

# **Journal of Advances & Scholarly Researches in Allied Education**

**Vol.15, Issue-9  
October 2018**

**An UGC Approved,  
Internationally Indexed  
& Peer Reviewed Journal**



## Journal of Advances and Scholarly Researches in Allied Education (JASRAE)

- Multidisciplinary Academic Research

Indexing and Impact Factor :

**UNIVERSITY GRANTS COMMISSION (UGC) : 8109 (2017)**

**IIFS : 1.6 (2014)**

**INDEX COPERNICUS : 49060 (2018)**

[Read / Download More Articles](#)

# Police Power for Investigation Use and Misuse: CRPC References

Dr. Ravi Kumar Tyagi<sup>1\*</sup> Mr. Edgar Braganza<sup>2</sup>

<sup>1</sup> Assistant Professor, Department of Law, OPJS University Churu, Rajasthan

<sup>2</sup> Research Scholar, OPJS University Churu, Rajasthan

**Abstract – “The police officer is an instrument for the prevention and detection of crime”<sup>1</sup>**

**Police play a key role in fighting crime, preserving peace, maintaining public order. They basically play a dual role while maintaining the law and order of any state. The head of the provincial police department is the Director-General of the police and in all provinces take the Legislature-The Police Officer.**

-----X-----

## INTRODUCTION

If someone is in trouble or threatens his health, he always remembers our rights protector as a police officer. The overall police administration has been handed over to the state. The police department is governed by a local government service. Although in cities or in major areas it is the General Police Commission. The police department plays an important role in maintaining peace and order. Receives the ability to investigate from the Code Procedure Code.

## ROLE OF POLICE:

They also control illegal activities and sale of illegal articles to which many people fall prey and destroy their lives. The roles of the police in nutshell are:

1. To prevent crime
2. To protect public property
3. To promote and preserve public order
4. To maintain law and order.
5. To prevent and control terrorist activities.
6. To protect internal security
7. To prevent commission of any cognizable offenses
8. To accurately register the complaint brought by the complainant

9. To register Zero FIR and not to deny the person to lodge the complaint just because the place where the offensive was committed does not come under their jurisdiction
10. Preserve, promote and protect human rights and interests of weak sections, backward Classes.
11. To take preventive action but the police must not exercise this arbitrarily power.
12. To do patrolling and prohibiting sale of illegal articles.
13. VIP security and performance of various duties while visiting any VIP.

## POWER OF POLICE TO INVESTIGATE:

The power of investigation by police may start:

- Where FIR is given under section 154 Cr. P.C. Or
- Where the police officer has otherwise reason to suspect the commission of a cognizable offence [S. 157(1) & 156(1) Cr. P.C.] or
- Where a competent Magistrate orders the police under Section 156(3) without taking cognizance of the offence on a complaint under section 200.
- After taking cognizance of the offence on a complaint for the purpose of deciding as to

the issue of process against the accused.  
[S.202 (1) & S.203 Cr. P.C.]

### **INVESTIGATIVE POWER IN NON-COGNIZABLE OFFENCES: SEC.155 (2) CR.P.C.**

May also arrange a police officer holding the police station to investigate an incomprehensible or incomprehensible case. Where the Magistrate under section 155 (2) gives a police order to investigate the incompetent case, the policeman who receives this order may use the same power for investigation without the power of binding without the confirmation that he or she performs in a clear condition.

### **INVESTIGATIVE POWER AND PROCEDURE IN COGNIZABLE OFFENCE: S. 156 CR.P.C.**

In case of incomprehensible cases, the investigation begins with providing information under section 154 Cr. P.C. A police officer holding a police station. The power of a policeman to investigate a reasonable case is provided under section 156 Cr.P.C. In terms of section 156 (3) Cr. P.C. Any magistrate is authorized in terms of section 190 offence. Section 190 empowers magistrate to take cognizance upon receiving any complaint or upon a police report (challah) or information obtained from any person other than a police officer who is aware of the case. In the case of a magistrate, he or she may conduct an investigation under section 156 (3) only in the monitoring section.<sup>2</sup>

### **PROCEDURE FOR INVESTIGATION: SEC. 157 CR.P.C.**

If the suspension of an offender commission is suspended, the policeman will file a copy of the record to the detainees who have been authorized to recognize the matter in a police report. At this point the suspension may be FIR received under Section 145 or any other police information.

It was possible "Even outside the FIR if a police officer holding a police station has reason to suspect that the commission is guilty of an offense, he may continue investigating the case under section 157 (1)."<sup>3</sup>

### **POWER OF POLICE TO REQUIRE ATTENDANCE OF WITNESS:**

In terms of section 160 of a policeman may be in written form requiring the presence of witnesses. Provided that no male under the age of 50 or over 65 years or a woman or a mental or physical disability will be required to be present in any area other than the area where the above person is referred to.

### **EXAMINATION OF WITNESSES BY POLICE:**

As per section 161 Cr. P.C. Statements are taken from the person who are acquainted with the facts and circumstances of the case and are reduced into writing.

By the amendment act 2013 it was stated that the statement of a woman against whom an offence under S. 354, S. 354-A, 354-B, 354-C, 354-D or section 376, 376-A, 376-B, 376-C, 376-D, 376-E or Section 509 is alleged to have been committed or attempted shall be recorded by a woman police officer.

### **POWER TO SUBMIT CHARGE SHEET AFTER COMPLETING INVESTIGATION UNDER SECTION 173:**

Police sent a release sheet after completing the investigation. Contains a copy of the FIR, a complainant / notice statement, a statement of witnesses, deputies, panchnama, death announcements, headings, etc.

### **OTHER POWERS OF POLICE UNDER CR.P.C.**

- Medical examination of rape victims
- Search for a police officer
- Police are seeking police maintenance under section 167 when the investigation can be completed within 24 hours. Police custody is granted a maximum of 15 days. This is called police custody.
- The magistrate may approve the imprisonment of a suspected suspect without a police custody for more than 15 days if he or she is satisfied that there are valid reasons but the arrest should not exceed 90 days when the investigation is subject to a penalty for death, imprisonment, or imprisonment for ten years, 60 in case of some cases.
- At the end of this 90-day day or 60 days the complainant will be released on bail if he or she is ready and give bail.
- The police may issue the respondent if the evidence fails to comply with section 169 of the C.P.C.
- The police's ability to ask and report suicide is provided in section 174



## **POWER OF POLICE UNDER SECTIONS 107 AND 151 OF CODE OF CRIMINAL PROCEDURE**

To understand the power of police under these statutes, it is imperative to examine what the sections exactly convey.

### **SECTION 107, CODE OF CRIMINAL PROCEDURE:**

- (1) If the Magistrate is aware that any person may commit a breach of peace or disruption of public peace or any other act of wrongdoing which may have resulted in harassment or interference with public peace and that there is sufficient soil to continue, such a person may have given reasons why he or she cannot be controlled obligation 1 [without or without certainty,] to maintain the peace of the period, not exceeding one year, as the Magistrate considers necessary.
- (2) The procedures under this section may be taken before any Chief Magistrate in any case of harassment or interference is taken under his or her position of office or within the capacity of a person who may commit an offense to silence or disrupt public peace or to do any wrong act as stated otherwise.

The High Court has explained the principles of public peace and social order so that there is no reason for confusion; the court ruled that public peace and social order co-operation. While playing high music can interfere with public peace but not in order. The public talk talk, although it combines peace, also reflects on no government, violence, or violent crime.<sup>4</sup>

The magistrate referred to in Section 107 is a member of a state-owned executive and not a judge. This section has legally authorized the Executive Magistrates to indicate that the person may (he) obtain the information as described above. Such information can be found by the police who once observed the person who said that police might have concerns about breaking the peace or peace of the community. It should be noted that section 107 does not conflict with the powers in the hands of the police to arrest. "This provision (Section 107) does not enable the police to arrest those people, but the fact is that a large number of people are being arrested under this agreement."<sup>5</sup>

Simply, Section 107 of the Criminal Procedure Act means that the magistrate has the power to hold any person over a year with information that may interfere with the peace and tranquility of the public

### **SECTION 151, CODE OF CRIMINAL PROCEDURE**

- (1) A policeman who knows that the design of any suspected offense may hold, without the

magistrate and without the warrant, the person who does so, if the order that the commissioner is deemed to be imposed is otherwise prohibited.

- (2) No person convicted under subsection (1) shall be kept in custody for more than 24 hours from imprisonment unless his or her arrest is required or authorized under any other provisions of this Act or any other law in force. Section 151 empowers police to arrest a person, except a warrant, believer, may make a serious offense. There are certain conditions set out in section 151 concerning imprisonment, such as those
  - The police commission expected by the police must also be anonymous
  - It seems that the expected trial will only be banned by imprisonment.

As a result, while sections 107 and 151 may provide further understanding of the powers of the Executive Magistrate and the police in consequence, it does not correspond to the major powers.

### **CONSTITUTIONAL VALIDITY OF SECTIONS 107 AND 151 OF CODE OF CRIMINAL PROCEDURE**

There are many applications that have witnessed the constitutional regard to the powers entrusted to magistrates and police under these categories. Some of the landowners in Madhya Pradesh and other people affected by the Sardar Sarovar Project have met on the street, screaming for logs, looking for land and other rehabilitation measures. They did not worry about making a legitimate offense or disturbing public order or peace. However, the police beat the protesters and the women and children and were arrested all under Section 151 of the Criminal Code and were called by Magistrate under section 107. They were sentenced to prison for failing to give a personal responsibility to violate Section 21 of the Indian Constitution.<sup>6</sup>

### **GROUND TO PROVE SECTION 107 AND 151 TO BE INTRA-VIRES OF THE CONSTITUTION OF INDIA:**

The above-mentioned case has enough reason to worry about people's arrests in India's protest arrest. But overly, sections 107 and 151 have been proven to be intra-vires in the Indian Constitution for the following reasons:

1. First, Section 151 provides reasons for such imprisonment as a result of an objection to the broader and "incomprehensible" in the hands of the

police who may comply with democratic principles.

2. In addition, in Section 107, it is clearly stated that the Magistrate must have a personal knowledge of a person who may interfere with public peace or the breach of peace. The Magistrates must be satisfied with the information on the person and, therefore, (s) must issue a notice of the cause under section 111 of the Criminal Code.
3. The notice must contain some particulars of the information received and the following reasons for indicating the cause. Magistrates are not only dependent on the information received, but also on the matter themselves or in other organizations or may call a detailed police report.
4. Apart from the provisions of sections 107 and 151, Article 22 of the Indian Constitution provides legal provisions in terms of imprisonment / arrests.

The bench that combines N. Santosh Hegde J., B.P. Singh J. and S.B. Sinha stated that the provision of "unconsciousness" (Section 151) does not mean that it does not look or unreasonable or violate basic human rights under Sections 21 and 22 of the Indian Constitution."<sup>7</sup>

#### **ABUSE OF POWER UNDER SECTIONS 107 AND 151 OF THE CODE OF CRIMINAL PROCEDURE**

It is not surprising that although laws may adequately satisfy the provisions of the Indian Constitution, they still violate human rights through the inferiority of such powers. In Ahmed Noor mohmed Bhatti vs. State of Gujarat And Other , 16 March, 2005, where the applicant's advice tells us that the directions given to the Supreme Court in detention should be used for provisions such as Section 151, the court said it was not necessary since the limitations and guidelines in the program themselves were adequately considered. The bench clarified that "The arrangement cannot be unreasonable or unconstitutional and, therefore, is not in line with the constitution, as the power delegated may abuse its authority."<sup>8</sup> Section 107 is a preventive and non-disciplinary phase, so there will be no solid grounds for prosecuting a person unless there is a thorough investigation of the facts sent to the Magistrate's Court on the basis of the case. Repeated court officials repeatedly told the Supreme Magistrate's Court that the Magistrates could not exercise this mandate, but there were cases of illegal arrests.

In this case, magistrates under sections 107 and 111 of the Criminal Procedure have arrested applicants imprisoned under section 151 of the Criminal Code, being kept in court for 6 days without giving any opportunity to hear. This case was tried without a

consideration of this subject and no order was issued under the provisions of Section 111 of the Criminal Code. Appropriately, if a suspect is present in court, an order under section 111 must be issued. If the healer is absent, section 112 of the Criminal Procedure Code is used. However, none of these categories were being processed and the imprisonment order was provided unfounded. In this regard, the Kanada High Court has done so "The provisions of Chapter (VIII) can easily be made of the engine of injustice and oppression and the High Court will use the same investigation into the same".<sup>9</sup>

#### **SUGGESTIONS:**

The author would like to continue to make a few suggestions on how to counteract misunderstandings and misconduct on the principles set out: Implementation of the guidelines given by the Supreme Court on DKK arrests. Basu v. State of West Bengal.

It is understandable that the guidelines issued by the Supreme Court in dealing with Dr. D.K. Basu is responsible for restraint arrests under the prohibition ban. However, the motive for providing these directions was to prevent the use of mysterious powers through the use of law and the conference could be issued by the fact that the guidelines described in sections 107 and 151 have been proven to be unable to control the abuse of similar abuse.

#### **MAKING INQUIRIES BY THE AUTHORIZED MAGISTRATE**

The arrest order under section 107 must be verified by the Magistrate by making questions and assistance to other agents so that the fundamental rights of the imprisoned person should not be set aside.

#### **STRICT PENAL CHARGES FOR PERSONS INVOLVED IN THE MISUSE OF THESE PROVISIONS**

The author believes that solid payments punishable by people who misuse it or even misuse these provisions are important. The concept of protective arrest is understandable that law enforcement agencies or any other person involved are somehow linked to law enforcement. They understand the consequences of defective binding rules and perhaps believe that the need to make similar changes is required. However, the law is made by the people of this country, India is a democratic society and human well-being is of paramount importance to the State, so it is important that people believe in prohibit ban on India and not think of it as a tool for the state.

## CONCLUSION:

This enabled us to prove that the role of the police is important and must use their power slowly and not independently. If it is alleged that "if anonymous offense information is received by the authority you must register FIR as in S 154 (1)<sup>10</sup> Cr.P.C. Police ultimately defend the rights of people and keep the law and order in the government.

It is wise to stop fighting crime even before it is possible, however, a state-of-the-art system for allowing 10 people to escape but not innocent innocent ones, such precautionary measures should be carefully monitored. Every mistake under these false phases prevents the principles of environmental justice and the rule of law. The author believes that measures can be taken to eliminate the abuse of power under Section 107 and 151 of the Criminal Code, if it is not finalized but properly governed by the above-mentioned suggestions.

However, when violent protests in Dalit in Maharashtra were linked to 'Bima-Koregaon', the official number of only 300 publishers was arrested in Mumbai while many protesters robbed property, threatening people to return home by stoning and so on. Police seem to have no power over standing without helping while the city is knocked down. It is imperative that police forces under these categories should be used as a crime prevention tool while protecting fundamental human rights and not in satisfying political needs or using them as a tool for compression.

## REFERENCE

1. Preamble of Police Act, 1861
2. Tula Ram v Kishore Singh
3. State of Maharashtra v sarangdhar Singh shivdassingh chavanthat
4. In Madhu Limaye and Anr. v. SDM Monghyr and Ors. 1971.
5. According to a consultation paper on the law relating to arrest written in 1999, by the
6. Then chairman of law commission Justice B.P. Jeevan Redd Medha Patkar v. State (2007)
7. Ahmed Noor Mohamed Bhatti vs. State Of Gujarat And others, 16 March, 2005
8. D.K. Basu v. State of West Bengal, [1997] 1 SCC 416
9. Sathi Sundaresh v. The State P.S.I. Of Moodigere

10. Kalpana Kutty v State of Maharashtra

---

## Corresponding Author

**Dr. Ravi Kumar Tyagi\***

Assistant Professor, Department of Law, OPJS  
University Churu, Rajasthan