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Police Investigation in India: A Critical Appraisal

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In India, the police officers play a key role in the investigation of criminal cases and, they are required to adhere to stringent duties that are imposed upon them by the Cr.P.C. while conducting an investigation. However, given the lack of resources available, it is extremely difficult for the investigating officials to comply with the rigid laws and conduct a fair investigation. Since they are overburdened with tasks and with compliance requirements, they are not able to perform proper investigations. As a result, the investigating officials are either complacent while investigating a case or at times, may even adopt malpractices during investigation in order to obtain a conviction. Even though the adoption of malpractices may help increase the conviction rate and may also help police officials escape criticism, it clearly violates the fundamental rights enshrined in the Indian Constitution. Therefore, there is a dire need to introduce reforms that reduce the burden of overworked police personnel. Furthermore, the investigating officials should be supplied with necessary resources, manpower, training, and remuneration to encourage impartial investigation in a given case. This article outlines certain duties of the investigating officials and the difficulties that they face while performing the said duties. The latter part of the article discusses the need to bring in reforms vis-à-vis the process of investigation and also suggests a few reforms that could be introduced to assist the effective functioning of police officers.

Keywords: *investigation, spot visit, case diaries, post-investigation report, specialised investigation units, community policing.*

HYPOTHESIS

The strenuous provisions of the Criminal Procedure Code, 1973 (“Cr.P.C.”) related to the investigation and the lack of resources have a detrimental impact on the investigation conducted by a police officer in a given case. As a result of being overburdened with tasks, the police officers may adopt unjust practices to complete investigation, obtain a conviction and thereby, escape criticism. With amendments to increase the flexibility of the provisions related to the investigation in the Cr.P.C. and with the improved availability of requisite resources, the process of investigation would be conducted in a more fair and effective manner.

INTRODUCTION

Over the last few decades, the law in India has made tremendous progress in adapting to contemporary social norms and to changes in the political and technological environment. But, on the contrary, there still exist several legal provisions that are not in line with the requirements of and the resources available to the present-day society, and the duties of a police officer concerning the investigation of a given case fall within the ambit of such provisions.

A police officer in India has to perform many functions in accordance with the law including the maintenance of law and order, the prevention of crime, etc. and an integral part of his duties include investigation.¹ Investigation within the meaning of the Cr.P.C. refers to all magistrate authorised activities that are performed by either a police officer or by any other person to collect evidence relating to the commission of a crime.²

The investigation performed in a criminal case is a quest for the untarnished truth and should, therefore, not be subject to any sort of compromise. However, even though the “crime rate in India has increased by 28% over the last decade...Convictions secured per 100 cases have remained fairly low.”³ The Law Commission of India has observed that one of the reasons for

¹ Anviti Chaturvedi, 'Police Reforms in India' [2017] EconPapers
<https://econpapers.repec.org/paper/esswpaper/id_3a11856.htm> accessed 21 June 2021

² Code of Criminal Procedure 1973, s 2(h)

³ Chaturvedi (n 1)

a low conviction rate could be the poor quality of investigation.⁴ It was also noted that the reason why the police officers neglect the performance of just investigation is that they are overburdened with tasks.⁵ Given the resources available, the duties imposed by the Cr.P.C. on police officers vis-à-vis investigation, require the overworked and underpaid police staff to perform strenuous tasks which render efficient investigation almost unrealistic. As a result, the members of the police force resort to unfair and improper practices in order to comply with the prescribed standards of law as detailed under the Cr.P.C., the police manuals, and the precedents.⁶ Thus, it is important to look into potential reforms that if introduced, would help in conducting a proper investigation.

DUTIES IMPOSED

The police officers perform several integral duties as a part of the investigation process. But for the purposes of this article, I shall limit my analysis to three integral duties that they perform over the course of an investigation.

- I) **Spot visit:** When a station head officer suspects the commission of a crime, he/she is duty bound to proceed to the crime scene and conduct an investigation.⁷ Nevertheless, this duty becomes difficult to perform due to the following reasons:
 - a) **Lack of manpower in the police force:** As of January 2016, there were 5,49,025 vacancies in the police force across India and Uttar Pradesh had the highest vacancy rate (50%).⁸ Due to the actual strength of the police force being deficient in comparison to the sanctioned number, there is less personnel to conduct an investigation. Thus, the process of conducting a thorough investigation becomes extremely strenuous for the existing manpower.

⁴ 239th Law Commission of India Report, 'Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities' (2012)

⁵ *Ibid*

⁶ Report of the Committee of the National Police Commission on Police Structure and Performance

⁷ Code of Criminal Procedure 1973, s 157

⁸ 'Data On Police Organizations: Bureau Of Police Research And Development, Government Of India' (*Bprd.nic.in*, 2016) <https://bprd.nic.in/content/62_1_DataonPoliceOrganizations.aspx> accessed 22 June 2021

- b) **Inefficient use of existent manpower:** Almost 86% of the available force constitute the constabulary⁹ that lacks proper education and training. Furthermore, even though the constables constitute a major proportion of the police force and play a critical role in making contact with the general public, they lack the authority to perform an investigation without the direction of their superior officers and as a result, they display little initiative.¹⁰ It is also important to note that their morale and motivation are majorly discredited because “in India, superiors employ constables as orderlies to do domestic work.”¹¹
- c) **Insufficient wages:** Apart from the lack of authority and training, the wages paid to an officer that belongs to the constabulary are inadequate to even support his/her own family.¹² The lack of sufficient wages may act as a demotivating factor and may also hamper the quality of work that the officers perform.
- d) **Availability of resources:** The promptness with which the investigating officer reaches the crime spot plays a critical role in influencing the quality of investigation. However, the promptness of the investigating officer in reaching the crime spot is dependent on factors like the availability of vehicles, the condition of the roads, the distance between the crime scene and the police station, etc. These factors may hinder the performance of proper investigation, especially in rural areas where the condition of roads is usually poor. Even if the roads are accessible and are vehicle friendly, the shortage in the supply of vehicles and vehicle drivers can “affect the response time of the police and consequently affect their effectiveness.”¹³ As of January 2015, there was a deficiency of 30.5% in the required stock of vehicles.¹⁴ The lack of vehicles and developed roads makes it strenuous to comply with the prescribed standards of investigation.

⁹ Chaturvedi (n 1)

¹⁰ David H Bayley, 'The Police in India' (1971) 6 Economic & Political Weekly

¹¹ Chaturvedi (n 1)

¹² *Ibid*

¹³ *Ibid*

¹⁴ Data on Police Organisations (n 8)

The above-detailed factors cause the police to be inconsistent with their promptness in attending to the crime and arriving at the spot. This delay in the arrival of police officials at the crime spot can affect the evidence available as it is very difficult to keep the scene of crime undisturbed for any length of time, especially from the interference of curious friends and relatives.¹⁵

Therefore, the lack of manpower in the police force, the ineffective use of the available manpower, the insufficient wages paid to the officers, and the lack of resources such as vehicles and access roads have a detrimental impact in carrying out the burdensome duties imposed by the Cr.P.C. concerning spot visit.

II) **Post-investigation report:** Under Section 173, Cr.P.C.¹⁶, the station head officer shall prepare a report to submit to the magistrate, and such report shall consist of all the information obtained from the investigation, copies of evidence, and other documents. However, if the magistrate empowered to take cognizance of the particular case is unsatisfied with the report submitted by the police, then he/she may either ask the police to conduct the further investigation under Section 156(3), Cr.P.C.¹⁷ or the magistrate may take cognizance of the case under Section 190(1)(b), Cr.P.C.¹⁸ and conduct an inquiry.¹⁹ It can be construed from the above-mentioned provisions that if the judiciary suspects the standard of the report submitted by the investigating officer, then it is vested with the authority under the Cr.P.C. to ignore or to reject the contents of the police report. It is important to understand that an investigating officer is required to adhere to the onerous investigation-related duties imposed upon him/her by the Cr.P.C. before preparing the police report for a given case. However, the fact that there exists a situation wherein all the effort that they invested in investigating a case and filing a police report could go to vain “not only demeans their self-image but also

¹⁵ Bayley (n 10)

¹⁶ Code of Criminal Procedure 1973, s 173

¹⁷ Code of Criminal Procedure 1973, s 156(3)

¹⁸ Code of Criminal Procedure 1973, s 190(1)(b)

¹⁹ *Bhagwant Singh v Commissioner of Police and Anr* (1985) 2 SCC 537

complicates and slows down their work.”²⁰ Thus, the police officials investigating the case may feel dispirited and may not put in their best possible effort to perform the investigation in accordance with the prescribed standards.

III) Maintenance of case diaries: A police officer who is investigating a given case is required to maintain a case diary consisting of all the relevant facts including time, place, etc., which are to be detailed in chronological order.²¹ Additionally, the Apex Court held that the case diary must be written at the place of the investigation itself and not at the end of the day.²² However, expecting the officer to write the case diary at the place of investigation is not completely reasonable. An investigating officer is subject to an extremely strenuous work environment on the field wherein he/she has to interact with strangers at different places and at different times of the day to collect relevant information regarding the case at hand. Given the vexatious working conditions, it would be extremely difficult for the investigating officer to maintain a chronological and uncluttered record of the facts of the investigation, mainly because the information that he/she receives is usually not corresponding and comprehensive in nature. However, the officers have to detail all the information that they collected via an investigation in a chronological and comprehensible fashion to assist superior officers and the court in understanding the contents of the diary. If the contents of the diary are not understandable due to its haphazard maintenance, it may defeat the very purpose of maintaining the case diary, and may also reduce the credibility of those who maintain the diary.²³

Therefore, a person conducting an investigation usually records the hour-to-hour proceedings of the investigation in his/her personal notebooks and then completes the case diary at the end

²⁰ Bayley (n 10)

²¹ Code of Criminal Procedure 1973, s 171(1)

²² *Om Prakash v State* (1980) Cr LJ NOC 67 (Del)

²³ *Bhagwant Singh v Commissioner of Police and Anr* (1983) 3 SCC 344

of the day's investigation,²⁴ which is contrary to the judgment of the Supreme Court in *Om Prakash v. State*.²⁵ Since the Cr.P.C. mandates the police officer conducting an investigation to write the facts gathered in a case diary and since the contents of the diary are required to be maintained in an uncluttered manner, it is almost impossible for the officers to adhere to the law laid down by the Apex Court in *Om Prakash*.

From the above discussion, it would be fair to say that the lack of resources and the duties related to investigation imposed by the Cr.P.C. upon police officials render just and unbiased investigation almost unrealistic.

THE NEED FOR REFORMS

In this section, I shall discuss the need to introduce reforms concerning the investigation. According to Article 21, Indian Constitution of India, 1950²⁶, an individual is guaranteed the fundamental right to life and liberty. The Supreme Court observed that the right to a free and fair trial is included in Article 21 and that if the criminal trial is biased, it would put the criminal justice system at stake and would also affect the confidence of people in judicial fairness.²⁷ Furthermore, "the right to a fair trial includes a fair investigation."²⁸ Thus, it implies that fair investigation in a given case is a fundamental right guaranteed under Article 21. Furthermore, fair investigation is a necessary element to yield justice not just to the accused, but also to the victim and the society.

However, the current framework regarding investigation fails to yield natural justice. As already mentioned, the Cr.P.C. imposes burdensome duties on an already overworked, undertrained, and understaffed police force. The rules and regulations laid down by the Cr.P.C., not only make the process of investigation more taxing but also make it difficult for the police to obtain convictions. Since the police are usually "judged to some extent by their

²⁴ R Deb, 'Police Investigation: A Review' (1997) 39 The Indian Law Institute
<http://14.139.60.114:8080/jspui/bitstream/123456789/17736/1/009_Police%20Investigation_A%20Review%20%28260-271%29.pdf> accessed 25 June 2021

²⁵ *Om Prakash* (n 22)

²⁶ Constitution of India, art 21

²⁷ *K Anbazhagan v The Superintendent of Police & Ors* (2004) 3 SCC 788

²⁸ *Kalyani Baskar v M.S.Sampoornam* (2007) 2 SCC

record of convictions obtained”²⁹, if they fail to complete an investigation and secure an accusation, they may be subject to criticism. Therefore, in order to escape criticism, the police officials are often tempted to “cook evidence” and adopt unfair means to complete an investigation and to obtain a conviction, especially if the accused is a known offender.³⁰ Several officers assume that “if the culprit is really known, there is no harm in creating some evidence or supplying the missing links in the chain of evidence to secure his conviction for the sake of protection of society from his depredations.”³¹ This argument put forth by the unscrupulous officers is logically fallacious because if a police officer could reason his unethical act of fabricating evidence by stating that he/she was only trying to secure the society from the wrongdoings of the known offender, then any criminal should be allowed justify the felons he committed based on concepts like welfare, ethics, and morals.³² In the words of M.K. Gandhi, “the end and means must both be clean.”³³ On the other hand, if it weren’t for the onerous and rigid duties imposed upon the police officials coupled with the lack of resources available, the process of investigation would be more unprejudiced. Thus, it would be fair to construe that the strenuous rules imposed by the Cr.P.C. on police officials play a significant role in tempting police officials to adopt unfair practices while conducting investigations.

It is also important to elaborate on another obstacle that an investigating officer has to face while performing the investigation. The hurdle concerns the “growing liaison between the police and the politician which is a great hindrance in the way of effective and impartial functioning of the police.”³⁴ The current structure gives politicians the authority to fiddle with the promotions and the transfers of police officials and several political parties use their authority maliciously to coerce the officers into serving their interests.³⁵ Since the incentive

²⁹ Bayley (n 10)

³⁰ Deb (n 24)

³¹ *Ibid*

³² *Ibid*

³³ R Deb, 'The Principles Of Criminology, Criminal Law And Investigation' (1991) 1 The Indian Law Institute <http://14.139.60.114:8080/jspui/bitstream/123456789/17724/1/042_Principles%20of%20Criminology%2C%20Criminal%20Law%20and%20Investigation%20%20%28477-480%29.pdf> accessed 27 June 2021

³⁴ Deb (n 24)

³⁵ *Prakash Singh v Union of India* (2006) 8 SCC 1

that the police officers receive to satisfy the interests of political parties is greater than the incentive that they receive to perform fair investigation, they usually involve themselves in satisfying the interests of the executive authority instead of performing an objective investigation that is based on their own discretion and conscience.

Therefore, there is a dire need to make amendments to the provisions of the Cr.P.C. related to the investigation and to introduce other reforms so as to help reduce the burden of police officers, to ensure that the officials refrain from adopting unjust practices and, to promote fair practices of investigation.

SUGGESTED REFORMS

1. **Fill in vacancies** - Even though the “United Nations recommends around 222 police per lakh persons; India has sanctioned a strength of only 181 police per lakh of persons.... and after adjusting for the vacancies, the actual police strength is at 137 police per lakh persons.”³⁶ Since the average deficiency in the police force is almost 100 police per lakh of persons, the available police officials face immense trouble in trying to complete the large number of tasks that are assigned to them. While, they are overburdened with tasks and with longer working hours, even the wages paid to them are insufficient which negatively impacts their efficiency and their effectiveness. Hence, the primary reform should involve hiring more police officers across India which would help ensure division of work. Hiring more police personnel should solve the problem of complaints concerning the lack of pay and the excess working hours because the inflow of police officers would reduce the burden on the existing manpower. As a result, the existing police personnel may no longer feel that their remuneration is deficient in comparison to their workload.
2. **Specialized investigation units** - As established previously, the police force, especially at the constabulary level, lacks training, knowledge, and the required skills to conduct a proper investigation. Additionally, “the forensic and cyberinfrastructure available to

³⁶ Data on Police Organisations (n 8)

them is both inadequate and outdated”³⁷ which hamper the fair investigation. Such a scenario, emphasizes the need to set up specialized investigation units for the investigation of criminal cases.³⁸ These units should be provided with the necessary resources in terms of manpower and terms of other material resources, should not be subject to the interference of the political authorities and their duties should be limited to the investigation of criminal cases. Though the introduction of specialized investigation units may increase the costs incurred, such reform is necessary as it will help make use of specialization, will improve objectivity, and will also lead to a reduction in the number of unjustified prosecutions.³⁹

Additionally, since the officials that are a part of the specialised investigating units are not duty-bound to maintain law and order in the society, they will be not be placed in circumstances that involve the use of force, lathi charge, firing, etc. against the general public.⁴⁰ This particular reform will help reduce the public’s hatred towards the police force for being oppressive in the past, and will also help gain their confidence. With increased confidence in the system, the public will co-operate with the investigating officials which will, in turn, lead to the effective detection of crimes.

3. Community policing- The police were always viewed as corrupt and oppressive forces in the eyes of the general public.⁴¹ Such an opinion of the public regarding the functioning of the police force is unsatisfactory because the public’s confidence is integral to the successful detection of crimes. The members of the public contribute to the investigation and to the successful detection of crimes by providing details regarding the crime, acting as witnesses, etc. Hence, in order to gain the public’s confidence in the functioning of the police force, more emphasis should be placed on community policing. Community policing refers to a strategy wherein the police authorities work closely with the members of the society “to prevent and detect crimes,

³⁷ Chaturvedi (n 1)

³⁸ *Prakash* (n 35)

³⁹ *Deb* (n 24)

⁴⁰ *Ibid*

⁴¹ *Bayley* (n 10)

maintenance of public order, and resolving local conflicts, with the objective of providing a better quality of life and sense of security.”⁴² Community policing would help improve the rapport between the police officials and the general public. Also, given the lack of manpower in the police force, working along with the members of the society would reduce the workload of police officers, would help solve crimes at a faster rate, and would create better living conditions in society.

A few states in India have already adopted the community policing strategy to improve the relationship between police officers and the people who belong to the local communities. For instance, Kerala has come up with the Janamaithri Suraksha, which is a community policing strategy wherein “beat constables are required to know at least one family member of every family living in his beat area and allocate some time to meet with people outside the police station every week.”⁴³ This reform would encourage interaction between the civilians and the police authorities and would improve the public’s opinion concerning the working of the police force.

CONCLUSION

As discussed in this article, the investigating officials have various integral duties to perform as a part of the process of investigation. It is crucial to understand that the process of investigation is significant in delivering justice to the accused, the victim, and society as a whole. The investigating officials must acknowledge that apart from its legal formulation, the investigation has moral and philosophical content that is of greater value.⁴⁴ Therefore, even if posed with several obstacles while performing investigation, the police personnel should refrain from acting in violation of the fundamental rights enshrined in the Indian Constitution. On the other hand, it is unreasonable for the government to ask police officials to continue to work under such strenuous circumstances. Hence, apart from making amendments to the provisions of the Cr.P.C. to reduce the burden imposed on police officers, the government should also provide the investigating officers with the necessary resources to conduct a proper

⁴² Chaturvedi (n 1)

⁴³ *Ibid*

⁴⁴ Deb (n 24)

investigation. As suggested in the previous section, the government could undertake various reforms to assist better investigation such as making workforce changes, providing adequate facilities, increasing pay, community policing, etc. It is a well-known fact that a country's civilisation is not only reflected in the treatment administered to a person in custody but is also reflected in the fairness that the country adopts while investigating a crime.⁴⁵ Thus, the recommended reforms should be adopted to reduce the difficulties faced by overworked police personnel and to ensure the adoption of fair and just practices of investigation.

⁴⁵ *Ibid*