

<b>Module details</b>	<b>Name</b>
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Summary	The module looks at the process of investigation in a criminal case. It explains what an FIR is and what are the steps in an investigation.
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## INTRODUCTION

This module is the fourth in Criminal Law and looks at the process of investigation of a criminal case. It explains what an FIR is and takes one through all the steps in an investigation.

## OBJECTIVES

1. To look at the process and steps of investigation in a criminal case.

## LEARNING OUTCOMES

1. Gain an overview of the process of investigation in a criminal case.
2. Guide the student on how to file an First Information Report.

### 1. FIRST INFORMATION REPORT

As stated earlier, the investigation process begins with the receipt of information of the occurrence of a cognizable offence upon which the police have to lodge a FIR or First Information Report.

What are the requirements of an FIR?

- ✓ Anyone can file the FIR. The investigation process is triggered of when the police receive information of the commission of an offence. This may be in person or by phone. Many police websites now have provision for filing FIR virtually. The informant need not be anyone who is either the victim or connected with the case but someone who has information of the commission of an offence.
- ✓ The FIR need not be in writing but can be oral. However if it is in writing, it needs to be in accordance to the points given below. It need not be drafted by a lawyer or have the particular sections mentioned in it. In fact if it contains all these particulars, then this casts a suspicion that it is a legally created document. It has to be a document of facts and not law. If the statement is oral and made to the police, the police are responsible for writing it down. The First Informant then reads over the document and signs the same to verify the contents of the same. Generally the FIR is written in the official language and if the First Informant is not capable of reading and understanding the same, the same has to be read over and explained to him before obtaining his signature. If there are discrepancies between what you tell the police and what they have written down, please do not sign the statement but ask the police to correct the same. Later on it could lead to issues of contradiction or omission as we shall see in the next point.

- ✓ The FIR should disclose the commission of a cognizable offence. The facts should be clearly stated in order to make the case out. While it is not necessary to record every detail, important facts should not be omitted as it will amount to contradictions and omissions that will affect the credibility of the witness and the benefit of this will go to the accused. For example, if Mahesh saw Suresh and Kamlesh murder Arunesh, he has to state this fact clearly to the police. The same facts have to be stated in the court at the time of giving evidence. Omitting the names of Suresh or Kamlesh would amount to an omission which will bring his evidence under cloud as the court will have to look at his evidence with suspicion as to why any reasonable man would not name all the people he saw committing an offence. Similarly if he states that he saw Suresh and Jignesh kill Arunesh it will amount to a contradiction as Jignesh was named in one of the statements and not the other where Kamlesh was named. This would also give clear evidence that Mahesh was speaking falsehood in one of his statements.
- ✓ The FIR is not meant to be encyclopedia and its object is to set the machinery of law into motion against the accused persons and as long as the broad features of the prosecution case are unfolded in the FIR, it hardly matters if details are absent in it. It is the responsibility of the police to elicit proper and correct details from the informant and duly record all the important facts.
- ✓ The FIR need not name the accused - it can even state that unknown persons have committed the offence. Where unknown persons commit the offence, their description should be stated where the witness has seen the accused. If for example if an unknown person The FIR should as far as possible have all the facts relating to the offence.
- ✓ Inordinate delay in recording the FIR casts a cloud of suspicion regarding the truth of the prosecution case, but delay if properly explained will not be of much consequence. However the delay should not be excessive. Unreasonable and long delay might be fatal to the case as the human tendency is that when an offence occurs, as soon as one learns about it, one goes to the police. However the exception is rape cases as it is natural for the survivor or her family to hesitate before going to police as they might think about it before taking this step. The Supreme Court of India in State of Punjab vs Gurmit Singh (1996 Cr.LJ 1728), where there was a delay of over a week in reporting the matter, held that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family.
- ✓ If by chance you do not know which police station has the jurisdiction to investigate the offence i.e the commission of the offence falls under which police station's area of jurisdiction, then you need not worry. In case the information is given to the police station which does not have jurisdiction to investigate the offence, it should record a 'zero FIR' and send the FIR to the police station that has jurisdiction. A "Zero FIR" is an FIR with the number "0" in place of the unique number given to each FIR by the Police station, which has the jurisdiction to investigate. The Zero FIR is given the unique number by the police station, which has jurisdiction. But in no case should the police station refuse to register the FIR on grounds that they do not have the jurisdiction to investigate the case. This has been held by the Supreme Court in State of Andhra Pradesh vs. Punati Ramulu (AIR 1993 SC 2644).
- ✓ A copy of the FIR has to be given free of cost to the First Informant. Copy of the FIR also ought to be forwarded to the Magistrate who has jurisdiction over the police station.

- ✓ The FIR is in a prescribed form, which has details such as name of informant, the time, place and details of the offence, the details of the accused including his name or description and the statement of the Informant.
- ✓ In case the police refuse to register the FIR, then the informant may send the copy of the information to the Superintendent of the Police (and in cities the Assistant Commissioner of Police) who, if satisfied that the information discloses the commission of a cognizable offence, shall either investigate it himself or direct it to be investigated by any officer subordinate to him (Section 154(3) Cr. P.C). The informant can also approach the Magistrate having jurisdiction to try the case and ask for a direction to the police to investigate the case (Section 156(3) Cr. P.C).

The police had started the trend of not registering an FIR and conducting a preliminary inquiry into the matter. This was also supported by several judgments of the High Courts. However in *Lalita Kumari vs State of UP* ((2014)2SCC1) the Supreme Court issued several directions, which made it mandatory for the police to register an FIR if the information disclosed the commission of a cognizable offence. The Court held if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry and a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. The scope of 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. The Court further held that in cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further. The court also ordered that action be taken against erring police officers who refuse to register an FIR. The type of cases in which a preliminary inquiry might be conducted include matrimonial disputes/family disputes, commercial offences, medical negligence cases, commercial offences and cases in which there is an inordinate delay in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry. The Court directed that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the General Diary/Station Diary/Daily Diary, which is the record of all information received in a police station, and the decision to conduct a preliminary inquiry must also be reflected in the same.

FIR is an important document but that by itself cannot be the basis to decide the culpability of the assailants in every case. The FIR is not a substantive piece of evidence, and can be used only to corroborate or contradict the statement of the maker in the court. This means that if the First Informant cannot be presented in the court as evidence but the First Informant has to come to court and give evidence and he identifies the FIR and then it is marked as evidence. If there are omissions or contradictions then they will be looked at by the court. Similarly the court looks at unexplained delay in registration of the FIR.

## 2. STEPS IN INVESTIGATION IN A CRIMINAL CASE

The investigation of the case involves several steps. They are as under:

- ✓ Proceeding to the spot- The police go to the scene of offence and gather all evidence there. One of the first tasks of the police is to record the scene of offence *panchnama*.

*Panchnama* is a document prepared which has all the facts and is witnessed by two independent witnesses, who are called *Panchas*. The panchas are not otherwise related to the case and have no interest in the outcome of the case. The police may also take charge of any articles that it discovers in the scene of offence such as the bloodstains, finger prints, the dead body etc. and send the same for forensic analysis. These also form an important part of the investigation of the case. The reports received are part of the evidence in the case.

- ✓ Ascertainment of the facts and circumstances of the case- this involves recording the statements of the witnesses who may be eye witnesses i.e people who have witnessed the crime or who might not be eye witnesses but are people who have some knowledge of the offence. The witnesses do not sign these statements recorded by the police and copies of the statements are also not given to the witnesses. The statements can only be used in the cross examine to contradict the witness. The witness can be called to the police station for the examination, though a police officer cannot summon a woman or a child below 15 years of age to the police station for the purposes of interrogation. The police officer should go to the residence of the woman or child for interrogating them under Section 160 of the Code of Criminal Procedure. In case a person, for purposes of interrogation, attends any place apart from his place of residence, he is entitled to be reimbursed the expenses incurred for doing so. The witness is bound to answer truly all questions relating to such case put to him by the police officer investigating the case other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. The law regarding the delay in recording of FIR holds good even when the recording of the statements of the witnesses. If a witness is easily available and known to the police, then the statement should be recorded earliest in point of time and there should be no unreasonable delay in recording the statement. In some cases, the statement of the witnesses might be recorded under Section 164 of the CrPC by the Magistrate. In *State of Karnataka v. Shivanna*, (2014) 8 SCC 913, the Supreme Court issued directions to all police officers to get the statement of all rape survivors recorded before a Magistrate (preferably lady Magistrate) within 24 hours and send it to the concerned court and that this statement be used as the evidence in the case. Any reason for the delay should be explained and handed over to the concerned Magistrate. If the statement is recorded before the Magistrate under Section 164 then it is a statement on oath and can be accepted as evidence if the Magistrate comes and proves the voluntariness of the statement.
- ✓ Discovery and arrest of the suspected offender- the detail of how arrests are done has been dealt with in depth in the previous module. If a person is arrested and the accused is not named in the FIR, then the accused is shown to the witness in a **Test Identification Parade**. A Special Executive Officer and not the police conduct the TI Parade. It is further not carried out in the police station. The TI Parade is not merely showing the arrested person to the witnesses but showing them along with similar looking persons with similar characteristics. These are known as dummies. This is to test the memory of the witness and to prevent the implication of an innocent person in the case. This is why it is not conducted in the police station and by the police. Care has to be taken by the SEO and the panchas to see that the witnesses are not informed in advance as to whom to identify and the arrested person has the right to choose where to stand in the parade and to change his clothes. The TI parade also has to be held soon in order to have veracity. The TI Parade is proved through the SEO and the panchas. If the accused is known to the witness, there is no need for the TI Parade. If an accused wants to confess the crime, then the confession to the police is not



admissible and he has to be taken to the Magistrate who after being convinced that the statement is voluntary, will record the statement and ensure that the accused is not sent to police custody. If the accused refuses to confess before the Magistrate too, he should not be sent to police custody, as there might be repercussions of the action.

- ✓ Search and seizure- the police have the power to search any place suspected to have links with the offence and seize any article from there. This might be done without a warrant, ie. an authorization of the magistrate. Searches are carried out in the presence of panchas and the seizure is recorded as a search and seizure panchnama. The articles seized have to be sealed and taken under the signatures of the panchas. They are then either sent for forensic examination to find a link with the offence or shown to the witnesses concerned if any article of use. For example in a theft case, if gold jewellery is seized, it is shown to the witness for identification. In case of seizure of property of the witness, the police cannot hand over the property to the witness but the witness has to approach the court for the same. Before conducting the search the police have to inform the owner or occupier of the premises or person to be searched about the search and the search team has to give its search to the owner/ occupier/ person if demanded to prevent the implanting of any article.
  
- ✓ Formation of opinion as to whether it is a fit case for the accused to be sent up for the trial and if so, taking steps to file charge-sheet- If after investigation the case is found to be false or if the police are not able to find who the accused are they can close the case by filing a summary report in the court. If the complainant is aggrieved by the report of the police, then she or he can move the court to proceed with the case as a private complaint and not a police case. In such case, the state will not prosecute the case. If the police are able to successfully investigate the case and find the accused, they file the chargesheet at the end of the investigation.
  
- ✓ Filing of chargesheet- The chargesheet is filed at the end of the investigation though under Section 173 (8) of the CrPC, even after filing a Chargesheet, the police officer is entitled to continue further investigation into the offence and where upon subsequent investigation, he obtains further oral or documentary evidence, he shall forward the same to the Magistrate as a Supplementary Chargesheet. The chargesheet which is also known as the police report has to contain the following:
  - a) The police report which has the names of the parties, witnesses and whether the accused is arrested or on bail
  - b) The First Information Report;
  - c) The statements of the prosecution witness recorded by the police
  - d) The confessions and statements recorded by the Magistrate under Section 164 of the Cr.P.C;
  - e) Any other document or relevant extracts thereof on which the prosecution proposes to rely such as reports of experts such as Post-mortem reports, Chemical Analysis reports, Inquest Panchanamas, Panchanamas relating to discovery and recovery of material evidence, other search and seizure panchanamas, etc.

A copy of the Chargesheet has to be furnished to the accused free of cost. However if the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceeding or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request. The purpose of the Chargesheet is to enable the trial court to know if there is sufficient case made out for proceeding with the trial of the case against the accused. In some cases where the Magistrate considers it proper, he may even direct further investigation into the case. It also enables the accused to know the

material against him and enables him to prepare his defense. The accused has no right to have any say as regards the manner and method of investigation till the filing of the chargesheet.

#### CONCLUSION

In this module we first learnt what an FIR is and the law relating to filing of FIR. We also learnt about our rights in filing an FIR and the dos and don'ts of an FIR. We then looked at all the steps in the investigation of an offence till the stage of filing of a chargesheet on completion of an investigation.

