



Intricacies Of Police Investigation, Role Of Police In Criminal Justice System Of India And Need To Reform

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Abstract: Police has important role in the criminal justice process in India. The main objectives of the Police are to provide immediate help to the victim, to take preventive actions, to arrest the accused, to investigate fairly the crime, to enforce and to maintain law and order situation. The Police investigation is the back bone of the criminal justice process, we cannot expect to be fair justice without the fair and genuine investigation by Police. But after the Nirbhaya gang rape case and several other cases of heinous crime, the Government and recently the Supreme Court of India have felt the need to reform the Police accordingly to the recent amendments in Criminal law. This critical study has an assertion and provided some suggestions to the knowledge of intricacies of Police investigation, role of Police in criminal justice system of India and need to reform the Police system in India.

Key Words: Intricacies, Investigation, Role, Police, Criminal Justice System, Crime, Reform.

1. Introduction:

As an integral part of law enforcement agency, the Police have four basic responsibilities towards the public and the society in general, which are, enforcing laws, preventing crimes, responding to emergencies, and providing support services. But the Police have an important responsibility to investigate the crime fairly towards the criminal justice system. When it comes to the crime related to sexual offences against the women in India, the Police is more responsible to take action, prevention and fair investigation towards the justice to the victim of rape like heinous crime. Although the major components of criminal justice system are Police, Court and Correction Home or Jail, the investigation is the backbone of the fair and accurate justice delivered following the process of criminal justice system, but there are several questions raised on the investigation done by the Police authority by the kin of the accused and thereby an impartial investigating agency demanded for fair justice. In the cases of sexual offences against women, most of the offences other than the Rape are like summon cases as “Arrest must be made after satisfying necessary parameters as mentioned under section 41 of the CrPC,” by **Arnesh Kumar v/s State of Bihar & Another, (2014) 8 SCC 273.**[1]

2. Origin of term “Police”:

The term ‘police’ originated from the French and less directly from the Greek word ‘politeia’ which means government or civil administration. The word ‘police’ was generated in France in the eighteenth century. In France, it was also known as constabulary and later constables who were an effigy of police officers. In the ancient periods, the military was liable for the law and order in urban areas. After that, the Roman Empire had made an effective law enforcement system by launching a police force in Rome. But in the case of lands local lords and nobles executed the order. And when a critical situation has arisen due to unpaid, they often appointed constable to enforce the law [2]

3. Comparative Police in other countries:

The first law enforcement body was established by London in 1663 when hired watchman to patrol the streets at night. After that the Glasgow police Act was enacted in 1800 and established the city police for Scotland. Following this instance, in 1829 the British Parliament passed the Metropolitan Police Act and formed London Metropolitan Police [3]. It became model for many countries and following this the New York City of the United States established the first organized police force in 1845. There are two levels of police forces in Australia and Brazil, federal police force and state police force. But Canada has three levels of police as municipal, provincial and federal. In France there are two types of police, administrative police and judicial police. Because here the term ‘police’ does not only mean to the forces but also refers to the policing in general sense of ‘maintenance of law and order’. Administrative police force remains under the law enforcing body on the other hand judicial police remains under the authority of Judge. In Indian sub-continent, the police system was introduced during the Mughal period. But in 1858, after taking directly the responsibility of India by British Crown the police system was reorganized. To prevent and reduce crime the British rulers sometimes enacted some codes like Indian Penal Code in

1860, the Criminal Procedure Code in 1861 and the Police Code in 1861. Around more than 150 years have elapsed but still Indian police organization follows these Codes [4]. It is a disciplined force within the meaning of Article 355 of Constitution of India. Although there are certain amendments in the prescribed codes till now, but the structure is still very old and needs to continuous reformation.

4. Role of Police towards criminal justice system:

The Police have important role to investigate the crime fairly towards criminal justice system. The function of Police is governed by the Indian Police Act, 1861 established the principles of organization for police forces in India and, with minor modifications, continues in effect. Although state police forces are separate and may differ in quality of equipment and resources, their patterns of organization and operation are similar, but the investigation of crime is governed by the criminal procedure code, 1973 as amended up to date. It is the duty of Police to take action immediately upon the information about crime of sexual offences against women and help the victim and then investigate the said crime properly and fairly. In the state case, a fair justice which is to the satisfaction of the victim is mostly depend upon the fair investigation and collection of concrete evidence and the burden of proof lies on the shoulders of Police, where Police is responsible to prove their case beyond reasonable doubt against the accused of the crime.

There are so many concepts in criminal justice system, sometime it is retributive, sometime it is deterrent, sometime it is corrective and sometime it is reformative in nature. But the nature of justice depends upon the nature of crime and its finding in investigation. But in grave cases of heinous crime, the policy of public at large that the offenders is shown the 'Iron fist of law' which in turn acts as a deterrent to other potential offenders, thereby reduction of commission of offences. Therefore, in a diabolical crime like Nirbhaya gang rape, the courts have to render swift justice by conducting the trials in a fast track court. Since this was a rarest of rare case, it required capital punishment. The punishment should act as a deterrent to other criminals. But the duty of the courts is not only to punish the guilty but also to protect the innocent and give justice to the victims of the crime. The law is both corrective and retributive but swift justice is also required in rarest of rare cases, where there is no scope for reformation.

It is the duty of Police to prevent crime, to combat crime, to control crime, to preserve peace, to maintain and enforce public order.

4.1 Contribution of Police in the criminal justice system:

Police have various types of functions in the criminal justice system. A modern country can't think the operation of its judicial system without a stable police force and their functions.

(1) Police arrests suspected criminal and law violators. To prevent misdeeds of criminal police takes them under custody and brings them before a criminal court. Police tries to put a bar on criminal activities through this process.

(2) Another important function of the police is to investigate criminal activities. Police can exercise power under various sections of the Code of Criminal Procedure to investigate a criminal case. After completion of investigation, police submit a charge-sheet for prosecution or final report for release of the accused.

4.2 Power of Police to investigate:

The power of investigation by police may start:

(1) Where FIR is given under **section 154 Cr.Pc.**; in **Lalita Kumari v. Govt. of U.P [W.P.(CrI) No; 68/2008]** [5] A Constitution Bench of the Supreme Court held that registration of First Information Report is mandatory under Section 154 of the Code of Criminal Procedure, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. The Supreme Court issued the certain Guidelines regarding the registration of FIR. or

(2) Where the police officer has otherwise reason to suspect the commission of a cognizable offence **U/Sec. 156(1) & 157(1) of Cr.Pc.**; or

(3) Where a competent Magistrate orders the police **U/Sec. 156(3) Cr.Pc.** without taking cognizance of the offence on a complaint **U/Sec. 200 Cr.Pc.**

(4) After taking cognizance of the offence on a complaint for the purpose of deciding as to the issue of process against the accused **U/Sec. 202(1) & 203 Cr.Pc.**

4.3 Power to investigate in cases of non-cognizable offences; U/Sec.155 (2) Cr.Pc.

A Magistrate under certain circumstances can also order a Police officer in charge of Police station to investigate a cognizable or even non-cognizable case. Where a Magistrate U/Sec.155(2) Cr.Pc. gives an order to a Police Officer to investigate a non-cognizable offence, the police officer receiving such order may exercise the same powers in respect of the investigation except the power to arrest without warrant which he does in a cognizable offence.

4.4 Procedure to investigate in case of a cognizable offence; S.156 Cr.Pc.

In case of a cognizable offence, the investigation is initiated by giving of information u/s 154 Cr.pc. to a police officer in charge of a police station. Police officer's power to investigate in a cognizable offence is given u/s 156 cr.pc. Any Police officer without the order of a Magistrate can investigate any cognizable offence. According to section 156(3) Cr.Pc, any Magistrate is empowered u/s 190 cr.pc. can order a police officer in charge of a police station to investigate any cognizable offence. Section 190 empowers any Magistrate to take cognizance upon receiving any complaint or upon police report (challan) or upon information received from any person other than police officer who is having knowledge that such offence is committed. In case of **Tula Ram Vs. Kishore Singh [6]** a Magistrate can order investigation under section 156(3) cr.pc. only at the pre-cognizance stage.

4.5 Procedure for investigation; U/Sec.157 Cr.Pc.

If a reasonable suspicion of the commission of a cognizable offence exists, the Police officer shall forthwith send the copy of report to the Magistrate who is empowered to take cognizance of such offence upon a Police Report. Herein the basis for suspecting may be FIR received u/s 154 Cr.Pc. or any other information of the Police.

Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality. [7]

It was held in case of State of Maharashtra Vs. Sarangdharsingh Shivdassingh Chavan that “Even without any FIR if a police officer in charge of a police station has reason to suspect the commission of a cognizable offence, he can proceed to investigate the offence u/s 157(1) Cr.Pc.”

4.5 Power of Police to require attendance of witness; U/Sec.160 Cr.Pc.

As per section 160 Cr.Pc. a police officer may by order in writing require attendance of witnesses. Provided that no male person under the age of 15 years or above 65 years or a woman or a mentally or physically disabled person shall be required to attend at any place other than the place in which such person abovementioned resides. [8]

4.6 Examination of witnesses by Police; U/Sec. 161 Cr.Pc.

As per section 161 Cr.Pc. statements are taken from the person who are acquainted with the facts and circumstances of the case and are reduced into writing.

Provided that statement made under this sub-section may also be recorded by audio-video electronic means. [9]

By the Criminal Law (Amendment) Act 2013, it was stated that the statement of a woman against whom an offence u/s 354, 354A, 354B, 354C, 354D or 376, 376A, 376B, 376C, 376D, 376E or section 509 of IPC is alleged to have been committed or attempted shall be recorded by a woman police officer. [10]

4.7 Power to submit charge sheet after completing investigation; U/Sec. 173 Cr.Pc.

Police submits charge sheet after completion of investigation. It consists of FIR copy, statement of complainant/informant, statement of witnesses, seizure memo, panchnama, dying declaration, recovery of articles, etc.

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

1A. The investigation in relation to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of the Indian Penal Code shall be completed within two months [11] from the date on which the information was recorded by the officer in charge of the police station.

2. -

1. 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-

1. the names of the parties;
2. the nature of the information;
3. the names of the persons who appear to be acquainted with the circumstances of the case;
4. whether any offence appears to have been committed and, if so, by whom;
5. whether the accused has been arrested;
6. whether he has been released on his bond and, if so, whether with or without sureties;
7. whether he has been forwarded in custody under section 170.
8. whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, or 376E of the Indian Penal Code.

2. 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 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 along with the report-

1. all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
 2. 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 proceeding 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).

4.8 Other powers of police under Cr.Pc.:

- (1) Medical examination of the victim of rape; U/sec. 164A Cr.pc.
- (2) Search by police officer; U/sec. 165 Cr.pc.
- (3) Police seeks police custody u/s 167 cr.pc. when investigation is not completed within 24 Hrs. Police custody is given maximum up to 15 days. This is called as Police custody.
- (4) The Magistrate may authorize the detention of the accused person otherwise than in the custody of Police beyond the period of 15 days, if he is satisfied that adequate grounds exist but the detention should not exceed 90 days where the investigation relates to an offence punishable with death, life imprisonment, or 10 years imprisonment and detention should also not exceed 60 days in case of other offences.
- (5) On the expiry of said period of 90 days or 60 days the accused shall be released on bail if he is prepared to and does furnish bail. Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognized social institution. [12]

As in **Rakesh Kumar Paul Vs. State of Assam [13]**, The hon'ble Supreme Court in this case by a majority of 2:1 held that case in which punishment with imprisonment extending 10 years shall for the purpose of "default bail" fall within section-167 (a) (ii) of the code and in such case, if charge-sheet is not filled within 60 days, the accused shall be entitled to be released on bail.

- (6) Police can release the accused when evidence is deficient as per section 169 Cr.pc.
- (7) Police has power to inquire and report on suicide is given u/s 174 Cr.pc.

5. Limitation of Police under different laws of India:

Police can't function smoothly due to some provisions of the Code of Criminal Procedure and the Evidence Act. Police officer takes any statement from any person in the course of investigation then that statement can't be used as evidence at any inquiry or trial of the court. Because this statement has no very evidentiary value, the police officer expresses a contradictory picture due to very limited evidentiary value of the statements. Under the evidence Act when a confession is given to a police officer in the absence of Magistrate this confession is not admissible as evidence in a court r/w sec. 25 & 26 of Indian evidence act, 1872 [14]. It creates an unnecessary hardship to the police in their activities in the criminal justice system.

Even in sexual offences like rape cases, under section 114A of Indian Evidence Act, 1872 as amended up to date; Presumption as to absence of consent in certain prosecution for rape: In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

Explanations In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code (45 of 1860).

6. Corruption and abuse of power by police:

Although the police department contributes vitally through its activities in the criminal justice system of India but it has been stigmatized as corrupt and has abused their power in different circumstances. Several times police department has been identified by Anti-corruption Bureau and Transparency International as the most corrupt department among all the departments of the Indian government [15]. According to the Indian Corruption survey 2019 conducted by Local Circles in collaboration with Transparency International India, as compared to last year i.e.2018, the cases of Police corruption have drastically increased from 13% to 33% in the year of survey i.e.2019 in Delhi a capital of India [16]. There are complaints about police for indiscriminate arrest of innocent persons in false cases. Sometimes victims are remanded to the custody of the police under section 167 of the same code and subjected to third degree methods in order to extract confession. In considering this matter a Supreme Court of India issued guidelines for the police as to exercise their powers in

Arnesh Kumar Vs. State of Bihar & Anr. The Supreme Court thinks that these guidelines will reduce the abusive power of the police i.e. Arrest must be made after satisfying necessary parameters as mentioned under section 41 of the Cr.PC.

Many times, it has been seen that the Police implicate the innocent person falsely, which is also one cause of burden on overburdened judiciary in the court.

And also, it is important to know that the role of Police is crucial and they must exercise their power sparingly and not arbitrarily. In case of **Kalpna kuty vs. State of Maharashtra [17]**, it was held that “if cognizable offence is received by Police officer, he or she should register FIR as per section 154(1) Cr.Pc. Police ultimately protect the rights of a person and maintain law and order in the state.

6. Problems and needs to reform of the Police in India:

Police are the important structure and a large embodiment of the Indian government to execute the rules and orders. But this police force faces many problems in India which are follows:-

6.1 An overburdened police force: [18]

- State police forces had 24% vacancies (about 5.5 lakh vacancies) in January 2016. Hence, while the sanctioned police strength was 181 police per lakh persons in 2016, the actual strength was 137 police. Note that the United Nations recommended standard is 222 police per lakh persons.
- 86% of the state police comprises of constabulary. Constables are typically promoted once during their service, and normally retire as head constables. This could weaken their incentive to perform well.
- Crime per lakh population has increased by 28% over the last decade (2005-2015). However, convictions have been low. In 2015, convictions were secured in 47% of the cases registered under the Indian Penal Code, 1860. The Law Commission has observed that one of the reasons behind this is the poor quality of investigations.

6.2 Need to improve Police infrastructure:

- CAG audits have found shortages in weaponry with state police forces. For example, Rajasthan and West Bengal had shortages of 75% and 71% respectively in required weaponry with the state police.
- The Bureau of Police Research and Development has also noted a 30.5% deficiency in stock of required vehicles (2,35,339 vehicles) with the state forces.
- However, funds dedicated for modernisation of infrastructure are typically not utilised fully. For example, in 2015-16, only 14% of such funds were used by the states.
- Recruitment of ample lady police staffs to deal with sexual offences against women in India.
- Installation of CCTV in the all the sensitive areas of city.

6.3 Lacking in Crime Investigation:

A core function of the state police forces and some central police agencies like the CBI is crime investigation. Once a crime occurs, police officers are required to record the complaint, secure the evidence, identify the culprit, frame the charges against him, and assist with his prosecution in court so that a conviction may be secured. In India, crime rate has increased by 28% over the last decade, and the nature of crimes is also becoming more complex (e.g., with emergence of various kinds of cybercrimes and economic fraud). [19] Conviction rates (convictions secured per 100 cases) however have been fairly low. In 2015, the conviction rate for crimes recorded under the Indian Penal Code, 1860 was 47%.[20] The Law Commission has observed that one of the reasons behind this is the poor quality of investigations.

Police mostly failed to investigate, prosecute the crime and find out the truth of the crime, because they are dependent on the version of story narrated by the complainant, while on the other side there is a blank shot on the version of accused. Sometime the accused is actual offender, but the theory derived by the investigation officer is different from the actual, which is proved to be weak to prosecute the accused who is actual offender and resultantly the acquittal of the actual offender. To prosecute any case, it is settled law that burden of proof lies on the prosecution to prove their case beyond reasonable doubt.

6.4 Need to hold Police accountable: [21]

- Police has the power to investigate crimes, enforce laws and maintain law and order in a state. To ensure that such power is only used for legitimate purposes, various countries have adopted safeguards such as making police accountable to the political executive and creating independent oversight authorities.
- In India, the political executive (i.e., ministers) has the power of superintendence and control over the police forces to ensure their accountability. However, the Second Administrative Reforms Commission has noted that this power has been misused, and

ministers have used police forces for personal and political reasons. Hence, experts have recommended that the scope of the political executive's power must be limited under law.

- Under section 197 of Code of Criminal Procedure (CrPC), prior sanction from a competent officer is needed to prosecute a government servant for alleged criminal act done in discharge of his official duty and "no court shall take cognizance of such offence except with the previous sanction". Therefore, investigating officer has immunity from prosecute further in case of discrepancies in investigation. [22]

6.5 An overview of crime in India: [23]

In 2015, National Crime Records Bureau recorded over 73 lakh complaints of cognizable crimes. Cognizable crimes are relatively serious offences for which police officers do not need a warrant from the magistrate to investigate, such as murder and rape. Between 2005 and 2015, crime rate (i.e., crime per lakh population) for cognizable crimes has increased by 28% from 456 complaints per lakh persons to 582 per lakh persons. This has been primarily because of increase in crime rates of alcohol-prohibition crime, theft, kidnapping and abduction, crimes against women and cheating.

Crime rate for crimes against women (e.g., rape, cruelty by husband or his relatives, insulting modesty of a woman) is calculated per lakh population of women.

7. A poor investigation is burden of Courts:

Investigation is the backbone of criminal justice system. If the investigation is poor, the case will be weak to prosecute and to deliver fair justice to the victim of crime, rather it become burden of the overburdened court. The Police are front liners of criminal justice system to meet the end of justice.

Conclusion:

Police and their functions are very important in criminal justice system. Because it is the principal duty of the police to arrest criminals and conduct them until the conclusion of trial for preventing crime. Police are legally authorized to use force and other means of coercion to execute public and social order. The basic knowledge of crime and criminology is must for the police and that's why almost in every country of the world has a criminology division for police. And police are manually trained for the knowledge of criminology. It is true that an honest, sincere and effective police force can ensure a happy and peaceful society. Although it is not possible for the police to reduce crime from society completely but it can be controlled and retained in a satisfactory stage. Otherwise, trick, corrupted, unlettered and disingenuous police force can give facilities to the criminals and make the life of the general citizens miserable.

The structure of Indian police within which they are working was established by the British rulers. After the establishment of India, we got a readymade police force and government kept same the previous structure of police. To reform the police structure, the government of India has taken different initiatives several times but no implementation has done for establishing a professional police force in the country. The whole machinery of the government is well aware of the corruption, illegal arrest, torture, manipulation and other malpractice of police. Despite that they are functioning with these deviated police force. The activities of police are negatively practiced against the opposition party citizens but when they come in the power, they defend the same police force and use them for narrow party purpose. So lastly it may be said that government, local authorities, voluntary organizations, individual citizens and the police all can play an important role to establish a civil society where there will be no crime and common people will not fall in cruel torture.

Suggestions:

The aim of the police Act, 1861 is to maintain the public and social order as well as also to maintain the status quo. The fundamental duty of the police force is to control crime and give services to the common people. To fulfill the principal objectives of the police and to make them more effective the following suggestions should be followed.

- (1) Government should establish a modern and professional police organization to effectively control crime.
- (2) A new police Act should be enacted and an independent authority or commission to adjudicate the complaint against the Police official for any discrepancy in duty and to ensure accountability of the Police should be formed. Or the separate body like public safety commission or a security commission may be formed, in which at least one member must be retired Judge of Supreme Court or High Court.
- (3) The conditions of detention and interrogation by the police during remand should be carefully scrutinized by the judges.
- (5) The time of police investigation should be time bound with accountability. And in case of delay, a fair compensation should be given to the victim of crime.
- (6) Proper training and motivational facilities should be provided to the police by continuing education.
- (7) The performance of the police should be evaluated in every year by the government.
- (8) The excessive political uses of the police force should be reduced by the government or ruling party.
- (9) Sufficient technological and logistic supports in the different police stations should be provided without any delay.
- (10) Police should be provided proper knowledge regarding crime and criminal behavior under criminology.
- (11) Effective guidelines should be provided to the police for preventive and service-oriented functions.
- (12) Vacant and shortage of lady officers and other staffs should be filled by recruitment drive.

At the end, we may say that the chosen topic has vast scope to further study and research, as the research in law is always ongoing process which is never-ending.

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