

Challenges in Criminal Investigation in India

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Abstract

In any criminal justice system 'police' plays a very pivotal role. Their role in rendering 'justice' in any criminal cases cannot be undermined. Right from investigation to establishing the guilt of the accused in the criminal trial, police plays a very crucial role. Through this article an attempt is made to discuss the challenges that the police has to face during the investigation and trial of criminal case. The article also attempts to discuss the manner in which the police can work with other agencies so as to improve the criminal justice system as a whole.

We know that in Indian Criminal Justice system there are three major agencies that are involved in resolving the crime and providing the justice viz police, prosecution and lastly judiciary. Amongst these three important agencies, the role of police is very important in rendering justice in criminal cases. The role of police agency has a magnitude that affects the operations of the whole criminal justice system. It is police who is first in line to make contact with the victims, the witnesses and the accused. It is accepted fact the police play a crucial role during the course of investigation, identification of accused and establishment of guilt of the accused in the criminal case.

It is humbly submitted that Indian Criminal Justice System (more specifically criminal investigation) works mostly for the benefit of the rich people who are often politically, economically and socially powerful, and not for the innocent victim. Through this article an attempt will be made to touch upon some of the existing abnormalities in the Indian Criminal Justice System, the challenges that the police have to face during the whole criminal investigation and the ways in which the police can work with other agencies (especially the judiciary), to improve upon the overall efficiency of the criminal justice system.

(A) ROLE OF THE POLICE

The police perform myriad duties throughout the course of a criminal case.¹ The responsibility of the police and the specific approach to a case varies from time to time,

¹ See, Paj Prithvi, Challenges in Police Investigation in India, available at <http://www.penacclaims.com/wp-content/uploads/2020/04/Prithivi-Raj.pdf>, last visited on 12/2/22

depending upon the person handling the case.² Once the charge sheet is filed, the investigative efforts made to collect, preserve, and adduce evidence in court are abandoned, and these efforts become systematically diluted, thus affecting the output of the case handlers.³ From the service of summons and warrants, to bringing witnesses to the courts to depose about the true facts, and refreshing the witnesses' memory, any of these processes, when altered, can affect the delivery of justice.

- **Prior to Investigation**

The role of the police during investigation is to search for truth as per the law of the land, and they should be unfettered in this search. However, in practice, myriad influences work on the investigators. At times, the police play the role of a mediator in resolving disputes informally, *even before* matters go to court. Criminal cases fall under two categories, cognisable and non-cognisable.⁴ As per law, only in cognisable cases can a police officer carry out investigations suo motu and make an arrest without a warrant. Cognisable cases are those which involve offences such as murder, rape, theft, and robbery. Non-cognisable cases are those where a police officer has no authority to carry out arrests without a warrant. In these cases, the police cannot start an investigation without a court order.⁵ In any police station, one invariably finds that non-cognisable cases are more in number than cognisable cases. Police officers spend more time and have greater interest in resolving such non-cognisable cases.

It is believed that police should step in to resolve such cases and become offended when they are directed to approach the court. Added to the enormous time and resources spent on such matters, undue police interference in a case can also give rise to malpractice and breeds institutional corruption, such as minimising a cognisable crime and making it non-cognisable. For instance, many dowry death cases are handled off as accidental death cases for a price. It submitted that the difference between cognisable offences and non-cognisable offences should be done away with. If the distinction between the two is removed, all reports of all registered cases can go directly to the jurisdictional magistrate, and the magistrate can identify what aspect of the crime needs to be investigated and what needs to be further verified by the police before a full-length investigation is launched.

Burking, or minimising and not registering crimes, is just one general malady. Police investigation of heinous cases suffers from insufficient allocation of resources (money, time, as well as manpower). In most states, police station staff definitely do not have separate allocation of moneys required for investigation of crime, for example, crime scene preservation and photography.⁶

² Ibid 1

³ See Problems faced by police system in India, available at <https://blog.ipleaders.in/problems-faced-police-system-india-solutions/>, last visited on 11/2/22

⁴ See Mohanty C, What is cognizable and non-cognizable offences, available at, <https://lawrato.com/indian-kanoon/criminal-law/what-is-a-cognizable-and-non-cognizable-offence-in-india-612#:~:text=Listen,arrest%2C%20unless%20with%20a%20warrant.>, last visited on 14/1/22

⁵ Ibid 4

⁶ See, S. Tiwari, Critical analysis of problems faced by police system in India and solutions, available at, <https://www.latestlaws.com/articles/critical-analysis-of-problems-faced-by-police-system-of-india-and-their-solutions-by-shashwat-tiwari>, last visited on 11/2/22

The cases that police officers are most often asked to resolve out of court relate to recovery of money, property, marital disputes, domestic violence, and civil contracts, where one party feels cheated.⁷

- **During Investigation**

The investigating officer (IO) is ordinarily in charge of the investigation of a case until the final report is filed. Frequent transfers of IOs (mostly due to political reasons) affect investigations adversely. There are examples wherein cases pertaining to dowry death (and many such other cases pertaining to other offences), that have been investigated by the Criminal Investigation Department, one sees at least four to five IOs handle a single case. When the IO of a case is transferred, the question of whether he or she has the locus to continue to work on the case until the new IO takes over the case comes up for debate quite often. There are two opposing viewpoints on this. While the majority view is that an IO should maintain a hands-off policy once the case is ordered to be transferred, the other view is, once an IO, always the IO of the case.⁸

The Supreme Court has ruled repeatedly that in the field of crime investigation, the supremacy of the investigating police should be maintained, and the executive or the judiciary should desist in taking control of the investigation.⁹ Of course, the courts or the executive could order a change of the investigating team if required, after recording reasons in writing. However, in the ordinary scheme of things, a criminal investigation should be allowed to proceed unhindered and without unwanted intrusions and subversions. Any change of IO mid-case, for external reasons, should be considered an unwanted interference in the investigation.¹⁰

- **Trial**

During trial of cases, it is another IO, called the holding IO, who is responsible for placing the evidence before the court. The IO who investigated the case and filed the final report appears in the court several times as a witness and is often asked to help in the examination of key and crucial witnesses. During the trial and appeal stages, the superior police officer's role becomes crucial for the successful conduct of the case and for keeping a watch on the prosecutor's role in handling evidence.¹¹

(B) CHALLENGES FACED BY THE POLICE

- **Lack of Trust**

⁷ Ibid 6

⁸ See Anam, Problems faced by police system in India, available at, <https://aishwaryasandeep.com/2021/10/04/problems-faced-by-the-police-system-in-india/>, last visited on 15/1/22

⁹ See, Lalita Kumar v. Govt. of UP and ors (2008) 7 SCC 164

¹⁰ Ibid 8

¹¹ See V P Dalmhia, Process of trial of Criminal Case, available at, <https://www.mondaq.com/pdf/clients/318472.pdf>, visited on 25/1/22

The general credibility of the police and the investigation agencies in the country is very low. However, branding all police officials as untrustworthy is very ridiculous. As an practicing Advocate I find it repulsive that all police are mistrusted by default under law.¹² This mistrust means that the police are not able to perform their duties in the pursuit of justice. It is high time that such mistrust in the police, a colonial legacy, which undermines all their work and causes the abject failure of the rule of law, is changed.. For instance, they can do this by allowing custodial interrogation as and when the police request for it.

- **Custodial Interrogation**

One of the challenges that the police face most commonly while working on an investigation is the inability to repeatedly interrogate an accused to verify the veracity of the statements made by the accused.¹³ The accused is quite obviously, the key figure in an investigation, who knows all the attendant circumstances, and it is only by a thorough and sustained interrogation of the accused that the police can find out relevant details about the crime. However, police custody and interrogation is limited to only 14 days. Not allowing continued contact between the police and the accused in custody defeats the purpose of investigation. Even when the accused is in judicial custody, repeated interrogation as and when fresh facts surface will help in investigation.

Custodial interrogation facilitates the police in confronting the witnesses and the accused, and obtains leads for corroboration from them. Police custody and interrogation therefore must be allowed as a matter of right to the police. The 14-day period of police custody need not be a continuous period. In fact, police officers would prefer it to be intermittent, as confronting the accused with evidence collected is very important towards the end of an investigation. In Japan, before the matter is taken to court for adjudication, the prosecutor discusses the issues with both sides and facilitates plea bargaining. The result of this is speedy justice.

- **Securing Evidence**

The police often cite lack of proper investigative tools, hostility of witnesses, and general apathy and lack of trust in the police force as the reasons for their failure to secure a conviction against a criminal.¹⁴ The CBI's conviction rate in corruption cases, where the accused spends over a month in jail, is 3.96 per cent. The greatest challenge in crime investigation is to capture all the evidence connecting the crime with the criminals responsible and to ensure preservation of the same in a tamper-proof condition, and in a legally permissible manner. Most loss of evidence (especially primary evidence) usually takes place after collection and during the investigative process. We need to innovate a techno-legal solution to preserve evidence in a sound manner. A central repository for preservation of all evidence should be set up in each district court. The modernisation and digital transformation of the court malkhana or storehouse is called for. Affidavits should

¹² See Y Patil, Challenges of Indian Police in Investigation of Crime, available at <http://docs.manupatra.in/newslines/articles/Upload/D3233B26-CBD0-4ACB-BFE7-205443A06DE8.pdf>, last visited on 21/2/22

¹³ See Singh Tanya, Problems faced by investigating officer during investigation, available at, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3849292, last visited on 23/2/22

¹⁴ See Martin O'Neil, Key Challenges in Criminal Investigation, available at, <https://policy.bristoluniversitypress.co.uk/key-challenges-in-criminal-investigation>, visited on 11/3/22

be filed digitally under Section 164 of the Criminal Procedure Code (CrPC), 1973 to preserve oral evidence. Physical evidence can be secured in bank lockers or court malkhanas where no human manipulation is feasible. Documents need to be preserved with the ability of easy retrieval and further research. In the Rajiv Gandhi assassination case, the documentary evidence was digitally scanned and preserved in optical disc drives after subjecting them to the court authentication process. This was done so that secondary evidence would be available in case primary evidence was destroyed by terrorists. Ease of inspection and production of the secured evidence for forensic and judicial examination is crucial. It is key that evidence is preserved for posterity without fear of manipulation and wilful destruction.¹⁵

(C) THE ROLE OF THE JUDICIARY

The Malimath Committee has made recommendations to strengthen the adversarial system by adopting, with suitable modifications, some of the good and useful features of the inquisitorial system. The recommendations include making it a duty of the court to assign a proactive role to judges, to give directions to investigating officers and prosecution agencies in the matter of investigation, and leading evidence with the object of seeking the truth and focusing on justice to victims.¹⁶

Currently, Section 311 of the CrPC gives the court the power to summon any material witness, or examine any person present. Similarly under Section 165 of the Indian Evidence Act, 1882, the judge has the power to put any questions or order production of a document or thing in order to discover or to obtain proper proof of relevant facts. However, these provisions do not cast a positive duty on the court to use the power to summon witnesses 'in order to seek the truth' but only for 'proof of relevant facts' or for 'just decision' in the case. In light of these provisions, the recommendations of the Malimath Committee have to be appreciated.¹⁷

- **Investigation**

Though practices may vary between individual courts and judges, it is clear that the judiciary should play a greater and firmer role in investigative proceedings and search for truth to give justice to the victims of crime. Court-supervised investigation can help all criminal cases and thus help improve overall efficiency in the system. Magistrates before whom criminal cases are pending should play a greater role in assigning specific tasks to the police during the course of the investigation to collect and preserve evidence essential to prove the guilt of the accused beyond reasonable doubt. The courts could also specify matters that need to be probed deeper during the investigation stage. If lacunae in the investigation are directly pointed out by the court, it can prevent further delays at later stages of trial or appeal. Many issues can be settled at the investigation level and do not

¹⁵ Ibid 6

¹⁶ See Sanjeev Sihori, Report of Malimath Committee on Reforms in Criminal Justice System, available at, <https://www.legalindia.com/the-report-of-malimath-committee-on-reforms-of-criminal-justice-system/#:~:text=Hence%20the%20following%20recommendations%20made.increase%20in%20their%20working%20days%20visited> on 11/3/22

¹⁷ Ibid 16

need to be discussed during a protracted trial. Court-supervised investigation will improve the overall standard of investigation and help in avoiding procedural mistakes. This means that the jurisdictional court where the FIR is filed after its registration exercises the powers already given to it by law, and does not require intervention from a higher court.

- **Efficiency**

The most significant challenge that the criminal justice system in India faces today is the sheer number of cases. In order to deal with this workload, judges need to be methodical. There are of course individual judges who are organised and well-prepared; however, systemic reform is required in order to improve overall efficiency. Some measures that the judiciary can take to improve efficiency in the criminal justice system are:

1. Hear and dispose of cases on a first-come, first-served basis. This will allow judges to hear cases with a set order and in an organised manner.
2. Sessions trials, as the name suggests, must be heard in a single session. Currently, sessions trials are heard in parts, which means that judges often lose track of proceedings.
3. Both issues and statements of witnesses must be framed in advance.
4. Technological processes must be used to improve efficiency. For instance, it is now possible to send and verify summons through email and WhatsApp. If this is done, precious court and police time will be conserved.
5. Processes should be separated out into procedural and substantive, and judges should concern themselves mainly with substantive matters. Procedural matters, such as issuing of notice or summons, can be carried on by other officers of the court. This will allow court processes to be carried out in parallel.
6. It is not essential that all matters need to have an actual hearing in the court. The court can consider documents for certain issues instead of having a hearing in court. This is a process that is followed in other countries, such as Japan.
7. The classification of evidence must be improved. For instance, experts providing forensic evidence do not always need to come in person before the court. They can send the evidence to court through documents or other means.
8. Methods such as plea bargaining³ can be used in appropriate cases to settle simple matters and to prevent clogging of the courts.

- **Judicial Supervision**

Judicial supervision of processes in the criminal justice system will help all actors in the system, as well as all processes. Though non-interference of the judiciary in the investigative process is the hallmark of our judicial system, it is clear that the judiciary is at the apex of the criminal justice system and has a duty to supervise. The judiciary must take

both preventive and corrective steps with regard to process, wherever necessary in every case.¹⁸

It is the prerogative of the courts to bring together all the involved parties in a case. Each organisation or actor in the criminal justice system, whether it is the police or the prosecutor and defence, cannot function in watertight compartments and in isolation. All the actors have to work in consonance and act as checks and balances to each other.

(D) CORRUPTION

The efficiency of the criminal justice system is greatly hampered by corruption. Corruption in the judicial system impedes and often nullifies the good work of the police.¹⁹ Corrupt practices are prevalent not only amongst the police but also in the judicial and legal circles, as well as the forensic and other fraternities. Justice has now become a 'buyable' commodity.²⁰ Corruption can be dealt with only by practising a strict zero-tolerance policy. The way the Panama papers were handled by the two German journalists and their newspaper *Süddeutsche Zeitung* is worthy of emulation in all big scam-related investigations. As with all other problems, corruption can be redressed only through systemic changes and eternal vigilance. It is submitted that one of the key duties of a retired police officer is to speak about corruption openly and expose it.

CONCLUSION

Criminal investigation can be improved by making each investigation a team effort. A central repository for all investigation records and collected data should be created and duly protected with access rights. Each member of the investigating team should have access to all relevant case data, but no individual member can scuttle an entire investigation. The accused does not know from where the next missile will come. The only challenge is that, unlike an investigative journalist, the IO has to ensure that relevant facts are translated into admissible evidence in the proceedings of the trial court. That is a tough challenge and needs suitable amendments to Section 164 of the CrPC to include preservation of all relevant evidence. But the first step is to start working on building a repository of knowledge and information pertaining to the material evidence that is collected at source, and that it is validated, verified, and correlated with other bits and pieces during the arduous investigative processes. Experts should be able to analyse material facts from wherever they are and add value to the appreciation of evidence. All relevant facts can thus be collected and preserved digitally in a legally admissible form.

¹⁸ See, Shipradubey, Criminal Judiciary reforms in India, available at, <https://www.legalserviceindia.com/legal/article-244-criminal-judiciary-reforms-in-india.html>, visited on 15/3/22

¹⁹ See Layanyya, Corruption in Indian Legal System, available at, <https://www.legalserviceindia.com/legal/article-2764-corruption-in-indian-legal-system.html#:~:text=Because%20of%20corruption%20people%20lost,3.14%20crore%20cases%20are%20pending,> visited on 11/3/22

²⁰ See Justice is not a Commodity, available at, <https://www.opendemocracy.net/en/shine-a-light/justice-is-not-commodity/>, visited on 11/2/22

Reforms in the criminal justice system are urgently needed in India. Today, a number of policemen are ready for police reforms, but unless the judiciary makes it a pointed action programme, the political class will not allow this to happen.