

## DEMANDING JUSTICE, FLOUTING RIGHTS: ALARMING TRENDS IN INDIA

*\*Dr Anand Kumar Tripathi,<sup>1</sup>*

### ABSTRACT:

The golden rule in criminal jurisprudence is that the accused is presumed innocent until his guilt is proved beyond reasonable doubt. The spirit seems to be to ensure that the image and reputation of an individual as a member of a civilized society is not sacrificed on the altar of speculations and biased notions. However, seeing that the ordeal of the accused begins almost the moment an FIR is lodged, the lodging of an FIR itself becomes an exercise to be initiated with utmost care and caution lest it should go to spoil the life and prospects of some innocent soul. The paper makes a humble attempt to underline the fact that simply because someone is accused and there is a great possibility of his being punished, nobody gets a right to defame him; because to punish is not to defame by any stretch of imagination. Equally or rather more importantly, no body becomes entitled to defame a woman or to put an accusing finger at her character just because she has become aware of her rights and has the guts to say a spade a spade. All that we need is give a proper thought to all those who are the stakeholders of a just and crime-free society, and to create an atmosphere to encourage the people to protect their rights and discourage the criminals.

Key Words: Fair trial, Criminal justice, Anonymity, Media, Victim

### 1. INTRODUCTION:

Article 21 requires that no one shall be deprived of his life and personal liberty except by procedure established by law; and also that this procedure must be just, fair and reasonable. If the procedure is not just, fair and reasonable; the Court will regard it as arbitrary and, hence, unlawful. From this it can be easily deduced that where the police officer has a reasonable doubt about the veracity of the complaint and the motives that prompt the complainant to make the complaint, he can hold a preliminary inquiry. Holding of preliminary inquiry is the mandate of Article 21 in such cases.

If the police officer mechanically registers the complaint involving serious allegations, even though he has doubts in the matter, Article 21 would be violated. Therefore, Section 154 must be read in the light of Article 21 and so read preliminary inquiry is implicit in Section 154<sup>2</sup>. The Court also has made an unequivocal declaration of the law that any act which damages or injures

---

<sup>1</sup> Assistant Professor of Law, Raksha Shakti University, New Mental Corner, Meghaninagar, Ahmedabad-16, Gujarat (India) e-mail: dr.anandtripathi@rediffmail.com

<sup>2</sup> Francis C. Mullin v. Administrator, Union Territory of Delhi 1981 (1) SCC 608 [paragraphs 4 and 5]

or interferes with use of any limb or faculty of a person, either permanently or even temporarily, would be within the ambit of Article 21<sup>3</sup>.

A proposition that the moment a complaint disclosing ingredients of a cognizable offence is lodged, the police officer must register an FIR without any scrutiny whatsoever, is an extreme proposition and is contrary to the mandate of Article 21. Similarly, the view at the other extreme, that the police officer must investigate each and every case substantially before registering an FIR is also not very convincing. Most of the time, it may be in the interest of justice to adopt a middle path, sparing the extreme positions only for exceptional situations.

## 2.CRIMINAL JURISPRUDENCE:

One of the cardinal principles always honoured in a system of administration of criminal justice is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of the burden, the Court cannot record a finding of guilt of the accused. If two views are possible one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused has to be accepted. It is submitted that "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law".<sup>4</sup> In this context it would not be out of place to understand the distinction between the terms 'accused person' and 'convicted person'.

The expression 'accused person' connotes a person against whom evidence is sought to be led in a criminal proceeding; a person against whom an allegation has been made that he has committed an offence; or a person who is charged with an offence. On the other hand a 'convicted person' is one who has been tried by a court of competent jurisdiction for an offence and convicted for such an offence.

Therefore, it is submitted that an exercise of utmost care is needed in the process of criminal justice system in order to ensure the repute, decency and dignity of the accused. Sometimes the accused feels embarrassed before the society only because his name figures as one who has been booked for allegedly committing some offence. This is general phenomenon of being suppressed without saying. Our Constitution has guaranteed that no person shall be deprived of his life and personal liberty except with the procedure established by law. However, in practice, this process rarely occurs so far as the dignity of the accused is concerned.

---

<sup>3</sup>Paragraphs 7-8, *ibid*.

<sup>4</sup> The Universal Declaration of Human Rights, article 11; The Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe says (art. 6.2); also see In the 1988 Brazilian constitution, article 5, section LVII, Canada, section 11(d) of the Canadian Charter of Rights and Freedoms, the Colombian constitution, Title II, Chapter 1, Article 29, France, article 9 of the Declaration of the Rights of Man and of the Citizen 1789, Iran, Article 37 of the Constitution of the Islamic Republic of Iran, Italy, the second paragraph of Article 27 of the Constitution, The Constitution of Russia, in article 49, the South African Constitution, section 35(3)(h) of the Bill of Rights, See also *Coffin v. United States* and *In re Winship*.

### 3.THE ISSUE OF ANONYMITY:

The complainant may not be publically named but, post-trial, has to deal with either their abuser being acquitted or having to deal with the consequences of falsely accusing an innocent person. This would mean that information cannot be accessed in the future regarding innocent defendants. Only if a negative opinion of the defendant is formed prior to the verdict will the accused be guilty until proven innocent; and, after all, if they are indeed innocent then the truth will ultimately prevail.

The damage done to reputation is tragic in case of those innocent people who have been accused. Acquittals are simply not regarded as convincing to the general public and there is a lack of public confidence in the criminal justice system. In particular, it may be submitted that there is an impression that many rapists get away with it at the trial. Therefore, people assign no weight to an acquittal. The pressing issue that needs be addressed is to think of why the system is flawed; and to look for the ways and means to tighten the loopholes if any. If the public were to repose more trust in an acquittal, then it would help remedy the problem of the innocent defendant. It is also humbly submitted that the identity of people accused of crimes should not be made public until after their trial is over.

### 4.ROLE OF MEDIA:

The proactive role of media can be seen everywhere which requires to be continued with due care and circumspection. In the fierce competitive age media sometimes crosses its limits, spreading the news relating to crimes merely on the ground of a first information report. On many occasions, it has been observed that while the media reports on a person accused of a heinous crime such as rape or murder, his/her reputation is entirely destroyed before any verdict is ever reached. This causes serious and irreparable harm to the accused party who may very well be innocent. This policy of revealing the identity of the accused without their consent violates the principle of “innocent until proven guilty”. Sometimes it seems that media is losing its credibility producing false news and making wild allegations upon the victims. Kuldeep Nayar has lamented that media is losing its credibility as the public has stopped taking the media seriously.<sup>5</sup> Former Supreme Court judge A K Ganguly felt quite harassed by the media, while he was denied a copy of the affidavit of the girl who had accused him of harassing her. “Media is hounding me like a criminal,” Justice Ganguly said.<sup>6</sup>

### 5.FAIR TRIAL:

---

<sup>5</sup> A three day seminar on “Challenges and Opportunities before the Indian Media” at Punjabi University; March,24, 2009.

<sup>6</sup><http://www.indiatvnews.com/news/india/latets-news-media-is-hounding-criminal-justice-ganguly--31693.html> accessed on 26/01/2014

Criminal trial is meant for doing justice not only to the victim but also to the accused and the society at large.<sup>7</sup> The primary object of criminal trial is to ensure fair trial which is guaranteed under Art.21 of the Constitution of India. A fair trial has, therefore, two objects in view. It must be fair to the accused and must also be fair to the prosecution. The trial must be judged from this dual point of view.<sup>8</sup> It is, therefore, necessary to remember that a judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the judge has to perform.

The object of criminal trial is thus to render public justice by punishing the criminal. It is also important to remember that the trial should be concluded expeditiously before the memory of the witnesses fades out. For a trial to be fair, several different procedures have to be observed. A fair trial ensures that Article 21 of the Constitution is upheld. In a fair trial, the accused person is given a copy of the charge sheet and all other evidence that is presented against her. The trial is held in an open court in a public view. The trial is held in the presence of the accused. The accused is defended by a lawyer. The lawyer is given a chance to cross-examine the prosecution witnesses. After all the procedures, the judge announces the sentence only in accordance with the law. Therefore, no one should be in hurry to disclose the name of the accused as it would be against the spirit of Art.21 and criminal jurisprudence as well.

## 6.FOUNDATION OF CRIME:

One of the most important wings of administration of justice is executive which plays a pivotal role in controlling crime from the society. The responsibility to bring the truth is big challenge before the Police personal as police is often, though with no proper justification, treated as villain. The expectation of society with police personal is very high but people should not forget the limitation of the police. Police is neither God nor panacea of all disease on criminal matters. Public must take the security concern individually by remaining vigilant, exercising due care and caution and working in a way that helps the police nab the culprits or discourage the prospective offenders. If police is there for the safety of the people, then people are also duty bound to help the police in maintaining law and order.

Most of the times, we see that the people do not provide requisite information to the police as a result of which the police has to beat about the bush. It results in a lot of time being spent in nabbing the culprit, and sometimes also helps him destroy the evidences that could work against him. It is true that there could be several reasons why people become unwilling or even compelled not to disclose to the police the whereabouts of the offender; but the fact remains that such noncooperation by the members of the society not only adversely influences entire process of administration of criminal justice but also emboldens the prospective criminals who may break the law with impunity. It is not justified for the members of civil society to remain oblivious of their duty to help the police and hence the state and become active only to raise accusing finger at the police.

---

<sup>7</sup> Ambika Pd. V. State (Delhi Administration)-2000 SCC CrI.522

<sup>8</sup> Vide T.H.Hussain V. M.P.Modkakar-AIR 1958 SC 376

Apart from this there is another aspect that arrests our attention. While we take pride in asserting our right to life and personal liberty and never allow the state or the police to interfere our halo of individual dignity even to the slightest degree possible, we take no time in holding the police irresponsible for those crimes which take place within the spheres of the same individual dignity that we cherish and where police has no role to play and we alone can maintain order in that sensitive world of our individual freedom. When there was much hue and cry about the Nirbhaya episode and everybody was almost mindlessly criticising the police, the then Police Commissioner of Delhi conclusively proved by revealing data that most of the crimes of rape and murder took place within the family relations and friends, in most of the cases the accused was very much known to the victim.

Now a days it has become fashionable to accuse the police; because it is probably the easiest job for anybody to do. Here, it would be relevant to illustrate the story of Mahabharat where Sanjaya is supposed to be omnipresent. Sanjaya, who has the gift of seeing events at a distance granted by the sage Vyasa, narrates to Dhritrashtra the action in the battle of Kurukshetra, which includes the Bhagavad Gita<sup>9</sup>. Police can't be like this. Therefore, it can be said that "Policing in the house is not the duty of police"<sup>10</sup>. Policing within the four walls of the family or close relations is something that has to be done by the elders in the family. It is no use cursing the cops for lack of policing where all that is required is moral policing.

## 7.DELAY IN LODGING FIRST INFORMATION REPORT (FIR):

The role of police begins in the criminal justice once first information report is registered. Criminal law procedure very unequivocally speaks about the responsibility of police. How does police make it materialise in order to restrict the crime rate? Certainly, India is capable and competent enough to ensure the internal security. But F.I.R should be registered by the complainant within reasonable time without undue delay. Delaying in F.I.R also matters and it affects the merit of the case. The object sought to be achieved by registering the earliest information as FIR is inter alia twofold: one, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment etc. later.

"...First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the .....report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence.

Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or

---

<sup>9</sup> Bhagwatgeeta; Chapter-I

<sup>10</sup> Police Commissioner, Mumbai(as he then was)

concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained...”<sup>11</sup>

Genuineness or otherwise of the information can only be considered after registration of the case. Genuineness or credibility of the information is not a condition precedent for registration of a case.<sup>12</sup>

Despite the fact that charge sheet has been submitted and accepted against the accused in a matter, the inaction on the part of the complainants in registering an FIR poses a big question. Law does not intend to make the FIR an engine of blackmailing, oppression and exploitation; its motive is to bring the criminal to book rather than to set personal scores with someone you do not like or someone who was till yesterday your well wisher and has now parted ways. Some of such delayed FIRs may actually serve the cause of justice by bringing the culprit to book that had been so far able to hide his crime; but some may also be the result of an afterthought.

It does not mean that accused go scot free but delaying in F I R also raise a finger against the complainant as it is well accepted that silence amounts to be consented in any matter and if such silence continues beyond the memory of complainant it would be unfair play with the spirit of criminal jurisprudence. Whose responsibility is to bring the accused in the clutch of law if something is going on with consent for a long time? Undue delay in registering F I R should be entertained by the police after preliminary enquiry if it discloses the commission of cognizable offence. Sometimes police and complainant both did delay in registering F I R .In both conditions criminal justice get affected. The researcher thinks that if police officers are blamed not to register case or entertaining delayed registration of F I R, why not complainants may hold liable for delayed F I R.

Registration is delayed resulting in valuable loss of time in launching the investigation and apprehension of criminals. Besides, the complainant gets an opportunity to consult his friends, relatives and sometimes even lawyers and often tends to exaggerate the crime and implicate innocent persons. This eventually has adverse effect at the trial.

The scope of the preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence, if the preliminary inquiry leads to closure of the complaint, the police officer must inform the complainant about the decision and the reasons behind it. In a case the court said while limiting the preliminary inquiry process to a select few categories of cases.

“As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The categories of cases in which preliminary inquiry may be made are-matrimonial and family disputes, commercial offences, medical negligence cases<sup>13</sup>; corruption cases and those involving abnormal delay in initiating criminal prosecution, for example, an over three-month delay in reporting the matter without satisfactorily explaining the

---

<sup>11</sup> Thulia Kali vs. State of Tamil Nadu (1972) 3 SCC 393

<sup>12</sup> Ramesh Kumari v. State (NCT of Delhi) and Others (2006) 2 SCC 677

<sup>13</sup> Jacob Mathew Vs. State of Punjab & Anr. (2005) 6 SCC 1

reasons for delay,” the bench said.<sup>14</sup>It is submitted that mandatory registration of FIRs under Section 154 of the Code will not be in contravention of Article 21 of the Constitution. It will be unfair and inequitable to prosecute in the cases relating to family disputes, commercial offences, and medical negligence cases on the basis of the allegations in the complaint.

The police seem to have become the prime suspect in the eyes of the people; its actions or non actions being criticized by the flag bearers of human rights with equal ease as if police alone is to be blamed for all crimes. Should there actually be no responsibility attached to us as members of civil society?

It is submitted that in all the cases where information is received under Section 154 of the Code, it is mandatory for the police to forthwith enter the same into the register maintained for the said purpose, if the same relates to commission of a cognizable offence. The police authorities have no discretion or authority, whatsoever, to ascertain the veracity of such information before deciding to register it.<sup>15</sup>

## 8.ACCUSED AS A VICTIM:

It is a trite proposition that a person, who is named in an FIR as an accused, suffers social stigma. If an innocent person is falsely implicated, he not only suffers from loss of reputation but also mental tension and his personal liberty is seriously impaired. After Maneka Gandhi’s case, the proposition that the law which deprives a person of his personal liberty must be reasonable, both from the stand point of substantive aspect as well as procedural aspect is now firmly established in our constitutional law. This warrants a fresh look at Section 154 of Cr.P.C. Section 154 Cr.P.C. must be read in conformity with the mandate of Article 21. If it is so interpreted, the only conclusion is that if a Police Officer has doubts about the veracity of the complaint, he can hold preliminary enquiry before deciding to record or not to record an FIR.

It is the mandate of Article 21 which requires a Police Officer to protect a citizen from baseless allegations. This, however, does not mean that before registering an FIR the police officer must fully investigate the case. A delicate balance has to be maintained between the interest of the society and protecting the liberty of an individual. Therefore, what should be the precise parameters of a preliminary enquiry cannot be laid down in abstract. The matter must be left open to the discretion of the police officer.

“The attempt of the Court should be to expand the reach and ambit of the fundamental rights, rather than to attenuate their meaning and contents by a process of judicial construction. The immediate impact of registration of an FIR on an innocent person is loss of reputation, impairment of personal liberty resulting in mental anguish and, therefore, the act of the police

---

<sup>14</sup>[http://articles.timesofindia.indiatimes.com/2013-11-13/india/44028164\\_1\\_cognizable-offence-constitution-bench-fir](http://articles.timesofindia.indiatimes.com/2013-11-13/india/44028164_1_cognizable-offence-constitution-bench-fir) accessed on 5/2/14

<sup>15</sup> Supra Note.11 Mr. K.V. Viswanathan, learned Additional Solicitor General appearing on behalf of Union of India.

officer in registering an FIR must be informed by reason and it can be so only when there is a prima facie case against the named accused.”<sup>16</sup>

The provisions of Article 14 which are an anti-thesis of arbitrariness and the provisions of Articles 19 and 21 which offer even a pre- violation protection require the police officer to see that an innocent person is not exposed to baseless allegations and, therefore, in appropriate cases he can hold preliminary enquiry. It is also argued that in order to give concrete shape to a right under Article 21, this Court can issue necessary directions in the matter. If directions as regards arrest can be given, there is no reason why guidelines cannot be framed by this Court as regards registration or non-registration of an FIR under Section 154 Cr.P.C.It can be observed that the importance of the need of the police officer’s discretion of holding a preliminary inquiry is well illustrated.<sup>17</sup>

In a case<sup>18</sup> the complaint was lodged by one Sarvjeet Chauhan against one Uma Shankar relating to alleged cognizable offence. Uma Shankar was arrested and upon investigation it was found that the complainant was a fictitious person. Somebody else had filed the false complaint. The residential address of the fictitious complainant was also fictitious. In the whole process Uma Shankar went through serious mental turmoil as not only the allegation was found to be false, but he was arrested by the police and had to undergo humiliation and loss of reputation. Such incidents can happen and must have happened in scores of cases as filing of false cases due to personal, political, business rivalry, break- down of matrimonial relationship etc. are rampant.

In a case<sup>19</sup>, the Court has referred to rapid increase in filing of complaints which are not bona fide and are filed with oblique motives. Such false complaints lead to insurmountable harassment, agony and pain to the accused. This Court has observed that the allegations of the complainant in such cases should be scrutinized with great care and circumspection. Is it, therefore, not advisable that before registering an FIR, a preliminary inquiry at least to verify the identity of the complainant and his residential address should be carried out.

This case illustrates how on a false complaint, a person’s right to life and liberty under Article 21 of the Constitution can be put to serious jeopardy. Not only this, every act which offends against and imperils human dignity, would constitute deprivation pro tanto<sup>20</sup> of this right to live and it would have to be in accordance with the reasonable, just and fair procedure established by law which stands the test of other fundamental rights. A baseless allegation is a violation of human dignity and despite the police officer having doubts about the allegation, he being required to register an FIR, would be a clear infringement of Article 21.

---

<sup>16</sup> Mr. Shekhar Naphade,learned senior counsel for the State of Maharashtra

<sup>17</sup> Uma Shankar Sitani v.Commissioner of Police, Delhi and Ors. 1996 (11) SCC

<sup>18</sup> Ibid

<sup>19</sup> Preeti Gupta and Another v. State of Jharkhand and Another (2010) 7 SCC 667

<sup>20</sup> The Latin phrase pro tanto is often translated as “as much as is able,” referring to partial fulfilment of a requirement by someone who cannot completely meet the obligation. In a legal sense, it commonly comes up in the context of partially paid claims, where a judge orders someone to pay as much as possible to satisfy the terms of a settlement. <http://www.wisegeek.com/what-does-pro-tanto-mean.htm> accessed on 09/02/2014



Criminal Procedure Code<sup>21</sup> clearly bring out that the statutory provisions clearly maintain a balance between the rights of a complainant and of the Society to have a wrongdoer being brought to book and the rights of the accused against baseless allegations. Every citizen has a right not to be subjected to malicious prosecution and every police officer has an in- built duty under Section 154 to ensure that an innocent person is not falsely implicated in a criminal case.

## 9.IMAGE OF POLICE:

In crime control all stakeholders of criminal justice system have significant role and Police is one of the most important pillar of the same. Undoubtedly, Police has been empowered under the criminal law to bring the accused at the forefront in order to ensure the criminal justice. But the image of police is not good as per the study<sup>22</sup> it has been observed that over 50% of the respondents mention non registration of complaints as a common practice in police stations. "In this situation action should be taken against police officers who refuse to register such information. Non registration of cases is a serious complaint against the police."<sup>23</sup>The police "evade registering cases for taking up investigation where specific complaints are lodged at the police stations".<sup>24</sup>Recently, Supreme Court has also expressed its views on the image of police that "If discretion, option or latitude is allowed to the police in the matter of filing of FIRs, it can have serious consequences on the public order situation and can adversely affect the rights of the victims, including violation of their fundamental right to equality,".<sup>25</sup>(SEE recently IPC-166A)

Recently, in a sting operation bribe was offered by reporter (posing himself as a car owner in fake story of car deal) with the police officer. The undercover reporter, requested the sub-inspector not to register a first information report (FIR) and let the complainant know about their meeting. "Sir, this is a minor case. My only request to you is - there should be no FIR. Don't tell them about this meeting," the reporter tells the cop. The video shows Sub Inspector Kumar replying, "Don't worry, that's not an issue. No case will be lodged here against you."<sup>26</sup>In

---

<sup>21</sup> Section 154. Information in cognizable cases--

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

<sup>22</sup> Conducted by the Indian Institute of Public Opinion, New Delhi regarding "Image of the Police in India"

<sup>23</sup> The Committee on Reforms of Criminal Justice System headed by Dr. Justice V.S. Malimath

<sup>24</sup> The National Police Commission in its report

<sup>25</sup> Five-judge constitution bench of Chief Justice P Sathasivam and Justices B S Chauhan, Ranjana P Desai, Ranjan Gogoi and S A Bobde.

<sup>26</sup> <http://daily.bhaskar.com/article-ht/DEL-robbers-in-khaki-exposed-from-constables-to-inspectors-of-delhi-police-caught-ta-4512461-NOR.html> accessed on 05/02/2014

the same sting operation some of the police officers denied the offer. It can be categorically, said that in many cases police does not entertain F I R. At the initial level complainants are being ignored and unheard by the police.

It is also relevant to note that arrest cannot be made by police in a routine manner. Some important observations are reproduced as under:-

“...No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer affecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do.”<sup>27</sup>

The registration of FIR under Section 154 of the Code and arrest of an accused person under Section 41 are two entirely different things. It is not correct to say that just because FIR is registered, the accused person can be arrested immediately. It is the imaginary fear that “merely because FIR has been registered, it would require arrest of the accused and thereby leading to loss of his reputation” and it should not be allowed by this Court to hold that registration of FIR is not mandatory to avoid such inconvenience to some persons. The remedy lies in strictly enforcing the safeguards available against arbitrary arrests made by the police and not in allowing the police to avoid mandatory registration of FIR when the information discloses commission of a cognizable offence.

The question, it is submitted, in regard to section 151 of the code of criminal procedure<sup>28</sup> is why Delhi Police did not take stern action against the dharna laid by Chief Minister, Arvind Kejariwal. “In response to public interest litigation (PIL), filed by advocate ML Sharma, which had questioned whether a person holding a constitutional authority can sit on a dharna, the apex court asked whether constitutional authorities can act illegally, according to reports. The SC also slammed Delhi Police for inaction and questioned the force over the unlawful assembly of people which gathered despite prohibitory orders under section 144 Cr.P.C in force. The court also wanted to know whether police acted appropriately to get the assembled people dispersed.”<sup>29</sup>

Therefore, Police should discharge its duties in the letter and spirit of law for the prevention and control of law. It is well known that in any democratic set up rule of law is basic feature. Rule of

---

<sup>27</sup> Joginder Kumar vs.State of U.P. & Ors. (1994) 4 SCC 260

<sup>28</sup> Section 151 of the Code allows a police officer to arrest a person, even before the commission of a cognizable offence, in order to prevent the commission of that offence, if it cannot be prevented otherwise. Such preventive arrests can be valid for 24 hours.

<sup>29</sup> <http://www.hindustantimes.com/india-news/newdelhi/kejriwal-agitation-sc-sends-notice-to-delhi-state-govts-slams-delhi-police/article1-1176236.aspx> accessed on 05/04/2014

law does not exist merely for those who have the means to fight for their rights and very often for perpetuation of the status quo which protects and preserves their dominance and permits than to exploit large section of the community but it exists also for the poor and the down trodden, the ignorant and the illiterate who constitute the large bulk of humanity in their country.

## 10.SUGGESTIONS:

The Legislature has provided adequate remedies against refusal to register an F I R and hold investigation in cognizable offences is indicative of legislative intent that the police officer is not bound to record an FIR merely because the ingredients of cognizable offences are disclosed in the complaint if he has doubt about the veracity of the complaint.

If, therefore, there is no reasonable ground to suspect the commission of cognizable offence, the police officer will not investigate and if that is a situation, then on the same footing he may decline to register the FIR. Carrying out investigation without a proper basis imperils the personal liberty and property of the individual, which are “sacred and sacrosanct”.

Due to advent of technology the crime statistic is at its peak. Numerous laws are available for the redressal of grievances but it seems to be partially ineffective. Blaming to police has been become the fashion. The expectation of the society with police is mounting but not the belief. It is high time to think on the issue that how justice can be ensured to the public? Should there be time limit for lodging an FIR? The execution of law requires overhauling in this critical era where victim becomes victim on his/her own will, on the date when he/she wishes. Due to retaliation this practice might increase the crime rate in the society. Let the amendments be made in the code enabling police confident in many of the provisions in order to ensure the justice. Some suggestions would be worth mentioning in this regard as following:

- (i) First Information Report is not only a piece of paper but also a future of complainant and defendant. Therefore, no person should be deprived of lodging F I R, whether it is cognizable or non cognizable offence.
- (ii) Police should be given complete liberty in letter and spirit both in the initiation of criminal justice.
- (iii) As per the existing law it is mandatory for the police to register F I R in the cases relating to commission of cognizable offence but in a matter where complainant is providing delayed information relating to commission of cognizable offence to the police, in this situation police should not be forced to entertain the matter until preliminary inquiry is over.
- (iv) Late F I R is deemed to be fake F I R in some matters not in all cases. Therefore, proceeding should be on through proper litmus test because it leads no question to be in hurry that accused will destroy the evidence.
- (v) If rape victim registers delayed F I R she must go through proper scrutiny in terms of entertaining F I R and for this, court must lay down guidelines.
- (vi) Presently, limitless time limit is available in existing laws for lodging an F I R. In rape cases reasonable limitation should be fixed to avoid frivolous cases.

- (vii) At the initial stage of the crime let the matter be not made public until disposal of the case as media started imposing wild allegations. The immediate impact of registration of an FIR on an innocent person is loss of reputation, impairment of personal liberty resulting in mental anguish and, therefore, the act of the police officer in registering an FIR must be informed by reason and it can be so only when there is a prima facie case against the named accused.”<sup>30</sup>

All that we need is to give a proper thought to all those who are the stakeholders of a just and crime-free society, and to create an atmosphere to encourage the people to protect their rights and discourage the criminals; to allow the law to have a fair play, and lastly not to paint the police as villain. The fact can hardly be denied that whether it is the police or the victim or the accused or the rest of the society, all are human beings deserving a life with dignity and freedom.

---

<sup>30</sup> See. f.n.15, supra.