Chapter IV

PROCEDURES IN INVESTIGATION OF CRIMES

The Code of Criminal Procedure has clearly set out the procedures to be followed by the police from sections 46 to 60 under chapter V, sections 100 and 165 under chapter V and sections 157 to 173 under chapter XII in the investigation of cognizable offences .

Investigation of crimes is not an easy job. It is a very complex and complicated process involving several procedures to be followed and hurdles to be negotiated by the investigating police. Thus, it is both procedural and systematic and not a haphazard job. There are several well laid down phases in investigation of crimes that are generally followed by the investigating officers to wade through the path of investigation. The phases are:

1. Visit to the Scene of Crime.
2. Search and Seizure.
3. Examination of Witnesses.
4. Apprehension and Arrest of the Accused.
   a. Confession and Extra-Judicial Confession of the Accused
   b. Discovery of Facts under section 27 the Evidence Act
   c. Test Identification Parade of the Accused
5. Writing of Case Diary.
6. Filing of Final Report.

I. Visit to the Scene of Crime

Visit to the scene of crime forms an important segment in investigation of crimes. Expeditious visit to the scene of crime by an investigating officer

will help the conduct of efficient and effective investigation. It prevents dilution of the scene of crime and destruction of clues. Section 157(1) of CrPC expects the investigating officer to proceed to the spot to investigate the facts and circumstances of the case, and if necessary, to take measures to the discovery and arrest of the offender except in non-serious cases. The Karnataka Police Manual requires the police officer to proceed to the scene of crime as expeditiously as possible and undertake thorough inspection for physical evidence. [1] It is worthy to remember the remarks of Dr. Hans Gross, the pioneer in the field of science of criminalistics, that "report of an inspection of localities is a real touchstone for the investigator. In no other duty are address, power of observation, logical reasoning, and keeping the end ever in view, so clearly revealed; and nowhere else can more striking examples of awkwardness, feebleness of observation, disorder, vagueness, and hesitation be found. An unskilled investigator will never furnish a good report of this description, while on the other hand such a document will reveal a good man at his true value." [2]

A. Importance of visit to the scene of crime:- Expeditious visit to the scene of crime by investigating officer is very vital for several reasons. It helps the investigating officer to determine the facts of crime. It helps him to establish the identity of the criminals and the spot. The investigating officer can find out whether they fit in with the story told by the witnesses. Immediate visit of the investigating officer to scene of crime demoralize the criminal on being brought to the scene. When he sees the traces left by him besides helping the investigating officer to reconstruct the crime. He also aids in the arrest and conviction of the criminal and exonerate innocent persons from false accusation.[3]

B. Steps to be taken by the Investigating Officer before he leaves for the Scene of Crime:- Before the investigating officer leaves for the scene of crime, he should inform his superiors on wireless, telephone etc. Depending upon the requirement, he should make use of scientific aids of investigation by

summoning forensic experts, finger print expert, sniffer-dogs squad, photographer etc., to the spot to assist him in the process of investigation. **Dr. Hans Gross** has suggested the following preparations that the investigating officer should make before leaving for the scene of crime.

1. A well equipped **'Investigator Kit Box'** to meet the basic requirements of investigation at the scene of crime.
2. A good writing assistant and a team of hardworking and sincere policemen to assist him.
3. A good means of communication and transport.[4]

C. Steps to be taken at the Scene of Crime:- As soon as the investigating officer arrives at the scene of crime, he should, as a golden and inviolable rule, never alter the position of the scene of crime, pick up, even touch any object before it has been minutely described in an official note, and a photograph taken of it. He should contact the man who reached the scene first and make enquires. He should ensure that the scene of crime is not interfered with and should not allow any unauthorized person to meddle in the inspection of the scene. He should avoid crowding at the spot and all thoughtless interference, as they always result in the destruction of clues. He should never leave the inspection of the scene to his subordinates especially those who are untrained. He should never take anything to be trivial but make his inspection thorough and minute and search methodically, patiently and in a definite order. He should summon some local and independent witnesses to assist him to draw panchanama and to maintain fairness and fulfill procedural requirements.

At this juncture it is relevant to make mention of Dr. Hans Gross's recommendations for the investigator to be followed at the scene of crime.[5] The Do's of the investigating officer are:

- He should preserve absolute calm.
- He should show perfect confidence.

- He should not speak without rhyme and reason.
- He should quietly and attentively take stock of the situation.
- He should have a mental picture of the case itself and all connected with it, in a definite form, with precise outline.
- He should have a temporary plan of action.
- He should inspect the scene of crime for its general and specific aspects.
- He should have time plan for doing the scene inspection.
- He should find out the persons best able to give information about the case to enable him to become approximately acquainted with its circumstances and avoid wastage of time.
- He should select the right witnesses to the crime and if necessary submit them to a certain surveillance so as to prevent them from gossiping uselessly with one another.

The officer making the search should take down accurate and detailed notes, supported by accurate sketches drawn to scale, showing the whole lay-out and the exact places where the articles, etc., were found. It is not sufficient to say that an article was in a certain room or on a particular table. Its exact position must be noted and, if necessary, an enlarged sketch of that portion of the scene must be drawn by a qualified draftsman. In all important cases photograph and videograph should be taken of the scene and of the objects on which any useful clues are found. Sketches are useful in criminal investigation and prosecutions as they reduce the length of case dairies and make a much more exact impression on the mind than written reports. They make lucid explanation of an intricate case fairly easy. They introduce method into investigation and help judges, magistrates, and others to an accurate understanding of case. They also enrich the powers of observation of investigating officer. The sketches should be prepared to scale indicating the compass point and mentioning the distance correctly. Invariably he should use a ruler, scale and compass for measurements at the scene of crime. He should use the expressions such as 'on the right' and 'on the left;' North, South, East and West for directions and for distance measurement 'inch', 'feet', 'meter' etc.

Therefore, expeditious visit to the scene of crime becomes most vital and valuable for the investigating officer as the efficiency and effectiveness of investigation of crimes invariably depends on this meticulous mission.

II. Search and Seizure

(a) Search by the investigating police officer: Search and seizure forms an important phase of investigation of crimes. Once the inspection of the scene of crime is completed, the investigating officer has to look for vital clues and physical evidence left at the scene by the criminals while committing the crime. The vital clues and physical evidence determine the very nature and magnitude of the crime committed. These clues and evidence support and strengthen the hands of the investigating officer in the investigation. Thus, the search and seizure segment has been placed on an important position in the scheme of CrPC by the legislature.

There are several sections in CrPC that embrace the procedures to be followed by the investigating officer in the process of investigation of crimes. *Inter alia*, the most important and relevant sections are 165, 166 and 100. The provisions and provisos of these sections are directory in nature. Any investigation done in violation of these provisions would mar the investigation.

Though a citizen is entitled to lead a free and undisturbed life by executive action, yet in the larger interests of the administration of justice it becomes necessary that public officers engaged in investigations and inquiries relating to offences or suspected offences should be afforded fair and reasonable facilities for searches.[6] The decision as to whether a search of a citizen's house is essential in the larger interests of society ought to be basically a judicial decision. Therefore, the duty of balancing the two conflicting considerations in diverse circumstances has been vested in the magistrate or court issuing search-warrants under various provisions of CrPC.[7] But section 165 CrPC has been enacted as an exception to this general law of searches because it is recognized that in certain exceptional emergencies it is necessary to empower responsible police officers to carryout searches without

first applying to the courts for authority.[8] The legislature has however attempted to restrict and limit the powers of the police under the section and provided the concerned citizens with safeguards in order to prevent the abuse of the powers. Section 165 is set out as follows:

A. Section 165:- Search by police officer:- (1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorized to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) A police officer proceeding under sub-section (1) shall, if practicable, conduct the search in person.

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

(4) The provisions of this Code as to search warrants and the general provisions as to searches contained in section 100 shall, so far as may be apply to a search made under this section.

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

The section 165 is meant to be used in cases where a search-warrant would be made use of in the ordinary course but lack of time renders it impossible to use it for probability of disappearance and destruction of clues and evidence. The powers of a police officer to make a search without warrant are defined under section 165 of CrPC. These powers are given to an officer in charge of a police station or a police officer making an investigation. Powers are not conferred on police officer generally and at large. Assuming the officer to be of the class referred to the next pre-requisite is that he must have reasonable grounds for believing that he will find a thing in a place within the limits of his police station. His being of that opinion is not in itself sufficient to justify the search. The normal procedure in such a case intended to be that he should apply to the magistrate for a search warrant but the requirement of a search-warrant is dispensed with if he has reason to believe that the thing for which he means to search, cannot be otherwise obtained without undue delay that is to say, that the object of the search would be frustrated if he waits to obtain a search-warrant. When all these conditions are fulfilled, the officer, if he decides to make a search, must record in writing the grounds on this behalf and is to specify in such writing, so far as possible, the thing searched for. There is one more essential preliminary, section 100 of CrPC must be complied with, that is to say, before making the search, he has to call upon two or more independent and respectable inhabitants of the locality to attend and witness the search which is to be in their presence. It is noticeable that section 165 differs sharply from section 93(1) and (3) in the absence of a power to conduct, without a search-warrant, a general search or inspection.[9]

A promiscuous entry into house is not permitted to an investigating officer simply to satisfy himself as to the truth of an allegation made by a complainant or an accused person or a witness. As held by the High Court of Oudh in ***Sohanlal v. Emperor***,[10] the police officer is bound to record in writing the grounds for his belief and the necessity of searching the house of a person and specifying clearly the article or articles for which search is to be made. The

non-recording of the reasons for search would make the search illegal. [11] An illegal search may entail punishment of the provisional officer who may be asked to pay compensation to the person whose house has been searched. [12]

Requirements for sending of the copies of record as provided by sub-section (5) of section 165 of CrPC are intended as an extra safeguard to protect individuals against general or roving searches and so it is essential that a police officer conducting a search under section 165 should send forthwith to the nearest Magistrate copies of the record that he has prepared before undertaking the search.[13] This provision ensures against fabrication of records after search and also enables the police to justify their conduct according to the procedure. Further, the sub-section requires the magistrate to furnish, free of cost, to the occupier of the place searched a copy of the entire record so required by him and enable him to know the cause for search and if any illegality or impropriety of search is committed by the police, he can proceed against the erring police officer. [14]

In ***Radha Kishan v State,*** [15] the Supreme Court, *inter alia,* observed that where the provisions of sections 100 and 165 of CrPC are contravened, the search can be resisted by the person whose premises are sought to be searched.

B. Search in the Jurisdiction of another Police Station.- When a search has to be conducted in the jurisdiction of another station, whether in the same or a different district, an officer in charge of a police station making an investigation may require under sub-section (1) of section 166 CrPC, the officer in charge of the former station to make a search or cause search to be made. But, where there is reason to believe that the delay occasioned by such a procedure might result in evidence being concealed or destroyed, the investigating officer may, under sub-section (3) of the section 166 of CrPC, make the search himself or cause the search to be made, in which case, he shall forthwith send a notice of the search together with a copy of the list prepared

under section 100 CrPC to the officer in charge of the police station, within the limits of which the place searched is situated and to the nearest magistrate empowered to take cognizance of the offence.

Section 166 A has been inserted by Act 10 of 1990 by the Parliament, empowers the investigating officer to write a letter to the competent authority for investigation in a country or place outside India.

C. General Provisions relating to Searches.- It is pertinent to note that whether a search is made under a warrant issued under any of the sections 93,94, 95, and 97 or whether it is conducted without a warrant under any of the provisions of sections 103, 165 and 166, including searches under Special and Local Laws the provisions of section 100 have been made applicable.

Requirements of a Lawful Search under Section 100

An analysis of section 100 will clearly explain and establish the following points:

(i) The free ingress and reasonable facilities referred to in sub-section (1) are to be made under both for search under a warrant as well as for a search without a warrant.

(ii) Sub-section (2) is also applicable in case of search without a warrant. If an ingress to a place liable to search cannot be obtained as envisaged by sub-section (1), then sub-section (2), by importing section 47(2) CrPC adopts the procedure whereby the police officer or other conducting the search is empowered to enter the place and in order to effect an entrance into such a place can break open an outer or inner door or window of any house or place if after notification of his authority and purpose, and demand of admittance duly made, he could not otherwise obtain admittance. Section 47(2) provides a safeguard in favour of a pardanashin woman and the same would apply in case of a search also. Further, it has been held that if in the exercise of the power or

the performance of the official duty, improper or unlawful obstruction or resistance is encountered, there must be the right to use reasonable means to remove the obstruction or overcome the resistance. This accords with common sense and does not seem contrary to any principle of law. [16]

While criticizing the conduct of police officer for his illegal method of search in ***Sharada Singh v. State of U.P.***, [17] the High Court of Allahabad thus observed that "the report was allegedly made on 13th November, 1995 and the raid was admittedly made on 15th November 1995, Prima facie there was no urgency for the raid on 15th November, 1995 even if there had been any report was entered nor was there any entry that the police officer was proceeding to make any search nor any entry concerning his return after the futile search. It is also required that whenever any search is made, a paper is to be prepared even if it is a case of no seizure. No such report was prepared nor any respectable citizen of the locality was called as required under section 100 (2) CrPC. There is nothing on record to indicate that before entering into the house of the petitioner, the female inmates were given any chance of withdrawal from the place. It must, therefore, be held that the action of the concerned Station House Officer was arbitrary and *mala fide*. It was submitted on behalf of the state that the police officer might have failed in his legal duties to record certain facts but there was no inherent lack of jurisdiction to make the search, rather it was his duty to conduct the search as possession of illegal arms was complained of. The *mala fide* looms large from that fact that immediate action was not taken on the report and it may not be ruled out that the report was obtained afterwards. The High Court directed that for the humiliations caused to the petitioner by the illegal and unwanted search, which was an invasion on his privacy, the concerned police officer must be asked to pay a compensation, which may act as some solace to the injured feeling of the citizen (Petitioner) and, at the same time, may act as a warning to the errant police officers who choose to do whatever they like without any regard to the provisions of law."

In ***Thakur Tanti v. State,***[18] the High Court of Patna has held that the mere recording of the fact in the case diary that he was going to search the house of the accused was not a compliance with that requirement in the eye of law. It was accordingly held that the attempt to search and the search itself later on was illegal, as the officer-in-charge of the police station had not fulfilled all the conditions precedent to the exercise of such power.

The High Court of Delhi has observed that in our egalitarian set-up under the Constitution which is framed after deep deliberation, the poorest man in his thatched mud hut or in his cottage, even though made of straw, was entitled to resist and defy forcible entry except when such entry had the sanction and authority of law. The police officers in our country had not yet realized the legal limitations imposed upon them by the law in their dealings with the citizens and they had not so far fully adjusted themselves to the changed set-up in the Indian Republic. Responsibility for this state of affairs had to be shared by the society as a whole including in particular the administrators whether elected politician or servicemen, as well as the enlightened citizens, and sooner the image of our administrative set-up in its day-to-day working falls in line with the principles enshrined in our Constitution, the better for the rule of law in this Republic. Indifference in this respect was fraught with grave danger to the future of our liberal democratic life.[19]

(iii) In order to obviate the chance of any person stealthily taking away on his person any article or thing for which the search of a place is to be made, sub-section (3) provides for the search of such a person. The provision is necessary to prevent the object of the search getting frustrated. If the person to be searched is a woman, then, in order to protect her modesty it has been provided that the search shall be made by another woman with strict regard to decency.

(iv) The search is to be made in the presence of at least two independent and respectable inhabitants of the locality in which the place to be searched is situated. However if no such inhabitant of the said locality is available or willing to be a witness to the search, the search can be made in the presence of any other locality. What is more important to be emphasized is the respectability of the witness rather than his locality or independence.[20] The object of the provision is to guard against possible chicanery and unfair dealings on the part of the persons authorized to search and ensure that anything incriminating which may be said to have been found in the premises searched, was really found there and was not introduced by the members of the search-party. [21] The presence of witnesses at a search is always desirable and their absence will weaken and may sometimes destroy the acceptance of the evidence as to the finding of the articles. [22]With a view to ensuring that the witnesses for the search are disintegrated persons, the word "independent" has been inserted in sub-section (4). [23] It suggests that the search-witness should be absolutely unprejudiced and disinterested in the result of the search. Witnesses who had been joining in the police raids and had been appearing as witnesses for the police for the last 15 years could not be a party to any faction. Perhaps difficulties might be encountered in constructing the term "independent" in relation to different individuals in a society in which people do have all kinds of labels religious, political, regional etc. Absolute "independence" might rather be difficult to find, however a reasonable degree of "independence" can legitimately be asked for and expected.

The word "respectable" does not connote any particular status or wealth or anything of that kind. Any person is entitled to claim respectability provided he is not disreputable in any way. He should have such standing as would make his words believable. [24] A dismissed constable, a thief, or a criminal of some kind or a person perhaps of grossly immoral habits will not be considered as "respectable". [25] Being a prosecution witness will not however make a person less respectable. In practice the word "respectable" has created difficulties.

Persons who are ordinarily considered "respectable" do not normally wish to be search-witness, and this has led to the emergence of professional witnesses who are employed by the police to witness searchers. It has been said in that sub-section (4) does not mean that the investigating officer can have two or three persons accompanying them wherever they go for searches. If despite the availability of respectable witnesses the police choose to have non-respectable witnesses there is an obvious inference that the police chose only such witnesses who would support them.[26]

(v) Sub-section (4) also provides that the officer or other person making the search is to call the above-said persons to attend and witness the search and they make for this purpose issue a written order to them. If a person so ordered to be a witness neglects or refuses without reasonable cause to attend and witness a search, then according to sub-section (8) he shall be deemed to have committed an offence under section187 IPC.

(vi) The search-witnesses should actually accompany the police officers or other persons making the search and should be the actual witnesses to the fact of the finding of the property. It is not sufficient compliance with this section if the witnesses are merely summoned and kept present outside the building, while the search is being carried on within it, and then called on to see what has been found. [27]

Usually it is the unwritten rule that the persons of the search-witnesses and of the police party must be searched before they are allowed to enter the house so that the owner should not have reasonable grounds for suspecting that one of his search party had planted anything surreptitiously in his house. Failure to observe this rule would give rise to the defense a strong argument against the credibility of search evidence. [28]

Though there is nothing in law that prohibits searches being carried out during night, it has been held that, when not convenient, they should be conducted during daytime so as to avoid any complaint on the part of the

accused that there was room for unfair practices like planting articles. [29] At the risk of some repetition it may again be emphasized that where lack of time is not a consideration, search without warrant is not proper and the recovery itself in that case would come under suspicion. [30]

(vii) Sub-section (6) requires that the occupant of the place of search, or his nominee, shall in every case be permitted to attend during the search. Denial of such permission may cause suspicion as to the reliability of the discoveries made out. However, where the securing of the presence of the occupier or his nominee might cause such delay as to frustrate the purpose of the search, it may be permissible dispense with his presence. In ***Ramesh Chandra v. Emperor,***[31] the High Court of Calcutta has held that if the occupant of the house, however, has not been allowed to be present during the search it has been held that it is not a technical but a substantial violation of the law. The law requires that the occupant of the place should be permitted to attend the search. These provisions are enacted with the wholesome object of ensuring that the occupant should not feel that the search was conducted otherwise than in accordance with law. They would also provide a check against what may be described as the activities of agents' provocateur. Therefore, it is the duty of the police officer conducting the search to permit the occupant of the place or someone on his behalf be present during the search. If the occupant is available, it is he who must be permitted to attend the search.

(viii) Sub-section (5) requires that a list of all things seized in the course of the search and of the places in which they are respectively found shall be prepared by the police officer or other person making the search and shall be signed by the witnesses. It is considered highly objectionable to make the accused sign or put his or her thumb-impression on the search-list. [32] In ***Dasu Dadasaheb Sitaram Chavan v. State of Maharashtra,*** [33] the High Court of Bombay has observed that it was true that in this case there was no mention either in the Panchanama or in the evidence of the investigating officer that the clothes and the weapon were properly wrapped and sealed in the presence of

the panchas. In order that there should not be any tampering with the articles which were said to be stained with blood the investigating officers were expected to put them in a proper cover and to seal them in the presence of the panchas and to forward them to the chemical analyser with proper seals. In the forwarding letter issued by the Investigating Officer to the Chemical Analyser in this case it was mentioned that all those articles were wrapped in brown papers and were duly sealed but there was no evidence as to when they were wrapped and sealed. The non-sealing of the articles immediately after the seizure in the presence of the panchas was bound to affect the probative value of the findings of the Chemical Analyser.

Where the search memo was signed only by the policemen accompanying the Head constable and not by any independent witnesses though they were present, it was held that the entire prosecution story appeared to be unnatural and doubtful. [34] Not much importance can be given to the signature of the accused on the seizure lists. Assuming that he was present at the time of search and signed the seizure list that by itself cannot be taken as incriminating evidence against him.[35]

Similarly sub-section (7) requires that when any person is searched under sub-section (3) a list of all things taken possession of shall be prepared.

The section makes it obligatory that a copy of the list of things seized in a search shall be delivered to the occupant or his nominee in whose presence the search has been made. Similarly a copy of the list of things seized from a person on his search is required to be given to such person. This would ensure that the things seized are properly accounted for.

(ix) The recovery of the articles in search can be proved at the trial by calling the police officer or other person making the search as a witness and it is not necessary to call a search-witness in court for this purpose. The Court, however, can summon such search-witness if it considers necessary to do so.

III. Examination of Witnesses

Examination of witnesses is another significant phase in investigation of crimes. Under the scheme of CrPC and the Evidence Act, witnesses have been placed on the top in the order of priority of evidence surpassing scientifically gathered controversial evidence. They play a pertinent role in determining the fate of a case under investigation and trial. It is quite evident from the recently held judgment of the Supreme Court in ***State of Punjab v. Hakam singh.***[36] In this case, the Apex Court has observed that court should keep in mind the female-witness rural background and the scenario in which the incident had happened and should not appreciate her evidence from rational angle and discredit her otherwise truthful version on technical grounds. When accused persons were firing from their respective firearms, court should not expect from her a minute description of the whole thing which had happened in a few minutes. Failure to effect seizure of the firearms and the empties and to send them to ballistic expert would not affect the categorical and truthful testimony of the eyewitness. On facts held, testimony of the eyewitness was truthful and conviction on that basis under section 302 IPC.

Sections 160, 161 and 162 CrPC, respectively, empower the investigating police officer to summon, examine and record statements of witnesses to the crime under investigation. However, section 163 prohibits the police officers from use of inducement, threat or promise to witnesses to the crime.

A. Powers of Police Officer to require Attendance of Witnesses:- According to section 160(1), an investigating police officer can by order require the attendance before himself of any person, provided the conditions listed out below are fulfilled:

(a) the order requiring the attendance must be in writing; [37]

(b) the person is one who appears to be acquainted with the facts and circumstances of the case; [38]

(c) the person is within the limits of the police station of the investigating police officer or is within the limits of any adjoining police station.

However, no person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides. Positively affirming the wisdom of the legislature in this regard the Supreme Court has held that there is public policy not complimentary to the police personnel, behind this legislative prescription which keeps juveniles and females from police company except at the former's safe proviso to section 160 (1), such deviance must be visited with prompt punishment since policemen may not be a law unto themselves expecting others to obey the law. This provision is intended to give special protection to children and women against misuses and abuses by the police empowered under section 160(1). [39]

It is the legal duty of every person to attend if so required by the investigating police officer. If such person intentionally omits to attend, he is liable to be punished under 174 IPC. However, the investigating police officer has no authority to use force to compel attendance of such person nor does he have any power to arrest or detain such a person. It may also be noted that a magistrate has no power to issue any process compelling a person to attend before a police officer.[40]

Any State Government may, if it so desires, may make rules and provide for the payment by the police officer of the reasonable expenses of every person, attending under sub section (1) at any place other than his residence. This facility is not yet provided by any State Government for the anticipated financial burden.

To avail the benefits of the section 160, there must an FIR registered by the police. Otherwise, the police officer cannot proceed under the section to summon witness to the crime. This condition has been clearly laid down by the

Supreme Court in ***P. Sirajuddin v State of Madras*** [41] and the Court has held that in investigating a cognizable offence, an investigating officer cannot ignore the provisions of CrPC, and proceed with the investigation without there being any FIR.

B. Powers of Police Officer to compel attendance of Accused:- Investigation into a crime often includes examination of number of persons including the suspects and the accused. The words 'any person' under section 160 will, therefore, include a suspect or an accused. The investigating police officer is empowered to require the personal attendance of a suspect or an accused to the crime during the investigation subject to the conditions laid down under section 160(1). This view has been clearly up held by the Supreme Court in ***Nandini Satpathy v PL Dani,***[42] holding that a police officer is entitled to question the accused and the accused is bound to answer all questions except those which would incriminate him.

However, the investigating police officer has no authority to call on the accused to produce any documents before him. A notice to produce a document under section 94 Cr PC cannot be issued to an accused person.[43] This view has been concurred by the Supreme Court in subsequent case of ***V. Gopalkrishnan Nayanar v Rv Sasidharan Nambiar & Another*** [44] by holding that the Article 20(3) of the Constitution gives protection to an accused against self-incrimination. Summons for production of documents under section 91 of the CrPC cannot be issued to a person against whom complaint is pending before the magistrate and inquiry under section 202 of the CrPC is being conducted. Such a person, even if not already summoned by the magistrate, is an accused person.

C. Examination of Witnesses by the Police:- The object of section 161 is to obtain evidence which may later be produced at the trial. In case of trial before a court of session or in case of trial of a warrant- case, a charge may be framed against the accused on the basis of the statements recorded by the police under section 161.

According to section 161 (1), any person supposed to be acquainted with the facts and circumstances of the case can be orally examined-

(a) by a police officer making an investigation of the case, or

(b) on the requisition of such officer, by any police officer not below such rank as the State Government may by order prescribe in this behalf.

The words "any person" in section 161 (1) include any person who may be accused of the crime subsequently. The expression 'any person supposed to be acquainted with the facts and circumstances of the case' includes an accused person who fails that role because the police suppose him to have committed the crime and must therefore, be familiar with the facts. [45] The accused person, even after his remand to judicial custody, subject to his right to silence, be questioned by the police with the permission of the magistrate in any place and manner which do not amount to custody in the police. [46]

Where a person is being examined by a police officer under section 161 (1), he is required to answer truly all questions put to him by such officer. He is, however, not bound to answer such questions which may have a tendency to expose him to a criminal charge or to a penalty or forfeiture [section 161 (2)]. It is quite important for effective investigation that every person questioned by the police officer must furnish, and must be under a legal duty to furnish, all information available with him to the police. Logically, the law must also require that the information is not false or misleading.[47] If a person, being legally bound to answer truly all questions relating to such case refuses to answer any such question demanded of him, he shall be liable to be punished under section 179 IPC. Further, if such a person gives an answer which is false and which he either knows or believes to be false or does not believe it to be true, he is liable to be punished under section 193 IPC for giving false evidence.

The Supreme Court has interpreted the scope of Article 20 (3) of the Constitution vis-à-vis section179 IPC and section 161 (2) CrPC in ***Nandini Sathpathy v PL Dani,*** [48] and held that the accused shall answer all questions put to her which do not materially incriminate her in the pending or imminent investigations or prosecutions. If she claims immunity regarding any questions she will, without disclosing details, briefly state in which case or offence in the offing makes her reasonably apprehend self-incrimination by her refused answers. If after the examination is over, the police officer examining her reasonably regards any refusal to answer to be a willful violation under pretence of immunity from self-incrimination, the accused can be prosecuted under section179 IPC. The Apex Court has also held that there is no obligation on the part of the accused person to make any statement to the police cannot be said to be a good law. However, 'compelled testimony' is prohibited under the section as the evidence procured is deemed to be under physical threats or violence or intimidating methods and the like.

The police officer may reduce into writing any statement made to him in the course of the examination of a person, and if does so, he shall make a separate and true record of the statement of each such person whose statement he records under section 161(3). This provision gives wide discretion to a police officer to record or not to record, any statement made to him during investigation. This appears to be necessary also. A police officer investigating crime has to question, and then to examine orally a large number of persons, many of whom may have no useful information to give, and much of the information may be found to be pointless at the end.

The above provision contained in section 161(3) does not require a person making a statement to a police officer to sign it as that might lead to abuse of power by the police. In some cases at least it might facilitate a police officer to obtain the signature of a witness by compulsion to a statement recorded by such officer and when faced with this statement at the subsequent stages of trial the witness would find it difficult to go against the statement

recorded by the police, although he may be anxious to state the truth before the Court.[49] Section 161 (3) gives discretion to a police officer to reduce into writing any statement made to him during an investigation. If he exercises his discretion in favour of reducing the statement into writing, he is bound to make a separate and true record of the statement of each person whose statement he records and the matter does not rest with his sole discretion.[50] In ***Jageswar Sow v King***, [51] the High Court of Calcutta has said that the police may not record any statement at all, but if they choose to record any statement as important or necessary, they are not to do so in a boiled form but separately under each person so that the defence may use it in accordance with section 162. This does not, however, mean that he should take down the statement verbatim, but it is essential that he should make a separate record of the statement of every witness and it is not sufficient for him to say that one witness corroborates the other. [52]

The statement recorded should not be in the indirect form of speech. The writing, therefore, should be a record in the first person, of the whole of the account a witness gives.[53]

Section 162(1) clearly enjoins that no statement made by any person to a police officer in the course of an investigation under Chapter XII of CrPC, shall, if reduced to writing be signed by the person making it. The provision is intended as a statutory safeguard against improper police practices. Contravention of the provision will be considered as impairing the value of the evidence given by the person making and signing a statement before the police during the investigation of a crime. [54] However, the Supreme Court has clarified that if an investigating officer has by mistake obtained the signature of the accused on the seizure memo in violation of section 162(1) it shall not vitiate the whole proceedings. [55]

During investigation, the statements of witnesses should be recorded as promptly as possible. Unjustified and unexplained long delay on the part of the

investigating officer in recording a statement of a material witness during the investigation may render the evidence of such witness unreliable.[56] Considered in the light of surrounding circumstances, the inordinate delay in the registration of the FIR and further delay in recording the statements of material witnesses, was held to cast a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story. [57] However, the question of delay in examining a witness during investigation is material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a got-up witness to falsely support the prosecution case. [58] The Supreme Court in ***Ganesh Bhawan Patel v State of Maharashtra*** [59] has held that delay by itself may not amount to a serious infirmity. If there are circumstances to suggest that the investigation was deliberately marking time with a view to decide about the shape to be given to the case and the eye-witnesses to be introduced, it may become a serious infirmity. The prompt recording of a statement under section 161 of the Code eliminates the possibility of a false account of the incident being given in the statement.[60]

In ***Anjinappa & Others v State of Karnataka,*** [61] the High Court of Karnataka has held that one to two months in recording statements of witnesses under section 161 of the Code was held to make the testimony of such witness extremely doubtful and unreliable.

The investigating officer is required by section 161 (3) to make a separate and true record of the statement of each person whose statement he records. Omission to do so would amount to an attempt to circumvent the law[62] If the investigating police officer records only one joint statement of several witnesses during the investigation, such a statement is clearly a contravention of section 161(3). However, it would not render these persons as incompetent witnesses or render their evidence as inadmissible; it can only affect the weight to be attached to their evidence. Whether non-compliance with section 161(3) would vitiate the entire trial would depend upon the circumstances and facts of

each case, unless the non-compliance has caused prejudice to the accused in his defense and has resulted in a failure of justice, it would not invalidate the trial.[63]

In ***Asan Tharayil Baby v State of Kerala,*** [64] the High Court of Kerala has said that the word 'statement" under section 161 includes both oral and written statements and it will also include signs and gestures. The words in section 161 (3) and 162 mean all that is stated by a witness to a police officer or officers during the course of investigation.

D. Evidentiary value of the Statements made to the Police during Investigation:- A statement recorded by police officer during investigation is neither given on oath nor is it tested by cross-examination. According to the law of evidence such statement is not evidence of the facts stated therein and therefore it is not considered as substantive evidence.[65] It is considered no evidence to initiate criminal cases under section 194 and 195 of IPC.[66] But if the person making the statement is called as a witness at the time of trial, his former statement, according to the normal rules of evidence could be used for corroborating his testimony in court or for showing how his former statement was inconsistent with his deposition in court with a view to discredit him. A statement recorded under the section 161 may be used only for the purpose of contradicting the evidence of the prosecution witnesses and not for the purpose of corroborating their evidence or for contradicting a person examined in the course of an investigation. [67]

E. Recording of Statements of Witnesses:- Section 162 deals with the use of statements made to a police officer under section 161. Under the Evidence Act, a former statement made by a witness can be used to contradict him, to impeach his credit, to corroborate him, or to refresh hidden memory. But this section imposes an absolute bar on the use of the statements covered by it for any purpose save for the purpose provided therein, however garbed the use may be. But this section does not apply to extra-judicial confessions.

As observed by the High Court of Bombay in ***Yusufally Esmail Nagree v State of Maharashtra*** ,[68] the intention behind the section is to protect the accused from being prejudicially affected by any dishonest or questionable methods adopted by a overzealous police officer, who may be inclined to miss-record the statements or bring pressure or influence on the witnesses. The object being achieved under sub-section (1), the proviso enables the accused and in some cases even prosecution bring out the contradiction between the statements made by the witnesses before the court and before the investigating officer. As held by the High Court of Nagpur in ***Balram Tikaram v Emperor*** [69] the omission of the investigating officer to record the statements of the persons examined by him separately during investigation and destruction of notes taken by him constitute a flagrant attempt to circumvent the law and thereby to defeat the right which the law bestows on a person under trial.

The expression 'any person' in this sub-section (1) includes an accused person.[70] The words no statement made by any person' are sufficiently wide to take in a statement even by the complainant in the course of an investigation after the FIR is lodged under section 154.

'Statement' in this section is the entirety of the facts stated by the witness to a police officer during investigation. All those facts, whenever and wherever stated, go to constitute his statement. The word 'statement' appearing in section 161 (3) and section 162 CrPC constituted the entirety of facts stated by a witness when he was examined on different dates by the same investigating officer or different investigating officers. Therefore, the expression 'statement or any part of such statement' appearing in section 162 CrPC, is not confined to a single statement given by a witness to a particular officer but includes those taken at different stages or on different dates by different investigating officers or the same investigating officer.[71]

When a person accused of an offence accompanies a police officer in the course of an investigation or complies with a request to give his handwriting or

thumb-impression for comparison he does not give a statement, proof whereof is prohibited by this section.

The facts regarding recovery recorded by the police officer in the recovery memo cannot be equated to statements made by the witnesses and recorded by the police officer under section 161. A statement can be made by means other than mere words. A gesture to all intents and purposes is a statement.[72] A list of stolen property is a 'statement' within the meaning of this section, and would be hit by this section if it is given to the police after the commencement of the investigation.

Sketch map if not prepared in the presence of the police at the crime spot is admissible in evidence. But, as pointed out by the Supreme Court in ***Santa Singh v State of Punjab,***[73] the witnesses corroborate his statement in the court that they showed him the place and there is nothing to show that the map was prepared by the draftsman in the presence of the police, the evidence would be legal evidence and admissible.

A panchanama made by the police cannot be regarded as a statement made by a panch witness to the police officer, and, if so, it would be hit by section 162, Cr PC. If the panchanama was not made during the course of the investigation, then it would not be hit by section 162, CrPC.[74] The bar of inadmissibility operates not only on the statements of the witnesses but also on those of the accused.

Every statement made to a person assisting the police during an investigation cannot be treated as a statement made to the police or to the magistrate and as such excluded by section 162 or section 164 CrPC.

The section will not be applicable if the statement in question was not made in the course of an investigation. The words 'in the course of', in the context of this section, import that the statement must be made as a step in a pending investigation to be used in that investigation.

A report or statement recorded after the commencement of the investigation would be a statement under this section.[75] The statement of the complainant recorded after the FIR is lodged would be a statement in the course of an investigation.

It is the investigating officer who has to record the statements of the witnesses. Where instead of taking down the statements of the witnesses by himself, the investigating officer required them to give their statements in their own writing, the Supreme Court held that the evidence of witnesses whose statements were so written contrary to the provisions of the CrPC, could not be relied upon. It was pointed out by the Supreme Court in ***Yudhishtar v State of Madhya Pradesh*** [76] that they could not resile there from.

The statements of witnesses incorporated in panchnamas, which were signed by them, do not lead to their evidence in the court being excluded from consideration.[77] Violation of the provision of section 162, in so far as asking the persons examined under section 161 to sign their statements, may sometimes diminish the value of the testimony of the witnesses before the court. The signature of a witness on his statement under section 161 CrPC does not make it inadmissible in evidence. The court will however keep in mind that the signatures were obtained by the police contrary to the provision of section 162 CrPC, and consider the statement keeping in view the rule of caution.[78] Signature of the accused on the seizure memo when obtained by the investigating officer in ignorance of the provision of section 162 CrPC, it was held by the Supreme Court, would not vitiate the evidence regarding the recovery.[79]

F. Evidentiary value of the Statements recorded under the Section 162:- Under the proviso to section 162 CrPC, the statements can be used only for the purpose of contradicting a prosecution witness in the manner indicated in section 145 of Evidence Act and for no other purpose. They cannot be used for the purpose of seeking corroboration of assurance for the testimony of the

witness in the court.[80] If any part of the previous statement is used for contradiction, any part of the statement can be used in the re-examination of the witness for the only purpose of explaining any matter referred to in his cross-examination.

Section 162 implicitly prohibits the use of the statements made to the police during the course of the investigation for the purpose of corroboration. That is based on the assumption that the police cannot be trusted for recording the statements correctly and that the statements cannot be relied on by the prosecution for the corroboration of their witnesses as the statements recorded might be of a self-serving nature. The restrictions imposed by section 162 of the Code on the use of statements are applicable only to such statements as are made to the police during the course of investigation, but not during the course of investigation. The object of the section is to protect the accused both against overzealous police officers and untruthful witness.

Section 162 would hit only statements made to a police officer in the course of an investigation. Any statement made to a police officer before the commencement of investigation would not be hit by section 162.[81]

With regard to panchayatnamas it has been held that there is no provision of the Evidence Act by which such documents can be used as substantive evidence. If they are prepared at the time, they can be used by the witnesses for the purpose of refreshing their memories in the witness-box under section 159, Evidence Act, but in themselves they are not evidence.

The investigation under this chapter refers to an investigation with regard to the commission of either a non-cognizable offence under the order of a magistrate under section 155 (2) or a cognizable offence in which a police officer is entitled to investigate under section 156. The expression 'an investigation under this Chapter' occurring in this section has thus been used to exclude its operation to investigation made under Chapter XIV or XV or other

provisions of the Code. Statement made during an inquest under section 174 falls under this section. The inquest statements, being within the bar of section 162 of the Code, cannot be used as substantive evidence as it is clearly held by the Supreme Court in ***Harkirat Singh v State of Bihar.***[82]

Sub-section (2) of this section excludes from its operation a statement falling within the provisions of section 32 (1) Evidence Act, and a statement falling under the provision of section 27 of Evidence Act. The Supreme Court has held in ***State of Uttar Pradesh v Deoman***[83] that section 27 of the Evidence Act and section 162, sub-section (2) of CrPC in so far as that section relates to section 27 of the Evidence Act, are not void as offending Article 14 of the Constitution.

IV. Arrest of Accused

Arrest and custody form the most important segment in investigation of crimes. The term 'Arrest" has been defined under CrPC and not the term 'Custody.' Both are not synonymous. In all arrests there will be custody, but not *visa versa*. Arrest consists in seizure or touching of a person's body with a view to restrain him, whereas custody refers to submission to the custody by word or action by a person.[84]

Arrest means apprehension of a person by legal authority resulting in deprivation of his liberty. However, timely arrest of the accused persons in serious cases is an essential step in investigation. Failure in this regard considerably weakens the prosecution.[85]

The police are empowered under CrPC to arrest a person in both cognizable case and non-cognizable case. The only limitation is that to arrest a person in non-cognizable case, the police have to obtain a written warrant of arrest from a competent magistrate [section 155 CrPC]. In cognizable case, the police can arrest a person without a warrant from the competent magistrate. The section 41 provides for arrest of a person without warrant from a

magistrate under several circumstances like: when any person actually concerned or reasonably suspected to be concerned in a cognizable offence; any person who, in the presence of such an officer, has committed or has been accused of committing a non-cognizable offence and refuses to give his true name or residence; any person concerned or reasonably suspected to be concerned in any act committed at a place outside India and the like.

The police can arrest of a person under several circumstances.[86] They can arrest for securing attendance of an accused at trial; to prevent from commission of any offence; to remove obstruction to the police; and for retaking a person who has escaped from custody.

A. How Arrest is made:- Whether the arrest to be made is with a warrant or without a warrant, it is necessary that in making such an arrest the police officer or other person making the same actually touches or confines the body of the person to be arrested unless there be a submission to custody by word or action.[87] An oral declaration of arrest without actual contact or submission to custody will not amount to arrest.

The importance of the precise arrest-procedure becomes obvious while determining the question as to whether at a particular time a person was under arrest or not.

The Code gives the following powers for effecting an arrest:

(1) Power to use force:- The person making an arrest may use all means necessary to make the arrest if the person to be arrested resists the endeavour to arrest him or attempts to evade the arrest.[88] However the power to use necessary force for making an arrest shall not extend to causing the death of a person who is not accused of an offence punishable with death or with imprisonment for life.[89] It may also be noted that the person arrested is not to be subjected to more restraint than is necessary to prevent his escape.[90]

Time and again the Supreme Court has been emphasizing the need for exercising caution in subjecting the arrested person to handcuffing. Since the police have been allegedly handcuffing arrested persons indiscriminately in spite of the courts' warnings, the Supreme Court has ordered thus:

"In all the cases where a person arrested by police is produced before the magistrate and remand-judicial or no-judicial-is given by the magistrate the person concerned shall not be handcuffed unless special orders in this respect are obtained from the magistrate at the time of the grant of the remand. When the police arrests a person in execution of a warrant of arrest obtained from a magistrate the person so arrested shall not be handcuffed unless the police have also obtained orders from the magistrate for the handcuffing of the person to be so arrested. Where a person is arrested by the police without warrant the police officer concerned may, if he is satisfied, on the basis of the guidelines given by us that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his production before the magistrate. Further use of fetters thereafter can only be under the orders of the magistrate as already indicated by us."[91]

(2) Power to search a place:- An occupier of a house is under a legal duty to afford to the police, and to any person acting under a warrant of arrest, all the facilities to search the house for the purpose of making arrests. If such facilities are denied or obstructions are put in the search, the police officer (or other person executing a warrant) shall have power to use force for getting entry into the house for search and also for the purpose of liberating himself in case he is detained in the house. These powers are subject to reasonable restrictions if the part of the house to be searched is in occupation of any pardanashin woman.[92]

(3) Power to pursue:- A police officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest, pursue such a person into any place in India.[93]

In case the arrest is to be made under a warrant, section 77 CrPC makes it clear that the warrant may be executed at any place in India. However, when a warrant of arrest is to be executed outside the local jurisdiction of the court issuing it, a special procedure as prescribed in sections 78-81 will have to be followed.

(4) Power to obtain assistance:- A police officer can reasonably ask any person to assist him in the taking of or preventing the escape of any other person whom he (the officer) is authorized to arrest.[94] The person asked to assist is under a legal obligation to give assistance and any intentional failure on his part is punishable under section 187 IPC.

(5) Power to require subordinate officer to arrest:- An officer in charge of a police station, or any police officer making an investigation under Chapter XII of CrPC, can require any subordinate officer to arrest without a warrant (other than in his presence) any person who may lawfully be arrested without a warrant, and shall deliver to the officer so required an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made.[95]

(6) Power to re-arrest escapee.- If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in India. The person making such a re-arrest shall have the same powers and duties as mentioned above in sub-paragraphs (1) and (2) in respect of using force for arrest, and of search of place etc.[96]

B. After-arrest Procedures:

(1) Search of arrested person:- Whenever an arrested person cannot legally be admitted to bail, or is unable to furnish bail, the police officer making the arrest (or to whom the arrested person is made over after arrest by a private person) may search such a person, and place in safe custody all articles, other than necessary wearing apparel, found upon him. A receipt showing the

articles so seized shall be given to such a person. The police's failure to take out a recovery memo is an irregularity and was however held not vitiating the trial.[97] Where the arrested person is a woman the search shall be made by another woman with strict regard to decency.[1]

(2) Seizure of offensive weapons:- The police officer or other person making any arrest may take any offensive weapons from the person arrested which he has about his person, and shall deliver all weapons so taken to the court or officer before which or whom the arrested person is to be produced.[2]

(3) Medical examination of accused:- If the offence with which the arrested person is charged is of such a nature and is alleged to have been committed under such circumstances that the evidence as to the commission of the offence would be afforded by the medical examination of such an arrested person, then, at the instance of a police officer not below the rank of a sub-inspector, such examination could be made by a registered medical practitioner in order to ascertain the facts that might afford such evidence. For the purposes of such medical examination such force as is reasonably necessary could also be used. If the person to be so examined is a woman the examination shall be made by, or under the supervision of, a registered lady medical practitioner.[3]

Such medical examination has been held to be not violative of Article 20(3) of the Constitution as it would not amount to compelling the arrested person "to be a witness" against himself. The examination is not restrictively confined to what is visible on the body itself. It may include testing of blood, sputum, semen, urine, etc. depending upon the nature of the case. If the process of examination is reasonable, then the discomfort, pain or hurt caused to the examinee in such examination is justified by the section.[4]

By giving an elaborate explanation as to the meaning of 'examination' and 'registered medical practitioner', the Code of Criminal Procedure (Amendment) Act 2005 has incorporated sections 53-A, 54(2) and 54-A laying down the procedure for the conduct of medical examination.

Section 53-A makes special provisions for rape cases. It is enacted that in a rape case the accused could be sent for medical examination by a registered medical practitioner working in a hospital run by the Government or local authority and in their absence within a radius of 16 kilometers, any other registered medical practitioner acting at the request of a police officer not below the rank of Sub-Inspector. For the purpose of such examination such force as is necessary can also be used.

The registered medical practitioner has to prepare the report with supporting reasons for his conclusions on each aspect, detailing the names and address of the accused and the person taking the accused to the medical practitioner, age of the accused, marks of injury on the person of the accused, the description of material taken from the accused person for DNA profiling and other material particulars. The exact time of the commencement and completion of examination will also be noted in the report and a copy of the report will be sent to the police officer and the magistrate. In case of the examination taking place at the instance of the accused under sub-section (1) a copy will be given to him also.[5]

It has been laid down in section 54-A that on the request of a police officer in charge of the station, a court having jurisdiction can require an accused to subject him for identification by others if it is found necessary for the investigation of the offence.[6]

Section 311-A authorizes the magistrate to direct any person including an accused to give specimen signatures or handwriting for the purpose of investigation or other proceedings. But this order shall not be made if he was at any time arrested in connections with such investigation.[7]

Though the examination is to be done at the instance of a police officer not below the rank of a sub-inspector that does not mean that other superior police officers of the court concerned are debarred from exercising the power under section 53 if such examination becomes necessary for doing justice in a criminal case.[8]

Even if an accused person is released on bail he is still 'a person arrested on a charge of committing an offence' as contemplated by section 53. Moreover, such a person while released on bail is notionally in the custody of the court (through the surety) and therefore his medical examination can be carried out in terms of section 53.[9]

(4) Reports of arrest to be sent to District Magistrate:- Every officer in charge of a police station is required to report to the District Magistrate the cases of all persons arrested without warrant, within the limits of his station.[10]

(5) Person arrested not to be discharged except on bond or bail:- A person who has been arrested by a police officer shall not be discharged except on his own bond or on bail or under the special order of a magistrate.[11]

C. Rights of Arrested Person:- The Code of Criminal Procedure, the Indian Constitution, various judgments of the Supreme Court and other International Human Rights Covenants and Conventions have laid down several standard procedures as to the rights of arrested person. These rights are enforceable at different phases of arrest of a person and violation of which would invite serious disciplinary and penal action against the police concerned.

(1) Right to be informed of the grounds for arrest:- In every case of arrest with or without a warrant the person arresting shall communicate to the arrested person, without delay, the grounds for his arrest.[12] This is a precious right of the arrested person and has been recognized by the Constitution as one of the fundamental rights.[13] Timely information of the grounds of arrest serves the arrested person in many ways. It gives him an opportunity to remove any mistake, misapprehension or misunderstanding, if any, in the mind of the arresting authority. It also enables him to apply for bail, or for a writ of habeas corpus, or to make other expeditious arrangements for his defence.

The rules emerging from decisions such as ***Joginder Singh v. State of U.P.***, [14] and ***D.K. Basu v. State of West Bengal***, [15] have been enacted in

section 50-A making it obligatory on the part of the police officer not only to inform the friend or relative of the arrested person about his arrest etc., but also to make an entry in a register maintained by the police. The magistrate is also under an obligation to satisfy himself about the compliance of the law by the police in this regard.[16]

(2) Right to be informed of right to bail:- Every police officer arresting without a warrant any person other than a person accused of a non-bailable offence, is required to inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.[17]

(3) Right to be produced before a magistrate without delay:- In case of every arrest, whether the arrest has been made with or without a warrant, the person arresting is required, without unnecessary delay and subject to the provisions regarding bail, to produce the arrested person before the magistrate or court having jurisdiction in the case.[18]

(4) Right of not being detained for more than 24 hours without judicial scrutiny:- In case of every arrest, the person making the arrest is required to produce the arrested person without unnecessary delay before the magistrate; and it has been categorically provided that such a delay in no case shall exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the magistrate's court.[19] If it is not complied with, the detention shall be unlawful. [20] When the arrested person is produced before the magistrate it is his duty either to release him on bail or to remand him. The High Court of Patna has ruled that such remand would continue till the trail is over.[21] Illegal detention may entail award of compensation by the Court.[22] The tendency of certain officers authorized to arrest, to note the time of arrest in such a manner that the accused's production before the magistrate was well within 24 hours of the arrest came to be criticized by the High Court of Bombay. The Court ruled that the arrest commences with the restraint placed on the liberty of the accused

and not with the time of arrest recorded by the arresting officer.[23] The right has also been incorporated in the Constitution as one of the fundamental rights.[24] This right has been created with a view (i) to prevent arrest and detention for the purpose of extracting confessions, or as a means of compelling people to give information; (ii) to prevent police stations being used as though they were prisoners- a purpose for which they are unsuitable; (iii) to afford an early recourse to a judicial officer independent of the police on all questions of bail or discharge.[25] This healthy provision contained in section 57 enables magistrates to keep a check over the police investigation and it is necessary that the magistrates should try to enforce this requirement and where it is found disobeyed, come down heavily upon the police.[26] The procedure that should be followed in such cases has been spelt out by the High Court of Kerala in ***Poovan case.***[27]

(5) Right to consult a legal practitioner:-Both the Constitution and the provisions of the Code recognize the right of every arrested person to consult a legal practitioner of his choice.[28] The right begins from the moment of arrest. The consultation with the lawyer may be in the presence of the police officer but not within his hearing.

(6) Right of an arrested indigent person to free legal aid and to be informed about it:- In ***Khatri v. State of Bihar***[29], the Supreme Court has held that the State is under a constitutional mandate (implicit in Article 21) to provide free legal aid to an indigent accused person, and that this constitutional obligation to provide legal aid does not arise only when the trial commences but also when the accuse is for the first time produced before the magistrate as also when he is remanded from time to time. However this constitutional right of an indigent accused to get free legal aid may prove to be illusory unless he is promptly and duly informed about it by the court when he is produced before it. The Supreme Court has therefore cast a duty on all magistrates and courts to inform the indigent accused about his right to get free legal aid.

The Apex Court has gone a step further in ***Suk Das v. Union Territory of Arunachal Pradesh***[30], wherein it has been categorically laid down that this constitutional right cannot be denied if the accused fails to apply for it. It is now clear that unless refused, failure to provide free legal aid to an indigent accused would vitiate the trial, entailing setting aside of the conviction and sentence.

(7) Right to be examined by a medical practitioner:- If any arrested person alleges, at the time when he is produced before a magistrate or at any time during the period of his detention in custody, that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body, then the magistrate, on the request of the arrested person, is required to direct the examination of his body by a registered medical practitioner. However the magistrate need not give such a direction if he considers that the request for examination has been made by the arrested person for the purpose of vexation or delay or for defeating the ends of justice.[31]

According to the Supreme Court, the arrested accused person must be informed by the magistrate about his right to be medically examined in terms of section 54.[32]

The need for having more transparency in the accused-police relations has been emphasized by the Supreme Court in ***Joginder Singh v. State of U.P.***[33] wherein the following rules have been formulated:

(a) An arrested person being held in custody is entitled, if he so requests, to have a friend, relative or other person who is known to him or likely to take an interest in his welfare, and he be allowed to reveal as far as is practicable that he has been arrested and where he is being detained.

(b) The police officer shall inform the arrested person, when he is brought to the police station, of this right.

(c) An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.

The magistrate is obliged to satisfy himself that these requirements have been complied with.[34]

Apart from the above-mentioned rules the Supreme Court in ***D.K.Basu v. State of W.B.***[35] issued the following instructions:

(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 at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the district and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(4) 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 the 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.

(5) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by the Director, Health Services of

the State or Union Territory concerned. The Director, Health Services should prepare such a panel for all tehsils and districts as well.

(6) Copies of all the documents including the memo of arrest referred to above should be sent to the Illaqa Magistrate for his record.

(7) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout interrogation.

(8) A police Control Room should be provided at all districts and State Head Quarters, 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 Control Room it should be displayed on a conspicuous Notice board.

Failure to comply with the requirements herein above mentioned shall, apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the county having territorial jurisdiction over the matter.

The right to compensation for the victims of unlawful arrest and detention has been recognized by the Supreme Court in ***Nilabati Behera v. State of Orissa.***[36]

It is to be noted that these instructions are applicable to authorities like Directorate of Revenue Intelligence, Directorate of Enforcement, CBI, CID, CISF, etc. which have the power to effect arrest and detain persons for interrogation.

D. Consequences of non-compliance with the provisions relating to arrest:- Non-compliance of the provisions of arrest will result in several serious consequences on violators. A trial will not be void simply because the provisions relating to arrest have not been fully complied with. Though the illegality or irregularity in making an arrest would not vitiate the trial of the

arrested person, it would be quite material if such a person is prosecuted on a charge of resistance to or escape from lawful custody. If the arrest is illegal, the person who is being so arrested can exercise the right of private defence in accordance with, and subject to, the provisions contained in sections 96 to 106 of the IPC. If the public servant having authority to make arrests, knowingly exercises that authority in contravention of law and effects an illegal arrest, he can be prosecuted for an offence under section 220 of the IPC. Apart from this special provision, any person who illegally arrests another is punishable under section 342 of the IPC for wrongful confinement. If the arrest is illegal, it is a sort of false imprisonment, and the arrested person in entitled to claim damages from the person who made such an arrest.

a. Confession and Extra-Judicial Confession

The term 'confession' has not been defined under the Evidence Act. Confession is a statement made by the accused who must either admit in terms the offence or at any rate substantiate all the facts which constitute offence. Confession- a term-used in criminal law is a species of "admission" as defined in section 17 of the Evidence Act. An admission is a statement, oral or documentary which enables the court to draw an inference as to any fact in issue or relevant fact. It is trite to say that every confession must necessarily be an admission, but, every admission does not necessarily amount to a confession.

As it is held by the Privy Council in ***Pakala Narayana Swami v.Emperor,***[37] confession is considered highly reliable because no rational person would make an admission against his interest unless prompted by his conscience to tell the truth.

Section 164 is to be read together with sections 24, 25, 26, and 29 of the Evidence Act in order to know its nature and ambit. The section emphasizes that:

1. a confession shall not be made to a police officer;
2. if a person in police custody desires to make a confession, he must do so in the presence of a Magistrate;
3. the magistrate shall not record it unless he is, upon inquiry from the person making , satisfied that it is voluntary;
4. when the magistrate records it, he shall record it in the manner provided for in section 164; and
5. only when so recorded the confession will become relevant and admissible in evidence.

The High Court of Madras has clearly said that the object of police proceeding is to collect information as a preliminary step to the production of the evidence in a judicial proceeding against an accused person. For this purpose, any person may be examined and any statement may be reduced to writing by the police, but no statement made to the police (except as provided in a section162) can be used against the accused. To these provisions, section 164 seems to be supplementary. The magistrate may prepare, while the police may not, a record of any statement, be it confession or not, which is made to him before judicial proceedings commence. The proof of such statements is not prohibited. On the contrary, express provision is made for proving the document in section 80 of the Evidence Act and in section 463 CrPC. The object of the police recording statements of witnesses under this section is two-fold; one to deter witness from changing their stories subsequently, and the other to get over the immunity from prosecution in regard to information given by witnesses under section 162. The only difference is that confessional statement is recorded without oath, whereas witness statement is recorded on oath before a magistrate. It does not apply to dying declaration, which are admissible under section 32 of the Evidence Act[38].

The section 164 applies only to statements recorded during investigation or at any time thereafter but before the commencement of the trial. The police have to bear in mind when an accused wanted to confess his guilt and avail the

provisions of the section promptly during investigation before filing of charge sheet and not after the trial of the case commences. [39]

A. Procedures in Recording of Confessional Statement:- Recording of confession under this section is a solemn and responsible act. A magistrate, in recording a confession, performs a very important judicial function. Before recording the confession he must properly consider the situation and the circumstances under which an accused is produced before him.[40] The magistrate should ensure while recording of confession that the following conditions and circumstances are fulfilled and prevailed:

1. fidelity or faithful reproduction of the statement;
2. spontaneity of the making thereof;
3. awareness in the accused's mind of the risk that he incurs in case he makes a confessional statement in relation to the charge in which he has been arraigned, and lastly;
4. a sense of safety from the risk, physical or mental, if any, consequent upon his refusal to make one.

Moreover, the provisions of this section are mandatory and have to be complied with. An omission in doing so will make the confession not liable to be utilized as a piece of evidence in the case as it is aptly held by the Supreme Court in ***Dhanajaya Reddy v State of Karnataka.*** [41]

Where the investigating officer wants the confession to be recorded by a magistrate, which the accused offers to make, it can be made at any time as is found necessary. There is no restriction under the law that this must be done within court-hours. Only thing is the accused should be allowed with sufficient time for reflection.[42] In ordinary circumstances an interval of 24 hours may be regarded as reasonable time for reflection. The court can accept the confession recorded inside the jail and that the irregularity did not affect the voluntary nature of the confession. [43]

The investigating officer is to ensure that as soon the accused expresses his willingness to confess, the latter should be produced before the magistrate. As observed by the Supreme Court in ***State (NCT of Delhi) v. Navjot Sandhu Alias Afsan Guru and Others*** [44] "before acting upon a confession the court must be satisfied that it was freely and voluntarily made. Section 24 of the Evidence Act lays down the obvious rule that a confession made under any inducement, threat or promise becomes irrelevant in a criminal proceeding. The expression "appears" connotes that the court need not go to the extent of holding that the threat, etc. has in fact been proved. If the facts and circumstances emerging from the evidence adduced make it reasonably probable that the confession could be the result of threat, inducement or pressure, the court will refrain from acting on such confession, even if it be a confession made to a magistrate or a person other than a police officer. Further, the confession should have been made with full knowledge of the nature and consequences of the confession."

As per the express provisions of section 164 read with section 281 of CrPC the magistrate should carefully observe the following formalities to ensure voluntary nature of confession:[45]

1. every question and every answer must be recorded in full and preferably in the language of the accused;
2. the signature or thumb mark of the accused must be affixed; and
3. the magistrate must make a memorandum at the foot of the confession as stated at the end of the section 281.

B. Evidentiary value of Confession:- The High Court of Allahabad has held that statements under this section can only be used for the purpose of corroboration or contradiction and cannot be used as substantive evidence. But they can constitute the basis of a complaint under section 340 and a conviction under section 193 of the IPC. [46] In so far as retracted confession is concerned, it will be open to the court to convict an accused on his confession itself though

he has retracted the confession at a later stage. Nevertheless, as per law, the courts usually require some corroboration before convicting the accused person on a statement. In ***Sarwan Singh v State***,[47, 48] the Supreme Court held that what amount of corroboration would be necessary in such a case would always be a question of fact to be determined in the light of the circumstances of the case. The Court has said that all the same, the courts do not act upon the retracted confession without finding assurance from some other sources as to the guilt of the accused. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires corroboration that the retraction was an afterthought and that the earlier statement was true. However, this is not a rule of law, but is only rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances can such a conviction be given without corroboration, for a court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration. But it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars.

However, the confession of a co-accused is strictly not evidence against the other co-accused against whom it can be taken into consideration under section 30 of the Evidence Act. Therefore a conviction based solely on the confession of a co-accused would be bad in law. When there is evidence in the case, the confession of the co-accused can be taken into consideration along with the other evidence to convict the accused, who did not make the confession.[49]

Extra-judicial confession

Extra-judicial-confession is that which is made by the party elsewhere than before a magistrate, or in court. It embraces not only express confession

of crime, but also those admissions and act of the accused from which his guilt may be implied. As held by the Supreme Court extra-judicial confession can form the basis of a conviction. By way of abundant caution, however, the court may look for some corroboration. Extra-judicial confession cannot *ipso facto* be termed to be tainted. An extra-judicial confession, if made voluntarily and proved can be relied upon by the courts. In the instant case[50] recoveries of the articles were made pursuant to the information given by the appellant-accused under section 27 of the Evidence Act. It is, therefore, admissible in evidence and the same could have been taken into consideration as a corroborative piece of evidence to establish general trend of corroboration to the extra-judicial confession made by the appellant-accused.

In case of extra-judicial confession under section 24 of the Evidence Act, exact words used by the accused need not be reproduced. Even substance of the confession made by accused to the witness, if there is no ambiguity and sufficience to prove culpability, can be acted upon. But there should not be vital and material difference. Court has to judge the credibility of the evidence of the witness. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of witnesses who speaks to such a confession. If extra-judicial confession is clear, unambiguous and in unequivocal terms, it should be believed and acted upon without agitation. [51]

There should not be any undue delay in recording of extra-judicial confession and if the Magistrate comes across such a confession he should act upon it with suspicion. In ***State of Punjab v Gurdeep Singh,*** [52] the Supreme Court has observed that the involvement of the accused in the crime is said to have been effected on December, 7th 1989, thus a delay of more than 20 days without any explanation whatsoever. The delay in recording of extra-judicial confession before a person wholly unconnected with the police is always a matter of great suspicion"

b. Discovery of Facts u/s 27 of the Evidence Act

The section 27 of the Evidence Act is an exception to the provisions enacted in sections 24, 25 and 26 of the Evidence Act which provide that no confession made to a police officer shall be proved as against a person accused of an offence and that no confession made by any person while he is in the custody of a police officer unless it be made in the immediate presence of a magistrate, shall be proved as against such person. However, the section provides for any fact is discovered in consequence of the information received from a person accused of any offence, in the custody of a police officer, that part of the information as relates distinctly to the fact thereby discovered can be proved whether it amounts to a confession or not.

As the Supreme Court observed in ***Ramkishan Mithanlal Sharma v. State of Bombay,*** [53] that what is allowed to be proved is the information or such part thereof as relates distinctly to the fact thereby discovered. If the police officer wants to prove the information or a part thereof, the Court would have to consider whether it relates distinctly to the fact thereby discovered and allow the proof thereof only if that condition was satisfied. If however the police officer does not want to prove the information or any part thereof, section 27 of the Evidence Act does not come into operation at all.

This provision contains as investigatory mechanics permitting eventual proof of information received from an accused person while in police custody only when it is assured by the fact that it led to discovery. Two things are necessary to satisfy the requirements of the provision. Firstly, there must be a statement containing an information from a person in the police custody accused of an offence and secondly, as the direct consequence thereof, a distinct discovery of fact should eventually be shown to have followed.[54] The facts discovered would be the material facts such as objects which can be physically comprehended or perceived. When such objective facts are discovered pursuant to the information contained in the statement, such information is admissible in evidence against the accused who, while in police

custody, supplied that information. The salutary use of this mechanics by practice adds value to the investigation as well as facilitates eventual decision of criminal trials. [55]

A. Requirements of Section 27 of the Evidence Act:- The expression "fact discovered" in the section includes not only a physical fact but also a mental fact as the knowledge of the accused as to the place where he has concealed the facts as is clearly held by the Supreme Court in ***Udai Bhan v. State of Uttar Pradesh.*** [56] The Court held that evidence of recovery of the pistol at the instance of the appellant cannot by itself prove that he who pointed out the weapon wielded it in offence. The statement accompanying the discovery was woefully vague to identify the authorship of concealment, with the result that the pointing out of the weapon might at best prove the appellant's knowledge as to where the weapon was kept.

A reading of section 27 of the Evidence Act makes it clear that what is allowed to be proved is the information or such part thereof as relates distinctly to the fact thereby discovered. The information would consist of a statement made by the accused to the police officer and the police officer is obviously precluded from proving the information or part thereof unless it comes within the four corners of the section. If the police officer wants to prove the information or part thereof, the Court would have to consider whether it relates distinctly to the fact thereby discovered and allow the proof thereof only if that condition was satisfied. In ***Gandra Brahma v. State of Assam,***[57] the High Court of Gauhati held that the police officer has not even stated that the dead body was recovered at the instant or in consequence of the information supplied to him by the accused. If the accused had supplied the information in consequence of which the dead body was recovered, such a statement ought to have been mentioned by the police officer in his statement but he had not done so. Therefore, the Court held that the accused had not made any such statement to the investigation officer in regard to the discovery of the dead body.

This section is based on ***the doctrine of confirmation by subsequent facts***. That doctrine is that where, in consequence of a confession otherwise inadmissible, search is made and facts are discovered which confirm it in material points, then such discovery is a guarantee that the confession made, was true. But what is important to note is that only that portion of the information can be proved which relates distinctly or strictly to the facts discovered. Discovery envisaged in section 27 of the Evidence Act is that of the fact only and not of discovered fact.[58] The place from where the police could recover some remnants of a human body, it is a rediscovery which does not fall within the purview of Section 27 of the Evidence Act and hence no importance can be attached to the said discovery.[59]

It is now well settled that "police custody" for the purpose of section 27 of the Evidence Act does not commence only when the accused is formally arrested but would commence from the moment when his movements are restricted and he is kept in some sort of direct or indirect police surveillance. In this connection some of the observations of the Supreme Court in ***State of Uttar Pradesh v. Deoman Upadhayaya.***[60, 61] areo worthy to note. The majority Judges observed that "Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in to custody: submission to the custody by word of mouth or action by a person is sufficient. A Person directly giving a police officer by word of mouth information which may be used as evidence against him may be deemed to have submitted himself to the custody of the police officer within the meaning of section 27 of the Indian Evidence Act."

In ***Sudam Chandra Bag v. Emperor,***[62] the High Court of Calcutta has held that where the police officer interviewed accused and was with him for considerable time and walked with him to the two places where accused pointed out the spot where the incriminating article might be found, it would be legitimate to hold that the accused was in custody within the meaning of

section 27 of the Evidence Act when he made the statement as to the spot where the incriminating article might be found, although the arrest was only made when the article had been found.

B. Procedure to be followed in Recording Information:- Statements made by an accused person which are or may be provable under section 27 of the Evidence Act, should be clearly and carefully recorded by the police officers concerned. They should be recorded in the first person, that is to say, as far as possible in the actual words of the accused. They should not be paraphrased. Obviously, if what a man says is to be used in evidence, his own words should be used and not a rendering into third person of the purport of his statement. With such a record of the statement before him it will then be for the Trial Judge to decide how much of it is admissible under the Section.[63]

Judicial opinion is now strongly set against the use of force or third-degree methods, for recovery under section.27. In ***Amin v. State,***[64] the High Court of Allahabad held that where the accused has been subjected to third-degree methods, recovery under section 27 of the Evidence Act, would be of no avail against him; the protection afforded by Article 20(3) of the Constitution against testimonial compulsion will apply in such a case.

However, where an accused person was kept in police custody for four days and subjected to persistent questioning (extending over a total period of 12 hours during these four days) and it was after such persistent questioning that the accused showed his willingness to discover the incriminating article, it was held that the mere questioning by a police officer cannot be "compulsion" within the meaning of Article 20(3) of the Constitution.[65]

C. Evidentiary value of Facts discovered under Section 27 of the Evidence Act:- Evidence to be admissible under the section the accused should be in the police custody and should have been committed an offence. Further it is also necessary that there must be witnesses to recovery mahazar and must state

categorically that the accused himself stated where the facts are concealed and should himself show such place and remove them from the concealed place. In ***Manoranjan Singh v. State of Delhi,*** [66] the Supreme Court has upheld the conviction given by the trial court by observing that the evidence of the three witnesses who had categorically stated that the key was produced by the appellant and with it the lock of that room was opened cannot be disbelieved. The witnesses had also stated that after opening the room the accused had pointed out the raxine bag containing dalda tin from which RDX was found. From this evidence, the Court was convinced that the appellant was in conscious possession of the said explosive articles. Therefore, the Court held that the appellant was rightly convicted by the Trial Court.

Mere solitary recovery of articles of crime is not enough. It should also be supported by other evidence. The benefit of doubt will go to them in the absence of any reliable evidence of the persons who say that they had witnessed the occurrence with their own eyes. [67] There should not be inordinate and unexplainable delay in recovery of facts to the crime,if so loses its evidentiary value.

Any recovery effected without recording the statement of the accused is un acceptable under the law. There should be a statement of the accused containing all necessary details linking to the crime. In ***Bahadur v. State of Orissa***, [68] the Supreme Court has acquitted the accused- appellant by observing that there is nothing to show that the appellant had made any statement under section 27 of the Evidence Act relating to the recovery of the weapon. Moreover, what the accused had done was merely to take out the axe from beneath his cot. There is nothing to show that the accused had concealed it at a place which was known to him alone and no one-else other than the accused had knowledge of it. In these circumstances the mere production of the tangia would not be sufficient to convict the appellant.

It is also necessary for the investigating officer to summon respectable and independent witnesses for recovery procedure. Otherwise, recovery loses its evidentiary value. The High Court of Gujarat deprecated the investigating officer in ***Godadji Thakore v. State of Gujarat,*** [69] where respectable and independent witnesses were not associated with recovery or witnesses made to sign paper at the police station. Once a fact is discovered from other sources there can be no fresh discovery even if relevant information is extracted from the accused. [70] Where the information relating to the discovery of the fact was already in possession of the police, section 27 will not be applicable and any evidence relating to such information will not be admissible.[71] The statements of accused recorded by the investigating police officer are wholly inadmissible except to the limited extent permitted by the section 27 of the Evidence Act.

The inferences that can be drawn as a result of the facts discovered cannot further be stretched so as to draw similar inculpatory inferences against the persons who are in the position of the co-accused. Such an exercise would mean drawing an inference from a mere inference having no direct nexus with the non-informant which can hardly be logical or reasonable. In the context of the statute like the Evidence Act what is important is the direct evidence against the offender. [72]

It is well settled that it is the first statement made by an accused leading to a recovery which is admissible in evidence. The repetition of that statement by the accused after witnesses are called would not make the statement before witnesses admissible in evidence.

It is common knowledge that police extorts by oppression, torture or inducement and in order to check this practice section 25 of the Evidence Act has been enacted. Therefore, any confession by the accused to the police except to the extent provided in section 27 of the Evidence Act cannot be brought in evidence against him. [73]

c. Test Identification Parade

During the investigation of a crime the police agency is required to hold identification parade for the purpose of enabling the witness to identify the person alleged to have committed the offence particularly when such a person was not previously known to the witness or the informant.

The whole idea of a test identification parade is that witnesses, who claim to have seen the culprits at the time of the occurrence, are to identify them from the midst of other persons without any aid or any other source. The identification test is usually adopted during the investigation of a crime by the police, when the witnesses are interrogated for the first time and state that they had seen some persons committing the crime, but do not know their names and would be able to identify them, if they would see them again. The identification test is a check upon their veracity. These proceedings are in the nature of tests and the Courts regard them as record of facts which establish the identity of any thing or person.

The phrase 'Test Identification Parade' has not been defined either under CrPC or under the Evidence Act. But the evidence forthcoming from test identification parade is held admissible under section 9 of the Indian Evidence Act, which has again been governed by the section 162 CrPC.

However, section 54A CrPC makes provision for identification of person arrested. The section provides that where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the court having jurisdiction, may on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit.

Magistrates are more conversant with the procedure to be followed to ensure their proper conduct. They can be more relied upon. They are less

amenable to extraneous influences. They are more easily available and they can act with great authority over the police and the jail staff who have to arrange for the parade. Experience too is invaluable and accordingly the U.P. Government in para. 496 of the Manual of the Government Orders, 1954, have laid down that identification proceedings should be conducted by experienced Magistrates and that they should attend at least six identification parades for instructional purposes before they can hold one unaided.

A. Purpose of Test Identification:- The purpose of identification test is to test the memory and veracity of a witness, who claims to identify an accused person as the participant or one of the participants, in a crime. It may be quite easy for a witness to identify an accused in the dock and say that he was the person who had committed or had participated in the commission of the crime. Therefore, for the purpose of testing the memory and veracity of the witnesses, identification parades are held in jail and the witnesses are asked to pick out the culprits from the group of persons in which suspects as well as other persons are mixed.

The observations of the Supreme Court made herein before in this connection in ***State of Maharashtra v. Suresh,***[74] may be quoted below for guidance "if potholes were to be ferreted out from the proceedings of the Magistrate holding such parades possibly no test identification parade can escape from one or two lapses. If a scrutiny is made from that angle alone and the result of the parade is treated as vitiated, every identification parade would become unusable. We remind ourselves that identification parades are not primarily meant for the Court. They are meant for investigation purposes. The object of conducting test identification parade is two fold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. So

the officer conducting the test identification parade should ensure that the said object of the parade is achieved. If he permits dilution of the modality to be followed in a parade, he should see to it that such relaxation would not impair the purpose for which the parade is held."

B. How to hold Test Identification:- Proper identification would depend on numerous factors, such as one's power of observation, distance, time and light, etc. The result would also be affected if the identification was held long after the incident but in case of arrest on the spot, the identification would be directed mainly to test the credibility of the witness who actually helped or effected arrest. If the accused refuses to participate in identification parade then adverse presumption could be drawn.

Justice Desai of Allahabad High Court ***in Satya Naraian v. State*** [75] has stressed that the practice of lining up several suspects together for identification was fundamentally wrong and was the root of all trouble that arise in the matter of judging the identification results, and he further pointed out that the rules of practice evolved by Courts for evaluating the evidence of witnesses who pick out some right persons and some wrong ones are rules not based on reason or any principle of mathematics. His Lordship expressed in the aforesaid judgment that the proper way to hold identification proceedings is to put up each suspect separately for identification mixed with as large a number of innocent men as possible, in any case not less than nine or ten. As each witness comes up for identification it will be seen whether he identifies the suspect or not. He will either identify him, in which case there will arise no question of mistake (because there will be no mistake) or he will not identify him, in which case even if he makes a mistake in picking out innocent man it will be immaterial because he will not have identified that suspect and even if he gives evidence against him in court it would not be believed. His Lordship further stated that when several suspects are required to be identified, and they are put up for identification separately, care should be taken to see that the innocent

persons mixed up are changed with every change of suspect, for otherwise the benefit of holding separate identification proceedings would vanish.

Every test identification of suspects should be held with only one suspect mixed up with nine or ten innocent persons, the innocent persons being changed every time a fresh suspect is put up for identification. If any of the suspects is possessed of a scar, a mole, a pierced nose, pierced ears, a blinded eye, a split lip or any other distinctive mark efforts should be made to conceal it by pasting slips of papers of suitable size over it, similar slip being pasted at corresponding places on the faces of a number of other under trials standing in different places in the parade. The Court *supra* in another case declared that the covering of marks should be within reasonable limits and should not be carried out to such an extent as to disfigure the face or to make its identification practically impossible or extremely difficult and thereby defeat the very object of identification.[76]

C. Conditions necessary for acceptable identification evidence:- This has been laid down in ***Ashrafi v. State,*** [77] wherein it was pointed out by the High Court of Allahabad that the following twelve questions will aptly arise and must be answered by the Court to its satisfaction before it can accept the evidence:

(1) Did the identifier know the accused from before?

(2) Did he see him between the crime and the test identification?

(3) Was there unnecessary delay in the holding of the test?

(4) Did the Magistrate take sufficient precautions to ensure that the test was fair?

(5) What was of the state of the prevailing light?

(6) What was the condition of the eye-sight of the identifier?

(7) What was the state of his mind?

(8) What opportunity did he have of seeing the offenders?

(9) What were the errors committed by him?

(10) Was there anything outstanding in the features or conduct of the accused which impressed him?

(11) How did the identifier fare at other test identifications held in respect of the same offence?

(12) Was the quantum of identification evidence sufficient?

However, rules cannot be so worded as to include every conceivable case. It is sufficient that they apply to those things which must frequently happen.

D. Evidentiary value of Test Identification:- The fact if proved, can be used for purposes of corroboration under section 157 or for contradiction under section 145 or for impeachment of the credit of the identifier under section 155 of the Evidence Act. Apart from the investigation utilizing these tests for checking up their own evidence and affording the Courts later on to rely upon them as corroborative evidence, the accused may, in certain cases, demand the holding thereof.

In ***Budhsen v. State of U.P.***[78] it was held by the Supreme Court that evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances the complainant or the witness came to pick out the particular accused person and the details of the part which he allegedly played in the crime in question with reasonable particularity. In such cases test identification is considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them.

The identification parade, even if held, cannot, in all cases, be considered as safe, sole and trustworthy evidence on which the conviction of the accused could be sustained. It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness of the complainant.[79] Identification parades are held not for the purpose of giving defence advocates materials to work on, but in order to satisfy investigating

officers of the *bona fides* of the prosecution witnesses. The proceedings are record of facts which establishes the identity of any thing or person and which may be relevant under Section 9 of the Evidence Act.

Any statement made by the identifying witnesses to the police officers would be hit by section 162 CrPC and would not be admissible in evidence.[80] The evidence of the identifier himself at the trial that he identified the accused or incriminating articles before the police is admissible in evidence to corroborate his identification at the trial. But the police officer stating that a witness identified the accused or any article would be hit by section 162 CrPC.[81]

V. Case Diary

Writing of case diary is mandatory for the investigating police officer while a criminal case is under the investigation. Failure to write case diary would not only obviate the course of investigation but also imperil the case of prosecution for want of documentary evidence. According to section 172(1), every investigating police officer is required to enter the proceedings of the investigation on a daily basis in a diary. Such a diary shall set forth the time at which the information reached the investigating officer, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation. The diary is called "Case Diary" or "Special Diary". It is of utmost importance that the entries in such a diary are made with promptness, in sufficient detail, mentioning all significant facts, in careful chronological order and with complete objectivity. In ***Bhagwant Singh v. Commissioner of Police, Delhi,***[82] the Supreme Court has observed that 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. It is of the utmost importance that the entries in police case diary should be made with promptness in sufficient detail, mentioning all significant facts in careful chronological order and with complete objectivity.

The delay in making a record of the entry in the diary is a suspicious circumstance. The diary should not only be written on a day-to-day basis but it should be dispatched to the higher authorities without delay. The higher police authorities and the courts whose duty is to administer justice should see that this rule is very strictly complied with. Because, in the overlapping events of the next day, the investigating officer may ignore or forget many things of the previous day or his memory may get confused, and so accurate recording may become difficult. The non-observance of the salutary rule may even lead to manipulation of events, and thus result in failure of justice.[83] The object of enacting this section is that the entries in the diary afford to the Magistrate information upon which he can decide whether or not the detention of the accused person in custody should be authorized and also to enable him to form an opinion as to whether any further detention is necessary.

In ***Nageshwar Sahai v. State of Bihar,*** [84] High Court of Patna has observed that: "from the wording of sub-section (1) of section 172 it appears that the diary contemplated under that section has really two parts : (1) relating to the steps taken during the course of the investigation by the police officer with particular reference to time at which the police received the information, the time at which the police officer began and closed the investigation, the place or places vitiated by him, etc., and (2) a statement of the circumstances ascertained through his investigation. The second part appears to relate to the statements recorded by the police officer in terms of section 161 of the Court and other matters relevant to trial."

A. Evidentiary Value of Case Diaries:- As provided under section 172(2) CrPC, a criminal court can only send for the police diary of a case under inquiry or trial in such Court, and may use such diary not as evidence in the case, but to aid it in such enquiry or trial, neither the accused nor his agent are entitled to all for such diary, nor they be entitled to see it merely because it is referred by the Court.[85] The entries in the case diary are not evidence nor can

they be used by the accused or the court unless the case comes under section 172 (3) CrPC. The court is entitled for perusal to enable it to find out if the investigation has been conducted on the right lines so that appropriate directions, if need be, given and may also provide materials showing the necessity to summon witnesses not mentioned in the list supplied by the prosecution or to bring on record other relevant material which in the opinion of the court will help it to arrive at a proper decision in terms of section 172 (3) CrPC. The primary duty of the police is to collect and shift the evidence of the commission of the offence to find whether the accused committed the offence or has reason to believe to have committed the offence and the evidence available is sufficient to prove the offence and to submit his report to the competent magistrate to take cognizance of the offence. [86]

The power of criminal court to use the special diary is not limited to the use of it for the purpose of enabling the police officer who made it to refresh his memory or for the purpose of contradicting him. The court may also use the special diary not as evidence of any date, fact, or statement referred to in it, but a containing indication of sources and lines of inquiry, and as suggesting the names of persons whose evidence may be material for the purpose of doing justice between the Government and the accused.

Neither the accused nor his agent is entitled under Section 172 to see the special diary for any purpose unless it has been used by the Court for enabling the police officer who made it to refresh his memory or for the purpose of contradicting him.[87] Case-diaries have been held not to be included in the words "documents" used in section 173 and section 239 CrPC.[88]

In ***Alarakh v. State of Rajasthan,*** [89] the High Court of Rajasthan has observed that the primary duty of Criminal Court is to arrive at the truth and for that purpose to ensure as far as possible that all the available evidence is placed before it. It is mainly for this reason that the Court is authorized by section 172 CrPC, to peruse the case-diary and by section 311 CrPC to summon and examine any person as a witness in the case.

The case diary under section 172, cannot be used by any court as substantial evidence but is intended to be used only for point arising. The section expressly forbids the accused from using the diary, so that if any entry in the diary is used as substantial evidence against the accused he has no opportunity of meeting the entry in the diary. Again, the CrPC permits the court to use the diary for the limited purpose of contradicting the police officer and not for the purpose of corroborating him.[90]

It is obvious that the accused is allowed to use the case diary for cross-examination of the police officer who made it, only under two circumstances: (1) If the police officer, while giving evidence, refreshes his memory by referring to the case diary (and this is permissible under section 159 of the Evidence Act) the accused is entitled to see the relevant entries in the diary and may use the same for cross-examining the police officer as provided in Section 161 of the Evidence Act; or (2) if the court uses the diary for the purpose of contradicting such a police officer in accordance with the provisions of section 145 of the Evidence Act, then the accused can have the right to inspect the relevant portions of the diary.

With regard to court powers to compel the police officer to refresh his memory from the case diary to answer relevant questions during cross-examination, in ***Shive Sharanagat v. State***, [91] the High Court of Bhopal has observed that: "furthermore, I find that the investigating officer refused to refer to the case-diary when he was asked to state during cross-examination on what dates he recorded the statements of the prosecution witnesses and it is surprising that the Trial Court did not compel him to do so. It is really a matter of grave concern that the police officer should refuse to answer a relevant question in a Court of law and the Court should be powerless and should not compel him to give a reply. Section 147 of the Evidence Act, empowers a Court to compel a witness to reply to a relevant question and it follows, therefore, that if he refuses to answer a question immediate action should be

taken against him in the interest of a fair trial. If the Court fails in its duty, it hampers the course of justice and brings the Tribunal into disrepute." In such a situation, the court can draw an adverse inference under section 114 of the Indian Evidence Act against the prosecution case.

In an application under section 482 at an early stage of the proceedings the High Court can look into the case-diaries to find out if any case is made out. It is not the law that a man can be put on trial and his liberty jeopardized when there is no material on which the police could have made a report.

If there is failure to keep a diary as required by section 172, the same cannot have the effect of making the evidence of such police officer inadmissible and what inference should be drawn in such a situation depends upon the facts of each case.[92]

B. Is Case Diary a Privileged Document?

In ***Gopal v. State of Tamil Nadu***,[93] it was observed by the Supreme Court that the statements in the police diary were ordinarily privileged and could not be given to outsiders except under section 162 CrPC, and that was limited to the case of an accused who was being tried for an offence under investigation at the time when the statement was made. Similarly, in ***Emperor v. Dharam Vir***,[94] it was observed by the High Court of Lahore that the subject-matter of police diaries would ordinarily be privileged under the provisions of section 124 of the Evidence Act and certain particulars may also be privileged under the provisions of sections 123 and 125 of the Evidence Act. None of these cases lay down a general rule that the case-diary is privileged and its contents cannot be made use of in another case. However, if the police officer does not record the statements of all or some of the witnesses under section 161(3) CrPC, but clearly incorporates the same in the case-diary maintained under section 172 CrPC, in the belief that by doing so those statements can be kept back from the knowledge of the accused, then the accused cannot be deprived of the copies of those statements. The provisions of sections 162,

172(4), 173(7) and 207-A (3) 238 CrPC, impose and obligation upon the prosecution agency to supply copies of statements of witnesses, who are intended to be examined at the trial to enable the accused to obtain a clear picture of the case against him, to utilize them in the course of cross-examination to establish his defence and also to shake the testimony of the prosecution witnesses.

Referring to the confusion as to the meaning of diary in section 172 and in some other sections the Supreme Court suggested legislative changes for providing and framing of appropriate and uniform regulations regarding the maintenance of diaries by the police.[95]

VI. Final Report

According to the scheme of CrPC, investigation is a normal preliminary to an accused being put up for a trial or cognizable offence . It usually starts on information relating to the commission of an offence given to an officer-in-charge of a police station and recorded under section 154(1). Investigation primarily consists of ascertainment of the facts and circumstances of the case. If, upon the completion of investigation, it appears to the officer- in- charge of a police station that there is no sufficient evidence or reasonable ground. He may decide to release the suspected accused under section 169 CrPC, if that person is in the custody, on executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground to place the accused on trial, he has to take necessary steps therefore under section 170 CrPC. In either case on completion of investigation, he has to submit a report to the Magistrate under section 173 of the Code in the prescribed form furnishing various details.[96]

On completion of investigation, if *prime facie* case is made out against the accused then charge sheet is submitted. Under section 173 (1), if no case is made out against the accused, final report has to be submitted to the court

under the section. Once charge sheet is submitted the Magistrate takes cognizance of the case under section 190(1) (b) CrPC.

Section 173 (1) CrPC lays down that every investigation under the Chapter XII shall be completed without unnecessary delay.

Sub-section (2) of section 173 CrPC merely emphasizes the duty to forward police report as soon as investigation is completed. An investigation is said to be complete on formation of opinion by the police on sufficient evidence, and not on possible evidence. [97] A report is to be filed on the formation of the opinion by the police officer, so, it is the opinion of the police, not of the court or any other authority, as a final step in investigation.[1] Further, it is to be noted that the filing of the charge-sheet is not a part of the investigation but it is on the completion of investigation. The report shall set 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. The report shall also mention whether the accused if arrested, have been forwarded in custody or released on their bonds, and if so, whether with or without sureties. A communication as per section 173(2) (ii) CrPC must also be sent to the person lodging the FIR that a police report has been submitted before the Magistrate.[2]

The sub-section (2) also underlines the importance of the promptitude and diligence in the investigation of cases. Every investigation shall be completed without unnecessary delay. Any slackness on the part of the investigating agency can result in the disappearance of material evidence which might otherwise be available and thus prevent the effective detection of the crime.[3] Apart from this prolonged custody of the accused before trial for various extraneous reasons can be done away with. However, the delay in submission of charge-sheet may not always be a ground for quashing of the proceedings as held by the Supreme Court in ***Seeta Hemachandra Shashittal v state of Maharashtra.***[4]

A. Forms of Final Reports:- Generally, the final reports are submitted in four forms. They vary from State to State and usually the instructions given in the Police Manual are followed. The forms of final reports are:

(i) Final Report True or 'A' summary – If at the conclusion of investigation, it is found that the case is true, but there is either no clue for its detection or there is no evidence or the evidence is so inadequate improbable, obscured and untrustworthy that no court would ever agree to convict the accused on the basis of that evidence, the investigating officer should submit F.R.T that is, final report true in the case. It means that the case reported to the Police is true, but evidence is not forthcoming to justify prosecution. In some parts of the country this sort of a final report is known as 'A' summary.

(ii) Final report false or 'B' summary – when on investigation, the Police officer finds the case of the complainant to be false, there is obviously no question of prosecuting anybody on the strength of such a false accusation. He must therefore, return the case as F.R. false, that is, final report false, and if evidence is sufficient to justify the prosecution of the complainant under section 182 to section 221 Indian Penal Code, he should take steps to prosecute him in due course of law. This final report false is known in some parts of the country as 'B' summary.

(iii) Final Report Non-cognizable or 'C' summary – If at the close of investigation, the investigator finds that the case is a non-cognizable one, he should submit F.R. non cognizable, that is, a final report on the ground that the offence is a non-cognizable one. In a case of this nature the parties are left free to fight out the case in a court of law, or the Magistrate may take cognizance of the non-cognizable offence on the strength of the final report itself and summon the accused to stand his trial.

(iv) Final Report mistake of fact or 'C' Summary – When after an investigation the investigator finds that the case arose out of a mistake of fact, he should close the investigation by F.R.M.F that is final report mistake of fact. In some parts of the country this kind of final report is known as 'C' summary.

In short, investigating officer should have any one of the following grounds for submission of a final report:

(i) When the evidence is utterly inadequate, improbable, untrustworthy, incredible and absurd; or

(ii) When the case is to be found to be false on investigation; or

(iii) When the case is found to be purely non-cognizable nature on investigation; or

(iv) When the case if found to be based on a mistake of fact; or

(v) When the case is found to be based on mistake of law or civil in nature.

If a final report is submitted at first, but on further investigation ordered by the superior police officer as per sub-section (3) of section 173 CrPC, the investigating officer finds that the accused has committed an offence, he is naturally bound to submit a charge sheet against him superseding the final report. He can do it on his own initiative, or under the direction of the superior police officer. This order is administrative and not subject to any control by a court.[5]

On the contrary, in ***Mutharaju Satyanarayan v Govt of Andhra Pradesh & Others*** [6] the High Court of Andhra Pradesh has held that even when the State Government directs further investigation into a case, it cannot direct that a charge-sheet be filed against the accused persons. At best the investigating officer can be directed by the State Government to conduct further investigation.

B. The Police to Supply to the Accused with the Copies of Documents filed to the Court:- Under sub-sction (5) of 173 CrPC, the investigating officer, while submitting charge-sheet, is under obligation to forward all documents along with the charge-sheet. An omission, due to a mistake, to forward all the relevant documents along with the charge-sheet cannot preclude the investigating officer to subsequently seek the permission of the court to file

the remaining relevant documents.[7] If for any reason the police officer considers it convenient, he may directly furnish copies of these documents to the accused. Where the prosecution seeks to put in additional documents, copies thereof should be supplied to the accused as held by the High court of Rajasthan in ***Alarakh v State of Rajasthan.***[8] On the other hand it has been held that the provision to supply copies of the documents to the accused is mandatory and in the case of non-supply, prejudice would be presumed and need not be proved by the accused.[9] Section 207 CrPC enjoins on a magistrate in any case instituted on a police report, to furnish necessary copies to the accused. Under section 208 of the new Code, even in cases instituted otherwise that on a police report,(i.e., in complaint cases) copies of statements recorded under section 161 or under section 164 and of the documents produced before the magistrate on which the prosecution proposes to rely, must be supplied to the accused. This is subject one condition, viz., that it is applicable only to cases exclusively triable by the court of sessions.

C. Courts have no powers to direct the Police to submit Charge-sheet, when the Police has already submitted Final Report:- In ***N. S. Bain v State (Union Territory of Chandigarh),***[10] after referring to sections 173, 156(3) and 190 CrPC, it was observed by the Supreme Court that "....on receiving the report police, the Magistrate may take the cognizance of the offence under section 190(1)(b) and straightaway issue process. This he may do irrespective of the view expressed by the police, in their report whether an offence has been made out or not. The police report under section 173 will contain the facts discovered or unearthed by the police and the conclusions drawn by the police there from. The magistrate is not bound by the conclusions drawn by the police and he may decide to issue process even if the police recommend that there is no sufficient ground for proceeding further... However, he cannot direct the police to submit charge-sheet."

However, a magistrate is not debarred from entertaining a private complaint merely because he has already passed an order accepting the final report submitted by the police.[11]

It is also made very clear by the Supreme Court in ***R.Sarala v Velu & Others*** [12] that there is no role that the public prosecutor has to play in filing of the charg-sheet, and the court cannot direct the investigating officer to consult the public prosecutor before filling the charge-sheet under section 173 CrPC.

D. The Police to submit Supplementary Report on further Investigation:- The powers of the police to investigate further, under section 173(8) CrPC , do not come to an end after cognizance of the offence is taken by the Magistrate.[13] Section 173(8), provides for forwarding a supplementary charge-sheet and not the one contemplated by sub-section(2) of the section 173. The number of investigations is limited by law and where one has been completed by the submission of a report, another may be set in motion on further information being received. As held by the High Court of Allahabad in ***Mangal Singh v Rex.***[14] that at any rate further investigation in respect of other accused or other offences is not illegal. Even if the case was closed after the filing of the final report, the police could conduct further investigation upon obtaining fresh material, and the permission of the court. The result of such investigation could be filed in the form of a charge-sheet, the magistrate is competent to take cognizance of the offence on the charge-sheet.[15] There is nothing illegal, when further investigation is conducted without the permission of the magistrate as clearly held by the High Court of Bhopal in ***N. P. Jharia v State of Madhya Pradesh.***[16] In the specific case a final report was submitted after the completion of investigationagainst the accused. Later supplementary report stating that there was a *prima facie* case against the other accused in the same case was submitted,. It was held by the High Court of Patna that such action of the police was permissible and it was a case of re-opening the investigation. [17] The law does not mandate taking of prior permission from the magistrate for further investigation. Carrying out of a further investigation even after filing of the charge-sheet is a statutory right of the police. The police can exercise such right as often as necessary when fresh information comes to light. The Magistrate also has a discretion in the matter to direct further investigation, even if he had

taken cognizance of the offence. A distinction exists between further investigation and re-investigation. Whereas reinvestigation without prior permission is necessarily forbidden, further investigation is not. The dictionary meaning of 'further' (when used as an adjective) is 'additional'; 'more'; 'supplemental'. 'Further' investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started *ab initio* wiping out the earlier investigation altogether. [18]

It is well within the powers of the High Court to order for further investigation under section 482 CrPC or Article 226 of the Constitution when due to negligence or dereliction of duty, the relevant material evidence has been side-tracked or withheld by the police. When the High Court under section 482 CrPC found the conduct of the investigation into offences under sections 498A and 406 IPC to be negligent, not only a direction for further investigation but also a direction for the change of the investigating officer was made. [19]

It may have been appropriate that the magistrate, who takes cognizance on the charge-sheet, should have had powers to order the investigating agency to conduct further investigation on aspects that had negligently or deliberately been left out of the investigation report. However, in the absence of a cogent and explicit provision CrPC, it may not be permissible for the magistrate to order further investigation after a charge-sheet is submitted before him.

End Notes

1. Vol. II, Chap. XXVIII p.131
2. Universal Law Publishing Co. Pvt. Ltd., 5th Ed., Second Indian Reprint 2002, p.76.
3. ***The Karnataka Police Manual*** op. cit. p.131
4. Dr. Hans Gross, op cit. p.76-78
5. Dr. Hans Gross, op cit. p.78-780
6. ***Melicio Fernandes v Mohan***, AIR 1966 Goa 23.
7. ***Kalinga Tubes Ltd v D. Suri,*** AIR 1953 Ori. 153.
8. ***Emperor v Mohd. Shah,*** AIR Lah 456.
9. ***Sitaram Ahir v. Emperor,*** A.I.R. 1944 (Pat) 222; also see ***Ram Parves v. Emperor,*** A.I.R. 1944 (Pat) 228
10. A.I.R. 1933 (Oudh) 305.
11. ***Sanchaita Investments v State of W.B..,*** AIR 1981 Cal 157
12. ***Sharad Singh v State of U.P.***, 1999 Cri LJ 1880 (All)
13. ***State v Satyanarayan Mallik***, AIR 1965 Ori. 136.
14. ***Emperor v Mohammad shah***, AIR 1946 Lah 456.
15. ***Lal Mea v. Emperor,*** A.I.R. 1926 (Cal) 663
16. ***Matajog Dubey v. H.C.Bhari***, AIR 1956 SC 44.
17. 1999 CR. L.J. 1880 (All)
18. A.I.R. 1964 (Pat) 493
19. ***State v. Bhawani Singh,*** A.I.R. 1968 Delhi, 208.
20. ***Tulmohan*** Ram ***v State,*** 1981 Cri LJ 223(NOC) (Del)
21. ***Kumar v State of A. P.***, 1993 Cri LJ 403 (AP)
22. ***Sahib Singh v State of Punjab***, (1996) 11 SCC 685
23. ***Joint Committee Report,*** p. xi.
24. ***Rajabather, Re***, AIR 1959 Mad 450.
25. ***Ramchandra v Emperor***, AIR 1935 All 520.
26. ***Public Prosecutor v Pamarti Venkata Chalamaiah,*** AIR 1957 AP 286.
27. ***Dinkar Nhanu Mangaonkr v Emperor,*** 31 Cri. LJ 927.
28. ***Tul Mohan Ram V state*** , 1981 Cri. LJ 223 (NOC) (Del): see also ***State v Mohan Patra***, (1961) 1 Cri. L.J. 828; 26 Cut. L.T. 322.
29. ***A. P. Kuttan Panicker v State of Kerala,*** 1963 (1) Cri. LJ 669.

30. *See* ***Case Supra,*** 1963 (1) Cri. LJ 669.
31. AIR 1914 (Cal) 456.
32. ***Narsiah, Re,*** AIR 1959 AP 313.
33. 1985 (2) Cri. L.C. 378 (Bom.).
34. ***Bhagwan Singh v. State of Rajasthan***, 1975 SCC (Cri) 737: see also ***Ishapal Singh v. State***, 1984 (1) Crimes, 708 (Delhi).
35. ***State of Orissa v. Nilkantha Sahu,*** (1965) 31 Cut. L.T. 990
36. 2005 SCC (Cri.) 1679
37. ***Bhambhia Noghanji v State of Kutch*** AIR 1954 Kutch 25.
38. ***Re. Manicka Reddy*** AIR 1968 Mad 225, 1968 Cri. LJ 760
39. ***Niloy Dutta v District Magistrate, Sibsagar,*** 1991 Cri. LJ 2933 (Gua); see also AIR 1978 SC 1025, 1978 Cri. LJ 968; ***Anita Panwar v State of Himachala Pradesh*** 1985 (1) Crimes 395 (HP).
40. ***M. N. Sreedharan v State of Kerala,*** 1981 Cri. LJ 119 (Ker)
41. AIR 1971 SC 520.
42. AIR 1978 SC 1025, 1978 Cri. LJ 968
43. ***State of Gujarat v Shyamlal Mohanlal Chokshi*** AIR 1965 SC 1251
44. 1996 Cri. LJ 1302; also see ***K Senthamarai v State*** 1998 (1) Crimes 319 (Mad).
45. ***Nandini Satpathy v PL Dani,*** (1978) 2SCC 424
46. ***Gian Singh v State (Delhi Admn.),*** 1981 Cri. LJ 100 (Del)
47. ***41st Law Commission Report***, Vol.1, p.71.
48. (1978) 2SCC 424
49. ***Joint Committee Report***, p. XVI.
50. ***Shive Sharnagat v State*** AIR 1953 Bhopal 21.
51. AIR 1950 Cal 565.
52. ***C Gangi Reddi v State of Andhra Pradesh*** AIR Mad 303; also see ***Muniswamy v State*** AIR 1954 Mys 81; ***Re B Subba Reddi*** AIR 1948 (Mad); ***Emperor v Ram Sewan*** AIR 1945 Pat 109, 112; ***Kandhai v State*** AIR 1953 VP 38.
53. ***B Ramariah v State of Andhra Pradesh*** AIR 1960 AP 160, 1960 Cri. LJ 311; ***Kutti Raman Nair v State of Kerala*** 1960 (2) Ker LT 329
54. ***Zahiruddin v Emperor***, AIR 1947 PC 75.
55. ***State of Rajasthan v Teja Ram,*** (1999) 3 SCC 507.
56. ***Atmaduddin v State of U.P.*** (1973) 4 SCC 35

57. ***Ganesh Bhavan Patel v State of Maharashtra*** , 1979 SCC (Cri.) 1, 9.
58. ***Banwari v State of Rajasthan***, 1979 Cri. LJ 161 (Raj)
59. AIR 1979 SC 135
60. ***Ramesh Bhagwan Manjrekar v State of Maharashtra*** 1997 Cri. LJ 796 (Bom).
61. 2001(1) Crimes 13 (Kant).
62. ***Baliram Tikaram v Emperor*** AIR Nag 1.
63. ***Tilkeshwar Singh v State of Bihar***, AIR 1956 238.
64. 1981 Cri. LJ 1165 (Ker)
65. ***Hazari Lal v State (Delhi Admn.),*** 1980 SCC (Cri.) 458.
66. ***Omkar Namdeo Jadhavv II Additional Sessions Judge, Buldana*** (1996) 7 SCC 498.
67. ***Kamurika Rajan v State*** (1984) 57 Cut LT 553 (Ori).
68. AIR 1965 Bom 3,(1965) 1 Cr LJ 12
69. AIR 1945 Nag 1.
70. ***Velu Viswanathan v State*** 1971 Cri. LJ 725, 1971 Ker LR 109; see also ***Joginder Singh v State of Punjab*** 1984 Chand Cri. C 99 (Punj).
71. ***Baby Varghese v State of Kerala*** 1981 Cri. LJ 1165, 1981 Mad LW (Cri.) 425.
72. ***Jhadu Gouda v State of Orissa*** (1985) 60 Cut LT 392.73; also see ***Bachandan v State of Rajsthan*** 1980 Cri. LR (Raj) 96, 1980 Raj Cr C 302.103; AIR ***Kartar Singh v State*** 1952 VP 42; ***Sucha Singh v Emperor*** AIR 1932 Lah 488, ***Brij Lal v Emperor*** AIR 1943 All 216 ***State of Orissa v Satrughna Behera*** (1985) 59 Cut LT 130.
73. AIR 1956 SC 526.
74. ***Naginlal Nandlal v State of Gujarat*** (1962) 1 Cri. LJ 142.
75. ***Golla Jalla Reddy v State of Andhra Pradesh*** AIR 1996 SC 3244, (SC); ***Bhanu Lal v State of Tripura*** AIR 1958 Tri 40.
76. 1971 SCC (Cr) 684, 1971 SCD 374, 1971 SC Cri. R 592.
77. ***A Gopalakrishna Naik v State of Mysore*** (1962) 1 Cri. LJ 55, (1961) 39 Mys LJ 788.
78. ***Khair Mohamed Reas Mohamed v State of Maharashtra*** 1995 Cri. LJ 568 (Bom).
79. ***State of Rajasthan v Teja Ram & Others*** AIR 1999 SC 1776, (1999) 3 SCC 507, 1999 SCC (Cri.) 436, 1999 Cri. LJ 2588 (SC), 1999 (2) Crimes 45 (SC).

80. ***Maklis Uddin v State of Assam*** 1988 (1) Crimes 639 (Gau); also see ***Kishan Sonowal v State of Assam*** 1987 (1) Crimes 336.
81. ***Keshab Choudhary v State of Assam*** 1987 Cri. LJ 1742 (Gau).
82. AIR 1995 SC 1437, (1995) 1 SCC 248, 1996 SCC (Cri.) 187.
83. AIR 1960 SC 1125, 1960 Cri. LJ 1504; reversing ***Deoman v State*** AIR 1960 All 1 (FB).
84. ***State of Haryana & Others v Dinesh Kumar,*** (2008) 1 SCC (Cri.) 722,
85. ***Ramlal Singh v. State***, A.I.R. 1958 M.P. 380
86. See S.41
87. See S.4691). Also see observation in ***Roshan Beevi v. Jt. Secy to Govt.*** of T.N., 1984 Cri. LJ 134 (FB) (Mad)
88. See S.46(2)
89. See S.46(3)
90. See S.49
91. ***Citizens for Democracy v. State of Assam***, (1995)3 SCC 743: 1995 SCC (Cri.) 600.
92. See S.47.
93. See S.48.
94. See S.37.
95. See S.55.
96. See S.60.
97. ***Mahadeo v. State***, 1990 Cri. LJ 858 (All).
1. See S.51
2. See S.52.
3. See S.53.
4. ***Anil A. Lohande v. State of Maharashtra***, 1981 Cri. LJ 125 (Bom)
5. See S.53-A and 54(2) inserted by Act 25 of 2005, (w.e.f. a date to be notified). Section 54 of the principal Act is now renumbered as S.54(1).
6. See S.54-A inserted by Act 25 of 2005, (w.e.f. a date to be notified).
7. See. S.27 of Act 25 of 2005 (w.e.f. a date to be notified).
8. ***Anil A.Lohande v. State of Maharashtra***, 1981 Cri. LJ 125 (Bom)
9. Id. at p.137. Also see ***Thaniel Victor v. State of T.N.,*** 1991 Cri. LJ 2416 (Mad)
10. See S.58

11. See S. 59
12. See S. 50
13. See Article 22(1) of the Constitution of India.
14. (1994) 4 SCC 260.
15. (1997) 1 SCC 416.
16. Inserted by Act 25 of 2005, S.7 (w.e.f. a date to be notified). Also see the discussion on D.K.Basu case at page.33.
17. See S. 50(2)
18. See Ss. 56 and 76.
19. See S. 57, and proviso to S. 76.
20. ***Manoj v. State of M.P.,*** (1999)3 SCC 715: 1999 SCC (Cri.) 478: 1999 Cri. LJ 2095 (SC).
21. ***Hari Om Prasad v. State of Bihar***, 1999 Cri LJ 4400 (Pat).
22. See ***D.G. and I.G. of Police v. Prem Sagar***, (1999)5 SCC 700: 1999 SCC (Cri) 1036: 1999 Cri. LJ 1036 (SC)
23. See ***Ashak Hussain Allah Detha alias Siddique v. Asst. Collector of Customs*** (P), 1990 Cri. LJ 2201 (Bom)
24. See Article 22(2) of the Constitution of India.
25. See ***Muhammad Suleman v. King-Emperor***, 30 CWN 985 (FB) (per Rankin J.)
26. ***Khatri (II) v. State of Bihar***, (1981) 1 SCC 627: 1981 SCC (Cri.) 228 1981 Cri. LJ 470.
27. ***Poovan v. S.I. of Police***, 1993 Cri. LJ 2183 (Ker)
28. See S.303 and Article 22(1) of the Constitution of India.
29. Supra n.76.
30. (1986)2 SCC 401: 1986 SCC (Cri.) 166: 1986 Cri. LJ 1084.
31. See S.54.
32. ***Sheela Barse v. State of Maharashtra***, (1983)2 SCC 96: 1983 SCC (Cri.) 353: 1983 Cri. LJ 642. Also See ***Mukesh Kumar v. State***, 1990 Cri. LJ 1923 (Del).
33. (1994) 4 SCC 260.
34. ***Joginder Singh v. State of U.P.,*** (1994) 4 SCC 260.
35. (1997)1 SCC 416: 1997 SCC (Cri.) 92. See also S.50-A inserted by Act 25 of 2005, S.7 (w.e.f. a date to be notified).

36. (1993)2 SCC 746. Also see ***D.K.Basu v. State of W.B.,*** (1997) 1 SCC 416 and ***People's Union for Civil Liberties v. Union of India***, 1997 SCC (Cri.) 434. In ***State of P. v. Challa Rama Krishna Reddy***, (2000) 5 SCC 712 the Supreme Court has rewritten the theoretical foundation for awarding compensation in case involving police atrocities and expressed disapproval of the moribund doctrine of sovereign immunity. See observations of the Supreme Court in Christian Community Welfare Council of India case, (2003)8 SCC 546.
37. AIR 1939 PC 47
38. ***Public Prosecutor v K Jalayya*** AIR 1954 Mad 303.
39. ***Raja Ram v State*** 1965 (All) LJ 1110 (FB)
40. ***Medu Sekh v State of Assam*** 1972 Cri. LJ 362 (Assam)
41. AIR 2001 SC 1512.
42. ***Jinappa Suddappa v State of Mysore*** (1961) 2 Cri. LJ 250.
43. ***Kehar Singh v State (Delhi Admn),*** AIR 1998 SC 1883.
44. 2005 SCC (Cri.) 1715
45. ***Sarwan Singh v State of Punjab*** AIR 1987 SC 637.
46. ***Nabi Ahmed v State of U. P.*** 1999(2) Crimes 272(All); also see ***Javvedhi Seha Rao v State of A.P.*** 1994 (3) Crimes 1072(AP)
47. ***Sarwan Singh v State of Punjab*** AIR 1987 SC 637
48. ***Ibid.***
49. ***State (NCT of Delhi) v. Navjot Sandhu Alias Afsan Guru,and Others,*** 2005 SCC (Cri.) 1715
50. ***Gagan Kanojia and Another v State of Punjab*** (2008) 1 SCC (Cri.) 109; also see ***Sukhwant Singh v State*** (2003) SCC (Cri.) 481
51. ***Ajay singh v State of Maharashtra,*** (2008) 1 SCC (Cri.) 371,
52. 2000 C. Cri. L.R. 56 (SC)
53. A.I.R. 1955 S.C. 104
54. ***K.Chinnaswamy Reddy v. State of Andhra Pradesh***, A.I.R. 1962 S.C. 1788; also see ***Shambu Gowala v. State of W.B.***, 2000 Cri. L.J. 1602 (Cal)
55. ***Nabi Mohomed Chand Hussein v. State of Maharashtra.*** 1980 Cri. L.J. 860 (Bom)
56. 1962 Supp. (2) S.C.R. 830: A.I.R. 1962 S.C. 1116; also see ***Pulukuri Kolayya v. Emperor***, 74 I.A. 65: AIR 1947 P.C. 67; ***Dudh Nath Pandey v. State of U.P.***, 1981 Cri. L.J. 618

57. 1981 Cri. L.J. 430 (Gau.); also see ***Slim Babamiya Sutar v. State of Maharashtra,*** 2000 Cri. L.J. 2696 P.2699 (Bom.); ***State Government of N.C.T. of Delhi v. Sunil,*** 2001(1) Crimes 176 (S.C.)

58. ***Sheo Bachan Mahto v. State of Bihar,*** 1988(1) Crimes 345 (Pat.);

59. ***State of Mysore v. M.N. Vasantha Kumar*** 1969 Cri. L.J. 1299 (Mysore)

60. AIR 1960 S.C. 1125

61. ***Laxmi Narayan v. State of Rajasthan***, 1984(2) Cri. L.C. 23 (Raj.).

62. AIR 1933 (Cal) 148

63. ***Chandran v. State of Kerala,*** 1985(2) Crimes 57 (Ker.).

64. AIR 1958 (All) 293.

65. ***Ahmedmiyan Bhaimiya v. State***, AIR 1963 (Guj) 159

66. 1998(1) J.C.C. 93 (S.C.); also see ***K.M.Ibrahim Alias Bava v. State of Karnataka,*** 2000 Cri. L.J. (Kar.)

67. ***Makaradhwaja Bhoi v. State of Orissa,*** 1984(1) Cri. L.C. 201 (Orissa);

68. 1979 Cr. L.J. 1075 (S.C.); A.I.R. 1979 S.C. 1262; also see ***Naindeo Daulasa v. State of Maharashtra,*** 1977 Cr. L.J. 238 (S.C.), ***Phalya Moliya Valvi v. State of Maharashtra,*** 1979 Cr. L.J. 1310 (S.C.).

69. 1993 Cri. L.J. 730 (Guj).

70. ***Suresh v. State of U.P.***, 2000(2) Crime 490 AT P.501 (All.); ***Kedar Bari v. State of Bihar,*** 2001(1) East. Cri. C. 30 (Pat).

71. ***Gokul v. State,*** 1967 A.L.J. 473

72. ***Kannunmal Mohammed v. State of Kerala***, AIR 1963 (Ker) 54

73. 2003 Cr.L.J. 682 (All.) ; also see ***Umar Ansari v. State of Bihar,*** 2003(1) east. Cri. C. 250 (Jhar.).

74. 2000 (1) Crimes 1 (S.C.) 7

75. AIR 1953 (All) 385

76. ***State of Madan Lal Jaggi***, AIR 1959 All. 504

77. ***Ashrafi v. State*** AIR 1961 (All) 153.

78. 1970 (2) S.C.C. 128 : 1970 S.C.C. (Cri.) 343.

79. ***State of H.P. v. Lekh Raj,*** 2000 SCC (Cr) 147: 2000 Cri. L.J. 44 (S.C.).

80. ***Leofred Lobo v. State,*** 1967 Cri. L.J. 746; also ***see Mohammed Mussa Mohammad Akub v. State of Gujarat,*** 1985 Cri. L.R. 390 (Guj).

81. ***State of Rajasthan v. Shiv Singh***, A.I.R. 1962 (Raj) 3; ***Vijay v. State (Delhi Administration)*** (1985)1 Crimes 31 (Delhi).

82. ***Bhagwant Singh v. Commissioner of Police, Delhi***, (1983)3 SCC 344: 1983 SCC (Cri.) 637, 1983 Cri. LJ 1081. Also see supra note 85.

83. ***Local Government v. Guji,*** A.I.R. 1935 (Nag) 69

84. 1986(1) Cri. L.C. 118 (Pat.).

85. ***Indradatt Mishra, In the Matter of,*** 1974 Cr. L.J. 994 (A.P.). As observed by the Supreme Court in ***State of Bihar v. P.P. Sharma,***

87. ***Emperor v. Naga Lun Thaung,*** A.I.R. 1935 (Rang) 370 (F.B.)

88. **Ibid.**

89. 1986 (1) Crimes. 39 (Raj.).

90. ***Achhaibat Singh v. Emperor,*** A.I.R. 1921 (Pat) 331

91. AIR 1953 Bhopal 21

92. ***Shamshul Kanwar v. State of U.P.,*** (1995) 4 SCC 430: 1995 SCC (Cri) 753.

93. 1986(1) Crimes. 448 (S.C.).

94. AIR 1933 (Lah) 498.

95. ***Shamshul Kanwar v. State of U.P.,*** (1995) 4 SCC 430: 1995 SCC (Cri.) 753.

96. ***H. N. Rishbud v State of Delhi*** AIR 195 SC 196, 1955 Cri. LJ526; also see ***Permanand v State*** 1962 (2) Cri. LJ 544(I&K)

97. ***Raghvendra Singh Hazari v State of Madhya Pradesh*** 1982 Jab LJ 19.

1. Ibid.

2. ***Ajit singh v State*** 63 (Punj) LR 571

3. ***Ajit Singh v State*** AIR 1970 (Del) 154 (FB)

4. AIR 2001 SC 1246, (2001) 4 SCC 525

5. ***Rama Shankar v State*** AIR 1955 All 525

6. 1997 Cri. LJ 3741 (AP)

7. ***Central Bureau of Investigation v R.S. Pai*** AIR 2002 SC 1644, 2002 Cri. LJ 2029(SC)

8. 1985 Raj LW 486

9. ***Mahommad Sayed v State*** 1977 Cr LJ 902(All)

10. AIR 1980 SC 1883; also see ***India Carat Pvt. v State of Karnataka,*** AIR 1989 SC 885.

11. ***Union Public Service Commission v S Papaiah,*** AIR 1997 SC 3876, (1997)7 SCC 614, 1997 SCC (Cri.) 1112

12. AIR 2000SC 1731, (2000) 4 SCC 459, 2000 Cri. LJ 2453 (SC)

13. ***Zulfiqar Beg v State of Uttar Pradesh*** 1992 Cri. LJ 2067 (All)

14. AIR 1949 All 599

15. ***K. V. Kandasamy & Others v DSP, Crime Branch Coimbatore*** 1999 Cr. LJ 4282 (Mad); also see ***R. Ramamuthy & others v State*** 1999 Cri. LJ 581 (Mad)

16. 2001 Cri. LJ 3212 (MP); also see ***Seraj Aslam v State of U. P.*** 1992 Cri. LJ 2244 (All); ***Abubaker v State of Kerala*** 2001 Cri. LJ 404 (Ker); ***Surendra Singh v State of Hariyana*** 2000 (4) crimes 191(H)

17. ***Shankar Ram v State*** 1986 Cri. LJ 707 (Pat)

18. ***State of A.P. v A. S. Peter,*** (2008) 1 SCC (Cri.) 427

19. ***Sandhya Sankaranan v Commissioner of Police, Egmore*** 1994 Cri. LJ 2577 (Mad)