

## CHAPTER -8

### Collection of Evidence

#### **Introduction**

163. Investigation is a process of connecting the offender to the offence. This is a method by which various events are connected with one another. A chain of events is prepared which illustrates and elaborates various steps and activities involved in the commission of crime. Relating each of such activity with another one will require the support of evidence of one nature or the other. The job of investigation and particularly that of collection of evidence is a serious, sensitive and complicated one. This requires use of utmost intelligence, competence, presence of mind, skills of observation along with utilization of various tools and techniques of evidence collection. Collection of various types of evidences through scientific interrogation and with the help of scientific aids to investigation can absolve the police of all the allegations with regard to use of third degree methods.

#### **Nature of Evidence**

164. The evidence to be collected during the course of investigation should be relevant and it should pertain to the facts in issue. Various provisions of Indian Evidence Act should be kept in mind, while collecting and recording evidences of various types. Only that evidence should be collected, which is admissible in the court of law. Collection of inadmissible and irrelevant evidence is wastage of time and even dilutes the quality and status of investigation.

#### **Types of Evidence**

165. The various types of evidences to be collected during investigation

are following:

- a) Oral evidence
- b) Documentary evidence
- c) Expert evidence
- d) Circumstantial evidence
- e) Other evidences

### **Oral evidence**

Oral evidence is the most frequently used mode of evidence collection by an Investigating Officer. Oral evidence must be in the form of direct evidence otherwise it will be inadmissible being hearsay. The Indian Evidence Act deals with the provisions of oral evidence in sections 59& 60. The oral evidence should be collected in accordance with the provisions of Cr.P.C. contained in chapter XII.

### **Collection of Oral Evidence**

**166-1.** The investigating officer is empowered under Section 161 CrPC to examine orally any person (including a suspect) who is likely to be acquainted with the facts and circumstances of the case. He may reduce to writing the statement of each such person, and when he does so, he shall make a separate record of each such person whose statement he records. The person so examined shall be bound to answer all questions relating to such case put to him, other than questions the answers to which would incriminate him to a criminal charge or to a penalty or forfeiture.

2.In order to examine a witness, the investigating officer should, as far as possible, contact him at his place, but may, if necessary, require the attendance before himself, of any person being in the

limits of his own or adjoining police station. If a person so called intentionally fails to attend in spite of a written order served on him, he is liable to be prosecuted under section 174 IPC. However, under proviso to section 160 Cr.P.C, no male person under the age 15 years or woman shall be required to attend as a witness at any place other than the place in which such male person or woman resides. Act of directing a woman to appear in Police Station is violative of section 160 (1) of the Cr.P.C.

3. When a police officer finds it necessary for the purpose of any investigation to require any employee of any essential services such as water supply and electricity, medical, civil supplies to leave his duties or otherwise to detain such employee from his duties, he shall give previous notice of the fact to the official concerned in order that the latter may take steps to replace the employee, and shall, at the same time, take all necessary measures to ensure that the object of the investigation is not thereby defeated.

### **Admission of police officers to visit jails on duty**

**167-1.** The rules regulating admission of Police Officers to visit jails lay down that;

A. Any police officer of a rank not lower than a Sub-Inspector shall, for any purpose connected with the discharge of his duty as such police officer be permitted to enter the jail at any time between unlocking in the morning and lock up in the evening.

B. He will be permitted to interview the prisoners only on a letter of authority to the Jail Superintendent from SP or superior Officers or

District Magistrate. He may take other Police Officers and witnesses or informers with him for assistance.

- C. Police officers of lower rank than a Sub-Inspector in uniform are permitted to enter the jail for the purpose of recognizing old offenders.
  - D. Any interview permitted as above shall take place in the presence of the Jailer or other proper officer of the jail, who shall, if required to do so, keep at such a distance that he may not hear the conversation that takes place.
  - E. The Superintendent of the Jail shall, produce any prisoner in his charge whom the police are authorized to interview and shall afford every reasonable facility for this purpose.
2. In case of remand of prisoners, no police officer shall be permitted, except under the authority and in the presence of a Magistrate, to enter a Sub-Jail /Jail for the purpose of interviewing or communicating with them.

### **Recording of statements of witnesses**

**168-1.** Though a Police Officer is not bound to record the statement of witnesses as he examines them during the course of investigation, in terms of section 161(3) of Cr.P.C it is desirable to reduce to writing the statements of all witnesses who are acquainted with the facts and circumstances of the case on the spot and who may have to be cited in the court as witnesses. The statement of each witness should be recorded separately, in direct form and as far as possible in his own language and with the full version of what he states. Section 173(5) of

CrPC lays down a statutory obligation on the prosecution to furnish to the accused, copies of statements recorded under 161(3) of CrPC of all persons whom the Prosecution proposes to examine as its witnesses.

These are mandatory provisions for compliance.

2. The case diary is intended for recording such particulars as, the action taken by the investigating officer, the places where he went, the people he visited and the things he saw. The statement of witnesses recorded during the course of investigation u/s 161 shall be inserted in the case diary. It is a privileged document and is covered by sub-section (2) of Section 172 of CrPC.

### **Recording statements of the accused**

3. It is important and necessary for an investigating officer to record the statement of an accused person, more so, if it contains lengthy details in a complicated case, so that these details may not be forgotten or overlooked in the course of enquiries for their verification. The statement may sometimes disclose his line of defense and may also at times indicate sources from which independent evidence may be available and provide clues for further investigation. Verification of all details given by the accused is a vital exercise in investigation and should be diligently done and entered in case diary from day to day.

### **Dying declaration**

- 169-1.** The statement given by a dying person is called dying declaration in IEA Sec. 32. Whether the statement is given expecting death or not, it is valid. Out of the entire statement the following only are relevant.

- A. That portion showing to the cause of person's death or
- B. To the circumstances of the transaction resulting in that person's death.

### **Recording of Dying Declaration-Process and Precautions**

2. The declaration may be recorded by any person, but it should preferably be recorded by a Magistrate, if readily available. Where this is not practicable, the doctor or if he is not available the investigating officer may record it, preferably in the presence of a witness. Even if the declaration is made to a police officer, it is admissible in evidence and its use is not barred by section 162 of the Cr.P.C. Even if it has been made orally in the presence of any person, it may be proved in court by the oral evidence of that person. The declaration becomes admissible, only if the declarant subsequently dies. If he survives, it will be useful, if made before a Magistrate or anyone other than a police officer, to corroborate his oral evidence as a witness in court. If it was made before a police officer, it will be treated as a statement u/s 161 Cr.P.C.
3. The declaration must, as far as possible, be complete by itself. The person making the declaration must be speaking from personal knowledge of the facts. If reduced to writing, the declaration should be in the form of questions and answers and in the very words of the declarant. The signature of the declarant should invariably be taken on the dying declaration wherever possible. If the declarant is an illiterate or is incapacitated from signing for any reason, his thumb impression should be taken. When a declarant dies while giving a statement, the declaration is valid even though he does not put his signature or thumb impression. A note should be made in the dying declaration giving reasons why the signature of the declarant was not

taken.

4. When the declarant, being in a serious condition and unable to speak, makes signs by hand or head, the person recording the dying declaration must record the precise nature of the signs which the declarant made.
5. Before taking down the declaration the persons recording the dying declaration should also ask the declarant whether he is mentally capable of making a declaration. He should obtain whenever possible a certificate from the Medical Officer as to the mental condition of the declarant.

1. Incomplete dying declarations are not by themselves inadmissible in law. Though a dying declaration is incomplete by reason of the deceased not being able to answer further questions in his condition then, yet the statement to that extent is admissible provided it is proved he has given it consciously and the statement is not vague.

7. An FIR can also be a dying declaration.

### **Recording of statements of witnesses and confessions of accused by a Magistrate**

- 170-1.** In important cases, witnesses may be produced before Judicial Magistrate; competent to record such statements under section 164 Cr.P.C. Such statements can be used to contradict the statements given by the same person during the course of enquiry or trial. If he retracts later he can be prosecuted for giving false evidence.

2. If an accused person, on being arrested, expresses his willingness to make a confession, his confession may be got recorded under section 164 of CrPC by the competent Magistrate. As far as possible he must be taken before a magistrate other than the one who has jurisdiction to try the case.

### **Confessional statements made to the police**

171. Though confession made to police officers are inadmissible, under section 27 of Indian Evidence Act, if a statement is given by an accused to a police officer while in custody and that statement reveals the discovery of any material fact and in consequence of that statement if that material fact is discovered, that statement is admissible to the extent of such discovery.

### **Recording the Confessional Statements**

- 172-1. As soon as it appears to the investigating officer that an accused is likely to make a confession leading to the discovery of a fact, the investigating officer should secure the presence of two respectable and independent witnesses of the locality and in their presence record the confessional statement himself, obtaining the signatures of the witnesses on the record. Stock witnesses or those who figure as witnesses in previous cases should not be taken. If it is not possible to secure the presence of witnesses, the investigating officer should himself record the confessional

statement and afterwards when he is able to secure the presence of witnesses, he should read over the statement to the accused before the witnesses and, if it is agreed to by the accused as correct, note this fact on the record and obtain the signatures of the witnesses on it. The statement of the accused should be in the first person and in the very words of the accused. When a discovery is made as the result of the statement of the accused, a separate recovery memo should be drawn up for the discovery. Giving information and recovery that follows it are two different transactions and a separate recovery memo should be recorded for each of them. The information given by an accused person should not be mixed up in the recovery memo drawn up for the recovery made in consequence of such information. It is the information given by an accused person that determines his knowledge about that fact discovered and that has a direct bearing on his guilt.

2. When one of several accused persons who have taken part in an act, for example, the burial of property at a certain place, offers to point out the place and the property is found in consequence, his confessional statement is relevant against him under section 27 of the Indian Evidence Act. But if other accused persons suspected to have taken part in burying the property at the place also give the same information subsequently the discovery cannot be attributed to second person. These confessional statements cannot be said to have led to the discovery of the property which has already been discovered and are not, therefore, relevant under that section. Though there is nothing objectionable in the investigating officer trying to see for his moral satisfaction whether such persons point out the same place as the one previously shown by one of them, no attempt should be made to

utilize that evidence against subsequent persons. If two or more accused give statements under section 27 of Evidence Act, simultaneously, it is inadmissible, as it cannot be attributed to any single person.

3. Where the place of recovery is a public place accessible to all and sundry a discovery from such a place cannot entirely be attributed to the exclusive knowledge of the accused and therefore much reliance cannot be placed.
4. The accused must be in custody of Police for a confession to come under purview of section 27 of Evidence Act. Even a man released on bail and giving information leading to discovery of a fact can be deemed to be in Police custody within meaning of section 27. Arrest and custody are not synonymous. A person can be in custody without being formally arrested.

### **Tendering of pardon**

**173-1.** In cases where it is otherwise impossible to establish the guilt of the accused from other evidence, conditional pardon can be tendered to an accomplice in a crime with a view to securing the evidence of such a person and bringing home the guilt of the other accused.

2. Tendering of pardon can be given in the following cases
  - A. All offences triable by sessions court
  - B. Offences under Prevention of Corruption Act
  - C. Offences which are punishable with 7 years or more

3. Tender of pardon is given where the investigation has to establish the guilt of the accused by independent evidence. In such cases participant who played a minor role with offence is taken into confidence with a view to prove the case against the other accused. The accused to whom the tender of pardon is granted is an accomplice witness
4. The pardon tendered to a person under section 306/307 of Cr.P.C., as already stated, is conditional that he should make a true and full disclosure of the whole of the circumstances within his knowledge relating to the offence. If such person either willfully conceals anything essential or gives false evidence and thus does not comply with the conditions on which the pardon was tendered, he may be tried for the offence in respect of which the pardon was tendered later.
5. During the course of investigation the chief judicial magistrate and during the course of enquiry or trial the presiding magistrate or judge are competent to grant pardon.

Documentary Evidence

**Directions to produce a document or thing**

**174-1.** Whenever any Officer in-charge of a Police Station or Officer entrusted with the investigation of a case considers that the production of any document or other thing is necessary for the purpose of investigation, such Officer may issue a written requisition to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it or cause to produce it at a time and place stated in the order (Section 91 of CrPC).

2. If the statement of the person in whose possession the document or thing is, to be recorded, he should be directed to appear in person and produce such document or thing. If his statement is unnecessary, such person can be asked to cause the document or thing produced on his behalf by any other person.
3. If the document or thing is in the possession of an accused, an order for its production shall not be issued as it contravenes clause (iii) of Article 20 of the Constitution of India. It should be seized after conducting a search of a place where such document or thing is kept.

#### **Documents required from Bankers**

- 175-1.** For documents required from bankers, the procedure given in **Bankers Books Evidence Act** 1891 should be followed.
2. According to section 4 of Bankers Books Evidence Act 1891 a certified copy (with prescribed certificate at the end) of any entry in a bankers book shall in all legal proceedings be received as prima facie evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein.
3. In cases where bank employees are involved in offences like misappropriation, forgery etc., or other bank frauds, financial or any other offences, the original records are required for examination by the handwriting expert. The relevant original records may be requisitioned by making out copies. The copies

so made can be retained by them for banking purposes. Where the examination by hand writing expert is not needed, and the records are required only for investigation, requisition should be confined to certified copies of entries which are admissible as prima facie evidence.

4. Section 8 of the Bankers Book Evidence Act 1891 authorizes the officers not below the rank of Superintendent of Police specified by the Government under this section to requisition records or entries which are needed for investigation into any offence. This requisition should be in Form .

**Procedure regarding articles/documents in the custody of  
Postal or Telecom Departments both Private and  
Government**

- 176-1.** If any document, letter, telegram, parcel or thing in the custody of Postal or Telegraph authorities is required, for the purpose of investigation, the Investigating Officer shall make an application to the District Magistrate or Chief Judicial Magistrate or Court of Session, and request for orders to the Postal or Telegraph authorities to deliver such document, letter, telegram, parcel or thing to the Investigating Officer (Section 92(1) of CrPC). The reference to Posts and Telegraphs authorities in this section may be interpreted to include Bharat Sanchar Nigam Limited (BSNL) and any other basic telephone (including WiLL) service provider or cellular operator whether Private or Government.

2. If any such document, parcel or thing, in the possession of Postal or BSNL authorities in the opinion of Superintendent of Police, is wanted for the purposes of investigation, he may require the concerned, to trace and detain such document, parcel or thing, pending the orders from the District Magistrate or Chief Judicial Magistrate as mentioned in the sub-order (1) (Section 92(2) of CrPC).

3. Instructions in the **P&T Manual 1982**, volume V regarding production of records in the custody of the post office are reproduced below:

Records of a Post Office or mail office should be produced, and information available in them should be given on the written order of any Police Officer who is making an investigation under the CrPC, or of any Excise Officer empowered by a local government or administration to investigate offences under any Excise Act, but only those entries in the records should be disclosed which relate to the person or persons charged with the offence under investigation or which are relevant to that offence. In any other case, the official in-charge of the office should, without delay, refer for orders to the Head of the Circle, who will decide whether under section 124 of the Indian Evidence Act, the information asked for should be withheld or not.

### **Inspection of Records of Criminal Courts by the Police**

Inspections of records of Criminal Courts should be done by Police in accordance with instructions used in this context by the High Court of Sikkim. Instructions in this regard for making applications for inspection

of records and taking extracts should be strictly followed.

**Inspection and obtaining of documents in the custody of audit (including Posts and BSNL) offices**

- 177-1. Investigating Police Officer will be given all facilities to inspect within the respective offices the original documents in the custody of audit offices. They will also have facilities to take out copies of such documents (including photostat copies). Even where an original document has to be shown to a witness during the process of investigation, it will be possible in many cases to have this carried out at the audit office.
2. Where the investigating Officer inspects the original documents, he shall sign and record the date of his perusal or inspection on the record so inspected or perused and thereafter request for the photocopies. The photocopies can be used in the investigation. He shall also handover a letter to the head of the office to have the original documents in his custody under lock and seal. The expenses for taking out the photocopies will be met by the concerned office.
3. In a case where an investigating officer finds it necessary to have the original documents in the possession of an audit office examined by the handwriting or fingerprint expert, the Director General of Police will request the Accountant-General to hand over the documents, in original directly to the investigating officer, who may use them for identification purposes and also have them examined by the expert.
4. The above orders also apply to documents, in the possession of the audit offices of the Posts or Telecom Department.

## **Expert evidence**

In the large array of the list of witnesses, the expert witnesses have a special significance. The expert opinion and there evidence is taken to be more objective, impartial and scientific as compared to the ordinary witnesses. The IO should have deep knowledge about the role, significance and relevance of the expert witnesses. Evidence and opinion of an expert are relevant as per the provisions of Indian Evidence Act (Section 45 to 51). These provisions deal with various facets of evidence by experts and admissibility thereof.

An IO should suitably evaluate, analyze and asses as to which part of his investigation would require help and assistance from an expert. At the scene of crime there are a number of exhibits and pieces of evidence, which might be relevant for the investigation and which may require expert opinion. The IO should prepare a list to such objects and should collect those objects for scientific examination and obtaining expert opinion. An IO should have knowledge about various categories of experts and the subjects with which they deal. He should also know where to send the exhibits for examination and which institutions, organizations and forensic labs are there to render the requisite help.

The experts who have given opinion on a particular matter should be cited in the list of witnesses with correct address and the issue on which they will tender their expert opinion.

Extreme care and caution should be exercised in identifying, lifting, packing and forwarding the exhibits for experts' opinion because during any of the above stages if the exhibit is distorted, disturbed or destroyed,

it may cause serious damage to the quality of evidence because either the expert opinion will not be available at all or if the one is available then on the ground of it being not fool proof, it may be rejected by the court of law.

### **Circumstantial evidence**

1. There are occasions when direct evidence is not available. In such a situation, in order to prove the case, an IO has to depend on the circumstantial evidence. Circumstantial evidence pertains to the various facts, situations and conditions, which would establish connection between the crime and the criminal. Such facts, conditions and situations which may form the basis of circumstantial evidences are dealt in the various provisions of the Indian Evidence Act.
2. Any fact, condition, or situation, which is relevant with relation to the fact in issue, that is, the investigation in question, may form part of the circumstantial evidence. The facts, which are so connected with each other that they form part of the overall transactions of crime are relevant and may form part of the circumstantial evidence. Likewise the facts, which are the occasion, cause or effect with regard to the crime under investigation can also form part of the circumstantial evidence. In the same manner the facts, conditions and situation, which prove the motive, preparation and previous or subsequent conduct of the accused persons can also form part of the circumstantial evidence. An IO should have deep knowledge of the various provisions of evidence act, which deal with the various facts, conditions and situations which may become part of the circumstantial evidence.

3. Collection of circumstantial evidence is a tough task and the IO has to work hard to collect such evidence. The evidence so collected should be corroborated by some support evidence. The circumstantial evidence must provide a complete chain of events connecting one another to become cogent, succinct and reliable. The connecting of the various facts, conditions and situations must provide a complete chain and no link of which must be missing. They must unequivocally point the guilt on the accused so as to exclude any point, which may be consistent with his innocence. The circumstantial evidence in order to secure conviction must be complete and conclusive in nature and prove the guilt of accused person beyond every reasonable shade of doubt.
  
4. In order to make the circumstantial evidence valid foundation of conviction, the IO should collect various types of corroboratory evidences, which may be oral, documentary, incidental, occasional or intentional. The circumstantial evidences may be corroborated with the help of expert opinion and scientific examination of various types of exhibits.

### **Identification**

1. Identification is one of the methods of collecting evidence. Witnesses see the individual or objects which are relevant for the investigation. In order to authentically connect such individuals and objects, the Investigation Officer prepares a profile on the basis of the statements of the witnesses. The witnesses later on are required to identify such individuals and objects to verify the authenticity of the version of the witnesses. This process is called identification and for conducting this process an identification

parade is held often in the presence of a Magistrate. This process is relevant under Section 9 of the evidence Act.

### **Procedure & Method of Holding Identification**

1. When a witness says that he can identify accused persons or others connected with the case under investigation, the Investigating Officer shall record in the case diary in their descriptions, the extent of prevailing light at the time of the offence (daylight, moonlight, flashing of torches, burning kerosene, electric or gas lights, etc., details of opportunities of seeing the accused at the time of the offence; anything outstanding in the features or conduct of the accused which impressed him (identifier), distance from which he saw the accused, and the extent of time during which he saw the accused.

2. The accused should as far as possible be mingled with persons of similar description, status, build and age in the proportion of a minimum of 1:5 and a maximum of 1:10, and they must be made to take their positions along with the persons with whom they are mingled up in a line. They should not be made to stand together. The Magistrate or other persons conducting the parade should satisfy himself or themselves that no Police Officer takes part in the actual identification proceedings that witnesses are kept out of view from the premises where the parade is taking place and that it is not possible to communicate with them by signals or other communications. Witnesses should then be called in, one by one, and they should be asked to go round the persons assembled for the parade and point out the accused, if any. If the identification is held by a Magistrate the proceedings should be drawn up and signed by Magistrate. Statements made by the identifying witnesses to the Magistrates at the time of identification should be recorded in the proceedings. Even if a witness makes a mistake, it should be recorded. In

short, the proceedings must contain a complete record of all that takes place in the identification parade. After the identification by one witness is over, care should be taken to see that the witness does not mingle or communicate with the other witnesses for whom identification parade is yet to be conducted or other outside persons and the whole parade will be reshuffled and the accused made to take different positions. If the accused so desire, they should be allowed to change their dress also. The same procedure will be repeated in the case of other witnesses also. Any well-founded objection by any accused during the identification parade should be recorded. After the completion of the identification parade and the drawing up of the proceedings, a certificate in the following form must be appended and signed by the Magistrate conducting the parade.(IEA Sec-9)

- A. "I, the undersigned, took all necessary precautions, and I am satisfied that no police officer was present at any time of the proceedings, when the parade was held".
- B. "No opportunity was given to the witnesses to see or know about the proceedings of the parade".

178. When the identification parade is to be held in a jail, the jailor on admission of the suspect should be informed of the intended identification. The jailor should prohibit any change in the appearance of the prisoner from that in which he was admitted to jail, e.g., beard not to be shaven or grown and the same clothes to be worn as at the time of the entry. The officer conducting the identification parade should keep a detailed record of the entire proceedings.

### **Salient Points of Identification**

179. The following are the salient points to be borne in mind by Police Officers arranging identification parades:-

- 1) Warn the accused person that he will be put up for a parade and he could keep himself veiled;
- 2) Secure the services of a Magistrate for holding an identification parade ; If this is not possible, secure two or more respectable and independent persons of the locality to hold the parade ; do not select persons already known to the identifying witnesses to stand along with the suspects in the parade ; arrange for the identification parade immediately an accused is arrested. There should be no delay.
- 3) when one accused is arrested in a case in which more than one accused is required to be identified, do not postpone the parade of the arrested accused, till the others are secured. As each accused is arrested, go on arranging for the parade.
- 4) Other persons participating in the parade should be of the same build, age, dress and appearance as the suspects;
- 5) Maintain a minimum proportion of 1:5 and a maximum proportion of 1:10; distribute the accused among others, they should not be made to stand together;
- 6) keep the accused out of the view of the witnesses and take precautions to prevent their being seen by others from the time of their arrest, if they are to be put up for identification parade subsequently;
- 7) Shuffle the persons in the parade after identification by each witness and make a record of having done so in the proceedings;
- 8) In respect of each accused, a separate identification parade should be held;
- 9) When several accused persons are required to be identified, the innocent persons, mixed up with one accused at one parade, should not be mixed up with another accused at a second parade. They should be changed, with every change of an accused person.

### **Identification by Photographs**

180. Photographs of certain classes of criminals are maintained in the District Crime Record Bureau. Photographs exist also for dossier criminals. Witnesses may be shown the photographs and asked to identify. In cases where criminals are identified through photographs, a regular identification parade should also be held after the apprehension of the accused. When identification is sought to be made through photographs, single and individual photographs should not be shown to witnesses. Photographs of as many persons as possible, among which should be the suspect's photograph, should be shown to the witness, who should be asked to pick out from among them the suspect's photograph, if it is there.

### **Identification Through Finger and Foot Impressions**

181. Identification can also be established from finger impressions left on the scene. Finger impressions found on the scene can be developed and tested to find out whether they tally with those of the suspected persons or not. Foot impressions left on the scene can also be lifted and compared later with foot impressions of the suspects.

### **Previous Conviction or Acquittal**

182. As prescribed by Section 298 of the Cr.P.C., a previous acquittal can be proved by a certified extract from the court record and the previous conviction either by such extract or by a certificate from the jailor or the warrant of commitment together with evidence in each of such cases, as, to the identity of the accused persons with the person so acquitted or convicted.

### **Identification of Property**

183-1. During investigations it may sometimes be necessary to conduct test identifications of articles involved in criminal cases. A test identification of properties which do not bear any special marks of identifications is of immense value in enhancing the credibility of

identification evidence in court; and a test identification of properties which bear definite marks of identification is not necessary.

2. When a witness states that he can identify properties connected with a case under investigation. Their descriptions and other marks of identification along with the circumstances under which he had previously seen them on several occasions during which he had previously handled them, and any other relevant circumstances should be recorded by the IO.
  
3. Make a clear record in the case diary and the search list of the places from which and how the stolen property was recovered. Evidence that the stolen property was buried under ground or was concealed in the walls or secreted in back yards or houses, etc., will help to establish the receiver's belief as to the nature of the property.

### **Case Diary**

184. Section 172(1) CrPC requires that every Police Officer making an investigation shall enter day by day his proceedings in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and a statement of the circumstances ascertained through his investigation.

The statement of witnesses recorded during the course of investigation u/s 161 shall be inserted in the case diary. (Sec -172(1A))

The case diary shall be a volume and duly paginated in form .

### **Nature & Importance of Case Diary**

185. Case diary is a confidential and privileged document. Though the accused has no right to look into it, the court may look into the diary. However if the police officer refreshes his memory while giving evidence

by looking into the case diary, the accused is entitled to look into that portion as referred by the police officer and may use it for contradicting the police officer.

1. The Investigating Officer and his superiors shall ensure the physical safety of the case diary as well as its contents. Any leakage of the contents to any person other than authorized by law leads to undesirable consequences and will be detrimental to prosecution. They should not permit access to any unauthorized person particularly the accused or their agents or their counsel. The officer who has custody of case diaries either as an IO or a superior officer supervising investigation should ensure that it is handed over to their successors in office. The access to the case diaries is limited only to the IO, the superior officers and the concerned legal officers who are in charge at a given time and not to others.

### **Contents of Case Diary**

186. Every case diary should contain the following information.

- A. date and hour of taking action;
- B. date of report of the case;
- C. name of the complainant or informant;
- D. names of accused known, if any;
- E. property lost
- F. property recovered;
- G. date and last page of the previous case diary, if the case diary is not the very first one;
- H. name of the deceased, if any, and
- I. names of witnesses examined.

## **The First Case Diary**

187. The first Case Diary should commence with a brief summary of the FIR, the time of receipt of the complaint, delay if any, in starting for the scene, the time of departure for and arrival at the scene,' and description and plan of the In cases where there is no scene as such like in Financial Crimes, the records and places where such records or data recording, storage or retrieval systems are located, the method of crime as reflected at such places, objects, computers, documents etc. and the plan or sketch or diagram representing the crime scene so to say may be described or drawn up as is possible.

## **Details & Description**

188. A statement of circumstances ascertained through the investigation at the place or places visited by the investigating officer, and the date and hour of closing the investigation shall be noted. Every step taken by the I.O. shall be mentioned as concisely as possible. Every clue obtained, even if at the time it appears likely to be of no value, houses searched with reasons for the search and the names of witnesses to the search, property recovered, its description and place where it was found, arrests, information obtained which is likely to prove of value, and methods adopted by the suspects/accused are among the things to be mentioned in the case diary. The substance of the statements of witnesses shall find place in the case diary. The IO shall record in Form the statements of persons examined by him in detail separately and attached to the case diary of the day.

189.1 The case diary shall be written incorporating the investigation done on each day. Statements of witnesses should be reduced to writing on the spot in Form in the prescribed Form. If it is not possible they should be written in the IO's note book, and transcribed in the prescribed form as soon as he returns to the Station House. If, for any unavoidable reason, notes had to be taken on separate sheets of paper, these should not be destroyed after the case diary is written but preserved in the case file.

### **Copies of Case Diary**

190. Case diaries and statement of witnesses will be duplicated by carbon process, or by photocopiers. The original is retained in the station and the other sent to the SDPO concerned who shall deal with the case diaries in the manner prescribed. In cases investigated by Sub-Inspector who is also SHO of Police Station the case diaries will be directly forwarded to SDPO concerned who in turn shall after scrutiny and necessary instructions to the I.O., dispose them off as prescribed.

### **The Concluding Case Diary**

191. 1. In the concluding diary, the investigating officer shall record a summary of the reasons which have guided his final decision in the case. If he considers that there is no case, his reasons will, of course, be more detailed and fuller than the one sent up for trial.

2. The names of informers need not be entered in the diary and no Court can compel an investigating officer to disclose the name of an informer.

### **Role & Responsibility of the Subsequent IOs**

192. Succeeding investigating officer to verify investigation made by the previous I.O. and to re-examine all the important witnesses already

examined, to ascertain the facts and circumstances of the case. But, as regards the recording of their statements, law does not require the investigating officer to reduce such statements into writing.

### **Action When Case in Transferred to CID**

193. In a case taken up by the CID, the I.O. of the CID is expected to verify and re-investigate the entire case and not merely to continue the investigation already done by the local Police Officer. To that end, it is necessary that he should not only re-examine the witnesses but also record their statements in full. The fact that the recording of such statements may lead to possibility of contradictions and deviations in the statements of witnesses and may cause inconvenience to the police in furnishing copies to the accused cannot be valid and lawful ground for evading it.

### **Case Diary in Inquest Case**

194. In inquiries under section 174 CrPC relating to suicide and accidental deaths, statements of witnesses examined during the inquest will be recorded separately and attached to the inquest report. However, in a case where it has not been clearly established that it is a suicidal or accidental death, a case diary should be written discussing the evidence gathered and available during the inquest and the grounds for treating the case as an accidental or suicidal death not warranting investigation. When a Head Constable holds an inquest, the Sub-Inspector should subsequently verify the investigation, and the result of such verification should be embodied by him in a case diary. A case diary should also be written summarizing the result of the

postmortem examination, if conducted.

### **Progress of Trial to be Recorded**

195. In order to report the progress of trials in courts, court diary in Form No. -- should be written, reporting details of all hearings and adjournments, the witnesses examined at each hearing, how each of them fared, gist of arguments of defense and prosecution, Court observations or orders and other matters of interest, if any, particularly with reference to their statements before police earlier and other material particulars including name and designation of the Police Officer who attended the Court.

### **Use of Case Diary for Seeking Remands etc**

196. Remands should be applied for along with case diary. Sub- Section (1) of Section 167 of CrPC requires a copy of the case diary to be sent when remand is sought. The investigating officer should, therefore, prepare an additional copy of the case diary, when he is aware that he will have to send a prisoner for remand. The statements recorded under section 161 Cr.PC till then should also be enclosed to the case diary.

197.1 Case diary forms should be used for applying to Magistrates for warrants of arrest or search, for proclamations and other orders connected with investigation and for forwarding search lists provided these communications refer to registered cases.

2 Case diaries should also be written in cases, referred by a Magistrate to the police for investigation under section 155, 156 or 202 of CrPC.

## **Investigation Abroad and Letters Rogatory**

198-1. Section 166A and Section 166B of CrPC deals with the investigation abroad and letters rogatory. Under Section 166A CrPC letters and request to the competent authority for investigation in a country or place out side India for the purpose of collection of evidence are sent in such a manner at the Central Government may specify in this behalf.

2. Every statement recorded or document or thing received under Sub-Section (1) of 166A CrPC shall be deemed to be the evidence collected during course of investigation.

3. During the course of investigation into an offence, an application is made by I.O or any officer superior in rank to the I.O stating that evidence may be available in the Country or place outside India to any criminal Court.

4. That Criminal Court may issue a letter of request to a Country or an authority in this Country or place competent to deal with each request to examine orally in person supposed to be acquainted with the facts and circumstances of the case and to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to forward all the evidence so taken or collected or the authenticated copies there of or the thing so collected to the Court issuing such letter.

5. Similarly u/s 166B CrPC deals with the letter of request from a Country or place outside India to a Court or an authority for investigation in India. Upon receipt of letter of request the Central Government may forward the same to the Chief Judicial Metropolitan Magistrate or such Metropolitan

Magistrate or Judicial Magistrate as he may appoint in his behalf or sent the letter to any Police officer for investigation in the same manner as if the offence has been committed within India. All the evidence taken or collected or authenticated copies so shall be forwarded by the Magistrate or police officer as the case may be to the Central Government for onward transmission to the competent authority had issued such request.

Comprehensive guidelines for Investigation Abroad, issue of letters rogatory, extradition request have been issued by Government of India.

#### A. INVESTIGATION ABROAD

1. It may be necessary to gather information or conduct formal investigation abroad, in cases, where accused person(s) has escaped from the Country after committing the crime or part of the crime has been committed outside the country or the witnesses and other material evidence are available in another Country.
2. However, it may not be necessary to gather formal evidence in all such cases and in many cases/enquiry; the investigation agency may only need information or lead in the first instance. The Investigation Agency may get informal information/material/leads collected through Interpol or diplomatic channels. (Intelligence sharing, however, is required to be done by designated intelligence agencies). The International Police Cooperation Cell (hereinafter referred as IPCC) of CBI, New Delhi is the designated agency for routing requests for informal enquiries to be made with National Central Bureau of other countries, Interpol Headquarters as well as our Missions abroad.
3. For getting informal investigation conducted through the Interpol channels or our Missions abroad, a self contained request, along with necessary details, may be addressed to Assistant Director, IPCC Block

#4, CGO Complex, Central Bureau of Investigation, New Delhi. In case, information is to be collected/enquiries are to be conducted in more than one country, separate self contained requests may be sent for each country. The request may be routed through the head of Crime Investigation Department (CID) of the State Police.

4. The request must incorporate the following details:
  - (i) The FIR number along with names of the accused and sections of law under which case has been registered.
  - (ii) The gist of the allegations in the FIR/Preliminary Enquiry or any other investigation process.
  - (iii) The detail of information required. In order to facilitate requested country /its NCB providing information the specific relevant details must be furnished.
  
5. It is necessary that material being furnished should be carefully examined and scrutinised at an appropriate level especially as regards accuracy of facts and figures. It must be noted the information so collected cannot be treated as formal evidence.

#### **B. VISIT OF POLICE OFFICERS ABROAD FOR INVESTIGATION**

1. Sometimes, it may become necessary to send Police Officer (s) from India to foreign country for the purpose of execution of LR or for collecting information or leads during the course of investigation of a case keeping in view the importance of the case and the complicated nature of offences under investigation.
2. As any police officer including that of the CBI would enjoy no police powers in a foreign country and any such visit by a police officer

- without the express consent of any country may be considered interference in the sovereignty of that country unless some required formalities are observed.
3. When it is considered necessary to send a team of Officers abroad, the State Government will send a proposal to IPCC, CBI, India which in turn will obtain the approval of MHA for the proposed visit, whenever necessary.
  4. The following information needs to be sent to the IPCC, CBI India for taking up the matter with the country to which such team is proposed to be sent:
    - (i) A brief note detailing the reasons for sending the team, nature of enquiries required to be made in the requested country. This is to enable the authorities to assess whether the request is justified.
    - (ii) All available particulars about identity or particulars of the person to be contacted or documents to be scrutinised etc. This would help the requested country to make all necessary preparations.
    - (iii) Information about penal offence to which mission relates.
    - (iv) Whether Article 3 of the ICPO (Interpol) constitution or some other legal provision restricting international cooperation is attracted.
    - (v) Exact date and duration of the mission and information about the police officers such as their names and ranks.
    - (vi) Any other relevant information which may be relevant in processing such a request.
  5. The visit will not commence before the required permission is received. The officers must get in touch with Indian Mission on their

arrival. In case, the country does not have a mission, the accredited mission for India may be kept informed as regards visit of the officers.

### C. GUIDELINES FOR ISSUANCE OF LETTERS ROGATORY FOR INVESTIGATION ABROAD UNDER SECTION 166A CrPC, 1973

1. In order to conduct formal investigation and to collect evidence and gather material objects/documents section 166A of the Criminal Procedure Code 1973 lays down the procedure of sending 'Letter of Request' (Letters Rogatory) through a competent Court. Letters Rogatory is forwarded within the ambit of Mutual Legal Assistance Treaty (MLAT), Memorandum of Understanding (MoU)/Arrangement etc. existing between India and requested country or on basis of reciprocity in case no such treaty and MoU exists. In certain cases, it may also be possible to use the provisions of an International Convention, providing for such mutual cooperation, to which both India and the requested country are signatory for sending such Letters Rogatory.
2. No request for issue of Letters Rogatory (Letter of Request) shall be brought before any Court by an Investigation Agency without prior concurrence of the Central Authority i.e the Ministry of Home Affairs (MHA).
3. In case, it is considered necessary to get a Letters Rogatory (Letter of Request) issued, a self contained proposal may be sent to Under Secretary(Legal), Internal Security Division, Ministry of Home Affairs, Lok Nayak Bhawan, New Delhi- 110 003 to be routed through the Home Department of the State in case of State Police, and

- directly to MHA in case of DSPE (CBI) for obtaining concurrence of the Government before filing an application in the Competent Court.
4. Before making a proposal to the MHA, the Investigating Agency concerned may examine the matter in detail whether it is absolutely necessary to get investigation conducted abroad for taking the case to a logical conclusion. The provisions of the MLAT, MoU, Arrangement for International Convention as well as requirement of the law of requested country such as principle of dual criminality, assurance of reciprocity etc. may be studied with view to determine that such a request would fall within the parameters of legal requirements of the requested country. It is important as it would have to be specifically mentioned as to under what provisions of Treaty, MoU, Arrangement or International Convention the request was being made. Where no such bilateral or multilateral arrangements exist Letter Rogatory may be made on the basis of assurance of reciprocity.
  5. Certain Countries do insist that a Letters Rogatory be sent in particular language or formal. If so, the requirements thereof of making a request may be studied to comply with them. Assistance of IPCC, CBI, New Delhi may be taken for the purpose, if required.
  6. For obtaining the concurrence of MHA, the Investigating Agency concerned would send the following in triplicate.
    - (i) A self-contained note containing brief facts of the case incorporating the allegations, names of the accused and particulars of the offences committed with details of sections of Law and a copy of First Information Report (FIR). The FIR may be neatly word processed and must accompany with an English translation if written in vernacular.

- (ii) The need to conduct investigation abroad along with the legal opinion of Director of Prosecution or the senior most Law Officer commenting on the need for such Letters Rogatory (Letter of Request), that it would fall within the ambit of MLAT, MoU, arrangement, International Convention and laws of the requested Country on the principles of dual criminality etc. Relevance of statement of witnesses to be examined and collection of documents/material being requested to be seized to the investigation of the case may also be commented upon.
- (iii) The relevant provisions of the MLAT or MoU of Agreement or Arrangement or an International Convention under which the Letters Rogatory (Letter of Request ) is to be made may be enclosed. In case it is to be sent on assurance of reciprocity the same may be mentioned.
- (iv) The draft application proposed to be filed in the Competent Court for issues of Letters Rogatory may be enclosed. The application should contain the following:
  - (a) Background Note with brief facts of the case, the allegations and name of the accused and particulars of the offences committed with extract of sections of Law and a neatly word processed copy of First Information Report (FIR) as enclosure.
  - (b) The details of investigation to be carried in the requested country. Care must be taken that request made is specific as no country would allow fishing enquiries/investigation.
  - (c) Particulars of the witnesses to be examined, their identity and addresses if available along with detailed questionnaire for examination of each witness.

- (d) Description of the documents/articles to be collected and procedure for the same.
- (e) Extract of the corresponding sections of laws of the requested country which would constitute an offence/s on similar allegations under investigation in India. It may be stated in particular if under the laws of the requested country principle of dual criminality or any other requirement is essential requirement for execution of Letters Rogatory.
- (f) Extract of the relevant provisions of the MLAT, MoU, Arrangement or International Convention etc providing for such assistance by the requested country.
- (g) Declaration that the proposed Letters Rogatory would be in compliance of all the requirements of the requested country and that the case under investigation is not political, military, racial or religious character.
- (h) A draft Assurance of Reciprocity in case the request is being made to a country with whom no MLAT, MoU, Arrangement exists or the request does not fall within the ambit of an International Convention.
- (i) Whether a visit by Investigating or any other officer is proposed to assist the authorities in the requested country to execute the Letters Rogatory.

7. The following precautions may be taken by the Investigating Agency while preparing a Letters Rogatory:

- i. The documents, photographs and objects, if enclosed with the Letters Reogatory, should be clearly marked and referred

to in the body to enable the requested authority to know clearly what is required to be done with them.

- ii. All the photocopied papers/documents enclosed must be legible and translated in the required language, if required.
  - iii. The letters Rogatory should be neatly bound and page numbered.
  - iv. The authenticated translated copies, duly signed by a translator, be enclosed along with original LR, if required to submitted in a language as prescribed in the MLAT, MoU, Arrangement or otherwise.
  - v. At least, five copies of the Letters Rogatory should be prepared including the original. Three copies along with the translated version, if any, would need to be sent to the MHA along with a copy of the International Police Cooperation Cell of CBI.
8. MHA may consult CBI whenever required and convey its concurrence to the proposal to be filled in the Competent Court for issue of a Letters Rogatory and also mark a copy of its concurrence to IPCC, CBI, New Delhi.
9. After obtaining the concurrence of the MHA, an application may be filled in the Court of competent jurisdiction for issue of Letters Rogatory addressed to the competent authorities of the requested country. The competent court may decide to issue a Letters Rogatory addressed to the competent authority in the requested country as prayed for or otherwise.

10. In case, the request is accepted, the Court would issue the Letters Rogatory under its seal and authority. A format and contents of the Letters Rogatory are given in the annexure to the guidelines.

#### D. PROCEDURE TO BE FOLLOWED AFTER ISSUE OF LR BY THE COMPETENT COURT

1. The Investigating agency will send three copies of the LR to IPCC, CBI, New Delhi and one copy to MHA, IPCC, CBI, New Delhi will forward the same to the competent authority in the requested country through the Indian Missions under intimation to MHA.
2. The Indian Mission will take prompt action to present/send the LR to the competent authority and communicate the exact date of such presentation/submission to IPCC, CBI, New Delhi. The Mission and IPCC will follow up the execution of LR with the competent authority in the requested country.
3. In event of requested country seeking clarifications, additional material etc. the mission will directly communicate the same to the IPCC, CBI, New Delhi, who may take necessary action the matter under intimation to MHA & MEA.
4. The execution report, along with evidence and supporting material, received from the requested country would be directly sent by out Mission abroad to the IPCC, CBI, New Delhi, who would in return send the same to the Agency concerned under intimation to MHA and MEA.

#### E. HANDLING OF INCOMING LETTERS ROGATORY (LR)

1. All incoming LR will be received by Under Secretary (Legal) Internal Security Division, Ministry of Home Affairs, Lok Nayak Bhawan, New Delhi- 110 003 and will be entrusted to an Investigation Agency (State Police/CBI in consultation with Joint Director (Policy) in CBI.
2. Where LR needs to be executed through the State Police, it will be sent to IPCC, CBI for getting it executed by the State Police concerned.
3. The agency entrusted with the task of execution of LR will do so at the earliest. The letters rogatory would be executed in terms of the provisions of the MLAT, MoU, Arrangement etc, it exists with the requesting country otherwise the evidence shall be gathered under the provisions of Indian laws, as applicable.
4. The following precautions may be taken while preparing the Execution Report:-
  - (i) The documents, photographs and objects, if enclosed with the Execution Report, should be clearly marked and referred in the body.
  - (ii) All the photocopied papers/documents enclosed must be legible and authenticated as per provisions of Indian Evidence Act unless otherwise provided in the MLAT, MoU, Arrangement etc.
  - (iii) The Execution Report should be neatly bound and page numbered.
  - (iv) At least, four copies of the Execution Report should be prepared including the original. Three copies including the original may be sent to the IPCC, CBI, New Delhi while a copy is retained by the executing agency for future reference.

5. After execution, the investigation agency will forward the execution report to the IPCC, CBI, New Delhi along with the evidence and material collected who will forward the same to the Central Authority of the requesting country through the MEA under intimation to MHA.

#### F. HANDLING OF EXTRADITION REQUESTS

1. Extradition if either done under Extradition Treaty or other Extradition Arrangement of Assurance of Reciprocity with the requesting country.
2. Extradition request can be normally made only after a charge-sheet has been filed in the court and the court has taken cognizance of the case. If the accused available in the other country is to be arrested and produced in the court in India, the requisite action to bring such accused to India is through Extradition Process and not through LR.
3. Extradition requests are not accepted for political offences. The principle of dual criminality is invariably followed for extradition requests. An accused extradited for a particular offence can be tried only for the offence by the receiving country.
4. The State investigating agency will send extradition requests to the IPCC, CBI, New Delhi through the State Home Department who would in turn send the same to MEA for further necessary action.

#### G. CONTRACT BY AND WITH FOREIGN POLICE/LEGAL OFFICERS/ATTACHES

1. Foreign Police Personnel/Legal Attaches are not permitted to establish any direct contact with the police personnel at the State Level unless specifically authorised by MHA.

2. Any attempt by such foreign police/legal personnel to establish direct contact with the State Police Authorities should immediately be brought to the notice of MHA.

## **FORMAT AND THE CONTENTS OF THE LETTERS ROGATORY**

199. The Competent Court, after considering the request may decide to issue the Letters Rogatory (Letter of Request) as prayed for or otherwise. In case, the request is accepted the court would issue the Letters Rogatory under its seal and authority. The Letters Rogatory, addressed to the Competent Authority of the requested country, would contain the declaration showing the competence and jurisdiction of the Court making to issue such request country. It would contain the following details and annexure:

- a. Brief facts of the case, the allegations and name of the accused and particulars of the offences committed with extract of Section for Law.
- b. The details of investigation to be carried in the request country.
- c. Particulars of the witnesses to be examined, their identity and addresses, if available, along with detailed questionnaire for examination of each witness.
- d. Description of the documents / articles to be collected and procedure for the same
- e. It may be mentioned 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 may be requested to be collected in original and in case the authorities concerned are unable to part with original documents, duly authenticated true copies in the manner of certification provided in the law of the requested State be supplied. In case, the documents requested are “public documents” according to the law of requested State, then request may be made either to give original or to authenticate the documents as provided under Section 78(6) of the Indian Evidence Act, 1872 i.e a copy certified by the legal keeper thereof, with a certificate under the seal of Notary Public, or of an Indian Counsel or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the documents according to the laws of the requested country.

- f. Request for permitting Officers of the Investigating Agency to present during execution of LR to render assist to the officers executing the request, if considered necessary.
- g. A declaration that evidence made available would be used only in the case in which the request is made, if there is any such requirement.
- h. It may be mentioned that as per Indian Law, it is not necessary to give any notice to the accused either before issuing the LR or before examining the same.

**ANNEXURE TO BE ENCLOSED**

- i. A neatly word processed copy of First Information Report (FIR) as enclosure with English translation if recorded in vernacular.
- ii. Extract of the Section of Law constituting the offences under investigation along with the Sections of Procedural Law, if relevant.
- iii. Extract of the corresponding Sections of laws of the requested country which would constitute an offence/s on similar allegations under investigation in India. It may be stated in particular if under the laws of the requested country principle of dual criminality or any other requirement is essential requirement for execution of Letters Rogatory.
- iv. Extract of relevant provisions of the MLAT, MoU, Arrangement or International Convention under which the request was being made or otherwise.
- v. Declaration that the case under investigation was not of political, military, racial or religious character, if required under the MLAT, MoU, Arrangement or International Convention under which the request was being made or otherwise.
- vi. An Assurance of Reciprocity, duly issued by the authorised officer of the MHA under his seal and signatures, in case, the request is being made to a country with whom no MLAT, MoU, Arrangement exists or the request does not fall within the ambit of an International Convention.

## EXTRADITION

1. Extradition may be briefly described as the surrender of an alleged or convicted criminal by one State to another. More precisely, extradition may be defined as the process by which one State upon the request to another surrenders to the latter a person found within its jurisdiction for trial and punishment or, if he has been already convicted, only for punishment, on account of a crime punishable by the laws of the requesting State and committed outside the territory of the requested State.
2. Extradition plays an important role in the battle against crime. It owes its existence to the so-called principle of territoriality of criminal law, according to which a State will not apply its penal statutes to acts committed outside its own boundaries except where the protection of special national interests is at stake. In view of the solidarity of nations in the repression of criminality, however, a State, though refusing to impose direct penal sanctions to offences committed abroad, is usually willing to cooperate otherwise in bringing the perpetrator to justice lest he goes unpunished.
3. ICPO-Interpol has been a forerunner in international efforts to improve and accelerate existing procedure of extradition. Apart from attempts by academic bodies such as the Harvard Research Draft Convention on Extradition, the ICPO-Interpol was the first international organization to recommend to member countries a Draft General Agreement for the Extradition of Offenders, which unfortunately has remained a dead letter since it was adopted by the General Assembly of the organization (then known as the International Criminal Police Commission) in 1948.

4. Interpol's interest is finding ways of improving the extradition process did not end with the failure of the Draft General Agreement. Since the early fifties, the General Secretariat of the ICPO-Interpol has undertaken on behalf of the member countries two new activities intended to facilitate international police co-operation in matters relating to extradition.
5. The first of these initiatives concerns the publication of a series of circulars on a country basis, setting out the provisional measures that the police in each country may take when complying with a request from the police of another member country for quick action with a identification and arrest of a person wanted on a warrant of arrest. The second initiative taken by the ICPO-Intepol consists in the dissemination of national extradition laws. This activity is based on a resolution of the General Assembly passed in 1967 in Tokyo (Japan) inviting member countries to forward the texts of their extradition laws to the General Secretariat so that the latter may send them to other member countries for their information. The pre-extradition circulars and the texts of extradition laws of the member countries received from the General Secretariat are being maintained in the Interpol Wing.

#### Position in India

1. In India the extradition of a fugitive from India to a foreign country or vice-versa is governed by the provisions of Indian Extradition Act, 1962. The basis of extradition could be a treaty between India and the foreign country. Under section 3 of this Act, a notification could be issued by the Government of India extending the provision of the Act

to the country/countries notified.

2. Information regarding the fugitive criminals wanted in foreign countries is received directly from the concerned country or through the General Secretariat of the ICPO-Interpol in the form of red notices. The Interpol wing of the Central Bureau of Investigation immediately passes it on to the concerned police organizations. The red notices received from the General Secretariat are circulated to all the State Police authorities and immigration authorities.
3. The question arises that what action, if any, can be taken by the Police on receipt of information regarding a fugitive criminal wanted in a foreign country. In this connection the following provisions of law are relevant.
4. Action can be taken under the provision of section 41(1) (g) of the CrPC, 1973 which authorizes the police to arrest a fugitive criminal without a warrant, however, they must immediately refer the matter to Interpol Wing for onward transmission to the Government of India for taking a decision on extradition or otherwise.
5. In case the fugitive criminal is an Indian national, action can be taken under section 188 CrPC, 1973 as if the offence has been committed at any place in India at which he may be found. The trail of such a fugitive criminal can only take place with the previous sanction of the Central Government.