POLICE AND JUDICIAL PROCESS IN INDIA: A DISCUSSION

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Abstract:

In the Indian society the police functions within the legal framework of the Constitution of India, 1950 and the Municipal Laws; comprising mainly the Code of Criminal Procedure, 1973, the evidence Act, 1872, the Protection of Human Rights Act, 1993 and the Police Act etc. Though the wide range of statutory laws constitute the normative basis for the Police functions but at the actual functional level often doubts and controversies arise regarding the ambit and interpretations of the statutory rules, thereby calling for frequent adjudications by the courts. In the tradition of the Theory of Precedent the judgments of the appellate courts have a binding or persuasive value for the later decisions on the point. Particularly the judgments of the Supreme Court of India which being the apex court has been accorded the highest precedential value in terms of Article 141 of the Constitution. The Supreme Court rulings constitute the binding law on all the courts as well as other State agencies; violation of which can entail contempt proceedings. Similarly, for the concern State the judgements of the relevant High Court constitute the binding law.

This article endeavour attempts a compilation of the significant Supreme Court and High Court rulings in India

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Introduction:

The Police is the official organisation or body of persons empowered by the sovereign state to enforce the law and limit civil disorder with legitimised use of force and is responsible for protecting people and property, making people obey law, finding out about and solving crime, and catching people who have committed a crime.

Paul-Michel Foucault[2] claims that the concept of police as a paid and funded functionary of the state was developed by German and French legal scholars and practitioners in Public administration and Statistics in the 17th and early 18th centuries[3]. Jeremy Bentham[4] advocated for the establishment of preventive police forces and influenced the reforms of Sir Robert Pee[5]l. The concept of preventive policing, or policing to deter crime from taking place, gained influence in the late 18th century. It is much better to prevent even one man from being a rogue than apprehending and bringing forty to justice[6]. The Utilitarian philosopher Jeremy Bentham promoted the views of Cesare Bonesana-Beccaria, Marquis of Gualdrasco and Villareggio[7] espoused the guiding principle of "the greatest good for the greatest number". The Benthamite thought had great influence on Patrick Colquhoun's[8] work '*Treaties on the Police of the Metropolis (1797).* Edwin Chadwick[9] argued that prevention ought to be the primary concern of a police body, which was not the case in practice[10]. Chadwick's view was that a preventive police would act more immediately by placing difficulties in obtaining the objects of temptation. In contracts to a deterrent of punishment, a preventive police force would deter criminality by making crime cost-ineffective. In 1829, Robert Peel drafted the principal object

2 French philosopher, historian of ideas, social theorist and literary critic.

3 Nicolas Delamere, *Traité de la Police* (Treaties on the Police), published in 1705. The German *Polizeiwissenschaft* (Science of Police) by Philip von Hörnigk. *Cameral Science* on the formation of police by Johann Heinrich Gottlob.

4 English philosopher, jurist and social reformer regarded as the founder of modern utilitarianism.

5 British statesman of the Conservative Party, served as Prime Minister of the United Kingdom (1834-1835 and 1841-1846); Home Secretary (1822-1827 and 1828-1830). He is regarded as the father of modern policing.

6 Police Magistrate John Fielding, Head of the Bow Street Runner stated/argued.

7 "Essay on Crime in Punishment". Was an Italian criminologist. Jurist, philosopher and politician.

8 Was a Scottish merchant, statistician, magistrate and founder of the first regular preventive police in England, the Thames River Police.

9 Sir Edwin Chadwick, an English social reformer.

10 "*Preventive Police",* London Review, 1829.

of the Police Act of the Metropolitan Police to be 'prevention of crime'. Development of modern police forces around the world was contemporary to the formation of the state.

As a key agency of the Criminal Justice administration the Police is responsible for performing multi-faceted functions such as the prevention of crime, maintenance of law and order, conduct of investigation of crimes, production of under-trials before the Courts and post sentence surveillance over the criminals. In view of the functional peculiarities the Police tends to become the frontal formal agency to come in contact with the raw realities of crime, including the accused and the victims. All this makes the Police not only an all pervasive criminal justice agency but also exposes it to frequent social censures both of formal as well as informal nature, and makes them the centre of lot of controversies regarding their professional roles.

Policing in India:

The need to reform the police in India started being felt ever since the inception of state police in the last decade of eighteenth century, itself an effort to mitigate the excesses of "Darogahs" working for and paid by Zamindars. Complaints of torture by the state police (working under Collectors) for realization of land revenues led to the setting up of a "Commission for the Investigation of Alleged Cases of Torture" in the Madras Presidency, and its two-volume report in 1855 unveiled the reality of policing as based on torture and extraction of confessions. The change from Company Raj to British Raj saw the promulgation of a host of laws, including the Police Act, the Criminal Procedure Code, the Evidence Act, and various State Police Regulations which sought to give a human rights orientation to policing by constraining their powers of arrest and use of force and by limiting the uses to which their records could be put to substantiate charges before a court of law, However the laws remained in the books and could not materially affect the practice, except in terms of presentation styles, as was concluded by the Police Commission of 1902. Freedom from colonial rule did not mean freedom atrocities of Police, the atrocities of Police continued unabated. The legal scholar Upendra Baxi has said that "custodial violence or torture is an integral part of police operation in India", and the recent spate of arrest and prosecution of police officers of all ranks on charges of fake encounter, torture in custody and illegal detentions indicates that the need for reforms despite

suggestions made by a plethora of Commission and Committees, and their half-hearted implementation, remains as pressing as ever.

As this historical account shows, the discourse on police reform is not so much about police effectiveness or police efficiency as it is about police conduct. The call for reforming the police has emanated not because of their failure to control crime, or detect crime, but on account of their unlawful, unscrupulous, brutal and deceitful behaviour.

The primary responsibility of Police is to protect life, liberty and property of citizens. It is for the protection of these rights that Criminal Justice System has been constituted assigning important responsibility to the Police. They have various of duties to perform, the most important among them being maintenance of Law and order and investigation of offences. The police are charged with the responsibility of protecting precious Human Rights of the citizens.

Whenever there is invasion or threat of invasion of one's human rights it is to the police that the citizen rushes for help. Unfortunately the contribution of the police in this behalf is not realized and only the aberrations of the police are noticed, highlighted and criticized. The aberrations must be corrected and the police respected for the difficult role they play even at the cost of their lives in the process of protecting the rights of the citizens.

Role of Courts in effective Policing:

While performing its duties, the police have to accomplish various types of functions. These functions can be purely administrative or field jobs. Apart from the routine departmental procedure the police have to perform different functions in its public dealing. These functions are categorised into two categories, to maintain the law and order and investigative functions. In this course, it has to deal with various types of reporting activities like arrest, detention, trials and procedures of bails and bounds. It is these functions through which, the police can either protect the human rights or on the opposite, can become the violator of the same. If the police perform these functions efficiently and effectively, it can become the protector of the human rights, but if performs them inefficiently or does not perform at all, it can endanger those very rights. Therefore to promote role of Police in administration of Justice effectively and

efficiently modifications made in them from time to time by the Courts in India which will be discussed here.

I. Police and Power of Investigation of Offences:

The statutory provision is specific, precise and clear without any ambiguity in the language employed in Section 155(4) Code of Criminal Procedure (CrPC), 1973. It is apparent that if the facts reported to the police disclose both cognizable and non-cognizable offences, the police would be acting within the scope of its authority in investigating both the offences as the legal fiction enacted in sub-section (4) provides that even a non-cognizable case shall, in that situation, be treated as cognizable.

Sub-section (4) of Section 155 creates a legal fiction and provides that although a case may comprise of several offences of which some are cognizable and others are not, it would not be open to the police to investigate the cognizable offences only and omit the non-cognizable offences. The whole case comprising cognizable and non-cognizable offences is to be treated as cognizable, the police had no option but to investigate the whole of the case and to submit a charge sheet in respect of all the offences, cognizable or non-cognizable both, provided it is found by the police during investigation that the offences appear prima facie, to have been committed[11].

The Apex Court held that while investigating a cognizable offence and presenting a charge-sheet for it, the police are not debarred from investigating any non-cognizable offence arising out of the same facts and including them in the charge-sheet[12]

(a) Territorial Jurisdiction and Power of Investigation:

The police has statutory authority under Section 156 CrPC. At the stage of investigation, there is no question of interference under Section 482, Code of Criminal Procedure, 1973 on the ground that the investing officer has no territorial jurisdiction. After investigation is over, if the

11 State of Orissa v. Sharat Chandra Sahu (1996) 6SCC 435.

12 Pravin Chandra Mody v State of Andra Pradesh AIR 1965 SC 1185.

investigating officer arrives at the conclusion that the cause of action for lodging the FIR has not arisen within his territorial jurisdiction, then he is required to submit a report accordingly under Section 170 CrPC and to forward the case to the Magistrate empowered to take cognizance of the offence.

A reading of Section 177 and 178 CrPC would make it clear that Section 177 provides for 'Ordinary' place of enquiry or trial. Section 178, inter alia, provides for place of enquiry or trial when it is uncertain in which of several local areas an offence was committed or where the offence was committed partly in one local area and partly in another and where it consisted of several acts done in different local areas, it could be enquired into or tried by a court having jurisdiction over any of such local areas.

The legal position is well settled that if an offence is disclosed the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. It is also settled by a long course of decisions of the Supreme Court that for the purpose of exercising its power under Section 482 CrPC to quash an FIR or a compliant, the High Court would have to proceed entirely on the basis of the allegations made in the compliant or the documents accompanying the same perse; it has no jurisdiction to examine the correctness or otherwise of the allegations[13].

(b) *F.I.R. and Registration of F.I.R.:*

The provisions of law about the registration of FIR are very clear. When the complainant approaches the police and brings the fact to their notice and prays for the registration of FIR, the police has no option but to register it and thereafter start investigation. It is another thing that after making investigation as a result whereof the police may come to a conclusion that no offence is made out in which eventuality it has to submit a report to the Court for cancellation of the FIR. Making an investigation and thereafter forming an opinion about the non-commission of an offence followed by refusal to register FIR is a procedure not known to law.

[13] Satvinder Kaur v. State (Govt. of NCT of Delhi) (1999) 8 SCC 728.

It is in fact violative of the matter in which FIR is to be registered and thereafter investigated. Cumulatively, the court was of the opinion that a direction should be issued to the state for the registration of the FIR, forthwith and in the facts and circumstances of the case, for entrusting the investigation of this case to a police officer not below the rank of Inspector of Police[14].

Where messages are transmitted between Police Officers inter se, the object and purpose in transmitting the message must be ascertained before any message is labelled as FIR. It is only if the object was to narrate the circumstance of a crime, with a view that the receiving Police Officer might proceed to investigate thereon that the message would be FIR. But if the message sent was cryptic because the object was merely to seek instructions from higher Police Officers or because the object was to send direction for the police force to reach the place of occurrence immediately or to merely give information to superior Police Officers about the situation of law and order, the message would not be FIR.[15]

Every telephonic information about commission of a cognizable offence irrespective of the nature and details of such information cannot be treated as FIR.[16]

Whenever FIR is registered against the accused a copy of it is forwarded to the Court under provisions of CrPC. Thus it becomes a public document. FIR is a document to which Section 162, CrPC doest not apply and is of considerable value as on that basis investigation commenced and that is the first version of the prosecution, as and when application is made by accused for a certified copy of the compliant, the Court to which it is forward should give certified copy of the compliant, the Court to which it is forward should give certified copy of the FIR, if the application and legal fees thereof have been tendered for the same in the Court of law.[17]

On information being laid before the Police about the commission of a cognizable offence the Police has no option but to register the case and then to proceed with investigation of the case under the provisions of Chapter XII of the CrPC. The Police can also decide not be investigate in terms contemplated by Section 157(1) of the Code. The Police has no right to refuse

14 Munna Lal v. State of Himachal Pradesh & Ors. 1992 Cr.L.J. 1558 (H.P.)
15 Jagdish & Ors. v. The State of Madhya Pradesh, 1992 Cr.L.J. 981 (M.P.)
16 Ramsingh Bavaji Jadeja v. State of Gujaratm 1994 Cr.L.J. 3067.
17 Jayantibhai Lalubhai patel v. The State of Gujarat, 1992 Cr.L.J. 2377 (Gujarat)

registration of a case on information being laid before it about commission of cognizable offence and instead proceed with an enquiry and refuse registration as a result of the said enquiry. If it is left to be determined by the Police to decide in which cases of disclosure or commission of cognizable offence it would first hold preliminary enquiry and then decide to register or not to register the case, it would also lead to delay in registration of the crime and in the meantime the material evidence may not be available. The conduct of enquiry itself may entail a long period. There may be the challenge to the said enquiry. The conferment of absolute discretion to the Police to register a cognizable offence or not would be violative of equality clause enshrined in our Constitution. The Code vests power in Judiciary to control the discretion of the Police.

The High Court at Madras has observed that even when the information is against the police officials including the higher officials it is the duty of the officer in charge of the police station to register the case, in other words he should reduce information in writing read it over to informant, get their signatures to it and enter the substance thereof in the Diary kept in the police station and also give the information free of cost to the informants. No Police Standing Order prevents him from doing so.[18]

The Supreme Court has pointed out "there is public policy, not complementary to the police personnel, behind this legislative proscription which keeps juveniles and females from the Police Company except at the former's safe residence." The Court further added that if a police officer acted in contrary to the proviso to Section 160 (1) of the Cr.PC such deviation must be visited with prompt punishment since policemen may not be a law unto themselves expecting others to obey the law.[19]

(c) Interrogation, arrest and custody:

In Bhagwan Singh v. State of Punjab it was held that it may be a legitimate right of any police officer to interrogate or arrest any suspect on some credible materials but such an arrest must be in accordance with the law and the interrogation does not mean inflicting injuries. It should

[18] A. Nallassivan v. State of Tamil Nadu & Ors. 1995 Cr.L.J. 2754 (Madras)

[19] Nandhini Satpathy v. P.L.Dani AIR 1978 SC 1025 (1978) Cri.L.J. 968.

be in its true sense purposeful, namely, to make the investigation effective. Torturing a person and using third degree methods are of medieval nature and they are barbaric and contrary to law. The police would be accomplishing behind their closed doors precisely what the demands of our legal system forbid. They must adopt some scientific methods than resorting to physical torture. If the custodians of law themselves indulge in committing crimes then no member of the society is safe and secure. If police officers who have to provide security and protection to the citizens indulge in such methods they are creating a sense of insecurity in the minds of the citizens.

The term 'arrest' means the restraint on or deprivation a man's personal liberty by the power of lawful authority. No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing and the justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mare allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fide for a compliant and a reasonable belief both as the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitant of the fundamental rights to the personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. An arrest, except in heinous crimes must be remanded if a police officer issues notice to person to attend the Station House and not to leave the station without permission would do.

The right of the arrested person to have someone informed, upon request and to consult privately with a lawyer is recognised under section 56(1) of the Police and Criminal Evidence Act, 1984 in England. These rights are inherent in Articles 21 and 22(1) of the Constitution and require to be recognised and scrupulously protected. For effective enforcement of the fundamental rights, the following requirements were issued:

- the police officer shall inform the arrested person when he is brought to the police station of his rights;
- 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 is practicable that he has been arrested and where he is being detained;
- an entry shall be required to be made in the diary as to who was informed of the arrest. These protections from the State must be held to flow from Articles 21 and 22(1) and enforced strictly.
- It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.

These requirements shall be in addition to the rights of the arrested person found in the various police manuals. These requirements are not exclusive. The Director General of Police of all states in India shall issue necessary instructions requiring due observance of these requirements. In addition , departmental instruction shall also be issued that a police officer making an arrest should also record in the case diary, the reasons for making the arrest.[20]

Section 46(1) of the Cr.PC states that a police officer while making arrest even if he actually touches the body of the person to be arrested, he can be said to have arrested the person. If a person is confined or kept in the police station or his movements are restricted within the precincts of a police station or his movements are restricted within the precincts of a police station, it would undoubtedly be a case of arrest. Section 57 of the CrPC provides that no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not, in the absence of a special order of a Magistrate under Section 167, CrPC, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court.21

A Magistrate can himself arrest or order any person to arrest any offender if that offender has committed an offence in his presence and within his local jurisdiction or on his appearance or surrender or is produced before him and take that person into his custody subject to the bail

[20] Joginder Kumar v. State of U.P. & Ors.

[21] Kultej Singh v. Circle Inspector of Police & Ors, 1992 Cr.L.J. 1173 (Karnataka)

provisions. If a case is registered against an offender arrested by the Magistrate and a follow up investigation is initiated, or if an investigation has emanated quo the accusations labelled against the person appearing or surrendering or being brought before the Magistrate, the Magistrate can in exercise of the powers conferred on him by Section 167(2) keep the offender or person under judicial custody in case the magistrate is not inclined to admit that the offender or person to bail.

The Code of Criminal Procedure, 1973 gives power of arrest not only to a police officer and a Magistrate but also under certain circumstances for given situations to private persons. Further, when an accused person appears before Magistrate or surrenders voluntarily, the Magistrate is empowered to take that accused person into custody and deal with him according to law. The taking of a person into judicial custody is followed after the arrest of a person concerned by the Magistrate on appearance or surrender. In every arrest, there is custody but not vice versa and that both the words 'custody' and 'arrest' are not synonymous terms. Though 'custody' may amount to an arrest in certain circumstances but not under all circumstances. If these terms are interpreted as synonymous, it is nothing but an ultra legalist interpretation which if under all circumstances accepted and adopted would lead to a starling anomaly resulting in serious consequences.

To invoke Section 167(1), it is not an indispensable pre-requisite condition that in all circumstances, the arrest should have been effected only by a police officer and none else and that there must necessarily be records of entries of a case diary. Therefore, it necessarily follows that a mere production of an arrestee before a competent Magistrate by an authorised officer or an officer empowered is arrest notwithstanding the fact that he is not a police officer in its strict sense on as he reasonable belief that the arrestee has been guilty of an offence punishable under the provisions of the special Act is sufficient for the Magistrate to take that person into custody on his being satisfied of the three basic conditions, namely, (i) the arresting officer is legally competent to make arrest; (ii) that the particulars of the offence or the accusation for which the person is arrested or other grounds for such arrest exist and are well-founded; and (3) that the

provisions of the special Act in regard to the arrest of the persons and the production of the arrestee serve the purpose of Section 167(1) of the Code.22

The Bombay High Court in a matter relating to custodial violence and arrest of female persons in State had issued directions to the State Government:23

- ➔ the State of Maharashtra was directed to constitute a Committee consisting of its Home Secretary, Law Secretary and Director General of Police within 15 days from the date of the order for going into all aspects of custodial violence by the Police in the State and suggest comprehensive measures and guidelines to prevent and check custodial violence and death and also suggest for that purpose suitable amendments in the Police Manual of the State and also submit comprehensive scheme for police accountability of human rights abuse;
- ➔ the said Committee was directed to submit its report to the State Government within three months of its constitution;
- ➔ the State Government was directed to take effective steps in implementing the measures and guidelines suggested by the Committee in preventing and checking the custodial violence immediately after submission of report by the said Committee;
- ➔ the State Government was directed to issue immediately necessary instructions to all concerned police officials of the State that in every case after arrest and before detainee is taken to the Magistrate, he should be medically examined and the details of his medical report should be noted in the Station House Diary of the Police Station and should be forwarded to the Magistrate at the time of production of detainee;
- ➔ the State Government was further directed to provide a complaint box duly locked in every police-lock up and the keys of the complaint box should be kept by the Officer-in-charge of the Police Station. The Officer-in-charge of the concerned Police Station

22 Directorate of Enforcement v. Deepak Mahajan & Anr, 1994 Cr.L.J 2269.

23 Christian Government Welfare Council of India & Anr. v. Government of Maharastra & Anr., 1995 Cr.L.J. 4223 (Bombay)

should provide paper and pen to the detainee if so demanded for writing compliant. The Officer-in-charge of the concern Police Station should open the compliant that be found in the compliant box. The Officer-in-charge of the Police station should produce such complaining detainee to the Magistrate immediately along with hos compliant and the concerned Magistrate would pass appropriate orders in the light of the compliant made for medical examination, treatment, aid or assistance as the case may warrant;

- ➔ the State Government should issue instructions immediately in unequivocal and unambiguous terms to all concerned that no female person shall be detained or arrested without the presence of lady constable and in no case, after sun-set and before sun-rise;
- ➔ the State Government should make proper provision for female detainee in separate lock-ups throughout the State of Maharastra.

(b) *Handcuffing and Security:*

The Supreme Court of India on handcuffing of prisoners issued, directed and laid down the following directions:24

- ➔ as a rule that handcuffs or other fetters shall not be forced on Any under-trial or convicted while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another of from jail to court and back. The police and the jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and back;
- ➔ where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the magistrate concerned and a prayer for permission to handcuff the prisoner be made before the Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to

[24] M.P. Dwivedi & Ors Case, 1996 Cr.L.J. 1670.

escape, he being so dangerous or desperate and the finding that no other practical way of forbidding escape is available, the Magistrate may grant permission to 'handcuff' the prisoner;

- ➔ in all cases where a person arrested by police is produced before the Magistrate and remanded to judicial or non-judicial custody – is given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand;
- ➔ when the police arrests a person in execution of a warrant of arrest obtained from a Magistrate for the handcuffing of the person to be arrested;
- ➔ where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guidelines given by the Hon'ble Supreme Court that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his production before the Magistrate. The use of fetters thereafter can only be under the orders of the |Magistrate;
- ➔ the relevant considerations for putting a prisoner in fetters are the character, antecedents and propensities of the prisoner. The peculiar and special characteristics of each individual prisoner have to be taken into consideration. The nature or length of sentence or the number of convictions or the gruesome character of the crime the prisoner is alleged to have committed are not by themselves relevant considerations.

The Supreme Court further directed that all rank of police and the prison authorities shall meticulously obey the direction as directed in Citizen for Democracy through its President v. State of Assam & Ors.25 Any violation of the directions by any rank of police in the country or member of the jail establishment shall be summarily punishable under the Contempt of Court Act, 1971 apart from other penal consequences under law.

In D.K. Basu vs State of West Bengal26 the Supreme Court issued directions on handcuffing for all State agencies. Failure to comply with such directions apart from rendering the official

25 1996 Cr.L.J. 3247.

26 1997 1 SCC 426.

concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter. The requirements as directed in that case flow from Article 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other government agencies like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, Central Reserve Police Force (CRPF), Border Security Force (BSF), the Central Industrial Security Force (CISF), the State Armed Police, Intelligence Agencies like Intelligence Bureau, RAW, Central Bureau of Investigation (CBI), Traffic Police, Mounted Police and ITBP. 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 the safeguarding of the rights and dignity of the arrestee. The requirements mentioned in the case shall be forwarded to the Director General of Police and the Home Secretary of every State and Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station under their charge and get the same notified at every police station at a conspicuous place. It would be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability.

(c) Search and Seizure:

(d) Remand:

Section 167 of Cr.PC is supplementary to Section 57.[27] The investigation should be completed in the first instance within 24 hours; if not the arrested person should be brought by the police before a Magistrate as provided under Section 167. While doing so, the police should also transmit a copy of the entities in the diary relating to the case which is meant to afford to the Magistrate the necessary information upon which he can take the decision whether the accused should be detained in the custody further or not. Even at that stage the Magistrate can release him on bail if an application is made and if he is satisfied that further remand is necessary then he should act as provided under Section 167. The Judicial Magistrate can in the first instance authorise the detention of the accused in either police or judicial custody from time to time but the total period of detention cannot exceed fifteen days in the whole. Within this period of

[27] C.B.I. v. Anupam J. Kulkarni, 1992 3 SCC 141.

fifteen days there can be more than one order changing the nature of such custody either from police to judicial vice-versa. If the arrested accused is produced before Executive Magistrate having judicial powers where Judicial Magistrate is not available the Executive Magistrate is empowered to authorise the detention in such custody the police or judicial only for a week, in the same manner namely by one or more orders but after one week he should transmit him to the nearest Judicial Magistrate along with the records. When the arrested accused is so to say excluding one week or the number of days of detention ordered by the Executive Magistrate, the Judicial Magistrate may authorise further detention within that period of first fifteen days to such custody either police or judicial.

Section 309 comes into operation after taking cognizance and not during the period of investigation and the remand under this section can be only to judicial custody. After the expiry of the first period of fifteen days the further remand during the period of investigation can only be in judicial custody. Police custody found necessary can be ordered only during the first period of fifteen days. If a further interrogation is necessary after the expiry of the period of first fifteen days there is no bar for interrogating the accused who is in judicial custody during the period of 90 days or 60 days. The detention in police custody is generally disfavoured by law. The whole scheme underlying Section 167 is intended to limit the period of police custody in order to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers.

There cannot be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction. Even if he is in judicial custody in connection with the investigation of the earlier case he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under Section 167(2), Cr.PC and can remand him to such custody as mentioned therein during the first period of fifteen days and thereafter in accordance with law.

If the investigation is not completed within the period of ninety days or sixty days as provided under the proviso to Section 167 (2) then the accused has to be released on bail. The period of ninety days or sixty days has to be computed from the date of detention as per the orders of the Magistrate and nor from the date of arrest by the police. Consequently the first period of fifteen days as mentioned in Section 167 (2) has to be computed from the date of such detention and the expiry of the period of first fifteen days it should be only judicial custody.

(e) Charge Sheet – Effect of delay:

No general and wide proposition of law can be formulated that wherever there is any inordinate delay on the part of the investigating agency in completing the investigation such delay is a ground to quash the FIR. It is not possible to formulate inflexible guidelines or rigid principles of uniform application for speedy investigation or to stipulate any arbitrary period of limitation within which investigation in a criminal case should be completed. The determination of the question whether the accused has been deprived of a fair trial on account of delayed or protracted investigation would also depend on various factors including whether such delay was unreasonably long or caused deliberately or intentionally to hamper the defence of the accused or whether such delay was inevitable in the nature of things or whether it was due to the dilatory tactics adopted by the accused. The court in addition has to be consider whether such delay on the part of the investigating agency has caused grave prejudice or disadvantage to the accused. It is imperative that if investigation of a criminal proceeding staggers on with tardy pace due to the indolence or inefficiency of the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused, the court as the protector of the right and personal liberty of the citizen will step in and resort to the drastic remedy of quashing further proceedings in such investigation. While so, there are offences of grave magnitude such as diabolical crimes of conspiracy or clandestine crimes committed by members of the under world with their tentacles spread over various parts of the country or even abroad. The very nature of such offences would necessarily involve considerable time for unearthing the crimes and bringing the culprits to book.[28]

[28] State of Andhra Pradesh v. P.V. Pavithran. (1990) 2 SCC 340.

The Investigating Officer is only required to collect material to find out whether the offence alleged appears to have been committed. In the course of the investigation, he may examine the accused. He may seek his clarification and if necessary he may cross check with him about his known sources of income and assets possessed by him. Fair investigation requires that the accused should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. But to state that after collection of all material the Investigating Officer must give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the Investigating Officer to the position of an enquiry officer or Judge. The Investigating Officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the disproportionality between the assets and the income of the accused. He just collects material from all sides and prepares a report, which he files in the court as charge-sheet. The charge-sheet is nothing but a final report of police officer under Section 173(2) of the Cr.PC. The statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. This report is intimation to the magistrate that upon investigation into a cognizable offence the Investigation Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2), purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the Court. The report is complete if it is accompanied with all the documents and statements of the witnesses as required by Section 173(5). Nothing more is needed to be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence29.

The police report under Section 173(2) has to be submitted as soon as the investigation is completed. If the investigation has been stopped on the expiry of six months or the extended period if any, by the magistrate in excise of power conferred by Section 167(5) of Cr.PC, the investigation comes to an end and therefore, on the completion of the investigation Section 173(2) enjoins upon the officer in charge of the police station to forward a report in the

[29] K. Veeraswami v. Union of India, (1991) 3 SCC 655.

prescribed form. There is nothing in Section 167(5) to suggest that if the investigation has not been completed within the period allowed by statute, the officer in charge of the police station will be vindicated from the responsibility of filing the police report under Section 173(2) of the Code on the stoppage of the investigation. Therefore competent courts having jurisdiction are competent to entertain the police report restricted to six months investigation and take cognizance on the basis thereof. Courts can also stop further investigation into the offence if the investigation is not concluded within a period of six months from the day of arrest of the accused person unless for special reasons and in the interest of justice the continuation of the investigation beyond that period is necessary. 30

(f) No cognizance on incomplete Charge-Sheet:

A plain reading of Section 173, Cr.PC shows that every investigation must be completed without unnecessary delay and as soon as it is completed, the Officer-in-Charge of the Police Station shall forward a report to the Magistrate in the form prescribed. Therefore, there is no question of sending up to a 'police report' within the meaning of Section 173(2) until the investigation is completed. Any report sent before the investigation is completed will not be a police report within the meaning of Section 173(2) read with Section 2(r) and there is no question of the Magistrate taking cognizance of the offence within the meaning of Section 190(1)(b) on the basis of an incomplete charge sheet. The incomplete charge-sheet cannot be treated as a 'police report' at all as contemplated under Section 173(2) to entitle the Magistrate to take cognizance of the offences. A police report as defined in Section 2(r) can only be filed 'as soon as the investigation is completed'. If it is not complete, no such report can be filed. When no report is forwarded as required by the Code, the Magistrate cannot take cognizance. Thus, unless all these steps are crossed, sub-section (8) cannot be pressed in aid for collecting further evidence which really can be called in aid if further evidence is discovered after the filing of the charge-sheet or the police report on the completion of the investigation. Unless cognizance has been taken, sub-section (8) cannot be set in motion. The Magistrate cannot take cognizance on the admittedly 'incomplete charge-sheet' forwarded by the police. In case the Magistrate is allowed to take cognizance on basis of incomplete charge sheet then the provision

30 State of West Bengal v. Falguni Dutta & Anr. (1993) 3 SCC 288.

of Section 167(2) or Section 468 of the Cr.PC can always be besieged by the prosecution and the apparent legislative intents under those provisions would not only be not effectuated but undoubtedly established.31

Section 96 merely deals with the obligation of an Officer-in-Charge of a police station to forward his report under Section 173 of the Cr.PC to the Commissioner or such other officer as the Commissioner may direct in that behalf. The said section nowhere provides that the Commissioner has the authority to issue summaries; issuance of summaries is a function to be performed by the Commissioner. This being a judicial function has to be performed by the Magistrate alone. Commissioner has no authority to pass over these judicial functions of the Magistrate. The function of the police being an executive limb is distinct from the role assigned to the judiciary. Once a report under Section 173(2) is submitted by the police to a Magistrate, a Magistrate has the jurisdiction to take cognizance. A Magistrate is not entitled in the event of a police report, being a negative report to direct the police to file charge-sheet. All that he is authorised to do is to direct a further investigation in the case. Similarly, once a report under Section 173 is submitted, taking of cognizance is the exclusive province of the Magistrate. The police has no role to play in this behalf. As far as grant of summaries is concerned, there is no provision to be found in regard to the same in the Code of Criminal Procedure.

(g) Registration of F.I.R: Intervention of the Magistrate and Executive.

The power of police to investigate under Section 156, 157 and 159 is not restricted. However, court would interfere in cases of illegal and improper exercise of investigatory powers in violation of statutory provisions. After registration of a case under Section 154(1), the police have a statutory right under Section 156(1) to investigate any cognizable case without requiring sanction of a Magistrate.

The Government has no power and jurisdiction to interfere with the discretionary power of the investigating authority and direct it to file a report even if in the opinion of the investigating authority no case is made out against the accused. No other authority except the officer in-charge of police station, can form an opinion as to whether on material collected in a case is

31 Sharadchandra Vinayak Dongre & Ors v. The State of Maharastra, 1991 Cr.L.J. 3329 (Bombay)

made out to place the accused before the Magistrate for trial. If the officer-in-charge of police station is of the opinion and submits a final report to the effect that no case is made out to send up the accused for trial, no other authority has power to direct him to change his opinion and file report of the police, if he does not agree with the opinion formed by the police.[32]

(h) Direction by the Magistrate for Registration of FIR and Investigation:

whenever a Magistrate directs an investigation on a 'compliant' the police has to register a cognizable case on that compliant treating the same as the FIR and comply with the requirements of the Police Rules. Therefore, the direction of a Magistrate asking the police to 'register a case' makes an order of investigation under Section 156(3) cannot be said to be legally unsustainable. Even if a magistrate does not pass a direction to register a case, still in view of the provisions of Section 156(1) of the Code which empowers the Police to investigate into a cognizable 'case' and the Rules framed under the Police Act, 1861, the Police is duty bound to formally register a case and then investigate into the same. The provisions of the Code, therefore, does not in any way stand in the way of Magistrate to direct the police to register a case at the police station and then investigate into the same. When an order for investigation under Section 156(3) of the Code is to be made the proper direction to the Police would be to register a case at the police station treating the compliant as the FIR.[33]

II. Police and Evidentiality Issues:

(a) Recording of Confession:

The Supreme Court of India has discussed the procedure for recording of confession under Section 15 of TADA Act; in view of the legal position vesting authority on higher police officer to record the confession hitherto enjoyed by the judicial officer in the normal procedure, there should be no breach of procedure and the accepted norms of recording the confession which should reflect only the true and voluntary statement and there should be no

[32] Mutharaju Satyanarayan v. Govt. Of A.P. & Ors. 1997 Cr. L.J. 3741 (A.P.)
[33] Madhu Bala v. Suresh Kumar & Ors, 1997 Cr.L.J. 3757.

room for hyber criticism that the authority has obtained an invented confession as a source of proof irrespective of the truth and creditability.[34]

(b) Police as Witness:

The Apex Court in India held that no infirmity attaches to the testimony of police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The rule of prudence however only requires a more careful scrutiny of their evidence, since they can be however, only requires a more careful scrutiny of their evidence since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case.[35]

(c) Use of Case Diary in Trial:

It is manifest from its bare reading without subjecting to detailed and critical analysis that the case diary is only a record of day-to-day investigation of the investigating officer to ascertain the statement of circumstances ascertained through the investigation. Under section 172(2), the court is entitled at the trial or enquiry to use the diary not as evidence in the case, but as aid to it in the inquiry or trial. Neither the accused, nor his agent, by operation of sub-section (3), shall be entitled to call for the diary, nor shall be entitled to use it as evidence merely because the court referred to it. Only right given thereunder is that if the police officer who made the entries in the diary uses it to refresh his memory or if the court uses it for the purpose of contradicting such witness, by operation of Section 161 of the Cr.PC and Section 145 of Evidence Act, it shall be used for the purpose of contradicting such witness i.e., Investigation Officer or to explain it re-examination by the prosecution, with permission of the court. It is,

34 Kartar Singh v State of Punjab (1994) 3SCC 569.
35 Tahir v. State (Delhi) (1996) 3 SCC 338.

therefore, clear that unless the investigating officer or the court uses it either to refresh the memory or contradicting the investigating officer as previous statement under Section 161 that too after drawing his attention thereto as is enjoined under Section 145 of the Evidence Act, the entries cannot be used by the accused as evidence.[36]

III. Police and Human Rights/Fundamental Rights:

(a) Right against torture and indignities:

Life, liberty of a citizen guaranteed under Article 21 includes life with dignity and liberty with dignity. Liberty must mean freedom from humiliations and indignities at the hands of the authorities to whom the custody of a person may pass temporarily or otherwise under the law of the land.[37]

IV. Externment:

The externee is entitled to know only the material particulars of the crime in question and not the details as alleged by the learned counsel for the petitioner. If the details are required to be supplied by the authorities to the externee before passing of the Externment order then the very purpose will be frustrated. It must be born in mind that taking recourse to the provisions of the Act is an exception and it is only in an emergent situation that such remedies are expected to be resorted to by the authorities in the interest of the society.[38] While passing an order of externment the nature of the offences would not be the sole criteria and the authority will have to go into the other pertinent question as to whether the offending activity of the individual concern has reached that degree of harm to the society that the interest of the society of even of that particular locality requires that this individual who has become public menance should be externed from the locality.[39]

36 Shamshul Kanwar v. State of U.P. (1995) 4 SCC 430.
37 Ravikant Patil vs The State of Maharastra & Ors. 1991 Cr.LJ 2344 (Bombay)
38 Sirajhhan v. State of Maharastra, 1999 Cr.L.J 2959 (Bombay).
39 Sh. Rambhai alias Ramlo Khimchand v. The State of Gujrat & Anr. 1991 Cr.L.J. 3159 (Gujrat)

V. Power of Police Surveillance:

As regards the surveillance in the form of secret picketing cannot be said to be an infringement

in the right of citizen to free movement or personal liberty. Such an infringement can be said to be caused only if by any direct or tangible mode such a right is infringed. It is not intended to protect the personal sensitiveness of the citizen by invoking any of the provisions of the Constitution.[40]

In cases where as a result of investigation it is thought necessary to open History Sheet against a person, a report should be given and after receiving such report and after further inquiry as he may think necessary the competent authority may forward the report to the Superintendent of Police. In both situations, some inquiry is necessary to ascertain whether the report submitted by the Station Officer required opening of History Sheet or not. It is not enough to put a blanket-seal on the report of the Station Officer.[41]

VI. Sanction of Route for Religious Procession:

When the fundamental right are involved and there is allegation of discrimination between two similarly situated persons or associations, no embargo can be placed on the powers of the High Court in exercise of Article 226 of the Constitution.[42]

VII. Permission to organise public meetings:

In the case of Superintendent Central Prison, Fategarh v. Dr. Ram Manohar Lohia,[43] it has been held that limitation imposed in the interest of public order to be a reasonable restriction, should

[40] Mohammed Shafi v. The State of M.P. 1993 Cr.L.J. 505 (M.P.)
[41] Sunil Kumar v. Superintendent of Police, Ballia & Ors. 1997 Cr.L.J 3201 (Allahabad)
[42] Gehohe-E-Miran Shah v. The Secretary, Home Department, Govt. Of A.P. and Ors. 1993 Cr.L.J 406 (A.P.)
[43] AIR 1960 SC 633; (1960 Cri.L.J. 1002)

be one which has a proximate connection or nexus with the public order, but not one far-fetched hypothetical or too remote in the chain of its relation with the public order.

Any police apprehension is not enough for passing order of externment. Some ground or other is not adequate. There must be clear and present danger based upon credible material which makes the movements and acts of person in questions alarming or dangerous or fraught with violence.[44]

The Supreme Court observed that the object of Section 144 Cr.PC is to preserve public peace and tranquillity and as such attempt should be made to regulate the rights instead of prohibiting the right to hold procession totally.[45]

VIII. Direction for providing Police security:

There can be no pick and choose in providing security to any person and the only thing that will guide making such provisions will be the perception of threat and the duty of the Govt. Of the State to protect the life and properties of individuals. High Court's power under Article 226 shall evidently extend to judicial review of the order passed by the competent authority, including the State Government upon the application for providing police security of any such individual or individuals and the Court, with all the self imposed restriction upon it power of judicial review, shall examine whether the application has been rightly rejected and if necessary suitable directions may issue.[46]

44 Prem Chand v Union of India, AIR 1981 SC 613 (1981 Cri. J.L.5)
45 AIR 1981 SC 2198: (1981 Cri L.J. 1835)
46 G.Subhas Reddy v. State of A.P. & Anr. 1997 Cr.L.J. 1296 (A.P.)