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Role of Investigation Agencies under Criminal Justice System in India

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ABSTRACT

The king is the guardian of citizen liberty, freedom and moral order is an exercise in justice observed by Plato, a Greek Philosopher and thinker. The justice delivery system is the benchmark of all democratic countries everywhere. The Constitution of India provides modern welfare and democratic rights to life and liberty under the Article 21. It envisages that “no one shall be deprived of his life and liberty except according to the due procedure established by law. This the very important question that the individual has been granted the protection and security against the State. The Police Administration including CBI, RAW, ATS and LIO, and IB have to go under the various applications of procedure. The mechanism for the harbinger the justice system and brought the accused to end. The rule of law and Body of system are two elements in the administration of criminal justice System. This is not practically possible in each case to undermine the law as the need of innovation and technology in modern time. The law enacted by the State for redressal of crime are traditionally in-adequate due to the lack of skill and technical support to all agencies despite the guidelines of judiciary are not properly implemented. The current remark by Apex court on the action and function of the Enforcement Directorate, CBI has flourished the issue once more time about the procedure and power of the authority to be laid down and fixed the cases as per curium in justice system “whether you want to put every person on board or behind the bar” observed by bench lead by A M Khandelwalker and A S Oka JJ. The Image of the existing Criminal justice system is not sound in the eyes of citizens and they are losing the faith in Rule of Law in the country and adoption of new infrastructure and scientific approach in dealing the crimes and criminals is the need of hour.

Keywords: Criminal justice, Democratic, Enforcement Directorate, Technology, scientific approach.

I. INTRODUCTION

India is democratic nation and the state play an important role in the administration. The Civil and criminal administration are the backbone of the system. The rights of the person and the justice is always an consideration of the society. The legalistic view on the justice has been a

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notion that “justice is given to each man what is proper to him”. According to *Plato* justice is harmony of men’s inner life or with body politic. Harmony is the quality of justice and it is to be achieved by reason and wisdom presiding over desires and keeping them in place with indispensable.² The Latin maxim clearly mention the concept of justice “*Salus populip est suprema lex*” (which means that the safety of the people in a state is the supreme law) and “*Salus republicae est suprema lex*” (which means that the safety of the State is the Supreme law) co-exist and these are not only required in a rule of law but are very important and lie at the heart of the idea that the welfare of a citizen and an individual must be made by the state. The balance to be achieved in these two terms is a very tough and hardworking job and the entire politics in the practical work of the agencies is revolved around these two fields. There should be adopted a balanced approach which is a very responsible job by the investigating agencies in investigating crimes for the interest o0f the state and simultaneously ensuring not to infringe the fundamental rights of the citizens.

II. FUNDAMENTAL RIGHTS VERSUS INTERESTS OF STATE

According to *Aristotle Nichomacheoan* ethics, Justice³ is a moral state” that in virtue of just man is said to be a doer, by choice, of that which is just followed by *St. Thomas Aquinas* and *Del Vecchio* in his work. He has classified the justice in two forms;

- A. Distributive Justice;
- B. Corrective Justice.

In modern legal sense, they are respectively understood as social justice and penal or criminal justice. Distributive justice deals with the distribution of power, money or other things and corrective justice deals with the maintenance of status quo by protecting the things wrongly done or taken and resorting the good to the individual.⁴ In functional aspect, justice is the sort of some equality. The origin of culture and civilization in all the countries of the world continues to be the goal of human welfare and endeavor for a better and meaningful living. One of the important essentials and basic requirement of administration of modern democratic country is working and functioning of system of Criminal Justice Administration for the welfare of society. When we come across news at any hour of heinous and brutal crimes and above that, come to know that fake statements are given by officials who have the responsibility of arresting the offenders, it shakes the conscience of every citizen.

² S.N. Dhyana; Fundamental of Jurisprudence, Indian Approach p. 155(3rd ed. 2004)

³ W.D Ross p.1134 Vol. IX (1954)

⁴ Supra Note 1, p 156.

The Roman concept of justice is different with the Greek notion of justice. According to Roman's justice as the goal or law and society based upon Ulpian definition⁵. The Justinian's corpus is based on the Ulpian's definition as 'Justice is the constant and perpetual will' to render everyone his due.⁶ This the very important question that the individual has been granted the protection and security against the State. It is the duty and obligation of the State to ensure the Justice to All.

The main operative part of the Criminal Justice system includes distinct constituent institutions or agencies set up by the state. They play their respective roles in coordination with each other as naturally would be required in a well-established system. According to *Herbert Spencer* and *Immanuel Kant*, justice is linked with human liberty and freedom. According to him, justice is his celebrated doctrine 'every man is free to do that what he wills provided he infringes not the equal freedom of any other man'. *Emanuel Kant* emphasised on liberty in place of equality for determining the matrix of justice. Law Commission of India has held in 277th report has provided that '*India's criminal laws are to see a complete overhauling. Safety and welfare of society in India is at a big stake with existing criminal justice system*'⁷.

(A) Concept and Development of Justice

Justice is a generic term which includes both procedural and substantive justice consisting of procedural and spirit of law including the social aid, assistance benefits and privileges and rights for the welfare of the people. The Constitution of India embodied the concept of social, economic and political justice under the Preamble and part III and IV of the Constitution,⁸ After the Independence of the India, there has been established administration of Justice. It provides the procedure, rules and regulation framed by the State in its sovereign power. But as law can't be static and it has to match with dynamic societies.

The accountability and responsibility of the State agencies can be determined by the application of the certain direction and guidelines observed by the apex court in dealing with criminal justice administration. The Constitution has been amended to give the effect of justice to all for the protection of liberties and promotion of equality. The role of Supreme Court is very powerful in determining the rights and justice to people through the constitutional tools and technique of judicial review. The power of Supreme Court is fundamental in cultivating the rights in egalitarian society. The development of democratic society observed by court in a

⁵ S.N. Dhyana; *Fundamental of Jurisprudence, Indian Approach* p. 155(3rd ed. 2004).

⁶ *Ibid* .

⁷ Report of Law Commission of India, 277th Ed. 2016,

⁸ The Constitution of India, 1950.

landmark case '*kesavnanda Bharti*'⁹ based on the principle of justice, whether the Constitution and the other statutory laws are sufficient for the harbinger of Justice without the honest, ethical, proper and qualified Investigative Agencies to do the Justice to common men and all in exception. This can be discussed and summarized as below;

- There is need for the well trained and qualified investigative agencies who are full of honesty, integrity and ethical values for the redressal of issues and conflict arising between the citizens inter se and the State and the citizens.
- The rule of Justice, Equity and Good conscience are important elements in determination of the impartial and unbiased investigation.

At the state and situation of existing criminal justice in India today, the Government issued a notification after the report submitted to it by the Criminal Justice Reforms Committee and concluded:

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

(B) Function of Officers and Authorities

Egalitarian justice has been the notion of the act of State in developing procedural justice, consisting in employing the correct methods to develop rules of conduct to ascertain facts in to final dispositive judgments. The body of well-established rule of procedural justice is the natural justice, based on the principle of equality and harmony that justice not only done but seen to be done. The “Criminal Justice System” of a country works on the sanctions given to it by the statutes enacted by the Union and the state legislatures. When law empowers the state to appoint and establish the institutions and constitute a system, fabricated and synthesized to work in a particular fashion, the enforcement of intended laws is taken up by various agencies set up for the purpose by the state as per the nature and requirement of task and the job to work for criminal justice system.

a. Legal Provisions related to Public Prosecution

The Code of Criminal Procedure provides for the constitution of prosecuting offices by appropriate governments such as Central and State governments. The recruitment of prosecution officer, which are terms as public prosecutors, additional or assistant Public

⁹ 1973 AIR S.C. 499 (India).

prosecution under sections, 24 and 25 of the Code¹⁰ provides for the recruitment and functioning of prosecution officers to represent the Central and the State governments in High Courts and in the Sessions courts.

Section, 25A provide for the administration of Prosecution department by establishing a Directorate of Prosecution and for the recruitment of Director and Deputy Director of Prosecution. Section 25A also provide for the subordination of prosecuting officers.¹¹ These agencies and institution are namely:

- i. The investigative agency,
- ii. The Prosecution,
- iii. The Judiciary, and
- iv. The Prison Authorities.

b. The Constitution and Role of State

The Constitution established the rule of law¹² and mandate the right to justice to all. The law s equally applicable and protect from the arbitrary action of the State. The State is the most powerful tool for harbinger of justice and growth of the people. There is a separation of powers under the state. The political philosophy of the State has been evolved on the principle of action of legislature, executive and judiciary. The three organ of the State are the backbone in administration of justice. The function of the legislature is to frame laws, rule and regulation for the welfare of people and the executive has to enforce the law. The role of judiciary is to look that there is no infringement of the rights of individual liberty. The judiciary is the guardian of the rights guaranteed under Constitution.¹³

III. CHALLENGES OF INVESTIGATING AGENCIES AND THE POLICE

At grass root level the practicality of the investigation play a very different role at the field and places. There are a lot of difficulties and constraints which are faced by investigating officers at various phases. This is not fair to criticize an institution without mentioning and appreciation of the real challenges faced by them, highlights of them are as follows-

- i. Lack of Manpower and associated work load due to under manning,
- ii. No Support and Cooperation from public at large,

¹⁰ The Code of Criminal Procedure, 1973

¹¹ The Code of Criminal Procedure , 1973.

¹² Article14, the Constitutional Law of India, (1950).

¹³MP Jain, the Constitutional Law of India. p. 352 9TH ed..E.B.C. Nagpur, (2010).

- iii. Logistics and forensic development are not enough as required in today's conditions of dynamic crimes,
- iv. Untrained staff especially lacking in Technology,
- v. Inadequate state of the art training facility,
- vi. Lack of coordination from other supporting Departments,
- vii. Lack of coordination and cooperation from prosecution Department,
- viii. Distrust of Law Courts,
- ix. Disturbed man force in other duties,
- x. External pressures such as political and departmental involvements

(A) Consequences of Crime and Criminal Justice System

Where do we stand in delivering Justice to our society is clearly reflected in our cries when suddenly in any hour on a day, we come across a new news like¹⁴ 'or the very silent, common and unfortunately always unreported incidents of domestic violence actually occurring in every home stead. Accused suffers a lot for waiting to get the decision of his case and his right to life and liberty get violated in every minute on daily basis. Right to speedy trial is a right that is given by the Article, 21 as declared by the honorable Supreme Court.¹⁵ Delay causes injustice to victim, accused and to the society at large. If accused is convicted after so many years or decades, make no satisfaction at all because feelings of pain are only satisfied of a victim.

(B) Right to Protection and Justice

Justice suffers when any innocent person is falsely implicated and punished, also when the guilty is acquitted and also when there is an unreasonable delay in adjudicating a criminal case in the lack of evidences. The real guilty gets escaped from the grip of the law. The Law has become a handmade tool for the evil minds and the powerful influential people. If the conviction is done as early as possible and if conviction is delayed, that make a counter productive result. The victim gets equally humiliated mentally as much he get when he suffers crime. Same was witnessed by the nation in Delhi's *Nirbhaya's Case* when mother of the victim had to suffer so many years despite of being most brutal, heinous and rarest of the rare cases.

(C) Notion of Justice: Whether there should be a Justice

Why in the '*Hathras Rape Case*', even the Superintendent of Police of the Hathras, said openly

¹⁴ *The Hathras Gang Rape Case (2020), the Unnao Rape and Murder Case (2019), the Kathua Gang Rape and Murder Case, Delhi's Nirbhaya's Gang Rape Case (2012)* (India) .

¹⁵ *Hussain Aara Khatoon vs. State of Bihar (1979) A.I.R p. 1819 (India) .*

live on the news cameras that “No rape was committed and no incident of tongue and spinal damage was there when after transfer of the case to CBI on October 2nd, 2020 CBI submitted a 2000 pages charge sheet and in medical report containing the tongue, spinal damages and gang rape is clearly proved.¹⁶ In “Unnao Rape and Murder 2018” the victim had to immolate herself in the front of then Chief Minister’s residence even to register her FIR because the heinous crime was done by the influential person of society, yet how much amount of the justice did she got, we all know. Who have not join the on the day, two relative died on the spot, the girl after some time died in hospital.¹⁷

(D) Reforms required for Underutilization of Legal Provisions related to trial

Despite equipped with legal provisions, some of the provisions of law are not utilized by the agencies involved in criminal justice system and proper use. The functioning of these provisions can make a drastic change in the working and reduce the work load considerably.

The Code of Criminal Procedure,1973 and Evidence Act provides for the various kinds of provisions which have been enacted to cater to problems of delay and like but unfortunately, this is the attitude of advocates and Courts that they tend to work in a pre- fashioned manner and only in a single way.

Section 294, 265, 265A to 265 L provides for alternative dispute resolution (ADR) technique in the forms of Plea bargaining and admissions to save the time but these provisions are not utilized at their full magnitude.¹⁸ It may be worth mentioning the thoughts made by Lord Auld in his “Review” for saving time and making the proceedings quick and he observed –

“where there is a desperate need for a pre-trial hearing, the adjudicating court and the parties should go to take full advantage of it and to resolve all the outstanding pending issues as to the conduct of the every step of proceedings and the trial and in dealing with all or any preliminary issues of law or fact that will assist that resolution’.

IV. CHANGING APPROACH OF LAW AND SOCIETY

Criminals can’t be eliminated from the society completely but the irony and the biggest problem is that in our country, criminals after committing crime are supported either by the corrupt officials, politicians or by society because of their roots in the social fabrics. Reasons are many, but solution is not concrete, Justice which is provided by law is never reached to the poor

¹⁶ Hathras Gang-Rape and Murder Case: A Timeline ; <https://thewire.in/women/hathras-gang-rape-and-murder-case-a-timeline> (Last Access dated 12.01.2023, 11:50 PM)

¹⁷ www.ndtv.com dated(Last Access 11:30 AM, dated 23.11.2020)

¹⁸ Code of Criminal Procedure,1973

victims.

There are unanswered and unending questions -

- i. How successful is our criminal justice system?
- ii. What are the lacunas and loopholes?
- iii. What reforms are required?
- iv. Who is the ultimately responsible?
- v. Lastly, when the changes would come?

(A) Investigation and Criminal Justice System

Generally investigating agency, is the police, which is the institution set up by the state for the purpose. The law which governs the investigation is provided in the Code of Criminal Procedure 1973 regarding investigations and other related provisions.¹⁹

The Police department is vested with the responsibility of maintaining law and order. The protection of the fundamental rights of the citizen is the first window that represents the face of the state to citizens. For these duties, investigating agencies should work proactively in anticipation for prevention.

As per the section, 45²⁰ Court has to rely on the experts reports and this is fact which should be realized that these cross functional departments are indirectly connected to the criminal justice system and they form an integral part of the system. These functions are the aids which should work in consonance with the investigating agencies.

In every condition, responsibility can be catered over only when the empowerment is done properly. Sometimes, police is to depend on others to initiate their work, such as experts reports play very important role and they can started and finished in time only when expert reports are fed to them in time. For example the report of forensic science laboratories experts and Medical experts play a very important role in the investigation and at the trial in the determination of facts.

a. Police Agency and their Role²¹

There have been numerous cases, when Police officials have not only abused their powers but they have behaved more or less like criminals and used the opportunity for their corrupt benefits. Even people tend to hide from them rather than communicating them openly and helping them.

¹⁹ The Code of Criminal Procedure, 1973 (India)

²⁰ Section 45, The Indian Evidence Act, 1872 (India).

²¹ Kelkar RV, Lecture on Criminal Procedure Code, 1973 6th ed, E.B.C (2017).

No one can forget the *Mathura Rape Case* and we have the most recent *Hathras Gang rape case*, where Police has not left any room to crush human rights and emotions below their feet. Yet reasons are many but the criticism only is not the solution for anything. Being the very first stage of criminal justice, there is a big scope and crime investigations are prone to malpractices by the investigating agencies.

They are as follows:²²

- Timely and properly investigation
- Collection of Evidence
- Reporting to the Higher Authority
- Submission of Report to the Magistrate
- Now, we shall discuss all the stages where there is scope for mal practices by the Police, the constraints faced by the Police and the possible reforms which should be introduced so strengthen the working style.

The Law which governs and throws light on investigation is provided in the Code of criminal procedure. The definition of the term ‘Investigation’ has been provided in section 2(h) of the Criminal Procedure Code as:

“All the proceedings under the code for the collection of evidence by a police officer or by any other person who is authorized by the Magistrate in this behalf. ” The Supreme Court explained the basics of investigation in its judgment as follows, the investigation of a crime consists of the following steps²³:

- 1) By the investigating team movement to the crime spot,
- 2) Inquiry and Ascertainment of all the relevant facts and circumstances of the case,
- 3) Making the discovery if not found and making the arrest of the suspect,
- 4) Making all possible efforts fir the collection of all relevant evidences which are required and relating to the circumstances and the commission of the crime.

The evidence collection may require –

- a) To inquire from present persons and recording of oral evidences and statements,

²² Ibid

²³ H.N. Rishbud v State of Delhi , (1955) AI..R 196(India) .

b) To make the search of all places and making seizure of the things found which the investigating officer doubts to be related to the crime,

- 5) As per section 170 of the Code of criminal procedure which is the specific responsibility of station house officer and the investigating officer as to make the opinion as to whether on the evidences.

These becomes a worthy case to forward before the magistrate and to place the accused before a Magistrate for facing the trial or not and, if so, taking all the required initiatives and steps for forwarding the accused before magistrate under section 170 and the filing of a charge sheet u/s 173 Code of Criminal Procedure, 1973. To overcome this, it becomes the responsibility of senior police officials to take the responsibilities and it is more the in-department thing which should be checked and controlled. The Ethical factor and the values play a major role here.

(B) Power of Police and Practice

a. Legal provisions related to Arrest

The law and the provisions for the arrest are provided in chapter 5 of the Cr.P.C. and sections 41 to section 60 A mentions various legal provisions regulating procedure for arrest, apart from the Cr.P.C. provision, there are some other special enactment which provide for arrest.

These provisions provides for the power and procedures to be adopted while making arrest of a person accused of an offence and these are carefully drafted as per the legal policies behind the need of arrest. The Chapter 5 contains section 41 to section 60A of the Code of Criminal Procedure. From the mandate of these sections, police has been given various powers:²⁴

- i. Under section 41, there are provisions for the police to arrest a person in specific situation without any warrant from a magistrate,
- ii. Under section 42, police can arrest any person who on demand does not give his name or place of residence,
- iii. Under section 47, provisions are there for making the search of the place,
- iv. Pursue and capture the offender in outside jurisdictions.

b. Guideline of Apex court and the Reports of the Law Commission

These guidelines are imposed with an objective to suppress the misuse and to ensure the discharge of proper duties by the police officials. Simultaneously, keeping a watch on the protection of the most important fundamental and human rights of the accused, but as earlier

²⁴The Code of Criminal Procedure, 1973 (India) .

discussed, some of the points and the plain language is vague and in the veil of those vague provisions, police take the advantage to execute their corrupt practices.

In case *Joginder Kumar vs. State of Uttar Pradesh*²⁵, the Supreme Court of India laid down very important guidelines related to the power of police to arrest and its exercise in practical applications. The Police must keep in mind the balance of rights between society and individual. The Supreme Court issued guidelines in a scenario that power to arrest is one thing and justification of arrest is another thing. It is not necessary in every cognizable case unless circumstances are there which justify such arrest.

The court also made same ratio of judgment in case of *Smt. Nandini Satpathy vs. PL Dani*²⁶,

The golden guidelines issued by the Apex court are as follows -

- It shall be the duty of the police officer to inform the arrestee about the grounds of arrest and to inform about arrest to any one of the nominated person by the arrestee and also about the location of his confinement,
- It shall be the duty of police officer and if not complied, it would be a clear dereliction of the duty to inform about the rights of the accused under custody,
- An entry shall be made by the police officer in his diary about the fact that accused has been informed about his rights and the name of the person who has been informed about the arrest,
- It shall be the duty of the magistrate before whom the accused is forwarded to ensure that compliance has been made of the above mentioned provisions and if it is not ensured, it would be a dereliction of the duty on the part of the magistrate.

In landmarks cases of *D.K. Basu vs. State of West Bengal*²⁷ and *Arnesh Kumar vs. State of Bihar*²⁸ are another golden judicial precedents, which are made by the Apex court which lays down law related to the arrest and confinement. The ratio of these judgments are very important to save the rights of the accused against unfair and unlawful treatment in the arrest.

The Judgments mentioned in these cases changed the era regarding the misuse of power and the atrocities of the police. The highlights of the announcements made by the Apex court are as follows -

- The arrested person shall have the right to meet a lawyer of his choice during the

²⁵ *Joginder Kumar vs. State of U P* (1994) A.I.R. 1349, India).

²⁶ *Nandini Saptadi vs. P L Dani* AIR (1978) S.C.R.(3) 608 (India).

²⁷ *D K Basu vs. State of Bengal*, 1997, 1 SC..C 416 (India).

²⁸ *Arnesh Kumar vs. State of Bihar*, 20148 S.C.C 273 (India).

interrogation by the police, section 41D mandates this requirement,

- For the protection of the accused against third degree methods by the police, accused shall be examined medically by a medical practitioner after every forty eight hours,
- Any relative or friend or any person who is nominated by the accused shall be informed about the arrest and the place of confinement,
- Constitutional mandate was reiterated that the accused shall be produced and forwarded before a magistrate within twenty four hours of his arrest after excluding the time of journey,
- Section 41B mandates that accused shall be arrested before the respectable member as a witness of arrest belonging to the society of the accused, and an arrest memo shall be prepared by the officer arresting the accused and get it signed by the involved member of the society,
- A record shall be maintained in a duly paginated diary which can be seen by the court at any time,
- Section 41C mandates that a control room shall be established and information regarding the arrest shall be maintained at every district.

(C) First Information Report: Abuse Of Power Of Registration

Just like the power of arrest, power to register first information report is discretionary in the hands of police officers as per the provisions of the code of criminal procedure²⁹. In *State of West Bengal & Ors vs. Swapan Kumar Guha & Ors*³⁰, the Supreme court had given that every department official has to act reasonably and they cannot act apply their unfettered discretion in every situation.

Explaining the often misunderstood and misinterpreted decision of the Privy Council in the **Leading and famous** case of *Emperor vs. Khwaja Nazir Ahmed*,³¹ the honorable Supreme Court held that it is a clear mandate of section 155 of the Code of Criminal Procedure that ‘police cannot and should not investigate into an first information report and into a case which does not result into the commission of a cognizable offence’. The Landmark and the golden judgment on this point is given by the constitutional bench of the honorable Supreme court, in the case of *Lalita Kumari vs. State of U.P. & Ors 2013*³² commenting upon the abuse of the powers to

²⁹ Ss. 154, 155, 157; The Code of Criminal Procedure, 1973 (India).

³⁰ *State of West Bengal & Ors vs. Swapan Kumar Guha & Ors*, (1982) A.I.R. 949 (India) .

³¹ *Emperor vs. Khwaja Nazir Ahmed* (1944) BOMLR. 245(India).

³² *Lalita Kumari vs. State of U.P. & Ors* ,2013 7 S.C.C. 164(India).

arrest which is often made by the police officers in daily routine, and in order to warn the police system that noncompliance with the guidelines would be meant as contempt of court by the involved police officer and a clear dereliction of the duty in the leading case of *Joginder Kumar vs. State of Uttar Pradesh*.³³

The Supreme Court said that any police officer cannot make arrest on his free will as right to liberty is a fundamental right vested in the citizen by the constitution and arrest should be made only when there exists grounds for making it and not in a routine manner. In the like manner, in another leading and landmark judgment in the case of *Lalita Kumari vs. State of UP*³⁴, the Supreme Court held and explained the correct interpretation of the law related to arrest and the first information report. The honorable court held that the registration of First information report under the Section 154 of the Cr. P. C. is mandatory. But it is nowhere meant by the provisions of the code that arrest of the accused after registration of the first information report is not required and it is not anyhow mandatory.

Subsequently, in year 2008, reforms were enacted in the Code of Criminal Procedure by the legislation after inculcating the guidelines and warning issued by the honorable Supreme Court and held that police officer instead of arresting the accused would issue an order to appear before the police officer and to conduct the investigations within the boundaries of the limits which are the mandate of the criminal procedure.

In Delhi, the *Dhaura Kuan fake encounter case*³⁵ the court held that “*There cannot be any more serious or grave crime than a police officer framing an innocent citizen in a false criminal case. Such tendency in the police officers should not be viewed or dealt with lightly but needs to be curbed with a stern hand.*”

But, notwithstanding to such important judgments and pronouncements, police have not changed their attitude and in daily routine they are using this malpractice of arrest as in a form of major and effective tool of earning their corrupt gains which causes mental and physical harassment

- Put up false and excessive charges on the accused on order to make unnecessary pressure on the accused and their family members and to force them to offer bribe or to harass them;
- Charging sections of law which are actually not mentioned in the first information

³³ *Joginder Kumar vs. State of UP*, 1994 AI.R. 1349 (India) .

³⁴ 2013 7 S.C.C. 164(India).

³⁵ The Times of India, dated (last Access 12³⁰ PM 9th February 2011) (India).

reports for the corrupt gain, as pronounced by the Supreme Court judgments like *KedarNath Singh's case*³⁶ and in the case of *Balwat Singh vs. State of Punjab*.³⁷

- Making the charges on the accused much heavier than those which should actually being implicated on the accused,
- Putting up false and fake evidences to charge with major sections of serious enactments such as Arms Act or Explosives Act,
- There is another usual corrupt practice among the police is saving real culprits or not implicating under actual sections of IPC or charging with less punishable sections of IPC or hiding and managing evidences for which they have received some political approach from active evil minded politicians or through their departmental superiors for monetary gains.

In the case of *Priyanka Srivastava vs. State of Uttar Pradesh*,³⁸ Supreme Court had embarked upon the abuse of the provisions of law. In Another important judgment of *Ajay Malviya vs. State of UP*³⁹ has been held that it is a proved practice adopted by the police. In its 277th report, the Law Commission of India speaks of wrongful and malicious prosecutions instituted without good faith which are very serious danger for proper working of the functioning of the criminal justice system of the nation.

Relying upon the Supreme Court's decision in the case of *Harbhajan Singh vs. State of Punjab*⁴⁰ the Law Commission said that it would include a malignant prosecution instituted negligently which is without due care and attention.

c. Compensation and Punishment for the wrongs done by the Investigating agencies

The law relating to the remedy is based on the maxim- "*UBI JUS IBI REMIDIUM*"

The above mentioned maxim means that there is no wrong without a remedy. The law says that where there is a right, there is a remedy and in this view. As a criminal is prosecuted for a crime committed by him, if investigating agencies commit malpractices to the citizens, these practices should be considered no less than a crime as these have been enacted a crime in the Indian Penal code and in the Prevention of corruption Act.

³⁶ *Kedar Nath Singh vs. State of Bihar*, 1962 A.I.R. 955 (India).

³⁷ *Balwant Singh and Another vs. State of Punjab*, 1994 S.C.C .(2) 1994(India).

³⁸ *Priyanka Srivastava & Anr. vs. State of UP & Ors.*(2015) 10 SCC 517(India).

³⁹ 2000 C.L.J.313 (India).

⁴⁰ *Harbhajan Singh vs. State of Punjab*, 1965 SCR(3) 235(India).

New studies are making scope for better arrangement for the victims of the crime by the state.

- Section 357, 357A, 357B, 357C, 358 mandates for the same and some of the provisions are mentioned in district and states legal service authorities acts.

In such scenario, they deserve equal compensations in monetary and social terms. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience. Article 9(5)⁴¹ provides that anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation.

Now, the policies and the duties of the state have changed in its nature and now state acts in a very active manner for the welfare of the citizens and in such changed scenario, trend has changed in a drastic way, for example in the important judgments of *Rudal Shah vs. State of Bihar*⁴², *Sebastian M Hongrey vs. Union of India*⁴³, *Rajendra Singh vs. Smt. Usha Rani*⁴⁴ and *Saheli vs. Commissioner of Police, Delhi*⁴⁵ the compensation was awarded for the victim by the court against the state.

There is no separate and express provision in the Constitution of India for grant of compensation for violation and infringement of a fundamental right to life, but the constitution talks about the due punishments for every kind of breach of fundamental rights and the damages to the citizens are under the constitutional sweep and the Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life, as said in *Neelabati Behera vs. State*.⁴⁶

The National Police Commission in its report⁴⁷ commented upon that effective and efficient look after and supervision of an investigation requires the active involvement by the senior officers and particularly in the following activities involved in investigation:

- (i) Visiting the actual spots of the crime,
- (ii) A deep and crucial examination of the complainant and his witnesses to ensure that their version does not involve elements of mal practices and in this way, a lot of false reporting can be stopped,
- (iii) Continuous support to the investigating officers with providing resources and their

⁴¹ United Nation International Covenant on Civil and Political Rights, (ICCPR) 1966.

⁴² *Rudal Shah vs. State of Bihar*, (1983) 4SCC 141(India) .

⁴³ *Sebastian Mhongray vs. Union of India*, (1984) S.C.R. (1) 904 (India) .

⁴⁴ *Rajendra Singh vs. Smt. Usha Rani* AIR (1984) 956 (India).

⁴⁵ *Saheli vs. Commissioner of Police Delhi*, (1989) 4 S.C.C. 730(India).

⁴⁶ *Neelabati Behera vs. State* 1993 AIR 1960(India).

⁴⁷ 4th Report , National Police Commission on Police, Paragraph, 27, 35(India).

active involvement in the case, and

- (iv) Providing motivation to the team on practical problems and protecting them from external influences.

If the supervision of the senior officers is loose and inefficient, it is but bound to generate malpractices and corruption in the whole department.

V. CONCLUDING REMARKS AND SUGGESTIVE MEASURES

The Tools and Technique to control and reduce the Abuse of Power of Police and investigating Agencies are some very basic traits but they are very important as basics and these should be focused in order to apply checks on the abuse of powers by the police and the investigating agencies. Transparency of Action, Accountability and Communication seems to be the most significant safeguards which we must look upon.

Initiatives should be taken to properly develop ethical work culture which is free from corrupt practices and full of value, and training should be given to every individual to make the police force inculcated with protecting the basic human values.

Training manner of the investigating agencies and the police needs overhauling. The Police force should be sensible and aware to become dedicated towards the protection of the fundamental rights of the citizen and they should be enriched in basic human values and made careful for protection of the constitutional ethos especially those mentioned in the preamble of the constitution. The Preamble of Constitution is a key to open the minds of those who have forgotten their core responsibilities and are entrusted with safeguarding the fundamental rights and the human rights of the citizens. The Right to Know is the basic feature of the right to life under the Constitution. The Honorable Supreme Court observed that the action of the State, must be just, fair and legally right.⁴⁸ Lastly but not least, mal practices of the police by any form of torture for speaking and extracting any kind of information would neither be right nor just and fair and protection to a citizen is provided in the constitution itself, therefore, would be unlawful and impermissible, being in derogation to the Article 20 and 21 of the constitution. The Golden words and announcements made by Justice *PN Bhagwati* should be the motivating spirit while legislating new laws and also, amendments should be made in line with the same Spirit. Justice *PN Bhagwati* while evolving the doctrine of Absolute liability in the case *MC Mehta v. Union of India*, commonly known (Sri Ram foods and Fertilizers case) as said that-

“We are an old and established system of legal jurisprudence and we are no more bound to

⁴⁸ Maneka Gandhi vs. Union of India AIR (1987) SC 499 (India) .

follow age old principles of foreign legal enactments and we will devise new principles of law as we are capable of doing the same as our legal jurisprudence is a very well established and developed system of law”.
