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Strengthening the Criminal Justice System vis-a-vis Investigating Agencies

KRITEEKA AGRAHARI¹ AND NIRUPAMA MAHAPATRA²

ABSTRACT

Criminal Justice Administration is one of the important tools available to the respective correctional authority for controlling the anti-social behaviour of the society. It is a set of legal and social establishments which helps in enforcing criminal law in agreement with a definite set of procedural regulations. It focuses on the leadership and operations of the various aspects of the criminal justice system.

To brief upon this topic, will be discussing on the roles of investigating agencies in criminal justice administration and about the functioning of the various correctional agencies. The role of investigating agencies differ according to their duties and the types of criminal cases. It includes the collection of evidence by the investigating departments. Accordingly, they inspect, collect and represent the evidence before the court of law. This paper will also talk about what are the latest techniques of collection of evidences? How evidences are collected by the investigating agencies and what happens if the evidences are lost or destroyed? What are the impact on the case and their consequences?

In addition to it, we have also added the measures and suggestions that can be taken by the investigating agencies to strengthen their administration and maximise their efficiency of solving the criminal investigation.

Keywords: Criminal Justice Administration, Society, Investigating agencies, Evidences

I. INTRODUCTION

Criminal Justice System in India is the system or the court for criminals to fight for a trial. This system ensures the law and order within the country. It is a collection of agencies and processes established by the governments to manage crime and impose penalties on people who violate laws. This system works in each area depends on the jurisdiction that is in charge: city, country, state, federal or tribal government or military installation. Different jurisdiction has different laws, agencies and ways of managing criminal justice processes. The main systems are: 1) State criminal justice system – This body looks after a particular

¹ Author is a student at Amity University Chhattisgarh, Raipur, India.

² Author is a student at Amity University Chhattisgarh, Raipur, India.

state and crime committing in that country. 2) Federal criminal justice system –This body looks after the federal parts of India and the matters of one or more states. Therefore, these are the two judiciary ways to process a criminal trial. Consequently, the jurisdiction of that area is responsible for the criminal matters in that boundary. An ideal legal system aims for a nation whose inhabitants are free from any kind of fear of crime. It includes judges, advocates, para legal personnel as well as various investigating agencies like the police, CBI, CID of states and many other preventive and enforcement agencies, this machinery helps in combating the crime. A criminal investigator can be described as an individual who collects, records, and analyses the evidence and information related to a criminal offence. The main goal of criminal investigation is to discover the truth regarding the events and processes that contributed to the occurrence of a criminal offence. Our criminal justice system is composed of four pillars that functions like a chain of links. They are: 1) Investigation by police, 2) Prosecution of case by the prosecutor, 3) Determination of guilt by the court, 4) Correction through prison system. In this system, these agencies operate together both under the rule of law and as the principle means of maintaining the rule of law within the society. Fair procedure is that the bedrock of any criminal justice system. The purpose of this system is to deliver justice for all by convicting and punishing the guilty and helping them to stop offending, while protecting the innocent. In the Indian criminal justice administration, the police investigate, collect and represent the evidences before the court of law to convict the accused, while the judge's role is like a neutral umpire and a fact finder and thus, they also impose the sentence. The execution of the sentence is bestowed on the correctional institutes. There is a report called Malimath Committee Report (2000) in which the committee was established to propose reform in the criminal justice system and constitutional provision related to it. Furthermore, it also suggests the ways to synergize the relationship among judiciary, police, prosecution, and delivering justice to common man. It mainly deals with the fallacy in the crime investigation department dealing with different cases. Even though the condition has changed now and we have advanced towards a better life, people are not safe today. Crime records are immensely increasing at a considerable rate and our investigator are lagging much behind because they take a good amount of time to solve a single case handled to them. The inception of the research paper is regarding the method which are usually followed by an ordinary man to approach the police department in case they face any unexpected circumstances.

(A) Objectives

- To study the roles and functions of investigating agencies.

- To study the process of lodging the complaints in the police station.
- To analyse the failure of the police department to register any FIR.
- Instances of police misconduct.
- To study the latest techniques of collection of evidences.
- To evaluate the measures taken by the investigating agencies to strengthen their administration.

(B) Hypothesis

The main reason for the failure in the crime investigation system arises because of the investigators as they fail to collect the evidences properly. And the failure of the judiciary, in most cases, to give fair verdict depending upon the facts and circumstances of the cases. This research paper elucidates lacunas in the present Crime Investigating System in India. Case examples have been cited in order to give different pictures of the failures and loopholes in the Investigating System in India. Therefore, it's well evident that such failures may have serious consequences and this can indeed create a barrier within the growth of the country. Unsolved crimes, unsuccessful prosecutions, unpunished offenders, and wrongful convictions together bring the criminal justice system to disrepute. It seems most unlikely that with all the checks and balances of the criminal justice system, today someone could be convicted of a crime he or she did not commit. While, imprisonment of an innocent person is pretence, of justice, a criminal investigative failure more commonly results in the offender escaping justice. A wrongful conviction also allows the important offender to travel free. This paper is in search for examining the failures of the department while handling the felony. The repulsive attitude of the police and the time consumed by them to deal with the criminals leaves the families to the victims in a depressing state. Moreover, the statistical data comprising the fatal condition of the Investigating department forms the part of research.

II. ROLES AND DUTIES OF INVESTIGATING AGENCIES

Police department plays an important role in combating crime, maintaining peace, and order. It derives the power to investigate from criminal procedure code, The head of the overall police department in the state is Director- in General of police and in every district, it vests with District- superintendent of police.

They basically play a dual role while maintaining law and public order of any state. They also control illegal activities and sale of illegal articles to which many people fall and prey and destroy their life. In a nutshell, the role of the police officer is: -

- They preserve, promote and protect human rights and interest of weaker section, backward classes.
- To start patrolling and prohibiting the sale of illegal articles.
- To register zero FIR and not to just deny the person to lodge the complaint because the place where offence was committed doesn't comes under their jurisdiction.
- To maintain law and order. And, also to promote and preserve public order.
- To protect internal security and prevent commission of a cognizable offence.

Responsibilities as well as functions of police officer are varied, and may differ greatly from within one political context to another. Typical duties relate to keeping the peace, law enforcement, protection of people and property and the investigation of crimes. Officers are expected to respond to a variety of situations that may arise while they are on duty.³

Police are one of the most ubiquitous of the society. In an hour of need, danger, crisis and difficulty, when a common man does not know, what to do and whom to approach, the police station and a policeman happen to be the most suitable and approachable unit and person for him. The police are expected to be the most accessible and dynamic organisation of any society.

The responsibilities as well as the functions of the police are: -

- To collect intelligence relating to matters affecting public peace, and all kind of crimes including social offences, communalism, terrorism and other matters relating to national security, and disseminate the same to all concerned agencies, as appropriate on it themselves.
- To facilitate orderly movement of people and vehicles, and to control and regulate traffic on roads and highways.
- To train, motivate and ensure welfare of police personnel.
- To create and maintain a feeling of security in the community, and as far as possible prevent conflicts and promote amity.⁴

III. FIR AS A PART OF INFORMATION TO THE POLICE IN CASE OF COGNIZABLE AND NON-COGNIZABLE OFFENCES

The code of criminal procedure (Cr.Pc.) is the main legislation on procedure or

³http://en.wikipedia.org/wiki/Police_officer

⁴ <http://bprd.nic.in/WriteReadData/userfiles/file/679820343-Volume%202.pdf>

administration of substantive criminal law in India. It was enacted in 1973 and came into force on 1 April, 1974.⁵ Chapter 12 of this code deals with the information to the police and their powers to investigate. Such powers are related to cognizable crime as well as non-cognizable crime. All powers of police are inherent and are not to have encroached through any means. In the case of S.N Basak,⁶ it was held that the statutory right of the police to carry on an investigation before prosecution is launched, cannot be interfered with by the courts either under section 401 (High court's powers of revision) or section 482 (Saving of inherent power of High court) of the code.

Information in case of cognizable offence

Section 154 of the code require that every information regarding the commission of any cognizable offence may give information to the police and may, thereby set the criminal law in motion. Such information is to be given to the officer in charge of the police station having jurisdiction to investigate the offence.⁷ The information which is reduced to writing is known as first information report. FIR, is not mentioned in Cr.PC. but these words are understood to mean information recorded under this section [2].

Section 156 of the Cr.PC. empowers the police offer to investigate a cognizable case without the order of magistrate. The officer can investigate the case only where the court has the jurisdiction over the local areas.

Information in case of non-cognizable cases:

Section 135 of the code deals with the information in case of non-cognizable offences and their investigation. All the information receives under this section will be recorded by the police officer in charge and will be entered in such boon as may be published by the state government. According to section 155 [2], a police officer is not permitted to investigate a case relating to the non-cognizable offence without the order of the magistrate. He has power to investigate as soon as he receives the order and can exercise the investigation.

IV. POWERS OF INVESTIGATING AGENCIES UNDER VARIOUS LAWS

This paper is referred by the laws related to:

1. **The Code of Criminal Procedure, 1973 (Cr.P.C.)**
2. **The Indian Penal Code, 1960 (IPC)**

⁵ <https://www.youtube.com/watch?v=nnjK0hFADcs>

⁶ AIR 1963 SC 447

⁷ <http://lawthing.blogspot.com/2013/04/first-information-report-and-its.html>

3. The Indian Evidence Act, 1872 (IEA)

4. The Constitution of India, 1949

Powers of police are very wide and are based on two functions of police. These functions are maintaining of law and public order and investigation of illegal activities. That's why police powers have to be carefully balanced to make sure that they can prevent crime without unfairly restricting people freedom. The police explain most of its powers from code of criminal procedure, 1973 and the Police Act, 1861. Following is some of the powers of police are:

The investigation of police starts when:

- When someone lodge an FIR under section 154 Cr.P.C; or
- When the police officer suspect commission of a cognizable offence. (Under section 157(1) and section (1) Cr.P.C.); or
- Where a competent magistrate orders the police under section 156(3) without taking cognizable of the offence on a complaint under section 200.

The police have the ability to research cognizable in addition as non-cognizable offences. Police officers can investigate cognizable offence without the magistrate orders. If a police officer suspects commission of a cognizable offences, he has the power to investigate under section 157 without filing a FIR. They also have the power to require the presence of witness in order to pursue investigation.

Attendance of witness

The police officer who is pursuing the investigation is empowered to require the attendance of the witness shall be such who are acquired with the facts and circumstances of the case. However, the provision of section 160 of the code explicitly mentions that no male below 15 years or above the age of 65 years or women or physically or mentally infirm person, shall be cared to attend at any other place than the place where she resides.

Examination of witness

The most crucial part of the investigation lies within the examination of witness. The statement made by them can hold an individual guilty. The lawman who is investigating the case has been empowered to conduct witness examination. The witnesses are absolute to answer the questions which are related to the case truly. As per section 161 of the code, the police officer who has the power to investigated will examine the witness and write down the statement made by them. There should be no delay on the part of the lawman investigating

the case in examining the witness. It is preferred that the statement should be written or the substance of the whole examination should be written down at least.

Preparation of charge sheet

As per section 173 of the code a police officer is empowered to submit a charge sheet after completion of investigation. It includes a copy of FIR, statement of the complainant, witnesses, dying declaration, etc.

Other powers of police officer

1. According to section 167 of the Cr.P.C police are empowered to extend the custody of the accused up to 15 days when the investigation is not completed within 24 hours.
2. If there are sufficient grounds, the custody of the accused could be increased beyond 15 days with the permission of magistrate. However, the detention of the custody should not exceed 90 days where the investigation relates to an offence punishable with death, life imprisonment, or 10 years imprisonment and 60 days in any other offence.

V. THE REASON FOR FAILURE OF CRIMINAL JUSTICE SYSTEM

The public are unhappy not only with the police but also with the functioning of other agencies of the criminal justice system. Crime has registered and increase. Basically, the crime rate in India is increasing mainly due to the negligence of police and registering the FIR. When a large number of persons, after committing crime, are allowed to get away and justice is not meted out to victims or cases drag on courts for many number of years, it ends up in eroding the religion and confidence of the general public within the effectiveness of the system. At the end of the day, what the public want is the feeling of security and are not always willing to question the methods employed by the police in achieving their success within the fight against crime and criminals.

VI. INSTANCES OF POLICE MISCONDUCT

Police misconduct refers to inappropriate conduct or illegal actions taken by police officers in connection with their official duties. It includes instances of such things as discrimination or even obstruction of justice. There are various types of police misconduct that officers can engage in, and they do not have to be on the job in order to be guilty of misconduct. Some examples of police misconduct include the excessive use of either physical or deadly force, arresting people based on discrimination, physically or verbally harassing people, or being selective with the laws they enforce.

VII. INVESTIGATING AGENCIES THAT INCLUDE LATEST TECHNIQUES TO FIND THE EVIDENCES

Under this topic, there are various forensic sciences which have been examined and the application of forensic sciences as practical tools to assist police in conducting investigation. However, it's important to possess sound understanding of forensic tools to call upon appropriate expert to deploy the right tools when required. The latest techniques analyse the various ways such as fingerprinting matching, physical matching, ballistic analysis, forensic pathology, DNA analysis, criminal profiling, forensic Identification sections etc. The types of evidence and where it is found can help investigators to develop a sense of how the crime was committed. In addition to it, the application of forensic examination turns into a potential means of solving the crime.

VIII. CASE STUDIES DEPICTING THE CONDUCT OF INVESTIGATING AGENCIES

- No acquittal only because of faulty investigation

State of U.P v Jagedo and Others⁸

The High Court reversed the decision of the Sessions Court; thereby, acquitting eight persons of the crime of murdering two individuals. According to the Supreme Court, the High Court acquitted based on improper reasons. It claimed the investigation was faulty. But the Supreme Court held that even assuming the investigation was faulty, there was still a strong case for the prosecution. The High Court ignored the evidence of three eye-witnesses, stating that they had motive for supporting the prosecution case. The Supreme Court stated that most witnesses are family members or close associates as they are ones who have reason to be present on the scene of occurrence. Simply because a motive can be attributed to eye-witnesses is not enough to ignore the evidence. The evidence put forth was consistent and the version of the witnesses tallied with each other. On this ground, the Supreme Court restored the Sessions Court's judgment.

- Inordinate delay in investigation by itself is not sufficient to seek quashing of the FIR

State of Andhra Pradesh v P.V. Pavithran⁹

The case having been registered in March 1984; the prosecution did not file its report under Section 173 until the appellant filed the petition for quashing the proceedings in November 1987. The respondent resisted stating that the delay occurred due to the dilatory tactics

⁸ 2003 CrLJ 844: AIR 2003 SC 660

⁹ 1990 CrLJ 1306: AIR 1990 SC 1266

adopted by the respondent, and the case was a complicated and time-consuming one. The High Court accordingly quashed the FIR. The Supreme Court held that no general and wide proposition of law could be formulated that says that whenever there is ordinate delay on the part of the investigation agency in completing the investigation, it would become a ground for quashing the FIR or proceedings arising there from.

- Defect in investigation cannot be a ground of acquittal

Ram Bali v State of UP¹⁰

The Sessions Court convicted two accused persons. The High Court acquitted one. The Supreme Court, after analysing allegations of faulty investigations stated that, “in the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.” The defect in investigation pointed out in this case was that the gun was not sent for forensic testing.

- Incompetency of the officer to carry on investigation extends only to quashing the investigation, and not the FIR

State of Haryana and Others v CH. Bhajanlal and Others¹¹

The Supreme Court overturned the High Court’s decision to quash the FIR, but quashed the commencement as well as the entire investigation on the ground that the third appellant is not clothed with valid legal authority to take up the investigation and proceed with the same. Appeal was dismissed, stating that the State Government was at liberty to direct a fresh investigation.

- Extending the police remand for further period after the first 15 days period has not expired is not permissible

Budh Singh v State of Punjab¹²

The High Court violated the statutory provision by authorizing police remand for a period of seven days after the expiry of the first 15 days. Hence, the Supreme Court reversed the order and held that the mandate of Section 167, Criminal Procedure Code, 1973 postulates that there cannot be any detention in police custody after 15 days.

¹⁰ 2004 CrLJ 2490; AIR 2004 SC 2329

¹¹ 1992 CrLJ 527; AIR 1992 SC 604

¹² 2001 CriLJ 2942

- The police officials ought to register the FIR whenever the facts brought to its notice show that cognizable offence has been made out.

*Aleque Badamsee and Others v Union of India and Others*¹³

The present case is a Writ filed in the Supreme Court under Art.32 of the Constitution. The petitioners stated that they approached this Court because of inaction of official respondents in not acting on the report lodged by two persons namely, Sumesh Ramji Jadhav and Suresh Murlidhar Bosle. The basic grievance is that though commission of offences punishable under the Indian Penal Code (Inflammatory communal speeches), 1860 was disclosed, the police officials did not register the FIR and, therefore, directions should be given to register the cases and wherever necessary accord sanction in terms of Section 196 of the Code of Criminal Procedure, 1973. The Supreme Court after a discussion of various provisions related to police powers of investigation held that, "The correct position in law, therefore, is that the police officials ought to register the FIR whenever the facts brought to its notice show that cognizable offence has been made out. In case the police officials fail to do so the modalities to be adopted are as set out in S.190 read with S.200 of the Code." However, the merits of the case were not discussed by the Honourable Court.

- Additional document can be allowed to be submitted subsequent to the charge sheet

*Central bureau of Investigation v R.S. Pai and Another*¹⁴

The Special Court rejected an application for the production of additional documents. CBI appealed. The Supreme Court held that while it is apparent that the investigating Officer is required to produce all the relevant documents at the time of submitting the charge-sheet, because there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or charge-sheet, it is always open to the Investigating Officer to produce the same with the permission of the Court. In our view, considering the preliminary stage of prosecution and the context in which Police Officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which prosecution proposes to rely, the word 'shall' used in Sub-section (5) cannot be interpreted as mandatory, but as directory.

- Right to speedy investigation is recognised as fundamental right under Article 21 of constitution of India

¹³ 2007 Cri.L.J. 3729 SC

¹⁴ 2002 CrLJ 2029: AIR 2002 SC 1644

Vakil Prasad Singh v State of Bihar¹⁵

In this case, the investigation had firstly been done by a police officer who had no jurisdiction over the case. Added to this, after the direction of the High Court, the investigation had been delayed for 17 years, without any sufficient explanation. This was held to have violated the constitutional guarantee for speedy investigation and trial of the defendant, which was given by Article 21 of the Constitution. Hence, keeping in mind the delay, the pending proceedings against the defendant were declared as unwarranted and they were quashed.

IX. CONCLUSION

The lacunae in the investigation should never be ground for defence such that the criminal walks free because the court could not convince beyond any doubts. Thus, from all the above discussion and study about criminal investigation and collection of evidences, we can conclude that if the uniform, solid, sound, profound and strong evidence is produced by the police in any criminal case before a court in a trial then the result of that case must be in conviction of accused. There is a great need to improve it by strengthening whole the police department, on the scientific basis according to the requirements of the present era, especially its investigation system under a research by oriented planning and its implementation. Therefore, Criminal justice system plays a crucial role in the prevention and detection of crime.

X. SUGGESTIONS AND REMEDIES

There are some important suggestions and remedies for strengthening the criminal investigation system of India. So, the suggested points for the production of free and fair justice in the society are:

- 1) Any police officers who violate the law and duties during investigation must be taken punished.
- 2) Awareness in public to support law enforcement agencies. During investigation of a criminal case co-operation of the public is of a great importance.
- 3) The forensic laboratories should be more developed. We can digitalize our system by introducing it with Cyber Forensic and Ballistics. Cyber Forensics involves the analysis of evidence found in computers and digital storage media like pen drive, hard disks, etc. Its major objective is identifying, preserving, recovering, analysing, and presenting facts and opinions about the digital information. Ballistics is a specialized forensic science that deals

¹⁵ 2009 Cri.L.J. 1731

with the motion, behaviour, dynamics, angular movement and effects of projectiles, such as bullets, rockets, missile, bombs etc. The use of ballistics in forensic is mainly in criminal investigation.

4) Police is an important part of a healthy society. We always remember Police first when we are in a trouble or under a threat. The powers of the Police are invested in them to have a smooth and healthy society. But they ultimately have a duty to protect the rights and interests of the individuals. Due to this, they must use their powers with utmost care and caution. There are many instances where the Police have misused these provisions. So, to prevent these there should be a proper check on these practices.

5) To strengthening the criminal investigation system, there must be coordination between the criminal prosecution services and police prosecutor and, the investigating agencies and sharing information.
