Subject Name: Code of Criminal Procedure
Topic Name: Process of Investigation

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Introduction

Section 23 of the Police Act, 1861 stipulates that every police officer is obligated to fulfil several duties, including collecting and disseminating intelligence pertinent to public peace, preventing offences and public nuisances, identifying and prosecuting offenders, and apprehending individuals authorised for arrest, provided there are adequate grounds for such apprehension.

Furthermore, Section 29 of the same Act outlines penalties for the neglect or failure to perform these duties.

However, the Criminal Procedure Code (CrPC) does not encompass the involvement of the police in investigating every offence. The Code categorises all offences into two distinct categories: cognizable and non-cognizable. Sections 2(c) and 2(l) of the CrPC define "cognizable offence" and "non-cognizable offence" as follows:

"Cognizable offence" denotes an offence for which, and a "cognizable case" denotes a case in which a police officer is empowered, in accordance with the First Schedule or any other prevailing law, to make an arrest without a warrant.

Conversely, a "non-cognizable offence" signifies an offence for which, and a "non-cognizable case" indicates a case in which a police officer lacks the authority to make an arrest without a warrant.

Section 157 outlines the procedure for conducting investigations when the suspicion of a cognizable offence arises. It empowers the officer-in-charge of a police station to refrain from investigating if they deem there are insufficient grounds for such action. Additionally, this section mandates the immediate notification of every complaint or information regarding the commission of a cognizable offence to the Magistrate with jurisdiction [Om Prakash v State AIR 1974 SC 1983].

Commencement of Investigation

Investigation encompasses all procedures outlined in the Code for gathering evidence, carried out by a police officer or any person authorised by a Magistrate for this purpose [Sec. 2(h)]. Broadly, the investigation of an offence includes:

1. Proceeding to the location of the offence.
2. Ascertaining the facts and circumstances surrounding the case.
3. Discovering and apprehending the suspected offender.
4. Collecting evidence related to the commission of the offence, which may involve:
   - Examining various individuals, including the accused, and recording their statements if deemed necessary by the police officer.
   - Conducting searches of premises or seizing items deemed pertinent to the investigation or trial.
5. Forming an opinion based on the collected evidence as to whether there is sufficient grounds to present the accused before a Magistrate for trial. If so, taking the necessary steps, such as filing a charge-sheet.

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Procedure for Investigation in Cognizable Cases

Under Section 157(1), the police can initiate an investigation based on information received from any individual regarding the commission of a cognizable offence, or even without such information if there are reasons to suspect such an offence.

There are two situations where it's unnecessary for the Station House Officer (S.H.O.) to personally investigate or assign a subordinate officer to do so: (i) when the accusation is against a named individual and the case is not of a serious nature [Proviso (a) to Sec. 157 (1)]; (ii) when the S.H.O. believes there are insufficient grounds for commencing an investigation [Proviso (b) to Sec. 157 (1)].

If the officer-in-charge of a police station has reason to suspect the commission of an offence, which they are authorised to investigate under Section 156, they must promptly report it to a Magistrate empowered to take cognizance of such offences based on a police report [Sec. 157(1)].

This provision serves to keep the Magistrate informed about the investigation of a cognizable offence, allowing them to oversee and, if necessary, provide directions under Section 159. The phrase 'or otherwise' encompasses all sources of information besides those provided and recorded under Section 154 (F.I.R.).

Therefore, the police officer acting under Section 157(1) must report to the Magistrate with jurisdiction, indicating suspicion of a cognizable offence and their initiation of the investigation. This report aims to ensure the Magistrate is promptly informed of any significant case, enabling them to take action if required. Failure to submit such a report constitutes a serious dereliction of duty on the part of the police officer and may lead to a miscarriage of justice (as it raises suspicions of fabricated evidence) **[Hafiz Mohd. v Emperor AIR 1931 Pat 150].** Nonetheless, if the accused is not prejudiced by the omission to submit the report, it does not invalidate the trial.

Delay in Sending Report to Magistrate

The timely dispatch of a copy of the F.I.R. to a Magistrate holds immense importance. An "extraordinary delay" in sending the F.I.R. raises legitimate suspicions that the report was recorded much later than claimed, potentially allowing the prosecution to introduce enhancements and distort the occurrence's version, as seen in ***M. Singh v State of U.P., AIR 1976 SC 2423***. However, it's crucial to note that the delay referenced in Section 157 for doubting the F.I.R. 's authenticity pertains to extraordinary and unexplained delays, not every delay, as established in ***Anil Rai v State of Bihar, AIR 2001 SC 3713.***

Nevertheless, the delay in dispatching the F.I.R. to the Magistrate does not necessarily impact the prosecution's case unless it causes prejudice to the accused, as indicated in ***Ram Rao v State, 1996 CrLJ 112 Bom.*** Moreover, a cogent and reasonable explanation for the delay in dispatching the F.I.R. is not grounds to dismiss the prosecution case entirely, as ruled in ***Sarwan Singh v State of Punjab, AIR 1976 SC 2304.***

Procedure for Investigation in Non-Cognizable Cases

In instances where a Magistrate, as per Section 155(2), issues an order to a police officer to investigate a non-cognizable case, the receiving police officer is empowered, under Section 155(3), to exercise the same authorities regarding the investigation, except for the power to arrest without a warrant, as an officer in charge of a police station would in a cognizable case.

In situations where a criminal case involves both cognizable and non-cognizable offences, determining whether the case should be treated as cognizable or non-cognizable may pose a question. To address such circumstances, Section 155(4) stipulates that "where a case involves 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."

For example, a case alleging offences under Sections 494 and 498-A of the Indian Penal Code (IPC) could be investigated by the police, even though the offence under Section 494 is non-cognizable. This is due to the provision outlined in Section 155(4).

Power to Require Attendance of Witness

According to Section 160(1), an investigating police officer can order the attendance of any person before them under certain conditions:

(a) The order must be in writing.
(b) The person should have knowledge of the facts and circumstances of the case.
(c) The person should be within the jurisdiction of the investigating police officer's station or an adjoining station.

However, individuals below 15 years old, over 65, women, or mentally or physically disabled persons are exempt from attending any place other than their residence, as per the proviso to Section 160(1). This provision aims to protect vulnerable groups from potential abuses of police power and inconvenience.

It is legally mandated for individuals to comply with the investigating police officer's requirement to attend. Failure to do so intentionally can result in punishment under Section 174 of the Indian Penal Code (IPC). Nonetheless, the police officer lacks the authority to use force, arrest, or detain such witnesses.

In a case where allegations of rape were made against the founder of an ashram, and victims were removed for questioning at women police stations to encourage truthful disclosure without fear, the Supreme Court ruled that Section 160 was not violated.



Section 160(2) allows State Governments to make rules regarding the payment of reasonable expenses to individuals attending at places other than their residence as required by police officers. However, due to the significant financial burden involved, the matter is left entirely to the discretion of the State Government to establish such rules.

In the case of **Sutapa Adhikari & Ors v State of West Bengal & Anr,** the Calcutta High Court emphasised that Section 160 of the CrPC empowers a police officer to require the attendance of witnesses. However, it cautioned against using this provision to summon individuals unconnected with the offence, as it could deny them their proper redressal.

The court stated that if there is an allegation of a violation of notice under Section 160, appropriate steps can be taken under Section 174 of the Indian Penal Code, but using Section 160 as an oppressive measure is not permissible. Citizens are subject to criminal law and procedure, but such laws should not be misused.

Similarly, in **Devendra Singh And 4 Others vs. State Of U.P. And 2 Others,** the Allahabad High Court criticised the issuance of notices under Section 160 of the CrPC to five accused individuals in connection with an FIR registered against them 17 years ago.

The court deemed this action a mockery of criminal jurisprudence and protected the accused individuals, granting them the liberty to apply for anticipatory bail. The court disapproved of the delay in issuing notices and directed that the interests of the petitioners be protected, with their cooperation in the investigation

Examination of Witnesses

Sections 161 and 162, which pertain to the oral examination of witnesses by the police, the recording of their statements, and the subsequent use of such statements, are pivotal components of Chapter XII of the Code. The Delhi High Court has clarified that the statements recorded by police officers and the accompanying documents are public documents accessible to citizens. These sections have elicited various comments and suggestions.

The primary objective of Section 161 is to gather evidence that can be presented during the trial. In trials before a court of session or in cases of warrant trials, the statements recorded by the police under Section 161 may form the basis for framing charges against the accused.

In the **Nandini Satpathy case**, the Supreme Court extensively analysed the provisions of Section 161(2) of the CrPC and the scope of Article 20(3) of the Constitution.

The Court held that an accused person cannot be compelled to answer questions if the answers may expose them to guilt in another accusation, even if the current investigation is not related to that matter. The Court emphasised that the tendency to expose to a criminal charge is broader than actual exposure.

The concept of "compelled testimony" was also discussed, encompassing not only physical threats but also psychological coercion, intimidating methods, and threats of prosecution. The Court cautioned against overbearing interrogation tactics that could violate Article 20(3).

Providing concrete guidelines, the Supreme Court outlined the following principles:

1. An accused person has the right to have their lawyer present during police interrogation, and this right should not be denied. However, the police need not wait excessively for the arrival of the accused's advocate.

2. The police must inform the accused about their right to remain silent against self-incrimination, and if the accused is literate, their acknowledgment should be obtained in writing.

3. In cases where the accused's lawyer is not available, the police should take the accused to a neutral official or nonofficial for a private conversation, where the accused can disclose any duress they may have faced. This conversation should be recorded and communicated to the nearest Magistrate.