Cr. P.C, I.P.C. and the Indian Evidence Act. This task should not be entrusted to legal experts, who have positive vested interests and biased perspectives. The Post-mutiny Penology or the concepts of crime and procedures of judicial administration cannot be revised by persons of law, who have been trained into it and have ceased to question its ‘reason detre’ in the new context. For example why should crimes in India be classified as ‘Cognizable’ and non-Cognizable? Which crimes need to be Bailable and non-bailable? What is a grievous hurt? Who is a rapist and who is raped? These issues need the awareness of

477 The Ministry may have a Research Bureau as one of its attached officers.
changed Indian sociology which should be reflected in the Blue Books.

Mere amendments in colonial laws create a queer situation and complicate them for the benefit of the legal profession. Crime control cannot be a concern of the Bar and the Bench. Hence the Job of Reauthoring the Basic Acts' may be entrusted to a National Penological Commission, which should have a majority of its members from the Press, the Politics, the Academics, the women’s Organisations, the weaker Sections and the trade unions.478

Acceptance of penology in obedience to a new philosophy will entail a new police organisation to enforce law and arrest crime. If Police is to be accepted as a partner in the rally race for Criminal Justice then the present organisation of the Indian Police may be divided into (1) Police for law and (2) Police for order. The former, which is popularly known as Civil Police has to be given p. Quasi Judicial status, some thing on the lines of the French ‘Police Judiciale’. The investigation process of crime has to be given the Sanctity of Judicial work, which independent of judicious Police Officers alone should pursue to help the senior judges in the discharge of their duties. Once the Order pan of armed Police is separated and left to the care of Political masters, the investigation and prosecution work of ‘Law-Police’ may be put under the charge of a Prosecution Director General and the Prosecution Directors, some what on the line; of the Comptroller and the Auditor General of India at the Centre and the Accountant Generals in the States.

Further details of this independent and quasi-judicial organisation can be worked out through continuous research and experiment. This autonomous organisation of Judicial Police will enjoy respectability and cooperation of fellow judges. The present situation of distrust will go and the police and the

478 The labours of this Penological Commission should be whittled by a Parliamentary Committee of Justice and the final drafts of the New Acts may be discussed and approved by the N.D.C. which should keep the national consensus in view through Prolonged national debates.
judiciary together will fight for the victim against the onslaughts of rich and the strong. Fudging of evidence in cases will not be needed and mercenary witnesses on easy money will not be allowed to make a mockery of Justice. The police partnership in place of present confrontation in judicial work will engender higher sense of professional ethics and public accountability of Police and Courts.

In a democratic society not much can be done to restrict the freedom of the bar which is supposed to play the defender of the rights of the citizens. But then, the defenders themselves should not exploit the society in the name of the defence. Some thing has to be done to strengthen the moral fibre and professional calibre of the members of the learned profession. Like black market in scarce or essential commodities in a developing society, black deals in open market of talent or professional services need to be banned. The present state of the legal profession, being far from satisfactory, warrants the following reforms:

1. The L.L.B. degree of Indian Universities like other professional degrees in Medicine and Engineering should be awarded on completion of a Five Year study course. The Bar Council should disaffilliate sub-standard colleges and Universities. Only youngsters of merit and proven integrity should be allowed to enter the law schools of the Country.

2. The Supreme Court and the High Courts should hold annual Entrance Examinations for their respective bars. The present practice of allowing entry into the legal profession under the shadow of some established veteran should be discontinued. This second screening will bring the real professionals and as in Japan the Black gown of the Counsel will be an object of envy and respect in Society.

3. The law should not permit free contracts in legal trade. The cases may be classified as A, B, C and D and the fee scales may be prescribed as minimum and maximum. The advocates should be
allowed to charge per appearance or hour wise professional attendance fees from their clients rather than the present system of case fees and status system of the Junior and Senior Counsels.

4. The mal-practices in the legal profession may be well defined by the law and gradually the voluntary association may be encouraged to sue their lawyers, for perjury. It will enhance the social responsibility of the Legal profession.

5. Of course, to point out problems and limitations of the Bench in the criminal justice system is fraught with misgivings. But a judiciary in a democracy has to learn to work, in the midst of popular noise all around. No institution, howsoever high, has a right to silence this dissent, especially when it represents what the Court purports to defend. In a democratic system there cannot be a concept of authority without corresponding responsibility. The Bench cannot afford to enjoy a fair image of silencing popular criticism in the name of contempt of courts. The social responsibility of the judges has to be seen in terms of an effective democratic accountability of the Bench. A public and open dialogue on judicial behaviour and relationships can help in operationalising this responsibility and accountability in democratic terms. To ensure it will be worthwhile and advisable that:

a. Judges continue to enjoy the security of tenure and constitutional protection in the discharge of their Judicial duties. Their service conditions should be lucrative enough to command respectability from the Executive and the Society. Actually, the present system of independent judiciary should not only continue but should be strengthened in much more independence and competence to do a trying job that involves Professional skills, moral integrity and physical hazards of varied nature.
b. But when all these privileges and honours seem justified, no Court in a democratic system can afford to avoid popular criticism and indulge in 'contempt of the citizen'. Press, Political Parties and Parliaments are the instruments to contain judiciary. Judicial Pronouncements also need screening by non-Judicial experts and even if motives are imputed in the process the judiciary should take it in the stride. It should command not demand popular respect.