"REGISTRATION OF F.I.R.-A RIGHT OF THE COMPLAINT"

DISSERTATION

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List of Abbreviations

A.I.R	**All India Reporter**
ART	**Article**
ANR	**Another**
CRPC	**Criminal Procedure Code**
H.C	**High Court**
S.C	**Supreme Court**
F.I.R	**First Information Report**
EDN	**Edition**
ILR	**Indian Law Reporter**
IPC	**Indian Penal Code 1860**
IEA	**Indian Evidence Act**
CPC	**Civil Procedure Code**
NPC	**National Police Commission**
SEC	**Section**
IO	**Investigation Officer**
NCR	**National Crime Report**
PO	**Police Officer**
ORS	**Others**
M.P	**Madhya Pradesh**

List of Cases

1. Asharam and Anr V. State of MP.

2. Bagwan singh and ors. V. State of MP.

3. Damodar Prasad V. State of UP. 1975 AIR S.C.

4. Devendra and Ors. V. State of UP.

5. H.M Rishbud V. State of Delhi.

6. Hallu V. State of MP. 1974 S.C.

7. Harbhajan Singh Bajwa V. Senior Superintendnt Police, Patiala and Anr. 2000 S.C.

8. Kapoor Singh V.Emperor AIR1930

9. Kunhumuhamed V. State of Kerla 1981 H.C

10. Lalita kumara V. Govt of UP

11. Munna lal V. State of Himanchal Pradesh 1967 AIR SC

12. Mohindro V. State of Punjab and Ors. 2006 SC

13. Naurata Ram V. State of Haryana and Ors.

14. Nalli V. State of Tamil Nadu 1993 Madras HC

15. Nalkait Singh V. State of Punjab 1991 SC

16. Prakash Singh V. State of Punjab 1991 SC

17. Pooran Yadav V. State of MP 2009 SC

18. Ramesh baburao Devaskar and Ors V. State of Maharashtra 2009

19. Rameshwar Dayal V.Col Ram singh 1998

20. Ramdas and Ors V. State of Maharashtra.

21. Sandeep Rammilan Shukla V. State of Maharashtra.

22. Santosh Bakshi V. State of Punjab and Ors 2005 SC.

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CHAPTER-1

F.I.R

1.1 Introduction

First Information Report is written by a Police Officer. State has duty to take in to its cognizance the commission of a cognizable case. Generally a Police officer does not possess the adequate knowledge to deal with these cases promptly, as these cases demand urgent attention because the delay erases the available evidences.

A Police officer has to perform many duties at the same time when he registers a case. He has to do the panchnama, finger print expert, forensic expert and investigation is also conducted by him.

John Cratman in his book "Police" defined police as "Crystallizing the concept and practices of the maintenance of public peace, safety and security."1 The `Arthsastra' of Kautilya mentions about the existence of police during the Mauryan period.2 As a law enforcing agency ensuring order, the origin of the police in India can be traced to the earliest Vedic Period of Indian History.

An Inspector General of Police once said: "I have worked 24 years in police department and honestly speaking, I do not know how to draft a F.I.R. properly. I do not know how to inspect a scene of crime scientifically and to be more specific, I do not know how to interrogate a suspect psychologically."

The Supreme Court in the case of D.K. Basu v. State of W.B. observed that "in view of the expectation of the society that police must deal with the criminals in an efficient and effective manner and bring to book those who are involved in the crime. The cure can't however, the worst than the decease itself."

SC disapproves of reckless arrests in criminal cases. "It appears that the police is not at all implementing it. What invariably happens is that whenever an FIR of a cognizable offence is lodged, the police immediately go to arrest the accused person.

This is clear violation of the judgment of the apex court." The court issued direction to the chief secretaries, home secretaries and law secretaries of all the states and Union Territories to "strictly comply with the judgment of the apex court in Joginder Kumar's.

1.2 Literature Review

The above sub-section corresponds to Section 154 of the old Code (Act of 1955) and also to Section 154 of the Code of Criminal Procedure of 1882 (Act X of 1882) except for the slight variation in that expression 'local Government' had been used in 1882 in the place of 'State Government'. Presently, on the recommendations of the 41st Report of the Law Commission, the sub-sections (2) and (3) have been newly added. Section 154(1) regulates the manner of recording the First Information Report relating to the commission of a cognizable offence.

1.3 Hypothesis

FIR cannot be treated as substantive piece of evidence as it is neither investigation started nor any evidence in recorded.

FIR can be treated as a substantive evidence under indian evidence act 1872.

1.4 OBJECT OF F.I.R.

FIR sets the Criminal Law in Motion. Object of FIR are many and these are given below:

Firstly, to inform Magistrate of the District and the District Superintendent of Police, who are responsible for the peace and safety of the District of the offence reported at the Police Station.

Secondly, to make known to the Judicial Officers before whom the case is ultimately tried, what are the facts given out immediately after the occurrence and on what materials the investigation commenced.

Thirdly, to safeguard the accused against subsequent variations or , object of the information report is set the criminal law in motion; this is from the point of view of the informant.

Fifthly, the object is to obtain information about the alleged criminal activity so as to able to take suitable steps for tracing and bringing to book the guilty party, this is from the point of view of investigating officer.

In Masta v. State of Punjab the honorable court decided that petition under section 482 Cr.P.C. seeking directions of High Court for registration of case by the police and petition dismissed, and petitioner then filed a criminal complaint before magistrate who is also competent to order registration of case. The alternative remedy was held equally efficacious.

In Emp. v. Kh. Nazir Ahmed, the honorable court held that the object of the FIR is to obtain early information of alleged criminal activity, to record the circumstances before there is time for them to be forgotten and embellished, and the report can be

put in evidence when the informant is examined if it is desired to do so. This view was confirmed by the Hon'ble Supreme Court in Wilayat Khan v. State of U.P.

F.I.R. is the Bible of the case initiated on police report. The Object of F.I.R. from the point of view of the informant is to set the criminal law in motion. From the point of view of investigating authorities it is to obtain information about the alleged criminal activity so as to be able to take suitable steps for tracing and bringing to book the guilty party. The report does not constitute substantive evidence though it is important as conveying the earliest information about the occurrence. It can be used only as a previous statement for the purpose contemplated under section 157 or section 145 of the Evidence Act that is for corroborating or contradicting its maker and not of other witnesses.

The object of Section 154, Code of Criminal Procedure, 1973 is to obtain early information of alleged criminal activity, to record the circumstances before there is time for them to be embellished or forgotten.

No doubt the FIR. being an early record and the first version of the alleged criminal activity conveyed to the police officers with the object of putting the police in motion in order to investigate is an important and valuable document. F.I.R. is used to check subsequent improvements and embellishments during tria1.

While explaining the legal position as to the right of informant to take the matter to the police by lodging F.I.R. or to the court direct, by filing complaint, the Andhra Pradesh, High Court has held that both the courses under Section 154 and under Section 200 Code of Criminal Procedure are open and available to a private citizen and, therefore, simply because there is a right under Section 154 of the said Code, consequent upon which the police would investigate, it cannot be said that the right under Section 200 is not available for purposes of taking recourse.

FIR is not substantive piece of evidence. Therefore, even if the written report filed has not been duly proved the prosecution case will not fall on that ground alone and the court has to consider the substantive evidence which has been adduced by prosecution, it can be used to corroborate or contradict its maker. It cannot be used to corroborate another person.Thus it is not a substantive piece of evidence.

The object of FIR. is to obtain early information of the alleged criminal activity to record the circumstances before there is time for them to be forgotten or embellished.

In State of Uttar Pradesh v. Mahar Singh it was held that purpose of recording FIR is to set the investigating agency in motion. Therefore the main purpose of F.I.R. is to give information of a cognizable offence to the police and set them in motion. The value of F.I.R. must always depend on the facts and circumstances of a given case. The importance of the F.I.R. lies in the fact that it is a statement made soon after the occurrence. Hence the memory of the informant is fresh and is unlikely that he had opportunities of fabrication.

The principal object of F.I.R. is only to make a complaint to the police to set the criminal law into motion. It's secondary though equally important; object is to obtain early information of an alleged criminal activity to record the circumstances before there is time for them to be forgotten or embellished.

The value attached to an FIR differs from case to case and no generalizations can be applied. Thus, where a telephonic message only conveying the fact of killing was given, it only amounted to giving of information as to commission of offence and could not be used as substantive evidence.

The issuance of a notice by the Magistrate to the informant at the time of consideration of the final report is a must.

Munnalal V. state of Himachal Pradesh 1967 AIR S.C.

Sandeep Ram Milan Shukla V. State of maharashtra.

Munna Lal V. State Of Himachal Pradesh The petitioner's eldest son Rakesh Kumar was married to Sham Lal's daughter Santosh. Rakesh Kumar died in mysterious circumstances. The day before his body was found Sham Lal had come to his house to take him away to Jatol Dispensary. He did not let Santosh accompany her husband nor let her pack food for him for the journey. It was also known that he was against the marriage between his daughter and Rakesh. The police refused to register an FIR. he filed a writ petition under Article 226.

The Director General Police submitted an affidavit where the enquiries made revealed that there was no motive for killing Rakesh and he had died due to exposure to extreme cold and as a result of consuming alcohol. The Court was not happy with the manner in which the investigation was conducted. It stated that the police should have registered the FIR when the petitioner approached them and then should have conducted the investigations. The police cannot refuse to file a FIR in lieu of the fact that they have already conducted investigations. The police do not have discretion regarding the registration of FIR in a case concerning a cognizable offense.

Sandeep Rammilan Shukla V. The State Of Maharashtra The view taken by the Division Bench of the Bombay Court was not in conformity with the ratio decidendi of the Supreme Court in Prakash Singh Badal.Therefore it constituted a larger bench to consider the question whether it is necessary for the officer in charge to register an FIR or can he conduct a preliminary inquiry pre-registration.

The court very clearly said that Section 154 casts an "absolute obligation" upon an officer in charge that whenever information regarding a cognizable offense is brought to his notice he shall follow the procedure as laid down in Section 154. In the case of Kotak Mahindra Bank Ltd. v. Nobiletto Finlease and Inv. Pvt Ltd. held that the police can hold a preliminary enquiry to check whether the accusations prima facie appear to disclose a cognizable offense if the accusation in the compliant appear to be doubtful, but after conducting their enquiry they would make a record of it in the station diary. The Bench in Kalpana Kutty's case passed a similar judgement. In Lalllan Choudhary

and Ors. V. State of Bihar and Anr. It was held that the reliability, genuineness, credibility of the information are not the conditions precedent for registering a case under Section 154 of the code. In Sandeep Shukla the judges agreed and stated that a officer in charge hardly has any discretion in registering a case once information regarding a cognizable offense is disclosed to him.

The discretion given to him is restricted to a bare minimum so that it does not allow them to abuse the power given to them. But the court allowed police officers to conduct a limited enquiry in exceptional and rare cases but only after making an entry in the Daily Diary/Station Diary/ Roznamachar instantaneously with reasons as well as the need for adopting such a course of action. Such inquiry should not take more than two days. Thereafter the FIR should be recorded in the prescribed book.

Mohindro V. State Of Punjab And Oths. The appellant approached the authority for registering a case against the alleged accused person but the police never registered a case. The learned Counsel for the State contended that there had been an enquiry. The Bench stated that there could be no enquiry without registering a criminal case. It directed the Police to register the case and then start investigations.

Palwinder Singh And Anr. Vs State Of Punjab The petitioner was repairing a religious building in their village when Kuldip Singh and others , armed with weapons attacked them. The petioners were moved to the hospital and their statements could not be recorded. But the third injured Sukhdev Singh's was declared fit to give a statement. The officer on further investigation found that no weapons were used and the statements of the injured were contradictory to each other. Since the matter was doubtful a report was recorded in the daily diary. The Court summed up State of Haryana v. Bhajan Lal and said that the legal information which emerged from that judgement was that a police officer cannot refuse to register a case on the grounds that the information was not credible or reliable.

Mohindro V. State Of Punjab And Oths. 2006 S.C.

Palwinder Singh And Anr. Vs State Of Punjab

After registering the FIR on the complaint of a cognizable offense, the police officer can make up his mind whether he would conduct an investigation under Section 157 or not. the case cited Gurmito v. State of Punjab and held that the rule 24.4. of the Punjab Police Rules 1934 had lost its statutory force after the enactment of Section 154 in the Code. The Bench said that the investigation done by the officer in charge "hardly inspired any confidence". They asked the police to register the case and carry out fresh investigations.

Naurata Ram V. State Of Haryana And Ors. The basic question set before the Court was whether the police has any discretion to conduct an enquiry to find out if the information is reliable or not before registering a case disclosing cognizable offense. the petitioner's son had died while he was in police custody. The post mortem examination said that death had occurred due to a severe blow to the head. The petitioner had approached the District Administration to register the case, but no case was registered. A writ petition filed by the petitioner was disposed of by the Division Bench which gave an order to the Director General of Police of Haryana to register a case against the alleged guilty police officials. The police conducted an enquiry but no case was registered. Another writ petition was filed by the petitioner.

The bench said that the police authorities were not allowed to sit in judgment and pronounce a verdict whether a case should or should not be registered. A police officer has to register a case once there is information regarding a cognizable offense given to him. According to the judgment given in State of Haryana v. Bhajan lal the Bench said that it made it obligatory upon the police officers to register a case before conducting an enquiry. In Kuldip Singh v. State the Court held that the police had no right to refuse a registration of a case on information about commission of a cognizable offense and instead proceed with an enquiry and refuse registration as a result of the said enquiry. The Bench in this case asked the CBI to register a case and investigate the same.

Naurata Ram V. State Of Haryana And Ors.

All India Reporter.

Lalita Kumari V. Govt. Of Uttar Pradesh A written report was submitted by the petitioner to the officer in charge who did not register it. The Superintendent of Police was moved and then an FIR was registered. Even thereafter there were no steps taken to apprehend the accused or to recover the minor girl child. Judge Agarwal spoke from experience of being the Judge of the Patna High Court and the Chief Justice of the Orissa High Court when he said that the police do not register FIR's unless some direction is given to them by the Chief Judicial Magistrate or the High Court or the Supreme Court.

He said that police does not take steps even after registering a FIR, its only when matters are brought to the notice of the Inspecting Judge of the High Court that FIR's are registered. In the above case the petitioner alleged that the station House Officer was pressurising him to withdraw the compliant. The Judge called this a very "disturbing state of affairs". The Court directed the Director Generals of police and Commissioners of Police to register FIRs and give the copies to the complainant. If this is not done then they could approach the magistrate to pass an order directing the police.if the police do not take appropriate steps then the concerned magistrate can initiate contempt proceedings against the delinquent officers and punish them for the violation of his orders.

The FIR initiates the criminal investigation. According to Section 154, whenever a citizen informs the police or the police have a suspicion that a cognizable offense has been committed, it should record that in writing. This is the 'first information report'. The Courts place a lot of importance on the FIR. it is accepted by the Courts without further corroboration. But it is seen that the citizens of our country face a number of problems while registering the FIR. a corrupt police officer may refuse to register the FIR or may actually reduce it to a non- cognizable crime. The police can conduct investigations only for cognizable crimes. The police in these situations has power to arrest the person without a warrant.

Lalita Kumari V. Govt. Of Uttar Pradesh 2014 S.C.C

Examples of cognizable offences are kidnapping, murder, dacoity etc. but in a non-cognizable offense the police cannot arrest the person without an order from the magistrate.

Therefore to avoid arresting the alleged criminal the police may reduce it to a non-cognizable crime and refuse to act on the complaint. If he had recorded the FIR in a cognizable case then he would have had no option but to register the complaint and conduct investigations.

Sometimes the police officers also conduct preliminary investigations into the case before filing an FIR. this has been strictly condemned by the Court in the strictest of language. In State of Haryana v. Bhajan Lal, the Court declared there to be an "absolute obligation" on the police to register the FIR. In Naurata Ram v. State of Haryana, the Bench declared that the police cannot sit and decide whether the information disclosed was reliable or not.

The police are obliged to register the FIR. In Gurmito v. State of Punjab, it was contended that Rule 24.4 of the Punjab Police Rules,1934 allowed the police officer to record the information in the station diary and he was not bound to register the FIR.

The Court was of the opinion that the rule had lost its statutory force with regard to Section 154 of the Criminal Procedure Code which made it mandatory to record the FIR. Generally FIR has no evidentiary value but in few circumstances it carries evidentiary Value, as in the case of dying declaration.

These circumstances have been mentioned in the cases mentioned in this chapter at relevant place. In State of Bihar V. Veer Kuer Paswan and Others the honorable Supreme Court decided that the informant- Satendra Kumar Sharma has not been examined as such; First Information Report can not be used as Substantive piece of evidence inasmuch as on this ground as well the appellants are entitled to an order of acquittal.

The submission is totally misconceived. Even if the first information report is not proved, it would not be a ground for acquittal, but the case would depend upon the evidence led by prosecution. Therefore, non-examination of the informant cannot in any manner affect the prosecution case.

CHAPTER-2

REGISTRATION OF F.I.R.

2.1 Define the F.I.R.

A First Information Report or FIR is a written document prepared by the Police in India, when they receive information about the commission of a cognizable offence. It is a report of information that reaches the police first in point of time and that is why it is called the First Information Report. It is generally a complaint lodged with the police by the victim of a cognizable offence or by someone on his/her behalf. Anyone can report the commission of a cognizable offence either orally or in writing to the police.'

The expression, First Information or First Information Report is not defined in the Criminal Procedure Code (Cr.P.C.) 1973, but these words are always understood to mean, Information recorded under Section 154(1) of Cr.P.C. It is the Information given to a Police Officer in the form of a complaint or accusation, regarding the commission or suspected commission of a cognizable offence. It is given with the object of setting the criminal law in motion and police starting the investigation. This report forms the foundation of the case. The question whether or not a particular document would constitute F.I.R. is a question of fact, which depends upon the circumstances of each case.

The statement made by a witness who initiated the proceedings when reduced to writing is the F.I.R. Genuineness or credibility of the information is not a condition precedent for registration of the case. Information lodged with Police disclosing cognizable offence, the officer-in-charge of a Police station is statutorily obliged to register a case. F.I.R. is the information which is given first in point of time. Obviously, there cannot be more than one F.I.R. in one case; however, there may be many the victims in one case. This First Information Report shall be based on the complaint as made or on the information as available at that point of time.

A good FIR must address the six issues of what is the nature of the incident, Where and When did it happen, who is reporting and against whom and why did the incident happen. These six 'W's begin the process of data collection, collation and analysis that hopefully results in • the arrest and prosecution of the involved person or persons.

Reporting Centers- while the investigative responsibility may rest at the Police Station level, we feel it would be desirable to enable some constituent units of a Police Station- for example, a police outpost- to register a First Information Report as and when an information or complaint about an offence is lodged with them direct. Apart from police outposts which are presently established in several states, we may in due course develop a system of reporting centers also, particularly in urban areas, where some specified residents of a locality of the type of wardens who function in a civil defence set up may also be empowered to register First Information Reports and pass them on to the Police Station concerned for taking up investigation.FIR can be lodged at police outpost/police beat box if special provisions have been made by the State government.

At Present Police officers use eleven points in their view when they reduce the information in writing. These eleven points are indicated with the help of 'W'. `W's at the time of writing FIR systematic and patient questioning by police officer would elicit relevant replies which should make an exhaustive self- speaking FIR.1s1 W- What information you have to convey? The reply should be the crime which is to be reported. 2111 W- In what capacity? Write here whether as an eyewitness or hearsay. 3rd W- Who has committed the crime? 4t1i W- Against whom the crime has been committed? 5th W-when? 6th W- Where? 7th W- Why? (Motive) eV:Which Way? 9th W- Witnesses or in whose presence? lOt^{h} W- What was taken away by the accused e.g. any article etc.11th

W- What traces were left by the accused, e.g. any article belonging to them, foot marks, anger marks and so on. 's

In pursuance of directions of the Supreme Court Haryana has enacted and notified the Haryana Police Act (HPA), 2007. A close perusal of the legislation, however, reveals that it has failed to incorporate the SC directives in letter and spirit. Section 26 of the EPA provides for a State Police Board whose constitution is not in fully consonance with the guidelines of the apex court. It was clearly directed that such a commission should be headed either by the Chief Minister or the Home Minister and include other members to be chosen in such a manner that it is able to function independent of the government's control. The States were asked to choose one of the models proposed by the NHRC, the Riberio Committee or the Sorabjee Committee, Unfortunately, none of the models has been fully adopted by Haryana. The Police Board comprises the C.M., the Home Minister, two senior bureaucrats instead of one and a retired judge of the High Court whose position can even be filled by a state Advocate- General.

Further, in case of appointment of three non-political or independent members, the Haryana law provides that one will be a retired IAS officers and one retired IPS officer, thus leaving only one slot to be filled from representatives of civil society, social organizations, human right activists, NGOs etc.

Also, these members are to be nominated by the state government as per the HPA rather than to be chosen through a selection as was suggested by the Sorabjee Committee. Under these circumstances whether the Police Board will be able to function independent of government control is any body's guess.

The functions provided for the State Police Board are also different from those assigned to the State Security Commission by the SC, Neither the recommendations of the Police Board are binding on the state government nor there is any provision to place its reports before the state legislative assembly in complete disregard of the directions of the SC.

In respect of the second direction of the apex court for the manner of the selection of the DGP from a panel prepared by the UPSC, Section 6 of the HPA provides for the

appointment of the DGP by the state government from amongst the officers holding the rank of DGP, thus retaining the power of selection of DGP wholly in the hands of powers that be contrary to the SC directive.

Whenever there is a change of guard in the state, the incumbent DGP is one of the first officers to be removed or transferred. It is not the distinguished or meritorious service record, but loyalty or proximity of the prospective officer with the ruling elite (Chief Minister) which plays a vital role in his selection as DGP. This practice needs to be abolished. Rather than providing for a minimum tenure of two years for the DGP as was directed by the SC, the Haryana l'aw provides for only one year.

Section of the HPA provides for a fixed term only in respect of an 1G and a SP and that too only for a period of one year rather than two years as was directed. It is difficult to understand why the SHOs have not been considered for a fixed tenure despite the fact that they are the very first investigating officers in a case well conversant with facts and incriminating evidence and as such they need a fixed tenure albeit with exceptions.

The Separation of the investigating Police from the law and order police seems to be only one direction which has been complied with to certain extent in the HPA. It would have been better if a separate state level cadre of investigators or state bureau of investigation, as suggested in the fifth report on "Public Order" submitted by the second Administrative Reforms Commission in June, 2007, was provided for in the legislation with a provision of well-equipped infrastructure, trained manpower and modern state of the- art technology.

Section 34 of the Haryana Police Act provides for a Police Establishment Committee, the functions of which like preparing an action plan for improving infrastructural facilities, professionalism, modernization, training and police welfare etc. are quite different from the one as directed by the apex court.

While the directions of the apex court were clear and unambiguous that police complaint authorities should be headed only by retired members of the judiciary and have members from different fields, the Haryana Police Bill provides for only one man state level Police Complaint Authority as binding upon the state government in complete disregard of the directives of the apex court.

Haryana is still without a state human right commission and recent spurt in instances of police atrocities on hapless citizens, especially women, warrants that immediate setting up of an effective mechanism to tackle these.

It is clear the Haryana Legislation falls short of kickstarting a new era of Police reforms. As the apex court is already seized of a contempt petition filed against the non-complaint states in initiating police reforms. Haryana being a partial compliant state should without delay amend its police legislation accordingly before the state is pulled up by the court on this count.

The following two conditions are to be satisfied before information could be treated as F.I.R.

(i) It must be an information
(ii) Secondly, it must relate to a cognizable offence on the face of it and not merely in the light of the subsequent events.'?

Section 154 uses the word 'report' the words F.I.R. have a legal import. It may be possible that there should be more than one report about the one and the same incident. In such cases, the F.I.R. would be a report under this section. The F.I.R. is the earliest report made to the police officer with a view to his taking action in the matter.

The F.I.R. must be in the nature of a complaint or accusation with the object of getting the law in motion.'9 The F.I.R. is information given by an informant given by an informtion on which the investigation is commenced.

Now, it is well settled that any information given on phone too in respect of a cognizable offence to a police officer-in-charge of a police station will be treated as F.I.R.: provided the said information received through the phone is reduced into writing by the police-in-charge of the police station and signed by him.

FIR is the first step of Criminal Procedure that leads to the trial and punishment of a criminal. It is also most important supportive evidence on which the entire structure of the prosecution case is built-up.

The main objective of the FIR is to enable the Police officer-in-charge of the Police Station to initiate the investigation on the crime and to collect evidence as soon as possible. It is first report of the crime and so it is a valuable document that throws much light on the crime. It is also important because it is a statement which is made soon after the occurrence of the crime without fabrication and any prosecution case that may be subsequently made-up can be checked in the light of the first report. FIR is an important document. FIR is not substantive piece of evidence but at times it affects the prosecution case. Therefore, correct recording of FIR is required. FIR should contain as much information as is available at the time of recording it.

2.2 Zero number FIR & Non FIR

Whenever a police officer in charge lodges an FIR but believes that he does not have the jurisdiction in the case to investigation. Such an FIR which will be ultimately transferred to the other police station would be called a zero number FIR.

As regards missing persons, as long as the information is that the person "is missing", or "went missing" (bhag gai), no cognizable offence is made out and therefore no FIR is lodged. In this context, different procedures are being followed by different states. In certain states, "Zero FIR" is lodged. In certain others, "Non FIR" is registered. Only in very few states, like Tamil Nadu and Andhra Pradesh, Proper FIR is lodged, investigation caused with regular case Diaries. In majority of cases of missing

persons, across the country, regular FIR is never registered and, therefore, no investigation is caused as per the code of Criminal Procedure.

Cognizable Offence

A cognizable offence is one in which the police may arrest a person without warrant. They are authorized to start investigation into a cognizable case on their own and do not require any orders from the court to do so.

Non-cognizable Offence

A non-cognizable offence is an offence in which a police officer has no authority to arrest without warrant. The police cannot investigate such an offence without the court's permission.

2.3 Why is FIR important?

An FIR is a very important document as it sets the process of criminal justice in motion. It is only after the FIR is registered in the police station that the police start investigation of the case.

According to Articles 21, 22, 23, 25, 49, 50 of Qanoon-e-Shahadat Order 1984, FIR is a relevant fact.

2.4 Procedure of filling an FIR

The procedure of filing an FIR is prescribed in Section 154 of the Code of Criminal Procedure, 1898. It is as follows:

1. When information about the commission of a cognizable offence is given orally, the police must write it down.

2. It is your right as a person giving information or making a complaint to demand that the information recorded by the police is read over to you.

3. Once the police have recorded the information in the FIR Register, the person giving the information must sign it.

4. You should sign the report only after verifying that the information recorded by the police is as per the details given by you.

5. People who cannot read or write must put their left thumb impression on the document after being satisfied that it is a correct record.

6. Always ask for a copy of the FIR, if the police do not give it to you.

7. It is your right to get a copy of FIR free of cost.

- **What should you mention in the FIR?**

1. Your name and address;

2. Date, Time and Location of the incident you are reporting;

3. The true facts of the incident as they occurred, including the use of weapons, if any;

4. Names and description of the persons involved in the incident;

5. Names and addresses of witnesses, if any.

- **What can you do if your FIR is not registered?**

1. You can meet the District Police Officer (DPO) or Capital City Police Officer (CCPO) or other higher officers like Deputy Inspector General (DIG) of police and Provincial Police Officer (PPO) and bring your complaint to their notice.

2. You can send your complaint in writing and by post to the DPO, CCPO, DIG or PPO concerned. If the DPO, CCPO, DIG or PPO is satisfied with your complaint, he shall order the registration of FIR.

3. You can file a complaint to the District Public Safety and Police Complaints Authority in your district.

4. You can file a private complaint before the court having jurisdiction.

2.5 Disputes as to Jurisdiction of Police Station

As soon as the police receive the first information about the commission of an offence, it is its responsibility to immediately act and investigate the case. In some cases, however, there may emerge a dispute between two the police stations about their territorial jurisdiction about the spot where the reported offence occurred. In such a situation, the police are required to follow the following procedure:

1. If there is any confusion about the jurisdiction of the police station and if each one of the SHOs contends that the territory under dispute does not fall in his area of jurisdiction, it is the responsibility of each SHO to stay on the spot and keep on investigating into the case. The case record in such a case shall remain with the SHO who reaches the spot earlier until the question of jurisdiction has been decided (25-5 of the Police Rules, 1934).

2. When one of the two police officers is relieved after the determination of area of jurisdiction by senior police officers, the relieved officer shall record a report of all that he has done in a case diary and sign it, giving the date and hour of his relief. Such case diary shall be handed over to the other police officer, who shall certify thereon that he acknowledges the case to have occurred within his station limits or to be one which he is empowered to investigate, as the case may be (25-6 of the Police Rules, 1934).

3. When a case is transferred from one police station to another, after determination of area of jurisdiction, the offence registered in the original police station shall be cancelled by the Superintendent of Police and an FIR shall be submitted in the police station in the jurisdiction of which the case occurred (25-7 of the Police Rules, 1934).

- **Who can host an FIR?**

Any person who is a victim of a recognizable offense or who is a witness to this crime or who is aware of the commission of such crime may submit an F.I.R.

- **You can submit FIR if:**

You are the person against whom the offense was committed; You know about an offense that has been committed.

2.6 Procedure for submitting an F.I.R.

The procedure for filing an FIR is prescribed in Section 154 of the Code of Criminal Procedure of 1973. When information about the commission of a recognizable crime is given orally, the police must write it.

It is your right as a person who provides information or files a complaint to require that you read the information recorded by the police.

Once the information has been recorded by the police, it must be signed by the person providing the information.

- **Where can a FIR be Lodged-**

A FIR can be lodged if you stay in the police station of the area in question in whose jurisdiction the crime was committed or in any police station.

- **What should you mention in the FIR?**

Your name and address;

Date, time and location of the incident reported; The true facts of the incident when they occurred;

Names and descriptions of the people involved in the incident.

Could the FIR be registered through Phone or E. Mail?

Yes, the FIR can be registered by phone or even by email and it is not necessary for the informant to be personally present before the police for the FIR registration.

Is it necessary for the FIR to be recorded at the same prescribed police station?

No, the FIR can be registered at any police station, regardless of where the offense was committed.

- **What are the advantages of early FIR recording?**

The FIR must be registered as early as possible, after the offense.

The benefit of early FIR recording helps in the arrest of real criminals and also helps in gathering evidence of the crime.5

- **What can you do if your FIR is not registered?**

You can meet with the Superintendent of Police or other senior officers such as the Deputy Inspector General of the Police and the Inspector General of the Police and present your complaint upon notification;

You can send your complaint in writing and by mail to the Superintendent of Police involved; If the Superintendent of Police is satisfied with your complaint, he will either investigate the case or order an investigation to be conducted;

You can file a private complaint with the court that has jurisdiction;

You can also file a complaint with the State Human Rights Commission or the National Human Rights Commission if the police do nothing to enforce the law or do so in a partial and corrupt manner.

- **What things should you do after FIR has registered?**

You must sign the report only after verifying that the information recorded by the police is according to the details provided by you;

People who cannot read or write should put their left thumbprint on the document after making sure it is a correct record. Always request a copy of the FIR, if the police do not give it to you. It is your right to obtain it at no cost.

Under what circumstances can the police not investigate a complaint, even if it submits an FIR?

Sometimes, the police will not investigate a complaint, even if you have already filed an FIR; The case is not serious in nature;

The police feel that there is not enough ground to investigate;

However, the police must record the reasons why an investigation is not carried out and, in the latter case, must also report it.

- [Article 157, Code of Criminal Procedure, 1973]

2.7 FALSE F.I.R.

Irrespective of country, region or society, a false complaint is a phenomenon that cannot be ignored. These false F.I.R. can be lodged by an 155 **Ramesh Baburao Devaskar & Others vs State of Maharastra.**

informant or by police to implicate a person in a case. Cases regarding the latter mode of registrations of a false F.I.R. are found more the earlier one. Under Indian criminal law, lodging a false F.I.R. against someone is a punishable offence u/s 182 and u/s 211 of the Indian Penal Code.

Sec. 182 prescribes a punishment for six months and fine in case any person gives false information to a public servant, on the basis of which the public servant takes certain action which he might not have taken if he had known the true state of facts. On the other hand, u/s 211, there is an ono use of per this provision, any person who institutes or causes to be instituted any criminal proceedings against a person to cause him injury, knowing that the complaint and allegations are false, is liable to face imprisonment for a period which may extend to two years.

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Further, if the charge alleged discloses an offence which is punishable by death, or a minimum imprisonment for seven years, is punishable with imprisonment for a maximum period of 7 years.

It is the duty of the authorities to initiate proceedings u/s 182 IPC if they conclude that the complaint given is a false one. The Punjab & Haryana High Court, in the matter of Harbhajan Singh Bajwa vs. Senior Superintendent of Police, Patiala & Anr.157, has given a wide explanation of Sec. 182 and it was held that:

authority found that the averments made in the complaint were false, it is for the said authority to initiate action under Section 182 I.P.C. The offence under Section 182 I.P.C. is punishable with imprisonment for a period of six months 157 Harbhajan Singh Bajwa vs Senior Superintendent of Police, Patiala (2000) SC .

or with fine or with both. When the authorities themselves found in the years 1996 and 1997 after due investigation that the averments made by Ashwani Kumar in his complaint were false, it is for them to initiate proceedings immediately or within the prescribed period as provided under Section 468 Code of Criminal Procedure. The acceptance of the cancellation report by the Court is immaterial. It does not save the limitation under Section 468 Cr.P.C. which prescribes the period of one year for taking cognizance if the offence is punishable, with imprisonment for a term not exceeding one year. Since the offence under Section 182 I.P.C. is punishable with imprisonment for a period of six months only, the authority should file the complaint under Section 182.

I.P.C. within one year from the date when that authority found that the allegations made in the complaint were false. Since more than four years lapsed from the date when the authority found the allegations were false, no question Madras High Court is of a view the principal object of the FIR from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to promptly record it so as to reduce the doubt created by the delay, if

any, in registration regarding embellishment and possibility of false implication of the accused.158

In this regard, the possibility of the fallout of police practise ignoring complaints on the grounds of trivial, petty or minor nature can be brought home. Nowadays, people tend to lean towards informal resolution of disputes, and this has somehow led to vitiate the whole complaint process. Thus to ensure either registration of the case or with an aim to extract a better deal from the tribunal

Nalli vs State of Tamil Nadu (1993) Madras process, or as the officer alleged that to implicate someone falsely, the public may sometimes engage in unfair practices of misrepresentation of facts in the complaint of falsely alleging someone as accused in a particular incident. There is a statutory deterrent in Sec. 211, but the Courts sometimes chose to avoid taking that path as they are already overburdened.

But, as held in the case of Rajinder Singh Katoch vs. Chandigarh Administration & Ors.

register a first information report in terms of Section 154 of the Code of Criminal Procedure, if the allegations made by them gives rise to an offence which can be investigated without obtaining any permission from the Magistrate concerned; the same by itself, however, does not take away the right of the competent officer to make a preliminary enquiry, in a given case, in order to find out as to whether the first information sought to be lodged had any The judiciary on numerous occasions has held that

(i) When the petitioner approaches the police and prays for registration of FIR, the police with the statutory duty to register a cognizable offence has thus no option but to register it in the form in which it receives and thereafter starts investigation.

Nalli vs State of Tamil Nadu (1993) Madras.

(ii) It has no discretion or authority to (a) enquire about the credibility of the information before registering the case161, or (b) refuse to register the case on the ground that it is either not reliable or credible. Where the police refused to register FIR on the basis of a written report on the grounds of false allegations as concluded in an ex parte preliminary enquiry, the High Court directed the registration of the FIR and fresh investigation treating the ex parte preliminary enquiry as non-est. The Court has ruled that the police should not start an investigation in a case or on the basis of a complaint, with a presumption that it is false and fabricated.

The Court has discussed the important elements of Sec. 182 while delivering a verdict in the matter of Santosh Bakshi vs. State of Punjab & Ors as follows:

(i) A piece of information was given by a person to a public servant.

(ii) The information was given by a person who knows or believes such statement to be false.

(iii) Such information was given with an intention to cause or knowing it to be likely to cause (a) such public servant to do not to do anything if the true state of facts respecting which such information is given were known by him, or (b) to use the lawful power of such public servant to the injury or annoyance of any person.

The statements made to the police are if three categories- (a) A statement which has been recorded as an First Information Report (herein after referred to as FIR) b) statement recorded by the police in the course of investigation c)a statement recorded by the police but not falling under the above (a) and (b) category.

None of the above statements can be considered as substantive evidence, that is to say, as evidence of facts stated therein. Because it is not made during trial, it is not given on oath, nor is it tested by cross- examination. If the person making any such statement to the police subsequently appears and gives evidence in court at the time of

trial, his former statement could , however be used to corroborate or to contradict his testimony according to the provisions of the Evidence Act, 1872.

• Essential conditions required for registration of an FIR

In Mani Mohan v. Emp. it was decided that the essential conditions of First Information Report are :-

(1) It must be in information and

(2) It must disclose the commission of a cognizable offence on the face of it and not in the light of subsequent events.

• Provisions of section 154(3), Code of Criminal Procedure

Section 154 (1) Cr.P.C. is as follows:-

"Every information relating to the commission of a cognizable offence, if given orally to an officer-in-charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf."

The language of sub-section (3) of Section 154 of the Code of Criminal Procedure, 1973 is only directory. There is no penalty prescribed for non-observance of this sub-section. This provision only enables a party to seek redress. Failure to adopt the course does not incur any penalty."

- **Conditions required for recording FIR under Section 154 Cr.P.C.**

The following requirements are to be satisfied to constitute information as "First Information Report" within the meaning of this section;

(a) It must be information regarding to the commission of a cognizable offence;

(b) It must be given to an officer-in-charge of a police station;

(c) It must be reduced into writing either by the informant (complainant) himself and it should be signed by the Informant;

(d) If it is oral, it must be taken down in writing and read over to the Informant, who should sign it and it should be recorded according to the direction of the Informant.

(e) The substance of information should be entered in the prescribed register, daily diary, General Diary, otherwise known Station Diary or Station House Register in the form as the State Government has prescribed for the abovesaid purpose.

CHAPTER-3

PROCESSING OF COMPLAINT

3.1 INTRODUCTION

Studies of policing in India were not addressed to understand the dynamics of reporting and registration of the "first information" probably because of the failure to realise that this stage of policework comprise of processes, the real as opposed to formal action, which involves critical non- legal, extraneous factors that seemingly outweigh the statutory process laid down. It is also partially because of the predominant conservative understanding of policework as only that which involves the hard core task of 'law and order'. In fact, the examination of the complaint process will show that the police is constantly engaged in confrontation with the contradicting twin principles of order and legality, a dilemma that pervades the policework in practice. The dominant theme of this study is to bring about the specific content of policework in actual practice. It is therefore imperative to reflect on the prescriptive provisions that are meant to guide the procedural functions of the police.

3.2 ADJECTIVE PROCEDURAL GUIDELINES FOR THE COMPLAINT PROCESS

The complaint is an act that sets the criminal law in motion. According to s. 2(d) Cr.P.C., it is the allegation of fact which constitute a complaint. As one of the modes for seeking cognizance of a fact, the requisites of a complaint are (1) an oral or a written allegation; (2) that some person, known or unknown, has committed an offence; (3) it must be made to the police, any other appropriate enforcement agency or the Magistrate and (4) it must be made with the object that action should be taken. A complainant and first informant may not necessarily be the same person. No form is prescribed which the complaint may take. Thus, an affidavit or a petition may also amount to a complaint. The general rule is that any person having knowledge of the commission of an offence can file a complaint, even though the concerned person is

not personally interested or affected by the offence, except in cases of offences relating to marriage, defamation and offences mentioned in ss. Cr.P.C.' The legal provisions that regulate the procedures in regard to the need for a complainant/informant to report the commission of a cognizable offence are as follows:

Section 154 Cr.P.C. provides for the filing and registration of every information relating to the commission of a cognizable offence. This information, given in writing or if given orally shall be reduced to writing by the OIC or under his direction and be read over to the informant. Such information given in writing or reduced to writing shall bear the signature of the informant. It hence constitutes the "first information report" (FIR).' There is a subtle difference between 'complaint' and 'FIR'. When the petitioner approaches the police with the information relating to the commission of a cognizable offence, it is filing of a complaint. This 'first information' in the form of a complaint when registered as prayed for by the informant u/s. 154 Cr.P.C.

The word "offence" includes an intended offence or offence that is imminent or likely to take place. Gulabsingh, (1961) 64 Bonn LR 274 in Ratanlal and Dhirajlal's The Code of Criminal Procedure.

Which should on the face of it and in the light of subsequent events disclose the information within the meaning of this section.

When any information disclosing a cognizable offence is laid before the OIC of a police station, the OIC has no option but to register the case on the basis thereof and a corresponding entry of the substance of the information be made in a book known as the Station Diary,'even thfiugh the information may be sketchy7 or the place of crime does not fall within the territorial jurisdiction of the concerned police-station (in which case information should be recorded and forwarded to the appropriate police-station having jurisdiction, otherwise refusing to record on this ground will amount to dereliction of duty).' The compulsoriness of registering any information is also based

on the understanding that the FIR is not a substantive piece of evidence' and can only be used to contradict or corroborate the contents.' **The Orissa High Court in Sanbar Rana v. Lohor Rana, 1995,** observed that a FIR is not a catalogue of events but to contain basic features of the prosecution case since it sets the law in motion.' I In other words, information regarding a cognizable offence, by whomsoever given and in whatever form, e.g. a telephonic or telegraphic message, which is, first in point of time, that is recorded as received u/s. 154 Cr.P.C. and on which the investigation commences is popularly known as the FIR. The principal object of the FIR from the joint of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to promptly record it so as to reduce the doubt created by the delay, if any, in registration regarding embellishment and possibility of false implication of the accused."

The provision that requires immediate intimation of every information of the commission of a cognizable offence brought before the OIC of a thana to the Magistrate having jurisdiction u/s. 1 57(1) Cr.P.C. is to ensure that the FIRs are free from manipulation or embellishment.

The informant is, as of right ride s. 154(2), entitled to receive a copy of the information (FIR) as recorded under sub-section (1) forthwith and free of cost.' 4 The FIR is a pulolic document and the accused is also entitled to have its certified copy." The latest statutory provision laid down for all police-stations to ensure the observance of s. 154(2) is the requirement of the signature of the complainant on the Acknowledgement Register, on the receipt of the copy of the FIR.

The OIC on receipt of a complaint by an informant that reveals a non-cognizable offence committed within the limits of its jurisdiction enter the substance of the case in the station diary and refer the informant to approach the concerned Magistrate l on whose order only can the police investigate such cases with the same powers as exercised in a cognizable case, except the power to arrest without warrant.'

The Orissa High Court in Sanbar Rana v. Lohor Rana, 1995,

7 Where a case relates to two or more offences of which one is cognizable, then the case will be considered to be a cognizable offence, notwithstanding the fact that other offences are non-cognizable.1

The law also provides safeguards in regard to the possible violations of s. 154, i.e. non- reporting or non-registration of a cognizable offence. In case of the former, the alternative processes are provided by s. 190 (1)(c) Cr.P.C. that enables the police to take care that the justice is vindicated notwithstanding the fact that persons individually aggrieved by such offence do not report of the incident. In case of the public aggrieved on account of non-registration of the information as referred to in s. 154(1), the informant can still seek justice from the same institution ride s.. 154(3) Cr.P.C. by sending the substance of such information, in writing and by post, to the S.P.1 or through the appropriate court by filing a petition, i.e. complaint case vide s. I 90(1)(c) Cr.P.C.

3.3 COMPLEXITIES OF THE COMPLAINT PROCESS

The relationship between powers and procedures on paper and that in actual practice is problematic. Police discretion in regard to the registration of the complaint is manifest in (i) the refusal for investigation u/s. 157(1)(b) Cr.P.C., and rzdr rules 1602' and 42' of OPM, notwithstanding the obligatory provisions of s. 154(1) Cr.P.C. and rule 143(f) OPM,27 and (ii) in the subjective perception of the officer, the information may appear to reveal a non-cognizable offence, ride s.

A product of that discretionary space is what was found to be the most significanr aspect of this stage of police work and that has become entrenched in its daily operations is the informally evolved process through which the complaints received by the police are generally routed. Such a mechanism reinforce the notion of police work as predominantly non-mechanistic in nature. Its function and methods and strategies of operation is akin to that of the role of the neighbourhood institutions in resolving disputes through informal sanctions. Its operational dynamics, as was

observed in the functioning of Orissa police, is constitutive of the craftsmanship of the officers. It has established as the dominant method of the police to address the complaints it receives.

According to the OIC of Lekhpur, 'the mantra of rural policing lies in the good relations that the police could develop with well-meaning members of the community and neighbourhood institutions to facilitate smooth and effective functioning. Hence the police effort in that regard has been to support the formation of neighbourhood (village level) institutions, interact with them on a regular basis and participate in their activities." Such institutions were variously named mostly with religious connotations like the "puja committee" or the one that was found in a Muslim neighbourhood was popularly known as the "insaf committee". A Muslim leader and an office- bearer of such a body in Lekhpur endorsed the measures taken by the police in establishing a working relationship with them. The Sewaknagar thana was found to have maintained a list of such community-level organisations with the purpose to seek necessary assistance from them in any eventuality for policing goals. Their participation in the police-initiated informal tribunal process has contributed to its legitimation.

But in reality, as critics would emphasize, the police with the kind of permissibilit) allowed by the laws are likely to operate in a fashion what Reiner has called 'the law of inevitable increment'

- give them an inch and they'll take a ' By its way of operation, the police has created a 'legal' no man's land for dealing with the complaints that come to their knowledge and their argument for the necessity of the sub rosa practice may seem to be a non Sequinir on the surface but worthy of empirical examination for better comprehension of the complexities of this aspect of policework in practice. The background realities of policework at the thana, rural or urban, are apparently quite common to analyze the need for the existing processual approach of the police.

The rationale for the non-feasibility of mechanical compliance of s. 154 Cr.P.C., according td the research participants (police officers), was not only the shortcomings of the police in terms of numerical and other infrastructural weaknesses that inhibits a rigid legalistic approach toward all the complaints that a thana receives which on an average is five to six everyday.

The Major consideration is about the social implication of such an approach on the interrelations in the society that could eventually become conflictual and rancorous, ridden by litigation. Thus, peace and order would be tentative and short-lived. It is pertinent to note the perspective of inequity in policework highlighted by the OIC of Lekhpur thana. He questioned the fairness of law to make demands on the police, the désignated authority to uphold the same, by being insensitive to their capacities to deliver. He added, "justice needs to be done to the police to expect it to dispense justice to the people."

The consequence is, as evident from the police responses to item nos. 13 and 14, the obvious schism between the law-in-the-books and law-in-action.

3.4 EMPIRICAL ENQUIRY ON COMPLAINT PROCESS

The process that follows the complaint when laid before the police is that it is received.°' The general police practice is that when an informant comes with a problem to report to the police, if not in written form it iS asked to get the 0 after rendering a hearing to the problem during which the police would make some relevant enquiries about the case. In not so serious cases, the police may either informally summon the opposite party to the thana, if in rural areas through a written message carried by the informant to the gram rabhi who would do the calling or through a constablc in the urban areas, and if felt necessary may also pay a visit to the spot for an enquiry. In some cases the complainant's desires about the kind of police response is also sought. These are to the effect of rendering a first-aid comfort to the distressed complainant.

In case of information relating to serious offences, a preliminary enquiry is conducted to verify the veracity and ascertain the gravity of the case so as to determine the necessary police intervention. To go by the belief, according to the opinion of the police officers to item that immediate registration takes place only in case of information relating to the commission of a serious cognizable offence is then a fallacy as 'the Cr.P.C. does not envisage holding of enquiry by police before the FIR is registered'." The researcher came across cases of alleged serious offences both in the urban and rural areas that were either refused, delayed or avoided registration. The delay is made either to ultimately deny registration or to provide itself an opportunity to seek possibilities to informally compromise the matter so as to forgo the necessity of registration.

The police on the receipt of a complaint, depending on the nature of the case, try to explore the possibilities of reconciliation that could be facilitated by engaging the disputing parties in a process of discussion. It is also initiated in most cases where the complainant seek to redress the problem informally through the police. It usually takes place in case of issues relating to land disputes, domestic conflicts and assault cases. According to the police sample, such complaints are usually considered non-cognizable despite the existence of cognizable elements, for e.g. criminal intimidation, violent quarrel and assault causing simple to serious injuries, etc. The complexity of these cases is the involvement of local politics. Every human problem in the rural areas is most likely to be politicised as parties to the dispute seek to mobilise the strongest of the political support that would influence the police in its favour. It makes the problem all the more difficult for the police to handle as there are competing interests

2'' The receipt of a complaint, even in written form, does not necessarily follow registration of the same as FIR in actual practice. It constitutes a violation of s. 154 Cr.P.C. that envisage the giving of the first information relating to a cognizable offence and recording the same as a continuous process.

trying to outweigh the other to gain police favour. At times the pressures exerted on the police is to the extent of dictating terms to the police. In such circumstances, mere registration of FIR is not enough, it requires deft handling of the situation to secure peace and order.

The police as an agency of social control is instrumental in managing differences, disagreements, disputes and conflicts by invoking a civil process of resolving disputes that it oversees toward a ef(ective compromise. This reconciliatory process is generally a police-initiated affair but it is the participation of the 'publics' that lends legitimacy to it. In fact, to facilitate a compromise, the police allow the disputing parties to involve others who generally constitute the panchayat members or local representatives and the respectables of the community, often referred to as gentry in the station-diary of the thana. Sometimes, it is they who are the first to reach out to the thana officials and volunteer to resolve a problem brought before the police that concerns their community. A senior Sub-Inspector of Yeshodabad thana observed that it is always for a healthy community life that differences are resolved within the neighbourhood without resorting to litigation and through a credible process by involving the participation of the well-meaning members of the community for harmonising strained relations.

The problem-solving activity either takes place within the precincts of the thana or the parties assure the police to resolve the problem at the community level and report back to the police. If the matter is serious and the police anticipate potential risks then it directly intervenes in the process to secure the case either in resolution or resort to the formal course of action. Generally, the police depends on the prominent figures of the community and the neighbourhood institutions as they constitute the appropriate forum around which the process of dispute-resolution is conducted, matters are negotiated and settled, and relationships are refurbished. The police-initiated mechanism is largely an emulation of the said process that assumes the form of an informal tribunal system as it involves elements like deliberation, negotiation, advocacy and adjudication."

The settlement of the dispute is concluded by a sworn compromise petition (Razeennma or Carcinoma) that is submitted to the police for official ratification which is reflected in the station- diary and filed in the station records. The content of the petition bears a joint declaration by the disputing parties that 'they have mutually resolved the problem between them in the presence of the said bhadraloks and undertake not to allow such thing to happen in the future, otherwise they would be liable for punishment.' The parties make an appeal in that petition to the police for the withdrawal of the complaint(s), if any, related to the case. The petition bears the signatures or thumb-impressions of the disputing parties and also that of the respectables, who participated in the process, as witness to the compromise. The petition was seen to be usually made on plain paper or occasionally on a stamp paper of the lowest denomination only to give an appearance of formality. The most interesting aspect about the whole issue is no mention of the role of the police was found to be made in such compromise petitions.'

It is pertinent to provide the historicity of the informal sanctions employed by the contemporary police for the settlement of disputes. Cornwallis who stands out as the most outstanding of the early contributors to police reforms in India for having created almost the first.

'2 the role of the respectables, especially as intermediaries between the disputants and the police, is in regard to the mediation of conflicts. Their involvement in policing affairs is a part of the police strategy for administrative convenience and ease. It is employed even in such operations that is not legally permissible.

This pathological stratagem has seemingly developed from the statutory provisions that prescribe the mandatory role of the "respectables" in certain processes of policework, for e.g. s. 100(4) Cr.P.C., rules 166(b), 236(a), 405 and 406 of the Orissa Police Manual, and s. l7 of the Indian Police Act.

The dynamics of the process in actual practice is dealt in subsequent discussion on it in this chapter. ’4 See Appendix E for a sample copy of the compromise petition (Razeenama).

fully organised police administration in the then Presidency of Bengal, had introduced principal measures in that respect that are contained in his Regulation XXII of 1793 called the “Regulations for the Police of the Collectorships of Bengal, Bihar and Orissa”. Amongst its important provisions that detailed the powers and duties of the darogahs, Article 11 empowered the darogah to discharge an accused in some cases on the basis of a Razeenama (deed of compromise) to be executed by both parties. Almost all the provisions of Regulation XXII of 1793 were later incorporated in various enactments pertaining to the system of criminal justice in India. Article 11 was one of those that did not form a part of the codified criminal law and procedure. But it still continues to have great import in the functions of policing in post-colonial India, vibrantly practiced by the same darogah, now the Officer-In-Charge."

Three items in the police interview schedule, (23, 24 and 119) delve on the role of the police as an arbiter in resolving disputes. The entire police sample strongly concurred with proposition that “the police should first try initiate a compromise process between two disputing parties rather than invoke the legal process rightaway.” A majority of the respondents emphasized the practice of commonly resorting to informal sanctions for settlement of disputes as a working rule toward its larger mandate to maintain order and preserve peace. But at the same time, they showed their displeasure over the fact that such process does not have any legal validity despite the fact that an overwhelming majority of the complainants seek redress through informal sanctions. It was observed that certain respondents were conscious of the fact that this technique sans legality, hence they officiously disclaimed any such practice. A subtle response came from a member of the Yeshodabad thana who saw the role of the police as an honest broker in cases wherein the disputants show the willingness to resolve the matter laid before the police.

In the event of no result from the informal tribunal process in any given c:ase and if the complainant on whose report this process was initiated maintained to pursue the legal course, the police generally is left with no option but to register a FIR on the basis of the complaint submitted earlier or a fresh one is sought from the complainant, as the case may be." "the researcher encountered such a police process as a participant-observer, having lodged a verbal complaint before the OIC of Sewaknagar thana who summoned the opposite party through the constable. The officer's attempt to consensually resolve the dispute through deliberation failed due to the dissatisfaction of the researcher over the process per se. The researcher was then asked to submit a written complaint if it wanted a formal action.

Thus in such cases, where there exist a written complaint, the registration of FIR would have to be made on the same date when the complaint was lodged and the matter thus required to be reflected on the same day of the SD. This could happen only when the SD is left pending till the outcome of the informal tribunal process which is not so long-drawn an affair. This, according to the police respondents, explains why the SD could not be maintained as per the police manual.'

"K.S. Dhillon, Defenders of the Establishment: Ruler-Supportive Police Forces of South Asia, Indian Institute of Advanced Study, Shimla,. Also see A.P. Mukherjee, Police in Mediaeval India, East India Company and British India: Encyclopaedia of Police in India, , New Delhi,

"The registration of a FIR is done by the OIC of the thana (or any other officer as according to law in his absence) by stating in that report under his hand the relevant sections of the penal acts as alleged in the complaint and the name of the police officer who is appointed as the IO of the case. The reporr is then sent to the DCO who makes an entry in the station diary reflecting the substance of the report and then passes it to the LC who then prepares the formal FIR in the official printed form that bear the signatures of the oRicer who registered the FIR and also that of the complainant who usually does it on receipt of a copy of the FIR.

3.5 REFUSAL TO ACCEPT /REGISTER COMPLAINT

Given the choice about priorities between the legal proceedings and the informal sanctions, the police favours the latter in disposing of complaints (item no. 23). According to the police sample, the administrative work of the police and policing concerns have increased manifold due to the increase in the population, rapid socio-economic changes in the operational context, and additional legislations and judicial pronouncements. But with no corresponding augmentation in the human and infrastructural capacities of the quotidian level of the organisation, it is unfeasible to legally process all the complaints. Thus recourse to informal sanctions appears not only inescapable but inevitable as a matter of logic. But the adoption of such a method to deal with ‹complaints is interpreted as a means to avoid or refusal of registration.

Rule 4 of the Orissa Police Manual gives the discretion to the police to deny registration of trivial cases if he finds no time to investigate them as also provided in rule 160 of the Manual and s. 157(1)(b) Cr.P.C. It also suggests that “the rise in the percentage of such refusals need not be feared in itself.” But s. 157(2) of the Code provides the safeguard against misuse of cl. (b) as the OIC of the thana is required to state in its report the reasons for not able to investigate a complaint of what seems to be a cognizable offence and shall also forthwith notify to the informant the fact of refusing investigation.

The station diaries at all thanas were found to be replete with entries of cases that were nc›t registered on grounds that their nature were found to be “civil”, “simple”, “non-cog.”, or “misc. case”. The standard police action in such cases has been, as noted in the entries:

- The opposite member is called to the thana through the local gram ra£hi or the constable (as the case may be) and warned against breach of peace or that both parties are given the warning,’ or
- The complainant is directed to approach the proper court of law, or

• An officer is assigned the task to enquire and reporr if anything for action.

In all such cases, "the fact is entered in the SD for future reference." The volume of such complaints that are treated as mentioned above is high and not all of them are truly what they have been considered as such. Implicit in it is the refusal for registration of FIR.

The most credible evidence of the police refusal to register a complaint can be the Confirm Case filed by the complainant as petition in the court for redressal of its grievance in case it was n.ot accepted by the concerned police-station. The survey data showed that from among the entire public sample, half of its 63 percent who had ever informed the police of being victims of an offence (small or big), had their complaints registered as FIR. Those whose complaints were not registered were either not considered necessary as the matter was settled through informal sanctions or considered as inappropriate for taking cognizance. But nearly 90 percent of them never got an explanation as to why their complaint was not registered.

As one respondent of Yeshodabad narrated his experience of having annoyed an officer by his inquisitiveness to know about his complaint. Such instances of police fury was experienced by respondents of Lekhpur and Sewaknagar too. The police officers do have a explanation to this, they proclaim that the often over-bearing attitude of the complainant in seeking instant action against the opposite party that ought to be punishing in nature and their assumption that it would follow with the registration of FIR, irritate them.

In cases where the complainant is aggrieved by either police inaction or refusal to register the FIR, it is legally empowered to seek redressal from the SP, rzdr s. 154(3) Cr.P.C., or else from the appropriate court of law, ride s. 190(1)(c) Cr.P.C., as discussed earlier. The Magistrates accorded the jurisdiction and power to issue direction to the police for treating the 'complaint case' as FIR and start the investigation process vary depending on the nature of the administrative area. The research findings showed that the designated courts approached for the above

purpose were the Judicial Magistrate First Class (JMFC) in the rural areas and the court of Sub-Divisional Judicial Magistrate (SDJM) in the areas with municipal status or urban areas. It was also found that writ petitions been filed in the High Court as Original Jurisdiction Case (OJC) for directing the police to consider the complaint as FIR and take necessary steps according to the Cr.P.C. In the OJC, the matter is between the petitioner, that is the aggrieved, and the opposite party is normally held to be the State or the OIC of the concerned thana or the SP of the district, as the case may be. The petition of the 'complaint case' filed in the court contains information furnished by the complainant: on 'whether the matter was reported to the police and if yes, the details of it, and the results thereof, and 'whether regarding the same case, anything is submitted or filed in any other court and details, ifi any'. It is not necessary that the complainant need to have approached the police before it moves the court. If it apprehends that the police may not render due treatment to its complaint, it can directly seek the intervention of the court for appropriate action. The petition cases registered as FIRs in the year 2002 of all the thanas were examined on the basis of content analysis of the relevant documents and personal interviews of the complainants, the victims and the accused of the cases to understand the complexities of the alternative process provided as legal safeguards against refusal of registration of FIR by the police.

The twin FIRs filed at the Sewaknagar thana on the basis of the separate orders issued by the High Court in response to the writ petitions filed (under article 226 of the Constitution of India) by an aggrieved couple on account of alleged police non-action on their complaint. The High Court in the OJC heard the opposite party, constituting the State of Orissa represented by the Secretary of Department of Home, the In-Charge of the concerned police-station and the SP of the concerned district, in relation to both the petitions filed before it. In separate orders, in reference to the affidavit filed before it on behalf of the In-Charge of the thana, stated therein that "the complaint made by the petitioner was never received by his office," the High Court without examining the veracity of the said sworn statement issued by the police, went on to state that "now that" the complaint "has been filed and copy thereof has been

served and opposite party," that is, the In- Charge of the thana, "has notice of the same, we direct the" same "opposite party...to treat the" complaint "as a FIR and look into the complaint in accordance with law and take steps as are needed in terms of the Cr.P.C."

It is pertinent to note that the examination of the case revealed that the In-Charge of the thana committed perjury on account of the submission made in the affidavit that is untrue based on the existence of an entry in the SD of the thana, a sufficient documentary evidence to that regard. The said SD entry, traced by the researcher, was made more than three months before the order of the High Court and two months before a copy of the complaints of the respective petitioners sent by the AG of Orissa were received by the thana. It showed that the complainant was the petitioner of the second OJC and the complaint contains exactly the combination of all the charges that were made in the two petitions.

The SD entry as is the norm contained the following observations by the DCO on the actions taken thereof:

it is purely civil in nature and petty matters hence directed the reporter to take shelter in the proper court to get justice. This fact has already been enquired by two officers, including the In-Charge of the thana, and both parties warned against any further breach of peace and were properly advised to maintain peace as both are respectable persons.'

CHAPTER-4

Evidentiary Value of F.I.R

4.1 VALUE OF F.I.R.

As already said, the FIR is not substantive evidence; however its importance as conveying the earliest information regarding the occurrence of a crime cannot be disputed. Moreover, it can be used to corroborate the Informant under S. 157 of Indian Evidence Act, 1872, or contradict the witness under S. 145 of the same Act if the informant is called as a witness in the trial.

Following seven points have been identified as the uses of FIR, which is non-confessional in nature for evidentiary purposes:-

1. For corroboration purposes: It cannot be ignored altogether and can be used to corroborate the statement of the eyewitnesses.
2. For contradicting the evidence of person giving the Information.
3. For proving as an admission against the informer.
4. For refreshing informer's memory.
5. For impeaching the credit of an informer.
6. For proving informer's conduct.
7. For establishing identity of accused, witnesses and for fixing spot time as relevant facts under S. 9, Evidence Act.

4.2 FIR can even become substantial evidence in following circumstances:

1. During declaration when a person deposing about the cause of his death had died (that is a dying declaration). In such case FIR will become admissible under S. 32(1) of Evidence Act.

2. When the injuries are being caused in the presence of SHO In PS and the injured makes a statement to the SHO saying that accused was injuring him.

3. When the informer who has written the FIR or read it falls to recall to memory those facts but is sure that the facts were correctly represented in FIR at the time he wrote it or read it.

Clearly, it can be reiterated again that FIR is a very important piece of evidence in a criminal case. Refusal to record an FIR means losing substantial evidence in the case. Thus, in case where the Police Officer in course of dereliction of his duties, refuses to record FIR. It may cause u serious Impediment to the case in hand.

Since FIR is the first hand primary evidence, it is extremely valuable to the case. Refusal to record FIR may even encourage crimes in the society as in such case most of the crimes will go unnoticed and unrecorded due to inefficiency of Police Officers.

FIR is not a substantive piece of evidence. Therefore, even if the written report filed has not been duly proved the prosecution case will not fail on that ground alone and the court has to consider the substantive evidence which has been adduced by the prosecution. The value of F.I.R. must always depend on the facts and circumstances of a given case. **In Asharam & Anr. V. State of M.P.** The Apex Court held that we do not find any merit in the contentions made in this case.

In Asharam & Anr. V. State of M.P.

According to the trial court, the foundation of the investigation was not proved and, therefore all the accused were entitled to acquittal. In this connection, the main circumstiince on which the triiil count relied upon is ante-timing of the FIR. In the present case, we have gone through the notes of evidence. One of the points which were argued before us was that Exhibit P/1 (FIR) appears to have been made 15 days after the incident. We are not prepared to Accept this argument. The evidence of Dr. S.B. Aerpude indicates that on' .11.1988 he had medically examined Nadnan, who was brought to Primary Health Centre, Bijadehi. He was brought by Constable Panja of Police Station, Bijadehi.

The : aid Constable had come to the Primary Health Centre with a requisition note (Exhibit?/7). Further, in this evidence, PW-10 has stated that even Koshabai was brought to the Centre by Cosntable Panja on under the requisition slip, Exhibit P/9. In the circumstances, it cannot be said that FIR was made 15 days after the incident. The requisition slips carried by the Constable incidates that the FIR proceeded 1.11.1988 when Nandan and his wife Koshabai were brought to the Centre by Constable Panja of Police Station, Bijadehi. The question which still remains to be answered is whether Exhibit P/1 was lodged in the police station by Nandan or whether it was at his residence. In this connection, we find that the only discrepancy is with regard to the place where the FIR was recorded.

There is no discrepancy regarding the contents of the FIR. Ji ii tvell settled that an FIR is not a substantive piece of evidence. It cannot contradict the testimony of the eye witnesses even though it may contradict its maker.

Dharma Rama Bhagare v. The state of Maharashtra. Nandan, in his evidence, had stated that Exhibit P/1 had his signature. That signature was obtained by the I.O. when the I.O. had come to his house. However, Nandan had stated that he had not gone to the police station to lodge the report and that it was Rampal who had gone to the police station to lodge the report.

The most crucial fact is that the said report bears the signature of Nandan. It is important to appreciate that Nandan had collapsed when he was assaulted with lathi by Tukaram. His arm was fractured. He was taken to Bijadehi hospital he was taken to his house where his signature was taken on Exhibit P/1. He was taken to Baitul hospital after the x-ray. In our view, there is no reason to disbelieve PW-1. In any event, Exhibit P/1 cannot discredit the evidence of Tikaram) and Koshabai .

That evidence corroborates the evidence of PW-1 who has categorically stated in his evidence that his land was situated in Neemgarh Village; that before Diwali he had gone to his field with Sukhdev, Bliure, Tikaram and Koshabai; that after sowing the field till 12:00 noon, Nandan with others was returning home for lunch and when the complainant party consisting of Nanda, Tikaram and Koshabai had reached the field of Chunni, they saw Asharam, Tukaram, Dayaram and Mansharam hiding in the tuar; that Asharam, appellant No. 1, had ballam (spear) with him and the rest of the accused had lathis; that Asharam came forward to pierce the spear in his abdomen when he caught hold of the spear; that there was a scuffle between Asharam and Nandan when Dayaram, appellant No. 2, assaulted Nandan with lathi from behind which hit his right ear and, at the same time, Tukaram, co-accused, gave a lathi blow on the right arm of Nandan caused its fracture; that at that stage Nandan fell and the accused started hitting him with lathis; that when his wife, Koshabai, saw her husband being assaulted, she fell on him in order to save him and in that process, Koshabai also got injured. That even Koshabai sustained injuries on her hands.

That, Tikaram was injured on account of lathi blow given by Dayarma. According to PW-1, when Nadan became senseless, the accused fled thinking that he had died. This part of the evidence is corroborated by the evidence of Koshabai and Tikaram. In her evidence, Koshabai stated that Dayaram, appellant No. , had also assaulted her husband with a lathi; that Tukaram, co-accused, had also assaulted her husband with the lathi which fractured his hand and at that stage Nandan had fallen down and in order to save her husband, she fell on him and in the process she was also assaulted.

There are certain discrepancies regarding the place at which the injuries were inflicted. However, a common thread runs through the evidence of the three complainants and other two witnesses who have deposed the time of the incident, namely, around 1:00 p.m. on 31.10.1988. They have categorically stated that October was the sowing time. They have categorically stated that they were returning for lunch after sowing their fields. They have categorically stated that the incident took place at/near Chunni's field. They have categorically stated that the accused were hiding in the tuar. In the circumstances, we are not prepared to believe the I.O. who stated that the incidence took place 1 to 1/2 kilometers away from Nandan's field.

The evidence of complainant party and the other witnesses mainly and shows the manner in which the assault was carried out. They categorically deposed that the assailants were armed with ballam and lathis. The manner in which the injuries, were inflicted have also been elaborately described, moreover, Nandan, Tikaram and Koshabai were injured witnesses.

Their evidence was fully corroborated by medical evidence. The evidence further shows that the appellant, Asharam, came with the ballam, he tried to pierce the ballam into abdomen of Nandan; that if Nandan would not have caught hold of the ballam, Asharam had almost succeeded in piercing the spear into the abdomen; and lastly, the evidence shows that the accused fled when they thought that Nandan had died when in fact he had become unconscious on account of injuries. Therefore, the weapons were used by the accused as intended to be used. We are further of the view that there were minor omissions in the statement under Section 161, Cr.P.C. There were no contradictions. The injuries have been duly proved. This is not a case where there are no injuries.

There were 16 injuries on the body of Nandan, on Koshabai and 7 on Tikaram. They were hospitalized for 15 days. Further, at this stage, we may point out that even according to Koshabai after the accused fled, she and Nandan had come to their house at Bijadehi where the police had come and from the house of Nandan and Koshabai,

the complainant party had gone to Bijadehi hospital around 4:00 p.m. in the evening. Therefore, it is clear that the police had gone to the house of Nandan and Koshabai where the signature of Nandan was obtained on Exhibit P/1.

Under the above circumstances, the High Court was right in coming to the conclusion that there was a common intention to cause serious injuries; that the presence of all the accused was proved on the scene of offence; that the specific role performed by each of the accused stood established and, therefore, there was intention to murder and, consequently, the High Court was right in convicting the accused under Section 307 read with Section 149, IPC.

We are also in agreement with the view of the High Court that Dr. Narvaria Medical Officer, Chicholi had not proved his having treated Mansharam, co-accused, (for typhoid) during the period 28.10.1988 to 10.12.1988. That, DW-2 did not produce any document or register of the Health Centre to show that Mansharam was an indoor patient in this hospital. That, there was nothing to show that he was treated in a private hospital. DW-2 had deposed that he had issued the certificate Exhibit D/7 on the demand made by the Mansharam.

The doctor did not maintain any register of the certificates issued by him, particularly when he says that he had private practice also. In the circumstances, the High Court was right in disbelieving Dr. J.P. Narvaria. In the present case, Nandan, Koshabai and Tikaram are the eye-witnesses. They are injured eye-witnesses. Hence, on the evidence, discussed above, there is no reason to doubt their credibility.

Even assuming for the sake of argument lhat there are inconsistencies in the deposition of Nandan, we see no reason to disbelieve the evidence of Koshabai and Tikaram, who have substantially corroborated the evidence given by Nandan, particularly with regard to the place at which the 5 accused had assembled in the tuar, the spot at which the occurrence took place, namely, Chunni’s field, the manner in

which the assault was carried out, the weapons carried by the assailants and the manner in which the injuries were inflicted.

Lastly, the evidence further shows the running away of the accused from the scene of the offence after they saw that Nandan had fallen down on the ground when they thought him to be dead, when actually Nandan had become unconscious. In the circumstances, the offence under Section 307/149 IPC stood proved.

4.3 EVIDENTIARY VALUE OF F.I.R.— SUPPRESSION OF MATERIAL PARTICULARS:

It is not correct to say that the F.I R. is the first information of the cognizable offence that has come to the police. It is also not correct to say that an information of the commission of a cognizable offence of a hearsay nature, given orally to the officer-in-charge of the police station would be an information admissible in evidence for two purposes i.e. for corroboration of the informant or for the contradiction of the informant if and when he is examined as a witness.

Any information of the commission or suspected commission of a cognizable offence, if given by a person to the officer-in-charge of the police station orally, shall be reduced to writing in a book prescribed by the State Government. Such information when so laid by the person having direct knowledge about the information would then is admissible as real information under Section 154 of the Code.

Then, such information could be used either for corroboration of the informant or for contradiction if and when the informant gives evidence in court touching such information. Moreover, the information must be first in time laid before the officer-in-charge of the police station before any step for the investigation starts upon any other either information received by the police officer whether recorded or not by the police officer in the manner prescribed. If any information sought to be admitted in evidence as F.I.R. does not satisfy the condition of Section 154, it would not be admissible as

F.I.R. for the prosecution to corroborate the informant in court while deposing but it may be used by the defence to contradict the informant in the witness box while deposing.

Any statement to the police after the investigation had commenced would be hit by the provisions of Section 162 of the Code. If a witness who laid the F.I.R. on his own knowledge makes a statement in court on oath different from what he had stated in the FIR that discredits the evidence of the witness in court to the extent, but does not make the statement in the FIR evidence in the case.

4.4 F.I.R. CAN BE USED ONLY FOR CONTRADICTION AND CORROBORATION PURPOSES:

An F.I.R. is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 157, Evidence Act or to contradict it under Section 145 of the Evidence Act. It can only be used for corroboration or contradiction purposes that too when F.I.R. was lodged by a person having direct knowledge about the occurrence.

The prosecution in accordance with Section 157. Evidence Act.'4 F.I.R. cannot be used against the maker at the trial if he himself becomes an accused not to corroborate or contradict other witnesses.

Where the prosecution fails to get the FIR lodged on behalf of the injured, exhibited and proved, it is duty of the Court to see that the same is duly proved and exhibited in the case. FIR is merely used by way of corroboration or contradiction and no further. If the FIR is not duly proved or if a statement recorded as FIR could not be used as FIR in legal Grounds. Merely for that reason the evidence of eye witnesses would not be rejected if the same is found to be otherwise reliable.' It is trite that an FIR is not substantive evidence unless of course it is admitted under Section 32(1) of the Evidence Act and can be used to corroborate or contradict the maker thereof and

therefore, the question of corroborating by his purported statements as contained in could not arise.'

In Bhagwan Singh and Others V. State of M.P. the honorable Supreme Court decided that non-mention of name of witness in FIR is not relevant and We also do not find nay substance in the submission of the learned counsel for the appellants that statement of Kiran should not be given any weight because her name is not mentioned in the FIR.

There is no requirement of law for mentioning the names of all the witnesses in the FIR, tlte object of wltich is only to set the criminal law in motion. Kiran herself was injured and being the niece of Hari Ram (deceased), had no reason to involve innocent persons in the commission of the crime.

Merely because PWs happen to be the relations of the deceased, cannot be made a ground to discard their evidence. In the circumstances of the case, the High Court has rightly found the aforesaid witnesses to be natural witnesses of the occurrence.

Section 8 of the Evidence Act as evidence of his conduct. It may also be admissible as his admission when the accused himself makes the first information report. Section 25 of the Evidence Act lays down that if it is in the nature of a confession, being made to a police officer, it is admissible, and it cannot be proved as against him. If it is not a confession, but contains admissions made by the accused, F.I.R. is admissible in evidence under Section 21 of the Evidence Act.

F.I.R is not a statement made to a police officer during the course of investigation. Section 25 of the Evidence Act and Section 162 of the Code of Criminal Procedure do not bar its admissibility. The report is an admission by the accused of certain facts which have a bearing on the question to be determined by the courts under Section 21 of the Evidence Act. Admission of an accused can be proved against him.

4.5 F.I.R and Recovery of certain articles

When any crime occurs there may be countless number of articles. It is not necessary to mention in F.I.R. the articles found at the place of occurrence.

EVIDENTIARY VALUE OF FIR SENT WITH DELAY TO MAGISTRATE UNDER SECTION 157, CODE OF CRIMINAL PROCEDURE, 1973

Element of delay in registering the complaint or sending the same to the jurisdictional Magistrate by itself would not be fatal to the prosecution, if the evidence adduced by the prosecution was worthy of credence."

The extraordinary delay in sending FIR to the Magistrate is a circumstance which provides a legitimate basis for suspecting that the FIR was recorded much later than the stated date and hour affording sufficient time to the prosecution to introduction improvements and embellishment and set up a distorted version of the occurrence. In such a case, the evidence of eye-witnesses cannot be accepted at its face value.' The same view was taken in another important case5 decided by Supreme Court.

When the FIR has been received by the magistrate with inordinate delay, then the entire prosecution case must be viewed with suspicion.'

Where the express massage which the police official sent to the jurisdictional Magistrate reached the said Magistrate at his place after nearly 1-1/2 days after the said complaint was registered, there being no explanation as to this inordinate delay only adds to the doubtful circumstances surrounding the prosecution case.'

When there is such delay the prosecution must explain it by examining the constable who has dispatched such report to the Magistrate.

However, in some cases, it has been held that Section 157, Code of Criminal Procedure, 1973, only states that the FIR should be dispatched forthwith and does not say that the time of dispatch must be noted therein.' The requirement of Section 157, Criminal Procedure Code to forthwith send a copy of F.I.R. to the Magistrate is an external check. Unexplained delay in receipt of special report by Magistrate creates a doubt and puts the court on guard.

Mere delay in holding inquest proceedings and in delievery of F.I.R. to local Magistrate cannot be said to have rendered F.I.R. ante-timed or ante-dated.

(a) It can be used to corroborate the maker under S. 157 of Evidence Act, but not to corroborate the other witnesses." Apex Court has gone so far to say that the prosecution case cannot be thrown out on the mere ground that if the first information report an altogether different version was given by its maker. This position has not, however been maintained in to in subsequent cases of the apex court.

(b) F.I.R. can be used to contradict only the maker of it under section 145 and Section 155 of Evidence Act and not other witnesses.

(c) FIR can be used by the defence to impeach the credit of the maker under section 155(3) of the Evidence Act.

(d) A non-confessional First Information Report lodged by the accused can be used against him to prove his admissions in regard to certain facts under Section 21 of Evidence Act.

(e) Certain portion of confessional First Information Report lodged by the accused can be used against him if they lead to the discovery of a fact within the meaning of Section 27 of Evidence Act.

(f) FIR can be used as substantive evidence on the death of the informant if it relates to the cause of informant's death or circumstances of the transaction resulting in

informant's death within the meaning of section 32(1) of Evidence Act.94 In other case, it cannot be used as substantive evidence.

Where the accused himself gives the First Information the fact of his giving the information is admissible against him as evidence of his conduct under section 8 of Evidence Act.

CHAPTER-5

JURISDICTION OFFENCES RELATING OF F.I.R.

5.1 JURISDICTION OFFENCES F.I.R.

A Police officer has to write the case relating to the cognizable offence irrespective to the place of occurrence, if an informant comes to him ask the officer-in- charge of the Police station to register the case. He must register the case and send it to the concerned Police Station. Members of the public are frequently advised by the police to give information to the nearest police station. Unfortunately we often heard of complaints of informants being directed by officers in the 'nearest' police station to go to 'proper' police station to give his/her information.' This problem arises from the territorial jurisdiction of the police station in relation to the case concerned.

A. Police Officer can not refuse to record the FIR on the ground that he has no territorial jurisdiction over place of offence.

The Supreme Court in its recent judgment imposed fine on the Non-Registration of the cognizable offence. The Officer-in-charge of a police station cannot refuse to record on the FIR on the ground that concerned police station has no territorial jurisdiction over place of offence. It amounts to dereliction of duty on the part of the Police Officer.

Section 154 Cr.P.C. reads as fol1ows:—

(1)"Every information relating to the commission of cognizable offence, if given orally to an officer-in-charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the

person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant. Three copies are to be prepared with the help of carbon papers and one of the copies is received immediately in the court of Judicial Magistrate of the Police Station concerned.

(3) Any person aggrieved .by a refusal on the part of an officer — in-charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned, who if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer-in-charge of the police station in relation to that offence."

Information as to non-cognizable cases and investiq•ation of such cases

Section 155 Cr. P.C.

(1) When information is given to an officer-in-charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer, in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer-in-charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

When we go through the Section 154 and S. 155 Cr.P.C. we can find out that thi territorial jurisdiction over a place of crime is not necessary when the offence relates to ‹ commission of cognizable offence.

In Section 154 of the Code, no where it is said that the offence should take place Wfl/tin the territorial jurisdiction of the concerned police station, whereas in Section 155 it is clear that the information relating to commission of non-cognizable offence shoula be within the Ifmifs of such station.

From the above it is clear that the officer-in-charge of a police station is not supposed to refuse the investigation when he receives the information relating to commission of a cognizable offence on the ground that the concerned police station has no territorial jurisdiction over the place of crime. But he can refuse to record the information if it relates to commission of a non-cognizable offence, if offence is committed beyond territorial jurisdiction of the Police Station.

C. The proper course to be followed is to record the FIR and forward the information to the concerned police station having jurisdiction:—

In the case **State of A.P. v. Punati Ramulu and others**,4 it was held that : “The case as put forward by the prosecution was that went to Narasaraopet from the scene of the occurrence. He contacted to draft the report addressed to the Circle Inspector of Police. Was projected by the prosecution as an eye witness who is the nephew of the deceased and had accompanied the deceased when the latter went to realize debts from the villagers.

State of A.P. v. Punati Ramulu and others

On reaching the police station at Narasaraopet he was informed by the constable on duty that the Circle Inspector, had already received information about the occurrence and had left for the village. The police constable at the police station refused to record the complaint presented by on the ground that the said police station had no territorial jurisdiction over the place of offence. It was certainly a dereliction of duty on the part of the constable because any lack of territorial jurisdiction could not have prevented the constable from recording information about the cognizable offence and forwarding the same to the police station having jurisdiction over the area in which the crime was said to have been committed.

According to the evidence of Circle Inspector he had received information of the incident from police constable who was on bandobast duty. On receiving the information of the occurrence, left for the village of occurrence and started the investigation of the case. Before proceeding to the village to up the investigation, it is conceded by in his evidence, that he made no entry in the daily diary or record in the general diary about the information that had been given to him by constable , who was the first person to give information to him on the basis of which he had proceeded to the spot and took up the investigation in hand.

It was only when returned from the police station along with the written complaint to the village that the same was registered by the Circle Inspector during the investigation of the case at about 12-30 noon, as the FIR . . In our opinion, the complaint, Ex. could not be treated as the FIR in the case as it certainly would be a statement made during the investigation of a case and hit by Section 162 Cr.P.C. As a matter of fact that High Court recorded a categorical finding to the effect that Ex. P-1 had not been prepared at Narasaraopet and that it had “been brought into existence at Pamidipadu itself, after due deliberation”.

Once we find that the investigating officer has deliberately failed to record the first information report on receipt of the information of a cognizable offence of the nature, as in t1us case, and had prepared the first information report after reaching the spot

after due deliberations, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would, therefore be unsafe to rely upon such a tainted investigation, as one would not know where the police officer would have stopped to fabricate evidence and create false clues.

Though we agree that mere relationship of the witnesses and , the children of the deceased or of and who are also related to the deceased, by itself is not enough to discard their testimony and that the relationship or the partisan nature of the evidence only puts the court on its guard to scrutinize the evidence more carefully, we find that in his case when the bonafides of the investigation has been successfully assailed, it would not be safe to rely upon the testimony of these witnesses either in the absence of strong corroborative evidence of a clinching nature, which is found wanting in

5.2 Offences committed outside India

In the offences committed outside India, the Officer-in-charge of a Police Station receives information of a commission of cognizable offence, he has to register a case on the basis of such information. Section 188 Cr.P.C. (Proviso), which prohibits "enquiry or trial" except with sanction of central government in regard an offence, committed by an Indian citizen or one bound by the Indian Law in a foreign country need no application at the stage of registration of an FIR or investigation by the police. Rather, joint operation of Sections 3 & 4 of I.P.C. & Section 154 of Cr. P.C. make it mandatory to register and investigate into such a case.6

Police Officer has power to investigate in a foreign country

In the case of Union ofIndia v. W.N. Chadda (popularly known as Bofors case) honorable court decided that in regard to investigation of such case in a foreign country, help can be sought under Section 166(A) of Cr.P.C. by having "letter regotory" issued by an Indian country to appropriate court or authority in the

concerned foreign country through the Ministry of External Affairs, Government of India. At the stage of issuance of letter regotary, the accused has no right to be heard as the doctrine of Audi Aultrem Partem does not apply in such a stage.

5.3 FIR by Accused

First Information Report may be lodged by an accused person himself. FIR may be lodged by the accused for two reasons:

1) Accused after committing gruesome murder would himself come to the police station and confess the offence; or

2) Accused may lodge false information about the offence with a view to save his skin. Whenever police officer receives information of the commission of cognizable offence, he is bound to issue FIR on the information received by him, from any person including the accused.

Officer-in-charge of the police station cannot refuse to register the case when he gets information regarding the commission of a cognizable offence.

5.4 Whether such FIR is admissible

The question that naturally arises is whether such first information report filed by the accused is at all admissible in evidence, in view of provisions of Sec. 25 of Evidence Act and Sec. 162 of Criminal Procedure Code reads as qunder :-

162. Statements to police not to be signed : Use of statements in evidence:—

(1) No statement made by any person to a police officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it, nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose,

save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

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

(2) Nothing in this Section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872 to affect the provisions of Section 27 of that Act.

Explanation :- An omission to state a fact or circumstance in the statement referred to in sub-section (l) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

In **H.M. Rishbud v. State of Delhi,**' honorable court decided that Sec. 162 Cr.P.C. does not come into play unless the statement is recorded in course of investigation by a police officer.

The investigation starts U/S. 157 Cr.P.C. as soon as a police officer proceeds to enquire into a cognizable offence on receipt of first information.

It is thus, next step following the first information report. So it is obvious that provisions of S. 162 Cr.P.C. do not bar the admissibility of such first information report.

H.M. Rishbud v. State of Delhi,

- **Section 25 of Evidence Act reads as follows:—**

Confession to police officer not to be proved:— No confession made to a police officer shall be proved as against a person accused of any offence.

As soon as the accused discloses the offence to the police officer and implicates himself, he stands automatically charged with the offence within the meaning of word 'accused' occurring in Sec. 25 of Evidence Act. In the first information report itself also there is column to show "the name and residence of accused" Thus, as soon as the accused implicates himself before a police officer, he stands, 'accused of the offence' and consequently that part of his statement which amounts to an acknowledgement of guilt, comes within the ambit of Section 25 of Evidence Act, and as such becomes totally inadmissible in the evidence against the accused. Section 25 of Evidence Act however does not prevent its use by the accused or by co-accused. If it goes in favour of either of hem, for example to reduce an offence of murder U/S. 302 IPC to an offence of culpable homicide not amounting to murder U/S. 304 IPC in view of grave and sudden Provocation to which the accused might have alluded to, in his confession.

- **Confessional first information report can not be taken as a whole**

A confessional FIR can not be taken as a whole in some case earlier it had been ield that even if an FIR consisted of some confessional and non-confessional parts, the ion-confessional parts would be separated from confessional part and exhibited on behalf if the prosecution, 9 The above position was reviewed by the Supreme Court at length In 4ghnoo Nagesia v. State of Bi/iar,l0 (confessional FIR) and it was held that a confessional statement may consist of several parts and may reveal not only the actual commission of the offence, but also the motive, the preparation, the opportunity, the provocation, the weapon used, the intention, the concealment of the weapon and subsequent conduct of the accused. When confession is tainted, the taint attaches to

each part of it. It is not permissible in law to separate one part and to admit it in evidence as an non-confessional statement.

- **Law laid down by Apex Court in Aghnoo Nagesia case**

In the case Aghnoo Nagesia v. State of Bihar, l ’ BACHAWAT, J. “the appellant was charged under S. 302 of the Indian Penal Code for murdering his aunt, Rant, her daughter, Chamin, her son-in-law, Somra and Dilu, son of Somra. He was convicted and sentenced to death by the Judicial Commissioner of Chotanagpur. The High Couof Patna accepted the death reference, confirmed the’conviction and sentence and dismissed the appeal preferred by the appellant. The appellant now appeals to this Court by special leave.

(2) The prosecution case is that on August 11, 1963 between 7 a.m. and 8 a.m. the appellant murdered Somra in a forest known as Dungijharan Hills and later Chamin in Kesari Garha field and then murdered Rani and Dilu in the hosue of Rani at village Jamtoli.

(3) The First information of the offences was lodged by the appellant himself at Police Station Palkot on August 11, 1963 at 3-15 p.m. The information was reduced to writing by the officer-in-charge, S’ub-Inspector H.P. Choudhury, and the appellant affixed his left thumb impression on the report. The Sub-Inspector immediately took cognisance of the offence, and arrested the appellant. The next day, the Sub-Inspector in the company of the appellant went to the house of Rani, where the appellant pointed out the dead bodies of Rani and Dilu and also a place in the orchard of Rani covered with bushes and grass, where he had concealed a tangi. The appellant then took the Sub-Inspector and witnesses to Kasiari garha khet and pointed out the dead body of Chamin lying in a ditch covered with Ghunghu. The appellant then took the Sub-Inspector and the witnesses to Dungijharan Hills, where he pointed out the dead body of Somra lying in the slope of the hills to the north. The Sub-Inspector also recovered

the appellant's house a chadar stained with human blood. The evidence of P.W. 6 shows that the appellant had gone to the forest on the morning of August 11, 1963.

(4) The medical evidence discloses incised wounds on the all the dead bodies. The injuries were caused by a sharp-cutting weapon such as a tangi. All the four persons were brutally murdered.

(5) There is no eye-witness to the murders. The principal evidence against the appellant consists of the first information report, which contains a full confession of guilt by the appellant. If this report is excluded, the other evidence on the record is insufficient to convict the appellant. The principal question in the appeal is whether the statement or any portion of it is admissible in evidence.

- **The first information report reads as follows :—**

"My name is Aghnu Nagesia.

(1) My father's name is Lodhi Nagesia. I am a resident of Lotwa, Tola Jamtoli, Thana Palkot, District Ranchi. Today, Sunday, date not known, at about 3 p.m. I having come to the P.S. make statement before you the S.I. of Police.

(2) That on account of my Barima (aunt) Mussammat having given away her property to her daughter and son-in-law quarrels and troubles have been occurring among us. My Barima has no son and she is a widow.

Hence on her death we shall be owners of her lands and properties and daughter and son-in-law of Barima shall have no right to hem. She lives separate from us, and lives in her house with her daughter and son-in-law ind I live with my brother separately in my house. Our lands are separate kom the time four father.

(3) Today in the morning at about 7-8 a.m. I had gone with a tangi to Duni Jharan Kahar to cut shrubs for fencing. I found Somra sitting alone there who was grazing cattle here.

(4) Seeing him I got enraged and dealt him a tangi blow on the filli (calf) of right leg, whereby he toppled down on the ground. Thereupon I dealt with several chheo (blows) on the head and the face, with the result that he became speechless and died. At that time there was none near about on that Pahar.

(5) Thereafter I came to the Kesari Garu field where Somra's wife Chamin was weeding out grass in the field.

(6) I struck her also all of a sudden on the head with the said tangi whereby she dropped down on the ground and died then and there.

(7) Thereafter I dragged her to an adjoining field and laid her in a ditch to the north of it and covered her body with Gongu (Pala ke chhata) so that people might not see her. There was no person then at that place also.

(8) Thereafter I armed with that tangi and went to the house of my barima to kill her. When I reached there, I found that she was sitting near the hearth which was burning.

(9) Reaching there all of a sudden I began to strike her on the head with tangi whereupon she dropped down dead at that very place.

(10) Near her was Somra's son aged about 3-4 years.

(11) I also struck him with the tangi. He also fell down and died.

(12) I finished the life of my Barima so that no one could take share in her properties.

(13) I hid the tangi in the jhari of my Barima's house.

(14) Later on I narrated the occurrence to my chacha (father's brother) Lerha that I killed my aforesaid four persons with tangi. After some time:

(15) I started for the P.S. to lodge information and reaching the P.S. I make this statement before you.

(16) My Barima had all along been quarrelling like a Murukh (foolish woman, and being vexed, I did so.

(17) All the dead bodies and the tangi would be lying on those places. I can point them out.

(18) This is my statement. I got it read over to me and finding it correct, I affixed my left thumb impression.

(7) We have divided the statement into 18 parts. Parts 1, 15 and 18 show that the appellant went to the police station to make the report. Parts 2 and 16 show his motive for the murders. Parts 3, 5, 8 and 10 disclose the movements and opportunities of the appellant before the murders. Part 8 also discloses his intention. Parts 4, 6, 9 and 11 disclose that the appellant killed the four persons. Part 12 discloses the killing and the motive. Parts 7, 13 and 17 disclose concealment of a dead body and a tangi and his ability to point out places where the dead bodies and the tangi were lying. Part 14 discloses the previous confession by the appellant. Broadly speaking the High Court admitted in evidence parts 1, 2, 3, 5, 7, 8, 10, 13, 15, 16, 17 and 18.

(8) On behalf of the appellant, it is contended that the entire statement is a confession made to a police officer and is not provable against the appellant, having regard to S. 25 of the Indian Evidence Act, 1872. On behalf of the respondent, it is contended that S. 25 protects only those portions of the statement which disclose the killings by the appellant and the rest of the statement is not protected by S. 25.

(9) Section 25 of the Evidence Act is one of the provisions of law dealing with confessions made by an accused. The law relating to confessions is to be found generally in Ss. 24 to 30 of the Evidence Act and Ss. 162 and 164 of Code of Criminal Procedure, 1898. Sections 17 ,to 31 of the Evidence Act are to be found under the heading “Admissions”. Confession is a species of admission, and is dealt with in Ss. 24 to 30. A confession or an admission is evidence against the maker of it, unless its

admissibility is excluded by some provision of law. Sec. 24 excludes confessions caused by certain inducements, threats and promises. Section 25 provides: 'to confession made to a police officer shall be proved as against at person accused of an offence".

The terms of S. 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a: onfession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression 'accused of any offence' covers a Person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof against any person of a Confession made by him in the custody of a police officer, unless it is made in the lmmediate presence of a Magistrate. The partial ban imposed by S. 26 relates to a confession made to a person other than a police officer. Section 26 does not qualify the absolute ban imposed by S. 25 on a confession made to a police officer. Section 27 is in the form of a proviso, and partially lifts the ban imposed by Ss. 24, 25 & 26. It provides that when any fact is deposed to as discovered in consequence of information received kom a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation, save as mentioned in the proviso and in cases falling under sub-s. (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of S. 27 of I the Evidence Act. The words of S. 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by a Magistrate under S. 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by S. 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under S. 25 of the Evidence Act, and if it is made in the course of an investigation it is

also protected by S. 162 Cr.P.C. and a confession to any other person made by him while in the custody of a police officer is protected by S. 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy, and the fullest effect should be given to them.

(10) Section 154 of Code of Criminal Procedure provides for the recording of the first information. The information report as such is not substantive evidence. It may be used to corroborate the informant under S. 157 of the Evidence Act or to contradict him under S. 145 of the Act if the informant is called as a witness. If the first information is given by the accused himself, the fact of his giving the information is admissible against him as evidence of his conduct under s. 8 of the Evidence Act. If the information is a non-confessional statement, it is admissible against the accused as an admission under S. 21 of the Evidence Act and is relevant. Similarly in the case of Faddi v. State of Madhya. Pradesh,' 2 explaining Nisar Ali v. State of U.P." and Dal Singh vs. King Emperor' 4 the same view was given but a confessional first information report to a police officer cannot be used against the accused in view of S. 25 of the Evidence Act.

(11) The Indian Evidence Act does not define ‘confession’. For a long time, the Courts in India adopted the definition of ‘confession’ given in Art. 22 of Stephen’s Digest of the Law of Evidence. According to that definition, a confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed that crime. This definition was discarded by the Judicial Committee in **Pakala Narayanaswami v. Emperor**,15 Lord Atkin observed that “.....no statement that contains self- exculpatory matter can amount to confession, if the exculpatory statement is of some fact which if true would negative the offence

alleged to be confessed. Moreover, a confession must either admit in terms of the offence, or at any rate substantially al1,the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession, e.g. an admission that the accused 'is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession."

5.5 Hearing of accused at the time of recording of FIR:—

At the stage of recording of FIR or even during the investigation, the accused has no right to be heard and therefore notice need not be issued to him at this stage.

In the case of Union of India v. W.N. Chanda3' honorable court decided that the doctrine of Audi Alteram partem cannot be invoked at the stage of recording of FIR or even during the investigation.

5.6 IN DOWRY DEATH CASES — MOTIVE IS IMPLICIT:

In Dowry deaths motive for murder exists and what is required of courts is to examine as to who translated it into action as motive viz., whether individual or fami1y3. 4 First Information Report is definite in regard to cruelty and harassment meted out to deceased for and in connection with the dowry demand soon before her death and mere specific omission in relation to definite sum of money etc would not make prosecution case doubtful.35

In **Rameshwar Dayal v. Col. Ram Singh,'** 6 it was held that FIR and complaint case on the same facts section 190 Cr.P.C. empowers the Magistrate to take cognizance of an offence upon receiving a complaint of facts constituting such offence independently of a Police Report before him of such facts.

Rameshwar Dayal v. Col. Ram Singh

Dowry-death cases."Section 54 and 195(1) Cr. P.C.,

The motive is inherent in dowry-death cases."Section 54 and 195(1) Cr. P.C., the mandatory provisions of Section 195(1) Criminal Procedure Code do not effect the right of police to investigate a cognizable offence. From a plain reading of Section 195 Cr.

P.C. it is manifest that it comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190(1), Cr. P.C. and it has nothing to do with the statutory power of the police to investigate into an FIR which discloses a cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in Court. In other words, the statutory power of the Police to investigate under the Code is not in any way controlled or circumscribed by Section 195, Cr. P.C. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the court would not be competent to take cognizance thereof in view of the embargo of Section 195(1) (b), Cr. P.C. but nothing therein deters the Court from filing a complaint for offence on the basis of the FIR (filed by the aggrieved private party) and materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in Section 340, Cr. P.C.3'

- **FIR filed against the accused can be falsified**

Ram Kumar and another were convicted U/S. 304-B & 498-A of I.P.C. Ram Kumar is the husband and second appellant is mother-in-law of the deceased. The deceased Rajdulari married to the first appellant on 20-6-1984. The case of the prosecution is that the appellant demanded dowry ever since the marriage. The deceased informed the same whenever she visited her parents.

The sister of deceased by name Bhimla was married to the 1st appellant brother on ie same day of the marriage of the deceased. The case of the prosecution is that on 7* April, 1988, three persons came to the house of PW7 and told that Raj Dulari (deceased) was having severe pain in the stomach and that they should go to see her.

On getting this formation, she went to the appellant house, but none of them was found. Her daughter Raj Dulari was also not in the house. They found that their second daughter Blfimla was acked up in a room on the first floor. She said that the appellant had given beating to Raj) u1ari during day and when she tried to intervene, she was detained in the locked room. “hen, the dead body of Raj Dulari was found lying near a well outside the house.

The Court of Session considered the entire evidence and came to the conclusion eat the charges were proved. On appeal, the High Court affirmed that judgment. Learned ounsel appearing for the appell ts argued before us that the following circumstances isprove the case of the prosecution.

The ‘Muklawa’ ceremony of the younger sister was performed about a month and half before the occurrence and that shows, according to learned counsel, that there was to demand of dowry or harassment by the appellants for Raj Dulari. According to learned ounsel, if it had been so, the ‘muklawa’ ceremony of the younger sister would not have been performed. There is no substance in this contention. The marriage of both the sisters ook place on the same day. There was no purpose in stopping the ‘muklawa’ of the ounger sister. As spoken to by the witnesses, the parents were hoping that if both the sisters started living together the situation would improve and they would be happy. The Performance of ‘muklawa’ of the younger sister does not belie the evidence of harassment.

The second contention placed before us by the learned counsel for appellants is hat the younger sister had filed a divorce petition later and in that petition, she had mproved the story. According to the learned counsel, in the First Information Report, the appellants’ names were mentioned while in the petition for divorce, the younger sister iad implicated her husband also and that shows that the story was not true. There is no nerit in the contention. The First Information Report could not be falsified by the

allegations made in the divorce petition. The latter is not relevant for considering the ruth of the prosecution.

The learned counsel next contended that the deceased had written five or six letters to her parents but none of them has been produced. We have to see whether the evidence placed before court is sufficient to prove the charges. The absence of the said letters does not disprove the case of the prosecution. The next argument is that there is no mark on the dead body to evidence the alleged beating. There is ample evidence to prove that there was harassment by the appellants. The same has been believed by the courts below. We see no infirmity in the discussion oz appreciation of evidence by the Courts below.

In the case of Ramkumar and another v. State of Haryana 39 honorable court decided that the circumstances, we do not find any justification to interfere with the concurrent findings of the Courts below, The appeal fails and is hereby dismissed.

- **Accepting final report without issuing notice is illegal**

It was held by **A. P. High Court in Injamuri Jayamma v. Director General of Police (CID) Hyderabad and another.**4' It was held having regard to the principles laid down as to the mandatory requirements of sec. 173 Cr. P.C. in the instant case, glaringly, the learned Magistrate did not give any reasons much less any opportunity of hearing either to the said V. John to whom the notice was alleged to have been served or to the petitioner.

The order passed by the Magistrate also is a one line order whereas the final report runs into pages and there is absolutely no consideration either way for accepting or rejecting the same and the reasons therefore (para 25) of the case mentioned above.

A. P. High Court in Injamuri Jayamma v. Director General of Police (CID) Hyderabad and another.

5.7 OFFENCES RELATING TO THE REGISTRATION OF FIR

Signature on the FIR

The FIR must be signed by the Informant.

(a) Informant right to refuse to s'ing the FIR

Informant should not sign the FIR if the information written by the Police Officer is not narrated by him, or if it is wrong. The informant may refuse to sign the FIR if the information recorded by the police officer is not correct.

b) When it will be an offence

After giving the information, after recording the information as stated by the aformant, if the informant refused to sign the report of the FIR made by him to the police Officer he may be prosecuted for the offence under Section 180 IPC.

i). Section 180 of Indian Penal Code Section 180 of IPC reads as follows:—

Refusing to sign statement:- "Whoever refuses to sign any statement made by rim, when required to sign that statement by a public servant legally competent to require hat he shall sign that statement, shall be punished with simple imprisonment for a term vhich may extend to three months or with fine which may extend to Rs. 500/- or with ioth."

To punish the informant it is necessary for the prosecution to prove that:

(a) The accused informant (if he refuses to sign) made a particular statement.

(b) That he shall be required to sign that statement by a public servant.

(c) That such public servant was legally competent to require him to sign such statement.

(d) That the accused refused to sign such statement.

ii). Police has no power to refuse to record FIR

The Police Officer has no power to refuse to enter the received information in 'irst Information Report for adequate action about the commission of cognizable offence s given to him, but he can refuse to record the FIR if the information is given as vague md not adequate enough to enable him to commence an investigation. Refusal to record he FIR by the police officer is punishable departmentally and legally i.e. under Section!17 ofI.P.C.

v) Section 217 Indian Penal Code

'ublic servant disobeying direction by law with intent to save person from punishment or Property from forfeiture :— Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

- **Nature of the offence**

Section 217 of IPC is cognizable offence, bailable offence triable by any Magistrate.

v). Lodging a False Report

People may lodge false report:

(i) for taking vengeance;

(ii) for getting insurance money, illegally by cooked-up stories of death or fire;

(iii) for grabbing other’s ornaments by narrating false stories of theft; and

(iv) for misleading the police.

It is the duty of the police officers in such cases to make an enquiry into the matter so that innocent persons are not charged on false information. The story of the informant must be scrutinized carefully and evidence must be collected to establish that the case is false.

Once it is established that the case is false, the FIR is to be sent to the Court for cancellation. A final report as required u/s. 173(2) Cr.P.C. is to be drafted by the police officer-in-charge of the Police Station emphasizing the following points :—

1. The brief facts given by the informant in the FIR.

2. The observation of the Investigating Officer who investigated the case of the Informant by inspection of the spot or material exhibits relied by the informant.

3. Direct and indirect evidence and its details which lead to the definite conclusion of the witnesses and the nature of the evidence given by them.

4. In support of information and scientific evidence on which he relies.

5. How the facts given by the complainant are not reconcilable.

6. How the evidence relied upon by the informant is worthy of rejection.

7. Why the informant was motivated to move to the police.

8. In the concluding para there should be a prayer that the case be closed:

(a) if any accused is arrested that he be discharged,

(b) if anything has been taken into possession and how it should be disposed of.

(c) That the informant should be proceeded against under Section 182 or S. 211 of Cr. P.C.

i). Filing of a ease against an informant

A final report should be submitted to the Competent Magistrate for his order that he case is closed. After the final disposal of the original case, the informant may be

Prosecuted for lodging a false FIR for the offence under Section 182 of I.P.C. or S. 211 of .P.C.

ii). Section 182 Indian Penal Code

false information, with intent to cause public servant to use his lawful power to the njury of another person "Whoever gives to any public servant any information which he knows or 3elieves to be false, intending thereby to cause, or knowing it to be likely that he will hereby cause, such public servant: —

a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or) to use the lawful power of such public servant to the injury or annoyance of any Person, shall be punished with imprisonment of either description for a term which nay extend to six months, or with fine which may extend to one thousand rupees, or with both.

It is a non-cognizable offence, bailable, triable by Magistrate of First Class.

Section 211 Indian Penal Code

- **False charge of Offence made with intent to injury:—**

"Whoever, with intent to cause injury to any person, institutes or causes to be instituted any Criminal Proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Nature of offence- This offence is Non-Cognizable, Bailable and triable by Magistrate of the first class.

viii). Recording untrue statements in FIR by the Police Officer

Recording of untrue statements in the FIR is a serious offence. The police officer is responsible for inserting anything false in the FIR and is liable to be punished under Section 177 and S. 218 ofI.P.C.

ix). Section 177 of Indian Penal Code

Sec. 177 of IPC reads as follows:—

Furnishing false information: —Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Nature of the Offence- This offence is Non-Cognizable, Bailable and triable by any Magistrate

Section 218 Indian Penal Code

- **Section 218 of IPC reads as follows:—**

Public servant framing incorrect record or writing with intent to save person rom punishment or property from forfeiture :— Whoever being a public servant, and being as such public servant, charged with the preparation of any record or other writing, rames that record or writing in a manner which he know's to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the

public or o any person, or with intent thereby to save, or knowing it to be likely that he will hereby save, any person from legal punishment, or with intent to save, or knowing that ie is likely thereby to save, any property from forfeiture or other charge to which it is table by law, shall be punished with imprisonment of either description for a term which nay extend to three years, or with fine, or with both."

Nature of offence- This offence is cognizable, Bailable and triable by any Magistrate.

In the absence of name of witness, Evidence can not be doubted Non-mention of name of witness is not a ground to doubt his evidence, there is no equirements of mentioning of the names of all witnesses in the first information report, but the details and description of witnesses, who saw the commencement of offence is dvisable, to mention in the FIR.

The High Court has noted that the names of witnesses to riot appear in the first information report. That by itself cannot be a ground of doubt heir evidence as noted by this Court in **Bhagwan Singh and others v. State of M.P**. There is no requirement of mentioning the names of all witnesses in the first information Report.

CHAPTER-6

Conclusion & Suggestion

6.1 Conclusion

First information report is the very first step to set in motion the criminal law. A common man invariably face the problems in getting registered their cases. Police always escape from their essential duty of registering the problems faced by the person aggrieved. Police give excuses like lack of jurisdiction, lack of Police force etc. They do not have any investigating tools. There is lack of scientific knowledge also in the Police department. Registration of the case is not enough. Something more is required to be done in this regard for delivering the real justice to the victim. Criminal Law is set in motion by the registration of the case. Object of the study is to do something pragmatic which can help the common man for getting their case registered. First of all, for victim this is very essential to make him psychologically enable to deal with the situation faced by him.

A Police Officer writes first Information Report. State has duty to take in to its cognizance the commission of a cognizable case. Generally, a Police officer does not possess the adequate knowledge to deal with these cases promptly, as these cases demand urgent attention because the delay erases the available evidences.

A Police officer has to perform many duties at the same time when he registers a case. He has to do the panchnama, finger print expert, forensic expert and investigation is also conducted by him. Registration of First Information Reports in Police Stations is a serious problem. Registration of First Information Report is a duty of the every Police Station In charge. A common citizen finds it very difficult to lodge an FIR registered. If two parties are giving different versions, then Police cannot sit and decide as to which version out of the two is correct version.

Prompt lodging of information of commission of cognizable offence at the first available opportunity is supposed to be true version without any addition, embellishment and concoctions The chances of missing links outside influence acer thought and additions are removed, where the memory is fresh and information is given without any loss of time. In past their was many hardships in registering a case, as distance of Police Station and Place of occurrence, transport and communication mediums, but some of these factors have been extinguished by the lapse of time.

on First Information Report (FIR). In this chapter, an attempt has been made to understand the meaning, object, importance, essentials of FIR. Information received on telephone is to be treated as FIR or not. Authentic information has to be written by the Officer-in-Charge of the Police Station, irrespective of the information received by telephone or by any other means.

Recent trends allow that the FIR may be written through e-mail, SMS or by telephone. It is a written document prepared by the Police in India, Pakistan, Malaysia, Bangladesh and Japan when they receive information about the commission of a cognizable offence. The expression, First Information or First Information Report is not defined in the Criminal Procedure Code (Cr. P. C.) 1973, but these words are always understood to mean, Information recorded under Section 154(1) of Cr. P. C. It is the Information given to a Police Officer in the form of a complaint or accusation, regarding the commission or suspected commission of a cognizable offence.

It is given with the object of setting the criminal law in motion and police starting the investigation. This report forms the foundation of the case. F.I.R. is the information which is given first in point of time. Obviously, there cannot be more than one F.I.R. in one case; however, there may be many the victims in one case.

FIR is the first step of Criminal Procedure that leads to the trial and punishment of a criminal. It is also most important supportive evidence on which the entire structure of the prosecution case is built-up. The main objective of the FIR is to enable the Police

officer-in-charge of the Police Station to initiate the investigation on the crime and to collect evidence as soon as possible. It is first report of the crime and so it is a valuable document that throws much light on the crime. It is also important because it is a statement which is made soon after the occurrence of the crime without fabrication and any prosecution case that may be subsequently made-up can be checked in the light of the first report.

FIR is not substantive piece of evidence, but at times, it affects the prosecution case. Therefore, correct recording of FIR is required. FIR should contain as much information as is available at the time of recording it. The value attached to an FIR differs from case to case and no general principle can be applied. The information need not necessarily be against a person by name, it may be against an unknown person. In such a case, it is the duty of the Police Officer to find out the real offender during the course of investigation.

F.I.R. is distinguished from information received after the commencement of the investigation which is covered by Sections 161 and 162 of the Code of criminal Procedure. Such information is inadmissible. Cryptic and anonymous oral message received by a police officer or a person in police station, which does not clearly specify a cognizable offence, cannot be treated as F.I.R.

POWER AND DUTIES OF THE OFFICER-IN- CHARGE OF POLICE STATION. In this chapter, it has been discussed that Every Officer-in-charge of a Police Station is empowered to investigate any cognizable case without the order of a Magistrate and the proceedings in any such case shall not, at any stage, be called in question on the ground that the case was one, which such officer was not empowered to investigate. In this chapter, duties of a Police. officer are also discussed.

FIR AND DELAY. In this chapter Advantage of prompt FIR and disadvantage of delayed FIR has been discussed in detail. Prompt lodging of information of

commission of cognizable offence at the first available opportunity is supposed to be true version without any addition, embellishment and concoction.

The chances of missing links outside influence after thought and additions are removed, where the memory is fresh and information is given without any loss of time. First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the report can hardly be over- estimated from the stand point of accused.

The object of insisting upon prompt lodging to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the parts played by them as well as the names of eye-witnesses present at the scene of occurrence.

It is, therefore, essential that the delay in lodging of the F.I.R. report should be satisfactorily explained. Delay as regards timing of lodging of First Information Report is fatal to the prosecution case. Delay may differ from case to case, delay may be due to the mental condition of the victim, geographical, seasonal and circumstantial conditions may be one of the reasons for delay in lodging of FIR.

JURISDICTION, OFFENCES RELATING TO FIR AND ROLE OF MAGISTRATE.
A Police officer has to write the case relating to the cognizable offence irrespective to the place of occurrence, if, an informant comes to him ask the officer-in-charge of the Police station to register the case. He must register the case and send it to the concerned Police Station. Police Officer cannot refuse to record the FIR on the ground that he has no territorial jurisdiction over place of offence. It amounts to dereliction of duty on the part of the Police Officer. The Supreme Court, in recent judgment, imposed fine on the Non-Registration of the cognizable offence.

F.I.R. IS NOT ENCYCLOPEDIA. In this chapter an attempt has been made to mention all the essentials which are necessary in FIR.

EVIDENTARY VALUE OF THE FIIL In this

it has been discussed that FIR is not a substantive piece of evidence generally and cases has been discussed where it carries the evidentiary value. Therefore, even if, the written report filed has not been duly proved the prosecution case will not fail on that ground alone and the court has to consider the substantive evidence which has been adduced by the prosecution. The value of F.I.R. must always depend on the facts and circumstances of a given case.

QUASHING AND CANCELLATION OF

FIRST INFORMATION REPORT. In this chapter cases have been explained where High court and Supreme Court have laid down the guidelines for quashing the FIR. It has been also stated that court has to use these powers very sparingly and cautiously. Few situations have also been given where FIR is liable to be cancelled.

6.2 SUGGESTIONS

In order to reform the law relating to FIR, following suggestions have been made:

(1) Protection to the Informants- At present a person feels frightened when he approaches to the Police; fear of criminal may be one of the reasons and second is the non co-operation of the police for Non registration and delay of FIR. Every informant should be given protection for the purpose that he can help the Criminal Justice delivery system fearlessly. Persons who are related directly or indirectly to the information feel comfortable that when required they will get adequate help from the Police related to their protection and relevant help if required. Safeguard measures should be put in place to monitor these precautions and their real implementation.

(2) Audio-Video recording of statements of witnesses & informants- Audio/video recording of statements of witnesses, dying declarations and confessions should be authorized by law. When the report is being written for the purpose, the Court/ Magistrate could see the condition of the informant in real and his or her natural state of mind. It will help in delivering the real justice because justice should be seen and in the same series it has been said by the jurists “Not only must Justice be done, it must also be seen to be done.”

(3) Awareness and Education about police role- There is need to generate sufficient awareness about the problems faced by the person aggrieved and under which he or she iad to deal with these situations. This awareness may be generated and imparted at school or college level as some subjects have been introduced by the Government as compulsory subject’s i.e. moral education & environment protection. In the same series police role in maintaining peace and order and’ registration of the cognizable case (FIR) has to be included in the syllabi of the students who will be the nation builder in time to come.

(4) On-Line Registration of FIR- New technology should be implemented to deal with the present scenario and the fast changing world. As online registration of the case and

registration of the information must be By SMS facility is to be started as it has not been possible in the first decade of the 21" century. It is in first stage Himachal Pradesh and some other states have introduced the SMS facility and it is to be introduced in whole Country having uniformity.

(5) FIR must be written in the language of the informant- First Information Report must be written in the language of the informant. Presently, While writing the FIR's, Urdu words are used which is not always conversant to all informants. In FIR writing, the language must be simple and technicalities should be avoided. Its real purpose is only to give the information about cognizable case only and set the law into motion.

(6) Assistance of Psychologists and other experts- Psychologists may play very vital role in report writing. In many cases it has been discussed that few things invariably remains to mention in the FIR by fear or his mental condition and psychologists may help the police in extracting more information from the informant and having veracity and beyond any embellishment. Even after that a few information remains to mention does not put the entire case out of the court. That is why informant is not to be treated as harsh/ stringently and as has been used by the police department as strict in their behavior. Psychologists may bridge this gap of police and the person aggrieved.

(7) Issuance of Citizenship cards- Citizenship cards are to be issued in no time. Citizenship cards are like ATM and the multipurpose cards may be introduced by bank or some other department like election commission. Banks issues ATM card after having authentic information subject to verification and recommendation of its two subscribers and attested and processed by a gazetted officer tehsildar/ Parshad and alike. Information including photo is to be fed in the digital record of the card and Govt.'s archive. It would help in the identification of person easily including criminals, informants and witnesses.

(8) Condonation of Reasonable delay in Lodging FIR- Delay in many cases brings the prosecution case out of the court and court has to look into the matter seriously for the purpose so that justice may be done to the victim person. All reasonable delay in

lodging the FIR must be condoned in the interest of Justice and the accused should not be allowed to take defences of technicalities and delay in Justice delivery system.

(9) Installation of Complaint- Boxes in the Locality- Many social activists have suggested that to facilitate easy reporting complaint boxes should be installed at all important places of a locality. Theses boxes should be opened at short intervals by an officer of DSP rank in the presence concerned SHO district Public Relation Officer (PRO) and Media. It will help in making police more accountable to serve the real justice

(10) No need of minute details in FIR- Each and every information can not be provided due to the mental condition of a person and some information is inadvertently left to mention by the informant. F.I.R. is not an encyclopedia. Each and every minute detail is not required to be mentioned in the First Information Report. Registration of he information is only for the purpose to get it registered and to take further necessary iction relating to the crime and set the law into motion.

11) Knowledge of Modern Scientific and Technical tools- In India there is high lliteracy rate. People are not aware of the new methods of scientific investigations.

Even in many cases decided by the Supreme Court it has been discussed that some victims do not know that prompt registration of the case is necessary and delay will throw out their case out of the court.

Literacy rate in developed countries is high and the citizens of these countries use the technology in the manner as they are familiar in using the same. In compare to these countries, in our country citizens of rural area have no knowledge of using these gadgets in a responsible manner.

This is also a hindrance in the issuing of the multipurpose citizenship cards. Only awareness about this will increase accountability in a citizen and in knowing their rights and duties. If the citizens are not aware of the general and basic technology they

can not take part in the criminal justice delivery system. For example if a person does not know how to use ATM and their proper use, use of password, criminals and dishonest person will take benefit of the same and withdraw their money. Legal awareness camp regarding the rights and duties of a responsible citizen will help in disseminating the use of multipurpose citizenship cards. Steps should be taken in this regard.

(12) Training to Police officers- Trained/ Specified officers should be appointed for Registration of the First Information Report and Police service conditions should be made more lucrative. Police functioning and their living must be accordingly improved. On the top of the reform agenda should be the transformation of police force. Police is the executive functionary in the administration. A good standard of living helps the police to have a concern for kindness, tenderness, elegance and civility. A low living standard derogates the police image, as well as their self-esteem which is reflected in their job.

(13) Police Reforms- Mere Registration of the First Information Report is not enough when the cognizable offence occur, the crime must be investigated in a proper manner to impart real Justice. In India a Police Constable works as forensic expert and each and everything relating to the investigation of the crime is dealt with by him as a novel. He does not posses scientific knowledge to deal with the victim/ deceased and place of occurrence and tempers with the evidences inadvertently, resultantly the law fails to impart Justice.

The machinery of Criminal Justice System is put into gear when an offence is registered and then investigated. A prompt and quality investigation is, therefore, the foundation of the effective Criminal Justice System.

Police are employed to perform multifarious duties and quite often the important work of expeditious investigation gets relegated in priority. A separate wing of investigation with clear mandate that it is accountable only to Rule of Law is the need of the day. Most of the Laws, both substantive as well as procedural were enacted more than 100

years back. Criminality has undergone a tremendous change qualitatively as well as quantitatively. Therefore the apparatus designed for investigation has to be equipped with laws and procedures to make it functional in the present context.

If the existing challenges of crime are to be met effectively, not only the mindset of investigators needs a change but they have to be trained in advanced technology, knowledge of changing economy, new dynamics of social engineering, efficacy and use of modem forensics etc. Investigation Agency is understaffed, ill equipped and therefore the gross inadequacies in basic facilities and infrastructure also need attention on priority.

There is need for the Law and the society to trust the police and the police leadership to ensure improvement in their credibility. In the above back drop following recommendations are made:

The Investigation Wing should be separated from the Law and Order Wing and I suggest that the wing for registration of a case is also separate for increasing the accountability.

National Security Commission and the State Security Commissions at the State level should be constituted, as recommended by the National Police Commission.

To improve quality of investigation the following measures shall be taken:

(a) The post of an Additional SP may be created exclusively for supervision of crime and proper registration (i.e. FIR).

(b) Another Additional SP in each Dist. should be made responsible for collection, compilation and dissemination of criminal intelligence; maintenance and analysis of crime data and investigation of important cases.

(c) Each State should have an officer of the IGP rank in the State Crime Branch exclusively to supervise the functioning of the Crime Police. The Crime Branch should have specialised squads for organized crime and other major crimes for their registration and investigation.

(d) Grave and sensational crimes having inter-State and transnational ramifications should be investigated by a team of special investigation officers and not by a single IO.

(e) The Sessions cases must be investigated by the senior-most police officer posted at the police station.

(f) Fair and transparent mechanisms shall be set up in place where they do not exist and strengthened where they exist, at the District Police Range and State level for redressal of public grievances.

(g) Police Establishment Boards should be set up at the police headquarters for posting, transfer and promotion etc of the District Level offices.

(h) The existing system of Police Commissioner's office which is found to be more efficient in the matter of crime control and management shall be introduced in the urban cities and towns.

(i) Dy. SP level officers to investigate crimes need to be reviewed for reducing the burden of the' Circle Officers so as to enable them to devote more time to supervisory work.

(j) Criminal cases should be registered promptly with utmost promptitude by the SHOs .

(k) Stringent punishment should be provided for false registration of cases and false complaints. Section 182/211 of IPC be suitably amended

(l) Specialised Units/Squads should be set up at the State and District. Level for investigating specified category crimes.

(m) A panel of experts be drawn from various disciplines such as auditing, computer Science, banking, engineering and revenue matters etc. at the State level from whom assistance can be sought by the investigating officers.

n) With emphasis on compulsory registration of crime and removal of difference between non-cognizable and cognizable offences, the work load of investigation, gencies would increase considerately. Additionally, some investigations would be •quired to be done by a team of investigators. For liquidating the existing pendency and for prompt and quality investigation including increase in the number of Investigating Officers is of utmost importance. It is recommended that such number be increased at least two-fold during the next three years.

(o) Similarly for ensuring effective and better quality of supervision of investigation, the number of supervisory officers (additional SPs/Dy.SP) should be doubled in next three years.

(p) Infrastructural facilities available to the Investigating Officers especially in regard to accommodation, mobility, connectivity, use of technology, training facilities etc. are grossly inadequate and they need to be improved on top priority. It is recommended a five year rolling plan be prepared and adequate funds are made available to meet the basic requirements of personnel and infrastructure of the police.

(q) Constant- evaluation of the performance of such officers in regard to the programme implementation & its effectiveness beside this, necessary follow-up measures should be taken to ensure that programme deficiencies are adequately corrected.

(r) A meaningful understanding of co-operation between police and public is necessary.

(s) Attention is required to be paid to properly develop work culture, training of citizen friendly orientation of the police force consisting with basic human values. In police training a chapter of human behavior needs to be introduced in police training programmes. The gap between public expectations and police performance has to be narrowed and for bridging this gap training will solve this purpose. Catchy slogans and public relations exercise will not achieve the desired objectives. Like "Samvedi Police and Samvedi Samaj" it has to be adopted in real sense and practically.

(14) Police Force Augmentation- Regarding Police force augmentation our Former President of India Dr. A.P.J. Abdul Kalam in the inauguration of 37'h All India Police Science Congress has suggested that in our country the present Police to people ratio stand at l:936 whereas in UK the"ratio is l:412. There is definitely a message in this for augmenting the police force and technology can be used to optimize the size of police force further. But a considerable.strength should be increased. In England this ratio is different to deal with the criminals and in India Police has to perform many functions as a traffic Inspector and in courts, Jails they also give protection to the V.I.P.'s

(15) Nation wide Uniform Scheme /model / Act should be adopted. In recent judgment Supreme Court has directed in Prakash Singh & Ors. v. Union of India and Ors., decided on 22/09/2006 that every state should choose one of the models proposed by the NHRC, the Riberio Committee or the Sorabjee Commmittee. In real some states have not opted one of these models and they have different legislation, irrespective of these guidelines.

(16) Assistance of NGO's and Public- Public and voluntarily agencies can help the victim in getting the F.I.R. lodged. Organized efforts should be made to create greater public awareness about the objectives of F.I.R. Voluntary organizations should be encouraged.

(17) Once a F.I.R. is registered, whether it is registered by the email, SMS or by any other means then it must be thoroughly investigated by a competent and impartial Inquiry Officers.

(18) In more serious offences of the nature where urgency to deal with is necessary than Police must proceed further and must not waste their time in writing F.I.R.

(19) Separate Department for FIR- A Department for registration of F.I.R. should be established to increase the accountability of Police department and inclusion of more than two members in the team will decrease the possibility of corruption and bribe in registration of the case. Team .must include a head and one of them must have knowledge of law can help the victim and this will decrease the unemployment among the law graduates and they can lead to the positivism and can help the justice delivery system by their legal aptitude.

Presently there is uncertainty as to the ambit of role of the registering the FIR and it decreases the accountability, officer who can write an FIR or this may be said that the particular officer for registering a cognizable offence. Therefore the legislature should come forward and make law to remove out such uncertainty.

A Lady Member must be included in the team because a woman can not register her case properly. This is invariably debatable that a victim of sexual abuse feels wounded in the Police Station when she goes for registration of her case. A lady can help her properly in registration of her case and group of people.

The government should consider setting up effective, adequately resourced and independent police report writing mechanisms at district level. First information report is to be written by the department which is autonomous in its nature for the purpose that no political interference can be made by the persons who are in the position interfere in the criminal justice delivery system and to do the same police department is to be severed from the department who register the cases which is of nature of cognizable offence.

(20) FIR in Special Cases- In matrimonial cases unless it is proved that cognizable offence is occurred or not F.I.R. is not to be registered. These types of cases are of serious nature and must deal accordingly and these types of institutions must be ended Like Woman Protection Cell or any Type of Special cells. Establishment of these institution/ department having quasi-judicial powers are not the solution of any problem and constitutionally invalid.

In many cases we see that some intermediaries like Indian Medical Association (IMA) some-times raises objection that before registering a case against a doctor their recommendation is necessary. This is unfair when there is prima facie a cognizable case occurs it is to be written promptly and undue delay will result in to the injustice to the victim. First Information Report as name itself defines information received by the Police officer first in time is F.I.R. Recommendation by these intermediaries (IMA & Women cell) even after six months are not to be treated as F.I.R.

(21) No Political Interference in FIR- In particular, political influence over police and the resulting resort by police must be addressed by taking relevant steps to remove the police from such influence and initiating criminal proceedings against erring police officials. There should be basic structural reform in the police to insulate it from external pressures and influence. The link between corrupt practices within the political and administrative system and the use of threats or police amounting to tortuous liability or ill treatment must be taken in to account.

(22) There should be no distinction in cognizable and non-cognizable case and compulsory registration of all crimes. Whether it is more serious or less serious in nature. In criminal Law there is no real measurement to measure pain taken by the victim and punishment inflicted to the person accused. For a sensitive person a minor offence will be as a serious offence to him and for habitual criminal punishment will be is ordinary as he had availed before.

23) Reckless/ Irresponsible members of the police force- The culprits from the io1ice force responsible for indulging in unlawful acts/ delay/ non registration of a case

should be given suitable punishment. There is no doubt, that such effective judicial intervention would sufficiently deter the erring policeman.

(24) Maintenance and Management of Police Records- Records of all complaints should be kept in a strong room with care, bound and numbered pages and including details of the informant, persons mentioned in the same and other relevant details. FIR may be saved in a digitalized manner by scanning using photocopy of the same and other ways of saving for a long period. In practical police always ask the person to bring the stationary who goes to report their cases and police excuses for the dearth of stationary. Register for the same must be signed by at least ten responsible agencies like NGO's etc. and each and every page is to be numbered for the purpose that faith may be gained of the lay man as well as all the citizens in police and justice delivery system.

(25) Effective Investigation after registering FIR- Methods of investigation need to be changed. The traditional methods of extracting information through torture of extracting need to be minimized. The prevailing sense of fear among the common people is the direct fallout of the use of methods. These methods need to be replaced by psycho-scientific ones like DNA test, Brain mapping, Narco-analysis, Lie-detector, etc. Presently these methods are not backed by legal sanctions, but considering the convenience and success of these methods and inhumanity involved in torture, these methods should be given legal sanctions.

(26) Police officers should be encouraged to opt for specialization in various streams of police administration. After a few years of exposure in different police jobs, police officers should earmarked for different branches depending on their aptitude and performance. Police officers must become true professionals if they are to succeed in controlling crime and criminals. Basic reforms in recruitment methods, system of promotion and posting are necessary to make the force more professional, accountable and less brutal.

(27) Training methodology of police needs be structuring. It should include practical methods to prevent harassment to the informant and not just theoretical teaching of legal provisions and writing of FIR standards. During training in police academies the legal provisions are tried to be memorized to trainees and they do not remember all for whole the life and there is need to make aware them time to time. The police force needs to be infused with basic values and made sensitive to the constitutional ethos.

(28) Monitoring and Supervision of registration of FIR -The government of India should introduce/ constitute a department for monitoring the registration of cases. This department will keep an eye (monitor) and ensure the accountability of police department. Then it will end the chances of delay and non-registration of a case and ensure the prompt registration of the cases.

(29) Police officers suspected and who has been declared responsible for delay and non-registration of the case or any offence relating thereto by the honorable court should not be allowed to be associated with the investigation into the alleged case of FIR in any manner, and should be removed from any position of influence over alleged victims or witnesses.

(30) Accountability of Police officers refusing to register FIR- Police officers, who refuses to register a cognizable case and shows his reluctancy to help the victim, as have been declared by the Apex court should be subject to immediate disciplinary proceedings.

(31) Access to the progress reports of FIR and consequential Investigation- FIR is a Public Document, Methods and findings of investigation should be made public and the victim or victims family must be allowed access to the complete records of the enquiry including post-mortem reports and be given the right to be represented through a competent lawyer during the enquiry because this is not enough to write/ register the First Information Report and In real there is aim to deliver the justice to the victim and not to console him by mere writing of his case only.

(32) Annual Report of Each Police Station regarding FIR- Annual report is to be prepared by the Government and data is to be published and made publicly about the reported cases in a year (containing details of every month) and action taken on the same. How many FIR's were fake and how many of them were true and containing real facts of the case.

FIR is an important report and if duly recorded provides a valuable evidence. it is a valuable piece of evidence in any criminal trial either for corroborating evidence or for contradicting witnesses, FIR can be used to corroborate the Informant under S. 157 of Indian Evidence Act, 1872, or contradict the witness under S. 145 of the same Act if the informant is called as a witness in the trial. Therefore, it becomes necessary that such report be recorded in all circumstances especially where the person has come to the police station to lodge an FIR against a particular crime. FIR considered as Substantial Evidence in certain cases which the paper will discuss and in other circumstances FIR can be used as non-confessional in nature for evidentiary purposes.

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