

CHAPTER 8

COMPLAINTS AND SOURCE INFORMATION

COMPLAINTS

8.1 The CBI may receive complaints dealing with various issues/ matters from different quarters including the general public. Every complaint, from whatever source received, will be entered in the Complaint sub-module of CRIMES Module or in the temporary Complaint Register maintained in the Branch Offices. Each complaint received, whether directly or from any other Branch or Head Office, will be assigned a temporary number as stipulated from time to time. If the complaint pertains to jurisdiction of any other Branch it should be forwarded to the concerned Branch without any delay. No verification of any complaint shall be initiated except after it has been assigned a regular complaint number with the approval of the Competent Authority as detailed in the paragraphs below. All complaints will be treated as "confidential" at all stages

Processing of Complaints

8.2 Superintendents of Police (including those working in the Special Units), are required to have a preliminary look at each complaint and decide whether it falls within the purview of CBI and would merit its attention. In case the complaint pertains to a subject outside the purview of CBI or the allegations contained therein are too trivial or vague it should be forwarded at the earliest to the department concerned with an endorsement that no enquiry has been made by CBI. The disposal would be noted in the records maintained for this purpose

8.3 All other complaints would be analysed with a view to see whether a criminal offence can be made out requiring any action by CBI. In case, the analysis reveals that the complaint deals with a substantial issue which falls within the ambit of CBI and needs further verification, the permission of the Competent Authority will be obtained to verify the same. The Competent Authority is one who could order registration of a Regular Case for the particular rank of officer against whom the complaint has been made. In case, the level of the public servant against whom the allegations have been made is not known, the SP of the Branch may initiate verification at his own level but during the course of secret verification if involvement of any senior officer figures, for which permission was not taken earlier, necessary orders of the Competent Authority should be obtained to conduct verification against the suspect officer.

8.4 After such approval, the complaint would be assigned a regular complaint number as provided in the Complaint sub-module of CRIMES Module or by entering the same in the register maintained for the purpose. Wherever records are maintained manually, necessary corresponding entry will be made in the temporary complaint register also.

8.5 In order to ensure uniformity in dealing with complaints, the following broad guidelines should be kept in view. Ordinarily, no verification of complaint of the following nature should be taken up except for special reasons:-

- (i) *Complaints which are anonymous and pseudonymous.*
- (ii) *Complaints containing vague and unverifiable allegations.*
- (iii) *Where the allegations relate to service matters, which can be better looked into the departmental authorities.*
- (iv) *Complaints of petty nature not involving specific allegations of bribery or corruption which can be better dealt with by the Vigilance Wing of the department or local Police*
- (v) *Complaints not otherwise falling within the purview of CBI.*

- (vi) *Complaints which have already been looked in to or are being looked into by the department or its Vigilance Wing and the allegations prima facie do not reveal that these would require an open investigation by CBI.*
- (vii) *Complaints pertaining to matters/incidents, which have occurred in the distant past.*
- (viii) *Complaints involving only State Government servants or private individuals and which are of no interest to CBI.*

Complaints in which Verification should be taken up

8.6 The following categories of complaints may be considered fit for verification:-

- (i) *Complaints pertaining to the subject-matters which fall within the purview of CBI either received from official channels or from well-established and recognized public organizations or from individuals who are known and who can be traced and examined.*
- (ii) *Complaints containing specific and definite allegations involving corruption or serious misconduct against public servants etc., falling within the ambit of CBI, which can be verified.*

8.7 If any complaint against a Minister or former Minister of the Union Government, or the Union Territory is received in any Branch, it should be put up to the Director, CBI, for appropriate orders. The relevant file of the Branch should remain in the personal custody of SP concerned. In case the complaints are received against members of lower judiciary these may be forwarded to the Registrar of the High Court concerned and the complaints received against members of higher judiciary may be forwarded to Registrar General of Supreme Court through the Joint Director (Policy).

Process of Verification

8.8 The complaints registered for verification, with the approval of the Competent Authority, would only be subject to secret verification. The SsP and the verification officers should ensure that the departmental records are examined discreetly, so that secrecy of the verification is maintained. It is advisable to consult the records informally, by contacting the concerned CVO/ Head of the Department. During verification of a complaint, written requisitions should be avoided. In case, it is absolutely necessary to do so, the requisition must go to the concerned Vigilance Officer under the signature of the SP.

8.9 Secret verification should be completed within three months of the receipt of the complaint. In complicated matters, a time of four months may be taken with prior permission of the DIG concerned. To ensure proper monitoring, the DIsG should review all pending Complaints every month and send a report to the Head Office with their comments on the complaints pending verification for more than three months.

Action on Complaints received from Head Office

8.10 Complaints received by a DIG, JD, ADCBI, SDCBI or the Director and marked by them to subordinate officers will be assigned temporary number immediately on their receipt and entered in the Complaint sub-module. These will be disposed of at the appropriate level in accordance with the instructions mentioned in the paragraphs above. Specific orders of the Competent Authority must be obtained for undertaking verification of the complaints received from the Head Office. Where, a senior officer desires a report on the action taken, he will specifically indicate it in his endorsement and the same should be complied with accordingly by the subordinate officers.

Complaints received from CVC

8.11 Whenever any complaint is received from the Central Vigilance Commission for enquiry under section 8 of the CVC Act, it should be examined on priority. In case the CVC has already made a preliminary study of the complaint and has asked CBI to investigate, there is ordinarily no need to re-verify the complaint. Preliminary verification should be limited to the instances which are worth verification and where special circumstances exist. In such cases, the permission of the Competent Authority should be taken at the earliest and in no case, later than seven days after

receipt of the complaint by the Branch SsP. The relevant facts and circumstances should be reported immediately to the CVC, so that the latter can take a decision as to whether an open enquiry is to be taken up or not.

8.12 If the CVC requests CBI merely for a report on the complaint, a preliminary report, without any detailed verification, may be sent to the Commission while mentioning it specifically in the forwarding letter that no detailed verification has been made verify the allegations contained in the complaint.

Complaints received from Ministries, Central Government Departments, Public Sector Undertakings, State Government or Union Territories and Members of Parliament

8.13 Complaints received from Ministries, Central Government Departments, Public Sector Undertakings, State Governments, Union Territories and Members of Parliament with request for a CBI probe/investigation should be dealt with promptly. Such a complaint whether received directly or through the office of DIG or Head Office should be analysed by the Branch SP immediately with a view to decide whether it contains specific and definite allegations involving corruption or serious misconduct against public servants etc. which fall within the ambit of CBI and would require action by CBI. If it meets the above criteria, the procedure prescribed in paragraphs above for registration and verification of complaint should be followed. In case the complaint *per se* reveals a criminal offence fit for registration of a Regular Case or verification brings out material, which would justify open enquiry/ investigation after registration of a PE or Regular Case the permission of Competent Authority should be taken for registration. The department should be advised to make available all the relevant documents along with the complaint. In case, the documents cannot be made available as it may hamper the functioning of that office, authenticated copies may be obtained with an undertaking that the original documents would be made available during the course of investigation.

8.14 In cases, where the MHA, DP & T, Cabinet Secretariat or other Ministries ask for the comments of CBI on reference received from a private person for a CBI enquiry/investigation into any case which is already under investigation with the local Police, the concerned Branch SP should offer his comments by looking into the documents of the State Police informally. The CBI under no circumstances should call or examine witnesses or collect documents in original from the local Police in such matters.

Complaints/References from PMO/MHA/DP&T/Cabinet Secretariat/Department of Personnel/State Governments/ Ministries/Union Territories requesting for registration of cases

8.15 Complaints received from PMO/ MHA/ Cabinet Secretariat/ Department of Personnel/ State Govts./Union Territories/ Ministries in the Branch requesting for registration of a case should be immediately examined and put up to the Competent Authority for appropriate orders within seven days.

8.16 Where State Government employees are involved or the matter is beyond jurisdiction of CBI, the reference may be forwarded to the Head Office with analysis and recommendation of the officers. Head Office will issue instructions on further course of action which shall be complied with by the Branches.

8.17 Where it is not feasible for CBI to register a case the final reply shall be sent to the concerned quarters only with the approval/ directions of Head Office.

Complaints/References/Orders received from High Courts/Supreme Court

8.18 On receipt of orders of the Supreme Court/High Court for investigation of a case by CBI, the SP should immediately inform the Head Office and initiate processing of the reference as per instructions contained in the Chapter dealing with registration of Preliminary Enquiries and Regular Cases. However, if any such direction is received from a Lower Court, it should be referred to the Head Office for further orders.

Orders for Registration of case after Verification of Complaints

8.19 When a case can be registered only on the orders of a DIG or above, the complaint/verification report along with the recommendation of the SP should be forwarded to the Regional DIG for further necessary action. Similar action will be taken by the Regional DIG also, if the Competent Authority to order registration is a Joint Director or above. Case should be registered within 3 days of the receipt of orders of the Competent Authority.

Complaints on Matters under Scrutiny by a Parliamentary Committee

8.20 Legally, there is nothing to prevent CBI from taking cognizance of any criminal offence. However, whenever it is intended to register a case for investigation concerning a matter already under scrutiny by a Parliamentary Committee, it should be done only after consultation of the Committee through the Head Office.

Anonymous/Pseudonymous Complaints

8.21 No action shall be taken on anonymous and pseudonymous complaints. Such complaints need not even be sent to the Ministry/Department/ Public Sector Undertaking concerned by CBI. They should be filed after entry in the complaint register. If there is any doubt about a signed or pseudonymous complaint an enquiry may be held to the limited extent to check whether the signature is genuine and whether the signatory admits having sent the complaint and stands by it. On such a check, if it is found that the signature is genuine, further action should be taken as on the basis of a genuine /signed complaint. Otherwise, no further action need be taken. However, information contained in such complaints may be used as intelligence input for identifying public servants indulging in corrupt activities as well as in finding areas of corruption in various departments.

Action on Reports appearing in the Press/Media etc.

8.22 Government of India instructions already exist to ensure that immediate notice is taken by the administrative authorities of allegations appearing in the Press/media on any matter of significance. A preliminary check may be made quickly to decide if the matter needs further action by CBI. In case, the subject matter is found actionable, further action may be taken as prescribed for registered complaints, with the approval of Competent Authority.

Complaints against CBI officials

8.23 All complaints against CBI officials of any rank, whether signed or anonymous, must be analysed and brought to the notice of the Competent Authority as prescribed by Policy Division instructions/circular with specific recommendation of proposed action. The Joint Director (Policy)/AIG-II may be kept informed of such matters.

Action to be taken on Verification Report

8.24 After initial examination of a complaint the officer entrusted with the verification will submit his detailed verification report with his specific recommendations as regards its disposal. The Verifying Officer should invariably mention whether the subject-matter of the complaint has already been looked into by the Department or its Vigilance Wing and the action taken thereon. The Superintendents of Police will either pass orders for closing the complaint, referring it to the department or for registration of Preliminary Enquiry / Regular Case if it is within his competence. In all other cases he will record his detailed comments and make specific recommendations for disposal of the complaint and forward it to DIG for obtaining appropriate orders. Similar action will be taken by DIG also, if Competent Authority to order registration of a case is a Joint Director or above. The provisions of Section 6A of DSPE Act may also be kept in view while making recommendation for registration of Preliminary Enquiry or a Regular Case.

Acknowledgment of Complaints/Letters

8.25 While it may not be possible to acknowledge receipt of each and every complaint, once a complaint has been registered for verification, the sender may be intimated, if deemed appropriate, stating that the same was being looked into and appropriate action would be taken in the matter. So far as the Government Departments are concerned, they should be advised of the action being taken by CBI on their communication. When a PE or RC is registered based on the complaint, a

copy thereof shall be endorsed to the individual/ officer who had sent the complaint to CBI. All complaints received from Members of Parliament should be acknowledged promptly.

SOURCE INFORMATION REPORTS

Collection of Source Information

8.26 As a part of their duty and in terms of annual programme of work, all Investigating and Supervisory Officers are required to collect quality information regarding graft, misuse of official position, possession of disproportionate assets, fraud, embezzlement, serious economic offences, illegal trading in narcotics and psychotropic substances, counterfeiting of currency, smuggling of antiques, acts endangering wildlife and environment, cyber crimes, serious frauds of banking/financial institutions, smuggling of arms & ammunition, forgery of passports etc. and other matters falling within the purview of CBI and verify the same to ascertain whether any *prima facie* material is available to undertake an open probe. While all CBI officers are free to develop such information through discreet means, the officer developing any information must keep his superior officer informed regarding information being developed by him. The immediate superior officer may also keep the Competent Authority, i.e. DIG/JD/ ADCBI/SDCBI/DCBI informed in case the officer against whom information is being developed is of a rank against whom only such officer can order registration of a case.

8.27 The source information once developed must be submitted in writing giving all available details with specific acts of omissions and commissions and copies of documents collected discreetly. The internal vigilance enquiries or departmental enquiry reports should normally not be used as basis for submitting the Source Information. The SP concerned after satisfying himself that there is *prima facie* material meriting action by CBI and further verification is likely to result in registration of a regular case, would order verification if it falls within his competence. In the cases which are within the competence of higher officers, he will forward his detailed comments to the DIG and obtain orders from superior officer competent to order registration. The verification of SIRs must begin only after the Competent Authority has approved its registration. At this stage a regular SIR number will be assigned to the SIR which will also be entered in the Source Information sub-module of CRIMES Module with all other details.

8.28 The SIR may be classified as 'SECRET'. These files must be maintained by the SP in his office.

8.29 After registration, verification may be entrusted to an officer other than who has submitted the SIR. As far as possible, the requisition of records/documents should be avoided during verification of SIRs. In case, it is absolutely necessary to do so, the requisition must go to the concerned Vigilance Officer under the signatures of the SP after obtaining permission from the DIG concerned. It must be ensured that no record/documents are requisitioned before the Competent Authority has passed orders for registration of an SIR.

8.30 However, if the Source Information Report is likely to result in laying a trap to catch a public servant red handed or where surprise check becomes necessary and the time available is short, the SP may after keeping the Competent Authority informed take further steps and submit the file subsequently for regular approval.

8.31 In case, during the course of verification of information, involvement of another officer(s) of a senior rank is revealed, orders of the competent officer should be obtained to conduct enquiry against such suspect officer.

8.32 The verification of an SIR must be completed within a period of three months. In case of delay, the approval of the Competent Authority should be obtained to carry out further verification beyond the prescribed time-limit.

8.33 After verification, the Verifying Officer should submit his detailed report, wherein it should be specified whether the allegations of the SIR have been substantiated or not. The Verifying Officer should invariably mention whether the subject matter of the SIR has already been looked into by the department or its Vigilance Wing and the action taken thereon. He would also make specific recommendation whether the matter may be closed, referred to the department, or a Regular Case

or Preliminary Enquiry could be registered for open probe. In case, the recommendation is for registration of a Regular Case, the names of the individuals against whom the case could be registered must be clearly mentioned. Sections of law under which the case is sought to be registered, should be specified. The provision of Section 6A of DSPE Act may be kept in view while making such recommendations. The SP may, thereafter, analyse the verification report and issue orders if the individual against whom the case is to be registered comes within his competence. In other cases he would record his detailed and specific comments and forward the matter to DIG who may either pass appropriate orders or forward the file to the Competent Authority through his superiors for obtaining orders. While processing the matter, the SP must ensure that the same matter is not being enquired into departmentally and if so, he must make specific recommendation as to why it is necessary to have a CBI probe in the said matter.

8.34 The Special Unit will also follow the same procedure for developing source information and undertaking verification of complaints and SIRs. Wherever it is considered necessary that Special Unit may conduct verification into the complaint assigned to a Branch or the source information being developed by a Branch, the matter will be put up to the Director, CBI for appropriate orders.

8.35 Where two or more Branches are involved in verification of similar complaints or informations, it should be transferred to the Branch having jurisdiction over the place of occurrence, in order to avoid duplication.

Registration of Cases on the basis of Information furnished by the

Special Unit

8.36 Whenever verified information or complaint is received by the Branch from the Special Unit, along with a Self Contained Note and orders of the Competent Authority for registration of PE/RC, the same should be promptly acted upon. However, if it is found by the Branch SP that the orders of the Competent Authority communicated to the Branch by the Special Unit require to be amended or modified, he should submit a detailed note recording clear and cogent reasons, through his DIG for further orders within 15 days. The matter will then be put up to the DCBI for obtaining revised orders.

CHAPTER 10

REGULAR CASES

Registration and First Information Report

10.1 On receipt of a complaint or after verification of an information or on completion of a Preliminary Enquiry taken up by CBI if it is revealed that *prima facie* a cognizable offence has been committed and the matter is fit for investigation to be undertaken by Central Bureau of Investigation, a First Information Report should be recorded under Section 154 Criminal Procedure Code and investigation taken up. While considering registration of an FIR, it should be ensured that at least the main offence/s have been notified under Section 3 of the Delhi Special Police Establishment Act. The registration of First Information Report may also be done on the direction of Constitutional Courts, in which case it is not necessary for the offence to have been notified for investigation by DSPE. The FIRs under investigation with local Police or any other law enforcement authority may also be taken over for further investigation either on the request of the State Government concerned or the Central Government or on the direction of a Constitutional Court. As the resources of CBI are limited, administrative arrangements have been worked out vis-à-vis local Police as detailed in this Manual and Policy Division instructions as regards registration of cases. The guidelines regarding the type of petty cases, which should normally not be taken up for investigation, are also mentioned in the Manual and instructions of the Policy Division.

10.2 While registering the FIR, the legal requirements of section 154 Cr.P.C. should be fully complied with. If the information is given orally, it shall be reduced into writing verbatim and shall include the answers to any question put to the informant. If a written complaint is received, an exact copy must be reproduced in the FIR. Every such information, whether reduced into writing or given in writing, which forms basis of the FIR, shall be signed by the person giving it. In case, the person is illiterate, his thumb impression will have to be secured. The refusal to sign or give thumb impression, as the case may be, on the First Information Report is an offence under Section 180 IPC

10.3 In case, it has been decided, with the approval of the Competent Authority, to register a FIR after conclusion of a Preliminary Enquiry, which might have been taken up on receipt of a complaint, the information originally received along with the summary of conclusions arrived at after completion of the PE should be incorporated in the body of the First Information Report. In such cases, it may not be necessary to obtain the signature of the original complainant. The FIR could be registered on the complaint of the Enquiry Officer, who conducted enquiry into the PE. In such cases, the investigation of the FIR may be entrusted to another Investigating Officer.

10.4 In case of decision to register a case after verification of source information, the FIR may be drafted in concise but comprehensive manner and must contain all details, which *prima facie* indicate commission of the specific cognizable offence(s) by the accused, or each accused, in case there are more than one. Due care must be taken while drafting the FIR and naming the accused persons. Names of only those persons should be mentioned in the FIR against whom *prima facie* material indicating their complicity in the offences is disclosed in the text of the FIR. The draft of the FIR must be thoroughly vetted by the Superintendent of Police. In important matters, even DIG may see the draft of the proposed FIR and approve it before registration. They may take assistance of Law Officers, where considered necessary.

10.5 In case of investigation being transferred to the DSPE by the local Police or any other law enforcement authority, the original First Information Report registered by them may be reproduced with all its details such as FIR number, date of registration, name of the Police Station, sections of law etc. Neither the contents nor the sections of law under which the case was originally registered may be changed. It must be remembered that it would not be treated as fresh FIR but a new number as per prevalent scheme of DSPE may be assigned for the purpose of maintaining uniformity in record keeping in CBI.

10.6 If a case is required to be registered under the Prevention of Corruption Act 1988 against an officer of the rank of Joint Secretary and above or a Government appointee in the Central Public Sector Undertakings, prior permission of the Government should be taken before enquiry/investigation as required under Section 6-A of the DSPE Act except the case under Section 7 of the P C Act wherein the registration is followed by immediate arrest of the accused. In case, involvement of another Government servant of the above-mentioned rank(s) is revealed during the course of investigation, a fresh permission as required under Section 6-A of the DSPE Act, which should be obtained at the earliest. The permission so obtained should form an integral part of the FIR or the Case Diary, as the case may be.

10.7 It may be mentioned that, as per Hon'ble Supreme Court decision in *SP Jaipur v. State of Rajasthan* [JT2001(1)SC624], the lower Courts, can not entrust any matter/ FIR for investigation or enquiry to DSPE. In case, any lower Court passes such an order, the same should be challenged in the appropriate Court after obtaining approval of the Head Office.

10.8 As per provisions under Section 154 (2) Cr.P.C., a copy of the FIR shall be provided to the informant. If, however, it is not intended to divulge the name of the informant, only "Source" should be written against the relevant column of the FIR.

10.9 The operative part of the FIR as well as the endorsement part should be signed by the SP of the Branch or by the officer looking after his work, when the SP is on tour or leave and the FIR should be forwarded to the Court/authorities mentioned in the Annexure 10-B of this chapter.

10.10 In case of registration of FIR under Section 13(1)(e) of the Prevention of Corruption Act, 1988, if the SP does not intend to investigate the case himself, he should simultaneously issue an order under Section 17 of the P.C. Act, 1988 authorizing the Investigating Officer to conduct investigation in the case. The SP must issue an order for registration of FIR and investigation as per stipulation under Section 17 of P.C. Act, 1988 on the date of registration of the case. The I.O. should refer to this order in the first Case Diary itself.

10.11 While registering FIR pertaining to the abuse of official position by a public servant relating to the Government business/commercial decisions, the important difference between a business risk and *mala fide* criminal misconduct should be kept in mind with a view to ensure that while the corrupt public servants are suitably dealt with under the relevant laws, the *bona fide* Government business/commercial decisions taken by public servants in discharge of their official duties are not taken up for unnecessary probe by CBI

10.12 In case a Regular Case is registered on a complaint given by the officer who conducted the Preliminary Enquiry, the investigation must be entrusted to another officer. While taking a decision in this regard, it may be kept in mind that in certain circumstances the investigation could be completed early if it is given to the same officer. However, in cases registered under Section 7 of Prevention of Corruption Act, wherein a trap has been laid, an officer other than the officer, who laid the trap, should conduct investigation.

10.13 In the cases registered on complaints received from a Ministry/Department/individual, the forwarding letter enclosing the copy of FIR meant for the Head Office must invariably mention that the case has been registered in consequence of a complaint from a particular Ministry/Department/ individual, giving details of reference number and date etc.

10.14 When an officer of CBI, not below the rank of a Sub-Inspector, while on tour within the limits of his Branch, receives credible information or complaint of the commission of a cognizable offence which the DSPE is authorized to investigate, he should record the same accurately as informed and transmit it to the SP of his Branch by quickest available means of communication for further necessary action. Whenever necessary, he should take adequate steps to preserve evidence or even take initial steps of investigation with the permission of the Branch SP.

10.15 Care should be taken to see that the FIR contains, as far as possible, full name along with father's name and other particulars of the accused such as age, place of residence and occupation, the scale of pay/group to which he belongs/date of superannuation, if he is a Government servant. The time and date of commission of the offence, the place of commission of the offence, the manner in which the offence was committed, full names and particulars of the witnesses, the motive alleged by the complainant for commission of the offence and, in cases

involving property, the details of property involved such as weight, make, design, distinguishing marks, etc. which may assist in its identification. In cases where the names of accused, or any of them, are not known, the complainant should be called upon to give description of the accused, which should be recorded along with the rest of the information.

10.16 In trap cases under Sections 7 and 13 of the P.C. Act, 1988, the FIR should be registered as soon as a *bona fide* complaint/information is received attracting the provisions of Sections 7 and 13 of the P.C. Act, 1988. After the trap materializes, investigation should continue under the same case number. If the offence is to be investigated by an officer of a rank, who cannot investigate the case without permission from a Magistrate, as contemplated under Section 17 of the P.C. Act of 1988, it will be necessary for the Investigating Officer to obtain requisite permission, from the Court soon after the case is registered. In case, the trap materializes, it will be necessary for the Investigating Officer, if he is below the rank specified in Section 17 of the P.C. Act of 1988, to report the developments to the Magistrate and obtain further permission for investigation of the offence of obtaining gratification other than legal remuneration punishable under Sections 7 and 13 of the P.C. Act, 1988 and of criminal misconduct punishable under Section 13(1)(d) read with Section 13(2) of the P.C. Act, 1988.

10.17 On receipt of an order of the Supreme Court/High Court entrusting a case to CBI, the Branch SP should immediately inform his DIG/JD and send a copy of the same to the DIG/JD without any delay. If the matter pertains to the functional jurisdiction of the Branch under his charge, the JD shall obtain orders of the DCBI through the Additional Director/ Special Director concerned for registration of the case. In case, the matter pertains to another Division, the DIG/JD will forward the order of the Court to the concerned Joint Director having jurisdiction for further necessary action. In urgent cases, a copy of the same may be faxed by the SP to the Joint Director concerned under intimation to his DIG/Joint Director. The Policy Division Circular No. 21/34/96-PD, dated 19-6-2002 prescribes the follow-up action to be taken in respect of such cases

10.18 In case of transfer of case from State Police or any other Law Enforcement Agency to the DSPE, the evidence or material collected during investigation by the concerned agency should be collected and analysed before taking up further investigation. The Case Diaries, including the statements of witnesses, details of places searched along with seizure memorandum, material objects/documents seized and/or sent to Forensic/Expert examination and their reports must be collected. The details regarding persons arrested and their current status must be gathered. It is also important to ascertain the details of petition(s) filed and orders of the Court, if any, passed during the course of investigation by the said agency.

10.19 The provision under Section 468 Cr.P.C., which prescribes the period of limitation for different category of offences, should be kept in mind while dealing with Regular Cases. As per provisions of this section, no Court shall take cognizance of an offence of the category specified in sub-section 2 after the expiry of the period of limitation. The period of limitation for different category of offences laid down in sub-section 2 are as under:

- (a) Six months, if the offence is punishable with fine only.
- (b) One year, if the offence is punishable with imprisonment for a term not exceeding one year.
- (c) Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years

Closure of an FIR

10.20 Unless the investigation of a case is transferred to another Branch or to the local Police, no RC can be finally closed without the orders of the Magistrate or Special Judge having jurisdiction. In such cases the SP incharge of the Branch shall send the Final Report under Section 173 Cr.PC

with necessary papers to the Magistrate or Special Judge having jurisdiction for orders to close the case.

10.21 In respect of cases registered under Section 25 (1) read with Section 3(1) of the Antiquities and Art Treasures Act (No. 52 of 1972), no case will be registered in respect of any alleged antiquities till the opinion of the competent officer of the Archaeological Survey of India has been obtained on the point whether the items seized from the suspect were antiquities or not.

10.22 In any particular case of the categories mentioned above, if it is felt by the SP of the Branch that the matter should be enquired into by CBI notwithstanding the instructions mentioned above it should be referred to the Head Office for orders. Whenever, in accordance with the above instructions or otherwise, a decision is taken by any CBI Branch to refuse registration of a case on the complaint of a Department/Undertaking, a copy of the communication containing such refusal should be sent to the Regional Office along with the reasons for declining registration

Crime Register of RCs

10.23 Details pertaining to all Regular Cases and details of investigation will be entered in the CRIMES Module and/or in the Crime Register of the Branch. Care shall be taken to see that the entries in this Module are duly validated. It will be the responsibility of the Branch SP to ensure that the data entered in the CRIMES Module and/or in Crimes Register are made correctly. Similar records may also be maintained in the office of the DIG and the Joint Director.

10.24 Similar records may be maintained in CRIMES Module or a separate Crime Register in serial order for the requests for part investigation received from the other Branches of CBI. Regular Case diaries should be written by the I.O. concerned showing the result of investigation in such part investigations also. Two copies of the same should be sent to the concerned Branch and one copy on plain paper may be retained by the I.O. for record.

10.25 While the CRIMES Module has the facility to provide on-line Information about all Regular Cases to the regional and zonal offices, a Crime Register may be maintained till the system is fully functional.

Maintenance of Running Note-sheet

10.26 The Superintendent of Police or any other officer supervising a case shall maintain in the running note-sheet form, a brief record of the progress of investigation as disclosed from the Case Diaries and of the orders or directions issued while supervising the investigation. It will also incorporate the result of investigation, subsequent action, and final disposal of each case. Such running notes should not be maintained in a routine and mechanical manner. It should record the perception of the Branch SP in respect of the evidence gathered and further course of investigation.

Proposals for Searches

10.27 All proposals for searches, which require permission of the Regional DIG or Head Office, should be preferably written in hand/typed by the Officer himself and sent in '**secret**' name covers to the officer concerned. The proposals may be sent by the means which are completely secure so that secrecy is maintained. It shall be the responsibility of the sender to ensure secrecy thereof. For details, the chapter on Searches and Seizure may be referred.

10.28 After completion of investigation, the FR-I shall be prepared by the I.O. The Law Officer will give his recommendation through the FR-II. The Superintendent of Police would, thereafter, either pass final orders in respect of the cases within his competence or obtain orders from the Competent Authority by sending his recommendations to the DIG concerned. After receipt of orders of the Competent Authority, if it is decided to prosecute the accused, necessary sanction for

prosecution u/s 19 of the P.C. Act, 1988 and Section 197 Cr. P.C., as the case may be, if any required, may be obtained by the Branch SP by sending a SP's Report and the relevant records to the Competent Authority. On receipt of the sanction, the Investigating Officer will prepare a self-contained draft charge-sheet giving details of investigation conducted and evidence/charges against each accused person in respect of each allegation(s). The said draft charge sheet shall be vetted by the Law Officer of the Branch and the Branch SP and also by the DIG in important cases and would, thereafter, be finalized and signed by the I.O. and forwarded to the Court by the SP along with the statements of listed witnesses and original relied-upon documents/articles and the sanction for prosecution, under Section 173 Cr.P.C. In cases where the sanction for prosecution is not required, the I.O. will proceed with the preparation of the draft charge-sheet soon after receipt of the orders from the Competent Authority and will take other necessary actions as mentioned in this Manual and the instructions issued from time to time.

10.29 The directions contained in the Chapter of this Manual, which relate to Preliminary Enquiries, will also apply *mutatis mutandis* to the relevant areas of Regular Cases registered in the Branch.

10.30 The provisions of the Cr.P.C. shall be fully complied with by the Branches at all stages in the registration and investigation of RCs. A communication under Section 173(2)(ii) Cr.P.C. shall be sent to the complainant informing him whether the case has been chargesheeted in the Court or not after completion of the investigation.

10.31 In cases where it has been decided not to prosecute any person but to refer the case for Regular Departmental Action, a SP's Report will be forwarded to the Competent Authority, making necessary recommendations and thereafter a report under section 173 Cr.P.C. shall be submitted to the Court concerned stating that the case has been closed on the grounds that may be applicable. These grounds should be based on facts emerging from investigation. In the report under Section 173 Cr.P.C. it should be clarified that disciplinary proceedings have been recommended against the accused. The case property seized during such investigation, should be disposed of by the investigating agency after obtaining necessary permission from the Court.

**GUIDELINES FOR REGISTRATION OF PRELIMINARY ENQUIRIES AND
REGULAR CASES–PETTY CASES TO BE AVOIDED**

Cases of the following types shall not be registered, except where there are special reasons warranting a CBI Enquiry/ Investigation:–

- (i) *Cases relating to Railway Claims, movements or delivery of consignments without Railway Receipts etc. except when bribe is involved and a trap can be laid.*
- (ii) *Cases relating to minor thefts or loss of stores or temporary misappropriation.*
- (iii) *Cases relating to promotions or similar departmental matters where no element of corruption is involved.*
- (iv) *Cases relating to misuse of Railway Passes or obtaining passes on false pretexts.*
- (v) *Cases relating to Life Insurance involving non-medical test or non-accounting of premia, unless the amount involved is very large or there are a number of instances over a prolonged period.*
- (vi) *Cases relating to false T.A. including LTC unless false claims of this nature have been preferred repeatedly.*
- (vii) *Cases (covered by CBI Charter) registered and investigated by Local Police unless these deal with serious criminal misconduct on the part of senior officers and these are handed over very soon after registration.*
- (viii) *Cases relating to departmental irregularities where the department itself is conducting an enquiry or taking necessary action against the delinquent.*
- (ix) *Cases relating to misuse of Staff cars or Government vehicles or orderlies unless such misuse is extensive or repeated.*
- (x) *Cases relating to shortage of stores unless stores found short are of considerable value, i.e. Rs. 25 lac and above and a criminal offence is suspected.*
- (xi) *Cases relating to recommendations in favour of a firm when no mala fides are involved.*
- (xii) *Cases relating to failure to report property or monetary transactions or similar violations of conduct rules.*
- (xiii) *Cases relating to the issues of certificates to Passport applicants without knowing them but not involving mala fides.*
- (xiv) *Cases relating to shortage or losses where it is not possible to fix responsibility due to defects in procedure.*
- (xv) *Cases relating to acceptance of contributions for any religions or social purposes, when the contributors have no official dealings with the officer concerned.*
- (xvi) *Cases relating to negligence due to which the loss caused to Government is less than Rs.25 lac.*
- (xvii) *Cases relating to acceptance of below specification work when the loss caused is small and no mala fides are involved.*
- (xviii) *Cases of Public Sector Undertakings (other than Nationalized Banks) relating to fraud, misappropriation etc. below Rs. 25 lac.*
- (xix) *Cases pertaining to Nationalized Banks, even on specific complaints from the banks, relating to frauds, misappropriation etc. below Rs. 25 lacs, which may not involve bank employees or bank employees in collusion with private persons.*
- (xx) *Cases of Nationalized Banks relating to frauds etc. committed by private persons/companies unless these involve*
 - (i) *amount of Rs.50 lac or more;*
 - (ii) *inter-national and/or interstate ramifications or*
 - (iii) *frauds against several banks.*
- (xxi) *Furnishing or alteration of date of birth in service records except where it can be established that the suspect had deliberately furnished false date of birth or altered the date of birth for deriving some specific advantage like eligibility etc.*
- (xxii) *Allegations which have been the subject-matter of audit objections unless there is reliable Information to indicate corruption or mala fides.*

(xxiii) False declaration of caste, at the time of appointment unless it is for All-India Services or Groups 'A' or 'B' Services.

(xxiv) False claims relating to Leave Travel Concession or Children Education Allowance.

FIRST INFORMTION REPORTS–TO WHOM SENT

*Copies of the FIR should be sent immediately after registration to the jurisdictional Magistrate or Judge, as the case may be, and to the Investigating Officer. Besides this, the legible copies of the FIR should also be also sent to the following, in confidential covers, addressed by name:–

- (i) Regional DIG
- (ii) Zonal JD
- (iii) Director (Vigilance), Department of Personnel and Training, North Block, New Delhi, only if the accused are:
 - (a) *Officers of whom the Department of Personnel is the controlling authority.*
 - (b) *Gazetted or Commissioned Officers of the Central Government removable by the President;*
 - (c) *Members of Parliament*
- (iv) CVC in the following types of cases:–
 - (a) *Cases referred by the CVC to the CBI*
 - (b) *Cases against Gazetted Officers, Commissioned Officers even when on deputation with Public Sector Undertakings.*
 - (c) *Officers of Public Sector Undertakings in respect of whom CVC advice is necessary.*
- (v) Ministries and Departments concerned in respect of following cases:–
 - (a) *Cases involving Non-Gazetted Officers, Head of the Ministry/ Department concerned, as the case may be.*
 - (b) *Cases involving Gazetted Officers:.*
 - (i) CVO of the Ministry concerned.
 - (ii) Head of the Department

*Copies of the FIR in CBI cases involving Commissioned and Civilian Gazetted Officers of the Defence Forces should be endorsed to following authorities:–

- (a) Cases involving Commissioned/ Gazetted Officers(Civilian):
 - (i) *HQ of Command concerned.*
 - (ii) *HQ of Formation concerned.*
 - (iii) *AG's Branch.*
 - (iv) *CVO of the Ministry of Defence.*
- (b) Cases involving Non-Commissioned/Non-Gazetted officers (Civilian):
 - (i) *HQ of Command concerned.*
 - (ii) *HQ of Formation concerned.*

*A copy of the First Information Report in all cases involving M.E.S. Officers (both Gazetted and Non-Gazetted) should be endorsed to the Engineer-in-Chief, Army Hqrs., DHQ P.O., New Delhi-110 011.

*First Information Reports regarding cases against employees of Border Roads Organization should be endorsed to the following authorities:–

- (i) Cases involving Gazetted Officers:

Chief Vigilance Officer,

Border Roads Development Board,

'B' Wing, 4th Floor, Sena Bhawan,

New Delhi-110 011.

- (ii) Cases involving Non-Gazetted Officers:

Director-General,

Border Roads, Seema Sarak Bhawan,

Naraina, Ring Road,

New Delhi.

*In case the suspect/accused person is a State Government employee, a copy of the FIR should be sent to the Head of Department/Secretary of the State Government concerned.

*Copies of the FIR in respect of cases against officers belonging to All-India Services serving in the State should also be sent to the Central Vigilance Commission, New Delhi, and the Department of Personnel, Government of India, for information in addition to the Chief Secretary of the State Government concerned.

*Copies of FIR involving Bank employees should be endorsed to the CVO of the concerned Bank, by name. If, however, the CMD of the bank is himself named as an accused in the FIR, copy of the FIR should not be sent to the CVO of the Bank and instead, it should be sent to the CVO of the Banking Division, Ministry of Finance

*Likewise, copies of the FIR involving employees of Public Sector Undertakings (PSU), Government of India should be endorsed to the CVO of the concerned PSU, by name. However, if the CMD of the PSU is himself named as an accused in the FIR, copy of the FIR should not be sent to the CVO of the concerned PSU and instead, it should be sent to the CVO of the concerned administrative Ministry.

*In respect of cases registered on the orders of High Court/Supreme Court, a copy of FIR be also endorsed to the Registrar of the concerned Court.

*** Each copy of the First Information Report should contain the indication of endorsements made to the other authorities.**

CHAPTER 11

CASE DIARIES AND PROGRESS REPORTS

CASE DIARIES

11.1 Under the provision of Section 172 Cr.P.C. every Police Officer conducting investigation shall maintain a record of investigation done on each day in a Case Diary in the prescribed Form. Case Diaries are important record of investigation carried out by an Investigating Officer. Any Court may send for the Case Diaries of a case under inquiry or trial in such Court and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

Facts to be incorporated in Case Diaries

11.2 The Case Diary, which is a record of day by day investigation of a case, shall contain details of the time at which the information reached the Investigating Officer, time at which the investigation began and was closed, the place or places visited by him and a statement of the facts and circumstances ascertained through investigation.

11.3 Case Diaries should contain only particulars of actual steps taken or progress made in the investigation and such details of investigation which have bearing on the case. Addresses, both present and permanent of the witnesses and all other relevant details should be invariably recorded in the Case Diaries. The following shall not be incorporated in the Case Diaries:

- (i) *Opinion of Investigating Officer, opinion of the Supervisory Officers and Law Officers*
- (ii) *Any conflict of opinion between I.O., Law Officers, SP, DIG and Head Office.*
- (iii) *Recommendations made in concluding report of the I.O., comments of Law Officer(s) and Supervisory Officers.*
- (iv) *Any other facts/circumstances not relating to investigation of the case.*

11.4 Every Investigating Officer, to whom part investigation of a case is entrusted, will also maintain a Case Diary for the investigation made by him. This may be called 'Supplementary Case Diary' (SCD). SCDs will be taken on record by the Chief I.O., who may incorporate the gist of important facts disclosed in such investigation in his own CD for the date when the SCD is received by him. It is important that SCD must be submitted without any delay. A copy of the CD submitted by I.O./Chief I.O. to the Superintendent of Police would invariably enclose the SCDs received by him.

Writing of Last Case Diary

11.5 On receipt of the orders of the Competent Authority after completion of investigation, the last Case Diary in every case shall be as mentioned below:

- (i) *In cases, in which charge-sheet is to be submitted to the Court, the last CD would be written on the date of filing the charge-sheet. If, however, investigation is continued under Section 173(8) Cr.P.C. on the same allegation or on other allegations, then Case Diaries would continue to be written till such investigation is completed.*
- (ii) *For cases, in which prosecution is not launched, the last Case Diary would be written on the date when the competent Court passes the closure order on the Final Report under Section 173 Cr.P.C.*

Case Diaries to be numbered and dated

11.6 All Case Diaries prepared in a case should bear consecutive numbers and shall be dated. The functionality of CRIMES Module can also be used, wherever possible, to type out the Case Diaries on the same day. Pre-printed stationary is available for this purpose. There shall be a separate case diary for each date, prepared in duplicate, one copy of which will be retained by the I.O. in the case file, and the other copy will be forwarded to the Superintendent of Police, to be securitized by him and retained in the office file. Both copies of the case diaries shall include all the relevant enclosures, viz. copies of statements of witnesses, seizure memos, search lists etc., but may not include the day-to-day correspondence taken up by the I.O. with various offices/agencies/ individuals.

Scrutiny of Case Diaries

11.7 Investigating Officers should submit their Case Diaries for each day of investigation to the Superintendent of Police of the Branch concerned and the latter shall scrutinize the Case Diaries and issue instructions for further investigation. The Case Diaries and other documents enclosed thereto may be used for preparing periodical Progress Reports. The Case Diary must be written on the day of investigation. SP would record a gist of its contents in the running note sheet. These need not be forwarded to the Head Office, unless specially called for.

Safe Custody of Case Diaries

11.8 In the normal course, the custody of the office file of case diaries after scrutiny by the Superintendent of Police/Supervisory Officer will remain with the Officer entrusted with such responsibility who shall store these in a secure/safe place. The original Case Diaries will remain with the Investigating Officer till the stage of final decision in the case is reached. In case of transfer of investigation to any other Officer due to any exigency these will be handed over promptly under acknowledgement to the new Investigating Officer. The movement of Case Diary file on transfer of the case to another Officer or to the Prosecutor etc. should be kept by the Officer entrusted with such responsibility under proper acknowledgement.

Progress Report when to be sent

11.9 Progress Report (PR) is an important monitoring tool for Supervisory Officers which provide them an opportunity to assess the progress made in the investigation and to issue necessary direction(s) in the ongoing investigation. Progress Report on the ongoing enquiry/ investigation should be sent to the DIG in all PEs and RCs which are registered after obtaining orders of the DIG or the Head Office. In the cases, which have been registered with the approval of Joint Director and above, the DIsG will forward the PRs to the Joint Directors with their comments and directions issued to the Superintendent of Police. Besides the above, where specific instructions are issued or where investigation continues beyond one year, in any case, the Progress Report would be sent to the DIG. The DIG would forward the PRs. to the Joint Director with his specific comments and directions given to the Superintendent of Police, if the investigation continues beyond one year. The Joint Director or the Head Office may call for PRs in any case and at any time.

11.10 In all PEs and RCs, as referred to in para 11.9, the first Progress Report should be sent to the DIG after a fortnight from the date of registration of the case and subsequent fortnightly Progress Reports in PEs and monthly Progress Reports in RCs till the finalization of the enquiry/investigation. The frequency of Progress Reports can not be minimized and may be increased with specific orders of the Head Office. The SP is required to send the Progress Report on the due date even if there has been no progress in the investigation during the intervening period. In case of delay in submission of the progress report for more than seven days, the SP is required to explain the reason for delay. An index of dates on which the Progress Reports are submitted by a Branch shall be maintained in each PE/RC file in the office of the DIG/Joint Director for which the relevant functionality of CRIMES module could be made use of. If a progress Report

becomes overdue by seven days, the DIG should send a reminder to the Branch. The office of Joint Director would also monitor the timely receipt of Progress Reports.

Preparation of PRs

11.11 The Progress Reports have to be prepared by the Superintendent of Police himself on the basis of the Case Diaries submitted by the I.O. and scrutiny of documents/material seized by him. Progress Reports should be serially numbered and prepared in the prescribed format given in Annexure 11-A.

11.12 The relevant CRIMES Module may be used for preparing and transmitting the Progress Reports and instructions issued thereon by various Officers.

11.13 The first Progress Report shall indicate the specific allegation(s) made in the registration report or First Information Report on which the enquiries/investigation are to be conducted. It will incorporate the plan of action as approved by the SP and the time schedule to complete the enquiry/ investigation. As prescribed in the proforma, the subsequent PRs would contain the allegation in brief and report the results and developments in the investigation vis-à-vis each allegation. The gist of evidence collected by the examining witnesses (including the opinion of the Government Examiner of Questioned Documents or some other Technical Expert) and gathered by way of documents seized may also be mentioned for appreciating the developments in enquiry/investigation. Each PR must contain the gist of enquiry/investigation conducted and enclose a chronological statement of important developments in the investigation till date. Apart from summarizing the evidence on each allegation the PR should make mention of discovery of new facts or evidence collected during the period under review and reflect the appreciation and supervision exercised by the SP. The SP is required to record his instructions in specific terms to set out a definite road map for further enquiry/investigation. Routine and vague instructions must be avoided. The reason for delay and important points on which enquiry /investigation remains to be completed must be pointed out. In case any fresh allegations arise, which may fall within the ambit of the ongoing enquiry or investigation or some new persons are suspected, these should be specifically mentioned in the Progress Reports. In case, any difficulty is encountered during the enquiry/ investigation a specific mention of the same and the steps taken to overcome that, should be made in the PR.

11.14 The DIsG are to forward the PRs to the Joint Directors with their specific comments briefly indicating the progress made in enquiry/investigation and whether it is proceeding on right lines. They may also record their observations on the speed of investigation and the reasons for delay, if any. The copy of instructions, which must be specific in nature, issued by them to the SsP and the IOs must be enclosed with their forwarding note to the Joint Director.

PROGRESS REPORT IN DISPROPORTIONATE ASSETS CASES

11.15 In the Progress Reports of cases of the disproportionate assets, the SsP should furnish the details such as savings at the beginning of check period, progressive calculation of income, expenditure, likely savings and assets computed based on the investigation conducted till the date of PR. These statements should commence from the second Progress Report and in any case not later than fourth PR onwards. These details could be summarized in the following statements: –

- (a) 'Statement A' should contain details of movable and immovable assets at the beginning of the check period with dates of their acquisition. These would broadly include cash balance, bank balance, jewellery, household effects and other movable and immovable properties.
- (b) 'Statement B' should contain the details of verified moveable and immovable assets acquired by the public servant either in his name or held on his behalf, during the check period. The value of assets should be based on the purchase price, supported by documentary or other credible evidence, at the time of their acquisition.

- (c) 'Statement C' will contain the progressive total income during the check period. This statement may contain figures in respect of income under different heads, e.g.; pay and allowances, rental income; income from interest, loans and advances, dividends etc., If necessary, schedules may be prepared and attached to the statement incorporating details under each head of income.
- (d) 'Statement D' will contain Progressive expenditure during the check period. Statement C (-) D will provide the likely savings during the check period.

PRs to be sent till completion of Investigation

11.16 The Branches should continue to send Progress Reports as long as the enquiries/investigation continue and until the case is actually charge-sheeted or closed by way of filing a closure report in the Court or referred to the Department, through a prescribed report for Departmental Action or Action as deemed appropriate.

Number of copies of PRs:

11.17 The PRs should be sent in duplicate to the Regional DIG in cases in which final orders are to be passed by an Officer of the rank of Joint Director or above. The original would be forwarded by the Regional DIG to the Head office, with a copy of his comments and instructions issued to the Superintendent of Police and Investigating Officer. In case of Central Units, based at Delhi, the PR would be put in a proper file and submitted to senior Officers.

FORMAT FOR THE PROGRESS REPORT

1. PE/RC No.
2. Date of Registration:
3. Section of Law (in case of RC):
4. Name(s) of the Investigating/ Enquiry Officer:
5. Details of accused/suspect:
 - (a) *Number of accused/suspect:*
 - (b) *Name(s) of main accused/ suspect:*
 - (c) *Whether arrested, or not:*
 - (d) *If arrested whether on bail or in CBI/Judicial custody;*
 - (e) *In case accused is absconding whether proceeding under section 82 & 83 Cr.P.C. have been initiated.*
6. Whether any search was conducted during the period under review:
(If yes, whether any incriminating documents/material to prove the allegations were found or not.)
7. Whether any documents/material have been collected during period under review or and any expert opinion received.
8. Details pertaining to investigation:
 - (i) *The allegation(s) in brief (gist maybe given point wise);*
 - (ii) *A brief chronological statement of important development in the investigation till date (which would include details of important searches/result of scrutiny of documents);*
 - (iii) *Development in the investigation vis-à-vis each allegation during the period under review;*
 - (iv) *How far the allegation(s) have been substantiated and where the investigation is leading (in case of disproportionate asset case, the statements mentioned at para 12.9 may be incorporated);*
 - (v) *Discovery of any new facts and gist of crucial evidence gathered during the investigation, whether by way of examination of witnesses or by way of scrutiny of documents/material seized (it would also be mentioned what documents/material have been sent for Expert examination);*
 - (vi) *Whether any application with regard to investigation or related matters have been moved in any Court and if so, the details of the same and what action has been taken in the matter;*
 - (vii) *Instruction given to the Investigating Officer for further investigation;*
 - (viii) *Action taken on instructions issued on the previous PR by DIG or Head Office;*
 - (ix) *Important points on which investigation remains to be completed;*
 - (x) *Difficulties encountered during investigation, if any, and steps taken to overcome these;*
 - (xi) *Reasons for delay in submitting the PR and steps taken to avoid further delay;*
 - (xii) *Further time to be taken for completing the investigation and*
 - (xiii) *Details of case diaries (such as numbers and dates) pursued by the SP based on which the PR is based.*

(Signature of SP with date)

CHAPTER 12

ARRESTS, CUSTODY, BAIL & REMAND

ARRESTS

Power of Arrest

12.1 The Police Officers of Delhi Special Police Establishment may arrest an individual, concerned in any cognizable offence notified under Section 3 of the DSPE Act or against whom a reasonable suspicion exists of his having been involved in the crime, without any warrant of arrest issued by a competent Court. This power is derived from Section 41 of the Code of Criminal Procedure (Cr.P.C). The Officer/s of DSPE may take assistance of the local Police while making arrest, whenever considered necessary. If any woman is to be arrested, she may be arrested between sunrise and sunset and with the assistance of woman Police Officer, as far as possible. In case of non-availability of women Police Officer, a woman relation/ acquaintance could be allowed to remain present until she is released on bail or produced before the competent Court.

12.2 The Police Officers of Delhi Special Police Establishment may arrest an individual against whom a warrant of arrest has been issued by a Court and endorsed to him for execution. No discretion is available to Police Officer(s) in executing the warrants of arrest issued by a Court. In case, the individual against whom a warrant of arrest has been issued by a Court cannot be arrested within the time specified in the warrant, a fresh warrant may be obtained after returning the unexecuted one. In cases of individuals to whom it may be advisable to deny use of passport facility, arrest warrants shall normally be obtained to invoke the provisions of Sections 6 and 10 of the Passports Act, 1967.

12.3 *However, as arrest takes away liberty of an individual, the power to arrest vested under Section 41 Cr.P.C. must be exercised with due care and caution. The power being discretionary must be used with due care to ensure that the human rights of any individual are not violated under any circumstances. The arrest may be made only when it is reasonably felt that the individual so arrested is involved in the commission of a heinous crime and will be prosecuted in the Court of Law for the offences committed by him and if it is feared that he is likely to tamper with or destroy evidence or is likely to evade the process of law. The Police Officers of DSPE must observe guidelines issued in this regard from time to time. The Superintendents of Police must satisfy himself, before Officers working under his control effect an arrest, by evaluating the evidence available against an individual, and need to affect the arrest. If the case has been registered with the approval of regional office or the Head Office, necessary permission may be obtained from the Competent Authority by sending an arrest proposal to the said authority through the DIG concerned. In respect of public servants, the instructions given in the paragraph below may be observed. Undue publicity for arrests made must be avoided.*

Arrest of Public Servants in CBI Cases

12.4 Public servants should be placed under arrest only when it becomes necessary to do so in the interest of investigation or to satisfy the requirements of law or to prevent the accused from absconding or after a decision has been taken to launch a prosecution and necessary sanction for it has been obtained. Investigating Officers should, wherever possible, obtain the concurrence of the Superintendent of Police before making such arrests. A Superintendent of Police and Investigating Officers should use utmost care and discretion in deciding to arrest and in making such arrest. Undue publicity and embarrassment must be avoided.

12.5 In affecting the arrest of a public servant, especially on operational duty, proper steps should be taken to see that the work of the Department is not unnecessarily dislocated. As far as

possible, timely information of intention to arrest the public servant may be conveyed to the authority, to which such public servant is subordinate so that suitable alternative administrative arrangements could be made. In case, the arrest cannot be postponed for any exceptional reason and his immediate superior cannot be informed in advance, he should be informed soon after making arrest of the public servant. A report will be sent to the Head Office detailing the reasons for effecting arrest without giving prior information to the immediate superior Officer of the public servant concerned.

12.6 The arrest of personnel of armed forces should be intimated to the nearest Commanding Officer and his/her parent unit.

Arrest how made

12.7 As provided in Section 46 Cr.P.C., in making an arrest the Police Officer shall actually touch or confine the body of the person to be arrested, unless there is submission to the custody by word or action. If any person forcibly resists the endeavour to arrest him or attempts to evade the arrest, all means necessary, including **reasonable force** may be used. It must be remembered while using reasonable force that the law does not give a right to the Police Officer to cause death of a person who is not accused of an offence punishable with death or with imprisonment for life. The use of handcuffs should be avoided as far as possible. In case, it is felt otherwise due to any reason, the handcuffs may be used only in accordance with law mandated by the Hon'ble Supreme Court in *Prem Shanker Shukla v. Delhi Administration* (1980 3 SCC 526) and *Citizen for Democracy v. State of Assam* (1995 3 SCC 743).

Person arrested to be informed of Grounds of Arrest and of the Right to Bail

12.8 Every Police Officer arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. If it is a bailable offence, the person arrested should be informed that he is entitled to be released on bail and that he may arrange sureties on his behalf (Section 50 Cr.P.C.). The individual may be informed that he has a right to consult a legal practitioner of his choice. The individual may also be told that he can have his medical examination done and if he requests to be examined by a Doctor, the same be attended to as per Section 54 Cr.P.C.

12.9 The Hon'ble Supreme Court in *D.K. Basu v. The State of West Bengal* (AIR 1997, S.C. 610) has given directions to be followed scrupulously after the arrest of an accused person. Failure to comply with the said directions shall render the concerned Police Officer liable for Departmental action and he will also be liable to be punished for contempt of Court. All DSPE Officers arresting an accused must therefore, follow these guidelines. The directions of the Supreme Court are as follows:

- (a) The Police Personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such Police Personnel who handle interrogation of the arrestee must be recorded in a register.
- (b) The Police Officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
- (c) A person who has been arrested or detained and is being held in custody in a Police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

- (d) The time, place of arrest and venue of custody of an arrestee must be notified by the Police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the Police Station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- (e) The person arrested must be made aware of list of rights to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- (f) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the Police officials in whose custody the arrestee is.
- (g) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the Police Officer affecting the arrest and its copy provided to the arrestee.
- (h) The arrestee should be subjected to medical examination by every 48 hours during his detention in custody by a doctor on the panel of approved Doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.
- (i) Copies of all the documents, including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.
- (j) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- (k) A Police control room should be provided at all District and State Headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the Officer causing the arrest, within 12 hours of effecting the arrest and at the Police control room it should be displayed on a conspicuous notice board.

Arrest Report

12.10 An arrest report showing the time, date and place of arrest as well as the FIR number with sections of law shall be prepared at the time of arrest by the Investigating Officer as required under section 57 Cr.P.C. and sent to the Magistrate. At least one witness who may either be a member of the family of the arrestee or a respectable resident of the locality may countersign the arrest report. The arrestee shall also countersign it.

Search of the Persons under Arrest

12.11 The body of all persons arrested by the Officers of DSPE and not admitted to bail shall be thoroughly searched at the earliest. In such cases, the Officer making the arrest shall invariably prepare a search memorandum. This memorandum shall contain details not only of the property seized from the accused but also details of injuries, if any, found on the person of the accused at the time of his arrest. It is advisable, though legally not required, to keep at least one witness while conducting the personal search. In cases, where the property expected to be seized from the person of the accused is itself the main case property, such as trap cases, narcotics cases etc., the search of the person of accused shall be made in the presence of two independent witnesses. In the case of women accused, search shall be conducted by a woman only and shall, in all cases, be conducted with due regard to decency. Some Special Acts like Narcotic Drugs and Psychotropic Substances Act (NDPS Act) etc. contains special provisions for search, which should be strictly followed.

12.12 When a person is arrested on a charge of committing an offence of such a nature and under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, he may be subjected to

medical examination to ascertain such evidence. The Officer may use such force as is reasonably necessary for that purpose, as per Section 53 Cr.P.C.

Procedure when Police Officer deposes Subordinate to arrest without Warrant (Section 55 Cr.P.C.)

12.13 When the Officer conducting an investigation requires any Officer subordinate to him to arrest any person without a warrant (otherwise than in his presence), he shall deliver to the said an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made. The Officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order. Nothing, however, affects the power of a Police Officer to arrest a person under Section 41 Cr.P.C.

CUSTODY OF ARRESTED PERSONS

12.14 If an arrested accused is not released on bail, he should be produced before the Magistrate having jurisdiction over the case in accordance with the provisions of law, at the earliest and in any case within 24 hours (excluding the journey time) as per Section 57 Cr.P.C. and get remanded to Police/judicial custody. In cases, where it is not possible to produce the accused before the Magistrate before the fall of night and it becomes necessary for the DSPE Officers to retain the accused in Police custody, he may be lodged in the Branch/ Unit lock-up or in the lock-up of the nearest local Police Station. The SP should have a working arrangement with the local Police authorities for using their lock-up facilities. In case the lock-up of the local Police Station is utilized for lodging an arrested accused or the accused who has been remanded to Police custody, at least one Officer of the Branch must be on duty as long as the individual is detained there. In the case of women accused, as far as possible a woman constable should be detailed to guard her in the woman lock-up.

Illness of Person under Arrest

12.15 When a person in Police custody is suffering from illness or injury at the time of arrest, or becomes ill or sustains injury while in such custody, such a person shall be subjected to medical examination at the earliest opportunity and proper treatment be given to him/her. A record of such treatment should be made in the General Diary of the place where the accused is so confined.

Production of Person arrested or Execution of Warrant of Arrest

12.16 When the accused is arrested on execution of a warrant of arrest in the jurisdiction of the Court issuing the warrant, he should be produced in the said Court at the earliest and in any case within twenty four (24) hours.

12.17 Whenever a person is arrested and it appears that the investigation as regards his involvement cannot be completed within the period of twenty-four hours provided in Section 57 of Cr.P.C., the Investigating Officer should produce him before the Magistrate with an application for Police custody remand as per the provisions of Section 167 Cr.P.C. The Magistrate may authorize detention of the accused in such custody for a term not exceeding 15 days and thereafter send the accused to judicial custody as per section 167 Cr.P.C. The Investigating Officer may seek Police custody of the accused, more than once within the first 15 days after his/her arrest, if deemed fit and necessary.

Warrant directed to Police Officer for Execution outside Jurisdiction (Section 79 Cr.P.C.)

12.18 When a warrant directed to a Police Officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a Police Officer, not below the rank of an Officer-in-charge of a Police Station, within the local limits of whose jurisdiction the warrant is to be executed. The local Police shall, if so required, assist him in executing the said warrant.

Procedure on Arrest of Person against whom Warrant is issued

12.19 When the warrant is executed outside the district in which it was issued and if the Court issuing the warrant is beyond 30 Km from the place of execution of the warrant of arrest, the arrested accused should be produced before the Executive Magistrate or District Superintendent of Police or Commissioner of Police in whose jurisdiction the warrant was executed, as per the procedure laid down under Section 80 Cr.P.C. Order should be obtained from the said Executive Magistrate or District Superintendent of Police or Commissioner of Police for production of the arrested accused before the Court, which had issued the Warrant of Arrest.

Arrests of Members of Parliament and Legislatures

12.20 When a Member of Parliament/ Legislature is arrested on a charge of involvement in a criminal offence, the Superintendent of Police of the Branch making the arrest shall intimate the DIG and the Head Office regarding the same by wireless/e-mail/Fax and also immediately intimate the same to the Speaker of the Lok Sabha/Legislature or the Chairman of the Rajya Sabha, as the case may be, indicating the reasons for arrest of the said member and the place of detention or imprisonment in the form prescribed in the Third Schedule of the book titled “**Rules of Procedure and Conduct of Business for Lok Sabha**”. Similar intimation shall be given to the Presiding Officers of State Legislature in case of arrest of members of those Legislatures. Where intimation of arrest or detention is sent by wireless or e-mail or telegram, the information on all the points mentioned in the form should be given succinctly and clearly. Information whether an arrested Member has been released on bail pending investigation or trial should also be given to the concerned authorities.

12.21 Two copies of the report sent to the Speaker, Lok Sabha, or the Chairman, Rajya Sabha, in the cases relating to the Members of Parliament should be sent to the Regional DIG as well as the Head Office along with two copies of the note giving the brief facts and particulars of the case. In respect of the cases involving MLAs and MLCs copies of the report and one copy of note giving the facts of the case should be sent to the Presiding Officer of the Legislature and Regional DIG and two copies to the Head Office for further necessary action.

12.22 No arrest shall be made within the precincts of the House without obtaining permission of the Speaker. Similarly, no legal process, civil or criminal, shall be served within the precincts of the House without obtaining permission of the Speaker.

Bail

12.23 When an arrested person, accused of a bailable offence, can provide bail, it shall be accepted and he shall be released from custody.

12.24 When a person accused of a non-bailable offence is arrested or detained without warrant, he may be released on bail if the release on bail is not likely to prejudice the investigation or is not likely to result in the person absconding, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life.

12.25 A person accused of a non-bailable offence shall be released on bail under Section 437(2) Cr.P.C., 1973 at any stage of investigation when it appears that there are no reasonable grounds for believing that a non-bailable offence has been committed by him, although grounds may exist for further investigation.

12.26 Generally, all arrested persons should be released on bail if permitted under the law and if adequate bail is furnished unless there are strong reasons to the contrary. Arrest and release or non-release of a person on bail should be mentioned in the Case Diary with grounds for the same.

12.27 No Police Officer has powers to re-arrest an accused person in the same case, who has been released on bail under Section 437 Cr.P.C., 1973. When re-arrest is deemed necessary, an application should be made to the competent Court for the cancellation of the bail bond and issue of a warrant of arrest in accordance with the provisions of Section 437(5) Cr.P.C.

Arrest and Extradition of Persons in Foreign Countries

12.28 Should an occasion arise in which it is considered desirable to effect arrest and arrange extradition/deportation of an accused in a foreign country, a detailed report should be sent to the Head Office containing full reasons for the proposed action. The Head Office would then take necessary steps to move the Ministry of External Affairs for extradition of the accused if there are arrangements for extradition/ deportation with that country in respect of the particular offence or offences alleged to have been committed by the him/her.

Identification of Offenders

12.29 Where it is necessary to get arrested suspects identified by witnesses who claim to be able to identify them, an identification parade shall be held to confront such arrested persons with such witnesses. The following instructions should be strictly observed while holding such identification parades :

- (a) The face of the accused should be covered immediately upon his arrest and a note to this effect may be made in the Arrest Memo, Case Diary and the Remand Application. The accused should also be instructed to keep his face covered as he may be subjected to Test Identification (TI) Parade. Ordinarily, when the accused is to be put on TI Parade, he may be sent to judicial custody and immediately an application may be submitted to the Court for holding TI Parade so that the accused may be taken in Police custody remand subsequently within the first 15 days of arrest, if necessary.
- (b) The proceedings shall be conducted in the presence of a Magistrate.
- (c) Arrangements shall be made to ensure that the identifying witnesses are kept separate from each other and at such a distance from the place of identification as shall render it impossible for them to see the suspects or any of the persons concerned in the proceedings until they are called upon to make the identification.
- (d) Identification shall be carried out as soon as possible after the arrest of the suspects.
- (e) The suspects shall be placed among other persons similarly dressed and of the same social strata in the proportion of 8 or 9 such persons to 1 suspect. The suspect will be allowed to take any position in the parade, which he chooses and may be allowed to change his place if so desired after identification by each witness. Each witness shall then be brought out separately to make the identification. Care should be taken to see that the remaining witnesses are still kept out of sight and hearing and that no opportunity is permitted for any communication to pass between the witnesses who have been called up and those who have not been called up for identifying the suspects.
- (f) The results of the test shall be recorded by the Magistrate or the persons holding the identification parade as each witness views the suspects. On conclusion, the Magistrate or the person holding the identification parade shall be requested to sign the form and certify that the test has been carried out correctly and that no collusion between the Police and witnesses or among the witnesses themselves was possible. It is advisable that whenever possible an independent and reliable person not connected with the Police should be present throughout the proceedings at the place where the witnesses are kept and should be required to devote his attention entirely to the prevention of collusion. Once the arrangements for proceedings have been made, the Officer investigating the case and any Police Officer assisting him in that

investigation should have no access whatsoever either to the suspects or the witnesses.

- (g) Formal identification proceedings should not ordinarily be arranged without approval of the Superintendent of Police.
- (h) It is not the duty of the Officers conducting the test to record statements or cross-examine the suspects or witnesses. They should, however, be requested to question the identifying witnesses as to the circumstances in which they saw the suspects whom they claim to identify and to record the answers correctly. While every precaution shall be taken to prevent collusion, the identifying witnesses must be given a fair chance and unnecessary conditions must not be imposed upon these to make it impossible for a witness to identify the suspect even if he is honestly capable of making identifying the suspect in normal circumstances.

12.30 In case the accused is absconding, a TI Parade can be held on the basis of his photograph. It has been held by the Supreme Court that identification of the accused by seeing photograph is admissible and such identification can take the place of test identification. Therefore, when a photograph is the basis of test identification it must be a good photograph or a set of good photographs. All the photographs should be of same size and colour.

Absconding Offenders

12.31 If during the course of investigation of a case sufficient evidence justifying the arrest of an accused is collected but the accused is found evading arrest, a warrant of arrest should be obtained immediately and the Investigating Officer should make all possible efforts to trace the whereabouts of the accused. The Hon'ble Supreme Court in *State of Maharashtra v. Dawood Ibrahim Kaskar and others* reported in 1997(2) Crimes 92 (SC) has held that a warrant of arrest can be issued by the Court against a person, who is accused of a non-bailable offence and is evading arrest. Enquiries should be made from his relatives, friends and other persons who are likely to be aware of his movements and they should all be warned against harbouring him

Issue of Proclamation

12.32 If the accused continues to evade arrest and the warrant cannot be executed, the Police Officer entrusted with the execution of the warrant should be produced before the Magistrate to give evidence to the effect that the warrant could not be executed. The Magistrate should then be requested to issue proclamation under section 82 Cr.P.C. and attachment of property order under section 83 Cr.P.C. Proceedings Under Section 82-83 Cr.P.C. should then be completed expeditiously.

Issue of Red Corner Notice etc.

12.33 In case the accused is suspected to be abroad, a Red Corner Notice may be got issued from Interpol (IPSG Lyons) against him. For getting the Red Corner Notice issued, the prescribed proforma may be obtained from Interpol Wing of CBI and it may be forwarded to Interpol Wing, duly filled in, along with an attested copy of warrant of arrest, with English translation, photograph and finger prints of the accused, if available. The Interpol Wing will forward the proforma to IPSG and after the Red Corner Notice is issued, a copy will be sent by Interpol Wing to the Branch on whose request it was got issued.

12.34 In case it is suspected that the absconding accused may flee the country, Lookout Notices/Circulars may be got issued through the Deputy Director (Coordination), CBI, New Delhi. Request for Lookout Notices should be sent only after obtaining approval of the Joint Director concerned. The necessity for continuing the Lookout Notice should be reviewed every six months. Further, Ministry of External Affairs, New Delhi may also be requested not to provide passport facilities to the absconding accused and also for revocation of the Passport, if already issued, as

provided under Sections 6 and 10 of the Passports Act, 1967. Deputy Director, Coordination, CBI, New Delhi has been appointed the nodal Officer for such matters in the CBI.

Recording of Evidence under Section 299 Cr.P.C.

12.35 In all cases in which an accused is absconding, except those of exceedingly trivial or petty nature or when special circumstances exist which make the procedure unnecessary or undesirable, the Court should be requested to record evidence against the absconded offender under Section 299 Cr.P.C.

12.36 In order to render evidence recorded under Section 299 Cr. P.C. admissible at future trial, it must be proved and put on record that the offender has absconded and that there is no immediate prospect of arresting him.

12.37 In cases where some of the accused are absconding and some are facing trial in the Court the evidence should first be produced to prove that these persons are absconding and that there was no immediate prospect of arresting them. The evidence of the witnesses should thereafter be recorded in the case against those present. Such evidence would be relevant against the absconders under section 299 Cr. P.C.

Publicity regarding Absconded Offenders

12.38 A descriptive roll, marks of identification and, if possible, a photograph of the absconded offender should be maintained by the Branch in a dossier and wide publicity given to seek public cooperation in the arrest of the absconder. Documents should also be sent to the C.I.D/local Police Station of the State concerned for publication in their Gazette. Policy Division orders/instructions regarding POs/absconders and Fugitives should be complied with meticulously. The Fugitive Investigation Support Unit (FISU) under Assistant Director, (Coordination), CBI, New Delhi should be kept informed and their instructions complied.

Rewards for Apprehension of Proclaimed Offenders/Absconders

12.39 *In suitable cases, the Superintendent of Police should submit recommendations for rewards for apprehension of the absconded offenders to the Head Office for sanction and if the Head Office sanctions the reward, it should be given wide publicity.*

Dossier sub module of CRIMES /Registers of Absconded Offenders

12.40 The names of all absconding accused shall be entered in Dossier sub-module of CRIMES Module and/or in a register of absconders, which should be maintained in each Branch. It should be ensured that the relevant particulars are entered in the said records so that adequate steps are taken for arresting them. The records shall be maintained in each Branch for each of the following categories:—

- (a) Proclaimed offenders/absconders involved in cases registered in the Branch.
- (b) Proclaimed offenders/absconders wanted in cases of other branches of CBI, who are residents of places within the jurisdiction of the Branch and are likely to visit their home districts.

Retention of Records in cases against Absconders

12.41 All documents of the cases in which the accused persons or any one of them is absconding, the case file and the seized property should be carefully preserved so that these may be available when the accused is arrested. Such documents, files and property will not be destroyed for a period of 30 years from the date of proclamation of absconders.

Periodical Enquiries

12.42 Periodical enquiries should be made about all the proclaimed offenders and efforts made for their arrest, by forming special teams whenever necessary. The results of such enquiries and efforts to apprehend them should be mentioned in the Dossier Module or the register kept in the branches. Instructions issued by Policy Division and Fugitive Investigation Support Unit in this regard should be complied with meticulously.

Removal of Names from Dossier Sub-Module/Registers

12.43 A Superintendent of Police incharge of a Branch may remove of the name of proclaimed offender/ absconders from the register on the occurrence of any of the following contingencies:-

- (i) Arrest of the accused;
 - (ii) Death of the proclaimed offender or expiry of 30 years from the date of proclamation;
 - (iii) Any other good and sufficient reason, e.g., trifling nature of the case or lack of sufficient evidence for a successful prosecution or withdrawal of the case etc.
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CHAPTER 14

GENERAL INSTRUCTIONS REGARDING INVESTIGATION & ENQUIRIES

14.1 Investigating Officers of CBI are authorized to conduct investigation into the offences notified by Central Government under Section 3 of the Delhi Special Police Establishment Act, 1946. While investigation of the said offences may be taken up in the Union Territories, a notification from the Central Government is required to be issued under Section 5 of the DSPE Act, 1946 with the consent of the State Government concerned under Section 6 of the said Act to enable investigation to be conducted in the territories of different States. Consent once given in any particular case cannot be withdrawn as has been held by the Hon'ble Supreme Court in *K. Chandrasekhar etc. v. State of Kerala* [JT 1998 (3) SC 612].

14.2 The powers of investigation as granted by the DSPE Act do not vest any different powers other than those laid down in the Cr.P.C. 1973. Under Section 156 of the Cr.P.C. 1973, all Officers of and above the rank of an Officer in charge of a Police Station have statutory authority to investigate cognizable offences. Under Section 157 (i) Cr.P.C., 1973 such Officers are empowered to depute subordinate Officers to proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender(s). Officers of CBI of or above the rank of Sub-Inspector are empowered under Section 2(3) of the DSPE Act, 1946 to exercise the powers of the Officer-in-charge of a Police station for the purpose of investigation of any case. Therefore, no independent enquiries/ investigation can be entrusted to Assistant Sub-Inspectors of Police or Head Constables in the CBI. In cases registered under the Prevention of Corruption Act 1988 only Officers of the rank of Inspector and above of CBI are authorized to investigate except in the state of Jammu & Kashmir (J&K). In J&K, under provisions of J&K Prevention of Corruption Act, only Officers of the rank of Deputy Superintendent of Police and above are authorized to investigate cases pertaining to the offences under the said Act.

14.3 As such, Sub-Inspector of Police (Inspectors/Sub-Inspectors in case of J&K) shall not investigate cases under the Prevention of Corruption Act, 1988 without obtaining prior permission of the Magistrate under Section 17 of the said Act. The Superintendent of Police shall forward an application for permission to investigate cases under the Prevention of Corruption Act by a Sub-Inspector (Inspector or Sub-Inspector in case of J&K P.C.Act) to the Magistrate, mentioning therein the reasons for entrusting the case to the above-mentioned ranks of Officers. Similarly, an Officer of the rank of Deputy Superintendent of Police can only investigate offences under some special Acts like Immoral Traffic (Prevention) Act, Information Technology Act etc.

14.4 Besides the above, the Supreme Court of India and the High Courts may also direct investigation or enquiry by CBI under powers vested with them by Constitution of India. In such cases the consent or notification, of the Central/State Government concerned, is not required.

STAGES OF INVESTIGATION

14.5 As held by the Hon'ble Supreme Court in *H.N. Rishbud V. State of Delhi* (A.I.R. 1955 S.C. 196), the investigation generally consists of the following steps:—

- (i) *Proceeding to the spot;*
- (ii) *Ascertainment of the facts and circumstances of the case;*
- (iii) *Discovery and arrest of the suspected offender;*

- (iv) *Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the, reduction of their statements into writing, if the Officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial; and*
- (v) *Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial, and if so, taking necessary steps for the same by filing of a charge-sheet under Section 173 Cr.P.C. before the competent Court.*

Powers of Investigating Officers

14.6 The powers and duties of a Police Officer making an investigation are laid down in Sections 157 to 173 of the Cr.P.C. When it is necessary to summon any person to attend an investigation, the Investigating Officer may issue an order in writing in the prescribed form to such person to attend investigation. However, no male person under the age of 15 years or woman shall be asked to attend at any place other than the place in which such male person or woman resides. The above-mentioned legal process of summoning witnesses by issuing notice under Section 160 Cr.P.C. shall not be used in Preliminary Enquiries.

14.7 It shall be the responsibility of the Senior Superintendent of Police or Superintendent of Police or any other Officer vested with task to supervise investigation of a crime or conduct of an enquiry to ensure that there is no inducement, threat or promise given to any person from whom enquiries are made or the information are elicited. No person should be unnecessarily called or detained under any circumstance.

Language to be used for recording Statements

14.8 As far as possible, the First Information Report should be recorded in the language in which the complaint is made by the complainant. The statements of witnesses as per the provisions of Section 161 Cr.P.C., should also be recorded in the language in which they are made. It should be ensured that the statements so recorded do not contradict any evidence on record either in the form of documents or the statement of any other witness. Whenever a statement is recorded by an Investigating Officer through an interpreter, the statement may be recorded in English, and an endorsement may be made at the end of the statement regarding the manner in which the it was recorded. In such cases, the statement of the interpreter should also be recorded. However, as per the provisions of Section 162 Cr.P.C., no signature of the individual as witness or accused should be obtained on the statements so recorded. During the preliminary enquiry, however, the signatures of individuals whose statements are recorded may be obtained. In case any individual is not willing to append his/her signature to the statement so recorded, the fact may be recorded at the end of such statement.

14.9 Action on reports emanating from interested parties or which appear to be false or malicious should be avoided. Where there is any indication that the complainant is actuated by pique or personal malice, the Investigating Officer should proceed with care and caution. This does not, however, imply that where credible information is forthcoming regarding the commission of an offence, the Officer concerned should hesitate to enquire into.

Acquaintance with Facts, Rules, Procedures etc.

14.10 The Investigating Officer may take assistance of any Officer of another Department in the investigation, with the approval of the Superintendent of Police.

14.11 While investigating cases pertaining to corruption, embezzlement, fraud etc. or undertaking any enquiries relating to misconduct, the Investigating/ Enquiry Officer must first acquaint himself with the facts, rules and regulations and the procedures including well established and approved

conventions, if any, as regards working of an organization with which investigation or enquiries are related. He should ascertain all possible explanations likely to be offered in defence as well as any defects or irregularities in procedure, which may be desired to be produced in evidence, circumstantial or otherwise, with reference to the Departmental Rules and Regulations.

14.12 Information may be obtained from the Heads of Department or Vigilance Officers for furtherance of investigation unless there are special reasons in any particular case for not doing so. Their Cooperation and help should be also secured in order to understand the procedures prevalent in a Department.

Clues to be followed up carefully

14.13 All available clues, at the time of registration of an FIR or initiation of an enquiry or those becoming known during the course of investigation or conduct of enquiry, should be carefully followed up. Enquiries should be made from every one who is likely to be connected with the events which preceded or, accompanied or followed the crime or the subject matter of enquiry.

Inspection of Scene of Crime

14.14 A scene of crime under investigation or an event under enquiry is a place from where and through which the Investigating/ Enquiry Officer may get crucial evidence relating to the commission of crime and identity of the accused or the individual responsible for the event. Therefore, examination of the scene of crime or event is very important task of the Investigating Officer. This is more so especially in crimes such as murder, rape, dacoity, kidnapping, rioting and explosion etc. because it exhibits:

- (a) *Information on the corpus delicti (body of the crime.)*
- (b) *Information on the modus operandi used by criminals.*
- (c) *Information to link a suspect with witness/victim, e.g., the evidence like blood, hair, cloth, fibres, cosmetics, documents and other items from the victim may be transferred to the perpetrator.*
- (d) *Information linking a person to the crime scene such as different types material like documents, fingerprints, blood, hair, fibers and soil, paint, etc. left by the criminal may be available at the scene of crime, which sometimes may provide one of the most vital clues.*
- (e) *Information to disprove or support a witness's testimony.*
- (f) *Information on identification of a suspect.*
- (g) *Providing lead to the investigation.*
- (h) *Information on identification of a substance.*

Plan of the Scene of Offence

14.15 In all important cases the plan of the scene of offence shall be drawn by the Investigating Officer or got prepared by him through any other suitable agency such as the engineers of the CPWD or Railways, Revenue Officers etc. The I.O. may take help of the Technical Advisor or his staff in the CBI, if considered necessary. In trap cases, cases of murder, a sketch of the scene of occurrence shall invariably be prepared.

Photographing/Videographing the Scene of Crime/Trap/Search Proceedings

14.16 As far as possible, the crime scene, steps during the course of investigation such as pre-trap and post-trap proceedings, search proceedings should be photographed as well as videographed. In case, the photographs are taken by conventional method, the negatives must be preserved. In the event of digital still photography and videography, the images may be downloaded/transferred, in the presence of witnesses, to a 'write only' compact disk (CD) or 'write

only' digital video disk (DVD) for preservation. This would prevent the independent witnesses turning hostile during the course of trial. In all important cases of disproportionate assets/recoveries, search proceedings should also be videographed so that the Court may appreciate the evidence collected by CBI about the luxurious lifestyle of the accused or the circumstances under which a particular recovery was made. A memorandum be prepared to this effect by the I.O. on the spot in the presence of witnesses.

Technical Assistance in the Investigation

14.17 Investigating Officers may secure technical assistance or advice whenever such assistance or advice is necessary and desirable for expeditious and professional investigation of cases. There should be no delay in sending papers or exhibits for expert examination or in seeking expert technical opinion. Investigation should not be kept in abeyance while waiting for records or expert's opinion or for the result of part enquiries by another Officer, except when unavoidable. As far as practicable, enquiries in all possible leads may be pursued simultaneously. Particulars of technical assistance that is available in CBI and the procedure for obtaining the same are available in the Chapters dealing with 'technical assistance' and 'forensic laboratory' of this Manual. In all investigations where foodstuffs or other articles of perishable or essential nature are involved, the Investigating Officer should not unnecessarily hold up the stocks but should take representative samples in the presence of independent witnesses for the purposes of evidence in the Court and release the remaining stocks after observing necessary legal formalities.

Planning of Investigation

14.18 The Investigating Officer should make analysis of the allegations in the FIR or enquiry registration report and focus on the main allegations for investigation or the main points for enquiry. The I.O., in consultation with the Superintendent of Police, would draw a list of points, to be called '**plan of investigation**', containing the allegation(s) to be proved witnesses to be examined, documents to be seized and technical assistance/expert opinion to be obtained in support thereof etc. without any delay. This plan may also incorporate details of part-investigation to be referred to other branches, searches to be conducted; Interpol reference to be made, investigation to be conducted abroad etc. The 'plan of investigation' is not to be static but a dynamic one which may be modified from time to time with the progress of investigation. The existing points may be revised and fresh points added as and when necessary. The SP shall review the same at the time of preparing the Progress Report or whenever the investigation is reviewed. In important cases, the DIG may also review the 'plan of investigation' and issue necessary directions, if any required in the said connection.

Requisition and Seizure of Records

14.19 There should be no delay in requisitioning and taking over records and documents which are required for investigation. Whenever, the case is registered based on complaint given by the Departments, the Department concerned must be asked to hand over the relevant documents along with the complaint. In other cases, need to collect documents should be examined immediately after taking up investigation. In cases where searches are to be conducted, such requisition for documents should be issued only after the searches are over. There should be no indiscriminate seizure of documents in any case. It should be borne in mind that seizure of records may cause dislocation of work in the office concerned. Hence, records should not be taken into possession as a matter of routine. The I.O. should seize/requisition the records only if the same are essential for the purpose of investigation. In many cases, examination and scrutiny of the records on the spot might suffice. Where it is not possible to take any records or documents immediately into possession adequate precautions should be taken and arrangements made to preclude the possibility of any interpolation in, or tampering with, such records or documents.

14.20 If any Department requests for photocopies of the documents seized from it, the same may be allowed to be prepared by the Department under the supervision of I.O. or some other responsible Officer. In case it is not possible for the Department to get the copies of said documents prepared, the CBI may arrange to supply the same to them.

Return of Documents and Records

14.21 The seized/requisitioned documents and records should be scrutinized promptly and necessary action should be taken to return the documents and records, which are not concerned with the case under enquiry/investigation or with any offence. Wherever necessary, orders of the competent Court should be obtained for the custody and disposal of the case property in accordance with the provisions of Sections 451, 452 and 457 Cr.P.C. All the documents/material objects/other items seized during the course of investigation should be promptly sealed/packed in a scientific manner and deposited in the Property Room (*Malkhana*). The details of these must be entered in the Malkahna Sub-Module of CRIMES or in the Malkahna Register, wherever the Sub-Module is not operational. The documents/items could be got issued by the Investigating Officer, as and when required, for the purpose of investigation etc. against proper receipt. These must be returned to the Malkahna as soon as these are no longer required by the Investigating Officer. All such issues and receipt shall be entered in the Malkahna sub-module of CRIMES or in the Temporary Issue Register, wherever the Sub-Module is not operational. Every I.O. shall be personally responsible for the safe custody of these documents, at all stages of the investigation. Property Room incharge will ensure that the issued items are not retained by the I.O. for an unduly long time and are returned to the Malkahna promptly. He will make sure that the Officer, who is transferred from the Branch/Unit, has returned all the documents/items issued him to the Property Room before he is relieved by the Branch/Unit. The Branch SP will monitor this matter.

Important Cases to be investigated by Additional SP/Deputy SP

14.22 All important cases/ enquiries especially those against senior Gazetted Officers should, as far as possible, be investigated by Additional SP/Deputy S.P. The Superintendent of Police should personally supervise the investigation through perusal of Case Diaries and records, discussion with Investigating Officers, examination of important witnesses, visiting the scene of offence, periodic review of the progress of investigation and by issuing memos of instructions, etc. In appropriate cases, a Superintendent of Police may also be directed by the DIG/JD to conduct investigation personally. A newly-inducted Superintendent of Police may investigate at least one important case within the first year of his joining the Branch. The DIsG should review progress of investigation of all the important cases periodically with the concerned SP and the I.O. along with the Law Officer, if necessary.

Recording of statements by Magistrates

14.23 In appropriate cases, crucial statements made in the course of investigation by important/vital witnesses may be got recorded by Magistrates under Section 164 Cr.P.C. with a view to reduce the possibility of their being tampered with later on or the witnesses resiling from their statements. Such statements should be recorded in the manner prescribed in the Code of Criminal Procedure. Since these statements are recorded by the Magistrate, and the I.O. is excluded from the proceedings, there is likelihood that, the witness may forget some important facts while giving statement to the Magistrate which may prove fatal during the course of trial. Due care should, therefore, be exercised to ensure that all essential details are brought out in the statements recorded under Section 164 Cr.P.C and errors, omissions and contradictions avoided.

14.24 Confessional statements of the accused persons should be got recorded by competent Magistrates as quickly as possible under section 164 Cr.P.C. All necessary precautions laid down under section 281 Cr.P.C. should be strictly observed while recording such statements. The I.O. should also satisfy himself that the accused is willing to disclose all the facts within his knowledge and is not hiding anything. Same precautions should be followed in the matter of recording confessional statement by any other authority empowered to do so under any law applicable to the case, from time to time.

14.25 If there is any doubt at the time of recording of the statement whether the persons making the statement will be a witness or an accused, the recording of statement under Section 164 Cr.P.C should be kept pending till the position becomes clear because the procedures for recording statements of witnesses and the confessions of accused persons under section 164

Cr.P.C. are different.

14.26 In appropriate cases, sworn statements can be got recorded by the Income-Tax Officers also under the statutory powers vested in them under the Income-Tax Act.

Examination of Suspect Accused Persons

14.27 When a suspect appears before the Investigating Officer, he should be examined thoroughly on all points. His statement should be carefully recorded with a view to ascertain his defence and to find out the cases from which the evidence could be gathered to verify his defence and to prove the charges against him during the course of further investigation. The accused may be informed of the charge against him and questioned thoroughly to seek his explanation. If the accused makes any specific disclosure of material objects used in the commission of offence, his disclosure statement should be recorded in the presence of witnesses and recovery of the articles, weapons etc. so disclosed by him should be made as per the provisions of Section 27 of the Evidence Act. All the points or arguments advanced by the accused should be looked into and thoroughly verified by the Investigating Officer. It should be ensured that complete statement of the accused is recorded and the points arising there from are looked into during the course of investigation, so that the prosecution is fully prepared to meet the defence of the accused/suspect.

14.28 The I.O. shall, in all important cases, prepare questionnaires for examining the accused and shall record his statement initially in the narrative form and then in the form of answers to the questionnaire, which should cover all important points. The record of the answers given by the accused should then be read over to him. To prepare the questionnaire in important and/or complicated cases, guidance of the Senior Officers should be taken

14.29 During the course of investigation, if the persons, who are suspected to have played role in the commission of offence and have escaped from India to some foreign countries and their present whereabouts are not known, Blue Corner Notices in the prescribed form along with the photograph of the suspect can be sent to General Secretariat, ICPO-Lyons through Interpol Wing, CBI, New Delhi, with a request to locate their present whereabouts or to ascertain their criminal records and identification etc. The General Secretariat in turn will request NCB of the member countries to provide necessary information to our Interpol Wing. The prescribed format can be obtained from the Interpol Wing of CBI in this connection. In case of accused persons where there is specific evidence available and NBWs have been issued and/or charge-sheet has been filed, Red Corner Notices could be got issued by the Interpol Wing of CBI for their arrest.

Part-Enquiries/Investigation

14.30 If enquiries/investigations in a case are to be made in the jurisdiction of other branches, the request for making these part-enquiries/investigations should be made to the Superintendent of Police concerned as early as possible.

14.31 No hard and fast rules can be laid down as to whether, and in what circumstances, the part-enquiries should be entrusted to the other Branches, or whether the Investigating Officer should himself conduct enquiries there. When the enquiries are to be made only on a few minor points, it would be a waste of public funds to send an Officer of one Branch to a far-off place for investigation. If, however, there are large number of points on which the investigation is necessary or if the Investigating Officer alone can take a comprehensive view of the points at issue and make proper enquiries on them, it would be worthwhile to send the Investigating Officer to the places concerned for such enquiries

14.32 Requests for part investigation received from the other Branches should receive prompt and adequate attention. The part-investigation should be completed within one month of the date of its receipt by the Branch concerned.

14.33 In order to know the whereabouts of the IOs, who go out of their jurisdiction for investigation and to ensure that they get proper assistance, they should report to the SP/DIG of the Branch where they go for enquiry/investigation. Such IOs should also intimate to the Branch

SP the place where they would be residing during their tour. Whenever an I.O. visits the city where the office of the Regional DIG is situated, he must meet the DIG of the concerned Region or Zone for instructions, if any.

14.34 When a case has been taken over by CBI, no other Officer or Department will have the right during the course of investigation to examine the records in the possession of CBI, except with the permission of the Superintendent of Police of the Branch concerned. When the other Government Departments like Income-Tax and Enforcement Directorate etc. request to see the documents in the possession of CBI for any official purpose, they may be permitted to do so by the SP in the presence of the I.O. incharge of the case or any other responsible Officer of the Branch.

Refusal/Withholding of Passport

14.35 If during the course of investigation or in cases where charge sheet has already been filed in Court, it is desired by the SP of the CBI Branch to ensure that the passport facilities are not granted to the accused under investigation/ trial or the passport already issued may be impounded, the SP should send a recommendation in the said regard to the Ministry of External Affairs through the H.O. of CBI. In this context, the provisions of Sections 6 and 10 of the Passports Act, 1967, should be borne in mind. Vague grounds such as "public interest" would not suffice. All proposals for refusal/impounding of passport should contain complete details of the person to whom the passport facilities are to be refused. This should include full name, father's name, date of birth and his full address etc. Requests for temporary suspension of Passports shall be routed through the Deputy Director (Coordination) of CBI at New Delhi.

Registration of Non-Cognizable Offences

14.36 Investigation into the non-cognizable offences should be taken up only after obtaining permission of the Magistrate of competent jurisdiction. When a Special Magistrate for CBI cases, who is competent to give such permission, is not available, the required permission should be obtained from the Magistrate in whose jurisdiction the offence was committed or from the Chief Judicial Magistrate.

14.37 The result of enquiry/investigation in every case shall invariably be communicated to the Ministry/ Department/ Undertaking concerned. A Closure Report should contain sufficient details to enable the Court to appraise as to why the case has been closed.

Measures to avoid Delays in Investigation

14.38 The following measures may be taken to prevent delay in the investigation of cases:—

- (i) As soon as the case is registered and, in those cases in which searches are to be conducted, as soon as the searches are completed, a checklist should be prepared of all the authorities, including banks, from whom documents are to be seized. Requisitions for these documents should be issued within a week after registration of the case or after completion of searches, as the case may be.
- (ii) Thereafter, reminders may be sent at regular intervals to the authorities concerned, till the documents are recovered. However, in case the documents are not received in a reasonable time, necessary steps may be taken to seize the same under the relevant provisions of law.
- (iii) If during the investigation, further documents are considered essential, requisitions for such documents should also be issued immediately.
- (iv) As soon as the documents are obtained, the Branch SP should fix a target date for scrutiny of the same and submission of the scrutiny report by the I.O. ***Urgent investigations, which may be required to be done even during the scrutiny of documents, should also be completed by the I.O. in the meantime.***
- (v) As soon as the scrutiny of documents is over, the SP should ensure that witnesses

are examined in a planned manner. It should be ensured that the statements of the complainant, trap witnesses, eyewitnesses in murder cases etc. whose evidence is of an important nature are recorded without any delay.

- (vi) Photocopies of the documents to be sent to the expert should be prepared and the original documents sent to the expert as early as possible. Material witnesses, whose evidence is connected with the documents, should be examined with reference to the original documents. The transmission of documents to the expert need not await the completion of the field investigation. While inspecting branches, the DIsG should specifically check if these instructions have been complied with by the branches.
- (vii) When the investigation of a case is over, the SP should set reasonable deadlines for the I.O. to submit his FR-I.
- (viii) In some cases, investigations are stayed by the Courts, on Writ Petitions, etc. In every such case of stay, certified copy of the order should be applied for immediately and an appeal against the stay order be filed invariably. Action in this regard should be taken on top priority basis at every stage, as this is a matter which involves limitation. It should also be borne in mind that once the limitation passes; nothing can be done thereafter till the Writ Petition is disposed of. In this context, it should be borne in mind that in case AIR 1985-SC-1668, the Supreme Court has discouraged the practice of Courts in interfering with the investigation of cases.
- (ix) When a sanction order has been requested for, periodical D.O. reminders, should be issued to the Competent Authority to ensure that the order is obtained early. In appropriate cases personal meetings should also be arranged for obtaining the sanction order early.

Prescribed Time-Limits

14.39 The necessity of prompt investigation by the I.O. cannot be over-emphasized. It should ordinarily not take more than 3 days for PEs as well as RCs to be registered after receipt of H.O. orders at the Branch. A Preliminary Enquiry must be completed in a period of three months and Regular Case within 12 months. The IOs and SsP will be responsible for the completion of investigation within the prescribed time limits. However, in complicated cases like those of disproportionate assets longer time limit exceeding one and a half year may be fixed by the SP. Any further extension in the time-limit, which shall not exceed six months may be granted by the next level of Supervisory Officer. The SP should ensure that the Investigation Reports are prepared as expeditiously as possible by the IOs and the Law Officers offer their comments soon after submission of the FR-I. Likewise, the SP and the DIG should also offer their own comments within a week. The Head Office orders on FRs should generally be passed within 15 days. Preparation of SP's Report should not generally take more than a fortnight. It should be prepared by the SP carefully and meticulously giving all details in clear and comprehensive manner. At the DIG level it should not take more than 7 days to forward the SP's Report to the Department concerned. The time-limit for filing charge sheet shall be 15 days from the date of receipt of sanction for prosecution from the Competent Authority except in complicated cases involving voluminous documents where the said time-limit could be one month.

Impersonation of CBI Officers

14.40 Whenever any incident is noticed by the Branch SP that some unscrupulous person(s) had misbehaved or demanded or obtained favour of different kind from any public servant or private party by posing as CBI Officers, the following action should be taken:—

- (i) *In every instance*, a case under the appropriate section of law should be got registered immediately with the local Police. The Branch should personally follow up these cases with the State Police authorities and have the cases investigated and tried expeditiously. In important cases the investigation should be taken over by CBI in consultation with the State Police authorities.

- (ii) The local Police chief concerned should be requested to give wide publicity through the *Press/Radio/TV etc. about such incidents and the action taken therein.*

Handing over Charge of Documents

14.41 When a CBI Officer retires from service or is repatriated to his parent department or is transferred from one Branch to another, the Superintendent of Police of the Branch shall issue an order requiring the Relieved Officer to hand over all original seized records to the Malkhana of the Branch and all other documents relating to cases under investigation, pending trial or pending Departmental action and any other documents, to another Officer of the Branch named for the purpose. The relieved Officer shall prepare four copies of the detailed charge report and of all the documents in his charge, which he hands over to the nominated or Relieving Officer. Both the relieved and the relieving Officer will sign these charge reports and the Superintendent of Police of the Branch will countersign the same. Thereafter, the SP shall keep one copy in his personal confidential almira, one copy shall be retained by the Relieved Officer and one by the relieving Officer. The fourth copy shall be deposited with the Malkhana Officer. These reports will be kept in yearly files with an index showing the name of the relieved Officer, the name of the Relieving Officer, the date of handing over of the documents and the page reference of the report so filed.

Investigation abroad

14.42 In cases where accused person(s) have escaped from the country after committing the crime or part of the crime has been committed abroad or the witnesses and other material evidence are available in a foreign country, it may be necessary to conduct investigation abroad. While informal information/material may be collected through Interpol and diplomatic channels, formal investigation to collect evidence and gather material objects/documents may be conducted through formal 'Letter of Request' (*Letters Rogatory*) sent through a competent Court under provisions of 166-A of the Criminal Procedure Code. Our diplomatic missions abroad do not have any power to conduct investigation. They can only help the Investigator to get information of formal nature. However, they must be kept informed of all requests whether moved through Interpol or through legal channels by way of *Letters Rogatory*.

14.43 However, some countries do not insist for a Letter of Request (*Letters Rogatory*) from the Court for conducting investigation in their country. In such cases, a note on relevant facts along with points on which the investigation is required to be conducted and the questionnaire for examination of any person, if required should be sent to the Interpol Wing of CBI. For getting investigation conducted through the Interpol, the following points have to be kept in mind:

- (i) A note/questionnaire/points for investigation should be sent in triplicate.
- (ii) If, the investigation is to be conducted in more than one foreign country, there should be a separate set of questionnaire/points for investigation in each country.
- (iii) A separate questionnaire should be prepared for each witness/person unless all the witnesses/persons are required to be examined on the same points.
- (iv) Note/questionnaire/points for investigation should be clear and specific.
- (v) The questions should be brief and to the point.
- (vi) Material should be carefully examined and scrutinized by the I.O. SsP concerned in order to ensure that all the relevant points are incorporated in the note and the facts and figures given in the note are correct.
- (vii) The note and the documents may be accompanied by the translation in the language of the requested country.

Visit of Police Officers abroad for investigation

14.44 Sometimes, it becomes necessary to send Police Officer(s) from India to foreign country for the purpose of investigation of a case keeping in view the importance of the case and the

complicated nature of offences under investigation.

14.45 CBI Officers or other Indian Police Officers have no Police powers in a foreign country. Any action by Indian Police Officers on a foreign land may amount to interference in the sovereignty of that country unless some required formalities are observed.

14.46 When it is considered necessary to send a team of Officers abroad, the National Central Bureau (Interpol) of that country may be requested through the Interpol Wing of CBI and the Competent Authority of the country through the diplomatic channels for taking necessary permission/approving visit of the Police Officers to the concerned country.

14.47 The visit or investigation abroad must not start before the required permission is received. Some countries do allow exception to this rule in urgent cases but in such cases while, sending Investigators, requested country should be informed through the Interpol/ diplomatic channels as regards intended visit of the Investigators to that country. The following information needs to be sent through Interpol CBI before sending the investigation team abroad:–

- (i) *A brief note detailing the reasons for sending the team, details of the actions required to be performed in the requested country i.e. obtaining the information for investigation purpose, taking statement from suspects or witnesses and seizure of property etc. It would enable the authorities to assess whether the request is justified. The requested country may have to obtain prior approval from their judicial authorities or from the other authorities concerned before granting permission for the visit of our Officers to that country.*
- (ii) *All available particulars about identity or particulars of the person to be questioned, the nature of the property to be seized and where it is likely to be found should also be given to the requested country to make all necessary preparations.*
- (iii) *Information about penal offence to which mission relates. It may include legal definition of the offence, summary of the facts, all available particulars about identity of the alleged offender and his nationality. This would enable the authority in the requested country, to examine whether the offence, in question, would constitute the penal offence in the also requested country.*
- (iv) *Whether Article 3 of the ICPO (Interpol) Constitution or some other legal provision restricting international cooperation is attracted and whether it could be subject of criminal proceedings in the requested country, e.g., because the offence was committed in its territory or by one of its citizen.*
- (v) *Exact date and duration of the mission.*
- (vi) *Information about the investigators, their names, rank and language used by them.*

14.48 Apart from the above, any other relevant information which might lead to legal or practical problems in the requested country, must also be mentioned, such as:–

- (a) *Any items/material objects, which the Investigator wishes to bring along with him, requires special permits from the requested country or which may otherwise amount to breach of certain regulations in the requested country. These items could be such as firearms etc.*
- (b) *In case, the Investigator wishes to bring with him a suspect under arrest, which would normally have to be released on arrival in the requested country.*
- (c) *Investigator wishes to bring with him a suspect (not under arrest) or other person, e.g., witness, who might be subject to arrest warrant in force in the requested country.*

14.49 After the team reaches the foreign country, the investigation will be done by the local Police or local law enforcement authorities under their own procedural laws and the visiting Officers will provide all necessary assistance and guidance to them.

Letter of Request (*Letters Rogatory*)

14.50 Prior to 19th February 1990, there were no legal provisions in the Code of Criminal Procedure (Cr.P.C.) for issue of Letter of Request (*Letters Rogatory*) for carrying out investigation in the country or place outside India, and also to provide similar assistance to the Court or authority outside India for carrying out investigation in India. However, with effect from 19-2-1990, Section 166-A and 166-B (Chapter-XII) were introduced in the Code of Criminal Procedure through the Cr.P.C. (Amendment) Act, 1990, which prescribed the procedure for getting investigation conducted abroad or extending similar assistance to the other countries.

14.51 Ministry of Home Affairs, vide S.O. 444(E) has notified that a Letter of Request (*Letters Rogatory*) from any Criminal Court in India referred to in sub-section 1 of Section 166-A of the Cr.P.C. shall be sent through Interpol Wing of CBI, New Delhi for transmission to the concerned country or place outside India through the diplomatic channels.

14.52 The Ministry of Home Affairs vide S.O. 445(E) have further notified that all evidence collected or taken under sub-section (1) of Section 166-B of the Cr.P.C. or authenticated copies thereof or the thing collected during investigation shall be forwarded by the Magistrate or by the Police Officer, as the case may be, to the Ministry of Home Affairs for transmission to a Court or authority in a country or place outside India through the diplomatic channels.

14.53 No request for issue of Letter of Request (*Letters Rogatory*) to any Court will be made by CBI without prior clearance of the Central Government. Thus, in case it is considered necessary to get a Letter of Request (*Letters Rogatory*) issued, a report has to be sent to the MHA through Head Office for obtaining approval of the Government before filing an application in the concerned Court.

14.54 When a LR is required to be got issued, a reference may be made to Interpol Wing, CBI to ascertain the name of the Competent Authority and also the requirement of the law of requested foreign country to take up such requests, language in which the request is to be translated along with documents accompanying the request. It may also be found out whether we have any legal mutual assistance treaty, agreement, memorandum of understanding or arrangement with the requested foreign country and the requirements thereof. Some countries have the requirement of obtaining an undertaking from the Government of India to assure reciprocity. The principle of dual criminality is relevant in most of the foreign countries and it is to be ensured that this requirement is duly met.

14.55 After obtaining approval of the Central Government, an application may be filed in the Court of competent jurisdiction for issue of *Letters Rogatory* to the concerned competent authorities in the requested country. The application should contain the following:–

- (i) *A self-contained brief facts of the case, allegation and particulars of the offences committed and the role of the authorities, who are required to be examined in the foreign country.*
- (ii) *Particulars of the witnesses to be examined, their identity and nationality.*
- (iii) *Description of the documents/articles to be collected.*
- (iv) *Separate questionnaire for examination of each witness.*
- (v) *Relevance of examination of witnesses and collection of documents to the investigation of the case.*
- (vi) *Copies of the sections of law constituting the offences under investigation in India and the equivalent laws of the requested country disclosing the dual criminality in the request.*
- (vii) *Provisions of the memorandum of mutual assistance and treaty etc. providing for such assistance by the requested country .*
- (viii) *Compliance of all the requirements of the requested country.*

- (ix) *A declaration that the case under investigation is not of political,, military, racial or religious character.*
- (x) *Assurance of reciprocity for countries with whom no treaty for mutual assistance is in place.*

14.56 The Court in India will take a decision to issue the Letter of Request as prayed for and will issue the Letter of Request addressed to the competent authorities of the requested country. The Letter of Request will contain the material showing competence and jurisdiction of the issuing Indian Court, identity particulars, brief facts of the case, name of the accused, relevant legal provisions and their description and the punishment prescribed. It may be mentioned that as per Indian Law, it is not necessary to give any notice to the accused either before issuing the Letter of Request or before examining the same. In certain countries like USA their law requires that a notice has to be given to the accused while collecting the evidence during investigation and the evidence collected without observing their procedure may not be allowed to be entered against the accused in that country.

14.57 When the assistance is sought to collect or prove documents by some witnesses in the requested country, our requirement should be clearly stipulated.

14.58The competent Court may be requested to incorporate the following points in the Letter of Request (*Letters Rogatory*):

- (i) *The law of (MoU/Treaty) the foreign country concerned regarding mutual legal assistance in criminal matters. In case we have a treaty/ agreement/MoU/arrangement with the requested country relating to the mutual legal assistance, the LR has to be prepared in accordance with such treaty/ agreement/ MoU/ arrangements.*
- (ii) *The fact that both India and the requested country are members of International Criminal Police Organization (ICPO) and the Constitution of ICPO provides for mutual assistance in criminal matters.*
- (iii) *A declaration that the request is not of political, religious, military or racial character in nature.*
- (iv) *Undertaking by the Government of India that evidence collected will be used only in the case in which the request is made in the form is prescribed by the concerned countries, if there is any such requirement.*
- (v) *The dual criminality by sending the copy of the relevant laws in India with the corresponding laws of the requested country.*
- (vi) *An assurance of reciprocity of the arrangement as per bilateral agreement, treaty and our law may also be given in the request. It may also be mentioned that reciprocity for mutual assistance in the investigation of any criminal case, if required by the requested State can be provided in terms of Section 166-B of the Code of Criminal Procedure .*
- (vii) *The request and the documents enclosed to the Letter of Request are required to be translated in the language of the requested country, if there is any.*
- (viii) *The documents, photographs and objects, if enclosed with the Letter of Request, should be clearly marked and referred to in the request to enable the requesting Judicial Authority abroad to know clearly what is required to be done with them.*
- (ix) *A copy of the First Information Report and also a copy of the relevant legal provisions should be enclosed.*
- (x) *All the papers enclosed must be legible so as to avoid unnecessary correspondence and delay.*
- (xi) *The request may be made as briefly as possible.*
- (xii) *It may be mentioned in the LR that while conducting investigation in the requested State, the statements of witnesses may be recorded as per the requirement of law and procedure in vogue in the requested State and duly authenticated by the Officer*

recording the same. The documents be collected in original and in case the concerned authorities are unable to part with original documents, true copies duly authenticated in the manner of certification provided in the law of the requested State be supplied. Each such certificate would be required to be countersigned by the Competent Officer of Embassy of India in the requested State in the manner followed in that country. In India, the documents certified in the aforesaid manner are admissible as per provisions of Section 78 of Indian Evidence Act, 1872. The text of Section 78 of the Indian Evidence Act, may be enclosed.

(xiii) In case it is considered essential that an Officer of CBI may remain present during execution of the Letters Rogatory, it may be mentioned in the LR that an Officer would be deputed by the Director, Central Bureau of Investigation to assist the concerned authorities in the requested country in collection of documents and recording of statements of the concerned persons.

(xiv) It is always useful to have the LRs neatly bound for an impressive presentation abroad. At least four copies of the Letter of Request be prepared including the original and sent to the Interpol Wing of CBI, who will arrange to forward the same to the requested country through the diplomatic channels. Submission of four copies of the LRs facilitate quick processing of the same in different offices. Care must be taken to ensure that the requests made in the LRs are to the point and specific because no country allows any fishing extradition in the execution of LRs. A copy of speaking order of the Court showing application of his mind in issuing the LR shall also be forwarded along with the LR to the requested country.
