

In our Technological age nothing more primitive can be conceived of than denying the discoveries of the sciences as aids to crime suppression and nothing can retard forensic efficiency than swearing by traditional oral Evidence only thereby discouraging the liberal use of scientific research to prove guilt phenolphthalein test in corruption cases.

Despite the conceptual conservatism inherent in most of the rules of Evidence the Court in India, of late, have adopted progressive pragmatism in admitting certain modern scientific gadgets in collaboration with but not in suppression of the oral testimony to arrive at a just decision photographs even today do not go beyond physical evidence used to corroborate the testimony of the person on the stand received the opinion of experts.

Lie detector tests (polygraph tests), Television in Court, Video Cassettes, Scientific Laboratory evidence, reports of serologists, DNA Test, admissibility of Computer printouts, *etc.* are the result of liberal use of scientific methods. Our Courts to reduce the crime rate in our society. The list of these above mentioned scientific methods are not exhaustive, as the progress of Science and Technology increases, the list of scientific methods which are adopted by our Courts to give landmark judgments also increases.

This section gives a vast power to the Judges to show their "Judicial Activism" under this section, by applying scientific techniques, they are able to serve the poor and needy people effectively.

## INVESTIGATION AND RELATED MODES OF INQUIRY

By

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**Autopsy** :—Autopsy refers to the dissection of a dead body for the purpose of inquiring into the cause of death<sup>1</sup>. It is a post-mortem examination to determine the cause, seat or nature of a disease. This kind of examination is normally required by statute for deaths by violent or unnatural means.

The term autopsy came into use early in the history of modern medicine to distinguish the opening of the human body by human agents from the much commoner practice of dissecting animals.

Post-mortem examinations of some sort have probably been made since man first took rational interest in disease<sup>2</sup>.

Laws on autopsy differ from place to place, but in general an autopsy, in the civilized world of today, can be performed only with the permission of the next of kin and by qualified doctor of medicine who is well-trained in Pathology, a branch of medical science which is concerned with the structural and functional changes caused by disease.

The primary purpose of autopsy is to

1. *Black's Law Dictionary* (1979) Page 122.

2. *Colliers Encyclopaedia* vol 3 Page 352.

further the knowledge of disease, and in his post-mortem examination the aim of the Pathologist is three fold. He attempts to discover and describe all deviations from normal anatomy in the body and its various organs, and if possible, to correlate these with each other by cause and effect.

Secondly, he tries to explain the abnormal functions manifested during life on the basis of anatomical alternations. And finally, he confirms or invalidates the clinical diagnosis made during life<sup>3</sup>.

**(ii) Inquest** :—In the jurisprudence of foreign countries, inquest, in its broadest sense, means a judicial inquiry, but the term is usually applied specially to an investigation by jury<sup>4</sup>.

The most familiar application of the term at present is to the inquiry performed by a Coroner with the aid of a jury into the cause of an unexplained or possible suspicious death. It is a criminal proceeding that takes the form of a preliminary investigation, rather than a trial involving an individual guilt or innocence.

In cases of violent death, the inquiry is not limited to the physical nature of the violence but may extend to the discovery of other circumstances that reveal the moral quality of the act.

The purpose of an Inquest is to gather evidence that may be used by the police in their exploration of a violent or suspicious death and the subsequent prosecution of a person if death ensued from a criminal act.

An inquest is not a trial but rather a criminal proceeding of a preliminary, investigatory nature. It is not a criminal prosecution but may result in the discovery of facts justifying the prosecution.

**(iii) Inquisition** :—Inquisition, in the Middle Ages, was a method adopted by the tribunals set up by the Catholic Church, with very wide powers for the suppression of heresy. Early Christianity had combated heresy by peaceful methods. When Christianity became the official religion of the Roman Empire during the 4th century a change came in the powers and procedures of the concerned tribunals in dealing with the offence of heresy<sup>5</sup>.

In the Medieval period, investigation of heresy was the responsibility of the bishop of diocese. Because heresy was ill-defined, there was little consistency in procedures and punishments. When heresy took deep roots in northern Italy and southern France and was spreading to several other parts of Europe repressive, measures were adopted by the Church.

Popular agitation against heretics found expression in extra-legal action and summary execution. At the Council of Tours (1163), the Pope commanded the clergy to search out heretics by holding inquests based on the testimony of sworn witnesses. Lay princes were invited to assist in their detection, disperse their assemblies, cast them into prison and confiscate their goods<sup>6</sup>.

Inspired by certain concepts in Common Law and the procedure followed in the Inquest in England since the Norman conquest Pope Alexander introduced a procedure by which an Ecclesiastical Judge or a special Ecclesiastical Commission, acting on the sworn testimony of witnesses conducted the inquest, and the purpose was to ascertain the innocence or guilt of those suspected of heresy. In this procedure, the Judge presided, received the testimony, examined and absolved or condemned the heretic. It is this

3. The Guide to American Law Vol 13 Page 311

4. David M. Walker Oxford Companion to law (1980) Page 622.

5. M.A. Kaith "Official Medico Legal investigation (1971) Page 8

6. Presswalla F.B. Historical Evolution of medico legal investigation (1976) Page 17

procedure which lies at the heart of the institution known as Inquisition.

Later legislation modified the procedure to reduce the rigour. According to the legislation of King Louis IX, the Bishops were relieved of the work of inquisition and in their place regular Inquisitors were appointed.

Within his delimited jurisdiction, the inquisitor was supreme. The inquisitor received his authority directly from the Pope. In theory, he was subject to Pope, in practice to no one.

**(iv) Discovery** :—Discovery is a kind of procedural device employed by a party to a civil or criminal action, prior to trial, to require the adverse party to disclose information that is essential for the preparation of the requesting party's case and that the other party alone knows or possesses<sup>7</sup>.

Discovery devices used in civil law-suits are derived from the Equity rules of practice which gave a party the right to compel and adverse party to disclose material facts and documents that established a cause of action.

Discovery is generally obtained either by the service of an adverse party with a notice to the adverse party, by order of the Court.

Discovery devices narrow the issues of a law-suit, obtain evidence not readily accessible to the applicant for use at trial, and ascertain the existence of information that might be introduced as evidence at trial. Public policy considers it desirable to give the litigants access to all material facts not protected by the rules of privilege, to facilitate the fair and speedy administration of justice. Discovery procedures promote the settlement of a lawsuit prior to trial by providing the parties with opportunities to evaluate the facts before them<sup>8</sup>.

**(v) Pre-sentence Investigation** :—A sentence in criminal law is a judgment formally pronounced by a Judge or Court after an accused person is found guilty in a criminal prosecution. It formally declares the legal consequences of a confession of guilt or conviction. While determining a specific sentence the Judge considers several objectives. These include the idea of exposing the criminal to treatment of training that will convert him into a satisfactory citizen<sup>9</sup>.

The authority to sentence is derived from the Legislature which enacts statutes to allocate this authority among the Courts and agencies. A trial Judge is usually allowed considerable latitude in imposing sentence. To exercise his discretion wisely, the Judge must have access to as much information about the accused as possible. During the trial the Judge learns about the nature of the crime and the role of the accused in it. The Judge might also receive a pre-sentence report prepared by a Probation officer who has investigated the background of the accused.

A pre-sentence report prepared by the probation officer deals with the prior arrests and convictions of the offender. It also covers the situation surrounding the person's criminal activity and summary of his education and employment history, home and family life, medical history, the environment to which he will return, resources available to assist the criminal, his motivations and ambitions and a recommendation as to disposition.

**(vi) Inspection** :—Inspection is a general term used to inquire into various things. It refers to examination, scrutiny, investigation, checking over, looking into, or viewing the purpose of ascertaining the quality, authenticity or conditions of an item, product, document, residence, business *etc.*<sup>10</sup>.

In civil litigation the parties have the right to inspect papers, documents, land *etc.* of the

7. Colliers encyclopaedia William Kelley vol 3 Page 128.

8. Black's Law Dictionary Page 418

9. The Guide to American Law Page 197

10. Black's Law Dictionary Page 716

opposing party, according to the rules of civil practice. Similar rights of the prosecutor and the accused in criminal cases also are Governed by the rules of criminal practice.

Inspection laws authorize and direct the inspection and examination of various kinds of merchandise intended for sale, especially food, with a view to ascertain its fitness for use, and excluding unwholesome or unmarketable goods from sale, and directing the appointment of official inspectors for that purpose.

An inspection search refers to administrative searches conducted by the local or State authorities for health or building law enforcement. There are also inspections of other institutions like the inspection of schools and colleges permitted by law, to look into the academic, administrative, environmental or other aspects of the institution.

**(vii) Commission of Inquiry :—**A commission of inquiry is appointed by the Government to inquire into any definite matter of public importance and it performs such functions as may be specified in the Government notification by which the commission is appointed<sup>11</sup>. Section 3 of the Commissions of Inquiry Act 1952 says:

“The appropriate Government may when it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by a House of the People or as the case may be, the Legislative Assembly of the State, by notification in the Official Gazette, appoint a commission of inquiry for the purpose of making an inquiry into any definite matter of public importance and perform such functions and within such time, as may be specified in the notification.”

Section 3 of the Act has got two parts; first it confers power upon the Central

Government to appoint a commission if they exists a definite matter of public importance and forms an opinion that it is necessary to do so. The appointment of the commission is discretionary. But in cases where there is a resolution either by the House of the People or by the Legislative Assembly it is obligatory upon the appropriate to appoint a Commission of Inquiry. The two parts are mutually exclusive, the sources are also different. The obligation on the Government to appoint a commission arises only when there is a resolution by the House of the People.

According to Section 4 of the Commissions of Inquiry Act, the Commission shall have the power of a civil Court while trying a suit under the Code of Civil Procedure 1908 in respect of the following matters, namely :

- (a) summoning and enforcing the attendance of any person from any part of India and examining them on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or any copy thereof from any Court or fees;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) any other matter which may be prescribed.

**(viii) Judicial Inquiry :—**Inquiry does not always mean a judicial inquiry. Whether it does or does not, depends on the context in which it is used. The definition in the Code is not exhaustive. Under the Code means not only an inquiry into an offence but inquiries into matters which are not offences. Proceedings under Chapter X as inquiries with the meaning of Section 2 of the Code.

11. Dr. W.P.D. Kesari “Lecturer on Administration Law (8th Edition) 1988 Page 154.

The wide definition of inquiry to cover every inquiry short of trial would relate both to judicial as well as non-judicial inquiry under the Code. Whether an inquiry is judicial or non-judicial will however depend upon the context in each case<sup>12</sup>.

## CRIMINOLOGY AND CRIMINAL INVESTIGATION

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Criminology is the science that deals with crimes and criminals whereas investigation is an endeavour to discover the truth by the application of that science. The realm of criminology and criminal investigation is so manifold and diverse that it is hardly possible to touch even the fringe of the various problems within the limited scope of a single chapter. Considerable progress has been made in subjects like Interrogation, *Modus operandi* Handwriting, Finger print, Foot-print, Ballistics, Microscopy, Blood analysis *etc.*, yet nobody is in a position to say that he has known or said the last word on this vast and ever-growing science of criminology.

### *Prosecution and Investigation:*

In countries where criminal proceedings move through the mechanism of adversary system the accused is presumed innocent until proved guilty and he has the right to assistance of a Counsel from the point where he is arrested. The procedure for determining the guilt is that of competitive presentations by the prosecution as a legal representative of the State, countered by the defense Counsel as a representative of the accused<sup>1</sup>.

The office of the public prosecutor is responsible for a criminal case from the point where it is received from the police through its termination by trial. The prosecutor has the responsibility of determining whether a formal charge should be lodged and if so what specific crime should be charged<sup>2</sup>.

A complex set of factors is involved in the decision to charge. The single most important factor is the seriousness of the crime, the prosecutor will refuse to proceed if there is dearth of evidence. He will decide to take up the case if there is strong evidence furnished to him.

In the adversary system, followed in most of the common law countries, evidence has a very important role to play, and the function of collecting the evidence is assigned to the investigating agency *i.e.*, the police. In many cases the policemen has to appear in Courts to testify as a witness, if the accused does not plead guilty. He may also be required to prosecute the charge. In the United States, it is only in very minor cases that the policemen act as prosecutors presenting the evidence against the accused. In England, the policemen act as prosecutors

12. *Mohd. Umar* Inspector General of Police (1959) All. L.J. 603.

1. Encyclopaedia of Crimes and Justice Vol 2 Page 450

2. Miller Frank, "prosecution, the decision to charge a suspect with crime". (1970) Page 14.