

Elements of Fair, Impartial and Competent Investigation

By

Justice U.C. Dhyani,

Chairman,

Public Services Tribunal, Dehradun

AT NJA, Bhopal

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Joginder Kumar v. State of U.P (1994) 2 Crimes 106 (SC)

Duty of the Magistrate to satisfy the compliance of the rights of the accused to be followed by the by the police officials

ADVERSARIAL CRIMINAL JUSTICE
SYSTEM

NON ADVERSARIAL OR
INQUISITORIAL CRIMINAL JUSTICE
SYSTEM

FIRST INFORMATION REPORT (Sec. 154 Cr.Pc) COGNIZABLE – FIR

NON COGNIZABLE- NCR (Sec. 155 Cr.Pc)
Order of a Magistrate for Investigation and Arrest
warrant

SEE FIRST SCHEDULE (Cl. 4)

INVESTIGATION (Sec.156)

Sec.155- NCR

GENERAL DIARY

CASE DIARY- Sec. 172

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply.

Sec. 157- Procedure for Investigation

Sec. 157 (1)- IO shall forthwith send a Report of FIR to a magistrate empowered to take cognizance of such offence.

Statement of the victim of Rape shall be recorded at her residence/place of her choice in presence of her parents/Guardians.

Sec. 160- Police officers Power to require attendance of
Witnesses.

Sec. 161- Examination of witnesses by Police.
Male under 15 or above 65 or women or differently abled
– At their Residence.
Rape Victim by a women police officer

Sec. 162- Statements to Police not to be singed- Use of
Statement in Evidence.

Sec. 164- Recording of Confessions and Statements

May also be recorded by audio- video electronic means in presence of Advocate

Memorandum at the foot of Confession

Magistrate has the Power to Administer Oath (Not in Confession)

Sec. 164 A: Medical Examination of the Victim of Rape

With the consent of such women
or of a person competent to give
consent on her behalf within 24
hrs.

THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022

Published in the Gazette of India, Extra, Pt.II
Sec. 1, No.11, dated 18th April, 2022

The Identification of Prisoners Act, 1920 is repealed

An Act to authorise for taking
measurements of convicts and other
persons for
the purposes of identification and
investigation in criminal matters and to
preserve records and for matters
connected therewith and incidental
thereto

(b) "measurements" includes finger-
impressions, palm-print impressions, foot-
print impressions, photographs, iris and retina
scan, physical, biological samples and their
analysis, behavioural attributes including
signatures, handwriting or any
other examination referred to in section 53 or
section 53A of the Code of Criminal
Procedure, 1973

Sec.3 Taking of Measurement- Any person who has
been

a) Convicted

b) Ordered to give security for his good behavior

(c) arrested in connection with an offence or
preventive dentention

Shall allow his measurement to be taken by a police
officer or a prison officer

Provided that any person arrested for an offence committed under any law for the time being in force (except for an offence committed against a woman or a child or for any offence punishable with imprisonment for a period not less than seven years) may not be obliged to allow taking of his biological samples under the provisions of this section.

Sec. 5 - Power of Magistrate to direct a person to give Measurements

Where the Magistrate is satisfied that, for the purpose of any investigation or proceeding under the Code of Criminal Procedure, 1973 or any other law for the time being in force, it is expedient to direct any person to give measurements under this Act, the Magistrate may make an order.....

Sec. 165- Search by Police Officer.

Sec. 166 A - Letter of request to competent authority for investigation in a country or place outside India.

Sec. 166B- Letter of request from a country or place outside India to a court or an authority for investigation in India.

JUDICIAL CONTROL

Art.22.- Protection against arrest and detention in certain cases

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate

(3) Preventive Detention

JUDICIAL CONTROL

Sec. 57- Person Arrested not to be detained more than 24 hrs.

Sec.167- Procedure when investigation cannot be completed in 24 hrs.

ESSENTIALS

1. Investigation cannot be completed within 24hrs.
2. Accused in person
3. Nearest Judicial Magistrate
4. Accusation is well founded.
5. Copy of the entries in the Diary
6. Not exceeding 15 Days in whole.

No Magistrate shall authorize the
detention

-Exceeding 90 days (Death, life,
imprisonment for a term not less
than 10 Yrs.

- Exceeding 60 days

First Time, in Person

- Subsequently Every time,
Either in Person or through the
medium of electronic video
linkage.
- No Magistrate of second class-
Unless specially empowered
by High Court

Hate the Sin and not the Sinner-
MAHATMA GANDHI

Judicial Custody Remand

Police Custody Remand

**Sec.173- Report of police officer on
completion of investigation.**

CS/FR

**Se.190- Cognizance of offences by
Magistrate**

Sec. 482 Inherent Powers of the High Court

- As may be necessary to give effect to any order under the Code**
- To prevent the abuse of the process of any Court**
- Otherwise to secure the ends of Justice**

- **General Principles of Natural Justice**
- **Human Right to fair and Speedy Trail**
- **Witness Protection: Jeremy Bentham**

Witnesses are the eyes and ears of Justice

Fair and transparent investigation is the precursor to fair trial. The expression “fair and proper investigation” in criminal jurisprudence mainly has two imperatives; firstly that investigation must be unbiased, honest, just and in accordance with law; and secondly, the entire emphasis has to bring out the truth of the case before the court of competent jurisdiction ensuring that the guilty are punished.

The apex court has emphasized on ‘fair, fructuous, and competent’ investigation. Poor quality of collection of evidence frustrates the very purpose of investigation, poignantly raised several times by the apex court which emphasized on periodic training of investigators and prosecutors to instil fairness in criminal justice administration. However, it is not only the responsibility of investigating agency but also of the courts, which must ensure fair investigation.

The High Court of Patna has underlined linkage between fair investigation and fair trial in **Param Pal Singh Gandhi v. The State of Bihar** as under:

The Constitution of India, under Article 21, guarantees a right to fair trial to an accused. A fair trial is impossible if there is no fair investigation. In order to be a fair investigation, the investigation must be conducted thoroughly, without bias or prejudice, without any ulterior motive and every fact, surfacing during the course of investigation, which may have a bearing on the outcome of the investigation and, eventually, on the trial, must be recorded contemporaneously by the investigating officer at the time of investigation. A manipulated investigation or an investigation, which is motivated, cannot lead to a fair trial.

Thank you.

Q & A