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ANALYSIS ON POWER OF POLICE INVESTIGATION

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ABSTRACT

The power of police investigation forms the foundation of the criminal justice system, enabling effective detection, prevention, and prosecution of offences. Under the new criminal law framework, the Bharatiya Nyaya Sanhita, 2023 (BNS) and the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) together regulate and structure this power. While the BNS defines offences and prescribes punishments, thereby determining the nature and seriousness of crimes, the BNSS provides the procedural mechanism through which police investigations are conducted. The BNSS authorizes the police to register FIRs, conduct searches and seizures, make arrests, examine witnesses, collect forensic and digital evidence, and submit charge sheets or closure reports within prescribed timelines. It also emphasizes transparency, accountability, and the use of technology, particularly through audio-video recording and forensic involvement. At the same time, it incorporates safeguards to protect individual rights by regulating arrest, custody, confessions, and investigative discretion. Thus, the combined operation of the BNS and BNSS establishes a balanced framework that empowers the police to investigate effectively while ensuring adherence to due process and the protection of fundamental rights.

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KEYWORDS: Evidence Collection, Arrest and Detention, Search and Seizure, Forensic Examination, Accountability.

INTRODUCTION:

Chapter XII of the CrPC, 1973² deals with the powers of the police to receive information and conduct investigations. It authorizes police officers to inquire into cognizable and non-cognizable offences, examine witnesses, conduct searches and medical examinations, and report on special cases like suicides and accidents. These powers are statutory and must be exercised within legal limits, not for arbitrary interference. The investigative powers of police are laid down in Sections 154 to 176 of the CrPC³. These provisions comprehensively define when and how investigations may be carried out. The authority of police under Section 156 to investigate cognizable offences is wide and ordinarily free from judicial interference. Courts generally cannot obstruct police investigations in cognizable cases. However, if police act illegally or exceed their authority, courts may intervene to prevent injustice. Judicial interference is permitted only when non-intervention would result in miscarriage of justice. Investigation is discretionary and not compulsory in every case. The police have autonomy in deciding whether to investigate, and this power is fundamental to criminal administration. In *S.N. Basak v. State of West Bengal*⁴, the Supreme Court held that police have a statutory right to investigate before prosecution, and courts, including High Courts under Sections 401⁵ and 482⁶ CrPC, cannot ordinarily interfere with this right.

² Code of Criminal Procedure, 1973, Chapter XII (India)

³ Code of Criminal Procedure, 1973, § 154–176 (India)

⁴ *S.N. Basak v. State of West Bengal*, AIR 1958 SC 447

⁵ Code of Criminal Procedure, 1973, § 401 (India)

⁶ Code of Criminal Procedure, 1973, § 482 (India)

DEFINITIONS:

Section 2(h) of the CrPC⁷ defines “investigation” as all proceedings for the collection of evidence conducted by a police officer or a person authorized by a Magistrate. Investigation begins after the commission of a crime or receipt of information about it. The object of investigation is to identify the offender, collect evidence, and ensure prosecution and punishment according to law. Under Section 156 CrPC, police may investigate cognizable offences without court permission. For non-cognizable offences, Section 155(2) requires prior approval of a Magistrate. Criminal offences are classified into cognizable and non-cognizable offences. This classification determines the extent of police powers. Section 2(c) CrPC defines cognizable offences as serious crimes that allow police to arrest without warrant and start investigation without court approval. These usually include offences punishable with death, life imprisonment, or imprisonment of not less than three years. Section 2(l) CrPC defines non-cognizable offences as less serious offences mainly affecting private individuals, where police can act only after obtaining a warrant or court permission. Section 154 CrPC requires that information relating to a cognizable offence must be recorded in writing by the police. This written information is commonly known as the First Information Report (FIR). Though the term “FIR” is not expressly used in the Code, courts, including in *Manimohan Ghosh v. State*⁸, have recognized that Section 154 refers to the FIR. Investigation can only begin after the occurrence of a crime, which may be cognizable or non-cognizable, bailable or non-bailable.

INVESTIGATION:

The term “investigation” means a systematic inquiry to discover facts, verify allegations, and identify the person responsible for an offence. Its primary purpose is

⁷ Code of Criminal Procedure, 1973, § 2 (India)

⁸ *Manimohan Ghosh v. State*, (1974) 2 Cal LJ 337 (Cal HC)

to collect evidence and assess whether an offence has been committed. In *State of Uttar Pradesh v. Sant Prakash*⁹, the Allahabad High Court held that evidence collection is the core object of investigation. Section 2(h) CrPC gives a broad meaning to investigation by including all procedures connected with evidence collection. These actions are carried out by police or authorized persons, and not directly by Magistrates. When an authority has jurisdiction over an offence, it automatically has the power to investigate it as part of its legal function. Investigation includes maintaining case diaries, visiting the crime scene, collecting evidence, and conducting searches and seizures. It also covers arrest, detention, witness examination, medical tests, and raids. The entire investigation process lies primarily under police control. The Magistrate does not supervise it directly but may call for records such as the case diary when required. Investigation is the first stage of a criminal case. If no offence is found, the police submit a report and proceedings end. If evidence of crime is found, the case moves to inquiry and then to trial.

The Investigating Authority:

As per the provisions of the Code of Criminal Procedure, 1973, Section 156 bestows the authority to investigate a cognizable offense upon a police officer. This section grants the police officer the discretion to initiate the investigation, either with or without the magistrate's orders, in cases falling within the jurisdiction of their police station. In instances of cognizable offenses, the officer in charge of the police station is required to document the First Information Report (FIR) in writing, and it must be signed by the petitioner before the investigation can commence. Additionally, a

⁹ *State of Uttar Pradesh v. Sant Prakash*, 1976 Cri. L.J. 274 (All. HC)

magistrate holds the power, as provided by Section 190 of the CrPC¹⁰, to order investigations into cognizable offenses.

The Initial Report of The Crime:

The initiation of an investigation begins with the crucial step of reporting the crime. Following the occurrence of any criminal activity, it becomes the responsibility of the victim to inform the nearest police station, either in written or oral form. In cases where the victim provides oral information, it is imperative for the police to document it in writing and obtain the victim's signature. Subsequently, the police will file the First Information Report (FIR) based on the information provided by the victim, and a complimentary copy of the FIR will be furnished to the victim.

The Inception of Investigation:

The authority to investigate any cognizable offence is explicitly vested in the police authorities according to the provisions outlined in the Criminal Procedure Code. The exercise of their powers is confined to legal and lawful procedures, strictly adhering to the provisions of the law. The court is not permitted to intervene in the investigation process, and an accused does not possess the right to be heard regarding the material collected by the investigating officer. The investigating agency has the prerogative to submit a report indicating whether an offence has been committed, and only then does the magistrate have the authority to take appropriate action. In cases where the investigating officer finds insufficient material to support the allegations in the First Information Report, the magistrate can either accept the report or order further inquiry. In specific situations, the court has the discretion to take prompt action. However, the court is not authorized to instruct the investigating agency to submit a report in accordance with a particular viewpoint. The initiation of the investigation

¹⁰ Code of Criminal Procedure, 1973, § 190 (India)

process occurs when the officer in charge possesses a reasonable suspicion of the commission of a cognizable offence. Two conditions must be met for the commencement of the investigation process: the officer in charge of a police station must have grounds to suspect the commission of a cognizable offence, and there must be sufficient justification for initiating an investigation.

The Course of Action:

Section 157 of the Criminal Procedure Code (CrPC) establishes the protocol for conducting investigations. This provision mandates the immediate notification to the Magistrate with jurisdiction upon receiving information about the commission of a cognizable offence. A police officer, upon obtaining such information or having grounds to suspect an offence, is obligated to report to the relevant Magistrate. The Magistrate, upon receiving this information, is empowered to take cognizance of the offence and can direct a subordinate officer to investigate the incident, including examining the scene, facts, and circumstances, and taking measures for the discovery and arrest of the accused. The purpose of promptly sending a report to the Magistrate is to keep them informed of the ongoing investigation, allowing for appropriate directives. Section 157 emphasizes the expeditious submission of the report, underlining that any delay does not cast doubt on the case but alerts the court to exercise caution.

This section marks the commencement of the investigation process, encompassing all proceedings outlined in the Criminal Procedure Code for evidence gathering by the police. In the case of *Kari Chaudhary v. Sita Devi*¹¹, the court emphasized that the goal of the investigation is to determine whether the alleged crime has occurred and, if so, identify the perpetrator.

¹¹ *Kari Choudhary v. Most. Sita Devi*, AIR 2002 SC 441; (2002) 1 SCC 714

In instances where the alleged offence is not of a serious nature, the police may choose not to proceed immediately with the investigation. If the police officer deems it unnecessary to continue the investigation, they are at liberty to refrain from doing so. However, the reasons for not pursuing the investigation must be explicitly stated in the report prepared by the police officer. Information theory provides a useful perspective on the criminal investigation process, portraying it as a battle between the police and the perpetrator for crime-related information. The offender leaves behind "signals," and the police attempt to collect these signals through investigative activities. If the police can gather a substantial number of signals, the perpetrator can be identified and apprehended.

A significant challenge for the police in conducting criminal investigations is the potential volume of available information, coupled with uncertainties about its relevance, completeness, and accuracy. Moreover, for evidence to be admissible in court, it must possess certain qualities, and specific rules and procedures must be followed during the collection process.

COGNIZABLE AND NON-COGNIZABLE OFFENCES:

In the legal context of India, offenses are broadly classified into two categories: cognizable and non-cognizable offenses, with the severity of the crime being the determining factor. Cognizable offenses are those in which the police have the authority to arrest a suspect without requiring an arrest warrant. These offenses are considered serious, with penalties exceeding three years of imprisonment, either with or without a fine. Examples of cognizable offenses include dowry-related crimes, murder, and rape, and the definition is provided under Section 2(c) of the Criminal Procedure Code. Cognizable offenses are viewed as transgressions against society, affecting the public at large.

On the other hand, non-cognizable offenses are of a less severe nature, carrying penalties of less than three years of imprisonment, with or without a fine. To make an

arrest in cases of non-cognizable offenses, an arrest warrant is necessary. Offenses falling into this category encompass acts such as defamation, battery, and assault, as outlined in Section 2(i) of the Criminal Procedure Code. In situations where a case involves both cognizable and non-cognizable offenses, the entire case is treated as one involving a cognizable offense.

Investigation In Cases of Cognizable Offences:

Section 156(1) grants authority to the officer in charge of a police station to conduct an investigation into a cognizable case without requiring a magistrate's order. This power is confined to cases within the local jurisdiction. Sub-section (2) of Section 156 rectifies any violation of this provision. Illegality or defects in an investigation that do not directly impact the competency or procedure related to cognizance or trial do not invalidate the trial, and convictions cannot be overturned unless such issues lead to a miscarriage of justice. Sub-section (3) of Section 156 empowers a magistrate to order a police investigation before taking cognizance of an offence.

Upon receiving the report, the magistrate can take various actions, including discharging the accused, issuing a process against the accused, or applying his mind to the filed complaint and taking action under Section 190 of the Criminal Procedure Code. Section 157(1) outlines the procedure for conducting an investigation. If the officer in charge of a police station receives information about a cognizable offence, he must report it to a magistrate empowered to take cognizance upon a police report. The officer must then personally investigate the facts and circumstances of the case and take steps for the discovery and arrest of the offender.

The first proviso allows the officer to forgo on-the-spot investigation if the information concerns a named person and the case is not of a serious nature or lacks sufficient grounds for such an investigation. The second proviso, added by the Amended Act of 2008, mandates that investigations in rape cases be conducted at the victim's residence by a woman police officer. It also stipulates that questioning a victim under eighteen

years should occur in the presence of parents or a local social worker. Section 157 necessitates the officer in charge of a police station to send a report of a cognizable offence to a magistrate, referred to as an occurrence report, to provide early information about serious crimes for the magistrate to issue necessary directions under Section 159.

Investigation In Non-Cognizable Offences:

Section 155 of the Criminal Procedure Code, 1973 addresses information related to non-cognizable offences. No police officer can investigate a non-cognizable offence without a magistrate's order. However, once permitted, the police officer can wield the same powers as in a cognizable case, except for arresting anyone without a warrant. When a case involves two or more offences, with at least one being cognizable, the entire case is deemed cognizable.

According to Section 156(3) of the Criminal Procedure Code, 1973, any magistrate empowered under Section 190 of the Criminal Procedure Code, 1973 can direct a police officer to investigate any cognizable offence. Section 190 empowers a magistrate to take cognizance based on a complaint, police report, or information received from a person other than a police officer with knowledge of the committed offence. The court, in the case of *Tula Ram v. Kishore Singh*¹², clarified that a magistrate can order an investigation under Section 156(3) only at the pre-cognizance stage.

ROLE:

The police play a central role in crime investigation by discovering the truth in accordance with law, and their power to investigate primarily applies to cognizable offences under Section 156 of the CrPC, which allows them to act without prior permission of a Magistrate, while non-cognizable cases require such permission. An

¹² *Tula Ram v. Kishore Singh*, AIR 1977 SC 2401; (1978) 1 SCR 615

investigation begins independently by the police and ends with the submission of a report under Section 173, and if the police fail to act, a Magistrate may order investigation under Section 190, though the court cannot control or interfere with the investigative process until the charge sheet is filed. Under Section 156(2), police may investigate even beyond their territorial jurisdiction, and as held in *Prabal Dogra v. State of M.P.*¹³, courts cannot direct the manner of investigation. However, in exceptional cases of abuse of power, courts may intervene under Section 482 CrPC or Articles 226¹⁴ and 227¹⁵ of the Constitution, as recognized in *T.T. Antony v. State of Kerala*¹⁶. Thus, while police autonomy in investigation is protected, it is balanced by judicial oversight to prevent misuse, and although investigations may begin even before FIR registration in certain cases, FIR is mandatory in cases of unnatural death. Further, the CrPC applies to special laws like the NDPS Act, 1985¹⁷, except where inconsistent, acknowledging the special procedures prescribed under such statutes.

INTERPLAY OF SUBSTANTIVE AND PROCEDURAL LAW IN POLICE INVESTIGATION UNDER BNS AND BNSS:

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)¹⁸ is the procedural law that governs police investigation in India. It authorizes the police to register FIRs, including through electronic means and Zero FIRs, and makes registration mandatory in cognizable offences. It empowers the police to investigate cognizable cases without prior court permission and non-cognizable cases only with the Magistrate's approval. The BNSS grants powers of search and seizure, arrest, examination of witnesses, medical and forensic examination, and collection of digital and scientific evidence,

¹³ *Prabal Dogra v. Superintendent of Police, MCRC No. 10446 of 2017 (M.P. HC Nov. 30, 2017)*

¹⁴ Constitution of India art. 226

¹⁵ Constitution of India art. 227

¹⁶ *T.T. Antony v. State of Kerala, Appeal (Crl.) No. 689 of 2001, Supreme Court of India (July 12, 2001)*

¹⁷ Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985 (India)

¹⁸ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023 (India)

while insisting on transparency through documentation and audio-video recording. It regulates arrests by requiring necessity, written reasons, arrest memos, and intimation to relatives, and protects voluntariness in statements while prohibiting police confessions. It further provides for police and judicial custody, fixes timelines for investigation, and mandates submission of charge sheets or closure reports, thereby ensuring efficiency, accountability, and protection of individual rights.

The Bharatiya Nyaya Sanhita, 2023 (BNS)¹⁹ is the substantive criminal law that defines offences and prescribes punishments, thereby shaping the foundation of police investigation. By classifying offences as cognizable or non-cognizable and determining their seriousness, the BNS decides when police may arrest without warrant, when investigation can begin without court permission, and what procedural safeguards apply. Although it does not itself confer investigative powers, it indirectly controls the scope and intensity of investigation by identifying the crimes that trigger the application of the BNSS. Together, the BNSS and the BNS create a complementary framework in which the BNSS provides the procedure for investigation and the BNS provides the substance of criminal liability, ensuring effective law enforcement while safeguarding individual rights.

ESSENTIAL RIGHTS:

i. *Attendance Of Witness:*

Section 160 of the Criminal Procedure Code grants authority to a police officer to demand the presence of witnesses within the jurisdiction of their police station. However, in the case of a male person below the age of 15 years or above the age of 65

¹⁹ Bharatiya Nyaya Sanhita, No. 45 of 2023 (India)

years, a woman, or a physically or mentally infirm individual, their attendance is required at their place of residence.

During an investigation, a police officer can compel the attendance of any person residing within the limits of their own or adjacent police station, including the accused, if acquainted with the facts of the case. However, no male person below fifteen years or female shall be compelled to attend at any place other than their residence. The police officer is entitled to orally question such individuals, and they are obligated to truthfully answer all questions related to the case, unless the answers would potentially expose them to a criminal charge or penalty. These statements can also be documented through audio-visual electronic means by the police officer, and copies of the statements must be provided to the accused.

ii. Examination Of Witness:

In accordance with Section 161 of the Criminal Procedure Code, the police officer vested with investigative authority is responsible for examining witnesses and recording their statements in writing. This section also empowers the recording of statements through audio-visual electronic means. Additionally, in cases where an offence is committed against a woman, a woman police officer is required to record the statement of the victim.

Any police officer involved in an investigation under this chapter, or any police officer not below the rank as prescribed by the State Government, may orally examine individuals presumed to be familiar with the facts of the case. Such individuals are obligated to truthfully answer questions related to the case, excluding those that might incriminate them. The police officer has the discretion to reduce any statement made during the examination into writing, creating a separate and accurate record for each person whose statement is recorded.

iii. Preparation Of Charge Sheet:

Following the completion of an investigation, a police officer is authorized to submit a charge sheet. This comprehensive document encompasses essential elements such as a copy of the First Information Report (FIR), the complainant's statement, statements of witnesses, panchnama (an official document describing the scene), and any dying declarations.

Once the investigation concludes, the officer in charge of a police station is required to promptly forward a report to a magistrate empowered to take cognizance of the offence based on a police report. The report must adhere to the prescribed format specified by the State Government, containing information about the parties involved, the nature of the information, the names of individuals perceived to be familiar with the case's circumstances, an assessment of whether an offence has been committed and, if so, by whom, the arrest status of the accused, whether the accused has been released on bond or sureties, and if the accused has been forwarded in custody under Section 170 of the Criminal Procedure Code. Additionally, the police officer is obligated to communicate the actions taken to the informant.

PURPOSE:

The police play a crucial role in society, encompassing various responsibilities aimed at maintaining law and order, ensuring public safety, and preventing criminal activities. In summary, the roles of the police include:

- ***Preventing Crime:*** The police are tasked with proactively working to prevent criminal activities in the community.
- ***Protecting Public Property:*** They safeguard public property from damage, vandalism, or illegal activities that may compromise its integrity.
- ***Promoting And Preserving Public Order:*** The police contribute to fostering a sense of order and safety within the community.
- ***Maintaining Law and Order:*** Ensuring that laws are upheld, and order is maintained is a fundamental responsibility of the police.

- **Preventing And Controlling Terrorist Activities:** The police are instrumental in preventing and responding to terrorist threats and activities.
- **Protecting Internal Security:** Safeguarding the internal security of the country is a critical role of the police force.
- **Preventing Commission of Cognizable Offenses:** The police work to prevent the occurrence of offenses that warrant immediate action and investigation.
- **Accurately Registering Complaints:** They are responsible for registering complaints brought by complainants promptly and accurately.
- **Registering Zero FIR:** The police are obligated to register a Zero FIR, ensuring that complainants are not denied the opportunity to lodge a complaint based on jurisdictional issues.
- **Preserving, Promoting, And Protecting Human Rights:** The police play a role in safeguarding the rights and interests of all individuals, particularly those belonging to weak sections and backward classes.
- **Taking Preventive Action:** While the police have the authority to take preventive action, it is crucial that this power is not exercised arbitrarily.
- **Patrolling And Prohibiting Sale of Illegal Articles:** They engage in patrolling activities to deter criminal behaviour and prevent the sale of illegal goods.
- **VIP Security:** The police are responsible for providing security to VIPs and undertaking various duties while accompanying VIPs on official visits.

In essence, the multifaceted role of the police involves not only responding to criminal incidents but also proactively working to create a safe and orderly environment for the community while upholding the principles of justice and human rights.

STATEMENT OF RESEARCH:

The police's investigative powers have evolved from ancient systems of maintaining law and order and were firmly structured in India with the enactment of the CrPC, 1973, which provided a comprehensive legal framework, procedural safeguards, and

adaptability to modern crimes and technology. These extensive powers are necessary to maintain public order, prevent and detect crime, collect evidence, and ensure effective law enforcement, but they must always operate in harmony with due process and the protection of individual rights such as privacy, legal representation, and presumption of innocence. Since broad powers carry risks of misuse and misconduct, strong safeguards like independent oversight, accountability, training, and proportional use of authority are essential. Fair and transparent investigations help build public trust and strengthen police-community relations, while abuse of power damages cooperation and confidence. International best practices stress human rights, fairness, and checks and balances, offering valuable standards for improving India's system. Effective investigative powers enhance the efficiency of the criminal justice system by enabling timely and accurate evidence collection, while technological advancements like forensic science and digital tools improve investigations but raise ethical concerns about privacy and bias. Finally, public perception and media portrayal significantly influence trust in policing, making responsible reporting, transparency, and public awareness crucial for maintaining confidence in police investigative powers.

PROCEDURE:

The procedural steps in a criminal investigation, as outlined by Section 157 of the Code of Criminal Procedure (CrPC), commence with the receipt of information about a crime by the officer in charge of a police station. This officer is authorized to conduct an investigation and submit a report to the Magistrate, who then takes cognizance of the case. The investigative process involves visiting the crime scene to gather evidence and potentially arresting suspects. In cases involving non-cognizable offenses, the police may refrain from investigating without the Magistrate's order. If the investigating officer finds no reasonable grounds for investigation, they are not obligated to proceed, and they can communicate the reasons to the Magistrate.

Throughout the investigation, various reports are sent to the Magistrate to apprise them of the inquiry's status.

- 1) *Section 157* mandates the submission of a "police report" to inform the Magistrate of the grounds for suspecting a crime. Additionally, a 'final report' is forwarded under Section 173 at the investigation's conclusion.
- 2) *Section 159* empowers the Magistrate to order an investigation based on the reports received. Identification and attendance of witnesses, as per Section 160, grant the police authority to call individuals acquainted with the case for interrogation.
- 3) *Section 161* authorizes the police to interrogate witnesses, with witnesses required to answer questions. However, they are not compelled to respond to questions that may incriminate them. Statements made during the examination may be recorded at the discretion of the investigating officer.
- 4) *Section 164* empowers the Magistrate to record statements or confessions, ensuring the voluntary nature of such admissions. These recorded confessions can be used as evidence in court.
- 5) *Section 165* grants the police the power to search places or properties relevant to the investigation. A search warrant from the Magistrate is required, and after the search, a report is sent to the Magistrate.
- 6) *Section 167* addresses cases where investigation completion within 24 hours is not feasible. The Magistrate is empowered to make decisions on the accused's custody and the continuance of the investigation.

The investigation concludes with several stages:

- Discharge of the accused if insufficient evidence is found, with the provision of furnishing security.

- Presentation of a "challan" or "charge sheet" to the court, containing essential information about the investigation, as mandated by Section 173.
- The initiation of the trial after the accused persons are charged with the crime.
- These procedural steps collectively guide the investigative process, ensuring adherence to legal requirements and safeguarding the rights of the individuals involved.

Police Report:

A document known as the police report is submitted to the magistrate by a superior police officer to inform them that a specific case is under investigation by a police officer. This submission aims to enable the magistrate to oversee the investigation and issue necessary directives in accordance with Section 159 of the Code of Criminal Procedure (CrPC). It is imperative that the report is promptly delivered to the magistrate. The case of *Swati Ram v. the State of Rajasthan*²⁰ clarified that a mere delay in furnishing the report does not render the prosecution's case null and void.

Search Warrant:

Regarding the search authority vested in a police officer during an investigation, Section 165 of the CrPC grants the officer the power to search any place within the local jurisdiction of the police station under their charge or to which they are attached. This search can be conducted without the need for obtaining a search warrant, provided the officer reasonably believes that the place holds items necessary for the ongoing investigation.

²⁰ *Swati Ram v. State of Rajasthan*, (High Ct. Jud. Raj. 1997)

The officer conducting the investigation is responsible for carrying out the search personally. However, if this is not feasible, written authorization can be granted to a subordinate officer, specifying the purpose of the search and the location. This provision emphasizes the importance of facilitating effective and efficient searches in the interest of the ongoing investigation.

Whenever an officer in charge of a police station or a police officer conducting an investigation possesses reasonable grounds to believe that anything essential for an investigation into an offence, which they are authorized to investigate, may be located in any place within the jurisdiction of the police station they oversee or to which they are attached, and obtaining such a thing without undue delay is not possible otherwise, the officer may, after recording in writing the grounds for their belief and specifying, to the extent possible, the item for which the search is to be conducted, proceed to search or cause a search for such an item in any place within the boundaries of the said station.

The police officer, when conducting the search under Sub-Section (1), should, if possible, personally conduct the search. If personal search is not feasible, and no other competent person is available to conduct the search at that time, the officer may, after recording in writing the reasons for this action, instruct a subordinate officer to carry out the search. The officer shall provide the subordinate officer with a written order specifying the place to be searched and, to the extent possible, the item for which the search is to be made. The subordinate officer may then proceed to search for the specified item in the designated place.

The provisions of this Code regarding search warrants and the general regulations on searches outlined in section 100 shall, to the extent applicable, be relevant to searches conducted under this section. Copies of any record produced under Sub-Section (1) or Sub-Section (3) shall promptly be sent to the nearest Magistrate empowered to take

cognizance of the offence. Upon request, the owner or occupier of the searched place shall be provided, free of charge, with a copy of the same by the Magistrate.

Right Of Police to Interrogate:

It is within the legitimate rights of a police officer to question any individual based on credible information. While it is true that individuals rarely volunteer quick and accurate information related to crimes, it is essential to note that this doesn't grant the police the liberty to employ third-degree methods, use physical force, or resort to any form of torture. Interrogation should serve a purpose in making the investigation effective, and the use of force is both barbaric and against the law. Police officers are custodians of the law, and if they engage in criminal conduct, it jeopardizes the safety of everyone in society.

THE POWER OF POLICE TO ARREST:

The police possess the authority to effectuate arrests for both cognizable and non-cognizable offenses. While a police officer cannot arrest an individual without a warrant for non-cognizable offenses, such restrictions do not apply to cognizable offenses, allowing for arrests without a warrant. In situations where there are sufficient grounds, a magistrate may extend the period of detention up to 15 days, and the police hold the power to release the accused if evidence is lacking.

Preventive Arrest:

The concept of preventive arrest, the apprehension of an individual likely to commit an offense, is a subject of global debate. In India, the powers of the police for preventive detention are primarily outlined in sections 107²¹ and 151²² of the Code of Criminal Procedure (CrPC). If an Executive Magistrate receives information about a

²¹ Code of Criminal Procedure, 1973, § 107 (India)

²² Code of Criminal Procedure, 1973, § 151 (India)

person potentially causing a breach of peace, they may issue an order to show cause or require the person to execute a bond to maintain peace. The police, as part of their duty, are empowered to prevent cognizable offenses. Furthermore, the police have the authority to arrest a person without a warrant or magistrate's order if they possess knowledge that the individual is planning to commit a cognizable offense.

However, such arrests are permissible only when it is deemed the sole means to prevent the intended offense. The underlying purpose of these provisions is to proactively avert the commission of an offense. The constitutional validity of these sections has been a matter of contention, with challenges mounted through petitions questioning the legality of preventive arrest provisions. In a specific case involving landowners in Madhya Pradesh protesting the Sardar Sarovar Project's impact, the court ruled against the arrest of individuals who posed no threat to committing cognizable offenses, citing a violation of Article 21 of the Constitution. It is noteworthy that Section 151 already outlines the grounds for arrests, and preventive arrest laws receive legal recognition under the Constitution of India. Consequently, these provisions are argued not to contravene Articles 21²³ and 22²⁴.

Instances of the misuse of police powers under preventive arrest have been documented, revealing arbitrary and unjust applications of these authorities. A specific case illustrates such abuse, where individuals detained under section 107 and section 151 were deprived of the opportunity to present their case for six days. The proceedings lacked proper scrutiny, and no order was issued under Section 111 of the Code of Criminal Procedure²⁵. The Karnataka High Court, in response, deemed this

²³ Constitution of India art. 21

²⁴ Constitution of India art. 22

²⁵ Code of Criminal Procedure, 1973, § 111 (India)

process arbitrary and unjust, emphasizing the failure of the police to adhere to the prescribed procedure.

In the legal case of *Ahmed Noormohmed Bhatti v. State of Gujarat*²⁶, the court suggested that guidelines established for detainees must be followed in cases of preventive arrests. These guidelines were initially articulated in the case of *D. K. Basu v. The State of West Bengal*²⁷. The court underscored that the mere arbitrary exercise of a provision by authorities does not render it unreasonable or unconstitutional. It emphasized the necessity for a thorough examination of each case to determine whether the arrest is constitutionally valid or not. This highlights the importance of scrutinizing preventive arrests to ensure their conformity with established guidelines and constitutional principles.

Arrest Without Warrant:

Police officers are granted the authority to make arrests without a warrant under Sections 41, 42, and 151 of the Code of Criminal Procedure (CrPC).

Under Section 41(1) of the CrPC²⁸, a police officer can arrest an individual without a warrant under the following circumstances:

- a. If the person commits a cognizable offense in the presence of a police officer.
- b. If a complaint has been filed against the person, or if there is suspicion that they committed a cognizable offense with a term of imprisonment up to seven years.

²⁶ Ahmed Noormohmed Bhatti v. State of Gujarat & Ors., Appeal (Crl.) 109 of 2001, (Sup. Ct. India Mar. 16, 2005)

²⁷ D.K. Basu v. State of W. Bengal, (1997) 1 S.C.C. 416, 1997 S.C.C. (Cri) 92 (Sup. Ct. India Dec. 18, 1996)

²⁸ Code of Criminal Procedure, 1973, § 41 (India)

- c. If the person possesses stolen property, is declared a proclaimed offender, obstructs police officials, attempts to escape lawful custody, or is reasonably suspected of desertion from the Indian Army forces.

However, these powers are subject to exceptions outlined in the code and related acts. For instance, a police officer cannot arrest someone for a non-cognizable offense without prior Magistrate permission (Section 155(2)).

The terms 'credible information' and 'reasonable suspicion' in Section 41 imply that arrests must be based on concrete facts, without ambiguity. Section 41(1)(b) specifies that arrests can only be made when the police have definite knowledge or information.

Section 42²⁹ addresses situations where a person refuses to provide necessary information. In such cases, a police officer can arrest someone for a non-cognizable offense if they refuse to disclose their name and residence or provide false information. The arrested person can be released upon executing a bond for appearance before a Magistrate within 24 hours.

Under Section 151, a police officer can arrest to prevent the commission of a cognizable offense, but not solely based on the apprehension of a breach of peace.

In *Arnesh Kumar v. State of Bihar* (2014), it was emphasized that in cases where the offense is punishable with less than 7 years, police should not unnecessarily arrest the accused. The court emphasized that Magistrates should not casually or mechanically authorize arrests, a sentiment reiterated by the Gujarat High Court in *Kamuben Somaji Bhavaji Thakore v. State of Gujarat* (2022)³⁰.

Arrest By Warrant:

²⁹ Code of Criminal Procedure, 1973, § 42 (India)

³⁰ Kamuben Somaji Bhavaji Thakore v. State of Gujarat, R/Criminal Misc. Application No. 12390 of 2022 (Guj. HC Sept. 14, 2022)

In instances of non-cognizable offenses, the police lack the authority to arrest individuals without a warrant or prior information from the Magistrate. A warrant, issued in writing by the Magistrate, is necessary to apprehend a person accused of committing a non-cognizable offense. The procedure for arrest with a warrant is delineated in Sections 70 to 81 of the Code of Criminal Procedure (CrPC)³¹.

As per Section 70 of the code, each warrant for arrest must be in writing and remains valid until expressly cancelled by the Court. When a Magistrate issues a warrant in writing, any police officer whose name is specified on the warrant is authorized to carry out the arrest. The arrested individual must be promptly informed of the reasons for their arrest, and without unnecessary delay, they are to be presented before the Magistrate. This ensures a transparent and lawful process for the apprehension of individuals accused of non-cognizable offenses.

CASE LAWS:

- *Naresh Kavarchand Khatri v. State of Gujarat* (2008)³²: the court emphasized the limited power to interfere in police investigations, asserting that the police have the authority to transfer cases when the place of the crime falls outside their territorial jurisdiction.
- *Shivlal and Ors. v. State of Chhattisgarh* (2012)³³: the case delved into the consequences of delays and contradictions in the prosecution's case. The court emphasized that the prosecution's failure to explain delays in providing the FIR copy to the magistrate and contradictions in witness statements can cast doubt on the authenticity of their case.

³¹ Code of Criminal Procedure, 1973, §§ 70-81 (India)

³² Naresh Kavarchand Khatri v. State of Gujarat, Appeal (Crl.) No. 839 of 2008, Supreme Court of India (May 8, 2008)

³³ Shivlal v. State of Chhattisgarh, Criminal Appeal No. 610 of 2007, Supreme Court of India (Sept. 19, 2011)

- *Manubhai Ratilal Patel Tr. Ushaben v. State of Gujarat* (2013)³⁴: the court held that the task of investigation exclusively falls within the purview of the police. It affirmed the police's empowerment to conduct investigations, unearthing the facts and circumstances of a criminal case before the initiation of a trial.
- *Hema v. State* (2013)³⁵: in this case, the Supreme Court underscored that flaws in the investigation period do not automatically lead to the acquittal of the accused. Even if the investigation is deemed highly defective, it does not imply blind reliance by the court on the investigation and charge sheet. The court acknowledged that the investigation is the initial stage of a criminal trial, and subsequent actions are taken by the court after the charge sheet is filed.
- *Anjan Dasgupta v. State of West Bengal* (2017)³⁶: the court considered a reasonable delay in registering an FIR. Despite a delay before the inquest report of a dead body, the court held that unintentional situations or other issues do not undermine the authenticity of the FIR.
- In summary, these cases collectively highlight various aspects of police investigations, from their exclusive domain to the importance of timely FIR registration and the need for careful scrutiny of evidence during trials.

CASE ANALYSIS:

Lalita Kumari v. State of Uttar Pradesh and Ors. (2013)³⁷:

Case Background:

³⁴ *Manubhai Ratilal Patel v. State of Gujarat*, Criminal Appeal No. 1572 of 2012 (arising out of SLP (Crl.) No. 6468 of 2012), Supreme Court of India (Sept. 28, 2012)

³⁵ *Hema v. State through Inspector of Police, Madras*, Criminal Appeal No. 31 of 2013 (arising out of SLP (Crl.) No. 9190 of 2011), Supreme Court of India (Jan. 7, 2013)

³⁶ *Anjan Das Gupta v. State of West Bengal*, Criminal Appeal No. 298 of 2006, Supreme Court of India (Nov. 25, 2016)

³⁷ *Lalita Kumari v. Government of Uttar Pradesh*, Writ Petition (Crl.) No. 68 of 2008, Supreme Court of India (Nov. 12, 2013)

The victim's father, through a writ petition under Article 32 of the Constitution of India, sought protection for his minor daughter who had been kidnapped. Alleging inaction by the police regarding his complaint, the petitioner highlighted that neither the local police nor the Superintendent of Police took steps to locate the girl or apprehend the accused.

Key Issues:

The central issue addressed by the Supreme Court in *Lalita Kumari* was whether a police officer is mandated to register a First Information Report (FIR) upon receiving information about a cognizable offense, or if the lodging of an FIR can be deferred until a preliminary inquiry verifies the authenticity of the information.

Court Decision:

The Supreme Court determined that the use of the term 'shall' in Section 154(1) of the Code of Criminal Procedure (CrPC) indicates a mandatory obligation for the police to register an FIR upon receiving information about a cognizable offense. The Court emphasized that the only prerequisite for FIR registration is the cognizable nature of the offense. While recognizing specific cases where a preliminary inquiry might precede FIR registration (such as matrimonial disputes, commercial offenses, medical negligence, corruption cases, and instances of extraordinary delay in initiating criminal prosecution), the Court clarified that this list is illustrative, not exhaustive.

Arnesh Kumar v. State of Bihar (2014)³⁸:

Case Background:

³⁸ *Arnesh Kumar v. State of Bihar*, Criminal Appeal No. 1277 of 2014 (arising out of SLP (Crl.) No. 9127 of 2013), Supreme Court of India (July 2, 2014)

Arnesh Kumar involved a husband accused of supporting his mother's dowry demand and threatening his wife. The wife claimed she was forced out of her matrimonial home for not meeting the dowry demand. The husband moved an application to the Sessions Court and later the High Court, both of which rejected his plea. Subsequently, he approached the Supreme Court via a Special Leave Petition.

Key Issues:

The case addressed the rights of arrested individuals before and after arrest, focusing on remedies available to those falsely accused under Section 498-A of the Indian Penal Code (IPC). The Court also provided guidelines for arrests in such cases.

Court Decision and Guidelines:

The Court granted bail to the accused under specified conditions and issued guidelines for police arrests. The guidelines emphasized that arrests bring humiliation and lasting scars, and thus, they should not be conducted casually. The court stressed that arrests under Section 498-A are warranted only when falling under Section 41 of the CrPC. It outlined a checklist for police officers, requiring them to provide reasons for arrest and forward them to the Magistrate. The Magistrate, in turn, was directed to consider these reasons before ordering further detention. Additionally, the Court mandated that reasons for not arresting the accused be submitted to the Magistrate within two weeks of case initiation. The notice under Section 41A was to be served within two weeks, and non-compliance with these guidelines would be considered contempt of court.

SUGGESTIONS:

The Supreme Court guidelines in cases such as *D.K. Basu v. State of West Bengal* were framed to control arbitrary preventive arrests, but the safeguards under Sections 107 and 151 CrPC have remained insufficient to effectively prevent their misuse. Magisterial inquiries are essential for validating arrests under Section 107, and the

Magistrate must conduct careful questioning and seek assistance from relevant authorities to ensure that the rights of detained persons are fully protected. To prevent abuse of preventive provisions, strict penalties should be imposed on those who misuse them. Preventive arrest must be understood as a protective measure, not a punitive tool, and public confidence must be built that such powers exist for safeguarding individual rights in a democratic society.

CONCLUSION:

The power of police investigation under the CrPC is a cornerstone of the criminal justice system, authorizing police to investigate cognizable offences, but it must always be exercised strictly in accordance with law. Courts do not interfere in the investigation process, and the accused has no right to participate in or challenge the evidence collection stage. The investigating agency has discretion to submit its report, upon which the Magistrate decides further action. An investigation begins when the officer in charge has reasonable suspicion and sufficient grounds to believe that a cognizable offence has been committed. These investigative powers must operate within the framework of due process, supported by safeguards and oversight to prevent abuse and ensure accountability. Ultimately, police investigation powers are vital for maintaining law and order and protecting society, and they must be exercised responsibly with full respect for individual rights.

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