

Investigation Procedure and Indian Criminal Justice System: A Study of Legislative Framework and Judicial Approaches

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Abstract

Criminal administration of justice is defined as "one's own activity and the structure of police and courts for the justice system in the discovery, investigation, anxiety, consultation, and trial of individuals accused of crime." Criminal investigative procedures are the cornerstone of any judicial system, acting as a crucial link between the processes of legal resolution and alleged criminal behaviour. This complex process is essential to establishing facts, gathering evidence, and guaranteeing the fair and impartial adjudication of cases. The criminal justice system is intended to provide the greatest amount of security in a democratic, civilised society by effectively, quickly, and legally handling crimes and offenders.

In present times, ineffective opaque and delayed investigation, by which an innocent has to suffer and the culprit gets the benefit of it. In India, police do not use scientific methods for collecting evidence, often recording witness statements and writing their own. They may attempt to include false evidence when unable to find sufficient true evidence, disregarding legislative provisions and following law procedures. They frequently utilise cruel and torturous techniques to get information out of both innocent and guilty people. The present condition of the Indian criminal justice system and other investigative organizations is examined in this paper. And identify the discrepancy between these positive court rulings and the actual manifestation of the right in India. Additionally, the significance of the current Indian situation and viewpoint on criminal law were examined.

Keywords: Criminal Administration System, Investigation, Judiciary, Police Force, Constitution, Justice Delivery System.

Introduction

In any civilized society, the criminal investigative process serves as a fundamental framework for the development of the administration of justice. Therefore, in its widest meaning, criminal law includes both substantive and procedural criminal law. Substantive criminal law defines offenses and proposes penalties for them, whereas procedural law enforces the substantive law.¹ The objectives of Criminal law are the protection of persons and property, the deterrence of criminal behavior, the punishment of criminal activity and rehabilitation of the criminal. It plays very crucial role in prevention and control of crime.²

The intricate architecture of the Indian Criminal Justice System is intended to uphold justice, preserve peace and order, and safeguard citizens' rights. Encompassing a range of organizations, procedures, and regulations, its goal is to effectively address criminal offences while maintaining the values of equity and fairness. The system's fundamental goals are to look into crimes, punish offenders, and decide cases in a way that upholds the law.

The foundation of any judicial system is made up of criminal investigation processes, which serve as a vital conduit between the processes of legal resolution and suspected criminal behaviour. Establishing facts, gathering evidence, and guaranteeing the impartial and equitable adjudication of cases all depend on this complex procedure. Fundamentally, criminal investigation entails the methodical pursuit of the truth in order to find the guilty, safeguard the defenceless, and preserve the values of justice. The criminal justice system is crucial to establishing justice and impartiality in society since justice cannot be achieved without a fair trial or an unbiased investigation procedure. Before the trial process begins, a few requirements must be met in order for it to be fair and impartial for the legal system. The Indian Criminal fairness System plays a vital role by providing a fair and unbiased system and promoting the

¹ Lakshminath, A. "CRIMINAL JUSTICE IN INDIA: PRIMITIVISM TO POST-MODERNISM." *Journal Of Heindian Law Institute*, Vol. 48, No. 1, Indian Law Institute, 2006, Pp. 26–56
A SOCIO LEGAL STUDY ON CRIMINAL ADMINISTRATION OF JUSTICE IN INDIA WITH SPECIAL REFERENCE TO STATE OF GUJARAT. Available From:

https://www.researchgate.net/publication/367106276_A_SOCIO_LEGAL_STUDY_ON_CRIMINAL_ADMINISTRATION_OF_JUSTICE_IN_INDIA_WITH_SPECIAL_REFERENCE_TO_STATE_OF_GUJARAT [Accessed Jun 22 2024].

² Pradeep Singh, "Delayed Investigation and Criminal Justice", *Civil & Military Law Journal*, Vol. 45, No.1 & 2, p.41.

concepts of equality, fairness, and social justice. The judiciary provides support at the top of the criminal justice system's hierarchy, while the investigating agency is at the bottom.

The significance of proper investigative techniques for maintaining justice cannot be overstated. By ensuring that investigations are conducted consistently and ethically, standardisation promotes justice and guards against the capricious use of power. Given the evident need for reform in our criminal justice system and the implementation of major reforms in the Indian Criminal Legal System, we must first look at the general nature of an inquiry and the procedure that our courts follow for the criminal administration of justice.

Concept and Procedure of Investigation

The primary piece of legislation in India governing the administration of substantive criminal law is the Code of Criminal Procedure. It was passed into law in 1973 and went into effect on April 1st, 1974. An investigator is the kingpin of criminal justice delivery system³. An accused is entitled to a Fair Investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India⁴. The Criminal Procedure Code (Cr.P.C.) offers the tools necessary for conducting criminal investigations, apprehending suspects, gathering evidence, finding the guilty or innocent parties, and determining the appropriate sentence for those found guilty.⁵

Investigation is a delicate painstaking and dexterous process. The investigator must be alive to the mandate of Article 21 and is not empowered to trample upon the personal liberty arbitrarily. High responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner. The investigation should not prima-facie be indicative of a biased mind and every effort should be made to bring the guilty to law⁶.

³.Amitbhai Anilchandra Shah v. CBI, (2013) 6 SCC 348.

⁴ Nirmal Singh Kahlon vs State Of Punjab & Ors (2009) 1 SCC 441.

⁵ The word investigation cannot be limited only to Police investigation but includes the investigation carried by any agency whether he be the Police officer or empowered authorized officer. The word investigation has to be read understand in the light of not only the powers conferred on Police Officer but the restraints placed on them in the use and exercise of such powers. The powers of the Police officer to investigate in the cognizable offence is ordinarily not to be interfered with by the Judiciary as was held in State of Bihar Vs. JAC Saldanna reported in AIR 1980 SC 226.

⁶ .State of Bihar Vs. P.P. Sharma AIR 1991 SC 1260.

Fair investigation is part of constitutional guarantee under Article 20 and 21 of the Constitution and it is minimum requirement of Rule of Law. Investigation must be fair, transparent and judicious and free from objectionable features like bias, ulterior motive or other similar infirmities. It is the duty of the Investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The Investigating Officer should be fair and conscious to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness⁷. Fair and Proper Investigation' in criminal jurisprudence has twin purpose. Firstly, the investigation must be unbiased, honest, just and in accordance with law. Secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction⁸.

The Hon'ble Apex Court in, Nirmal Singh Kahlon Vs. State of Punjab and others⁹ pleased to hold that,-

“Definition and scope of the expressions investigation and Officer In-Charge of a Police Station must receive a liberal interpretation.”

Under the criminal procedure code attempt to define investigation under section 2 (h) as follows-

Section 2 (h) “investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf;

After receiving the information about any offence the process of investigation starts, Section 154(3) provides about the investigation in cognizable offences as under:-

Section 154 Information in cognizable cases-

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either

⁷.Babubhai Vs State Of Gujarat (2010) 12 Scc 254.

⁸ Vinay Tyagi Vs Irshad Ali @ Deepak (2013) (5) Scc 762.

⁹ Air 2009 Supreme Court – 984.

investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

Section 155 (3) explains about the investigation in non-cognizable offences as under:

Section 155. Information as to non- cognizable cases and investigation of such cases-

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

It is the crucial document having the most evidentiary value after the First Information Report (FIR) is filed. Information about cognisable offences is covered in Section 154, whereas information and investigations regarding non-cognizable offences are covered in Section 155. Section 154 of the Code of Criminal Procedure states that a police officer's only recourse in the event that he learns of a crime that is cognisable is to file a case. FIR can be used as substantive piece of evidence.¹⁰ To ensure Fair Trial whether the police are empowered to conduct inquiry to know the truth and then register FIR and what is the role of magistrate on such preliminary investigation. If the information reveals the commission of cognizable offence the officer in-charge is bound to register the FIR. He cannot make preliminary inquiry.

Safeguards to be taken by the Investigating Officer during investigation:-

1. The officer-in-charge of a police station may without the order of Magistrate investigate any cognizable case within the limits of such station as per Sec.156 of Cr.P.C. but so far as non-cognizable case is concerned police officer shall not investigate the same without the order of the Magistrate having power to trial such case or commit the case for trial.
2. Sec.157 of Cr.P.C. deals with the procedure for investigation which says if the police officer has reason to suspect commission of a cognizable offence he shall forthwith send a report to

¹⁰ Damidar Prasad Vs State of U.P. AIR 1975 SC 757.

the Magistrate and proceed to the scene of offence investigate the matter in person or to depute his sub-ordinate to investigate and investigate the facts and circumstances of this case and to take steps to discover and arrest of the offender.

Sections 160 and 161 provide for the summoning of witnesses and the recording of their testimonies; nevertheless, unless the Indian Evidence Act is used, the statements are often not acceptable in court.

- 1. During investigation the police officer may secure the attendance for the witnesses who are acquainted with the facts and circumstances of the case except a male person under the age of 15 years or above the age of 65 years, a woman, a male or physically disabled person who shall be examined at their residence.*
- 2. During investigation and examination of witnesses by the police as per Sec.161 of Cr.P.C. the Magistrate may orally examine any person who are acquainted with the facts and circumstances of the case and such person shall be bound to answer truly the questions relating to the case other than the questions, the answers to which would have a tendency to expose him to a criminal charge or a penalty to a forfeiture.*

Although the accused may be questioned further, their police statements are not admissible unless they are presented to a magistrate. Section 165 grants the police the authority to inspect properties, take evidence, and, in the event that they require it, request help from other authorities (Section 166).

Section 167- Procedure when investigation cannot be completed in twenty four hours.

(1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty- four hours fixed by section 57, and there are grounds for believing that the accusation or information is well- founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he

has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-

(a) I[the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding, -

*(i) **ninety days**, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;*

*(ii) **sixty days**, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]*

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police. Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail;

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.

(2A) Notwithstanding anything contained in sub- section (1) or sub- section (2), the officer in

charge of the police station or the police officer making the investigation, if he is not below the rank of a sub- inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub- section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub- section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.]

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons- case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under

subsection

(5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub- section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify

Section 169. Release of accused when evidence deficient. *If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.*

Section 173. Report of police officer on completion of investigation.

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

- (a) the names of the parties;*
- (b) the nature of the information;*
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;*
- (d) whether any offence appears to have been committed and, if so, by whom;*
- (e) whether the accused has been arrested;*
- (f) whether he has been released on his bond and, if so, whether with or without sureties;*
- (g) whether he has been forwarded in custody under section 170.*

(ii) The officer shall also communicate, In such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of

the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation,

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order- for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate alongwith the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements- recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings 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.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub- section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form

prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2).

In **H. N. Rishbud and Inder Singh Vs. The State of Delhi**¹¹, the apex court defined the Investigation in following terms,

“ Investigation usually starts on information relating to the commission of an offence given to an officer in charge of a police station and recorded under section 154 of the Code.....By definition, it includes "all the proceedings under the Code for the collection of evidence 3 conducted by a police officer". For the above purposes, the investigating officer is given the power to require before himself the attendance of any person appearing to be acquainted with the circumstances of the case..... .

Thus, under the Code investigation consists generally of the following steps:

1. *Proceeding to the spot,*
2. *Ascertainment of the facts and circumstances of the case,*
3. *Discovery and arrest of the suspected offender, and*
4. *Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and*
5. *Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under section 173.”*

In **Manubhai Ratilal Patel vs. State of Gujarat and Others**,¹² the Hon'ble Apex court held as-

“It is apposite to note that the investigation, as has been dealt with in various

¹¹ 1955 AIR SC 196.

¹² [(2013) 1 SCC 314].

authorities of this Court, is neither an inquiry nor trial. It is within the exclusive domain of the police to investigate and is independent of any control by the Magistrate. The sphere of activity is clear cut and well demarcated. Thus viewed, we do not perceive any error in the order passed by the High Court refusing to grant a writ of habeas corpus as the detention by virtue of the judicial order passed by the Magistrate remanding the accused to custody is valid in law. “

In **State of Haryana and Ors vs Ch. Bhajan Lal and Ors**¹³ Supreme Court of India held that The investigation of an offence is the sole domain of police officers, who have unrestricted powers in this area as long as their authority to look into cognizable offences is lawfully exercised in strict accordance with Chapter XII of the Code's provisions and as long as the courts are not justified in erasing the evidence of their investigation when the investigating agencies are acting within the law.

Conclusion

For a society to be in order, the criminal justice system must function efficiently and honourably. The nation's laws must take into account the demands of the contemporary world as well as the complexity of crimes. In order to guarantee that justice is carried out properly and that no innocent individual is subjected to prejudice or exclusion that could lead to a miscarriage of justice, all parties concerned should have a more candid conversation about workable solutions.

Due to a significant backlog that delays the administration of justice, the delivery system has lost effectiveness, placing pressure on the judiciary. The length of time needed to administer justice has prevented the purpose of discouraging criminal activity from being achieved. Due to a lack of coordination, many people who are awaiting trial languish in cells. Because of the intricacy of crime and the advancement of technology, the current rules are insufficient.

¹³ 21 November, 1990.