

8th – Understanding Our Criminal Justice



Understanding our criminal justices

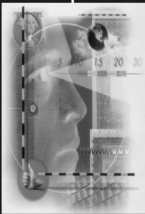
- The four key players in the criminal justice system are the police, the public prosecutor, the defence lawyer and the judge.
- In a government, the legislature makes laws and the executive puts them into effect. The judiciary helps the government to maintain the laws. And the police play a vital role in protecting the law by preventing and solving crime against society.

What is the role of the police in investigating a crime?

- One important function of the police is to investigate any complaint about the commission of a crime; an investigation includes recording statements of witnesses and collecting different kinds of evidence.
- On the basis of the investigation, the police are required to form an opinion. If the police think that the evidence points to the guilt of the accused person, then they file a charge sheet in the court.
- It is not the job of the police to decide whether a person is guilty or innocent, that is for the judge to decide. The rule of law, which means that everyone is subject to the law of the land.
- This includes the police; therefore, police investigations always have to be conducted in accordance with law and with full respect for human rights.
- The Supreme Court has laid down guidelines that the police must follow at the time of arrest, detention and interrogation. The police are not allowed to torture or beat or shoot anyone during investigation.
- They cannot inflict any form of punishment on a person even for petty offences. Article 22 of the constitution and criminal law guarantee to every arrested person the following fundamental rights:
 1. The rights to be informed at the time of arrest of the offence for which the person is being arrested.
 2. The right to be presented before a magistrate within 24 hours of arrest.
 3. The right not to be ill treated or tortured during arrest or in custody.
 4. Confessions made in police custody cannot be used as evidence against the accused.
 5. A boy under 15 years of age and women cannot be called to the police station only for questioning.
- When a crime is committed, it is the job of the police to investigate, and then arrest the person they believe committed the crime. The person has to be then produced in court, where the defence lawyer defends the accused, and the public prosecutor fights the case on behalf of the state.
- The judge hears both sides of the case, and then gives his or her ruling or judgment. If the judge believes that the accused is guilty, he or she is punished. It is now the role of the police to carry out the punishment.

The main activities performed by the police include.

1. Preventing crime
2. Solving crime
3. Taking necessary steps to arrest the persons involved in the crime.
4. Investigating and filling charges sheets
5. Ensuring that law and order prevails
6. Regulating traffic



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- The supreme court of India has laid down specific requirements and procedures that the police and other agencies have to follow for the arrest, detention and interrogations of any person.
- These are known as the D.K Basu guidelines and some of these include:
 1. The police officials who carry out the arrest or interrogation should wear clear, accurate and visible identification and name tags with their designations.
 2. A memo of arrest should be prepared at the time of arrest and should include the time and date of arrest. It should also be attested by at least one witness who could include a family member of the person arrested. The arrest memo should be counter - signed by the person arrested.
 3. The person arrested, detained or being interrogated has a right to inform a relative, friend or well- wisher.

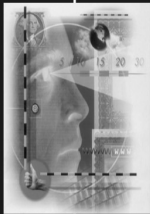
When a friend or relative lives outside the district, the time, place of arrest and venue of custody must be notified by police within 8 to 12 hours after arrest.

Administrative set- up of the police

- Every state is divided into districts: each district's police administration is headed by the superintendent of police (SP)
- Each district is further divided into five or six circles and a deputy superintendent of police (DSP) controls each circle.

Process of investigation of crimes.

- The law requires the officer of the police station to register a first information report or FIR whenever information is given that a crime has been committed.
- Once the FIR has been lodged and arrest made, the matter has to be taken-to the court.



What is the role of the Public Prosecutor?

- A criminal offence is regarded as a public wrong. What is meant by this is that it is considered to have been committed not only against the affected victims but against society as a whole. In court, it is the public prosecutor who represents the interests of the state.
- The role of the prosecutor begins once the police has conducted the investigation and filed the charge sheet in the court. He/ she have no role to play in the investigation. The prosecutor must conduct the prosecution on behalf of the state.
- As an officer of the court, it is his/ her duty to act impartially and present the full and material facts, witnesses and evidence before the court to enable the court to decide the case.

The accused will be represented by his or her lawyer and, if the accused is financially incapable, the court will appoint a lawyer for him or her. This lawyer is called defence lawyer.

What is the role of the judge?

- The judge is like an umpire in a game and conducts the trial impartially and in an open court. The judge hears all the witnesses and any other evidence presented by the prosecution and the defence. The judge decides whether the accused person is guilty or innocent on the basis of the evidence presented and in accordance with the law.



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- If the accused is convicted, then the judge pronounces the sentence. He may send the person to jail or impose a fine or both, depending on what the law prescribes.

What is A Fair Trial?

- Trial to be fair, several different procedures have to be observed. Article 21 of the constitution that guarantees the right to life states that a person's life or liberty can be taken away only by following a responsible and just legal procedure.
- A fair trial ensures that article 21 of the constitution is upheld. The trial was held in an open court, in public view. The trial was held in the presence of the accused. Advocates are given an opportunity to cross-examine all the prosecution witnesses. Advocate was given an opportunity to present witnesses in defence.
- Although the police filed a case of theft against person the judge assumed her to be innocent. It was the responsibility of the prosecution to prove beyond reasonable doubt that person was guilty. It is significant that the judge decided the matter only on the basis of the evidence before the court.
- The judge did not jump to the conclusion that person was the thief just because he was a poor maidservant. Instead, the judge remained impartial and since the evidence showed that some other young men and not person was the thief, he set the person.
- In his case, justice was finally done to her because he was given a fair trial. The constitution and the law both state that all of the persons should carry out their roles in a proper manner. What this means is that they all need to work to ensure that every citizen, irrespective of their class, caste, gender, religious and ideological backgrounds gets a fair trial when accused.
- The rule of law which says that everyone is equal before the law would not make much sense if every citizen were not guaranteed a fair trial by the constitution.
- The key factor to be note here is that in our country, a person accused of a crime is considered innocent until proven guilty by a court of law. So, a fair and open trial is mandatory. The judge, the public prosecutor, the defense lawyer, the accused, the witnesses and the public are present during the hearing.
- The punishment will vary depending on the magnitude of the crime committed. If the crime so warrants, the judge may even award the death sentence.
- But if a lower court awards the death sentence, the criminal will not be executed till the sentence is confirmed by the High Court. If the verdict given by the High Court is unsatisfactory, the case can go to the Supreme Court.

