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# **CRITICAL ANALYSIS OF POLICE INVESTIGATION IN BNSS**

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## **ABSTRACT**

Police investigation is a part of criminal procedure which is provided under the Bhartiya Nagarik Suraksha Sanhita. Investigation means a search for truth, evidence, and justice. In this Paper, the author discusses the provisions relating to police investigation that are provided under the Bhartiya Nagarik Suraksha Sanhita and important case laws relating to the provisions. The paper also discusses the ground reality of these laws and how it is actually implemented in the cases.

**Keywords:** Investigation, Non-cognizable, crime, police, offence, cognizable

## **INTRODUCTION**

Investigation is one of the most crucial part of the criminal procedure that commences soon after a crime is committed or an information regarding the commission of crime is registered by a police officer.

Investigation is a process through which the offender is identified and Presented before the trail court where the offender can get punished of his offence according to the proviso's of the Bnss. A police officer is empowered to investigate in cognizable as well as non-cognizable cases but in non-cognizable cases, he has to first obtain a warrant to Investigate and then he can proceed. The provision for obtaining a warrant for investigation in Cases of non-cognizable cases is provided under **Sec 174(2)** of the Bnss. The definition of the term "**investigation**" is provided under **Section 2(l)** of the **Bnss**. The provisions regarding the Intimation of commission of any offence and the power of the police to investigate upon the crime is provided under the **Chapter XIII** containing **sections 173 To187**. Investigation is a procedure that a police officer or any other person that is authorized by a magistrate conducts in order to find and collect evidence. Following are the steps of investigation:

1. *Reaching the place of action.*

2. *Discovering the facts and circumstances of the case.*
3. *Find and arrest the suspect.*
4. *Collect following evidences:*
  - ☐ *Examine people in connection with the case and get their statements reduced In writing.*
  - ☐ *To search and seize the important items that can be relevant to the case.*
5. *Come to a conclusion as to if there is a case for trial, and then take actions accordingly.*

### **Difference Between Cognizable And Non-Cognizable Offence**

**COGNIZABLE OFFENCE** is an offence of serious nature and is a public wrong. The prosecution in Cognizable cases is done at the option of the state. In these cases, the police officer is empowered to arrest the suspect even without warrant. The punishment for committing cognizable cases is of imprisonment of 3 years or more or fine or both.

***For Example:*** Dowry cases, Rape, Murder, etc.

**NON – COGNIZABLE OFFENCE** is comparatively of less serious nature and the offender can be prosecuted only if the parties of the case want to. Under these cases, police cannot arrest without obtaining warrant.

The punishment for the non-cognizable cases is less imprisonment less than 3 years.

***For Example:*** Assault, Defamation, etc.

### **SECTION 173: INFORMATION IN COGNIZABLE CASES**

Any informant who gives information relating to the commission of any cognizable case must be reduced into writing by the officer in charge of the police station.<sup>9</sup>

Once the information is reduced in writing then that police officer must read the information to the informant and get It signed by him. This information report is known as “**First Information Report**” (F.I.R.). If in case the informant is a woman who gives information about any offences that is specified under **sections 124(1),124(2),74,75 to 78,64,66 to 71 or 79 of Bhartiya Nyaya Sanhita**. Once the information is received of occurrence of any cognizable offence then the police may start investigating after they assure themselves that such offence has actually existed.

***In Manimohan Ghosh Case***, it was held that even though in Bnss. first information Report is

*not mentioned, but it is understood that the information is recorded under Section 173 of Bhartiya Nagarik Suraksha Sanhita.*

In **Meghaji Godadji Thakore v. State of Gujarat**, it was held the reason behind putting so much pressure on lodging of FIR, is to understand the reason for which the crime was committed, name of the eye-witnesses, name of the offenders and the role played by each offender.

This Section further states that if any offence that is mentioned under the first proviso is committed against someone who is mentally or physically disabled, then the information should be recorded at the residence of the victim by the police officer in the presence of an interpreter or someone who is a special educator and such information shall be video recorded. That in order to present it before the Magistrate.

#### ***SECTION 174: INFORMATION AS TO NON – COGNIZABLE CASES.***

Information regarding the commission of a non- cognizable offence shall be recorded by the police in- charge of the police station. The information should be entered in the book as per prescribed by the state government. In non-cognizable cases, police does not have a right to investigate without an order of a Magistrate having jurisdiction over that area or power to try that case. When a police officer receives the order from the Magistrate to investigate in the case then he can proceed with the investigation in the same way as it is a cognizable case.

In a non-cognizable case, a police officer cannot arrest any person without a warrant.

If a case involves two or more than two crimes in which one of them is cognizable offence then the whole case will be dealt as a cognizable offence case and no argument that the other offences are of non-cognizable nature would be considered and the police officer will proceed with the case as prescribed for the cognizable cases.

#### ***SECTION 175: INVESTIGATION OF COGNIZABLE OFFENCES.***

This section gives power to the police officer to investigate upon the matters of cognizable offences even without a warrant or without the order of Magistrate provided, that a police officer can only investigate in those cases where the Court has jurisdiction over the local areas.



*In Tula Ram v. Kishore Singh*, the court held that only at the pre-cognizance stage, the Magistrate may order an investigation under **Section 175 of Bnss**.

### **SECTION 176: PROCEDURE FOR INVESTIGATION**

The very first step that should be taken by the police officer who received the information of Commission of a cognizable offence and is of a view that it has actually occurred, then he must Firstly inform or report to the Magistrate who has the jurisdiction to try that case.

In **Om Prakash V. State of New Delhi** the Court held that an officer in-charge of a police Station should immediately inform the Magistrate having jurisdiction upon that matter as soon as the officer in-charge of the police station gets the information regarding occurrence of a Cognizable crime. The Magistrate after receiving the intimation of a cognizable offence must take the cognizance Of the matter and the Magistrate can order any subordinate officer to investigate the place of Occurrence of crime, facts and circumstances of the case and to take the necessary steps that is required for the discovery and arresting the actual offender. The police officer investigating upon the matter must sent the report of the investigation so as to keep the Magistrate acknowledged with all the facts and circumstances of the case and the magistrate can also give Some directions to the officer investigating the case.

This section mandates the police officer to **“forthwith a report”** without any unreasonable delay. The delay in producing the report will not affect the case but the Court might become cautious and alert.

In **Manimohan Ghosh Case**, it was held that the process of investigation includes all the Procedures prescribed under the BNSS , to collect evidence by the police officer investigating the case or any person authorized that is by the Magistrate.

In **Kari Chaudhary v. Sita Devi**<sup>17</sup>, it was pointed out that the motive behind carrying out an investigation is to find out that whether such a crime has actually been committed or not and if It has been committed then who has committed such offence. The Court also held that if the nature of an offence is not much serious then it is not necessary to start the investigation immediately and if the police officer is satisfied that there is no need of an investigation, then he shall not proceed with it and the police officer has to inform the reasons for the same in the Report.

The main issue with criminal investigation is that there are plenty of information available and It is really a hard task to segregate relevant information out of them.

Sometimes the information available is irrelevant, incomplete or inaccurate due to which it becomes difficult to prove the evidence before the court. In order to prove the guilt of an offender without any reasonable doubt it is important that the evidence produced before the court qualities and the produced evidences should follow the prescribed rules and procedures.

### **WHO CAN INVESTIGATE?**

*In a cognizable offence case, the power to investigate is upon the police officer as prescribed under the BNSS. This power cannot be restricted or questioned until the officer is exercising his power legally, lawfully and following all the provisions of the BNSS .The Court cannot Interfere in the process of investigation. The accused does not have a right to be heard upon the material collected by the investigator. When the investigating agency submits its report then the magistrate has the authority to take action. If the report does not have valid relevant information regarding the accused, then the court either may take the report or direct the officer to make further investigation.*

### **WHEN DOES THE INVESTIGATION COMMENCE?**

*The investigation process starts when the officer in-charge of the police station is satisfied that the crime has been committed.*

*In **Din Dayal v. State of UP**, the court observed that to commence an investigation, it is important that the following 2 conditions are fulfilled:*

- 1. The investigating authority must have a reason to suspect that the offence has been Committed.*
- 2. There must be sufficient reason to commence investigation of the case.*

### **POWERS OF A POLICE OFFICER**

*A police officer or any other person who is authorized by the magistrate to investigate upon a case has following powers:*

- ☐ *Attendance of Witness*

*The police officer is empowered to require the presence of witnesses who are under the*

*jurisdiction of the police station but if a person is younger than 15 years or older than 65 years, or someone who is physically or mentally disabled, then their attendance of that person at their place of residence is required. A police officer can ask the witness or the suspect regarding the facts and circumstances of the case and they are bound to truly answer those questions unless those answers may expose him to a criminal charge or to a fine or seizure. The statements made by the witnesses or suspect must be reduced in writing via audio-video electronic means and its copy should be given to the accused.*

#### ☐ Examination of Witness

*The police officer investigating the case is empowered to examine the witnesses and reduce their statements into writing and also record the statements of the witness in audio-visual electronic means. In a case where crime is caused against a woman then a woman police officer will record the statements any police officer conducting investigation under this Chapter, or any police officer who is not below a rank as may be determined by the state government by general or special order on behalf of that officer at the officer's request, may verbally interrogate the facts and Circumstances. The person being interrogated has to answer all the questions the officer puts him or her in relation to the case, except for questions which, is answered, would result in him being prosecuted, convicted or confiscated.*

***Section 180 of the BNSS** provides that the police officer taking the examination of witness has to reduce the statements into writing and make a separate and true record of those statements of all the persons whose statements the police officer has recorded.*

#### ☐ Preparation of Chargesheet

*After the investigation is complete, the police officer has to submit a charge sheet consisting of the copy of FIR, statement of the complainant, witnesses, panchnama, dying declaration etc. The report should be submitted to the Magistrate who has the power to take cognizance of the offence.*

*The report must be in the prescribed manner by the State Government. The report must Include the names of the parties, nature of the information, names of the person who have the knowledge of the circumstances of the case. The report shall also include the view of the officer that if he thinks that the offence was even committed or not, and if it was committed then who committed the crime, information regarding the suspect's release whether on bond or sureties, and with the information whether the suspect is forwarded in custody under **Sec. 190 of the BNSS** . The police officer shall also inform the action taken by him to the informant who gave*

*the information regarding the occurrence of that crime.*

□ *Section 185 – Search by Police Officer*

*When a police officer or any person having authority to investigate is of view that there is anything which is necessary to find during investigation, then he by recording the reasons in writing that such thing or weapon is needed to be obtained without any undue delay specifying the thing to be searched and reasons, can search or cause search to be made within the limits of the police station of which that police officer is in- charge or which he is attached to. It is Important that the police officer makes the search himself but if it is not possible then he after writing the reason order any subordinate officer to make the search and to send the order in writing to that subordinate officer specifying the area that need to be searched and the material that is to be search.*

□ *Other Powers of a Police Officer*

- 1. If in case the investigation doesn't get completed within 24 hours then the officer has a power to extend the custody of the suspect by fifteen days.*
- 2. If the police officer wants to extend the custody more than fifteen days then he can extend it by obtaining permission from the Magistrate.*
- 3. In cases of rape, the police officer is empowered to conduct medical examination of the Victim as well as the suspect.*

## **CONCLUSION**

*Under Bhartiya Nagarik Suraksha Sanhita a detailed procedure for investigation is mentioned which a police officer making investigation has to follow but if the procedure was duly followed by the investigating authority, then the number of unsolved mysteries must have definitely reduced. The police instead of following the procedures of investigation, they misuse their power and are often Found to be negligent in cases. They do not work according to the procedures of the BNSS and Due to this it becomes difficult to impart justice to the victim.*

*The research paper discusses in detail the procedure for investigation and if it is followed properly then justice will get served as soon as possible and help the court in getting into a conclusion without any reasonable doubt.*

*These powers of investigation should be used in a positive way by the police officers making*

*investigation so that people retain their trust on police and come forward in helping the officers to reach the truth. People often fear the police As they get harassed when they get involved in a case and therefore, they try to avoid their involvement in the case. If people will not get harassed and they will be treated right by the officers then it will ease the load of police and they can easily reach the truth.*

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