

## Chapter-V

### PROFESSIONALISM AND ITS IMPORTANCE IN INVESTIGATION OF CRIMES

#### A. The concept of 'Professionalism in Investigation of Crimes'

The concept of 'professionalism' is a universal phenomenon. It pervades all most all activities and fields of knowledge. It was the Renaissance and the Industrial Revolution which gave a fillip to the idea of professionalism. Later advancements in science and technology have further provided a great impetus to the growth of professionalism in the world. Today, no organization or institution, whether small or big, is free from the influence and impact of professionalism. Its prime purpose and object is to excel well in ones own field of knowledge and work. The police organization is not an exception to it.

Though several definitions for the term 'Professionalism' are available in currency none of them are universal in nature and content. They are coined and used in definite context and reference to a particular profession. Thus, any definition is relative than general in its application and is used with the changing vicissitudes of time and situations. The term 'professionalism' has been defined in Oxford Dictionary of English as "the competence and skill expected of a professional." The term 'professional' has been defined as "competent, skilful, or assured person." Thus, the fundamental attributes that qualify professionalism are qualification, specialization, experience, expertise and professional ethics.

A few academicians and others related to the field of policing have attempted to define and describe the phrase 'professionalism in investigation of crimes' in a definite context. According to R.C. Jha professionalism in

investigation of crimes refers to “strict adherence to the rule of law in police profession.”<sup>1</sup> According to Prof. N. R. Madhava Menon it refers to “the degree of professionalism that is directly proportional to the degree of training, autonomy in decision making and the extent of operational freedom.”<sup>2</sup> According to C. V. Narasimhan it refers to “identifying the police competence in law enforcement with adequate knowledge of law and the citizen’s rights in a democracy, their integrity and impartiality in all their work and their total commitment to duty and discipline of a very high order under a hierarchical command system.”<sup>3</sup> Neal C. Griffin has described professionalism in investigation of crimes as “those qualities, characteristics, behaviors, and attributes of integrity, intellect, industry, initiative and impact for maximum level of professional achievement.”<sup>4</sup>

Thus, professionalism in investigation of crimes is a necessary concomitant for efficient and effective investigation of crimes. It helps to stem the growing rate of acquittals by proper application of special skills and knowledge, experience, expertise and professional ethics.

## **B. Importance of Professionalism in Investigation of Crimes**

Professionalism in investigation of crimes plays a pertinent role.

- It improves efficiency and effectiveness in investigation.
- It improves quality and performance level of the investigating police.
- Its helps in the successful prosecution of criminals by securing maximum rate of convictions.
- It helps to harness and exploit human as well as other resources required for investigation judiciously and optimally.
- It indirectly helps the prevention of crimes and criminal activities.
- It reinforces trust and respect among the seniors, fellow colleagues, the other wings of criminal justice system and the public at large.
- It helps to mould and develop leadership and supervision.
- It improves teamwork and instills the spirit of cooperation amongst the investigating police.

- It encourages adoption of suitable values of integrity, intellect, industry, initiative for better performance in work.
- It helps better appreciation of knowledge of laws, procedures and skills and their application in the field of investigation of crimes.
- It facilitates adoption of modern scientific methods and aids of investigation.
- It insists for full fledged training and orientation of investigators and team.
- It infuses confidence and pride of the profession.
- It improves accountability amongst the investigating police.
- It encourages and inspires the police folk and eliminates apathy towards their superiors and other social agencies.
- It reduces disciplinary problems in the course of investigation.

### **C. Need for Professionalism in Investigation of Crimes**

Investigation of crimes is both a complex and cumbersome task. It has to be performed systematically and procedurally in a professional fashion, otherwise, the efforts put in by the investigating officers will prove futile. The investigation is a multi-pronged process of collection of clues and evidence from various sources, places and persons under the procedures. Therefore, professional outlook and attitude is essential for the investigating police for effective investigation of crimes.

The prevailing poor and ineffective investigation and resultant rise in the acquittal rate indicates the poor application of attributes of professionalism in the field and process of investigation of crimes. This can be witnessed in all the phases and facets of investigation ranging from the registration of the first information report to the filing of the charge-sheet or final report to the court. It is very relevant to quote the observation of the Supreme Court in *Nandini Satpathy v. P.L.Dani and Another*,<sup>5</sup> “the Indian Republic cannot fulfill its social justice trust without a serious strategy of cultural and organizational

transformation of police intelligence and investigation, abjuring fists and emphasizing wits, setting apart a separate, sophisticated force with special skills, drills, techniques and technology and aloof from the fossilizing, sometimes marginally feudal, assignments- like V.I.P duty, sentry duty, traffic duty, law and order functions, border security operations. They must develop an ethos and ethic and professionalism and probity which can effectively meet the challenge of criminal cunning, the menace of macabre intricacies and the subtle machinations of white-collar criminals in politics, business and professions and can do so without resorting to vulgarity, violence or other vice. The methods, manners and morals of the police force are the measure of a society's cultural tolerance and a government's real refinement."

Lack of professionalism amongst the investigating police in investigation of crimes has been clearly brought out by the Supreme Court in *State of A.P. v. Patnam Anandam* <sup>6</sup> by observing that the death of deceased alleged to have occurred sometime between 4 p.m. and 7 p.m. on 7-11-1992. The FIR was lodged at 6-30 a.m. on 8-11-1992. Prosecution alleged that the father of the accused informed the Sarpanch about death of the deceased at 7 p.m. on 7-11-1992 and Sarpanch thereafter telephonically informed the police as well as "sent a written report" at 11 p.m. However, no such entry was made in the station diary and no written report was produced to substantiate the claim. Investigating officer had not made any report, though the information was disclosing the commission of a cognizable offence. Besides, investigating officer reached the place of occurrence, which was only at a distance of 4 km from the police station on the next day at 6-30 a.m. and only thereafter FIR was drawn up. These facts cast doubt on the prosecution's case and consequently on the time of occurrence of death. The most crucial circumstance which could have linked the respondent with the murder of the deceased was the finding of a piece of cloth and two buttons near the body of the deceased, which according to the prosecution were parts of the shirt worn by the respondent on the date of occurrence. It was urged before the Court that the respondent made

a disclosure statement on 22-11-1992 and produced a shirt from his house voluntarily which was worn by him on the date of occurrence. The case of the prosecution is that while resisting the assault on her, the deceased may have caught hold of the pocket of the shirt and in the struggle that ensued, the pocket was torn off and two buttons also fell off near the place of occurrence.

Unfortunately, the prosecution has led no evidence to connect the shirt with the piece of cloth found near the place of occurrence. Counsel for the respondent submitted that the respondent was arrested on 8-11-1992 and the alleged disclosure statement is said to have been made on 22-11-1992. The disclosure statement made after such delay has no value, the Court maintained. Therefore the court assumed in favour of the prosecution that a disclosure statement was made on 22-11-1992 and pursuant thereto the respondent produced before the police shirt, which according to the prosecution, was worn by him on the date of occurrence. The seizure memo of the shirt shows that the shirt was a white shirt with red patterns of flowers and it appeared that the pocket of the shirt was torn apart. Two buttons were also missing from the shirt. The site plan Prosecution Exhibit -3 disclosed that a torn shirt pocket and two white buttons were found near the dead body. The colour of the shirt pocket found was not disclosed in the panchanama. It is, therefore, difficult to connect the torn shirt pocket with the shirt which was recovered at the instance of the respondent. This apart, no evidence adduced by the prosecution to establish that the piece of cloth found at the place of occurrence was really a part of the shirt which was recovered at the instance of the respondent which was corroborated by the witnesses. No witness has said so. Moreover, the circumstance that the pocket of the shirt worn by the accused at the time of committing the offence was found at the scene of occurrence was not even put to the respondent in his examination under Section 313 CrPC. It was, therefore, difficult to rely upon as it was an incriminating circumstance for the Court to consider. The highly unprofessional fashion adopted by the investigating officer was responsible for the acquittal.

Lack of professionalism amongst the investigating police in investigation of crimes can be analyzed in different phases and facets. They are as follows:

### **1. Lapses and Loop holes in Registration of FIR**

Generally, FIR is a pre-requisite for commencement of investigation of a crime. Under section 154 of CrPC it is clearly laid down as to what constitutes an FIR, and as to how an FIR is registered. There are Police Manuals, the Indian Police Act, 1861 and innumerable judgments of High Courts and the Supreme Court that cast complete light on the contents and contours of an FIR. *In Thanedar Singh v. State of M.P.*<sup>7</sup> the Supreme Court has observed that FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence leading to the trail.

Caused by the lack of professional outlook and attitude, the officers in charge of the police stations do often err in registration of complaints though the complaints do not reveal cognizable offence and continue with the investigation.<sup>8</sup> This is *de hors* of CrPC. This is because an officer in charge of a police station whose rank as per CrPC is Head Constable and above may not have working knowledge of laws and procedures as to how to distinguish clearly between cognizable and non-cognizable offence. They often fail to realize whether they are empowered to register a case for non-cognizable offence.

As required under section 154 CrPC, an officer in charge of a police station often does not register an FIR promptly as soon as it is lodged before him. He causes undue delay in the registration of a case without rhyme and reason which vitiate the process of criminal trail and result in acquittals. *In Thanedar Singh v. State of M.P.*,<sup>9</sup> the Supreme Court has held that delay in lodging the FIR often results in embellishment, which is a creature of an

afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity but also the danger of introducing coloured version or exaggerated story crops up. On account of the infirmities, the FIR loses its value and authenticity and it appears that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by Prosecution Witness -8.

Though under section 154 CrPC an officer in charge of a police station is expected to dispatch copies of the FIR to court and other superior officers immediately after registration, yet he delays in dispatching them and thus invites the wrath of the court at the trial.

Under section 154 of CrPC and section 23 of the Indian Police Act of 1861, an officer in charge of a police station as soon as he registers an FIR, is expected to make a brief entry of the contents of the FIR, date, time, crime number and section of law in the station house dairy.<sup>10</sup> If he does not do so, it tantamounts to a flagrant violation of procedure laid down under the said laws. On several occasions High Courts and the Supreme Court have lamented on this state of functioning and had to pass judgments in favor of the accused for poor evidence put up for trials by the prosecution.

An officer in charge of a police station at the time of receipt and registration of FIR is procedurally bound to ensure that all the contents are mentioned in the FIR. The contents of the FIR will include the name of the complainant, victim, accused, witnesses to the crime, date and place and nature of the offence committed, property lost etc.<sup>11</sup> Very often an officer in charge of a police station either due to the slackness or the insufficient knowledge on the provisions of the FIR under the section 154 CrPC ignores the provisions and fails registers a case, which will adversely affect the case. The courts will be bound by law to judge a case in favor of the accused for these lapses and loop holes that has glaringly crept in because of the carelessness, or ignorance of the officer in charge of the police station. At times an officer in charge of a police

station receives oral complaint and reduces it into writing but fails to comply with the procedures. Further if he fails to record the oral complaint given to him in the language known to the complainant and records in a language unknown to the latter and if he fails to read over the recorded complaint to the complainant or obtain signature on the written complaint or a left hand thumb impression of an illiterate complainant he will be questioned during trial and expectedly the case ends up in acquittal.

If an officer in charge of a police station receives complaints over telephone, telegraph or post, but does not evince an iota of interest to verify the authenticity of such information it may result in the delay of the registration of case and destruction of clues to the crime. This attitude of an officer in charge of a police station would result in the flagrant violation of section 154 CrPC, and guidelines issued by the Supreme Court in its day to day judgments. The police are expected to treat a dying declaration under section 32[1] of the Indian Evidence Act as an FIR and proceed with the formalities laid down under section 154 of CrPC. In reality the police/officer in charge of police station does not promptly and procedurally get the dying declaration of the injured recorded by a Magistrate or a doctor who attends on the injured or by the police officer himself in the presence of the witnesses. He often mixes up the issues which are procedurally wanting and would substantially spoil the case at the trial.<sup>12</sup> There are several instances when the police especially the officers in charge of the police stations conduct themselves unprofessionally and turn out poor quality of investigation which ultimately prompts higher rate of acquittals. Lack of qualification of law, experience, expertise and other attributes of professionalism amongst the police are directly responsible for this state of affairs in the registration of FIR.

## **2. Slow and Reckless attitude of the Investigating Officer in visiting the Scene of Crime**

Though the procedures under CrPC and the Indian Police Act of 1861 require the investigating officer to visit the scene of crime expeditiously as

soon as the case is registered, yet there will be delay in his visit to the scene due to various reasons. This will result in destruction and disappearance of many clues to the crime. This is mainly due to lack of professional promptitude and attitude in attending to the crime scene, which adversely affects the investigation. In *Suresh Chaudhary v. State of Bihar*<sup>13</sup> the Supreme Court has observed that “there are certain suspicious circumstances surrounding the investigation made by the investigating officer. There is no reason whatsoever why he chose outside the police station and chose to go to the village and conduct inquest on the other two dead bodies at the pump house. This conduct of the investigating officer also creates some doubt in our minds as to the time of the incident in question. That apart, the express message which Prosecution Witness-13 sent to the Jurisdictional Magistrate reached the said Magistrate at his place only on 12-10-1992 nearly 1 ½ days after the said complaint was registered and there was no explanation from Prosecution Witness-13 as to this inordinate delay which only adds to the doubtful circumstances surrounding the prosecution case.”

The investigating officer's attitude and conduct may also cloud the course of investigation if he fails to study, survey and secure the crime scene by cordoning it from any body's interference and influence, including his own staff.

The investigating officer often does not make use of scientific methods and aids of investigation including well equipped Investigator's Kit Box, finger print and forensic experts, sniffer dogs, photography etc., which are solely meant for professional way of investigation of crimes. Even the selection and deployment of crime staff at the crime scene will not be on rational and systematic footing. This will further complicate the process of investigation at the scene of crime.

Many a times the investigating officer fails to carry along with him a note book and ignores to jot down therein important points vital for the

investigation as expected by a professional and thus, gropes in darkness and plods with doubts and confusion in execution of work at the crime spot. Lack of vision and wisdom on the part of investigating officer will result in destruction of vital clues and evidence essential for effective investigation. As Dr. Hans Gross in his book "*Criminal Investigation*", has noted that a golden rule that the police investigator should follow as soon as he reaches the scene of crime is that "he should not alter the position of, pick up or even touch any object before it is minutely described in an official note and a photograph should be taken of the scene of crime." <sup>14</sup>

An investigating officer is expected to be a well experienced professional to get things done at the scene of crime from qualified persons such as drafts-man for drawing the sketch of the crime scene, a good writer-assistant to write down important points and draw mahazar etc. He is expected to adopt correct method of search and be clever enough to trace perpetrator to the crime and he must be prompt enough to summon and secure the witnesses to the crime. He must be knowledgeable to use ruler, scale and compass for measurements and the distance measurements such as 'inch', 'feet' and meter; and terms of direction such as North, South, East and West etc. In reality he misses this crucial and vital train of thoughts and ideas. This reflects his unprofessional outlook and attitude in efficient and effective investigation of crimes. As a result the cases put up for trials end up in acquittals.

### **3. Shortcomings in Examination of Witnesses**

Under the prevailing provisions of CrPC and the Indian Evidence Act witnesses are recognized and placed at the highest level in the ladder of testimony and proof in criminal proceedings. Witnesses can make or mar the investigation and trial. Thus, the investigating officers must be extra careful and cautious and must be professionally knowledgeable enough to understand and appreciate the codes and laws that lay down the procedures and prohibitions in effective investigation of crimes.

The growing trend in acquittals, reflects the sad and sagging scenario of poor and perfunctory investigation. The witnesses to the crime are supposed to be examined immediately at the crime scene. But the reality is otherwise. Witnesses to the crime are examined very late at the police station. The Supreme Court has held that if as a matter of fact the witnesses were examined by the police after a very long time, that certainly is a circumstance that will have to be taken into account to consider whether the evidence given by them before the Court can be relied on. <sup>15</sup> In *Basudeb Sahu and others v The State*, <sup>16</sup> the Supreme Court has held that when the eye-witnesses were examined by the investigation officer three days after the occurrence and the delay in examination of such witnesses would be fatal. Unexplained delay in the examination of principal witnesses by the investigation officer would certainly cast a reasonable doubt on the authenticity of statements of witnesses and thus it becomes unsafe to accept the evidence of such witnesses.

Often, the statements of witnesses are prepared in their absence, without examining them, just to suit the needs of the investigation. Due to the pressure of work and other reasons, the investigating officer would allow the writer to record statements. As a result of which the witnesses turn hostile later at the trial resulting in easy acquittal of the accused. The tendency of recording of statements of witnesses in omni bus and stereo-typed manner has considerably affected the prosecution cases. This again reflects poor and unprofessional attitude of the investigating officer.

Several instances wherein the investigating officer due to ignorance of procedures laid down under section 160, 161 and 162 CrPC summons, examines and records the statements of child and woman witnesses at the police station are available for reference. Often signatures of the witnesses are obtained on the statements in violation of procedures by the investigating officers. In this regard the Supreme Court in *Harpal Singh V Devinder Singh*, <sup>17</sup> has observed that section 162 CrPC provides that evidence of a

witness given in the court becomes inadmissible if it was found that the statement of the witness recorded in course of the investigation was signed by the witness at the instance of investigating officer. It puts the court on caution and may necessitate in depth scrutiny of the evidence.

There are several instances wherein the investigating officers have drawn stock and partisan witnesses to concoct the cases under investigation. This has prompted the courts to decide the cases in favour of the accused. On several occasions the statements are recorded in the language unknown to the witnesses and expectedly they fail to depose in favour of prosecution at the trials leading to large scale acquittals.

#### **4. Defective Search and Seizure**

Though sections 100 and 165 CrPC have laid down several provisions as to search and seizure during the investigation, the investigation officer will forsake these procedures and hold search and seizure, which in turn adversely affect the investigation and also the trial. This is mainly due to lack of professional skills and copious knowledge of procedures involved in the investigation and lack of experience to handle such skilled task professionally.

The instances of investigating officers not securing the scene of crimes, neglect to study and survey and take close stock of the situation at the scene of crime, non-adoption of scientific methods and aids for search will show lack of professionalism amongst them in the process of search and seizure.

Investigating officers at times exhibit loathsome and sluggish attitude in effecting search of crime articles. This often weakens the prosecution case. In *State of U.P. v. Sukhbasi*<sup>18</sup> the Supreme Court has observed that the manner of the recovery of the stolen ornaments, and seizure procedure creates considerable doubts. No recovery was made from the accused Ram Shanker in the specified case. There was 22 days delay in the recovery of stolen ornaments from the accused Chhotelal. Further it was observed that the witnesses of seizure were common. All such circumstances created doubt on the veracity

and authenticity of investigation conducted by the investigating officer. Hence, in this case the Court had to give the benefit of such doubt to the accused.

In several cases the investigating officers have failed to collect physical clues relevant to the crime systematically and procedurally. In *Balkar Singh v. State of U.P.*,<sup>19</sup> the High Court of Allahabad has observed that the conduct of Prosecution Witness-15 Deedar Singh (investigating officer) during the investigation was not free from suspicion. He had deposed that after the case was registered on 23-5-1978 under section 364 IPC the search was conducted for the accused Balkar Singh at his house on 24-5-1978 but he did not prepare any memo which in the normal course he should have done. For this reason alone the Court had to acquit the accused.

An investigating officer often ignores or fails to seek the assistance of the forensic experts and make use of scientific aids to investigation in the process of search and seizure. The instances of ignorance of procedures to collect sufficient quantity of samples of the crime clues, poor packing and defective sealing pattern without the seal and signatures of the investigating officer and panch witnesses are abundantly available for reference, which show that the investigating officer lags far behind in professional aptitude in the process of search and seizure during investigation. Added to this often the panch witnesses called to draw panchanama may not be genuine or local and independent persons as expected by procedure. In *State of U.P. v. Arun Kumar Gupta*<sup>20</sup> the Supreme Court has observed that in spite of the availability of number of people around the house of the respondent, the investigating officer selected Prosecution Witness-4 who had to be the witness for the recoveries. The Court also took note of the delay in the preparation of memos of the recoveries and for all the recoveries Prosecution Witness-4 was a common witness. There was also considerable discrepancy with regard to the manner in which the Prosecution Witness-4 came to be a witness to the recoveries.

An instance of lack of complete professionalism can be seen in the case of *Suresh Chaudhary v. State of Bihar*<sup>21</sup> wherein the Supreme Court had

come down heavily on the investigation officer for his lack of professional knowledge in conducting search and seizure and thus observed that Prosecution Witness -13, the investigating officer in the course of his examination stated that when he conducted the inquest at the place of the incident he found one .315 bore empty cartridge which he actually did not seize. However, he produced the same in the court without any mahazar in this regard. The empty cartridges were also not sent to the ballistic expert to establish the nature of the weapon from which the cartridge had been fired. It is relevant to note here that three deceased persons have suffered multiple gunshot injuries and the failure on the part of the prosecution to collect the other pellets which had passed through the bodies of the deceased also casts grave doubt as to the actual place of the incident.

In many cases the courts have noticed inordinate delay in dispatching the seized articles to Forensic Science Laboratory for examination and even to the courts. Such attitudes undoubtedly speak of the poor professional outlook and aptitude of the investigating officers in handling search and seizure issues procedurally during investigation. This will ultimately result in acquittals.

##### **5. Illegalities and Irregularities in Apprehension and Arrest of the Accused**

Lack of professionalism amongst the investigating officers can be seen in apprehension and arrest of the accused to the crime. Delay in tracing of accused to the crime will lead to loss and destruction of essential clues and evidence. There are many instances of the investigating officer not making prompt and sincere efforts to trace the real accused, instead branding innocent people as suspects and supporters of the accused. In *Re v. Muddamma Malla Reddi and Others*,<sup>22</sup> the High Court of Madras has observed that the investigating police were primarily the guardians of the liberty of innocent persons. A heavy responsibility devolves on them of seeing that innocent persons are not charged on irresponsible and false implication. There is a duty

cast on the investigating police to scrutinize complaint first and properly examine if any person is implicated with rigorous case. He should refrain himself from building up a case on its basis unless satisfied of its truth. It is not lawful and fair to make the innocent persons to languish in the police station for days together without rhyme and reason. Often harassing and abusing their human rights in flagrant violation of fundamental rights enshrined in our Constitution and other laws is seen amongst the investigating police.

Unprofessional attitude and outlook can be witnessed in cases of arrest of the accused to the crimes. The investigating officer often uses third degree methods, detains the accused for many a day with or without interrogation to elicit information. He does not even bother to comply and respect the procedures laid down from sections 46 to 60 of CrPC for arrest of the accused and fundamental rights for protection of life, liberty, privacy and wrongful detention under Articles 20, 21 and 22 of the Constitution and charter of Human Rights set out by International Covenants and Conventions. In *D.K.Basu v. State of West Bengal*<sup>23</sup> JJ, Dr. A. S. Anand and Kuldip Singh of Supreme Court have observed that the police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of offence but the law does not permit the use of third-degree methods or torture of the accused in the custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. "By torturing a person and using third-degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit."

The investigating officer's unprofessional attitude and outlook can also be witnessed in dealing with the juveniles, women, and other poor and weaker section during the course of investigation. The illegal detentions and harassments, and custodial rapes and deaths of the persons also speak of scant

respect and fear of the investigating officer and the staff for rule of law and human dignity of individuals.

The investigating officer's attitude and act of implicating the innocent persons to the crime and absolving the real accused for personal and political considerations is yet another gray area wherein the investigating officer is exhibiting poor professional attitude.

Often, the investing officer does not evince prompt interest to recover the property to the crime. In cases of bailable offences and anticipatory bails the accused are let off free without thorough questioning and not effecting recovery. This will bury the genuine cases under investigation. There are instances, where the investigating officer obtains the custody of the accused for 5 or 6 days and produce him before the court without effecting any recovery due to ignorance of provisions of section 167 CrPC, but he applies again for police custody of the accused which cannot be granted under 167 of CrPC in the same case and the section permits to seek the police custody of the accused in a case for 15 days as a whole not in piecemeal fashion. This manner of working by the investigating officers mirror lack of enough knowledge of procedures of laws and appreciative skills amongst them.

The investigating officer's poor professionalism can be witnessed in recording confessional statement of the accused in gross violation of section 164 of CrPC wherein magistrate is empowered to record confessional statements as per the procedures laid down under it. Often, it can also be seen that the suspects and other innocent persons are detained, duressed and compelled to confess to the crime before the magistrate for record purpose to show that cases are detected. This is again going to show that the investigating police are unprofessional in their job.

Poor professional outlook of the investigating officer can be seen in case of discovery of facts under section 27 of the Indian Evidence Act. He often fails to comply with the provisions and procedures set out under the

section for discovery of facts to the crime. Often the facts are discovered by the investigating officer without recording the voluntary statement of the accused and without taking him in to police custody. He also effects the recovery of the concealed objects himself instead of allowing the accused to show and take out the objects concealed. He also shows false and superfluous recovery without really accompanying the accused to the spot where the objects are concealed and he does not effect seizure under a panchanama before the genuine panch witnesses. In *Sattatiya Alias Satish Rajanna Kartalla v. State of Maharashtra*,<sup>24</sup> the Supreme Court held that the next thing which is to be seen is whether the evidence relating to the recovery of clothes of the appellant and the half blade, allegedly used for commission of crime, is credible and could be relied on for proving the charge of culpable homicide against the appellant. In this context, it is important to note that the prosecution did not produce any document containing the recording of statement allegedly made by the appellant expressing his desire to facilitate recovery of the clothes and half blade. The prosecution's case that the accused volunteered to give information and took the police for recovery of the clothes, half blade and purchase of handkerchief is highly suspect. The Court observed that it has not been explained as to why the appellant gave information in piecemeal on three dates i.e. 3-10-1994, 5-10-1994 and 6-10-1994. Room No.45 of "Ganesh Bhuvan" from which the clothes are said to have been recovered was found to be unlocked premises which could have been accessed by anyone. The prosecution could not explain as to how the room allegedly belonging to the appellant could be without any lock. The absence of any habitation in the room also casts serious doubt on the genuineness and *bona fides* of recovery of clothes. The recovery of half blade from the roadside from beneath the wooden board in front of "Ganesh Bhuvan" was also not convincing for the Court. Undisputedly, the place from which the half blade was said to have been recovered is an open place and everybody had access to the site from where the blade was said to have been recovered. It was, therefore, difficult to believe the prosecution theory regarding recovery of the half blade. The credibility of the evidence relating to recovery was substantially dented by the fact that even

though as per the chemical examiner's report the bloodstains found on the shirt, pants and half blade were those of human blood, the same could not be linked with the blood of the deceased. Unfortunately, the learned Additional Sessions Judge and the High Court overlooked this serious lacuna in the prosecution story and concluded that the presence of human bloodstains on the clothes of the accused and half blade were sufficient to link him with the murder.

The investigating officer's poor professionalism can also be seen in arranging test identification parade. The investigating officer resorts to illegal and unethical methods in test identification parade. He often, allows the victim and other witnesses to the crime to see the accused before test identification parade or take the photographs of the accused and show them to the witnesses in advance due to ignorance of law or willingly to strengthen the case. Often the accused will be kept long time at the police station to have a close access to the accused to identify them in identification parade. In *Ismail v. State of Rajasthan*, the occurrence had taken place on May 29, 1983 and the accused petitioner was arrested on June 1, 1984, i.e. almost after a year of the occurrence. He was sent to Central Jail and the identification parade was held on June 12, 1984 i.e. after 11 days of his arrest. It was stated by the accused during the identification parade that he was shown to the witnesses. Therefore, the High Court of Rajasthan has disbelieved the version of prosecution and acquitted the appellant-accused.<sup>25</sup>

These and other attitudes of the investigating officers will show their ignorance of procedures and rule of law or vested interest in the cases.

## **6. Irregularities in writing of Case Dairy**

A promptitude and perfectness in writing the case dairy is undoubtedly an important segment in the process of investigation. Section 172 of CrPC has clearly set out the need and necessity of maintaining case dairy by the investigating officer.

However, several irregularities and short comings in the writing and maintenance of case dairies by the investigating officers can best be attributed for their lack of professionalism in the task of investigation. The Police Manuals, several judgments of High Courts and the Supreme Court have lamented the manner and method of writing case dairies while hearing the appeals and emphasized the dire need and necessity of writing case dairies properly and promptly. In *Shri Bhagavant Singh v. Commissioner of Police, Delhi*,<sup>26</sup> The Supreme Court has held that it was disturbing that the entries in the Police Case Diary did not appear to have been entered with the scrupulous completeness and efficiency which the law requires of such a document. The haphazard maintenance of a document of that status not only does no credit to those responsible for maintaining it but defeats the very purpose for which it is required to be maintained. The entries in a Police Case Diary should be made in sufficient detail, with promptness, mentioning all significant facts, in careful chronological order and with complete objectivity.

The investigating officers do not make a habit of writing case dairy on day to day basis which should include all the details of efforts put in and the work done in respect of investigation. This loathsome and sluggish attitude of the investigating officers is bad under the procedure and often the cases get weakened during the trial. There are instances where the case dairies were written by the investigating officers at a stretch after the completion of investigation. Often getting the case dairies written by the subordinates and not using the prescribed pro-forma for writing case dairies can be seen during the trial. Lack of continuity and coherence of the facts and other details of investigation in case dairies can also be noted. Such inconsistencies undoubtedly throw suspicion on the conduct of the investigating officers who are expected to investigate cases, maintain documents procedurally and

systematically. The investigating officers in some parts of the state do not write case dairies but just make brief entries of the work done in the course of investigation including the recording of statements of witnesses in general dairies maintained at the police stations. This leads to confusion and invites a lot of discrepancies during the trail when the accused or his counsel seeks the case dairies to peruse when an opportunity is given by the court.

### **7. Lapses in preparation and Filing of Charge Sheet/Final Report**

Preparation and filing of charge sheet is a very significant step in the investigation of crimes. No investigation of a case is claimed to be complete unless and until the investigating officer professionally fulfills the requirements laid down under section 173 of CrPC.

Several irregularities and lapses are often committed by the investigating officer while filing charge sheet or 'B' or 'C' final report, due to lack of professional skills and aptitude. They fail to appreciate the procedures laid down under Section 173 CrPC. An investigating officer, often, fails to prepare the charge sheet /final report in a prescribed pro-forma, with all details and documents collected and prepared during the investigation. This kind of work culture of an investigating officer invites the wrath and criticism of the court compelling it to draw adverse inference against the prosecution case. The investigating officer often fails to inform the complainant through notice, whenever 'B' or 'C' final report is filed to the court. This is a grave misconduct and dereliction of duty on the part of investigating officer.

Many a times the charge-sheet is not enclosed with statements of witnesses, search and seizure mahazar, opinions of experts etc, which corrode the evidence collected during the investigation and as a result the case will end up in acquittal.

The investigating officer, in several instances, fails to submit supplementary charge-sheet under section 173(8) of CrPC after filing of first and regular charge-sheet to the court when many more facts and evidence are forthcoming. This undoubtedly speaks of the investigating officer's lack of experience and knowledge which is otherwise essential attributes of professionalism.

The investigating officer is expected to incorporate advises and instructions given by his superiors in the charge-sheet/ final report and he often ignores or fails to seek the advise of his superiors in preparing the case.

All these lapses and shortcomings in preparing and filing of charge-sheets/ final reports clearly manifest poor professional outlook and approach of the investigating officers in the investigation of crimes.

#### **8. Poor and Improper use of Scientific Methods and Aids of Investigation**

Lot of advancement in science and technology has brought about scientific methods and aids of investigation into the scope and ambit of investigation on more professional footing. Computer portrait parley, finger prints, ballistics, serology, forensic medicine, questioned documents, polygraph, brain-mapping and narco-analysis, voice analyzing test and scientific aids of investigation such as well equipped Investigator's Kit Box, sniffer dogs, video graphs, photography etc. are the scientific methods and aids of investigation that are available for the investing officers to conduct investigation in professional fashion. However, these facilities are not properly made use of by the investigating officers. As a result the investigating officers have to rely upon eye witnesses and other witnesses who go hostile during trial resulting in acquittals. If the scientific methods and aids of investigation are adopted by the investigating officer, acquittals due to poor testimony of the witnesses can be averted. This again speaks of lack of professional experience and expertise amongst the investigating officers in effective investigation of crimes. The 14<sup>th</sup> Law Commission Report<sup>27</sup> has

observed that: “almost every police whom we examined, emphasized the need of the introduction of scientific methods of investigation in our police system.” The 4<sup>th</sup> **Indian Police Commission Report** <sup>29</sup> also emphasized the need of scientific aids of investigation such as adequate transport, forensic laboratories with sufficient number of experts and staff, computers, tape recorders and prescribed forms etc. **Justice Malimath Committee on Reforms of Criminal Justice System-2003**<sup>30</sup> has noted inadequate availability and use of scientific methods and aids of investigation by the investigating police. In *Prakash Singh and Others v. Union of India and Others*,<sup>31</sup> JJ. the Chief Justice Y.K. Sabharwal, C.K. Thakker and P.K. Balasubramanyam have directed the Central and State governments to prepare the police with all facilities/ expertise to meet latest crimes of terrorism, drug trafficking, money laundering, organized crimes, counterfeiting of currency, smuggling of weapons, indulged in by mafia groups with trans-national ramifications. This emphasizes the need and necessity of scientific methods and aids of investigation to tackle sophisticated crimes.

#### **9. Paucity of skilled and experienced Investigating Officers and Staff for Investigation**

There is a dire need for skilled and experienced investigating officers in sufficient number for effective investigation of crimes. Generally, an officer in charge of a police station investigate crimes, except where the laws expect an higher rank officer to investigate serious crimes. Number and nature of crimes reported at police stations also vary from station to station. The professional skills and experience required by the investigating officers are not on par with the nature and magnitude of crimes. Availability of time is very little for investigation as most of the time has been spent on other station duties. There is no parity in number of cases to be investigated and number of officers available for investigative job. There is a grave shortage of investigating officers which will eat away the professional efficiency and expertise of the investigating officers as they are overstretched and exhausted to perform their investigative job efficiently and effectively.

One of the requisites that enable an investigating officer to work with accuracy and promptitude is skilled and experienced staff. But the present scenario in India is very pathetic and depressing. Professionalism in effective investigation of crimes will not work well if there is paucity of skilled and experienced staff to support and strengthen the investigating officers. The 14<sup>th</sup> **Law Commission Report**<sup>31</sup> has observed that: "It is the general complaint of the police officers that the department is very much understaffed and has to meet a very heavy demand on its personnel who have been drawn for various nature of duties." The 4<sup>th</sup> **Indian Police Commission Report**<sup>32</sup> emphasized the need for increasing the cadre strength of the investigating officers and the crime staff. It sadly to note that hardly 37% of the time is available for investigation in a day. **Justice Malimath Committee on Reforms of Criminal Justice System-2003**<sup>33</sup> has noted that in the first place, there is inadequacy of the investigating staff besides the police officers are hard-pressed for time with multifarious commitments and thus they are not able to devote adequate time and attention for investigation work. A single investigating officer is investigating 145.3 cases in a year along with other duties in states like Orissa. There is a need for more realistic norms to fix the cases for investigation per investigating officer.

It is important to note that there is no separate crime force in India to help and assist the investigating officers either in a police station or in other special investigative units. The police are expected to perform routine and multiple duties besides taking up the investigative work. In spite of the recommendations and suggestions from various Commissions and Committees on police reforms as well as directions from the Supreme Court, the separation of police force into law and order and crime divisions has remained a distant dream. This has affected the professional attitude and outlook of the police, who can be interchanged and drawn from common pool of police force, to assist the investigating officers in the task of effective investigation. Often the investigating officers have to toil themselves to investigate crimes as the

provided staff is not up to the mark to meet the basic requirements of investigative job. Invariably an investigating officer needs a computer typists, writer, staff to secure the scene of crime; secure witnesses for examination; apprehend and guard the accused and collect preliminary crime intelligence etc. Unfortunately, more often than not the investigating officers are deprived of the minimum staff that is endowed with the necessary professional skills and aptitudes. The assisting staff often is awfully ignorant of the scientific methods and aids of investigation besides being drawn to crime work irrespective of age, health, experience and aptitude etc. This system of investigative work culture has spoiled the efficiency and effectiveness in investigation resulting in large scale acquittals.

#### **10. Lack of professional ethics amongst the investigating officers and the staff**

Lack of professional ethics among the investigating police is one of the serious lacunae that has affected the efficiency and effectiveness in the investigation of crimes. The main attributes of professional ethics such as sincerity, honesty, hard working, altruistic interest, firm conviction, promptitude are missing miserably amongst the investigating police. Insincerity amongst the investigating police has bred hypocrisy and deceitfulness in their investigative work culture. Dishonesty amongst them has resulted in unfair and unjust investigations. Low morale and professional ethics can easily make an investigating officer budge to political interference, influence and other personal gratifications. Inability to put in hard work, attitudinal problems and constant display of sluggishness and loathsome attitude towards the investigation by investigating police has prompted inefficiency and ineffectiveness in the investigation of crimes.

In *State of Rajasthan v. Kashi Ram*<sup>35</sup> the Supreme Court has observed that extra judicial confession made by the respondent before Prosecution Witnesses 3 & 4, who were unknown to him, and the circumstance that recoveries were made pursuant to his statement made in the course of

investigation of the waist cord used for strangulating Kalawati (the deceased) and the keys of the locks which were put on two doors office house revealed that the investigating officer intended to concoct the evidence in favour of prosecution. In the case of *State of Goa v. Sanjay Thakran & Another*,<sup>36</sup> the Supreme Court has observed that there was material contradiction in the panchanama of the search conducted on the flat on 17-2-2000 and evidence of Prosecution Witnesses-8 and Prosecution Witnesses -38 with respect to the way in which the entry was made to the flat of the accused persons on 11-2-2000. It was observed by the Court that at the first instance when no jewellery was found inside the flat, how was it recovered in the subsequent search? The search and recovery of articles by the police on 11-2-2000 does not inspire confidence as the flat was easily accessible, without disturbing the lock and planting of the articles cannot totally be ruled out. The Court also has observed that the recovery of incriminating articles, belonged to the deceased, seized from the accused were not properly identified by the deceased brother Prosecution Witnesses -5 and another witness Prosecution Witnesses-33 in test identification parade of the articles arranged before Prosecution Witnesses -24-Special Judicial Magistrate. The Court observed that the whole purpose and authenticity of the recovery of these ornaments have been lost when the witness has admitted that a day ahead of the recovery the accused was shown to him in the police station. The clumsy manner in which the investigation was handled was pooh-poohed by the Court, which is a result of unprofessional style of investigation.

In *Bapu Alias Gujraj Singh v. State of Rajasthan*<sup>37</sup> the Supreme Court has observed that the onus of proving the unsoundness of mind is on the accused. But where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused.

Lack of strong conviction amongst the investigating police to work for their pay and for people has weakened the very edifice of investigation resulting in large scale acquittals.

The most important amongst all is lack of professional ethics respecting 'the Rule of Law' and upholding 'human dignity' in dealing with different cross-sections of people in the society, whom the investigating police frequent in the process of investigation. Investigating police resorting to third degree methods to elicit information from suspects and accused, harassment to the complainants-victims, abuse against the women, juveniles, and other weaker and minorities for various reasons and considerations reflect the absence of professional ethics among the investigating police.

Lack of professional ethics amongst the investigating police has resulted in poor, partisan and perfunctory investigations. As a result of which justice has been denied for the genuine victims and often innocent persons have become scape-goats of police actions and excesses.

#### **11. Lack of community leadership and co-operative attitude amongst the Investigative Police**

The task of investigation is not one man's job but it is a teamwork. The investigating police, due to lack of professional outlook and attitude, have failed to seek the help and co-operation of the public, the media, NGOs and others in efficient and effective investigation of crimes, as a result the acquittal rate of criminals has increased. The investigating police generally behave with false ego and display disrespect towards the public, media, non-governmental organizations, etc., as a result of which the latter do not evince any interest to extend co-operation to the investigating police and often work against the police interests. This can be witnessed during investigation as they express their reluctance and unwillingness to extend co-operation as panch-witnesses, crime-witnesses and also while deposing evidence at the trials by turning hostile to the prosecution. Today, the media and the non-governmental

organizations work against the interest of the investigating police, because the latter is very rude to the media and non-governmental organizations. Often the police also connive with the media and indulge in disclosure of very serious and secret information. The media may go for crime clips and stories, set itself on parallel investigations, that can disturb and distort the investigating police from the path of investigation. This is mainly because of lack of professionalism, positive outlook and ethics amongst the investigating police.

### End Notes

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6. (2005) SCC (Cri.) 1225.
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8. *Illies Ali, v. State of West Bengal*, (1997) CRI. L.J. 803(Culcutta) 805.
9. (2002)1 SCC 487; see also *Sabbi Mallesha and Others v. State of A.P* (2007) 1 SCC (Cri.), 146.
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13. (2003) 4 SCC 135.
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15. *Atmaduddin v. State of U.P.* AIR 1974 SC 1904.
16. 1985 Cri. LJ Nos 29 (Orissa), 15.
17. 1997 SC Cri. LJ 3561
18. (1985) SCC (Cri.) 398.
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21. (2003) 4 SCC 135.
22. (1954) Cri. L.J. 167 (Madras), 168.
23. (1997) SCC (Cri.) 94.
24. (2008) 1 SCC (Cri.) 733.
25. (Jaipur Bench), 1989, (Raj) 301.
26. AIR 1983 SCC 826 : 1983 Cri. L.J. 1081
27. 14<sup>th</sup> Law Commission Report: chap. 'Investigation by the Police' p.738.
28. 4<sup>th</sup> Indian Police Commission Report: chap. 'Investigation' p.3
29. Justice Malimath Committee on Reforms of Criminal Justice System-2003: chap. 'Investigation' p.102, 118 & 119
30. 2006 SCC 2 (Cri.) 306.
31. 14<sup>th</sup> Law Commission Report: chap. 'Investigation by the Police' p.736.
32. 4<sup>th</sup> Indian Police Commission Report: chap. 'Investigation' p. 4.
33. Justice Malimath Committee on Reforms of Criminal Justice System-2003: chap. 'Investigation' p. 91.
34. (2007)1 SCC (Cri.) 695.
35. (2007) 2 SCC(Cri.) 176.
36. (2007)3 SCC (Cri.) 515.