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## PARTICIPANTS' PAPERS

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### INVESTIGATION OF CRIMINAL OFFENCES IN BHUTAN

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#### I. INTRODUCTION

The Royal Bhutan Police is the main law enforcement agency in Bhutan for the investigation of criminal offences in Bhutan. The responsibilities of the Royal Bhutan Police are to prevent and detect crimes, to maintain law and order and to prosecute offences. As per section 161 of the Civil and Criminal Procedure Code of Bhutan, it shall be the duty of every police personnel to promptly detect and apprehend all persons, when sufficient grounds exist to bring them to justice. Section 41 of the Royal Bhutan Police Act provides prevention, detection and investigation of criminal offences as the main responsibilities of the Royal Bhutan Police. Crime in Bhutan consists of cognizable offences as provided by section 165 of the Civil and Criminal Procedure Code of Bhutan, the offences under the Penal Code of Bhutan, the criminal offences under the various minor Acts of Bhutan and any other offences which are criminal in nature. Investigation by a competent police officer is a fact-finding operation authorized by law from its inception till it concludes by placing the evidence and material collected before a court. The investigator discharges a statutory function and, therefore, must exercise his best judgement and take steps and actions that are correct, ethically and legally. Investigation includes all the proceedings for the collection of evidence conducted by a police officer or by any person. It primarily consists of ascertainment of facts and circumstances of the case after the Police Crime Report (PCR) is registered. As per section 161 of the Civil and Criminal Procedure Code of Bhutan, the police shall lodge the criminal complaint in writing, if the complaint has not already been submitted in writing and make efforts to verify the accuracy of the complaint expeditiously by carrying out preliminary investigation. The police or the person making the statement and the person providing any record or evidence shall sign all statements and records emanating from the investigation. The police shall also make a record of the description of the suspect as first given to them by potential witnesses. It is mandatory for the Investigating Officer to take a statement of a material witness questioned during the course of investigation. As per section 90 of the Royal Bhutan Police Act, In order to establish a fair and efficient enquiry and investigating system, the Police department shall be provided with adequate modern facilities and scientific aids to investigation.

#### II. INVESTIGATION PROCEDURE IN BHUTAN

##### A. Investigation Steps

The investigation steps in Bhutan shall encompass proceeding to the spot/scene of crime; ascertaining all the facts and circumstances of the case; discovery and arrest of the suspected offender; collection of evidence relating to the commission of the offence, which may consist of examination of various persons (including the suspect) and the search of places or seizure of things considered necessary for the investigation and to be produced at the trial; and formation of the opinion as to whether, based on the materials collected, there is a case to place the accused before a Court for trial and, if so, taking the necessary steps for the same by making a charge sheet under section 187 of the CCPC and section 105 of the RBP Act. As per section 91 of the RBP Act, any Police officer investigating a crime shall conduct such investigation based on the minimum requirements laid down as hereunder:

- (a) The investigations shall be based upon reasonable suspicion of an actual or possible commission of an offence consequent to the filing of Police Crime Report (PCR) by an affected person or by any person on behalf of the aggrieved person;

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- (b) The investigator shall inform the accused of the offence he is being charged with and to prepare his defense either in person or through *Jabmi* (lawyer);
- (c) The investigations shall be objective and fair. The investigator shall provide special attention to the interest of the accused, especially if the accused is a vulnerable person;
- (d) The guidelines for the proper conduct and integrity of interviews shall be established and systematic records of interviews shall be maintained;
- (e) The investigator shall safeguard the rights of the suspect including the right to remain silent;
- (f) The investigator shall submit the result of the investigation in the form of a charge sheet or final report to a court of law;
- (g) The investigating officer shall protect and collect any sample which shall have evidentiary value in the investigation of a case;
- (h) The investigation report must be submitted in accordance with the prescribed format;
- (i) All the statements of the suspects/accused/witnesses must be recorded in writing as required under the Evidence Act of Bhutan;
- (j) In the event a suspect is required to be detained for more than 24 hours, the investigating officer must submit a request for remand to a court of law under the Civil and Criminal Procedure Code of Bhutan, for 49 days;
- (k) Obtain further remand under of the Civil and Criminal Procedure Code of Bhutan, after 49 days till a maximum period of 108 days in cases of heinous offences; and
- (l) An investigating officer must send a request for arrest or search warrant to a court of law for all arrests and searches to be made in accordance with the provisions under the Civil and Criminal Procedure Code of Bhutan.

As per section 101 of the RBPSRR, investigation of a case shall be conducted based on the minimum requirement laid down under the Royal Bhutan Police Act, 2009. It involves:

- (a) Recording of the PCR, GD and case diary;
- (b) Proceeding to the crime scene with an investigation kit box and investigation team;
- (c) Ascertaining all the facts and circumstances of the case;
- (d) Taking photographs and drawing sketches of the scene of the crime;
- (e) Search, seizure, collection of evidence and examination of concerned persons;
- (f) Registering of the case, interrogation, recording of statements and charge-sheeting of the case to the court;
- (g) Dismissal of case if there is no prima facie case after preliminary investigation; and
- (h) Releasing of the suspect by obtaining a release order from the court if there is no substantive evidence.

**B. General Principles of Investigation**

In Bhutan, it is mandatory for the investigation officers to follow certain general principles of Investigation as provided by the CCPC and the RBP Act. A successful investigation is one in which a

logical sequence is followed, all physical evidence is legally obtained, and all witnesses/suspects are efficiently questioned/interrogated. As per section 102 of the RBPSRR, the general principles of investigation are:

- (a) Investigation should be started without any pre-conceived notion or bias;
- (b) Investigation should be started without any delay;
- (c) Provide emergency assistance if required;
- (d) Cordon the scene of the crime to protect the evidence;
- (e) Make a preliminary survey of the scene of the crime and seek technical or expert help as may be necessary;
- (f) Secure atleast two independent witnesses;
- (g) Photography and videography and maintenance of a case diary;
- (h) Take note of all witnesses with their details;
- (i) Make a systematic search of the scene of crime for evidence and clues;
- (j) Carefully handle, collect, pack and label the physical evidence as per the seizure list in presence of witnesses for further examination by experts;
- (k) Study the *modus operandi*;
- (l) Reconstruct the crime scene and find out the motive for the crime;
- (m) Identify the victim if not done;
- (n) Formulate theories based on available information as to the commission of the offence and whereabouts of offenders; and
- (o) Follow any other guidelines and procedures as provided by section 161 of the Civil and Criminal Procedure Code (CCPC) of Bhutan and chapter 14 of the Royal Bhutan Police Act, 2009.

### **C. Purpose of Investigation and Qualities of a Good Investigator**

The purpose of investigation in Bhutan is to find out whether the allegation made out in the Police Crime Report (PCR) is true or not: if true, who are the offenders, i.e. identify and locate the perpetrator and solve the crime; if not true, why it is not true. The result of investigation, if successful, shall answer the following questions: did a crime as described by a code or statute occur; where and what time and date, did the crime occur; who is the victim; who are the individuals or organizations involved in the planning, execution and after effects of the crime; were there any witnesses to the crime; is there evidence to prove the crime? A good investigating officer shall have the following qualities:

- Sincerity, honesty, integrity and loyal;
- Sound knowledge of the law, legal procedures and police practices;
- Perseverance, zeal, tact and application of knowledge, and objectivity and freedom from preconceived notions;
- Agreeable manners with firmness in dealings;
- Good power of observation, analysis, deduction and an eye for details;

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- Be a good judge of human psychology;
- Hard working and determined;
- Strong will and determination to achieve desired objectives;
- Have informers and sources from among the criminals of the area and should utilize them frequently for detecting the crime; Proficiency in writing reports;
- Strong commonsense;
- Extraordinary capacity for observation, recollection and attention to details;
- Well-disciplined and time conscious;
- A fair knowledge about elementary principles and application of science and technology;
- Logical and having a sixth sense with superior reasoning ability;
- A good investigator is imaginative, creative, patient and persistent;
- An investigator should be capable of differentiating between fact and opinion, determining cause and effect relationships, determining the accuracy and completeness of information presented recognizing the logical fallacies and faulty reasoning, developing inferential skills through deductive and inductive reasoning, superior reasoning ability and critical thinking;
- Should be physically fit, have knowledge and ability to use scientific aids, should have the ability to collect and analyse information;
- Should be able to maintaining good sources and contacts and should have good public-relations skills;
- Should have good communication skills, good command and control, and should be disciplined.

**D. Multi-Disciplinary Approach to Investigation**

For any investigation to be successful, the involvement of the following agencies is very important:

- Fellow police officers within the jurisdiction and also outside the jurisdiction;
- Crime Record Bureau;
- Intelligence;
- Informers and sources;
- Forensic science laboratories;
- Medical and forensic experts;
- Prosecutors;
- Technical experts;
- Judges (*Drangpons*).

### III. EFFECTIVE COLLECTION OF EVIDENCE

#### A. Types of Evidence and Its Collection

As per section 84 of the Civil and Criminal Procedure Code of Bhutan, the Court shall grant the opportunity to present evidence including the right to subpoena witnesses and to compel the production of physical evidence on the defendant's behalf. Evidence may include physical exhibits, the testimony of witnesses or expert opinion in accordance with this Code. As per section 3 of the Evidence Act of Bhutan, evidence means all types of proof or probative matter presented and permitted by the Court at a legal proceeding by the act of the parties or required by the Court on its own through the medium of witnesses, documents inclusive of electronic records and physical evidence in relation to matters under inquiry.

#### 1. Types of Evidence

Section 4 of the Evidence Act of Bhutan provides that evidence shall be categorized into the following types:

- (a) Testimonial;
- (b) Documentary including electronic records;
- (c) Physical; and
- (d) Expert opinions;
- (e) Section 5 of the Evidence Act of Bhutan provides that evidence may be:
  - (i) Direct; or
  - (ii) Circumstantial or indirect.

#### 2. Collection of Physical Evidence

As per section 34 of the Evidence Act of Bhutan, where there is physical evidence produced before the Court, other evidence shall not be admitted unless there is substantive and reasonable ground for such physical evidence to be untrue and irrelevant. It is essential for every Investigating Officer to know how to look for clues at the scene, how to seize, handle, label and pack them, where to send them for examination by the concerned authority/expert and how to preserve their identity throughout. The investigating officer should handle movable articles carefully so that no clue is lost or damaged or its relative position disturbed e.g.: fingerprints, footprints, saliva, remains, blood stains on weapons, and hair adhering to blunt instruments. Due care must also be taken not to obliterate any clues like fingerprints by careless handling of fixed objects, like polished walls, doors, windows and their handles and fastenings. The Investigating Officer should, if possible, use a pair of rubber gloves when handling articles. Steps in collection of physical evidence include seizure in presence of two disinterested and respectable local witnesses, labeling, packing and forwarding. Usually for detection and collection of trace evidence and evidence like fingerprints, footprints, etc., expert help is requisitioned. The services of Mobile Forensic Labs will be very helpful in this regard. While selecting the detection, collection, and preservation methods and the processing sequence, consider the circumstances of the case, ambient conditions, the discriminatory power of the different techniques, and the need to preserve or collect other types of evidence. It is important to record the techniques used for detection, collection, and preservation of the evidentiary items and the location from which they are removed. Methods used for detecting trace evidence include but are not limited to general visual searches; visual searches assisted by different types of illumination, such as oblique lighting and alternate light sources (UV, laser, high intensity); and visual searches assisted by magnification. Trace evidence recovery or collection techniques used should be the most direct and least intrusive technique. Collection techniques include picking, lifting, scraping, vacuum sweeping, combing, and clipping. The Forensic Science Unit will usually provide the following services to the Investigating Officer:

- Fingerprint lifting and comparison;

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- Collection and examination of biological materials;
- Examination of questioned documents;
- Toxicological services;
- Examination of firearms and ballistics;
- Lie detection;
- Voice-test analysis;
- Audio/Video-tape analysis;
- Analysis of digital evidence;
- DNA profiling;
- Analysis of hair, fiber and other materials;
- Comparison of paint, wood and glass;
- Comparison of tool marks, recovery of erased writings, etc.;
- Cyber-crime investigation.

3. Oral Evidence and Interrogation of Suspects

Chapter 5 of the Evidence Act of Bhutan provides for oral evidence. Oral evidence in a criminal offence may be obtained from the victim, complainant, witnesses and suspects/accused. Interrogation is the art of systematic questioning of a person who is suspected to have committed a crime or to have been involved in a crime and of making the suspect reveal everything. It is an interaction of two minds — the mind of the interrogator and the mind of the suspect. This goes on till one-mind triumphs over the other mind. It aims at not only establishing guilt but also at establishing innocence. The primary object of interrogation is not, as is often supposed, to obtain a confession from a suspect. It is rather to obtain truthful information. The interrogator should be vigilant about false confessions, made under duress which, if swallowed, would put the interrogator to shame and in jeopardy. As per section 184.2 of the Civil and Procedure Code of Bhutan, any statement made to police by the suspect, to retain its evidentiary value in courts, must be voluntary in nature, include a statement to that effect and carry the signature of the suspect. Section 184.3 of the CCPC provides that the interrogation of a suspect shall be permitted provided the person charged has been informed of his/her right to consult a *Jabmi* before any such interrogation.

4. Questioning of Witnesses

Witnesses may be interested witnesses, disinterested witnesses, nervous, unwilling, lying, hostile, and child witnesses. In Bhutan, a police officer is empowered to require the attendance of the witness while making an investigation within the limits of his police station or adjoining station. The person who is acquainted with facts and circumstances of the case is bound to answer all questions truly, and the police officer may reduce to writing any statement made to him. Any person is bound by the Civil and Criminal Procedure Code of Bhutan to assist any police officer in investigation of a case, and if such person fails to assist, he may be liable for failure to assist lawful authority as per the Penal Code of Bhutan. The reasons for the reluctance of a witness to give his statement may be prejudices, fear and self preservation, anger, pressure against talking, no trust in police, fear of being implicated in the crime, time, energy and money, and harassment. While questioning a witness, an investigating officer shall bear the following in mind:

- Interrogate the witness soon after the commission of the offence;

- Examine as much as possible at the scene of the crime;
- Do not allow witnesses to discuss the case with each other;
- Question witnesses individually;
- Examine the most trustworthy first;
- Be kind and polite to the witnesses;
- Ask one question at a time;
- Do not ask specific questions;
- Do not ask leading question;
- Avoid questions with yes or no answers;
- Listen to answers, but at the same time anticipate your next question;
- Watch your body language and tone of your voice;
- Never threaten, frighten, or injure a witness to give information;
- Method of questioning should vary according to witness's age, sex, religion, political views, social status, education, etc.;
- Start the conversation on neutral territory;
- React to what you hear;
- As you move in to difficult territory slow down;
- Don't rush to fill silence;
- Pose the toughest questions simply and directly;
- Aid the witness's memory;
- Cross checking should be done carefully;
- Do not get annoyed with irrelevant details;
- All statements need not be recorded;
- Statements should be recorded in the language of the witness;
- Statements form part of the case diary; and
- A copy has to be supplied to the witness/suspect/accused.

#### **IV. CONCLUSION**

Bhutan is a peaceful, small developing country with a mere population of around seven hundred thousand people. Therefore, the crime rate in Bhutan is very low compared to other neighbouring countries like India and China. Nevertheless, various crimes are being committed every year around the country and the highest rate of crime is committed in the capital city, Thimphu. At present, the

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Royal Bhutan Police, comprising around 4,000 personnel, is entrusted with the responsibility of preventing, detecting, investigating crime and maintaining law and order, and protecting and safeguarding the lives and property of the people. The Royal Bhutan Police is trying its level best to fulfill its responsibility in the most efficient, effective and professional manner with more emphasis on prevention and investigation of crime. To date, the Royal Bhutan Police has been successful in preventing, detecting and investigating many crimes. However, since Bhutan is a developing country, the lack of modern and the latest scientific aids, equipment and techniques for investigation has been a deterrence to the Bhutanese police force in its quest of providing the best policing service to the people. The lack of a full-fledged forensic laboratory in the country and dependence on other countries for complex forensic analysis has also added to the inefficiency of the police investigation. Yet, the Royal Government of Bhutan is taking a lot of initiative to provide its police force with the best facilities and policing equipment which is most suitable and required in this modern era. Hence, with such noble initiative and encouragement from the Government, the hard work and professionalism of the Royal Bhutan Police, the policing service in Bhutan may certainly become efficient and effective, which will ultimately lead to minimization of crime in society and the prevalence of peace, happiness, harmony and security in Bhutan.