POLICE TRAINING COLLEGE

JHARODA KALAN, DELHI

ADVANCED COURSE ON SCIENTIFIC INVESTIGATION

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MODULE I : RECAP ON POLICE PROCEDURES AND INVESTIGATION TECHNIQUES

STUDY MATERIAL

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MODULE NO : 1

RECAP ON POLICE PROCEDURES AND INVESTIGATION TECHNIQUES

“ONE THAT DESIRES TO EXCEL SHOULD ENDEAVOUR IT IN THOSE THINGS THAT ARE IN THEMSELVES MOST EXCELLENT”

EPICTETUS

MODULE-I

RECAP ON POLICE PROCEDURE AND INVESTIGATION TECHNIQUES

INDEX

FIR

Essentials of FIR:

- It must be first in point of time.
- It must be information, responsible but not vague, gossip or hear say.
- It must relate to the commission of a cognizable offence..
- It must be made to officer in-charge of a police station.
- It must be in writing or put into writing if given orally and read over to the informant.
- It must be signed by the informant.
- It must be entered in the Daily Dairy.

❖ Ordinarily mere gossip, hearsay or rumours do not fall within Section 154 Cr.PC, but definite information when recorded at the Police Station become FIR.

❖ Original telegram only become FIRs because they bear the signature or thumb mark of the senders. But the police officer can suo motto register a case on receipt of telegram.

❖ A telephonic message is not an authenticated statement but the Police Officer receiving it can register a case on his own signing as the person giving the information.

First in time:

- First Information Report is the information given to the police first in point of time and not that which the police may select and record as first information.
- Where two different reports about the same occurrence are given by two different persons before two different Police officers of the same Police Station but found at different places before the commencement of the investigation, the latter information cannot be excluded from evidence, as it was not a statement made in course of investigation but was independent FIR (1940 All 291)
- Investigation begin immediately after recording of FIR (Shiv Bahadur Singh Vs State of Madhya Pardesh-1954 Cr.L.J. 921)
- As proceeding to the spot has been held to be part of investigation, list of stolen property handed over to the investigating officer on his arrival at the scene of occurrence is hit by Sec. 162 Cr.PC (Vide Supreme Court ruling in R.N. rishbud Vs. State of Delhi. SC 196; 1995 Cr.L.J. 526).

FIR by accused :

An FIR of confession nature made by an accused person is inadmissible in evidence against him except the fact that he made statement soon after the offence, identifying him as a maker of the report, which is admissible as evidence of his conduct u/s 8 of the Evidence Act and the information furnished by him, leading to the discovery of a fact, which is admissible u/s 27 evidence act (SSCA 37/65- Aghnoo Nagesia Vs. the State of Bihar). A non-confessional FIR is however, admissible against the accused as an admission u/s 21 Evidence Act and is relevant.

Information by Police officer / suo-motto registration of FIR u/s 157 Cr.PC :

Following are some of instance in which Police officer have to prepare FIRs on their own initiative and have to play the part of complainant.

- When they receive secret, anonymous, telegraphic and telephonic information about the commission of a cognizable offence.
- When they cognizable offence is exclusively detected by them.
- When a cognizable offence is committed in their very presence.

General defects relating to the FIR which may cause acquittal:

- Delay in lodging a complaint without explaining the reason.
- Not obtaining the signature of the complainant on the FIR or the statement.
- Delay in dispatch of FIR to the court
- Eyewitness or injured being the complainant not giving full account of the offence having known or seen all detail of crime.
- Content of FIR contrary to the fact of the offence and the 10 not being able to explain.
- Not examining the scribe of the complaint during investigating and during the trial.
- Not examining the complainant, who lodges the compliant, during the trial.
- Not examining the officer who registered the case during the trial.
- Not examining the constables who handed over the FIR to the court during the trial.

How to make FIR comprehensive?

SHO should ensure that record made by him in truthful and as per the statement of the informant. He should avoid imparting his own impressions and high-sounding language. It should be in the word of the informant. Please try to keep the following eleven “W”s in your mind while recording FIR. They are:-

- What information have you got to convey?

- What is his capacity - eye witness victim or hear say?
- Who possibly committed crime?
- Who is the victim of the crime?
- When did it occur?
- Where did it occur? (the spot)
- Why? (Motive of crime)
- Which way? (Describe the incident. The role played by each accused-weapon used, etc.)
- Who else was present then?
- What was taken away by the accused? (any article/property)
- What traces were left by accused? (physical clues).

Problem arising due to delay in registering FIR

- Delay in lodging FIR without satisfactory explanation is looked upon with grave suspicion because there are chances of fabrication.

- Wherever there is delay it must be properly explained in the FIR - itself

Problem arising due to delay in sending FIR to Court and other places

Delay by itself cannot be held for rejecting evidence, which is otherwise credit worthy. It is only a circumstance that puts the court on its guard.

Some judgments on delay of FIR:

Harpal Singh Vs. State of H.P. -AIR 1981 SC 361:
Delay of 10 days in lodging the FIR was considered to be justified in the rape case- ground was prestige of the family- members had to decide.

Ramjag- AIR 1974 SC 607-611:
Delay in FIR was not satisfactorily explained. Held that “delay has no ground” .

Ramchandra Vs. State of Rajasthan -1982 Cr.L.J. (Rajasthan H.C.):
Delay due to the anxiety of relatives to provide medical aid to the injured person consider proper.

Omission in FIR and effect thereof:
AIR 1981 SC 631
Gumam Kaur Vs. Bakshish Singh. Omission to mention an incidental fact cannot have the effect of nullifying an otherwise prompt and impeachable report

FIR in the crime investigation is not the beginning and ending of the case. It only sets the machinery into motion.

- **AIR 1975 SC 1453 - FIR on telephone call: Being too creptic could not constitute FIR.**
- **W.B. State Vs. Swapnakumar Guha - 1982 Cr.L.J. 819 (SC) - FIR quashed if it does not disclose cognizable offence.**
- **Tara Chand Vs. State - AIR SC 1970 (page: 189) - FIR cannot be used to contradict other witness.**

INQUEST

Meaning and importance:

"Inquest" means inquiry into a death, the cause of which is unknown. The term has its origin in the coroner's enquiry under the English Law called "Inquisition". The coroner's Act came into existence in the year 1871 for metropolitan cities of Calcutta, Mumbai and Chennai and is still in existence in Calcutta and Mumbai.

Inquest can be held by an Officer-in-Charge of a Police Station or some other Police Officer specially empowered in that behalf. Inquest Report u/s 174 Cr.PC should contain all detail of the body under the scene of the offence. The inquest report is an important document in ascertaining the cause of death and the circumstances under which it took place. The witness examined at the inquest are bound to answer truly all questions other than those the answer to which have a tendency to expose them to a criminal charge or to a penalty or forfeiture. The statement of witness recorded at inquest fall within the preview of Sec. 162 Cr.PC. They should be recorded separately but they should not be embodied in the same inquest report. Inquest report is not substantive evidence. However, a verbatim report of statement of witnesses examined at the inquest may often be of great use of to the court in testing value of the evidence subsequently given and considering the important nature of evidence which is generally supplied by the result and observation, external and internal should be fully-recorded. It can be used for corroboration u/s 157 Cr.PC or for refreshing memory u/s 159 and for contradiction U/S 145 of the Evidence Act. If any doubt regarding cause of death, the dead body must be forwarded to Medical Officer. If the death occurred in Police custody, it must be informed to Magistrate & (S.D.M.) to hold the inquest.

Legal sanctity and legal requirement of Inquest:
Provisions relating to inquest are contained in Sees. 174 to 176 of the code of Criminal Prpcedure.

Under Section 174 Cr.PC, the officer-in-charge of a Police Station or some other Police officer specially empowered by the state government in the that behalf are required to investigate in to the apparent cause of death where a person:

a) has committed suicide, or
b) has been killed by the another or an animal or machinery, or by an accident, or
c) has died under circumstances where there is a reasonable .suspicion that some other person has committed an offence.

On receipt of information of the sudden, unnatural or suspicious death of any person, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquest, and unless otherwise directed by any rule prescribed by the state government, or by any general or special order of District or Sub-Divisional Magistrate shall proceed to the placed where the body of such decreased person is, and there, in the presence of two or more respectable inhabitants of the neighborhood, shall record wounds, fractures, bruises and the other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted. Such report shall be signed by such Police officers and other persons or so many of them as concerned therein and shall be forthwith forwarded to the District Magistrate.

The investigating Officer shall send the body for autopsy or postmortem examination in the following cases:

a) When there is any doubt regarding the cause of death.
b) When it involves suicide by women within seven year of her marriage or
c) Where a women dies within seven years of her marriage in any Circumstances raising a reasonable suspicion that some other has committed an offence relating to the women.
d) When a women dies within seven years of her marriage and any relative of the women had made a request in that of behalf or
e) The Police officer for any other reason considers it expedient to do so.

A Police officer has got discretion not to send the body for post-mortem examination only in one case namely where there can be no doubt about the cause of death. This discretion is to be exercised prudently and honestly.

Sec. 175 Cr.PC enumerate the power given to a Police officer proceeding under Sec. 174 to summon persons who appear to be acquainted with the fact of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answer to which would have tendency to expose him to a criminal charge or to a penalty of forfeiture.

According to Sec. 176 Cr.PC, in case of death in Police custody or a women-committing suicide within seven years of marriage, inquest by Magistrate is obligatory while in other case it is option. Such inquest may be held by District Magistrate or SDM or other Executive Magistrate specially empowered in this behalf.

A Magistrate shall hold the inquest in all cases where a person dies in the custody of Police or where women dies within seven years of marriage involving suicide a suspicious of the commission of an offence.

When the case fall U/S 174 (3)(i) or (ii), the Executive Magistrate shall hold an enquiry into the cause of death either instead of or in addition to the investigation held by the Police Officer. The Executive Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith under the code of Criminal Procedure, the Executive Magistrate shall hold inquiry.

The Magistrate holding inquest shall inform the relative of the deceased and allow them to be present at the enquiry. He shall also record the evidence taken by him in any manner according to the circumstances of the case.

The investigation by Magistrate U/S 174 is distinct from the proceeding taken on complaint. (Ghulam Mohammad, AIR 1927 Lah.30 at P.31:238 Cr. LJ. 26)

Sec. 174 Cr.PC is inapplicable where the dead body is not available (Ghulam Hassan Vs. emperor, 9 Cr.Ll. 105, 1908 P.RNo. (Cr.).

Holding Inquest:

1) Look carefully to the place and surrounding, describe them and if possible, photograph them from different angles. In case of dismembered body thrown at different places, hold separate inquest for each and one more inquest after bringing all the limbs together if they are suspected to be of the same person. Always take photographs at all the places. Assistance of the doctor if possible may be obtained wherever possible.

2) Prepare sketch of the place where necessary.

3) Note number in which the body is lying i.e. its actual position with respect to fixed objects and distances.

4) Position of hands, feet. Head, etc.

5) Any materials lying close by or in actual grip of the corpse or plunged in to the body.

6) Description of the dress- all cloths- manner of dressing.

7) Describe all marks on the cloths and body such as charring, etc., as in gunshot wounds.

8) Describe all wounds - giving the direction from which it is likely to have been caused.

9) Carefully note matters which may help fixing time of death - such as rigor mortis, there presence and absence - examine all limbs from head to feet to determine it.

10) Note ornaments, watches, etc., on the person of the dead and the time, if any, indicated therein.

11) Take fingerprints and nail clipping or in decomposed bodies - request the Civil Surgeon for it.

12) Establish identify or note full descriptive roll- along with photographs.

13) Information after the identity of the deceased has been established should be sent to deceased's relation.

Don'ts:

1) Don't feel shy to uncover the body thoroughly.

2) Don't fail to examine the private parts.

3) Don't try to use medical terms in drawing up the report. Remember there are witnesses also to the inquest and they are laymen generally. Besides, your terminology may be wrong and may create unnecessary complications.

4) Don't fail to take note of the manner in which the deceased has worn cloths - times it helps to distinguish between suicide & homicide, particularly where women are concerned.

5) Don't change position of the body without taking proper notes, photographs, etc.

6) Don't fail to mention names of persons identifying the corpse.

7) Don't put charcoal on the dead body to deter decomposition. When such a thing is necessary, always wrap the body in the cloth and then put charcoal alongside.

Common mistake made by I.D.s in the course of inquest and while preparing inquest report:

1) In describing the facts wrong information are given about the sex of the subject, writing male for female and vice versa.

2) In describing an adult unidentified male body description of the foreskin in the genital organ (whether circumcised or not) is often not given.

3) Description of injuries and their positions given in slipshod manner. Condition of the cloth- whether they bear any marks or cut or puncture or struggle etc. not always noted.

4) In case of hanging marks of saliva dribbling from an angel of mouth are some time omitted. Similarly, position of tongue whether protected or found bitten by the tooth is omitted. Presence or absence of semen is also not always noted. In case of female bodies the discharge found is not of semen but of mucus from the vagina.

5) When sending more then one body after inquest for autopsy examination, proper identifying marks are not affixed to the bodies. To avoid confusion proper identifying marks are not identifying neck labels on the bodies.

6) In case of unidentified bodies identifying marks like scars, moles, tattoo marks, etc are not always given.

7) In the inquest report a short history of the case giving out the facts and circumstances ascertained on local enquiry is not always giving. The reports should include the circumstances under which the death took place, for assistance of the autopsy surgeon. In case death due to injury it should be noted whether a weapon was found at the scene and if so the position and direction and distance of weapon from the dead body, whether firmly grasped in hand in cadaveric spasm or not. In cases suspected poisoning mention whether there are any peculiar stains coming down from angles of mouth or even the palm or back of the hand.

8) If the dead body was found inside a room, care is not always taken to describe whether the room was bolted from inside, kept ajar or chained or locked from outside. Condition of the furniture, presence of any marks or disturbance must be included in the report.

9) Sometimes the I.O. marks a note of imaginary injuries on the dead body due to misinterpretation of various marks on the dead body when there is actually no much injury on site.

TEST IDENTIFICATION PARADE

Importance:

Test identification parades are held both in civil and criminal cases to identify

a) persons living or dead, known or known
b) recovered property/articles including fire arms
c) photographs, fingerprints, footprints, handwritings, voice.

Mostly, test identification parades are held in criminals case to prove or disprove the guilt or innocence of the accused whether it is held in respect of person are articles.

Necessities and circumstances required for conducting T.I. Parade:

Identification parades in criminal cases are held while the cases are under investigation. The purpose of T.I. parade is to test the memory and veracity of a witness who claims to identify an accused person as one of the participants in the crime or property or articles/weapons involved in the offence. Such identification test may be needed in all sorts of crime and particularly so in cases of dacoity, assembly of persons for committing riots and other heinous offences. This is an opportunity given to the witnesses whoever that he will be able to identify a criminal if seen again.

Identification is an act of mind. It is based on the fact that the mental impression made by the witness of the appearance of the accused at the time of occurrence. It is therefore, dependent upon certain attending circumstances such as:

i) An opportunity of the witnesses to see the criminals
ii) Existence of sufficient light and relative proximity between the witness and the offender
iii) Reasonable period of time during which the T.I. parade was held
iv) Reliability of the witness and his power of observation.
v) Absence of any collusion between Police and witnesses.

In testing the veracity of such a witness the extraneous factors such as previous grudge, enmity, fear, terror, etc. should not be overlooked.

The T.I. parade is meant to satisfy the investigating authorities before sending up the cases for trial and to satisfy the court that the accused committed the crime. The object is to test the evidence given by the witnesses and to know whether they could really identify the accused as claimed by them.

Precaution to be taken by a Magistrate holding identification parade:

1) The parade should not be held in public view, privacy should be observed.
2) No Police Officer shall be present.
3) If held in jail, the prison official shall not be present at the place of parade but cannot be in the view of the Magistrate.
4) The non suspects selected to be mixed with identification over the accused shall be ideally in the proportion of suspect to outsiders be the ratio of 1:9, it was held that the parade was fair one.
5) If any accused wears any conspicuous garment, the Magistrate shall if possible, arrange for similar wear to other and if not possible induce the suspect to remove such garment.
6) The accused shall be allowed to state whether he has any objection to the persons present.
7) The accused shall be allowed to select its own position.
8) The witnesses summoned for the parade shall be kept out of view of the parade and should not have a chance to see the suspects before the parade.
9) The witnesses one after the other shall be called into identify. Any witness who has completed identification shall not be allowed to meet the other witnesses who are yet to identify.
10) The witness shall be asked whether he has prior acquaintance with any suspect whom he proposes to identify.
11) The statement of any accused (including any well founded objection to any point) made during the identification parade shall be recorded.
12) Every other circumstance connected with the identification also shall be carefully recorded.

Importance of prior test identification: The substantive evidence of a witness is the statement made in the court. The identification of accused by a witness for the first time during the trial, from its very nature, inherently would be weak. The purpose of prior test identification is to strengthen the trustworthiness of the witnesses. The Supreme Court in the case Rameswar Singh V s. State of Jammu & Kashmir reported in 1972 (SC 102) has held that in the absence of any test identification parade, excluding the statement made U/S 161 Cr.PC, the statement by witnesses at the trial, when they did not know the accused before the occurrence could not be relied upon. In another case reported in 1976, Sri Ram V s. State the Supreme Court held that identification made during the trial is not of much value unless it is corroborated by the prior identification.

Who can hold a T.I. Parade?: in law there is no provision for this. Any person, for that matter even a Police Officer, can conduct a T.I. Parade. However, no value is given for the identification parade conducted by a private Police Officer. There is some value for the identification parade conducted by a private person. Magistrate

is preferred to conduct identification parades. His identification memo is a record of the statement, which is a Magistrate, Metropolitan, or judicial, S c. 164 Cr.PC becomes applicable and his identification memo, is admissible in evidence U/S 80 of Evidence Act without proof But if private held it, they must be called as witness to prove it. In the absence of Magistrate, the T.I. parade can be held by the Panch witnesses exclusively under their direction and supervision.

Delay in holding T.I. Parade: It is normal practice for the Police to arrest the accused -and obtain Police remand for recovery of evidence or for the recovery of property and thereafter to remand the accused to judicial custody and request for the holding of identification parade. The identification parades after Police remand have very little value. In determining the value of test identification parade one of the factors considered is whether the identification parade was held within a reasonable time after the arrest of the accused and if not so whether there is convincing explanation from the side of the investigating agency of delay.

Duties of prosecution in conducting T.I. Parade: It is the foremost duty of Police while arranging T.I. parade to seal off all possibilities of defense suggestion that the witness had any opportunity viewing the suspect before the parade was actually held. For this purpose, the arrested offender should be warned since his arrest that he might be placed in T.I. parade and such may take precaution to cover up his identity before he is so placed. Though the 1.0. should satisfy himself that person be kept in proper places. In the T.I. parade, he should better avoid any sort of association with the witness during the T.I. parade. All precaution taken in the regard should be noted in the official records such as Daily' Diary or Station Diary, Case Diary, etc, the idea is that precautionary measure should not only be taken but should be provided in the Court of Law.

Evidentiary Value of records prepared during T.I. Parade: The statement made by witness in course of T.I. proceeding is neither substantive evidence nor it is admissible in evidence till the person who made such statement is examined in the court (Sec. 9 of Indian Evidence Act become relevant here). The statements can only be used either for the propose of contradiction U/S 145 or 155 of the Evidence Act or corroboration U/S 157/158 of the same Act in the Court. Such a statement, however, made before a Police Officer when the T.I. parade is being held is hit u/s 162 Cr.PC and thereby becomes inadmissible. The statement may be express or implied. The person identified may either nod his head or give his assent in answer to a question addressed to him in that behalf or make a sign of or gesture which tantamount to saying that the particular property was the subject matter of the offence or the person identified was concerned in the offence.

Right of the accused to ask for T.I. Parade: There is no statutory provision to order holding of T.I. parade at the request made by an accused person as the law has not provided him with the right to ask for the holding such a T.I. parade. But the rule of prudence demand that in such case of T.I. parade is held, as it will be an

important feature considering the credibility of the witnesses and point of identification. Although an accused may have no right to demand an identification parade, if the prosecution turns down his request of identification, it runs the risk of veracity of the eye- witness being challenged on that ground.

Identification of property: Identification of property needs also enough precaution, which consists of sealing of the properties to the identified and similar sealing of the properties to be mixed in the T.I. parade. The Police Officer who takes the sealed bundles to the Thana after recover .and also take the Magistrate for identification should be examined to prove that the sealed bundles were not tampered within any way. The sealed bundles should be opened before the Magistrate conducting the T.I. parade. This evidence is also relevant u/s 9 of the Evidence Act. while the identification parade of the prisoner can be conducted by a Magistrate, there is no provision that identification of property should be conducted by the Magistrate.

Identification by the photographs: It is well settled that for certain purpose photographs may be received in evidence. But here also the same principle has got to be observed, namely "identification should be done from a number of photographs of similar looking persons".

The other means of identification that are prevalent and accepted by the Court of Law are

1) Finger Print
2) Foot Print or Shoe Print
3) Hand Writing
4) By Voice.

The evidence of such identification except by voice is generally by experts on the subjects whose testimonies are admissible ills 45 the Evidence Act.

Legal provision relating in T.I. parade in various Acts:

1) Sec. 9 of Indian Evidence Act facts necessary to explain or introduce relevant fact: Facts necessary to explain to introduce a fact in issue or relevant facts, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant or fix the time or place at which any fact in issue of, relevant fact happened, or which show the relation of the parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

2) Sec. 145 of Indian Evidence Act *Cross-examination as to previous statement in writing :* A witness may be crossed examined as to previous

statement made by him in writing or reduce into writing and relevant to matter in question, without such writing being shown to him, are being proved: but, if it is intended to contradict him by writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

3) Sec.155 of Indian Evidence Act. : *Impeaching credit of witness:* the credit of witness may be impeached in the following ways by the adverse party or, with the consent of the Court, by the party who calls him:-
   a) By the Evidence of the persons who testify that they, from their knowledge of the witness believe him to be unworthy of credit;
   b) By the proof that the witness has been bribed or has accepted the offer of a bribe, or has received any other corrupt inducement to give his Evidence;
   c) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.
   d) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

4) Sec. 157 of Indian Evidence Act. Former statement of witness may be proved to corroborate testimony as to same fact: In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

5) Sec. 158 Indian Evidence Act. : *what matters may be proved in connection with the proved statement relevant under section 32 to 33:* whenever any statement, relevant *U/S* 32 to 33 , proved all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it' was made, which might have been proved if that person had been called as witness and had denied upon cross-examination the truth of the matter suggested.

6) Sec. 32 of Indian Evidence Act. : *Cases in which statement of relevant fact by person who is dead or cannot be found etc is relevant:* Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving Evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:

   a) When it relates to cause of death.

b) Or it is made in course of business.
c) Or against interest of maker.
d) Or gives opinion as to publish right or custom or matter of general interests.
e) Or relates to existence of relationship.
f) Or is made in will or deed relating to family affairs.
g) Or in document relating to transaction mentioned in Section 13, Clause (a)

"Section 13. Clause (a)": Any transaction by which the right or custom in question was created, claimed modified, recognized, asserted, or denied, or which was inconsistent with its existence".

h) Or is made by several person persons and expresses feeling relevant to matter in question.

7) Sec. 33 of Indian Evidence Act : *Relevancy of certain for proving, in subsequent proceeding, the truth of facts therein stated:* Evidence given by a witness in a judicial proceeding or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a latter stage of the same judicial proceeding, the truth of the fact which it state, when the witness is dead or cannot be found, or incapable of giving evidence, it is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of the Court considers unreasonable:

Provided-

a) That the proceeding was between the same party of their representative in interest;
b) That the adverse party in the first proceeding had the right and opportunity to cross-examine;
c) That the question in issue were substantially the same in the first as in the second proceeding.

8) Sec. 80 f Indian Evidence Act: *Presumption as to document as record of Evidence:* whenever any document is produced before any Court purporting to be a record or memorandum of the evidence, or of any part of the Evidence given by a witness in a judicial proceeding or before any office authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any judge or Magistrate or by any such Officer as afore said, the Court shall presume-

That the document is genuine; that any statement as to the circumstances under which it was taken, purporting to be made by

the person signing it.- are true, and that **such** Evidence, statement or confession was duly taken.

9) Sec. 45 of Indian Evidence Act *:Opinion if experts:* When the Court has to form an opinion upon a point of foreign law, or of science or art , as to identify of handwriting or finger impression, the opinion upon that point of person specially skilled in such foreign law, science or art, or in question as to identify of handwriting or finger impression are relevant facts. Such persons called experts.

10) Sec. 162 Cr. PC : *Statement to Police not to be signed: use of statement in Evidence* :-

a) No statement made by any person to a Police Officer in the course of investigation under this chapter, shall, if reduced to writing, be signed by the person making it: nor shall any such statement or any record thereof, whether in a Police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigating at the time when such statement was made:

b) Provided that when any witness is called for the prosecution in such, inquiry or trial whose statement has been reduced into writing an aforesaid, and part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness, but in the manner provided by section 145 of the Indian Evidence Act 1872 ;(1 of 1872), and when any part of such statement is so used, any part thereof may also be used in the reexamination of such witness, but for the purpose only of explanation of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

c) Nothing in this Sec. Shall be deemed to apply to any statement falling within the provision of clause (I) of Sec. 32 of Indian Evidence Act ,1872 (1 of 1872), or to reflect the provision of Sec. 27 of the Act.

11) Sec. 164 of Cr.PC *:Recording of confession and statement:*-

a) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this chapter or any other law for the time being in force, or at any time afterwards before the commencement of the enquiry or trial:

Provided that no confession shall be recorded by Police Officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

b) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound" to make a confession and that, if he does so, it may be used as Evidence against him; and the . Magistrate shall not record any such confession unless, "upon questioning the person making it, he has reason to believe that it is being made voluntarily.

c) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person on Police custody.

d) Any such confession shall be recorded in the manner provided in Sec. 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the magistrate shall make a memorandum at the foot of such record to the following effect:-

"I have explained to (name) that he is not bound to make a confession if he makes, it may make may be used as evidence against him and I believed that this confession was voluntarily made. It was taken in my presence and hearing and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A.B.
Magistrate" .

e) Any statement (other than a confession) made under sub-section (I) shall be recorded in such manner hereinafter provided for recording of Evidence as is, in the opinion of the Magistrate shall have power to administer oath to the person whose statement is so recprded.-

f) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.

ARREST, BAIL & HABEAS CORPUS

Arrest of a person is normally exercised by the law enforcing Authorities. However, in certain special circumstances, the exercise of arrest can be done by civilians. Arrest involves the curtailment of the liberty of a person for an offence is called Arrest. Since early times man has inalienable right of life and liberty. But this individual liberty underwent changes with the passage of time and the present concept of individual freedom is counter balance by a man's duty toward society. Arrest is not a proof of guilt.

WHY ARREST?

The purpose of arrest may be either

a. To ensure the presence of the accused in a court of law to answer a criminal charge leveled against him.
b. To prevent him from continuing his unlawful acts in special case.

Apart from the above, if the accused is a dangerous and violent person, the arrest will have beneficial effect on the morale of the society. Arrest of person in time will boost the image of the prosecution agencies and is consider as an essential step in investigation.

As arrest involves depriving of the freedom of an individual, it must be exercised with utmost care and caution. It is only a mode of precaution taken under the law in order to make a person appear before the legal forum to answer a charge against him.

LEGAL PROVISION RELATING TO ARREST & RECENT SUPREME COURT DIRECTION

➢ Arrest of a person may vise in the following ways viz.,

a. Arrest with warrant
b. Arrest without a warrant

➢ The following persons are competent to arrest as given below:-

1) A Police Officer may arrest

- Without a warrant under Cr.PC Sec. 41 and Sec. 151
- With a warrant u/s 72 to 74 Cr.PC
- With the written order of an Officer in charge of a Police Station U/S 55 and 157 Cr.PC
- With order of Magistrate U/S 44 Cr.PC
- In Non-cognizable offence U/S 42 Cr.PC

2) A Superior Police Officer u/s 36 Cr.PC
3) An officer in-charge of Police Station u/s 41 (2) and Sec. Cr.PC
4) An Magistrate u/s 44 Cr.PC
5) A Military Officer u/s 130 and 131 Cr.PC
6) A private person

- Without a warrant u/s 43 Cr.PC
- With warrant u/s 72 and 73 Cr.PC
- With order of a Police Officer u/s 37 Cr.PC
- With order of Magistrate u/s 37 & 44 Cr.PC

Arrest without warrant:-

Police Officer u/s 41:- Section 41 enumerate 9 categories of the circumstances under which a Police Officer is empowered to arrest a person without a warrant VIZ.,

a. Who has been concerned in any
   a) Cognizable Offence;
   b) A reasonable complaint has been made against such person
   c) A credible information has been received that such person in involved in some criminal offence
   d) A reasonable suspicious exists having connection with some criminal offence

b) If the person has **in his possession any implement of house breaking** without lawful excuse;
c) If such person has been **proclaimed as an offender** under this code or by the state government.
d) If such person is **found in possession of stolen property;**
e) If such person **obstruct a Police Officer** while in execution in his duty or if such person escapes or attempts to escape from lawful custody;
f) If such person **is reasonably suspected of having deserted** from any of the **Armed Forces of the Union;**
g) Who has been **concerned,** or against whom a **reasonable complaint** has been made or credible information has been;
h) Received or a **reasonable suspicious** exist of his having been concerned in any act committed at any place out of India, which if committed in **India would have been punishable as an offence,** and for which he is, under any law relating to extradition or otherwise, liable to be apprehended or detained in custody in India;
i) If such person being **released convict, commits a breach of any rule** made under S/356 (5) Cr.PC.

S/356(5) Cr.PC deals with the order for **notifying address** of previously convicted offender (notification of residence or change of or absence from residence of released convicts).

j) For whose arrest any **requisition, whether written or oral** has been received from another Police Officer

Sub-Section 2 of Sec. 41 Cr.PC also empowers the Police Officer to arrest any persons who come under Sec. 109 Cr.PC (security for good behaviour from suspected person) and u/s 110 Cr.PC (security for good behavior from habitual offenders).

NO INTERVENTION OF HIGH COURT :-

Sec. 41 Cr.PC gives a wide statuary Power to the Police to arrest a person during the investigation of a cognizable offence. This power of the Police cannot be interfered with by high Court in exercise of its inherent power. **Ram Lal Yadav Vs. State of Uttar Pradesh 1989 Cr.L.J. FB**

Sec. 42 empowers a Police Officer to any person who commits a non-cognizable offence in the presence of the Police Officer or who is accused of committing such offence before such Officer.

Sec. 55 empowers a Police Officer in-charge of Police Station to depute another Police Officer in writing to arrest any person who may lawfully be arrested without a warrant.

Important points:-

a. The power empowered u/s 41,42 & 55 of Cr.PC to a Police Officer to arrest a person is not exhaustive. There are various other Acts which also confer such powers on Police Officers viz., Arms Act, MISA etc.,
b. If the Police Officer make a wrong arrest by mistake in **good faith,** he is protected under the Act.
c. Sec. 57 of the code give mandatory direction that Police Officer must produce the arrested person before a Magistrate within 24 hours of his arrest.
d. A Police Officer should be in uniform to reveal the identity of his official authority except in emergency cases where he can effect arrest without being in uniform. But Police Officer has an obligation to make it clear to the person whom they intent to arrest that they are officers of law. **(Emperor Vs. Abdul Hamin, 43, Cr.L.J., 338).**

RESTRICTION ON THE POWER OF ARREST:-

The general power of arrest by Police Officer is restricted by different sections of law.

a) Police has no power of arrest without warrant in a non-cognizable offence. His limited power in this field is given in Sec. 42 Cr.PC

   Illegal arrest is punishable U/S 220 Cr. PC

b) Magistrate are entitled to get information when Police arrest anybody without warrant as detailed bellow:-

   (i) Under Sec. 58 Cr.PC Police bound to report apprehension to Magistrate.
   (ii) Under Sec. 59 Cr.PC Police cannot discharge any arrested person except on his own bond, or on bailor under the special order of a Magistrate.
   (iii) Arrest during investigation is also made under the watchful eyes of the Magistrate and Sec. 157, 167, 170, and 173 of Cr.PC are relevant in this connection.
   (iv) U/s 44 of the Police Act, the Magistrate has access to the general diary. It records the details about arrest of a man when he is taken into custody.

c) The superior Police Officer is also empowered by law to know the position of a cognizable case under investigation. Sec. 158 and 173 (2) Cr.PC have provided for submission of reports contemplated in Sec. 157 and 173 Cr.PC through different stages.

SUPREME COURT DIRECTION:-

I FOR HANDCUFFS :-

Prem Shankar Shukla Vs. Delhi Administration : AIR 1980 SC 1535:-

In this case, certain condition in which handcuffs to be used was laid down which is as under:-

1) Every male person falling within the following category can be handcuffed viz.,

   - Person accused of a non-bailable offence punishable with any sentence exceeding in severity a term of 3 year imprisonment.

- Person accused of an offence punishable U/S 148 or 226 of IPC
- Person accused of and previously convicted of, such an offence as to bring the case U/S 75 IPC
- Desperate character
- Person who are violent, disorderly or obstructive or acting in a manner calculated to provoke popular demonstration;
- Persons who are likely to attempt to escape or to commit suicide or to be the object of an attempt at rescue. This rule shall apply whether the prisoners are escorted by road or in a vehicle.

2) Better class under-trial prisoners must only be handcuffed when this necessary for safe custody.
3) The actual practice of arresting prisoners/persons by handcuffing as a matter of routine is to be strictly stopped forthwith.
4) Handcuffs should not be used in routine. They are to be us 9 only where the person is desperate, rowdy or is involved in non-bailable offence.
5) There should ordinarily be no occasion to handcuff person occupying a good social position in public life or professionals, the jurists advocates, doctors, writers, educationist and well known journalists and this list is only illustrative and not exhaustive.
6) The duty officers of the Police Station must also ensure that an accused when brought at the police station or dispatched, the facts whether he was handcuffed or otherwise should be clearly mentioned along with reasons for handcuffing in the relevant Daily Dairy Report. The SHO of the police station and ACP of the Sub-Division will occasionally check up the relevant daily diary to see that these instructions are complied with by the police station staff.

II NEW RIGHTS OF ACCDSED :-

In Joginder Kumar Vs. State of U.P. & Others. A.I.R.. 1994 SC 1349

In this case, Supreme Court has issued the following requirements for effective enforcement of the fundamental rights by the accused *u/Art.* 21 and 22(1) of Indian Constitution.

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

b. The Police Officer shall inform the arrested person when he is brought to the Police station of this right.

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

It shall be the duty of the Magistrate before whom t,he arrested person is produced to satisfy himself that these requirements shall be followed in all the cases of arrest till legal provisions are made in this behalf. These requirements shall be in addition to the rights of the arrested persons found in the various Police Manuals.

III GUIDELINES FOR POLICE OFFICERS AFTER ARREST:-

In D.K.Basu Vs. State of west Bengal, AIR 1997 SC 610:-

Following guidelines has been laid down by Supreme Court for police officer to be observed after the arrest which are as given below.

1) The Police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
2) That the Police officer carrying out the arrest of the arrestee shall prepare a Memo of Arrest at the time of arrest and such memo shall be attested by at least one person witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.
3) A person who has been arrested or detained and is being held in custody in a 'police Station or interrogation center or other lock-up, shall be entitled to have one friend of relative or other person known to him or having interest in his welfare being informed as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself is such a friend of a relative of the arrestee.
4) The time place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative or arrestee lives outside the district or town the police Station of the concerned telegraphically informed with in a period of 8 to 12 hours after the arrest.
5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

6) An entry must be made in the Diary at the place of detention regarding the arrest of the person which shall also disclose the names and particulars of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effective the arrest and its copy provided to the arrestee.
8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours of his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services Should prepare such a penal for all Tehsils and Districts as well.
9) Copies of all the documents including the memo of the arrest referred to above should be sent to the Illaqa Magistrate for his record.
10) The arrestee may be permitted to meet his Lawyer during interrogation, though not throughout the interrogation.
11) A police control room should be provided at all District and State headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by officer causing the arrest, within 12 hours of effecting the arrest and at the police control room, it should be displayed on a conspicuous notice board.
12) Failure to comply with the requirements herein above mentioned shall part from rendering the concerned official liable for Court and the proceedings for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

These requirements are in addition to the Constitutional and Statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with safeguarding all the rights and dignity of the arrestee.

IV CONSTITUTIONAL RIGHTS AND REMEDIES AGAINST ARREST

Article 21 and 22 of the Indian 'Constitution deals with the rights and remedies against arrest. Article 21 guarantees to every citizen freedom of life, liberty and lays down "No person shall be deprived of his life, liberty without due process of the law",

In Hussainare Khatoon vs Home Secretary, State of Bihar (1980), the supreme Court held that the procedure by the law should not deprive a person of his liberty and acquitted the accused who was in Judicial custody for a long period for a petty

offence and punishment for his offence would have been two year if proved, but trial delayed 4 year.

In **Rudul Shah's case,** the supreme Court ordered to release him immediately and also ordered the State Government to pay Rs. 30,000 for illegal arrest by the police.

Article 22 deals with the protection against arrest and detention also it provides the following rights to the person arrested:

- Right to be informed the ground of arrest.
- Right to consult and to be defended by a legal practitioner of his choice
- Right to produce before a Magistrate within 24 hrs of his arrest
- Not to be detained beyond 24 hrs without a Magistrate's order.

Note : Section 167 of Cr.PC confers authority to the above Magistrate to extend the police custody if he is convinced that the presence of the person arrested is necessary.

Section 49.57.59 and 436 of Cr.PC corresponds with the above rights

CASE LAW: In State of Punjab Vs. Shukpal Singh AIR (1990) SC 231 it was held if a detune is not given opportunity to appear before the Court within the court may order his release.

In **Anand Prakash Vs. State of V.P. AIR (1990) SC 516** it was held inordinate delay in passing detention order may entail release of the detune.

IV BAIL-Sec. 436, 437, 438 Cr.PC:

Meaning : Bail means release of an accused person from the custody of the Officers of law on furnishing surety or on accepting certain conditions. In other words Bail in its fundamental concept is a security for the prisoner's appearance to answer the charge at a specified time and place. A person released on bail may give a bound himself or any other person may also give his bail for the security of appearance of such person. The person giving bail enters into a contract with a penalty clause to produce the accused before the Magistrate whenever called upon.

Object: The object of bail is to secure the appearance before the Court. As the entire penal provisions is based on the maxim **"Hundred wrong doers may escape from punishment but one innocent should not be punished"** the accused is released on bail during trail as he cannot be detained for long time. The Supreme Court held in **Baby Singh Vs. State of D.P. 1984 SC 527** held that refusal to grant

bail must be rare and therefore it can be said that **"Bail is the rule and Jail is an exception:"**

Legal provisions relating to bail:

Sec. 436 of Cr.PC. explains about the procedure to give bail in bailable cases. Where an accused has committed a bailable offence he is entitled to bail in the simplest way.

Sub-Section of Section 436 Cr.pc. empowers the Court to refuse bail who has been granted bail in case if such person does not comply with terms and conditions of the Bond.

The Order of the Court granting bail must record reasons for granting bail.

Section 437 of Cr.PC. explains the procedure in granting bail in case of non-bailable offences.

Proviso to Sec. 437 Cr.Pc. gives power to Court to release the following person even if the offence charged is punishable with death or imprisonment for life. Viz.,

a) A person under the age of 16 yrs
b) A Woman
c) A sick or infirm person

This is an extraordinary power granted to the Court on humanitarian grounds and also on the principles of natural justice. .

CONSTITUTINAL VALIDITY OF SEC. 437 Cr.PC.:-

In the case of **Nirmal Kumar Vs. State 1972 Cr.L.J. 1582,** the constitutional validity of the differences between Sec. 436 & Sec. 437 in the release of (a) young person (b) women and (c) infirm person was challenged as violative of Art.14 i.e, Equality. The Supreme Court held that the provisions of Sec. 436 & Sec. 437 that the classification between Sec. Sec. 436 (bailable) & Sec. 437 (non-bailable) is based on intelligible difference and hence not violative of Art. 14 of the Constitution. The object of the framers of the Code is not to harass the weak and innocent person, The classification was upheld by the Supreme Court in this famous case.

CANCELLATION OF BAIL :-

Where a person is on bail the Court may cancel the bail granted in the following circumstances:-

a) When he commits the very same offence while on bail.
b) When he intentionally causes obstructions to the police officer or Court Officer.
c) When he intentionally and forcibly prevents the search of place under his control.
d) Where he tampers with the evidence by humiliating, intimidating or threatening the prosecution witnesses.
e) When he tries to abscond or run away to a foreign country or any other State.
f) If he behaves violently in revenge with the Police or Court Officer.

ANTIC ITA TORY BAIL:- Sec. 438 Cr.Pc.:-

Means a bail given in advance.

It is a new provision incorporated in Cr.Pc. in 1973 based on the recommendation of Law Commission.

The object of the Anticipatory Bail is " *The necessity for granting anticipatory bail arises mainly because sometime influential person try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. Apart from false case where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail.*

Only High Court and the Court of Sessions are entitled to grant Anticipatory Bail.

This is not a Constitutional Right but purely based on the discretion of the Court.

Under sub-Section (1) of 438 Cr.PC. a person may apply to the High Court or Court of Sessions for a direction to be released on bail when arrested, if he has reason to believe that he may be released on bail when arrested, if he has reason t believe that he may be arrested on any non-bailable offence.

The a one Courts under sub-clause (2) can release him on bail on such conditions as it may think fit including the following so that he may not tamper the investigation.

a) He shall make himself available for interrogation by Police Officer as and when required.
b) He shall not tamper with any witness.
c) He shall not leave India without permission.

V APPLICABILITY OF THE WRIT OF HABEAS CORPUS

Articles 32 and 226 of the Indian Constitution confers power on the Supreme Court and the high Court respectively to issue the writ of Habeas Corpus calling upon any detaining authority to produce before the Court any person detained so that he may be dealt with according to the process of law.

Habeas Corpus is a safeguard for the individual freedom and it is a prerogative writ directing to produce the body of that person against any illegal detention, restraint or confinement. As no person should be detained illegally and to curb the power of police officers who commits.
Wrongful arrests, this constitutional remedy is provided for in the Indian Constitution.

To whom applicable :-

Any person arrested or detained or kept under unauthorized detention.
The person arrested or his friend or his relative can approach the High Court or Supreme Court requesting to issue the writ of Habeas Corpus.

Refusal of Writ :-

If the person arrested and detained according to the law.
If the person so detained is released from the detention
If the person is arrested or detained' under any preventive dentition Acts
Any person who for the time being is an alien enemy.

IN **Bhim Singh Vs. State of J&K (1958) SC,** in a Habeas Corpus writ, the SC ordered the police to release the MLA Bhim singh who was detained by the police without any valid reason and also directed the State to pay Rs. 50,000 as damages for the violation of his constitutional right.

In **Bhavsagar Vs Sate of A.P. (1993)** the High Court of A.P. ordered the release of Bhavsagar from police custody and also ordered the State Government to pay Rs. 20,000 compensation for wrongfully arresting Mr. Bhavsagar.

SEARCH AND SEIZURE

Content, Method and resources required:

The word 'Search' generally means looking for a thing and 'Seizure' means taking possession of the thing physically for which search is made. For the purpose of investigation, search means the examination of a man's person or the premises to discover evidence and material objects to connect the accused with the offence he has committed. A successful search, not only will deprive the offender of the enjoyment of the property but also fix him with the crime, which he committed. The offenders always conceal the material objects either in a cavity caused by nature or by artificial means. It may also be done by blatant display of things; The power of search is one of the most important powers conferred on an I.O. or an officer in-charge of a Police Station by law. This power is even greater then the power of arrest, as arrest can be made even by a private person if a cognizable and non-bailable offence is committed in his presence but a private person has no power of search.

Search : To look for wanted person and material - includes examination of individual's person and premises.

Seizure: To take possession physically of material recovered in search.

Constitutional and legal provisos:

Under Article 19(1) of the Constitution of India, a person is guaranteed the Fundamental Right of possession and enjoyment of his private property. This clause of the Article protects the right to acquire, hold and dispose of property. The power of search and seizure as contemplated in Cr.PC affects the right to hold property. As per Art. 19(5) the right of a person to hold property is not an absolute right and is subject to a certain 'reasonable restriction.' In M.P.Sharma Vs. Satish Chandra (AIR 1954 SC 300) the supreme Court observed:-

"The search by itself is not a restriction on the right to hold and enjoy property. No doubt the seizure and carrying away is a restriction of the possession and

Such Police Officer, if subordinate to the officer in-charge of a Police Station shall forthwith report the seizure to that officer."

The word 'any offence' shows that even though the offence is non-cognizable, the Police may seize property found under suspicious circumstances (Babulal A 1954 or 25). The suspected property must be seized by the Police Officer himself and he cannot order another to do it (Bithal 15 Cr.L.J. 177).

Legal formalities to be followed before, during & conducting search and seizure

The following instructions and procedure may be useful for effective searches:
Action before the search

- The officer concerned should know the place to be searched thoroughly and if possible he should reconnoiter it before starting.
- He should take search list forms, sealing wax, scale etc., with him.
- Journeys to the place should be quick but at the same time he should not arouse suspicion in the minds of the people of the locality.
- On reaching the police he should mount the guard at the place of exit and entrance to prevent the escape of the offender.
- Two respectable persons of the locality or of any other locality who are willing to act as witnesses should be invited to witness the search. The witnesses should be independent.
- Before entering the house the Police Officer should disclose his identity and intimate the purpose and the object of the search. The searching officer has the right to break open, If on demand, ingress is not allowed.
- All the members; of the searching party should offer themselves to be searched by the occupant of the house, who should be asked to take of the witnesses also.
- The Police Officer should not take unnecessary person with him.

Legal provisions relating search and seizure
Search without warrant

Sec. 47 Cr.PC - Search of a place entered by person sought to be arrested.
Sec. 51 Cr.PC - Search of the person of arrested individual.
Sec. 165 Cr.PC - Search of premises within the limits of the SHO in emergent cases. . .
Sec. 166 Cr.PC - Search of the premises beyond the limits of the SHO in emergent cases.

Search with warrant

Sec. 93 Cr.PC - Search for documents.
Sec. 94 Cr.PC - Search for :-

- Stolen property
- Counterfeit currency
- Forged documents
- False seals
- Obscene objects
- (u/s 292 IPC)

Sec. 95 Cr.PC - Search for forfeited documents u/s 124-A 153-A,153-B,292 and 293 IPC

Sec. 97 Cr.PC - Search for a person wrongfully confined.

Seizure of property

Sec. 102 Cr.PC says -

"Sec 102 power of police Officer to seize certain property"
Any Police Officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which creates suspicion of the commission of any offence.

Action during the search

Residents of the house including the women folk should be asked to collect at one place but they should never be out of sight.

At least one member of the house should remain present during the search.

Search should be taken in spiral methods, i.e. clockwise or anti=clockwise so that no place is left unsearched.

Spiral method - This method is mainly intended for indoor searches. In this method, the term technique is utilized with good results, although a lone searcher can also adopt this method. The searchers follow each other along the path of a spiral form the door of a house and spiraling in towards the center. This method ensures thorough coverage of the area by more than one officer. If this system is enjoyment of the property seized. This, however, is only temporary and for the limited purpose of investigation. A search and seizure is, therefore only a temporary interference with the right to hold the premises searched and articles seized. Statutory regulation in this behalf is necessary and reasonable restriction cannot peruse (by its nature) be considered to be unconstitutional. The damage if any, caused by such temporary interference,; if found to be in excess of legal authority, is a matter of redress on other proceedings."

The witnesses for search should not be left outside and they should remain present with the Police Officer taking the search.

All possible place should be searched and newly excavated places should be carefully scrutinized.

While making the search the searching officer should remain alter and read the indications given by the occupants of the house as sometimes the occupants go on gazing at a particular place where the property is concealed or they keep moving in the same area.

When any property is recovered, it should be carefully noted, labeled and signed by the witnesses so that subsequent identification may be made by them.

Search list should be prepared on the spot.

It should be read and explained to the witnesses and their attestation should be obtained thereon.

A copy of the search list should be furnished to the house owner under proper acknowledgment.

The searching officer should be very ethical during the search and should not plant any incriminating article to fabricate evidence against any person. There are instances where the IOs have fabricated evidence by planting incriminating articles.

(3) Action after the search

Before leaving the place, the Police party and the witnesses should offer themselves to be searched by the occupant of the house and the property seized should also be shown to him.

The record of the search should be sent to the concerned Magistrate immediately.

Disposal of the property: All property seized under the panchanama by a Police Officer should he produced before the Magistrate for enquiry or trail as the case may be. The property seized under Section 102 Cr. P.C should also be sent to the Court for disposal as deemed fit by the Court.

Need for proper use of power of search:

The following points may also be kept in mind as suggested by the following rulings:-

The police officer is restrained from conducting anything in the nature of general search (Remprakash V s. Emperor 1944 Patna 228).

If is a vicious thing to allow a Police Officer to have power to conduct a general search without knowing what he is going to search for but merely to see if he can find anything incriminating to a person's house (Mangal Singh Vs. Emperor 1939 Lahore 200)

Roving searches conducted without initial record regarding the places to be searched and the things for which the search was to be made do not come under the provisions. Of sec. 165 Cr.P.C. (Gangaram Vs. State 1944 N.V.C. 3862).

The Supreme Court held that Sec. 100 Cr.PC. would not apply to search of a person but only to search of a place (Sunder Singh Vs. State of U.P. 1965 SC 80).

The Allahabad High Court held that no witnesses are necessary for search of a person.

Conducting search for a person

Section 47 Cr.P.C (Search for a person) - This Section reads as follows:

Sec. 47 Search of a place entered by person sought to be arrested-

> If any person acting under a warrant of arrest, or any Police Officer having authority to arrest, has reason the believe that the person to be arrested has entered into, or is within any place, any person residing in, or being in charge of such place shall, on demand of such person, acting as aforesaid or such Police Office, allow him free ingress there to, and afford all reasonable facilities for a search therein.
>
> If ingress to such place cannot be obtained under Sub-Section (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a Police Officer to enter such place and to break open any outer or inner door or window of any house or place, whether that of the person to be arrested, or of any other person, if after notification of his authority and purpose. And demand of admittance duly made, he cannot otherwise obtain admittance:
>
> Provided that, if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom; does not appear in public, such person or Police Officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.
>
> Any Police Officer; or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein."

As per Section 47 Cr.pc. any Police Officer having authority to arrest any person accused of an offence can search a place where the accused is hiding without a warrant of search. If the Police Officer is not allowed to enter the place, he can use force to gain entry to arrest the accused. If such place is in occupation of a female, the Police Officer should give her sufficient notice to withdraw herself in carrying out his duties (Ramesh 41 C 350, 376). If in order to arrest suspected person, the Police Officer enters into a building, his action *prima facie* justifiable (Daitari A 1965 Orissa 97). Where the door is open, it is not required that the Police Officer should wait and make a formal demand to the occupier for entry in the house.

Sec. 51 and 52 Cr.P.C. regarding search of person read as-

"Sec. 51 Search of arrested person

Whenever a person is arrested by a Police Officer under a warrant which does not provide for taking of bail, or under a warrant, which provides for the taking of bail, but the person arrested cannot furnish bail, and Whenever a person is arrested without warrant or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

The Police Officer making the arrest or, when the arrest is made by a private person, the Police Officer to whom he makes over, the person arrested, may search such person, and place in safe custody all articles, other then necessary wearing apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the Police Officer shall be given to such person.

Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency."

This Section provides that no warrant is needed to search under certain circumstances a person who has been arrested by a Police Officer or, made over to Police Officer by a private person after the arrest. When the person of a female is to be searched, it should be searched by another female and it should be done with strict regard to decency. If any articles were seized from any such person, a receipt for the same should be given to him.

Sec. 52 Cr.P.c. provides that whenever a person is arrested under the Code of Criminal Procedure, the officer making arrest of such person may seize any offensive weapon found in his possession and produce the same before the Court along with the arrested person.

Searched for person wrongfully confined

Section 97 Cr.P.c. authorizes any District Magistrate, Sub-Divisional Magistrate or Magistrate of the First Class of issue a search warrant for a wrongfully confined person and the person if found shall be immediately produced before the Magistrate.

Procedure for Search. Section 100 Cr.P.C reads:-

"Sec. 100: Persons in change of closed place to allow search"

Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of such place, shall, on demand of the officer or other person executing the warrant, and on

production of the warrant allow him free ingress there an afford all reasonable facilities for a search therein.

If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by Sub-section (2) of Sec. 47.

Where any person in or about such place is reasonably suspected of concealing about his person any article for which search warrant was made, such person may be searched any if such person is a woman, the search shall be made by another woman, with strict regard to decency.

Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or any other locality if no such in habitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them to do so.

The search shall be made in their presence, and a list of all thing seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witness of the search shall be called to the court unless specially summoned by it.

The occupant of the place searched, or some person in his behalf, shall in every instance, be permitted to attend during the search, and a copy of the list prepared under this Section, signed by the said witnesses, shall be delivered to such occupant or person.

When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.

Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this Section, when called upon to do so by any order in writing delivered or tendered to him, shall be deemed to have commited an offence under Section 187 of the Indian Penal Code(45 of 1860).”

Conducting search of premises

Power of search:

Search may be conducted to seize objects which will connect the accused with the offence which he has committed, for example, stolen property in cases of theft and burglary; weapon of offence in case of murder robbery, dacoity, 'riots and die, ink, etc., in case of counterfeiting of notes, Search may also be conducted to apprehend the accused a well as to recover a kidnapped or abducted person. The provision contained in the Cr. P.C. in respect of search is discussed hereunder:

Search of a place (Sec. 165 & 166 Cr.P.C.): Law contemplates that all searches should be conducted under a warrant of search obtained from a competent Magistrate, but in emergent cases where there may be immediate necessity of search and there being not time to obtained the warrant from Magistrate, powers of search are given to Officer in charge of a Police Station or a Police Officer making an investigation of an offence to conduct searches without a warrant.

Example: If an investigating Officer in a far away place gets information that stolen property is concealed in a house in the village and it is apprehended it may be removed to some other place if it not seized immediately, he can conduct a search without warrant u/s 165 Cr.PC

The Section read as-

"Sec. 165: search by Police Officer -

Whenever an Officer in charge of a Police Station making an investigation into any offence which he is authorized to investigate may be found in any place within the limit of the Police Station of which he is attached, and such thing cannot in his opinion be otherwise obtained, without delay, such Officer may after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limit of such station.

A Police Officer proceeding under sub-section (1) shall if practicable conduct the search in person.

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

The provision of this code as to search contained in section 100 shall so far as may be, apply to a search made under this section.

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

The contents of the Sec. 165 Cr.PC can be summarized into the following ten points.

The power of search without warrant is given to the Officer in charge of the Police Station or an Officer investigation a case.
Search may be necessary for investigation.
The offence must be such as a Police Officer is authorized to investigate. i.e cognizable offence.
Reasonable grounds must exist for believing that the thing required will be found in that place.
There would be undue delay in getting the thing in other way.
Ground of belief as to the necessity of search must be previously recorded and communicated to the Magistrate forthwith.
The article of search must be specified, as far as possible in the record a Procedure of the search may be adopted as prescribed in section 100 Cr.PC
Copies of the record made, i.e (I) the reason for conducting the search without warrant, (ii) ordering the subordinate to conduct the search, and (iii) the search list should be sent to the Magistrate empowered to take cognizance of the offence.
The search should be within the limit of the Police Station of the Officer investigating the case.

Sec. 166 Cr.PC - this section enables an Officer in charge of a Police Station to have a search made within the limits of another station through the Officer in charge of that station who will act as laid down in Sec. 165 Cr.PC

In emergent case, the Officer in charge of one Police Station may search or cause to be searched places within the limits of another Police Station subject to the conditions and procedure laid down ills 165 and 100 Cr.PC

Search warrant for document (Sec. 93 Cr.PC)

"Sec. 93 when a search warrant may be issued
1)

- Where any court has reason to believed that a person or whom summons or order under section 91 or a requisition under sub-section (1) of Sec. 92 has been or might.

- where such document or thing is not known to the court to be in possession of any person or where the court consider that the purposes of any enquiry, trial or other procedure under this code will be served by general search or inspection
- it may issue a search warrant; and the person to whom such warrant is directed, may search or inspect; in accordance therewith and the provisions hereinafter contained.

2) The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspections shall extend; and the person charge with the execution of such warrant shall then search or inspect only the place or part so specified.

3) Nothing contained in this Section shall authorize any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other, thing in the custody of the postal or telegraph authority.

However, for a document, parcel or other thing in the custody of the postal or telegraph authority, only District Magistrate or Chief Judicial Magistrate can issue the warrant.

Search of a place for stolen property (Sec. 94 Cr.P.C.)

This Section authorise the District Magistrate, Sub-Divisional Magistrate or Magistrate of First Class to issue a search warrant for stolen property, counterfeit currency notes, forged documents, false seals and obscene objects (as contemplated u/s 292 IPC) etc.

Under this Section, the Court is authorized to issue search warrant to any Police Officer above the rank of a Constable.

Search for forfeited publication (Sec. 95 Cr.P.C)

The section authorizes any Magistrate to issue a search warrant to any officer not below the rank of Sub-Inspector to seize any newspaper or book or by document, which the State Govt. by notification declared to be forfeited. (Documents includes any painting, Drawing or photograph or visible interpretation)

Criteria for forfeiting publications u/s 95 Cr.P.C. are that they should be punishable u/s 124-A or 153-A or 153-B or 292 or 293 or 295-A IPC, the contents of which are briefly as follows:-

Sec. 124-A IPC refers to amongst others any written matter bringing hatred or contempt or exciting disaffection towards to Govt. of India.

Sec.153-A IPC refers to among other things, any written matter promoting enmity

between different groups on grounds of religion, race, language etc.
Sec.153-B IPC deals with imputations, and assertions prejudicial to notational integration.

Sec.292 IPC provides penalty for the sale, import r export or advertisements of obscene books.

Sec.293 IPC deals with sale or distributions of obsence objects to young person.

Sec.295-A IPC deals with deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious belief.

For greater certainty and security. It has been made obligatory that

At least two independent and respectable witnesses preferably of the locality or of any other locality who are willing to be witness should be present.
The search should be conducted in their presence and the list of the things seized should be signed by the witnesses.
The occupant of the place or his representative shall be allowed to attend during the search and a copy of the search list signed by the witnesses shall be given to him when any person is searched u/s 100(3) Cr.P.C a copy of the list of things taken possession of, shall be given to him.

The rule as to offering the search of the persons of the Police Officers and of the search witnesses before entering the house should not be neglected so that there may be no suspicion that anything has been planted (Mohod. Ali 55 A 557; Sohan 34 Cr.L.J 56(8). Persons shall not be allowed to enter the room without being searched (Sultan 59 CWN 391). Failure to observe the formalities of personal search of the searching officer and witnesses renders the recovery highly suspicious (Kpil A 1969 SC 53). When the failure to comply strictly with the provisions of the Sections is satisfactorily explained, it does not make the search illegal (Stagopala 23 MLJ 455; Johnson A 1957 AP 829).

CONFESSIONS

What is Confession?:

The expression "Confession" has not been defined in the Evidence Act. Stephen defines it thus -

"A confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed the crime."

Privy Council explained "confession' in the following words-

"A confession must either admit in terms of the offence or at any rate substantially all these facts which constitute the offence. An admission of a incriminating fact, even a conclusive "incriminating fact, is not of itself a confession."

Confession is very valuable piece of evidence. It reduces the workload of the Court and lengthy procedure. A conviction can be based on a confession if believed to be made truly and voluntarily. In view of this some safeguards are provided in Law against the admissibility of a confession.

The Law relating to Confession is contained in Sec. 24 to 30 of Indian Evidence Act.

Difference between Confession & Admission:

(Sec. 17 of Indian Evidence Act): Admission defined as follows:

An admission is a statement, oral or documentary, which suggests an inference to a fact in issue or relevant fact. In criminal matters an admission is a statement, which incriminates the accused in some way or links him with the offence in some manner. When an admission is sufficient in all respects as to hold the accused guilty of offence it becomes a confession.

Example: (a) I purchased poison on a particular day is an admission
I administered that poison to 'X' is confession.
(b) If I am the accused, I had stated that I purchased poison and administered it to B who died subsequently. It is a confession.

Types of Confession:

There are two types of confession (a) Judicial and (b) Extra-judicial.

Judicial confessions are those made before a Magistrate or in a Court in the course of legal proceedings (Sec. 164 Cr.P.C). All the other confessions are extra-judicial.

Evidentiaa value of confession:

Judicial opinion seems to differ against the weight of confession in the scale of proof. Some judges of eminence denounce it as weak and suspicious while others describe it as the highest and most satisfactory proof of guilt.

a. Judicial confessions stand on a higher footing. Observance of precautions by the Magistrate at the time when he records the confession lends assurance to its voluntary character.
b. Extra-judicial confessions are subject to imperfections, mistakes and are also easy to concoct. So the degree of acceptability has to differ from judicial or extra-judicial confessions. Courts are disinclined to act upon extra-judicial confessions and, as a general rule, they seek corroboration, with abundant caution. Conviction can be based on extra-judicial confession if it inspires confidence. (Maghar Singh case 1973 SC 1320). If the extra judicial confession is cogently proved to be voluntary and true it is efficacious proof of guilt and can be relied on for founding a conviction (Hardayal case 1976 SC 2055 (OP).
c. 'Retracted Confession'. The accused makes the confession and subsequently goes back at a later stage. If the accused adheres at the trial to a previous judicial or extra judicial confession and the Court believes it to be voluntary and true, it can be acted upon without corroboration.

A retracted confession is always open to a great suspicion. It has been held that it is unsafe and unwise to act on a retracted confession alone without independent corroboration. If the reasons given by the accused for retraction are false, a conviction can be based on it. An accused cannot retract a statement without adequate reasons. If torture by the police is given as reason the fact of torture must be supported by evidence. The use of retracted confession against the maker does not contravene Art. 20 (3) of the Indian Constitution. (A.I.R. 1953 S 131).

When confession is not admissible:

1) A confession made under a promise, threat or inducement from a person in authority (Sec.24 lEA)
2) A confession made to a police officer even if made in the presence of a Magistrate (Sec. 25 lEA)
3) A confession made even to a private person while in police custody and no in the immediate presence of the Magistrate (Sec. 26)

But the following confessions are admissible:.

1) A confession made to any person other then police officer while not being in police custody (Sec. 26 lEA)
2) A confession made to police officer while in custody leading to the discovery of any fact (Sec. 27 IEA)
3) A confession made after the removal of impression caused by threat, promise or inducement. (Sec. 28 IEA)
4) According to Sec.29 if such a confession is otherwise relevant it does not irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practiced on the accused person for purpose of obtaining it or when he was drunk or because it was made in answer to questions which he need not have answered, whatever may have been the format of those questions or because he was not warned that he was not bound to make such confession and that evidence of it might be given against him. Sec.29 is an exception to the general rules contained in Sec. 24, 25, 26, 27. The confession statement though it is irrelevant becomes relevant in the following cases:

   The confession obtained by making a promise.
   The confession by playing fraud.
   The confession obtained by putting under the influence of intoxication.
   During the course of interrogation
   Without administering any warning.

5) The normal rule is that a confession made by a accused person can be used only against him. But an exception to this rule is provided in Sec. 30. A confession made by any accused person affecting himself and co-accused when they are tried jointly, can be taken into consideration by the Court. e.g. A & B are jointly tried for the murder of C. It is proved that A said "B and I" murdered C. The Court may consider this confession against B also. This relates to the confession made before the commencement of the trial, the confession so made during trial does not come under this Section.

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REMAND AND CUSTODY

1 Meaning :-

REMAND in common parlance, means to send back. With respect to Criminal Law, remand denotes sending back an arrested person to Custody pending investigation or trial. It means authorized detention. Remand usually signifies the end of Police Custody and the beginning of Judicial Custody.

CUSTODY means the state of being guarded. Custody may involve detaining of the person arrested under safety especially by the police. Custody also may be legal confinement by Court Order.

II CONSTITUTIONAL SAFEGAURDS AGAINST FREEDOM TO CITIZENS

Article 20 provides protection in respect of conviction for offences :-

1) **Ex Post Facto Laws:-** No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence nor be subjected to a penalty greater then that which might have been inflicted under the law in force at the time of commission of the offence.
2) **Double jeooardv:-** NO person shall be prosecuted and punished for the same offence more than once.
3) **Protection against self incrimination:-** No person accused of any office shall be compelled to be a witness against himself.

Article 21 guarantees every citizen freedom of life, liberty and property and lays down **"No person shall be deprived of his life, or personal liberty without due process of the law".**

Article 22 deals with the **protection against arrest and detention** also provides the following rights to the person arrested:

1) Right to be informed the ground of arrest. Art 22(1)
2) Right to consult and to be defended by a legal practitioner of his choice Art. 22(1)
3) Right to produce before a Magistrate within 24 hrs of his arrest Art. 22(2).
4) Not to be detained beyond 24 hrs without a Magistrate's authority Art 22(2).

Sec. 303 Cr.P.C. deals with the provisions of legal aid to accused at state expenses in certain cases.

III WHY WHOM & FOR WHAT PURPOSE REMAND REQUIRED :-

If he behaves violently in revenge with the Police or Court Officers.
Where he is interfering with the investigation.
Where investigation cannot be completed within the period of 24 hours and there are grounds for believing that the accusation or information is well founded.
Where he tampers with the evidence or humiliating, intimidating or threatening the prosecution witnesses.
When he tries to abscond or run away to foreign country or any other State.

IV LEGAL PROVISION RELATING TO REMAND:-

Section 167 of the Code deals with the provision relating to police custody while sec. 309 deals with the provisions of judicial custody.

Sec. 167 Cr.P.C.

If an investigation cannot be completed within the time fixed under Sec. 57 Cr.P.C i.e., 24 hours, duty cast upon the Officer lncharge of the investigation to produce the accused to the nearest Judicial Magistrate and also transmit a copy of the entries in the diary. Sec. 167 (1).

The Magistrate to whom an accused person is forwarded, may authorize detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days. Sec. 167 (2).

Suppose the Magistrate not having jurisdiction to try the case or commit it for trial, but considers further detention necessary, he may order the accused to forwarded to a Magistrate having such jurisdiction.

The nature of custody can be altered from judicial to Police custody or vice versa during the first period of 15 days mentioned in Sec. 167 (2).

If the detention of the accused is required even beyond 15 days, he shall be so detained, but not in police custody, but only in judicial custody. This further detention for a total period shall not exceed 90 days where investigation relates

to an offence punishable with death, imprisonment for life or imprisonment for not less than 10 yrs. and 60 days where investigation relates to any other offence.

After the expiry of this extended period, the accused person shall be released on bail if he is prepared to furnish bail if charge sheet is not filed.

In **Directorate of Enforcement Vs. Deepak Mahajan, 1994 (2) ALT (Crl.) 173,** it was held that the Magistrate has jurisdiction under Sec. 167 (2) to authorize detention of a person arrested by any authorized officer of the Enforcement under FERA and taken to the Magistrate in compliance of Sec. 35 (2) ofFERA.

In **Dharmanand Vs. State 1994 (1) ALT (Crl.) 10 (NRC),** it was held that the Right of accused to be released on bail for non-filing of charge sheet within 90/60 days as the case may be is absolute. In this case, accused was charged for the offence of Sec. 302 & 307 IPC. It was further held, that this right to bail couldn't be taken away on subsequent filing of charge sheet or by remand.

Sec. 309 Cr. P. C.

Normally, in every Inquiry or Trail, the proceedings shall be he held as expeditiously as possible and also examination of witnesses once began shall be continued on day to day until all witnesses in attendance have been examined. But on certain occasions, if it is not practicable to do so or continue proceedings, Court may adjourn the proceedings after recording reasons for such adjournments. During such adjournment, if any accused is in custody, Magistrate shall remand the accused for a period of 15 days at a time.

Sec. 309 Cr. P. C. comes into operation after taking cognizance and not during the investigation and hence, the remand under this provision can only be to Judicial Custody. 1992 (2) Crimes 310.

WHEN REMAND CAN BE EXTENDED:-

If further material evidence to be collected at the instance of the accused.

If the accused has volunteered to get the stolen property recovered.

If the accused offered to produce implements used in the offence viz., weapons.

If the accused has offered to point out co-accused.

Any other circumstances requiring the presence of the accused.

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ESCAPE FROM THE LAWFUL CUSTODY

Escape from the custody: It is almost a challenge to the authority of law, which demands that every person committing an offence must submit to the hands of the law. Anyone escaping from the a lawful custody, residing such custody or rescuing from such custody flouts the authority of the law.

The custody of a person is said to be lawful when the custody is approved by a law. Therefore, to constitute lawful custody the arrest must lawful.

Legal aspects: Salient terms used in the different Section of the IPC relating to the offence :-

(a) Custody	Does not necessarily mean detention or confinement but include constructive and even symbolic custody.
(b) Lawful custody	To constitute Lawful custody, the arrest must be lawful. Legal form of arrest The Police Officer or other person making an arrest shall actually touch or confine the body of the person to be arrested, unless the person submits to the custody by word or action.
i) Sec. 46 Cr.PC	
ii) Art. 21 & 22 (1)	(a) No person to be deprived of his liberty excepting according to the legal procedure of the constitution (b) No person can be taken into custody without being informed of the ground of the arrest.

Resistance - Obstruction :

- The resistance or obstruction must be intentional and on the part of the person escaping.
- Trivial resistance to unlawful force in causing arrest does not amount to resistance or obstruction within the purview of the offence.
- Merely evading arrest does not amount to resistance or obstruction.

Rescue : The person charged with rescuing must have knowledge that the person rescued is in custody.

Escape : Escape of a person legally arrested but left unguarded is punishable. Even when the escape is affected by consent, connivance or within knowledge of the person keeping in custody the person escaping is equally guilty.

Section of Law dealing with the officer:

Section. 224 IPC : i) Intentional resistance of illegal obstruction to lawful apprehension or Custody.

ii) Escape or attempt to escape from lawful custody. While resistance must be intentional, the obstruction must be both illegal and intentional.

"Illegal" defined under **Section 43 IPC:**

(i) An offence or
(ii) Prohibited by law or
(iii) That which furnished ground for civil action.

Section.225 IPC: *Resistance or obstruction to lawful apprehension of another person:*

(i) Intentional resistance or obstruction to lawful apprehension.
(ii) Rescue or attempted rescue of a person from lawful custody or detention.

Intention: Intention is an important ingredient in the Section. If the arrest/custody is not lawful, then the resistance or obstruction or rescue will be protected under General Exceptions - Right of private defense.

Sec.225-A IPC: *Omission to apprehend or sufferance of escape, on part of public servant, in cases not otherwise provided for:* Whoever being a public servant legally bound as such public servant to apprehend or to keep in confinement any person in any case not provided in Sec. 221, 222, 223 or any other Law omits to apprehend that person or suffers him to escape from confinement.

If he does so intentionally, with imprisonment of either description for a term which may extent to 3 years or with fine or with both and if he does so negligently, with imprisonment for a term which may extend to two years, or with fine, or with both.

Sec.225-B IPC: i) Resistance or obstruction to lawful apprehension
ii) Escape or attempted escape from lawful custody.
iii) Rescuing or attempting to rescue from custody.

Where the cause for which custody or arrest made is not an offence within IPC or any local or special law but for other cause like detention for being bound over or under warrants from Civil Courts, etc., which are not offences.

Section 221. 222. 223. 223-A IPC .: Allied and subservient to offences under Section 224, 225 and 225-B IPC and deal with public servants intentionally omitting

to arrest when legally bound to arrest and negligently suffering escape of offender from custody.
Sec. 60 Cr.PC .: *Power on escape, to pursue and retake:*

1) If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may, immediately pursue and arrest him in any place in India.

2) The provisions of Section 47 shall apply to arrests under sub-Section (1) although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

Sec.128 IPC.: *Public servant voluntarily allowing prisoner of State or war to escape:* Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Sec.129 IPC.: *Public Servant negligently suffering such prisoner to escape:* Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Sec.130 IPC.: *Aiding escape of rescuing or harboring such prisoner :* Whoever knowingly aids or assists any State prisoner of prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbors or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with imprisonment for life, or with fine which may extend to five hundred rupees, or with both.

Sec 186 IPC.: *Obstructing public servant in discharge of public functions:* Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Common types of escape:

(i) Slipping offhand cuffs or braking off handcuffs, chain or rope.
(ii) Escape from lavatory.
(iii) By digging manhole in lockup or bending or cutting iron bars of lockup.

(iv) Escape from hospital.
(v) Escape in crowds or melee.
(vi) Forcible rescue.

While category (vi) is rare, the other causes are invariably due to slackness or negligence in charge of the custody.

Who is a public servant?

According to Sec. 21 IPC, a public servant means -

a) Commissioned Officer
b) Judge
c) Officer of Court of justice
d) Juryman, assessor, member of panchayat assisting Court or public servant
e) Arbitrator working under Courts Order or competent public authority
f) A person keeping any person in confinement under authority
g) Govt. officer who has to prevent offences, give information of offences, investigate, produce accused in Court, etc.

Types of prisoners and different custodies:

1) State Prisoner
2) Prisoner of war
3) under trail prisoners in jail
4) Convicts in jail
5) Arrested persons in police custody
6) Prisoner in hospital for treatment
7) Person set to judicial remand during investigation.
8) Person taken under police custody under Courts Order
9) Custody during escort for shifting prisoners from one place to another place.

Role of the routing in preventing escapes:

1) Most of the escapes occur due to non-implementation of the routine actions prescribed in the police Manual or Regulations or Standing Orders for the proper care of the prisoners.
2) The routine action of the police should never be ignored as apparently pointless and blundering
3) The routine action which may seem purposeless constitutes the professional criminal’s most serious problem.

Precautionary actions embodying the routine:

a. Lockup to be examined every time.
b. Santries must be adequate
c. Arrangements for regular relief and supervision of santries
d. Thorough search of prisoner.
e. Adequate arms to the sentry or escorting party.
f. Examination regarding safety and securing in the prison van.
g. Precaution while taking a prisoner in public transports without reservation of seats.
h. Proper steps are taken for escorting prisoners by road
i. Testing of handcuffs, chains and ropes
j. Extra precautions when a prisoner is dangerous - applying fetters with permission from Magistrate.
k. Not allowing anyone to talk or to approach the prisoner.
1. Use of force to escape when a prisoner resists the efforts of the escort to prevent escape. Application of force 'should be as much as is necessary and incases of absolute and unavoidable necessity (Sec.46(3) Cr.PC)
m. Proper briefing of the, escorting party about the nature of the prisoner, and the locality they ave to pass through.
n. Alertness, at every step and always.

Investigation:

i Prompt pursuit of the fugitive as provided in Sec.60 Cr.PC.
ii Prompt routine information to all concerned giving:

a. full name and alias
b. physical description
c. modus operandi
d. motive
e. associates - past and present - including concubines, girl friends, etc.
f. criminal record, photographs and previous locations.
g. Employment last known and previous employers
h. Relatives, (names and address of all available)
i. Close friends, names and addresses,
j. Physical condition
k. Habits, hangouts, probable resorts, probable places of visit.
1. Case reference.

iii Prompt alerting all police stations and outposts
iv Secret enquiry and unobtrusive watch at likely places.

v Collection of criminal intelligence to locate the absconder.

vi Service of proclamation orders and execution of attachment orders (Sec. 82 and 83 Cr.PC)

vii Simultaneous drives at probable places of resort by surprise.

viii Reference to fingerprint Bureau.

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PRE-REQUISITE CONDITIONS FOR INITIATION OF PROCEEDINGS

Meaning & Importance:

The general rule is that any person who knows of commission of an offence may set the law in motion by lodging a complaint. It is not necessary that he is interested in or effected by the offence. There, are however, certain exception to this general rule contained in section 195 to 199 Cr.PC are most relevant. These section have been enacted to guard against irresponsible and reckless prosecution by private individuals in respect of the offences such as Sec. 494, 498 (a) (IPC) etc.

Legal Provision under Cr.PC to be followed before launching proceedings under IPC offences:

The relevant sections, which lay conditions requisite to initiate proceeding, are contained in sections 190 to 199 Cr.Pc.

Sec. 190 Cr.PC : cognizance of offence by Magistrates:

1) Subjects to provisions of this chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in the behalf under sub-section (2), may take cognizance of any offence:-

   a. on receiving a complaint of facts which constitute such offence;

   b. on a police report of such fact;

   c. on information received from any person other than Police Officer, or on his own knowledge that has offence has been committed.

2) The chief Judicial Magistrate may empower any Magistrate of second class to take cognizance under sub-section (1) of such offence as are within his competence to inquire into or try.

Sec. 191 Cr.PC : Transfer on application of accused: When a Magistrate takes cognizance of an offence under clause (c) of sub-sect on (1) of section 190, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into, tried by the Magistrate, and if the accused or any of the accused, if there be more than one, object to further proceeding before the Magistrate taking cognizance, the case shall be transferred to such other Magistrate as may be specified by the chief Judicial Magistrate in this behalf.

Sec. 192 Cr.PC Making over of cases to Magistrate:

1) Any chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for enquiry or trial to any competent Magistrate subordinate to him.
2) Any Magistrate of the first class empowered in this behalf by the chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the chief Judicial Magistrate may by general or special order, specify, and there upon such Magistrate may hold the inquiry or trial.

Sec. 193 Cr.PC : cognizance of offences by courts of session: except as otherwise expressly provided by the code or by the other law for the time being in force, no Court of session shall take cognizance of any offence as Court of original jurisdiction unless the case has been committed to it by a Magistrate under this code.

Sec. 194 Cr.PC : Additional and Assistant session Judges to try cases made over to them: An additional session judge or assistant session judge shall try such cases as the session judge of the division may, by the general or special order, make over to him for trial or as the high Court may, by special order, direct him to try.

Sec. 195 (1) Cr.PC : NO Court shall take cognizance of-

a. any offence punishable ills 172 to 188 IPC, except on the complaint in writing of the public servant concerned or some other public servant to whom he is administratively subordinate.
b. any offence punishable ills 193 to 196, 199, 200 to 211 and 228, when such offence is alleged to have been committed in or in relation to any proceeding in any Court.....except at the complaint in writing of the Court....

Sec. 172 to 188 IPC broadly relate to contempt of the lawful authority. As per

Sec. 195 Cr.PC, complains in this case can be filled only by the public servant whose order were disobeyed or by his superior officer.
Generally, police officer come across offences ills 174,182 and 188 IPC Sections 174 IPC relate to the disobedience to attend as per summons issued ills 150 Cr.PC
Sec. 182 IPC is prosecution for having given false information.
Sec. 188 IPC is violation of an order promulgated ills 144 Cr.PC
Prosecution ills 174 and 182 IPC, can be filed by the SHO whose order are disobeyed. It is somewhat different in case 188 IPC.

As per the schedule-I of Cr.PC 1973, sections 188 IPC relates to a cognizable offence. All violation of order promulgated u/s 144 Cr.PC by Executive Magistrate are to be prosecuted u/s 188 IPc. Since 188 is a cognizable case, the SHO can register a case u/s 188 IPC and commence investigation. But in view Sec. 195(1)(A) Cr.PC complaints u/s 195 Cr.Pc.

For the purpose of investigation, Sec. 188 IPC, has been made cognizable, but it does not remove the bar u/s 195 (1) Cr.PC. the latter doesn't over ride Sec. 188 IPC (1976 Cr.LJ 922 J & K).

Sec. 195 (b)(i) shows that when offences mentioned there are alleged to have been committed in or in relation to any proceeding in any Court, they can be charged only on a written complaint of that Court or some other Court to which that Court is subordinate.

Therefore, offences for perjury u/s 193 IPC, or false charge u/s 211, can be filed only by the concerned courts.

Whenever happens to hold the post at the time the complaint is filed is regarded as the public servant concerned (AIR 1969, AP 41=1969 Cr.LJ 145 AP).

In this connection, it is relevant to note the difference between Section 182 to 211 IPc. It is also important to know when the police officer can file complaint u/s 211 IPC and when the Court alone can proceed against the accused u/s 211 IPC, as laid down u/s 195 (1) (b)Cr.PC

In order to be held as an offence u/s 182 IPC, it must be established that a person gave information which he knew or believed to be false to a public servant and that he intended thereby to cause such public servant to do or not do what he would have done or not done in the normal course of events.

In order to establish case u/s 211 IPC, it must be shown that the accused institutes or cause to institute the criminal proceeding against a person or falsely charges any person with having committed any offence with intent to cause injury to that person.

Similarly, for offence relating to document tendered in evidence committed by party to the proceeding in Court (Section 463, 471, 474, 476 IPC), the cognizance can be taken only when the complaint is lodge by the concerned Court or its superior Court (Section 195(1)(c)

Sec. 196 Cr.PC : Prosecution for offences against the state and criminal conspiracy

to commit such offence: According to this Section no Court shall take cognizance of

a. Any offence punishable under chapter VI or u/s 153-A IPC, or a criminal conspiracy to commit such offence or any such abetment as is describe in the state Government. (Sec. 196(1)

b. Any offence punishable u/s 153-B or sub section (2) or sub-section (3) of Sec. 505 IPC or a criminal conspiracy without sanction of the central Government or of the State Government or of the district Magistrate. (Sec. 196 (I-A))

c. No Court shall take cognizance of the offence of any criminal conspiracy punishable u/s 120-B of IPC (43 of 1860), other than a criminal conspiracy to commit (an offence) punishable with death, imprisonment for life or rigorous imprisonment for a term of two year or upward, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceeding:

   Provided that were the criminal conspiracy is one to which the provision of Sec. 195 apply, no such consent shall be necessary.

d. The central Government or the State Government may before according sanction (under sub-section (I) or sub-section (I-A) and the district Magistrate may before according sanction under sub-section (I-A) and the State Government or the District Magistrate may, before giving consent under sub-section (2) order a preliminary investigation by a Police Officer not being below the rank of Inspector, in which case such Police Officer shall have the power referred to in sub-section (3) of Section 155. (Sec. 196(3)).

Sec. 197 Cr.PC : The narration of this Section is as follows:

The first part of the Section provide a special protection to a certain public servant charged with committing offence while acting or purporting to Act in discharge of their official duties. As per this protection, before a criminal Court can take cognizance of any such offence, a sanction should have been granted by the appropriate Government. In other words, the appropriate Government must be satisfied that there is prima-facie case for the prosecution. This prima facie satisfaction has been interposed as a safeguard before the actual prosecution commences (1962(2) Cr.Ll 510).

The object of the Section is to avoid vexatious proceedings against public servant and to secure him and to consider opinion of superior authority before a prosecution is launch. But this qualified protection does not apply to all public servants and to all offences. Before the Section can be invoked two condition must be satisfied.

1) the accused must be a public servant of the kind mentioned in the Section, i.e., he must be a judge or Magistrate or a public servant not removable from his office save by or with the sanction of the State Government are the Central Government; and
2) the offence must be committed by the accused while acting or purporting to Act in the discharge of his official duty.

The word public servant denotes the same as defined U/S 21 IPC

1) With reference to the first condition in order that the protection under the Section may apply, the public servant must be removable from office only by or with the sanction of the State or Central Government and not by any other authority.

   The word "removable from the office" refer not to the particular vacancy to which a person has been posted but to the office to which he has been appointed.

   This section applies and sanction is required whether a public servant is in service or retired.

   The use of expression "who is or was" clearly shows that, if the public servant concerned at the time commission of the offence, the fact that he subsequently ceases to be so does not obviate the necessity of the sanction. The protection afforded under the Section would be rendered illusory, if it were open to a private person harboring a grievance to wait until the public servant ceased to hold his official position and then to lodge a complaint. The protection considered by Section 197 is justified by the public interest in seeing that official acts do not lead to needless or vexatious prosecution.

2) With reference to the second condition, it is to be seen that the Section applies and the protection is given only when the offence is committed by the Magistrate, or judge or public servant while in discharge of his official duties. Where a judge used insulting defamatory language in the course of the trial of the case, the Section does not apply to the offence.

   Similarly, in a case where a public servant was entrusted in his official capacity with certain moneys he committed criminal breach of trust in respect of such moneys, it was held that the offence does not being one which could be committed only by a public servant, the Section did not apply.

   The section applies only of the act complained of is itself done by public servant in pursuance of his public office although it may be in excess of the duty. It is a question of fact in each case whether the alleged offence has been

committed in discharge of official duties or not. The Section does not mean that the very Act which constitutes the offence must be the official duty of the public servant concerned. If such were the case the Section would have no operation at all same time be an official duty as well as offence (1955 Cr.LJ 857 SC). Thus, the Section contemplates an act which is done by a public officer in official capacity but which, at the same time, is neither his duty or his right as such public officer to do so.

3) The sanction of the authorities (District Magistrate as amended up to date) is necessary to prosecute an accused u/s 3 and 5 of Explosive Substance Act (it may be noted that this sanction is required before the trial begin).

As per the notification of G.O. 3583 of Government of India, dated 2.12.1978, the President in consultation with all States, hereby entrusts to all District Magistrate in the State the function of the Central Government u/s 7 of the Explosive Substance Act, 1908.

In various other special Act such as Prevention of food Adulteration Act, Extradition Act, Police Act, etc, no prosecution can be launched against the accused without obtaining prior sanction from the appropriate authority. No prosecution against approver can be started unless sanction for his prosecution has been obtained from the High Court. (In Mohan Lal Ram Singh Thakur Vs. Chief Executive Officer, corporation of Jabalpur, it was observed that "sanction is nothing but a permission that the complaint be filed").

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CASE DIARY

What is Case Diary?:

A Case Diary or Special Diary, as it is also called is a systematic report compiled chronologically on day-to-day basis as envisaged in Sec.172(I) Cr.P.c. by the investigation officer commencing from the time the investigation is started and continuing until the case is finally disposed off from the police file.

Importance:

1) Case diary is a chronological record of the progress of investigation.
2) Writing Case diary is statutory and legal obligation.
3) It is a record of reference for the La.
4) It helps to decide further course of action.
5) It helps subsequent I.O. to understand the case,
6) It provides as a basis for superior officers to supervise and guide the La.
7) It is as important as F.I.R
8) If written on day-to-day basis without delay, sanctity and credibility is attached to the evidence collected in investigation.

Different columns in Case diary:

1) F.I.R. Number and Date of F.I.R.
2) Section of Law
3) Serial Number of C.D.
4) Date of C.D.
5) Date and number of previous Case Diary
6) Name of the complainant/informant
7) Name of the deceased (victim)
8) Time of commencement of investigation and time of conclusion.
9) Placed visited
10) Name of accused
11) Name of persons examined during the day.
12) Total number of persons examined.
13) Details of investigation conducted during the day

Provisions of Law relating to Case Diary:

Sec.172(l) Cr.P .C. *:Diary of proceeding in investigation:* Every police officer making an investigation under this Chapter shall day by day enter his proceedings of the investigation in a diary, setting forth the time at which the information

reached him, the time at which he began and closed his investigation, the place or places visited by him. And a statement of the circumstances ascertained through his investigation.

Sec. 172(2) Cr.P.C.: Any Criminal Court may send for the police diaries of a case under inquiry or trail in such Court, and may such diaries, not as evidence in the case, but to aid it in such inquiry or trail.

Sec. 172(3) Cr.P.C. : Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section l45, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply.

Statement of Witnesses: (i) Sec. 160 Cr.P.C. empowers the investigating officer to secure attendance of witnesses to the crime investigated for examination and Sec. 161 Cr.P.C. empowers him to examine such witnesses orally in the course of investigation and if necessary to record their statements. Sec. 161 further enjoins that a witness is bound to answer truly when questioned by the police excepting the questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. The police officer recording the statements must make a separate and true record of each witness in the first person. Such statements shall not be signed by the witnesses. Taking signature of witness is expressly prohibited by Sec. 162 Cr.p.C. A witness making a false statement is liable to prosecution under Sec. 193 I.P.C.

(i) Avoid omissions of important details - they are taken as contradictions (Expl. to Sec. 162 Cr.P.c.)
(ii) No precis or condensed version of the examination of all the witnesses should be recorded. Must record what each witness says (AIR 1950 Cal.565).
(iii) Each statement must be capable of being read by itself without necessarily looking into the statement of others (AIR 1954 Mys.81).
(iv) The failure to make a separate record of the statement of each witness would be a violation of the mandatory provisions of Sec. 161(3) Cr.P.C.
(v) The practice of writing against names of certain witnesses that they corroborate the statement of earlier witnesses is illegal and strongly deprecated by all Courts (AIR 1945 Pat. 109).

How to maintain Case Diary:

1) Recording should be prompt without any changes.
2) The sheets in Case Diaries should be numbered serially.
3) They should be in chronological order.
4) Each case should have a separate file.
5) Narrative portion of investigation must be in Part-I.

6) Statements must be in Part-II.
7) Separate sheet should be maintained for each witness.
8) Statements are to be enclosed to Part-I.
9) Case Diary file is to be preserved till disposal of the case.

Necessity of writing case diary without delay:

The case diary should be promptly written i.e. on the very day of investigation. Otherwise there is every possibility for the I.O. to miss certain points which may be important. Delay also leads to suspicion by the Court as also adversely effect investigating officer and prosecution.

Usefulness of Case Diary:

1) It is useful for the I.O. to refresh his memory by referring to the entries made in the Case diary.
2) It also helps the I.O. to decide further course of action.
3) It helps the succeeding investigating officer to continue the investigation without difficulty.
4) It helps superior officers to guide the I.O. in investigation.
5) The Case Diaries have to be forwarded to the Magistrate while remanding the accused either for judicial custody or police custody.
6) The Criminal Court may at any stage of enquiry or trial, send for case diaries and may use them not as evidence by to aid in the enquiry or trial judge should take assistance of Police Diaries for appreciating the pint or situation better.
7) Section 172 Cr.P.c. empowers the Court the pursue the Case Diaries but it does not give any such right to the accused to see them. However, if the case diaries are used by a police officer to refresh his memory, the accused gets a right to pursue such portions of the case diary which have been referred to by the police officer. He also gets a similar right when a court refers to case diary for contradicting a police officer giving evidence in the Court. In both the circumstances the diary should be the one written by the Police Officer.

Privilege of Courts, Prosecution. Defense with regard to Case Diary:

Thought the case diary can be called for any used by the court as said hereinbefore, it is absolutely protected from inspection by the accused. See 172(3) Cr.P.C. provides that neither the accused nor his lawyer is entitled to call for it of to see it even if it is referred by the Court. In this sense the case diary is a privileged document. But if the Police Officer while giving evidence, uses it to refresh his memory or if the court uses to contradict him, the privilege goes. It is only in these two events that the diary becomes valuable to the accused for contradicting the police officer under Section 145 Evidence Act or for inspection under Sec. 161

Evidence Act for his cross-examination. But even in such cas the accused is entitled to see only the particular entry referred to and so much of the diary as is the opinion of the court is necessary to the full understanding of the particular entry so used as no more. The case diary cannot be used to enable any witness other then the police officer, who made it, to refresh his memory nor can it be used to contradict any witness other then such police officer.

CHARGE SHEET AND MEMO OF EVIDENCE

WHAT IS A CHARGE SHEET?

A police officer, on completion of investigation, submits a final report to the Court. This report can be either in the form of a **charge sheet** or a **referred report.** The final report is governed by Sec. 173 Cr.P.C.

Copies to the accused: If the police officer is of the opinion that any part of any such statement is not relevant to the subject matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shell indicate that part of the statement and append a note requesting the Magistrate to exclude that part from parties to be granted to the accused and stating his reasons for making such request.

where the police officer investigating that case finds it convenient so to do he may furnish to the accused copies of all or any of the documents referred to in sub-section.

Supplementary Charge Sheet: Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-section (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

from the above, it is clear that further investigation can be made and supplementary charge sheet can be filed only when there is fresh evidence which is not available at the time of filing the original charge sheet.

Amendment of a charge sheet is different from supplementary charge sheet. A revised or amended charge sheet on the basis of the same facts and same material to set right certain mistakes or omissions in the first report can be filed even if there is no fresh investigation.

When an expert opinion is awaited a supplementary charge sheet cannot be filed to include the r port of the expert. Such charge sheet shall be termed as charge sheet on incomplete investigation. Supplementary charge sheet is not contemplated for such continuation.

Sec. 468 Cr.P.C. *Bar to take cognizance after lapse of the period of limitation:*

According to this Section, when the charge sheet is filed, the Court is bound to consider the question of limitation. In this case the court has to see as to whether or not it is competent to take cognizance and whether or not the charge sheet has been filed within a period of limitation prescribed by Sec. 468 Cr.P.C.

Sec. 468 Cr.P.C. states that no Court shall take cognizance of an offence of the category specified in Sub-Section (2) after the expiry of the period of limitation.

Sub-section (2): The period of limitation shall be

a) Six months, if the offence is punishable with fine only;
b) One year, if the offence is punishable with imprisonment for a term not exceeding one year;
c) Three years, if the offence is punishable with imprisonment not exceeding three years.

Sec. 743 Cr.P.C.: ***Extension of portion of limitation in certain cases:*** According to this Section, the prosecution can explain the grounds for the delay in the charge sheet itself if the court is satisfied that there are sufficient and justifiable grounds for condoning the delay for the extension of period of limitation. Prosecution can file an application accompanied by an affidavit or documents in support of the same. Sections 469 to 472 Cr.P.C. deal with the commencement of limitation. (Exclusion of time in certain cases, exclusion of date on which court is closed and date of limitation for a continuing offence, etc.)

Section 195, 196, 197 and 98 Cr.P.C: ***Sanction for Prosecution:*** These sections mention the case in which the Court shall not take cognizance without the sanction of, or complaint by, some competent authority. In such cases, it should be seen that the required sanction is obtained when the investigation is completed and the original sanction attached to the charge sheet when laid in court (Order 614 A.P.P.M.)

Under the following cases, the sanction of the competent authority is necessary.

i. Offences punishable, or abetment or attempt to commit or the abetment of, any offence, specified in item No.2.
ii. Offences punishable U/S 193 to 196,200,205, to 211 and 228 IPC.
iii. Any criminal conspiracy to commit, or attempt to commit or the abetment of, any offence, specified in item No.2.
iv. Any offence punishable under Chapter VI of IPC U/S 153A, 295A or Sub-Section (1) of 505 IPC or a criminal conspiracy to commit such offence or abetment as described U/S 108A IPC including 120B IPC.
v. To prosecute a Judge or Magistrate or public servant not removable from office save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purported to act in the discharge of his official duty. An employee of Union or the

State Govt. when he is employed in connection with its affairs, or any member of Armed Forces in the discharge of his official duty.

vi. To prosecute a Commissioner or Receiver appointed by the civil court.

vii. For prosecution for offences against marriage, viz., offences punishable u/s 494 or 495 and 276(1) IPC.

In India it is said poverty leads to crime but poverty is only a minor cause of crimes in this Country. The real causes are still to be found in old and fundamental faults of human nature i.e. greed, Anger, Jealousy, vanity and lust. But a police officer is concerned more with the requirement of substantive and procedural law and not with philosophy there of though according to Indian Penal Code (see Sec. 20), our Courts in are "Courts of Law". In fact the word Court is not defined either in Penal Code or in the Code of Criminal Procedure but it is defined in Sec. 3 of lEA where Court includes all judges and Magistrates and all persons except arbitrators legally authorized to take evidence. But it may be pointed out here that every Magistrate is not a Court unless he is legally authorized to take evidence according to Evidence Act. It is thus before the judges and Magistrates acting judicially that a police officer has to place the offender for justice or to be dealt with according to Law. Several irregularities committed by police officers during the course of investigation, enquiry and trial go unnoticed and even those noticed go uncorrected as a matter of habit or negligence. A brief review of some of the correct procedures will be of help in avoiding such errors.

Defects in investigation:

Various steps and procedures prescribed for investigation under Chapter XII (Old Chapter XIV of Cr.P.c. are:

1) Proceeding to the crime scene
2) Ascertaining of facts and circumstances
3) Discovery and arrest of suspects
4) Collection of evidence -
   a. Examination of persons and recording their statements
   b. Search and seizure of things considered necessary for investigation and to be produced at the trial.
   c. Formation of opinion based on the material collected as to
      i. whether there is a prima facie case against the suspects and
      ii. whether a charge sheet or final report of the closure of the case could be filed.

The I.Os. generally commit the following errors during the course of their investigation:

(i) Unfair investigation : Duty of Police (I.O.) to bring out the real unadvised truth. Therefore, partisan, tainted investigation may go against the prosecution version. It may result in -

a. Magistrate asking the police to further investigation under Sec. 156(3) Cr.P.c.
b. Magistrate taking cognizance of the case, despite contrary police version under Sec. 190(l)(c).

(ii) Insertion of untrue statements in FIR or FIR being tampered: Prosecution case may be disbelieved.

(iii) Failure on the part of I.O. to collect requisite evidence at the crime scene or de ay in proceeding to crime scene:

a) Good tracks of evidence may be obliterated.
b) May render the accurate approach to the case difficult.

(iv) Failure on the part of I.O. to carry the essential tools of investigation (including the small volumes of legal codes - IPC, lEA, Cr.P.C.)

a) Always it is not safe to rely on memory regarding the actual implications of legal rules.
b) Essential forms including sealing wax, packing material.
c) Camera for recording all aspects of crime scene through photograph. Color photograph serves as better evidence.
d) Not drawing an accurate plan of crime scene, as "map of the scene" serves as invaluable evidence in the case.
e) Not recording minute details of crime scene including minor details (as they may be most-relevant at the time of trial).
f) Lacunae in the report prepared may result in incomplete aspect of physical evidence as to render "expert opinion" to be discredited.

(v) Failure on the part of I.O. to present access of unauthorized persons entry into the crime scene. This may result in the primary evidence being tampered with, resulting in subsequent treatment by expert unreliable.

(vi) Leaving loop-holes or other omissions to collect physical evidence, resulting in the escape of the culprit from punishment. For example recording of foot prints (little toe missing in photograph), not collecting the pieces of "hair" found (as to render identification of culprit not possible or difficult).

(vii) Failure to examine all eye-witnesses:

a) Results in withholding material evidence and drawing adverse inference by Courts
b) Naming accused persons as witnesses and witnesses as accused (may be due to political interference or superior officers interfering with investigation).

(viii) Failure to pack the objects and sending the same to experts:

a) Improper packing results in inferences as to tampering
b) Delay may raise doubts regarding "planting of evidence"

(ix) Failure to take possession of all material objects which might provide evidence as to the commission of the crime or to connect the accused with the crime. For example, not taking possession of blood stained clothes.

(x) Failure to make investigation according of Law or violation of Law, Illegal investigation will not (as a general rule) vitiate the trail unless prejudice is caused to the accused or resulting in miscarriage" of justice:
Such cases may result in the Court ordering investigation further into the case or the Court may not attach much importance to the record of investigation.

(xi) Improper method of case diaries preparation:

a) May contain full of inadmissible evidence (no use to the prosecution or to the Court)
b) Indicating the failure to investigate in accordance with Law and Procedure.
c) Indicates the failure to appreciate whether a particular piece of evidence is important or not.
d) Indicates the failure to provide proper linkage to the chain of missing circumstantial evidence.
e) Indicating the failure to consider whether any sanction is required or not.
f) Indicates the failure to make a successful or thorough investigation,
g) Whether the complaint is time-barred and to consider whether the condonation under Sec. 473 Cr.P.C.
h) Preventing the courts from checking the method of investigation:
   1. Case diaries not made with promptness.
   2. Case diaries not mentioning all significant facts.
   3. Case diaries not made in chronological order.
   4. chronological order with complete objectivity.

(xii) Failure to take precautions to eliminate the possibility of finger prints/weapon of offence or to dispel suspicion as to its genuineness. Not taking specimen fingerprints before or under the orders of a Magistrate in accordance with Sec. 5 of the Identification of Prisoners Act.
Keeping the Magistrate out of picture in such cases.

(xiii) Failure to investigate without delay resulting in prosecution not discharging its burden of proof.

a) Much of valuable evidence lost.
b) Important witness turning hostile or their refusal to support the prosecution case.

(xiv) Investigation merely resulting in suspicion or finding of probability or trying to find flaw or unreasonableness in defense theory -

Care to be taken to collect evidence to establish the case beyond all reasonable doubt.

(xv) Investigation leading to two sets of contradictory evidence -

Efforts to be taken to find out the truth. The entire background of the case to be studied.

(xvi) Failure to protect the innocent and allowing the culprit to escape -

Efforts to be taken to find out whether the complaint is false? Generally it is found that parents who are against the love marriages trying to involve the girl or boy (parties) in false charges to break such marriages (as to affect the character of the boy or girl either to create false evidence of the girl being of questionable character or the boy as a sexual maniac)

Such investigation or prosecution would bring discredit to the police or damage their reputation in public eye.

(xvii) Failure to get a dying declaration properly (Judicial practice not in favor of dying declaration being record by Police).

(xviii) Failure to obtain statements from accused/witnesses without adopting or resorting to third degree methods.

(xix) I.Os. unable to keep pace with the latest development of Law with particular point of evidence. For example, collecting ashes from the cremation ground is a good quality in order to detect arsenic.

(xx) Joint Enquiry under Sec. 107 Cr.P.C.: It is generally observed that whenever two rival factions are involved in provoking a breach of peace, the La. files information against the members of the rival parties under one report labeling them Party-A and Party-B. In the list of witness he includes Party-A members as witnesses against Party-B and vice-versa. In effect it amounts to both the parties figuring in the same case as respondents as well as witnesses. This type of joint enquiry is not correct. Separate information reports shall be filed against each party.

(xxi) Prosecutions are often launched clubbing juveniles and adults together in one trail. A

(xxii) Search List: Whenever a closed place is liable to search of a thing or document, the I.O. has to make the search in the presence of two respectable mediators of the locality. It is often seen that the mediators report is drafted by these mediators in the form of narration. The procedure laid down u/s 100 Cr.P.C. prescribes that a list of seizures shall be prepared by the officer making the search, or "other person". So what is required is only a list of seizures, not a mediators report, Secondly, it must be prepared by the officer and not the mediators. The mediators only attest the same as witnesses. Following the correct procedure will avoid subjecting the mediators to unnecessary and avoidable cross-examination in the Court.

(xxiii) Charge sheet for enhanced punishment: Sometime, when the case involves an previous convict, it is necessary to add Sec.75 IPC when a charge sheet is filed against an previous convict. It is commonly seen that I.Os. adds a sentence at the end of the charge sheet stating that the accused was previously convicted for a similar offence and is therefore liable for enhanced punishment. They do not bother to bring any more evidence to establish such previous conviction and so the Courts are unable to award any enhanced punishment to such offenders. It must be remembered that there is a mode of providing a previous conviction which Sec. 298 Cr.P.C. lays down.

(xxiv) Escort Constable: The constable who escorts the dead body to the post-mortem examination is an important link in the investigation. He is the person who testifies that the dead body on which the inquest was held and then entrusted to him, is the same on which the post-mortem is conducted. So it is essential that the Police Constable who escorts the dead body is cited in the Charge sheet and examined in the Court.

(xxv) It may be remembered that remands of the arrested is only to Judicial Magistrates but never to an Executive Magistrate except in extraordinary circumstances provided under Sec.167 (2-A) Cr.P.C.

(xxvi) Preparing sketches: Sketch map of scene of crime is valuable piece of evidence. The I.O. should himself prepare the said plan in accordance with what he personally saw or observed. If he bases the sketch on the narration of a witness or if he depicts anything which is not based on his own personal observation, but on the information received from others, it is hit by Sec.162 Cr.P.c. and therefore becomes inadmissible.

Why prosecution fails? :

a. Deficiency in investigations: Investigation is the process of collecting evidence for the prosecution of the offender in the Court of Law. For this the investigation officers must possess zeal to find the truth arid the keenness to discriminate right from wrong and charge the right accused only. For example, a case and counter rioting case are reported in a police station. The SHO registered the complaints of the rival parties. He simply records the statements of the parties according to their respective version and files charge sheet in both the cases. A close reading of both the case diaries may reveal rival claims in respect of place of offence, time of offences, parties present at the scene of crime, etc. At times, one FIR will show a certain person as accused and this person may not figure in the scene at all in the report of the counter case.

In such case it is the duty of the I.O. to collect truthful evidence relating to the scene of offence and the time of offence to the actual participation of the accused, etc. He should be able to decide whether it is a tree fight warranting a charge of both case or whether anyone party can be named aggressor. An investigator without this, efficiency ends up begins routine and mechanical. If the I.O. is alert and assertive it will be easy to reduce unnecessary pendency and will certainly add to the execution of his legitimate duty.

b. Lack of certain legal knowledge on the part of I.Os.: The I.O. should not only learn the art of eliciting facts but also equip himself with fair amount of legal knowledge in order to successfully present a case in the Court of Law.

c. Irregularities in investigation: Many of the irregularities committed by the I.O. right from the time of registering the FIR., at the scene of crime, recording statements of witnesses as well as the accused, inconsistency in recording injuries, haste arrest and illegal searches, failure to get objects identified by the complainant before filing charge sheet, improper filing of

charge sheet, the long interval between time of offence and the time of giving evidence by witnesses, failure to contact the witnesses before they attend court, refresh their memory and put then before the prosecutor for gauging their attitude before it takes them into the Court, etc. are bound to result in acquittals.

The other reasons for the failure of cases in the Court may be

i. Illiteracy of witnesses
ii. Benefit of doubt enjoyed by the accused in the Court of Law
iii. The incompetence of prosecuting staff

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POLICE PROCEDURE & REPORT WRITING

Though Police procedure and report writing is a very vast subject comprising major part of the CrPC . Sections starting from 154 CrPC to 173 CrPC cover main tasks/duties associated with investigation and submission of reports by the investigating agencies.

Section 154 :- FIR is not defined in the code. If may be defined as under:-

a. It is an information given to the police officer.
b. Information must relate to a cognizable offence
c. It is an information first in point of time.
d. It is on the basis of this information that investigation into the offence commences.

The information given to a Police officer and reduced to writing as required by this section is called the First Information Report.

The section has a three fold objectives namely

i. To inform the Magistrate of the district and the District superintendent of Police who are responsible for the peace and safety of the District, of the offence reported at the Police station.
ii. To make known to the judicial officers before whom the case is ultimately tried what are the facts given out immediately after the occurrence and on what material the investigation commenced.
iii. To safeguard the accused against subsequent variations or additions.

Section 155 :- This section provides that substance of the information relating to the commission of non-cognizable offence lodged in a police station shall be entered in the station Diary. The informant shall be referred to the magistrate because the police is debarred under subsection (2) from investigating the case without the order of the magistrate

Section 156 :- Under this section the police is empowered to investigate into a cognizable offence without order of a magistrate. If the police do not investigate, the magistrate can order the investigation. But if the police investigate, the magistrate cannot prevent them from investigating.

Section 157 :- It provides the manner in which investigating is to be inducted where the commission of cognizable offence is suspected and authorise an SHO not to investigate if he considers that there is no sufficient ground for such

investigation. It requires that prompt intimation of every complaint or information made to an SHO of the commission ofa cognizable offence shall be given to the magistrate having jurisdiction

The report is to be sent forth with to the magistrate to keep him informed about the progress of investigation.

Section 158 :- It deals with the manner in which report under section 157 Cr.PC is to be submitted to the magistrate.

Section 159 :- It empowers the magistrate to hold investigation or preliminary enquiry on the report received by him.

Section 160 :- While investigating into an offence the Police will ordinarily go to the persons who are acquainted with the facts and circumstances of the case without sending far them. But in certain case the Police may by a written order require the attendance of any person who appears to be acquainted with the facts and circumstances of the case. It is with a view to facilitate the police to obtain evidence with regard to the crime being investigated. A person who fails to comply with the order of the police may be prosecuted for disobedience under section 174 IPC. However, male under the age of fifteen years or woman shall not be required to attend such investigation at any place other than his/her residence.

Section 161: - A Police officer making investigation can examine the witnesses acquainted with the facts of the case and reduce them to writing if he so wishes. This section also enables the police to examine the accused during investigation but he cannot be forced to answer questions. He is entitled to keep his month shut if the answer sought has a reasonable prospect of exposing him to guilt.

In the new code the word 'truly' has been added. The law now expressly require a person to answer the questions truly.

Statements should be recorded as far as possible in the very words of the person examined.

Section 162 :- It imposes a general bar against the use of a statement made before the police except for a limited purpose "A statement recorded by the police during the investigation is not at all admissible in evidence and the proper procedure is to confront the witness with contradictions when they are examined and then ask the La regarding those contradiction", as was held in the case of Raghunandan v state of UP, AIR 1974 sc 463. Provision to this section which apply only if the following three condition are fulfilled.

a. Statement must have been reduced to writing.
b. The witness must have been called for the prosecution

c. The written statement must be duly proved.

Section 163 :- The section bars offer of any inducement, threat or promise by police officer. .

Section 164 :- This section empowers the magistrate specified therein to record any confession or statement made by a person in the course of investigation by the police before the commencement of trail.

Section 165:- Searches by police officer within the limit of police station

a. SHO or I.O must have reasonable grounds for believing that anything necessary for the purpose of any investigation into any offence which he is authorized to investigate may be found in any place within the limits of the police stations of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may after recording the grounds of his belief and specifying in such writing so far as possible, the thing for which search is to be made, search or cause search to be made, for such thing in any place within the limit of such station.
b. A police officer proceeding under sub-section (I), shall, if practicable, conduct the search in person.
c. If he is unable to conduct the search in person and there is no other person competent to make the search present at the time, he may, after recording in writing the reason for so doing, require any officer subordinate to him make the search and he shall deliver to such subordinate officer an order in writhing, specifying the place to be searched, and so far as possible the thing for which search is to be made; and such subordinate officer may there upon search for such thing in such place.
d. The provisions of this code as to search warrants and the general provisions as to searches contained in section 100 CrPC shall, far as may apply to a search made under this section.
e. Copies of any record made under sub-sec (I) or sub-sec (3) shall forthwith be sent to the nearest magistrate empowered to take cognizance of the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.

Section 166 :- Search outside the limit of the police station:-

a. When officer in charge of police station may require another to issue search warrant. An officer in charge of a police station or a police officer not being below the rank of sub-inspector making an investigation may require an officer in charge of another police station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to" be made, within the limits of his own station.

b. Such officer, on being so required, shall proceed according to the provisions of section 165 CrPC and shall forward the thing found, if any, to the officer at whose request the search was made.
c. Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police station to cause a search to be made under sub-sec (I) might result in evidence to the commission of an offence being cancelled or destroyed, it shall be lawful for an officer in charge of a police station or a police officer making any investigation under this chapter to search, or cause to be searched, any place in the limits of another police station, in accordance with the provisions of section 165 CrPC, as if such place were within the limits of his own police station.
d. Any officer conducting a search under sub-sec (3) shall forthwith sent notice of the search to the officer in charge of the police station within the limits of which such place is situated and shall also send with such notice a copy of the list (if any) prepared under section 100 CrPC and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in sub-section (1) and (3) of section 165 Cr.PC.
e. The owner of occupier of the place searched shall, on application, be furnished free of cost, a copy of any record be sent to the magistrate under sub-section 4.

Section 166 A :- Deal with the procedure to be adopted to obtain evidence from a place or country outside India.

Section 166 B :- It is the other side of section 166 A and deals with the collection of evidence by the home country on the request of a foreign country.

Section 167 :- This section only permits a remand when investigation relating to any offence is pending. This section is not applicable when a person is arrested & detained in connection with proceedings for prevention of breach of peace under section 107 CrPC and not any allegation or suspicious of any offence as held in case of sarvan kumar v supdt. Distt. Jail AIR 1957. (All) 189.
It deals with a situation where the investigation of a case can not be completed in twenty four hours and the accused has been in custody without bail.
Transmission of copy of entries in the case diary is mandatory. On the basis of the material in the diary the magistrate decides judicially whether or not further detention of the accused is necessary as held in the case of Bir Bhadra Pratap Singh V CM Ajamgarh AIR 1959 al 384

The period for which the accused may be as ordered by the magistrate to be kept in police custody is fifteen days at a time.

Section 168 :- This section deals with the cases where investigation has been conducted by any officer subordinate to an SHO. Such subordinate officer shall report the result of such investigation to the officer in charge of the police station.

Section 169 :- This section empowers the SHO to release the accused on bail if it appears that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a magistrate.

Section 170 :- This section deals with the situation when upon investigation sufficient evidence or reasonable ground are found. The station house officer shall forward the accused in custody or with security for his appearance if on bail. "Under this section an accused person can be forwarded to the magistrate only when there is sufficient evidence or reasonable ground against him. A mere admission of guilt or confession by the accused during the investigation of the offence does not necessarily amount to sufficient evidence under this section" as held in case of Dal Singh V state (1947) 19 (Bom) LR 510.

Section 171 :- This section bars police officers to subject any complainant or witness to unnecessary restraint or inconvenience for ensuring their appearance in the court.

Section 172 :- This section entails the investigating officer to maintain case diaries detailing day by day proceedings in the investigation with details of time, places visited etc. "The object of this section is to enable the magistrate to know what was the day to day information by the police officer who was investigating the case and what were the lines of his investigation" as held in case of Debendra Chandra V Emperor AIR 1934 (cal) 458. It was also held in case of Pearey Mohan Das V. D western (1911) 16 CWN 145 that "this section directs the investigation officer to keep a diary which is called a case diary. The object of maintaining a case diary is to enable the court to check the method of investigation by the police".

Section 173:- The section entails that every investigation under this chapter shall be completed without unnecessary delay.

As soon as it is completed the SHO shall forward to a magistrate empowered to take cognizance of the offence on a police report. It will be in the form prescribed by the state government. It must state

a. The name of the parties.
b. Nature of the information
c. Names of the persons who appear to be acquainted with the circumstances of the case
d. Whether any offence appears to have been committed and if so, by whom e. Whether the accused has been arrested
f. Whether the accused has been released on his bond and if so whether with or without surety.
g. Whether he has been forwarded in custody under section 170.
h. "Report submitted under this section is called 'completion report or charge sheet' The police charge sheet corresponds to a complaint made by a private

person on which criminal proceedings are initiated. Submission of charge sheet means that the preliminary investigation and preparation of the case is over and the magistrate can then take cognizance of the offence" as held in case Rama Shankar v state of U P AIR 1956 AU 525

It was held in case of Rishbud, H. N V state of Delhi AIR 1955 Sl 196. That "Police Report means a report forwarded by a police officer to a magistrate under sub section (2) in the prescribed form. The formation of the opinion of the officer in charge of the police station whether on the material collected, there is or there is not case to place the accused for trial before a magistrate is the last of the several stages of the investigation by police.

Sub section (4) relates to those cases under section 169 where the accused has been released on his bond on the ground that the evidence is deficient.

Sub section (5) enjoins upon the police to forward certain documents on which it relies along with the report to the magistrate. It will be written on the IIF Annexure- V i.e final form/report.

POLICE STATION RECORDS

There are 25 registers as per PPR maintained in each police station. But those register which are concerned to investigation are explained as under :-

PUNJAB POLICE RULES (PPR) REGISTERS

The following register are required to be maintained in each Police Station:-

REGISTER NO.1 FIRST INFORMATION REPPORT REGISTER

The First Information Report register shall be recorded on a printed book in integrated investigation form (Annexure-I) It shall be completely filled before a new register is commenced. Cases shall bear an annual serial number in each Police Station for each calendar year. Every four pages of the register shall be numbered with the same number and shall be written at the same time by means of carbon copying process. The original copy shall be a permanent record in the Police Station. One copy shall be sent to the DCP, one to the magistrate empowered take cognizance of the offence and the third to the complainant. A warning stating therein that 'Burking or writing incorrect report is an offence punishable under section 218 IPC' shall be affixed to the cover of every FIR book before bringing it to use.

Note: - Additional copies of FIR may be prepared for CRO & sent to J/C CRO). This register is a permanent record.

REGISTER NO. 2 DAILY DIARY REGISTER

This register is maintained on form 22.48 PPR. It shall be maintained by means of carbon copying process. There shall be two copies. The original will remain in the Police Station and the carbon copy shall be sent to ACP/In charge of the Sub-Division. The DCP shall fix hours at which station diaries shall be daily opened & closed.

All entries ,in the daily diary shall be made by the Officer In-charge of the Police Station, Duty officer or the Station Clerk. Each separate entry shall be numbered and the time at which it was made shall be mentioned in each such entry.

The opening entry each day shall give the name of each person in custody, the offence of which he is accused and the date and hour of his arrest.

The last entry each day shall show the balance of cash in hand as shown in cash register.

Any Police Officer who enters or causes to be entered in the daily diary a report which he knows, or has reasons to believe, to be untrue, whether he has or has not been directed to make such entry, shall be ordinarily dismissed trom service as per P.P. R 22.50. A copy of this rule shall be affixed to the cover of the daily diary in every Police Station.

A Certificate to the effect the daily diary contains 200 pages will be affixed by S.H.O. on each Daily Diary before it is commenced.

The Daily Diary is being maintained in two parts. In part A (DD-A) reports regarding apprehension of breach of peace, gist of non-cognizable reports (if not entered in Non-cognizable Reports Register (gist of FIR, section of law etc; shall be recorded when a case is registered. Apart trom this all important matters including persons arrested, persons in custody, deposit of case property seized by IOs, dispatch of case property trom PS, receipt of summons and warrants, checking of properties lying in Malkhana, reports regarding cash kept in Malkhana or excess expenditure etc. shall be entered. Information regarding checking of BCs or about their activities will also be mentioned for being used later to make entries in the History Sheets. The IOs on their arrival after/investigation & enquiries in various cases/ reports marked to them, shall make a mention in the Daily Diary about the action taken by them on such investigation reports.

In part B (DD-B) routine entries like arrival & departure of policemen, dispatch of patrolling staff, posting of pickets, arrival & departure of policemen sent for process service duties or who are sent to summon persons U/S 160 CrPC for purpose of investigation will also be mentioned.

REGISTER NO. 4 ABSCONDERS REGISTER

This register shall be maintained in the following parts:-

Part (i) This part shall contain the names of all absconders in cases registered in ‘the home police station.

Part (ii) The names of absconders in cases registered in other police stations but resident of or likely to visit the home police Station shall be written in this apart which shall be maintained in form 22.54 9(a). The entries of residents of home police station shall be made in red ink.

Part (iii) Will contain the names of deserters trom the army and shall be maintained in form 26.16 (6).

As soon as an absconder has been proclaimed under section 82 of the Code of Criminal Procedure, his name shall be entered in the Proclaimed Offender list.

When an absconder is proclaimed under section 82Cr. PC. His name should be entered in Register No. 10 Part-A of the Home Police Station and his History Sheet should be opened in red ink.

PROCLAIMED OFFENDERS REGISTER

There is no provision in the PPR for maintaining a proclaimed offenders register in a Police Station. As per PPR 23.25, a list of proclaimed offenders shall be hung up in the office and notice board of the Police Station. However, as per PPR 23.22 a proclaimed offenders register shall be maintained in form 23.22 (I) in each District by the head of the Prosecution agency. This register shall be maintained in two parts:-

Part I-In part-I shall be entered the names of proclaimed offenders who are residents of home Police Station irrespective of the Police Station in which proclaimed.

Part II- shall contain the names of proclaimed offenders of the Police Station but not residents of the home Police Station.

Note :- for convenience and ready reference, the P.Os register should be maintained in the Police Station as well as mentioned above in the form 23.22.

REGISTER NO. 9 VILLAGE CRIME REGISTER

This is very important register from the crime and criminals record point of view. This register shall be maintained in following five parts in accordance with PPR 22.59. The village crime register is an unpublished official record relating to the affairs of state and is privileged document under section 123 of the Indian evidence Act

Part 1— This register will be maintained in Form 22.59(1) A containing information about beat. A separate register shall be maintained for each beat.

Part II— This register shall be maintained in Form 22.59(1) B. A separate register shall be maintained for each beat. Any crime registered in the area of beat shall be registered in the register.

Part III— This register is an index to the criminals of the area and shall be maintained in Form 22.59(1) C separately for each beat. In this register shall be entered the name of persons residing in the beat who have been arrested or against whom strong suspicious of involvement in cognizable case, whether the case occurred in the beat or not, exist. A separate entry shall be made for each suspect

with a separate serial number. When the person in again arrested or suspected, a fresh entry shall bear the previous serial number of suspicious and shall be entered below it in the form of fraction. Person who are suspected to have committed an offence and arrested u/s 41 Cr.PC would also be entered as above.

Part III-A— This register shall also be maintained separately for each beat in Form 22.59(1) C . In this register the name of the following persons of doubtful character who visit the beat shall be entered: --

a. Person whose history sheets are on record Bundle 'A'.
b. Person established through information sheets (stranger rolls) to be of doubtful character.
c. Person arrested in the beat u/s 41/109, code of criminal Procedure, provided that no entry shall be made unless the persons concerned are placed on security.

(Note :- An entry shall also be made in register No. 6, Part-II).

Part IV- This is an confidential register and shall remain in the personal custody of the officer Incharge of the Police Station. This register shall be kept in form 22.59(1) D .The following matter shall be entered in the registered:—-

a. Notes regarding influential individuals residing in or having connection with the area who habitually abet or share in the proceeds of crime or shelter criminals.
b. Special types of lawlessness or crime to which the inhabitants of the area are addicted.
c. Notes on gangs operating in the area.
d. Notes on personal, land, communal and other feuds, which are liable to cause breaches of peace.
e. Notes on fairs and similar occasions requiring the special attention of the officer in-charge of the Police Station.
f. Notes on criminals of other area who commit crime in the jurisdictIon. A list of respectable inhabitants of the area who can provide important information regarding proclaimed offenders and absconders.
h. Conviction uls 124-A and 153-A IPC.

It is a permanent record of the crime and criminals and of previous' convictions. It is to a great extent the basis for the preparation of History Sheets and other measures of surveillance. It shall be maintained in form 22.59 (1) E . Entries in this register shall be made by the Officer in charge of the Police Station personally or under his special or general orders. Each entry shall be signed by the Officer in charge of the Police Station personally. Every conviction shall be given one permanent serial number. When a person is reconnected, the fresh entry shall bear the same serial number and the number of conviction shall be entered bellow

it in the form of fraction. When two or more offenders are jointly convicted of committing one and the same offence and when there is reason to believe that they had acted in concert, a cross reference shall be inserted in the remark column of the register, drawing attention to the fact.

REGISTER NO. 10 SURVEILLANCE REGISTER

This register shall be maintained in two parts A & B in Form 23.4 (1). The surveillance register shall be written by the Officer in charge of the Police Station personally or by his Junior neatly.

Part-A In this part, the names of persons commonly residents of the jurisdiction of the Police Station and who belong to one or more of the following classes shall be entered. No entry in this part shall be made except by the order of a G.O and every entry shall be attested by the G.O.

a. All persons who have been proclaimed under section 83 of the Code of Criminal Procedure.
b. All released convicts in regard to whom an order under section 356, Criminal Procedure Code has been made.
c. All convicts the execution of whose sentence is suspended in the whole or any part or whose punishment has been remitted conditionally under section 432, Criminal Procedure Code.

Part-B In this part the names of the following categories of persons may be entered under the written order of the DCP who is strictly prohibited from delegating this authority. Before the name of a person is entered in this part, a history sheet shall be opened for such person.

a. Persons who have been convicted twice or more of offences whose entry is to be made in Register IX part-V
b. Persons who are reasonably believed to be habitual offender or receivers of stolen property whether they have been convicted or not.
c. Persons under security under section 109 or 110 of the Code of Criminal Procedure.
d. Convicts released before the expiry of their sentences under the Prisons Acts and Remission Rules without imposition of conditions.

Note :- Before opening of History sheet, the P.F. should be opened compulsorily. B.C Roll register is also a part of Register No. 10.

REGISTER NO. 12 INFORMATION SHEETS DESPATCHED

Information sheets in form 23.17 (1) shall be issued by an Officer Incharge of a Police Station or on his behalf as a means of ascertaining the antecedents of persons who are residents of the jurisdiction of other Police Stations and

a. Who are believed to have committed an offence, whether they have been arrested or not.
b. Who have been arrested under section 41 (2) of the Code of Criminal Procedure.
c. Who are genuinely believed to be suspicious. The Dispatch of information sheet issued shall be entered in Register No. 12 which shall be maintained in Form 23.17 (2)

Information Sheet of the arrested person shall be issued thrice: firstly at the time of arrest, secondly at the time of conclusion of investigation and finally after the conclusion of judicial trial or magisterial proceedings.

REGISTER NO. 12-A INFORMATION SHEET RECEIVED

The officer incharge of a police station receiving an information sheet shall cause an entry to be made in this register to be maintained in Form 23.17 (6) . Register no. 12 and 12-A shall be destroyed seven years after the last entry.

REGISTER NO. 18 RECEIPT BOOK FOR ARMS AND AMMUNATION OF MILITARY STORES.

This book shall be kept in triplicate in form 22.69. The arms, ammunition or military stores, deposited seized or brought to the Police Station when such seizure is not otherwise reported shall be entered in this register. One copy will be affixed to the weapon or article, the duplicate shall be given to the depositor and the original shall remain in the book.

This book shall be destroyed five years after the date of the last entry.

REGISTER NO. 19.

This register shall be maintained in Form 22.70 as in Annexure 29. All case properties, articles of personal search, properties seized in Kalandras, inquests etc., shall be entered in this register. The articles released shall be entered in the appropriate colunm and every such release shall be attested either by the Officer Incharge or by the investigating Officer. The Officer Incharge shall physically check the articles once in a fortnight and make a note to this effect in this register and daily diary. On the last day of every calendar year, this register shall be brought forward in red ink by making entries of unreleased articles. The entries so brought forward shall be made serial-wise. The serial number of the preceding year shall also be written in fraction.

This register may be destroyed three years after the date of the last entry.

In this register each entry should be attested by the 10 & MHC (M) at the time of depositing the case property in the Malkhana.

REGISTER NO. 23 POLICE GAZETTE AND CRIMINAL INTELLIGENCE GAZETTE

The Police Gazette and Criminal Intelligence Gazette will be neatly filed in separate cardboard covers.

REGISTER NO. 24 POLICE RULES

The copies of Police Rules must be kept up-to-date.

REGISTER NO. 25 CONFIDENTIAL REGISTER

This is a blank register which shall remain in the personal custody of the Officer Incharge of the Police Station. The Officer Incharge of the Police Station on his transfer shall record a confidential note in this register for the assistance of his successor. The confidential charge note shall contain miscellaneous local information which the outgoing officer has gathered during his stay in the information which the outgoing officer has gathered during his stay in the jurisdiction. The following matters may be mentioned in these notes:-

The character and capacity of the members of staff of the Police Station. Residents of the jurisdiction who are useful to the Police Directions in which co-operation with other Police Stations is necessary. Special factors affecting crime and other problems in the Police Station Matters of temporary importance, such as serious cases under investigation etc.