

CHAPTER 14

GENERAL INSTRUCTIONS REGARDING INVESTIGATION & ENQUIRIES

14.1 Investigating Officers of CBI are authorized to conduct investigation into the offences notified by Central Government under Section 3 of the Delhi Special Police Establishment Act, 1946. While investigation of the said offences may be taken up in the Union Territories, a notification from the Central Government is required to be issued under Section 5 of the DSPE Act, 1946 with the consent of the State Government concerned under Section 6 of the said Act to enable investigation to be conducted in the territories of different States. Consent once given in any particular case cannot be withdrawn as has been held by the Hon'ble Supreme Court in *K. Chandrasekhar etc. v. State of Kerala* [JT 1998 (3) SC 612].

14.2 The powers of investigation as granted by the DSPE Act do not vest any different powers other than those laid down in the Cr.P.C. 1973. Under Section 156 of the Cr.P.C. 1973, all Officers of and above the rank of an Officer in charge of a Police Station have statutory authority to investigate cognizable offences. Under Section 157 (i) Cr.P.C., 1973 such Officers are empowered to depute subordinate Officers to proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender(s). Officers of CBI of or above the rank of Sub-Inspector are empowered under Section 2(3) of the DSPE Act, 1946 to exercise the powers of the Officer-in-charge of a Police station for the purpose of investigation of any case. Therefore, no independent enquiries/ investigation can be entrusted to Assistant Sub-Inspectors of Police or Head Constables in the CBI. In cases registered under the Prevention of Corruption Act 1988 only Officers of the rank of Inspector and above of CBI are authorized to investigate except in the state of Jammu & Kashmir (J&K). In J&K, under provisions of J&K Prevention of Corruption Act, only Officers of the rank of Deputy Superintendent of Police and above are authorized to investigate cases pertaining to the offences under the said Act.

14.3 As such, Sub-Inspector of Police (Inspectors/Sub-Inspectors in case of J&K) shall not investigate cases under the Prevention of Corruption Act, 1988 without obtaining prior permission of the Magistrate under Section 17 of the said Act. The Superintendent of Police shall forward an application for permission to investigate cases under the Prevention of Corruption Act by a Sub-Inspector (Inspector or Sub-Inspector in case of J&K P.C.Act) to the Magistrate, mentioning therein the reasons for entrusting the case to the above-mentioned ranks of Officers. Similarly, an Officer of the rank of Deputy Superintendent of Police can only investigate offences under some special Acts like Immoral Traffic (Prevention) Act, Information Technology Act etc.

14.4 Besides the above, the Supreme Court of India and the High Courts may also direct investigation or enquiry by CBI under powers vested with them by Constitution of India. In such cases the consent or notification, of the Central/State Government concerned, is not required.

STAGES OF INVESTIGATION

14.5 As held by the Hon'ble Supreme Court in *H.N. Rishbud V. State of Delhi* (A.I.R. 1955 S.C. 196), the investigation generally consists of the following steps:—

- (i) *Proceeding to the spot;*
- (ii) *Ascertainment of the facts and circumstances of the case;*
- (iii) *Discovery and arrest of the suspected offender;*

- (iv) *Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the, reduction of their statements into writing, if the Officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial; and*
- (v) *Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial, and if so, taking necessary steps for the same by filing of a charge-sheet under Section 173 Cr.P.C. before the competent Court.*

Powers of Investigating Officers

14.6 The powers and duties of a Police Officer making an investigation are laid down in Sections 157 to 173 of the Cr.P.C. When it is necessary to summon any person to attend an investigation, the Investigating Officer may issue an order in writing in the prescribed form to such person to attend investigation. However, no male person under the age of 15 years or woman shall be asked to attend at any place other than the place in which such male person or woman resides. The above-mentioned legal process of summoning witnesses by issuing notice under Section 160 Cr.P.C. shall not be used in Preliminary Enquiries.

14.7 It shall be the responsibility of the Senior Superintendent of Police or Superintendent of Police or any other Officer vested with task to supervise investigation of a crime or conduct of an enquiry to ensure that there is no inducement, threat or promise given to any person from whom enquiries are made or the information are elicited. No person should be unnecessarily called or detained under any circumstance.

Language to be used for recording Statements

14.8 As far as possible, the First Information Report should be recorded in the language in which the complaint is made by the complainant. The statements of witnesses as per the provisions of Section 161 Cr.P.C., should also be recorded in the language in which they are made. It should be ensured that the statements so recorded do not contradict any evidence on record either in the form of documents or the statement of any other witness. Whenever a statement is recorded by an Investigating Officer through an interpreter, the statement may be recorded in English, and an endorsement may be made at the end of the statement regarding the manner in which the it was recorded. In such cases, the statement of the interpreter should also be recorded. However, as per the provisions of Section 162 Cr.P.C., no signature of the individual as witness or accused should be obtained on the statements so recorded. During the preliminary enquiry, however, the signatures of individuals whose statements are recorded may be obtained. In case any individual is not willing to append his/her signature to the statement so recorded, the fact may be recorded at the end of such statement.

14.9 Action on reports emanating from interested parties or which appear to be false or malicious should be avoided. Where there is any indication that the complainant is actuated by pique or personal malice, the Investigating Officer should proceed with care and caution. This does not, however, imply that where credible information is forthcoming regarding the commission of an offence, the Officer concerned should hesitate to enquire into.

Acquaintance with Facts, Rules, Procedures etc.

14.10 The Investigating Officer may take assistance of any Officer of another Department in the investigation, with the approval of the Superintendent of Police.

14.11 While investigating cases pertaining to corruption, embezzlement, fraud etc. or undertaking any enquiries relating to misconduct, the Investigating/ Enquiry Officer must first acquaint himself with the facts, rules and regulations and the procedures including well established and approved

conventions, if any, as regards working of an organization with which investigation or enquiries are related. He should ascertain all possible explanations likely to be offered in defence as well as any defects or irregularities in procedure, which may be desired to be produced in evidence, circumstantial or otherwise, with reference to the Departmental Rules and Regulations.

14.12 Information may be obtained from the Heads of Department or Vigilance Officers for furtherance of investigation unless there are special reasons in any particular case for not doing so. Their Cooperation and help should be also secured in order to understand the procedures prevalent in a Department.

Clues to be followed up carefully

14.13 All available clues, at the time of registration of an FIR or initiation of an enquiry or those becoming known during the course of investigation or conduct of enquiry, should be carefully followed up. Enquiries should be made from every one who is likely to be connected with the events which preceded or, accompanied or followed the crime or the subject matter of enquiry.

Inspection of Scene of Crime

14.14 A scene of crime under investigation or an event under enquiry is a place from where and through which the Investigating/ Enquiry Officer may get crucial evidence relating to the commission of crime and identity of the accused or the individual responsible for the event. Therefore, examination of the scene of crime or event is very important task of the Investigating Officer. This is more so especially in crimes such as murder, rape, dacoity, kidnapping, rioting and explosion etc. because it exhibits:

- (a) *Information on the corpus delicti (body of the crime.)*
- (b) *Information on the modus operandi used by criminals.*
- (c) *Information to link a suspect with witness/victim, e.g., the evidence like blood, hair, cloth, fibres, cosmetics, documents and other items from the victim may be transferred to the perpetrator.*
- (d) *Information linking a person to the crime scene such as different types material like documents, fingerprints, blood, hair, fibers and soil, paint, etc. left by the criminal may be available at the scene of crime, which sometimes may provide one of the most vital clues.*
- (e) *Information to disprove or support a witness's testimony.*
- (f) *Information on identification of a suspect.*
- (g) *Providing lead to the investigation.*
- (h) *Information on identification of a substance.*

Plan of the Scene of Offence

14.15 In all important cases the plan of the scene of offence shall be drawn by the Investigating Officer or got prepared by him through any other suitable agency such as the engineers of the CPWD or Railways, Revenue Officers etc. The I.O. may take help of the Technical Advisor or his staff in the CBI, if considered necessary. In trap cases, cases of murder, a sketch of the scene of occurrence shall invariably be prepared.

Photographing/Videographing the Scene of Crime/Trap/Search Proceedings

14.16 As far as possible, the crime scene, steps during the course of investigation such as pre-trap and post-trap proceedings, search proceedings should be photographed as well as videographed. In case, the photographs are taken by conventional method, the negatives must be preserved. In the event of digital still photography and videography, the images may be downloaded/transferred, in the presence of witnesses, to a 'write only' compact disk (CD) or 'write

only' digital video disk (DVD) for preservation. This would prevent the independent witnesses turning hostile during the course of trial. In all important cases of disproportionate assets/ recoveries, search proceedings should also be videographed so that the Court may appreciate the evidence collected by CBI about the luxurious lifestyle of the accused or the circumstances under which a particular recovery was made. A memorandum be prepared to this effect by the I.O. on the spot in the presence of witnesses.

Technical Assistance in the Investigation

14.17 Investigating Officers may secure technical assistance or advice whenever such assistance or advice is necessary and desirable for expeditious and professional investigation of cases. There should be no delay in sending papers or exhibits for expert examination or in seeking expert technical opinion. Investigation should not be kept in abeyance while waiting for records or expert's opinion or for the result of part enquiries by another Officer, except when unavoidable. As far as practicable, enquiries in all possible leads may be pursued simultaneously. Particulars of technical assistance that is available in CBI and the procedure for obtaining the same are available in the Chapters dealing with 'technical assistance' and 'forensic laboratory' of this Manual. In all investigations where foodstuffs or other articles of perishable or essential nature are involved, the Investigating Officer should not unnecessarily hold up the stocks but should take representative samples in the presence of independent witnesses for the purposes of evidence in the Court and release the remaining stocks after observing necessary legal formalities.

Planning of Investigation

14.18 The Investigating Officer should make analysis of the allegations in the FIR or enquiry registration report and focus on the main allegations for investigation or the main points for enquiry. The I.O., in consultation with the Superintendent of Police, would draw a list of points, to be called '**plan of investigation**', containing the allegation(s) to be proved witnesses to be examined, documents to be seized and technical assistance/expert opinion to be obtained in support thereof etc. without any delay. This plan may also incorporate details of part-investigation to be referred to other branches, searches to be conducted; Interpol reference to be made, investigation to be conducted abroad etc. The 'plan of investigation' is not to be static but a dynamic one which may be modified from time to time with the progress of investigation. The existing points may be revised and fresh points added as and when necessary. The SP shall review the same at the time of preparing the Progress Report or whenever the investigation is reviewed. In important cases, the DIG may also review the 'plan of investigation' and issue necessary directions, if any required in the said connection.

Requisition and Seizure of Records

14.19 There should be no delay in requisitioning and taking over records and documents which are required for investigation. Whenever, the case is registered based on complaint given by the Departments, the Department concerned must be asked to hand over the relevant documents along with the complaint. In other cases, need to collect documents should be examined immediately after taking up investigation. In cases where searches are to be conducted, such requisition for documents should be issued only after the searches are over. There should be no indiscriminate seizure of documents in any case. It should be borne in mind that seizure of records may cause dislocation of work in the office concerned. Hence, records should not be taken into possession as a matter of routine. The I.O. should seize/requisition the records only if the same are essential for the purpose of investigation. In many cases, examination and scrutiny of the records on the spot might suffice. Where it is not possible to take any records or documents immediately into possession adequate precautions should be taken and arrangements made to preclude the possibility of any interpolation in, or tampering with, such records or documents.

14.20 If any Department requests for photocopies of the documents seized from it, the same may be allowed to be prepared by the Department under the supervision of I.O. or some other responsible Officer. In case it is not possible for the Department to get the copies of said documents prepared, the CBI may arrange to supply the same to them.

Return of Documents and Records

14.21 The seized/requisitioned documents and records should be scrutinized promptly and necessary action should be taken to return the documents and records, which are not concerned with the case under enquiry/investigation or with any offence. Wherever necessary, orders of the competent Court should be obtained for the custody and disposal of the case property in accordance with the provisions of Sections 451, 452 and 457 Cr.P.C. All the documents/material objects/other items seized during the course of investigation should be promptly sealed/packed in a scientific manner and deposited in the Property Room (*Malkhana*). The details of these must be entered in the Malkahna Sub-Module of CRIMES or in the Malkahna Register, wherever the Sub-Module is not operational. The documents/items could be got issued by the Investigating Officer, as and when required, for the purpose of investigation etc. against proper receipt. These must be returned to the Malkahna as soon as these are no longer required by the Investigating Officer. All such issues and receipt shall be entered in the Malkahna sub-module of CRIMES or in the Temporary Issue Register, wherever the Sub-Module is not operational. Every I.O. shall be personally responsible for the safe custody of these documents, at all stages of the investigation. Property Room incharge will ensure that the issued items are not retained by the I.O. for an unduly long time and are returned to the Malkahna promptly. He will make sure that the Officer, who is transferred from the Branch/Unit, has returned all the documents/items issued him to the Property Room before he is relieved by the Branch/Unit. The Branch SP will monitor this matter.

Important Cases to be investigated by Additional SP/Deputy SP

14.22 All important cases/ enquiries especially those against senior Gazetted Officers should, as far as possible, be investigated by Additional SP/Deputy S.P. The Superintendent of Police should personally supervise the investigation through perusal of Case Diaries and records, discussion with Investigating Officers, examination of important witnesses, visiting the scene of offence, periodic review of the progress of investigation and by issuing memos of instructions, etc. In appropriate cases, a Superintendent of Police may also be directed by the DIG/JD to conduct investigation personally. A newly-inducted Superintendent of Police may investigate at least one important case within the first year of his joining the Branch. The DIsG should review progress of investigation of all the important cases periodically with the concerned SP and the I.O. along with the Law Officer, if necessary.

Recording of statements by Magistrates

14.23 In appropriate cases, crucial statements made in the course of investigation by important/vital witnesses may be got recorded by Magistrates under Section 164 Cr.P.C. with a view to reduce the possibility of their being tampered with later on or the witnesses resiling from their statements. Such statements should be recorded in the manner prescribed in the Code of Criminal Procedure. Since these statements are recorded by the Magistrate, and the I.O. is excluded from the proceedings, there is likelihood that, the witness may forget some important facts while giving statement to the Magistrate which may prove fatal during the course of trial. Due care should, therefore, be exercised to ensure that all essential details are brought out in the statements recorded under Section 164 Cr.P.C and errors, omissions and contradictions avoided.

14.24 Confessional statements of the accused persons should be got recorded by competent Magistrates as quickly as possible under section 164 Cr.P.C. All necessary precautions laid down under section 281 Cr.P.C. should be strictly observed while recording such statements. The I.O. should also satisfy himself that the accused is willing to disclose all the facts within his knowledge and is not hiding anything. Same precautions should be followed in the matter of recording confessional statement by any other authority empowered to do so under any law applicable to the case, from time to time.

14.25 If there is any doubt at the time of recording of the statement whether the persons making the statement will be a witness or an accused, the recording of statement under Section 164 Cr.P.C should be kept pending till the position becomes clear because the procedures for recording statements of witnesses and the confessions of accused persons under section 164

Cr.P.C. are different.

14.26 In appropriate cases, sworn statements can be got recorded by the Income-Tax Officers also under the statutory powers vested in them under the Income-Tax Act.

Examination of Suspect Accused Persons

14.27 When a suspect appears before the Investigating Officer, he should be examined thoroughly on all points. His statement should be carefully recorded with a view to ascertain his defence and to find out the cases from which the evidence could be gathered to verify his defence and to prove the charges against him during the course of further investigation. The accused may be informed of the charge against him and questioned thoroughly to seek his explanation. If the accused makes any specific disclosure of material objects used in the commission of offence, his disclosure statement should be recorded in the presence of witnesses and recovery of the articles, weapons etc. so disclosed by him should be made as per the provisions of Section 27 of the Evidence Act. All the points or arguments advanced by the accused should be looked into and thoroughly verified by the Investigating Officer. It should be ensured that complete statement of the accused is recorded and the points arising there from are looked into during the course of investigation, so that the prosecution is fully prepared to meet the defence of the accused/suspect.

14.28 The I.O. shall, in all important cases, prepare questionnaires for examining the accused and shall record his statement initially in the narrative form and then in the form of answers to the questionnaire, which should cover all important points. The record of the answers given by the accused should then be read over to him. To prepare the questionnaire in important and/or complicated cases, guidance of the Senior Officers should be taken

14.29 During the course of investigation, if the persons, who are suspected to have played role in the commission of offence and have escaped from India to some foreign countries and their present whereabouts are not known, Blue Corner Notices in the prescribed form along with the photograph of the suspect can be sent to General Secretariat, ICPO-Lyons through Interpol Wing, CBI, New Delhi, with a request to locate their present whereabouts or to ascertain their criminal records and identification etc. The General Secretariat in turn will request NCB of the member countries to provide necessary information to our Interpol Wing. The prescribed format can be obtained from the Interpol Wing of CBI in this connection. In case of accused persons where there is specific evidence available and NBWs have been issued and/or charge-sheet has been filed, Red Corner Notices could be got issued by the Interpol Wing of CBI for their arrest.

Part-Enquiries/Investigation

14.30 If enquiries/investigations in a case are to be made in the jurisdiction of other branches, the request for making these part-enquiries/investigations should be made to the Superintendent of Police concerned as early as possible.

14.31 No hard and fast rules can be laid down as to whether, and in what circumstances, the part-enquiries should be entrusted to the other Branches, or whether the Investigating Officer should himself conduct enquiries there. When the enquiries are to be made only on a few minor points, it would be a waste of public funds to send an Officer of one Branch to a far-off place for investigation. If, however, there are large number of points on which the investigation is necessary or if the Investigating Officer alone can take a comprehensive view of the points at issue and make proper enquiries on them, it would be worthwhile to send the Investigating Officer to the places concerned for such enquiries

14.32 Requests for part investigation received from the other Branches should receive prompt and adequate attention. The part-investigation should be completed within one month of the date of its receipt by the Branch concerned.

14.33 In order to know the whereabouts of the IOs, who go out of their jurisdiction for investigation and to ensure that they get proper assistance, they should report to the SP/DIG of the Branch where they go for enquiry/investigation. Such IOs should also intimate to the Branch

SP the place where they would be residing during their tour. Whenever an I.O. visits the city where the office of the Regional DIG is situated, he must meet the DIG of the concerned Region or Zone for instructions, if any.

14.34 When a case has been taken over by CBI, no other Officer or Department will have the right during the course of investigation to examine the records in the possession of CBI, except with the permission of the Superintendent of Police of the Branch concerned. When the other Government Departments like Income-Tax and Enforcement Directorate etc. request to see the documents in the possession of CBI for any official purpose, they may be permitted to do so by the SP in the presence of the I.O. incharge of the case or any other responsible Officer of the Branch.

Refusal/Withholding of Passport

14.35 If during the course of investigation or in cases where charge sheet has already been filed in Court, it is desired by the SP of the CBI Branch to ensure that the passport facilities are not granted to the accused under investigation/ trial or the passport already issued may be impounded, the SP should send a recommendation in the said regard to the Ministry of External Affairs through the H.O. of CBI. In this context, the provisions of Sections 6 and 10 of the Passports Act, 1967, should be borne in mind. Vague grounds such as "public interest" would not suffice. All proposals for refusal/impounding of passport should contain complete details of the person to whom the passport facilities are to be refused. This should include full name, father's name, date of birth and his full address etc. Requests for temporary suspension of Passports shall be routed through the Deputy Director (Coordination) of CBI at New Delhi.

Registration of Non-Cognizable Offences

14.36 Investigation into the non-cognizable offences should be taken up only after obtaining permission of the Magistrate of competent jurisdiction. When a Special Magistrate for CBI cases, who is competent to give such permission, is not available, the required permission should be obtained from the Magistrate in whose jurisdiction the offence was committed or from the Chief Judicial Magistrate.

14.37 The result of enquiry/investigation in every case shall invariably be communicated to the Ministry/ Department/ Undertaking concerned. A Closure Report should contain sufficient details to enable the Court to appraise as to why the case has been closed.

Measures to avoid Delays in Investigation

14.38 The following measures may be taken to prevent delay in the investigation of cases:—

- (i) As soon as the case is registered and, in those cases in which searches are to be conducted, as soon as the searches are completed, a checklist should be prepared of all the authorities, including banks, from whom documents are to be seized. Requisitions for these documents should be issued within a week after registration of the case or after completion of searches, as the case may be.
- (ii) Thereafter, reminders may be sent at regular intervals to the authorities concerned, till the documents are recovered. However, in case the documents are not received in a reasonable time, necessary steps may be taken to seize the same under the relevant provisions of law.
- (iii) If during the investigation, further documents are considered essential, requisitions for such documents should also be issued immediately.
- (iv) As soon as the documents are obtained, the Branch SP should fix a target date for scrutiny of the same and submission of the scrutiny report by the I.O. ***Urgent investigations, which may be required to be done even during the scrutiny of documents, should also be completed by the I.O. in the meantime.***
- (v) As soon as the scrutiny of documents is over, the SP should ensure that witnesses

are examined in a planned manner. It should be ensured that the statements of the complainant, trap witnesses, eyewitnesses in murder cases etc. whose evidence is of an important nature are recorded without any delay.

- (vi) Photocopies of the documents to be sent to the expert should be prepared and the original documents sent to the expert as early as possible. Material witnesses, whose evidence is connected with the documents, should be examined with reference to the original documents. The transmission of documents to the expert need not await the completion of the field investigation. While inspecting branches, the DIsG should specifically check if these instructions have been complied with by the branches.
- (vii) When the investigation of a case is over, the SP should set reasonable deadlines for the I.O. to submit his FR-I.
- (viii) In some cases, investigations are stayed by the Courts, on Writ Petitions, etc. In every such case of stay, certified copy of the order should be applied for immediately and an appeal against the stay order be filed invariably. Action in this regard should be taken on top priority basis at every stage, as this is a matter which involves limitation. It should also be borne in mind that once the limitation passes; nothing can be done thereafter till the Writ Petition is disposed of. In this context, it should be borne in mind that in case AIR 1985-SC-1668, the Supreme Court has discouraged the practice of Courts in interfering with the investigation of cases.
- (ix) When a sanction order has been requested for, periodical D.O. reminders, should be issued to the Competent Authority to ensure that the order is obtained early. In appropriate cases personal meetings should also be arranged for obtaining the sanction order early.

Prescribed Time-Limits

14.39 The necessity of prompt investigation by the I.O. cannot be over-emphasized. It should ordinarily not take more than 3 days for PEs as well as RCs to be registered after receipt of H.O. orders at the Branch. A Preliminary Enquiry must be completed in a period of three months and Regular Case within 12 months. The IOs and SsP will be responsible for the completion of investigation within the prescribed time limits. However, in complicated cases like those of disproportionate assets longer time limit exceeding one and a half year may be fixed by the SP. Any further extension in the time-limit, which shall not exceed six months may be granted by the next level of Supervisory Officer. The SP should ensure that the Investigation Reports are prepared as expeditiously as possible by the IOs and the Law Officers offer their comments soon after submission of the FR-I. Likewise, the SP and the DIG should also offer their own comments within a week. The Head Office orders on FRs should generally be passed within 15 days. Preparation of SP's Report should not generally take more than a fortnight. It should be prepared by the SP carefully and meticulously giving all details in clear and comprehensive manner. At the DIG level it should not take more than 7 days to forward the SP's Report to the Department concerned. The time-limit for filing charge sheet shall be 15 days from the date of receipt of sanction for prosecution from the Competent Authority except in complicated cases involving voluminous documents where the said time-limit could be one month.

Impersonation of CBI Officers

14.40 Whenever any incident is noticed by the Branch SP that some unscrupulous person(s) had misbehaved or demanded or obtained favour of different kind from any public servant or private party by posing as CBI Officers, the following action should be taken:—

- (i) *In every instance*, a case under the appropriate section of law should be got registered immediately with the local Police. The Branch should personally follow up these cases with the State Police authorities and have the cases investigated and tried expeditiously. In important cases the investigation should be taken over by CBI in consultation with the State Police authorities.

- (ii) The local Police chief concerned should be requested to give wide publicity through the *Press/Radio/TV etc. about such incidents and the action taken therein.*

Handing over Charge of Documents

14.41 When a CBI Officer retires from service or is repatriated to his parent department or is transferred from one Branch to another, the Superintendent of Police of the Branch shall issue an order requiring the Relieved Officer to hand over all original seized records to the Malkhana of the Branch and all other documents relating to cases under investigation, pending trial or pending Departmental action and any other documents, to another Officer of the Branch named for the purpose. The relieved Officer shall prepare four copies of the detailed charge report and of all the documents in his charge, which he hands over to the nominated or Relieving Officer. Both the relieved and the relieving Officer will sign these charge reports and the Superintendent of Police of the Branch will countersign the same. Thereafter, the SP shall keep one copy in his personal confidential almira, one copy shall be retained by the Relieved Officer and one by the relieving Officer. The fourth copy shall be deposited with the Malkhana Officer. These reports will be kept in yearly files with an index showing the name of the relieved Officer, the name of the Relieving Officer, the date of handing over of the documents and the page reference of the report so filed.

Investigation abroad

14.42 In cases where accused person(s) have escaped from the country after committing the crime or part of the crime has been committed abroad or the witnesses and other material evidence are available in a foreign country, it may be necessary to conduct investigation abroad. While informal information/material may be collected through Interpol and diplomatic channels, formal investigation to collect evidence and gather material objects/documents may be conducted through formal 'Letter of Request' (*Letters Rogatory*) sent through a competent Court under provisions of 166-A of the Criminal Procedure Code. Our diplomatic missions abroad do not have any power to conduct investigation. They can only help the Investigator to get information of formal nature. However, they must be kept informed of all requests whether moved through Interpol or through legal channels by way of *Letters Rogatory*.

14.43 However, some countries do not insist for a Letter of Request (*Letters Rogatory*) from the Court for conducting investigation in their country. In such cases, a note on relevant facts along with points on which the investigation is required to be conducted and the questionnaire for examination of any person, if required should be sent to the Interpol Wing of CBI. For getting investigation conducted through the Interpol, the following points have to be kept in mind:

- (i) A note/questionnaire/points for investigation should be sent in triplicate.
- (ii) If, the investigation is to be conducted in more than one foreign country, there should be a separate set of questionnaire/points for investigation in each country.
- (iii) A separate questionnaire should be prepared for each witness/person unless all the witnesses/persons are required to be examined on the same points.
- (iv) Note/questionnaire/points for investigation should be clear and specific.
- (v) The questions should be brief and to the point.
- (vi) Material should be carefully examined and scrutinized by the I.O. SsP concerned in order to ensure that all the relevant points are incorporated in the note and the facts and figures given in the note are correct.
- (vii) The note and the documents may be accompanied by the translation in the language of the requested country.

Visit of Police Officers abroad for investigation

14.44 Sometimes, it becomes necessary to send Police Officer(s) from India to foreign country for the purpose of investigation of a case keeping in view the importance of the case and the

complicated nature of offences under investigation.

14.45 CBI Officers or other Indian Police Officers have no Police powers in a foreign country. Any action by Indian Police Officers on a foreign land may amount to interference in the sovereignty of that country unless some required formalities are observed.

14.46 When it is considered necessary to send a team of Officers abroad, the National Central Bureau (Interpol) of that country may be requested through the Interpol Wing of CBI and the Competent Authority of the country through the diplomatic channels for taking necessary permission/approving visit of the Police Officers to the concerned country.

14.47 The visit or investigation abroad must not start before the required permission is received. Some countries do allow exception to this rule in urgent cases but in such cases while, sending Investigators, requested country should be informed through the Interpol/ diplomatic channels as regards intended visit of the Investigators to that country. The following information needs to be sent through Interpol CBI before sending the investigation team abroad:–

- (i) *A brief note detailing the reasons for sending the team, details of the actions required to be performed in the requested country i.e. obtaining the information for investigation purpose, taking statement from suspects or witnesses and seizure of property etc. It would enable the authorities to assess whether the request is justified. The requested country may have to obtain prior approval from their judicial authorities or from the other authorities concerned before granting permission for the visit of our Officers to that country.*
- (ii) *All available particulars about identity or particulars of the person to be questioned, the nature of the property to be seized and where it is likely to be found should also be given to the requested country to make all necessary preparations.*
- (iii) *Information about penal offence to which mission relates. It may include legal definition of the offence, summary of the facts, all available particulars about identity of the alleged offender and his nationality. This would enable the authority in the requested country, to examine whether the offence, in question, would constitute the penal offence in the also requested country.*
- (iv) *Whether Article 3 of the ICPO (Interpol) Constitution or some other legal provision restricting international cooperation is attracted and whether it could be subject of criminal proceedings in the requested country, e.g., because the offence was committed in its territory or by one of its citizen.*
- (v) *Exact date and duration of the mission.*
- (vi) *Information about the investigators, their names, rank and language used by them.*

14.48 Apart from the above, any other relevant information which might lead to legal or practical problems in the requested country, must also be mentioned, such as:–

- (a) *Any items/material objects, which the Investigator wishes to bring along with him, requires special permits from the requested country or which may otherwise amount to breach of certain regulations in the requested country. These items could be such as firearms etc.*
- (b) *In case, the Investigator wishes to bring with him a suspect under arrest, which would normally have to be released on arrival in the requested country.*
- (c) *Investigator wishes to bring with him a suspect (not under arrest) or other person, e.g., witness, who might be subject to arrest warrant in force in the requested country.*

14.49 After the team reaches the foreign country, the investigation will be done by the local Police or local law enforcement authorities under their own procedural laws and the visiting Officers will provide all necessary assistance and guidance to them.

Letter of Request (*Letters Rogatory*)

14.50 Prior to 19th February 1990, there were no legal provisions in the Code of Criminal Procedure (Cr.P.C.) for issue of Letter of Request (*Letters Rogatory*) for carrying out investigation in the country or place outside India, and also to provide similar assistance to the Court or authority outside India for carrying out investigation in India. However, with effect from 19-2-1990, Section 166-A and 166-B (Chapter-XII) were introduced in the Code of Criminal Procedure through the Cr.P.C. (Amendment) Act, 1990, which prescribed the procedure for getting investigation conducted abroad or extending similar assistance to the other countries.

14.51 Ministry of Home Affairs, vide S.O. 444(E) has notified that a Letter of Request (*Letters Rogatory*) from any Criminal Court in India referred to in sub-section 1 of Section 166-A of the Cr.P.C. shall be sent through Interpol Wing of CBI, New Delhi for transmission to the concerned country or place outside India through the diplomatic channels.

14.52 The Ministry of Home Affairs vide S.O. 445(E) have further notified that all evidence collected or taken under sub-section (1) of Section 166-B of the Cr.P.C. or authenticated copies thereof or the thing collected during investigation shall be forwarded by the Magistrate or by the Police Officer, as the case may be, to the Ministry of Home Affairs for transmission to a Court or authority in a country or place outside India through the diplomatic channels.

14.53 No request for issue of Letter of Request (*Letters Rogatory*) to any Court will be made by CBI without prior clearance of the Central Government. Thus, in case it is considered necessary to get a Letter of Request (*Letters Rogatory*) issued, a report has to be sent to the MHA through Head Office for obtaining approval of the Government before filing an application in the concerned Court.

14.54 When a LR is required to be got issued, a reference may be made to Interpol Wing, CBI to ascertain the name of the Competent Authority and also the requirement of the law of requested foreign country to take up such requests, language in which the request is to be translated along with documents accompanying the request. It may also be found out whether we have any legal mutual assistance treaty, agreement, memorandum of understanding or arrangement with the requested foreign country and the requirements thereof. Some countries have the requirement of obtaining an undertaking from the Government of India to assure reciprocity. The principle of dual criminality is relevant in most of the foreign countries and it is to be ensured that this requirement is duly met.

14.55 After obtaining approval of the Central Government, an application may be filed in the Court of competent jurisdiction for issue of *Letters Rogatory* to the concerned competent authorities in the requested country. The application should contain the following:–

- (i) *A self-contained brief facts of the case, allegation and particulars of the offences committed and the role of the authorities, who are required to be examined in the foreign country.*
- (ii) *Particulars of the witnesses to be examined, their identity and nationality.*
- (iii) *Description of the documents/articles to be collected.*
- (iv) *Separate questionnaire for examination of each witness.*
- (v) *Relevance of examination of witnesses and collection of documents to the investigation of the case.*
- (vi) *Copies of the sections of law constituting the offences under investigation in India and the equivalent laws of the requested country disclosing the dual criminality in the request.*
- (vii) *Provisions of the memorandum of mutual assistance and treaty etc. providing for such assistance by the requested country .*
- (viii) *Compliance of all the requirements of the requested country.*

- (ix) *A declaration that the case under investigation is not of political,, military, racial or religious character.*
- (x) *Assurance of reciprocity for countries with whom no treaty for mutual assistance is in place.*

14.56 The Court in India will take a decision to issue the Letter of Request as prayed for and will issue the Letter of Request addressed to the competent authorities of the requested country. The Letter of Request will contain the material showing competence and jurisdiction of the issuing Indian Court, identity particulars, brief facts of the case, name of the accused, relevant legal provisions and their description and the punishment prescribed. It may be mentioned that as per Indian Law, it is not necessary to give any notice to the accused either before issuing the Letter of Request or before examining the same. In certain countries like USA their law requires that a notice has to be given to the accused while collecting the evidence during investigation and the evidence collected without observing their procedure may not be allowed to be entered against the accused in that country.

14.57 When the assistance is sought to collect or prove documents by some witnesses in the requested country, our requirement should be clearly stipulated.

14.58The competent Court may be requested to incorporate the following points in the Letter of Request (*Letters Rogatory*):

- (i) *The law of (MoU/Treaty) the foreign country concerned regarding mutual legal assistance in criminal matters. In case we have a treaty/ agreement/MoU/arrangement with the requested country relating to the mutual legal assistance, the LR has to be prepared in accordance with such treaty/ agreement/ MoU/ arrangements.*
- (ii) *The fact that both India and the requested country are members of International Criminal Police Organization (ICPO) and the Constitution of ICPO provides for mutual assistance in criminal matters.*
- (iii) *A declaration that the request is not of political, religious, military or racial character in nature.*
- (iv) *Undertaking by the Government of India that evidence collected will be used only in the case in which the request is made in the form is prescribed by the concerned countries, if there is any such requirement.*
- (v) *The dual criminality by sending the copy of the relevant laws in India with the corresponding laws of the requested country.*
- (vi) *An assurance of reciprocity of the arrangement as per bilateral agreement, treaty and our law may also be given in the request. It may also be mentioned that reciprocity for mutual assistance in the investigation of any criminal case, if required by the requested State can be provided in terms of Section 166-B of the Code of Criminal Procedure .*
- (vii) *The request and the documents enclosed to the Letter of Request are required to be translated in the language of the requested country, if there is any.*
- (viii) *The documents, photographs and objects, if enclosed with the Letter of Request, should be clearly marked and referred to in the request to enable the requesting Judicial Authority abroad to know clearly what is required to be done with them.*
- (ix) *A copy of the First Information Report and also a copy of the relevant legal provisions should be enclosed.*
- (x) *All the papers enclosed must be legible so as to avoid unnecessary correspondence and delay.*
- (xi) *The request may be made as briefly as possible.*
- (xii) *It may be mentioned in the LR 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 be collected in original and in case the concerned authorities are unable to part with original documents, true copies duly authenticated in the manner of certification provided in the law of the requested State be supplied. Each such certificate would be required to be countersigned by the Competent Officer of Embassy of India in the requested State in the manner followed in that country. In India, the documents certified in the aforesaid manner are admissible as per provisions of Section 78 of Indian Evidence Act, 1872. The text of Section 78 of the Indian Evidence Act, may be enclosed.

(xiii) In case it is considered essential that an Officer of CBI may remain present during execution of the Letters Rogatory, it may be mentioned in the LR that an Officer would be deputed by the Director, Central Bureau of Investigation to assist the concerned authorities in the requested country in collection of documents and recording of statements of the concerned persons.

(xiv) It is always useful to have the LRs neatly bound for an impressive presentation abroad. At least four copies of the Letter of Request be prepared including the original and sent to the Interpol Wing of CBI, who will arrange to forward the same to the requested country through the diplomatic channels. Submission of four copies of the LRs facilitate quick processing of the same in different offices. Care must be taken to ensure that the requests made in the LRs are to the point and specific because no country allows any fishing extradition in the execution of LRs. A copy of speaking order of the Court showing application of his mind in issuing the LR shall also be forwarded along with the LR to the requested country.
