

# **Effective administration of police in Criminal Justice**

Ruby Zenilda Luis<sup>1</sup>

The principal objective of the criminal justice system is the effective and efficient delivery of justice. The Administration of Police and Prosecution, in the justice delivery system is guided by the universal principle, that justice must be not only done but also seen to be done.

The Code of Criminal Procedure, 1973<sup>2</sup> is the procedural law providing the machinery for punishment of offenders under substantive criminal law. The code contains elaborate details about the procedure to be followed in every investigation, inquiry and trial, for every offence under the IPC or any other law. Earlier there was no uniform law of criminal procedure until Criminal Procedure Code of 1882; it was replaced by the Code of 1898. The act was amended in 1923 and 1955. This code was repealed by the Code of 1973 enacted by Parliament on 25<sup>th</sup> of January, 1974 and made effective from 1<sup>st</sup> of April 1974 so as to consolidate and amend the law relating to Criminal Procedure. Its object was to provide a machinery for determining the guilt of and imposing punishment on offenders under the substantive criminal law, for example, the Indian Penal Code (I.P.C.). The two Codes are to be read together. The Code also provides machinery for punishment of offences under other Acts.

The Supreme Court has said “*It is the procedure that spells much of the difference between the rule of law and the rule of whim and caprice*”.<sup>3</sup>

## **Functionaries under the code:**<sup>4</sup>

The functionaries under the code include the Magistrates and Judges of the Supreme Court and High Court, Police, Public Prosecutors, Defence Counsels Correctional services personnel.

Functions, Duties and Powers of these Machineries:

---

<sup>1</sup> Assistant Professor, G.R. Kare College of Law, Margao Goa

<sup>2</sup> THE CODE OF CRIMINAL PROCEDURE, 1973, No. 2, Acts of Parliament, 1973.

<sup>3</sup> Iqbal v. State of Maharashtra, (1975) 3 S.C.C. 140. (India)

<sup>4</sup> Legal bites, *Functionaries under the Criminal Procedure Code 1973*, DECEMBER 4, 2017, <https://www.legalbites.in/law-notes-crpc-functionaries-under-criminal-procedure-code/>.

a) **Police:**

The code does not mention anything about the constitution of police. It assumes the existence of police and devolves various powers and responsibilities on to it. The administration of police in a district is done by DSP (District Superintendent of Police) under the direction and control of District Magistrate. Every police officer appointed to the police force other than the Inspector-General of Police and the District superintendent of police receives a certificate in the prescribed form by the virtue of which he is vested with the powers, functions and privileges of a police officer which shall be cease to be effective and shall be returned forthwith when the police officer ceases to be a police officer. The CrPC confers specific powers such as power to make arrest, search and investigate on the members of the police force who are enrolled as police officers. Wider powers have been given to police officers who are in charge of a police station. As per section 36 of CrPC which reads as “the police officers superior in charge of a police station may exercise the powers of such officials.”

b) **Prosecutor**

If the crime is of cognizable in nature, the state participates in a criminal trial as a party against the accused. Public Prosecutor or Assistant Public Prosecutor is the state counsel for such trials. Its main duty is to conduct Prosecutions on behalf of the state. The public Prosecutor cannot appear on behalf of accused.<sup>5</sup> According to the prevailing practice, in respect of cases initiated on police reports, the prosecution is conducted by the Assistant Public Prosecutor and in cases initiated on a private complaint; the prosecution is either conducted by the complainant himself or by his duly authorized counsel.

1. c) Defence Counsel: According to section 303, any person accused of an offence before a criminal court has a right to be defended by a pleader of his choice. Such pleaders are not in regular employment of the state and a paid remuneration by the accused person. Since, a qualified legal practitioner on behalf of the accused is essential for ensuring a fair trial, section 304 provides that if the accused does not have means to hire a pleader, the court

---

<sup>5</sup> State of Bihar v. J.A.C Saldanha, (1980) 1 S.C.C. 554.

shall assign a pleader for him at state's expense. At present there are several schemes through which an indigent accused can get free legal aid such as Legal Aid Scheme of State, Bar Association, Legal Aid and Service Board and Supreme Court Senior Advocates Free Legal Aid society. The legal Services Authorities Act, 1987 also provides free legal aid for the needy.

2. d) Prison authorities and Correctional Services Personnel: The court presumes the existence of Prisons and the Prison authorities. It empowers Magistrates and judges under certain circumstances to order detention of under trial prisoners in jail during the pendency of the proceedings. It also empowers the courts to impose sentences of imprisonment on convicted persons and to send them to prison authorities. However, the code does not make specific provisions for creation, working and control of such machinery. These matters are dealt with in separate acts such as The Prisons Act 1894, The Prisoners Act 1900 and The Probation of Offenders Act 1958.
3. The rationale of criminal procedure:
4. a) Importance of fair trial: One of the primary goals of criminal law is to protect society by punishing the offenders. However, justice and fair play require that no one be punished without a fair trial. A person might be under a thick cloud of suspicion of guilt, he might have been caught red-handed, and yet he is not to be punished unless and until he is tried and adjudged to be guilty by a competent court. In the administration of justice, it is of prime importance that justice should not only be done but must also appear to have been done. Further, it is one of the most important principle of criminal law that everyone is presumed to be innocent unless his guilt is proved beyond reasonable doubt in a trial before an impartial and competent court. Therefore, it becomes absolutely necessary that every person accused of crime is brought before the court for trial and that all the evidence appearing against him is made available to the court for deciding as to his guilt or innocence.<sup>6</sup>

#### **b) Constitutional perspectives:**

Articles 20 and 22 of the constitution of India provide for certain safeguards to the persons accused of offences. Article 20 secures the protection of the accused persons, in respect of

---

<sup>6</sup> Sunil Kumar Pal v. Phota Sheikh (1984) 4 S.C.C. 533. (India)

conviction for offences, from Ex post facto laws, double jeopardy and prohibition against self-incrimination. Similarly, Article 21 of the constitution of India ensures the protection of life and liberty which reads as “no person shall be deprived of his life or personal liberty except according to the procedure established by law. This right may be affected in cases of preventive detention under preventive detention laws. As such, Constitutional protection against arrest and detention is ensured under Article 22(1) to (7) of the constitution of India.<sup>7</sup>

The primary responsibility of Police is to protect life, liberty and property of citizens. It is for the protection of these rights that Criminal Justice System has been constituted assigning important responsibilities to the Police. They have various duties to perform, the most important being maintenance of law and order and investigation of offences.

It is truly said that any person can set the criminal law in motion, which means that the Police has to record the complaint made by any person. It is known as the First Information Report, it is the information given to the police for the first time and the Police cannot deny this information. The investigation begins with the F.I.R and generally ends with the final report. The final report concludes the investigation process in a formal recommendation for action.

In this paper the author looks forward to lay emphasis on the functioning of the police in the administration of Criminal Justice.

## **Offence**

Section 2(n) of the CrPC<sup>8</sup> defines the word “offence” to mean any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle-trespass Act, 1871. However, the term is more elaborately defined under Section 40 of the IPC<sup>9</sup> which states that “offence” denotes a thing made punishable by the Code. Section 39 of the CrPC.<sup>10</sup> imposes a duty on every person who is aware of the commission of or of intention to commit an offence, to give information of

---

<sup>7</sup> INDIA CONST. art. 22.

<sup>8</sup> Section 2, THE CODE OF CRIMINAL PROCEDURE, 1973, No. 2, Acts of Parliament, 1973.

<sup>9</sup> Section 40, Indian Penal Code, 1860, NO. 45, Acts of Parliament, 1860.

<sup>10</sup>Section 39, THE CODE OF CRIMINAL PROCEDURE, 1973, No. 2, Acts of Parliament, 1973.

certain offences which are specified in Clause (i) to (xii) of sub-Section (1). An offence is what the legislature classes as punishable. *Mens Rea* a bad intention or guilt is an essential ingredient in every offence.

**Bailable Offence and Non-bailable Offence**

A “bailable offence” means an offence which is shown as bailable in the First Schedule or which is made bailable by any other law for the time being in force. “Non-bailable” offence means any other offence.