

AGENCIES AUTHORIZED TO INVESTIGATE FROM OTHER THAN POLICE OFFICERS

By

—Dr. SARFARAZUNNISA,
Principal Anwar-ul-loom College of Law
for 12 years,
Worked as Professor of Law Asmara
University, Eritrea for 2 years,
Presently working as Advocate and
Part-time Lecturer

Section 202(1) of the Code falling under Chapter XV of the code of Criminal procedure with the caption "*Complaints to Magistrates*" envisages that any Magistrate on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under section 192 of the code can direct an investigation to made by a police officer of "*by such other person as he thinks fit*".

Investigation by Magistrates:

Investigation in criminal matters is in most of the procedural systems a function of the police. But even where the law confers the power on the police to investigation it confers a similar power sometimes on Magistrates and person other than the police. In France, Spain and West Germany the Penal Codes confer powers on the Magistrates to investigate. But the Magistrates, owing to the dearth of manpower, skill and experience, delegate the routing matters to the police or other non-legal personnel and retain the right to investigate important or sensitive cases.

The institution of the investigation Magistrate is characteristic of continental criminal procedure. In United States a recommendation was made to adopt the procedure of the Magistrates rather the police conducting criminal investigations, but the recommendation was not accepted. France, Italy and Spain still retain the investigating Magistrate but West Germany abolished that

office in 1975 because it was no longer regarded as necessary.

A Spanish statute requires that the investigation Magistrate be informed within twenty-four hours of all acts of investigation performed by the police and that he collect the transcripts of police protocols. In practice, the Magistrate delegates the function to the police. Thus, the primary responsibility in Spain for conducting the investigation resides with the police, despite the statutory mandate that it should be done by the investigating Magistrate. The reason why the Magistrate delegates the responsibility to the Police is that the Magistrate cannot single-handedly conduct or even control the investigation as long as the police monopolize the requisite manpower, equipment and experience.

In India, the function of investigation in most of the matters is that of the Police. The law however confers power in certain special category of officers to investigate though their powers are not so vast as those of the police officers. Even the Magistrates have the power to inquire into certain matters, as can be seen from the following provisions of the Code of Criminal Procedure, 1973.

Under Section 159 of the code of criminal procedure a Magistrate, on receiving report from an officer incharge of Police station that a certain case is not of a serious nature and that there is no sufficient ground for making an investigation on the spot, may direct an investigation or if he thinks fit at

once proceed or depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry into the case or dispose of the case in the manner provided in the Code.

Under Section 176 of the Code of Criminal Procedure 1973 the Magistrate has the power to hold an inquiry into the cause of death either instead of or in addition to the investigation held by a police officer.

Under Section 202 of the code of criminal procedure, any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under Section 192, may if he thinks fit, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding.

Other Agencies Empowered to Investigate :—The task of investigating into crimes is not the sole monopoly of a particular branch of Government whether it is the Indian legal system or any other legal system of the world. Almost all the three branches of Government; the legislative, the executive and the judiciary exercise the power of investigation independently or share the power with some other branch of Government. Of course, the major share of responsibility for investigation, under the general principles of criminal procedure is that of the police, but there are a number of statutes which assign the duty of investigation to other agencies of Government including the administrative, legislative and judicial branches.

This chapter examines the hypothesis that the task of investigation is not the monopoly of the police but of various departments of Government in total disregard of the theory of separation of powers. The various agencies working in India and other countries to perform the task of investigation in various matters are the following.

(a) Agencies in India:

(1) *The Human Rights Commission :—*

The protection of Human Rights Act 1993 provides for the constitution of a National Human Rights Commission and the State Human Rights Commission for better protection of Human Rights.

The National Human Rights Commission is assigned the duty to perform all or any of the following function, namely:

- (a) *Inquire suo motu* or on a petition presented to it by a victim or any person on his behalf into the complaint of violation of Human Right or abetment thereof, or negligence in the prevention of such violation by a public servant;
- (b) *Intervene* in any proceeding involving any allegation of violation of Human Rights pending before a Court, with the approval of such Court;
- (c) *Visit* under intimation to the State Government any jail or any other institution under the control of the State Government where persons are detained or lodged for the purposes of treatment, revision or protection.

Under Section 14 of the Act, the Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilize the services of any person or investigation agency of the Central Government or the State Government with the concurrence of the Central Government as the case may be.

For the purpose of investigating into any matter pertaining to the inquiry any officer or agency whose services are utilized may, subject to the direction and control of the commission summon and enforce the attendance of any person and examine him, require the discovery and production of any document, and requisition any public record or copy thereof from any office.

Under Section 17 of the Act the commission may call for information or report from the central Government or any State Government or any other authority or organization subordinate thereto within such time as may be specified by it, provided that if the information or report is not received within the time stipulated by the commission it may proceed to inquire into the complaint of its own.

Under Section 18 of the Act the Commission may take any of the following steps upon the completion of the inquiry held under this Act, namely;

- (i) Where the inquiry discloses the commission of violation of human rights or negligence in the prevention or violation of Human Rights by a Public servant it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the commission may deem fit against the concerned person or person.
- (ii) Approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
- (iii) Recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim of the members of his family as the commission may consider necessary.

(2) National Commission for Scheduled Castes and Scheduled Tribes :—The constitution Sixty-fifth Amendment Act 1990 amended Article 388 of the constitution to provide for the establishment of a Commission known as the National Commission for scheduled Castes and scheduled Tribes to perform the following functions, namely;

- (a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the constitution or under

any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

- (b) to inquire into specific complaints with respect to deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;
- (c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development in the Union and in the States;
- (d) to present to the president annually and at such other times as the commission may deem fit, reports upon the working of these safeguards, and
- (e) to make any such reports / recommendations as to the measures that should be taken by the Union or any State for the effective implementation of these safeguards and other measures for the protection, welfare and socio-economic development of the scheduled castes and scheduled tribes.

Under clause 6 of Article 388 of the constitution the President shall cause all such reports to be laid before each House of parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the case and the reasons for the non-compliance, if any, of such recommendations.

Under clause 8 of Article 388 the commission, while investigating any matter or inquiring into any complaint shall have all the power of the civil Court trying a suit and in particular the power of summoning and enforcing the attendance of any person from any part of India and examining him on oath; requiring the discovery and production of any document, receiving evidence on affidavits; requisitioning any public record or

copy thereof from any Court of office; and issuing commissions for the examination of witnesses and documents.

(3) *The National Commission for Minorities* :—This commission has been constituted under the National commission for Minorities Act 1992 to perform all or any of the following functions, namely –

- (a) Evaluated the progress of the development of minorities in the Union and States;
- (b) Monitor the working of the safeguards provided in the constitution and under the laws enacted by parliament and the State Legislatures;
- (c) Make recommendations for the effective implementation of the safeguards for the protection of interests of minorities by the Central Government or the State Government;
- (d) Look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authority;
- (e) Cause studies to be undertaken into the problems arising out of any discrimination against minorities and recommend measures for their removal;
- (f) Conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities.

Under sub-section (2) of Section 9 of the Act the central Government shall cause the recommendations of the Minorities commission referred to above to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendation and the reasons for the non-compliance, if any, of such recommendations.

While performing any of the functions referred to above, the Minorities Commission

shall have the power to summon and enforce the attendance of any person from any part of India and examine him on oath; require the discovery and production of any document; receive evidence on affidavits; requisition any public record or copy thereof from any Court or office; and issue commissions for the examination of witnesses and documents.

(4) *The National Commission for Women, 1990* :—This commission has been constituted under the National commission for women Act 1990 to perform all or any of the following functions, namely;

- (a) Investigate and examine all matters relating to the safeguards provided for women under the constitution and other laws;
- (b) Present to the Central Government annually and at such other times as the commission may deem fit, reports upon the working of these safeguards;
- (c) Make any such reports / recommendations for the effective implementation of these safeguards for improving the conditions of women by the union or any state;
- (d) Review from time to time the existing provisions of the constitution and other laws effecting the women and recommend amendments thereon so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislation;
- (e) Take up the cases of violation of the provisions of the constitution and all other laws relating to women with the appropriate authorities;
- (f) Look into complaints and take *suo motu* notice of matters relating to deprivation of women's rights, and non-implementation of laws enacted to provide protection to women and

also to achieve the objective of equality and development, non-compliance of policy decisions, guidelines or instructions aimed at mitigating the hardship and ensuring welfare and providing relief to women and take up the issues arising out of such matters with appropriate authorities, call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the issues so as to recommend strategies for their removal; make periodical reports to the Government on any matter pertaining to women.

Under sub-section 2 of Section 10 of the Act, the central Government shall cause all the reports of the women commission to be laid before the Houses of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendation relating to the opinion and the reasons for the non-compliance if any of any of such recommendation.

While investigation into any matter falling within its purview the commission shall have

all the powers of a civil Court in respect of matters like requiring the discovery and production of any document, receiving evidence on affidavits, requisitioning any public record or copy thereof from any Court or office, and issuing commissions for the examination of witnesses and documents.

(5) National Commission For Backward Classes :—This commission has been constituted under the National Commission for Backward classes Act, 1993 to examine the requests for inclusion of any class of citizens as a backward class in the lists and bear complaints of over-inclusion or under inclusion and tender such advice to the central Government as it deems appropriate. The advice of the commission shall ordinarily be binding upon the central Government.

The commission while performing its functions has the power to summon and enforce the attendance of any person from any part of India and examine him on oath; require the discovery and production of any document; receive evidence on affidavits; requisition any public record or copy thereof from any Court or office and issue commissions for the examination of witnesses and documents.

RIGHT TO INFORMATION ACT AND LIMITATIONS

By

—ELURI SRINIVAS RAO, M.A., LL.M.
(International Law)

Asst. Director General,
Directorate General Security, New Delhi

The Right to Information Act (RIT) has come into force from October 12, 2005 in all over the country. Although the Act does not permit citizens to seek information on certain matters affecting security, strategic, scientific or economic interests of the country it gives them the legal rights to be informed about utilization of public funds, progress reports of ongoing projects, state circulars, contracts *etc.* The new law place India among 55

countries in the world to have such legislation. But this Act will not be applicable in J&K.

The Act empowers the Central Information Commission/State Information Commission to receive complaints if a PIO doesn't provide correct and timely information. The CIC will be headed by a Chief Information Commissioner who will be assisted by Information Commissioners.