

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

INVESTIGATION BY POLICE: SPECIAL EMPHASIS ON RE-INVESTIGATION AND FURTHER INVESTIGATION

AUTHORED BY - RIYA TRIVEDI¹ AND AAROHI SANKLAN²

¹LL.M (CRIMINAL LAW), AMITY UNIVERSITY, NOIDA

²LL.M (CRIMINAL LAW), AMITY UNIVERSITY, NOIDA

ABSTRACT

The purpose of this paper is to look at the provisions related to the investigation under Indian laws and to discover the procedural aspect of the topic. This paper specially emphasized on Investigation by police, re-investigation and further investigation and decisions held by the Apex Court in that regard. In criminal law, the investigation plays vital role and it is mandatory to understand how it works in the Indian legal system. This paper also emphasized the theoretical and practical approach to the investigation in Indian context.

Keywords: Criminal Procedure, Investigation, Re-Investigation, criminal justice system

1. INVESTIGATION

An investigation is an important fragment of criminal procedure. When police receive information of the commission of an offence then first step would be the investigation. The purpose is simply to identify the offender and proceed him for trial so as to ascertain relevant facets of the crime including evidences and to serve the offender with punishment. Investigation is such process which enables the authority to justify the act as a criminal one. It is undisputed that the criminal offences are classified as cognizable and non-cognizable offences and the procedure for such offences are different as provided under the Code of Criminal Procedure, 1973. By perusing the relevant provisions under CrPC, 1973 it is clear that the police cannot investigate the non-cognizable offences without any

permission or warrant of the Magistrate whereas if the offence is of cognizable nature, then police may investigate without obtaining any permission from the Magistrate of Competent jurisdiction. Such reasoning between the procedures for cognizable and non-cognizable offences is paramount to the existing legal system.

The term Investigation is defined under the Section 2(h) of the CrPC, 1973 which states that *“investigation includes all the proceedings under this code for the collection of evidence conducted by a police officer or by any person (other than Magistrate) who is authorized by a Magistrate in this behalf.”*

2. CONCEPT OF INVESTIGATION

The concept is based on two separate procedures for investigating the offence under criminal law which may be enlisted as under:

1. The procedure to investigate the cognizable offences
2. The procedure to investigate the non-cognizable offences.

It is also imperative to say that it may occur to investigative authorities that the crime consists of both cognizable and non-cognizable offence. In such a case, the crime will be termed as cognizable offence. To further distinction between the two, it is submitted that the cognizable offences are of serious nature and non-cognizable offences are of non-serious nature comparatively. To make no mistake, the procedure for both is not contemplated in detail but it has been mandated by the provisions of CrPC, 1973 that the police have to obtain prior permission or warrant from the Magistrate of the Competent Jurisdiction in respect of the non-cognizable offence whereas there is no need to obtain such sanction from the Magistrate in case of cognizable offences. After the investigation police needs to make a report and submit it to the Magistrate in both the cases. Such report is the findings of their investigation and the basis of such report is the investigation only. Therefore, without any investigation the report will be of no base and it will more likely to become ineffective due to uncertainty.

The cognizable offence is defined under Section 2(C) of the CrPC 1973 and non-cognizable offence

is defined under Section 2(I) of CrPC 1973.

It is equally important to know how and what enables the police to investigate the offences under the relevant provisions of CrPC, 1973.

There is a provision which deals with ‘Information to the Police Officer’ under Section 154 of CrPC which titles as “Information in cognizable cases”. As per the aforesaid provision, the information must be given by informant to officer in charge of the police station in writing or must be reduced in writing by the officer in charge of the police station. The written information needs to be signed by the informant and read over to the informant. This information is also known as First Information Report or FIR. Subsequently to the receiving of the information, police officer shall start his investigation. Power of police to investigate is given under the provision of Section 156 of CrPC, 1973. Further the procedure of investigation is given under the provision of Section 157 of CrPC, 1973.

The investigation of the cognizable offence begins when a police officer in charge of police station has reason to suspect the commission of the cognizable offence on the basis of the FIR or any other information so received. The officer shall then proceed in person or shall depute one of his subordinate officers to the spot for investigation of facts and circumstances of the case and if required, measures for the discovery and arrest of the person shall be taken. If no sufficient ground exists for entering into investigation, he shall not investigate the case and shall state in its report for not complying with the requirements of the provision and notify the informant that the case cannot be investigated due to such reasons.

At different stages of the investigation, police required to submit different reports to the Magistrate. Purpose of forwarding the report to the Magistrate is to enable him of being aware that a particular case is investigated and to control and give directions if required to the police officer under the provision of Section 159 of CrPC 1973.

3. DIFFERENT REPORTS UNDER CrPC, 1973.

The different reports can be enumerated as under:

- i. Section 157 Report requires the officer in charge of the police station to submit a report to the magistrate which is known as Preliminary Report or Occurrence Report.
- ii. Section 168 Report requires the subordinate officer to submit a report to officer in charge of police station.
- iii. Section 169 Report requires the police officer to submit the report against the accused that no evidence or reasonable grounds for suspicion are found. This report is also known as Closure Report.
- iv. Section 173 Report requires that a Final Report is to be submitted as after the investigation gets over.
- v. Section 173(8) Report requires a police officer to submit Supplementary report on the further investigation after forwarding the report u/s 173(2) of Cr.PC 1973.

4. ATTENDANCE AND EXAMINATION OF THE WITNESSES

The police officer investigating the case is empowered under the provision of Section 160 of CrPC 1973 to require the attendance of any person as a witness who is acquainted with the facts and circumstances of the matter. Further the Police officer is also empowered to examine the witness under the provision of Section 161 of CrPC 1973. The persons who are being investigated are expected and required to answer truly all the questions before the investigating officer. It is also hereby pertinent to mention that as per the criminal legal principles such persons are not bound to truly answer the questions which would expose them to a criminal charge or any other charge. The statements made by such persons during examination before police officer is not need to be signed. Such statements can be used in court only to contradict him, and not to corroborate him. Although, it is moreover imperative to say that this has exception if it relates to the section 32(1) or Section 27 of the Indian Evidence act, 1872.

5. SEARCH BY POLICE OFFICER

A police officer is empowered under the provision of Section 165 of CrPC 1973 to make search for any such places which he has reason to believe that contains something necessary with respect to the investigation. The grounds for issuing a warrant for search are provided in Section 93(1) of the CrPC 1973.

6. PROCEDURE WHEN INVESTIGATION IS NOT COMPLETED WITHIN 24 HOURS

The provision of Section 167 of CrPC lays down the law regarding the procedure when investigation cannot be completed within 24 hours. This provision has provided that the accused or arrested person cannot be detained for more than 24 hours. The purpose is to safeguard the accused from atrocities of the investigating authority and no detention without trial. It gives the opportunity to the Magistrate to decide whether the person detained be sent to further custody or not and to facilitate the investigation process.

7. FURTHER INVESTIGATION AND RE-INVESTIGATION

Re-investigation refers to a process where a fresh investigation is conducted by the police or other investigating agencies after the initial investigation has been completed. It is usually ordered by a higher authority or a court of law, either Suo moto or on the request of the accused or the victim. Re-investigation can be ordered in cases where new evidence has come to light, or there are doubts about the veracity of the initial investigation.

Further investigation, on the other hand, refers to the continuation of the investigation beyond the initial phase to gather additional evidence or to verify the existing evidence. This process may be initiated by the police or the court, depending on the circumstances of the case.

The concept of re-investigation and further investigation has been a subject of much debate and discussion among legal practitioners and scholars. While some argue that it provides an opportunity

to rectify mistakes made during the initial investigation and ensure justice for the victim, others contend that it could lead to harassment of the accused and delay in the trial.

According to section 173(8) of the Code of Criminal Procedure (CrPC), the investigating officer can submit a further report at any stage of the trial, which may include additional information, documents, or witnesses. However, the court has the power to either accept or reject such a report based on its merit and relevance.

The Supreme Court of India has also laid down several guidelines for re-investigation and further investigation. In the case of *Bhagwan Singh v. State of Rajasthan (2001)*, the court held that re-investigation could be ordered if there is evidence of a deliberate attempt to suppress facts, a mistake of law or fact, or a violation of human rights.

Similarly, in the case of *Ashfaq v. State of Maharashtra (2013)*, the court held that further investigation could be ordered if there is a reasonable apprehension that the investigation was not conducted fairly, or the material evidence was not properly considered.

Despite the guidelines and legal provisions, the concept of re-investigation and further investigation remains controversial. Critics argue that it could lead to harassment of the accused, delay in the trial, and a waste of resources. However, proponents argue that it provides an opportunity to ensure justice for victims of crimes and rectify mistakes made during the initial investigation.

8. CONCLUSION

In conclusion, the concepts of further investigation and re-investigation are crucial in ensuring justice for victims of crimes and maintaining the fairness of the legal system. While there are debates and concerns surrounding these processes, it is essential to strike a balance between the interests of the accused and the victim, and to adhere to the legal provisions and guidelines set forth by the Supreme Court of India. The decision to order re-investigation or further investigation must be made based on the merits of each case, and with a commitment to upholding the principles of justice and fairness. Ultimately, the successful implementation of these processes will help to build public trust in the criminal justice system and ensure that justice is served for all.