

Chapter I

INTRODUCTION AND RESEARCH METHDODOLOGY

Introduction

The menace of crime is as old as human civilization. One is yet to know from the historical records the place and time where there existed a crime-free society with complete peace and happiness. The menace of crime is such that it caused concern for both the ruler and the ruled through out the history of man kind.

It is very difficult to attribute sole and specific reason for the changing phase and face of crime and criminal activities. In an attempt to satiate and satisfy of his biological, psychological, social, economic needs and greed man seems to have indulged in crime and criminal activities. As an eminent sociologist Emile Durkheim in his treatise "*Suicide*" remarks that "crime is a normal phenomenon, a society composed of persons with angelic qualities would not be free from violations of the norms of that society."¹ Therefore, it will be too Utopian to think that the people had lived and have been living with peace and security without the help of a strong State agency like the police in administration of criminal justice with detection of crime and prosecution of criminals.

A close look at historical records reveals that crimes have changed dreadfully over the years, from simple to complex, in terms of manifestation and magnitude. This has resulted in unmanageable problems in the maintenance of law and order; safety and security of the people and the State; prevention and detection crimes; and prosecution of criminals. Cyber crimes,

organized crimes, white collar crimes, terrorist crimes, trafficking in drugs, women and children are not only on the rise but are also spreading out their tentacles across the nations scaring and spurring the concern for the people and the States. One can also witness as to how the State and the people are relentlessly battling against the menace of crime with its various agencies of criminal justice administration - the police, the prosecution and the judiciary- by spending crores of rupees of public money on these agencies.

Baffling realities of crime in the society at large are profoundly visible and clear as one ponders over facts published in **National Crime Records Bureau Report -2005**. In short, crimes are on the rise at an alarming rate. The criminal activities have pervaded all walks of human life and ruling the roost. The social realities of crimes are such that total number of crimes reported under Indian Penal Code; and Special & Local Laws was 52,47,789 in the year 1992 and 60,28,781 in 2005. In the year 1961 the conviction rate was 64.8%, out of 2,42,592 cases tried, only 1,57,318 ended up in conviction, where as in the year 2005, the conviction rate was only 42.5%, out of 9,57,311 cases tried only 4,06,621 ended in conviction. In heinous crimes like murder and rape the conviction rate is hardly 9% and 11%.² The statistics indicate that the crimes are increasing while the conviction rate is on the decrease and the acquittal rate is very high.

Therefore, it is logical and relevant for a social researcher to review the available literature, in various forms and contents, to explore the various reasons for large scale acquittals in criminal cases. The acquittals may be due to ineffective investigation of crimes flowing from lack of professionalism in the police, deficiency in prosecution and need for proving a criminal case beyond reasonable doubt. A host of other reasons might also be involved. It is only by meticulous study and review of widely scattered literature in the form of legislations, judgments of the Supreme Court and High Courts, reports of Law Commission of India, National Police Commission, various Committees,

and reports researchers will be able to understand and explore the reasons for large scale acquittals

Review of Literature

For the purpose of study the researcher has undertaken this work with the hypothesis that “lack of professionalism in the investigation of crimes leads to ineffective investigation, which in turn results in large scale acquittals.”

Review of literature is done from the selected sources, such as the Police Act of 1861, Code of Criminal Procedure, Evidence Act, Police Manuals, 14th and 154th Reports of Law Commission of India, Report of Gorey Committee on Police Training (1972), Reports of National Police Commission, Report of Justice (Dr.) V.S. Malimath Committee on ‘Reforms of Criminal Justice System’, Various land mark judgments of the Supreme Court and High Courts and other related sources.

Further, the researcher has examined aptitude, attitude, experience, skills, qualification, time and other attributes and constraints which are latent and apparent to the policing and police profession.

In the course of review of available literature, it is found that there is no empirical study done to examine the proposition that “Lack of professionalism in the investigation of crimes leads to ineffective investigation, which in turn results in large scale acquittals.” Further it was also observed that there is no exclusive study on this proposition.

1. The Police Act of 1861

The Police Act of 1861 is a British enactment in India, which reflects the spirit of professionalism in handling law and order; prevention and detection of crimes in British India. The Act, in its preamble, emphasizes the

imminence and importance of investigation by observing that “it is expedient to re-organize the Police and to make it more efficient instrument for prevention and detection of crimes.” The Act, in section 23, has enshrined the duties of police officers as “it shall be the duty of every police officer promptly obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace to prevent the commission of offences and public nuisance; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient ground exists, and it shall be lawful for every police officer, for any of purposes mentioned in this section, without warrant, to enter and inspect any drinking shop, gaming house or other place of resort of loose and disorderly characters.” Section 44 of the Act envisages that “it shall be the duty of every officer-in-charge of a police station to keep a general diary in such form as shall, from time to time, be prescribed by the State Government and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of witnesses who shall have been examined.” Thus, the Police Act of 1861 emphasized the task of investigation of crimes on professional footing and fashion.

2. The Apex Court emphasis on Professionalism in the Police

In *Nandini Satpathy v. P.L. Dani and Another*,³ the Supreme Court has observed that the Indian Republic cannot fulfill its social justice without a serious strategy of cultural and organizational transformation of police intelligence and investigation, abjuring fists and emphasizing wits, setting apart a separate, sophisticated force with special skills, drills, techniques and technology and aloof from the fossilizing, sometimes marginally feudal, assignments- like V.I.P duty, sentry duty, traffic duty, law and order functions, border security operations. They must develop ethics, professionalism and

probity which can effectively meet the challenge of criminal cunning, the menace of macabre intricacies and the subtle machinations of white-collar criminals in politics, business and professions and can do so without resorting to vulgarity, violence or other vice. The methods, manners and morals of the police force are the measure of a society's cultural tolerance and a government's real refinement.

In *Prakash Singh and Others v. Union of India and Others*,⁴ the Supreme Court has directed the Central and State governments to prepare and enact a model new Police Act to meet the present day law and order crimes situation and to overcome political interference at all levels and different facets. The Court suggested for setting up of the State Security Commission to act as the watch-dog on the police and its policing and to ensure that the state government does not exercise unwarranted influence or pressure on the state police. The Act should lay down the broad policy guidelines to the police to always act according to the laws of the land and the Constitution of the country. The Supreme Court expected the Act to introduce new selection procedure and minimum tenure of 2 years to DGP; minimum tenure of 2 years to IGP and other officers; separation of the investigating police from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. However, for the proper co-ordination between these two wings there is a need for the constitution of Police Establishment Board in each state to decide on transfers, postings, promotions and other service related matters for officers of and below the rank of Deputy Superintendent of Police; Constitution of Police Complaints Authority to attend to the complaints against the police officers to maintain transparency in administration and accountability to the public and State; establishment of National Security Commission at the Centre for selection and placements of Chiefs of the Central Police Organization and to prepare the police with all facilities/ expertise to meet latest crimes of terrorism, drug trafficking, money laundering, organized

crimes, counterfeiting of currency and smuggling of weapons indulged in by mafia groups with trans-national ramifications.

The Supreme Court in *Jagdish Murav v. State of U. P. and Others*⁵ has observed that “the investigating officer allegedly recorded the statements of the persons present at the spot. No independent witness has, however been examined by the prosecution. He visited the spot. He is said to have prepared a site plan, which was not brought on record. He did not seize the Swaraj Mazda vehicle. He had merely taken a piece of the seat which was said to be blood-soaked but the report of serologist was not made available. At the place of incident he did not find any cartridge or bullet which was unlikely. There exists a contradiction also in regard to place of arrest of the accused persons. They were said to have been arrested in their village Moja Fulhar as disclosed by Prosecution Witness-1. Prosecution Witness- 4, however, states that all the accused persons were arrested from the taxi-stand of Gorakpur on 13-3-1993. It is wholly unlikely that the accused persons would come back to the place of occurrence.”

This observation made by the Apex Court is an indication of the sad state of police investigation. It also reflects clearly, lack of professionalism in the investigating police.

3. Legislations

Code of Criminal Procedure (CrPC) and the Indian Evidence Act are the two major criminal laws of India that together embrace several provisions which directly and indirectly control and regulate the processes and procedures of investigation in India. All proceedings of other penal laws, Special and local Laws are held with in the procedural framework of CrPC and the Indian Evidence Act. The provisions are separately laid down under different chapters of the Codes in order to ensure that the investigating police will perform the solemn task of investigation well within the scope and ambit in order that professionalism is reflected fully and completely to ensure success in

prosecution of perpetrators of crimes and protect the innocent from false prosecution. The Supreme Court and High Courts have made note worthy observations as to the present pathetic scenario of lack of professionalism in the investigating police and emphasized the need and necessity of professional outlook and aptitude in investigation of crimes to check unbridled rise in acquittal rate.

A. Code of Criminal Procedure:- CrPC encompasses several sections ranging from registration of First Information Report(FIR) under section 154; search and seizure under section 100 and 165; examination of witnesses under section 160, 161, and 162; arrest of persons under section 40 to 60; writing of case diary under section 172 to filing of final report to court under section 173 CrPC . CrPC lays down procedures that are mandatory and directory, and are to be adopted in investigation of crimes by the police. Further, CrPC also lays down the roles and responsibilities of the investigating police during and after investigation of crimes. In fact, CrPC lawfully expects the investigating police to be professional in their outlook and attitude to see that they promptly and properly carry out the paramount task of investigation within the set framework of CrPC to ensure that real culprits are convicted and the innocent are acquitted without any harassment and abuse.

In so far as lack of professionalism in the police in registration of FIR, the observations of Supreme Court and High Courts in the following cases are relevant and note worthy.

In *Re v. Muddamma Malla Reddi and Others*,⁶ the Madras High Court has observed that the investigating police are primarily the guardians of the liberty of innocent persons. A heavy responsibility devolves on them of seeing that innocent persons are not charged on irresponsible and false implication. There is a duty cast on the investigating police to scrutinize complaint first and properly examine and then initiate suitable action as per the procedures.

In *Balkar Singh v. State of U.P.*,⁷ the Allahabad High Court has observed that “it is indeed surprising that in the FIR even this fact was noted that in the shoes there was a particular stitch and the details of the ring and the wrist watch were also given which normally Prosecution Witness-2, Gurmeet Singh could have no occasion to know and that further raises grave doubts about the genuineness of the FIR and the sanctity of the identification. Hence the contention that the FIR appears to have been subsequently prepared after the arrest of the appellant, finds corroboration from these circumstances. It is also pointed out that according to the appellant he was apprehended earlier though his arrest was not shown and that fact was supported from the unsatisfactory maintenance of the entries in the General Diary. It was also argued that the articles appear to have been obtained from the complainant and their false recovery has been set up by the prosecution.”

In *Meharaj Singh v. State of U.P.*,⁸ the Supreme Court has observed that FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, but also the danger the introduction of a coloured version or exaggerated story creeps in.

In *Illies Ali, v. State of West Bengal*,⁹ the High Court of Calcutta has observed that from the very inception the police officer concerned was aware that he was investigating a non-cognizable offence without obtaining prior permission of the Magistrate and as such the report submitted by him cannot be treated as complaint.

In *Thanedar Singh v. State of M.P.*,¹⁰ the Supreme Court while lamenting on the delayed registration of FIR has observed thus “a specific suggestion was put to Prosecution Witness-10 (Station House Officer, Sihonia Police Station) that FIR was prepared 2 or 3 days after the occurrence which, of course, was denied. Prosecution Witness -10 admitted that no attempt was made to apprehend the accused on 19th and 20th May. It is significant to note that the crime number/FIR number is not to be found in the inquest report, site plan or a requisition sent to the hospital for post-mortem. No reference what so ever is made in Prosecution Exhibit -6 about the information, if any, furnished by Prosecution Witness -8 or Prosecution Witness -6. All this would support the defence version that FIR in which the names of the accused were mentioned would have probably come in to existence much later.”

In *Suresh Chaudhary v. State of Bihar*,¹¹ the Supreme Court has observed that “there are certain suspicious circumstances surrounding the investigation made by the investigation officer. why he chose outside the police station and chose to go to the village and conduct inquest on the other two dead bodies at the pump house. This conduct of the investigation officer also creates some doubt in our minds as to the time of the incident in question. That apart, the express message which Prosecution Witness-13 sent to the Jurisdictional Magistrate reached the said Magistrate at his place only on 12-10-1992 nearly 1 ½ days after the said complaint was registered and we find no explanation from prosecution witness 13 as to this inordinate delay which only adds to the doubtful circumstances surrounding the prosecution case.”

In *Ramesh Kumari v. State of (NCT of Delhi)*,¹² by emphasizing the mandatory nature of section 154 CrPC in registration of FIR, the Supreme Court has held that genuineness or otherwise of the information can only be considered after registration of the case. Genuineness of credibility of the information is not a condition precedent for registration of a case. The provision of Section 154 of the Code is mandatory and the officer concerned is

duty-bound to register the case on the basis of such information disclosing cognizable offence.

In *Prakash Singh Badal & Another v. State of Panjab & Others*,¹³ the stand taken in the above case has been stressed again by the Supreme Court by observing that at the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of section 154(1) of the code, the Police Officer concerned cannot embark upon an enquiry as to whether the information laid by the information is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of the police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence.

In *Sabbi Mallesa and Others v. State of A.P.*,¹⁴ the Supreme Court has observed that especially in heinous cases like murder etc. FIR should contain the details of all the accused persons otherwise it would not be correct to rely on the deposition of eye witnesses to the scene of crime about the omnibus statements made.

In *Bhimappa Chandappa Hosamani & Others v. State of Karnataka*,¹⁵ the Supreme Court was astonished to note as to how the investigating officer was caught in defence net unable to withstand the cross-examination for lack of knowledge and professional skills as to how to register FIR and what ought not have been done by him. The Apex Court in this case has thus said that “ there were inconsistencies between evidence of Prosecution Witness-10 (Havaldar) and Prosecution Witness -11 (Investigation Officer) as regards how they reached the place of occurrence and recorded the complaint raising serious doubts as to when the FIR was recorded. Complaint lodged by Prosecution Witness -1 was not read out to her by the Police Officer, her thumb impression was taken on five blank papers and she was never questioned by the police.”

In *Jagdish Murav v. State of U. P. and Others*,¹⁶ while emphasizing the need and necessity of making entry in the General Diary maintained at the police station, the Supreme court has commented that the original diary has not been produced despite the fact that a specific defence was raised that the FIR was not ante-timed ante-dated. The Circle Officer, whose office was situated at about 1 1/2, km from the police station and was housed in the building of Kotwali police station, saw the FIR only on 11-3-1993 though FIR was stated to be registered on 7-3-1993. It reached the Court of Magistrate much later on 16-3-1993. The statement of the complainant was not recorded in the General Diary. The investigation officer, despite the FIR, did not visit the hospital immediately but did so only on 26-3-1993 to record the statement of the injured. He did not explain as to why he could not record the statement of the injured.

In so far as lack of professionalism in the police regarding search and seizure, the observations of Supreme Court and High Courts in the following cases are relevant and note worthy.

In *Santa Singh v. State of Punjab*,¹⁷ the Supreme Court has severely criticized the inordinate delay by the investing officer in sending up of seized articles to Forensic Science Laboratory for examination and opinion. The Court has observed that “there was inordinate delay in sending the sealed parcels of (a) the empty cartridge case recovered from the scene of occurrence, and (b) the rifle recovered from the house of appellant, for the opinion of ballistic experts, Dr. Goyle. The accused, though actually was arrested on the 14th September 1954, brought to the police station on the 21st of September 1954 and he was not interrogated by the Sub-Inspector till the 26th September 1954. The above suspicious features throw doubt on the bona fides of the investigation.”

In *Col. Mohan Singh v. State of Rajasthan*,¹⁸ while expressing its anguish over the investigating officer for his lack of professional sense in

search and seizure, the Supreme Court has held that “the investigating police officer examined Sardar Khan s/o Umrao Khan, Petrol Pump dealer and his servant, Mangilal. There is nothing in their statements that there was any blood on the car which was washed, there was not an iota of material on record to furnish basis even for a grave suspicion that by getting the car washed on the 8th March 1978. The mere washing of the car on the 8th March could not, by any stretch of imagination, be *prima facie*, evidence of the factual ingredients of an offence under section 201 of IPC. Hence the charge frame against appellant quashed.”

In *Shri Bhagavant Singh v. Commissioner of Police, Delhi*,¹⁹ the Supreme Court was very critical about lack of professionalism in sub-inspector of police cum investigating officer in search and seizure and has aptly remarked that “we think it can be fairly stated that the police did not display the promptitude and efficiency which the investigation of the case required. There is much that calls for comment. It appears from the entries in the police case diary that a Sub-Inspector visited the place of occurrence on Aug. 9. 1980 and seized a number of articles. But it is conceded that he did not take into custody the blanket with which the fire is said to have been put out. On the next day, experts from the Central Forensic Science Laboratory visited the place and appear to have made an examination for chance prints. They also photographed the mirror. And yet, it was not until over five weeks later that the police were able to obtain a report from them. Curiously, although the mirror was removed from the scene of occurrence and was examined for chance prints, no “identifiable prints” could be developed. In cases such as this, it would have been of the essence that on visiting the place of occurrence immediately on information of the incident, the mirror should have been taken into possession by the police and handed over forthwith to the Central Forensic Science Laboratory experts for an urgent report with regard to the existence and identification of the prints. Delay in such a matter is vital and can often result in the loss of valuable clues.”

Vouching the observations of the case *supra*, in *State of M.P and Another v. Bhadur Singh*,²⁰ the Supreme Court has lamented for lack of professional skills and knowledge in the investigating officer in search and seizure procedures and thus held that “there are serious material discrepancies in the evidence in respect of recovery and seizure. Prosecution Witness-4, a constable, stated in the cross-examination that when Pawan Kumar Sharma reached Kabir Chowk where the truck was apprehended Prosecution Witness-3 told him that there is poppy straw in the truck and when they reached there, Prosecution Witness-3 had already taken the search of the truck. There are also serious discrepancies in respect of the deposit of the seized poppy straw in the maalkhana. The deposit is shown to have been made under Entry 68-A dated 11-10-1997. The date of the incident is 10-10-1997. His explanation to the aforesaid entries was that he forgot to make an entry of the seized material in the maalkhana register and made the entry later, after 5th day. The explanation is far from satisfactory.

With regard to professional deficiencies in summoning mahazar witnesses and memo of recoveries in investigation of crimes, the Supreme Court in *State of U.P. v. Arun Kumar Gupta*,²¹ has observed that in spite of number of people available around the house of respondent the investigating officer has selected Prosecution Witness-4 as to be the witness for the recoveries. We also notice, though the preparation of memos of the recoveries took a long time, still for all the recoveries Prosecution Witness-4 is common witness. There is also considerable discrepancy in regard to the manner in which Prosecution Witness-4 came to be a witness to the recoveries.

In *Suresh Chaudhary v. State of Bihar*,²² while making critical remarks on poor professional skills displayed by the investigating officer, the Supreme Court has observed that Prosecution Witness -13, the investigation officer in the course of his examination stated that when he conducts the inquest at the place of the incident he found one .315 bore empty cartridge

which he actually did not seize. However, he produced the same in the court without any mahazar in this regard. This empty cartridge was also not sent to the ballistic expert to establish the nature of the weapon from which this cartridge had been fired. It is relevant to note here that three deceased persons have suffered multiple gunshot injuries and the failure on the part of the prosecution to collect the other pellets which had passed through the bodies of the deceased also casts grave doubt as to the actual place of the incident.

The Court has further observed that “we also notice certain omissions in the investigation conducted by Prosecution Witness -13. His non-preparation of the sketch of the place of the incident has given rise to an argument from the defence which is based on a statement by Prosecution Witness-8 in his examination. Prosecution Witness -8 while answering a specific question as to the size of the roof of the cabin had stated that the same measures 1.3 ft. From this, an argument is built that it is impossible to have five beds arranged in such a small space, as contended by the prosecution, to accommodate the three deceased and two witnesses as also the assailants at one time. All these omissions and contradictions also add to the list of doubtful circumstances pointed out by the prosecution case.”

In *State of Rajasthan v. Khuma*,²³ the Supreme Court was surprised that how unprofessional the police are in creating evidence by seizing incriminating articles from the long time accused absconder. The Court also expressed surprise over the failure of the investigating officer to establish human blood on the seized articles.

In *State of Rajasthan v. Kashi Ram*,²⁴ the Supreme Court has observed that prosecution witness 6 Inder Bhan admitted in the course of his cross-examination that the waist cord which had been used for strangulating Kalawati was recovered much earlier from the scene of offence by the police themselves. Moreover, waist cords as well as the keys were not even produced before the court. It may be that some other witnesses have stated that waist cord was not recovered from the spot.

The Court, in this case, has subtly disclosed the investigating officer's clandestine design to concoct the evidence in favour of prosecution by disbelieved extra judicial confession made by the respondent before Prosecution Witness -3 & 4, who were unknown to him, and the circumstance that recoveries were made pursuant to his statement made in the course of investigation of the waist cord used for strangulating Kalawati (the deceased) and the keys of the locks which were put on two doors house.

In *State of Goa v. Sanjay Thakran & Another*,²⁵ similar lamenting observation has been made by the Supreme Court on fake and false search and seizure design contemplated and executed by the investigating officer and observed that “ there was material contradiction in the panchanama of search of the flat made on 17-2-2000 and evidence of Prosecution Witness-8 and Prosecution Witness-38 with respect to the way in which the entry was made to the flat of the accused persons on 11-2-2000. When at the first instance no jewellery was found inside the flat, how it was recovered in the subsequent search? The search and recovery of articles by the police on 11-2-2000 does not inspire confidence as the flat was easily accessible. Accordingly, the Court has held that the recovery of incriminating articles, belonged to the deceased, seized from the accused were not properly identified by the brother of the deceased -Prosecution Witness 5 and another Prosecution Witness- 33 in test identification parade of the articles arranged before Prosecution Witness 24-Special Judicial Magistrate. The whole purpose and authenticity of the recovery of these ornaments have been lost when the witness has admitted that a day ahead of the recovery the accused was shown to him in the police station.”

In so far as lack of professionalism in the police in examination of witnesses, the observations of Supreme Court and High Courts in the following cases are relevant.

In *Balakrishna Swain, v. The State of Orissa*,²⁶ the Supreme Court has observed that “ the prosecution witness evidence was rightly not relied upon to support the prosecution case as to who and in what circumstances the occurrence took place. The only other evidence is that of Prosecution Witness 5 who was not examined till the 15 January i.e. till after 10 or 11 days of the incident. There was no reason why Prosecution Witness 19 could not have examined him because on his own showing Prosecution Witness -5 was being taken to the Hospital”.

In *Atmaduddin v. State of U.P.*,²⁷ the Supreme Court has held that if as a matter of fact the witnesses were examined by the police after a very long time, that certainly is a circumstance that will have to be taken into account to consider whether the evidence given by them before the Court can be relied on.

In *Basudeb Sahu and others v The State of Orissa*,²⁸ while making remarks on delayed examination of witnesses by the investigating officer, the High Court of Orissa has held that where the eye-witnesses were examined by the investigation officer three days after the occurrence, the delay in examination of such witnesses would be fatal. Unexplained delay in the examination of principal witnesses by the investigation officer would certainly cast a reasonable doubt about their veracity and it would not be safe, reasonable and proper to accept the evidence of such witnesses.

In so far as lack of professionalism in the police in the arrest of the accused to crime, the observations of Supreme Court and High Courts in the following cases are note worthy.

In *State of U.P. v. Sukhbasi*,²⁹ the Supreme Court has observed that the investigating officer had failed to answer the Court as to why there was delay in arresting the accused who belonged to village Behta where the crime was committed. Further the manner of the recovery of the stolen ornaments, and seizure procedure creates considerable doubts. No recovery was made from

the accused Ram Shanker. There was 22 days delay in recovery of stolen ornaments from the accused Chhotelal. The witnesses of seizure are common. All these circumstances create doubt on the veracity and authenticity of investigation conducted by the investigating officer. Hence, the Court opined that the benefit of such doubt should go to the accused.

In *Ismail v. State of Rajasthan*,³⁰ the High Court of Rajasthan, Jaipur Bench, observed that “ the occurrence had taken place on May 29, 1983 and the accused petitioner was arrested on June 1, 1984, i.e. almost after a year of the occurrence. He was sent to Central Jail and the identification parade was held on June 12, 1984 i.e. after 11 days of his arrest. It was stated by the accused during the identification parade that he was shown to the witnesses. A perusal of the statement of Shakura Prosecution Witness 3 will show that his statement is full of contradictions and he had noted the features of the accused petitioners. That apart he had stated that he had seen him in the flash of bus coming from the opposite direction. A look at the FIR will show that it is not mentioned that there was any source of light much less flash of bus and the accused could not be identified. The conviction of the accused petitioner is rested on the statement of Shakura. There was no recovery of stolen, property. In my opinion, looking to the statement of Shakura, the identity of the accused petitioner cannot be said to be established.”

In *D.K.Basu v. State of West Bengal*,³¹ while laying down broad parameters for arrest of the accused, the Supreme Court has categorically said that the police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of offence but the law does not permit the use of third- degree methods or torture of the accused in the custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. Resorting to torture and use of third-degree methods, the police would accomplish what the demands of our legal order forbid which no society can permit.

In *Raju @ Rajendra v. State of Maharashtra*,³² the Supreme Court has observed that the evidence of Prosecution Witness-1, so far as it relates to identification of accused-2, cannot be relied upon for even though he claimed to have known accused-2 from before, in the FIR he did not mention the name of the accused-2.

In *State of Goa v. Sanjay Thakran & Another*,³³ the Supreme Court has observed that the recovery of incriminating articles, belonged to the deceased, seized from the accused were not properly identified by the deceased brother Prosecution Witness-5 and another witness Prosecution Witness-33 in test identification parade of the articles arranged before Prosecution Witness-24- Special Judicial Magistrate. The whole purpose and authenticity of the recovery of these ornaments have been lost when the witness has admitted that a day ahead of the recovery the accused was shown to him in the police station, the court observed.

In *Bapu Alias Gujraj Singh v. State of Rajasthan*,³⁴ the Supreme Court has exposed the poor knowledge of the investigating officer for not subjecting the accused of unsound mind for medical examination and thus observed that the onus of proving the unsoundness of mind is on the accused. The Court opined that whenever the instance of previous history of insanity is revealed during investigation, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused.

In so far as lack of professionalism in the police with regard to writing of case diary, the observations of Supreme Court and High Courts in the following cases are relevant.

In *Shri Bhagavant Singh v. Commissioner of Police, Delhi*,³⁵ the Supreme Court has observed that “ the entry Case Diary No.1 dated Aug. 9, 1980 does not indicate at Ramu’s statement was recorded by the police on that

day, although it shows that the statements of other persons were recorded. There is a suggestion by learned counsel for the State that Ramu's statement was also recorded on that very day, but that is not shown by the Case Diary extracts filed before us. It is only as late as Jan. 25. 1981, according to the entry Case Diary No.13 of that date, that the servant was examined by the Station House Officer. Ramu was a material witness, and yet strangely as it appears from the entries in the Police Case Dairy, he was allowed to leave the town and go to his village before he could be fully examined by the police. There is no evidence that the police expressed any anxiety to put him through a thorough examination immediately or shortly after the date of the occurrence of at least before Shri.Kartar Singh's family allowed Ramu to leave the town for his village."

The Court, in the case *supra*, has further 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 to be of the utmost importance that the entries in a Police Case Diary should be made with promptness, in sufficient detail, mentioning all significant facts, in careful chronological order and with complete objectivity.

In *State of M.P and Another v. Bhadur Singh*,³⁶ the Supreme Court Judge has observed that "first, if one compares the writing in Prosecution Exhibit -15 carefully, one would find, that the entries regarding the description of amount and currency notes are not written by the same person who wrote and made rest of the entries in Prosecution Exhibit -15. Figure (4) of 54 is quite different than Figure (4) of 451/97 in the very first column and there is no doubt that these two figures of (4) are not written by the same person. Apart from this, I have also carefully compared the writing of case diary written on 10-10-1997. The writing in Prosecution Exhibit -15 and appears to be written by the same person. In the case diary of 10-10-1997, the fact of seizure of 27,000 rupees is not mentioned which in ordinary course should have been mentioned."

In so far as lack of professionalism in the police in prompt filing of final report, the observations of Supreme Court and High Courts in the following cases are note worthy.

In *Durgesh Chandra Saha v. Bimal Chandra Saha and Others*,³⁷ the Supreme Court has observed that “it appears to us that section 167(5) CrPC as amended, is intended to ensure speedy completion of investigation within the time frame specified therein otherwise to face an order of discharge of the accused against whom investigation without any just cause to the satisfaction of the court has been kept pending. Where investigation has been completed, a different situation, not contemplated under Section 167(5) CrPC emerges. We may indicate here that if a criminal case is kept pending for a very long time without any just cause thereby seriously affecting the guarantee under Article 21 against deprivation of personal liberty.”

In *Mathew Areeparmatil v State of Bihar*,³⁸ the Supreme Court has directed that where a charge-sheet has not been submitted and the investigation was not completed during the preceding three years, the accused shall be released forthwith, subject to reinvestigation on fresh facts. It further directed that the accused, in such cases shall not be arrested without the permission of the magistrate and where the permission was given the accused shall be released on personal bond.

In *Union Public Commission v S. Papaiah*,³⁹ the Supreme Court has held that the law is settled that whenever final report is filed by the police that no case for the prosecution of the accused is made out, a notice must be issued to the complainant and he must also be heard in opposition to the acceptance of the final report. This is very sad that the investigating officer has failed in his duty.

In *Ajit Singh v State*,⁴⁰ the High Court of Delhi has held that: “ Under sub-section(2) of Section 173 of CrPC underlines the importance of

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 crime.”

In *Kalpna Ghosh v State*,⁴¹ the High Court of Calcutta has observed that “all documents and statements are to accompany the police report. When the documents mentioned in section 173 (5) of the Code were not filed along with the charge-sheet, the cognizance taken by the Magistrate without looking at the documents, was held illegal.”

In *Anwar v State*,⁴² the High Court of Calcutta had granted bail for the offences under the Narcotic Drugs and Psychotropic Substances Act 1985, on the ground that the charge-sheet did not accompany section 161 statements and hence it was an incomplete charge-sheet.

In so far as lack of professionalism in the police in recording extra-judicial confession under section 24 of Evidence Act, the observations of Supreme Court and High Courts in the following cases are relevant and note worthy.

B. The India Evidence Act :- The Indian Evidence Act is equally important for the investigating police to carry on the investigation on professional footing in order that the process of investigation does not suffer a set back for want of proper appreciation of various provisions of the Act. If the investigating officer lacks knowledge of Evidence Act, the whole efforts put in by him will end up in vain as the cases will be acquitted for want of proper evidence. In this regard sections 24, to 29 and 32(1) of the Act are very important for the investing police for investigation of crimes on professional line.

In so far as lack of professionalism in the police in recording extra-judicial confession under section 24 of Evidence Act, the observations of the Supreme Court and High Courts in the following cases are note worthy.

In *Paramanada Pegu v State of Assam*,⁴³ the Supreme Court has held that extra-judicial confession is a weak piece of evidence and the Court would normally expect sufficient and reliable corroboration for such type of evidence. In the instant case, the prosecution witness himself asked the accused as to why he killed his father and the accused replied that he did it because his father used to quarrel. It was, therefore, clear that the accused had replied the question asked by the prosecution witness and he assumed that the accused had killed his father and on the said assumption he asked the question. By no stretch of imagination this can be considered to be an extra-judicial confession made by the accused.

In *Makhan Singh v State of Punjab*,⁴⁴ the Supreme Court has observed that in case of non-judicial retracted confession, it has to be seriously considered as to why the accused reposed confidence in the witness. The witness who proved the extra-judicial confession stated that, the accused told him that as the police was after him so he had come and conferred the fact so that he might not be harassed. It was not proved that the said witness had some influence with the police or that he was a person of some status to protect the appellant from harassment. Hence the Court ruled that the evidences were not reliable.

In so far as lack of professionalism in the police in proving confession recorded by the police under section 25 of the Indian Evidence Act, the observations of Supreme Court and High Courts in the following cases are relevant and note worthy.

In *State of Gujarat v Anirudhsing*,⁴⁵ the Supreme Court has observed that a confession made to a police officer is hit by section 25 of Indian Evidence Act. It is immaterial whether at the time of making the confession the police man was working as a police officer or he was working as an ordinary man. Confession made to such police officer is barred under the law.

In *State of Rajasthan v Bhup Ram*,⁴⁶ the Supreme Court has held that the confession made to a police officer cannot be accepted as substantive evidence. Section 26 of the Indian Evidence Act is also very important to the police as it prohibits confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved against such person.

In so far as lack of professionalism in the police in discovery of facts by the police under section 27 of the Indian Evidence Act, the observations of Supreme Court and High Courts in the following cases are relevant and noteworthy.

In *Satish Kumar v State*,⁴⁷ the High Court of Delhi has held that the investigating officer must make sincere efforts to secure the presence of respectable witnesses to recovery of blood stained weapon.

In *Varghese v State of Kerala*,⁴⁸ the High Court of Kerala has observed that if an article is found and discovered from an open place (not found concealed) then it cannot be held to be discovered in consequence of information received from the accused.

In *State of Haryana v Jagbir Singh*,⁴⁹ the Supreme Court has refused to believe the prosecution version and observed that when the dead body was recovered on the basis of information already known under section 27 of the Evidence Act, it has no applicability.

In *Sakal Deep v State of U.P.*,⁵⁰ the High Court of Bombay has held that the accused assaulted the deceased woman with an axe, and the assault resulted in her death. During investigation the accused took out the axe from the wall of a thatched roof and handed it over the investigating officer. It was held that the fact of recovery in itself would not be admissible under section 27 of the Indian Evidence Act, there being no information furnished to the police while in the custody.

In *State of U. P., v Arun Kumar Gupta*,⁵¹ the Supreme Court has held that the only witness to the recovery of the dead body, weapon etc. was not a resident in the immediate proximity, he being from the Biradari of the complainant, it was held that it was not safe to rely on his statement.

From the professional point of view, section 28, 29 and 30 of the Evidence Act are important. Section 28 of the Indian Evidence Act which refers to confession made after removal of impression caused by inducement, threat or promise, relevant. Section 29 of Indian Evidence Act which refers to confession otherwise relevant not to become irrelevant because of promise of secrecy. Section 30 of the Indian Evidence Act which refers to consideration of proved confession affecting person making it and others jointly under trial for same offence.

In so far as lack of professionalism in the police in recording of dying declaration under section 32(1) of the Indian Evidence Act, the observations of Supreme Court and High Courts in the following cases are relevant

In *Lakshmi Reddy v State of A. P.*,⁵² the Supreme Court has held that if the evidence of witnesses speaking out which are of dying declarations are shaky or doubtful and short of inspiring confidence, such declarations cannot be made basis for conviction.

In *surinder Kumar v State*,⁵³ the High Court of Delhi has observed that in case of dying declaration given before Magistrate when no doctor was consulted to find out the declarant's state of mind and when declaration is not in the form of question and answer nor in words and language of declarant, such dying declaration cannot be relied upon.

In *kans Raj v State*,⁵⁴ the Supreme Court has observed that statement of the deceased relating to the cause of death or circumstances of the transaction which resulted in his death must be sufficiently or closely be connected with the actual transaction.

In *Kutty v State of Kerala*,⁵⁵ the High Court of Kerala has observed that where the deceased was not in fit state of mind and body to make coherent and intelligible statement, then such dying declaration could not be relied on and any conviction based on it was not sustainable.

In *Harda v State of M. P.*,⁵⁶ the High Court of Bhopal has observed that where the deceased's mouth, oesophagus and pharynx were found choked with and full of food particles, it was impossible for the declarant to speak and, hence, the oral dying declaration alleged to have been made by him before witnesses could not be relied up on and no conviction could be based on it.

In *Kamalakar Nandram bhavsar v State of Maharashtra*,⁵⁷ the Supreme Court has observed that a doctor who did not treat a patient was called up on by the police to certify the fitness of the patient to make a dying declaration when other doctors who treated the said patient were available for the said purpose. The dying declaration was held to be not genuine. As the deceased having almost 95% burns was put on oxygen and at that moment the moment she was brought to the hospital and continued to be on oxygen till she died. Dying declaration allegedly made under such circumstances was held not to be a genuine document.

In *State of Rajasthan v Teja Ram*,⁵⁸ the Supreme Court has held that in a case of killing by an axe, deceased sustaining head injury, even if the injured was able to mutter something or even speak out something after sustaining the said injuries, it was held unsafe to place any credence on statements made to Investigating officer as the brain functions of the injured would have impaired due to the brain injury.

In *Bablya v State of Maharashtra*,⁵⁹ the Supreme Court has observed that evidence of the investigating officer and other circumstances also have to be taken into consideration in order to see whether the said evidence is trustworthy or not. It is difficult to rely on the declaration recorded by I.O.

when there are number of lacunae and the procedure which is normally required to be followed in recording off the dying declaration has not been followed.

In *Nanahau Ram v State*,⁶⁰ the Supreme Court has observed that normally the courts in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witnesses have said that the deceased was in a fit and conscious state to make this dying declaration. The medical opinion cannot prevail.

In *Anna Appa Sutar v State*,⁶¹ the Supreme Court has observed that a number of dying declarations were made in a Bombay case. One declaration suggested that deceased had committed suicide. Hence the Court held that under such circumstances conviction cannot sustainable.

In *State of U.P v Raj Bahadur*,⁶² the Supreme Court has observed that where a host of friends and well wishers and relatives of the deceased had surrounded him before the Executive Magistrate arrived to record the dying declaration, it was held that it was quite likely that these persons availed themselves of every opportunity to tutor and brain-wash the deceased. This was a reason for not relying upon the dying declaration.

All these decisions of the Supreme Court and High courts indicate lack of professionalism in police during investigation of crimes, which resulted in large scale acquittals.

4. Police Manuals

The Police Manuals of different States in India are also very vital for the investigating police force as they have laid down several procedures which are professional in nature and are useful and essential in the course of investigation of crimes. For instance, the **Karnataka Police Manual**⁶³ has set out the line and lane of investigation based on various provisions and procedures laid down under CrPC, the Indian Evidence Act and important day to day judgments of

the Supreme Court. The Karnataka Police Manual has laid down do's and don'ts for the investigating police. It has laid down several ways and means of investigating different crimes ranging from first information report, general instructions to Investigating officers, collection of evidence, collection of documentary evidence, searches and property, arrest, custody, bail, remand, scientific aids to crime detection to filing of final report. Thus, it emphasizes the need and necessity of professional outlook in effective investigation of crimes to boost up conviction rate.

The State of U.P. has framed regulations in terms of the Police Act which are statutory in nature. Regulation 97 provides as to how and in what form the information relating to commission of a cognizable offence when given to an officer in charge of a police station, is to be recorded. Such a first information report, known as chik (check) report, should be taken out in triplicate in the prescribed form and the true facts should be ascertained by a preliminary investigation. In the event of reception of a written report, an exact copy thereof should be made and the officer in charge of the station is required to sign on each of the pages and put the seal of the police station thereupon. The duplicate copy is to be given to the person who brings the written report and the original thereof must be sent to the Superintendent of Police. Regulation 108 emphasizes the need to maintain the case diary stating that time and place should be noted in the diary by the investigating officer as to when the investigation is commenced, how the scene of the alleged offence is attended etc. Regulation 109 provides that the case diary must contain the particulars required by Section 172 of CrPC in sufficient detail so as to enable the supervising officer to appreciate the facts.

5. The 4th Report of National Police Commission

The 4th Report of National Police Commission has made several serious observations about the manner and method of investigation of crimes being conducted by the police in an unprofessional fashion. The Commission has noted that non-registration of complaints at police station for various

considerations, inadequacy in staff for investigation of crime and resultant reluctance to bear additional work load, various duties expected to be performed by the police, use of third degree methods during interrogation of witness, suspect or accused to elicit information and there by abusing the human rights of suspects and the accused, poor quality of supervision as the main reasons for lack of professionalism, which in turn resulted in ineffective investigation of crimes. ⁶⁴

The Commission ⁶⁵ has observed that “a sample survey made in different parts of the country has revealed that an average investigating officer is able to devote only 37 per cent of his time to investigational work while the rest of his time is taken up by other duties connected with maintenance of public order, VIP bandobust, petition inquiries, preventive patrol and surveillance, court attendance, collection of intelligence and other administrative work. According to statistics available from 13 States, it is seen that in 1977 there were 28,061 Investigating Officers (of the rank of Inspector, Sub-Inspector and Assistant Sub-Inspector) to handle a total of 34,31,933 cognizable crimes reported during the year which means that an average Investigating Officer had to handle about 122 cases per year. The enormous burden of investigational workload that falls on the available investigating officers is too heavy to be borne with any reasonable efficiency. The Commission felt an urgent need for increasing the cadre of Investigating Officers with professional aptitude and attitude.”

6. State Police Commissions

Several State Police commissions appointed from time to time have made several observations and remarks which are very pertinent and relevant to understand the extent of external forces, specially political interference, that have impeded and obviated professional way of investigation of crimes by influencing the investigative police and forcefully making them ineffective in investigation of crimes. **The Kerala Police Re-organization Committee(1959)** ⁶⁶ has observed that the greatest obstacle to efficient police

administration flows from the domination of party politics under the State administration. Pressure is applied in varying degrees which often affects different branches of administration. The result of partisan interference is often reflected in lawless enforcement of laws, inferior service and general decline of police prestige followed by irresponsible criticism and consequent widening of the cleavage between the police and the public affecting the confidence of the public in the integrity and objectives of the police force.

The Punjab Police Commission (1961-62)⁶⁷ has observed that the evidence led before the Commission has disclosed that members of political parties, particularly of the ruling party, whether in the Legislature or outside, interfere considerably in the working of the police for unlawful ends. Politicians accompany complainants to police stations and try to influence the Station House Officer to take down reports implicating innocent persons against whom the complainant has enmity. No objection can be taken to politicians accompanying people of their constituencies for lawful purposes but the objection is that they approach the Station House Officer for ulterior purposes and use their position to influence him. He is threatened that if he does not support them, they will bring orders from above for his transfer, or will otherwise harm him in his career. The result of this political interference is disastrous and it has very seriously affected the professional way of police work in the State.

The Delhi Police Commission (1968)⁶⁸ has observed that political interference is another rich source of corruption. Allegations have been made before the Commission that some politicians resort to the device of securing the assistance of goondas and bad characters who are given protection by the police. This protection is the result of influence exercised by the politicians upon the police. The Commission opines that there is truth in such view though it was not sure to what extent it is rampant and effective. The only way to do away with it is to take a strong stand against political interference which can

come only from within the police force and the higher officers of the department should make it a code of their conduct to resist all kinds of unlawful interferences and to see that their subordinates also do not permit themselves to be influenced by this kind of pressure.

The Tamil Nadu Police Commission (1971)⁶⁹ stated that the problem of political interference is not a new one. It cannot be dated from February 1967. It has grown over the years, during the term of office of a number of different Ministers. It has grown in spite of the most explicit public declarations made by successive Chief Ministers (including the present one) that there should be no political interference and they expect officers to do their duty without fear or favour, in the confident expectation of government support. The Commission opined that such problem is by no means peculiar to Tamil Nadu which was no worse than the best among other States and much better than in many.

The West Bengal Police Commission (1960-61)⁷⁰ found that there were frequent allegations that investigation of offences is sometimes sought to be interfered with by influential persons highly placed in society or office.

The Committee on Police Training set up by the Government of India (1972) under the chairmanship of Gore, reported that there have been instances where Governments have been accused of using the police machinery for political ends. There are also instances of individual politicians interfering with the administration and the work of the police. The Committee had found a great deal of political interference in the administration as well as the operation of the police forces, particularly at the lower level.

7. The 2nd National Police Commission Report

The 2nd National Police Commission Report has observed that the police, as a part of the civil services, came within the ambit of this interference. In fact the police became especially vulnerable to interference from politicians

because of the immense political advantage that could be readily reaped by the misuse of police powers. The quality of police performance was hit and continues to be adversely affected by such interference.⁷¹

8. The Committee on Police Training, 1973

The Committee on Police Training, 1973, was appointed by the government of India in the year 1971, under the Chairmanship of Prof. M. S. Gore. The Committee in its report submitted in the year 1973, seriously observed that professional training was in a state of neglect qualitatively and inadequate quantitatively. It was observed that these were training institutions to be inadequate to meet the needs of an expanding organization. Training institutions were ill-prepared to equip the professional policeman for his new responsibilities. Even the basic amenities like proper buildings and accommodation were lacking. The training institutions could not find many properly qualified, competent and well motivated instructors. The serving police officers were not willing to join as instructional staff as they thought it to be below their worth and prestige to be attached to training posts in comparison with the operational posts. It was also observed that teaching equipment and facilities were also out-modeled. The development of awareness of the social and political climate in which the policemen had to work was not up to the requirements. The needs and compulsions of a more humane role of the police were not adequately understood. No emphasis was placed on knowledge and skills in human-relations, management and communication strategies. It was opined that the police officers should acquire a high degree of professional competence and be fully aware of the means whereby Science and Technology can help in police work.⁷²

8. The 14th National Law Commission Report,

The 14th National Law Commission Report,⁷³ has made several observations about the prevailing system of multiple duties of the investigating police, increasing trend in incidence of crimes, the inordinate delays in the

investigation of the offences, lack of proficiency in search and seizure, entrusting of examination of witnesses to constables and other subordinate staff resulting in piecemeal investigation, the general insufficiency of the investigating officers, adoption of old, timeworn methods of investigation, inadequate use of modern and scientific methods, lack of adequate training, lack of assistance, paucity of qualified law graduates in the field of investigation, the absence of effective supervision of senior officers and large number of acquittals due to insufficient investigation as the areas of great concern.

The Commission has observed that "it is often usual for a police officer who is engaged in the investigation of a serious offence at a spot far away from the police station to receive a message giving information of the commission of another offence at another corner of his beat. The police officer may, accordingly, have more than one case simultaneously pending investigation on his hands and has to move backwards and forwards from one place to another; and this in the mofussail on account of lack of adequate transport and bad roads, is by no means easy. There are also several routine duties which have to be performed by the personnel of a station. In the result the investigation of cases seldom receives adequate attention from a police officer." ⁷⁴

9. The 154th Report of Law Commission of India

The 154th Report of Law Commission of India, ⁷⁵ in its report while proposing for establishment of separate investigating agency has candidly remarked that the investigating agencies have an important role to play in the administration of criminal justice. Investigation of crime is a highly specialized process requiring a lot of patience, expertise, training and clarity about the legal position of specific offences and subject matter of investigation and socio-economic factors. It is basically an art of unearthing hidden facts with the purpose of linking up different pieces of evidence for the purpose of successful

prosecution. It requires specialization and *professionalism* of a type which is not yet fully perceived by police agencies. For discharging such a task efficiently, a separate investigating wing of the police which replenishes its knowledge and skills from developing technology is a *desideratum*.

The Commission has observed thus “the police department is understaffed and has heavy duties to perform. The requirements of the law and order situations, *bandobust* duties, and escort of prisoners to courts, patrol duties, traffic arrangements, security to VIPs, rise in crime graph in the country in general and creation of new kinds of substantive offences have increased the work of the police manifold. Further, many a time while the investigation officer is in midst of the investigation, he would be called in connection with some other duty. Consequently he would be constrained to suspend the investigation or hand it over to a junior officer. Further, it also happens that investigating officers are transferred without being allowed to complete the investigation on hand. Even in grave offences there is piecemeal investigation by different police officials in the hierarchy which inevitably results in variation of statements by the witnesses examined and recorded at different times. Such variation would ultimately destroy the *efficacy* of the evidence of witnesses when examined in the court. This is a defect in the investigational process, advantage of which is taken by the defence.”⁷⁶

10. Justice Malimath committee on Reforms of Criminal Justice System

Justice Malimath committee on Reforms of Criminal Justice System⁷⁷ has observed that the manner in which police investigations are conducted is of critical importance to the functioning of the criminal justice system. Not only serious miscarriage of Justice will result if the collection of the evidence vitiated by error or malpractice, but successful prosecution of the guilty depends on a thorough and careful search for truth and collection of the evidence which is both admissible and probative. In undertaking this search, it is the duty of the police to investigate fairly and thoroughly collect all

evidence, whether for or against the suspect. Protection of the society being the paramount consideration, the laws, procedures and police practices must be such as to ensure that the guilty are apprehended and punished with utmost dispatch and in the process the innocent are not harassed. The aim of the investigation and, in fact, the entire criminal justice system is to search for the truth. To achieve this objective, investigation officers must be properly trained and supervised and necessary scientific logistical support should be made available to them.

The Committee has bemoaned on the existing system of unprofessional investigation resorting to short cut methods, non-registration of complaints, poor professionalism in examination of witnesses, interrogation of accused use of third degree method to elicit information from accused, lack of innovativeness, poor utilization of Forensic facilities, delay in dispatch of Forensic expert reports, etc.⁷⁸

The Committee⁷⁹ has observed that the standard of police investigation in India remains poor and there is considerable room for improvement. It cited an observation made by the **Bihar Police Commission** (1961) that “during the course of tours and examination of witnesses, complainants have been made before the Commission regarding the poor quality of police investigation. Besides, inefficiency, the members of public complained of rudeness, intimidation, suppression of evidence, concoction of evidence and malicious padding of cases.” It is appropriate at this juncture to refer to observations made other State Police Commissions. The **Punjab Police Commission** (1961-62) bemoaned poor quality of police investigation. A frequent complaint relating to the method of investigation received by the Punjab Police Commission was that all cases were not investigated by one officer but several officers in succession. The **West Bengal Police Commission** (1960-61) also referred to noticeable deterioration in the standard of investigation. The **second West Bengal Police Commission** (1988) reaffirmed the downward trend and

observed that during the intervening years the standard of investigation had further gone down. Many cases remained undetected. It also observed that the conviction figures had also come down.

The Committee has observed that “investigation of crime is highly specialized complex matter, requiring a lot of experience, patience and training. Given the complexity of crime, it is not possible for the police officers themselves to understand various facets of crime and conduct competent investigation all by themselves. They would need help of experts from various disciplines such as auditing, computer science, banking, revenue, engineering and so on.”⁸⁰

11. Studies

P. K Bhardwaj in his paper “*Declining Professional Standards of the Police: Causes and Remedies*”⁸¹ had identified appalling living and working conditions, lack of leadership, low acceptability in the society, less job satisfaction, absence of effective grievance redressal machinery, human rights violations, lack of desired results and vulnerability to political influence as the reasons for decline in professionalism in police.

Dr. Anil K. Saxena in his research work, “*Professionalism in Indian Police*,”⁸² has made some efforts to study the issues and the reasons for declining professionalism in the police in general. He has suggested several measures like framing mission statements for channelising the knowledge, attitudes, skills, and motivation of the police. He insists on developing training inputs for the police and establishment of research cells to study and recommend ways and means to introduce new methods of management techniques. He has also suggested for adoption of scientific methods and aids in the course of investigation and argues for laying down the code of conduct and active role sensitization among the police for better performance. He strongly recommends for improving infrastructural facilities and better service

conditions for the police to achieve professionalism. However, he has not made any specific study on the issues that are directly attributable to ineffective investigation due to lack of professionalism resulting in large scale acquittals.

Dr. S. Krishnamurthy in his work "*Preparing the Indian Police for the 21st Century*"⁸³ has discussed at length the need and necessity of professionalism in the present day police and policing. The author, while introducing the topic for the readers, has made a remarkable observation that the art of managing any modern society, particularly in relation to investigation of crimes has undergone rapid and remarkable changes in the last few decades. The investigating police in that enterprise need to have a good discernment of the complexity of countless types of problems that confront them in the context of human relations and rule of law. This demands minimum of professional competence at an acceptable degree of effectiveness.

It is very clear from the literature review carried out herein above that large scale acquittals are mainly due to ineffective investigation as result of lack of professionalism in the investigating police. Further, the review makes ostensibly clear that so far no exclusive, systematic and exhaustive study or research work is carried out to understand the core issue and the problem of lack of professional competence in investigating police which is coming in the way of effective investigation of crimes. As a result, there has been an alarming increase in the rate of acquittals. If this problem is not tackled instantly and effectively the whole exercise of criminal justice administration will remain unfulfilled beggar's dream, as a result of which the crimes will swell and criminal activities hold sway over the society and the State resulting in chaos and lawlessness. Thus, the study.

The Scope and Empirical Component of the Study

The study is an attempt to understand the lack of professionalism in the investigative police in effective investigation of crimes and the resultant large scale acquittals. The study is also closely concerned with the study and analysis

of immediate need and necessity of professionalism in investigating police in effective investigation of crimes.

The scope and empirical component of the present study encompasses selection and study of serious offences of 50 murder cases and 50 rapes cases-25 each from Bangalore Rural and Urban Districts-disposed off by Sessions Courts during the period from 1996 to 2006 in Karnataka State. This will help to identify aptly and accurately concomitant attributes that are *sin quo non* for professionalism in the police for effective investigation of crimes to check large scale acquittals, to determine major causes that are affecting effective investigation of crimes due to lack of professional attributes; and to evolve suitable and sustainable strategy for the investigative police to improve in effective investigation of crimes by imbibing professional attributes to check large scale acquittals by *litmus test* of the hypothesis laid down for the study, keeping closely in view the social realities of occurrence of crimes and the investigation by the police.

Based on primary data and secondary data, the study embarked upon to frame questionnaires for different samples to elicit apt and appropriate responses to the hypothesis for ineffective investigation of crimes due to lack of professionalism and the resultant large scale acquittals. Accordingly, the study attempts to suggest suitable solutions to address the problems of large scale acquittals.

The reference period chosen for the study and analysis of selected serious offences of murder and rape as noted above in the scope of the study is between 1996 and 2006.

Therefore, the scope and ambit of the research study has been laid down clearly and concisely keeping in mind a close view of the implications, constraints and dimensions of the problem chosen to its manageable limits, without sacrificing coherency and compatibility of the empirical study.

Statement of the Problem

Crimes and criminal activities will have a baneful effect on the society and the State. They not only damage and destroy peace and happiness of people but also shatter the safety and security of the State. If they are not promptly and effectively controlled and combated, they will ruin the whole peaceful societal atmosphere. Unfortunately, in India incidence of crimes and criminal activities are menacingly on the rise, both in terms of manifestation and magnitude.

One will be bewildered to watch the 'Crime Clock-2005' published by *National Crime Records Bureau, New Delhi*,⁸⁴ as it reflects how frequently heart throbbing heinous crimes like murder, rape etc, are committed. The social realities of crimes and their consequences are grave and dreadful. In India every 17 seconds one crime under Indian Penal Code (IPC) is committed; every 3 minutes one crime is committed against women; every 15 minutes one molestation; every 29 minutes one rape; every 16 minutes one murder; every 19 minutes one attempt to commit murder; every 23 minutes one kidnapping and abduction; every 30 minutes one robbery; every 2 hours one dacoity; every 6 minutes one burglary; every 2 minutes one theft is committed and so on crimes are committed without any check and control under other IPC and Special and Local Laws (SLL).

Baffling problem is that in the year 2005 there were 50,26,337 crimes reported in India when compared to 6,96,155 crimes in the year 1961.⁸⁵ One can witness a steep and alarming rise in the incidence of crimes and criminal activities over the years. It may be observed that more than 61,10,436 persons are being arrested every year, of them 1,54,641 are of womenfolk. In the year 2005 under IPC offences alone of 26,22,547 crimes reported; 23,65,658 cases were investigated and 13,67,268 cases were charge-sheeted. Out of 10,13,240 cases tried, it is worthy to note that 6,83,149 cases were acquitted. To speak in terms of percentage it is interesting to note that there was 62 % acquittal rate. In the case of percentage of acquittals in heinous crimes such as murder and rape it was as high as 91 % and 89 %.

Unfortunately India's population has crossed one billion marks and as per NCRB Report⁸⁶ the 1 billion population India has hardly 10, 46,575 civil police personnel to take care of law and order besides other work. It may be observed that strength of the police personnel per 1000 population is as low as 1.2 and per 1 lakh 122 policemen, which includes both men and officers performing various duties ranging from law and order, crime, traffic, intelligence, VIP to court work. They are unevenly deployed for these different duties. Expenditure incurred on the police by all the states in India in the year 2005 was about 19, 915 crores. Expenditure per police comes to rupees 1, 15, 000/- per annum. It is further bemoaning to note that the time available for detection of crime is very short and the number of police available for the job is also very limited and dismally low.

A billion dollar question is that what is that the police, the prime wing of criminal justice administration is doing? Will it not be a colossal waste of public money spent by the State on these machineries? How is it that the cases investigated by the police under different processes and procedures over a period of time under direct supervision of the State get acquitted in courts? Is the paramount duty of police is undermined and neglected? How and why the State's Prosecution Department has failed to cope with the prosecution of criminals in courts? Are trial courts helpless under laws to try and tackle the issue of large scale acquittals? Is it because the criminal cases are poorly and ineffectively investigated by the police under CrPC and other laws? How is it that the ineffectiveness has crept into the spine and vein of investigation? Is it primarily because of the lack of enough experience, expertise, knowledge and skills, qualification and specialization and other fiscal and physical constraints that concomitantly qualify and call for professionalism in the police? Or are there any other causative factors and forces which are latently and apparently operating in and around criminal justice system?

A close and critical review of the literature in the topic under study and researcher's experience in the field of investigation for over a decade and a half has clearly convinced that there is lack of professionalism in the investigative police that has prompted ineffective investigation of crimes resulting in large scale acquittals of criminals by the courts for want of sufficient and strong evidence. Such phenomena seems to have further prompted the acquitted criminals to commit more and graver crimes with scanty fear for laws and law enforcing agencies.

Hence, the problem or issue of large scale acquittals due to ineffective investigation of crimes as a result of lack of professionalism is a researchable one on empirical footing. There seems to be an urgent need for specific study to understand and identify the correct reasons for this sad situation from professional angle and approach. Once the problem stated is explored empirically, answers and solutions to it can also be planned to address the problem accordingly.

Objectives of the Research Study

The objectives of the research study are:

1. to identify professional concomitant variables and attributes that are absent among the police in effective investigation of crimes resulting in large scale acquittals;
2. to determine major causes that are affecting effective investigation of crimes;
3. to evolve suitable and sustainable strategy to improve effective investigation of crimes by the investigative police; and
4. Adoption and application of various concomitant attributes of professionalism to check the large scale acquittals.

Hypothesis

1. Poorer the professional competence in the investigating police greater will be ineffectiveness in investigation of crimes and acquittal rate in criminal cases.

Methodology

This study is based on both empirical and doctrinal methods. The survey technique is adopted to assess the reasons for lack of professionalism in the police in ineffective investigation of crimes and its resultant large scale acquittals. Accordingly, relevant responses are elicited and view points are taken from the Police Inspectors, Dy. Superintendents of Police, Sr. Police Officers(as only of and above the rank of police inspectors are authorized to investigate heinous cases like murder, rape, dacoity etc,) judicial officers, prosecutors, and criminal advocates, journalists and witnesses who have experience, according to their nature and extent of roles, in the field of investigation and criminal proceedings in Sessions Courts during the trial of murder and rape cases.

Sources of Data

In this study both primary and secondary sources of data are used. The primary data for the study is collected from questionnaires circulated amongst the police officers, judicial officers, prosecutors, criminal advocates, journalists, and witnesses who have experience, according to their nature and extent of roles, in the field of investigation and criminal proceedings in Sessions Courts during the trial of murder and rape cases. Sample study of case files of 50 murder and 50 rape cases taken from the Sessions Courts in Bangalore Urban and Rural Districts on the basis of random sampling, various Judgments of High Courts and the Supreme court of India, the India Law Commission Reports, the National Police Commission Reports and Justice V. S. Malimath Committee Report on 'Reforms in Criminal Justice System'. The secondary data for the study is collected from Major Criminal Acts, the Constitution of India, Books on Criminology and Criminal investigation, Forensic medicine, the Police Act and Manuals, Law journals, articles, National Crime Records Bureau, Karnataka State Records Bureau and from other available and accessible sources.

Technique of Data Collection-Sampling

Multi-stage stratified sampling is adopted for the study.

In the First Stage 50 murder cases and 50 rapes cases- 25 each from Bangalore Urban and Rural Districts-disposed off by Sessions Courts during the period from 1996 to 2006 were selected for study to find out the exact rate of and compelling reasons for acquittals and convictions. If the acquittals were very high, was it due to lack of professionalism in the police investigators in effective investigation of crimes or due to some other reasons?

In the Second Stage attempts were made to find out the correct reasons for lack of professionalism in the investigative police in effective investigation of crimes with various samples of the selected sampling frame (in Bangalore Urban and Rural Districts)- 50 police inspectors, 25 deputy superintendents of police, 15 senior police officers, 15 judicial officers, 15 prosecutors, 15 criminal advocates, 15 journalist and 15 witnesses who have experience, according to their nature and extent of roles, in the field of investigation and criminal proceedings in Sessions Courts during the trial of murder and rape cases, were selected for collecting the primary data for the study. 'Sampling of convenience' is used for selection of samples of senior police officers, judicial officers, prosecutors, criminal advocates, journalists and witnesses as ratio or percentage yardstick could not be used for the various samples are scattered and not easily accessible in nature.

Tools for Collection of Data

A structured schedule was prepared for various said samples and multi-faceted-questionnaires were mailed to collect primary data for the study, except for the witnesses- sample, for whom personal-interview method was used.

Field Work

Any field work which involves a spectrum of people and large areas of interest would be laborious and cumbersome. My field work experience was no

exception. Several hurdles were experienced to select, meet and request the various respondent-samples and persons to extend their cooperation wholeheartedly and willingly. The management of important resources- time and money-was very crucial. Other constraints include scattered information and samples across vast areas of operation. It was absolutely an uphill task to overcome the fear and prejudices that had crept in the course of the field work. Many police respondent-samples were apprehensive to express their views to the mailed questionnaires. They had to be persistently convinced and assured that their responses and opinions would be kept confidential and secret. Personal and frequent visits to the persons and places of information and persuasive efforts have brought out substantial and credible results during the study.

Data Analysis

The data collected was stored, classified, collated and analyzed with the help of computers. For better analysis and understanding of the data appropriate statistical tools such as average, percentage, and correlation were employed. These statistical tools have helped in great deal to analyze and understand the data in terms of its change amongst the dependent variables, independent variables and also between dependent variables and independent variables at different time and place and respondent-samples. The correlation analysis has helped to understand the significant relationship between the two variables, be it positive or negative correlation.

Limitations of the Study

1. The review of disposal of murder and rape cases was limited to only 50 cases each from Bangalore Urban and Rural Districts. The reference period was spread over from 1996 to 2006 as the disposal rate is very small in number varying on the nature of offences as the case records were very bulky, and time and other resource constraints were too many.

2. While selecting respondent-samples from judicial officers, prosecutors, advocates on criminal side, journalists and witnesses, no ratio/percentage criterion could be adopted as it was found difficult to ascertain the strength of those samples for they are unevenly scattered. In collection of primary data the samples located and present in Bangalore Urban and Rural Districts were alone considered as they were relevant and closely connected with the study and understanding of professionalism in the investigating police in effective investigation of crimes, whereas the remotely concerned entities were left unselected. The type of sampling selected was crude but reliable which was largely a 'sampling of convenience.'
3. Opinions and suggestions were sought only from respondent-samples except respondent-witnesses.

Chapter Scheme

The layout of the study is set out in seven chapters.

The first chapter deals mainly with the review of literature, the research design, scope and empirical component of the study, statement of the problem, objectives, hypothesis, methodology, techniques of data collection and analysis limitations of the study.

The second Chapter embraces the investigation of crimes, the historical background of criminal investigation, strides in science and technology of investigation of crimes from Bertillon's identification to DNA fingerprinting, scientific aids in criminal investigation, objectives, qualities and skills of a police investigator.

The third chapter embodies the pre-investigative procedures in investigation-First Information Report.

The fourth chapter lays down the procedures in investigation of crimes, starting from visit to the scene of crime to filing of charge-sheet/ final report.

The fifth chapter encompasses the meaning and importance of professionalism in investigation of crimes and its need and necessity in the investigation of crimes.

The sixth chapter gives a panoramic view of investigation of some serious offences like burglary, organized crime, cheating and frauds, murder, rape and cyber crimes.

The seventh chapter deals with the professional challenges before the investigating police for effective investigation of crimes based on empirical data. Here in, the collected primary data has been classified and analyzed in a tabular form and over 40 tables are analyzed for the purpose of study.

The eighth chapter deals with the review of 100 murder and rape cases that were disposed off by the Sessions Courts in Bangalore Rural and Urban Districts in Karnataka State from the period 1996 to 2006 to arrive at the details with regard to the pace and plight of prosecution of criminals and state of criminal justice administration in Karnataka State.

The ninth chapter comprises findings of the empirical study and recommendations to profess and foster professionalism in effective investigation of crimes to check the rising rate of acquittals.

End Notes

1. Emile Durkheim: *Suicide*: trans. by J. W. Twain London: George Allen & Unwin, 1954. p.25
2. *Crimes in India*: National Crime Records Bureau-2005, New Delhi.
3. (1978) 2 SCC, 457.
4. (2006) 1 SCC (Cri.), 678.
5. (2007) 2 SCC (Cri.), 236.
6. (1954) Cri. L.J.167 (Mad).
7. (1990) Cri. L.J.77(All).
8. (1994) 5 SCC, 195.
9. (1997) Cri. L.J. 803 (Cal).
10. (2002) 1 SCC, 491.
11. (2003) 4 SCC, 135.
12. (2007) 1SCC, 141.
13. (2007) 1 SCC (Cri.), 232, (2007) 1 SCC (Cri.), 376.
14. (2007) 1 SCC (Cri.), 146.
15. (2007) 1 SCC (Cri.), 462.
16. (2007) 2 SCC (Cri.), 236.
17. 1956 SC Cri. L.J. (vol. 57 C.N. 339), 933.
18. 1980 Cri. L.J., 1098.
19. AIR 1983 SC 826:1983 Cri. L.J. 108, 829.
20. (2002) 1 SCC, 608.
21. (2003) 2 SCC, 210.
22. (2003) 4 SCC, 135.
23. (2007) 1 SCC (Cri.), 376.
24. (2007)1 SCC (Cri.), 696.
25. (2007) 2 SCC(Cri.), 176.
26. AIR 1971 SC (V 58 C 163), 807.

27. AIR 1974 SC, 1904.
28. 1985 Cri. L.J. Nos. 29 (Ori), 15.
29. (1985) SCC (Cri.), 398.
30. (1989) Cri. L.J. 301.
31. (1997) SCC (Cri.), 94.
32. (1998) 1 SCC, 172.
33. (2007) 2 SCC(Cri.), 176.
34. (2007) 3 SCC (Cri.), 515.
35. AIR 1983 SC 826:1983 Cri. L.J. 1081.
36. 58. (2002) 1 SCC, 608.
37. (1996) 1 SCC, 344.
38. Cri. L.J. 357 (SC).
39. AIR 1997 SC 3876.
40. AIR 1970 (Del) 154 (FB).
41. 1996 Cri. L.J. 1406 (Cal).
42. 1998(1)Crimes 409 (Cal)(DB).
43. (2004) 7 SCC 779.
44. AIR 1988 SC 1705.
45. AIR SC 2780.
46. (1997) 10 SCC 675.
47. 1996 Cri. L.J. 265 (Del) (DB).
48. (1998) 2 JT 436.
49. 2003 (4) Cri. 241 (SC).
50. 1993 Cri. L.J. 1608 (Bom).
51. 2003 Cri. L.J. 894 (SC).
52. AIR 1999 SC 3255.
53. 1992 Cri. LJ 616(Del).
54. (2000) 5 SCC 207.

55. 1984,Cri. L.J. 191 (Kel).
56. 1989 Cri. L.J. 1058 (Bhopal).
57. 2004 (1) Crimes 31 (SC).
58. 1999 Cri. L.J. 2588 (SC).
59. 2003 Cri. L.J. 731(Bom).
60. 1988 Supp SCC 152 .
61. 1987(1) Crimes 96 (Bom).
62. 1993 Cri. L.J. 86(All) (DB):1992 A Cri. R 433.
63. *The Karnataka Police Manual*: .vol. II, chaps. XXVII to XXXVIII, p.113-307.
64. *The 4th Report of National Police Commission*: chap. XXVII, p. 1-11.
65. *Ibid.*, chap. *supra*, p.3
66. *State Police Commissions*: referred from *Second National Police Commission Report*: chap.XV, p.22.
67. *Ibid.*
68. *Ibid.*
69. *Ibid.*
70. *Ibid.*
71. *2nd National Police Commission Report*: chap. XVIII, p. 50.
72. *The Committee on Police Training, 1973*: referred from *Fifth National Police Commission Report*: chap. XXXVI, p.7-9.
73. *14th National Law Commission Report*: vol. II, chap. 34, p.736.
74. *Ibid.* vol. II, chap. 34, pp. 737, 739, 741 ,742 & 743.
75. *154th Report of Law Commission of India*: vol.-I, chap. II, P. 5.
76. *Ibid.*
77. *Justice Malimath committee on Reforms of Criminal Justice System*: pt.II, p. 87.
78. *Ibid.* .pt. II, pp. 102-115.
79. *Ibid.* pt. II, p. 890.

80. **Ibid.** pt.II, p.118.
81. P.K. Bhardwaj: *Declining in Professional Standards of the Police: Causes and Remedies*: A paper presented in the 26th all India Police Science Congress, NPA, Hyderabad, in 1994
82. Dr. K. Saxena: *Professionalism in Indian Police*: APH Publishing Corporation, New Delhi, 1997, pp.139-155
83. Dr. S. Krishnamurthy: *Preparing the Indian Police for the 21st Century*: Puliani and Puliani, Bangalore, 2000, p.2
84. *National Crime Records Bureau Report*: 2005, New Delhi.
85. **Ibid.**
86. **Ibid.**