

## “Challenges in Police Investigations in India”

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### **ABSTRACT**

Existing police system suffers from myriad deficiencies. From problems relating to police organisation, infrastructure and environment to obsolete weaponry and intelligence gathering techniques to shortage of manpower to corruption, police force in the country is not in a good shape. The superintendence and control of the police is a debatable issue. As per the police laws, both the Central and State police forces come under the superintendence and control of political executives. This has resulted in the lack of democratic functioning and appropriate direction. Police priorities are frequently altered based on the will of political executives. It seems that the police force has become a puppet in the hands of its political masters. There is no mechanism for registering a complaint against erring police officials. Both the Second Administrative Reform Commission and the Supreme Court have accepted the need for having an independent complaint authority to inquire into the cases of police misconduct. The author will suggest some measures to improve investigation process & administration.

### **INTRODUCTION**

A fundamental tenet of effective policing involves having specialist detectives. India does not — at the Indian Police Service, civil service, national or state levels — have any detectives. Officers of the IPS are managers, while state-level officers are the only ones empowered to investigate, which is why they are given the title of ‘investigating officer’. They are charged with investigating everything all at the same time, with each officer having a national average of several hundred cases at any given time. The management structure of state and city policing units is also strange. Branches have peculiar remits, such as political activities, overpriced rice and diluted mustard oil. The fairly new Protection of Children from Sexual Offences Act, 2012 was enacted, but there are not enough investigators who are trained to deal with such crimes.<sup>1</sup> Thus, at the cost of science-based detection, the burden has fallen, yet again, on the investigating officer and his network of paid spies. At the state level, a very simple structure is required to rein in crime: a uniform side for operational street policing — with detectives being called in to take over probes pertaining to their department and talent base — and forensics. A low-ranking sergeant with decades of experience is as valuable as his detective counterpart. A detective with the pertinent skill set will know everything, from what physical and forensic evidence to secure at the fresh crime scene to the integrity of witness and victim statements, so that, at the trial, the defence does not shred them. With any

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<sup>1</sup><https://www.telegraphindia.com/Opinion/Are-Our-Police-Equipped-For-The-Challenges-Of-Investigating-Crime-In-The-21st-Century/Cid/1681765>

finely-tuned investigation, the ‘who, what, when, where, why and how’ question will set a bloodhound on the right path. Further, depending on the crime and its degree, the evidentiary standard required to secure a conviction that matches both the crime and its severity is dependent on a specialist.<sup>2</sup>

The panacea to these problems is the police reform process that has been debated for decades with no results. From time to time, several commissions have looked into the reform processes. Till now, six committees, including the National Police Commission, have been set up by the government. These committees made recommendations in favour of major police reforms. These include the Gore Committee on Police Training (1971-73), the Ribeiro Committee on Police Reforms (1998), the Padmanabhaiah Committee on Police Reforms (2000), the Group of Ministers on National Security (2000-01), and the Malimath Committee on Reforms of Criminal Justice System (2001-03).<sup>3</sup> It reflects the lack of political will and adamancy on the part of bureaucracy to implement the order. Neither the politicians nor the bureaucrats want to lose their control over the police. This problem of lack of clarity in control also lies in The Police Act of 1861, which is silent on ‘superintendence’ and ‘general control and directions.’ This enables the executives to reduce the police to mere tools in the hands of political leaders to fulfil their vested interests.<sup>4</sup>

The fundamental basis for Criminal Justice System is the law of the land. The very process of law in a democratic society ensures a measure of public sanction for law through the consent expressed by their elected representatives. The entire criminal justice system in our country therefore revolves round the Criminal Law enacted by the Union Parliament and the State Legislatures. After laws are made by the legislative institutions their enforcement is taken up by various agencies set up for the purpose by the Government. Police comes at this stage as the primary law enforcement agency available to the State. Enforcement by Police is primarily an exercise of taking due notice of the infraction of laws as soon as it occurs and ascertaining the connected facts thereof including the identity of the offender. This particular task in the system of Criminal Justice is known as ‘Investigation’.<sup>5</sup>

### **MEANING AND DEFINITION OF ‘INVESTIGATION’**

The term ‘Investigation’ stands for a search that is made to find out the truth of the matter. In other words it means taking cognizance of something by physical or mental vision.

According to Richard Ward, the author of ‘Introduction to Criminal Investigation, the primary function of the Criminal investigator is to gather information, determine the validity of this information, identify and locate the perpetrator of the crime, and provide evidence of his guilt for a Court of law. Inherent in this function is a responsibility to protect the innocent.

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<sup>2</sup><https://www.telegraphindia.com/Opinion/Are-Our-Police-Equipped-For-The-Challenges-Of-Investigating-Crime-In-The-21st-Century/Cid/1681765>

<sup>3</sup> <https://www.orfonline.org/Expert-Speak/Why-India-Needs-Urgent-Police-Reforms-46003/>

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

The means by which the investigator carries out his functions may be classified in two ways: internal and external. Internal refers to the process of logic, expertise, intuition, experience, and knowledge that he brings to the investigations; External refers to the tools, scientific aids, additional personnel, and other resources that he brings to bear on the investigation.<sup>6</sup>

According to Paul B Weston, the author of ‘Criminal Investigation: Basic Perspectives’<sup>7</sup> Criminal Investigation is a lawful search for people and things useful in reconstructing the circumstances of an illegal Act or omission and the mental State accompanying it. It is a probing from the known to the unknown, backward in time, and its goal is to determine truth as far as it can be discovered in any post-factum inquiry.

According to Charles M. Bozza, “Criminal Investigation is a probing from known to the unknown and a step by step reconstructive process of what has occurred. Its theory is based solely upon logical sequences and it can be utilized for any Police function.... A Criminal investigator usually is a person who collects facts to accomplish a goal. The goal may be to locate the guilty, to gather evidence for prosecution, to identify witnesses, or to see if a crime has in fact been committed. The important methods of Criminal investigation are the techniques used by the investigator to establish facts related to investigation; perception, observation or scientific theories and facts”.<sup>8</sup> “Investigation” includes all the proceedings under the Code for the collection of evidence conducted by a Police officer or by a person (other than a Magistrate) who is authorized by Magistrate in this behalf.”<sup>9</sup>

In Directorate of Enforcement vs. Deepak Mahajan<sup>10</sup>, the Supreme Court said: “The expression ‘investigation’ has been defined in Section 2(h). It is an inclusive definition. It being an inclusive definition the ordinary connotation of the expression ‘Investigation’ cannot be overlooked. An ‘Investigation’ means search for material and facts in order to find out whether or not an offence has been committed. It does not matter whether it is made by the Police officer or a customs officer who intends to lodge a complaint”.

In N H Dave, Inspector of Customs vs. Mohammed Akhtar<sup>11</sup> the Gujarat High Court while examining a case of investigation under Section 104 of the Customs Act said, “The expression ‘investigation’ has been defined in Section 2(h). It is an inclusive definition. No doubt, it will not strictly fall under the definition of ‘investigation’ in so far as the inclusive part is concerned. But then it being an inclusive definition the ordinary connotation of the expression ‘investigation’ cannot be overlooked’.

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<sup>6</sup> Richard Ward, Book - Introduction to Criminal Investigation

<sup>7</sup> Richard H Wood: “Introduction To Criminal Investigation: Addison Wesley Publication Company (1975), P. 15.

<sup>8</sup> Paul B. Weston: “Criminal Investigation, Basic Principles” Prentice Hall, 4th Edition (1974), P.1

<sup>9</sup> Section 4(H) Of The Code Of Criminal Procedure 1973

<sup>10</sup> (1994) CrIj 2269

<sup>11</sup> (1984) 15 E L T, 353, Gujarat

**INVESTIGATING AGENCIES UNDER THE GENERAL LAW**

Following are some of the enactments of the Central Legislature under which the Police Force has been constituted for the purpose of performing, among other things, the function of investigation.

**1. Police Force Constituted under “The Police Act, 1861”:**

In order to organize the Police and to make it a more efficient instrument for the prevention and detection of crime the Central Legislature passed in the year 1861 the Police Act. In this Act the word ‘Police’ includes all persons who shall be enrolled under the Act. The entire Police administration under a State Government, for the purposes of the Police Act, is deemed to be one Police force and consists of such number of officers and men, and shall be constituted in such manner as may from time to time be ordered by the State Government. It is the duty of every Police Officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the Public Peace, to prevent the commission of offences and public nuisances, to detect and bring the offenders to justice, and to apprehend all persons whom he is legally authorized to apprehend and for whose apprehension such ground exists, and it is lawful for every Police Officer to enter and inspect drinking shops, gaming house of other places of resort of loose and disorderly characters.<sup>12</sup>

**2. Delhi Special Police Establishment :**

In the year 1946 the Central Legislature passed an Act to make provision for the constitution of a special force for the investigation of certain offences in the Union Territories. The Act provided for the superintendence and administration of the said force and for the extension to other areas the powers and jurisdiction of the members of the said force in regard to investigation of the said offence. The Delhi Special Police Establishment is a Central Police Force constituted to investigate offences of bribery and corruption committed by officers or others in the Departments of Central Government. The Central Government may by notification in the official gazette specify the offences or classes of offences, which are to be investigated by the Delhi Special Police Establishment. The superintendence of the Delhi Special Police Establishment is vested in the Central Government, and the administration of the said force is vested in an officer appointed by the Central Government who may exercise such powers as are exercisable by the Inspector General of Police in respect of the forces in a State. The Central Government may by order extend to any area (including railway areas) in a State the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences which are within the purview of the Delhi Special Police Establishment.<sup>13</sup>

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<sup>12</sup> Section 23 Of The Police Act

<sup>13</sup> Delhi Special Police Establishment Act.

### **3. Central Bureau of Investigation:**

The Central Bureau of Investigation is the prime agency for investigating cases relating to corruption by Central Government employees. It was constituted through a resolution of the Government of India passed on April 1, 1963 as regulated by the Delhi Special Police Establishment Act 1946. The objects and functions of the Central Bureau of Investigation have been mentioned in the resolution, which reads as follows: “The Government of India have had under consideration the establishment of a Central Bureau of Investigation for the investigation of crimes at present handled by the Delhi Special Police Establishment including specially important cases under the Defence of India Act and Rules particularly of boarding, black marketing and profiteering in essential commodities which may have repercussions and ramifications in several states; the collection of intelligence relating to certain types of Crimes; participation in the work of the National Central Bureau connected with the International Criminal Police Organization; the maintenance of crime statistics and dissemination of information relating to crime and Criminals; the study of specialized crimes of particular interest to the Government of India or crimes having all-India or inter-State ramifications or of particular importance from the social and the coordination of laws relating to crime. As a first step in that direction the Government of India have decided to set up with effect from 1<sup>st</sup> April, 1969 a Central Bureau of Investigation at Delhi with the following six Divisions namely; Investigation and Anti-Corruption Division (Delhi Special Police Establishment, Technical Division; Crime Records and Statistics Division; Research Division; Legal and General Division; Administration Division. The Charter of functions of the above said Divisions will be as given in the annexure. The assistance of the Central Bureau of Investigation will also be available to the State Police Forces on request for investigating and assisting in the investigation of inter-State crime and other difficult Criminal cases”.<sup>14</sup>

### **4. Central Reserve Police Force**

The Central Reserve Police Force Act 1949 is an Act dealing with the subject of Police. The aim, object and purpose of the said Act were to create a body of men for performing the functions, which are enforceable by members of the Police. The only difference is that all members of the Central Reserve Police Force are armed, and the various Sections of the Act authorize and impose strict military discipline for the members of the Central Reserve Police Force. The object of their creation is the performance of functions, which are performable by the Police in a more efficient manner.

## **INVESTIGATION BY PERSONS OTHER THAN POLICE OFFICERS**

Section 202(1) of the Code falling under Chapter XV of the Code of Criminal Procedure with the caption “Complaints to Magistrates” envisages that any Magistrate on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made

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<sup>14</sup> Ibid.

over to him under Section 192 of the Code can direct an investigation to be made by a Police officer or “by such other person as he thinks fit”.<sup>15</sup>

### **INVESTIGATION BY MAGISTRATES**

Investigation in Criminal matters is in most of the procedural systems a function of the Police. But even where the law confers the Power on the Police to investigate it confers a similar Power sometimes on Magistrates and persons other than the Police.

Under Section 159 of the Code of Criminal Procedure a Magistrate, on receiving report from an officer in charge of Police Station that a certain case is not of a serious nature and that there is no sufficient ground for making an investigation on the spot, may direct an investigation or if he thinks fit at once proceed or depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry into the case or dispose of the case in the manner provided in the Code.<sup>16</sup>

Under Section 176 of the Code of Criminal Procedure 1973 the Magistrate has the Power to hold an inquiry into the cause of death either instead of or on addition to the investigation held by a Police officer.<sup>17</sup>

Under Section 202 of the Code of Criminal Procedure, any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a Police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding.<sup>18</sup>

### **INVESTIGATION AGENCIES UNDER THE SPECIAL LAWS:**

When the Indian Penal Code was enacted it was made clear that the Code shall not affect the special jurisdiction or the Special Law or the Local Law. Section 5 of the Code said: “Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any Special or Local Law”.<sup>19</sup>

The Code of Criminal Procedure, 1973, which continues the rule that was there in the earlier Codes, says: “(1) All offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

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<sup>15</sup> Code of Criminal Procedure. 1973

<sup>16</sup> S.159, Code of Criminal Procedure. 1973

<sup>17</sup> S.176, Code of Criminal Procedure. 1973

<sup>18</sup> S.202, Code of Criminal Procedure. 1973

<sup>19</sup> S.5, Indian Penal Code, 1860

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.”<sup>20</sup>

The provisions of both the substantive law of crimes as well as the procedural law of crimes admit of a special rule for inquiry, investigation and trial of offences punishable under the Special laws. The Special laws mostly deal with socio-economic offences. These offences are different in nature from the conventional type of offences. The procedural rules are also different from what they are about the traditional offences. The Special Laws enacted so far provide for new types of offences, new methods of inquiry and investigation and new Procedure for their trial.

## **INVESTIGATING AGENCIES UNDER SPECIAL LAWS**

### **I. Investigating Agency under the Prevention of Food Adulteration Act, 1954 :**

The Prevention of Food Adulteration Act 1954 empowers the Central Government to appoint Food Inspectors, and the powers given to them are to take samples of Articles of food from persons selling such Articles, and sent such samples to the Public Analyst. Under Section 8 of the Act the Central Government or the State Government may by notification in the official gazette appoint such person as it thinks fit having the prescribed qualifications to be Public Analysts for such local area as may be assigned to them by the Central Government or the State Government as the case may be. The Act empowers the Central Government to constitute a committee called the Central Committee for Food Standards to advise the Central Government and the State Government on matters arising out of the administration of Act and to carry out the functions assigned to them under the Act.<sup>21</sup> Under Section 4 of the Act the Central Government may by notification in the official gazette establish one or more Central Food Laboratory or Laboratories to carry out the functions entrusted to the Central Food Laboratory by this Act. The Central Government may after consultation with the Committee make rules prescribing:

- (a) the functions of the Central Food Laboratory and the local area or areas within which such functions may be carried out.
- (b) the Procedure for the submission to the said laboratory of samples of Articles of food for analysis or tests, the forms of laboratory reports thereon and the fees payable in respect of such reports; and
- (c) such other matters as may be necessary of expedient to enable the said laboratory to carry out these functions.<sup>22</sup>

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<sup>20</sup> Code of Criminal Procedure. 1973

<sup>21</sup> Prevention of Food Adulteration Act, 1954

<sup>22</sup> Prevention of Food Adulteration Act, 1954

## **II. Investigating Agencies under the Foreign Exchange Regulation Act, 1973 :**

In the year 1973 the Union Parliament passed the Foreign Exchange Regulation Act with the object of consolidating and amending the law regulating certain payments, dealing in foreign exchange and security transactions indirectly affecting foreign exchange and import and export of currency and bullion, for the conservation of foreign exchange resources of the country and their proper utilization in the interest of the economic development of the country.<sup>23</sup> According to Section 3 of the Act there shall be the following classes of officers of enforcement, namely;

- (a) Directors of Enforcement;
- (b) Additional Directors of Enforcement;
- (c) Deputy Director of Enforcement;
- (d) Assistant Director of Enforcement, and
- (e) Such other classes of officers of enforcement as may be appointed for the purposes of the Act.

Under Section 4 of the Act the Central Government may appoint such persons as it thinks fit to be officers of enforcement; it may authorize the Director of Enforcement or the Additional Director of Enforcement or a Deputy Director of Enforcement or the Assistant Director of Enforcement, to appoint officers of enforcement below the rank of Assistant Director of Enforcement.<sup>24</sup>

An officer of enforcement may, subject to such limitations and conditions as the Central Government may impose, exercise the powers and discharge the duties conferred or imposed on him under the Act. These various classes of enforcement officers are empowered to search suspected persons, arrest them and stop and search conveyances if they have reasonable belief that a person is Acting in contravention of the law laid down in the Foreign Exchange Regulation Act.<sup>25</sup>

## **III. Investigating Agencies under the Narcotic Drugs and Psychotropic Substances Act, 1985:**

Under Section 4 of the Narcotic Drugs and Psychotropic Substances Act 1985 the Central Government may take all such measures as it deems necessary or expedient for the purpose of preventing and combating the abuse of narcotic drugs and psychotropic substances. It may constitute an authority or a hierarchy of authorities by such name or names as it deems necessary for the purpose of exercising such powers of the Central Government under this Act and for taking measures with respect to matters, and subject to the Control of the Central

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<sup>23</sup> Foreign Exchange Regulation Act, 1973

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

Government, as are necessary in the interest of the Act.<sup>26</sup> Under Section 5 the Central Government may appoint a Narcotics Commissioner and may also appoint such other officers with such designations as it thinks fit for the purpose of the Act. The Narcotics Commissioner may exercise all powers and perform all functions relating to the superintendence of the cultivation and production of Opium and perform such other functions as are entrusted to him by the Government. Besides the Central Government, the State Government also may appoint such officers with such designations, as it thinks fit for the purposes of the Act.<sup>27</sup> Under Section 53 of the Narcotics Drugs & Psychotropic Substances Act 1985 the officers of the Central and State Governments may be invested with the powers of an officer in charge of Police Station to investigate into offences punishable under the Act. Similarly, the State Governments may also invest any officer of the Departments of Drugs Control, Revenue, or Excise or any class of such officers with powers of an officer in charge of Police station of the investigation of offences under the Act.<sup>28</sup>

#### **IV. Investigation into offences Punishable under Prevention of Corruption Act, 1957:**

Section 5-A of the Prevention of Corruption Act 1947 deals with investigation into cases under the Act. It says: “Notwithstanding anything contained in the Code of Criminal Procedure 1898, no Police officer below the rank:

- (a) in the case of the Delhi Special Police Establishment of an Inspector of Police;
- (b) in the presidency-towns of Calcutta and Madras, of an Assistant Commissioner of Police;
- (c) in the Presidency-town of Bombay, of a Superintendent of Police; and
- (e) elsewhere, of a Deputy Superintendent of Police; shall investigate any offence punishable under Section 161, Section 165 or Section 165-A of the Indian Penal Code or under Section 5 of this Act, without the order of a Presidency Magistrate of the First Class, as the case may be, or make any arrest therefore without a warrant; Provided that if a Police officer not below the rank of an Inspector of Police is authorized by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Presidency Magistrate of the First Class, as the case may be, or make any arrest therefor without a warrant; Provided further an offence referred in clause (e) of sub-Section (1) of Section shall not be investigated without the order of a Police officer not below the rank of a Superintendent of Police”.<sup>29</sup>

#### **THE ROLE OF THE POLICE IN INVESTIGATION**

The police perform myriad duties throughout the course of a criminal case. The responsibility of the police and the specific approach to a case varies from time to time, depending upon the person handling the case. Once the charge sheet is filed, the investigative efforts made to

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<sup>26</sup> Narcotic Drugs and Psychotropic Substances Act, 1985

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Prevention of Corruption Act, 1957

collect, preserve, and adduce evidence in court are abandoned, and these efforts become systematically diluted, thus affecting the output of the case handlers. From the service of summons and warrants, to bringing witnesses to the courts to depose about the true facts, and refreshing the witnesses' memory, any of these processes, when altered, can affect the delivery of justice.<sup>30</sup>

### **CHALLENGES FACED BY THE POLICE IN INVESTIGATION<sup>31</sup>**

- i. The general credibility of the police and the investigation agencies in the country is every time questioned. However, branding all police officials as untrustworthy is in my view preposterous.
- ii. One of the challenges that the police face most commonly while working on an investigation is the inability to repeatedly interrogate an accused to verify the veracity of the statements made by the accused. It is only by a thorough and sustained interrogation of the accused that the police can find out relevant details about the crime. However, police custody and interrogation is limited to only 14 days. Custodial interrogation facilitates the police in confronting the witnesses and the accused, and obtains leads for corroboration from them. Police custody and interrogation therefore must be allowed as a matter of right to the police. The 14-day period of police custody need not be a continuous period. In fact, police officers would prefer it to be intermittent, as confronting the accused with evidence collected is very important towards the end of an investigation.<sup>32</sup>
- iii. The police often cite lack of proper investigative tools, hostility of witnesses, and general apathy and lack of trust in the police force as the reasons for their failure to secure a conviction against a criminal. The greatest challenge in crime investigation is to capture all the evidence connecting the crime with the criminals responsible and to ensure preservation of the same in a tamper-proof condition, and in a legally permissible manner.<sup>33</sup>

### **THE ROLE OF THE JUDICIARY BY GUIDING INVESTIGATION**

Discrepancies in the investigation such as delay in lodging of FIR, confusion about the time of starting the investigation and recording of 161 statements lead to the acquittal of the accused.<sup>34</sup> Right to speedy investigation is recognized as fundamental right under article 21 of constitution of India, 1950.<sup>35</sup>

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<sup>30</sup> [https://Dakshindia.Org/Daksh\\_Justice\\_In\\_India/30\\_Chapter\\_03.Xhtml](https://Dakshindia.Org/Daksh_Justice_In_India/30_Chapter_03.Xhtml)

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Om Prakash V. State Of Uttar Pradesh, 2009 Cri.L.J. 782

<sup>35</sup> Vakil Prasad Singh V. State Of Bihar, 2009 Cri.L.J. 1731

The Malimath Committee on 2003 has made recommendations to strengthen the adversarial system by adopting, with suitable modifications, some of the good and useful features of the inquisitorial system. The recommendations include making it a duty of the court to assign a proactive role to judges, to give directions to investigating officers and prosecution agencies in the matter of investigation, and leading evidence with the object of seeking the truth and focusing on justice to victims.<sup>36</sup>

Currently, Section 311 of the Cr.P.C gives the court the power to summon any material witness, or examine any person present. Similarly under Section 165 of the Indian Evidence Act, 1882, the judge has the power to put any questions or order production of a document or thing in order to discover or to obtain proper proof of relevant facts. However, these provisions do not cast a positive duty on the court to use the power to summon witnesses ‘in order to seek the truth’ but only for ‘proof of relevant facts’ or for ‘just decision’ in the case. In light of these provisions, the recommendations of the Malimath Committee have to be appreciated.<sup>37</sup>

In *Prakash Singh vs Union of India*<sup>38</sup> the Supreme Court of India issued guidelines as below:

1. Constitute a State Security Commission in every state that will lay down policy for police functioning, evaluate police performance, and ensure that state governments do not exercise unwarranted influence on the police.
2. Constitute a Police Establishment Board in every state that will decide postings, transfers and promotions for officers below the rank of Deputy Superintendent of Police, and make recommendations to the state government for officers of higher ranks.
3. Constitute Police Complaints Authorities at the state and district levels to inquire into allegations of serious misconduct and abuse of power by police personnel.
4. Provide a minimum tenure of at least two years for the DGP and other key police officers (e.g., officers in charge of a police station and district) within the state forces, and the Chiefs of the central forces to protect them against arbitrary transfers and postings.
5. Ensure that the DGP of state police is appointed from amongst three senior-most officers who have been empanelled for the promotion by the Union Public Service Commission on the basis of length of service, good record and experience.
6. Separate the investigating police from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people.
7. Constitute a National Security Commission to shortlist the candidates for appointment as Chiefs of the central armed police forces.

According to a report of the NITI Aayog (2016), of 35 states and UTs (excluding Telangana), State Security Commissions had been set up in all but two states, and Police Establishments

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<sup>36</sup> Supra.

<sup>37</sup> Supra.

<sup>38</sup> 2006 (8) SCC 1

Boards in all states. The two states in which the State Security Commissions were not set up by August 2016 were Jammu and Kashmir and Odisha. The composition and powers of the State Security Commissions and the Police Establishment Boards were at variance with the Supreme Court directions. For example, in states such as Bihar, Gujarat and Punjab, the State Security Commission was dominated by government and police officers. Further, many of these Commissions did not have the power to issue binding recommendations.<sup>39</sup>

## CONCLUSION

Criminal investigation can be improved by making each investigation a team effort. Each member of the investigating team should have access to all relevant case data, but no individual member can scuttle an entire investigation. The accused does not know from where the next missile will come. The only challenge is that, unlike an investigative journalist, the Investigation Officer has to ensure that relevant facts are translated into admissible evidence in the proceedings of the trial court. That is a tough challenge and needs suitable amendments to Section 161 & 164 of the Cr.PC to include preservation of all relevant evidence. Experts should be able to analyse material facts from wherever they are and add value to the appreciation of evidence. All relevant facts can thus be collected and preserved digitally in a legally admissible form. Reforms in the criminal justice system are urgently needed in India.

## SUGGESTIONS

- i. Separation of investigative and police administration branch from law and order should be made for better efficiency.
- ii. Witness must be protected and should get confidence of police to speak the truth so that the chance of becoming hostile should be minimise.
- iii. The consumption of long time in trial, and repeated attendance and waiting at court will dilute the initial enthusiasm of complainant and witnesses to fight the case, and that will force them to get compromised into some sort of settlement.
- iv. Record reasons for the delay for registering FIR itself on the day of registration itself.
- v. Use the Information Technology to communicate the copy of FIR. Sending FIR by Fax and email to the Superintendent of Police, and considering Superintendent Police as responsible officer regarding complaints, will solve the delay registration of complaint.
- vi. Measures to ensure Police accountability are very important.
- vii. There must also be institutional checks in both the law and the police manual to rectify the charge if the gravity of the offence has been minimised.
- viii. A related issue is accessibility to police stations is logistical problem is a very real one, and must not be ignored while dealing with substantive lacunae in the law. It

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<sup>39</sup> Ibid.

was highlighted that the falsity of the complaint is not to be tested or verified when an FIR is being lodged. Yet, this is often done. Often the police feel that they are being diligent by making sure that the FIR is *pukka*. So time expended on travelling and investigation complicates the issue besides causing delay in the registration of FIR. The suspicion that police might have tutored the witnesses and the complainant to give information according to their convenience will arise. This suspicion will be highlighted in cross examination, which weakens the case.

- ix. The problem with the above practice is that even though the statement of witness is truthful he might not be believed later in a court of law due to the delay surrounding registration of the complaint. This results in an acquittal for the accused. A higher rate of conviction will involve timely lodging of FIRs. In such a circumstance, the whole village will know who has committed the crime, and an acquittal will only serve to erode their faith in the system.
- x. Practice of seniors instructing juniors not to register case until the superior advises or permits has to go. Only when the people come with a recommendation from a “contact” is this done without hitches. Often the senior officers themselves direct that no complaint should be registered without their assent.
- xi. It must also be noted that there is nothing making it mandatory for FIRs to be recorded in English. This must not deter the officers of a lower rank in allowing for registration of complaints.
- xii. There must be victim-witness support programs in each and every police station limits.
- xiii. On section 161 statements, it was suggested that the provision to get them signed by the person making them should be incorporated into the present code of criminal procedure. This was one of the important recommendations of the Malimath Committee. Videographing can help to prove that there was no coercion while recording these statements. However, the efficiency of this safeguard is highly questionable.
- xiv. Genuine and prompt entries in General Diary under section 172 are essential.
- xv. An increase in manpower and increase in number of Scientific Experts for all clues teams in entire state is essential.
- xvi. Investigation can also be improved by providing Travelling allowance/dearness allowance to witnesses and investigation team which might act as an incentive to work sincerely and people to come forward and give evidence.