



FORENSIC CRIMINAL INVESTIGATION IN CRIME DETECTION

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INTRODUCTION

Law of the jungle has gone away after the establishment of Democratic System of administration of Justice, in which the courts are playing pivotal role in the administration of justice. Justice should be done according to the Rule of Law, which aims not only to protect the innocent from unfair punishment but also it is the duty of the state to see that the real culprit should not go unpunished.

Mere allegation of commission of an offence is not enough to prosecute the offender. For successful prosecution the prosecuting agency should collect all relevant evidence in support of their claim and prove the case beyond reasonable doubt. For this purpose, proper and fair investigation into the alleged offence is necessary.

“Investigation” is a systematic, minute and thorough attempt to learn the facts about something complex or hidden; it is formal and official.² According to Section 2(h) of the Criminal Procedure Code, 1973 “Investigation includes all the proceedings under the code, for the collection of evidence conducted by a police officer or by any person (other than a magistrate) who is authorized by the magistrate on his behalf”. Here the word magistrate refers to judicial magistrate; it clearly states that, the magistrate cannot conduct an investigation.

SCOPE OF THE INVESTIGATION

Generally, investigation in cognizable cases will start after receiving the information (F.I.R) or otherwise further, in cases of cognizable offences the police officer can start investigation without the permission of the magistrate. But in non-cognizable offences he cannot start investigation without the order of the magistrate.

The police have been given wide powers in their investigation. These powers are likely to be abused or misused or have in fact been abused by the police in several cases. The strength of a case in a court depends generally on the nature of the quality of the evidence collected at the time of the investigation. Even a negligent exercise of

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² Hamlyn's Encyclopedic Word Dictionary (1972), P.836.

the power can run counter to the best interest of the criminal justice administration in terms of conviction of the guilty. Then the magnitude of the problem raised by intentional abuse of the investigative powers can be imagined.

Recording of FIR is the first stage of investigation of a cognizable offence. Making intentional flaws in the recording of FIR will weaken the prosecution case. The powers of arrest could be misused to injure the innocent. Powers pertaining to search and seizure can be abused to unnecessarily interference with the personal liberty of individuals. While recording statements of witnesses the police officers can omit vital facts and information's and can add their own ideas into the records. Besides this the possibility of implicating innocent persons in false cases also exists.

All these may result from many factors. The influence of political wing of the executive machinery, other political elements, money and personal vendetta are only a few among them.

This results either in the failure of the prosecution case in the court and acquittal of the guilty or in innocent persons being harassed unnecessarily for years by criminal proceedings. The ultimate sufferer in such instances is the credibility of the system of criminal justice administration. The abuse of the investigative power by the police has been variously described as the bane of Indian legal system.

The root cause of all these rests, it appears, in the structure and organization of Indian police. There are no separate categories of police in India for maintenance of law and order and for investigation of crimes. Both these functions are carried out by one and the same wing of police. The police are a wing of the executive branch of the government. Courts have no control over the manner or methods followed by police in the investigation of offences. This function is often discharged by the police subject to the intervention and the supervision of the executive branch. This affects the quality of the evidence collected in investigation. The courts can only compare the evidence collected by police to that given by witnesses. A contradiction between the two may weaken the prosecution story, and might result in unwanted acquittal.

Since, our system of criminal justice administration is modeled on the accusatorial system; a basic postulate of this model is to cast the burden of proving in the case of prosecution, the extent of burden being to prove the case beyond shadow of reasonable doubt coupled with this principle is the presumption of innocence of the accused until proven guilty.

But this is not an invariable practice followed by all legal systems in the world. The inquisitorial system, of which France is an excellent example, operates on different principles. This reflects in the structure, organization and functioning of the police as well.

Forensic science in criminal investigations and trials is mainly concerned with materials and indirectly through materials with men, places and time. Among men, the investigating officer is the most important person. In fact, it is he whose work determines the success or failure of the application of forensic science in the processing of a

criminal case. If he fails to collect the relevant evidence, allows the exhibits to be contaminated or does not provide correct samples for comparison, the findings of a forensic scientist will be useless³.

IMPACT OF SCIENCE ON INVESTIGATION

Science is a compelling and commanding weapon in the armory of administration of justice. Forensic science is a science pertaining to law. In particular, it works as the branch, which is used mainly in criminal investigation and findings of which can lead to arrests and convictions. Undoubtedly, scientific investigations generate evidence in favor of the victims and against the accused. Forensic science helps in providing the identity of the culprit or the accused that willingly or unwillingly, in most of the cases, leaves the mark of the crime, thereby making the job of the investigator much easier in proving the culpability with the aid of forensic science.

Forensic science provides scientific study for investigation of crime. The growth, development and use of forensic science in detection of crime in developed countries are tremendous and increasing with new techniques. The area of forensic science in India has not been properly looked into, as it ought to have been and more so when the average acquittal rate is alarmingly high. Therefore, in our country, also, the necessity and importance of forensic science hardly needs any emphasis.

The lack of understanding and appreciation of the importance of specialists in general, by non-specialists, in all fields, cannot be denied. The field of forensic science is no exception. Many a time, neither the judge, nor the lawyer nor even the police appreciate fully, the advances or the extensive, promising potentialities if the science and the fusion of new technologies, methodologies modalities and research. Multitask and multi-professional nature of forensic science needs an inter-professional approach, which is many a time, lacking. Therefore, sincere and serious efforts are required to be made to eliminate personal and professional bias of the involved personnel and professionals.

Forensic science in criminal investigation and trial is principally concerned with materials and circuitously through materials, with men, places and time. It embraces all branches of science and applies them to the purpose of law. The scientific examination by forensic scientists adjoins a missing link or strengthens a weak chain of investigation.

Law enforcement agencies refer to forensic experts to help solve mysterious situations concerning human life and thereby, provide help and useful contribution to the criminal courts in the journey for search of truth in criminal trials. Forensic science deals with various aspects, including routine post-mortem to sophisticated tracking piece like DNA analysis.

³ Deepak Bade- "An Overview on Forensic Science and Criminology" at P.273.

Unfortunately, techniques and methodology with necessary materials used extensively in western countries has not successfully clicked in India because of a variety of reasons, the major one being the investment of huge finance. This science is also, at times, useful in finding out the truth in some of the civil cases.

The prosecution mainly calls forensic scientists as expert witnesses. The practice of the defense producing forensic scientists or the courts consulting on their own listed experts is not very much in vogue. In fact, there is an acute need to bridge the communication gap that presently exists between lawyers, judges and forensic scientists. An independent analysis and evaluation of the scientist's data and any subsequent testimony that may follow again depends on the Judges Familiarity and understanding of the principles of forensic science.

In western countries DNA test and profile is widely employed. In a country like ours, the need of such a test and profile may hardly, be emphasized in many developed countries, DNA test, genetic testing techniques and Racmization- testing based on scientific examination of teeth and bite-marks has proved to be useful. "Racmization" technique is currently used in Japan and Germany. It has potential to replace the traditional method that took into account the eruption and/or fusion and falling sequence of teeth. A fusion of such knowledge of forensic science and newly developed techniques will, undoubtedly, not only provide proper perspective and dimensions, but will also lead to detection of crime, and be a great help in search of the truth. It will be useful in prevention and control of crimes and will provide required assistance to the parties to civil disputes, as well⁴.

Forensic science is a dynamic field of knowledge and skills which can be highly helpful and useful for criminal investigation. Forensic science applies technical skills to detect, identify and prosecute offenders. The application and awareness of forensic science is growing in Law Enforcement Agencies in Pakistan. The Police in Sindh province is a mix of the human resource having different levels of education and exposure to training besides variant thinking patterns and perceptions. The force with better education and training feel that forensic science is inevitable for successful criminal investigation. The traditional thinking police is totally unaware about role of new technology in helping investigators. The 81% of respondents were satisfied from police knowledge of forensic techniques. The 19% opined police have poor forensic knowledge and skills. The future of forensic science in Sindh depends on overcoming the constraints and strengthening the developmental factors. The constraints are orthodox attitudes, lack of implementation, lack of funds, lack of training staff, equipment and laboratories. Forensic science-investigation is possible if police adopts new professional culture, ethics of professionalism, scientific methods & tools, merit-based recruitment and promotion, discouraging political interference, enhancing training inputs and establishing the forensic laboratories.

⁴ Jithendra N. Bhatt; "A Profile of Forensic Science in Juristic Journey", at P.245.

IMPORTANCE OF FORENSIC SCIENCE IN INVESTIGATION

Medical jurisprudence or it is sometimes called Forensic, legal, or state Medicine may be defined to be that science which teaches the application of every branch of medical knowledge to the purpose of law; hence its limits are on the one hand the requirements of the law and on the other, the whole range of medicine. Anatomy, physiology, medicine, surgery, chemistry physics and botany lend their aid as necessity arises; and in some other cases all these branches of science are required to enable the court of law to reach to a proper conclusion on a contesting question effecting life or property.⁵ Even though medical jurisprudence, forensic medicine and legal medicine are the terms commonly used to denote the branch of medicine which deals the application of the principles and knowledge of medicine to the purpose of law, both civil and criminal, they bear different meanings. Medical jurisprudence embraces all questions which affect the civil or social rights of individuals as well as cases of injuries to persons and brings the medical practitioner in contact with the law. Medical jurisprudence embraces all questions which affects the civil and social rights of individuals, as well as cases of injuries to persons, and brings the medical practitioner in contact with the law. Thus, medical jurisprudence deals with the legal aspect of medical practice, while forensic medicine deals with the application of medical knowledge to the administration of law. Forensic science is in all a very comprehensive term. In its broadest definition, forensic science is the application of science to those criminal and civil laws that are enforced by police agencies and courts. The term “state medicine”, recommended by Dr. Stanford Emersion Chaille in 1949, is being rejected worldwide. In Europe and the United States of America, the term legal medicine is often preferred. However in most parts of world the term Forensic Medicine is widely accepted.⁶ The credit for establishing forensic medicine on a systematic basis in Britain is usually given to Andrew Duncan (1744-1828), professor of institute of medicine at university of Edinburg, who in 1806 successfully persuaded the government to establish a reguis chair in medical jurisprudence and medical police.

HUMAN RIGHTS PERSPECTIVE OF CRIMINAL INVESTIGATION

Protection of rights of accused will depend on the factor that how far the concerned country feels safe to do so⁷. This will be an important question in answering the human rights violations in criminal justice administration. As we all call it, crime is always a threat to humanity. So, who makes the boundary by delimiting the rights of an accused and making the criminal law administration possible? Of course, it's the duty of the state to regulate the law so as to balance the state accused standings. Thus how far the law confers right to an accused in the nation

⁵ The first paragraph of Alfred Swayne Taylor's Principles and Practice of Medical Jurisprudence, first published in 1865. (Medical jurisprudence was term favored over forensic Medicine in 19th century. The former term reflecting more accurately the subjects perceived subservience to the needs of the law).

⁶ HWV Cox, Medical Jurisprudence, seventh edn,2002, p 3

⁷ J.A Courts, "The Public Interest and the Interest of the Accused in the Criminal Process," In J.A Courts (ed.) "The Accused a Comparative Perspective", London, Stevens & Sons, (1966) at P.3.

can be read from the constitution of that land and the criminal procedure law. A great change to this is brought by the evolution of human rights jurisprudence in the post-world war period.

The inquisitorial law of criminal procedure was changed much earlier to this and made a better footing to the accused in criminal trial by virtue of the sociological school's innovation by law. Many of the international human rights documents look for the protection of accused persons. We can trace rights guaranteed to an accused person even from very old documents like Magna Carta (1215), Petition of Rights (1628), American Declaration of Independence (1776) etc. The evolution of these rights was influenced mainly by the progressive developments in the legal theories. But we are now on the new generation rights which clearly requires for procedural fairness in every criminal justice systems and call for some set of specific rights addressing an accused directly⁸. Now these bundle of rights created by the human rights doctrine is making a good shield for making the accused, sometimes to protect him or otherwise for him to escape from the law. The concept of torture as evolved much through various human rights documents. In universal declaration of human rights the word torture is simply used⁹, by time that term achieved wider impact in the international criminal jurisprudence¹⁰. This can be pointed out that a good instance to show how the development of human rights influenced criminal law.

Torture is one of the major human right issues of every time and especially police torture, which is also called as state sponsored torture. In India, there is no express constitutional guarantee against torture and it is mentioned that it is properly regulated through executive measures¹¹. The methods like hanging upside down, severe beating, applying heavy rollers on the leg of accused, use of electrical shock etc. are used as means to extort confession at the time of interrogation. The court was also in many instances referring to these as human right violations and also asked the state to equip the investigation system with scientific techniques. The protection of an individual and abuse by the police and other law enforcing officers is a matter of deep concern in a free society¹². Thus the study is so rooted in the society. The application of the test in the suggestion to replace some evils but whether this actually causes some other problems to the rights of individuals subjected to it. Thus the study concentrates on many issues like the possible human rights violations, whether any improvement is made possible to the system, how far the human rights are ensured by implementing these techniques.

⁸ Andrew Ashworth, *Human Rights, Serious Crimes and Criminal Procedure*, London, Sweet and Maxwell,(2002), at P.13; According to him the identified rights include- the right to be presumed innocent, the privilege against self-incrimination, right to silence, right to legal aid and assistance, the right to be brought promptly before a court, right to release pending trial, right to disclose of documents, right to confront witnesses, right to be tried on evidences and obtained by violation of fundamental rights and right not to be placed in double jeopardy.

⁹ UDHR (1978), Article 5 say, “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”, also see, Article 7 of ICCPR.

¹⁰ The convention against torture and other inhuman or degrading treatment or punishment, 1978 defines the term torture and other cruel inhuman or degrading treatment.

¹¹ Dr. Gokulesh Sharma, *Human Rights and Legal Remedies*, New Delhi, Deep and Deep Publications, (2003 Reprint) at P. 553.

¹² *D.K. Basu v. State of West Bengal*, A.I.R. (1997) S.C. 610 at P.615.

The concept of human rights is more ethical. Everyone in the society needs a dignified treatment. Even after conviction of a person is to be respected to the extreme where no limit is made to this liberty by law is to be noted that Justice V.R Krishna Iyer, who was one of the great advocates of human rights doctrine, remarked that even a criminal is to be healed and humanized¹³. How far we can deprive the rights of an accused, who is just only under the shadow of suspicion. So the human rights which are available to an accused should be made available to him by the state at any cost. It is also to keep in mind that the state can deprive the basic right available to an accused only through a procedure established by law¹⁴. So these requires a clear law which permitting these

CONCLUSION

The quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of criminal law¹⁵. It is very important to note that we by following the accusatorial system of trial, we declare that we are much concerned on the rights of accused. Secondly the international society demands much fairness in our procedural laws. This obligation is added by the international human right doctrines. It is true that every accused whether in accusatorial or inquisitorial system requires the protection of this rights against the state.

There is a demand for rights from one side and on the other hand the requirement is justice to be done. Crime is an evil against entire humanity. The crimes are increasing and getting more complicated. The experiences from many cyber space crimes, terrorist acts show how dangerous the situation is and how far our investigating agency can prove the crime with existing tools of investigation. It is also argued as the need of the crime to have more advanced methods which is proved to be scientific in investigating crimes. There are some limitations made by law to the extensive use of tests in criminal justice administration. As this makes a substantial question of law, we can only open the door to any science into the area of crime detection after a strict scrutiny of the concerned science and procedural safeguards secured by it. The same has to be done in the case of Polygraph, Narco Analysis and Brain Mapping. There should be every balance between interest of accused and that of society.

¹³ Prof. N.V. Paranjape, *Criminology and Penology*, (13th ed.), Allahabad, central law publications, (2007), at p.27.

¹⁴ Article 21 of the constitution of India reads "no person shall be deprived of his life or personal liberty except according to procedure established by law". The second part of the article clearly says that the deprivation should be according to a procedural establishment by law.

¹⁵ *Joginder Kumar v. State of UP and Others*, (1994) 4 S.C.C. at P.260.