

QUESTIONING an ACCUSED

Dr. S. Krishnamurthy, IPS (Retd)
Former DGP, Karnataka State



Published by
S.V.P National Police Academy

Questioning an Accused

© *Director, S.V.P National Police Academy, Hyderabad*

First Edition: 2015

All rights reserved. No part of this book may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording or by any information storage or retrieval system, without permission in writing from the Publisher.

Published by

Director

S.V.P National Police Academy
Shivrampalli, Hyderabad -500 052
Ph: (040) 24015151-58 Fax (040) 24015179
Website: www.svpnpa.gov.in,
Email: info@svpnpa.gov.in

Cover Design: Asia Law House, Hyderabad

ISBN: 978 - 81- 931249 - 0 - 2(PB)

Price: ₹200.00

Printed by: SVP NPA, Printing Press.

Preface

Sardar Vallabhbhai Patel National Police Academy, Hyderabad gave me a great opportunity to study a professionally relevant subject by awarding the SVP NPA Fellowship for the year 2010.

The subject of 'Questioning an Accused' is indeed central to the task of detection and investigation of crime. Without doubt it is a most fascinating area of study for anyone interested in that critical range of law enforcement ventures.

As a part of that study I was able to meet and interact with various current and ex-police officers as well as some others who are in related areas of criminal justice processes. Besides reviewing an immense amount of information and data on the subject, I was happy to learn a lot about this complex area of police work. The study is a legal analysis as well as a reflection of contemporary perceptions about that crucial area of police work. Indeed many issues that come to the fore during various 'detection of crime' situations that abound the total area of police work are the focus in this effort.

I am particularly thankful to the SVP NPA, an institution that is most dear to all officers of the Indian Police Service in particular. I am thankful to the Director and others of that great institution for having enabled this chance for me.

Bengaluru
20/12/2015

Dr. S. Krishnamurthy

Contents

CHAPTERS

1.	The Challenges faced by ‘Crime Investigators’	1
2.	Historical Facets of some of the Legal Principles and the Right against ‘Self -incrimination’	35
3.	Self-incrimination and the Law	74
4.	Scientific Evidence and the Law relating to ‘Self-incrimination’	103
5.	Law Relating to Evidence Obtained Illegally.....	129
6.	Search for ‘Facts’ as a Dominant Charter in all Police Investigations - its Impact on ‘Questioning an Accused’	177
7.	‘Questioning an Accused’ and Training the Investigators.....	213
8.	Suggestions to improve the quality in the task of ‘Questioning an Accused’	247
9.	‘Questioning an Accused’ during Police Investigations & Role of SVP NPA.....	304
10.	Annexure.....	347
	Data Sheets on opinion gathered.....	348
	S W O T analysis vis-à-vis the ‘Questioning an accused’.....	375
	Subject Index.....	379

=====

CHAPTER 1

The Challenges faced by 'Crime Investigators'

I.1.(1) India is a vast country. Indisputably it is an agrarian society. With the population of the nation bursting its seams, India is often called an enigma for various perceptible reasons. This is surely so as more than a billion people are themselves an amazing mixture of varied cultural, linguistic and social backgrounds. In addition to that, the people of India, in general constitute an incredible assortment of diverse religious beliefs and practices. Notwithstanding its historically recent legacy of being considered a poor nation, India is also known as a rapidly developing country in terms of many contemporary international benchmarks. However, in the present times, India has been very rightly fashioning many accomplishments in diverse fields and thereby generating global consciousness about its innate potential and capacity. It is no surprise that India is now being rated as a rapidly emerging superpower in terms of its pioneering leadership in several areas, besides its well noted expertise in computer 'soft-ware' applications, which it has achieved by its relentless and assiduous hard work. Likewise, it is recognized that India is admirably endowed in several other fields of science and technology as well as in many added areas of global reckoning. Yet, there are innumerable contradictions galore that abound this land. For example, the scientific abilities of its pioneers in the field of air space discipline to launch orbiting satellites, paradoxically enough, have to still coexist with the most rudimentary and primitive ways of life even in many of its

urban areas not to mention remote and inaccessible places in the realm. Incredible scenes like modern day swanky cars sharing space and time with bovines, sheep, donkeys and various other domesticated animals, camels & elephants trudging along the highways, thoroughfares and numerous other streets may startle an alien but accepted as a part of daily life in India. Likewise, the spectacle of abject poverty alongside displays of unlimited wealth and similar other incongruities dot the landscape in a mind-boggling number of ways. Stated differently, they are not mere oddities as they are really the challenges to the dexterity and ability of the leaders and managers of the country in moving the nation forward and in a right path. Perhaps one such difficult challenge confronting the nation can be seen in its fight against crime.

I. 2.(1) Crime Scenario in India

The National Crime Records Bureau (NCRB), Government of India, New Delhi has been publishing its annual statistical compilation related to the yearly crime scenario in India. Report at hand is in '*Crime In India-2011*'. A perusal of the data reflected therein indicates several easily discernible facets of the current crime situation in India.¹

1.2.(2) Awesome burden of '*traditional crimes*' on the police forces of India: During the year **2011** a total number of **62,52,729** cognizable cases (both under the Indian Penal Code and under Special and Local laws) were registered and investigated by the police. Out of that massive number, **23,25,575** cases were registered under IPC and the rest were taken up under Special and Local Laws. Looking at the 'Snapshots' provided in that publication of the NCRB, it is seen that the crime trend has been clearly depicting a tendency to reflect an increase in the total volume of crimes. (A perusal of the '*snapshots*' of *Crime in India-2011* would enable us to get a

1. Crime In India-2011, NCRB, GOI, New Delhi.

graphic picture of many other salient features of 'Crime in India'). In fact that official statistical compilation of NCRB on crime reported in India is a useful resource to enable development of best possible plans in dealing with the crime problem. This is especially so from the point of view of the awesome workload which is steadily but steeply impinging on the investigative burdens of the police forces of various States and Union Territories of India.

I.2.(3) A quick perusal of the data on '*Disposal of Cases*' conveys that during the last four years (i.e., from the period 2008 to 2011), a huge number of cases (i.e., over 80%) out of the total number of cases reported during those years, as per the Code of Criminal Procedure, 1973 were investigated. It is also seen that in a vast majority of such cases, final reports charging accused persons have been submitted to concerned jurisdictional courts. However, if we take note of number of cases not charged and disposed accordingly (on grounds of lack of evidence or mistake of fact, as provided by the Code of Criminal Procedure, 1973) and add those numbers to the litany of cases investigated and duly charged, then, it is easy to note that the overall burden relating to the task of 'Investigation' of crime is clearly much more arduous. As mentioned earlier, many cases do not result in 'A' final summary (or the charge – sheet, as is popularly known amongst the uninitiated to the legal processes), due to various reasons, notwithstanding good investigation done in such cases. Yet, the fact remains that investigations will have to be done fully and completely in all such cases irrespective of end result of probe efforts under the Code. To sum up, it merits notice that notwithstanding the kind or type of final report in each case taken up under the Code, it is inevitable that all cases registered in the police stations have to be attended to, as per law - in terms of ensuring proper investigation of all registered complaints. As a natural result investigating officers will have to bestow due and proper attention to each one of

them and must do so as per strict standards prescribed by the Code. Further, from a perusal of crime data for the year 2011, it is seen that, out of the total number of cases reported during the period of study, only about 1% of cases were refused investigation or were not taken up for any further steps by the police. To sum up, it is clear that the overall burden on the law enforcement system to fulfill the tasks of investigation of cases is really colossal. From a perusal of the data at hand it is glaringly seen that substantial number of cases impale the system further by sheer load of cases of pending investigations, which are perforce carried forward to ensuing or subsequent years. As can be seen from the data (at page 345 of Crime in India-2011) a mammoth pendency of the previous year/s is/are taken forward for disposal as per law. During the year 2011, it is seen that an overwhelming load of 31, 46, 326, cases (pending investigation) were carried forward and at the end of the year 2011, a total of 86,56,544 cases are shown as *pending investigation*. This steadily escalating burden cannot be ignored at all, if we plan to deal realistically with the burden of investigation of crimes registered.

I.2. (4) From a perusal of the data in question, it is evident that some particular categories of crime like 'Cheating', 'Criminal Breach of Trust', 'Counterfeiting' and of similar ilk are in big volumes (as reported to the police each year) and that numerical load relentlessly adds up to the overall duty of '*Under Investigation*' cases, rendering the pendency burden to continuously escalate. This is essentially so due to many inherent factors. Data *per se* indicates that most such crimes do not get solved quickly (and more often than not, investigations go on for very long periods without much of success). Yet, all such cases have to be investigated and as a rule they mean longer durations of investigation work in comparison to cases of many other types under the Indian Penal Code. Numerous statistical portrayals made by NCRB's

'Crime in India- 2011' relating to particulars and minutiae of crime and a generalized array of information concerning the disposal of cases by police can be referred to and analyzed from a study of that publication to get an idea of the overall variety of investigative enterprise undertaken by the police organizations of the country. It can be stated emphatically that the overall burden of investigation of crime on the police systems in the country is surely mammoth. An obvious reason as to why such a reference is appropriate here lies in the fact that an awesomely large number of cases warrant sustained investigations and that singular fact merits notice. Thus, in the context the theme of this study, that critical fact gains significance. Though there is no clear and convincing empirical data to indicate precisely the total number of cases in which a major clue or hint was obtained or secured by the investigators after successful interrogation of the 'accused' in the concerned case, - leading to solving the crime in question, and yet, it is a fact that the task of 'questioning an accused' devolves as a vital part of investigative work by police. That aspect merits notice as an inevitable primary charter of 'questioning an accused' in all crime investigations requiring no special assertion. The balance of opinion amongst a majority of police professionals is that, '*questioning the accused*' in each and every case is of immense significance to the respective case, notwithstanding the fact that law generally mandates that the investigating agency or the police will have to establish the case against the accused based on other direct as well as circumstantial evidences. This facet may or may not necessarily include the statement made by the accused to the investigator in that particular case.

1.2.(5) We need to keep in mind the essential legal prescriptions of the Code which provides that the accused may, by law, use his 'right of silence' and remain silent and thereby refuse to assist the police. Stated broadly, it is necessary for the police to gather evidence in a given case, independent of

the accused. However, as mentioned earlier it needs to be kept in mind that no reliable data is at hand on the statistical analysis of number of cases that have been solved by the clues secured only during the interrogation of the accused. It needs to be noted that such a data must exclude cases solved through recourse to other sources and further it needs to be noted that such cases must have been solved without violating Constitutional dictates and prescriptions of the Code relating to the rights of the accused. In fact, this crucial fact (i.e., on a rights of the accused) has to be repeatedly mentioned in the vista of professional standards of investigation of crime. Perhaps this is most necessary from the perspective of good policing and is decidedly so for several reasons. However, that brand of data is not at hand. (i.e., of cases which were solved solely *with the help of information provided only by the accused*). In fact, that kind of information is also not generally envisaged during the myriad processes of all crime data gathering enterprise. More importantly, endeavoring to seek that kind of statistics is also not easy or practical at all!

1.2.(6) The general expectation of the penal law is that theoretically, the investigating officer has to solve the case or present his case essentially based on evidence secured by him after examining witnesses or by obtaining circumstantial evidence (from the scene of crime and various other sources). Conversely, he is expected to depend less on obtaining information from the accused. However, it is also a fact that law provides the power and authority to the investigator to try and elicit as much information as is possible from the accused, subject to the rights of the accused – as legislated by the Constitution of India, the Code and other valid legal prescriptions. Yet, it is manifestly clear that even in cases where witnesses are named and are at hand to assist the investigation, the basic and most vital task of ‘questioning the accused’ cannot be ignored. Nor can that part of investigative work be given any less importance by the investigating officer. While

the investigating officer elicits as many facts and as much of information as is possible (within the bounds of the law), he has to keep in mind the significance attached by the profession to the task of 'questioning the accused'. This is so, in each and every case before the investigators. The Code of Criminal Procedure, 1973 clearly provides various legal options in this regard. The investigating authority can elicit as much information as is possible from the accused or the suspect, notwithstanding the rights of the accused or in his legal right to remain silent or to refuse to answer questions put to him. No doubt, keeping in mind the legal standards relating to the rights of the accused against self-incrimination or the guidelines to secure evidence without recourse to prohibited means are deemed as '*must*' mandates for implicit compliance. They provide a right countenance to all legal and validly permitted ways to secure information that can be legitimately elicited from the accused.

1.2.(7) The Indian Evidence Act, 1872 is most emphatic in its enunciations with reference to confessions or admissions made by an accused as well as with regard to the range of discovery made or accomplished by the investigating officer i.e., based on the statement or information provided by the accused. Though it is easily foreseeable to note that some accused may simply refuse to answer any question or questions posed, it is equally necessary to appreciate that generally an accused is most likely to reply to posers made to him so long as he (in his own mind or in his perception) feels safe about information given by him in response. However, he is most likely to chose to remain silent, if he apprehends danger to his interests in giving a particular reply. (Law also prohibits such responses as being hit by the law on self-incrimination, if they tend to impact the matter in such a way). Further, due to increasing awareness about rights of accused persons (amongst the people in general), many a suspect or an accused may prefer to remain silent and at times, his legal counsel

may advise him (i.e., accused) to keep mum to any questions asked. Notwithstanding all the nuances of the processes of investigation and the legal directions encompassing all such areas of police work, it is easy to surmise that eliciting information from the accused is of paramount importance to the very edifice of law enforcement. Though no generalizations can be made in this regard, it is without doubt necessary to assert that the role of an investigator in *questioning an accused* is of immense professional significance and consequence.

1.2.(8) A perusal of various types and kinds of information and statistics provided by *Crime in India - 2011* helps in getting a rough idea about the phenomenal range of investigative role to be played by a law enforcement agency like the police. It is not merely the huge varieties of traditional crime proscribed under the Indian Penal Code that come to our mind at the mention of the phrase 'investigation of criminal cases', as we need to keep in mind an equally wide range of many other conventional penal laws in force under the general nomenclature of Special and Local laws. To this list we need to keep in mind many new laws that are being continuously made to deal with many technology based contemporary crimes. In fact, the Code of Criminal Procedure, 1973 operates to guide most such enactments, save those laws for which special procedures are particularly mandated. Notwithstanding such variations, the general principles of law as dictated by the Code covers the total gamut of investigations and thus, the significance that merits to be attached to the task of 'questioning an accused' is virtually *at par* even in those special areas cited as above.

1.3.(1) Cyber Crimes and the engulfing 'Chip Menace': - Never has any human development since the invention of the pattern of wheel, influenced and even revolutionized the daily life of the world, as much as the invention and design of the 'chip', especially of the present-day kind. Strange as it may seem, the rapid transition that is

overtaking the field of 'information sciences' as well as its application encompassing practically all areas of life has been the single biggest factor of consequence of modern era. Further, it is surely global, as it is reaching remotest corners of the earth. There is hardly any location that can be considered inaccessible for the chip. Computers are now commonplace in our midst, though ordinary people (in India and in many underdeveloped nations) may not be fully aware of its cascading and intensifying influence on all aspects of life. But, that trend is rapidly getting altered as innumerable manifestations of info-tools are virtually swamping the human life. Televisions, mobile phones, computing tools and so on are now in the realm of the inevitable (and at times the most essential) tools of modern living. Though a vast majority of organizations and institutions in the private sector have indeed tuned rapidly to computer application mode, the lumbering public services, especially the governmental systems are also slowly but surely falling in line. It is being increasingly realized that computer aided work culture is the future. There is hardly any human activity which is not influenced by these applied sciences. Though technology is really a great boon to get reliable, fast and effective computing data in relation to virtually all types and all facets of human activities, the fall out of growth of knowledge and technology in all those exclusive areas is also witnessing the escalating abuse and misuse of many such tools. Criminals are perhaps more innovative to put to perverse use the ever changing or advancing technology. Such unsavory trends are virtually surrounding the entire human society. Great techno-resources of numerous kinds are being increasingly abused by the lawless. Those negative acts subvert the law by such misuse of the awesome potential of many such techno tools. There are endless number of examples of such perverted ways, all of which invariably impale the society. As a natural result, all such negative consequences and outcomes add to the crime burden of the

human society in general. The resultant upheavals work to the utmost detriment of democratic and civilized ways of living. Computer crimes of diverse kinds are overwhelming the world and its hazardous range is mind-boggling with reports of hitherto unheard of or even unimaginable types of abuses of law. Each new day tells us about technology assisted innovative crimes. It would be needless to point out that many such new crimes and its ilk were hitherto unknown to humanity. Indeed, many of these chip-based crimes are becoming most deadly and horrifying threats to peace and order in general. Besides no nation seems to escape the tentacles of all such technological perversions. It is not merely the commercial or financial peril that invades humanity but more significantly the very edifice of global peace is endangered as terrorism, trafficking, money-laundering and a host of other crimes thrive on abuse of technical and knowledge-based advances made by man.

1.3.(2) Perhaps, the sheer range of these crimes depicting ever innovative ways that criminals resort to in seeking and impaling their quarry, easily overcoming territorial boundaries of the nations merits notice. This is primarily so, especially in the context of building a collective buttress of citizens of the world to stand united against such crimes and criminals in general. The very fact that the official crime data resource of India (seen in N.C.R.B's "Crime In India" publications) has started to collect data on cyber-crimes and related techno based crimes in its annual numbers is an evidence of the realization of the significance of these perils to the global as well as the national peace. In that perspective, scrutiny of data provided by 'Crime in India' helps to comprehend the glimpses of the emerging scenario of crime inclusive of these contemporary kinds of crime.

Crimes of the future – 'looming perils of technology-based threats'

I.4.(1) We have already looked at the staggering impact of the exploding technology, more particularly the computer based facility, which is virtually leaving even the knowledgeable wonderstruck by the destructive changes and negative developments that are being rapidly achieved somewhere in the world, each and every day. It was not long ago when the world would feel amazed by the rapidly altering models of computers, TV, applied tools, mobile phones, computing resources and many others of that ilk. Hidden behind that seemingly sedate scenario is the peril of new crimes based on technology, which cannot be ignored any more.

I.4.(2) Historians of the modern era recording the passage of technology-based developments in the world are unanimous in their assessment on the looming threats to peace and order of the world. Though progress and advances in all areas of knowledge are welcome, in all path-breaking kinds of events in the life of modern man, one cannot lose sight of the ill-effects of all techno perversions. It is said that few technological developments are formidable enough to mark turning points in modern world history. Two such phenomena have occurred in contemporary times and they are respectively noted as the 'making of the atomic bomb' and the 'development of the chip'. Though it may not be necessary for each one of us to understand intricate and at times tongue-twisting technical definitions of innumerable features of computer or chip based tools, suffice here to note that in the modern era of networking involving individuals, organizations, governments and nations, the innate possibility of abuse of the information technology is posing to be one of the most serious security risk areas to the entire humanity. Without doubt, all abuses of such tools sweep well beyond the mere military security concerns of nations. The menace is

deeply encompassing the entire human race. Sadly the peril is not reckoned fully as in some ways the world is still oblivious to the real extent of the threat looming and the dangers lurking just around the corner.

I.4.(3) Advent of technology based applications in the form of e-mail, electronic commerce, cyber cash, digital signature and so on, mean a geometric progression of its usage. At the same time it also means that the very 'information' (which is crucial in all such enterprise) is itself in peril. In fact, all or any kind of information is at an imminent risk. We ought to remind ourselves that use of science and technology is most welcome but at the same time we have got to note the implications of abuse of such resources. As application of technology has virtually encompassed every moment of a man's life (individually as well as collectively), that significant facet has very many implications, some of which directly relate to security and crime aspects concerning all such use. We cannot forget the fact that all tools are helpful in some way or the other. But we cannot for a moment ignore that all tools that can be used well can also be abused. Modern tools of technology are no exception to that maxim. Law Enforcement Systems have to be more concerned with the later, as it is that area which generates work for them. In order to uphold the 'Rule of Law', the police will have to deal with each such abuse, as and when it becomes illegal and/or comes within their reckoning. At times they may have to act swiftly to prevent a possible future crime. What the modern citizenry (more particularly common populace in a developing nation like ours) has not fully realized is the implications of abuse of technology that virtually could swamp the society, as the territorial and other limits (which in a way were hitherto perceived as sufficient enough protective barrier against crime of the normal or the traditional kind) are really no obstructions or impediments to a criminal mind. Without a shadow of doubt, such crimes are practically encompassing the entire

world. Undoubtedly all such pervasive abuses (of techno-based tools) can result in diverse, assorted and copious types of violations - each of which is bound to cause wrongful loss or wrongful gain on one or the other or on many. Yet, the impact is bound to be of an unimaginable kind as it debilitates the entire society. Most of the times, the latent danger acts on the unsuspecting, conveying damage to the hilt. As a result, the crime scenario spurred by such abuses is surely startling to say the least. Each such development makes the crime vista (global as well as national) highly complex and most difficult to be addressed effectively, for very apparent reasons. No doubt, it is true that many techniques of protecting information are also being developed and are sequentially at hand. Though good amount of efforts are being made to relentlessly improve the security efforts more as a protection against lawless, the criminals are also working even more furiously to exploit and abuse technology adding to the already clogged crisis of techno-based crimes.

I.4.(4) Rudimentary facets of computer crimes are currently bracketed under *Hacking, Interception and Time Theft* and so on. Following it are the crimes of alteration of computer data by various means, some of which, in technical jargon are called as *Logic bomb; Trojan horse; Virus; I-worm; False data entry, Salami technique* and so on. The third category relates to computer frauds done or accomplished by several and numerous means. *Software Piracy, Computer Sabotage* and *miscellaneous Computer Crimes* add to the seemingly unending list of such crimes. Closely connected with this danger is the exploding hazard of the many innovative kinds of cyber crimes. Lot can be said about the looming jeopardy of *Computer Crimes and Cyber Crimes*. At the same time we are also well aware (if not fully) of the appalling state of unpreparedness on the part of the law enforcement systems in India to meet the crisis which is threatening us on the threshold of our daily lives. The menace is seemingly well set to swarm the entire

society. Perhaps it may be necessary for us to point out that we need to initially computerize all areas of police work and at the same time get ready to arm the panoply of law by making the investigators capable of fulfilling the role of bringing to book the offenders of all kinds of that ilk (i.e., in the most enigmatic sphere of Computer and computer applied or chip applied crime). It would be surely interesting even for law enforcement professionals to very briefly know the types and ranges of computer crimes and cyber crimes. Though considered as not easily surmountable, each and every feature of such technical advances have paved way for newer and innovative types of abuses resulting in all kinds of losses and damages to the state as well as the individuals. Perhaps a sense of enlightened self-awareness must spur the individuals and the organizations (including the nations) to come alive to the needs of the time - which is most inevitable for the very survival of organized human societies.

1.5. (1) Internet Crimes and the new waves of lawlessness: The ambit of 'Internet Crimes' is surely capable of several interpretations. Firstly, it may cover instances of new forms of crimes that can be performed on the Internet. Another addition to that category can be those crimes taking new forms as above but also would include its variants of existing crimes that are adapted suitably to the Internet context. In addition, it may also encompass all such criminal activities that involve suitably the misuse of Internet. Another dimension to the computer crime world is the latest nomenclature of crimes getting to be known as "digital" crimes.

- a) *Computer related crime:* - Examples can be seen in the innumerable types of 'bank frauds', - often stated euphemistically as '*what was crime earlier with paper, but is now done with a computer*'.
- b) '*Network Crime*' means the use of Internet resource for transactions that are already illegal- such as those relating

to 'Child Pornography' or to aid or abet other forms of illegal activity – often involving the *Drug trade, Customs Evasion and Money Laundering, etc.*, A wide array of crimes include Conspiracy; Harassment; Incitement; Extortion; Fraud, Forgery and Falsification Tax Evasion & Computer Crimes (example- harm to stored or on-line data). In addition, it may also include particular forms Assault; Copyright violations and so on most of which are becoming regular features in modern day trade and commerce, seriously affecting the economy of almost all developed and developing countries. Besides comprehending the peril that may affect them, the State and its apparatus will have to mount adequately all necessary administrative as well as legal strategies to contain such wide categories of technology based menace. In addition, nations will have to weave in efforts to prepare investigators to deal with each and every kind of such problem areas. All such charters will have to assert the supremacy of the law.

A graphic account of contemporary crimes in the area of cyber crimes is available for perusal in the brief summary of types of Cyber Crimes listed by the Australian Institute of Criminology and a narration of nine major kinds of abuses in that range provides a good amount of actionable information. (See <http://www.crime.hku.uk/cybercrime.htm>)

I.5.(2) Such a placement would call for elevating the knowledge and awareness base with regard to the effective working of that specific area of technology. Conversely, the State and its systems of law enforcement too will have to come up with developed and mastered skills to investigate such violations. Only when lawmen are technically skilled to know the crime (in question) in all its nuances, the edifice of law enforcement will be able to have some say. It is not uncommon for us to recall many instances where many huge crimes of these kinds have gone unnoticed or were perceived

to be so complex that the authority at times gave up the efforts or the limitations of the procedures were making the probe tasks virtually impossible to be able to deal with the challenge. Firstly, only when the Law Enforcement System succeeds in comprehending the ways of criminals in the abuse of technology, it would be possible for them to devise ways and means to tackle the crime (and of course, the criminal). Unless such a platform is ready, the enforcement venture will have no chance to succeed. Next, by making appropriate laws and further by finding ways to successfully investigate them to its logical end, the intended sequence can have some meaning. But, it needs to be kept in mind that such new brands of crime are so complex that even a seasoned police official with some idea of a computer and its applications may find the going really tough. In fact, in a way many of these crimes are normally beyond the pale of traditional brand of investigators who may do their jobs well with regard to routine and traditional crimes, but would be out of their depths with regard to these new types of crimes. Thus, a new brand of skilled investigators may have to be developed and sustained, in emerging areas of work.

1.5.(3) A simple illustration may clarify the point more lucidly. A traditional view of an offence of 'robbery' involves access to a physical person or a physical location to break in- and to enter into the premises to commit offences. But with technology at hand currently, the criminals, can seek and get access into physical premises on the Internet, without ever stepping into the victims premises or say that of a bank and accessing it through the cyber space. Thus, modern day world has to realize that many traditional jurisprudential notions of 'property' (or for that matter many other legal terms and legal concepts) are perforce undergoing various changes. For example, 'hacking' is tending to get treated as a form of 'data theft' in some countries. Similarly, offences like Battery; Manslaughter or Murder and so on can get committed in

actuality, without any direct physical contact. Though an apparent examination of such a situation may, on the first blush, elude easy comprehension as to how such a crime could be committed using the Internet. Though there seems to be a lack of global consensus on what types of conduct should constitute 'Computer', 'Computer-based' or 'Computer-related Crime', the fact remains that these are a new series of deadly perils to the modern world. Yet, the Investigators, even in a developing country like India are still to come to grips with each such combination of emerging or new crimes. Noting the progress of sciences in these areas and comprehending well the ways by which such tools can be or are being abused, is perhaps the first step in becoming capable to deal with the problem.

I.5.(4) Notwithstanding the lack of uniformity at the global level to deal with these mind-boggling varieties of crimes, it would suffice to mention here that the investigators will have to reckon these new areas as a challenge to their innate potential. It needs to be observed that individuals as well as organized group of criminals can commit these crimes. Further, most of such criminals are literate and capable of masking their actions by putting on pretence of fair and legitimate enterprise for their nefarious ventures. Thus, the situation makes the task of 'questioning such accused or suspects' in those crimes surely more difficult and decidedly burdensome. Before speaking about the task of questioning an accused in such cases, it is necessary to note the impediments to national territorial boundaries from criminals of distant lands. Getting access to such suspects or accused is fraught with legal hurdles and practical constraints. However, *prima facie* it can be said that an average police investigator with no knowledge of computers or its application will not be able to deal with those categories of cases and this debilitating facet must spur a sense of urgency at governmental levels to come to grips with the emerging

challenges of all such crimes. In fact, some of the possible choices before the police leadership is to seek and pursue the best way to prepare the average police personnel to become well trained and fully competent professional or to seek a new cadre of professionals in this area. Some of these issues are discussed at a later stage. In a way, this burden is directly on the police organizations who have to venture towards massive improvements or usher in drastic changes in this regard.

I.6.(1) The dreaded crimes of Terrorism, Extremism and its ilk. Though the entire world seems to be in the vice of this terrible menace, India, as a nation has been particularly the most seriously affected. Innocent populace and lay citizens are being repeatedly made to suffer as victims by a series of seemingly never-ending terrorist attacks. Sadly enough, these crimes have been going on since decades. Reasons for such deadly crimes apart, frequent occurrence of such horrifying incidents really causes immense damage well beyond the loss of life and damage to property. The crisis corrodes the very foundations of social order. That kind of damage is beyond repairs as many of the adverse consequences are terminal in nature and most losses are irrevocable or irretrievable. Such crimes seriously dent the public confidence in the ability of the state to contain 'terrorism' as a dreaded menace. Some years ago there were viewpoints about the inadequacy of stringent laws to deal with such serious crimes. Sadly enough that debate is still lingering on, in some form or the other. But, what makes the problem of '*terrorism*' an extremely difficult crime to be handled by law is the intricacy and obscurity in identifying and getting at the perpetrators of such serious offences against humanity. More often than not, it is not the real brain behind such crimes that are caught in the web of the law. This is obvious as it is the peripheral participants of such networks or the carefully chosen hapless or misguided 'foot soldiers' who get nabbed (most of the times) and are secured for police scrutiny, for the purposes of investigation and further

legal actions. It is also a fact that many a times, (perhaps in a majority of cases) such willing or even unwilling participants of such crimes may not be even aware of the total diabolic scheme of such nefarious ventures (in which they have either unwillingly or unwittingly played a part), making the process of detecting and bringing to book the real masterminds very difficult. In addition, many such dreadful and horrendous plots are conceived by criminals by hatching such conspiracies from their hideouts or from some other country or countries. In such cases investigating those heinous crimes become a virtual Gordian knot making it really difficult and at times, clearly insurmountable.

I.6.(2) 'Terrorism', a crime against human race is no longer a 'once-in-a-while' or an isolated or a freak instance of grave violence caused by a small group of misguided individuals. Unfortunately, that dreaded menace to life, limbs and properties of people at large has really come to stay in our lives. Further, it is no more a public expression of deeply disgruntled elements as it has somehow assumed the posture of being a product of an extremely complex networks of myriad kinds, where the criminals who harbour political, religious and other overtones and profess or assert their own pervert reasons to indulge in acts of unmitigated violence on the innocents, often resorting to genocide. Whatever be the reason that is blandly touted by such persons and whatever be the arguments or logic advanced by some others for the prevalence of such hazards, investigations of such horrendous crimes will have to be done and those tasks are surely very difficult to be dealt with. Perhaps the tasks of investigating terrorist related crimes are most difficult for various patent as well as latent reasons, some of which are mentioned here.

I.6.(3) Similar are the problems of Extremism, Naxalism and other violent crimes of identical or similar genre, where very many factors and issues like the remoteness of the place of crime, difficult terrain, ideological indoctrination of youth

who are lured into that brand of violent lawlessness, fancying many genuine as well as wrongly perceived reasons of injustice and exploitation are the common features. Strange logic at times gets touted as a cause or reason for such upheavals. Each one of those facets hinders many steps in investigation of such crimes. However, as each such crime poses a serious challenge to the forces of order, all investigations of such cases will also have to be accomplished overcoming all such constraints somehow.

I.6.(4) Besides cataloging all the innumerable constraints and impediments that are perceived in dealing with many such crimes, it is relevant here to point out the extremely difficult as well as hazardous nature in terms of risk to life and loss of limbs and other facets of vulnerability that confronts the investigators personally (to their physical well-being and that of their near and dear ones) when they are obliged to deal with such tasks. Yet, they have to pursue the mandated goals while dealing with all such crimes, as such tasks become part of their duties.

I.7.(1) Trafficking of ‘Persons’, ‘Drugs’, ‘Arms’, ‘Contraband’ etc and other *Organized Crimes*

I.7.(2) Global perceptions about ‘organized crimes’ are not of a recent origin. Since long history has recorded the misadventures of gangs of robbers and dacoits (and even pirates on the high seas) committing depredations on individuals and the community (and even on nations or their ships) resorting to several types of crimes of varying seriousness. Highwaymen, pirates and many others of that criminal disposition have been noted for assorted kinds of depredations. The Indian sub-continent has its own share of such experiences. The core notion of such crimes was that they were done by a gang or gangs. Such bands would conspire and operate choosing its victims and the place of offence, depending upon the susceptibility and defenselessness of the

victims concerned or the suitability of the locale to perpetrate such heinous acts. Terrible chronicles relating to criminal tribes like the *Pindari's* (who were brought to their end by Lord William Bentinck) and others of the similar breed still boomerang our thoughts as though they were recent happenings in the nature. Closely following the heels of such gangs were the dreaded dacoits of the Chambal valley and other parts of Northren India, who freely roamed the entire central India to commit numerous depredations. Unfortunately, the danger posed by the desperados of that breed is still a lingering problem for the police in some of the states in the northern plains of the country, though the quandary has paled to a very low intensity in its impact. However, the traditional concept of organized groups have given way to the idea of organized crimes (referred above) where the main doings of the gang are in terms of supplying illegal goods and services to countless number of customers. But the range and sweep of their activities are astounding, unimaginable and even incredible. Supply of drugs, contraband, and many other items of such kind are exchanged brazenly and most such crimes go unchecked in society as more often than not, people are generally not even unaware such nefarious ventures. Black marketing of almost all kinds of goods, sale of pirated or copyright violated items and many of such related crimes are getting committed in a manner that seems to be a direct affront to the law. Some of the above mentioned crimes are mere illustrations of the range of such crimes.

I.7.(3). The virus of organized crimes has taken its roots in very many urban areas in particular (in most urban pockets) and many of them create an apparently legal and valid commercial facade to make it appear as if their ventures are a kind of legal or a legitimate activity. Many organized business and illegal labor unions have links either directly or remotely with such operators of several nefarious activities. At times,

the partners of such ventures may not be aware of the real character of those with whom they are transacting.

I.7.(4) To put it in brief, the coterie of organized crime employs illegitimate techniques comprising of monopolization, terrorism, extortion, tax evasion to drive out or control lawful ownership and legitimate business leadership and to extract illegal profits from unsuspecting or reticent public. It needs to be noted that all or any kind of organized crime corrupts the public officials as only such an illegal combine can act as a buffer to avert governmental interference. The types of organized crimes in India have taken the shape of extortion, seeking protection money, contract killing, bootlegging, gambling, prostitution and smuggling and many other related vices. The list depicting all such illegal activities can be really very big. It is worth noting that in recent times, drugs and arms smuggling have become most important crimes in the vista of organized crimes. Another seemingly ever increasing sphere of influence includes illegal arms trafficking, money laundering and trafficking in illegal immigrants within a really vast country like ours including trafficking of such abducted or kidnapped persons across borders of the country. It is rather sad to note that all such eventualities are a direct affront to the professed claims of Universal Declaration of Human Rights. Indeed that horrifying facet of lawlessness against basic humanity must surely cause concern in the perceptions of the law enforcement agencies in general. Another disquieting feature of such branded crimes is that national boundaries and geographical outlines are no obstacles to these gangsters. The groups are welded by continuity of plan of action and are pandered to depravity by many direct or indirect causes and factors that support all such well-entrenched subversive groups. In addition, these gangs have a front shop or office and carry on apparently legal routines and the secret enterprise of crime is indeed difficult to be exposed unless the police are able to really work

hard for long periods and do so in a very sustained manner. Data building on various men and matters, systematic check of almost all types of ventures, keeping their ears to the ground to know about happenings in the vicinity are a must. The police in India have many bitter experiences of that kind and slowly the nation has started to realize the inadequacy of the law to deal with many such crimes. Though some states like Maharashtra, Karnataka and others have enacted some specific laws sometime ago, the results are still to be evaluated, in terms of its real utility value. More importantly, it is necessary to address the criticisms of many human rights activists who are raising a hue and cry over such 'stringent' legislations.

I.7.(5) Admittedly many legislations like Customs Act, 1961; the Narcotic and Psychotropic Substances Act, 1985; the Emigration Act, 1956 and so on are on statute books and yet, the need for some more specific legislations to deal with particular problems in many of those area is surely obvious. But, the basic aspect of most such problems is that they are not easy or simple in terms of the investigative enterprise. In fact, the ability of the investigators in dealing these categories of cases are of great significance. Thus, the lead that an investigator can build in such a case by good 'questioning of the suspect or the accused' is of great value and in fact, those facets form very crucial aspects in this study.

I.8.(1) Offences of Corruption in public services and its varied hues: Though the Prevention of Corruption Act, 1988 has been in existence since 1947, (amended in the year 1988), there is a serious and rapidly increasing public concern about the menace of corruption in public services and in public life. Though institutions like Lokayukta and other watchdog or vigilance systems are functional, a substantial part of work in the area of the Prevention of Corruption Act, 1988 and in other anti-corruption laws devolves upon the police. The task is not very easy as

investigation of a case of that kind is usually very cumbersome, time consuming as well as laborious. In addition and as a rule most cases of that kind are complex. It however needs to be reckoned that this area of work is strongly dependent on the quality of investigation as well as the ability of the investigator and his team to ferret out information - both from the witnesses and the accused.

I.8. (2) To sum up, the burden on investigators in India in general is really massive. Furthermore, a large number of such cases in that total range are complex (as discussed hitherto). Without doubt, such a burden calls for an ideal blend of head and heart in the personality of the investigator. Besides the traditional crimes, which are getting reported in very big numbers (in terms of the sheer volume of crimes), it is also a clear fact that the said category of crimes are showing a steady increase over the years. (As already cited from the data at hand in NCRB Publication - Crime in India 2011 – though the facet of the massive population of India has to be kept in mind while noting that crisis of crime escalation). Adding to the burden are crimes of new types, which have been discussed hitherto, as each one of them is showing an escalating trend not only in terms of the numbers but also in terms of its deleterious consequences.

I.8.(3) Some years ago, it would not been easily possible to discern from NCRB projections by a perusal of the data on Crime in India statistics, many important aspects of crime. It would have been difficult to gather data in terms of the extent of many crimes (other than IPC or crimes under Special and Local Laws) or to gather information about the real impact of all these crimes on the society. However, since recently NCRB publications have been innovating to provide numerous sidelights to data and this trend is very useful.

I.8.(4) With the increasing ambit of data gathering in the NCRB publication, it is now possible for any police

professional to get to know about myriad categories of Economic Offences, which are actionable by police. In fact, many such data and details give much more information of several new kinds and types of crimes about which the society ought to be surely concerned with.

I.8.(5) From a close study of NCRB data it is also possible for a professional leader in the enforcement systems to comprehend on the facets and skills and other professional requirements that pave way for the success of the law. Stated tersely many facts that call for skill, ability and knowledge levels (about the technical aspects of the relevant crime or crimes) of the Investigating officer are becoming increasingly critical to the professional success of law enforcement systems.

I.8.(6) Admittedly, every case investigated by police hinges on the ability of lawmen to choose correct methods of investigation and that part of professional work is elemental as well as important. Yet, it is also a fact that in relation to many technology based crimes, mere diligence or willingness on the part of the Investigating Officer is not enough. It is most necessary that the Investigating Officer (and his team) have to be well and fully aware of the matter under investigation, besides the fact that they will have to be very conversant with the nuances of technology that may have been employed in such a crime. Naturally therefore, investigators will have to be skilled enough to know the sequence of events in a technical manner as well as be alive to the background of each such brand of crime. It is only by improved professional levels of awareness (a healthy mix of Knowledge, Skill, Discipline and Attitude) that investigators can aspire to succeed in the tasks assigned to them. Therefore, it is vital for the Investigating Officer to be professionally aware and be technically competent in a meaningful manner to be able to come to grips with the practical and methodological aspects of such crimes (for example, the way in which the internet system works or the way in which the cyber world

data and evidence is to be traced and gathered are a must to enable good investigation and similar examples can be cited to emphasize that critical aspect). Keeping abreast with rapidly cascading changes in all relevant areas is a professional must. In fact, it may not be practical for the law enforcement systems to rely on the traditional approach of assigning investigation to the police ranks based on mere experience as technical knowledge becomes most important and it may be inevitable to induct real professionals of relevant areas into the investigating teams so that all such tasks are met well. Such a need is manifest at least in some specific techno based areas. Without being armed with such a capacity (either on an individual basis or as a team or having the needed technical expertise to back them at each and every step) the traditional approach of the lawmen cannot be expected to accomplish good investigations while dealing with all those recent and new brands of crimes.

I.8.(7) Similarly, with regard to organized crimes like Trafficking persons, drugs and arms etc or crimes of Terrorism, Naxalism etc., full awareness and knowledge about the way in which the gangs or criminals operate and knowledge about the milieu in which they perpetrate such crimes is of a critical value. The lawmen will have to be conversant with the ideological background of such networks that inspires such law breakers to put their own life on the chopping block. All such facts help the law and knowledge/awareness of such crucial aspects are surely necessary and essential. Such an awareness base has to be developed by expert study teams within the system and the respective investigators continuously have to get briefed on all such diverse areas connected with investigative work. The burden is two-fold. Firstly, it is on the organization to build the knowledge base and next, the investigators have to be equipped with the needed briefing so that they are able to do their work in a realistic manner. There is no gain saying in the fact that the

task before the investigators or the investigating teams is massive and can only be accomplished by an integrated enterprise of the individual investigators backed up well by sound and well planned and adequately resourceful police organizations. That network has to encompass the central leadership and extend right up to the police station levels. In such wide encompassing vista, the significance of individual capacity of an investigator, coupled with the organizational potential to provide knowledge, information and data support plus other professional buttress becomes vital. Some of these vital aspects relating to such facets are discussed at a later stage. It is easy to note that the charter of investigation of crimes in general is creative, imaginative and extremely diligent kind of professional police work.

1.8.(8) A routine and standard type of investigation of a crime reflects a series of work progressing in the form of witnesses and other evidences secured in the case. The task of '*questioning an accused*' is qualitatively more strenuous as the task of finding facts from the accused (who are generally of a recalcitrant kind, for various and at times for obvious reasons) is no cakewalk. Yet, there are many instances in which the investigator has to work his way by effectively and efficiently pursuing his goals by good display of professional standards in eliciting what he is seeking or in getting to know 'facts' of the case by mastering that elusive professional skill. That status is a fascinating mixture of art in dealing with the people and applying science, done in a most effective manner. Further, the investigator has to play his part without compromising the law.

1.8. (9) Contemporary policing standards in this country (in terms of prevention as well as detection of crimes – which amongst other things directly deals with the issue of '*questioning an accused*' in all the relevant investigations) have to perforce take a quantum leap in terms of their professional capacity. This is especially so in the area of dealing with crimes

of the modern times. Coupled with those technology-based lawlessness calling for the best capacity from the police to prevent and detect crimes of that kind, the law enforcement machinery will have to be rendered professionally competent in terms of Knowledge and Skills needed to make their job ventures effective and successful. The present day reality in this particular regard is surely distressing – not only with regard to the ability and capacity but also in terms of professional preparedness of most investigators in almost all police systems in various states of the nation. In the first place, that ability is surely wanting even in the police capacity to deal with traditional or conventional crimes. Going further, they are woefully inadequate as a whole to be able to deal with international crimes of various hues and kinds, especially the Techno-based crimes about which mention has been made earlier.

1.8. (10) Task before the investigators of crime is becoming increasingly technical as well as complex in relation to the cascading changes coming in the field of known and even unknown abuses of the emerging Information Technology and its applications. A brief reference has been made at an earlier place citing the use of technology in not only the computer or chip related crimes but also in other crimes like Terrorism and Trafficking of various kinds, including crimes of money laundering and other international financial crimes. The range and diversity of all such crimes clearly calls for greater awareness in terms of 'Knowledge' and increased capacity in terms of the 'Skills' (required amongst the investigators) needed to be able to deal with all such crimes. An average police officer at the Station House level in the country is sure to find himself out of his depth in almost all such challenges. In that perspective, imminent failures of investigation of that brand of cases in general stares glaringly at us. Unless massive and wholesale efforts are launched and sustained to empower the police investigators

in this regard by ensuring standard training ventures in those special areas or in the alternative to think of raising new teams of technically qualified fresh entrants inducted into the police teams, the situation is bound to become hopeless. What is being apprehended here is not just another pessimistic doomsday forecast. On the contrary it is a clear portent of the events that are sure to confront the entire law enforcement machineries of this land. It may appropriate to refer here to a recent article on the Internet about the menace that the techno- abuses are rapidly leading to¹. (See article on the Internet - <https://vpncreative.net/2014/10/06/murder-by-internet-a-reality>) Implications of the projections made therein are self-explanatory in the current context. (A brief reference to the crimes on Internet and other perils looming before us have been made earlier. However, the article cited herein gives a more vivid picture of the perils looming ahead of the world –a menace on the threshold.) Further, the strategies that the potential of the concept of Rule of Law coupled with best enforcement strategies that the democratic world will have to come up with ought to range from micro to macro levels. Further the democratic world has to seek

1 *The constantly evolving nature of Internet of Everything (IoE) is making us more and more vulnerable to online crimes, a US firm has warned. The scary part is that governments are not prepared to combat this threat of 'online murder' as criminals exploit Internet technologies to target their victims. Europol says that in the immediate future, it expects to see an increase in 'injury and possible deaths' caused by cyber attacks on critical care equipment. The criminal intelligence agency also emphasized that police forensic techniques have to 'adapt and grow' to deal with these growing threats.*

The term Internet of Everything is used to refer to the technological interconnectedness where everything from car doors to critical health care systems is linked and managed through computer networks. This concept is the driving force behind the development of smart cars, smart homes, and even smart cities, but police warn that any failure to protect these devices will put them at the risk of being hacked by criminals who want to make some quick bucks or attack their opponents. A few days ago, the US security company IID predicted that the first murder through a hacked Internet connected device would take place by the end of this year.

Contd...

and elicit co-operation and participation of all the member nations to launch several collective drives to deal globally with all such modern crimes, including the emerging ones. Though it is not easy to surmise the types and extent of the cyber menace that is engulfing the world, there are some assessments by experts and some of those observations make a compelling reading, especially in the context of empowering the investigators to become capable to dealing with the menace.¹ Report cited above is concerning 'cyber criminals' in general, that speaks of the 'king-pins' who need to be tackled first, as according to that report, many assorted and related cyber criminals would find themselves restricted if the key figures of that dreaded lawless are dealt by a united global effort. In fact, this aspect also highlights that in the ensuing future, the concept of law enforcement in relation to

Contd...

Tampering with devices hasn't led to any murder so far, but hackers have time and again highlighted the vulnerabilities of computer security systems, from hacking ATMs to crashing medical devices like pacemakers. Dick Cheney, the former Vice President of America, has been battling heart problems for a long time. Last year he revealed that the wireless functionality of his implanted defibrillator has been disabled because of fears that criminals could hack the device and trigger a heart attack. This was the same idea used in TV show Homeland in which a character was murdered using a similar method. Recently, there have been several reports about blackmail and extortion using connected devices. For example, there have been instances where people were locked out of their smart homes or cars by criminals who demanded ransoms. The next few decades will see the advent of tens of billions of gadgets connected to the Internet. Their arrival will also provide ample opportunities for criminals to tamper with them. When a large number of devices are rendered 'smart' and thus become interconnected, unfortunately, many of them will also possess vulnerabilities that will give criminals the access to them.

Vulnerabilities in one system will also lead to vulnerabilities in other systems resulting in more victims; and because of the complexity of the technology, identifying the perpetrators will become difficult. Security breaches have already led to the hacking of web cameras. There have also been reports about malware slowing down the devices used for monitoring high-risk pregnancies.

Rod Rasmussen, chief of I I D says that there is already a quasi-underground market for buying and selling these flaws. He also added that while murder by Internet is yet to be reported, 'death by Internet' is already a reality because online extortions and blackmailing have led to several suicides.)

most of the international crimes would call for a collective effort by the nations of the world and it would be no more police of a country versus criminals of that realm as the problem is bound to terminate or result as a fight between the law abiding of the world against the lawless of the world.

1.8. (11) It is also necessary to note that there is an increasing apprehension in the minds of the common people

1. *There are only "around 100" cyber criminal kingpins behind global cyber crime, according to the head of Europol's Cyber crime Centre. Speaking to the BBC's Tech Tent radio show, Troels Oerting said that law enforcers needed to target the "rather limited group of good programmers".*

"We roughly know who they are. If we can take them out of the equation then the rest will fall down," he said. Although, he added, fighting Cyber crime remained an uphill battle. "This is not a static number, it will increase unfortunately," he said. "We can still cope but the criminals have more resources and they do not have obstacles. They are driven by greed and profit and they produce malware at a speed that we have difficulties catching up with."

The biggest issue facing Cyber crime fighters at the moment was the fact that it was borderless, he told the BBC. "Criminals no longer come to our countries, they commit their crimes from a distance and because of this I cannot use the normal tools to catch them. "I have to work with countries I am not used to working with and that scares me a bit," he said, pointing out that a big majority of the Cyber crime "kingpins" were located in the Russian-speaking world. It was pointed out that the relationships with Russian law enforcers have not always been good but were "improving". Mr. Oerting described how Russian-speaking criminal gangs were creating and testing malware and then selling it as a service in online forums, following that access, the malware is downloaded by all kinds of criminals, from Eastern Europe, Europe, Africa and America. As the menace is being increasingly commercialized, the task for the law enforcers is becoming increasingly harder. 'You don't have to be a cyber-expert because you just download the programs that you want to use'. On the issue of what consumers should be worried about', he said: "What I think you should be afraid of is the stealing of your private, sensitive information - your inbox credentials, your Face-book account. If they know a bit about you they can reset your Google accounts, your Apple accounts. Then they simply take over your life," he said. He also spoke about how the job of containing the Cyber crime threat was getting harder as the Internet acquired more users and widened its reach. The so-called Internet of things - where previously dumb objects are connected to the network - "widens the attack surface a bit", he said. And he revealed how the Edward Snowden revelations, which exposed mass government surveillance programs, had played a part in hampering law enforcement's efforts to contain Cyber crime. "There is confusion among the good guys on the internet between anonymity and privacy. I don't think they are the same. I think that you have right to privacy but that doesn't mean that you have the right to anonymity," he said. The increasing trend towards
Contd...

that the 'Law' or the 'Police' are slowly becoming less and less effective in dealing with crimes of all kinds. Such a perception seems to be global as well. (At a later place in this book this particular aspect has been referred to in relation to the terms of reference of the Government of India to the Committee on Criminal Justice Reforms, which has given its report in the year 2003). A recent news item in the BBC dated 01/11/2014 pointed out that the Government of UK is planning to scrap the use of police cautions (or police warning) currently followed in relation to minor crimes. A BBC news item dated 01/11/2014 highlighted this emerging idea, which reflects, among other things the global concern in dealing with crime. (Perhaps the idea of 'broken window' concept, followed by the police in New York can be seen in a contrasting perspective). The news item¹ conveys various interesting aspects of the plan of action.

1.8.(12) In such a wide encompassing vista, as discussed hitherto, the significance of the individual capacity of an investigator, coupled with the organizational potential to provide knowledge, information and data support plus other professional buttress becomes most vital. It is easy to note that the charter of investigation of crimes in general is creative, imaginative and extremely diligent kind of professional police

Contd...

greater encryption of online communications is not acceptable, he said. "Imagine in the physical world if you were not able to open the trunk of a car if you had a suspicion that there were weapons or drugs inside... we would never accept this. "I think that should also count for the digital world. I hate to talk about backdoors but there has to be a possibility for law enforcement, if they are authorized, to look inside at what you are hiding in your online world."/ (BBC News dated 10/10/2014)

1. *Justice Secretary Chris Grayling said victims should not feel that criminals are "walking away scot-free". Under the new system, offenders would repair any damage they have done or pay compensation for less serious crimes.*

Those who commit more serious offences would face court if they fail to comply with conditions set out by police." It's time we put an end to this country's cautions culture". The system will be experimented for a year in the Staffordshire, West Yorkshire and Leicestershire police force areas, starting this November. If successful it will be introduced across England and Wales. The government says the scheme - which will

Contd...

work. Though various media and other sources like fiction writings have created the image of investigating officers with great fascination and yet, it needs no special argument to assert that the job of an investigator of crime is most difficult and complex. Even an average investigator will have to display various attributes needed for that calling. Generally it is perceived that every investigator has to seek, elicit and gather facts or evidence by the dint of sheer hard work - from the crime scene to the criminal and in the passage seek and obtain help and information from witnesses and experts to work his way towards the logical end of his calling.

I.8.(13) As so succinctly pointed out by Hans Gross in his celebrated treatise on "the Investigator", the resoluteness

Contd...

also give victims a say in how the offenders are acted on by the police - will be tougher but simpler to act than the current system (prevailing in England and Wales). It is felt that 'it isn't right that criminals who commit lower-level crime can be dealt with by little more than a warning. It's time we put an end to this country's cautions culture. As expressed by the Justice secretary Chris Grayling 'every crime should have a consequence, and this change will deliver that.

"Under the new system we are introducing, offenders will face prosecution if they fail to comply with the conditions set by the police, so that no one is allowed to get away with the soft option." The overhaul of what are known as out-of-court disposals will mean cannabis warnings, community resolutions, penalty notices for disorder, simple cautions and conditional cautions would be replaced by the new two-tier framework. As a part of the scheme, first-time offenders committing minor crimes would face a new statutory community resolution. This could see them offering a verbal or written apology to their victim, paying compensation or fixing damage. More serious crimes would be dealt with by a suspended prosecution which would have one or more conditions attached, for example paying a fine, or attending a rehabilitation course. Suspended prosecutions would be traced on a criminal record but community resolutions would not, the Ministry of Justice pointed out. Further, these steps are intended to make the victims not to feel that offenders are walking away scot-free. It is felt that this new approach will empower victims and give them a say in how criminals are dealt with, as well as making it easier for officers to deal with more minor offences." Recently the United Kingdom has allegedly watered down the sentencing rules and this is criticized that the government is seemingly not on the side of the victims of crime. Police in India do not deal with even the so-called minor offences as the Code recognizes only the Cognizable and non-cognizable offences and has prescribed the procedure to be followed in each case. However, the enforcement of some of the Special and Local laws or some of the Municipal Regulations, which have penal offences ranging from small violations to the serious ones reflect some similar issues as narrated above.

and determination to reach the 'goals' of investigation¹ - to bring the offender before the law must inspire the personality of such a professional. The most difficult task of 'Questioning an Accused' is relative to the type and nature of the crime under investigation. As discussed hitherto, the range and varieties of crimes *per se* are mind-boggling. Each one of them present inherent as well as exclusive constraints for detection and for gathering evidence. Unless done well, the task of the state (law enforcement systems) to bring the offender to book cannot aspire to succeed. Obtaining 'relevant' and 'admissible' evidence is the most crucial task that can be accomplished by the investigator. That charter is most complex, in the gamut of securing evidence by the questioning of an accused. In the fast changing contemporary world and amidst rapidly altering social, economic and political environments, the task of investigator is extremely arduous. Knowledge, Skill, Discipline and Attitude components of the highest kind of professional standards perforce mark those attributes in a worthy investigator. As can be comprehended, it is no mean task. That ideal must become the mission of the police systems so that investigation in general is approached in the best possible ways. Such a purposeful objective is welcome.

I.8.(14) Perhaps the success of an investigator who has to work his way with an accused- more so, when all other avenues of obtaining information from other sources are not at hand, speaks of the highest forms of professional skills displayed or accomplished within the bounds of law. Surely it is a commendable goal worth ventured.

1. Hans Gross, the famous Austrian pioneer on the subject of "Criminalistics" has several worthwhile enunciations on the subject of crime and detection. Hans Gross's *Handbuch für Untersuchungsrichter* (1893; *Criminal Investigation*)

CHAPTER 2

Historical Facets of some of the Legal Principles and the Right against 'Self - incrimination'

II. Introduction: When we consider a police procedural process like the 'Questioning of an Accused', it would be necessary to view that facet of professional work with various legal aspects that manifest themselves in that regard either as Constitutional mandates or as parts of legal directions stemming from the Code of Criminal Procedure, 1973 or the Indian Evidence Act, 1872. Furthermore, several administrative guidelines prescribed by the respective Police Manuals of various states of the country also come into focus in that ambit. Stated differently, it means that the '*Rights of an accused person*' under the law have to be taken note of by the police investigators so that they accomplish their professional goals in their myriad investigative efforts without forsaking any of the 'rights' of the accused or without violating the procedural standards mandated by law. Besides, the central aspect of 'Right against testimonial compulsion' enshrined under Article 20 (3), several other vital rights merit good understanding. Lest we forget, compliance with all such prescriptions by investigators is mandatory. In that visage, various legal concepts that propel the dynamics of numerous rights of an accused have to be appreciated. A brief historical perspective of some of the most elemental legal principles will surely help in advancing the cause of generating awareness amongst the lawmen. Such inputs will surely promote the object of

ensuring full play of all such legal rights of the accused in the entire gamut of criminal justice processes. Though there are a good number of concepts and ideas that spur such ideal values in the domain of the criminal justice processes, some of the most relevant and directly connected legal notions and practices that are currently in vogue merit to be seen and appreciated from the point of view of their respective historical perspectives.

II.1.(1) 'Presumption of Innocence': The concept of '*Presumption of Innocence*' stems by drawing its inspiration from a well-known and widely accepted legal maxim, which holds that "*it is better to allow one hundred guilty to escape lest one innocent is unjustly punished.*"

II.1.(2) Historical narratives abound acceptance of that proposition in a number of recorded events, even as ancient as the times of the Greeks or the Romans, not to speak of its repeated reiterations during the subsequent times. It is cited with authority that the celebrated concept was clearly evident in the laws of Sparta and Athens.¹ Later on, the legal practices of the Romans clearly reflected the impact of that legal principle, especially in Roman criminal laws, by the proclaimed assertion that, "*Let all accusers understand that they are not to prefer charges unless they can be proven by proper witnesses or by conclusive documents, or by circumstantial evidence which amounts to indubitable proof and is clearer than day.*"²

II.1.(3) Though it is held by many that Cannon Laws had really given the facet of 'presumption' a primary place in criminal trials, it is not very clear as to how and in what manner such events came to be adopted in the *Common Law* practices. Yet, it can be safely regarded that they had somehow existed in Common Law from its earliest times.

1. Greenleaf. Ev.part5, section 29 note (related to Deuteronomy).

2. Code, L.IV, T.XX, 1, 1.25.

II.1.(4) References of *Trajan's writing to Julius Fronto* commending that "*no man should be condemned on a criminal charge in his absence, because it was better to let the crime of a guilty person go unpunished than to condemn the innocent*" is an indication of the antiquity of the concept. Indeed there are many such examples that give credence to the existence of a distant past of the concept.¹

II.1.(5) However, it merits to be kept in mind that the concept of '*presumption of innocence*' is the moving force behind the legal principle of 'burden of proof' in most systems of criminal law, as it seems to have percolated in to them since the ancient times.

II.1.(6) Ammianus Marcellinus relates an anecdote of Roman Emperor Julian that illustrates the enforcement of this principle under the Roman law. Numerius, the Governor of Narbonensis, was on trial before the Emperor, and, contrary to the usage in criminal cases, the trial was public. Numerius contented himself with denying his guilt, and there was not sufficient proof against him. His adversary, Delphidius, 'a passionate man,' seeing that the failure of the accusation was inevitable, could not restrain himself, and exclaimed, "*Oh, illustrious Caesar!, if it is sufficient to deny, what hereafter will become of the guilty?*" to which Julian replied, "*If it suffices to accuse, what will become of the innocent?*"²

II.1.(7) The Supreme Court of United States of America made an emphatic reference to the principles of '*presumption of innocence*'³ in the case of *Coffin v US*.⁴ The Court clearly pointed out that the "*burden of proof*" is on the government (prosecuting the accused). Further the Court commended the jury to keep in mind the necessity to appreciate the principle and practice of '*presumption of innocence*' of the accused till

1. Dig.L.SLVIII, Tit.19,1.5.

2. Rerum Gestarum, L.XVIII,c.1.

3. Coffein decision, Mr. Justice White. (156 US (432) 1895)

4. (156 US (432) 1895).

the prosecution brings home the charge in the prescribed manner. The concept or the principle of '*presumption of innocence*' and its consequential impact on various notions like the 'burden of proof' and other closely linked concepts are often referred to as the major foundations of the Criminal Law under the Anglo Saxon legal systems and subsequently in the American Penal Justice processes. Blackstone (1753-1765) in his commentaries on Criminal law has reflected on development of the notion built on the premise that '*it is better that ten guilty persons escape than that one innocent suffer.*'¹

II.1.(8) Many of the above ideas are evidently at the root of the principles of criminal law as they have developed in England. Stated in simple terms, the principle of *Presumption of Innocence* means that the prosecution (or the government which is taking the case before a criminal court against an accused) has to prove its case on the guilt of the criminal defendant before the said court.² Further and as a necessary consequence, the defendant in question is relieved of any burden to prove his innocence. In actual working of the proposition, the presumption is to be deemed as an assumption of innocence in the absence of contrary evidence as observed by the U S Supreme Court in *Taylor v. Kentucky*.³ It is not considered evidence of the defendant's innocence, and it does require that a mandatory inference (as decided in *Taylor v Kentucky cited earlier*) favorable to the defendant be drawn from any facts in evidence. Presumption of innocence coupled with the notions relating to the concept of proof beyond reasonable doubt are crucial to any criminal trial but it is said that each such concept easily forms identifiable parts of the '*due process*' requirement. Both these conditions, i.e., the 'presumption of innocence' and 'proof beyond reasonable doubt', have to be taken together as it is possible that an accused person could

1. Rerum Gestarum, L.XVIII,c.1.

2. Bl.com.c.27,margine page 358, ad finem.

3. (*Taylor v Kentucky*, 436 U.S.98 S. Ct. 1930, 56L.Ed 2d 468 {1978}).

be in danger of being convicted on the basis of extraneous considerations rather than on facts of the case under consideration.

II.1.(9) In fact, the notion of the 'presumption of innocence' is at the root of the idea of giving or granting bail prior to trial liberally to all persons accused in a crime. However, there could be instances when some criminal defendants are detained without being given the benefit of bail till the end of the trial. Such instances may be in relation to cases of defendant/s allegedly being involved in serious crimes or who may be of slight risk or pose a danger to the public, if freed on bail. Thus, it may be seen that in such cases the notions of 'presumption of innocence' is largely theoretical.

II.1.(10) Aside from related requirement of *proof beyond reasonable doubt*¹, the presumption of innocence is largely symbolic. Reality is that no defendant would face trial unless somebody, i.e., - the crime victim, the prosecutor, or a police officer believed that the defendant was guilty of a crime. Further, after a *prima facie* case is made out on the basis of enough or reasonable evidence, there is a probable cause to hold or believe in a view that the defendant has committed the alleged crime.

However, the accused need not be treated as if he or she was innocent of a crime. At the same time, it need not be held that he (i.e., the accused) is guilty, till it is proved so and that position will subsist till the time it is proved that he is (really) guilty. Further, such a charge must be proved beyond reasonable doubts by the prescribed processes of trial. It can also be viewed that notions of 'presumption of innocence' are a kind of legal fiction developed so as to ensure the objectives of a fair trial and also to guard that an innocent is not unjustly punished. Working on such a fiction is considered

1. 'Proof beyond reasonable doubt' is not a rule of evidence but it is a guiding principle- Criminal Trail -S 3 and 101 Evidence Act.(2002SCC (Cri)169.

very necessary in order to maintain the integrity of the entire process in accordance with basic principles of ensuring justice, which is a most critical end result.

II.1.(11) Nevertheless, it is considered indispensable to rely on the said concept of presumption of innocence, as it is deemed to be an essential part of the criminal processes. It is said that the mere mention of the phrase 'presumed innocent' till proved guilty, keeps the judges and the juries focused on the ultimate objective at hand, in a criminal trial. Those objects hinge on the fact as to whether the prosecution has proved its case beyond shades of a reasonable doubt and has demonstrated with valid proof which clearly conveys that the defendant has in fact committed the alleged (legally prohibited) act/s. It may be noted that the concept of presumption of guilt (as opposed to the presumption of innocence before the trial starts and wherein the authority looks for evidence to buttress that intended view by evidence - and this is in clear contrast with the concept of presumption of innocence) which is considered as a manner of holding an inquisitorial trial and is considered as being against the principles of fair and open trial.

II.1.(12) On 'Exclusionary Rule': *"The fundamental problem with English law is that you can have all these rules for concealing evidence, and you can have all this intellectual dishonesty that goes on in the courts, and the stupefying unreality of what goes on in courts."*¹

II.1.(13) Criticism against *'the exclusionary rule 'to admit evidence procured by violating the prescriptions - rests on the absurd proposition that a law enforcement error, no matter how technical, can be used to justify the act of throwing an entire case out of court, no matter how guilty the defendant, or how heinous the crime....the criminal goes free, the officer receives no effective reprimand, and the only ones who really suffer are the people of the community. (Ronald*

1. See article of Evan Whitten, The Cartel: Lawyers and their Nine Magic Tricks.

Wilson Reagan).¹ Ever since Jeremy Bentham wrote his scathing 'Critique of the law of evidence', both philosophers and legal scholars have criticized the exclusionary rule of evidence, arguing that formal rules excluding entire classes of evidence for alleged unreliability violate basic epistemological maxims mandating that all relevant evidence be considered. Although particular pieces of evidence might be excluded as unreliable, they argue, it is a mistake to make such judgments for entire categories, as opposed to making them only in the context of particular pieces of evidence offered for specific purposes.

II.1.(14) However, as Martin J² has argued, the concept of 'presumption of innocence' is really not an absolute or stand alone proposition. It needs to be kept in mind that there is a responsibility on the State to provide or set up a criminal justice system that is workable in a fair and effective manner. Indeed it has to meet both the objectives together and simultaneously. As efficiently put by him, 'normally, the Academics and Lawyers understandably tend to focus on the fairness part as against the requirement of the law to be effective. Indeed, there are cogent reasons as to why those involved in the legislative process (predominantly the law makers and the judges) have to look at both effectiveness as well as fairness'.

II.1.(15) O'Higgins C.J. in *Re Criminal Law (Jurisdiction) Bill 1975* [1977] IR 129, a case of 1977, stated that the concept of 'due process of law' requires

"A fair and just balance between the exercise of individual freedoms and the requirements of an ordered society"

II.1.(16) In a later case reported in the year 1982, in *People (DPP) v O'Shea* ([1982] IR 384), he returned to the theme when he said that

1. Ronald Reagan, advancing an argument on the Exclusionary Rule.

2. J Martin on the Irish Penal Laws and his critique on the Criminal Justice.

"The Constitution is concerned with justice and in the context of this case, with criminal trials being fairly conducted in due course of law. While these considerations provide safeguards to the person accused, they also guarantee to the State which accuses him and which has a duty to detect and suppress crime that he will be tried fairly and properly".

II.1.(17) As Martin has pointed out that in so far as the Irish laws are concerned, it needs to be kept in mind that the European Convention on Human Rights entails 'an obligation on the State to secure the right to life, including a requirement to put in place effective criminal law provisions to deter the commission of offences against persons'.¹

II.1.(18) 'From the perspective of those involved in the legislative process, the criminal justice system is therefore not about a mere instance of monolithic '*State versus a private individual*'. It is about the criminal justice system that maintains a proper balance between the rights of the accused, the rights of victims and the rights of society. If this balance swings too much to one side or to the other, it can have serious consequences affecting the very integrity of the criminal justice system. At the same time any perception that miscarriages of justice are common in the system is bad and is similarly so on a perception that it is impossible to convict serious criminals in the courts. Both such opinions (true or imaginary) have implications on our system of justice'

II.1.(19) Commending that a baseline be picked to strengthen the (i.e., the Irish) Criminal Justice System, he suggested that some of the significant developments in the field of criminal law be closely looked at and then reflect on whether miscarriages of justice are more likely or less likely to occur on holding to any extreme position and then build a workable scheme of viable penal arrangement.²

1. *Taylor Gibson and King* 23412/94 D and R (1993)P.127(136).

2. www.dit.ie/socialscinecelaw/.../jm%20presumption20%of20%innocence.do

II.2.(1) Significance of the 'Due Process': It is fairly common to hear from those discussing any major theme relating to any constitutional law of any country about the significance that needs to be attached to the concept of the 'due process of law' in any such legal edifice. In order to comprehend that proposition and to appreciate it fully, we really need to understand the meaning and importance of the term 'due process of law'. Stated in simple terms, the idea that is conveyed by the phrase 'due process of law' is that, all the laws and all the legal proceedings must be fair. For example, it may be seen that the Constitution of the United States of America guarantees that the government cannot take away a person's basic rights to 'life, liberty or property, without due process of law'. Courts have issued numerous rulings to indicate as what it really means and how the interpretation of the words 'due process of law' affects particular cases. A large number of decided cases by the Supreme Court of the United States of America stand in testimony to that assertion. For example, to compel an under-trial accused to wear prison uniform was held to be not clearly within the bounds of constitutionality of the United States and consistent with the concept of due process as (the impugned) practice furthers no essential state interest, and 'the constant reminder of the accused persons *condition implicit in such distinctive, identifiable attire may affect a juror's judgment*' and *impair the presumption of innocence, which is 'a basic component of a fair trial under our system of criminal justice.'* However, the compulsion to wear a prison uniform after conviction' was seen by the US Supreme Court 'as not violating the provisions of any of the due process requirements'.

II.2.(2) Thus the term '*due process*' employed in the US Constitution can be considered as a comprehensive bundle that reflects 'fairness' as a key to the total issue of legally dealing with a case. All laws are expected to reflect that ideal

1. Estelle V Williams 435 U S 501(1976) IB AT 503 -50400-06.

in actual terms. In India, the term 'due process' does not find a place in the relevant text of the Constitution of India and instead the phrase '*procedure established by law*' is provided for. In the initial years of the interpretation of the Constitution of India, the Supreme Court had been choosing a restrictive as well as a literal construction of those words. But, that trend got slowly altered and a vast and an expansive meaning consistent with a 'fair, just and reasonable' content of the law (Substantive as well as Procedural) was resorted to. In the Constitutional history of India, it needs to be noted that the term 'procedure established by law' has been given an extended and a comprehensive meaning. That step truly enlarged its innate scope and comprehensive interpretation/s emphatically mandated by the Supreme Court of India, which convey that the scope of 'the procedure established by law' really means, a '*fair, just and reasonable*' content and extent of each and every state action. Indeed that elucidation virtually covers both substantive as well as procedural laws. Thus, the meaning and impact of the term '*procedure established by law*' has been rendered virtually (i.e., and in effect) at par with the concept of 'due process' clause contained in the text of the Constitution of the United States of America that is considered by an overwhelming majority of legal experts as 'a jewel in the constitutional edifice of the United States of America'. Keeping in mind the result accomplished by the relevant verdicts of the Apex Court of India as well as the trend of judicial views that followed it, it can be said that the current position in India is similar to the prevailing standards on the matter in the United States of America.

II.2.(3) In that context, it can be seen that the enactment of the P O Act, 1994 of U K is a clear departure from the long held penal policy in that country (which seemed to be analogous with the ideas discussed hitherto) and that shift in position has resulted in the following consequences:

- (a) It is a clear departure from the long held penal practice of that country and the known aspect of the English Jurisprudence which has been in a steadfast manner guaranteeing an accused person the 'right to silence' in the face of a criminal accusation;
- b) As a result of the new position of law, the emerging trend permits exceptions to the rule of presumption of innocence of an accused. It is easy to see that the new position alters or affects the foundational principles of the accusatorial system;
- (c) By those special arrangements the accusatorial system seems to be tilting towards the inquisitorial system;
- (d) Though sufficient empirical data is not at hand, many penal law experts have been critical of the changes in the said new law and are of the view that the objective of such changes in expecting a reduction in serious crimes may not really occur.

(Note: See also view of the Law Commission of India - in rejecting the need to change Article 20 (3) of the Constitution of India and in the context of its detailed arguments on the issues above. This facet of the changing legal ideas and practices, especially in the context of similar suggestions that have come from the Report of the Committee on Reforms of Criminal Justice System in India, (often referred to as the Malimath Committee Report) is discussed at a later place in this study).

II.3.(1) 'Benefit of doubt': The legal concept of 'benefit of doubt' is a reasoning standard of a judge in a trial court by which the material evidence before the legal forum is closely examined to adjudicate on the guilt or otherwise of the accused. Historically, the concept has a long past and has been considered as a just way to deal with offenders. Taken together with the ideas relating to the 'presumption of innocence' and

the logically closer idea relating to the notions of 'proof beyond reasonable doubt, the combined inspiration leads to the arrival of a stage where the legal forum comes to an opinion that 'the charge has not been fully established to enter an order of conviction on the accused.'

11.3.(2) Notions of 'benefit of doubt' hinges on the possibilities of uncertainties, as arising in the mind of the judge in the evidence submitted before the court of law. But, the so-called 'reasonable doubt' cannot be equated to what can be termed as 'not a mere possible doubt'. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the mind of the judge in that condition that he cannot hold on an abiding conviction to a moral certainty of the truth of the charge, (which is in consideration by him at the culmination of the trial in question). A fairly simple but convincing view on the notions of benefit of doubt was given by the Supreme Court of Canada in the case of *R v Lifchus* {(1977) 3 SCR 320} by suggesting as under:

"The accused enters these proceedings and is presumed to be innocent. That presumption of innocence¹ remains throughout the case until such time as the Crown has on the evidence put before you satisfied you beyond a reasonable doubt that the accused is guilty.

"What does the expression 'beyond a reasonable doubt' mean? The term beyond a reasonable doubt has been used for a very long time and is a part of our history and traditions of justice. It is so engrained in our criminal law that some think it needs no explanation, yet something must be said regarding its meaning."

"A reasonable doubt is not an imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived

1. <http://www.duhaimeorg/legaldictionary/p/presumptionofinnocence.aspx>.

from the evidence or absence of evidence."

II.3.(3) Even if a judge or the jury were to believe that the accused is 'probably guilty' or 'likely to be guilty', that outcome is not sufficient in the context of the subject under discussion. In those circumstances and under such situations, the judge or the jury ought to give the 'benefit of the doubt' to the accused and acquit him on the summation of evidence that the Crown (or the prosecution) has failed to satisfy the judge or the jury of the guilt of the accused beyond a reasonable doubt. It cannot be forgotten that in the normal course of things it is virtually impossible to prove anything to an absolute certainty. After all, the law manifestly does not expect it, as such a standard is not mandated and the prosecution need not be bound to provide evidence at par with that standard. In fact, the Crown is not required to do so. Such a standard of proof is *per se* impossibly high and it would not be practical or reasonable to adhere to that type of an unreasonable yardstick.

II. 4. (1) Proof beyond reasonable doubt: An oft quoted standard relating to proof beyond reasonable doubt states that

*"in short if, based upon the evidence states the court, you are sure that the accused committed the offence, you should convict since this demonstrates that you are satisfied of his guilt beyond a reasonable doubt"*¹

II.4.(2) It can also be considered as a level of certainty that comes up in the mind of a judge or a jury that finds a defendant guilty of a crime (which the defendant is accused of). This can be considered to be in contrast to a real doubt, (that influences the judge or the jury as the case may be) based upon reason and common sense, after a careful and an impartial consideration of all the evidence, or lack of evidence, in the case in question.

1. [http://legal-dictionary .the freedictionary.com /Beyond+ a+ Reasonable Doubt](http://legal-dictionary.the freedictionary.com /Beyond+ a+ Reasonable Doubt).

II.4.(3) Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that a balanced person would be willing to rely and act upon it without hesitation in the most important of events in the affairs of such a person. However, even in that mental assessment, the concept of 'proof beyond reasonable doubt' does not mean an absolute certainty.

II.4.(4) The said concept is also defined as a legal standard followed in the process of placing or seeking evidence before the judicial forum in a criminal trial. That standard of evidence calls for, highest kind of burden of proof, placed normally on the prosecution under common law that the defendant is presumed innocent. With that dominant feature at hand, the court expects that the prosecution will bring home the material to rely on his or her guilt and that evidence or the standard of proof so tendered must be proven to the entire satisfaction of the judge or jury. However, the term 'proof beyond reasonable doubt' needs clarity and surely enough that ought not to be interpreted to imply proof 'beyond a shadow of a doubt.' If the evidence is so strong that there is only a remote possibility (and no probability) of extenuating circumstances, the guilty is then deemed to have been proved of his guilt beyond a reasonable doubt.¹ 'Whether the same level of proof is also required in civil cases is still a matter of debate'. *{In fact this precisely is one of the main commendations on law reforms that can be comprehended from the Report of the Committee on Reforms of the Criminal Justice in India (2003)}*

II.4.(5) In other words, it can be stated that the idea of proof beyond reasonable doubt is clearly connected with the standard of evidence considered necessary in a criminal case before the court enters an order of conviction. In the 'Adversarial System' and as per the long legal traditions of the penal practices under the Anglo-Saxon principles, (which is followed in the United Kingdom, the United States of America

1. <http://www.businessdictionary.com/definition-beyondreason>

as well as in India, - which has followed the British practices) the concept has a direct bearing on the end result of a criminal case launched against a person, either by the state or by a private criminal complaint. As a rule, the burden of proof or the submission of all evidence to bring home the charge against the accused is clearly on the prosecution. Further, the requirement of 'proof beyond reasonable doubt' makes it inevitable as well as essential for the prosecution to place the required proof and do so as per the due standards of placing evidence tendered before the relevant Court. In establishing the truth or the veracity of the version of events, as asserted by the prosecution, it has to bring home the case before the court. As a result the prosecution will have to provide the evidence as per law and do so in such a manner that there remains no scope for any 'reasonable doubt' in the mind of the judge (to the same extent as would be in the mind of a 'reasonable person'). Only when so done, the decision to find the defendant guilty can be taken up or made by the judge. Though proof beyond all shades of doubt would be fetish and not a practical and reasonable standard of appreciation of evidence based on law, it is perhaps necessary that proof beyond reasonable doubt is to be noted as a status of materials at hand to the extent that it would not affect the belief of a reasonable person regarding whether or not the defendant is guilty.

II.4.(6) Though in common parlance, it is seen or observed that phrases like 'beyond any shadow of doubt' are used at times synonymously or interchangeably with the words 'beyond reasonable doubt' and yet what the law really means by the use of the term 'beyond reasonable doubt' is well circumscribed and that can be well comprehended in the light of the discussions above.

II.4.(7) It needs to be seen that ideas relating to the term 'proof beyond any shadow of doubt' really visualizes a near impossible standard of proof. Logically speaking any rational

view on the issue would hold that such a yardstick may not be realistic in managing human affairs, and more so in the area of conflict resolution in criminal cases. Thus, the ideas and notions of 'reasonable doubt' have prevailed in the realm of arriving at right assessment of evidence in the total gamut of penal justice. Stated differently, it can be said that if a reasonable person holds a belief that there is a doubt about the defendant being guilty, then, such a status of appreciation of evidence, may make the judge to hold a view that the evidence at hand does not satisfy the charge in the given case beyond 'a reasonable doubt'.

II.4. (8) It can be seen that the use of the concept of 'reasonable doubt', as a standard requirement in the western penal justice system originated in medieval England. In English Common Law prior to the dominance of the 'reasonable doubt' standard, passing judgment/s in criminal trials had severe religious repercussions on the jurors. According to Christian Law, prior to the 1780's, *'the Juryman who finds any other person guilty, is liable to the Vengeance of God upon his Family and Trade, Body and Soul, in this world and that to come.'*¹ *It was also believed.'* *In every case of doubt, where one's salvation is in peril, one must always take the safer way... A judge who is in doubt must refuse to judge*² was the resulting approach to these 'religious fears'. Indeed it was in that manner notions of 'reasonable doubt' were introduced during the later periods of the 17th Century. Slowly the idea got entrenched in the English Common Law, thereby allowing jurors to resort to convict the accused persons more easily. Therefore the original use of the 'reasonable doubt' standard was really the opposite of its modern use of limiting a juror's ability to convict.

II.4.(9) However, jurors in criminal courts in England are no longer customarily directed to consider whether there

1. http://en.Wikipedia.org/wiki/reasonable_doubt#cite_note-what_are_the_Origins-O.

2. *ibid*

is 'reasonable doubt' about the guilt of the defendant. Indeed a recent conviction was appealed after the judge had said to the jury '*You must be satisfied of guilt beyond all reasonable doubt*'. The conviction was upheld but the Appellate Court made clear its unhappiness with the judge's remark, indicating that the judge should instead have said to the jury simply that before they can return a verdict of guilty, they '*must be sure that the defendant is guilty*'.¹

II.4.(10) In United States of America, jury must be instructed to apply the 'reasonable doubt' standard when determining the guilt or innocence of a criminal defendant, but there is much disagreement as to whether the jury should be given a definition of the term 'reasonable doubt'.

II.4.(11) However, it is worth noting that in *Victor v Nebraska*,² the Supreme Court of the United States expressed disapproval of the unclear 'reasonable doubt' instructions at issue, but stopped short of setting forth an exemplary jury instruction.

II.5.(1) Burden of Proof: As a rule the burden or the responsibility to establish what is asserted or what is charged during a trial is clearly on the party which is either making that assertion or advancing the plea in that allegation. It is on the State or the Prosecution, which is seeking the trial. That responsibility is referred to as the 'burden of proof' in the trial. In fact that rule applies similarly to civil or criminal or other legal proceedings.

II.5.(2) The term '*burden of proof*' seems to have originated from a phrase commonly used in the Latin language, referred to as '*onus probandi*'. That is recognized as a legal concept, by which the obligation to shift the accepted conclusion away

1. R V Majid {2009} EWCA Crim2563 (12October 2009)

2. (511) US (1) 1994

<http://emWikipedia.org/w/index..php?title=victor-v-vnebraska& action= edit& relin>

from opposition opinion to one's own position. A legal maxim in Latin says '*semper necessitas probandi incumbit ei qui agit*' and it is said to literally state that 'the necessity of proof always lies with the person who lays charges'. It can be seen that the concept of 'presumption of innocence' provides a legal basis for a procedural strategy wherein the accused is deemed by a legal fiction as innocent of the charge made against him and that legal fiction is entertained by the court legitimately as per law and that facet stays till proved otherwise. As a natural consequence, the said burden (i.e., the burden of proof) shifts on the party asserting a fact or a proposition. As a result that situation patently advances the objective of the notions of 'presumption of innocence', which is deemed as very critical to the entire process.

11.5.(3) A particular fact can be proved or alternatively a fact or a proposition claimed by the accused in his defense can be proved, in a manner as provided for, by the law of evidence. But, that responsibility has to be undertaken by the respective parties and that onus or burden lies on the party seeking to make that assertion. Thus, the task in law to make a claim during a trial is in simple terms referred to as the 'burden of proof'. Generally, the 'burden of proof' tends to lie with anyone who is arguing against received wisdom, but does not always, as sometimes the consequences of accepting a statement or the ease of gathering evidence in its defense might alter the said burden (i.e., of proof) from the shoulder of its proponent. He who does not carry the burden of proof enjoys the benefit of assumption meaning that he needs no evidence to support his claim. Fulfilling the 'burden of proof' effectively captures the benefit of assumption, passing the burden of proof off to another party. However, the incidence of burden of proof is affected by Common Law, statute and procedure. This can be seen in many laws or rules where a 'presumption' is made under certain circumstances at hand and the burden then shifts to the opposite side. - (as mandated by a valid rule or a valid law.)

II.5.(4) Elsewhere, a facet of the legal practice by which the criminal courts draw a 'presumption' *ab initio* in relation to a matter during a trial 'as per law' is discussed. That can be followed as per the mandate of a specific legislation or by a provision in the objectives of the notions of 'presumption of innocence', that is deemed as very critical to the entire process. Procedural law can provide for such an arrangement. Under such circumstances and where certain facts are first *prima facie* established, (as and when so done), the 'burden of proof' shifts on to the other side with regard to that particular presumption so drawn by the Court. However, it needs to be kept in mind that such a presumption can be rebutted by the accused, by proving the falsity or unreliable nature of such a presumption. It can be seen that in some ways the action to draw such presumption is really opposed to the basic stand of law *vis-à-vis* the 'presumption of innocence' of an accused. This however is a procedural arrangement more particularly when on the balance of materials, the successful tendering of best evidence relating to that particular fact is (or is considered by law as unviable) not possible by the prosecution and therefore the only inference in that regard that can stem lies within the knowledge and perception or access of the accused. Naturally therefore, the general burden on the prosecution to establish the charge or to advance facts (in a case through that party submitting evidence before the court) is transferred on to the defendant to establish his innocence on that inference. Once the burden shifts on that presumption, the burden of proof latches on to the party against whom such a *prima facie* inference is permitted or mandated as per a law or a rule. For example, reference can be made to a provision to raise such a presumption (under certain explicit and emphatic circumstances) as is provided in a law like the PACE Act, 1994 in England.

II.6.(1) Essential elements of the Principles of Natural Justice: It may also be useful to mention here the guiding notions and principles that govern the concept of '*Natural*

Justice' which is a very vital component of the total system of law. It has to be mentioned here that such a proposition assumes immense significance in a criminal trial for very apparent reasons.

II.6.(2) In a famous English decision in *Abbott vs. Sullivan*¹ it was observed that:

"The Principles of Natural Justice are easy to proclaim, but their precise extent is far less easy to define".

Jurists agree that there is no single definition of the concept of '*Natural Justice*' and it is only possible to enumerate its cherished dimensions with some certainty and thereby comprehend the main principles that inspire that celebrated concept. Some centuries ago, the expression 'natural justice' was often used interchangeably with the expression 'natural law'. However, it is seen that in the recent times, the term 'natural justice' is more used to describe certain rules of judicial procedure.

In fact, it is that particular aspect covering legal procedures which makes the need to discuss the concept of '*Natural Justice*' here.

II.6.(3) The two essential or basic elements considered to be the pith and substance of 'natural justice', are as under:-

- a. 'No man shall be a Judge in his own cause' and
- b. 'Both sides shall be heard' before a decision is taken

However, another additional aspect deemed as a part of that concept is the 'procedure followed' in each case. The basic proposition relating to the concept of '*natural justice*' lies in terms of a duty cast on the proposition that the 'person who decides must give reasons for his decisions'.

II.6.(4) In fact, the facet of the procedural processes is often referred to by the celebrated legal maxim cited as *audi alteram partem*. Two other related notions, which are

1. (1952) 1 K.B. 189 at 195.

considered as an extension of the above propositions, are:

- (i) Due notice has to be given to the parties in question and
- (ii) Conduct of the authority has to be done honestly and impartially and must not have been done under the dictation of other persons to whom authority is not given by Law.

II.6.(5) In this regard it would be appropriate to refer here to the verdict of the Supreme Court of the United States in *MacLean vs. Workers Union*¹ which provides a greater clarity in elucidating the essentials of the said legal concept.

"The phrase is, of course, used only in a popular sense and must not be taken to mean that there is any justice natural among men. Among most savages there is no such thing as Justice in the modern sense. In ancient days a person who wronged executed his own justice. Amongst our own ancestors, down to the thirteenth century, manifest felony, such as that of a manslayer taken with his weapon, or a thief with the stolen goods, might be punished by summary execution without any form of trial. Again, every student has heard of compurgation and of ordeal; and it is hardly necessary to observe that (for example) a system of ordeal by water in which sinking was the sign of innocence and floating the sign of guilt, a system which lasted in this country for hundreds of years, has little to do with modern ideas of justice. It is unnecessary to give further illustrations. the truth is that justice is a very elaborate conception, the growth of many centuries of civilizations: and even now the conception differs widely in countries usually described as civilized '.

II.6.(6) The following specific features of the concept of 'natural Justice' can be inferred from the verdict of the Apex Court in *Canara Bank and others vs Debasis Das* and others.²

1. (1929)1.Ch.602.624, {333 F2D 84(6th Cir 1964)}.

-
1. Natural Justice is another name of commonsense justice.
 2. Rules of 'Natural Justice' are not codified canons.
 3. But they are principles ingrained into the conscience of man.
 4. Natural Justice in the administration of justice is based on commonsense and construed in a liberal manner.
 5. Justice based predominantly on Natural Justice is indeed relying substantially on natural ideals and human values.
 6. The administration of Justice is to be freed from the narrow and restricted considerations, which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties.
 7. It is the substance of justice which has to determine its form.
 8. Expressions 'natural justice' and 'legal justice' do not present a watertight classification.
 9. It is the substance of 'Justice', which is to be secured by both and whenever legal Justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice.
 10. Natural Justice relieves 'legal justice' from unnecessary technicality, grammatical pedantry or logical prevarication.
 11. It supplies the omissions of a formulated law.
 12. As Lord Buckmaster said, '*no form or procedure should ever be permitted to exclude the presentation of litigants' defense.*'
 13. Adherence to the principles of 'natural justice' as recognized by all civilized countries is of supreme
-

importance when a quasi- judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. Notice is the first limb of the principle of '*Audi Alteram Partem*'.

14. Notice should apprise the party the case he has to meet.
15. Adequate time should be given to make his representation.

II.6.(7) However, in the recent times the concept of '*natural justice*' has undergone a great deal of change as can be seen from the legal practice which holds that a particular rule of '*natural justice*' has to be applied depending upon the facts of that case, the statute governing the issue and other related factors etc. As a result, the previously held view that dominated the distinction between an Administrative act and a judicial act is no longer considered as necessary. Thus, each and every 'Administrative' order, which involves or has civil consequences on any person, is clearly expected to follow the rules of '*natural justice*.'

II.6.(8) Further, there are clear verdicts of the Supreme Court of India asserting the proposition that 'in the absence of a notice and reasonable opportunity to a person to meet the case against him, the order passed would become wholly vitiated'. However, the Hon'ble Supreme Court has also in some of its decisions prescribed the limits to which they (the claims of '*natural justice*') are to be confined. Accordingly, the principle is to be applied which, in any particular situation or set of circumstances, is right, just and fair. Natural justice, it has been said, is only 'fair play in action'. In *Maneka Gandhi's* case, the Supreme Court emphatically asserted that

*"Nor do we wait for directions from Parliament. The common law has abundant riches – there may we find what Byles, J., called "the justice of the common law"*¹

II.6.(9) Thus, the soul of '*natural justice*' is fair play in action and that is why it has received the widest recognition throughout the democratic world. In United States of America, right to an administrative hearing is regarded as an essential requirement of fundamental fairness. In England too it has been held that, 'fair play in action', demands that before any prejudicial or adverse action is taken against a person, he must be given an opportunity to be heard. Lord Denning, M.R. has summed up the substance of '*natural justice*' very succinctly in *Schmidt v Secretary of State for Home Affairs*² as under:

"Where a public officer has power to deprive a person of his liberty or his property, the general principle is that it has not been done without his being given an opportunity of being heard and of making representations on his own behalf"

II.7.(1) Historical facets of the Right against Self-incrimination: In order to grasp the way by which the English law responded to the evolution of various legal concepts and ideas, particularly in the context of 'Rights of an accused person', we can appreciate the significance of the basic premise of the law that expects the state to undertake the responsibility in establishing the case it has against a subject. That emphatic feature was graphically narrated by Viscount Sankey in *Woolmington v D P P*³ as under:

"Throughout the web of English Criminal Law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt."

II.8.(2) It must be remembered that through various legal traditions relating to many concepts like '*presumption of innocence*', '*burden of proof*' and '*benefit of doubt*' and so on, which are in reality highly interdependent and mutually

1. AIR 1978 Supreme Court 597/AIR1978(2)SCR 261.

2. (1962)2.Ch.D.149.

3. *Woolmington V DPP*, 1935 AC 462 AT 481, Per Viscount Sankey

supportive to cumulatively make sense in terms of the quality of the penal justice processes. Early criminal law practices reeked of horrifying ways that considered nothing as improper or unjust against an accused and all kinds of inhuman and blatantly cruel ways dominated the scene. But, reforms encompassing virtually all the ways and methods by which criminals were dealt came slowly and haltingly before many such ideas took roots. As a natural corollary fetters were put on the idea by placement of burden of establishing any criminal charge against an accused on the State or prosecution and that idea became an accepted practice in the penal processes. It was easy to understand that the '*right of silence*' and '*right against compelling the accused to make any incriminating statement*' (or the right against 'self-incrimination') slowly occupied the central stage of a criminal trial. Admittedly that transition took some time in becoming an accepted practice.

11.8.(3) Indeed, the origins of the 'Right against Self-incrimination' seems to have had its roots much earlier than the 16th Century. However, the claim for such a valid right appears to have got a really sharp focus that stemmed from a persistent cry in England during the immediate aftermath of Star Chamber practices. In fact unjust ways of the Star Chamber processes had got degenerated completely. It had got debased so brazenly that they were grossly vitiating the very integrity and fair practices of the Courts. Consequently, the impact was seen on the veracity and uprightness of the system. As a result of the accursed Star Chamber abuses, a worst kind of tyranny became the order of the day resulting in a gross perversion of the very professed process of doing justice in any given penal trial. The Latin maxim *nemo tenetur sei psum accusare* ('no man is bound to accuse himself') was the natural counter reaction that stemmed from such a stalemate. That cry, for very apparent reasons, came to be persistently and repeatedly invoked by religious and political

dissidents who were prosecuted in the Star Chamber practices of the 16th Century England. During those tumultuous times, persons charged by tribunals were forced to take an ex-officio oath by which they were bound to provide truthfully answer/s to all the questions that were to be put to them and more importantly, they were to swear to do so, even without knowing what they were being accused of, in the first place. As a result of that invidious situation, they (the accused before the Star Chamber) were indeed torn between the devil and the deep sea. The choice before hapless victim/s was to either commit a perjury (a moral sin) or face a hardship of the consequences of a contempt of court (if they chose to refuse to answer the questions or resorted to silence when questioned). Further, they were obliged or expected to abdicate the natural urge for self-preservation by being forced to speak the truth or honor the oath they would have taken earlier, (by which they were compelled or forced to so) i.e. before the commencement of the trial.

II.8.(4) However, the popular uprising resulted in the acceptance of the claim to the 'Right of Silence' of the accused. As Wigmore has asserted, the said 'right' came to be formally conceded with the abolition of the Star Chamber practices. From then on, it was validly recognized that '*that no man is bound to incriminate himself, on any charge against him (no matter how properly instituted), or before any Court (not merely in the ecclesiastical or Star Chamber tribunals)*'. Firstly, it was intended in favor of an accused and later on it was also extended to cover the ordinary witness/witnesses. From then on, the said right seemed to slowly get an extended interpretation in the penal processes (which was not so until then)

II.8.(5) However the 'right to silence' was not always a practical reality for all accused in the English courts for some period afterwards. With limited access to legal counsel (often depending on the social status of the accused), a shifting

standard of proof, and a system generally distrustful of silent defendants, a criminal accused who remained silent was often committing figurative or literal suicide. Nevertheless, it remained a basic right available to the accused and has been an accepted practice over the past few centuries.¹

II.8.(6) In England, the practice of judicial questioning of accused persons at the trial (as distinct from questioning prior to trial) did not really disappear until well into the 18th century. However, by the end of the 19th century, the accused was not allowed to give evidence 'on oath' even if he wanted to - and this change was also said to have been a reaction to the inequities of the Star Chamber and High Commission of the 16th Century England.²

II.8.(7) Subsequent to that development, and with the British Empire's colonial enterprise spreading far and wide, most of the colonies adopted such Common Law practices. Later on, the Commonwealth countries adopted the basic notions guiding the Anglo-Saxon jurisprudence.

II.8.(8) By the middle of the twentieth century, the Universal Declaration of Human Rights was proclaimed and it became a primary force and acted as a sheet- anchor in getting the global acceptance to the said basic notions encompassing the way by which the criminal law was to deal with the problem of crime and in rendering justice as per law.³

II.8.(9) United States of America was also an inheritor of the common law traditions and these ideals had in fact, inspired the period well prior to the times of American Revolution and War of Independence. With the proclamations of the Bill of Rights⁴ a good number of Constitutional guarantees were brought into effect and some of the specific

1. John Henry Wigmore, *On Evidence*, Aspen.

2. English Court upto 1641- often cited about its cruel practices.

3. Bill of Rights, United States of America, 1791.

4. Due Process of Law, A brief History, JV Orth University of Kansas, 2003.

rights were woven by subsequent amendments to the Bill of Rights. The Right against Self Incrimination was reflected in the Fifth Amendment to the Constitution of the United States of America. Notions of 'due process' were slowly added in the legal texts. It is interesting to note that the term 'due process' was employed way back in the year 1354 in a Statute of Edward II which contained the words similar to the ones so graphically used in the Fifth Amendment to the Constitution of the United States of America, which became a part of the basic guiding principle of all legal processes in that country.

II.8.(10) *It needs to be noted that the choice of the phrase 'Procedure established by law' was chosen by the makers of the Constitution of India, as against the words 'due process' and though initially the difference appeared to create a varying impact, a subsequent development of the legal history of the Supreme Court of India seems to have in reality incorporated the concept of 'due process' into the working of the Constitution of India. Indeed that judicial passage is a very dynamic and interesting part of the growth and development of Constitutional Law In India.*

II.8.(11) Though there are some legal commentators who seem to claim that the '*Right of Silence*' (as seen in the Fifth Amendment to the Constitution of the United States of America) to be a pioneer as evident in the practices of the modern day world, there is clear evidence that the English systems and its inheritors from the innumerable colonies, have been the real harbingers of the said '*right*' in all its glory and splendor.

II.8.(12) Further, it merits clear notice that after the culmination of the Second World War, '*Right of Silence*' and some other related rights of the accused persons have been expressed as emphatic Articles of their respective Constitutions by most democracies. At the same time many other countries have made specific penal procedural legislations or made rules

in respective criminal procedure codes providing adequately to convey the same effect.

II.8.(13) An interesting difference is seen in some of the Commonwealth countries like Australia or New Zealand where police officers are still required at common law to issue a 'Miranda-style' of warnings (but which are completely unrelated to the mandate of the *Miranda Warning* as prescribed by the US Supreme Court). They are expected to inform an arrested person that he is not obliged to answer any questions but that whatever he says (or does) can be used in court as evidence. They (the police) must also ask an arrested person whether they understand these rights. Procedural failure to do so may jeopardize a criminal prosecution and can jeopardize or impede the case of the prosecution. While differing slightly with the wordings or terms used in the prevailing legal practices in the United States of America, the intent is identical and that facet comes from the inherited traditional law from the British colonies (as seen in contrast with that of Australia and New Zealand). However, in Australia, for instance, anything said by the accused under police questioning while in custody generally will not be accepted into evidence unless it is corroborated, normally done via audio or video record.

II.8.(14) It is relevant to note here that in the United Kingdom there has been a substantial shift in the position with regard to the 'Right of Silence', after the advent of the C J P O Act, 1994, though it has not watered down the notions of 'presumption of innocence' of an accused. With the making of the said law in the year 1994 (discussed elsewhere) suspects are told they have a right to remain silent but are also cautioned that anything they do not reveal in questioning but later relied upon by the court may harm their defense. In other words, under those specific circumstances the court would be, by law, entitled to draw (adverse) inferences against the accused, if he had chosen to remain silent at an earlier time (during the

trial).

II.8.(15) Right to Counsel: The American Revolution heralded various 'Rights of the Accused' in a greater clarity than by any other event. '*Right to Counsel*' became an accepted right and it must be said that in tandem to the empowerment of a kind that was the result of the right to counsel giving any advice to the accused, a parallel enterprise to improve the quality and capacity of the police in the United States of America was ventured. That facet was an indirect result but surely the consequence of the development and entrenchment of the '*Right to Counsel*' during the investigation of the case by the police.

II.9.(1) Legal Developments of the '**Right against Self-incrimination**' in India and a comparative view of the same subject *vis-a-vis* USA, UK and some other nations: - In order to appreciate the actual working of the 'Right against self-incrimination' in India, a study of cases relating to many new democracies, which have chosen to incorporate standards similar to that of the constitutional assertion as in Article 20 (3) is referred to in the ensuing pages. However and at the same time, it would be useful to look at the prevailing legal position in some of the important countries like the United States of America, Australia, New Zealand, Canada, England and Wales etc., so as to get a good comparative view of the matter at hand.

II.9.(2) In the legal history of the United States of America, especially from the perspective of an accused person, the year 1966 is seen as the climactic time for the 'Right against Self Incrimination' as the oft quoted case of *Miranda v Arizona*¹ set the pattern for compliance by law enforcement agencies. By that famous mandate, the express letter of 'oral caution to be made' to a person before his arrest was emphatically decided. These words of caution to be repeated by the law

1. 384 US 436(1966).{see also Brown v U S 256 U S 235 (1921)}

men to any person arrested by them, is very well known as the *Miranda Warning*. The practice of permitting a counsel to assist an accused person during the police questioning or during any pre-trial questioning came to be settled after the verdict in *Bram v United States*.²

II.9.(3) Unlike the Adversarial system prevalent in Britain, some countries in Europe like France and some others were pursuing the inquisitorial system and even in those systems, the 'right of silence' slowly spread in some form or the other, essentially due to massive developments of the relevant concepts in the realm of the International Law (i.e., after the climactic proclamation of the Universal Declaration of Human Rights). It is also a fact that due effect of the impact of the ideas and notions relating to the concept of 'due process' (as followed by the USA) were also seen in that growth of ideas. Thus, the protection to an accused person in terms of 'right to silence' came to be accepted in most parts of the world in a very big way.

II.9. (4) It can be well seen that countries that have woven the 'right to silence' as a Constitutional guarantee include USA, India, South Africa, Pakistan and many others from the developing and even the third world nations.

II.9.(5) At the same time, it can be observed that some nations which have not pursued that strategy (of conferring on an accused the 'right to silence' in their realms) through the express means of an appropriate Constitutional Article or text have however accomplished the same end result by either making a law or by resorting to a viable convention. Countries like the United Kingdom and Australia can be considered as examples under that category.

II.9.(6) Further, even some of the nations following the 'Inquisitorial System' of criminal justice dispensation have made similar provisions in their penal codes to achieve a

² 168 US 532 1897.

somewhat similar result. France can be seen as an example of that style.

II.9.(7) There are many interesting but subtle differences in the ways by which the said right is ensured amongst the comity of nations. For example, in Australia, - an accused (or even a suspect) (under the State and Federal Crimes Act) was given the protection of a right to refuse to answer questions by lawmen during the process of police enquiry. The conferment of a similar '*right to refuse*' to give evidence in a trial is comparable to the '*right of silence*' and the '*right against any kind of testimonial compulsion*'. Further, as the Australian penal processes have the jury system in vogue, it is seen that as per the law prevailing in that nation, a Judge can uphold the defendant's (or accused person) silence. However, it needs to be noted that such a right is not available to Corporations or Juristic persons other than a 'natural person'. In a way, that right is limited to accused persons, meaning a human being only (i.e., natural persons).¹

II.9.(8) Similar to the position prevailing in the United States of America, the '*Right of Silence*' is not available to a witness testifying before a Royal Commission. Similar position exists in the recently amended law of the Federal Anti-Terrorism and Organized Crimes Act.² It needs to be noted that each of these Acts or Laws set up coercive questioning regimes that operate outside the normal criminal processes. Direct testimonial evidence gained from this kind of coercive questioning cannot be used in any subsequent criminal trial of the person providing the evidence. However, a witness who testifies in his defense at a subsequent criminal trial and provides a different testimony to that during the questioning may face prosecution for perjury.

II.9.(9) Position prevailing in Canada: The right to silence is protected under Section 7 and Section 11 (c) of the

1. See *EPA v Caltex*, 178 C.L.R.477 (1993) (Australia)

2. (<http://em.wikipaedia.org/wiki/right-to-silence#cite-note-1>)

Canadian Charter of Rights and Freedoms. The accused may not be compelled to function as a witness against himself in criminal proceedings and therefore only voluntary statements made to police are admissible in evidence. Prior to informing the accused of his right to legal counsel any statements he makes to police is considered 'involuntarily compelled' and therefore, are inadmissible as evidence. However, after being informed of the right to counsel, the accused may choose to voluntarily answer questions and those statements would be admissible.

II.9.(10) The '*Right to Silence*' exists only when the suspect is knowingly dealing with a person in authority. When the subject is unaware that he is dealing with the police, such as in the case of an undercover operation, these protections do not exist. Statements made to police officers during undercover operations are almost always allowed into evidence unless the conduct of the police was deemed so egregious that it would shock the community.

II.9.(11) An interesting case in relation to the '*Right to Silence*' was reported in the *Hodgson* decision.¹ The facts of the case were that the accused was confronted and questioned by the victim and her parents. The accused confessed to them and was subsequently held at knifepoint until the police arrived. The court found that his confession was admissible because the complainant and her parents were not deemed to be 'persons in authority'. The subject was convicted on the basis of his confessions made at that time.

II.9.(12) Notwithstanding the fact that an accused has the right to remain silent and may not be compelled to testify against himself, the case can be different where an accused freely chooses to take the witness box and testify. However, when he does so, there is no further 'right to silence' and no general restriction on what kinds of questions he (the accused)

1. *R v Hodgson*, (1998) 2 S.C.R.449.

may be required to answer. Section 13 of the Canada's law on Charter of Freedoms² assures that incriminating evidence tendered by witnesses may not be used against them in separate proceedings. In effect, a person can be compelled to give involuntary self-incriminating evidence but only where that evidence is to be used against a third party. It can be seen that in most cases, except for certain sex offences or where the victims are children, spouses cannot be compelled to testify against each other.

II.10.(1) Position prevailing In England And Wales: - Right to silence has a long history in England and Wales and yet it was first codified in the year 1912. That provision was specifically provided for in the Judges Rules. As a result of that provision, a defendant in a criminal trial can choose to not give evidence in the proceedings. Further, in England and Wales there is no duty cast on a citizen to assist the police with their enquiries.

II.10.(2) After the Criminal Justice and Public Order Act, 1994 was duly enacted, the law permitted the Courts to draw adverse inference against the accused and some of the instances can be mentioned as follows:

- (a) Where the accused fails to mention any fact which he later relies upon and which in the circumstances at the time the accused could reasonably be expected to mention;
- (b) Where the accused fails to give evidence at trial or answer any question;
- (c) Where the accused fails to account on arrest for objects, substances or marks on his person, clothing or footwear, in his possession, or in the place where he is arrested; or
- (d) Where the accused fails to account on arrest for his presence at a place.

¹ Canadian Charter of Freedom, April 17, 1982

However, it needs to be kept in mind that it would not be permissible to record an order of conviction solely based on 'presumptions' raised owing to the silence of the accused. There can be no conviction based wholly on silence. Where inferences may be drawn from silence, the court must direct the jury as to the limits to the inferences that may be permissible to record an order of conviction solely based on 'presumptions' raised owing to the silence of the accused. There can be no conviction properly drawn only from such a silence. This does not apply to investigations by the Serious Fraud Office where there is no right to silence. This is so as the said law has emphatically taken away that right and has rendered any such claim under that law unacceptable. Under Section 49 (5) and Section 53 (6) of the Regulation of Investigatory Powers Act 2000 (RIPA), it is an offence to fail to disclose when requested the key to encrypted data (and this violation has a penalty of two years in prison on conviction).

II.11.(1) Position prevailing in the United States of America: Fifth Amendment to the Constitution of the United States (which is a part of the Constitution of the United States of America) - known as the *Bill of Rights* has codified the right to silence. The U S Supreme Court has ruled in *Miranda* that suspects questioned while in police custody must be told of their rights in what have become very well known as the *Miranda* warning. The said caution is required to be conveyed without fail, during the questioning of a suspect prior to actual arrest. It includes a similar burden even during the execution of a search warrant.

II.11.(2) An exclusive and specific provision is made with regard to Subpoenaed Grand Jury witnesses by the offer of immunity and thus (such a person) can be compelled to give evidence truthfully under oath. A grant of immunity removes the possibility of the jeopardy of self-incrimination and therefore removes the right to remain silent to avoid self-

incrimination. (This is not to be confused with the issue of legally privileged communications, such as those between a lawyer and client, doctor and patient, and clergy and parishioner etc.,)

II.11.(3) However it is seen that there is a conflict between the *Miranda* verdict and the *Raffle v USA* decision that remains unresolved by the U.S. Supreme Court. In *Raffle v U.S.A*¹, and in law enforcement practice, the court finds that at the very moment a suspect cooperates and answers questions and/or consents to search, the suspect gives up those rights and must continue that cooperation and consent through to that person's possible/eventual arrest, trial and judgment. Therefore, in the United States, by cooperating with police in any way prior to arrest, a person gives up Fourth and Fifth Amendment rights and as per the verdict in *Raffle*, technically the accused cannot reclaim that right any time later, after arrest and post his *Miranda* notification of those rights. This in reality renders *Miranda* warnings rather limited in effect, since police do not have to advise a person of his or her rights until after he or she self-incriminates and/or is arrested; if the person has cooperated prior to arrest, then the arrestee has already surrendered most of the rights about which the police are advising that arrestee. This situation in a way seems to go against the grain of the right granted under the *Miranda* rule.

II.11.(4) In the United States of America, the only way for a person (arrested accused or accused) to protect one's rights fully is to refuse answering any questions beyond giving one's name and identifying papers, if requested for (by the police) and to refuse giving consent to anything (such as a search) prior to one's arrest. Law enforcement officials do not have to tell civilians the truth on any subject. They can make any promises and claims they like in order to induce a person

1. 560 US -2010.

to incriminate herself or himself or to allow the officer to perform a search. Law enforcement officials are not bound by anything they promise to suspects or witnesses (i.e. promises' of aid or protection). Thus, the impact of *Raffle* continues to be upheld in U.S. Courts despite the apparent contradictions with *Miranda*. In the case of Grand Jury Subpoena to Sebastian Boucher, the U.S. District Court for Vermont ruled that, because the defendant had already cooperated as far as he had and had in fact already potentially incriminated himself, by stating his ownership of his laptop and further by providing to the law enforcement with partial access to it prior to his arrest, the proposition that he must now surrender complete access to all information on that laptop, even encrypted and potentially self-incriminating or confidential information is contrary to the trend seen hitherto, prior to the case in question. Because the defendant had cooperated in part already, the Court ruled that the defendant must continue his cooperation and provide the decrypted and potentially harmful information to the government. This is particularly noteworthy since earlier U.S. Supreme Court rulings normally protected the suspects even after conviction from the requirement of revealing self- incriminating information such as locations of their victims' bodies and /or property.

II.11.(5) Some countries including Canada have carefully avoided such contradictions by clearly making such evidence inadmissible in court and any information/statements provided by the suspect prior to advisement of their rights to silence and representation is clearly barred. In a very recent case (June 2010) the U. S. Supreme Court announced its decision in *Berghuis v. Thompkins*,¹ holding that a suspect's mere 'silence during the interrogation did not invoke his right to remain silent'. This decision was the third time in the same term that the

1. 271 U.S.A.494(V271)1926.

Supreme Court placed limits on Miranda rights. In the dissenting opinion, Justice Sotomayor called the majority's decision, 'a substantial retreat from the protection against compelled self-incrimination that Miranda v Arizona has long provided during custodial interrogation.'

II.12.(1) Two legal definitions given to the term 'self-incrimination' are useful to comprehend the current legal position in USA

- A) Barron's Law Dictionary (USA) states that SELF-INCRIMINATION, PRIVILEGE AGAINST *the constitutional right of a person to refuse to answer questions or otherwise give testimony against himself or herself which will subject him or her to incrimination. This right under the Fifth Amendment (often called simply PLEADING THE FIFTH) is now applicable to the states through the due process clause of the Fourteenth Amendment, 378 U.S. 1,8, and is applicable in any situation, civil or criminal where the state attempts to compel incriminating testimony.*
- B) The Black's Law Dictionary (USA) states that SELF-INCRIMINATION: *Acts or declarations either as testimony at trial or prior to trial by which one implicates himself in a crime. The Fifth Amendment, U.S. Const, as well as provisions in many state Constitutions and laws, prohibit the government from requiring a person to be a witness against himself involuntarily or to furnish evidence against himself.*

II.13. (1) Right to Counsel of an Accused: *Right to Counsel* is now a widely accepted right of an accused, especially during police questioning. In so far as the prevailing practice in India is concerned, the said right was a commendatory suggestion made in *Nandini*¹, as the Supreme Court of India did not make it a binding order. In fact, from a plain reading

1. AIR 1978 SC 1025.

Historical Facets of some of the Legal

73 Principles and the Right against 'Self -incrimination' [Ch.2

of the verdict of the Apex Court in *Nandini*, it can be clearly inferred that the Court commended to the investigating agencies (the police in particular) the idea (to enable a counsel to be present and to assist the accused during his cross examination or questioning while in custody) as a very useful practice for the police. However, the Court seemingly left it to the discretion of the police to think and act upon that suggestion. Thus the current situation in India is not emphatically mandated to permit a legal counsel to assist the accused, as a legal obligation. However it can be allowed as the investigator deems it fit. This subtle distinction merits notice.

=====

CHAPTER 3

Self-incrimination and the Law

III.1.(1) Article 20 of the Constitution of India proclaims three very important rights of an accused person. They are respectively conveyed in the three sub-clauses of that most dynamic Article.

III.1.(2) Article 20 of the Constitution of India says as under:

- Article 20* (1) *No person shall be convicted of an offence except for violation of a law in force at the time of the commission of the act charged as offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.*
- (2) *No person shall be prosecuted and punished for the same offence more than once.*
- (3) *No person accused of an offence shall be compelled to be a witness against himself.*

III.1.(3) The first clause is often referred to as the 'combined constitutional protection' against 'retrospective operation of a penal law' and a protection against retrospective imposition of a higher penalty. If the first part of the sub-clause prevents the retrospective application of a penal law on a person, the second part of that sub-clause ensures that a person is not imposed a greater penalty than what was prescribed as per law, at the time when the said offence was committed. Thus a dual shield against retroactivity of a penal law as well

as the protection against higher scale of punishment (higher than what was prevailing at the time of the commission of the impugned offence) – notwithstanding a subsequent amendment to a penal law. A most emphatic and dynamic protection against ‘double jeopardy’ (punishing a person twice for the same offence) is provided by clause (2) of that very potent Article of the Constitution of India.

III.1.(4) However, the highly cherished right of an accused person stems from the third clause of the said Article. That vital right of an accused contained in the said Article 20 (3) is often referred to as the article of the Constitution of India on the ‘right’ of an accused against ‘*Self-incrimination*’.

III.1.(5) It needs to be appreciated that the said fundamental right is drawn from the British criminal jurisprudence and that facet continues to be strongly embedded in the Anglo-Saxon system of Criminal Justice Administration in England. Further, it is very necessary to note that the concept has also found a place in the Constitution of the United States of America. That aspect can be seen in its categorical and equally vigorous assertion of what is popularly known as the ‘Fifth Amendment’ to the Constitution of the United States of America.

III.1.(6) As said earlier, that legal concept drawn from the English law is a part of the Anglo-Saxon penal philosophy which has been in vogue and practice for several centuries. That celebrated legal protection has been adopted in a full measure by the Constitution of India by emphatically placing that ‘right’ expressly vide Article 20(3). By that placement the said legal principle has been elevated to the status of a ‘Constitutional Right’. Further, by providing categorically a legal prohibition against any action by the State or its authorities to gather evidence in the proscribed or inhibited manner, the significance attached to the said right can be clearly comprehended. It may also be useful here to mention that, historically speaking, several other laws have reflected

the same constitutional guarantee by specific statutory provisions, advancing the very goal of the law. For example, we can see that the Oath's Act, 1873, vide Section 342 in particular, speaks of the same right.

III.1.(7) While speaking of the Constitution of India in the context of the right against self-incrimination, it is necessary to note that similar end objectives are also envisaged by specific sections of the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872.

III.1.(8) Needless to point out that this particular right is of immense concern for every investigator of a crime as he has to fully understand the law in its letter as well as in its spirit as mandated by the Constitution of India. Further, every investigator is also bound to note the relatable provisions of the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872. In addition, he is also obliged to reckon several other procedural or administrative standards, which ensure the said right in favor of an accused person in various ways. The investigating officer will have to know well as to what is permissible and what is not, in all his actions to question the accused, while he is seeking to elicit replies or information from him. In effect, he has to do so (i.e., accomplish results) within the bounds of law and as per the law. (i.e., the Constitution of India, the Code of Criminal Procedure, 1972, Indian Evidence Act, the Police Act, 1861, the Police Manuals and other standing instructions that are issued by the competent authority from time to time). Therefore, it is necessary for the law enforcement personnel (more specifically the Investigating Officers dealing with Investigation of Crimes as per the Code) to keep in mind those critical aspects of that right of an accused, in particular, along with his genuine concerns on many other rights of the accused under the law. An investigator has no choice but to ensure compliance to all such legally mandated rights. An investigator cannot afford to forget the primary fact that each such right has a direct

bearing on the totality of the entire investigative enterprise. In that enigmatic context the charter of 'Questioning an Accused', assumes immense legal and practical significance. To sum up, the array of legal directions cannot be ignored or forgotten by the law enforcers in general as they will be doing so only at their peril.

III.1.(9) Some of the related 'rights of the accused' under that big legal umbrella are:

1. Right against Self-incrimination;
2. Right of Silence;
3. Right to a Counsel of choice/ Right to Counsel;
4. Right against unjust or unfair or cruel treatment in custody;
5. Right of Privacy;
6. Right against undue and unjust physical restraint and
7. Right to 'Medical Examination', when sought by the accused

III.1.(10) It would be necessary to discuss briefly these specific rights cited above, and appreciate them with reference to the current and prevailing status of these rights, as conditioned by the verdicts of the Superior Courts of India. A brief narration of the historical development of these rights in that context will help the lawmen to understand the real purpose and objective of such laws in commending their value into the entire penal processes. Further, it will advance the cause of such mandates in practical and real terms. Only a good understanding of the subject would help the investigators to appreciate the significance of the *dos* and *don'ts* of the Code. Indeed, such an involved awareness and consequential pursuit of correct action based on that understanding would advance the cause of 'Rule of law'. Conversely, the emphatic legal burden that the investigator has to fulfill as per law, would also compel in him a sense of desire as well as an urge to

strive and improve his own knowledge, skills, attitudes and discipline *vis-a-vis* his profession and in the appropriate context. Such a status will help the investigator to seek an increasingly better and improved style for his work ethos and job ethics. Armed with such a competence, an investigator can aspire to do his chores without violating any of the provisions of the law of the land. Such a welcome situation will help the police, as an organization to succeed in reaching their job ends within the limits of the law. More importantly such a combination of a worthy organization worked well by lawful professional staff will help both to collectively reach and achieve good levels of success – all of which can be done only in accordance with the law.

III.1.(11) Right against Self-incrimination: The Constitution of India confers the right against ‘self-incrimination’ to every person ‘accused of an offence.’ The said right extends to every accused, irrespective of his being a citizen of India or not, as there is no qualification assigned to the term ‘person’, in the text of that Article in the Constitution of India. However, before a person can seek recourse to this ‘right’, it is necessary to keep in mind that all the following three ingredients are present, to effectively enable an accused to claim that right. They are:

- a. It is a right pertaining to a person accused of an offence,
- b. It is a protection against compulsion to be a witness; and
- c. It is a protection against such compulsion resulting in his giving evidence against himself.

III.1.(12) In *MP Sharma v Satish Chandra*¹ the Supreme Court of India expressed a view that the protection offered by Article 20 (3) of the Constitution of India would extend to juristic persons as well.¹ In *Maqbool Husain v State of Bombay*²

1. AIR 1954 SC 300; 1954 SCR 1077.

2. 1953 SCR 730; AIR 1953 SC 525.

the Apex Court clearly asserted that the clause 'Accused of an offence' makes it patent that the protection envisaged by this provision is confined to criminal trials or proceedings of that nature before a court of law. It could extend to instances of cases under section 3(38) of the General Clauses Act in a matter before a tribunal and in which a person has been accused of an offence. (That explanation refers to an act punishable under the Indian Penal Code or any other Special or Local Law). As a natural result of that interpretation of the said provision, the protection of the Article would not extend to parties and witnesses in civil proceedings or proceedings other than criminal proceedings. Thus, if in a civil proceeding a person is asked to answer a question by the authority, then, such person cannot refuse to answer claiming the protection of Article 20 (3) of the Constitution of India.¹

III.1.(13) The privilege in question commences from a time anterior to that of a criminal case under investigation or during a criminal trial. When protection is legally assured by the constitutional mandate to reach into a prospective time and then the right can even revert back to the stages previous to investigation or trial as the case may be. The only condition in that regard is that the right, which the accused is claiming in the context, must be relatable to a prospective prosecution, if the said accused were to be compelled to state or provide evidence against him (i.e., himself).²

III.1.(14) It can be stated that the protection of Art 20(3) is available:

- a. to a person against whom a formal accusation has been made³, though the actual trial may not have commenced as yet.⁴

1. *Laxman v State*, 1956 Bom 195; see *Bansil v P Misty*, AIR 1961 SC 1808.
2. *State of Bombay v Kathi Kalu Oghad*, AIR 1961 SC 1808 (1816).
3. *Satyanarayana Mallela v Vijaya Commercial Bank*, AIR 1958 AP 756; see also *Dastagir Mohamad v State of Madras*, AIR 1960 SC 756 (761).
4. *M P Sharma v Satish Chandra*, 1954 SCR 1077.

- b. If such an accusation relates to the commission of an offence which in the normal course may result in prosecution.¹

III. 1.(15). However, such a protection may not extend to cases where the accused is being interrogated in an investigation under a law like the Customs Act or a law involving a civil violation and so on, as the protection of the law is intended only in criminal cases. Thus, in instances mentioned above, the person is not 'accused of an offence' and thus, the umbrella of the law would not cover such a person. However, in such instances, the right to seek the assistance of a lawyer may also be available to him, as is permissible in the case of an accused in a criminal trial.²

III.1.(16) Further, as per the provisions of the law and the verdicts of the Apex Court, it needs to be noted that vide clause 20 (3), an accused can take recourse to protection even in cases where formal accusation has not been made by the processes of a court. In fact, the protection would commence even from the moment a First Information Report has been lodged against the accused in a police station or the accused is mentioned in a complaint, which in the normal course would result in prosecution.³ Similarly, in instances where a show cause notice is issued or a First Information Report has been lodged against the accused in a F E R A case, the said circumstances can be viewed as being covered by Article 20(3).

III.1.(16) The protective ambit of the Article comes into play every time a person has been named as an accused in a case and has been so done by persons competent under the law to launch a prosecution against such a person.⁴ Though the facet of existence of a formal accusation against the person

1. *Narayanlal v Bansilal v Manek Phiroz Mistry*, AIR 1961 SC 29 (38-39).

2. *Poolapandi v Supdt of customs*. AIR 1992 SC 1795; 1992(3) SCC 259.

3. *M P Sharma v Satishchandra*, 1954 SCR 1077; AIR 1954 SC 300.

4. *R.B Shah v Guha, D.K*, AIR 1973 SC 1196.

seeking the protection of the law is not considered necessary, it has to be so existing at the time when the recovery of the incriminating material was made (from the person of the accused) or was so done, at the instance of an accused person. Thus, in a case where money is recovered from the alleged compulsions that were made or used against a person, and where no accusation has been made against him, then the said clause under Art 20(3) may not benefit such a person.¹

III.1. (17) It also needs to be kept in mind that the said protection will not come to the aid of the accused where material objects are recovered from (the person of the accused) or at the instance of an accused person, who is offering a bribe or is being bribed, the clause under Art 20(3) would not apply². So would be a case where a sample of milk from a vendor is obtained by the authority.³ The Apex court had mandated in *Kathi Kalu*⁴ that cases of recovery or discovery of material objects would not fall foul of Article 20(3) relating to the facet of testimonial compulsions and that particular enunciation of the law by the Apex Court has had a great bearing on the development of the law, in that specific regard.⁵

III.1.(18) In considering the term 'the accusation normally resulting in prosecution', the following aspects may be kept in view

- a) It is not necessary that an F I R must have been lodged against the person, before he seeks the protection of the said clause.
- b) It is also possible to note instances where the court can infer that a charge or an accusation has been made in substance⁶

1. *Dalmiya v Delhi Administration*, AIR 1962 SC 1921- see also *Kathi Kalu*.

2. *MR Thakur v Jabalpur Corporation*, AIR 1961 SC 1962 MP 17.

3. *ibid*.

4. *Kathi Kalu Oghad v State of Bombay*, AIR 1961 SC 1808 (1816).

5. *Narayanlal Bansilal v Manick Phiroz Mistry*, 1961(1) SCR 417.

6. *ibid*, AIR 1961 SC 29.

- c) However, the protection cannot be claimed in a case where a general sort of investigation has been made against a specific individual, and at that time there has been no accusation made, although subsequently a specific allegation may result against the said person. Instances of this kind can be illustrated with reference to the provisions of section 235-240 of the Companies Act, 1956, or in instances where a person is examined under section 33(3) of the Insurance Act, or by a customs officer under the Customs Act, 1962¹ or by an Inspector under section 27(2) of the Payment of Bonus Act, 1956. As a rule it can be stated that Article 20(3) will come into play if the proceedings start² 'with an accusation' and further, the person who is seeking the protection of the said provision is already an accused person when he was compelled to make the statement³ (which is held to be self-incriminatory).

III.1.(19) The use of the word '*compelled*' employed in Article 20(3) is of immense significance. This is so because the act of 'compulsion' is the most vital and essential ingredient of the clause.⁴ Thus, if confession is made by a person (accused) without there being any threat or inducement or promise, the said action (i.e., in getting that confession recorded) cannot be construed as having been obtained under 'compulsion', though subsequently the person may retract the said confession.⁵ Similarly the provisions of article 20(3) do not bar an accused from voluntarily agreeing to be examined as a witness.⁶

-
1. *Dalmiya R K v Delhi Administration*, AIR 1962 SC 1821.
 2. *Poolapandi v Superintendent of central Excise*, AIR 1992 SC 1795
 3. *Dastagir Md v State of Madras* AIR 1960 SC 756(761) *J Agusthi v Naryanan*, AIR 1964 SC 1552 (1564); *Popular Bank v M Naik*, AIR 1965 SC 654.
 4. *State of Assam v Rajakhowa*. U.N., 1978 Cr. LJ 354 (at Para. 34)
 5. *Kalavathi v State of H.P.*, 1953 SCR 546.
 6. *Bhagat v Union of India*, AIR 1962 Delhi 191 (para12).

III.1.(20) Further, the facet of 'compulsion' means 'duress' which must be established by proof before a person can seek the protection of Article 20(3). Without that vital proof being provided, the benefit of Article 20(3) would not be available to the said person.¹

III.1.(21) The facet of 'compulsion' was made clear by the Apex Court in *M P Sharma v Satishchandra* wherein it was pointed out that 'compulsion' can take many forms - which may be mental or physical. Mental compulsion can be found only when it is established that the mind has been so conditioned by some extraneous process so as to render making of the statement involuntary and therefore, it will have to be held that the statement was extorted and under those circumstances the facet of 'compulsion' can be said to be present.²

III.1.(22) Further, there is a subtle difference between instances where a person is compelled to do a volitional act and where something is being obtained from him (such a person) without involving any volitional act on his part and thus, the immunity provided under Article 20 (3) can extend only to cases of the first kind, mentioned above. As a natural corollary the second category of such cases would therefore be deemed as not falling foul of the law. Such cases of the second type, as illustrated above, fall outside the ambit of the Constitutional provisions of Article 20 (3). In fact, this rationale is one of the basic arguments in relation to the act of law to validly secure physical samples of materials needed for investigation of a crime, like handwriting, fingerprints etc., which are, as per law, not hit by Article 20(3).

On the same analogy, it is seen that the immunity may not be applicable to an accused person when he is issued with

1. Poolapandi, *Dalmia v Delhi and Kathi Kalu* others cited earlier

2. *Ibid*, see also *M P Sharma's* case cited earlier.

a notice to produce a document (incriminating himself) or to a case where a document is recovered from the possession of an accused without involving any volitional act by the accused. In order to really note the subtle difference between the two categories as above, the facet of voluntariness as well as the circumstances of the case merits notice.

III.1.(23) The essential facet of compulsion can be seen in some of the following illustrations:

- a. Where the person making the statement has been in an adjoining room starved or beaten;¹
- b. Where the person has been made to believe that his son is being tortured and on that belief he makes a statement;²
- c. Where under the provisions of any law a person is, under any legal sanction, bound to give oral or documentary evidence, it is obvious that he is 'compelled to be a witness'.³

III.1.(24) However, in the following illustrative cases, the court ruled that there was no 'compulsion' evident.

- a. Merely because a person was in police custody at the time he made a statement cannot lead to an inference that the said person was 'compelled' to give a self-incriminating statement.⁴
- b. An answer given voluntarily to an investigating officer, notwithstanding the fact that the statement turned out to be incriminatory.

1. *Yusuf Ali Nagre v State of Maharashtra* AIR 1968 SC 1808.

2. *Collector of Customs v Calcutta Motor and Cycle Co.*, AIR 1956 Cal 682 (687) *Dalmiya v Delhi Administration*.

3. *Ram Swaroop v State*, AIR 1958 All 1199 (12); see cases of *Kathi Kalu*, *Dalmiya v Delhi Administration*.

4. *Kathi Kalu*, *Dalmiya v Delhi Administration*, *op cit*.

-
- c. Where a free and voluntary statement was secretly recorded by using a tape recorder, though the person making the statement was not aware of that, (the fact that there was a hidden tape recorder which was used without his becoming aware of that arrangement made by the authority) and unless there is an actual or inferred compulsion, invoking Article 20 (3) would not be relevant.
 - d. Where a person {seeking the cover of Article 20 (3)} is not by law bound to answer the questions or to produce the document that is being sought from him.
 - e. It can however be safely stated that the protective umbrella of Article 20 (3) of the Constitution of India will come into play clearly in all cases where the proceedings 'start with an accusation' against a person and further he (the said person) has been compelled to make a statement against himself or is forced to incriminate himself by such a statement.¹
 - f. The privilege of protection conferred by clause (3) of Article 20 (3) is confined only to an accused i.e., a person against whom a formal accusation relating to the commission of an offence has been leveled, which in the normal course may result in the prosecution. However, it is really not necessary that actual trial or enquiry should have commenced before a court or a tribunal, so that the person accused can seek the relief under Article 20 (3), thus where a F I R has been made against a person and an investigation has been ordered by the Magistrate, the person in question can claim the benefit under Article 20(3). Further, even if his name has not been mentioned in the first information report, it would not take such a person out of the category of

1. *Dastagir Mohamad v State of Madras* AIR 1960 SC 756; *Joseph Agusthi v Narayanan*, AIR 1964 SC 1552; *Popular v Bank Madhava Nair* AIR 1965 SC 654.

persons (if evidence, oral or circumstantial, points to the guilt of the said person, and he is taken in to custody and interrogated on that basis) who can claim the said benefit or protection.¹ Further, the protection envisaged covers both the oral as well as documentary type of evidence that is being compelled against him. Unlike in the United States of America, where protection against 'self-incrimination' extends not only to the accused but also the witnesses,² the legal arrangement made by the Constitution of India covers only the accused person. In fact the position prevailing in U S A is similar to the arrangement subsisting in United Kingdom under the English law.³ The position prevailing in India is clearly consistent with reference to the constitutional provision and the express wordings of section 132 of the Indian Evidence Act, 1872, directly speaking on that issue.

- g. The protection does not cover cases where there is no accusation, as in the case of a proceeding under a charge of 'Contempt of Court' hearing.⁴
- h. The verdict of the Apex Court in *Nandini Satpathy v P L Dani*,⁵ held that the dictates of Article 20(3) of the Constitution of India as well as the emphatic proscriptions of Section 161 (2) of the Code (i.e., Cr P C, 1973) run in tandem and are virtually the same. The words employed by the Code in that section by the expression, '*any person supposed to be acquainted with the facts and circumstances of the case*', would clearly include a person who fills that role because, the police suppose him to have committed the crime and must therefore, be familiar with the facts (of the relevant

1. *Amin v State*, AIR 1958 ALL 293.

2. *Willis, Constitutional Law*, (1936) p 419.

3. *Phipson, Evidence*, 9th Edition, pp 215 & 474.

4. *Delhi Judicial Service Assn v State of Gujarat*, (1991) 4 SCC 406.

5. 1978 (2) SCC 424.

case). Further, based on that analogy, as advanced by Mr. Justice Krishna Iyer, V. R., the Supreme Court held that the expression 'accused of an offence', no doubt includes a person formally brought in to the police dairy as an accused but also includes a suspect. While discussing the previously held view of the Apex Court (in several other cases), the Supreme Court of India chose to jettison its earlier¹ restrictive views of the expression 'accused of an offence' taken therein and extended the application of Article 20(3) of the Constitution of India to police interrogations. However, that view was not fully asserted as the Supreme Court did not consider that claim with regard to serious offences.

III.2.(1). Meaning and import of the clauses '**be Compelled**' and '**to be a witness against himself**,' respectively: With regard to the constitutional umbrella against 'Self-incrimination' as provided by Article 20(3) of the Constitution of India, the true import of the relevant word, '*compelled*' and the clause '*to be a witness against himself*' can be seen from a fairly long list of decided cases of the Supreme Court of India.

III.2.(2). It must be clearly noted that the prohibition against testimonial compulsion mandated by Article 20(3) of the Constitution of India, applies only in cases where there is 'compulsion' of the accused to give evidence against his own self.² It means that a person accused of an offence is 'compelled' to make oral or written statement/s in or out of the court and only then, the umbrella of the constitutional protection comes to the fore. If such an action on the person accused (as is compelled) results in imparting knowledge in respect of

1 *R N Bansilal v M P Mistry*, AIR 1961 SC 29; also *Kathi Kalu Oghad*, AIR 1962 SC 1805; *R C Mehta v State of Bombay*, AIR 1970 SC 940; *B Goenka v Union of India*, Cr A 131 & 132 of 1961, 20/09/1963.

2 See cases of *Bansilal v Mistry*, *op cit*, *Kathi Kalu* and *RCMehta op.cit*.

relevant facts, by the said person through such a statement, either oral or written, (given to a court or otherwise), then, such an impugned statement would attract the provisions of Article 20 (3). Further, such statement/s need not be confessions alone, as even incriminatory statements, which have a tendency to point out or lead to an inference of guilt of the said accused person are also covered by the said clause of the Constitution of India. As observed by the Supreme Court in *Nandini Sathpathy v P L Dani*,¹ such of those '*relevant replies which furnish a real and a clear link in the chain of evidence indeed to bind down the accused with the crime become incriminatory and offend Article 20(3), if elicited by pressure, from the mouth of the accused*', would fall in the ambit of the claim of 'self-incrimination'.

III.2.(3). It also needs to be kept in mind that the facet of 'to be a witness' is not the same or equivalent of the term 'furnishing evidence' - in its widest ambit. Thus, the term 'to be a witness' may not necessarily include production of documents or giving materials, which may be relevant at the time of the trial to determine the guilt or innocence of the accused.

III.2.(4). In fact, the Supreme Court had overruled *Satishchandra* in the subsequent *Kathi Kalu Oghad*, which was decided by a eleven member bench of the Supreme Court of India. The Apex Court asserted the basic logic of *Kathi Kalu Oghad* as under:

"It is well established that clause (3) of Article 20 is directed against self -incrimination by the accused person. Self-Incrimination must mean conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical processes of producing documents in court which may throw light on any of the points in the controversy, but which do

1. 1978 (2) SCC 424; AIR 1978 SC 1025.

*not contain any statement of the accused based on his personal knowledge. For example, the accused person may be in possession of a document which is in his handwriting or which contains his signature or his thumb impression. The production of such a document, with a view to comparison of the writing or the signature or the impression is not the statement of an accused person which can be said to be of the nature of a personal testimony.*¹

III.2.(5). Thus, based on the above logic of the Supreme Court of India, acts of giving or obtaining of thumb-impression or the foot impression or providing the specimen writings or showing of the parts of the body by way of identification were, in the post *Kathi Kalu* got excluded from the expression 'to be a witness'.

III.2.(6). The history of development of the law on the subject of Article 20 (3) of the Constitution of India records an interesting fact that the basic aspect of the clause 'to be a witness' would mean and include oral and documentary evidence. Further, that proposition was given a wider connotation by the Supreme Court in *MP Sharma*² to include not only the written statements of the person accused but also any documentary evidence which he may have been compelled to produce. On that analogy, the Court had held that a compulsory process for the production of the documentary evidence against a person, who has been accused of an offence, falls foul of Article 20 (3). However, the wider ambit conveyed by Sharma³ clearly got narrowed down by the Supreme Court in *Kathi Kalu*, a decision handed down by an eleven member's bench of the Supreme Court. The verdict narrowed as well as restricted the scope of the protection of Article 20 (3) in relation to documentary evidence and limited it to written statements conveying his personal

1. *State of Bombay v Kathi Kalu* AIR 1961 SC 1808.

2. *MP Sharma v Satishchandra*, 1954 SCR 1077.

3. *State of Bombay v Kathi Kalu Oghad*, AIR 1961 SC 1808.

knowledge relating to the charge against him. As per the later verdict in *Kathi Kalu*, the prohibition of law is against compulsion to produce only '*such*' a document, which reflects the personal knowledge aspect of the accused in the relevant case. Thus, the protection would not extend to the production of any other document. For example there can be no bar for compelling the accused person to produce a document containing statements of other persons in his (i.e., the accused who has been so compelled) possession. Similarly, there can be no application of Article 20 (3) to a case where the person is asked to produce the document written by himself, which simply shows his own handwriting/s, or states facts, which do not convey his personal knowledge to the charge against him; or a document, which may incriminate some other persons. Thus, it can be stated that *Kathi Kalu*, in effect, narrowed down the ambit of Article 20 (3) in relation to documentary evidence. It is interesting to note here that the guarantee afforded by the American law (Fifth Amendment) virtually encompasses all documents save the public documents. However, the Supreme Court of India made it emphatically clear in *Kathi Kalu* that the expression or the terms used in the Article i.e., 'to be a witness' do not include giving thumb impressions, impressions of foot or palm or fingers or specimen handwriting or showing the parts of the body by way of identification¹ etc.,

III.2.(7). Code of Criminal Procedure, 1973 vide section 315 provides for the accused being considered as a competent witness. Vide the proviso (b) to Section 315, any person accused of an offence, 'shall not be called as a witness except on his own request in writing.'² Thus, it can be seen that an accused person can waive his right provided under Article 20

1. *State of Bombay v Kathi Kalu Oghad*, AIR 1961 SC 180; *State of U P v Buta Singh*, (1979) 1 SCC 31 (para41), AIR 1978 SC 1770.

2. *State of Maharsatra v R B Chowdhuri*, AIR 1968 SC 110; 1968 Cr L J 95 see also *PN Krishna Lal v State of Kerala*, Supp (2SCC 187 (Para 47).

(3) to render himself as a witness, if he so chooses by preferring an application in writing.

III.2.(8). As per the scope of Article 20 (3), it is clear that the 'compulsion' must be of an act, which forces him in giving evidence against himself. The prohibition imposed by the law is only in relation to the act of compulsion imposed on the accused, to give evidence against himself. Article 20 (3) does not apply to a case where the confession is made by an accused without any inducement, threat or promise.¹ In order to attract the mischief prohibited by Article 20 (3) it must be shown that the accused was compelled to make the statement having a material bearing on the criminality of the maker. 'Compulsion' means the employment of 'duress' in law, and the Apex Court in *Kathi Kalu Oghad* made this particular aspect clear. '*Duress is where a man is compelled to do an act by injury, beating or unlawful imprisonment (sometimes called 'duress' in a strict sense) or by the threat of being killed, suffering some grievous bodily harm or being unlawfully imprisoned (sometimes called menace of 'duress' per mines). 'Duress' also includes threatening, beating or imprisoning of the wife, parent or child of a person.*'²

III.2.(9). In a case where the appellant accused had gone to the house of a police officer to offer him a bribe and that bribe contained in a closed envelope, the act in question came to be discussed by the Court. It was noted that the police officer threw the envelope at the appellant accused. The accused in turn picked it up. Soon thereafter, the appellant accused was asked by the police to produce the envelope, and on that direction, he (the accused) took it out from his pocket and from out of that envelope currency notes were seized. Later on seeking the protection of Article 20 (3) the appellant accused pleaded that the seized notes ought not to

1. *Kalavathi v State of Himachal Pradesh*, AIR 1953 SC 131.

2. *State of Bombay v Kathi Kalu Oghad*, AIR 1961 SC 1808.

be taken up in evidence in view of Article 20 (3) as the said material was not acceptable or permissible under the law, as it had become a 'compelled evidence'. However, the Court held that clause 20 (3) would not apply to that specific case, firstly because there was no duress or compulsion used against the appellant accused and further, and more importantly, he was not an accused, as yet at that point of time (the appellant accused) in the eye of the law, when the currency notes were seized. Thus, the benefit of Article 20(3) was not conceded in that case.¹ Similarly in *Malkani v State of Maharashtra* it was decided by the Supreme Court that the protection envisaged by Article 20 (3) would not extend to a case where a hidden tape recorder was used to collect the recording of a conversation between the accused and others as the said conversation was done without any duress or compulsion, notwithstanding the fact that the said recording was done without the knowledge of the appellant accused person.² Also in *Usuf Ali's* case, the Court did not find anything affecting Article 20 (3) wherein a tape recording of the evidence of the accused was made without the knowledge of the accused and was done without any compulsion being made on him.³

III.2.(10). However, the ambit and scope of the act of 'compulsion' was vastly expanded by the verdict of the Supreme Court in *Nandini Sathpathy* as it held that '*compelled testimony*' would include not only evidence procured by *not merely the physical threats or violence, but also psychic torture, atmospheric pressure, environmental coercion, tiring interrogative proclivity, overbearing and intimidating methods and the like*.⁴

III.2.(11). On the question as to whether the immunity provided by Article 20 (3) extends to the production of

1. *Mohd Dastagir v State of Madras*, AIR 1960 SC 756.

2. *R M Malkani v State of Maharashtra*, (1973) IR 1973 SC 157.

3. *Usuf Ali Nagre v State of Maharashtra*, AIR 1968 SC 147.

4. *State of Bombay v Kathi Kalu Oghad*, AIR 1961 SC 180.

material evidence or specimen handwriting, etc, the Supreme Court in *Sharma's* case clarified that the expression used in the Article 20 (3) is 'to be' and not 'to appear' as a witness. Therefore, it can be easily surmised that the immunity given by the Article is to cover any kind of evidence which so compelled, and which is likely to support the case of the prosecution. In fact, this interpretation of the Apex Court was fairly wide and inclusive of almost everything coming as evidence likely to be used against the person concerned. *Sharma's* case was decided in the year 1954. However, in the year 1961 *Kathi Kalu* in effect narrowed down the above proposition by holding that the protection offered by Article 20 (3) would not extend any kind of evidence but would be limited only to self-incriminating statement made by the accused (including oral or documentary or written testimony) relating to the charge brought against him. Thus, the *Kathi Kalu* verdict clearly conveyed that as per Article 20 (3):

- a) The accused is not protected in all instances of production of material objects. As a result, if force or compulsion is employed seeking that the accused is asked to exhibit his body for the purpose of establishing identity (example- for a test identification parade) or for holding the identification of the suspect in a group of persons or taking their photographs or for wearing clothes of a particular kind to enable identification by witness or complainant. Then, in such a case, the question of compulsion does not exist in terms of the express interpretation of the Article in question, i.e., Article 20 (3). In fact it was on that premise the provisions of Section 5 of the Identification of Prisoner's Act 1920 was held to be consistent with the provisions of Article 20(3) and was thus held *intra-virus* of the Constitution of India.¹ There are decided cases, where the courts have upheld the recovery of blood-stained clothes¹ or other

1. *Ram Swarup v State*, AIR 1958 All 119 (126); 1958 Cri L J134.

articles² from the person of the accused, as falling outside the scope of Article 20(3). Similarly, it has been held that the process of medical examination of the person of the accused or for taking the blood samples from his person for the purpose of tests etc., does not amount self-incrimination of the accused³

- b) The provisions contained in Article 20(3) are not applicable to cases where the accused is asked to give his specimen writing⁴ or impressions of foot or palm or fingers.⁵ Further, the fact that the accused was in judicial custody or in police custody does not make any difference to the action so done to obtain evidence as above.⁶
- c) Similarly, in cases where the information furnished to the investigating officer by the accused person after his arrest, leads to the discovery of articles under section 27 of the Indian Evidence Act, 1872, such facts are admissible in evidence, as it does not in any way offend Article 20(3) of the Constitution of India.⁷ This is so because an accused person cannot be said to have been compelled to be a witness against himself under those circumstances. As was decided by the Apex Court in *Kathi Kalu*, the mere fact that the accused was in police custody at the time of making the statement by itself would not, as a proposition of law, lend itself to the inference that the accused was compelled to make a statement. The Supreme Court in the case of *Pershad v State of U.P.* held that, in a murder charge the accused

1. *Palani Moopan in re*, AIR 1955 State of Madras, 1960 (3) SCR 116.

2. *Collector of Customs v Culcutta Motor and Cycle Co*, AIR 1958 Cal 682(687) also *Ram Swarup v State*, AIR 1958 All 119 (121)

3. *MP Sharma v Satish Chandra*, 1954 AIR SCR 1077; AIR 1954 SC 300.

4. *State of Bombay v Kathi Kalu Oghad*, AIR 1961 SC 1808 (1816).

5. *Pakhar Singh v State*, AIR 1958 Punj 294 (298) 1958 Cri L J 1084.

6. *Collector of Customs v K B Pinjalani*, AIR 1967 Madras 263(265)FB.

7. *Govinda Reddy re*, AIR 1958 Mys 150; *Fettya v State*, AIR 1865 Raj 147.

had stated to the police officer that he would give the¹ clothes of the deceased which he had placed in a pit and thereafter he, in the presence of the witness, dug out the pit and took out the clothes which were identified as clothes belonging to the deceased, the statement of the accused were held to be admissible. However, if the police had tortured him to make that statement, then the evidence so obtained would have become tainted and that evidence would have been rendered inadmissible under Article 20(3) of the Constitution of India.²

- d) In fact, this aspect of the discovery of material objects based on the statement made by the accused is consistent not only with Article 20 (3) but also with regard to the relevant provisions of the Indian Evidence Act, 1872 and is the correct method of obtaining admissible evidence without violating the provisions relating to prohibition against 'self-incrimination' of an accused and the act of discovery under the law of evidence is permissible in the eyes of the law.
- e) It needs to be noted that the discovery of material evidence obtained based on the statement of the accused is admissible in evidence, if it has been secured without any compulsion and if the statement contains self-incriminatory averments, then, that portion becomes inadmissible under the law at the time of the trial.
- f) The transition from *MP Sharma* to *Kathi Kalu* had limited the scope and ambit of the sweep of Article 20 (3) and instances like the production of material evidence to be deemed as permissible and acceptable evidence. Thus, the protection of Article 20 (3) was not all pervasive or all embracing to all kinds of evidence

1. AIR 1957 SC 211.

2. *Ghad v State*, AIR 1962 All 142; AIR 1965 SC 1251 (para 4, 37.), 1965 (2) CrLJ 256, see also *Kuttan Pillai v Ramachandra*, AIR 1980SC 185 (Para 8, 13, 14) 1980) 1 SCC 264.

secured from the accused (by resorting to various kinds and ways of effecting compulsion) but was limited only to self-incriminating statements made by the accused (including oral or written testimony) relating to the charges brought against him.

- g) Verdict in *Kathi Kalu* was delivered by a large bench. (It had consisted of eleven judges of the Supreme Court). Recently, a decision by a smaller bench (consisting of three judges of the Apex Court was pronounced by the Apex court with regard to use of various tests like the Narco-analysis, Brain-mapping etc and that verdict has in a sense overruled the long held *Kathi Kalu* rationale.

(Note: - *These developments together with a brief analysis of the said case in Selvi v State of Karnataka are discussed in the ensuing pages*)

III. 3.(1) Article 20(3) and its application vis-a-vis the Code and the constitutionality of various other legislations: - Section 91 of the Code of Criminal Procedure, 1972 empowers the officer-in-charge of a police station to issue summons or written order requiring the said 'person' to produce a document or thing in his possession. It is possible to interpret that the word 'person' (used in Section 91 of the Code) may include an 'accused person' and thus the direction given by an officer-in-charge of a station would be amounting to seek from him (i.e., the person, who could also be an accused person) the production of an incriminating material.

III. 3. (2) However, the Apex Court did not concede that argument and had decided in *State of Gujarat v Shyamalal Mohanlal Choksi*¹ that the word 'person' employed in section 91 of the Code, (formerly it was section 94 of the Code of 1898) would not mean 'an accused person' and thus a narrower interpretation of the meaning of the word person

1. *Shyamalal Choksi v State of Mysore*, (1965) Cr LJ 96; 1973 (2) Mys LJ 528.

was resorted to by the Supreme Court so as to keep Section 91 of the Code of Criminal Procedure, 1973 consistent with Article 20 (3) of the Constitution of India.

III. 3. (3). Thus, as per law, an accused person cannot be asked by the police to produce a self-incriminatory document or thing and thus such a statement (of production of a document or a thing) is not permissible. Flowing out of that rationale, it would not be permissible for a police officer or a Court to issue an order or summons, respectively, to accused person in his custody or present in the court, to attend and present any document, for, such a compulsory process amounts to 'compulsion' within the meaning of Article 20(3) of the Constitution of India.

(Note: *The same principle was applied*¹ *by the Apex Court in relation to the provisions of Section 67 of the Factories Act, 1948*)

III.4.(1) Questions relating to the constitutionality of Section 93 of the Code of Criminal Procedure, 1972, (Earlier it was known as Section 96 of the Code of Cr P C, 1898), were raised in the context of the provisions of Article 20 (3) of the Constitution of India. It can be seen that vide its Section 91, the Code of Criminal Procedure, 1972, empowers a court to issue summons against a person to produce a document or a thing. Further, that very section of the Code of Criminal Procedure, 1972, confers similar powers on an officer-in-charge of a police station. The Apex Court had given a restrictive meaning to the word 'person' contained in that section, in the said case to keep that provision of the Code consistent with the mandate of Article 20(3). However, Section 93 of the Code relates to issuance of warrants to enable a valid or lawful search of a place where a document or a thing may be found. Following the verdict of *Shyamlal* with regard to Section 91 of the Code, the Apex Court again chose to give a

1. *Hiriyanna Setty v State of Mysore*, Cr L J 1973(2) Mys L J 528. Also (1975)Cr L J 96.

restrictive meaning to the term '*person*' employed in Section 93 of the Code in clause (1) of that section.¹

III. 4. (2) Vide clause (2) of Section 93 of the Code, a warrant can be issued to enable search for a document or a thing. However, the Supreme Court drew its argument on the contention that warrant issued under section 93 (2) is not a general warrant but the said warrant is not directed against any particular person. Based on the logic relied on in *Kuttan Pillai* 's case, the Court held that during such searches incriminating documents can be recovered from the premises of the accused person, provided it was not known to the court, when issuing the warrant, that the document or thing to be recovered was in possession of the accused or any other person.

III. 4. (3). However, with regard to clause (3) of Section 93 of the Code, the Court had no difficulty in harmonizing the scope of the said section with the provisions of Article 20(3) of the Constitution of India as that section of the Code was clearly not directed against any person. It was manifestly a warrant given for a general search with a view to discover material objects, which may or might involve criminal liability on the part of the accused or the suspect. As the object of that section was clearly not intended against any person, it was held that there is no issue with regard to Article 20(3) *vis-a-vis* a search warrant under Section 93 (3) of the code. Furthermore, clause (3) of section 93 of the Code is independent of clause (1) and/or clause (2) of the same section. Thus, when a general search warrant is issued, and in execution thereof even the premises in possession of an accused is searched and documents found therein may be seized, even though they might contain statements of the accused and thus, the restrictive meaning is given to the term '*person*' employed in Section 93 of the Code (vide clause (1) of that section), which may incriminate the accused. As a warrant in such a case is not directed against

1. *Kuttan Pillai v Ramachandra*, AIR 1980 SC 185(Paras 8,13,14)1980) 1 SCC 264.

any person, the action under section 93(3) of the Code does not fall foul of Article 20 (3) as the said person is not compelled to produce the incriminating material or evidence. The accused is not required to participate in the search in such a process and he may or he can remain absent and may even be a passive spectator and thus, even such a passive submission during a search process will not make the action to be an act of 'compelling' a person to incriminate himself. Thus, the section is not hit by the provisions of Article 20(3). In view of the facts as above, even if in a search process, done under the power of Section 93(3), incriminating material is found by the investigator then, such a step is protected. Further, *Dalmiya v Delhi Administration and Kathi Kalu* mandate that materials discovered during the search, cannot be held to be inconsistent with Article 20(3) and thus, section 92 of the Code was also interpreted to be consistent with the Constitutional mandate against self- incrimination.

III. 4. (4). There was a challenge to a specific provision of the Prevention of Food Adulteration Act, 1954, based on which a certificate concerning a seized sample under that law, that had been issued after due examination by the Director of Central Food laboratory was submitted in evidence. The impugned certificate mentioned that the sample examined was containing adulterated substance. Based on that certificate and as per the provisions of the law in challenge, the evidence in question would be deemed as 'conclusive evidence'. The said provision further provided that in such cases, the vendor in that particular proceeding would not be permitted to plead ignorance of nature, substance or quality of the substance under scrutiny, in his defense. That legal arrangement came to be questioned before the court and the impugned provisions were assailed as being inconsistent with the provisions of the law under the Constitution of India, relating to the right against self- incrimination, conferred by Article

20 (3). By that argument, it was asserted that the relevant provision of the said Act ought to be declared *ultra-vires* of the Constitution of India vide Article 20 (3). The Supreme Court rejected the argument to hold that the said provision was made with a view to secure a formal documentary evidence after due tests and was so done to ensure that by the said arrangement, it would not be necessary to seek the presence of the said official certifying the substance each and every time before various courts conducting the relevant proceedings, for, and in view of the innumerable number of cases that are likely to be taken up under that law. Further, it was pointed out that the holder of the high office (the officer of the department conducting such tests) would not be interested in a particular case and further that it would be a standard procedure for test and certification in the disposal of matters under that law. Therefore, it was held by the Apex Court that it would not be correct to deem the provision as inconsistent with the law on self-incrimination. Based on that rationale and on the reasoning mentioned above, the challenge to that law was rejected by the Apex Court.¹

III. 4. (5). Similarly, provisions of the Identification of Prisoner's Act,² 1920 vide sections 5 & 6 have been held to be valid and constitutional in the context of Article 20 (3). In fact this outcome was from the verdict in *Kathi Kalu*, where a challenge had been made with regard to the constitutionality of the said provisions of the Identification of the Prisoners Act, 1920.

III. 4. (6). It needs to be kept in mind that the provision relating to the law on Self-incrimination is of immense significance and importance to all investigating officers in general. This would be essential because the awareness on the part of the investigating officers with regard to the

1. *A. P. Grain Merchant's Association v Union of India*, 1970(2) SCC 71.

2. *State of Bombay v Kathi Kalu Oghad*, AIR 1961 SC 1808; 1962(3) SCR 10.

conditions mandated by the Constitution of India and all the guidelines and yardsticks prescribed by the Code as well other regulations (like the Police Manuals etc) will help to ensure that all the steps that they plan and pursue are always within bounds and are done in accordance with the law of the land.

III. 4. (7). After the verdict of *M P Sharma* (1954), broad contours of the law on the subject of 'self-incrimination' were clear and the said guidelines were valid till the decision in *Kathi Kalu Oghad* which had narrowed down the scope of the application of the provisions of Article 20(3). However, the limits of action by a law enforcement agency was clearly demarcated as well as circumscribed in *Nandini*, which also opened up newer interpretations with regard to the *Right to Counsel* of an accused person. However, it could be said that the *Nandini* verdict of was closely following the rationale and logic employed in *Kathi Kalu*. Yet, it is argued by some legal experts that a recent verdict of the Supreme Court in *Selvi v State of Karnataka* has in effect overruled *Kathi Kalu*. As the later verdict in *Selvi* was by a bench consisting of three judges as against the eleven- member bench in *Kathi Kalu*, a doubt has been raised on the said situation. *Selvi* set at rest the legality and permissibility of forcible application of Narco analysis and Brain Mapping and similar other tests on the accused. In fact, a clear verdict of that nature was essential as some of the High Courts had also permitted the conduct of such tests, without taking in to consideration the mandate of Article 20(3) and in some instances such tests were permitted based on consent of the accused, though in most cases, the said tests were administered much against the willingness or consent of the accused. That developing situation had made the issue very complex and the resulting scenario had created a serious challenge to the provisions of Article 20 (3). Besides issues with regard to permitting such tests on the accused persons, important concerns on the scope of using the evidence so secured by the application of such tests had come up for

consideration of the Apex Court. *Selvi* verdict has several interesting aspects and that detailed verdict set at rest many burning questions on the subject of 'self-incrimination'.

III. 4. (8). To sum up, the following basic conditions are essential for the application of the Constitutional protection offered by Article 20(3). These conditions can be seen in three different and distinct compartments as under: -

- a) It is the right pertaining to a person accused of an offence;
- b) It is a protection against compulsion to be a witness;
- c) It is a protection against such compulsion resulting in his giving evidence against himself.

The law relating to the question of '*self-incrimination*' has a direct and clear bearing on so many other rights of an accused person like the '*right of an accused to a counsel*'; '*right of privacy*'; '*right to silence*'; '*right against cruel or degrading treatment (while in custody)*' and so on. Further, each one of them can be said to be linked or connected *inter-se* some way or the other. In that context, it would be essential for an investigating officer to know the legal position and the nuances of the law in relation to all of them and that awareness will help him to fulfill his professional obligations in a befitting and competent manner. It may also be useful to keep in mind the provisions that had been made regarding the recording of confessions under the TADA law which in most of its essential aspects have been reflected in the Unlawful Activities Prevention Act, 1967, now applicable to the cases of that kind. In fact, it would be most useful for the investigators to have a good grasp of those relevant provisions which will enhance the quality of their work. It is elemental that such a standard helps them to observe the procedural guidelines that cover all their work ethos as well as all investigative exertions.

=====

CHAPTER 4

Scientific Evidence and the Law relating to 'Self-incrimination'

IV.1.(1) We may refer to the provisions of Section 45 of the Indian Evidence Act, 1872, which relate to '*Opinion of Experts*' in order to appreciate the processes of the courts of law accepting evidence of a scientific nature or an expert opinion on a fact or an issue, as a part of evidence in a case before it. Section 45 speaks as under:

Section 45 of the Indian Evidence Act, 1872 states that -

'When the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting (or finger impressions), the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to the identity of handwriting or finger impressions are relevant facts'.

Further,

As per Section 46 of Indian evidence Act 1872, it is stated that '*facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant*'.

IV.2.(1) The basis for considering Expert Evidence: An ancient rule of the Common Law provided that on a subject requiring special knowledge and competence, evidence is admissible from witnesses who have acquired by study or practice the necessary expertise on the subject. Justice Saunders observed as under:

'It is an honourable and commendable thing in our law to apply the aid of science. The evidence is justified by the fact that the court would be unable, unaided to draw proper inferences and form proper opinions from such specialized facts as were proved before it. The foundation on which expert evidence rests is the supposed superior knowledge or experience of the expert in relation to the subject matter upon which he is permitted to give an opinion as evidence. The credibility of an expert witness depends on the strength of the reasons stated in support of his conclusions and the data and material furnished, which form the basis of his conclusions ' (per Justice Sanders in Buckley v Rice¹)

IV.2.(2) However the generally accepted practice with regard to such evidence is that:

- 1) The court when necessary will place its faith on skills of persons who have technical knowledge of the facts concerned.
- 2) The court will rely on the *bona fide* statement of proof given by the expert and concluded on the basis of scientific techniques.
- 3) The evidence considered irrelevant would be given relevance in the eyes of law if such evidence is consistent with the opinion of experts. Thus, we can note that expert evidence helps law courts to draw logical conclusions from facts presented by experts, which are based on their opinions derived by their specialized skills acquired by study and experience. Hence experts are routinely involved in the administration of justice, particularly in criminal courts.

IV.2.(3) Noting the above approach of the courts of law in general, we may venture to closely look at various advances in the relevant areas or fields of sciences that can be put to

1. *Buckley v Rice-Thomas*, (1554) 1 Plowd 118 (at 124) Per J Sanders.

good use in numerous processes of conflict resolution, that surface during a trial. Such a step in reality advances the cause of justice as it in a way benefits both parties in a legal dispute. Flowing out of such facts, developments and advances in many areas of specialist's and expert's studies pave way for several logical steps that can follow. Those advances are deemed as crystallized points of observation of such experts. Indeed all such facets are sure to help the courts of law when specific questions relating to some issue come up for resolution before them. Under those situations views of the experts on such questions become significant in helping the resolution of mutual claims in a dispute. However, it needs to be seen that many developments in diverse areas of knowledge continue to expand based on the speed of progress in the relevant area of study coupled with the primary question of reliability of such expert views or findings.

IV.2.(4) Use of science or efforts to seek scientific applications to prevent abuses of all kinds is no stranger to man or the modern world. Illustrations supporting that assertion as above can be endless. It is fairly well known to note that many new and innovative strategies are being continually employed in various countries essentially in areas of business or commerce particularly as a 'preventive' tool to deter damage, loss or pilferage which are likely to occur, if those kinds of preventive strategies are not put in place. This is indeed inevitable as there are many individuals in almost all societies who indulge in acts of various kinds (of a negative kind) and resort to diverse ways to adversely affect the private, business and societal interests and the range of such perils are surely countless. In order to prevent all such destructive consequences, the affected individual or the entity (like business or commerce systems and so on) has to stand guard to continuously protect their legitimate and valid interests. A similar burden also devolves on the society. As illustrations of that range of problems, we can consider issues that can vary

from trade secret, copyright, financial interest and so on and extend to mind boggling types of genuine and legitimate concerns of the concerned. In fact, the reach of such apprehensions virtually encompass the life of humanity in all its dimensions. As many such perils percolate human life in diverse ways, appropriate steps are necessary, essential as well as inevitable.

IV.2.(5) *The Guardian*, a top newspaper of the United Kingdom had published an article in the year 2007 wherein the said report conveyed a story under the caption 'Lie-detectors target benefit claim cheats'. Further, the said article stated that a pilot scheme using lie detector tests and other related processes had saved the local bodies a massive sum of over 1,10,000 pounds by filtering out benefit claimants and job seekers by using lie detector tests and other related processes. Besides the claim of the local authorities that such steps (i.e., preventive and protective kind which improved the overall standards of service to its clientele) were necessary to bring the offenders to book, it was also a fact that all such tests had in effect saved huge amounts of public resources from falling into the hands of fraudsters and cheats. After successful pilot studies a local council in the City of London had commended wider application of the (such and similar) tests to be applied throughout Britain. The test in question was based on a process known as the Voice Risk Analysis (VRA) Technology. However, it was also mentioned in the said article that experts in America, where a more comprehensive scrutiny of the technology has taken place, had clearly warned that the technology is far from being failsafe.

IV.2.(6) Various innovative and creative technological applications are being adopted world over to prevent numerous false or bogus 'business or commercial and related' claims by unscrupulous persons. As for example, in order to meet that kind of challenge to its legitimate and valid interests, the business of 'insurance' has started spreading its preventive

strategies virtually encompassing its reach to cover all kinds of events and situations. A mention here about such developments is to highlight the speed and spread of scientific applications as tools to prevent losses of innumerable kinds (more particularly those spurred by illegal and criminal ventures). Though the bottom line of all such efforts are intended to protect the legitimate financial and commercial interests from any perils like the theft, pilferage, loss or damage by third party actions, its significance in terms of knowing facts or tracking such events cannot be lost sight of.

IV.2.(7) But using such scientific advances as a 'tool' of law and as a factor of significance in the processes of law courts is surely on a slightly different plane. This is so, as the conditional requirements for such applications are clearly distinct from the way by which scientific advances in day to day life of the world emerge. It needs notice that rules and procedures governing use of all such resources (presented under the color or nomenclature of 'expert' evidence) by the law are very strict, precise and most demanding. Such concerns come to the fore as we move on to appreciate the factors surrounding the principles and practice of permitting expert evidence in legal processes before the law courts in general.

IV.2.(8) Though quick and ready application of such resources has not been running in tandem with speed and progress of many advances, discoveries and innovations in various scientific, technical and related fields, the alacrity with which the law courts concede a favorable response to each such forward movement is restricted or constrained for very obvious reasons. The law courts would consider any such innovative ideas or applications as a basis for action in the area of adjudication on evidence only after the credibility and reasonable certainty of the processes in question are well and clearly established. More importantly the basic aspect of legal prescriptions having a bearing on the judicial processes will have a clear say on the permissibility of any such application.

Thus an 'expert' opinion on any fact has to meet some basic requirements. Firstly, any such step must fall in line with the constitutional guarantees and other legal mandates concerning the procedures prescribed. It is necessary that rules and guidelines made as per law are not overlooked. Further, the law courts interpret any given situation before them in terms of '*law as it stands on that day*' and therefore, any idea stemming from the perspective of the expert opinion will also have to be bound by that compulsion. Such a legal stand is necessary notwithstanding the public perceptions or peer group recommendations on any area covering the expert opinion based on the most established facts of a contemporary kind. In fact appropriate changes in the law that guides the processes of the courts have to precede the way in which such newness (in the areas coming under the 'expert opinion' facets) can become the courtroom routines. Thus the prevailing position of the courts of law in general *vis-a-vis* scientific advances including forensic innovations, is surely understandable. Indeed that legal strategy is clearly appropriate as well as correct.

IV.2.(9) With the march of science, as for example, advances in the field of application of the computer chip to diverse facets of its use, changes have been coming into the Law of Evidence and that trend is also more or less universal. It is generally common in the world that respective laws of evidence of most realms have been or are being so molded to suit the contemporary situations and times. We may refer here to a law in India that came up during the beginning of this century. The Parliament of India legislated in the year 2000, the Information Technology Act, 2000. By that law, digital evidence became acceptable in the courts of law as a reliable proof of certain facts. The word 'Evidence' in section 3 of the Indian Evidence Act was amplified by the addition of section 3 (a) and the term 'documentary evidence' was to include all documents, including electronic records procured for

inspection by the Courts. The term 'electronic records' was given the same meaning which provides for 'data, record or data generated, image or sound stored, received or sent on electronic form or microfilm or computer *generated microfiche*'.¹

IV.2.(10) Speaking on 'Science in the Courtroom'² Justice Stephen Brayer, a judge of the Supreme Court of the United States of America commended appropriately that:

'in the age of science, science should expect to find warm welcome, perhaps a permanent home, in our courtrooms... our decisions should reflect proper scientific and technical understanding so that the law can respond to the needs of the public'.

IV.2.(11) Though there is a genuine urge on the part of the legal fraternity to employ the resources of science to the advantage of very process in securing the ends of justice and for the advancement of the 'Rule of Law', it is equally necessary to note a word of caution in such a quest. As rightly observed by the Supreme Court of the United States in *re Daubert Merrel Dow Pharmaceuticals*,

*"... there are important differences between the quest for truth in the courtroom and the quest for truth in the laboratory. Scientific conclusions are subject to perpetual revision. Law on the other hand, must resolve disputes finally and quickly"*³

'Science and Law, two distinct professions have increasingly become commingled, for ensuring a fair process and to see that justice is done. On one hand, scientific evidence holds out the tempting possibility of extremely accurate fact-finding and a reduction in the uncertainty that often accompanies legal 'decision making'. At the same time, scientific

1. S 3, of the Indian Evidence Act, 1872 as amended by the IT Act, 2000.
 2. (Justice Stephen Brayer, U S Supreme Court) delivered at the Annual Meeting of the American Association for the advancement of Science in the year 1998.
 3. (1993) 509 US 574 2786.

methodologies often include risks of uncertainty that the legal system is unwilling to tolerate.¹

IV.2.(12) With the advent of great strides in 'Cyber Forensics' and similar other areas of applied sciences for example, possibilities of making good uses of all such advances are no doubt welcome and yet, the question of reliability and certainty of such scientific opinions become most crucial and critical issue in court room processes for apparent and justifiable reasons.

IV.2.(13) During the early part of this century a wave of scientific tests known commonly as the Narco-analysis, Brain Mapping and T 3000 tests were in intense media glare of public focus. Naturally such issues became the bones of contention amongst those concerned with penal justice issues. A good number of police investigations concerning various cases including some of the really high profile criminal cases were pursued on the basis of such tests. Top forensic laboratories of the country were conducting such tests and that trend became very rampant in a very short time. More importantly some of the High Courts also accorded permission or authority for the conduct of such tests on the accused persons. Such a stand was taken by some such courts by *prima facie* holding a view that conduct of such tests under those specific circumstances, as observed by them, did not violate the provisions of Article 20(3) of the Constitution of India. These developments raised furious debates in the legal world as arguments for and against the application of such tests came in waves. Legal issues therein are worth discussing as they have a clear effect on the future use of such tests, besides impacting indirectly the facet of use of forensic sciences in numerous legal conflicts.

IV.2.(14) The main question that was posed before the High Courts and the Apex Court was the permissibility of such

1. See article by Nidhi Tandon, The journey from one cell to another: Role of DNA evidence (2004) 8 SCC 17.

tests on an unwilling accused (to undergo such tests, notwithstanding the fact that such tests would not be painful or physically intolerable) and more particularly from the perspectives of the facets of the guarantees proclaimed by Article 20(3) of the Constitution of India.

IV.2.(15) The Supreme Court of India has put at rest all doubts about the Constitutionality of application of all such tests (the Polygraph test, the Brain Mapping test, the Narco Analysis and its ilk) - as they stand in terms of their scientific status in the peer analysis of professionals in the realm of respective areas expert studies) by its verdict in the case of *Selvi and others v State of Karnataka*.¹ It was argued before the Apex Court that conduct of such tests on an unwilling accused violates the provisions of Article 20 (3) and thus such tests are *per se* unconstitutional and cannot be conducted on an accused. Besides the *Selvi* appeal, nearly ten other appeals championing the cause to prohibit the conduct of such tests had come up before the Supreme Court. In fact, that decision in *Selvi* has a great significance as the verdict clearly provides comprehensive guidelines not only with reference to such tests, but also with regard to factors that must be kept in mind while deciding on such tests *vis-a-vis* the demands of Article 20(3) of the Constitution of India. However, the Apex Court in its *Selvi* ruling had directed that information 'subsequently discovered' from the result of a 'voluntary' test can be admitted in evidence. (*See details of the Selvi case in the ensuing pages*)

IV.2.(16) In order to fully understand the implications of this important judgment, it would be appropriate to discuss the case along with the points raised for and against the permissibility of such tests, especially in the context of the study on the theme of this study in the facet of 'questioning an accused'.

1. Cr Appeal No 1267 of 2004 (Supreme Court of India).

IV.3.(1) **A brief background** to the provisions of law concerning some of the issues relating to the conduct of tests like Brain Mapping, Narco-Analysis, P 3000 and similar other tests:

Section 53 of the Code of Criminal Procedure, 1972 provides that

S. 53. Examination of accused by medical practitioner at the request of the Police officer: (1) When a person is arrested on a charge of committing an offence of such a nature and to have been committed under such circumstances that there are reasonable grounds for believing that such an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of the police officer to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

IV.3. (4) Provisions of the Code referred to above has also been subject of close scrutiny by the superior courts of India. The Supreme Court in *State of Gujarat v Shyamlal Mohanlal Choksi*, had categorically asserted that existence of provisions, *inter alia*, including the compelling of an accused to submit himself to examination by experts in medical science, is permissible under the law, as it had held that

‘provision has been made requiring a person accused of an offence to give his handwriting, thumb marks, finger impressions, to allow measurements and photographs to be taken, and to be compelled to submit himself to examination by experts in medical science.’¹

IV.3.(5) A similar situation had arisen in the case of *Jitubhai Babhubai Patel v State of Gujarat*,² where a challenge had been

1. AIR 1965 SC 1251.

2. (2005) 10 SCC 545.

made against forcible conduct of Narco analysis on an accused person. However, the respondent state filed an affidavit before the Supreme Court that it would not like to conduct the test without the consent of the accused and based on that averment, the Supreme Court had disposed that matter¹ by holding that '*in view of the stand taken by the respondent state, the matter had become a mere academic exercise*' and left the matter to be decided in an appropriate case. That situation later arose in the case of *Selvi and others v State of Karnataka*.²

IV.3.(6) *Kathi Kalu Oghad* had led the development to permit scientific tests on the physical person of an accused and that trend continued based on a view that the testimony given or taken from the accused would not under those circumstances be equated with an involuntary (or compelled) statement of the accused and hence such tests could be done to advance the cause of justice. Based on that very analogy several other tests like the DNA fingerprinting and its ilk came to be pursued with the passage of time and many such tests were being conducted on the person of the accused under the law.

IV.3.(7) In *R B Sharma v State of Maharashtra*,³ a challenge had been made against forcible application of the Narco-analysis tests (against the willingness on the part of the accused to undergo such a test).

However, the Apex Court marked the contours of such an addition to the list of permissible test with an observation quoted from a case from the United States of America in *Fry v United States*⁴ wherein it had been noted that:

-
1. *Jitubhai Babhubai Patel v State of Gujarat*, (2005) 10 SCC 545.
 2. *Selvi and others v State of Karnataka*, Criminal Appeal. No 1267 of 2004.
 3. See also *MP Sharma v Satishchandra*, 1954 SCR 1077: See also *R Swaroop v State*, AIR 1958 All (119 (126)); *Pakar Singh v State of Punjab*, 1958 AIR 1958 Punj 294.
 4. 293 F 1013 (DC cir) 1923.

'Just when a scientific principle of discovery crosses the line between the experimental stand and demonstrable state is difficult to define. Somewhere in the twilight zone, the evidential force must be recognized and while the court will go a long way in admitting the expert testimony deducted from a well recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field to which it belongs'.

IV.3.(8) Quoting from another case from United States of America in *Daubert v Meryll Dow Pharmaceuticals*,¹ wherein a more liberal approach was adopted by observing that for admissibility of the scientific evidence the court may consider the following:

- (a) Whether the principle or technique has been or can be reliable?
- (b) Whether it has been subject to peer review of publication?
- (c) Is it having a potential for error?
- (d) Whether there are recognized standards that control the procedure of implementation of the technique?
- (e) Whether it is generally accepted by the community? and,
- (f) Whether the technique has been introduced or conducted independent of the litigation?

IV.3.(9) Besides calling for an innovative and dynamic policy based on possible answers to such assessments, the Supreme Court of the United States had pointed out the obligation of a trial judge to ensure relevancy and reliability for admitting evidence. There is no doubt that such a charter applies clearly and most certainly to all kinds and types of expert evidence. An illustration of that approach could be

1. 113 S Ct 2786 (1993).

inferred from the verdict in *R v Watters*, 2000 All E R (D) 1469 wherein it was pointed out that there could be a great significance to the DNA evidence where there is supporting evidence and the rationale would depend upon the evidence based on DNA report as against the rest of evidence. Based on that fact, the court could then decide as to whether it would point towards a *prima facie* case. However, in B R Sharma's case as the prosecution did not rely upon the report of the Narco analysis in its case before the High Court, the Supreme Court did not place any reliance on that particular aspect of the said case.

IV.13.(10) Perhaps, a most crucial question that comes up with regard to the conduct of tests like the Narco analysis etc., would be the uncertainty and hesitation as to whether the conduct of such tests on an accused is constitutionally valid in the face of the mandate of Article 20(3). Though there seems to be no legal bar to conduct such a test on a witness, a similar action on an accused *prima facie* seems to be hit by Article 20(3).

IV.3.(11) It needs to be noted that the processes in general of a good number of scientific tests and of DNA tests and so on are clearly distinct and different from the impugned tests. Unlike the tests of the former kind that are employed to gather some material evidence, procedures which manifestly form a totally different kind of tests *vis-a-vis* tests like the Narco-analysis or Brain Mapping and similar other closely related tests, were in focus in *Selvi*.

IV.3.(12) It needs to be kept in mind that most of the routine or general tests, some of which have been mentioned above are in real terms a kind of physical tests - to draw samples and compare them or do other tests to arrive at scientific and fact based conclusions. However, with regard to tests like the Narco Analysis or the T-3000 or the Brain Mapping etc., there is a clear but subtle difference. That critical difference lies in the fact that such tests have some sort of direct or easily

discernible relation with the mental status (during the tests) or mental aspects of the person (i.e., the accused) undergoing the test or tests. In all tests of the former kind, there is only a physical participation by the accused (even if the said person is compelled to provide samples for the said test or tests). Stated differently there is no mental participation by the accused in those tests. He merely participates in the test in a physical way (most commonly in a mechanical manner) and his mental faculties or perceptions or responses have no role in that range of tests and further they do not create or have any effect on the data aspects of the tests or on the results. It can be stated that all such tests are clearly and fully independent of the mental state or status of the accused undergoing such tests, from the perspective of the results obtained by such tests. However, in all the tests of the later kind, (i.e., Narco-analysis or Brain Mapping or P 3000), there is a manifest kind of mental participation by the accused – with or without his volition or willingness. Even if one were to argue that the said person is rendered incapable of controlling his own mind, or is rendered unable to use his own mind, in his own best interests, even if that were to be considered a natural instinctive response of self preservation to withhold facts or strive to do so or mentally take steps to ensure that he hides facts or information based on his perceptions of possible danger to his own case or his own interests etc, it cannot be denied that there is a clear and patent as well as existing mental element involved in the entire process. No doubt, an test is accomplished by subjecting the said person to an entire series of examinations and its sequences ranging the totality of all such tests and further that the tests are done even against his own will (against his consent or wish or desire) to participate in the said tests. In fact, it is that vital mental element which resonates more to the guarantee of prohibition by law against any act of self-incrimination. It is that 'something' which is little more than

the mere 'physical' participation of the accused (as can be seen in the first category of tests), as against the latter category of tests where there is that 'extra' element of the mind of the accused which is compelled or subdued or manipulated in some other way, in the guise of the conduct of the test. Though there seems to be no perceptible danger to the physical person of the accused, it is seen that the act in question (or the impugned tests) virtually neutralizes the constitutional guarantee provided under Article 20 (3) of the Constitution of India in a most open and brazen manner.

IV.3.(13) In fact the power to conduct tests on such an accused who volunteers to participate in such tests presents no legal difficulty as under the long held view of the law (more particularly the Indian Evidence Act, 1872) a voluntary confession is clearly admissible under law and flowing out of that argument, it can be urged that if an accused volunteers to participate in the test and as a result of that self incriminatory evidence stems out, then, the resulting evidence can be used in the court unless the accused retracts such a self-incriminatory evidence. Thus, results of such a test on a willing accused may not fall foul of the law on self-incrimination.

IV.3.(14) A new kind of argument was advanced by an advocate during an internet exchange of views amongst professional police officers of India on this subject and his views were as under: *"Consider the word 'testimonial' first. Admitted, it talks of an oral account of something. But, I may be permitted to stretch it a 'little', my question is oral account of which mind- 'a conscious mind or unconscious mind'? I feel that oral account requires a conscious effort on one's part to think and reply by making use of one's mental faculties. So, a conscious mind is pre-supposed. But what about a sub-conscious mind from where the information is taken out more in a mechanical manner from the stored information of a human brain (much like the blood sample taken out from the body) and when information is taken out from a person in a mechanical manner from a sub-conscious state of mind after*

administering some so-called truth serum in a narco-analysis test? So, there is scope for twisting of words, exercise or the word testimonial, a la method often used in good faith by the Supreme Court to lay down a particular legal principle by adopting the words or laws.'

IV.3.(15) Further, citing a verdict of the Apex Court in *Kartar Singh v State of Punjab*,¹ where in the word 'compulsion' was given a wide meaning, it was suggested to consider restricting the meaning of the word 'compulsion' in its actual application in terms of the context of situations that emerge from Article 20(3).

"the word, compelled means by force. This may take place positively and negatively. When one forces the other person to act in a manner desired by him it is compelling him to do that thing. Same may take place when one is prevented from doing a particular thing unless he agrees to do as desired. In either case it is compulsion "- (quoted from the Kartar Singh verdict)

IV.3.(15) Further, it was argued that as per the prevailing law and the practice of the law enforcement agencies across the country, blood samples, finger, hand or foot impressions or DNA samples or other samples are drawn from the person of the accused, with or without his consent, and thus, stretching the same logic a little more, a proposition that steps like injecting a truth serum or fixing of electrodes on various parts of the anatomy of an accused could also be rendered permissible on the same analogy. Further, as the accused under those tests (impugned tests like Narco Analysis, Brain Mapping, P 300 etc) would be speaking on his own responses or voluntarily (by responding to the stimuli of questions or suggestions made by the team conducting such tests), in fact, no physical force is being employed and thus it cannot be said to be hit by the term 'compelled' and by that yardstick, the

1. (1994) 3 SCC 569; 1994 Cri LJ3139.

conduct of all such tests (like Narco-analysis, truth serum etc) could serve as alternative to the crude method of extracting information by the police - a vice which is widely prevalent.

IV.3.(16) While conceding that the conduct of such tests (like the Narco-analysis, Brain Mapping, P 3000 and its ilk) against the consent of the accused would be hit by Article 20(3), it was further argued that as per the law such an evidence would become inadmissible in full. However, it was asked as to 'what harm would it bring, if the investigating agency does not use the evidence so drawn against the accused in that particular case but use the information secured through such tests for further probes and for subsequent gathering of evidence based on such disclosures'? According to that line of argument, what the law (i.e., Article 20(3) as well as the relevant provisions of the Code, 1972 read with the Indian Evidence Act, 1882) prohibits is the adducing of such evidence by the investigating agency against the accused in all such cases. Further, accepting that legal standard, it was argued further as to what would be wrong if the evidence is not adduced (even if it is clinching and convincing- but which is refused (as per the law on self-incrimination) by the courts as it violates the constitutional guarantee) but in just collecting all information or facts related to a matter under investigation. As the evidence is not used, there is no infringement with regard to Article 20(3). Thus, as per that view point, the information gathered should not be used for the purpose of using the material (so secured) as evidence, ("in the relevant case") but for gathering and putting to use, that information for other investigative efforts. Another argument in that regard advanced was based on a view that (as is commonly believed), holding of such tests, do not really cause any physical pain or harm to the accused and keeping the vice of third degree in mind, such a step would surely be a better way to pursue police investigations, under those complex circumstances. (Say for example in cases of terrorist crimes or similar other most

serious crimes)

IV.3.(17) However, it is urged that such a path is neither legally permissible nor is an ethically better way. There are many in the legal as well as police profession who may even reluctantly agree to the adoption of such tests rather than wily-nilly or somehow permit the use of third degree methods that the police are generally known to resort to while seeking information from the accused persons. Some even feel that it would be a lesser evil to resort to tests like the Narco analysis etc or even agree to such steps though reluctantly in the face of the deeply entrenched vice of the third degree in the enforcement systems. In addition, by another bizarre argument it is also averred that a citizen owes a duty to the State (as per the Constitution of India) and therefore, as a citizen he (the accused) has to help the upholding of the *Rule of Law*, which will be not possible if he seeks umbrage under the constitutional rights of the accused.

IV.3.(18) Right from the beginning of the 21st Century and up to the year 2010 (by which time the *Selvi* verdict was pronounced), there were many who were commending the progress of Forensic and Applied Sciences with regard to many such tests. In the face escalating crime waves, the debate took various hues and it was in that context, the *Selvi* verdict assumed great significance. It would be appropriate to narrate in brief, the details of *Selvi*'s case and comprehend the basic theme which has inspired the Apex Court to reject the permissibility of such tests on an unwilling accused. Though a qualified nod seems to have been given (for the conduct of such tests) in instances where the accused conveys his consent to participate in such tests, the issue seems to be not settled in those situations as well. However, that stand of the Apex Court has been critically commented on as being contradictory and conflicting with the express and manifest stand of the law. Thus, the bottom line in the matter is that the law emphatically rejects the case for conduct of such tests on the accused. By the

same verdict the Apex Court has upheld the integrity and assertiveness of the provisions of Article 20(3) of the Constitution of India.

IV.3.(19) *Kathi Kalu* and *Nandini* were the two leading cases dealing with the most challenging questions relating to the subject of self- incrimination till the verdict of *Selvi* came on the scene. However, some distinct aspects of the development of these cascading verdicts merit to be noted. The judgment of *Kathi Kalu* was delivered by a large bench consisting eleven judges of the Supreme Court of India. (Perhaps it was one of the largest benches in the history of the Supreme Court). Admittedly, it could be conceded that while deciding *Kathi Kalu*, the Hon'ble Judges who delivered the verdict in that path breaking case might not have imagined the advances of the applied sciences with regard to myriad scientific tests that can be employed for ways of establishing facts, as materials of acceptable evidence. In addition, it would not be fair to expect an omnibus provision of law to be made on a given aspect of a problem or hope for some sort of an all encompassing verdict to suit all times. In fact, a 'law' has to be relevant to the present and it ought not to get rooted to the past. Yet, it cannot be left loosely worded to (accommodate) a possible future (need). However, law can be expected to be resilient enough to accommodate new ideas that can be taken up for action. But that enterprise of dynamism has to stay within the clear bounds of the concept of 'Rule of Law'. Law, no doubt lends itself for change, provided the needed changes are actually effected into the text of the law, so as to prescribe a new standard to become a valid law. A law that does not countenance a new proposition cannot be contracted to speak for what is not permitted by the text of the law or by the process of interpretation. As changes in the world and in the realm of science come by, and as many other things in life come on their own, laws will have to be changed or modified to suit the changing needs. Those aspects are seen well in the

saying that 'law has to be stable but not static.' Change sought has to be done in a prescribed manner but so done in a methodical and consistent style. Law cannot be static as it has to be dynamic so as to stay relevant. Actions based on law will have to reflect 'stability of law' and yet, any change envisaged or accomplished will have to be by steps or processes that are clearly 'in accordance with the law'. Therefore, there ought not to be any 'real' concern in our minds that ideas of the past cannot automatically be harmonized with the emerging views of a contemporary world. Based on the societal need and built on the foundations of sound legal principles, changes can be conceived and made. Indeed that sums up the genuine scope for dynamism of the 'law' in its conception and in its enactment besides the vital area of its enforcement in general.

IV.3.(20) Notwithstanding many of the above ideas, it is also evident that the permissible scope advanced in *Kathi Kalu* was not fully followed in *Selvi*. It is also an evident fact that no specific reasoning on that particular facet of transition was reflected by the Apex Court to emphatically commend the stand taken in *Selvi*.

IV.3. (21) However, the 'exception' to the prohibited tests by a mandate to permit the conduct of such tests on a willing accused or an accused who consents or agrees to participate in such test/s, is also critically viewed on two counts. First, it contradicts the very foundation of Article 20(3). Next, in the absence of the required guarantee on the 'credibility and reliability' of such tests, permitting an accused to give his statement through the process of such tests in effect militates against the object of Article 20(3). More importantly, such an opportunity provided can be abused and that stand may pave way for mischief by unscrupulous investigators who may abuse the very scope of the mandate of the Apex Court with

regard to the consenting accused persons. It is seen that this crucial aspect has not been really addressed at all.

IV.4.(1) ***Selvi and others v State of Karnataka (Appeal No 1267 of 2004)*** *Brief facts of the case:-* Kavita, daughter of one Selvi married Shivakumar. It was a love marriage. The boy and the girl did not belong to the same caste. And yet the marriage took place against the wishes of the girl's family. Shivakumar was brutally killed in the year 2004. Selvi (the mother of the bride) and two other persons were named as the main suspects in that murder case. Since the prosecution depended its case entirely on circumstantial evidence, it sought permission of the court to conduct Polygraph and Brain-Mapping tests on Selvi and other named suspects. Needed permission was given by the court to hold such tests. However, the data/ record on the polygraph tests showed that there was deception in the conduct of such tests. Further, tests were allegedly done on the accused persons who were unwilling to undergo the Narco-Analysis tests. The accused persons challenged the order of the said magistrate before the High Court of Karnataka, which rejected their plea. Taking their appeal further, the accused persons approached the Supreme Court of India.

IV.4.(2) The Supreme Court of India, in the resulting verdict held categorically that the conduct of compulsory Narco-analysis and /or Brain Mapping tests violate Article 20(3) of the Constitution of India.

IV.4.(3) It is also a fact worth noting that together with the appeal of *Selvi* and others, the Supreme Court disposed off ten other appeals made to it and these appeals were also concerning the legality of such tests.

IV.4.(4) Experts in the field of Constitutional law have observed that, as a general policy response, the Apex Court of India has been resorting to what is known as a 'minimalistic approach' in dealing with appeals and cases concerning

security issues and the Supreme Court has been restricting itself to settle the dispute at hand rather than articulate deeper constitutional principles. This trend has a fairly long history dating back to the early 1950 when the validity of the Preventive Detention Act, 1950 was before it (i.e., the Supreme Court of India). That style continued in the disposal of cases relating to Terrorist and Disruptive Activities (Prevention) Act, 1985 and 1987 and also the cases under the Prevention of Terrorism Act, 2002. However, that restrictive approach was not sustained in *Selvi* and the said bench consisting of Mr. Justice Balakrishnan (C J) together with two other judges in Mr. Justice R V Raveendran and Mr. Justice J M Panchal, who collectively weaved in a new path resulting in the *Selvi* judgment.

IV.4.(5) The Supreme Court asserted that such questions not only impact the issue of 'self-incrimination' that came up in the matter (in *Selvi*) but also raised many other questions like the 'Right to Privacy' as well as many closely connected claims. More importantly such a matter also directly confronts the genuine concerns on the celebrated principles of 'Due Process of law' (in the enlarged context of Article 21 - notwithstanding the fact that the letter of the law in the said Article in the Constitution of India, reflects the text as '*procedure established by law*' as against the well know clause in the Constitution of the USA called as the '*due process of law*' mandate). Further, the Apex Court noted that such a stand point stares at the question of subjective satisfaction of a matter before it, and in addition poses questions with regard to most vital claims of '*Substantial Justice*'. Thus, all the issues, taken together, merited an urgent but emphatic resolution and in fact that object was well delivered by the *Selvi* judgment.

IV.4.(6) A reasoned editorial in a media forum '*the italicize*' observed that, 'the Court has made it clear that nobody can be compelled to undergo Narco analysis, Brain Mapping, or the lie detector tests and that any statements made during those

procedures are not admissible as evidence. *Such tests are permissible only when they are taken voluntarily*, (emphasis supplied) - there are criticisms against that observation by the Apex Court. But even in such cases, they must be conducted in strict compliance with the guidelines provided by the National Human Rights Commission issued with regard to the protocols of the administration of the Polygraph test and those guidelines include safeguards prescribed as mandatory for recording of consent before a Magistrate and the conduct of all tests by an independent agency. ...the Proponents of the three tests, ...also offer alternative to the third degree methods of interrogation and serve the public interest in extraordinary situations.

IV.4.(7) The important aspects decided by the *Selvi* Verdict can be stated as under:

1. The impugned techniques (like those in the *Narco Analysis*, *Brain Mapping*, P 3000, and others of the same or similar kind) violate the standard of substantive 'due process', which is required for restraining any threats to the sacred rights of personal liberty.
2. Such tests cannot be administered forcibly - either during an investigation or for any other purpose.
3. The said tests cannot be read into Section 53, 53-A and 54 of the Code of Criminal Procedure (provision enabling the task of medical examination of an accused person at the request of a police officer) (Such an expansive interpretation is not feasible in the light of the rule of '*ejusdem generis*').
4. Holding of such tests also result in intrusion into mental 'privacy' of the accused individual.
5. Such tests also amount to 'cruel, inhuman and degrading treatment'- as covenanted by many international agreements on the subject.
6. Placing reliance on such tests also comes into conflict

with the notions and right to 'fair trial' of an accused person.

7. The test/s cannot be conducted on an unwilling person.
8. With regard to instances of voluntary participation in such tests by accused persons, certain safeguards like the tests being not admissible in evidence against the subject, as the subject does not exercise control over the responses given by him during the said tests, come to the fore.
9. However the provisions of section 27 of the Indian Evidence Act may be put to use with regard to the material/s or information/s subsequently discovered.

IV.4.(8) Guidelines issued by the National Human Rights Commission for the administration of the polygraph tests are to be extended to other tests like the 'Narco Analysis Technique' and the 'Brain Electrical Activation Profile (BEAP)' as mentioned below:

- (i) No lie detector test should be administered except on the basis of consent of an accused. An option should be given to the accused whether he wishes to avail such test.
- (ii) If the accused volunteers for a Lie Detector Test, he should 'be given access to a lawyer and the physical, emotional and legal implications of such test should be explained to him by the police and his lawyer.
- (iii) The consent should be recorded before a Judicial Magistrate
- (iv) During the hearing before a Magistrate, the person alleged to have agreed should be duly represented by a lawyer.
- (v) At the hearing, the person in question should be told in clear terms that the statement that is made shall not be

'confessional' statement to a Magistrate but will have the status of a statement made to the police.

IV.4.(9) However, in the light of implications on the results and fall out of such tests, it is doubtful as to whether there would be any use of the said guidelines. In fact, when the very conduct of such tests are deemed as impermissible as well as invalid in the eyes of the law, the idea to accord a status of permissibility of enabling such tests on a willing accused person is also criticized as a clear case of contradiction of terms, besides an alarming prospect that such steps may lead to unethical and other unpalatable situations.

IV.4.(10) However, it must be noted that the verdict of the Supreme Court of India in *Selvi and others v State of Karnataka* has clearly set at rest the feverish pitch of public frenzy, where many believed that novel tests like Narco Analysis, Brain Mapping, T-3000 and its ilk were a kind of scientific miracle that had come to the aid of the investigators in dealing with cases which appear to be extremely difficult and unfathomable. False notions of strange kinds were being entertained by some that, after such tests, the mystery of a case would unfold as a drama before the eyes of a beholder and that would go a long way to bring offenders to book. It was also believed wrongly that as it was the band of experts who would be conducting such tests, they would be done without any violation of the law. In fact, all such farfetched ideas were blown away and were so done for right reasons. Besides the facet of serious doubts about the credibility of such tests, it was also noted that the very adoption of such procedures were unwise as well as even unscientific. In fact the first area in which the Supreme Court strongly disagreed with many of the High Courts in question (which had given their approval for the conduct of such tests with or without the consent of the accused persons), related to the degree of validity and reliability of Narco analysis and Brain mapping and Polygraph tests. Strangely enough, some of the High Courts had simply

supported such tests on a bland claim of 'advances in the field of forensic sciences'. Thus, in the face of glaring absence of adequate material to convincingly show the reliability as well as credibility of such tests, peremptory and myopic permissions were accorded for the conduct of such tests. In fact, a wiser course would have been to clearly avoid the very basis of such tests as a tool for gathering evidence. More particularly of the those material which merit jettisoning on the ground of the evidence being of the self- incriminating kind.

=====

CHAPTER 5

Law Relating to Evidence Obtained Illegally

V.1.(1) Questioning an Accused - important issues: - Several duties relating to the mandated procedures in the area of 'investigation of crime' are enjoined upon the police. These standards are emanating from the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872, and to some extent by the Indian Police Act, 1861, though rather indirectly. Besides providing directions for correct approach to be followed, some of the legal provisions contained in them have also prescribed punishments for committing breaches of those standards. In addition to those yardsticks, administrative guidelines are to be found in respective Police Manuals of various States. Further, as per Section 36 of the Code of Criminal Procedure, 1973, Superior Police Officers can issue supervisory guidelines and directions for compliance by the investigating officers during the course of investigations under that Code. An overall view of all such guiding principles emphatically means that the police will have to fulfill all their 'investigative' obligations within the bounds of law contained in all such prescriptions. As a necessary corollary to such duties, various powers and resources are also provided to the police to enable them to accomplish all legally ordained objectives. In that visage, it is perhaps easy to note that, the task of 'Investigation' becomes a worthy goal or obligation in pursuit of the primary duty of the police. That critical charter stems from the tasks of 'Prevention and Detection of Crime', which is clearly stated at the helm in the Police Act, 1871. Admittedly, the area of

detection of crime is a fascinating panorama that stirs human imagination very easily. Though, the tasks of Prevention as well as Detection of Crime are deemed as the closely entwined primary duties enjoined on the police and are to be comprehended in that order in terms of their relative significance, the burden of crime detection somehow seems to have gained the fancy of one and all. At the same time, it needs notice that the task of 'prevention' of crime merits to be accomplished first in diverse and varied ways. However, due to various facts of life, all crimes cannot be prevented and thus, the task of 'investigation' of crime –which in a way speaks of the task 'detection' of a crime, is to be pursued.

V.1.(2) Arriving at 'finding 'of fact/s by the investigator: Fulfilling the task of investigating a crime in reality means that the investigator is able to 'reach the goals of investigation, in accordance with the law'. It also means that the investigator strictly follows all the rules and guidelines that are prescribed by the procedural standards in that regard. After all, it is only by strict compliance to such procedures, all end results have to be obtained by him. Indeed, crime detection is a very vital area of police work that is complex as well as challenging. Public perception no doubt holds that all such tasks are really fascinating as well as exiting. In fact such a perceived insight may no doubt be true to some extent. Yet, the overall burden of investigative duty is really arduous. The investigator will have to continuously comply with a range of parameters that insistently and categorically encompass all nuances of that duty in a most exacting manner. Keeping those wide ranging obligations in mind, one can say that the job of being a successful investigator calls for a binding commitment to law. In addition, it requires a mental caliber of a creative and an innovative kind in the nature and makeup of the personality of a successful investigator. Indeed, such manifest styles of work culture are necessary to secure all 'facts ' in pursuit, within the parameters provided by Law. But, the task is not

easy as the investigator has to always remain within the bounds of law. Said simply the task of detection of crime is a very difficult duty and at times, it may turn out to be really complex. Even then, it is a very vital area of police work and is very aptly considered the core of law enforcement work. Though, the range of all such 'duty' charters can be broadly seen or comprehended as to 'how' and in 'what' manner the power or authority vested in the police (in the vista of investigation on of crime) to gather 'facts' are to be exercised, the practical aspects, more often than not, pose several challenges. This is so, as the power or authority vested in the police by the process of the law is not a license or an unbridled authorization conferred upon them. The police cannot exercise the power or authority given to them in any arbitrary way, as the precise mode of utilization of that power (in its entirety) is itself very clearly indicated by the law. An investigator will have to perforce realize that all powers assigned are unmistakably limited. Further, they are precise and exacting in terms of its essay. Indeed all such enabling powers are circumscribed in diverse ways. It is the clear intention of the law that duties prescribed by law are accomplished correctly and are not secured willy-nilly. Professional goals of the police are not to be reached 'somehow'. The law expects that all goals duly envisaged by it are secured only in the manner provided by it (i.e., as per the law of the land). In that regard the law governing each and every step by the police in all their investigative efforts are clear, emphatic and explicit. The very ethos of constitutional governance makes it that the 'means' employed has got to always stay as important as the 'end' accomplished. Conversely, the law also directly as well as indirectly conveys that 'ends do not justify the means'. Said differently, law will only accept such steps which are done as per its directions. Though it may be necessary to note here that such expectations of the law covers not only the police but also the working of entire governmental apparatus. After

all, each and every act of governance has to be done as per law and in a most stringent manner. There is no doubt that such a general assertion is most clearly applicable to all areas of police work, though it comes into greater and sharper focus in 'crime work' as all aspects of that range of duties are carefully verified and assessed invariably by the courts of law. In that compelling context, it can be said that the significance of compliance to rules is virtually the pith and substance of legally acceptable ways of investigating crime. Further, that standpoint truly merits repeated reiterations in the context the theme of this study.

V.1.(3) Though the wider area of 'prevention' of crime may also see instances of violations of the procedure prescribed - in terms of breach of guidelines or mandates of law including the directions of the Superior Courts, the vicinity of 'detection of crime' is evidently more prone to abuses and this is so owing to various inherent factors. In that compelling perspective, one can even say that the job of being a successful investigator calls for an abiding commitment to law. In addition, it requires a mental makeup of creative as well as innovative nature. Such styles of work are necessary to secure the 'facts' in pursuit, which may seem to be a fascinating kind of work and yet, the investigator has to remain always within the bounds of law. Said simply, the task of 'detection of crime' is a very difficult but a vital area of police work, which demands a lot in terms of following a prescribed procedure. What cannot be forgotten is that the said 'duty' can be 'validly' done only as per law. The procedural law makes it emphatically clear as to how and in what manner the power or authority vested in the police (in the vista of investigation of crime) is to be discharged or exercised. The power or authority conferred on the police by those procedural processes of law is neither a license nor an unbridled authorization conferred upon the investigator. The police cannot exercise the power or authority given to them in any manner they like as the mode of such utilization of that

power (in its entirety) is itself very clearly defined. Indeed all such enabling powers are circumscribed in so many ways. Thus the logical sequence of correct and legally permissible investigation followed by the prescribed procedure for trial has to be so pursued so that the entire process enables the overall need of free and fair trial of the accused. This vital aspect is indeed the mandate of the Constitution in terms of Article 21 which enjoins that all the theoretical as well as the practical actions (in the gamut of a trial of a case) are ensured as per the 'procedure established by law'. In so far as the police are concerned, the actual working of each and every step in the innumerable range of all such 'investigative' duties has to continuously reflect adherence to the sweeping philosophy of acceptable standards of law emanating from the provisions of Article 21 of the Constitution of India. According to the Supreme Court of India, each such step has to fully and squarely answer the needs of procedural 'due process of the law'. (the end effect is the same, as if the substance of due process is read into the words 'procedure established by law' in the said Article and has to be given the same amplitude). Thus, it is not merely the substantive aspects of law that have to continually meet the 'fair, just and reasonable' standards but the procedural aspects of all actions of the State, which also have to consistently remain to be so. That status has got to remain in such a visage as all arrangements made by the state will have to relentlessly reflect the *fair, just and reasonable* requirements at all times. Only then all such steps can aspire to pass the test of constitutional acceptability.

V.1.(4) While Keeping in mind those enabling standards, it is easy to note that the '*Criminal Justice System*' must be free from any kind of prejudice or bias. It has to remain so in a manner that the concept of 'Rule of Law' gets the correct projection. There should be fairness at each and every stage of that area of penal justice processes (investigation, prosecution and trial and in that order) otherwise the public confidence in

the efficacy of the concept of 'Rule of Law' would be eroded. 'Free and fair trial' is the essence of the criminal justice system. That delicate balance has to be sustained in the entire sequence of events. Surely such a precise stability would get destroyed if the delicate foundation dependent upon the correct progression of all predetermined events of trial are marred by any improper or illegal or impermissible investigative ventures. Any such inconsistency would corrode the credibility of the very process. It is easy to see that the concept of judicial fairness spoken about so eloquently in all legal discourses is really comprehensive of the entire range of activities that come under the penal justice processes starting from the registration of the offence till the final judicial disposal of the case.

V.1.(4) The power of investigation conferred by section 157 of the Code is no doubt unfettered, in the sense that no one else, can interfere with that authority. But, that does not mean a situation in which no one can call the police to order when they fail to follow the procedure or commit any other impermissible errors in investigation. This aspect was highlighted as under:

*'The investigation of a cognizable offence is the field exclusively reserved for the police whose powers in that field are unfettered so long as such powers are legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Cr P C. (emphasis added). The courts are not justified in obliterating the track of investigation where the investigating agencies are well within their legal bounds as aforementioned. But, if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory power in breach of any statutory provision causing serious prejudice to personal liberty and also property of citizen, the court on being approached has to consider the nature and extent of breach and pass appropriate orders.'*¹

1. *State of Haryana and others v Bhajanlal*, 1992 Cr L J 527 SC at 528.

V.1.(5) The same aspect has been emphasized in an earlier case in relation to the power of the High Courts to intercede under such circumstances holding the view that the High Court may interfere when the mala fide exercise of police power is brought to its notice.

*'The Criminal Procedure Code gives to the police unfettered powers to investigate all cases where they suspect that a cognizable offence has been committed. If the power of investigation that has been exercised by a police officer is mala fide the High Court can always issue a Writ of Mandamus restraining the police officer from misusing his legal powers.'*¹

V.1.(6) However, it needs to be kept in mind by police investigators that law does not recognize any other private investigator to deal with investigation of cases as it is the exclusive prerogative of the police. That fact was emphatically conveyed by the Apex court by saying that *'evidence collected by private investigation cannot be presented by Public Prosecutor in any trial.'*²

V.1.(7) Further, it necessarily follows that defects in investigation would mean a diminishing value for the overall effort of investigation and as a result it would have a bearing on the way in which the evidence can be appreciated in its totality. As correctly pointed out by the Apex Court, *in the case of defective investigation the court has to be circumspect in evaluating evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would be to playing into the hands of the investigating officer if the investigation is designedly defective.*³

V.1.(8) The words employed in 173 (1) Section of the Code,

1. *S N Sharma v Bipin Kumar Tiwari*, AIR 1970 SC 786

2. *Navinchandra N Majithia v State of Meghalaya*, 2000 SCC (Cri) 1510

3. *Ram Bali v State of UP*, 2004 SCC (Cri) 2045 and *Karnel Singh v State of MP*, 1995 (5) SCC 518

(in relation to the task of investigation of cases), mandate that investigation of a case must be done expeditiously. Emphatic observations of the Apex Court that the Code that does not recognize any private investigating agency further enjoins on the investigating officer a duty that 'every investigation under this chapter shall be completed without unnecessary delay'. Following that direction, all steps that are to follow are well enumerated. Therefore, consequences of any unreasonable delay are bound to affect the case. As is explicit under the Code, several specific time limits are provided for various steps that are to be undertaken as per law. If the delay in question exceeds the limit prescribed by law, then the matter will have to be viewed seriously.

*'The investigation must be carried out with utmost urgency and completed within the maximum period allowed by the proviso (a) to Section 167 (2). If it fails to show a sense of urgency in the investigation of case and omits or fails to file a charge-sheet within the time prescribed, the accused would be entitled to be released on bail.'*¹

V.1.(9) The power vested in the police necessarily warrants its use as per law and within bounds of various conditions and limits set by law. We can consider several examples in that regard, such as the Constitution of India - say for example, with regard to the production of an arrested accused before a Magistrate within a period of 24 hours after arrest. Similarly, we can refer to the requirement of display of decency during a search of the person (arrested) or the care taken during the search of a premises, as per the Code. Likewise, issue of exercise of powers of designated officers to take up investigation of a heinous case can be seen in the context of respective police manuals and various other standing orders or executive instructions issued by the Governments or Police Departments or by any other law in that regard. As an

1. *AB Desai v State of Maharashtra*, AIR 1993 SC 11.

example, we may also refer to the provisions of the law under the SC & ST (POA) Act, 1993 or the Prevention of Corruption Act, 1988 etc and so on to emphasize on that specific aspect of the procedures to be strictly followed.

V.1.(10) Though as a matter of rule and practice, the courts are not to interfere with the police investigations in general, such a stand is not unilateral. After all,

'Interference by the Court at the investigation stage is not called for. However, the investigating agency cannot be given the latitude of protracting the conclusion of investigation without any time limit';

V.1.(11) The Supreme Court has clearly conveyed as to what is the meaning of the term 'investigation' and that enunciation includes *'all proceedings under the code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a magistrate in this behalf'*. It ends with the formation of the opinion (of the investigator) as to whether based on the material collected, there is a case to place the accused before Magistrate for trial and if so, taking the necessary steps for the same by filing an appropriate final report i.e., a charge - sheet under Section 173 Criminal Procedure Code.² Further, stages of investigation constitute the following terms and events:

1. Proceeding to the spot,
2. Ascertaining of the facts and circumstances of the case,
3. Discovery and arrest of the suspected offender.
4. Collection of evidence relating to the commission of the offence, which may consist of
 - a. Examination of any person (including the accused) and the need to ensure reduction of their statements

1 *Mahenderlal Das v State of Bihar and others*, 2002 SCC (Cri) 110.

2 *Union of India V. Pradash P.Hinduja*, 2003 SCC (Cri) 1314.

in writing, if the officer thinks fit,

- b. Search of place or seizure of things considered necessary for the investigation and be produced at the trial and
- c. Formation of the opinion whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking necessary steps for the same by the filling of a charge sheet under Section 173.¹

V.1.(12) In the context of the theme of this study, Para 4 (a) above, becomes a very important part of investigation and in cases where, if at the time of examining the accused, no tangible clues are available, then the said task is to be pursued validly and lawfully. Naturally therefore, the integrity of all such sequences and steps assumes immense significance.

V.1.(13) 'Questioning an Accused' is a very extensive but a delicate task. Any poor or improper handling of that burden by the investigating officer may either result in failure of the case or result in the emergence of many other unceasing problems of various kinds. Firstly, poor professional approach may mean that the case would not be secured in terms of its merited end. Such a stalemate means that there is a clear failure of the object of the law. At the same time, any thoughtless or unjustified action can cause the loss of focus of the case. Next, non-compliance of the dictates of the law in that matter may mean the facet of illegality, which invariably gives raise to issues of 'Human Rights' violation. That kind of a charge against the investigator is counterproductive, as his time, energy and resource which could have been better used, (had due care been taken to comply with the prescribed procedure, in letter and spirit of the law) is wasted in defending his actions. In addition, that negative burden also affects the police organization badly.

1. *H.N. Rishbud V. State of Delhi*, AIR 1955 SC 196: 1956 CrLJ 526.

V.1.(14) As discussed elsewhere in this book, 'Questioning an Accused' involves so many other steps or issues like arrest, search, production of the accused within 24 hours; observing various directions of law with regard to the processes connected with questioning, including the right against self-incrimination; right of silence; right to counsel; right to dignity; right to medical examination of the accused; right against degrading or cruel or inhuman treatment while in custody; right against hand-cuffing (unless duly justified by law and so done in a manner provided for all such actions) and several other steps of the law. It needs no special argument to assert that each one of them is vital for strict procedural compliance by the investigator. There is no alternative to the mandates so prescribed as all guidelines have to be kept in view and followed meticulously, lest the burden of the law will impinge on the erring. In that fairly large but clearly inter-connected series of tasks, the investigator has to keep his balance to ensure that he stays clear of any lawless action. In that encompassing array of duties, the investigator would do well to avoid the problem of custodial aberrations as those range of failures are eminently avoidable.

V.1.(15) Notwithstanding the fact, that it is a fairly well-settled position of law that a 'mistake' committed during investigation may not vitiate the trial itself in all instances and yet, correct procedural ways are a must. However, it needs notice that such a view does not cover all types of misses, for the law may contend with a *bona fide* mistake or an unintended error. But surely the law will not brook deliberate and reckless actions or highhanded behavior in terms of the procedural care expected from the investigator in particular and the law enforcement machinery in general. It would be worthwhile to note the clear difference between the above two kinds of situations and there is no doubt that wise amongst the lawmen would do well to keep that fact in mind. Any investigation being not an enquiry or trial, the omission or mistake

committed during the course of Investigation would not vitiate the trial itself.¹

V.1.(16) It is in that context, it would be best for the Investigating officer to be clear in his mind about the law on various aspects of his work covering the areas of arrest, search, seizure and remand of an accused, whom he has questioned. Besides the actual events that precede and succeed the task of questioning an accused, all related areas of penal processes have to be carefully followed so that there is no scope for errors or other shortcomings by the investigating officer. Obtaining or securing evidence in an illegal or impermissible manner may, by itself (depending upon the facts of that failure) result in the outright rejection of the admissibility of the evidence and further, each such situation would grossly affect the credibility and integrity of the investigation.²

V.1.(17) The task of interrogation of the accused or questioning of an accused is an extremely delicate task and that job has to be done or undertaken by an investigating officer with an immense amount of care and responsibility. This is a real professional task, which calls for best skills in eliciting information from the person questioned. This job has to be undertaken with a great sense of responsibility as well as commitment to the 'Rule of Law'. Further, this part of police work warrants best professional capacity of the investigator and calls for a good understanding of human behavior in general. More importantly, any investigator must have a sound awareness about psychology of persons under stress. Besides the knowledge of law the competence of the investigator has to be best backed up by a clear, complete and precise knowledge about the crime under investigation. A good knowledge about the background of the accused would be most important. In fact, some of these essential

-
1. *Nirajan Singh V. State of UP*, AIR 1957 SC 142 1957 SC 294;
See also ac. *Sharma V Delhi Administration*. AIR 1973 SC 913
 2. *State v Satish NMT Joy Immaculate*, 2004 SCC (Cri) 1722.

aspects have been discussed in the ensuing pages in greater detail. Stated tersely, it is important to note and realize the total range of legal and custodial issues in the context of questioning an accused.

V.1.(18) For instance, it is most important for the investigating officer to keep in his mind that the accused has the 'right to silence' during interrogation. In fact, the prohibitive sweep of Article 20 (3) goes back to the stage of investigation. Such a right is not restricted to the events during the trial. Further, it is not restricted only to the case on hand as it can extend to other offences pending or imminent and therefore, the investigating officer will have to note and act without losing his patience or balance of mind, if the accused refuses in all possible ways to answer any question posed by the investigating officer.¹ Further, the investigator has to keep in mind that the accused is entitled to be assisted by counsel even during interrogation by the police. In fact, the Supreme Court had commended the 'right to counsel' in *Nandini Sathpathy v P L Dani*,¹ and in the words of Mr. Justice Krishna Iyer by holding that,

'Article 20(3) and Article 20 (1) may, in a way be telescoped by making it prudent for the police to permit the advocate of the accused, if there be one, to be present at the time he is examined'.

V.1.(19) Use of strong arm methods or resort to the accursed third degree methods are clearly prohibited by law as that would surely pose serious problems to the concerned living person, and hence at it is best avoided². Any number³

1. *Nandini Sathpathy v PL Dani*, 1978 Cr LJ 968 (SC) AIR 1978 Sc 1025.
2. *Dagadu and other v State of Maharashtra*, 1977 SCC (Cri) 421; see also *Kishore Singh v State of Rajasthan*, 1981 CrLJ 17 (SC).
3. *State of Gujarat v Hargovandas Deverjibhai Patel*, 1992 Cri LJ 3598; *Gauri Shankar Shirma v State of UP*, AIR 1990 SC 709; *Sharad Birdhi Chand Sarda v State of Maharashtra*, 1984 SCC Cri 487 (Ref); *Ega Venkaiah v A.P.*, 1993 Cr LJ 691; *Bhim Singh MLA v State of J&K*, 1986 Cri LJ 192, *Rudal Shah v State of Bihar*, 1983 Cr L J 1644.

of cases in which the courts have come down heavily on erring personnel (for having resorted to such abuses) can be noted. Perhaps, efforts to change the mindset of some of the misguided policemen will have to be undertaken with greater intensity and commitment to the cause of the law by the police leaders at all levels. There are some in the police profession who try to argue that many investigators resort to the third degree measures only with a genuine intention to detect the case. However, such an excuse seems to be not true in all such cases, as several studies relating to custodial abuses have shown that resort to such violence may not necessarily be for the reasons of detection as more often than not, such instances have occurred in matters that have no direct connection with central purpose of investigation of crime in view. Extraneous reasons for such abuses even in the name of investigation of cases are also widespread and that reality cannot be ignored. Admittedly, there may be some instances where resort to violence may be stemming from the extreme urgency of public or organizational pressure to solve a crime – say in a matter like a horrendous rape case or in relation to a terrorist crime and so on. Yet, it needs to be kept in mind that the investigator has to bestow keen care in terms of professional skills, besides his concern for human rights of persons, especially the accused. If the investigating officer is professionally alert, then he is more likely to seek and explore all possible forensic help or search other sources with greater intensity to gather evidence in the matter, rather than use his fists in a half-hearted desperation.

V.1.(20) No doubt, law provides for securing various evidences like finger impressions or foot impressions or blood samples or sample handwritings or DNA samples from the person of the accused. Further such material evidence can be secured even forcibly (using minimum force needed) from the person of an accused. The courts have viewed that all such steps do not necessarily amount to the *accused making a*

statement under Article 20(3) of the Constitution of India. Such steps do not tantamount to use of illegal force notwithstanding the unwillingness on the part of the accused to provide such 'facts'. However, it needs emphasis that the law mandates that all such steps can be directed only by the orders of a competent court. (as per Section 73 of the Indian Evidence Act, 1872). Naturally therefore, such acts of compulsion (in securing such scientific evidence) cannot be forced or affected during the period of investigation by the investigating officer, without appropriate judicial orders. It may be correct to point out here that though an impression or a DNA sample and so on is not to be treated as statement made by the accused in violation of Article 20(3) of the Constitution,¹ salient aspects of law in this regard ought to be a part of professional preparedness of the investigator so that he is able to marshal his efforts in valid and acceptable ways.

V.1.(21) It needs no extraordinary or special argument to suggest here that it would benefit the investigating officer richly if he does not lose sight of the Human Rights perspectives in all that he does, as a part of his duty activities. No doubt a police officer may entertain a good intention with regard to the steps he is taking and further he may be really keen or even determined to detect a case or solve the mystery confronting him in a given case. Further, the accused being questioned by him may also be really the person who has to answer many things about the crime. Even then, transgressing the limits permitted by law would not be acceptable. (not only from the point of view of the law but also in the context of human dignity and humanity). Law does not countenance disregard of any of its directions, about which much has already been said earlier and has been so done several times,

1. *Anil Lokhande v State of Maharashtra*, 1981 Cr L J 125 (Bom); *Jamshed v State of UP*, 1976 Cr L J 1680; *Anantha Kumar v State of AP*, 1976 Cr 1797 (AP); *State of Bombay v Kathi Kalu*, 1961(2) Cr L J 856 (SC); *State of UP V Ram Babu*, AIR 1980 SC 791; *Boota Singh v State*, AIR 1978 SC 1170, *State of Haryana v Jagbir Singh*, (2003) 11 SCC 261; 2004 SCC (Cri) 126.

only with the purpose of highlighting the significance of the procedural standards. In addition, the investigator needs to keep reminding himself that the implication of '*Rule of Law*' is very emphatic and that applies in an equal measure on a macro scale of governance and also on a micro scale in terms of an isolated case under investigation. Firstly, the action of the State which in simple terms includes (in the current context) all actions of the law enforcement agency and includes even an isolated instance of an investigator dealing wrongly with an accused apparently while investigating a crime. All such steps have to remain consistent with the professed and proclaimed constitutional values, which also include the custodial aspects of an accused person. All such facets have got to be *fair, just and reasonable* at all times. As the investigating officer is a creature of the State, all his actions have to resonate the mandate of the law, even though the case in question may be an insignificant or an isolated one. No investigator can afford to forget the 'rights' of any person, including an accused under the law. Each and every action of an investigator is deemed as an act of the State. Further, the quality and dimensions of the 'life' guaranteed by law is a not a life of any kind.¹ Nor that can be relegated to a kind of an animal existence. Many clear enunciations on the quality of freedom or quality of 'life' are well exemplified by the verdicts of the Supreme Court of India and thus the investigator can at no time afford to loose the perspective of law and procedure in all these areas of his work.

V.1.(22) Use of unjustified force or atrocity or brutality is a clear 'no-no' for the lawmen. Law expressly and emphatically prohibits any act or violence or any excess on an (or any) accused (while he is in custody of the police). The plea of purpose to detect a case offers no power to any enforcement personnel to take a short cut in the path of the law. It does not matter if it (the said lawless act) is done (by

1. *Francis Correlli Mulin v Administrator, UT Delhi*, AIR 1981 SC 741.

the Investigating officer) with the genuine object of detecting a case. Irrespective of the motive or logic of such abuse, no such deviation is acceptable to the law. Words of caution of the Supreme Court of India in this regard are worth the repetition. While upholding the constitutional validity of TADA by its majority judgment in *Kartar Singh v State Punjab* the Apex Court said that:

*Whatever may be said of the argument for or against the submission with regard to admissibility of a confession before a police officer, we cannot avoid saying that we... have frequently dealt with case of atrocity and brutality practiced by some overzealous police officers resorting to inhuman, barbaric, archaic method of treating the suspects in their anxiety to collect evidence¹ by **hook or crook** and wrenching a decision in their favour. (Emphasis added).*

V.1.(23) Another very important thing that an investigator can ill afford to forget is the fact that as per law, a magistrate is bound (by law) to ask from the accused produced before him as to whether he wants to make any complaint of torture while he was in police custody. In *Sheela Barse v State of Maharashtra*,² the Supreme Court clarified that section 54 of the Code of Criminal Procedure, 1973, required that the magistrate before whom an arrested person is produced shall enquire from the accused person, whether he has any complaint of torture or maltreatment in the police custody and seek from him that **as per section 54 of the Code of Criminal Procedure, 1973, he be medically examined.**

V.1.(24) In fact, the State is under an obligation to prevent and punish brutality by the police officials who resort to crude methodology.

The State, at the highest administrative and political levels, will organize special strategies to prevent and punish brutality

1. *Kartar Singh v State of Punjab*, JT1994 (2) SC 423-(1994)3 SCC569

2. *Sheel Barse v State of Maharashtra*, AIR 1983 SC 378

*by in police methodology. Otherwise, the credibility of the rule of law, our republic vis-a-vis people of the country will deteriorate'*¹

V.1.(25). No doubt the police can legitimately question an accused or a suspect, before arresting him. However, that action and connected ventures by the police will have to be done expeditiously. The Supreme Court observed that even a suspect has a right to an expeditious police investigation.² Similarly, right against bars or fetters while in custody, right against handcuffing when there is no need or justification for such an action/s, right against custodial violence, right against any kind of exploitation, right against custodial torture, right of privacy, right to emergency medical aid, as and when necessary, right against police atrocities, right to legal aid and so on are surely most relevant issues about which the investigating officer cannot afford to be ignorant.³ Nor can he be half- hearted in ensuring compliance on all such procedural steps done by him as a part of his investigative efforts.

V. 1.(26). Categorical enunciation of the eleven points guidelines in *D K Basu v State of West Bengal*⁴ will have to be repeatedly noted so that action of arrest and post arrest actions are (in terms of procedural compliance) within the limits of law. Further, at no stage can an investigator ignore the characteristics of Human Rights in general and the facet of human dignity in particular. As strongly remarked by the Supreme Court,

'Constitutional Rights of the citizens and human dignity

1. *Raghubir Singh v State of Haryan*, (1980) SCC 70.
2. *MH Hoskote v State of Maharashtra*, (1978)3 SCC 544.
3. *DK Basu v State of WB*, AIR 1997 SC 610; *Govind v State of MP*, AIR 1975 SC 1378; *Baldev v Surinder Mehta*, (2003) 1 SCC 343; *Paramanad v Union of India*, AIR 1989 SC 2039; *Parashcim Banga Khet Mazdoor Samity v State of WB*, AIR 1996.
4. *D K Basu v State of West Bengal*, 2004 (SCC) Cri 1198.

should not be allowed to be violated by police indifferently or by their insensitiveness¹

V.1.(27). It needs to be kept in mind that any act of custodial violence is a direct blow to the very edifice of 'Rule of law'. That foundational reality can never be ignored or forgotten by the personnel of the law enforcement systems. Rule of law commends as well as demands from lawmen due compliance to the guiding principles that marshal the entire range of police processes. It encompasses various human rights that have been evolved in the penal processes. More importantly, the presumption of innocence of an accused is a human right as well as an elemental principle in the complete range of penal processes.² That is not saying that investigator has to be lax in his efforts in the face of such a presumption. It is also necessary that every crime investigator has to always keep in mind the most fundamental aspect of 'freedom' of every person. In that specific regard the investigator has to be well aware that 'freedom' at reference includes *inter-alia* a right against any kind of physical abuse (on the accused by him). That elemental right has to manifest and remain always in focus, irrespective of the feelings or opinions about the accused in the mind of the investigator. This is so, notwithstanding the fact that the accused or person under custody may clearly appear to be guilty of a very serious or heinous crime or that he (the accused) *prima facie* suffers from a very bad reputation of a terrible kind. Even if that were to be a fact, such a status of the accused confers no right on the police or for that matter on any one (including the courts of law) to compel any physical imposition on the accused, without the power of the law. In fact punishment of any prescribed kind can be only as per law and can be imposed

1. *Kheda Mazdoor Chetna Sangh v State of MP* 1995 Cri L J 5908 SC ; Prem Shankar 1335 (referred).

2. *Narendra Singh and another v State of M P* 2004 SCC (Cri) 1893.

only as provided by law.

V. 1. (28) Thus, in a way none of the facts or perceptions relating to the personality aspects of the accused can be converted as a license or excuse to transgress the limits of the law. There can be no compromise in the methods or procedures prescribed by the law. Any excesses resorted to under such conditions (or where the police officer is subsequently found out to have been guilty of any excesses) is impermissible in the eyes of the law. A mere plea that the investigator had no personal animus, grudge or motive in ill-treating a suspect, where an illegal physical violence was used on an accused, is clearly unacceptable to the law. That basic proposition holds the integrity of the person of the accused or suspect in custody of the police as an inviolable feature and that contention is emphatic and explicit. Though each and every step undertaken during the course of investigation of a criminal case is to be scrutinized or verified by the courts with or without a complaint being made by the victim (accused or suspect as the case may be), during the trial as well as during some of the pre-trial stages like the juncture of granting or refusing custody or granting remand of the accused or sanctioning bail to the accused etc.), the basic condition of overseeing the investigation lies in the fact that at no stage can any investigator be permitted or allowed to ride roughshod over the suspect. Any violation of law resulting in the perpetration of a 'third degree' abuse on any accused or suspect in custody is *prima facie* illegal. It would surely be in the best interests of the law enforcement personnel themselves to ensure that all such eminently avoidable lapses are consciously abjured. Only a patently honest and conscientious way of working in investigation of cases will help the situation. Indeed, a right kind of mental and practical approach has very many advantages. Firstly it saves the investigators from any possible confrontation with the law itself. Those who recklessly indulge in such lawlessness surely

merit the penal consequence as prescribed by the law and undoubtedly merited consequences of such misdeeds will eventually catch up with them. At the same time, it is very appropriate to note that any evidence secured illegally or unlawfully will result in a worthless effort for the purposes of investigation or prosecution.

V.2. (1) In this regard, it may be useful to refer to the considered opinion of an expert body like the Law Commission of India with regard to illegal and improper evidence secured by the investigating agency. In fact, the Law Commission of India had made an emphatic recommendation almost three decades ago, that an amendment be made to the Indian Evidence Act, 1872 by the addition of a separate chapter in the said law (by adding Chapter 10 A) and that particular suggestion commended that a new chapter under the Indian Evidence Act, 1982 should contain a solitary section in the form of 166 -A - to be placed immediately after the current provisions contained in Section 166 of that law.

V.2. (2) the recommendations were as under¹:

Chapter 10A

EVIDENCE OBTAINED ILLEGALLY OR IMPROPERLY

166 -A. (1) In a criminal proceeding, where it is shown that anything in evidence was obtained by illegal or improper means, the Court, after considering the nature of the illegality or impropriety and all the circumstances under which the thing tendered was obtained, may refuse to admit it in evidence, if the court is of the opinion that because of the nature of illegal or improper means by which it was obtained, its admission would tend to bring the administration of justice into disrepute.

(2) In determining whether evidence should be excluded under this section, the court shall consider all the circumstances

1. 94th Report of the Law Commission of India on the subject of Evidence obtained illegally or improperly –Proposed Section 166 A In the Indian Evidence Act, 1972-October 1983.

surrounding the proceedings and the manner in which the evidence was obtained, including:

- (a) The extent to which the human dignity and social values were violated in obtaining the evidence;
- (b) The seriousness of the case;
- (c) The importance of the evidence;
- (d) The question whether any harm was inflicted willfully or not, to the accused or others and
- (e) The question whether there were circumstances justifying the action, such a situation of urgency requiring action to prevent the destruction or loss of evidence"

V.2. (3) During the myriad processes of investigation by the police involving or including the facet of 'Questioning an accused' under the penal law of the land, all the legal standards that legitimately govern the said activity would, in the normal course, encompass the issues of evidence obtained illegally or improperly. However, those standards have not been uniform and the logic and reasoning that preceded the recommendations of the Law Commission of India in its Ninety-Fourth Report, (made during the year 1983) projects all the issues in a graphic and clear manner, commending an appropriate perspective for further action.

V.2. (4) It may be noted that the mandate of Article 21 of the Constitution of India relates to *life* and *liberty*. In fact and *per se* that dynamic article of the Constitution of India, seems to be limited in its application to those two specific areas, referred to above. The reason or purpose of discussing that exclusive aspect here is to appreciate the facet of 'evidence obtained by the State or its officials' in violation of the rules governing the procedure for gathering such evidence, in the context of the celebrated Article 21, which has clear bearing on the matter. The failure in question may be stemming from

a clear case of illegality or be of an improper kind. In view of the reasoning that preceded the recommendations made in the report of the Law Commission of India vide its Ninety Fourth Report, comparative aspects as well as the interplay of the provisions of Article 21 *vis-a-vis* the impact of gathering evidence in an illegal or improper manner need greater clarity. That view will perhaps get a clearer projection as the issues are discussed in the combined context of 'testimonial compulsion' and the facet of 'adducing evidence' against an accused. Article 21 of the Constitution of India states that:

"No person shall be deprived of his life or personal liberty except through the procedure established by law".

V.2. (5) That celebrated Article (i.e., Article 21) emerged in its current form in the text of the Constitution of India after intense debates and far reaching discussions, which included detailed analysis on the pros and cons of the wordings of the said provision. Those engaging features are duly recorded in the proceedings of the debates of the Constituent Assembly. Indeed it is illuminating to note various viewpoints expressed by many stalwarts, (by a perusal of the proceedings of the Constituent Assembly) who in effect exemplified the concerns of the members of the said august body on the choice of words that were to embellish the text of the Constitution of India. However, the end that led to the acceptance of Article 21 in its current form would also reflect prominently the guiding reasons as to why such a deliberate choice was made in that specific regard. As the Constitution makers of India had the benefit of examining¹ various other Constitutions of many other leading nations, they were helped in closely considering all essential aspects of the matter and according to their wisdom, the words chosen by them would suit best the genius of the new Republic (that was India). While arriving

¹ *Debates of the Constituent Assembly – making of the Constitution of India 9th December, 1946, 24th 1950* [http://parliamentofindia.nic.in/parl.htm/Text of the debates accessible in the records of the Parliament of India Library, New Delhi](http://parliamentofindia.nic.in/parl.htm/Text%20of%20the%20debates%20accessible%20in%20the%20records%20of%20the%20Parliament%20of%20India%20Library,%20New%20Delhi).

at a consensus on the issues many facts like the Fundamental Rights, especially those relating to the Rights of the Accused were seen at par with the constitutional arrangements that were found in the Constitution of the United States of America.

V.2. (6) The Constitution of India (as resolved by the Constituent Assembly) contained the wordings '*the procedure established by law*' to be the crucial or central aspect of the letter of the law as against the facet of '*due process of law*' as seen in the Constitution of the United States of America. The impact of the choice of that vital phraseology as well as the evolutionary path of the Constitutional law (including the facet of most engaging debates of the Constituent Assembly that preceded the making of that law), post its adoption reflects a dynamic sequence of a rare but fascinating kind. Resorting to a creative mode of legal interpretation the Apex Court of India has drawn fresh the expanding contours of those words contained in that crucial Article. By resorting to a creative judicial way of deciding the cases before it, the Supreme Court of India has rendered it (the text of Article 21) to run in tandem with the needs of a developing society. However, another vital provision of the Constitution of America which can be said to be closely connected with the mandate of the provisions of Article 21 of the Constitution of India is to be seen in the Fourth Amendment of the Constitution of America which deals with one of the Constitutional guarantees against any evidence that has been obtained in an illegal or improper manner.

V.2. (7) The text of the Fourth Amendment to the Bill of Rights of the United States of America is as under: -

Evidence obtained as a not-too-remote or no-to-attended result of violation of the federal Constitutional prohibition against illegal government sponsored searches and seizurescannot be admitted

*as substantive evidence in a criminal case in any Court of the land ...as against the persons whose rights were invaded.*¹

*'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized'*²

V.2. (8) Legal outcome of the said provision has been the concept of the 'Exclusionary Rule' with regard to any evidence that has been obtained by the State or its agencies (like the Police) without any valid legal authority being employed in obtaining the impugned evidence. Another essential aspect of the said rule is that consequences that stem out of those acts of violation/s of the Constitutional right would result in civil, criminal or equitable sanctions besides a privilege to exclude 'evidence' so obtained in breach of the said right.³ Thus, the consequences of gathering evidence by the State or its minions, say for example, by an illegal search, is clearly deemed as a violation of a Constitutional right (of the affected individual). By that summation, it needs notice that the said violation is not a mere transgression of the law of evidence. It would become something more – and which is impermissible as well actionable, independent of the matter under trial. Another interesting aspect of the provisions of law in the United States of America is that even an 'arrest' of a person is treated as a 'seizure' and thus the said action (i.e., of the said arrest) will have to be demonstrated as having been done in a constitutional and valid manner so that evidence collected by the said process is considered by law courts as a permissible action.

1. Rothstein, Evidence in a nutshell (May 1981) P 485 p. 94th Report of Law Commission of India, p.18.

2. <http://en.wikipedia.org/wiki/FourthAmendment> to the Constitution of the United States of America.

3. LCI 184th Report, at P 19.

V.2. (9) However, it is also a fact that since some time, the legal arrangement as it exists today in the United States of America has been viewed with critical comments by some Constitutional Law experts on the ground that the said legal (or Constitutional) arrangement has a tendency to defeat the object of law - which is to advance the cause of justice. Chief Justice Burger had also remarked that (in a dissenting judgment) the operation of the exclusionary rule results in the release of countless guilty criminals. In fact, this was followed by an attempt to amend the provisions of the law with regard to the said 'Exclusionary Principle' and so far that has not materialized for various reasons including the viewpoint that sufficient empirical data is not at hand to support the view that the said rule has harmed the interests of the community by allowing criminals to escape the rigors of law. (This can also be seen in the 184 th report of the L C I)

V.2. (10) It needs to be kept in mind that there is no 'exclusionary rule' either in the Indian Evidence Act, 1872 or in any other law, which proscribes the adducing of such tainted evidence and this is one of the focal issues in these discussions. In that background the situation has lead to make a very substantial impact on the procedures to be validly followed and that is precisely so for very apparent reasons.

V.2. (11) The prevailing legal position of law in India may have had several historical reasons, all of which have seemingly played a part in shaping the legal position as it subsists today and that bargain is somewhat similar to the prevailing scenario in countries like the UK. Views of great jurists and judges like Lord Scarman and Justice Goddard have emphatically reflected their concerns to the evidence placed before the Courts in terms of the conduct of the trial. However, the courts have refrained to look at these issues simultaneously, as it may open up parallel or residuary enquiries away from the object of the trial. Yet, it would surely come up as matters of 'Human Rights' concerns and 'ethical standards' in Law

Enforcement enterprise. That anxiety was perhaps the reason behind the views of the Law Commission of India in suggesting an amendment to the Indian Evidence Act, 1872 - by making a specific addition of a separate chapter in the said law, as narrated earlier.

V.2. (12) It may be equally pertinent to mention here the underlying force of the sum and substance of several recommendations of the Criminal Justice Reforms Committee headed by Mr. Justice V S Malimath which had compellingly argued the merit of focus on 'Search for Truth' as the basis for criminal justice processes and that expert body had called for not placing an equal weight on other peripheral or not so directly connected issues. Procedure followed by the Code, it seems from the suggestions of that Committee (Criminal Justice Reforms in India (2003), ought not to overrule the 'truth' on technical reasoning and similar other considerations.

V.2. (13) In fact, the Law Commission had pointed out that there is no 'Exclusionary Rule' under the Indian Penal Justice arrangement and had in its effectively articulated report marshaled the crucial issue as under:

"10.10. The consideration to introduce an exclusionary rule, it is argued, would be justified where evidence to the facts in issue, it should be admitted despite the fact that it was illegally obtained because ¹

- (i) The predominant concern of the Tribunal is to be the search for truth (emphasis supplied) and the fact of the illegal acquisition of evidence does not affect the legal relevance of the evidence and the court should undertake a collateral enquiry.
- (ii) Other sanctions and remedies exist against the perpetrator of illegal acts that are better suited to deter the wrongdoers than an evidentiary rule of exclusion; and

1. LCI 184th Report on the proposed Section 166 A to the Indian Evidence Act, (1872) at P 32 of the report.

-
- (iii) It would be grave injustice to a party to be denied the use of illegally obtained evidence where he was not involved in the illegality."

V.2. (14) The plea of compulsion to conduct a parallel or a collateral enquiry does not really help the victim of such an illegality (i.e., the complainant) as the relief that he would merit as per law would not be available to him straight away - at least till the time he is able to bring home the assertions in support of his right - which would also involve considerable cost as well as expertise in marshalling the arguments to the satisfaction of the judge in question. In addition to that, it would be too unrealistic to expect a self-correcting attitude on the part of the law enforcement agency and thus, the counter argument to support the prescription of a rule that would straight away inhibit any such illegally or improperly obtained evidence before a legal forum. Furthermore, the argument in support of such a rule would assert that it is not merely the constraint of parallel enquiry but the issue begs more in terms of interests of justice and the majesty of law that such a blanket ban would be appropriate.

V.2. (15) Taking note of the extreme possibilities of the issues surrounding the question of illegally or improperly obtained evidence (*vis-a-vis* the exclusionary rule - as founded by the Fourth Amendment in the USA), the Law Commission of India suggested several yardsticks that could be considered by the amendment which would give a final power to the Courts hearing the matter in question to deal with it appropriately (i.e., the question of tainted evidence, secured illegally)

V.2. (16) However, in so far as the recommendations of the Law Commission of India in its Ninety Fourth Report are concerned, it is to be noted that the same is yet to be acted on by the Government of India and thus, the situation is still guided by the verdicts of the Apex Court. At this juncture it may be useful to cite cases like *A.R. Malkani v State of*

*Maharashtra*¹ (in fact this approach of the Apex Court was perhaps a resonance of the verdict of the Privy Council in *Karuma*).² Though the Code of Criminal Procedure, 1973 clearly provides the method and manner of searches, seizures and so on, there is nothing in the said law (or for that matter in the Indian Evidence Act, 1872 that illuminates the way in which such evidence is to be treated by the Courts). Thus the current situation which had in fact persuaded the Law Commission of India to consider an appropriate recommendation to change the law on the subject comes to focus.

V.2. (17) Some illustrative situations of evidence obtained illegally or in an improper manner, as illustrated by the Law Commission of India in its Ninety-fourth report make a very valid assertion in support of the said recommendation. It could be appropriate to quote those illustrations in full as the import of the issues would be fully conveyed by those instances, which are indeed drawn from real cases that have been reported in various courts of law.

“Appendix-Some illustrative situations of evidence obtained illegally or improperly:

In order to make the discussion concrete, there is given below an illustrative list of certain situations in which evidence can be said, *prima-facie*, to have been obtained illegally or improperly. The listing of any situation here does not, of course, necessarily imply that in that particular situation the discretion should be exercised for excluding the evidence in question. The cases cited in the corresponding footnote against a listed situation are mentioned here for the facts involved. The court did not, in each case, exclude the evidence.

1. Arrest

(a) Unlawful arrest;

(b) Unlawful removal from custody.

1. *R M Malkani v State of Maharashtra*, AIR 1973 SC 57.

2. *Karuma V R* (1955) AC 197 (PC).

-
2. Physical examination
 - (a) Illegal search of the person accused;¹
 - (b) Illegal blood tests;²
 - (c) Illegal breathes tests;³
 - (d) Unwarranted medical examination;⁴
 - (e) Medical examination of the accused to obtain evidence of drunkenness, when all that the accused was told was that examination was necessary to see if he was ill;⁵
 - (f) Medical examination of the accused to obtain evidence of drunkenness, where it was undertaken merely after telling the accused that it would be advantageous to him;⁶
 - (g) Taking of fingerprints of the accused without telling him because he might refuse to give them;⁷
 - (h) Compulsory breath test which is permitted by law only for using them on certain minor charges, where it is employed for more serious cases
 3. Search of Property
 - (a) Illegal search of property;⁸
 4. Breach of Privacy (including interception of communication)
 - (a) Illegal telephone tapping;⁹
-

1. *Karuma v R*, (1955) A C 197 (P.C.).
2. *A G of Quebec v Begin*, (1955) 5 D.I.R.394 (Supreme Court of Canada).
3. *Merchant v R* (1971) .45 A.I.J.R.310 (High Court of Australia).
4. *R v Ireland* (No1)1970) 126C L R 321 (High Court of Australia).
5. *R v Payne*, (1963, 1 All E R.848.
6. *R v Nowell*, (1948) All ER. 794
7. *Collins v Gunn*, (1964) a Q B 495.
8. *Marc Garlande v Sharp*, (9) (1972) N Z L R 64.
9. *R v Mathews*, (1972) VR 3 (Supreme Court of Victoria).

-
- (b) Photographs illegally taken by telling the accused wrongly that it was compulsory;¹
 - (c) Eavesdropping;²
 - (d) Obtaining conversations between blackmailers and the victim
 - (e) Incriminating letter written by the accused in jail, where the jailor promised to post, but which was handed over to the prosecutor.³
5. Denial of legal advice
 - (a) Confession obtained after its maker had been refused advice of a solicitor⁴
 6. Tricks played by the law enforcement agency
 - (a) Evidence obtained by reason of a policeman describing himself as a magistrate;⁵
 - (b) Evidence of drunkenness obtained from Medical Examination, which the accused was told, was just to see if he was ill.⁶
 7. Entrapment - The use of agent provocateurs⁷

V.2. (18) It is also worth noting that the Law Commission of India had in its Ninety Fourth Report commended (in the year 1983) an amendment to the Indian Evidence Act, 1872 and had suggested introduction of Section 166 A to the Indian Evidence Act, as under:

166 A (1) In a criminal proceeding, where it is shown that anything in evidence was obtained by illegal or improper

1. *R v Ireland (Nol)*, (1970) 126 CLR 321.

2. *R v Bucan* (1964). 1 WIR 907.

3. *R v Derrington* (1826) 171 E R 188. Also see *Rumping v DPP* (1964) A.

4. *R v Allen*, (1977) Crim L R 163.

5. *R v Pettipiece*, (1972)

6. *R v Ameer* (1977) Crime. L R 104, 105

7. For the position in US, see note, 'Entrapment as a due process defence'.

means, the court after considering the nature of the illegality or impropriety and all the circumstances under which the thing tendered was obtained, may refuse to admit it in evidence, if the court is of the opinion that because of the nature of the illegal means by which it has obtained its admission would tend to bring the administration of justice into disrepute.

(2) In determining whether evidence should be excluded under this section, the court shall consider all the circumstances surrounding the proceedings and the manner in which the evidence was obtained, including —
Developments after Hempton v U S 96 S Ct (1646) (1982)
Winter 57 Indian Law Journal 89 (30)

- (a) The extent to which human dignity and social values were violated in obtaining evidence;*
- (b) The seriousness of the case;*
- (c) The importance of the evidence;*
- (d) The question whether any harm to an accused or others was inflicted willfully or not and*
- (e) The question whether there were circumstances justifying the action, such as the situation requiring action to prevent the destruction of loss or evidence’.*

V.2. (19) However, it needs to be noted that the above changes in the law are not comparable either in terms of the status of the amendment or the emphatic disapproval of the objectionable method of collecting evidence by the police.

V.2. (20) It is also a fact that the celebrated ‘Exclusionary Rule’ in the United States of America is also undergoing various changes including reducing or watering down the rigid standards by which the rule was originally introduced.

V.2. (21) In view of the prevailing practice of the Courts of law in India particularly with reference to be evidence in question, the issue of considering a guideline by law was

contemplated. In contrast to an express position of a Constitutional mandate in the USA (emphatically conveyed by the Fourth Amendment to the Bill of Rights), the position in countries like UK and India are similar and such evidence (gathered in an illegal or improper manner do not *per se* get rejected) and as summed by the law Commission of India in its Ninety Fourth Report,:

“Non-compliance with statutory safeguards may call for strictures against the police and may, also affect the weight of evidence. But the legality of conviction based on such evidence remains unaffected by the defects as such. Though courts have discretion under such circumstances to deal with such evidence as it considers it appropriate, the basic standpoint that illegality in obtaining evidence does not per se affect in admissibility remains still the status of law on that area of the judicial process.”
(Note: - In fact, that was the basic reason as to why the said recommendation was made by the Law Commission of India - which, however, has not been yet considered for any action by the Government of India).

V.2. (22) It is worth noting that the ‘exclusionary rule’, which is currently in vogue in the United States of America, is perhaps unique¹ to that country, in the sense that such a type of rule has not got reflected in almost all democratic nations, though some nations like Germany seem to be having a comparable legal arrangement *vis-a-vis* illegally and unconstitutionally obtained evidence by the police.

V.2. (23) The exclusionary rule in the United States of America is treated as a Constitutional Right of an accused by which any evidence collected or analyzed in violation of the defendant’s constitutional rights is treated as inadmissible during the trial of the relevant case. This right was evolved by the judicial interpretation of the Fifth Amendment to the

1. Justice Berger, *Bivens v Agents of Federal Bureau of Narcotics*, 401 US 388 (1971)(Disenting).

Constitution of the United States of America, which holds that no person “*shall be compelled in any criminal case to be a witness against himself*” and that no person “*shall be deprived of life, liberty or property without due process of law*”. As a result the said constitutional protection becomes operative during illegal searches and seizures. In fact, going further, the practice of the ‘exclusionary rule’ to also apply to violations of Sixth Amendment by which the right to counsel of an accused is guaranteed in the United States of America.

V.2. (24) Justice Malcolm Wilkey,¹ a famous Judge of the United States of America had been arguing vehemently since long (1978) against the said ‘exclusionary rule’ by observing that no other nation is having such a constitutional rule affecting or impacting their respective penal processes. In fact, protagonists of the said rule seem to counter that view by stating that many other countries (particularly democratic and developed nations) have a better police discipline, lower crime rates and better homogeneity amongst its populations. Though it is seen that in many nations like United Kingdom and many Commonwealth nations (and also nations like Germany etc), the courts do not generally admit any evidence obtained illegally and yet the constitutional status for such a rule is rather exclusive to the United States of America.

V.3. (1) **Recommendations of the Law Commission of India with regard to Article 20 (3):** - During the year 2002 (May) the Law Commission of India made over to the Government of India, its One Hundred and Eightieth Report on the subject stated as ‘ **Article 20(3) of the Constitution of India and Right against Self-incrimination.**’ Examining the ‘right against self-incrimination’ from various angles, including a survey of its historical evolution coupled with the occurrence of the said or similar rights in various major countries of the world, the Law Commission of India had

1. Wilkey, the Exclusionary Rule: Why suppress evidence, 62 Judicatures, 215,216 (1978).

commended its views for action. It may be worth mentioning here that in fact, *Miranda*¹ ruling in the United States of America seemed to have created a great impact on the verdict of the Supreme Court of India in *Nandini Sathpathy v PL Dani*.²

V.3. (2) Justice Krishna Iyer noted in *Nandini* that the right was at hand not only at the time of trial but would come into play at a much earlier point of time, more particularly during police interrogations and during various stages of investigation of a crime.

*'Whether we consider the Talamudic Law or the Magna Carta, the Fifth Amendment, the provisions of other constitutions or Article 20 (3), the driving force behind the refusal to permit forced self- incrimination is the system of torture by Investigators and courts from medieval times to modern days. Law the response to life and the English rule of the accuser's privilege of silence may easily be traced as a sharp reaction to the Court of Star Chamber when self- incrimination was not regarded as wrongful. Indeed then the central feature of criminal proceedings, as Holdsworth noted, was the examination of the Accused.'*²

V. 4. (1) Some particular aspects of Evidence obtained **illegally or improperly**: The Code of Criminal Procedure, 1973 prescribes the precise manner in which the police will have to discharge all their responsibilities, *inter - alia*, during the numerous pre-trial processes. This is in particular context of securing of 'facts' as a part of collecting evidence relating to an offence under investigation. Though the Indian Evidence Act, 1872 provides clarity on the standards of evidence that can be considered in any trial, the procedural aspects are to be inferred from the mandate of the Code. The principles of law relating to 'relevancy' and 'admissibility' of evidence are well articulated by the Law of Evidence, 1872. However, the

1. *Miranda v Arizona*, (1966) 384 UAS 436.

2. 1978(2) SCC 424.

Code of Criminal Procedure, 1973, is the guide for all actions by the police in all their pre-trial exertions and the Code prescribes the methods to be followed for the processes of investigation of a crime. In addition, the law clearly indicates the steps to be avoided in all such pursuits. Resorting to impermissible steps in the guise of gathering evidence in a case under investigation cannot remain a secret and is sure to surface somehow. It suffices to point out that under those situations, the efforts by the investigators will be doomed to be a failure as the courts will refuse to entertain evidence which is tainted by impermissible procedures.

V.4. (2) As all procedures and guidelines prescribed by the Code are mandatory, as per law, the investigating officers will have to be conscious of 'what' is to be done at each and every step in the path of investigation of a crime. They must also be clear in their mind to know as to 'how' and 'when' as well as 'where' of all such prescribed steps. More importantly, the investigating officer will have to be conscious of what is prohibited by law in terms of procedural actions as well as know the spirit and purpose of all such directions. They cannot afford to forget that the 'law' (in the current context, the Code of Criminal Procedure, 1973) does not countenance any exceptions to its prescriptions in that regard.

V.4. (3) Actions and omissions committed or ignored by the investigating officer are matters that come under direct scrutiny at various levels and at several stages and by various agencies and systems. Firstly, the superior police officers are expected to closely oversee the working of a case by checking the emphatically prescribed steps and to scrutinize progress of investigation. All such steps will have to be clearly verified to have been done as per law and as per procedure meant for it. Next, the prosecuting agency will surely check each and every step of the progress made from the point of view of prosecution of the case. Finally, the Courts will clinically examine each and every step taken as a part of the trial process.

Failures by investigators will also attract attention of bodies like the Human Rights Commissions and other overseeing bodies. For example, the NPC mandated the establishment of Police Complaint Authorities in each State and the Union Territories, though that direction has not been uniformly or fully complied with by most States or Union Territories of India. (However, many states are slowly falling in line by setting up such high powered bodies and that must ring a bell in the minds of the investigators to ensure their urge to follow the law). In addition to the above, it is surely not possible to ignore the media potential to project any wrongful action taken by the police and to highlight errors and lapses - all of which have legal consequences on the erring (i.e., the investigator). Thus, it would be unrealistic for any investigator to harbor a false or even an unrealistic hope that his failures or misdeeds in abusing the power vested in him for investigating a case would somehow escape notice.

V.4. (4) It surely is most appropriate here to note two distinct and clearly welcome developments that have taken place in the last two decades in India, especially in the context of upholding the 'Human Rights' of individuals (more particularly the accused). The first dynamic change relates to the establishment of the National Human Rights Commission following the enactment of the Human Rights Act, 1993. Based on that law almost all states in the country have established respective State Human Rights Commissions. Unlike in the past where many abuses of human rights occurring in the total range of police activities may have missed notice, notwithstanding the fact that criminal courts - from the lowest levels to the highest levels were in fact dealing such issues. Further, there is no doubt that it is becoming more and more difficult for the lawless in the police systems to violate the prescribed procedures and mandated legal steps in each and every case handled by them and also hope for some sort of an anonymity and aspire an unworthy and an unmerited cover

from any exposure. With changes that have been coming in the recent times, it is no more easy or simple for any to hope to get away from being found out for any procedural lapse/s, without being adversely noticed. Surely with the increasing intensity of public and media glare, which are appropriately relentless in their enterprise and are progressively more and more persistent to highlight all such failures. Indeed such developments are to the good of the community. Besides that kind of scrutiny by many journalistic urges to bring facts to light, we also note many other *suo moto* efforts by the enlightened citizens who may try to seek good governance by such exposures. All such efforts, barring some rare exceptions, are for right and merited reasons to ensure the cause of 'Rule of Law'. More importantly, people in general are getting more and more assertive on all such matters, notwithstanding many instances of exaggerated and false complaints in that regard. In any case, law has also provided answers to some of those features discussed as above, in the context of quality of public life. Thus, the society has to evolve ideas and ways of coming to grips with the main issues, in upholding the 'Rule of Law' as well as in sustaining peace and order in its midst.

V. 4. (5) Perhaps, the other most noteworthy as well as significant change is seen in the emergence of the Right to Information Act, 2005. That law has created an impact of a very far-reaching kind in the promotion of democratic ideals and to weave in an egalitarian culture in our midst. *Prima facie*, the law in question, for a casual perusal may not externally reflect as to how the processes of seeking information can help advancing the good of democracy - as merely seeking information on any matter or seeking access by perusal of relevant files of the concerned public institution may not mean much by itself in terms of the problems in view. After all, such a gain does not reflect as what can happen on such access to information. However, it needs notice that

by such processes, an indirect impetus for elevating the quality of democratic governance is being clearly seen and that most dynamic and dramatic transition (which is also in the making) is perceptibly self-evident. Though the law on Right to Information (2005) has arrived on the national scene chronologically at a later date in comparison to the Human Rights Act, 1993, it is still a clearly perceptible as well as a easily perceivable fact that the said law has created phenomenal impact in the entire gamut of public administration. In a way, it has created greater public impression than the other law in view. There is no doubt that the Right to Information Act, 2005 has surely impacted the quality of democratic life of the country. It is an unanimous opinion amongst the experts in public administration that the direct as well as indirect benefits flowing out of that law are very wide, diverse and are far reaching. Indeed, such total effects are most worthy of notice.

V.4. (6) The Right to Information law has, *inter-alia* mandated the compulsory publication of data, documents and related details from every public institution in terms of their respective domains. Surely enough, that direction has virtually opened the door for greater transparency in all activities of each and every public institution. Most such obligatory responsibilities are now made as specific duties in all such systems and the charter of the said law can be sought by any member of the public, who can easily seek and obtain information relating to any area of activity of the public institution in question. Admittedly, though some exceptions are made in relation to the access to some specified information, the facet of a general air of transparency is now a mandated obligation on each and every public institution in India. The impact of this new law, to say the least, has been really mindboggling. True that a plethora of pleas or applications seeking information as per that law may pose various administrative and other constraints on the public institutions in general, and yet the greatest advantage has been

accruing to the demands of public interests as all steps and actions spurred by this dynamic law are undisputedly to the advantage of the democratic way of living.

V.4. (7) The obligation on each and every public institution to stay tuned to the dictates of openness and transparency in all their dealings has been creating a phenomenal effect on each one of the systems of community concerned. It is most comforting that all public institutions and networks are, by law, bound to display openness and frankness in all their dealings. This is a most welcome mandate of the said law which has paved way for an awesome wave of public accountability. Indeed that dynamic transition has really no parallels in the history of public administration in India.

V.4. (8) Being empowered by the mandate of that most dynamic law, people in general are now in a position to compel visibility of all public actions. More importantly, every citizen is now armed with the needed power to seek and obtain information as per the RTI law and he can readily choose to act on any commissions or omissions by any one in any of those public institutions or authorities. Thus, no data in relation to any activity or no information concerning any public institution can remain behind any veil of secrecy. As a result, each and every step of every public institution is fully accessible, through the working of this most vibrant law. This is so done in favor of every individual and he has no obligation to mention as to why he needs any particular or specific information. Indeed it needs no special argument to assert that there can be really be no secrecy in any area of public activity and in that encompassing vista of public domain of all such public institutions, each and every such new trend is most welcome. Several experts in the area Public Administration and Democratic Governance have called the law on the Right to Information Act, 2005 as the most dynamic enactment made in India since the making of the Constitution of India (1950). In addition to many such positive and commendatory

observations on the working of that law, it is aptly pointed out that the said legislation has virtually conferred a new kind of independence and power to the masses or the common people, (whom, the Supreme Court of Canada referred to as per the real meaning ascribed to it for the term 'democracy'). Surely, the 'common people' are the real masters of the nation in any good democracy.

V.4. (9) In that immediate territory of free, open and obligatory access to information (save some well argued exceptions), the entire range of pre- trial penal processes comes within that searching ambit. All stages of investigation of each crime come up as a natural subject of interest or as a matter of consequence to the public and to any individual information seeker. Barring matters of national security and some specially identified areas, access to any information (which is by law limited in the context of security and related aspects), the prospect of imminent exposure of all illegal steps in most cases of police investigations has to be noted and acted on by the concerned. The emerging scene must convey caution as well as spur a sense of self- protection, prompting a culture of law abiding nature even amongst the most heedless investigators.

V. 4. (10) Admittedly, many constraints are observed in the working of the Right to Information Act, 2005, in the last ten years of its existence. Though there are many practical and working difficulties in the actual implementation of that law, the real impact as well as the democratic worth of that law cannot be ignored. In the background of the fact that some public servants and some wings of administration have sought to limit the scope and provisions of the said law, it is still a matter of the new awakening which has to be accepted. Though some vested interests may prefer avoidance of exposures of their misdeeds, the prevailing intensity of public perception and force of public opinion makes it not so easy to limit the scope of that law any more than what has been already enacted. It is worth noting that many such attempts

to limit the scope of the Right to Information Law have been failing as the people in general have started to slowly realize the potential of that significant tool to the people at large. That awesome power is capable enough to compel real public interest in the most desired facet of total transparency and accountability in the functioning of all public institutions.

V.4. (11) The law on Right to information is really creating a phenomenal impact in elevating a sense of direct and active participation of the people in the entire gamut of democratic governance. The range and depth of information that can be legitimately sought and obtained from all public institutions even by a most unlettered individual is really amazing. Though several difficulties in the actual working of that law are noted wherein abuse of such information so secured are seen here and there. Yet, the true potential of that law is beyond question. Admittedly some of the practical constraints in handling malicious and motivated individuals seeking information from any public institution merits to be addressed well for smoothening the flow of legitimate and lawful use of any information so sought. Yet, the facet of a very perceptible new wave of 'public awareness' on all most all issues and subjects of public concern cannot but be welcomed. Indeed this law in a way reflects the most worthy and priceless advantage of the Jeffersonian ideals and exemplifies the concept of people's participation in the life of the nation. Law in turn has started impacting to instil a healthy impact on the quality and significance of ideal standards in public life in general. The most lively and energetic impact of that law is clearly and fully on all the public departments of governance (in the Union of India as well as in the States and Union Territories). Needless to assert that the police systems are also covered under that awesome sweep. Barring some exclusive areas of national security and some related facets where the needs secrecy may be perceived to limit such classified information, most other areas of law enforcement

work are well within the reach of that law. As a natural result a vast range of law enforcement ventures including investigation of cases fall in the category about which there can be no limitation on mandatory access to information. The impact of all such healthy developments is very notable particularly in exposing abuses of various rights of the accused persons or in highlighting mistakes and misdeeds of any investigative work.

V.4. (12) Till the advent of the Right to Information Act, 2005, many departments under the governments were at best monitored or reviewed by legislatures and other duly constituted bodies. In addition to that, institutions like Comptroller and Auditor General or the Public Accounts Committee and so on fulfill or perform a kind of scrutiny and yet the systems (as for example the police departments) in the past could somehow manage to stay clear of any intense search and scrutiny leading to actions even in merited instances. Though some of the constitutional bodies, legislature, the law courts and even the media would bring to light many failures or abuses in the facets of police administration, as and when it came to the light of such overseeing systems, the intensity and perseverance of such actions were not really focused, barring rare and exclusive instances. But, with the working of the Right to Information Act, 2005, by many individuals and institutions who are able to seek and ferret out even distinctive instances of abuses or other closely guarded information (which were hitherto not permissible under the law as well as in its practice) and thus many failures in the functioning of the departments (police in the current context) are now bound to come out in the open.

V.4. (13) By pursuing various kinds of leads any interested party is now able to seek information on virtually every aspect of law enforcement besides insisting on remedial or disciplinary action, as warranted. Unlike in the past, wherein the general gamut of public administration somehow did not

lend itself for an ambience of openness and transparency in its working, it was generally felt that most public institutions were really not people friendly. But, the new era ushered in by the Right to Information Act, 2005 has really empowered the people to an enormous extent. The power is in the hands of the people at large, so formally and as per law ensured by this most welcome enactment. The purpose of highlighting that fact is to bring it to the minds of police personnel that they have to willy-nilly follow the law in all their actions and in case they fail to do so, they are most likely to face exposure only to be acted on, in a befitting manner, though as per law.

V.4. (14) In the fast changing scenario, erring police personnel (and more particularly the investigating officers) cannot hope to somehow escape notice or being found out in terms of their remiss in their duties, as institutions like the Human Rights Commissions, NGO's (Professing and advancing the cause of various 'Human Rights' of the people at large) and those who are striving to ensure the effective functioning of the RTI law, *inter-alia* have become real tools for exposure of failures in the public institutions and systems. In addition to that apprehension, they cannot forget the critical role that can be played by the law courts in general. A sense of enlightened self-awareness must spur the lawmen to stay well within the bounds of law and save themselves from impending perils of the illustrated kind, by complying with the law as prescribed for all their legal ventures. Thus, the writing on the wall is clear and explicit. In so far as police investigations in the context of the theme of this study are concerned, there is no doubt that all actions by the lawmen, more particularly the procedural actions of the cases under investigation (and even any stray or unconnected or isolated individual actions by policemen) cannot be hidden from being brought into the open in the normal course. Further, with a really swarming posse of myriad visual and print media systems and networks, who are virtually covering almost each and every action and

activity of all public institutions, the public gaze on the police actions is surely intense and comprehensive. Though it may be argued by some that under such circumstances crime prevention and detection may be dulled or the potency of law enforcement may get neutralized to some extent, the truth of the matter is that the new wave generated by the 'Right to Information' directly as well as indirectly helps the compliance to law by the law enforcing agencies in a more realistic manner. Indeed all these 'checks and balance' on the use of police power are surely most necessary.

V.4. (15) The need to fully comply with the law, in letter as well as in its spirit is inevitable for all public institutions and that proposition assumes the most forceful argument in so far as the law enforcement systems in general and the investigators in particular are concerned. Further, in the face of the prevailing reality and the emerging legal situation, there is no choice for them, save to follow the law. Yet, that situation is most welcome. In those contextual situations, all investigations have to answer the correct, lawful and legitimate processes and all steps and measures undertaken for the collection of evidence have to be correct. In the preceding pages, various legal directions stemming from the innumerable verdicts of the Supreme Court and also some High Courts of the country have been narrated so that the processes pursued by the investigating officer will fall in line and stay in compliance to the dictates of the law.

V.4. (16) Any step or action which is not permitted by law is *per se* a violation of the procedure for which the offending investigator will have to surely face penal law or answer administrative consequences. If the impugned illegal action has no direct or tangible connection with a case under investigation, then such perpetration is *prima facie* and independently a crime or a violation that merits due action. But, if the action done is in the line of gathering or collecting the evidence in a case under investigation, then the evidence

so secured may fall short of the standards prescribed by the Code. As a result that tainted evidence may fail to measure up to the exacting standards of evidence prescribed by the Indian Evidence Act, 1872. In consequence, the ill secured evidence would become useless in the eyes of the law.

V.(5).(1) After a careful examination of the prevailing legal approaches to this very important area of penal processes, it can be generally stated that there is a clear uniformity in most of the countries with regard to the law in question. However, United Kingdom had made a law, which has pursued a slight departure to the standard practice with regard to the right of silence of the accused. However, this law has not been tested with reference to the Human Rights Act of UK of 1998. However, when that law was before the European Court, it was directed that certain pre-conditions will have to be perforce imposed before the jury could take into consideration the silence of the accused (to draw adverse inference on that conduct). Further, as the European Court ordered that the accused must under those circumstances have the benefit of a counsel, the law in UK underwent further amendments in the year 1999. This has lead to a peculiar situation where, the accused person chooses to remain silent on the advise of the counsel, then, the courts have chosen to cross examine both the accused and the counsel.

V.5. (2) However, it needs to be noticed that the problem may get complicated when the advice given by the counsel turns out to be wrong, and which may cause prejudice against the accused. As a result, the criminal trials in UK are becoming more and more complicated. As problems of very serious crimes like international terrorism and other deadly violations are making the issue more and more complex, it is seen that the nations are *venturing at making laws, which provide the power to courts to draw various presumptions and other inference. According to the views of the Law Commission of India, all such steps are corroding and are violating the right against self-*

incrimination. It needs notice that even China has introduced a regulation in some regions which entitles an accused to remain silent, in contrast to the changing scenario on USA and other countries like Australia.¹

V.5. (3) Appreciating the fact that while seeking changes in the Code to make them consistent with the Constitutional mandate under Article 20 (3), the Law Commission of India has categorically suggested that no change be made in the Code, as any such step would come in conflict with the guarantee ensured under Article 20 (3) of the Constitution of India.

V.5.(4) **Importance of avoiding 'third degree' approaches:** 'Questioning an accused' is surely a complex but challenging task which has to be well accomplished within the bounds of law. Much has been said by various verdicts of the Apex Court of India in calling for a humane, lawful and dignified conduct of investigation by the police in general and the investigators in particular to ensure that no law is broken in the quest of any investigative efforts. When pressed hard by various kinds and types of pressures, an investigator may be tempted to resort to shortcuts and yet that path is eminently avoidable. Amongst the most heard charges against the police (investigators in particular) are the allegations of abuse of the physical person of the accused or suspect. Though the problem of crude physical use of force is more or less prevalent in all nations, there is no gain saying that it is not permitted under the law and more importantly, no one will come to the rescue of an investigator when things go wrong. No one will agree to support such an investigator and even his post incident claim that he resorted to force for either detecting the crime or for any other professed social good will be of no avail. There are innumerable examples to convey that lesson and it is necessary that the police organization must place lawful conduct bereft

1. 180th Report of the Law Commission of India, 2002, at P 46.

of any kind of abuse as its creed and style. That exalted standard must not only be professed (as is being done now from all platforms) but also practiced in a real way and for a good measure

The investigators would do well to remember some of the most compelling reasons to abjure 'third degree' styles in their work

- It is the most flagrant violation of Human rights of the accused.
- Law clearly and expressly prohibits it.
- It would be paradoxical as well as illegal if a policeman, who is expected (and directed to be so) to uphold the law himself violates the law. It undermines human dignity. It is a crime against the individual. It brutalizes the police.
- It brings the systems to disrepute (the entire Criminal Justice System gets a bad name, though the police will suffer worst consequences of all such misdeeds).
- If an investigator (police) believes in his fist, he would be less and less dependent on the use of his wits
- It erodes the credibility of the Judiciary.
- It exposes the offending lawman to penal and administrative consequences.
- It is a short-cut method and by resorting to it, the police (or the investigator as the case may be) lose zeal to fight crime in real and scientific or methodical manner.
- It fuels public resentment against the police and slowly erodes very credibility of the police as a law enforcement system.
- It affects the self-respect of the police.

=====

CHAPTER 6

Search for 'Facts' as a Dominant Charter in all Police Investigations - its Impact on 'Questioning an Accused'

VI.1. [1] While examining the fundamental principles of the Criminal Justice System prevailing in India, including the Constitutional provisions relating to Criminal Jurisprudence, the Committee on Reforms of the Criminal Justice System ventured to take a close look at the need to revisit the major penal laws of India (i.e., the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act), in the particular context of suggesting reforms in the Criminal Justice System. That step was intended to make the Criminal Justice System effective and efficient. In fact, the terms of reference by the Government of India commended to the said Committee on the Reforms in the Criminal Justice System in India, contained five specific issues for consideration by that expert body.

VI. 1. (2) As the object of infusing a sense of dynamism in the entire criminal justice arrangement as is prevailing to-day is perhaps a most critical need that is engaging the attention of the nation as a whole, a verbatim reiteration of those terms of reference is most appropriate here. They were:

- I. *To examine the fundamental principles of Criminal Jurisprudence, including the constitutional provisions*

relating to criminal jurisprudence and see if any modifications or amendments are required thereto.

- II. *To examine in the light of findings on fundamental principles and aspects of criminal jurisprudence as to whether there is a need to rewrite the Code of Criminal Procedure, the Indian Penal Code and the Indian Evidence Act to bring them in tune with the demand of the times and harmony with the aspirations of the people.*
- III. *To make specific recommendations on simplifying procedures and practices and making the delivery of justice to the common man close, faster and uncomplicated and inexpensive.*
- IV. *To suggest ways and means of developing such synergy among the Judiciary; the Prosecution and the Police as it restores the confidence of the common man in the Criminal Justice System by protecting the innocent and the victim by punishing unsparingly the guilty and the criminal*
- V. *To suggest sound system of managing, on professional lines, the pendency of cases at investigation and trial stages and making the Police, the Prosecution and the Judiciary accountable for delays in their respective domains.*
- VI. *To examine the feasibility of introducing the concept of 'Federal Crime' which can be put on list of the Seventh Schedule to the Constitution.¹*

VI. 1. (3) After examining a range of relevant factors in the context of an extensive scrutiny ventured by the said Committee, a series of recommendations were made by that expert body. Many steps suggesting various actions to tone up the fundamental parameters that guide the penal justice

1. Report of the Committee on Reforms of Criminal Justice System –headed by Dr. Justice V S Malimath, Report submitted to the Government of India during the year 2003.

system were made. *Inter-alia*, the expert body most convincingly suggested a radical approach to the entire penal justice processes to be founded on the need for making 'the quest of truth', as the primary and dominant goal in each and every venture undertaken by the system. In that perspective, the police, the prosecution and the courts were to be given a 'charter' by which the urge for 'the quest of truth' is to be made the foundational buttress for all exertions undertaken by each one of them. In that context, the quest for '*truth*' would, as per the committee become the ethos of the entire Criminal Justice System. Thus, not only the investigator but also the prosecutor and the judge as well, in that sequential order, as envisaged by the law, are to be assigned a basic but compelling duty to seek and act in terms of their respective exertions and do so in 'quest of truth' on the respective matter or task before them. Thus, urge to '*seek the truth*' must become the central charter of the entire process. Whether it is a matter under investigation or is a presentation of the case for the prosecution or the trial processes conducted by the court as per the Code, the core theme of 'search for truth' must supervene in all of them. Thus, each wing of the Criminal Justice System has to work towards that specific goal. More importantly it needs to be kept in mind that the effort of the entire arrangement, as commended by the Committee on Reforms of the Criminal Justice System has to be geared to move it for realizing the goals of ensuring '**Justice**'- primarily to the victims of crimes. Further, it must be so done in the best interests of the society without forsaking the requirements of a fair trial of the accused. Some of these critical aspects merit a closer scrutiny in the vibrant context of the theme of this study. As a result of that encompassing goal, the Committee on Reforms of the Criminal Justice System had made a series of suggestions to infuse a sense of vitality into the Criminal Justice System in India. It can be repeated here that the Government of India had in its preamble

to the formal government order constituting the said expert body categorically conceded that

'... People by and large have lost confidence in the Criminal Justice System... Victims feel ignored and are crying for attention and justice ... there is need for developing a cohesive system in which, all parts work in co-ordination to achieve the common goal'.¹

VI. 1. (4) The report of the said expert body deals comprehensively and exhaustively with most questions on the criminal justice processes ranging from the very edifice of the Adversarial System that is in vogue in this country. Further, it extends comprehensively to various other aspects that are currently functional in the said system. In addition, the Committee in its report has analytically contrasted the relative merits and demerits of that arrangement *vis-a-vis* the Inquisitorial System. However, on the balance of totality of advantages as well as the choice or option to draw the good features from the Inquisitorial System, the Committee has found favor to commend continuation of the existing arrangement (i.e., the Adversarial System) as a better way of dealing with the problem of crime. Very interesting array of details have been enumerated in that Report, in addition to pointing out some of the specific or particular shortcomings of the current system that are hindering good of the Criminal Justice System in India. Even from an academic point of view, the report is indeed very ably presented and the ideas are thought provoking.

VI.1. (5) Subsequent to the submission of the said report to the Government of India and following the natural public access to that report, there were many criticisms concerning several recommendations made therein. The report also generated many public protests from various quarters

1. Notification of the GOI constituting the Committee on Reforms of the Criminal Justice System, dated 21/11/2000.

including many individuals and groups, who claimed that the ideas suggested were highly detrimental to the very foundations of 'Human Rights' of the people in general and that of the accused persons in particular. However, it is also a matter to be noted that many such critical views were essentially stemming predominantly from advocates and NGO groups who spoke at lengths about the negative impact of those recommendations on several Human Rights issues. Yet, it ought to be pointed out that the viewpoints commended by the report were not discussed at important levels of governance as it ought to have been done. Such a step was essential more particularly from the fact that those issues dealt by the report are very foundational to the massive crime problem that is confronting the nation. Subsequent to those developments, the report somehow seemed to go into a sort of oblivion and it is a matter of natural concern to any law abiding citizen of India that the report of the said committee has remained in the corridors of the concerned ministry. Barring occasional references to the said report here and there, the debate on that critical report has virtually stopped. Further all the suggestions and recommendations of the Committee on Criminal Justice Reforms, have not been really considered by the powers that be, notwithstanding the real fact that the Report truly merits a fuller and meaningful debate at all appropriate forums.

V.I. (6) As some of the specific suggestions recommended by the said Committee are indeed relevant to the current theme of study, explicit reference to particular suggestions are surely germane for further discussions. As can be easily perceived some of the ideas suggested by that committee are very valuable to improve the effectiveness of law in terms of justice to the victims of crime. Therefore considering them here is perhaps inevitable. Furthermore, a closer look at some of those thought provoking and innovative ideas are sure to help the focus and purpose of police investigations and to elevate them

to greater heights of professional excellence. Such an intense analysis is bound to advance the cause of *Rule of law* in general.

VI.1. (7) The Committee on Reforms of Criminal Justice System has made in its detailed report¹ a very interesting analysis on the two aspects of 'Truth' and 'Justice'. Further, it has also reflected the inter-relationship that is supposed to subsist between the above two notions. Truth, according to the said Report, is the 'ideal' that ought to inspire the entire system and if so rendered, then, Justice would flow in consequence of all actions that are taken in pursuit of truth. In fact, the said report advances an argument that 'truth' and 'justice' are synonymous words. Going further, it makes a strong claim that the concept of 'Truth' as a dominant value is still sustained strongly in the minds of the Indian society (more so in the conduct of all public activities including penal justice processes). In addition, it asserts by necessary implications that such a perception seems to be so more particularly owing to the traditional values that inspire the thinking and actions of the people of this country in general. Thus, the notions about 'Truth' and 'Justice' are to be comprehended as deep-rooted perceptions in the heritage of our country. However, it seems that the place of primacy of the said concepts in the legal system has somehow got relegated as an appendage to the 'form of law' than on its content or substance. This stalemate has been so situated in the face of the strongly entrenched Anglo-Saxon system of judicial arrangement, notwithstanding the fact that the said system is an alien idea (i.e., to India). We need to keep in mind that the current system of law is an enforced arrangement so imposed in the entire sub-continent by the British masters, who controlled all the colonies occupied by force by the East India Company during the previous centuries.

VI. 1. (5) Based on such an argument, the Committee

1. *Report of the Committee on Reforms of the Criminal Justice System, (2003) at P. 28/ chapter 2.15.*

has called for a *pro-active* role to be fulfilled by a judge in not only doing justice but also in complying with the law in terms of the procedures and processes. Further, the Committee commended that the judge ought to be striving to ensure that justice is done in each case and in support of that assertion, has adverted to the verdict of the Apex Court in *Mohan Lal Vs Union of India*.¹ The relevant portion of the verdict is surely worth quoting:

'In such a situation a question that arises for consideration is whether the presiding officer of a court should simply sit as a mere umpire at contest between two parties and declare at the end of the combat who has won and who has lost or is there not a legal duty of his own, independent of the parties to take an active role in the proceedings in finding the truth in and administering justice? It is a well accepted and settled principle that a court must discharge its statutory functions- whether discretionary or obligatory- according to the law in dispensing justice because it is the duty of a court not only to do justice but also to ensure that justice is being done [emphasis supplied].

VI. 1. (6) Logically arguing in favor of a more creative and participative role of a Judge, the Report of the Committee on Criminal Justice Reforms commended that 'the concern for and duty to seek the 'truth' should not become the limited concern of the courts. It should become the paramount duty of everyone to assist the court in its quest for truth.' (See Page no 29/2.16.9 of the Report)

VI.1. (7) There is hardly any argument that can surface on the averment of the Committee that, for justice to be done, truth must prevail. It is the truth that must protect the innocent and it is truth that must be the basis to punish the guilty. Truth is the very soul of justice.... This can be achieved by

1. *Mohan Lal v Union of India*, cited at P 29 of the Report of the Committee on Reforms of Criminal Justice system in India (Report of March 2003).

statutorily mandating the courts to become active seekers of truth.(at Page no 29/2.16.9).

VI.1. (8) Besides commending a new and more inspiring preamble to the Code,¹ with an emphatic assertion to 'seek truth' added as its goal, the suggestion of the Committee also calls upon the superior courts to expand more realistically the scope of section 482 of the Code to prevent abuse of the process of the courts in a dynamic way and also to extend that power (the power under Section 482 of the Code) to subordinate courts. Such a step, according to the said report, is bound to advance the cause of '*justice*' in most meaningful ways.

VI.1. (9) Flowing out of the suggestion to pursue 'Truth' and in that pursuit to block all technical shortcomings which most of the time gets converted or gets abused as an escape route to the accused who may be really guilty (in truth or in reality) has a deeper implication. By availing such unmerited escapes, the guilty more often than not succeed unjustly to avoid the richly merited legal consequences. This happens more due to technical inadequacies of the evidence at hand or due to non- examination of material witnesses and other shortcomings, most of which can be plugged by a purposeful and pro-active venture by the judge, to get to the 'truth of the matter.' If such a path is chosen to decide the case on such a perception, then, the end results would be more humane and just.

VI.1. (10] The Committee on Reforms of the Criminal Justice System has very correctly observed that the quality of investigation needs substantial improvements, which is very critical to the very processes of law enforcement in general and crime prevention and detection in particular. Owing to several reasons, the professional standards in the vast areas of investigation of crime have been eluding the police systems.

1. *Recommendation No 1 of the Report of the Committee on Reforms of the Criminal Justice System – at P 266 of the Report.*

As a result the outcomes of most investigations suffer in very serious ways.

Notwithstanding the fact that the police systems in general have various kinds of resources at an improved level, the stalemate of poor professional standards stare at us. It needs notice that the basic potential of the personnel at the cutting edge levels of the police organizations, quality of preparedness, standards of investigative work, work ethics and strength of commitment to 'rule of law' have not reached desirable levels. On the contrary the standards are at clearly unacceptable levels, as they are really at deplorable conditions. Poor professional standards, inadequate or cursory supervisory efforts, poor public support and related shortcomings have been corroding the outcome of a massive majority of police investigations in general. Besides poor professional approaches, the constraints of law have also contributed to the unwholesome levels of investigative work in general. In this regard, the views of the IIIrd National Police Commission are still being ventured for implementation, through the somewhat belated follow-up actions, spurred only by the determination of the Apex Court, seemingly attempted rather at a painfully slow pace. In that particular context, the views of the Committee on Reforms of the Criminal Justice Systems really focuses on the abysmal situation in relation to justice to victims and the need for ensuring punishment of the guilty in all crimes reported, so that each one of them is acted on as per law.

VI. 1. (11) However, observations of the Committee on Reforms of the Criminal Justice project a clear and manifest pointer to the prevailing realities in the area of police investigations. That aspect, in the critical context of the theme of this study merits closer scrutiny. Commending the combined might of the Criminal Justice System to the task of 'Search for Truth' is surely one of the most significant recommendations of the said Committee, besides various other specific and

emphatic suggestions covering the overall gamut of the criminal justice arrangement as is prevailing in India today.

VI. 1. (12) Notwithstanding the assertion of the Committee on Reforms of the Criminal Justice System on the utility value of making the pursuit of 'Truth' as the main focus of the investigation, prosecution and trial of criminal cases, there are certain visible constraints to follow that approach wholesale. That is more in terms of the practical issues rather than on the theoretical compliance to that noble idea. This is so as the term 'Truth' in the context of ascertaining the 'reality of events' in a matter (which is under scrutiny before a judicial forum) is not fully the same as ascertaining 'facts'. It is seen that the two terms (i.e., truth and justice) are often used as interchangeable words. Though most dictionaries define the two words in similar terms, which are almost analogous and yet, they are not the same. The word 'Truth' can be comprehended from the point of view of etymology or orthography, besides the modern day meaning assigned to it in various standard dictionaries. According to some linguistic experts the English word 'true' is drawn from old English *tri* 'ewp, *tre* 'owe and is also seen to have its identity from an old Saxon word (*gi*) *truui*, and to old German word¹ (*ga*) *triuwu*. Further, the word has various meanings ascribed to it. However, it can be said that 'truth' involves both the quality of faithfulness, (or fidelity, loyalty, sincerity, veracity) and that of 'agreement with reality'. The said word seems to have been used under the Anglo-Saxon legal enunciations. However, there are a large number of acclaimed theories that assert a valid basis for deciding how the words, symbols, ideas and beliefs are to be properly considered as true by a single person or an entire society. In fact, several substantive theories abound that realm. Though exhaustive commentaries on what 'truth' is can be seen not only from a philosophical or intellectual or scientific view points, it is also simple enough for us to note

1. Northvegr.org- A concise Dictionary of old icelandic. Getr. T Zoega (1910).

that it is not easy to clearly and precisely say as to what should be the real or tangible facet of truth. In addition, there seems to be an emotional quotient in understanding that notion and more than that, comprehension as to what the truth is may vary from person to person and amongst groups of people belonging to different identity. Thus, it (i.e., the word truth) may not have a clearly discernible yardstick to enable us in knowing or understanding or appreciating the real and precise meaning of the said word.

VI.1.(13) Though the primary suggestion of the Committee on Reforms of Criminal Justice System advances a very appealing idea in terms of making the 'search for truth' as the foundation for all enterprise of the Criminal Justice System, the actual working of that idea may at some point of time pose several difficult and at times even conflicting situations. It may not be easy to identify or define all the possible blocks that may come in the way of its application to the penal processes. Similarly, it may not be easy to suggest ways by which the legal regimes can meet all those instances. Further, it is also worth remembering that such a change in the foundational approach of the law may cause some confusion in the entire system, besides confounding many on that approach. Admittedly, the highly treasured national motto of India which eloquently asserts that '*Truth alone will triumph*' is undoubtedly the highly inspiring proclamation in our national perspective. Surely it adds to confidence building of the masses and also is an assuaging statement that paves way for patience in seeking justice, especially amongst the victims in particular and the people in general. However, it is also a well-accepted fact that a commonsense understanding amongst people is that the concept of 'truth' is at times, somewhat 'abstract'. Further, such a perception directly relates to reality or truth in its most bare form and that perception needs some more acts (which follows its understanding or its appreciation) like interpreting or understanding the term

'truth' in the context of its impact on life. The real impact of 'truth' is to be seen as a possible inference based on perceivable facts or situations. As a natural result, such an inference on any aspect of 'truth' gives an impression that trying to found the legal enterprise on the peg of 'truth' may lead to complexities. In fact, a plea to seek recourse to an assessment of truth in that compartment is not to find fault with the idea of 'truth' in its entirety, which is surely elevating. But, from a realistic point of view, such an approach may pose various problems in theoretical as well as practical terms. However, we are surely fortunate that the relevant text of the Indian Evidence Act, 1972 had, (and has, as that law is currently functional) in a way comprehensively met the same goal that the Committee on Criminal Justice Reforms has suggested in its charter to lay the ultimate emphasis on the idea of 'Search for truth'. This seems so, as the search for 'facts', (as so emphatically and clearly prescribed by the Indian Evidence Act) in seeking or securing all evidence is a more realistic strategy and is clearly a down to earth proposition. Perhaps the difference between the two ideas (one commended by the Committee and the other prescribed by the Indian Evidence Act), needs to be carefully comprehended. Though both of the ideas may seem to be similar for a cursory view, there are subtle differences separating them and understanding those facets may warrant some elucidation.

VI. 1. (14) It is appropriate to point out that a 'fact is basically something that exists, or is present in reality'. For example, there are things that can be seen visually, and these are the things that can actually (physically or even by a scientifically reliable process) be verified. 'Facts' in real terms relate directly to objective matters rather than subjective ones. It is not just something that a person believes in, but rather these are more or less the things that can be observed or established empirically, or noted by the senses. Thus, facts can be seen and/or heard, as well as proven by the various senses.

(These ideas are in fact reflected in the wordings employed by the Indian Evidence Act, 1872). In contrast to this view point, it can be seen that 'truth' can be described as the state of a certain view on a matter, may it be a person, a place, a thing or an event. In a way it can be said that 'truth' is what a person has come to believe on some matter. If he believes that something is true, then it is deemed 'true'. It may also answer questions of what's really happening. In a technical sense, 'facts' can answer certain 'why' questions, and further, it can answer other questions like 'where' or 'when', and even 'how', while truth may answer a question as to 'why' of a particular proposition. The question of 'how', and even 'what', are said to be answerable by either of the two. Stated very tersely, it can be seen that the concept of 'truth' has an emotive content and it may vary from person to person or from society to society. Given that complexity, we can see that such conflicts may at times pave way for many kinds or types of self-contradictory situations and such a stalemate may hinder us in developing any idea in establishing a '*truth*' of a matter in itself.

VI. 1 (15) Thus, relying only on the emotive thinking of 'truth' in the penal processes may not be an easy solution for implementation. Furthermore, it has to be conceded by rational view that instead of seeking 'truth' of a matter, venturing to approach any issue or facet of effort to seek 'facts' (and facts alone) would be more practical. That is precisely so if the effort is in pursuit of seeking to know the event or incident as it had happened in relation to a crime or an offence. That contention applies to events occurring not only during a trial, but to other events preceding it in terms of investigation or prosecution, as the case may be. It can be even said that seeking the 'truth' or searching for 'truth' in an investigation is no doubt a laudatory and very worthy goal. It reflects the urge and resolves to find the reality - which is the path to fix the legal responsibility for any act or omission, based on which the

law of crimes prescribes legal consequences. 'Quest for truth' is even an inspirational objective and yet it may mean some complexities as the notion of truth is not directly a 'fact' (which may be the object of the investigative effort in a case). Further, it is also worthy of note that 'truth' is more closer to an inference in the mind of the person who is asserting that claim of 'truth' and further it has an expressive content. Truth, in addition is the culmination of an inference based on various independent facets consisting of facts or ideas. Thus, an emotive content tends to create a kind of aura that is not found in 'mere facts' - as is to be gathered as (intra-dependant and at times inter-dependant) pieces of evidence under the Indian Evidence Act, 1872. Thus, in a way, the concept of 'search for facts' (as sought by the Indian Evidence Act, 1872) is seemingly much easier proposition for comprehension, at least, at the level of the investigators. It is also easier for practical application by the law enforcement agencies in all their exertions.¹

VI. 1. (16) A very important aspect of the current legal system prevailing in our midst is the foundation of the concept of the 'Rule of Law' - which means 'Rule by law and not by men'. Further, that really worthy elemental legal concept hinges on the idea that the substantive law defines the rights, liabilities and duties of persons. Those facets are to be ascertained through the judicial processes by the sound working of the adjective laws- that include the procedural and evidentiary standards. It needs no special assertion that the yardstick provided for acceptance of evidence is surely very precise and exacting. Evidence, thus becomes the most emphatic assertion of 'facts' and which therefore becomes the best deciding foundation for all legal adjudications. Evidence is often compared to precise legal practice as logic is said to relate to the idea of 'reason'. As J. Bentham has asserted²,

'evidence is any matter of facts, the effect, tendency or

1. Based on 'Appreciation of Evidence in Criminal Cases', by Justice U L Bhat, NJA, Bhopal, India 2005 at P1.

2. cf Best on Evidence Sec 11 citing 1benth Jud Ev 17, 18, 48, 49.

design, affirmative or dis- affirmative, or the existence of some other fact, of the existence of some other matter of fact'

VI. 1. (17) However, the scope and ambit of 'evidence' in its actual working during a judicial processes, such as in a criminal court, is clearly more limited, as it has to keep in mind the requirement of 'relevancy' of the said evidence. Another crucial aspect of evidence as per law is the facet of its 'admissibility'. Each and every piece of evidence tendered by any party before a court is to first pass the test of relevancy and next has to fulfill various conditions with regard to its admissibility. In that engaging context the definition of the term and 'Evidence' as per the Indian Evidence Act, 1872 is appropriate for citation here.¹ Evidence" means and includes-

- (a) all statements which the Court permits or requires to be made before it by witnesses, in relation to matter of fact under inquiry; such statements are called oral evidence;
- (b) [all documents including electronic records produced for the inspection of the Court];²

Keeping the combined implication of terms like 'evidence'; 'relevancy' and 'admissibility' as provided by that law in mind, fruits of investigation will have to be reflected in total compliance to those guidelines and standards. (All these steps have to be reflected by the investigating agency while making presentation of its case before the appropriate court of law- through the means of the prosecuting agency).

That facet of accord with Law, along with the compliance to other legal directions in terms of presenting evidence, advances the cause of upholding 'rule of law', in best possible ways. The underlying purpose of pointing out above provisions of law is to indicate that the Law of Evidence visualizes the enunciation of 'matters of fact' under an inquiry. That in

1. Vide Sec 3 of Indian Evidence Act, 1872(clauses provided therein).

2. Substituted by Information Technology Act, 2000/Sec 2/SchII W.e.f 17/10/2000.

effect, signifies the mandate prescribed by Law to get at 'facts' and secure evidence to bring home that 'fact' before the legal forum in question, so done in a prescribed manner.

VI. 1. (18) The most significant thing in relation to the idea of pursuit of 'truth' or 'quest for truth' is perhaps a little more wider than what the term 'evidence' by law would permit. Predominantly the matter in pursuit during a criminal trial is the 'fact', about which evidence is being advanced by either of the parties when a dispute is being resolved by a court.

VI. 1. (19) At times it is noticed that many lay persons ascribe the failure of a case launched by the State before a court to rigidity in the appreciation of evidence or in making things too technical (by the courts or the arguments by the counsel/s) with regard to a case. Any one not conversant with the nuances of interpreting the law (more so a penal law), may find such an inference on the legal processes as 'rigid' or merely 'technical' and that idea may even appear to be appealing to others as well, as most of them may perceive the end results based on that myopic way of inference. However, that is not true or correct as such a stalemate is not the real shortcoming of the concept of rule of law. On the contrary it really exemplifies the concept in a most eloquent way. No doubt failures of seemingly iron clad cases wherein violations of law/s by a person/s gets thrown out by the courts on the ground that the prosecution has failed to make out a case as per law may confound the lay people as to the ways of the law (as it works in such cases) and some may even harbor a mistaken perception that processes of interpretation can be manipulated brazenly to help or harm persons based on who is interpreting the law and how he accomplishes such a goal. It is easy to see such instances getting illustrated by numerous essays on the technical aspects of 'Interpretation of Statutes' where the Courts hearing a case may find that the evidence adduced or advanced does not fully cover the proscribed conduct in a case

before it. Primarily, such a case may fail on the ground that facts submitted are not precisely tallying with the exact and emphatic prescriptions or proscriptions (in terms of the letter of the law) of a penal enactment and therefore, the court has no option but to record its finding accordingly.

VI. 1. (20) We need to keep in mind the historical aspects of the evolution of the criminal law and note that the very edifice of 'rule of law' is founded on the exacting concept of clear and precise enunciation of the law and the need to exactly establish the charge based on evidence secured. In fact, the basic premise of the need of a law in being clear, certain and uniform has made the sequence of growth of various strategies of law enforcement to play a creative role in order to see that strategies employed by them are at par with the styles of the interpretations of the law in as close or as precise manner. This has been so for many reasons, amongst which the purpose of ensuring human rights of persons (accused) is a top priority and the enforcement of law has to be done only in accordance with the law. That brand of vital steps help qualitative improvements in the enforcement strategies. Though delineating on this facet may take us away from the main focus in view, it is perhaps necessary to mention here that nuances of interpretation of statutes have proved to be resilient to ensure that the penal processes are humane and strictly as per law, besides ensuring that the objective of the law is fulfilled. Development of the strict liability concepts or invoking the mischief rule and so can be cited to indicate the way in which the law has been responding to such situations. But, it must be kept in mind that such an approach is by itself a limited venture depending upon the type of law and the letter and wordings or text of the law, about which the case is at hand.

VI. 1. (21) To illustrate the point in question more emphatically, we can remind ourselves the innovative but patently just and fair argument advanced by that enigmatic

advocate Portia, in Shakespeare's immortal drama called 'the Merchant of Venice' to prevent a palpable abuse of law, which appeared to be inevitable at a particular moment in that play. The ingenuity by which the famous play-writer has resolved the apparent crisis is amazing to say the least. After all, the loathsome moneylender Shylock could only be permitted by law to take 'a pound of flesh, from the place closest to the heart of Antonio', but could do so only by ensuring that 'not a drop of blood' spills, while redeeming his claim. In fact, the idea conveyed is in simplest terms a fantastic enunciation of the precise meaning and purpose of 'law' so graciously asserted by that handsome lawyer in that fascinating play. That style in a way explains as to how the law is to be interpreted, keeping the notions of 'Justice' in mind. After all, the purpose of law must be 'justice' and not the mere implementation of the 'law' in itself. {In fact, this most significant aspect has been repeatedly reiterated by the Committee on Reforms of the Criminal Justice, in its dynamic report to the Government of India (2003)}.

VI. 1. (22) Though in actuality and in a good number of normal situations as seen in the working of the law, the advantage of a very strict and rigid interpretation of the law (which of course is mandated and is perhaps inevitable) may be enjoyed more by the persons, who gain from such technical escape routes. Illustrations abound such brand of legal results in trials as a triumph of a stunning argument or crafty and brilliant advocacy. Perhaps, glaringly visible cases (which are unfortunately very large in sheer numbers) of persons who easily circumvent the law come to our mind. Catalogues of cases of persons who have been able to stir out of the well meaning legal net by that kind of machinations are apparently big.

VI. 1. (23) Perhaps all round prevalence of that category of cases or instances of a disheartening kind may have inspired the views of the Committee on Reforms of the Criminal Justice

System in India, to rely more on 'truth' so that the sweep of the law would be more encompassing and enable the law to disregard such devious ways to beat the law. But, such a contention has to reckon many legal and practical hurdles discussed as above. No doubt, it can be visualized that resort to a more rigid way to deal with the interpretation of the law may not result in any innocents being punished unjustly but is most likely to reduce the chances of the really guilty escaping the law. In fact, there are many who comment on the prevailing legal system and its effect by comparing it with a medically related tongue-in-cheek saying which allegedly recounts the triumphant claim of a surgeon rushing out of the medical emergency room and shouting hoarse that 'Operation is successful, but patient is dead'. However, the working of the law in real terms is slightly different. This aspect of law is beautifully clarified as well as explained by Herbert Packer, in his 'Limits of Criminal Sanction' as to the difference between a person who is legally guilty in contrast to a person who may be factually guilty but not held, legally as such (i.e., legally guilty). This may so happen due to various legal hurdles that are designed to prevent abuse of the legal processes.¹ Thus, with the established processes of penal justice, the scheme of the entire arrangement is not easy to be altered, though it is clear that unlike the traditional notions of 'Dharma' or 'Truth' and so on, which have a slightly different perspective unlike the legal processes where the decisions or the outcome of a penal trail can be different and distinct due to the strict rules of interpreting the procedural and evidentiary laws. Yet, we can also note in this regard, the impact of traditional views of the society, though they may not be very clear and decidedly perceptible to reflect the mental make up the people in their collective wisdom. Perhaps, rooted to the traditions and values that have inspired our heritage for well over five thousand

1. Herbert J Packer, *Limits of Criminal Sanction*, Stanford, *Two Models of Criminal Process* – Part II PP C 8-149-172.

years, the view point on these facets in the thinking of an average citizen may be seemingly different with regard to the working of the penal laws and punishment of the really guilty. In fact, such a perception seems to be in total contrast with the 'Anglo-Saxon' legal philosophy to which we are currently wedded, though by sheer force of historical circumstances. Lest we forget, the Anglo -Saxon concepts are truly alien to our thinking. They are clearly different from the traditional points of view of our naturally inherited ideas and yet, we are consigned to that historically recently acquired legal mode due to the events of the past.

VI. 1. (24) However, we need to remind ourselves that the theme of this study is on focusing on the professional issues relating to the subject of 'Questioning an Accused' and to suggest better ways of attending the said task within the ambit of the existing legal arrangement. Even then, for several essential reasons any effort to suggest a better legal regime is not out of the context at all! However, commending suggestions with regard to the substantive, adjective and procedural laws are perforce made incidentally. Main focus of this study is in terms of improvement of the professional standards within the scheme of police organizational working.

VI.2. (1) Indian Evidence Act and seeking of 'facts': Search precisely for 'facts' (not the search for 'truth') is the charter assigned to the agency saddled with the tasks of investigation of crime by the Indian Evidence Act, 1872. This is manifestly clear in the context of the power and duty conferred upon the police by the laws governing the total range of Criminal Justice Processes and related arrangements. Police systems in India constitute the major or premier penal law investigative agency and such a mention is essential in the context of the theme of this study.

VI.2. (2) The Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 respectively provide the broad contours of the procedures and methods to be followed to

conduct Investigation (as per the code) and for gathering evidence to be submitted before a court of law. Further, the law clearly demarcates the standards of evidence that is to be gathered by the police in each such investigative enterprise and for a later process of prosecution of the offenders.

VI.2. (3) In order to grasp precisely the strict standards so evolved by the said procedural and adjective penal laws, we may have to look closely at the fundamental aspects of investigation including the very meaning of the term 'investigation' employed by the Code.

"Investigation", as per section 2 (h) "includes all proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this regard".

VI.2. (4) Stated differently all actions and procedures undertaken by an authorized person under the law (as above) are to be done with a view to gather or collect evidence in relation to an offence and all such steps become a part of the processes of 'investigation'. It would be appropriate to discuss the verdicts of the Apex Court on the question as to 'what is investigation' and further know the stages of those legally prescribed enterprise by the police. We also have to note other relevant mandates of the Supreme Court on the broad theme of 'Police Investigations' under the Criminal Justice System in India. The task assigned to the police is to 'investigate' offences and that is intended primarily to identify and gather facts (in relation to an alleged crime), followed by the action to secure the needed evidence with regard to each such fact in relation to the crime under investigation.

VI.2. (5) The substance of investigation is really given a sharp focus by the crisp wordings of Section 157 of the Code of Criminal Procedure. A plain reading of the said section illuminates several aspects of the task and goal of investigation

1. Section 157 of the Code of Criminal Procedure, 1972.

in a clear and visible manner.

Section 157. (1) If, from the information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate to take cognizance of such offence upon a police report

*and shall proceed in person, or shall depute one of his subordinate officers not being below such rank, as the Government may, by general or special order prescribe in this behalf to proceed, to the spot, **to investigate the facts** and circumstances of the case, and if necessary, to take measures for discovery and arrest of the offender:*

Provided that -.....

(Note: the law provides steps that the Station House Officer can take in relation to offenses which are not serious (vide Sec 157 (1) (a) and in cases where investigation is refused 157 (1) (b). Vide the proviso to the same section, guidelines are issued regarding the statement of a complainant in a rape case and specific procedural requirements are directed on the Station House Officer registering a case of rape).

However, vide 157 (2) the Station House Officer is bound to convey to the concerned jurisdictional court the reasons for non-compliance to the directions contained in Section 157 (1) (a) and (b).

VI.2. (6) Undisputedly, the most fundamental aspect of 'investigation' is to seek and ascertain 'facts' with regard to an offence (true or alleged as per complaint) and this gathering of 'facts' is to be done with a view to collect evidence in that particular case under investigation. Thus, the issue of 'investigating the facts' and 'accumulating all evidence in support of those 'facts' (emphasis supplied) are the real pith and substance of the entire process of investigation. Further, those tasks have to be accomplished in a logical and

methodical manner.

VI.2. (7) It can be seen that the relevant portion of Section 173 of the Code conveys emphatically some of the equally vital aspects of investigation. The first charter of Section 173 by its sub-section (1) enjoins upon the relevant law enforcement agency to ensure that

“Every investigation under this Chapter shall be completed without unnecessary delay

Further, the report that is prescribed to be submitted by the investigating officer under Section 173(2) vide sub clauses (c) and (d) speaks of list of witnesses and the opinion of the investigating officer regarding his view on whether any offence has been committed and if so, by whom

Going further Section 173 (8) states that:

*173(8)- Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of a police station obtains **further evidence, oral or documentary**, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as possible be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section*

VI.2. (8) Here again, the emphasis is on the word “evidence” used in that particular sub-section (i.e., 173(8) of the Code. It needs no special argument to assert that all ‘evidence’ is to be seen or reflected from the ‘facts’ ascertained, as per law.

VI.2. (9) The purpose of highlighting these prescriptions of the law is to emphasize the essential aspects of the investigative tasks to be fulfilled by the police in relation to the term ‘facts’. These ‘facts’ have to be ascertained by the processes of investigation. The investigator has to build the

sequence of all 'evidence' gathered by him, based on all 'facts' so secured or elicited by him. That total array of 'facts' become the material for further steps under the law and that total bundle of 'facts' become the foundation of the case submitted to the court, through the assistance of the prosecution wing by the Investigator. Indeed that proposition applies generally to all cases under the legal facet of 'investigation' under the Code.

VI.2. (10) While the Code of Criminal Procedure, 1973 prescribes the procedural aspects of the investigative processes (as regulated by the procedural obligations on the investigating officer concerned), the Indian Evidence Act, 1872, the adjudicative law on evidence to be submitted to the courts, provides the standards and rules of evidence that ultimately become the basis or foundation for any judicial decision making in an ensuing penal trial. It is said that the law of evidence is to the legal practice similar to what logic is to reasoning. Besides ensuring economy of time and resources for the myriad processes of trial, the said law helps the making of correct inferences on material/s placed before a judicial forum. Based on well-set rules and standards the testimony submitted is evaluated or assessed and acted on in best possible ways. In fact, the English law of evidence, as it was in vogue in England was codified and made a law in the form of the Indian Evidence Act, 1872. The law of Evidence is designed to prevent laxity in the ways in which 'admissibility' of evidence is to be decided by the judicial forums at each stage of trial. Further it helps in sustaining a systematic, uniform and correct rule/s of practice covering all aspects of accepting or rejecting evidence placed before a court. Reiteration of the above aspects of the law of evidence is considered necessary to highlight the specific letters of the law in Section 3 of the said Act in relation to the use of words and expressions in that law.

"Fact" means and includes

- (1) Anything, state of things, or in relation of things, capable of being perceived by the senses;
- (2) Any mental condition of which any person is conscious.

Illustrations

- (a) That there are certain objects arranged in a certain order in a certain place, is a fact.
- (b) That a man heard or saw something is a fact.
- (c) That a man said certain words is a fact.
- (d) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation is a fact.
- (e) That a man has a certain reputation, is a fact

"Relevant" - One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue" - The expression "Facts in issue" means and includes- any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation: - Whenever, under the provisions of this law, that is time being in force with regard to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations

A is accused of murder of B

At his trial the following may be facts in issue

That A caused B's death;

That A intended to cause B's death;

That A had received grave and sudden provocation from B;

That A, at the time of doing the act which caused B's death, suffered from unsoundness of mind and is incapable of knowing its Nature.

"Evidence" - Evidence means and includes:

1. **all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;**
2. **all documents including electronic records for the inspection of the court} are called documentary evidence.**

VI.2. (12) Following these definitions the use of words in the context of the said law in relation to the terms "Proved", "Disproved" and "Not proved" are also necessary to be noted for the purposes of discussions in relation to the theme of "Questioning and Accused " under the Law.

VI.2. (13) Standard commentaries on the law of evidence illuminate the scope of the term 'fact.'¹ Besides various other closely relevant viewpoints on the subject, the interpretation of Sir Stephen, on the word 'fact' is worth citing. The word 'fact' sometimes is opposed to theories, sometimes to opinion, sometimes to feelings but all these modes of using it is more or less rhetorical. Further, the term 'fact' under the Indian Evidence Act, 1872 is used in three distinctly different senses and they are as under:

The information provided by witnesses and other evidence;

1. Commentary on the law of Evidence, Ratan Lal Dhiraj, XXth editin., 2002 at pages 21 to 23 under synopsis No 8.

The conclusion drawn by the 'Trier' of fact from the happened; The legal concepts hold that a fact in issue that must be established if a particular party to legal proceedings has to succeed.¹

Events and facts which are likely to occur in future does not fall within the definition of 'facts.'²

VI.2. (14) The context in which the above discussions are made on the term 'Investigation' (as prescribed under the Code of Criminal Procedure, 1972) as well as on the words 'Facts' and 'Evidence' and other related terms referred to above is to enable a clearer understanding of the recommendations and suggestions of three very important bodies constituted by the Government of India in the recent times as under:

1. The Committee on Reforms of the Criminal Justice System-headed by Dr Justice V S Malimath (This Committee was Constituted in the year 2000 and the said Committee submitted its report to the Government in the year 2003)
2. The Committee to propose a 'Draft National Policy on Criminal Justice -headed by Dr N R Madhav Menon (This Committee was constituted in the year 2006 and the said Committee submitted its report to the Government in the year 2007)
3. Fifth Report of the Second Administrative Reforms Commission headed by Dr Veerappa Moily - in relation to the theme of its study on "Public Order". (The said report was made available to the Government of India in the year 2007.)

VI.2. (15) A reference to the reports of the above said Committees of experts on the subjects assigned to them is perhaps appropriate particularly in the context of the some

1. Steve Uglow's Evidence: Text and Materials, 1997, p 16.

2. *Dueful laboratory v State of Rajasthan*, 1998 Cr L J 4535 (PARA33) (Raj).

of the crucial recommendations made by each one of them, more particularly in the context of the issues that were discussed immediately above.

VI.2. (16) As mentioned earlier, the Committee on Reforms of the Criminal Justice System headed by Dr Justice V S Malimath had called for 'Search for Truth' as the basis for both the investigation of criminal complaints by the police and the conduct of the trial of criminal cases. Further, the report of the committee headed by Dr N R Madhav Menon, to propose a draft policy on Criminal Justice as well as the report of the Second Administrative Reforms Commission have joined the chorus of 'Search for Truth' as seen in their recommendations.¹ Though there are some other important recommendations made by the said two bodies in relation to various other aspects of Criminal Justice Administration in India, both the reports have very strongly commended the ideas propounded and recommendations made by the Committee on Criminal Justice Reforms in India on the issue of 'search for truth'. However, in the light of the discussions hitherto and while taking into consideration the hands-on aspects of emphasizing the urge to get to know the reality of a incident or a crime, the task assigned by the Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1973 to seek 'facts' seems to be a more rational and practical approach rather than venturing to peg the penal laws to the notions of 'search for truth' howsoever alluring and appealing the alternative may appear to be.

VI.2. (17) However, there are some who hold a view that the prevailing Criminal Justice System in India, notwithstanding the fact that all three major penal laws being routed to an alien culture and thinking and yet have somehow

1. See Chapter 6 of the Report of the Committee on Draft National Policy on Criminal Justice – from Pages 22 and onwards and the ARC Report on Public Order in Chapter VII Pages 187 -211

got entrenched in our soil and the national psyche, more so in the minds of so many (particularly those connected with the Criminal Justice system). According to them, it may not be easy to jettison the same without a viable alternative system to deal with the penal justice needs. Therefore, it is considered that it may perhaps be wiser and safer to work on the existing arrangement and seek improvements in a steady and systematic manner. It is wiser to sustain the current styles of Criminal Justice System lest, in our anxiety to align a new system to suit a hitherto (seemingly almost) forgotten traditional styles of penal justice we may unwittingly consign the entire system to a chaotic point of no return.

VI.2. (18) In the context of the theme of this study, the focus here is more geared towards the professional aspects of police investigations and in improving the knowledge, skill, attitude and procedural practices of the personnel. In addition the effort is to highlight the advantages of looking at the rights of the accused and understanding briefly the background to such rights as well as the way by which the Apex Court in India has been responding to shape the law by its the relentless responses to the continuously developing situations. In fact, such a limited effort will be of sure value to the police profession. That awareness will decidedly enlarge the consciousness of the Investigators in relation to all vital aspects of law and procedure so that being armed with better knowledge, they will be able to pursue their duties with an improved sense of professional competence. If so done, then the investigators can venture to strive more systematically and effectively in the areas that are clearly within their ambit.

VI.2. (19) In order to recapitulate the sum and substance of the suggestions of the three expert bodies in relation to the theme of the current study, we can list them as under:

1. The Committee on Reforms of Criminal Justice System has among other things suggested that the Criminal

Justice System ought to base the sacred task of 'Search for truth' as the catalyst for the entire enterprise of the system. (Investigation and trial)

2. It has called for replacing the currently followed standard of 'Proof beyond reasonable doubt' in criminal trials by invoking in its place the standard of 'preponderance of probabilities' as a guiding yardstick in deciding the outcome of penal trials. According to the Committee on Criminal Justice Reforms, such an approach will increase the chances of better rates of conviction of criminal cases in general. (That goal is perhaps most vital for the well being, peace, order and progress of the society)
3. The Committee on Reforms of the Criminal Justice System has also commended that 'Right to Silence' of an accused be so molded in a more meaningful way without forsaking the protection of valid and legitimate interests of the accused. According to the Committee the approach is to render the participation of the accused in accordance to the steps to be undertaken by the Court and that would be geared to elicit relevant information on the pain of adverse inference, if the accused refuses to provide that information. (Para 3 of item No 8) Further, changes are suggested in Sections 313 by adding newly recommended sections in the form of Section 313A, 313B & 313C. In addition to that the said Committee has commended a revision of the idea on 'burden of proof and 'presumption of innocence 'so as to make the criminal justice system more effective and efficient. In fact, these ideas are the response of the committee to take a fresh look at some of the fundamental principles of the criminal justice system in India so as to make them really relevant while ensuring the real and intended objects of the penal processes. Admittedly, the law as it stands to-day seems to more in favor of the

accused- perhaps inspired by a noble idea that an innocent ought not to be punished unjustly or unfairly. However, the system has to provide right and merited answers to the victim and the society, without forsaking the legitimate concerns of the accused. Thus the system has to find answers to the needs and just demands of each one the above constituents.

[Note: Some of the implications of the above idea as well as the suggestions to make the investigative efforts meaningful and just in the context of the task of 'questioning an accused' are discussed in the ensuing pages]

4. Several other innovative ideas are also suggested by the Committee on Reforms of the Criminal Justice System in India in relation to the procedure for trials so that all such steps advance the cause of 'search for truth'
5. Several improvements in relation to the Justice to Victims; Prosecution; Courts and Judges, Witnesses and Perjury, Trial Procedure, Gender Justice and many other aspects of the system are suggested by that expert body by making specific and particular recommendations in that regard.
6. In so far as the task of 'investigation' is concerned, the Committee has made a good number of recommendations. (see items no 15 to 51). In relation to the theme of this study, specific recommendations relating to establishing 'interrogation centers' in all the District Head Quarters and the use of Audio and Video equipment for reliable recording of appropriate data are worthy of immediate acceptance by the concerned.
7. Recommendations on the better use of Forensics and improved co-ordination between investigators and forensic experts have been made and surely it is appropriate and timely. In fact, there is a most urgent

need to invoke greater forensic applications in the entire range of penal law enforcement ventures.

8. In relation to the changes in law and procedure, a recommendation to make the witness affix his signature (or thumb impression) to attest the statement so made by the concerned witness to the police during investigation has been commended.

VI.2. (20) The Committee to suggest Draft National Policy paper on Criminal Justice has also made several recommendations in its report to the Government of India (2007] and it can be briefly stated that the said body has strongly supported the views of the Committee on Reforms of the Criminal Justice System, especially with regard to the idea of making quest for 'truth' to be the central theme for all those who work the Code. In fact that theme is to be made the main charter by adding an appropriate preamble to the Code depicting that worthy contention. This aspect has been emphatically commended by the Committee on Draft National Policy on Criminal Justice.

VI.2. (22) Besides suggesting that a new classification of crimes be made, it has also been suggested that several specific 'Codes' in relation to various types or broad categories of crimes. As per that committee new laws are to be developed by specific enactments. A series of good ideas on use of Technology in the penal processes and in developing a sound sentencing policy as well as and more importantly promoting professionalism in the police are amongst other suggestions of immense significance

VI.2. (23) More significantly the said Committee has, as mentioned earlier, followed the suggestion of the Committee on Reforms of Criminal Justice with regard to putting the focus on 'Search for Truth' and has also echoed the idea on making the standard of proof in criminal cases to be less stringent *vis-a-vis* the current standards of 'proof beyond

reasonable doubt' - by which, according to some, many guilty persons escape the consequences of their crimes. This is so as the really guilty would stand to gain the benefit of such rigid standards of scrutiny of evidence adduced and such an unmerited escape is proving to be very expensive to the good of the community.

VI.2. (24) Like-wise, the Second Administrative Reforms Commission in its Seventh report has echoed the recommendation made by the Committee on Reform of Criminal Justice System with regard to the proposed amendment to Section 311 of the Code of Criminal Procedure, 1973. Similarly, the inference that a Court can draw (by a new law or by an amendment to the Code) hearing a case/s relating to serious crimes like Terrorism or Organized Crime has been suggested. As per that suggestion, a court can, upon refusal by the accused to answer questions put to him by the court, draw inferences that may go against the professed claim/s of the accused. This proposal is also a virtual reflection of the recommendation made in that regard by the Committee on Reforms of Criminal Justice System. Further, another important recommendation suggests stringent action on the commission of an offence of perjury to be made effective, besides greater response from courts to strictly adhere to the existing provisions on that particular subject. In addition, steps relating to 'witness protection programs' have been suggested, especially in relation to serious crimes like Terrorism, Organized Crimes and other similar grave violations.

VI.2. (25) There are various other suggestions made by all the three expert groups in relation to the Criminal Justice System in general. However, keeping in view the theme of this study, reference and discussions made here are limited with regard to the new or reiterated suggestions that have a direct impact on the issue of 'Questioning an Accused'. In the preceding pages various legal issues that call for careful appreciation as well as compliance by the investigators have

been discussed. Every law enforcement officer is bound to keep in mind that any illegal or legally unacceptable action (by him) affects the rights of such of individuals and such results may grossly violate the fundamental rights of such affected. Therefore, care and caution in ensuring systematic compliance to the law is most necessary. At the same time, the investigator must be determined to get at the root of the matter under investigation as per law and further ensure that he does not abdicate any procedural standards in that really onerous and complex enterprise.

Indeed the task is delicate as well as difficult with so many issues and facets that pose numerous challenges to the initiative, industry and enterprise of the investigator. In that perspective some of the essential suggestions for each and every investigator can be succinctly stated as under:

- Investigation of a crime is finding of 'facts'. Only the correct and clear identification and gathering of facts leads to establish the totality of facts of the matter under investigation. In fact, the idea of 'truth' so strongly pitched by the Committee on Reforms of the Criminal Justice hinges on that result.
- Efforts to seek 'facts' must be true and fair at all times and in all situations.
- It does no good to add or subtract 'facts' in the hope of strengthening the police case
- A commitment to 'Rule of Law' is a must
- Fact/s and data secured must be verified for its veracity before pursuing the next logical step
- Acting on mere hunch or suspicion is illegal though there is no bar to make more enquiries to seek 'facts'. But, before any step is taken, care must be ensured to pursue only a just, fair and correct legal action.
- Accused, suspect as well as witnesses must be treated

with respect. All steps must be built on basic human courtesy consistent with human dignity.

- Care is must while dealing with women either as accused or as witnesses. Worthy conduct by an investigator is a must in all such situations
- It must be remembered that 'courtesy' costs nothing but gains 'everything'.
- Being aware of the 'law' is a real professional need and it is a continuous learning process at all times. That awareness will surely help the investigator to become worthy of his charter.
- Urge to keep on improving the professional standards is most necessary and in a way that adds to the personality of the investigator at all times.
- The notion that criminals ought to be treated roughly is not a worthy or wise way. Any illegal way is not lawful besides the fact that such a conduct may result in legal as well as departmental action on the erring investigator.
- Crude behavior alienates every one and is eminently avoidable.
- Being partial prejudices the actions and is worth abjured. Though an investigator may feel for the victim, he has no right to do things which are unworthy of the law. The investigator must always be inspired to uphold the rule of law.
- Investigator must never forget that he is the agent of the law and not a servant of the party in power or any other group. Admittedly, complying with the above mandate is not easy for various reasons. Yet, nothing can stop a true investigator to conduct himself with fortitude and dignity even under trying situations to uphold the law of the land. Illustrations abound many worthy responses displayed even by very junior ranks in that regard and

such ways must be championed.

- Caring for the health and safety of the accused or the victims must be a top priority. Steps needed to attend to the health issues first cannot be forsaken and the humanity displayed by the investigator not only is mandated by law but is also the right thing to do.
- Many other essential steps in being discreet, avoiding brutality or crude behavior styles, treating juveniles as per law, being kind but firm, being honest, maintaining records of each and every step pursued and so on are most necessary.
- Remembering that investigation is a team work is most essential and investigator should not get carried away to underplay the significance of team work. Sharing legitimate information (as directed by law or the system) is a useful and essential step.
- Staying vigilant in all duty ventures is of immense value.

=====

CHAPTER 7

'Questioning an Accused' and Training the Investigators

VII. 1. (1) Investigating a crime means a task pursued by a law enforcement official in finding out 'when', 'where' and 'how' of a crime committed (which is reported or has been taken note of by other ways for action by a station House Officer), as per the Code. More importantly, the crux of investigation lies in efforts to identify 'by whom' of the crime in question that is said to have been committed. In addition, it also means seeking and collecting all direct as well as indirect answers (to all possible questions concerning the crime) or in precisely eliciting 'facts' that connects the crime with the criminal. However, this task will have to be done as per prescribed procedure (generally, as per the Code) so that findings of investigation result in a final report as per law. Further, all the next and ensuing steps of law follow, based on which the accused (the real or true offender so identified) is made to face a proper trial and is punished as per law, if found guilty. Since several centuries, diverse methods and ways of 'ascertaining facts' from a suspect (including an accused) or even a witness to a crime have been ventured in almost all parts of the world. Crime fighting has been one of the major societal challenges confronting all civilizations. Over a period of time, that burden was taken over by the king or the power which governed the society. That task slowly became some sort of a most elemental sovereign responsibility. Further and

due to several understandable reasons, efforts to bring the offender to book took various routes. Many paths were pursued in such quests and the total ranges of all such experiences were really diverse and numerous.

VII. 1. (2) A 'crime' witnessed by some one or the other is most likely to get a quick and ready response from the State or its authorities, on the common aspect of a complaint being made on the event. Such steps (of a report made to the police) become a part of the effort to bring offender/s before the courts of law. It is normally perceived that a witness to a crime is most likely to help in the identification of the perpetrator of the crime. Of course, the process of identification may become complex if the witness does not (or is not able to) easily recognize the accused and yet by various logical processes efforts are to be made, as per law, to reach the accused. However, where a crime committed is hidden from others or is done under the cover of dark or is not seen by anyone due to various reasons like the time or place of offence etc, the issue tends to become complex. Firstly, it may take some time, before the fact of commission of that 'crime in question' is duly perceived and gets recorded or noted by the authority. After that step is taken, efforts may stem to identify the crime, victim and witnesses, if any and then pursue measures to identify the culprit. Thus, in cases where there is no eye witness or other sources to help in readily identifying the accused, the processes of reaching the criminal, to make him answerable to that 'crime in question' would not be easy. Yet, the processes of investigation will have to be duly launched and pursued in each and every case, as per the law to accomplish that vital goal.

VII. 1. (3) 'Questioning an Accused' or a suspect is a task that calls for a combination of knowledge on men and matters, understanding of various facts including a good awareness about human nature and conduct besides several other attributes that are essential to be a part of the personality of a

skilled investigator. In this regard it merits noting that modern day policing as a 'profession' is really a historically recent phenomena. Surely enough, a job of that kind calls for various skills, abilities and expertise coupled with many other requirements of the profession, so that the totality of all such attributes pave way towards intended success. However, the critical professional virtue of that calling is not an inherited potential. At the same time, the burden on the government to deal with the load of steadily increasing crimes is surely a very significant matter. Thus, keeping in mind the massive number of persons (investigators) who will have to fulfill such roles and also in the context of ensuring that such professionals pursue a uniform and legally prescribed ways in doing such chores, the idea of systematic training of investigators assumes importance. Thus, establishing a methodical way to ensure training to instill varieties of such skills, legal knowledge and other required attributes amongst 'investigators' becomes most necessary. However, as pointed out earlier, 'investigation' of a crime is a very extensive and wide-ranging area of 'fact gathering' enterprise and the totality of all such tasks can be best pursued only as per worthy professional standards. Though a large part of such efforts emerge as a logical, rational and many a times a common-sense approach, it cannot but be done in a professional style. Thus, the overall competence of such enterprise can be acquired and improved only by systematic training and practice. It is necessary to note further that in the path of such accomplishments i.e., in investigating a crime (in the current context), the complainant generally provides various leads to pursue the matter to reach the objective of establishing so-called 'golden thread' linking the 'crime (under investigation) with the accused'. But, when the investigation of a crime is of a kind where the 'fact of a crime' is known but the details of the perpetrator of that crime are not known, then the task is to be pursued by various ways to solve the apparent mystery in question. The suspect or the real accused is to be identified by various standard ways and

next, such a person is to be secured for further steps of the law. Where a *prima facie* assessment helps the investigator to zero in on the identity of the accused in question, the task of building the connection (through the means of securing the needed evidence) between the crime and the accused becomes central to the success of investigation of that crime. Besides securing various other pieces of evidence that relate to the crime under investigation, the law provides the authority for securing and questioning a suspect (or an accused where some material evidence is at hand to perceive the inference that provides a basis to hold that such a person is most likely to have been connected with the crime in question). Once done, the investigator has to pursue the processes of ascertaining facts from the said person under scrutiny. Thus, the task of 'questioning an accused' (or a suspect) becomes a real challenging task, as the investigator has to elicit 'facts' that can help him to stir out of dark by that 'fact finding enterprise'. Unlike the areas where the investigator has the help from a complainant or a witness in a crime, the task of identifying and eliciting facts to link a suspect with a crime in the category of cases where no such help is at hand is more difficult. At times that task may even be extremely complex. However, ability to overcome all constraints of that kind is a matter of professional competence, which can be instilled to a substantial extent by systematic and quality training of the personnel. Though many primary attributes that auger as essential pre-requisites in the personality profile of any one so trained are necessary, and yet, it is surely possible to inculcate worthy standards amongst the willing and keen by planned and persistent training. Keeping in mind the massive workload that devolves on the law enforcement systems and also keeping in view the massive number of various kinds and types of criminal cases that are to be dealt relentlessly as per law, it is easy to note that investigators will have to be made to learn and acquire all the basic attributes of the profession so as to be able to, among other things, deal with

the task of questioning the suspect or the accused in a competent way. In that context, the significance of training becomes very critical as well as vital. Good training can help substantially the professional police investigators in the art and science of investigation of crime. In the context of the theme of this study, grasping nuances of critical professional knowledge, skill, discipline and attitudes for that exclusive kind of work becomes most important. In a way, the professional abilities needed for successful 'questioning of an accused' is a part of the investigation work in general. Yet, that task is clearly more difficult and complex, in comparison to myriad investigative tasks, as the former kind of work calls for greater standards of professional excellence. In order to make the investigators get a grasp of the task of 'questioning an accused' in efficient and effective ways, various steps are necessary to prepare them for numerous likely and anticipated duty contingencies. In a way such a training responsibility is clearly on the police organizations in general. In the context of the current day crime scenario that is confronting the society and keeping in mind the staggering volume of work in the area of crime prevention and detection, perhaps it would be impossible to expect satisfactory work output from investigators (i.e., policeman) unless they have the benefit of a good foundational training in that trade. Efforts are a must to inculcate and nurture in them the requisite capacity to master the needed skill or talent and that basic status of preparedness can be met to a large extent by good and systematic training. As asserted earlier, the task of 'questioning an accused' is perhaps at a clearly higher professional standard to be displayed by the investigators in general and that goal ought to be an extended part or a specialized area of learning in the area of general training of investigators.

VII. 1. (4) In the contemporary world, many nations have their own professional police systems continuously striving to improve their basic capacity and potential in all areas of

law enforcement work. In that vast range of diverse kinds of law enforcement work, the task of 'questioning of persons' including the accused or suspect is a most critical area of professional competence.

VII. 1. (5) The Police Act, 1861 established the police systems in India on a formal basis and in that charter 'Prevention and Detection of Crime' was mandated as a predominant duty of the police. Though a couple of other tasks were a part of the duty of the police, fighting crime was proclaimed to be their primary goal. It must be said to the credit of the British rulers of those days that the hidden compulsions that reeked of their political and military agenda, did not prevent them to weave into the police systems a viable form and content for diverse needs of law enforcement. In a way a good foundation was laid for the police systems on a methodical basis. Early efforts did include steps to establish training centers through which the native police personnel were formally trained to come to grips with their mandated job needs. Early training manuals and other instructional guides, especially in the area of 'crime detection' did speak of how an 'interrogation' is to be accomplished. Those guidelines discussed various closely connected issues including the need to comply with the basic directions of the law of the land. Such training schedules did contain varieties of ideas and methods that were commended to the lawmen. It is easy to note that even in those early years, the Code of Criminal Procedure – Act X of 1872 (which later on has become the Code of Criminal Procedure, 1973) and the Indian Evidence Act, 1872 (which were in fact strongly inspired by the Anglo Saxon concepts) had prescribed many conditions by which many tasks that were connected with investigation of criminal cases were to be followed. Several guidelines therein mandated on numerous law enforcement actions including the difficult facet of 'questioning of suspects and accused persons'.

VII. 1. (6) As crisply observed by the IIIrd National Police

Commission, the current day police in India owe much to those early foundations. However, during the post independence era of the police in India, recommendations of an expert body popularly known as the Gore Committee came in to provide a worthy yardstick by which a dynamic thrust was given to the entire vista of training of the lawmen of all ranks. Though several laudable improvements have been made since then, to the entire gamut of training dimensions that stipulate various preparatory ventures of the police of modern India, the undercurrent of police training still draws immense inspiration from the said Gore Committee Report.

VII. 1. (7) Police are expected, as per law to attend to several important duties. In the context of the currently prevailing practices in our country, Maintenance of Law and Order and the Security duties (often referred to as VIP duties) hold the centre stage, though the burden of Crime Prevention and Detection is theoretically placed at the top of the charter as per the Police Act, 1861. In addition, the police are also to fulfill an important role in regulating traffic (movement of vehicles on the streets together with regulating busy streets where people move about for their innumerable chores). In addition, diverse kinds of social service functions are also in the litany of their responsibilities.

VII. 1. (8) However, as the significance attached (in practice though not in theory) to Crime Prevention and Detection is not at par with the Law and Order related tasks, the professional improvements in that 'fundamental' area of 'crime' work has naturally suffered. Notwithstanding that unintended relegation of priority (not in theory but surely in practice), the need to train the police personnel in the art and science of Prevention and Detection of Crime is of immense consequence. Yet, it must be said to the credit of the system that in spite of that misplaced charter of organizational priorities in reality, the quality and intensity of police training in the area of investigation of crimes is slowly but perceptibly

moving upwards.

VII. 1. (10) There is no gain saying that the police will have to accomplish their goals within the limits of law and do so in accordance with the procedure laid for that. In the formative years, the scrutiny on the compliance to laws was seemingly not so stringent or meticulous, especially with regard to the manner of the performance of police duties and more particularly in the context of observance of rights of the accused. The supervisory echelons of the police seemed to focus more on results of crime prevention and detection. Perhaps due to such a half-hearted approach, most failures of prescribed procedures did not get acted on as needed. In a way that shortcoming may have delayed the reach of the police systems to move towards greater professionalization. Slowly events like the establishment of the National Police Commission reflected the changing perceptions at the Governmental and the organizational levels, besides the mounting public clamor for such improvements, made that trend to emerge more rapidly.

VII. 1. (11) Investigation (of a crime) is a fabulous mix of application of science and art of dealing with the people and an inspired ability of an investigator. In all cases where the identity of the accused is not yet clear, ability of the investigator to quickly identify the possible accused comes to the fore. Further, that initial step has to be sharpened further to link the crime scene with the criminal. It is under those circumstances, the combined professional competence of an investigator in successfully 'Questioning the Accused' (or the suspect, as the case may be) assumes immense significance.

VII. 1. (12) The problem of high-handed behavior on the part of lawmen in the total range of their duties is somewhat prevalent all over the world, though some nations have been able to demonstrate some qualitatively better ways in that particular vista. Evidently, an authoritarian style seems to be patent in the day to day work of the police in general, especially

in many law and order and regulatory functions. Yet, it is a fact that tyrannical conduct is seemingly more visible in crime fighting role of the police. As the tasks of crime prevention or crime detection are *per se* more difficult from a professional point of view, there is a greater chance of poor professional standards resulting in lawless, highhanded and crude display of police conduct. Investigation of crime which is a part of the burden of crime detection is to be done well within the limits of law. Rights of the people in general and that of the accused in particular will have to be respected and that indeed is the challenge to the law enforcement system as a whole.

VII. 1. (13) Investigation of crime has several objectives. It predominantly seeks to identify the criminal answerable for a crime under investigation. In addition, it ventures to locate the said accused and apprehend him. Finally, it calls for gathering all admissible evidence to ensure successful prosecution of the offender before an appropriate legal forum. All these highly inter-related steps are mutually dependant and linked inexorably with one another.

VII. 1. (14) The total range of efforts in investigation calls for correct identification of the accused. Next, after due findings of the facts of the case, the need emerges to ensure steps to gather the correct, relevant, admissible and appropriate evidence that can be advanced before courts of law. As rules of evidence are extremely precise and exacting, the task (of advancing evidence before the courts) is really tough and can be done only in a painstaking manner. Furthermore, at each and every step of investigation, meticulously to be advanced as per the Code, a good number of mandated procedural steps have to be carefully complied or followed. Though the Code (1973) or the Evidence Act, 1872 have no specific functional impact on the identification of the accused, through the processes of investigation (before all the available evidence is secured), the shadow of the law is always present. Indeed 'law' can be stated as omnipresent in so far as an investigator is

concerned. Thus, the crucial part of the investigation to correctly identify the accused is to be done by professional skill, knowledge and intelligence. Admittedly a good part of these tasks are aided by the statements or views of the witnesses (if any). In addition, such a situation also relies substantially on the background, which surfaces either immediately or over a period of time with reference to each case. At times, such a resource may not be present and in instances where such clues are absent, then, a good amount of logical reasoning power exercised by the investigator comes to the fore. In many such situations, the burden of seeking and dealing with a suspect of a crime becomes a major part of the investigative task.

VII. 1. (15) As a rule and in general, most traditional crimes like 'homicide' (or murder in common parlance) lend themselves for reasonably easy detection as various clues like motive, background and other facets of the prevailing situation tend to become available to the investigator. But, a crime committed by a professional criminal for gain (more so in cases of murder for gain or theft or dacoity etc.,) is not easy to be solved and naturally that effort calls for good investigative work by various processes of deduction, logic and reasoning. The investigator may have to rely on facts (including pieces of evidence) at hand at the scene or those details that can be obtained from the victim or other ideas secured through various other processes, including instances of chance clues. The ideal way of investigation is to move from the scene of crime to the accused - by gathering clues and information from the scene of crime. Though in theory such an idea seems very straightforward, it is not so in each and every case. Notwithstanding the fact that clue/s at the scene may not be very specific (in a given case), the investigator may have to venture further based on some possible hunch or suspicion. Armed with such reasonably well- arrived conclusions, the investigator may have to secure the suspect and seek answers

from him about the crime. Human nature being what it is, generally most persons would not admit their role in a crime and would feign ignorance or resort to total denial of any knowledge about the crime in which he is being questioned or is deemed as a suspect.

VII. 1. (16) By and large, the processes of investigation of a traditional crimes against body (which are enumerated in the Indian Penal Code) or other offences where the offence is done in public view or where the victim is able to give clue or details of identity of the accused, solving the crime in question may be somewhat easy or simple. But, where a crime is committed in an isolated place or situation or when the commission of the said crime is not seen by anyone else or where the victim is not sure of the identity of the accused, then, the chances of detection are dependent upon the competence of the investigator. It is under those circumstances the learnt or acquired professional skills and abilities of the investigator come to the fore.

VII. 1. (17) Crimes of a complex nature like Organized Crimes or Trafficking of persons or drugs or prohibited substances or weapons, or crimes of Frauds by endless types of bogus schemes, crimes like Money Laundering and so on are not easy for investigation. Many constraints of facts from the point of view of place of offence, the victim/s location at the time when the offence took place, the obscure manner of consequences felt directly or remotely by the victim etc may make the task increasingly difficult. In addition, prime offenders of such crimes may not be visible to the law as they may be operating from background or where only some front-end lackeys or foot soldiers of such gangs get identified (by the victim/s) and each such complexity poses difficulties to the investigative efforts. In such cases of Organized Crimes and related violations, it is only the minor players who may get secured by police, while the principal actors remain elusive. Investigating those kinds of crimes are *per se* time

consuming as well as difficult in terms of gathering evidence. Furthermore, professional criminals do not come forward to disclose any information (during their 'questioning' by the Investigator) relating to the crime. Naturally therefore, cracking open their rigid stance is thus a challenge to the investigator. Crimes of the modern times like Cyber menace (crimes) or other computer or technology based violations are still more elusive as the main person behind the crime may be hidden far away from the victim and at times such crimes may also be committed from across the national boundaries. It is no longer a mystery to note that such crimes are perpetrated from even distant continents, as the ubiquitous Internet has made the distance between places irrelevant. Situations in many of those crimes are similar to the commonly known fact that a neighboring country is sponsoring the illegal printing of fake notes in one of its major ports and is using such bogus currency for distribution in many parts of India. (A recent news item published in Economic Times dated 21/4/14 narrated that China has become the hub to route such fake notes into India from various border areas of the Nation). When the source of crime is seen to be situated in some other land, efforts to tackle such a crime within the limits of the Code (or the Law) are hamstrung and the progress of investigation in such cases are bound to get stalled and the work of law is bound to suffer. Another factor of significance is that in many modern techno-based crimes, the offenders are generally educated and aware of many things like the legal standards due on the police work. They are normally technically capable and endowed. Armed with that kind of techno awareness, they commit the crime & defy the law. In addition, they may also venture to erase the path of their nefarious deeds, making the subsequently ensuing processes of gathering of evidence very difficult. As is known, a good majority of police personnel (at the investigator's level) are themselves not aware of these new tools of technology and thus, the ignorance of the sleuths dampens the pace or quality

of investigation. For some time, there were some shortcomings in the law of evidence with regard to accepting the footprints left by such techno criminals in the records and that used to diminish many attempts to deal with that brand of crimes. However, many changes in this regard are emerging to render the panoply of law more effective. Firstly, some new laws have been made (which are however in need of continuous refinement with the advances or progresses made in such technologies)¹ and due changes have also been made in the law of evidence to provide a scope for gathering acceptable legal evidence to prosecute the offenders.

VII. 1.(18). Crimes of Terrorism or Extremism or the kind of internal upheavals like Naxalism and its ilk are more elusive for various physical, practical and other reasons. Motivation for that kind of extreme violence may stem from ideological inspirations or by acts of brainwashing of the gullible to take to such crimes or instilling a sense of injured feelings of a very big kind for some imaginary or perceived ideas of injustice and so on. Many such permutations can be cited as illustrations for such a hostile mental makeup amongst the perpetrators of such crimes. As a result, a lawless of that brand may resort to a desperate conduct and may even venture daring attacks on innocent people or places at random. It is too well known that more often than not, such crimes impinge on many guiltless bystanders or those unconnected with the real or imaginary grouse of the violent law breaker. It is also well known that many a times innocents are deliberately targeted to espouse the hidden agenda of such brand of criminals. More often than not, it is some front men and small time criminals who may either knowingly or otherwise become partners in such crimes but get ensnared by the law. When caught and questioned they would not be really able to help the investigation. Often it is seen that either

1. A reference to that trend can be seen in the latest amendment to the Money laundering Act, 2002 by Act 2 of 2013, w. e. f, 15/02/2013.

such elements are very hardened to resist quick breakdowns during intense questioning sessions or they may themselves be not aware of the behind the scene operators resulting in a stalemate which affects the progress of investigation. In addition to that, if an instance of terrorist violence and carnage is sponsored from across the national borders and further if the neighbor is latently or patently supporting such crimes against humanity, then again, investigations of such cases would naturally face insurmountable obstacles.

VII. 1. (19) Investigation of crime is a complex task that calls for various attributes to be present in the investigator. *(The fact that such a basic capacity can be instilled and honed to very good levels by good training, coupled predominantly with the desire to learn on the part of the trainee, is the basic key to commend training)*. Knowledge of Law; clear and good awareness about procedures prescribed; ability to keep in mind the law of evidence; skills in various aspects of investigative work; proficiency and awareness in knowing and practicing ideas on various aspects of human nature and ability to get the people's support (in seeking and getting the evidence by the willing cooperation of the people at large) and so on are the needs of that job. The list of all such requirements makes the task of getting suitable persons to join that trade not so easy. The oft quoted lament of August Wollmer, a very famous police leader of the United States that a policeman has to have so many ideal qualities of head and heart is surely appropriate here and one may even wonder as to where from in the world one could hope to hire such an all round personality to work for the law enforcement systems, and more so, as an ideal crime investigator!

VII. 1. (20) However, we cannot forget that such a somewhat tongue-in-cheek assertion only exemplifies the need for a meticulous preparatory effort to make a police official a good and competent investigator. A good basic educational qualification is essential for being considered eligible to enter

the profession. Luckily for us, the present day enlistment standards prescribe mandatory minimum qualifications and that can be considered as reasonable and adequate. Indeed that comforting facet is more or less applicable to all police systems in the country. Though the basic material is good, it is equally true that the standard of basic training of investigators is surely not at a satisfactory level. There are several reasons for this stalemate. Perhaps, one of the primary shortcomings in that inadequacy can be traced to the alarming facet of lack of significance or importance to the overall tasks of crime investigation (prevention as well as detection) *vis-a-vis* the disproportionate organizational emphasis on tasks of Law and Order and VIP duties. In a way that misplaced arrangement is surely a clue to deal with the persistent problem of poor standards of investigations of crime that is at hand. Even then, the quality as well as intensity of training and the efforts needed to convert this area of professional undertaking for the investigators in general are not at an ideal level. The urge and implicit desire on the part of the powers that be (political, administrative and professional) to stir the system out of that syndrome have been clearly lacking. As a result the situation has continued to lag and has remained at unhappy levels, though some changes have been slowly emerging here and there. The IIIrd National Police Commission had made caustic comments on this aspect and during the recent times, the Committee on Reforms of Criminal Justice System, the committee for drafting the National Penal Policy as well as the Second Administrative Reforms Commission have made emphatic but highly critical observations on this principally disquieting and truly unwholesome situation. The administrative burden to meet that shortcoming and to work the correctives is directly on the leaders of the police organizations and in that effort the Governments of the day also have a noteworthy part to play.

VII. 1. (21) In the total vista of 'Investigation of Crime' in

general, the task of 'Questioning an Accused' is really very crucial. In all pervasive efforts of investigation of crime, where gathering of clues and information hinges on the result of the 'Questioning of the accused', the success or failure of police efforts in dealing with the penal transgression under investigation hangs in balance. It would be inevitably dependent on the quality and effectiveness of efforts made during the 'Questioning of the Accused'.

VII. 1. (22) It is true that the subject of 'Investigation of Crime' is a part of the induction syllabus to train the Sub-Inspectors of police (who would become Station House Officers, sooner than later, after their basic training). Yet, it is seen that the inputs in that particular area of professional training are of a very general nature. So much so, the quality and content of such inputs are surely not enough to prepare them (the trainee Station House Officers) as good investigators. In a way that kind of training would not be able to help them in becoming competent investigators, not to speak of their professional standards in the task of 'Questioning an accused or a suspect' or in 'examining an unhelpful witness'.

VII. 1. (23) In that context, it would be very necessary to ensure a mandatory pre-assignment training for those who are selected to become 'Crime Investigators'. That kind of training is sure to help in enabling them to become a little more capable and competent, than the current day occupants of such assignments. That focus will have to be pursued further by training them more intensely to develop proficiency and competence in the art and science of 'questioning' or 'examining' or 'interrogating' an accused or a suspect or a witness, as the case may be.

VII.2. (1) A perusal of the training syllabus at the induction levels for the members of the Indian Police Service or the directly recruited Sub-Inspectors in various police academies of numerous States in India or that of the entry

level constabulary training indicates that such basic programs are meant as a general preparatory ventures for those entering the profession at respective levels. Further, there is really no special or particular emphasis either on the numerous facets of investigation of crime/s or in the particularly significant or relevant area of 'Questioning' an accused or a suspect or in examining a witness. Another glaring shortcoming is that most such inputs of training (barring some exceptions) are primarily 'information oriented'. They are not, as a rule, invoked to instill professional skills, as the quality and content of practical learning is at best a sample glimpse to such fundamental professional needs.

VII.2. (2) With regard to professional needs of supervisory echelons in the area of Crime Prevention and Detection, another persisting reality needs to be kept in mind. Barring some instances, it is seen that officers of the Indian Police Service get random placements or assignments connected with supervision of crimes at state CID offices of all most all States in India (who deal with important and complicated cases of investigation) or in metropolitan towns as Deputy Commissioners of Police dealing with the portfolio of Prevention and Detection of Crime. Further most such assignments are for short durations as young officers of that category move out to various other postings very quickly. Firstly the middle level leaders of the Indian Police Service have no specialization training in terms of crime investigation as a rule and next they do not have the needed experience to guide or supervise a range of crimes under investigation by those specialized units.

VII.2. (3) In so far as the policemen of the most junior levels are concerned, it is seen that invariably such personnel are seconded to assist the investigating officers, and most of them are expected to learn the profession, while on the job. As they are short of foundational training to become good assistants for all investigations, the basic inadequacy of poor

induction training will bug not only their performance but also act as a drag on the work of the investigators in general. It appears that there are no training ventures for the constabulary to get to know the fundamentals of assisting the investigators. They blunder along the way by learning on the basis of a 'trial and error' mode, which is surely most affected further by a basic lack of awareness of their respective roles. As a result, the overall performance suffers very seriously. Indeed that alarming inadequacy needs to be addressed quickly but systematically.

VII.2. (4) On a quick survey of the prevailing scenario, it is seen that there are not many worthy mid-level training programs to cater to the needs in the professional area of work relating to the specific task of 'Questioning an accused or a suspect.'

VII.2. (5) But, the problem of inadequate training in the area of 'questioning' an accused or a witness is somewhat common in almost all countries. Even in the United States of America where policing standards in the area of 'Investigation of crime' is considered better than in most other democratic countries, it is reported that the amount of training given to police officers in the area of 'questioning' (in the United States that area of police work is referred to as 'interviewing techniques') is very low and same is the situation with regard to most of the middle level career development programs in the police profession. Further, the amount of time and effort devoted to 'Crime Investigation' at the induction level is also not high. Of course, keeping the nature and types of jobs that come in the progressive path of a young police recruit, training of investigators and 'questioning techniques' have to be ensured as a 'specialist' type of preparation. In fact, it is very explicit that there is a clear and visible need to ensure that all such training ventures are rendered intense and comprehensive, besides being reinforced by systematic retraining or by providing advanced training programs and

are sustained further on a continuing basis.

VII.2. (6) It is a well established fact that 'Police Interrogation' tasks virtually account for almost 90% of all investigation work¹ and yet, there seems to be pervasive lack of concern amongst most police organizations of the world to plug this glaring shortcoming. This inadequacy surely looks staggering when it is seen that in most of the police systems only around 20% of the police personnel get any in-service training in the area of 'questioning or interviewing' of a suspect or an accused or a witness. Though police interrogation techniques are most critical to all types of investigations of crimes, sadly enough that facet seems to have been somehow ignored.

Unless the investigators are professionally trained by evolving well developed programs, relying on the so-called on the job learning experience or by off-hand coaching from a senior police officer randomly done may not be a good idea. On the contrary such an approach is a sure way to loose another young entrant to the service to a misguided path of poor or improper types of police work including the areas of investigation or interrogation.

For example, in the United States of America, confession to a police officer under certain circumstances can be admitted but conditions prescribed for adducing such evidence before the courts have to meet positively as per various technical and legal prescriptions. Thus, unless trained correctly, (as felt by a majority of police trainers in that country) a police officer will not be able to accomplish the tasks assigned to him in any satisfactory manner.

VII.3. (1) A basic question as to what is the purpose of conducting a successful interrogation or 'Questioning an accused', is answered as under:

1. *Statistical details provided in 'the Police Interrogation Training and Consulting' sponsored by American Association of Police Interrogators/ R R law Enforcement.Com*

'Obtaining information that an individual does not (or may not) want to provide'

That fundamental task in a way constitutes the sole purpose of interrogation. Surely enough that very task indeed becomes the most important objective of 'Questioning an accused'. If a criminal outwits an interrogator during his (former's) questioning, then it surely means that he (i.e., the criminal), in all probabilities may go unpunished and more disastrously, he would be free to strike again with his crime. As a result of that kind of failure suffered by the law enforcement system (or by the crime investigator), the community is made to suffer. In addition to that, such a breakdown adversely affects the victim. Therefore there is a great onus on the investigator to grasp best skills and knowledge needed by him to become successful in his duties. But, that status does not come either by a wish or in any other easy way. It necessarily takes the effort by the organization to provide a good training coupled with the needed desire on the part of the trainee to acquire those qualities by absorbing all basic and common inputs. It is conceded by police training experts that interrogation can fail for various reasons. But, at the same time, it is very clear that an interrogator can increase the chances of his success by eliminating or minimizing identifiable causes of failures in that professional area of crime detection work. Once those factors (causes of failures of interrogation due to the inadequacy on the part of the lawman) are identified, it is surely possible for a conscious investigator (so trained) to avoid such pitfalls and make better efforts to increase the probability of success of his enterprise.

VII.3. (2) Many other closely inter-linked steps like preparation, planning and execution of interrogation tasks are most necessary in training of the investigators in general. Getting to know the background of the case as well as that of the surroundings of the suspect or accused or the interviewee (as the case may be) is elemental. Planning carefully to

meticulously work in advance to prepare possible questions that he may use in the process, the chosen or planned sequence of posing the interrogatories during each session and so on have to be ensured, so as to work an effective questioning session. That step has to be followed well by making a good documentary record of the sequence accomplished. Further, the investigating officer has to build the capacity for using all basic resources of technology to improve the chances of success in the task before him. The investigator has to become capable of using best ideas to work the smallest of clues connected with the case and by using the basic knowledge of the work in relation to each of such leads. At the same time ensuring compliance to all the procedural and constitutional legal mandates is a most critical part of that total effort.

VII.3. (3) In fact, in many leading nations like Canada, USA etc various specialized training techniques are being developed by experts. Reid Technique of interrogation is a fairly well known method that is widely followed in the west. It is worthy of note that the superior courts of law in USA and other developed nations have endorsed the validity of that technique and have permitted them as legal measures for action. As an example it can be mentioned that a confession recorded based on that methodology was found to be acceptable as per the Constitution of Canada.¹ The Reid technique approach is also called as 'Nine-step Interrogation' method, found to be acceptable by the law courts in the United States of America. It merits mention that specific steps envisaged by that training technique have been evolved in a logical order and each such step is respectively identified as separate entity for action by investigators. Steps like direct positive confrontation; theme development; statements made by the accused; the theme of the investigator in the case and his efforts to confront that with the accused; to draw the

1. *R v Oickle* 2000SC 38.

attention of the accused; presenting alternative questions (with a view to elicit concurrence of the accused) on some elemental matters for a subsequent use during interrogation; developing oral confession and drawing up the same in writing, based on the truthfulness of the case are all parts of that process. Each such step is well connected and inter-linked with rest of the steps and are seen as logical events in progression as each one of them is mutually supporting the rest of the sequence. The streamlined training venture in the 'Reid technique' is well identified as a comprehensive and methodical approach to examine the crime under investigation and in questioning of the accused. It is worth noting that besides the nine steps mentioned earlier, the technique relies on factual analysis as well as behavior analysis in the facts of the case and the persons involved. By resorting to the first analysis, the investigator will be able to rationally analyze the facts to eliminate improbable suspects, and also develop ideas or clues about possible suspects. Further and next, through the interview process, the investigator or interrogator can enhance chance of identifying truthful or guilty suspects and thereby pitch upon identifying and effecting appropriate interrogation strategies. A good amount of literature is available on the said technique in various training programs in USA, Canada etc and details of that method are also easily accessible through the Internet.¹

VII. 3. (4) 'Questioning an accused' is not a casual or an off-hand interaction between an accused or a suspect and an investigator. It is no doubt a very exacting task, as it calls for steady, systematic and seemingly never ending series of continuous efforts by the investigator. The entire process conducted professionally becomes a succession of steps. Collection of data, evaluation of the collected data, analyses of the evaluated data is followed by substantiation of data during the interrogation. A large number of closely connected

1. *Reid Technique*, from Wikipaedia.www.net/http://www.reid.com

steps and events mark that professional area of police work.

VII.4. (1) It is also necessary to keep in mind that resorting to violence on the person in custody with a hope to elicit some confession or to secure some information may not really yield worthy results. Besides being highly counterproductive in many ways, it is not a wise step. In this regard, the facet of extraordinary rendition that took place in the USA and the subsequent questions on human rights abuses merit to be kept in mind. Indeed this is a very sensitive issue and it may not be easy to answer as to what is right, when issues of many innocent lives are seemingly at stake (as for example during the investigation of a terrorist crime). In fact, it does raise various ethical questions and even a celebrated jurist and thinker like Jeremy Bentham had argued against the state resorting to third degree in the hope of securing vital intelligence. Though it may not be possible to give an effective and convincing answer on many or all questions that surface in such contexts, it would be most prudent to pursue all steps within the ambit of the law.

VII.4. (2) Besides the possibility of unreliable nature of information or clues eked out from the accused or the suspect, we must also keep in mind that even at times many cases decided on the basis of scientific evidence have been subsequently found to be unworthy of reliance by courts, leading to formal reversals of earlier verdicts. Further, such events bring in its wake many other complications. As so convincingly explained by Michael Hall,

'Testimony from forensic experts can be the most persuasive evidence presented in a trial, but often juries don't realize that the analysis of hair, fire and even fingerprints may not be so scientific. And as the story of deputy Keith Pikett, master of the dog-scent line up, shows, investigations can sometimes lead to the greatest crime of all: putting innocent people behind the bar'¹

1. cf Texas Monthly, on weird science/texasmonthly.com

VII.4. (3) It is very useful to keep in mind that all statements made can be analyzed and some *prima facie* ideas on truthfulness or otherwise of the maker of the statement can be arrived at by effective methods of evaluation. Further, it would be essential for the investigator to know that the interview or questioning can be made more dynamic by developing and acquiring skills that are needed for such tasks. A competent investigator can learn to spot the effort on the part of the interviewee or the suspect to feed a lie to the interrogator while giving his version. Indeed many skills of that nature and similar kind can be learnt and improved upon by good training followed by practice in the field. Several other important attributes like improving the memory power and developing skills akin to mind reading by systematic learning and practice of the knowledge and skills of interrogation or questioning can also be relentlessly improved upon by commitment and determination on the part of the investigator and all such aspects ought not to be forgotten.

VII.4 (4) Over the years, many State Police training institutions, particularly in the United States have started developing advanced interrogation techniques training programs. Various experts are at hand to provide such training activities and to qualitatively improve the training inputs. Various levels of such techniques from the 'basic to advanced' grade training ventures are now commonplace training events. Needless to point out that through many such efforts the professional standards in this area are showing steady but marked improvements. Interesting titles like 'Identification of criminals'; 'Statement Analysis'; 'Anatomy of a liar' and so on are at hand for the trainers and those areas of professional knowledge are continuously getting improved upon.

VII.4. (5) Several advances in studies relating to 'Human Psychology' and other closely related fields have been leading to the development of new tools and fresh ideas are emerging paving the way to making of specific categories of professional

issues in relation to various crimes and those tools further basic police interrogation techniques, but at a higher professional level. All such progresses will surely benefit the work in the pervasive field of law enforcement.

VII.4. (6) The Central Bureau of Investigation (India) has its own scientific Interrogation techniques program. Though the program is seemingly of a short duration, the venture is decidedly interesting. A perusal of the syllabus of training and other professional techniques to convey the essence of that training are surely worthy of notice.

VII.4. (7) It is necessary that best efforts are sustained to continuously improve upon the training programs and ensure that investigators are enabled to learn the basics and later on, as needed, pursue advanced and higher professional learning experiences. Needless to point out that at least the basic levels of such programs are a must for the general run of the crime investigators in all the police stations of at least all the urban areas of the county. Likewise the 'investigation support staff' (-meaning the constabulary in the current context), do need a sound initiation training in 'investigation and its support' and must also be made conversant with various support works concerning interrogation techniques, so that they are able to function meaningfully.

VII.4. (8) More importantly, the general strategy of training of supervisors (i.e., the middle levels of the Indian Police Service)¹ to effectively fulfill their assigned roles in ensuring good overseeing of the investigation work really warrants an urgent second look. The current styles are inadequate and further it does not reckon the supervisory role as a continuing need, resulting in the general lack of professional expertise at that level. This vital aspect of police professional work has been somehow ignored for long. Surely it needs to be corrected early. This particular matter also needs to reckon another vital issue. Essay of any police power directly

(see www.campbellcollaboration.org/lib/download/947 on interrogation methods)

impinges on the freedom and liberty of the people, notwithstanding the fact that such a power given to the police is necessary in the interest of the peace and order in the society. Though that conferment is validly provided for a specific purpose, the exercise of that power surely calls for a close watch over the actions or omissions by the personnel. That range of superior scrutiny in relation to various acts or omissions in the gamut of investigation of crimes is very critical to the well being of the society. No doubt, the law has to act against those who violate the prescribed law/s by committing crimes. In accomplishing that goal, station house officers and others connected will have to act to bring the offenders to book. But, all such steps will have to be done only as per the procedure mandated for each such step. It is essentially in this area, one can see the need for close supervision of investigation which manifests itself to prevent failures or abuses by law. After all poor or inadequate supervision is most likely to mean tyranny and abuse as well as injustice on some citizen or the other. Good supervision helps to prevent such abuse/s at the operational and field levels, besides setting the course of work for a right path. In addition it will also help to act as a means of future control. However, benefits of good supervision go beyond that aspect of work as good supervision not only prevents any misapplication of law or procedure in a particular case but also upholds the legitimate interests of democratic way of life. Indeed, that measure of upholding the rule of law, guides and helps, as a corollary to the lawful outcome of investigative work in diverse areas. Thus, the task of supervision is of equal significance to both the needs of victim and the society (accused included) and in a way it can be deemed at par to the task of professional investigation itself, especially when it is not done well. Conversely stated, supervision of investigation work is of substantial and continuing value to the organization and the people or the society in general.

VII.4. (9) But, the quality of supervision of most investigations (particularly the routine and run of the mill cases) in the near five thousand police stations spread across the length and breadth of this country is surely not at a satisfactory level. That alarming situation is a result of continued negligence on the part of the system towards the evolution of a good cadre of capable, competent and committed supervisors. As it is the basic standard of investigators is not very high and that fundamental inadequacy is compounded by poor quality of supervisory work, as that cadre of supervisors is also not trained as warranted. In fact, there is a clear need to build teams of professionally high quality supervisory echelons. Since over a century, all routine and general cases from the station houses are supervised by the ranks of police inspectors and deputy superintendents of police and further, heinous cases are as a rule investigated either by an inspector or a deputy superintendent of police but supervised by the next higher ranks in the form of SP's and other higher levels in the Indian Police Service. Though this strategy is seemingly workable, and yet, in practice it has got slowly degenerated more due to the organizational failure to insist on good supervision. There is no doubt in the proposition that every investigation of a cognizable case (irrespective of the type or kind) merits to be complimented by its close supervision. That commitment is not merely from the point of view of good use of resources of the state but also from the point of view of ensuring rights of the people. It is not merely the question of human rights of accused that should spur us, but the genuine need to ensure quality work in an area of desirable standards of governance. If that is taken care off, then, it paves way for the well-being of the society as a whole. A good control and supervisory mechanism ensures economy of resources and advances the compliance to laws. More importantly it acts as a bulwark to protect the human rights of everyone in the process.

VII.4. (10) The task of building a continuing chain of good supervisors is thus an important activity and merits to be placed at the top of the charter of the police needs. That demand can be answered best by police leadership as well as political leadership of the state by responding positively to that critical requirement.

VII.5. (1) Nuances of Investigation in general and the art of interrogation in particular are explained in various acclaimed treatises and many such resources are easily accessible. Interrogation techniques visualized and conceived from various perspectives are being used in different nations. In fact, many professional police systems have been striving to improve many such styles. Though many good efforts of that kind are entwined with several coercive styles (which are prohibited by law) of work and such trends are evident in most parts of the world. In that context, the Indian police are no strangers to similar scenarios bugging them very often. Keeping the systems functional within the bounds of law is a must and the supervisors have a big role in that range. In that context, keeping the issues of security of the society in mind, ventures can no doubt be made to work new ways of eliciting information needed in various investigations. Many enhanced techniques built on several typical ideas like suggestibility, deception, dual role of interrogators, playing on the ego of the suspect and so on are continuously being attempted in various situations. Innovation and experimentations in this area is also publicized by various sources. It suffices to assert that there is no bar for experimenting but care is needed to keep the concept of rule of law as the bottom line for all such enterprise. In a way, developing new strategies in dealing with interrogation is not only the pith and substance of the skill and competence of investigators but also the essential item from the perspectives of supervisors, to ensure the bounds of law for all such exertions.

VII.5. (2) It has to be kept in view that 'interrogations

and questioning of detainees' are not only being pursued by the law enforcement agencies only as issues of professed national security concerns have been paving the way (since very long in the history of man) for questioning of detainees by military personnel or national security agencies of myriad kinds. Examples abound such efforts across the globe. India too is familiar with that kind of efforts to ferret out information or secure actionable intelligence from a person/s in their custody. Many instances of that kind get media coverage in diverse ways and several such events cast wider political and other ramifications. Though hue and cry is perforce heard condemning the events as violation of human rights of the detainees, other essential aspects like the issues of innocents and so on come up in the same vista and even those considerations warrant resolution. Undisputedly each such issue defies easy answers and the problems also do not get answered in any easy way. For example, harsh questioning of suspects by the security forces of the United States of America as a part of its global war on terror has various dimensions and it must be stated that problems of international terrorism is clearly on a different orbit in contrast to the facets of questioning suspects of crime by violent or coercive ways. In the context of the fact that the general run of punishable crimes under the respective penal codes, international crimes and terrorist crimes and so on are all violations of standards of civic living on a graded scale, there seems to be really no clear demarcation between them as one form of abuse or exploitation transcends into the other and the lines of separation get increasingly hazier.

VII.5. (4) While noting that police are responding to the situation by increasing the quality and frequency of professional training and other ventures, there is also a corresponding upsurge in various public forums which support accused persons and help such accused persons in so many ways to overcome the chances of exposure by

interrogations by giving ideas as to what a suspect or an accused can do as per law to refuse any answers during all such situations. There are several resources with many voluntary organizations, often advised by advocates and Human Rights activists and support workers besides the web access that explains various police techniques and methods to assist the accused in direct and indirect ways. Ideas on how a suspect or accused can conduct himself and yet refuse to confess to the crime, are also getting easy for access by the accused persons.. Here the question is not on the factual aspect of the involvement of the accused or suspect in the crime but in fully making use of the legal protections against self-incrimination and other related rights. It is interesting to note an observation made in an advertisement for training police officers in that field.¹

it turns out that the methods that are used by law enforcement to feign confessions are based on extremely powerful psychological techniques that have been known to social scientists for decades. Same methods have been used by marketers and conmen alike for centuries to convince regular people to do their will. The fact that these same techniques can be applied by law enforcement to get people, who often times should clearly have known better, to give statements that result in lengthy imprisonment, or even execution, is an testament to the power of such techniques.²

VII.5. (4) Coming back to our own experience in the vast areas of learning ideas and developing strategies in the art of eliciting information, we can recall that one of the earliest police training handbooks by the Police Training School of Moradabad, UP had given a series of ideas as to how to bring pressure on the accused or suspect to give away clues or to give enough material for investigation to move forward. Of

1. New Jersey Courts, Judiciary. state.nj.us2011/13/04

2. Note by Dr Eric Mings, Ph. D., in the psychology of the police interrogation methos and techniques-<http://www.interrogationpsychology.com>

course, since the time of the original publication of such training literature (and also in relation to the original law in question), both the Code and the Evidence Law had prohibited confessions made to the police but the use of Section 25 of the Evidence Act to recover incriminating material at the behest of the accused was put to the most intense use. The point here is that even in India, experience has shown that there are many ways to deal with the challenge of interrogation but the emphasis that is repeated here is the fact that the adequacy, frequency and intensity of training police personnel in the area of investigation can never be forgotten. Further and more importantly the significance of the most crucial area of 'Questioning an Accused' needs to be improved very much, from the perspective of training and its use in actual field activities of the police forces. More importantly, such learning, training and use of that range of professional competence is a continuing need and it has got to be relentlessly worked on and sustained.

VII.5.(5) Techniques of Interrogation heavily depending upon the accusatorial style or a confrontational style, will often find that the chances of its success get limited in the long run. In addition, such approaches get consigned to an inevitable zone of law of diminishing returns. More importantly in a 'rule of law' based regime, such a process is most likely to be challenged in the courts of law. Chances are that even the most sophisticated unlawful method will one day or the other fail as one exposure will fail to pass the needed test and the most vital judicial certification of legality for any such unworthy effort is sure to be lost.

VII.5. (6) As mentioned earlier the entire range of knowledge and practice as well as new ideas in the vista of 'questioning an accused' are undergoing so many changes. Innovative and creative attempts are clearly and continuously emerging and that trend is evident in several ways. The ubiquitous new approach by its appealing name 'focused

interviewing' is also at hand on a compact disc and is now available as a distant learning tool. Making best use of the 'body language, identifying deception of the interviewee or the suspect' and making best use of good planning and so on are some of the professed ideas in that learning scheme. It is claimed by the protagonists of such ventures that an interrogation has better chances of succeeding, if it takes care of some of the vital aspects in its entirety.¹ However, it is also seen that in many such programs, the idea of security of the country is being touted as a matter of vital, immediate and imminent concern to all involved and those catch slogans seems to be a novel idea as buzz words in marketing training of that kind, particularly after the terrorist attack on the twin towers in the New York City of the United States of America.

VII.5 (7) In this increasingly sought after and fairly widespread area of dissemination of knowledge and skills, very many Universities and even private educational institutions are offering such training ventures to the police organizations and in particular to the investigating officers in that country (the USA). In addition the appeal is also conveyed to all those aspiring to join the law enforcement system, so that they are chosen by the police systems for their already acquired skills and knowledge, considered as inevitable essentials in that profession. As pointed out earlier, such access is open to all (and also through the internet and by distance education plans of different kinds) and even an evil minded person can get vital or critical information as to how the police may or will act during such questioning sessions. A new website for professional interrogators is also at hand and the information exchanges and continuous improvements to the data and resources are also seen in them. As there are a large number of private investigators working in the United States of America, many such programs cater to such persons besides the law enforcement officials. It is worth noting that

1. *focussedinerview.com* on the Internet.

besides the legal issues, use of technology, essential psychological ideas and various permutations of linguistic barriers, multi-suspect interviews and so on are part of such programs.

VII. 5. (8) A brief reference to the above information is only to highlight the significance of the subject as ought to be noticed by us. It is clear that the knowledge in that area is being used by many and in various ways. The recipients of such inputs are not only the law enforcement professionals but also many others (several legitimate users like those in Private Security or Insurance and other business). More importantly, it is necessary to keep in mind that such recipients also include a vast band of the lawless and they are seeking the same inputs for diverse reasons. More often than not, their intentions may not be honorable and thus, the lawmen have to stand ahead of them in all such areas of learning and acquiring skills in all possible ways.

VII.5. (9) The task of 'Questioning an Accused' has various dimensions to it. The goal may not be limited to only crime fighting in general as various facets of international security and even international relations may have a bearing on many issues raised by that charter. With the changing patterns of crime, the challenge is really acute as well as complex. The amazing varieties of crimes and its differential impact on the entire human society adds to the problem. However, keeping the awesome numbers of traditional crimes reported in India, the need is to look at the task professionally. That goal calls for mastering the art and science of 'Questioning an Accused' as a major responsibility for the all police systems. Without forsaking commitment to deal with all other types of issues narrated hitherto, police will have to develop their professional advances with determination and firm up their resolve to do such chores in most effective but legal ways. In that dynamic environment, it may be necessary to ensure that the task of 'questioning' persons (suspects,

accused and even witnesses) are done only by qualified or certified professionals. Though such a sudden transition may not be possible or practical, there is no reason why a drive to reach that level should not be ventured. The future of the police in the realm of crime fighting indeed clearly depends on that noble objective.

VII.5. (3) Since recently, the law courts in the United States of America have been directing a movement for mandatory electronic 'recording of all custodial interrogations.' This situation has a bearing on the law relating to a confession of an accused made to a police officer, which is generally presented as a taped or recorded confession. In view of increasing appeals against such evidence during trials, questions of testimonial compulsions crop up and this seems to have impacted the need to seek 'electronically recorded' custodial interrogations.

VII.5.(4). Japan is currently considered as a modern democracy having a very highly trained professionally efficient police force. The National Police Academy in Japan has been in the forefront to develop new training schedules to inspire more objective ways of gathering evidence. Voice recording of suspects coupled with various other sources are being worked to make the 'questioning of accused and suspects' a more positive way of dealing with crime. Besides calling for several law reforms to enable various scientific tools (like interception of communications of suspects and criminals), the Police Academy of Japan has continuously engaged in developing more and more creative ways of interrogation techniques and those ideas are being conveyed to the investigators across that country. Recently the report* of the National 'Research Committee for Safe and Reassuring Future' has provided its report commending various steps including preventive efforts and also the police professional approaches. Better and more effective use of data - to be gathered and at hand are being worked diversely. These developments are worth noting and surely useful for similar adaption.

* (Proceedings of the A A P S conference, Tokyo, December 2014 - on Prevention of Crime.)

CHAPTER 8

Suggestions to improve the quality in the task of 'Questioning an Accused'

VIII.1. (1) 'Questioning an Accused' during an investigation of a crime is a real professional task that can be accomplished best only by a competent, capable and professionally trained investigating officer. In addition, that enterprise has to be comprehensively supported by a sound organizational policy that has faith and commitment to the most desirable components that embellish the concept of 'Rule of Law'. In that dynamic enterprise, it is necessary that the investigating officer is inspired by a spirit of being law bound at all times. In fact he has to act truly as an 'agent of law'. Conversely it means that he cannot allow himself to be debased by any considerations other than the law of the land. Further it also means that an investigating officer has to keep in mind that he cannot allow himself to become an agent of anyone else other than the law. He cannot afford to convert himself as a member of an armed unit of the political party in power that is ruling the State. Law and law alone can be his master. That commitment becomes the key as well as the passport to ensure integrity of investigations. It cannot but be asserted that all efforts by the investigating officer in his duty exertions must rely on such a fundamental foundation. A sense of complete independence and integrity in his work can manifest itself only when the elemental aspects enumerated above are ensured. In a way, these aspects are

besides his professional skills and competence and yet without the above attributes, no investigator can prove to be worthy of his salt.

VIII.1. (2) Though the problem of crime has been engaging the police in India since long (barring aside the experience of the native Indian society, though under different kingdoms in dealing with the crisis since times immemorial), the approach of the police organizations in dealing with that challenge has been generally sporadic. It is a fact that organized existence of police in India came about when the Indian Police Act (1861) was made a law. No doubt, the Constitution of India gave them a great foothold to come to grips with their ordained role and functions. However, that basic foundation of the Indian Police Act, 1861 has, rather indirectly, impaled the police systems to answer more to the dictates of the governing political power rather than enabling them to respond to the commands of '*Rule of Law*'. As a result, the police systems in general seem to be more content in remaining as eager servants of the political masters rather than taking a stand in the face of any undue or unjust or illegal opposition to their law related work. As a result the police are yet to genuinely feel that they are the true agents of the law of the land. In the absence of such an essential mental makeup, they are still to stir out of the syndrome of being the self-proclaimed (though not expressed openly) footmen to do the bidding of the political power. Though it cannot be summarily stated that all cases registered in the country suffer due to such a vice, it is equally true and clear that in a glaring number of instances public perceptions about the police reflect a patent paucity of action that can redeem the trust expected by law. Further, the needed mindset seems to be palpably missing in their innate thinking and actions, which somehow seems to reflect the absence of such worthy and needed perceptions. Though Law has enjoined on them to be responding to legal directions alone, it is evident by a seemingly

never ending series of instances that brazenly convey the subversion of rule of law for varieties of reasons. In fact exposures of the police in resorting to such types of wrongs are repeatedly witnessed in frequent media reports castigating partisan or unjust actions by the police. In addition to that there are a very large number of instances where law courts (of all levels) have found the law enforcement machinery ignoring to honor the '*Rule of Law*' by failing to do what is really expected of them by the law. Even though volume of such types of failures may be clearly in a minority *vis-a-vis* the awesome number of routine cases that are seemingly disposed on merits, the odium of abuse of the former category corrodes the public faith in the police in particular and the system in general. As a result, the public confidence in the edifice of '*Rule of law*' relentlessly continues to get shattered. The damage stemming out of such a situation has a far-reaching impact on the very efficacy of law as a means of good governance.

VIII.1.(3) Besides that debilitating constraint (in the face of a not so a brilliant record of the law enforcement agency in its credibility to uphold the 'rule of law' at all times and in all cases of 'investigation' before them), the near total immersion of the organizational focus on law and order and other security requirements of the State have paved way for a very unhealthy trend in overshadowing real and professed organizational priorities as per the Police Act of 1861. The crying need to make the police an agency for Prevention and Detection of crime has become an elusive goal and the system has not been able to fully assume it's real professional character in that challenging sphere. It is not the case that police in India are utterly incompetent or incapable in dealing with the tasks of crime detection or crime prevention. Indeed reality is far from it. Though there is a very massive list of fantastic success chronicles accomplished by the Indian police in solving ostensibly good number of complicated crimes (and that

merit has been with them since long), two distinct inadequacies seem to bug the police systems in this regard. Primarily, police have not been able to assume in real terms their true professional posture in becoming the 'crime fighters' of the community. Though police systems in India have most of the structural arrangements and other ramifications essential for setting up a professional network in the fight against crime and in addition the police have resources of man power and related where-with-alls (in spite of several shortcomings and inadequacies in those arrangements), the prevailing work ethos does not place them as dedicated team of professionals who can respond to the duty calls in the area of crime prevention and crime detection. Next, they have not been able to really acquire the genuine status of a specialized, proficient network of professional crime fighters.

VIII.1.(4) As a result of that stalemate, even the area of 'questioning an accused', a professional task, suffers from many known shortcomings and maladies. As mentioned earlier skills, capacity and expertise of a good number of police investigators from across the length and breadth of India undisputedly matches with the best that can be considered generally from across the globe. But, due to real lack of development of a commensurate organizational culture coupled with lack of a sense of professional approach that can enable collective potential of the system to elevate itself to its highest desirable levels, they, as a team have been unable to reach the desired standards in professional terms. Crime Prevention and Crime Detection are in fact the real first charters on the police.¹ Due to historical as well as other reasons those credentials have got distorted in most serious ways. Though the significance attached to Law and Order or VIP duties cannot be disregarded or relegated, there seems to be no legal justification to alter the legally mandated sequence

1. Refers to the law by which duties are assigned to the police under the Police Act, 1861.

of precedence of police duties as per law. Such an incongruous situation has developed over some decades, even though the Police Act of 1861 places 'crime fighting' (in the combined task of 'Prevention and Detection of crime') as the primary range of duty ahead of the task of Maintenance of Law and Order. This aspect has had a far-reaching impact on the poor growth of the standards in the overall area of crime fighting. Suffice here to mention that efforts to improve the quality of crime fighting by elevating standards in crime prevention and crime investigation can be surely ventured better if organizational priorities are reassigned with regard to relative charters of police duties. This has to be done to sub-serve the best interests of peace and order as well as the concerns of public interest. However, keeping the detailed analysis of various aspects that have a bearing on the theme of the study, we can examine those crucial aspects that relate the needed changes in the organizational approaches. There is a need to advance professional standards in the area of 'questioning an accused' in particular and that of police investigations in general.

VIII.2.(1) In order to find ways and means to seek improvements in the task of 'questioning an accused', some of the actionable ideas can be considered as discussed below.

VIII.2.(2) **Effecting specific changes in 'Procedural' and 'Evidentiary' laws:** Changes in law ought to stem only after due deliberations and consultations, held at appropriate levels. After all, changes in law cannot be an impulsive response to make 'some new law' or to merely make some changes in an 'existing law'. It ought not to be allowed become a myopic and ham-handed answer to any crisis that confronts us. Likewise, such a change must not be allowed just to assuage some feelings or viewpoints without due thinking at all relevant levels. Changes must not stem due to some pressure or the other without adequate thinking on the pros and cons of the changes envisaged. Thanks to the democratic ideals

that inspire our nation, we can benefit from various opinions, ideas and suggestions from several expert bodies and professional forums, besides the option to seek opinion of individual experts and specialists. In addition, the nation can also draw from various other experiences, including its own wisdom of the past as well as the facet of its near seven decades of learning experiences since independence. More importantly, decision makers in the portals of governance can also get a feedback (and indeed they have been getting such responses) from members of the public in very many latent as well as patent ways. Armed with many such considerations, the nation ought to be able to make a best choice in all such enterprises.

VIII.2.(3) Problems concerning myriad aspects of law enforcement have been in focus since independence. With the awesome changes that are cascading in the last two to three decades in almost all areas of life, law enforcement systems have been facing a humbling challenge of staying relevant to the rapidly varying and hugely altering environs. As a result of such sweeping transformations engulfing the modern day world, it is incumbent on police to adopt and modulate quickly their overall potential to suit the up-and-coming posers to their professional competence and capacity. If they fail to do so, they will be rendered obsolete. But, that worthy mission in pursuit is no cakewalk. Welding the police systems to succeed in that context is a poser to the very genius of the human capacity to come to grips with all such challenges and yet sustain the ability to administer a crime free society in a democratic manner.

VIII.2.(4) As human societies are dynamic, newer developments of umpteen kind keep coming in waves and thus the adequacy of law to a new situation has natural limitations. Newer laws are needed and newer procedures become necessary. A good part of traditional crime problems of the society, as seen in the occurrence of several types of crimes noticed and experienced by the world are apparently

repetitive type of harms to the person or property in general. But, changes in the styles of ways of living coupled with awesome transitions brought about by rapidly cascading innovations in the area of technology and applied sciences as well as the exploding changes in a means of communication and transport have been providing seemingly endless opportunities for the evil minded to venture out into hitherto unknown areas of life. As a natural result the society is being continuously compelled to deal with new brands of crimes. In this devastating enterprise, national boundaries are really no barriers. Terrorism, Extremism, Trafficking of all kinds - inclusive of Trafficking of Persons, Drugs, Arms, Money and so on, Money Laundering across nations, Cyber Crimes and its ilk have added to national and global crime problems. Surely integrated perils of all such posers are exploding in geometric progressions. Laws which seemed adequate till recently are looking grossly insufficient and at times appear most derisory as well as simply inadequate to meet most of such new threats.

VIII.2.(5) Thus making due and appropriate enactments, to advance the cause of law and for sustaining peace as well as order will have to be the primary tool in the total vision of law enforcement. Many procedural guidelines held as consistent and appropriate till recently also merit a review. Ultimately the society has to survive and if the society ceases to exist owing to swamping of lawlessness, there can be no life even for the 'individual'. Though jettisoning the legal process that is '*fair, just and reasonable*' is not a real alternative to the emerging crisis, modulating the processes and procedures in proportion to the perils is perhaps inevitable.

VIII.2.(6) Owing to the very nature of things, new and innovative laws will have to be made to meet emerging challenges. Some discussions have been already made in this regard at an earlier place to think of innovative and creative ways, without forsaking basic notions of civilized ways of

living. Human society is no longer a simple group of homogenous assembly of people. This is so in most parts of the modern day world. Heterogeneous communities are further impacted by religious, linguistic and many other differentiating factors. Members of the public are vertically and horizontally grouped in terms of their respective interests and such isolation haunts the society in very many latent as well as patent ways. Under those compelling situations, making a best choice to be accepted by all in society is very difficult. Society has become a cluster of various types of opinions and beliefs, as well as of actions, reactions and viewpoints. Clash between nations for securing control over fast depleting natural resources is another factor prompting serious differences adding to the resulting global crime situations. In that extremely complex background making of new laws to meet the challenges of crime will have to be ventured. That can be very difficult as it calls for seriousness and sagacity from the entire human society and that is not an easy task. We are also bound to deal with many traditional crime concerns besides the emerging techno based perils and many other global crime issues.

VIII.2.(7) At an earlier place a mention has been made about the need to closely examine some of the considered recommendations and suggestions of some of the important expert groups set up in that regard by the Government of India. The report of the Committee on Reforms of Criminal Justice System (2003) raised furious debates and angry criticisms were heard about some of the new ideas that were commended by that body to reform the penal justice processes in India. In that context, some of the procedural recommendations made by that Committee were criticized as being extremely detrimental to the very founding notions of 'Human Rights' of persons. Similarly, a particular idea suggested on switching over the standards of appreciation of evidence in penal trials from notions of '*proof beyond*

reasonable doubt' to a slightly less rigid standard (broadly stated as a standard based on preponderance of probabilities) was also strongly contested as not being suitable for implementation. That new idea, as can be seen, enables the court to come to a view on the guilt of the accused before it, after considering evidence tendered by a slightly less rigorous yardstick. Such an inference is possible if the court is convinced that it is true. However, some have argued that such a change may not be really wise. This new standard commended by the said committee is no doubt an innovative suggestion, which is explained to be somewhere between the 'proof beyond reasonable doubt' (currently followed by the courts of law as a guiding standard) and the 'standard of proof' followed by the civil courts in India by what is known as 'the preponderance of probabilities' test. In fact, the question of 'proof beyond reasonable doubt' is not a standard mandated by any law (say like the Indian Evidence Act, 1872) but is a procedure followed by the criminal courts as a matter of precedent. It is also a moot point to note that if civil laws which follow the standard of evidence based on 'the preponderance of probabilities' as an acceptable standard and further such a position is deemed as a civilized way of resolving civil questions, then, there seems to be no worthy or unassailable argument to counter the commendation of the Committee on Criminal Justice Reforms on this particular legal standard.

VIII.2.(8) Further, the basic strategy to make the 'search for truth' as a duty to be cast on the courts is another important idea. However, with regard to this particular suggestion, it seems that the current arrangement envisaged by the Code of Criminal Procedure, 1972 could well be continued. (*See discussions on this specific aspect made at an earlier place*). Perhaps if the investigative as well as adjudicative enterprise are made to look at 'facts and facts alone' and reduce the significance attached to various technical exceptions to the

rule of evidence, then to a great extent the enterprise of investigations done competently may yield better results. The noble sentiments which reiterates that 'let one hundred guilty escape lest one innocent is punished unjustly' may have to be modulated to say that 'let the guilty surely be punished and let no innocent be punished unjustly' and there seems to be no serious or justifiable complaint against such a standpoint. In a way that idea is seemingly more welcome, in the face on escalating crime waves and unjust burdens on the society by such depredations. Though no empirical data is at hand to convince us about the ratio of innocents being punished unjustly in criminal trials or the ratio of really and factually guilty escaping the consequences of law, the public perception seems to hold that a substantial number of really guilty escape easily, at the cost of the society. As a result of that stalemate, the very credibility of the legal system is in great peril. The innate trustworthiness and standing of the system in the eyes of the lay public is slowly sinking to most abysmal levels. If that deterioration is not arrested, it may reach a point of no return. That situation would spur lawlessness and chaos within the society. Likewise, it seems that instances of factually innocent being unjustly punished is surely not very high (it is also based on perceptions and not on any empirical data and yet media does project instances of failures of justice where an innocent has got punished unjustly). It is also an oft cited fact about pre-trial detentions and other apparent failures of the concept of 'presumption of innocence' before being proved guilty and yet those are not in the direct line of the arguments made in here. To sum up on this issue, we can safely hold that the fear of innocents getting unjustly punished is really remote and at worse, it cannot be but negligible.

VIII.2.(9) It merits notice that a catena of recommendations of the Committee on Reforms of the Criminal Justice System relate to some of the most important procedural and evidentiary facets of the Criminal Justice

System functioning in India. For example, questions relating to the 'Right to Silence' (of an accused or suspect), which is perhaps most central to the theme of this study has to be seen in the context of slowly emerging international thinking - not only amongst the lay people across the world, who become innocent victims of the acts of terrorism and other horrifying international crimes but also amongst the leading jurists and legal practitioners who have started to feel the need to uphold peace and order in the realm of rule of law, without forsaking the rights of the accused. Keeping in mind various challenges posed by crimes of Terrorism, Extremism and Trafficking of Persons, Arms and Drugs as well as Cyber and Computer crimes, the world is being pressurized to seek hard answers in relation to the fully justified questions raised by victims of such crimes. Most of the times, such victims get suddenly caught up in the quicksand of such patently unjust and violent impositions and in those situations, mere implorations of various procedures, that acts as a road block to protect an accused, rather unjustly, seem to be an unnecessary and an unfair mechanism. Such a series of obstructions on procedural grounds delay and even deny justice to the victim/s. Though it is not the case that issues of 'Human Rights' have to be abandoned in this tug-of-war between the criminals and the law abiding, and yet, there is a good case to differentiate the way in which the law deals with such crimes, at least once the basic question of the background of the crime as well as *prima facie* nature of the involvement of an accused is manifestly clear. Closely following the report of the Committee on Criminal Justice Reforms (2003), the suggestions and recommendations of the Committee for the National Criminal Justice Policy echo some of the above mentioned view points in their report. That view strongly supports many of the important recommendations submitted by the committee headed by Dr Justice V S Malimath to the Government of India. (2005). The Second Administrative Reforms Commission (2007) in relation to the subject of

‘Public Order’ has also chosen to reiterate some of the strong recommendations of the Report of the Committee on Reforms of Criminal Justice System.

VIII.2.(10) There have been persistent suggestions to make specific changes to the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 so that genuine constraints that hinder the effectiveness of law enforcement is removed and a more appropriate environment that can advance the cause of justice to the victims and the society is put in place. Further, it is asserted that such a change can be invoked without imposing any unjust burden on the interests of accused persons or without forsaking important rights of the accused. For example we can mention some of the crucial changes that can be taken up urgently by the Government as under:-

1) Changing the ‘badge’ of mistrust that impales the credibility of the police system as a whole. This suggestion relates to S 25 of the Indian Evidence Act, 1872. It is viewed that by amending that critical provision under the Indian Evidence Act, 1872, a good and worthy change can be ushered in. This idea is stemming from the recommendations made under Chapter II of the Report of the Committee on Reforms of the Criminal Justice System. With regard to the prevailing arrangement dealing with the question of relevancy of facts, it is noted that Section 25 of the Indian Evidence Act, 1872 makes a blanket ban on confessions made to police officer. The level of trust that the law reposes on a police officer is rendered low, more by that provision (Section 25 of the Indian Evidence Act, 1872), than anything else. Several viewpoints have been seeking to alter that basic dichotomy of lack of formal trust on the law enforcement agency. In fact, most advanced nations do not have a comparable prohibition. As a result of that legal barricade, which summarily pillories the official efforts to deal with the challenge of crime deeply affects the end results. Further that contention impales the system

in very many other ways. The Law Commission of India, in its Sixty-ninth Report suggested major changes in the Law of Evidence and more particularly relating to sections 24 to 27 of that law. Though that worthy suggestion was made in the year 1977, those views have remained in the interiors of the governmental record rooms. Notwithstanding the fact that the matter was brought back to the same body (i.e., the Law Commission of India) which after a further reconsideration of its views, again commended early changes on the same facets of law. The Law Commission of India, chose to remind the Government on the salutary proposals by pointing out in its 185th Report (year 2002) that 'a review of the law of evidence is, it is acknowledged by one and all, one of the most formidable and challenging tasks for any commission. The Indian Evidence Act was drafted in 1872 by one of the most eminent jurists of the nineteenth century i.e., Sir James Stephen. In fact, while dealing with sections 24-27 of the Act which are probably some of the crucial sections of the Act, and which are applicable to the criminal law, the logic and reason for that prescription was briefly asserted which in the changing scenario merits a fresh look, at least now. As observed by a well known jurist and author of widely acclaimed commentary on the said Act that 'no section has raised so much of controversy and doubt as section 27 and several judges have recommended the redrafting the range of sections from Section 23 to S 27 of the said law'. The vital suggestion by the Law Commission of India was to introduce an amendment to section 26 by the addition of a new section 26 A. This provision was conceived to enable confessions made before a senior police officer to be admissible in evidence and that suggestion had several conditions attached to that sequence to be followed before it is held admissible in law. However, as the exchange of views between the Government of the day and the Law Commission of India went on and on during the period right up to 2002, the said legal guillotine

vis-a-vis the credibility of the entire police organization continued and remains to be so till this day. At best it has remained to be another debatable issue. Though it is a fact that the same rigid stance of the law is not maintained in so far as many other law enforcement agencies of the State (like the Customs, Excise and Revenue Intelligence and so on), the historically imposed invidious burden on the police has continued. Admittedly, some changes have been considered in relation to some special enactments to combat really deadly problems of terrorism and its ilk by making some changes in law *vis-a-vis* the provisions of the Indian Evidence Act, 1872, and yet, the overall restrictions in the evidence law has continued. To sum up, the situation still operates to the disadvantage of the society in general. Though many modern day democracies do not impose such a blanket ban on confessions made to a police officer, and many have also altered several conditions to enable the police to advance the case more effectively through such enabling arrangements, the odium as well as the castigation of the entire police of India by the law continues. It needs notice that this mistrust of the law enforcement machinery is by the law itself. (i.e. by the Indian Evidence Act, 1872) Such an incongruity is a kind of a paradox, which needs to be attended to.

2) It is recommended that the Government of India should takes steps to consider the need to provide by law to enable the confessions made to police to be admissible in evidence. It is also necessary to keep in mind that even if such a change is effected, unsubstantiated or uncorroborated confession will not result in any conviction of an accused. As the facets of circumstantial evidence in all such cases come into play, the question of unjust imposition on any accused cannot be a genuine grouse.

3) Changes in the Criminal Procedure with regard to Section 162 of the Code: - The enterprise and exertions of the police in the pre-trial stages of a crime are virtually disregarded

by the law as any statement made to police (even if the witness were to be a literate person) need not be attested by the said person. Though the Law Commission of India, in its Forty-first Report made a strong pitch to alter that scenario, the stalemate persists. Besides making it appear that police efforts are of no real value before a forum conducting the trial, such a situation gives scope for a possible abuse of the investigative processes by the police officer concerned. The dual impact of the legal fetters on the police by the Code and at a later stage the Evidence Act has really no connection with the facets of evidence or the manner in which a resolution on admissibility of a statement (oral or documentary) is to be received. As a result the negative impact works on the entire system. That negative perception was perhaps due to the opinion and action by the law makers of that vintage (Sir Stephen in particular), which paints the entire system in a single brush. That view is surely outdated as it was conveyed under different situations, which was more in consonance with the best interests of the ruling aliens. More importantly, there is justifiable case to find out empirically about the post independent enforcement teams, which have replaced the earlier systems. The echelons are surely worthy of public trust and continuing a castigating eye on them is surely counterproductive at the cost of the well-being of the entire community.

4) In fact, over 150 years have gone by, since the times when such views marshaled the law in question. It is urged that the modern-day Indian police merit to be perceived better with a greater sense of trust and faith which will in the long run help in the common cause of the peace and order edifice of the country as a whole.

5) In addition, several ideas and suggestions of the Committee on Reforms of Criminal Justice system need to be viewed with a dispassionate and mature perspective to strike a balance between the Individual and the Society. However, with regard to the issues on the theme of changing

the procedures and processes of the law on the critical questions relating to the 'right of silence of the accused', it is necessary to keep in mind, that such an assessment must be seen not merely from the perspective of the accused as the concerns of the victim/s of the crime and the interests of the society- on whose behalf enforcement system works, merit to be objectively viewed. The 'right of silence' of the accused must work effectively so that it can act as a 'shield' to protect the innocent. But it ought not to be allowed to become a 'sword' to strike recklessly at the victims of crime.

6) It would be pertinent to keep in mind the progressions made in the history of penal laws since nearly one thousand years, more particularly in the development of criminal law under the Anglo Saxon system. Initially the penal law was very harsh and a mere accusation was enough to consign an accused to a perennial incarceration. Trial within a reasonable time was by itself a mirage and at times it seemed to be a matter of luck. In addition to those facts of despair, innumerable additional miseries were being heaped on the hapless accused. The question of his innocence was really not a matter for immediate consideration by any one and the presumption of guilt seemed to be certain on mere accusation. Due to various factors, most such perverse views may have seemed natural during those tumultuous times. Further and in addition, cruelty and debased actions on behalf of the King seemed an inevitable event in the process of an accused getting punished. It was in that particular context a slow upsurge seeking reforms of the penal law and penal processes emanated, predominantly as an urge to seek protection from the tyranny and abuse by the King or King's men. The emerging idea of reform in the penal processes was essentially to soften the rigors of abuse of power exercised most arbitrarily by or on behalf of the King. It needs notice even in retrospect, that such instances of oppression and uncouth ways were really the commonplace events under the then prevailing

Anglo-Saxon systems. As a revolt against such invidious impositions, efforts and urge for reforms started. The focus was to mitigate the harshness of the response of the King-controlled law enforcement to all crime issues. The slow but surely cascading events commenced a long series of legal ideas to mitigate all such harshness in the total range of penal processes. But, a contemporary appreciation shows that the pendulum of change seems to have swung to the other end of extremity by which the 'accused person/s' is/are seemingly getting several unmerited favors which are really counterproductive. No doubt the urge to foreclose an apprehension that an innocent may get wrongly penalized was and in fact is a genuine concern. Yet making the penal processes most inefficient by too many technical bars is slowly corroding the very efficacy of the system and this problem merits notice, more out of an enlightened self-awareness, as the very civilized ways of living seems to be in great peril.

7) As commented by Justice Krishna Iyer, (1978)

'One wonders whether in the meticulous hyper sensitivity to eliminate a rare innocent from being punished many guilty persons must be callously allowed to escape',

In that context, there ought to be a genuine and worthy way to ensure that an innocent is protected and at the same time, such an approach must surely and certainly ensure that the really guilty do not flee the law, assisted by the means of undeserved considerations bestowed on them in a formal way. Admittedly, that proposition is not easy for practical action. But, the thinking of the leading lights on the way to harmonize the competing claims has not been a methodical or a focused effort. Indeed, that step is a must lest the very ethos of democracy gets destroyed and the affected victims would lose faith in the legal system. We need to stand guard against the idea of a possible helpless recourse to the pressures of personal revenge by the victims against the wrongdoers. If not well cared for, the rule of law may really get negated seriously.

8) Perhaps the most vital perception in the trend of reforms that have come into being after so many diverse kinds of deliberations that went on for several centuries is that during the beginning of such a wave to seek mitigation of the harshness of the King's laws, the fight on behalf of an accused was against the King who was most visible embodiment of autocratic power. In the last one hundred years, most parts of the world have shed and abandoned that once-renowned claim of royalty, through which the kings and his heirs tried to assert their hegemony on the common people. Rule by Kings, monarchs and their ilk have virtually vanished, though some dictators are seen lingering here and there. People's innate urge for self-governance is clearly asserting, enabling strongly to support the real power of the rule of law. In that clearly altered situation, genuine and primary interests of the people or community must be given highest considerations to plan and effect a worthy legal arrangement. In this context, it may be appropriate to mention here the provision of Article 51-A of the Constitution of India that casts a duty on the citizen with regard to several events in the life of a nation. Admittedly, the 'duties' envisaged therein cannot be extended straight away to the realm of penal law enforcement. But, there is scope to look at the way by which the peace and order as well as the collective development and progress of the nation are to be shaped. New laws and new ways to deal with many societal or national problems including the menace of crime may have to be fashioned. Of course, the law as it exists now is fairly vast in terms of its gamut of working but new crimes and new threats to public peace are in a totally different orbit. Unless we infuse an air of dynamism in the working of the law and follow it up by a carefully evolved policy to deal with such crisis issues, the society itself may perish and at that stage talking of the rights of individuals may become a non est.

9) With regard to the 'Right of Silence', the famous quote

of Glanville Williams¹ in his celebrated work on 'The Proof of Guilt' which were spoken by Justice Swift in commending to the jury the charge and the evidence at hand that makes a compelling citation given as under:

'Members of the Jury, there is one person in this court who could tell you a great deal about this little child. A great deal! For it is admitted that he was with her on the evening and during the afternoon of the day on which she was seen last. He could tell you much, and members of the jury, he sits before you in the dock. But he has never been there (the witness box) would you not think that he would be willing - nay, eager to go into the box and on his oath tell you all he knows. But he stays where he is. Nobody has ever seen that little girl since twelve o'clock on January 6th. Nobody knows what has become of her. There is one person in this court who knows and he is silent. He says nothing to you at all. The witness box is there open and free... Why does he give us no information? Why is he silent when we are wondering and considering what has happened to that little girl?'

Indeed, the case for limiting the right of silence can easily rest on that impassioned plea. In fact, this aspect has also received the attention of the Committee on Reforms² of the Criminal Justice System in India and the view of that expert body is seen in its commendation for appropriate action by the State.

VIII.3.(1) Structural changes in the police to advance good Investigation of crimes: The Third National Police Commission had submitted its worthy report to the government of India almost forty years ago. After analyzing a wide range of issues pertinent to the diverse facets of 'professional policing' in general, the said National Police

-
1. *Proof of Guilt, Study of English Criminal Trial, Glanville Williams, (London Stevens and sons, 1958).*
 2. *Report of the Committee on Reforms of the Criminal Justice system (2003).*

Commission made a good number of recommendations and suggestions for implementation. Though some ideas commended by that expert body have been acted on, most of the foundational questions and issues (that were well addressed by the said National Police Commission) are yet to be attended to. Reasons apart for such setbacks, there are many critical views on the seemingly unjustified delay on the part of the governments in taking the needed steps. A well-meaning legal crusade launched by Sri Prakash Singh, a former police professional of great repute, in the form of a legal appeal before the Apex Court of India has started yielding some preliminary openings in search of the essential end results. The Supreme Court while responding to that desperate plea has ordered several mandatory steps to be taken by all the governments concerned. In consequence, some basic changes in the police systems of India are in for urgent transition. Amongst the correctives on the anvil, direction to separate the 'Investigation' wing from the 'Law and Order' outfits within the police organization is a harbinger for very crucial developments. Indeed, such a step is a welcome measure in terms of improving the professional standards of investigation work in general. It is in that particular context, several important aspects of investigative tasks including the most challenging area of work as depicted by the theme of this study can be addressed effectively. Undoubtedly, such a step would, besides elevating better attention and focus on the most foundational area of crime detection, have an impact on reducing the phenomenal volume of backlog or pendency in the area of 'under-investigation' cases. (As per the annual publications of the National Crime Records Bureau,¹ the burden in this facet of basic police work is staggering. See reference to that in Chapter I)

VIII.3.(2) A combined effect of lack of importance

1. *Crime In India -2001, NCRB Publications, GOI, New Delhi –for a very informative analysis of the crime in India in all its basic perspectives.*

attached to crime investigation work, poor professional standards and strategies, inadequate resources and woefully deficient training of personnel across the board coupled (in terms of quality as well as its quantity in relation to the real and essential needs of all such investigative duties) with some legal constraints and outdated or inadequate legal provisions (especially in dealing adequately with newer and complex crimes) have consigned the entire area of Prevention and Detection of Crime to the bottom of police expertise. Even a partisan observer, rooting for the police, will surely say that current day police exertions in the area of investigations in general are desolately short of professional standards. Strangely enough the prevailing ham handed styles of police investigations in that range of massive number of cases by it are further relegated to a lower order by its clumsy and haphazard ways (barring some exceptions). Yet, the prevailing absurdity does not seem to concern the powers that have to seek answers to remedy the problem. Political powers, all the wings of the Penal Justice arrangement as well as the pioneers in law and public administration have somehow remained uncertain in this big crusade.

VIII.3.(3) Compared to the task of dealing with Law and Order duties, which are, in general, more or less straight forward in a vast majority of situations, the task of crime investigation as a rule calls for various skills including the ideal combinations of head and heart on the part of the investigating officer. The current scenario in general, especially in terms of the most needed professionalism and all related aspects of crime work is pathetic, to say the least. Admittedly, there are a number of instances where the Indian police have demonstrated their brilliance in investigation of crimes. But, those are seen with regard to a select number of instances because there is a political or administrative will to ensure best attention for such investigations. As a natural result, a massive majority of crime investigation tasks are relegated in the charter of importance and urgency. The stalemate is

compounded due to the glaring fact that duties like Law and Order, Security tasks and VIP commitments somehow seem to have got a higher precedence in the estimations of the governments in all most all States of the Union (including the Union Territories). In addition to that, the top echelons of the bureaucratic and police hierarchy also seem to be incapable of ridding the system from out of that quagmire. In consequence investigation of crimes is not given due significance and importance and most of the times crime fighting activities (Crime Prevention or Crime Detection) are done as a secondary area of work in the police systems. This inferior status for crime work has to be altered in practice, as law has surely mandated the order of importance in a most clear manner. (See *the text of the Indian Police Act, 1861*)

VIII.3.(4) Though the glaring paucity of organizational emphasis to place crime work at the helm of the duty charter is perceived glaringly by anyone who has seen the working of the system from close quarters, common people are not fully conscious of that incongruity. There seems to be a prevailing popular but mythical perception entertained by most gullible people that the police are eternally busy investigating crimes and are frightfully occupied in solving them with a sense of utmost seriousness. But, in reality, that is surely not so. The need for improving the status of that area of work and placing the charter of crime prevention and crime detection as a primary and top of the list of the police duties is perhaps most central to the changes we are seeking. Following that step, augmenting the resources and improving the standards in this vital area of police work has got to be ventured in a steady and systematic way. Steps to deal with shortcomings in the area of investigation have to be sustained for long as the standard of professionalism in this area of police work is at a wretched level and immense efforts are needed to place this area of work on the right track. We can hope to ensure better days for the citizens of this great country only

by restoring the original order of priority of police duties for compliance. In fact, a foundational justification can be clearly perceived in the very purpose of establishing a correct kind of police systems in a modern democracy.

VIII.3.(5) Crime fighting calls for a great commitment in terms of professional urge and effort by the investigating teams. Next, it has got to be backed up to the hilt by the entire system. Only then the organization can aspire to visualize, plan and stimulate a seemingly endless series of measures that can help the police to deal effectively with the myriad types of crimes that are virtually engulfing and strangling the human society.

VIII.4.(1) **Seeking the most needed changes in the mindset of the police and instilling in them a firm commitment to 'Rule of Law'.** Police system is a creature of the law. It is designed to work within the framework of the law of the land. It is bound to work as directed by law and observe it in its letter and spirit. Any contrary view is clearly a contradiction in terms. 'Rule of law' is the guiding force of the law enforcement systems, (the system which enforces the law and in accordance with the law) and yet, there is need to note that laws cannot be made as an all pervasive and all encompassing tool. However, the system has to be assured of autonomy within the confines of the law. A timely emphasis on the operational independence of the police was well asserted recently by a top police leader of the Metropolitan Police of London.¹ Several news reports on the riots raging in London and other cities of England tried to indicate that the strategy to put down the lawlessness must be acted at the behest of the political masters and this was flatly rejected¹ by the police officer pointing out that police are bound by law to act and they alone are empowered to choose and decide on the

1. News item in BBC News, 13/08/2011 - by Danny Shaw, 'at the heart of the row is the question of operational independence - political overseeing is lawmakers and opinion makers in the enterprise of law making. Perhaps, it would be useful to all if the opinions and ideas of the experienced lawmen are no doubt a part of democratic arrangement. But Rule of law will vanish if overseeing' by political masters mean interference in the police work which is to act as per law and do so always.

operational strategy to do their chores and in this enterprise there can be no political control on the steps to be taken by the police, though they are accountable as per law. Indeed, that assertion is comforting to anyone who believes in the noble concept of the 'Rule of Law'.¹ If we are able to infuse that dominating thinking in the mind of an average policeman, then, we can say that a new (but essential, legitimate and lawful) trend has begun. That long awaited transition will surely help the society, assist the individual citizen and more than everything, will enable the police to get greater support from the people in all that they do. In so far as the police are concerned, they have to comply with the law 'as it is' and not 'as it could be' or as 'it ought to be'. They have to follow the currently applicable law. If such a guiding perception really informs the pith and substance of all their exertions, then, they will be in a position to pursue their ordained goals, doing their best within those parameters. Since long, it has been our experience that viewpoints and opinions on several practical constraints of law enforcement are generally not even sought from the practitioners of that profession by those who administer the State or Nation. Police enforce the current law and seek mandated goals within legal parameters. A point to note here is that the experienced police officers would be able to observe critical aspects of law and its enforcement as they are in the ring side seat of those events. There is a clear need to give due consideration for the professional view points of the lawmen, before any changes are made in procedures or in ushering in new laws. Unfortunately this basic requirement is not cared for and emerging constraint has been hamstringing the very enterprise

1. *This stand looks in contrasts the report action of the CBI in seeking clearance from the executive on the submission to be made before the Apex Court in the coal scam and this demonstrated failure is clearly more on the said organization rather than on the political executive. (Reports in all the media during the 3rd & 4th week of April 2013).*

of law enforcement in many visible and invisible ways.

VIII.5.(1) **Administrative steps in relation to the examination of persons by an Investigating officer during the course of an Investigation:** There are several areas coming under the ambit of investigation of crimes, which could do well to imbibe and instill some fresh ideas. Keeping in mind the theme of the study, only such suggestions having a direct bearing on the subject of 'Questioning an Accused' are indicated for consideration. However, as issues are closely mixed up, some general suggestions with regard to the basic problem of investigation of crimes are also mentioned in brief to ensure continuity of thoughts and homogeneity of ideas.

1) Taking a rational view on the '**Work load**' assigned to the Investigating staff: The National Crime Records Bureau has been publishing the annual data projections on 'Crime in India'. The workload on police stations in general is really awesome and the overload is surely taking a heavy toll on the quality of investigative work. No doubt, many ideas are being considered to rationalize the burden on staff. In this regard it would be useful to all if the opinions and ideas of the experienced lawmen are also given due consideration before any changes are made in the procedures or arrangements to streamline the mismatch between the numerical strength of the police and the work load to be assigned. Though the IIIrd National Police Commission had made several suggestions to rationally allocate work in this area, the desired changes are not yet in view for various reasons. However, it is also necessary to point out that many other financial, administrative and structural issues are entwined with this problem.

2) **Importance** assigned to Investigation work: - As the work of Crime detection in all the police stations has somehow got relegated to a secondary status in terms of significance, importance and prestige, that area of work has suffered grievously. Such a consequence is both patent as well as latent.

In addition to that serious lacunae, the general quality of personnel who get assigned to this vital task (of crime detection including crime prevention) is surely not the best available. As an inevitable result, the most needed good quality work force has been eluding us. In addition, as crime detection has become a task subject to the commitment of the already overburdened police station staff for other tasks like Law and Order and VIP commitments as well as other numerous security and social service related activities, the needed staff is not at hand to attend to the tasks related to crime work. Due to misplacement of priorities (for which the police organization alone cannot be fully blamed), the vital work in relation to Prevention and Detection of Crime is consigned to a back seat. In fact it was in that particular context, the demand for the separation of investigation staff from the law and order outfit is being pursued. Fortunately, some changes are seemingly visible on the horizon, based on the emphatic directions of the Supreme Court of India and once fully complied with, it would be possible for the police systems to sustain a steady focus on various aspects of investigation work. There are some views that balkanization of police stations into two isolated wings would be to the detriment of the police as a whole. But, that is a wrong premise as what is being suggested is not to make two different kinds of law enforcement apparatus that are inaccessible or secluded from each other. No doubt creating clearly identifiable teams of investigation is a step that will create an exclusive crime fighting outfit but what is the most needed is a specialist task force focusing exclusively on the job of investigations of crime within the systems of each police station. Such an arrangement will also help to ensure adequate resources allocations (man power as well as organizational) and in turn will bolster the capacity of the police to pursue systematic exertions against crime. More importantly, immediate consequence of creation of exclusive compartments in police duty will *prima facie* mean that crime staff will not be drawn away from their assigned duties of

crime work. Further, such pre-allocated professional staff cannot be taken away summarily and deployed for other tasks of law and order etc, which is the current and most visible bane of large number of police stations in India, in general.

3). Investigation must be made a **real professional task**: There is an urgent need to invest more time and effort in making the investigation of crimes a real professional task. That process would call for a comprehensive effort to weave in necessary professional urge into crime fighting teams through systematic and suitable measures. The process of selection of good and capable investigators; their comprehensive training; providing them with resources so that they can render quality work and so on are all part of that venture. More importantly and in addition to that basic strategy, all the multifarious exertions of investigators will have to be supervised well by a competent group of seniors or professional elders. That overseeing will have to ensure quality and quantity in the total range of all investigation work and logically carry it forward till the final culmination of each matter under investigation as per law.

4) Recruitment and Training : It is accepted all around that the basic levels of education and capacity of those entering the police profession in our country is surely good at the directly recruited sub-Inspectors level. They are invariably persons having a degree in some subject of Arts or Science. Such a basic qualification makes them generally capable of being trained well and molded to suit the basic needs of investigative work. But, rather sadly, there is clear and glaring inadequacy in terms of their induction training, as the quality and content of that preparation is really inadequate. Currently, the subject of investigation of crimes is treated as a part of the police foundational or induction training and that approach corrodes the requirement of training professional investigators and thus the prevailing styles of training are clearly neither appropriate nor sufficient. As the task of investigation needs

a very sound grounding in the knowledge and understanding of the penal, procedural and evidentiary laws, the time spent by the training institutions in these areas are *per se* derisory as well as unfinished. Indeed, they are grossly deficient and peripheral. Preparing the investigators with the most essential knowledge about Forensic Sciences, Human Psychology and issues of Human Rights, besides the legal knowledge on procedures and related area becomes elemental. Investigation is a fairly big segment of learning for a trainee and the current day syllabus, at all levels (at the Police Schools, Police Academies and the SVP National Police Academy) is patently less than what can be considered as necessary either for basic investigation work and/or for being a good support staff for investigators. Similarly, training standards for the supervisory roles is surely poor as the current inputs really fail to convey the most essential levels of knowledge and skills. That shortcoming is glaring as such poor strategies fail to inject the most needed right perspectives amongst the superiors. Bereft of that ability the supervisors would not be able to really oversee any original ventures of their respective junior functionaries.

5) **Training the support staff** in 'Crime' work: An investigator like a station house officer or an officer of similar rank (undertaking investigation as per law) would need a good number of junior staff to virtually act as his shadow. Such support staff help him in so many little chores which make up the total range of investigation work. During the present times, a good percentage of constabulary is also from the ranks of graduates (in terms of their basic qualifications) in some subject or the other. And yet, getting such basically suitable material to the investigating area of work has not been fully successful for several reasons since many such bright youngsters are getting into law and order areas of work as the work in the crime fighting tasks do not have the same aura as the other kinds of work mentioned above. Selecting the best talented at the grass root levels and assigning them to

investigation wing would be a very important task. That strategy must be pursued by the police leaders at district and police station levels and that trend will have to be ensured systematically by conscious and determined efforts.

6) Basic training of the constabulary hardly has any focus on various specialized aspects of investigation. This gap has to be filled by providing a short duration training of at least one month to those who join the investigation teams within the police stations so that such support staff are rendered capable to perform better in numerous kinds of support work. They have got to be trained in numerous support works in investigation of crime, inclusive of tasks like obtaining criminal intelligence or in dealing with witnesses or in gathering valuable information about accused or suspect and so on - all of which become most vital in the area of 'questioning an accused'.

7) **Research Studies to be sponsored/participated at District, State and National Level:** Much before a plan of action to 'question an accused or a suspect' is planned, the police team or police investigators have to be aware of the background of the individual and must be ready with at least a fairly adequate knowledge about the suspect or accused person. Only after ensuring that they are reasonably armed with some vital data, the facet of 'questioning' of such person can result in good leads, critical for further progress of the case. Typical or routine methods now in vogue may to some extent work in relation to a traditional crime like 'offences against body' or 'offences against property' etc. That ability is surely not enough in relation to newer kinds of crime. Thus, poor readiness in relation to most other complex crimes will seriously and perilously affect the quality of investigations if the accused gets inkling that the police are blissfully unaware about him on many vital areas of information relating to the crime in question, then, he is bound to get more and more emboldened to mislead the investigators or may resort to

various subterfuges to foil the efforts of the law. Surely enough, violations like Terrorism or Organized crimes and other kinds of serious offences that are mostly and generally perpetrated by organized groups of lawless persons, are not easy in terms of eliciting information from a member of such gangs, during all such questioning sessions done as per law. Most of such networks are better prepared both mentally as well as physically to dodge the law as they (such criminal gangs) are also allegedly making persistent efforts to train their outfits in that regard to stand the rigors of questioning, should any of their tribe get caught for interrogation or for investigation by the law. In additions to that fact, their sympathizers and godfathers (as well as many from the legal fraternity) are at hand to get them out of the clutches of the police by seeking bail and other reliefs though as provided by law. In addition, members of such gangs may themselves be not fully aware of many things about their own net works and the only choice for investigators is to gather facts in bits and pieces to prepare the profile of the puzzle on many such matters under investigation. Further, it is easy to expect that many amongst such criminals would not be ready to provide any worthy information to the police in most such interrogations. It is in that context, the capacity of the investigator is put to test and it is necessary that the forces of the law are ready up their sleeves, with essential and vital or critical data about the background of the crime in question and the subject under questioning. Based on that potential, they can pursue to seek better answers keeping in mind the history and ideology (good, bad or indifferent) of the organization. But such kinds of knowledge based on facts are not easy to secure nor are the answers easily available anywhere. Thus, the art of gathering the needed data or the background of such persons or gangs has to precede the tasks of questioning such persons – all of which have to be accomplished in a professional manner. Surely it cannot be an item that can be spoon fed to the lawmen. That capacity

will have to be acquired by diligence, persistence and hard work in learning and in becoming proficient in all such areas of knowledge and skills. In order to do so, the police organization will have to invest its own time and resources for diverse aspects of data gathering and info-data building-all of which calls for systematic, thorough and painstaking efforts. It can be mentioned here that in the past, fairly good practices in manual record keeping of data of the common and rudimentary types of criminal gangs and other crime data were systematically pursued by the erstwhile Indian police. Such welcome styles enabled copious amount of information to be systematically entered in records like Station Crime History or History Sheets and on various other kinds of rolls on crime and criminals etc. More importantly, all such data were being used as tools or aids in investigation of crimes. In addition, the data stored and sustained were being relentlessly used to help the police in anticipating various law and order issues also.

But with the rapidly encompassing changes in both the urban as well as the rural vista of the country, relying on limited kinds of data sources is surely not enough. In fact, it is also observed by many old timers in police profession that worthy practices in most such record writing ventures are not being sustained well. Admittedly many new ideas have emerged but the essence of organizational and professional anxiety as well as determination to build all kinds of data resources is not very systematic. This is a very serious organizational issue that needs to be addressed by top levels of police hierarchy.

8) New Crimes of the modern age are getting increasingly complex by escalating abuse of technology of numerous kinds. Each such area of police work calls for intense knowledge about the technical aspects as well as the *modus operandi* of all such new waves of lawlessness. Such data or information is not easily accessible and therefore efforts have to be made to painstakingly and assiduously gather and

compile all such basic information. It is also a disconcerting fact that a good number of such violations seem to continuously emerge from even the most unexpected quarters and what is more amazing is that each new technology of various kinds seems to spur a new wave of abuses and more often than not, the very awareness about such crimes even amongst the helmsmen of the State and the state machineries takes time. More importantly all such background materials will have to be very wisely gathered, marshaled and duly processed to suit the law enforcement needs. All such info-data have to be maintained in a most scientific manner for easy access and retrieval, as and when needed. White Collar crimes, Crimes of trafficking of all kinds, Organized crimes, Cyber crimes and so on are not easy to be dealt with as the network of criminals who many a times operate using an ostensible facade of legitimate business or enterprise, elude quick and prompt recognition for due action. Somehow police organizations have been very slow and have even remained reticent in investing in research-based studies that will most surely help them in a very big way, though in the long run. This visible shortfall has to be met by commencing studies within a local area or a police district keeping some of the essential endemic factors in mind. In order to start such necessary ventures the police leadership will have to seek the increasing support of Universities, Institutions engaged in intellectual studies and other social service networks for all enterprise. It is felt that huge investments are necessary in this regard at the National and State level. It is also comforting that many efforts have been made, though not at commensurate levels, in working new ways to develop a knowledge base on various aspects of law enforcement. Establishment of a Forensic University in Gujarat or the establishment of a Police Sciences University in Rajasthan and similar efforts in some of the states like Punjab, Gujarat, Madhya Pradesh and so on are good illustrations of a most welcome kind. It would be in the best interests of police to

invest their time and money in such areas as their manpower would benefit directly resulting in advantages to the entire organization. The leadership has to creatively use all available resources in learning, developing and building a professional and knowledge base. Such efforts auger well for the use of law in better ways and as a tool of governance. We have very often heard or learnt through media of many top international anti-espionage and intelligence outfits of leading nations which are continuously building and working on numerous kinds of data resources so that vital inputs are provided to several connected or even unconnected operating agents (all working towards the common cause) at short notice. Professedly such efforts are intended to accomplish numerous democratic goals and many other legitimate objectives. Indeed, such a strategy is neither a farfetched enterprise nor is an extravagant appendage of a wasteful kind (as no doubt huge sums of money are needed to work those ideas), in the context of the fragile global crime situation and its consequential impact on peace and order of the world in general. In fact, such ventures are most necessary to safeguard modern day democratic world, as new waves of myriad types and kinds of crimes are sweeping across nations and continents. There is no alternative for the world to deal all such negative pulses in a bold and direct manner. Due to poor current strategies in this regard, time and again the local police in our country are at best reduced to assisting only in rescue and rehabilitation efforts of the affected victims of many such crimes and as a result of delay in securing actionable information results in the loss of clues and ends up invariably in the easy escape of the criminals or gangs. The lawless get an easy head start in most such situations to dupe the long arm of the law. Thus, besides the national and local needs, if police systems are able to weave in a combined front sponsored by cooperating democracies in dealing with all such anti-humanity depredations, then the potential of the response of the law to deal with those ventures are sure to be more successful. Emphasis here is to assert the

need for strengthening the local police to become more effective and creative.

9) Preparing the Investigation team for the oncoming **challenges of new crimes:** Computer based crimes or technology based crimes, on a first blush appear like a mystery to an average kind of investigator who may by some hard efforts comprehend the way in which the crime has been committed. Yet, most of such ill prepared lawmen will be groping in the dark in their quest to establish the identity of culprits and to seek as well as secure worthy and reliable evidence/s in vast majority of newer or modern crimes scenes. As a large number of such crimes are committed by using rapidly improving technologies of the latest kinds, the police would need the support of experts in technology who can help and guide their efforts in the path of investigation (*see footnote in Page 302*). Expert help in the gathering legal & credible evidence is in fact a dire need. Hiring of specialists from specialized areas like the cyber experts, professionals in emerging areas of forensics, skilled psychologists and other knowledgeable persons have to be systematically planned and effected by the State so that the police organization is able to respond quickly as well as act comprehensively in all such situations. Though there could be really no end to that kind of hiring of experts, unwise moves in the direction of inducting such experts may add to many other administration related and/or cadre management related constraints/problems. Therefore a policy of that nature has to be a balanced one so that it is useful as well as practical. Developing a basic network for access with such varied expertise has to be built and sustained, based on well evolved plans of actions to maintain the technical resources trim and up to date. In this regard, it needs to be asserted that effective 'questioning the accused or the suspect' in many crime situations depends on those extremely crucial inputs. In addition to that fact, any mature plan in making best use of such resources can also help in foundational training

of the investigators in general as well as building efforts for greater specialization through research and related actions. When done well, such a state of preparedness can be of immense value to the investigators. Basic ability of the investigators helps them to do a good amount of scrutiny of facts and gather evidence to the extent possible before seeking the help or support of experts. Such preparedness will avoid loss of time and also help in saving many other scarce resources.

10). **Hiring experts** into the Investigation teams or seeking such help on a tactical and planned basis: Lateral level entry of experts into the law enforcement systems in some of the most relevant areas of investigation (especially those related to National Security and other very critical areas) would be a good step. It is a well-known fact that many countries have innovated the police systems to include experts into the police leadership teams. Such steps are intended to make the organizational efforts more effective. Management specialists, financial experts and other highly skilled professionals have been absorbed into police policy making groups to bring not only innovative thinking and fresh ideas into the working of the system but also to bring in wider range of professional expertise into the effectiveness of the police. It is also true that such inductions help in advancing the cause of economy of time and resources in addition to being a tool for a greater control of the system and lending itself for an effective management. It cannot be forgotten that in areas of Prevention and Detection of modern crimes like cyber menace or money frauds using technology and its ilk would perhaps be better answered if the organization enables scope for use of talented professionals to guide and assist investigation of such crimes. Such a trend is perhaps inevitable as many new crimes are built on the abuse of sophisticated technologies and the level of expertise in those areas alone can help in dealing with such violations of law. (*see footnote in Page 302*).

11) We are aware of the setting up of many multi-disciplinary teams¹ where investigations of some high profile cases are dealt with by the law. In such cases various complex aspects of crimes and use of technical characteristics that encompass the matter under investigations will have to be converted into actionable evidence so that they can be adduced before the courts of law. It has been our experience that such teams with diverse capacity and potential are better equipped to bring enhanced results to the advantage of the law in general.

12) Since almost two decades, there seems to be a massive explosion in the reporting of various financial frauds and other acts of corruption in the public service areas, involving top public servants of all hues. Though several movements have started emphasizing on a comprehensive fight against corruption in general, it cannot be forgotten that most such cases are not easy for investigation. It needs no special argument to bring home the fact that most such cases call for skills and ability of the investigator in identifying the *modus operandi* of the perpetrators, the knowledge of the way in which the concerned system works or the method by which the crime has been perpetrated and so on, in addition to correctly identifying the right law to be applied, before he can venture to bring the offenders to book. Building teams of competent investigators is the real need of the hour. But, owing to the difficult nature of the cases, which are unlike the most traditional or conventional violent crimes where identifying the types as evidence that has to be secured are not generally so difficult, investigation of corruption cases generally suffer

1. Various scams like 2G Spectrum case (2011) or the Satyam scam or the Hasnat Ali money laundering case or the CBI efforts in Jagan Mohan Reddy of Andhra Pradesh, alleged amassing wealth in terms of PC Act etc (the Hindu, 13/08/2011) have seen such teams. That trend is sure to continue and innovative effort to look for various clues that can be worked out to solve the crime are obvious.

due to constraints of the kind referred to resulting in slow passage of the cases. Further, proverbial delays in disposal of cases by law courts add to the already clogging backlog of the entire criminal justice system. It is also a disturbing fact that due to poor capacity of the investigators many such critical cases have failed to the detriment of society. Corruption cases in general call for greater awareness and skill on the part of the investigators. Poor investigation will without doubt enable the accused to escape and allowing that kind of a situation to continue without any efforts to remedy the shortcoming, is a greater peril to the society. It is in that context the idea of hiring or obtaining the help and assistance of experts from various areas can be considered as most useful.

13) Motivating the investigators to make better use of Technology and greater and increasing use of forensics: Improvements in this specific area is very vital and this burden has to be answered with utmost seriousness by the police leaders. The mindset of an average policeman is still out of times, and somehow persists in trying to willy-nilly avoid the use evidence secured through scientific tests. This glaring malady bugging the police systems in India in general is evidenced by the commonplace effort of the investigators to move from the criminal to the crime and not vice-versa, as it ought to be for a good investigation. But, in practice that golden rule (of 'from crime to criminal') is ignored. As a direct result of that incongruity many crude and perverse ways of investigation have taken roots to the disadvantage of the very ethos of police working. Unfortunately, it is the public who are the helpless recipients of all the failures of the police owing to that basic mismatch between duty and processes. Primarily this stalemate speaks of poor preparation for investigating a crime and next it somehow forces the investigator, as a rule, to resort to shortcuts when confronted with situations where there is lack of response from the accused or the suspect. It can be easily perceived that by making a committed effort to

change that unwise trend, the quality of investigation can be made to move upwards. For example, documentary record of a good study of the scene of crime or the visual data of a well pursued questioning of witnesses or the use of video recording to ensure all data secured during all interrogations of suspects will help in credibility of police efforts besides proving the facet of valid and legal methods of questioning. After all improved professional standards can help in so many other ways. As for example, permitting a counsel and/or a relative during such custodial questionings would also prove to be a useful idea, in the long run.

14) Skills and innovativeness in Investigative efforts: - Keeping the limitations to the task of questioning an accused in terms of the law relating to Article 20 (3), the general run of all investigations must be inspired to exhaust all available options in getting all possible material evidence against the accused rather than not venturing to seek such resources under the apprehension that law may not permit any such step. A little later the need for interactions amongst the investigating staff, in each case under scrutiny has been commended. Surely during such in-house and internal exchanges of views many new ideas on evidence can possibly be identified and all such innovations and creative or pro-active efforts can emerge to the advantage of the police.

15) **Developing specialization areas** in relation to various newer categories of crimes: State Criminal Investigation Departments have specialized wings to deal with various major categories of crime. This has to be given a broader ambit by carefully and continually monitoring the set up of special teams and enable them to become more and more proficient and knowledgeable in all such chosen areas. Initially any such fresh addition or embellishment to the departmental arm may not appear to be useful from a cost-benefit ratio assessment. But, in these days of specialization, there is hardly any other alternative for the law enforcement

systems, other than seeking greater professional expertise and competence. Without forsaking the needs of secrecy and confidentiality, establishing some primary teams on all such emerging areas is a must.

16) Importance of 'reconstruction' of Scene of Crime: Amongst the first steps to be taken by an investigator in relation to a crime and more particularly when he has to deal with a suspect in terms of 'questioning' him, lies in his ability to recapitulate the event under investigation. Such a reconstruction of crime can be done at the actual site or even mocked up on a computer or other similar ways - all of which help the Investigator to put his best foot forward in looking at various ways through which the crime may have been committed. Any good effort to reconstruct the scene of crime is a primary task and somehow that aspect of detection work has not been given its due for various reasons. Possibly that has come about more due to the ignored emphasis for such a critical step. A visit to the scene of crime and a well-planned effort in analyzing the facts at hand, even if done after some delay (since the report of the case), would lend itself for a creative and innovative effort to look for various clues, that can be still worked and that can help to solve the crime, even after a delay owing to such early remiss by the investigators.

17) Systematic development of Criminal Intelligence and its applications as well as new ways to improve the data base: Traditionally the Indian Police have had the benefit of perusal of publication of criminal intelligence gazettes. With the advent of computerization, developing innovative ways of data collection of all kinds are being made and that resource is also being used as an on-line tool. At an earlier place a suggestion has been made to develop research teams to study, identify and recommend strategies for dealing with specific crimes or for adding to the basic knowledge on crime and criminals of particular kinds. That kind of preparatory efforts have to be dovetailed along with the task of continuously

improving the database. Though all such efforts may seem to result in the pile up many kinds of data and bits and pieces of information of numerous kinds in to a bludgeoning storehouse that may clog the time and space at hand, such a fear is unfounded. If worked on good retrieval standards, many such data will surely yield results and thus building data-base is a must and that task merits to be given a top priority.

18) **Library and on line resources** for the development of individual investigators: Most police stations in our country have very few books relating to the profession. Barring books on some of the Major Acts, there are not many reference books that can help in establishing professional investigation libraries in each police circle or police sub-division levels. This is one area where efforts can be made to provide a source of verification for the investigation which can at times act as a storehouse of inspiration to a keen mind. In fact that kind of a facility is most necessary. Investigators must be encouraged to hone their skills besides helping them to learn their trade better in all respects. Building a computer or other technology based learning tools can be used to help the investigators to see and use many ideas that can inspire their thinking and stretch their creative potential to the good of the society.

19) Use of Internet to seek information, knowledge as well as for exchange of information through that phenomenal resource is surely another practical idea that can inspire creativity and innovativeness into the massive range of investigative enterprise. Though some of the newer and recent entrants to the police systems are capable of using the net, use of such powerful tools must be made a commonplace resource. It is also on record that some of the governmental agencies have established networks to reach out to their staff remotely placed for various types of works and duties and such networks are being used to keep in touch, communicate, interact and pursue goals in routine and special areas of work.

Replicating such styles is surely necessary, so that all the 'critical information' needed for police work gets due scope for its intended impact, as per law.

20) Case studies and other training material that help in periodical intellectual interactions amongst the investigation staff is very necessary, though it may appear that investigation teams in the police stations may not be able to accomplish much, especially in view of the current systems in vogue. If the change envisaged in that structural design comes up as a reality and then it is certainly possible to invoke a sense of duty and consciousness even amongst the junior ranks.

VIII.6.(1) **Supervision** of Investigations and Problems connected with Supervisory levels:- It is seen that in almost all states and the Union Territories, specialized investigative wings are established. But, it is also seen that even in their most professionally acclaimed crime investigating systems, very young officers of the Indian Police Service occupy positions of supervisory authority in relation to specific crimes like terrorism, vice squads and other important categories. But, such youngsters notwithstanding their brilliant background and splendid potential cannot truly fulfill a satisfactory supervisory role, unless they are made to professionally acquire or equip themselves to do those exacting chores. Indeed, that vital role calls for a good professional experience. Officers manning such positions have to be capable of a good mix of knowledge, skill coupled with at least some years of experience. *Prima face* these attributes are not at hand with the young officers of the Indian Police Service, especially with regard to expertise and experience. It is clear on a study of the syllabus of training for all the levels of entry into the police services that training in investigation at the respective induction levels is not at an ideal level in terms of content as well as extent. Further, there are hardly any good programs to suit the training needs of the senior levels or to provide advanced training inputs or

enabling them with appropriate refresher/ new learning opportunities. Due to such obvious debilitating factors, young officers have really no good forum to learn or to gain experience in dealing with supervision of special crimes and yet they are assigned such tasks. Thus, there is a great vacuum in the task of training senior levels to become good supervisors of investigation of cases. Naturally the work at the grass root levels suffers as the much essential scrutiny and guidance, that can come about by good supervision is visible more by its absence. Though some exceptional cases of brilliant middle level supervisors are seen here and there, as a rule, the quality of supervision is not adequate for many of the above reasons. The Central Bureau of Investigation conducts special programs for investigation of crimes and there are particularly designed programs concerning the art of scientific interrogation techniques. The course material and the curriculum as well as the schedule of training seem to a one off venture and that is grossly insufficient to the total range of investigations that go on in India in general. Good supervision at the early stages of investigation helps in enabling the investigating officer to produce better results. Though as per the Code, the decision and action on every aspect of investigation of a case is to be fully under the functional independence given to the Investigating officer, the help at hand by good supervision cannot be underplayed. However, if the superior officer wants something to be done in a particular manner and if the investigator in question does not find it appropriate, then also, the opinion or the action of the Investigating officer will prevail. Under those circumstances the only choice for the supervisory officer is to either actually take over the investigation personally under the provisions of Section 36 of the Code and pursue the case himself or to assign the case in question to someone else, as he deems it fit. Thus, the professional independence of the investigator is well accepted by law and by practice. Notwithstanding the above fact, it is clear that 'Supervision' of investigation is a surely a good way of help in

ensuring better results. But, that can be done only if the supervisory levels are trained to do that charter in a professional manner. In that background, steps are needed to evolve, develop and ensure regular advanced or high- level supervisory training programs to cater to this specific professional need.

VIII.6.(2) A policy to ensure **systematic and professionally sound supervision of** all cases taken up for investigation of crimes is most necessary. Theoretically the Police Manuals provide for classification of crimes for supervision (Grave Crimes - calling for Express Reports and Grave Crime Reports etc - reflecting the action of the supervisors) while most of the other cases are cursorily dealt at the police station or circle levels. This is not a welcome situation, as the quality of review of each case registered and taken up for investigation is not being dealt satisfactorily. The prevailing approach does not result in any help or advice to the investigators. Though there is a prescribed periodical work audit by the immediate higher ups, many cases are left languishing in the custody of the investigating officers and the consequential poor handling cannot but be foreseen. This has to be corrected urgently. Cases even of an ordinary nature in which the suspect is to be examined before further steps in investigation are to be planned, warrant a better and intense professional approach. That aspect of quality of investigation (which in turn reflects on the integrity of investigation) has to be dinned into the minds of the investigators. This step can be further amplified by developing strategies to ensure very close and honest supervision of all cases taken up for investigation by the police stations.

VIII.6. (3) An evolved '**professional**' approach to ensure good Supervision in investigation of Crimes: - Dealing with Investigation of cases where the task of 'questioning of an accused' is critical, the task of securing clues for further investigations become important for the following reasons:

-
- a) If the case is of a heinous nature then chances are that some attention by a senior level is bestowed to that case, at least in theory. If such a step is not forthcoming, then the case is handled at the station house level and the onus is on the middle level leaders to deal with the case appropriately. Though the law provides that investigation of a case is to be dealt by an Investigating officer (who is assigned that task either by the Station House Officer or a professional supervisor as per law), there is no bar if teams are developed under a lead investigator so that the collective effort will advance the cause of good investigation. It is not a matter of argument that currently all cases are done under the individual efforts of the investigating officers and at best are helped by junior ranks who may assist the investigation. But that kind of support does not enable an honest evaluation of the case in terms of the best way to deal with it. Such an isolated work culture hinders the efforts to gather evidence as needed in each case. By evolving a 'teamwork plan' to ensure good discussion on the case followed by right way to pursue the case forward is considered a good choice. By resorting to that kind of approach, improvements can be woven into the quality of investigations in a general run of cases. Each case merits to be dealt so as to have an objective as well as subjective analysis and must be so done not only by the Investigating officer but also by the team. It also needs a supervisory vision, so that the right path can be chosen by honest scrutiny. A style pursued in that visage seems best to accomplish the legal goals. That objective can effectively be pursued as a collective aim of the entire team. No doubt, the investigator as per the Code will take the final call and yet will consult the team and do so in a manner which is consistent with the law. Such a style will not offend the Code in terms of job assigned

to an investigating officer and further, the quality can assured by honest way of working the idea.

VIII.6.(4) **Integrity in investigation of crimes:** There is a great crisis of credibility *vis-à-vis* general police actions in the minds of the common people. Such a perception is evident in almost all areas of law and order management and crime detection. The public view seems to hold a notion that in crucial instances the police are not impartial especially while dealing with a job on hand (particularly where the case involves the rich or the influential persons) or in the investigation of a criminal case, where political issues are manifest. There is a pervasive apprehension that in relation to case/s involving the high and mighty (political as well as financial including the physically strong or powerful) justice is not done and the route of investigation deliberately gets strayed for the sake of latent or patent extraneous considerations. This kind of credibility shortfall acts as a death blow to the very edifice of the 'rule of law' consigning the entire police network into a point of no return. This general lack of trust is not easy to be tackled. Good and honest leadership, right motivation and committed manpower can create the right ambience of principled policing standards, but which takes awesome amount of efforts. However, those standards after being reached, cannot be forgotten once such a worthy plane level is attained. Even top countries like the United Kingdom have somehow lost the image of the once loved 'London Bobby' over a period of time. A most admired public image, prevalent some decades ago had held that the bobby (a policeman) in that country would consider himself as an agent of the law and pursue his goals with a nonchalant air and yet would do everything as per the law. The police in that realm seems to have lost such a glorious pedestal and that clearly exemplifies the fact that quality of effort is needed not only to reach that most desirable standard but in sustaining it as well. It is also a matter of note that perhaps

greater efforts are needed to stay and to hold on to such worthy standing.

VIII.7.(1) Use of the People's participation and support in Crime Detection: A stereo type scenario is not unusual for us to see, especially in numerous visual media projections, where a police man is hopelessly isolated on the streets when crime or lawlessness strikes and people's response is generally one of aloofness. Though it speaks volumes of the prevailing levels of Police-Community partnerships, it ought to be possible to make intensified efforts to promote good understanding, which in turn will directly or indirectly support the police in many ways. If people help the police on the basis of mutual trust then many tasks including getting clues or securing very vital information about a suspect to be questioned and many other aspects of law enforcement become easy and quick. The adage that police can never be the darling of the people is surely a fact but there is nothing to indicate that policemen cannot stir out of that isolation syndrome and start making sincere efforts in getting the people's tacit support. In the sadly prevailing but truly compelling environs of mistrust and suspicion, which is somewhat mutual between the people and the police, the resulting picture is not rosy and surely the urge to change it is not very easy. But efforts are a must to correct this fundamental imbalance. A recent news report on the changing profile of the L A P D (Los Angeles Police Department) in reducing the reliance on high handed and assertive style of work and relying more on a persuasive and determined style has proved to be of great value as better public support is being seen in various actions of police. There is no doubt that dignified, humane and planned efforts done with a determined attitude¹ will surely result in better output in investigation of crimes, including the tasks of 'questioning an accused' (especially in the police getting to know many facts in relation to the suspect

1. [http:// www. nyimes. Com /2 2011/08/13/us/13lapd.l?r=l&hpw](http://www.nyimes.Com/2011/08/13/us/13lapd.l?r=l&hpw)

or accused, helped by the lay people).

VIII.8.(1) **Supervision to cover systematic and frequent internal interactions** amongst the staff at the police station levels is a professional need. Roll calls and duty allocations are done routinely but the investigators and their teams hardly gather for any interactions. This is so as, such a system of established investigating teams is not yet seen in practice. Really the investigating teams in police stations do not exist and even if so, they are in such a small number that any such professed interactions do not inspire any hope of being useful. It is time that such a strategy is made a functional practice and a daily routine at the police stations. Exchanging information and other vital tit bits can solve many small time and street level crimes. Such ideas are to be tried, tested and sustained.

VIII.9.(1) **Greater use of Right to Information Act** to seek and obtain relevant information is a worthy effort. By doing so the police teams can do well to gather good amount of information about the case/crime and advance the progress of many cases comprehensively. Various activities of information gathering most certainly includes better contact and continuous co-operation and coordination with various other departments like Revenue, Transport, Communication, Forest as well as various Tax related departments of the State including the Union Government. Such a mutually supportive effort can help the police to progress substantially in many investigations besides helping the cause of law in a number of ways.

Generally it is seen that most departments of the government pursue a lone furrow in their own areas of exertions (as if they are blinkered, though this comment is not to water down the need stay focused on their respective tasks) and are reticent to interact with others in government. This grand isolation is not useful either to them or to the system. But, that shortfall affects seriously the people at large.

Barring not so common instances of leak of vital information, it is possible to weld the power of united potential of the myriad governmental apparatus to advance the cause of law. Just like the proverbial mix up with so many civic agencies which take turns to dig up the city streets after they are paved well, (so as to do their respective essential tasks like laying of pipes or wires or take up repairs of underground drains and so on), leading to a grand waste of precious time and costly resources, work in seclusion is not a good idea in the vista of democratic governance. Similarly, the investigative and enforcement agencies could do well to promote a good understanding *inter-se* with many other governmental agencies and ensure economy of effort and speed of operations, all of which will benefit the community as a whole.

VIII.10.(1) **Better coordination between Investigation and Prosecution wings:** This particular aspect has been one of major bones of contention and a bane of building a good case against a criminal. The Committee on Reforms of Criminal Justice as well as other bodies mentioned earlier have highlighted the impact and consequences of such poor co-ordination. There are views by many that the Code does not contemplate the existence of the Prosecution wing as a united front with the investigating agency. Further some arguments are also advanced that as a concept as well as by law, the Prosecution wing is an agency to assist the court of law in delivering justice. Theoretically prosecution has to simply present the case without any commitment towards the police case. Thus, with a really competent advocate (which is more often than not the case) arguing the matter on behalf of the accused, the situation becomes a bit complex for the police. The judge acts as a neutral umpire and if the prosecution acts as an impartial agency to present facts as they are, then the net result is that nobody is really making out the case got up by the police (as prosecution is in theory is only intended to assist the Court and not really argue on behalf of the police). This outcome is decidedly inevitable, if the prosecution

assumes the posture of being a theoretically impartial entity. Here the question is not one of siding or not siding the parties but of giving a fair and equal chance to the case launched on behalf of the State. If an innocent is convicted he suffers most. But if a guilty escapes the law for various reasons, then, not only the victim but also the society suffers. After all, laws are made with a specific purpose and law expects good enforcement and if those objectives are lost, then the resulting malady affects each and everyone.

VIII.10 (2) Another significant aspect in relation to the problem of quality in the trial processes is that since long the method and manner of presenting best defence is steadily getting improved and this is so in almost all parts of the democratic world. But the same cannot be said of the qualitative improvements in the styles and manner of presenting the case for the prosecution. This is a glaring fact, which has to be addressed by the police and the prosecution so that the quality of presentation of the state case is surely elevated to prevent unmerited failures of the cases launched on behalf of the state (i.e, the society in general)

VIII.11.(1) **Human Rights issues during the questioning of an accused:** Amongst the most legally ticklish areas of work in the field of investigation of crime is in the range of jobs done to question an accused. It is in this crucial area several human rights questions emerge and the concerns of the law to protect the accused come into play. Such worries are natural, due to the types of situations that surface during such an important stage of police work. Right to be produced within twenty four hours after arrest; Right against arbitrary search or illegal seizure of materials from the person of the accused; Right to silence; Right to privacy; Right to have the benefit of a counsel; Right against self- incrimination; Right to medical examination (either to prove an offence against himself or an offence against someone else); Right to humane and dignified custody; Right against torture in custody and

so on have to be carefully noted, understood and fully complied with, especially in the working of the Code. Given the poor standards of current quality of police training (and the inadequate in-service updating of inputs for the rank and file), it would be in the interest of the investigating officers and the organization itself to ensure best measures to impress on the need to follow the law. In that visage, periodical in-service training of the Investigating Officers is a must. Only by good training followed by close supervision, it is possible to reduce the problems of this accursed kind that swamp the system. There are a good number of persons or agencies including the NGO's and the accused, who will surely raise questions on the rights of the accused, before judicial forums or the media if there are any violations, real or even perceived. Having a firm commitment and faith in the concept of Rule of Law would be essential for the police individually as well as collectively. Though good training may prove to be useful, it is the enlightened self-interest instilled in the minds of the investigators that can prove to be of greater value, to do the bidding as per law.

VIII.11.(2) Demonstrating a commitment to Human Rights is a vital need for the police. That can be put to practice to ensure gains in terms of investigative efforts. Some of the steps can be as under:

- a) Establishing interrogation rooms or questioning rooms for professional interviews/examination of the accused during various preliminary stages of investigations is a necessary step. It is essential to ensure basic facilities in such locations, so that the ranges of police tasks are done in a legal and humane way. Technical resources like recording of the interview coupled with needed facilities to replay or screen the event or use it during questioning more than one accused (by showing it to the other accused/s) are a must and such resources have to kept up-to-date as newer and simpler technologies emerge.

In addition, building a storehouse of all such records has to be made systematic. Video recording of the 'questioning an accused' must be invariably made irrespective of the fact whether such interrogation or interview was done at the designated room or at any other place. An important suggestion relates to the making presence of a team of police officers (two or more, as is practical) throughout the interrogation which is surely wiser as it helps the investigation in several ways. Further, permitting a counsel and /or a relative would be of value and this can made as a routine practice, though in terms of its actual application, the law with regard to the step of permitting a counsel and his offering assistance to the accused during that questioning is not yet settled fully in India (This is so as the verdict of the Apex Court commended in the *Nandini* verdict was not emphatic)

- b) Establishing such well-planned interrogation centers must be given a top priority in all district head quarters (Justice V S Malimath Committee has commended that aspect in particular)
- c) Ensuring Close Circuit Television arrangement to enable genuine and lawful supervision of all such efforts.
- d) Providing access to copies of recording (while making it tamper proof so that its credibility would be weighing well with the law courts) is a good step. Such measures will also dissuade false and bogus complaints. The prosecution may be able to present such video records (duly authenticated) to the trial courts as material evidence, especially to counter charges of abuse during interrogation of the accused while in custody. One can even foresee that very soon depositing of such data with the concerned courts may become a mandated action similar to the current practice of sending first information reports to the Courts. (For example, a

recent news item from Bengaluru conveyed that all the near 1200 police stations in the state of Karnataka are connected with respective courts and efforts are made to convey the FIR soon after registration for the scrutiny and other legal actions by the courts. Many states are also on a similar advance mode to bring technology to work in police routines)

VIII.12. (1) **Newer Crimes and Questioning of an Accused or a Suspect:** As newer and hitherto unknown types of crimes are relentlessly getting committed in some part or the other of the world, many native criminals are bound to use such tactics and vicious plans in our land too. Just like the criminals using such knowledge to perpetrate such and similar or improvised violations, there is a need to develop a continuing awareness research on all such trends. Perhaps the National Police Academy at Hyderabad or the B P R & D at Delhi or the Central Bureau of Investigation Academy at Delhi and other important training centers of C D T S can set up study centers in their institutions to keep on updating all related information and knowledge of all such progressions. Such a data base will be a great source of useful information to Investigating officers. Similarly, study of good case histories, awareness about the possibilities of newer methods of detection and application of techniques to solve and gather evidence in such cases and so on would be another side light of such efforts.

VIII.13.(1) **Efforts on Crime Prevention and reducing the burden of police work:** - Though the theme of the study relates to the subject of 'Questioning an Accused', there is a good case to keep working on various aspects of crime prevention. Architecture and design of public places and use of various tools to continuously monitor some of the important common places of public interest will help in easy detection of crimes as recorded by CCTV and similar other gadgets. In fact, this has been the most visible trend in many

major metropolitan cities in India. These efforts have to be extended to other smaller urban areas and also steadily streamlined so as to ensure its working as well as its utility.

VIII.14.(1) **Appreciating and recognizing systematically all good and commendable investigative work** is a professional need. Keeping the nature and kind of police work, uniformed personnel, as a rule, get a sense of identity and feel proud of their accomplishment/s with each instance of official recognition that come in their way. But, this certification has got to be well planned, carefully selected and publically appreciated, so that such steps add value to the work done. While quality exertions and worthy efforts merit commendations from the Government and leadership of the police systems, improper and unbecoming conduct too deserves condign punishment as well as condemnation based on the shortcomings of each such infraction. This is to be done swiftly and promptly so that the investigators will realize that the path that they (investigators) have to pursue is always to remain lawful and legitimate. The 'end' accomplished is important in terms of mere professional success. But 'means' employed are equally vital as civilized ways of law enforcement, as it draws sustenance from the compliance to rule of law.

VIII.14.(2) **Opinions and ideas gathered during field visits relating to this study:** Nearly one hundred police officers (present and past and some others connected with law) responded with their views on some of the basic issues relating to the theme of this study. In fact, their views have helped the study immensely and they are a part of this narration. Important view points are summarized as under:

1. Besides making an emphatic assertion about the need to make the task of 'Investigation' of crime a real professional area of work (flowing out of the anticipated changes based on the verdict of the Supreme Court of India in Prakash Singh's case), there was near unanimity

in the observation that the prevailing standards amongst the investigators in general in India is really poor. Making that area of work a high- class professional enterprise is an imperative task. Training the investigators and the junior staff who assist the lead investigators must be given the best attention.

2. In reality there is no supervision of investigation in a vast majority of ordinary cases, though here and there important and serious crimes are supervised. But the basic standards of professional competence amongst supervisors are at a very low level and this critical problem will have to be addressed systematically.
3. The opinion was more or less common to hold that while the police of the times can be expected to rise up to some standard of work *vis-a-vis* traditional crimes, the police readiness to meet the newer challenges in Terrorism, Extremism, Cyber Crimes, Technology based crimes, Trafficking of all kinds, International crimes which are per se complex is alarming. Sadly enough the police systems in India are generally seen as being hopelessly outdated. In fact, that perception is not really wrong, to say the least. In order to elevate their potential enormous efforts are needed to bring them collectively at par to meet the most difficult challenge confronting them.
4. A good number of junior level officers who had great experience in many investigations of sensational nature of terrorism pointed out that sharing of intelligence may be a good idea in dealing with traditional crimes but such open page investigations will only help the criminals in such horrendous crimes as such a strategy gives big scope for the criminals to escape. After all leakage of extremely delicate information or intelligence cannot be ruled out and all the painstaking efforts done by some ought not to be allowed to go down the drain,

by any ill-monitored approach. The opinion given by such experienced junior ranks was that depending upon the case in question any such idea needs to be worked well and can be so done only on a case to case basis. But, they agreed that a good number of traditional crimes in medium and big sized cities are not detected as vital Intelligence is not shared in time and the criminals roam free till the case is solved owing to some unforeseen chance or due to other reasons.

5. With regard to Human Rights issues in the area of 'Questioning an accused' it was felt that it would be better if the police follow the rules very sincerely and venture to record the interrogations faithfully so that it acts as a proof of compliance to law in not violating Article 20 (3) and in addition make the courts to find the quality and genuineness of investigations. In addition, permitting a counsel and/ or a relative during the custodial questioning can also be considered. Getting the confidence of the accused that false action or bogus evidence or padding will not take place, would perhaps yield better results.
6. With regard to remand applications of the accused, it was opined that best information may come in the first few hours. Answers may have to be pursued by the questioning when the incident is fresh and the accused would be perhaps willing to tell his version of the case. Once he is set free on bail or is back in the company of his near and dear ones or is away from the isolation of police custody, he is less likely to speak. More importantly enabling the professional criminals or brainwashed operators (especially in relation to crimes of Terrorism and its different brands) or organized racketeers to gain time is not wise as such criminals are not likely to open up once they are out of the remand jurisdiction. Thus, the idea of seeking specific

amendments¹ to the law on 'remand' is necessary as the law has to keep the realities on the ground in mind. Answers to these issues have to be pursued systematically.

¹*It is said that post the 9/11 incident relating to the destruction of the two towers coupled with huge death and destruction in the city of New York, the security agencies of the USA have been resorting to very harsh methods of questioning, ostensibly to extract information about terrorist activities which are plotting to convey harm to the interests of the said country. Though media glare of the recent revelations of extremely harsh methods of questioning are not the first time such an exposure has occurred, it is also a fact that the crisis of Terrorism is surely a problem of an extremely complex kind.*

Abraham Lincoln is said to have exclaimed that 'when the guns boom, laws are silent', especially when the State is pushed to a corner for its own survival. However, International Law and democratic ways of living do not countenance action outside the pale of the law and such steps (of harsh and cruel ways of questioning suspects or accused) are violations of law and are actionable. At the same time, it is perhaps necessary to look closer at the crisis situations of that kind where such criminal ventures are not mere acts of war as they degenerate into acts of genocide, killing innocents and many others unconcerned with the cause or reason for prompting such deadly enterprise. It is also a fact that many other nations across the globe are confronted with similar allegations of abuses of worst kind. We need to keep in mind that many serious crimes like Terrorism and its ilk transcend territorial limits of nations and the municipal laws may find it difficult to deal with such crime – either in terms of pursuing legal actions on the perpetrators of such horrendous crimes or in successfully preventing such deadly events.

However, while dealing with the issue of 'Questioning an accused' the law enforcement agencies will have to follow the law and at the same time, it would not be easy to deal with the challenge. It is also a fact that it would be not possible to make laws to support such harsh methods, as the demands of 'due process' – which calls for 'fair, just and reasonable' processes will validly and justifiably intercede.

A recent media projection (as seen in global reports on 04/01/2015) asserts that the intensity, diversity and volume of Cyber Crimes in India is going to get doubled (in terms of the number of cases reported) and that assessment perhaps exemplifies the need to work towards professionally preparing and supporting the enforcement systems in various ways, lest such criminals virtually overrun the State.

=====

CHAPTER 9

'Questioning an Accused' during Police Investigations & Role of SVP NPA

Preface to Chapter 9: - *This study on the theme of "Questioning an Accused" was a part of the SVP NPA fellowship (2011-12). Naturally a question would surface on the advantages that can accrue to the Academy by such an effort. The SVP National Police Academy has a distinctive place in the dynamic and difficult area of preparing the police leadership of India for their arduous roles. The current day entrants to the service are endowed with greater capacity and potential compared to the previous generations of such professional enforcers of law in this country. However, there is a great scope to elevate the individual capacity of each new entrant to the service besides enabling each one of them to comprehend their own role to become real leaders at the middle and top levels of the police organizations of India.*

In order to highlight some of those critical goals and objectives of the basic premise of professional learning, the gamut of police professional preparedness, though from the perspective of the theme of this study, is enumerated.

The unique position of the officers of the Indian Police Service has several specific goals. In the leadership positions in various sub-divisions and districts, these young officers can influence the quality of police performance in several ways. However, their performance in the field as team leaders in crime fighting (in the combined tasks of Crime Prevention, Crime Detection and Investigation coupled with Prosecution) depends on their

commitment, willingness to bestow attention and involvement to the minutest details of their duty components. Coupled with an urge to weld the big manpower under their charge, the young leaders have to strive hard. Firstly, these officers will have to understand the need to be alive to the mandated procedures of the law and the way by which they can solve crimes under investigation. Being in touch with the latest advances in law (as guided by the verdicts of superior courts) is a must for them as such an awareness helps to guide their teams in the right path. It is also an established fact that a large number of officers of the Indian Police Service are having technical background of diverse kinds and as a rule most of them are conversant with the current day computer tools. Such a competence must spur them to keep abreast with the contemporary advances in forensic and related areas that help crime fighting activities.

As middle level leaders, the IPS officers can motivate the Investigating officers as well as the support staff (of junior ranks at the PC, HC and ASI levels) in promoting an urge and determination amongst the staff of the police stations to seek relentlessly better professional standards.

Notwithstanding the prevailing constraints on the status of 'crime fighting' in the police duty charters, much can be done to weld good teams within their respective fields of control to elevate the capacity, competence and urge of the police teams as a whole and also spur the individuals along with their teams towards excellence.

The task of crime fighting is very difficult and the burden on the police system is awesome. Yet, incremental progress is possible by the dint of efforts by the young IPS officers. There are several examples (though not very big in terms of numbers) of young leaders of the IPS making a great and positive impact on the problem. Success in crime fighting plays a big role to promote good Community-Police relationship - which is most elemental for the very existence of the police.

It is in that context, this chapter has many significant aspects, (mentioned earlier in this study), which are repeated with a purpose to impress the young officers under training at the SVP NPA to make them comprehend their own true role that is expected of them and also to submit to the administration of the SVP NPA to appreciate the immense potential that the Academy can work on. It can make the quality and effectiveness of police work move towards greater professionalism. Such a sweep must cover the entire rank and file, notwithstanding the prescribed and professed goals of the Academy.

=====

'Questioning an Accused' during Police Investigations – The impact of 'Police Training' in the professional task of 'questioning an accused' and **Role of SVP National Police Academy.**

IX.1.(1) **Introduction:** The Police Act of 1861,¹ in its preamble asserts, by necessary implication, that the main function of the police is in relation to the task of 'Prevention and Detection of Crime.'² In fact this was the professed purpose of making the said law, besides suggesting several other duties and tasks that can be assigned to the police. These aspects emerge clearly from a perusal of the said law. Evidently, some specific duties are also explicitly indicated in that founding enactment³ and these basic ideas have in a way fashioned the organizational structure of the police in India.

IX.1.(2) There have been persistent demands to legislate a new Police Act for the Union Territories and the States respectively, (Post the report of the Third National Police Commission, and that fact being further spurred by a Public Interest Litigation before the Supreme Court of India on the subject of Police Reforms – known as the Prakash Singh's case) so that such a basic organizational edict fairly and squarely reflects the contemporary ethos besides the law being made congruous and consistent with the democratic aspirations of the people of this country. In fact, amongst various objections raised against the continuation of the Indian Police Act, 1861

-
1. *Vide the Statement of objects and reasons in its preamble, the Police Act of 1861 mentions that " it is expedient to reorganize the police and to make it a more efficient instrument for the prevention and detection of crime".*
 2. *It is another matter that the Police Act, 1861 is commended for a new law on the subject, and yet it stands to reason to assert that 'Prevention and Detection of crime' ought to be a major duty and role of the police besides other tasks.*
 3. *A new Police Act of India is under consideration, but that proposed law has not yet seen the light of the day. However, the preeminence of the duty relating to the prevention and detection of crime merits to be continued even if a new law on Police Organization in India gets legislated by the States or the Union (Under the Constitution of India, the subject matter comes under the States list).*

(which has gone on to rule the police structure even after well over 150 years of its application and the observation made above relates to the move made in the year 2012), is the charge that it was designed to suit the alien needs of a colonial power. Notwithstanding many worthy suggestions to make a new law (including the Draft Police Act visualized by a committee headed by Sri Soli Sorabji, a well-known jurist and lawyer of India), it seems necessary to assert here that the charter of 'Prevention and Detection of Crime' must remain the main or the first duty of the police. By emphatically asserting that 'duty' as a primus in the charter of various assignments which the police will have to be obliged fulfill, as per law, a decisive transition is intended primarily in their own mindset.¹ As a result of such an enunciation a vast majority of policemen themselves would start feeling about the change needed. Next, such an emphatic premise is sure to advance a transition in the minds of many others like the political leaders and the administrative echelons who are sure to slowly internalize the new ethos that ought to inform the role and functions of a police system in an egalitarian ambience. However, it is seen that changes that have come in many states by most such new enactments (on the same subject) have failed to give or provide a new but appropriate legal basis for the police structure in a manner as commended by the IIIrd NPC. The

1. *It is very interesting to note some of the half-hearted responses of various Governments of many States as well as the Union Government in failing to come up with a good plan to the need for a new Police Act. If the IIIrd National Police Commission commended a new police law and had also suggested a model law in the year 1981, the specially appointed committee by the GOI came up with model Police Act 2006. Various states like Madhya Pradesh (2002), Bihar (2007), Delhi (2010), Goa (2008), Chhattisgarh (2007), Gujarat (2007), Haryana (2007), Rajasthan, (2007), Kerala (2007), Tamilnadu (2008), West Bengal (2001) have made new Police Acts for their respective jurisdictions. Yet, it is broadly observed that most of them have failed to reflect answers to many concerns voiced by the IIIrd NPC in evolving an ideal law on the subject, which is of immense significance to the people of the county. A very interesting analysis of the status of that transition is well articulated by the CHRI (Commonwealth Human Rights Initiative)- in its reports which can be seen on the Internet in http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=597&Itemid=502*

yawning gap on that foundational need, which can elevate the position of the police in India is yet to be filled up by a proper action. Meeting that burden ought to be undertaken by the respective lawmakers in India at the relevant Union and States levels. Indeed, that critical need is warranting an immediate response from the powers that be.

IX.1.(3) We need to keep in it mind that a foundational law like the Police Act ought to become a benchmark or guidance standard for the police in country in their multifarious duties, besides answering various other objectives and implications of such a law. No doubt effectiveness of law is surely dependant not merely on the legal foundation by itself, as the way by which such a law is worked in reality would also assume immense significance. In fact, such views are often expressed even with regard to a law like the Constitution of India. Quoting Dr B R Ambedkar, it is said that any law can be made to succeed or fail by the way it is worked by those answerable for its implementation. However, a good law made on regulating the Police System can help the community to answer many of its elemental needs, besides paving way for a clear and unambiguous assertions relating to structural aspects of such a system. Stating the mandated prescriptions on matters like the organizational arrangement, recruitment, training and discipline and so on, – all of which are of important consequence, can help the good functioning of the law enforcement systems. In addition, it can also facilitate marshaling of full potential of police towards community good by broadly portraying itself as the controlling parameter for the police organization and its personnel. That is necessarily so as the day-to-day activities of the police affects the people in very many ways. A well-evolved Police Act can be like a guiding pole star, helping the society in getting the best out of law enforcement. But such a law has to be stable and not static, so that the law can meet the changing needs of the times. It must contain scope for well

thought out improvements and have necessary resources for effecting the needed changes. At an earlier place mention has been made to assert the urgent need to bring in a new Police Act. However, it is necessary to reiterate here that a vital point about the clarity on the ultimate accountability of the police themselves must find a clear reflection in such a law. The basic inadequacy of the Police Act of 1861 was the constraint of imposed answerability of the police to the political power. That obligated burden seems to have dragged the Indian police to a great isolation and alienation from the public as the police perforce seem to care more for the dictates of the political power rather than to legal directions of the law, howsoever clear is the professed goals of law. In that backdrop, it is perhaps most necessary that 'police' are made accountable to law and law alone. Police have to be the 'real' agents of law and they ought not to get degenerated as an armed extension of a political party in power, (though elected to that exalted place of democratic leadership and by a due process). Contrary to the express intention of the Constitution of India and many other important laws, such a sorry scenario is palpably evident throughout the land. Thus, by placing the police as a harbinger and torchbearer of 'laws' at all times, the concept of 'Rule of Law' can get best thrust forward. If so done, then it will surely spur a cascade of various positive changes that will auger well for the entire society. In fact, such a worthy transition is bound to impact the crime-fighting role of the police in very significant ways.

IX. 2. (1) But, we ought not to loose sight of the fact that the range of police duties and the guidelines that shape the police procedures are not conditioned only by the Police Act, 1861¹ as there are various other laws including the Constitution of India which have a big say in most such

1. *(Some changes are seen as nearly a dozen States have enacted appropriate Police Acts and yet basic charter seems to perpetuate barring some cosmetic changes). This has been adverted to earlier.*

matters. In a way, the main goal or objective of a law like that of the Police Act (1861) would lie in dealing with a host of matters which are predominantly related to organizational and internal facets of the police systems.

Further, such a law has got to necessarily find due resonance with other enactments, including the Constitution of India so as to logically and effectively carry forward the mission of 'law' in that visage. It is by that brand of arrangement we can use law as a means to advance the cause of building a new society, as conceived by the Constitution of India, and so emphatically conveyed in its Preamble.

IX. 2. (2) It is essential to keep in mind that the overall functioning of the Penal Justice System in India hinges on the triumvirate of legal charters contained in the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872.² It is also deducible from the above legal panoply that police are saddled with tasks of Prevention and Detection of Crime; Maintenance of Law and Order; Regulation of Traffic besides various other Social Service functions. In that broad canvass, the closely interconnected tasks of 'prevention and detection of crime' assume immense importance of a primary kind. It can be comprehended from the Code of Criminal Procedure, 1973 that, in its ordained quest to 'Prevent and Detect Crimes', the police are obliged to scrupulously follow various express and implied directions of all the procedural yardsticks mandated by that law¹. In addition the police will have to follow and toe the line of several other prescriptions and proscriptions of the substantive law, the procedural law and the evidentiary law (as contained in the Indian Penal Code, 1861, the Code of Criminal Procedure, 1973 the Indian Evidence Act, 1872 respectively). Though the

1. *There are several other special laws where the procedures are exclusively prescribed and the police are to comply with such directions. Yet those kinds of variations are really limited*

Constitution of India mandates various guarantees impacting the penal processes, it can be well noted that almost all such directions are contained in some form or the other in the procedural and evidentiary laws, referred to above.

IX.2.(3) Naturally flowing out of those penal charters is the onerous responsibility thrust upon the Law Enforcement Agencies (predominantly the Police) to ensure that all due and appropriate steps are initiated, adopted and sustained – first in terms of prevention of crimes and next in their pervasive efforts to detect crimes (viewed from a limited perspective of its fight against crime) and as an obvious corollary the police (so also most other enforcement agencies in our land) are bound to bring all violators of Penal Law(s) before the Law Courts.¹

Contours of charter in the area of Investigation of Crime.

IX.3.(1) A 'Crime Investigation', undertaken as per law by the police, more often than not starts with a formal document (commonly referred to as the First Information Report) and ends with another formal document known as the 'final report', as provided under Section 173 of the Criminal Procedure Code, 1973. Subsequent to that penultimate stage or facet of primary police work events like a trial & post-trial steps occur depending upon the type of the final report filed by the police.

IX.3.(2) In the total vista of 'Prevention and Detection of Crime', 'Investigation' is the most crucial part notwithstanding the real truth that 'Prevention' is surely a wiser option. But, as preventing crime is inherently elusive or difficult and at times intangible, due emphasis is naturally unavoidable on effective investigation of crime. It needs to be mentioned here that

1. Besides the IPC, there are a good number of other penal enactments to be enforced and that list is getting added on since long. Very many Special and Local Laws as well come in that ever expanding ambit..

focus of the discussion here is on that professional area of 'questioning an accused', which is a vital part of the total range of 'investigation of crime' by the police. The emphasis here is to consider steps that can qualitatively enhance the outcome of 'investigation of crime' by increasing the chances of success in the area of 'questioning an accused'.

IX.3.(3) As this study is venturing to look closer at the task/s of 'questioning an accused', so as to find more effective ways of optimizing the end results of that particular police enterprise, efforts are to be focused to seek ideas and steps from various participants in that specific task of enforcement. The idea is to make the goal easier. Though a good majority of criminal cases are commenced on the basis of a complaint under the law (Code), where the facts narrated by a 'complainant', generally give a hint or clue as to facts surrounding the alleged violation/s of the law, there will be many cases where such a help may not be at hand. In the former category of crimes reported and more often than not, such complaints commonly speak about the possible identity of the suspect or give hint about clear or even vague characteristics of the accused person. Such an enabling fact may either be express or implied depending upon the type and kind of First Information Report.

IX.3.(4) From that starting point, the investigator pursues a sequence or series of steps in a methodical manner and on his way plans and marshals collection or gathering of various types and kinds of evidence, as per law. These steps are to be so done with a view to enable prosecution of the offender in question. However, it is possible that in a given case, there are no such materials or clues readily visible or such indicators are not so patent, though the fact of commission of a crime is clear or is beyond doubt. Paucity of such vital information to pursue due action to bring the offender to book may also be seen during various stages of investigation. Such a hiatus can be seen in an example where the information at hand in the

complaint is found to be not true or is false (as found out during the investigation) or that in a given case, the accused could be someone else (though not named in the first information report) or that the investigating officer is not in a position to identify the possible or real culprit in a given case, due to various other facets or peculiarities of the case. To such a list of stalemates we can add another category of case or cases, where the Investigating Officer has to grope in dark till he gets some clue to logically begin and carry forward his investigative enterprise. We can also note instances of cases where the suspect or an accused named (in the first information report) happens to be a part (or is suspected to be a part) of an organized gang or that the suspect may be a part of the network of criminals, as for example, of a terrorist gang or network. It is also possible that such a person may be a member of an organized criminal arrangement indulging in offences like trafficking of persons, arms or drugs or contraband and many other complex facts may abound the case. The list of such situations can be really large. (and they also seem to be getting bigger by the day). However, we need to note that in the ultimate analysis such trends are essentially due to man's ingenuity to abuse the power of his own mind, in conveying some illegal harm or the other to his fellowmen. We can add to that swelling list, instances of criminal networks engaged in newer types of technology based crimes¹ like money laundering or cyber crime or other innumerable types of techno based crimes. Though most of them involve more than one person, there are instances where a solitary criminal may be causing or committing many crimes and that trend is

1. *Internet provides various insights into new types of emerging crimes and such prospective menace can be unnerving. But that also makes the task of the investigations more and more difficult as the resources at the command of the investigators will have to be founded on increased awareness as well as skills in using all kinds of possible resources that have to come in the way of the police systems in dealing with all such new challenges. As an illustration see <http://www.ted.com/talks/marc-goodman-a-vision-of-crimes-in-the-future.html>*

predominantly seen in computer or technology based crimes.

IX.3.(6) In fact, such situations can confront the investigating officer/s, where the chain of persons involved as 'offenders' is a long one, making the effort to gather evidence against each accused a complex task. This is so as many facts may not seem to be explicit during the early stages of investigation. In many such cases, there may be no apparent witness or witnesses who can be identified, due to factors like the location of the criminal at the time of the offence or the seemingly remote access between the accused & the victim or peculiarity or seclusion or isolation of the crime scene and so on. Many illustrations of technology based violations or trans-border crimes can easily provide examples of such descriptions.

IX.3.(7) However, it can be seen that in most such instances, outcome of the concerned case may depend heavily on the ability of the investigating officer/s to elicit all possible details by skilful, intelligent and effective 'questioning of the accused' (or the suspect, besides examining the witnesses of various kinds and hues). It is no mean task as he (the I.O) is to accomplish the results within the bounds of the law. Thus, those worthy objectives can be reached by the investigating officer/s only by demonstrating a very high standard of professional competence based on which the police can hope to gather and build up the chain of evidence against all such offenders.

IX.3.(8) Naturally therefore, success of the police charter to 'detect' & logically prosecute the criminal/s in each case would hinge on the skilful venture of the investigating officer (or his team) to gather all relevant and related information from the suspect or the accused. Admittedly, the basic premise mandated explicitly under the penal processes is that the investigating agency (investigator or his team) is normally expected to gather evidence from various other sources like the witnesses and myriad circumstantial evidences and so on

to bring the case before an appropriate judicial forum. Though questioning the accused is a part of the legally permitted procedure, the investigating officer is not to depend only on that particular effort. In fact, the investigating officer is not permitted to 'extract' information from the accused, though he is well within his legally empowered rights to question or interrogate the accused (or the suspect). The total perspective of evidence gathered in a particular case must be legitimately secured from all other available sources and has to be so done besides the evidence that he may be able to gather from the statement/s of the accused person/s. Even in that enterprise, the investigating officer is to take care that such an action is done without any tinge of 'testimonial compulsion', (which is expressly prohibited by the Constitution of India (vide Articles 20 & 21 as well as the Code).

IX.3.(9) Thus, the path to be pursued and the goals to be accomplished in establishing the case against the accused person in those kinds of cases (where the case is to be built on the result of successful 'questioning the accused') is a real challenge to the ability of the investigator.

IX.3.(10) In the context of solving that kind or category of cases where the end-result of the case is heavily dependent on the outcome of the facet of 'questioning the accused', the processes of eliciting information from the accused during all such questioning efforts surely becomes a very high quality professional task. It calls for a significant levels of knowledge on men and matters. For example, the investigator will have to display intimate knowledge of the organization involved or awareness or knowledge about various personal details of the accused, or the data and background about the gang or the network, or the facet of demonstrated skills in understanding the use of human psychology or his (Investigating Officers) awareness in reading the 'body language' of person/s and so on. Thus all such abilities become vital and each one of such positive attributes can help in greater

success of the relevant investigative efforts.

IX.3.(11) Though there can be a good number of traditional crimes like rape or murder or other offences against body, property or documents under the IPC, where skilful questioning of the accused or suspect can help to unravel the mystery, as the focus in this study is also on crimes like Terrorism or Extremism or Organized crimes or Money Laundering or the Trafficking of persons and other items or various other techno based crimes- where the investigating officer has to slowly get the facts by his skilful demonstration of the 'art of questioning' coupled with the good use of resources of various other kinds, the range of ideas have to be extensive. From our experience since long it can be said that the task of obtaining or eliciting information from suspects or accused (by a valid questioning process by the investigating officer/s) may be constrained or rendered arduous due to the fact that, more often than not in a large majority of such cases the accused person/s or suspects (before the investigators) are generally spurred and inspired by some or the other devious motive/s. For example, many involved in terrorist misadventures are supposedly or allegedly harboring a notion or an idea due to which they perceive their venture as an idealistic cause of action and thus rationalize their involvement in such misadventures. At times, the accused or suspect may entertain a mistaken notion of inflicting a revenge against society for his plight (or that of others in whom he is interested) which has made or compelled him to resort to the crime or to become a part of the said or suspected organization and so on. In addition to those kinds of situations, it is also possible that reticence to speak out may be emerging out of a 'enlightened self-awareness' that it may be wiser for him to not to give any information to the investigating officer/s. Such a mindset is sure to be present when the accused or suspect is conscious of the legal parameters that oblige the police to refrain from use of illegal force during questioning. Hardened

criminals often resort to either silence or deliberately mislead the sleuths during such questioning or interrogation sessions, as they would be well aware that once they are out of police custody as per law, they can manage to avoid any negative legal consequences coming upon them. At times, they may fear reprisal on their families or their near and dear ones in case the gang in question becomes angry about his failure to protect the information during the processes of questioning him (the accused) by the police, and would want to settle scores, if he succumbs to spill the beans resulting in some support for the police efforts.

IX.3.(12) Besides instances of extreme ideological commitment to stay silent, the law also obliges police to warn the accused that he is not bound to state anything and that in case he does so, such aspects may be taken in evidence against him in the trial etc., In this regard we may note that the '*Miranda Warning*,¹ is a police procedural practice mandated in the United States of America. Notwithstanding the fact that such a practice is not in vogue here (in India), generally persons involved in that brand of cases (like Terrorist outfits or organized crimes or technology based crimes etc) are aware of that *de-jure* situation and thus it could be one of the reasons for their non-cooperation to speak during questioning or for their premeditated action to mislead the police by bogus and untrue accounts so given by them.

IX.3.(13) In addition to those kinds of hardened minds refusing to give any useful information, we can also note that a somewhat similar stalemate may also occur in instances where the said individual accused or suspect who is being questioned by the police) may himself be not be fully aware of the total organization for which he has been working and has done a part or parts of the crime (in which he is secured and is being questioned). A good number of persons

1. *Miranda v Arizona*, (1966) 384 US 436.

euphemistically called or referred to as 'foot-soldiers' of many organized crimes may fall under that category. Thus, it is not as if the accused or suspect is not willing to speak or that he is determined not to give out information but the fact that he himself is not really or truly aware of details, which the investigator or his team is eagerly seeking through the processes of questioning. It is no secret that organized crime syndicates guard all information about their own nefarious networks in such a way that the end of the line criminal associates are clearly kept in dark about the network or the goals of the gang. Most facts or information/s relating to the reason or purpose or objectives of the gang, or the network of operations like the placement and type of rungs involved and so on are very closely guarded. Such crime networks rigorously follow the 'need to know' principles to rigidly monitor information and give out only a limited charter even to their own close teammates or associates in a particular or general criminal act/s. It is another matter that in many organized criminal activities a good number of open conduct of actions are deliberately done in a most visible manner and many such actions may even appear or seem to be legitimate activities of trade or commerce and such strategies may refuse to admit facts or profess falsely that their actions are not illegal. Thus any such participant/s secured by the police as a suspect or as a accused for questioning, may draw a blank in his responses as he would be really and clearly unaware of the totality of the part played by him or his team in the crime.

IX.3.(13) Besides the practical constraint of getting unwilling persons to disclose information (all such accused would be surely aware that any such disclosure would be detrimental to their own interests under the law), many other related issues come to the fore. Generally they would also be aware of the imminent retribution (in terms of the well-being of their kith or kin or their own physical safety, that they may have to face or suffer in case they give up any information),

and thus, it would not be easy for the investigators to elicit clues or information that would be useful. (Another important fact that adds to the constraint of police efforts to successfully interrogate or question criminals is with regard to the fact term 'accused' that has not been defined either in the Constitution of India or the Indian Penal Code. Though the Indian Penal Code makes a reference to the term 'offence', the term 'accused' has not been defined. Similarly, the texts of the Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1973 also do not help us in that regard, though all of them have used that term at several places in their respective legal texts.)

IX.3.(14) We can however note that some clarity is perhaps easily discernible by a careful scrutiny of some of the relevant case laws. Article 20(3) has conferred fundamental right on an accused person with regard to any compelled testimony. Notwithstanding that fact, there are several sections, (contained in three major penal laws of India) where the import of the term 'accused' can be deduced. However the Indian Evidence Act, 1872, specifically covers the ambit of the term 'accused' from the most dynamic provisions of the said Act in Sections 24 and 25. In this regard, we need to keep in mind a catalogue of decided cases right from *Kathi Kalu*¹ and going well beyond *Nadini Sathpathy*² and right up to *Selvi* (2009)³ to help us to understand the legal prescriptions.

IX.3.(15) The complexities involved in dealing with the investigation of the type of cases that are in current focus are *prima-facie* manifest and are well known. After all, the issue is not merely limited to the case/s under investigation but also to the vital facets of ascertaining facts (gathered during

1. *Kathi Kalu Oghad v State of Bomay*, AIT 1961 SC 1808.

2. *Nandini Sithpathy v P L Dani*, 1978((2) Scc 424.

3. *Selvi and others v State of Karnataka*, (Appeal No 1267 of 2004).

such investigative efforts) to be put to use for 'preventive' efforts of the police. Such a requirement becomes very important in view of the duty cast upon the police to take various preventive steps to stop or avert other possible or likely crimes or acts of lawlessness. That may include instances of lawlessness by other members of the (suspected or known) network, of which the accused in custody and under questioning is a part. Thus, we need to be conscious of the types, range, intensity as well as obscurity of many facts in crimes like Terrorism, Naxalism, Extremism, Trafficking of Persons, Drugs and Arms (within the country as well as beyond its boundaries or being part of other kinds of international crime venture), or dealing with contraband within a nation or beyond. Similarly, efforts to investigate violations of the penal law like Organized Crimes of various kinds and hues, Money Laundering, Cyber Crimes, Computer based or Technology based crimes and so on are really difficult and based on that awareness we need to professionally prepare and equip the investigators to venture and succeed in those Herculean tasks.

IX.3.(16) Experience as well as common sense ideas in the field of police administration would suggest that it would be virtually impossible for any individual person, howsoever brilliant, to become an expert in investigating all types of cases illustrated above. This clearly reiterates the basic truth that 'fighting crime' is a very huge task with so many complex issues and several posers. Keeping the staggering challenge in mind it would be wiser for the organization to work on a sound policy to build expertise amongst its ranks by choosing and enabling individual investigators to augment their expertise in specially chosen areas and building teams to deal with each category of crime.

IX.4.(1) The overall vista of police training (in the State Police Academies and Police Training Colleges) should be so designed to help the trainees (in the current context, the Sub-

inspector of police in particular) to comprehend the challenge that the task of 'crime fighting' holds as a professional subject of learning. A sound foundation has to be given to them by a good initial grounding so that at a later stage, their professional standards can be bolstered by good and continuing on-the-field or on-the-job learning processes. (Of course these efforts will have to be supported by the willingness and voluntary urge on the part of the said individual/s through his/ their continued personal commitment to keep on improving their own respective awareness and knowledge levels). The police organization can make or take steps to build on their relative strengths to ensure intense or specialized training on categories of crimes mentioned earlier. After identifying special skills or unusual talent seen in the individual trainee, steps can ensue to build on their relative strengths to ensure intense or specialized training on categories or types of various crimes mentioned earlier.

IX.4.(2) In fact, newer and increasingly complex or devious kinds of crimes are likely to confront the society with the passage of time and such trends will be continuously spurred by the seemingly endless growth of various scientific and technological advances. Such developments are most likely to remain so and become continuing perils for the human kind. Therefore, the police will have to relentlessly work to keep pace with such daunting challenges and sustain their own professional standards.

IX.4.(3) There is no gain saying that the primary task of 'Investigation of crimes' at a higher level and more particularly in the realm of dealing with complex crimes (about which repeated references have been made earlier at several places) is not really an individual enterprise. Barring very rare and unusual exceptions, the nature and facets of crime investigation in general is a group venture, though some individuals may play a dominant role in some instances. There could also be some very exceptional cases, where successful

investigations are accomplished by solo efforts. Notwithstanding such rare and unusual events it is surely realistic to hold a view that keeping in mind the range and types of umpteen tasks that are to be attended to during the investigation of most of the cases, (especially those that are in focus), it would be impractical for any individual effort to foray into all tasks. 'Crime fighting' is surely a team venture and has to be addressed accordingly, and therefore it would be decidedly practical for wise and mature leaders to break up various tasks in the processes of investigation of cases and apportion or assign specific tasks to members of the team based on their potential, aptitude and capacity.

IX.4.(4) As a natural corollary, all training inputs given to such members (police investigators in general) will have to be dovetailed to become congruous and to stay in consonance with that assess, perhaps with options for corrections and embellishments as needed. Further, that style has to assert a clear emphasis on specialization of investigations in the type, category or brand of crimes in a systematic manner. Benefits flowing out of an approach of that style not only help the real and perceived value of the police systems as a whole but also convey the resultant gains and advantages to the community in general. It is a common and contemporary experience of most states of the union in India that expert teams of investigating officers are at hand with institutions like the respective State CID (by whatever name or appellation they are called) and such teams do by and large succeed in solving the case/s. Similar is the case with the investigative units under the control and care of the Union in the form of organizations like the CBI or the NIA etc.,. Further, it is fact that combined efforts of these investigative units result in good number of cases before the law courts. Though the numerical numbers of such prosecutions are high, the successful culmination of such cases as evidenced by the rates of conviction is not at a desirable level. This stalemate is considered or often explained

to be due to various reasons like lack of complete or clinching evidence to bring home the guilt beyond shades of reasonable doubts, or due to the fact that witness or witnesses turn hostile, or the courts give benefit of doubt to the accused persons, as per law and so on. (It is also a fact of significance that the Committee on Reforms of Criminal Justice Systems (2003) had pointed out most emphatically that the system has become dysfunctional and some of the fundamental principles have become counterproductive resulting in the failure of the system itself. More importantly, the Government of India has by its admissions reflected in the preamble to the terms of reference and has in that narration conceded the fact that the criminal justice system has proved to be ineffective and thus the share of the burden for failures of prosecution of cases cannot solely be dumped on the police systems of the country). *(A recent verdict be of the Supreme Court during August, 2014, calls for a systematic review of rape case/s which have ended in acquittal to fix the responsibility for poor investigations. This step obligates the police department to closely verify the investigations made in those cases that have failed and such steps are intended for fixing responsibility for failures in investigations, if any)*

IX.4.(5) Further, it is also seen from hard experience that if a series of complex cases suddenly confront the system simultaneously, then, even the best teams of experts stretched to their maximum capacities may still find it hard to fully succeed in all such cases. Under those circumstances, various kinds of pressure situations may also develop. Many a times political bosses, bureaucratic leaders, public opinion, media, and even top amongst the police hierarchy may want very quick results and may not be really willing to hear about the niceties of law or of the lack of any actionable evidence etc., for the delay in solving such cases.

IX.5.(6). Though there is a clear dearth of any reliable empirical data to support the oft- claimed assertions by the

experienced police leaders that even under such adverse circumstances, it is a fact that not less than about 60 to 65% of most such complicated cases do get solved, another glaring fact emerges that there is good case to work towards improving the professional standards in the area of investigation of crimes. If the system wants to strive really hard and improve upon the professional skills and competence in the area of 'Prevention and Detection of Crime' in general, there can be many advantages in that effort. Further that pursuit will also substantially help in qualitative improvements in the range of jobs such as the tasks of 'questioning accused' persons, especially in the types and varieties of crimes mentioned earlier. The specific as well as explicit reason as to why these essential aspects are raised here is to point out that it would be humanly impossible to claim that all cases will be solved and that despite such unavoidable possibilities, it would be necessary for the police to persist and carry on the investigative enterprise, with a sense of commitment and determination. Such a resolve is a must.

IX.6.(1) However, keeping in mind the steps that may directly or indirectly pave way for improvements in the quality of investigations in general (with the focus on the theme of 'Questioning an Accused'), it would be appropriate to note that:-

1. 'Crime Investigation' work is a team enterprise.
2. Specialization and expertise can come only by long years of dedicated experience to a large extent, besides the scope to improve the skill, dexterity and perseverance of individual investigators.
3. It is the quality and emphasis on the subject of 'Prevention and Detection of Crime' that builds a foundation for a later development aided by good experience and determination to excel by continued learning processes.

-
4. In fact, the content and extent of the basic training in this particular area is of immense significance to the future and the very relevance of the police. Basic training will have to inspire the young recruits to seek and become a part of the investigation teams in their careers. Such inputs have to instil in them (though not amongst all trainees but at least amongst a carefully chosen numbers) an urge to develop expertise in particular type or types of criminal cases. Though many simple and straight forward cases at the police station levels can be handled by a single investigator, it is an inescapable factor that even in those efforts many tasks have to be undertaken and accomplished by many others like the junior staff (like the constabulary) and thus, the emphasis is on being aware that the task of 'investigation' normally calls for team efforts. This facet has to be understood well and impacted accordingly in the minds of the aspiring police investigators.
 5. Professional learning in the area of crime fighting is decidedly a continuing event. Such learning processes never cease or stop. The needed components like Knowledge, Skill, Discipline and Attitude will have to be assiduously improved and sustained. Gaining expertise can be buttressed and strengthened by specialized and intense training programs that ought to be provided to the cadre of investigators, at fairly frequent intervals during their entire career. Training opportunities systematically provided to the cadre of Sub-Inspectors of Police who have at least 4 to 5 or 6 years of field experience (and who have done a reasonable number of investigations into routine and simple cases) can lay a solid foundation for developing competent and willing teams for all such investigations. (The bitter truth about police investigations in general is the fact that most investigations are seriously

handicapped by the absence of good and systematic training of investigators. Though some efforts are made here and there to meet this inadequacy, the yawning gap between the need and the supply of the quality of investigators is really big. This problem has to be addressed with a sense of determination and commitment. Police leaders in all the states have a clear role in this regard).

6. Higher levels of professional training in special types of crimes or in relation to some of the complex types of crimes (illustrated or mentioned earlier) will necessarily have to be ensured as systematic and frequently conducted events. Such a step can ensure two consequential facets. First, it would help in qualitatively upgrading the skills and professional competence of the band of investigators. Next, it would ensure that a fresh batch of investigators is around the corner and that the organization will not suffer for want of professionally skilled investigators at any given point of time.
7. However and more importantly in the current context, it is perhaps essential to keep in mind that among the total range of efforts connected with investigation in the overall gamut of 'Investigation of Crime', the core facet of 'questioning an accused' is a very critical and an important facet. Further, that area of work is manifestly difficult and most of the times it is extremely complex, tricky and confusing. That area of police work (i.e., 'questioning an Accused'), calls for painstaking efforts even by the most experienced, besides the elemental aspects of professional standards. Sustaining good ideology or elevating the overall potential with the help of professionals is no mean task. Perhaps this area poses a great training challenge to the entire police organization.

-
8. Notwithstanding such constraints it is surely possible that most such needed skills, talent and efficiency that are necessary to help in accomplishing investigative tasks and more particularly in the area of 'questioning an accused' can be honed by dedicated learning. Further, it can be continuously improved by gaining good and worthy experience backed up by several in-service training and learning efforts.
 9. The knowledge base of investigators will have to be enlarged continuously by the organizational and individual efforts. The second aspect will come good if proper environment is created to inspire the individual in that direction.
 10. A long list of essential resources that the investigating teams or individual investigators need during all efforts to 'question an accused' has to be met fairly and squarely. This particular aspect will have to follow a well-evolved plan and effected by a committed police leadership.

IX.6.(2) Committee on Police Training (often referred to as the Gore Committee) as well as the Third National Police Commission had emphasized in no uncertain terms on the need to invest best resources of the police systems in the area of professional police training. (Various high powered bodies have been asserting on that aspect since long. However, since recently expert bodies like the Report of the Committee Criiminal Justice Reforms or the Report of the Committee on Draft Criminal Justice Policy or the Report of the Second Administrative Reforms Commission and so on have all uniformly stressed the significance of increased professional standards, which can come only by good training and backed up resources of various kinds. Further, several mandatory verdicts of the Apex Court of India have been repeatedly calling for a higher priority to be assigned to this particular area of training in the overall gamut of police preparedness.)

IX.6.(3) In that dynamic perspective the primary coordinates of any professional competence in terms of knowledge, skill, discipline and attitudes have to be continuously developed and sustained. Considering the complexities involved in that goal, all the nuances of the charter relating to the duties of 'Prevention and Detection of Crime' will have to be approached systematically. This calls for a good initial training in that area of police work. Based on that foundational learning, all steps to improve that potential will have to be continuously pursued by frequent and recurrent in-service training ventures. Making such kind of learning will have to be made mandatory and that perhaps is the most essential precondition. The initial training has to not only provide a platform for preparatory learning but more than that the type and method of such a learning, the inputs so given must inspire the young entrants to see the scope and opportunity for developing an abiding interest to further their career prospects to become good investigators. They have to be motivated to take that as a challenge to their personality. If these young entrants can be charged with a sense of commitment and dedication to that area of work, a good platform would have been built. Though it is neither necessary nor is practical to expect every new entrant in that rank (at the Police Sub-Inspectors level) to become proficient in Crime Investigation work, building a big pool of good investigators is surely a must. Thus, if that area of work is elevated in terms of status, opportunity and recognition, then, the best or most suited amongst them could be made to become worthy members of such investigating cadres.

IX.6.(4) Though the basic styles and resources of Police in India (especially from the point of view of the innumerable types and kinds of resources needed during the myriad processes of investigation of criminal cases) have moved forward in a very appreciable manner, since the time of the independence of the nation (1947), it is still a noticeable factor

that the prevailing collective standards of the quality of investigators in terms of knowledge and skill have not got improved in a commensurate manner. Likewise, the support necessary for the investigators by the provisions of various scientific tools and resources have not yet reached desirable or satisfactory levels. (A recent news report had reflected a fact that even the police in England are not fully equipped to deal in the area of forensic competence vis-à-vis Cyber crimes and if this can happen in a developed nation, the implications for developing nations hardly warrant any other comment – *news item in BBC dated 21/04/2014*). (Perhaps we may note the fact that for the investigators in India, especially those dealing with international crimes including the dreaded menace of Terrorism, language barriers may also confront them in their efforts to deal with the criminals and their support outfits – as the land is enveloped by nations speaking various languages on its western, northern and eastern frontiers.)

IX.6.(5) Admittedly some of the specialized teams under the CBI or the specialized wings of several state Criminal Investigation Divisions have shown promise in this regard and yet, the general standards of the police investigations in almost all states (especially in all the police stations) are surely warranting due up-gradation and standardization.

IX. 6.(6) As new entrants to the profession slowly gather experience, they will be able to internalize the art and science of ensuring compliance to the law and would also be able to do so in consonance with the organizational work ethics and job ethos. Assigning higher responsibilities in terms of status as well as allotment of work assignments will have to be done in a well planned way. Each major category of crime under the Indian Penal Code is by itself having its own peculiarities and such differentials call for varying approaches in relation to investigating and gathering evidence. Added to that galling factor, dealing with special types of crimes like Terrorism,

Naxalism, Extremism or the wide range of several Organized crimes or Trafficking of Persons, Arms and Drugs, Offences of Money Laundering, Cyber and other technology-based crimes (such crimes are slowly getting added to the roster of crimes confronting the human kind) call for a increased awareness, knowledge and skills in the total gamut of logically and comprehensively investigating all such brands of cases.

IX.6. (7) Issues or problems like difficulty of gaining access to suspects or witnesses or other connected persons or remoteness of the places of origin of the offences and facts like the need to verify the relative roles of various offenders in a series of connected crimes or the facet of involvement of a long and complex chain of persons in such types of crimes and the need to know the intricacies of working of such special kind of crimes perforce calls for a higher degree of abilities which can be attained only by long years of experience. But that has to be buttressed by systematic improvement of the knowledge base of the personnel. Simultaneously, improving or acquiring new skills or use of better tools or technology and the facet of awareness of seeking help and support from right places become vital.

IX.7.(1) Due to historical reasons, the three tier approach to police recruitment in India has got entrenched. Several other social and economic factors have also compelled the seemingly inevitable perpetuation of that mode. That situation has surely caused a far-reaching impact on the heavy under-utilization of the awesome manpower especially at the subordinate levels. Constables who account for almost 94% of the total human resource of the police systems in India do a very small amount of original work (the blame is not on them as a good number of them are worthy and hardworking and yet, failure to use them effectively by the organization has created a big drag) and that invidious situation has paved way for a uneven work load on the one hand and has on the other impaled the system with imbalance in the use of

precious human resource.

IX.7.(2) The Sub-inspectors level, which is assigned the most functional charters of the police duties, more particularly in the area of overall police work, have to primarily do their major role in relation to Prevention and Detection of Crimes. But in actuality, the situation is far different. Due to several complex reasons, the task of Crime Prevention and Detection has got subordinated to the seemingly all pervasive tasks of Maintenance of Law and Order and other security related activities including the much talked of area of VIP security. This position has come about, notwithstanding the fact that the task of 'Crime Prevention and Detection' is asserted as the main reason for the very enactment of the Police Act of 1861 itself. Thus, as a result of the prevailing dichotomous reality, which seems to have been the outcome of so many cascading factors molded over several decades, the organizational priority has somehow relegated the tasks of Crime Prevention and Detection (especially the investigation work) to a very low level in the charter of police duties. As a natural and necessary consequence, emphasis on quality training in the area has also suffered, more by the absence of the needed prominence and stress in such primary and foundational ventures during the induction level training. (This facet relates to the initial training of Sub-Inspectors of Police).

IX.7.(3) The specific reason or purpose of repeatedly mentioning this unsavory aspect here is to highlight the impact such facts have had on the training aspects of 'Crime Investigation' in particular. The consequential results are there for all to see. It is observed elsewhere in this paper that the sub-inspector trainees do not get really 'satisfactory' quality training during their basic or induction phase of training in relation to 'Prevention and Detection of Crime' in general or that of 'Investigation of Crimes' in particular. Though some inputs are made in a somewhat mechanical style of 'conveying

information' to the trainees, resorting to a bland fashion to fulfill the curriculum results in the loss of significance that is essential in that regard. A careful perusal of the training syllabus prescribed for the directly recruited sub-inspectors (across the board of all the prevailing training standards in the States and the Union Territories of the country) shows that the schedules show a good amount of knowledge based inputs on various matters on Law, Procedure, Crime-causative factors, Order maintenance, Medico-Legal Jurisprudence, Forensic Sciences, Police Station routines and so on. It is seen that most of these learning areas are clubbed under 'Police Sciences' and conveyed as an omnibus charter. No doubt, all these inputs relating 'investigation' are surely a part of those 'combined' prescriptions of professional learning for a future leader of the police force at mid professional levels. Subjects like Law and Order Management, Traffic Regulations and several other subjects are undoubtedly very essential. Strictly speaking that kind of syllabus of learning by itself may not be inappropriate as all such areas of training are necessary for a prospective police officer undergoing that brand of initial training.

IX. 7. (4) But, if we look at the basic aspect of 'Prevention and Detection of Crime' as the most fundamental duty of the police, then it becomes inevitable that we cannot afford to relegate the significance and importance 'Crime fighting' role that the future or prospective Station House Officers will have to play soon after they leave the portals of the training colleges and police academies. Though it is a pragmatic view in terms of the contemporary reality that 'law and order and security' facets of police work are somehow placed higher in the charter of all the police duties in general, the emphatic point here is that during the training period, the budding policemen ought to be made to feel inspired about the role that they 'can' and 'ought' to play as 'crime fighters'. As the needed emphasis is not visible, (or is glaring more by its absence!) the urge and

commitment that can be instilled in the young minds to focus their energies in this area of work is dulled to a great extent. It is not the argument here that an investigator reaches professional heights during the period of basic training but that a good foundation has got to be laid at that stage itself. It is only by that elemental investment we can help in the subsequent period of their professional existence – as they mature to move up the organizational ladder.

IX.7.(5) Real and effective professional learning or imbibing knowledge and skills in relation to all aspects of 'crime work' can come during an actual 'on-the-job learning' situation, which generally occurs after about after three to five years of work by such young entrants of the police profession. This change takes place when the young Sub Inspectors would be occupying the important positions as Station House Officers in various police stations. However, owing to the fact that greater importance is given to the 'order' related tasks in the police station the urge to excel in 'crime work' gets subordinated for very obvious reasons. Since there is no visible emphasis on a high quality standards *vis-à-vis* the tasks of 'Prevention and Detection of Crime,' at the basic training level, the so called 'on the job learning' (which will ensue each such fresh entrant in the course of three to four or five years down the line) is fraught with a kind of 'hit and miss' approach and the unhappy results prevailing ought not to really surprise anyone.

IX. 7. (6) The mental makeup and involuntary urge that can well be instilled by proper emphasis laid during the induction training schedules on the subject of 'Prevention and Detection of Crime' is so irretrievably lost. The initial urge to learn, instilled well during the pre-entry training period can be strengthened better during the 'on-the-job' learning situations and that may perhaps be more useful than the current or prevailing approach to crime fighting training. In the light of the compulsion that has cascaded the police

training strategies since long, the utility value of young and bright sub-inspectors attending to the innumerable range of tasks in the complex facet of crime work gets stunted.

IX.7.(7). To sum up, it is necessary that the induction training of the sub-inspectors must be so shaped so as to instill a sense of significant organizational importance and priority so that the task of 'Crime fighting' which is surely the basic charter of police duties, gets its due place. Of course, placing the task of crime fighting at the top of hierarchy of police duties has to be based on the reality of perception and cannot be served by acts of mere lip sympathy. Owing to various events, very visible since the last six to seven decades, law and order areas of work have cornered the so called aura of the best aspects of police work and as a result that variety of police work has been accorded an overriding importance vis-à-vis crime fighting tasks. Thus the prevailing reality in terms of the priority of police has a different reflection as against the duty assigned under the Police Act of 1861.

IX. 8. (1). Surely it is not any short sighted assertion that the importance of law and order duties or VIP duty or Security related tasks be castigated as secondary or inappropriate in the hierarchy of police ventures. But by manifestly making the law and order work more important in the eyes of all, as against the crime prevention and detections work, the resultant effect has impacted the emergence of a myopic and self-defeating perception of the real role of police to the community. Admittedly persistent threats to peace and order and continuous challenges to the overall security scenario may also have had its say on this particular development. There is also no doubt in the proposition that 'sustaining order' is really fundamental to the very foundations of democratic living. Even then, by not assigning due significance to the tasks of 'Prevention and Detection of Crime', the credibility of the police has not gone up. On the contrary, better performance in the crime fighting efforts will surely enhance public reliance

and confidence in the police as an important social service enterprise. As the bogey of greater importance to the more visible area of law and order work percolates even to the police training institutions, it is no wonder that the urge to excel in the professional fulfillment of the successful crime work is lost on the minds of the young police officers under basic training. Consequently, growth and development of professional standards in relation to crime fighting have been continuously eluding the police system since decades.

IX.8. (2) Thus, instead of creating a situation wherein they (the young fresh entrants to the police service – especially at the sub-inspector's levels) are made to learn about the crime fighting enterprise with poor mental preparedness, (the trainees are sure to absorb the patent as well as latent ideas on the importance attached to any area of professional learning- as they observe, perceive and comprehend during their basic training period) there is a justifiable case to organizationally place 'Crime Work' as a highest or the really top-most priority area of basic learning. Young sub-inspector trainees must be made to comprehend the dynamic and creative as well as proactive role that they can play as 'crime fighters' and the steps they need to pursue once they leave the training campus of respective police colleges. If sufficient thrust on this change of mindset is made during the basic training duration, then, that can help them to become better investigators at a later stage, with greater ease.

IX.8.(3). The task of Crime Investigation is really very difficult but surely it is a challenging opportunity to a committed mind. A 'true' investigator has to be really endowed with a right mix of the head and heart. Qualities like creativity, grit, innovativeness and a mindset to relentlessly pursue goals coupled with commitment to 'Rule of Law' and to do so with a sense of doggedness are very essential. Only those imbued with a real 'professional crime fighter' approach can aspire to succeed in this great fight undertaken on behalf

of a civilized society. However, in the context of the basic premise of the need to sustain the 'Rule of Law', the investigator has to reflect each and every step he takes and make sure that he stays well within the bounds of legal proscriptions. But, the total landscape of investigative enterprise is a very vast one. Besides the continuing requirement for invoking various skills and talents in that line, the investigator has to be some sort of an all rounder.

IX. 8.(4) Keeping in mind the theme of this study, we need to note that Crime Investigation is the genre /genus and the task of 'questioning an accused' is the species. In that ambience, the task of 'questioning an accused' or a suspect is far more difficult in comparison to several related facets of investigating work like examining the witnesses, gathering evidence and doing other chores connected with the same area of police exertions. Further the task is surely more exacting both from the point of view of Law, Procedure and techniques and from the point of view of skills or talent needed to accomplish all those objectives.

IX.8.(5) Though many young sub-inspectors of police may have had some understanding of the basics *vis-à-vis* the tasks of investigation, they may surely find themselves out of their depths, especially in the area of 'questioning an accused' even in less complicated cases, not to speak of the task of 'questioning an accused' in really intricate cases. Less said of the difficulties that confront the investigators who are charged with the task of questioning the accused persons in crimes of Terrorism, Extremism, and Organized crimes, Trafficking of persons, arms and drugs etc, which are indeed a legion.

IX.8.(6) It had been observed earlier that there is a great dearth of intense professional learning in dealing with specialized crimes and such a situation seems to be more or less evident in all parts of the country. Further, it is seen that most police training institutions have various in-service

training programs but it is also equally true that the frequency and range of such inputs are grossly inadequate.

IX.8.(7) Two specific aspects stand out in this area of professional police work *vis-à-vis* the tasks of Prevention and Detection of Crime. First, the basic standards have to be improved drastically in all areas of Crime fighting. Next, based on that continuing enterprise, efforts have to be launched to develop expertise in particular areas of various hitherto mentioned brands of crimes and also work on upgrading the ability of investigators in dealing with the subject of 'questioning an accused' in all such types of crimes.

Importance of good supervision of Crimes in general and that of 'Questioning an accused' in particular

IX. 9.(1). Quality of Supervision in general is poor and is glaring by its palpable and alarming inadequacy. During the course of this study, most police leaders with whom this author interacted on the theme of the study strongly pointed out to this shortcoming. Young officers of the Indian Police Service, especially during their first ten to fifteen years of service are invariably called upon to fulfill the tasks of supervision of many such crimes, and more particularly those, about which this study is focused on.

IX.9.(2) Due to reasons of absence of quality higher training or learning for such eligible police officers or due to lack of continuity of assignments in special wings like CID or COD and its ilk (including CBI and other agencies like NIA etc), coupled with poor resources and related causes, the development of competent superior police officers who can supervise such crimes is suffering seriously. This has got to be addressed fairly and squarely. The National Police Academy at Hyderabad can perhaps take lead in working on some of the steps suggested in the ensuing pages. Besides instilling and evoking a keen sense of determination to take such assignments with vigor, commitment and flair to excel in that

challenging area, the institution can run very frequent special training camps, workshops and events that can inspire the young officers of the Indian Police Service, to look at that area of 'supervision' of such crimes as worthy and useful periods of their professional career. (It is also a fact that the misplaced importance to Law and Order related work has not only affected the mindset of the police officers at the Sub-inspectors level but a similar cloud has also seemingly engulfed the young officers of the Indian Police Service. Though there is no empirical data to support the above assertion, a feeling of that kind is surely conspicuous to anyone who has seen the police working from a close range). In that context, building professional expertise in special or complex kinds of crimes (mentioned in detail in several places earlier) is a step that the Sardar Vallabhbhai Patel National Police Academy can consider.

Better utilization of the support staff from the ranks of constabulary for improving the quality and output in investigation work.

IX.10. (1) Even though the theme of this study is in relation to the facet of 'questioning an accused', the issue of under-utilization of the constabulary merits to be reiterated here for a specific reason. It is a fact that not much has been done in the area of selecting and training the constabulary in supporting investigation work and a random or off-the-cuff approach seems to permeate the systems. With the implementation of the mandate of the Apex Court in *Prakash Singh's* case, (though such steps are taking a slow and labored course, the change seems sure to come in the near future) crime work is surely bound to get segregated from the order related tasks and the personnel chosen for the former would get assigned exclusively for that work alone in the police stations. In that emerging scenario, the next logical step would lie in effectively moving forward to train and empower the constabulary as the support staff for investigations and also

in specialization in that area of work.

IX.10.(2). Some of the Asian countries like China and South Korea, Taiwan and so on have established separate and exclusive Police Universities and have provided platforms for giving intense training to young recruits to become experts in choice areas of various facets of police work built on forensic sciences and so on. These universities train policemen before their field commitments and some of them provide opportunities for professional learning to selected policemen. In addition, they also provide chances for improving individual aspirants (those who are not in the police profession or those who are keen to join it etc) seeking to better their career prospects by qualifying in those learning situations. In addition, these universities are engaged in extensive research work on diverse areas that are of significance or value to all areas of crime fighting. Admittedly, some states in India¹ have recently pioneered such learning forums. Though such efforts are still in the formative stages, the trend surely augurs well for the police.

Some suggestions to improve the mid-career training programs for the Investigating Officers

1. Besides persisting on various inputs that are currently worked as per the syllabus (at the level of Sub-Inspectors of Police) emphasis is necessary to continuously assert the significance and importance of a thorough professional approach to Crime Prevention and Crime Detection and realize the true significance of 'Training' in that vista.
2. It may be more appropriate to separate Prevention and Detection of Crime and the role of police in Crime fighting as an exclusive subject (from out of the all

1. See reference made to the Forensic University in Gujarat and Police Sciences University in Rajasthan, Gujarat, Punjab and other places which are welcome changes in the police systems of India.

inclusive police functions and duties) so that the importance assigned to the said tasks gets instilled in the minds of the young entrants into the police profession.

3. The theme of 'questioning an accused' merits to be treated as a composite but exclusive package which can be conveyed in an effective manner by providing the basic inputs and other directly relevant Constitutional; Legal (evidentiary and procedural); Professional standards and good practices; Administrative guidelines and resources, Forensic aspects, Human Rights issues, Media relationship and related areas of police work.
4. Human Rights focus must be given the highest priority
5. Field research must be reflected in the publications meant for internal circulation
6. Investigators have to be trained in optimizing the manpower and other resources at their command.
7. Visual and print media can be used as good resources in promoting the basic abilities in the areas of investigation. Films, books, talks and related accounts of actual events can be of sure motivational value.

II. Training initiative for the Indian Police Service at the foundational level:-

- a) The training syllabus for the probationers of the Indian Police Service is really substantial and good. Keeping the massive list of innumerable inputs in many areas of knowledge and skill and attitudes etc, it may not be easy to make any special emphasis on any particular aspect of 'investigation' or 'questioning an accused'. However, it may be useful, if the most proximate areas of professional learning namely 'Investigation of Crime' and 'Questioning an Accused' and 'Supervision of Crime

Investigation' are specially conveyed together by composite and intense three day programs where only these chosen areas are emphasized to the hilt. Lectures, debates, case studies, screening films of videos depicting successful investigations, use of forensics and so on can be conveyed so as to motivate the young minds to these challenging areas of police work. Thus, something more specific can be done to help the young officers to understand the real 'role' that they can play in the most vital areas of 'crime fighting' in the subsequent years after their initial training, especially till they reach the rank of a DIG in their respective cadres or in organizations like the CBI or NIA etc., A specially readied handbook with the basic issues of the subject (conveyed in about 75 pages of printed text) can be handed over to them for their future use in their respective professional careers.

- b) Calling successful investigators across the country to come and speak to the young probationers at the National Police Academy during those specific training programs is very necessary. Such learning opportunities not only help the grasp of the subject in view, but also builds healthy bonds to grow amongst the personnel of the entire police organizations. Though it is a fact that such inputs are a part of the schedules in National Police Academy, there is a clear need to make such learning ventures more intense and decidedly more frequent, supported by various follow-ups cementing the learning ideas.
- c) It needs to be reiterated again that 'questioning an accused' is a part of the total vista of investigation of crimes. However, that area of work is very delicate and a difficult task that calls not only for demonstrating a high level of professional standards worthy of such investigative work but also demands a very high quality

of supervisory credentials. It is in the later area, the young officer trainees of the Indian Police Service will find scope to improve upon their knowledge base and dovetail it to related areas, so that they are able to fulfill their ordained tasks in a satisfactory way. This area of competence can be acquired and improved upon by a sense of commitment and involvement and backed up by a dedicated learning effort. Specializing in particular areas of crime (especially with regard to various organizations in the focus of such crimes) is a step that can be taken up from these formative years, depending upon the State to which they are to be posted subsequently.

- d) NPA or BPR&D can pioneer the system of continuously publishing 'Protocols' on both 'Investigation' and 'Supervision' of important types of crimes in view as well as in relation to some of the serious kinds of traditional crimes. Developing new and extensive literature of that ilk to cover various professional areas in crime investigation and in the art of questioning an accused is a must. As an illustration, materials relating to 'Crime Scene Management' or reiterating the 'duties and responsibilities of the first responder to scene' and so on are easily seen (in print or on the Internet, though the circulation is generally restricted to the profession) in developed countries and that list is getting bigger. Other illustrations like publications on 'Preparing Check lists' for 'Investigation/ Interrogation' or for 'questioning the accused or suspects' can help in a very visible way. Similar efforts can be made to help the young officers to fulfill their role as good supervisors. If done systematically and persistently results will surely show in the long run. It is sure that such a brand of self-learning kind of training is useful for both at the field levels and the supervisory levels. Similarly most officers

suffer during court processes and often get confounded during cross-examination etc. Thus, helping them to come to grips with subjects meant for Court procedures and evidence processes, depicting them in their original style can be a good way of improving the police. Though many such useful learning tools are being provided randomly by many states, sustained efforts of that kind in all professional crime-fighting areas is a must. In fact, all such ideas need some kind of standardization for easy access and application.

- e) Supervisory levels have to be persuaded to stir out of their grand isolation syndromes to become inspirational leaders by their own commitment to their profession and by using and applying in practice the awesomely cascading developments of forensic and related sciences. That assertion applies with a greater reality vis-à-vis the investigation and supervision of technology based crimes.
- f) Greater use of media, print and visual as well as the Internet is a worthy idea. Making the leaders aware of the fast developing changes across the globe can help them to become real pioneers who will not take a 'not possible to detect' as an answer in a given case and become dogged in their crusade against crime, by working and seeking newer ways to solve crimes in more and more effective ways.
- g) Ideas like making best use of awareness about the nuances of the 'body language', human psychology, study of human character and so on can be very good sources of increasing professional competence, especially at the supervisory levels.
- h) Leading the way to open up the all-pervasive 'Internet' based world and to enable a continuing learning spree is a step that S V P National Police Academy ought to

pioneer. Many countries, particularly in the west have several 'only on the net' professional police training organizations¹ committed to crime solving and related efforts. Establishing and supporting such band of Crime Investigators and Supervisors community, even on an informal basis is a good way to advance ideas on self learning and group interactions. Such steps surely help in improving the police professional standards. In fact, making that kind of a trend ought to become the creed of the young police leaders essentially during their first fifteen years of service. Such welcome habits once instilled can inspire them to carry on such worthy trends for long periods in their professional life. 'On the net Seminars', 'Workshops', 'Forums for exchange of views' and so on must be made to become routine activities of the police professional leaders and the SVP National Police Academy ought to support many such enterprising ventures.

- i) Building various kinds of library resources of case studies on all kinds of crime investigations is very useful. Several Police Training Academies have been doing commendable work in this area. We are aware that the NPA has been doing its bit but surely it can play a more intensive role in this area. Supporting research works of all hues, which currently informs the culture at the Sardar Vallabhbhai Patel National Police Academy, can be given a greater and a more emphatic thrust and spread to reach out to the entire police fraternity, through the young police leaders. Perhaps it may be appropriate to mention here of an old saying by proven war veteran that 'I am not afraid of an army of one hundred lions lead by a sheep but I am afraid of army

1. *Body of International Crime Scene Investigators Association and so on are easily seen on the web. Here it is the creativity and initiative of the institution like NPA and the fertile minds of the young IPS officers that can do the trick.*

-
- of one hundred sheep led by a lion.' (This must inspire the role that the young leaders can play in their careers).
- j) Conducting special crime investigation supervision training programs or Crime Investigations of complex kinds can be made a regular feature in the NPA. Though such training programs for junior ranks may not be a part of the charter of the NPA, by making such ventures, a healthy bonding between investigators and supervisors across the board can be accomplished and its value is truly inestimable. It seems to be in the best interests of the police in general that such an idea is worth venturing.
 - k) Learning the art of investigation and the skills in analyzing facts is surely a challenging kind of work. Reading great works of Arthur Conon Doyle (Sherlock Holmes) or Agatha Christie (Hercule Poirot) and similar other known crime fiction and real event authors can be a good way to improve the professional range of awareness. Films of CSI and similar other professional work or films about dedicated cases of good investigations can be good learning tools.
 - l) Various Universities in USA and more particularly in China, South Korea, Taiwan and Japan inter-alia, are involved in great efforts to spread the knowledge and skills in terms of various emerging advances in the professional subjects related to investigation in general and in terms of the specialized areas in particular. Such dynamic approaches can be surely ventured by the Sardar Vallabhbhai Patel National Police Academy – which is not only meant to train the officers of the Indian Police Service but also to pave way for pioneering and sustaining increased professional standards at all the leadership levels.

=====

CHAPTER 10

As a part of the study on the subject and with an object of ascertaining various viewpoints from a practical perspective, I personally met and interacted with almost one hundred persons most of who are serving members of the various police forces, more particularly in the states of Gujarat, Maharashtra, Uttar Khand, Uttar Pradesh, West Bengal, Karnataka & Union Territory of Delhi. In addition, I had also got a chance to meet and interact with some of the leaders of the Central Police Organizations and Para Military forces of India. Indeed, it was a great learning experience.

Based on those interactions, I have compiled in brief the essential highlights and comments that I gathered during those very interesting interactions. Indeed, I am thankful to each one of them for having spared their valuable time and thoughts. I have made an attempt to present those responses as opinions of the experienced. The ideas and points are made out in a tabular form and the points for consideration are also reflected in the datasheets.

II. During the same interactions, I also tried to ascertain, from their own view points the Strengths, Weaknesses, Opportunities and Threats perceptions of the organization with regard to the subject of Investigations in general and the task of 'Questioning an accused' in particular. Those ideas are reflected in a series of sheets respectively projecting each facet of that analysis.

Dr. S. Krishnamurthy/Bengaluru
=====

**Strengths/Weaknesses/Opportunities and Threats -
vis-a-vis the task of 'Questioning an Accused'**

STRENGTHS

- 1 Organisational potential - 24x7 presence and spread in almost all Urban and Semi Urban areas
- 2 Hierarchical advantage
- 3 Power and Authority of Law
- 4 Training - though it has various limitations
- 5 General support from the people- subject to the type of issue in question- more often than not barring instances where public opinion is divided, support to police activities
- 6 Resource of man power
- 7 Compared to other departments, better in terms of resource - means of Communication and Transport
- 8 Better resources in terms of Communication
- 9 Nearly 150 years of experience in Crime Prevention and Detection
- 10 Knowledge and awareness with regard to the area - even rural parts - by village visits etc
- 11 A fairly comprehensive data on crimes (particularly traditional crimes)
- 12 Ability of the organisation to quickly mobilise resources of various kinds and ability to rush help or resources - though with some limitations
- 13 Experience of Crime Investigation work for over 150 years and a good number of crime staff with huge experience in crime work
- 14 In terms of investigation of traditional crimes - first to arrive at scene - (though there is a good amount of delay in many cases)
- 15 Forensic teams in towns

OPPORTUNITIES

- 1 A great chance to do a real police work-which enhances pride, & sense of worth. A challenge to skills acquired.
- 2 A great opportunity to do service to the community
- 3 Ability to use intelligence and enhance intellectual potential as against mere use of brawn. Will enhance personal worth of individual police officials.
- 4 Ability to get recognised in the police department as well as in the public eye about capacity, potential and accomplishments in crime detection work
- 5 Improve their own professional standards to become capable of solving complex cases
- 6 Becoming useful to the organization besides becoming relevant in the community
- 7 A chance to lead the peer group besides becoming a role model to younger professionals in the area of successful investigation of crimes
- 8 To get professionally recognized by the department and the Government
- 9 If success has to come, then recognition and appreciation by the courts of law is a very important accomplishment
- 10 Upholding Rule of Law and succeeding in the professional tasks of investigation would surely be a reward in itself
- 11 Ability to innovate, ability to be creative and imaginative in the work challenges improves the very personality of the police personnel
- 12 Compliance to Rule of Law will slowly make the community come closer both at the organization and more importantly at a personal level -which is very useful
- 13 Improved Police -Community contact helps the police work in terms of quality as well as quantity
- 14 It gives a great chance to the police personnel to become real leaders of the community through their own professional accomplishments

WEAKNESSES

- 1 Lack of public confidence in integrity as well efficiency of the police in general
- 2 Limitations of Law-procedural guidelines which at times retard the progress of the investigation
- 3 Poor resources in relation to the actual needs
- 4 Poor personnel conditions
- 5 Poor, inadequate and professionally irrelevant training in term of crime detections
- 6 Lack of peoples support as issues have some political interests or political overtones in dealing with investigation of crimes
- 7 Police systems seemingly not determined to carry their duties to a logical end in the face of money or muscle power
- 8 Organizational inability to provide any mechanism to inspire honest /determined and lawful conduct at all times -more particularly in investigation of crimes
- 9 Poor professional standards -in comparison to developed countries
- 10 Poor basic levels of the Constabulary -in terms of skills needed for investigative work
- 11 Poor basic and in-service training in the areas of investigation
- 12 Poor Organizational ethos in tems of Human Rights issues and a negative mindset in dealing with accused persons /mistaken notions about the necessity of Rights etc.
- 13 Inability to garner public support especially where the accused are influential or have money or muscle power.
- 14 Poor mindset in using Forensic tools amongst the junior ranks and lack of any initiative in that group -which cascades to the entire investigation range
- 15 The system uses a bullying approach in investigation, though at times they are able to show some results in

investigation of some traditional crimes. But surely cybercrimes or organised crimes or money laundering etc are beyond their normal capacity.

THREATS

- 1 Corruption in public life and in profession
- 2 Poor professional standards
- 3 Lack of professional supervision
- 4 Unjustified media campaigns
- 5 Unjust political /Judicial criticisms -at times unfounded and unfair
- 6 Negative peer pressure
- 7 Poor personality and character traits basically unsuited to professional needs
- 8 Negative image which are so overpowering the Individual. False campaigns create a great hazard -in life and in profession
- 9 Compulsion to do unethical and unprofessional things pressured by higher ups, professional and political groups or vested interests
- 10 Inadequacy of the law especially in relation to serious issues like Terrorism, Organised Crimes, Computer Crimes etc.
- 11 Basic mistrust of the law on the police in general
- 12 Mismatch of resources between criminals and police - resulting in tragically comical situations
- 13 Poor backing from the organization in relations to data, information, intelligence on issued which are not easily accessible to individual police personnel
- 14 No continuing research on various developing aspects like intelligence on Terrorism, Naxalism, Organised Crimes and so on as even the organization itself is poorly prepared to meet the threats of these kinds
- 15 Too much of Red-tapeism which affects the output and more time and energy is wasted in overcoming all such constraints

=====

Subject Index

Accused

- examination of, by medical practitioner 112
- questioning an 177,213
- range of efforts in investigation calls for correct identification of an 221
- rights of an 35

Administrative steps 271

Arms 20

Article(s)

- Art 20 74
- Art. 20(3) and its application 96
- Recommendations of Law Commission of India with regard to Art. 20(3) 162

Benefit of doubt 45

Black marketing 21

Burden of Proof 37,51

Chip Menace 8

Contraband 20

Corruption 23

Crime(s)

- challenges of new 280
- contours of charter in the area of investigation of 310
- cyber 8

Crime(s) (Contd.)

– detection	291
– devious kinds of	320
– dreaded	18
– importance of good supervision of	338
– internet	14
– investigating a	129, 213
– network	14
– newer	298
– of Extremism	18
– of Terrorism	18
– of the future	11
– Organized	20,223
– reconstruction of Scene of	285
– scenario in India	2
– structural changes in the police to advance good investigation	265
– traditional	2

(Crime) Investigation(s)

– a challenging opportunity to a committed mind	334
– ‘facts’ as a Dominant Charter in all	177
– improving the quality and output in	338
– a fabulous mix of application of science and art	220
– of crime is a complex task	226
– of crime has several objectives	221
– quality of supervision of most, not at a satisfactory level	239

(Crime) Investigation(s) (Contd.)

- virtually account for almost 90% of all investigation work 231
- work is a team enterprise 323
- Crime Prevention 299,330
- Criminal Intelligence 285
- Criminal Justice Reforms Committee 155,254
- Custodial interrogations 243,245
- Cyber Crimes 8,319
- Drugs 20
- Due Process 43

Evidence

- Expert 103
- Indian Evidence Act 103
- obtained illegally or improperly 149
- obtained illegally, law relating to 129
- Scientific 103
- Exclusionary Rule 40,153
- Expert Evidence 103
- Extremism 17

Fact(s)

- as Dominant Charter in all Police Investigations 177
- Indian Evidence Act and seeking of 196
- field Visits 299
- forensics 280,340
- Hacking 13
- hardened minds 316

Homicide	222
Human Psychology	236
Human Rights	295
Indian Evidence Act	103,196
Interception	13
Internet Crimes	14

Investigation(s)

– administrative steps on relation to the examination of persons by an investigating officer during the course of	271
– better coordination, with prosecution wings	294
– not an individual enterprise	320
– nuances of	240
– of high profile cases	282
– questioning an accused during	304
– skills and innovativeness in investigative efforts	284
– techniques of	243
Investigators	176,213
Law Commission of India	157,159

Legal Principles 35

– and the right against self-incrimination	35
– benefit of doubt	45
– burden of proof	51
– essential elements of the principles of natural justice	53
– historical facets of right against	35
– on exclusionary rule	40
– presumption of Innocence	36

Legal Principles (Contd.)

- proof beyond reasonable doubt 47
- significance of due process 43

Legislation(s)

- Constitutionality of 96
- Library 286
- medical practitioner 112
- Money laundering 314
- National Crime Records Bureau 2,266
- Network Crime 14
- Newer Crimes 298
- NPA 304
- on line resources 286
- Organized Crimes 20,224
- People's participation 292

Police

- are yet to feel they are true agents of the law of the land 248
- changes in the mindset of the police 269
- misguided notions 142
- partisan or unjust actions by 249
- reducing the burden on 298
- structural changes in 265
- Presumption of Innocence 36
- Principles of Natural Justice 53
- Proof beyond reasonable doubt 47,206
- Prosecution wings 294
- Public services 23

Questioning an accused

– and training the investigators	213
– effecting specific changes in procedural and evidentiary laws	251
– entire range of knowledge and practice as well as new ideas on the vista of	243
– facts as a Dominant Charter in all police investigations its impact on	177
– has various dimensions	245
– is a real professional task	247
– is a task that calls for a combination of knowledge on men and matters	214
– is not a casual or an off-hand interaction	234
– structural changes in the police to advance good investigation of crimes	265
– suggestions to improve the quality in the task of	247
– during police investigations and Role of NPA	303
– & human rights issues	295
– qualitatively more strenuous	27
– & newer crimes	298
Reid Technique	233
Research Studies	275
Right against 'Self Incrimination'	35,58
Right to Information Act	293

Right(s)

– against self-incrimination	35,74
– against self-incrimination, historical facets of	58

– against self-incrimination, position in Canada	66
– against self-incrimination, position in England and Wales	68
– against self-incrimination, position in U.S.A	69
– against testimonial compulsion	35
– of an accused person	35
– to counsel of an accused	72
– to silence	76,101
Rule of Law	109,269
Scene of Crime	285
Scientific Evidence	103
Self-incrimination	
– and the law	103
– historical facts of right against	58
– right against	35,74
– right against, position in Canada	66
– right against, position in England and Wales	68
– right against, position in U.S.A.	69
– scientific evidence and the Law relating to	103
Technology	283
Technology-based threats	11
Terrorism	18
The Police Act, 1861	307
Third Degree approaches	176
Time Theft	13
Traditional crimes	2
Trafficking	20

=====

