
ROLES AND CHALLENGES OF POLICE INVESTIGATION IN THE CODE OF CRIMINAL PROCEDURE, 1973

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ABSTRACT

The Criminal Procedure Code (Cr.P.C.) of 1973 in India is a comprehensive legislation that governs the procedural aspects of criminal law. It encompasses both the legal framework and the practical difficulties faced by law enforcement agencies in its implementation. The study emphasizes the differentiation between cognizable and non-cognizable offences, elucidating the jurisdiction bestowed upon police officers in dealing with these instances, including their capacity to conduct investigations without a warrant. The analysis critically examines key problems, including the role of the First Information Report (FIR), the roles of the police during the investigative process, and the legal requirements for conducting investigations. The report also addresses notable obstacles that impede the efficacy of criminal investigation in India, including financial constraints, inadequate public cooperation, forensic limitations, and political influence. Suggested reforms entail augmenting financing for police resources, establishing specialist investigation teams, and bolstering forensic skills. The paper advocates for reforms that target the enhancement of efficiency and fairness in the criminal justice system in India, thereby strengthening the fundamental principles of justice in society.

Introduction

A crucial part of criminal procedure would be investigation. This is carried out by the police after a crime has been committed. Investigation can be referred to as the process through which the offender is identified and presented before trial court where the offender can get convicted according to the provisos of the Code of Criminal Procedure, 1973.

The definition of 'investigation' is given under the section 2(h) of the Code which states that all the proceedings that take place for the collection of evidence conducted by a police officer or any person authorised by a Magistrate includes investigation. The steps included under investigation would be to reach the place of crime, finding out the facts and circumstances of the case, tracking and arresting the suspect and collecting necessary evidence and coming to a conclusion whether the case would require a trial and take the required action.

A police officer can investigate both cognizable and non-cognizable offences with a warrant. The process of obtaining a warrant for investigation is given under section 155(2) of the Cr.P.C and it's corresponding section in the latest BNSS would be given under section 174.

Cognizable and Non-Cognizable Offences

A cognizable offence refers to a major offence that is considered as a public wrongdoing. The state has the discretion to choose whether or not to initiate prosecution in cognizable cases. In such instances, the police officer has the authority to apprehend the suspect even in the absence of a warrant. The penalty for committing cognizable offences is a minimum of three years imprisonment, or a fine, or both. Examples would be dowry-related cases, sexual assault, homicide, and so on.

A non-cognizable offence is relatively less severe in nature, and the perpetrator can only be prosecuted if the parties involved in the case give their consent. In these circumstances, law enforcement officers are unable to make an arrest without first obtaining a warrant. The penalty for non-cognizable offences is a prison sentence of less than 3 years. Examples of such offences include violence, defamation, and other similar acts.

Section 154- Information in cognizable offences

The officer in charge of the police station is required to put any informant's statements

regarding the commission of any cognizable offence on paper. Once the information is reduced to writing, the officer in charge must read it aloud to the informant and obtain his signature.

"F.I.R." stands for "First Information Report" and describes this type of report. When a female informant provides information regarding a crime listed under the Sections 326A, 326B, 354, 354A-345D, 376, 376A-376E, or 509 of the Indian Penal Code, a female police officer is required to document this information. The criminal justice system and police inquiry would be launched upon filing the FIR.

As soon as the police receive notice of a cognizable offence, they can begin investigating once they have confirmed the crime has occurred.

According to the court holding in *Meghaji Godadji Thakore v. The State of Gujarat*¹, the high priority placed on filing a First Information Report (FIR) is to learn the circumstances surrounding a crime, identify any witnesses, identify the perpetrators, and determine their respective roles.

According to the court's ruling in *Kanik Lal Thakur v. State of Bihar*², the First Information Report (FIR) is the most important piece of information that a police officer receives whenever a crime takes place. The court ruled that the informant's remarks in the FIR should not be the only relevant evidence considered for making a decision.

If a person with a mental or physical disability is the victim of an offence listed in the first proviso, this section specifies that the police officer investigating the crime must interview the victim at their home with the help of an interpreter or special educator, and then record the video and interview and present the evidence to the Magistrate.

In the Bharatiya Nagarik Suraksha Sanhita, the corresponding section of section 154 in Cr. P.C would be sub-section 1 of section 173 when the information regarding a cognizable offence is given to an officer in charge of a police station. The police officer must register this information in the 'FIR' book regardless of the area where the offence had been committed.

¹ Meghaji Godadji Thakore v. The State of Gujarat [1993] CRILJ 730

² Kanik Lal Thakur v State of Bihar [2001]

Section 156- Power of Police Officer to investigate cognizable offences

The section 156 of CrPc tells about the power given to a police officer to investigate upon the matters of cognizable offences without a warrant or without the order of the Magistrate provided, that a police officer can only investigate in those cases where the Court has jurisdiction over the local areas.

In the case of *Tula Ram v Kishore Singh*³, the Court held that only at the stage of pre-cognizance, an order of investigation by the Magistrate can be given under section 156(3) of the Cr.P.C.

The corresponding section of section 156 would be section 175(3) of the BNSS where it empowers a judicial magistrate to direct a police officer to investigate a cognizable matter in cases where police has failed to register a FIR or conduct an investigation.

Section 155- Information In Non-Cognizable Cases

The police in-charge of the police station is responsible for recording information related to the commission of a non-cognizable offense.⁴ The data should be recorded in the book according to the guidelines set by the state government. In instances that are non-cognizable, the police do not have the authority to investigate without an order from a Magistrate who has jurisdiction over the area or the power to try the case. Once a police officer receives an order from the Magistrate to investigate a case, they are authorized to proceed with the investigation as if it were a cognizable case.⁵ In a non-cognizable case, a police officer is prohibited from apprehending any anyone without a warrant.

If a case encompasses multiple offenses, including at least one that is recognizable, the entirety of the case will be regarded as a recognizable offense case. Any contention regarding the non-cognizable nature of the other offenses will not be considered. The police officer will manage the case in accordance with the prescribed procedures for cognizable cases.

³ Tula Ram & Ors v Kishore Singh [1977] AIR 2401

⁴ Singh K, 'Constructing and Deconstructing the Provisions of FIR: Methodology, Misuse, Denial & Possible Remedies' (heinonline, 29 October 2022)
<https://heinonline.org/HOL/Page?handle=hein.journals/juscrp3&div=50&g_sent=1&casa_token=&collection=journals> accessed 1 May 2024.

⁵ Deb R, 'POLICE INVESTIGATION : A REVIEW' (JSTOR, 4 April 1997)
<<https://www.jstor.org/stable/43953271>> accessed 1 May 2024.

Section 157- Procedure For Investigation

Upon receiving knowledge of a cognizable offense and determining that it has indeed occurred, the police officer must promptly notify the Magistrate with jurisdiction over the matter. In the case of ***Om Prakash v. State of New Delhi***⁶, the Court ruled that ‘the official in charge of a police station must promptly notify the Magistrate with jurisdiction as soon as they receive information about the occurrence of a serious crime’⁷.

Once a cognizable offence has been reported, the magistrate is required to take notice of the situation and may direct any subordinate officer to look into the crime scene, the case's facts, and the circumstances surrounding it. They may also direct any subordinate officer to take the necessary actions to find and apprehend the real offender. In order to give the Magistrate with information regarding all of the facts and circumstances of the case, the police officer who is carrying out the inquiry is required to submit a summary of the investigation. Afterwards, the Magistrate has the power to give the officer who is conducting the investigation instructions.

In the case of ***Manimohan Ghosh***⁸, it was determined that the process of investigation encompasses all the steps outlined in the Cr.P.C. for gathering evidence by the investigating police officer or other authorized person, such as a Magistrate. In the case of ***Kari Chaudhary v. Sita Devi***⁹, it was emphasized that the purpose of conducting an investigation is to determine whether a crime has indeed occurred and, if so, to identify the person responsible for committing the offense. The Court further determined that in cases where the severity of an offense is not significant, it is not obligatory to commence a timely inquiry.

If an officer is convinced that an investigation is unnecessary, they are not obliged to pursue it. However, the police officer must provide an explanation for this decision in their report.

When investigating a rape case, a female officer must interview the victim either at their preferred location or in the presence of their parents, guardians, immediate family members, or social worker.

⁶ Om Prakash v. State of New Delhi [1983] AIR 431

⁷ Om Prakash v. State of New Delhi [1983] AIR 431

⁸ Mani Mohan Ghose vs Emperor [1931] AIR 1931 CAL745

⁹ Kari Chaudhary v. Sita Devi [2002] AIR 2002 SC 441

Who Has The Authority To Conduct Investigations?

Under the provisions of the Cr.P.C., the responsibility for investigating a cognizable offence is with the police officer. The exercise of this power cannot be limited or challenged unless the official is acting within the bounds of the law, in accordance with all legal requirements and provisions outlined in the Code.¹⁰ The Court lacks the authority to intervene in the inquiry process. The accused is not entitled to present their case based on the evidence gathered by the investigator.¹¹ Upon receiving the report from the investigative agency, the Magistrate possesses the jurisdiction to initiate appropriate measures. If the report lacks legitimate and pertinent information on the accused, The judge or magistrate has the discretion to decide whether to approve the report or direct the officer to conduct further investigation.

Obligation To Establish Fairness

In India, there are no defence investigators, whether private or official. Therefore, it is the responsibility of the police to conduct a sincere and direct investigation to uncover the truth. This is crucial because the criminal justice system can easily be manipulated by individuals with ulterior motives, informants, and opposing groups, who may exploit it as a convenient tool for seeking revenge against their enemies.¹²

The Supreme Court has ruled that all the requirements of section 161 of the Criminal Procedure Code, which pertain to the questioning of witnesses and accused individuals, are intended to provide a just investigation into the facts and circumstances of the criminal case.¹³

In the case of *Nandini Satpathy*¹⁴, Justice Krishna Iyer determined that according to the essence and meaning of Article 22(1), it is crucial for the principles of justice that a lawyer's assistance should be accessible to any accused individual during situations of almost being taken into custody for questioning. The lack of impartiality exhibited by the investigating police frequently leads to unjust outcomes for the accused. This is particularly evident in cases

¹⁰ Rishbud v. State of Delhi [1995] AIR 196

¹¹ King Emperor v. Khwaza Nazir Ahmed [1945] 47 BOM LR 245

¹² Deb R, 'POLICE INVESTIGATION : A REVIEW' (JSTOR, 4 April 1997) <<https://www.jstor.org/stable/43953271>> accessed 1 May 2024.

¹³ State of Rajasthan v. Gurcharandas Chaddha [1979] AIR 1979 SC 1895

¹⁴ Nndini Sathpathy v. P.L. Dani [1978] AIR 1025

where the accused is eligible for bail, yet they are compelled to spend a day or more in police custody due to the unavailability of someone to arrange for their release.

When Does The Investigation Begin?

The investigative procedure commences after the official head is satisfied that an offence has indeed taken place. According to the court's ruling in *Din Dayal v. State of UP*¹⁵, two things must be in place before an investigation may begin: The investigating authority must possess a valid basis for suspecting that the offence has been perpetrated. And there must be a compelling justification to initiate an inquiry into the case.

Powers of Police

The enforcement of laws and the investigation of criminal offenses are the purview of the Indian Police. The Indian Police powers and duties are governed by the Code of Criminal Procedure (Cr.P.C.) of 1973. A comprehensive framework for examining offences, articulating a meticulous way and mentioning the police's authority in distinct sections of the code are part of what it does. The Cr.P.C gives the police 'permission to look into any cognizable offense in section 156, an offense that the police can arrest without an arrest warrant'¹⁶. As part of the investigation process, authorities also allow the police to gather evidence and take statements from witnesses under section 157 of the Cr.P.C.

Under section 160 of Cr.P.C, the police are mandated to interrogate the complainant as well as the witnesses on any given case and the officers can examine any person that has knowledge of the case from section 161 of the same Code. The Indian Police can apprehend a suspected person on grounds specified in Section 41 of Cr.P.C. If there are reasonable grounds for believing that he has committed a cognizable offence, He may be arrested without warrant. In cases where arrest without warrant is not authorized for police officers, there should apply to a Magistrate accompanied by a warrant according to s.44 of Cr.P.C. Furthermore, the Cr.P.C. has various mechanisms which aid in safeguarding against abuse with communicative powers given in addition.

¹⁵ Din Dayal v. State of UP [1959] AIR 831

¹⁶ Criminal Procedure Code 1973, s 156

In the case of *D.K. Basu v. State of West Bengal*¹⁷, the Supreme Court established the criteria that law enforcement officers must follow while apprehending or detaining someone. This aligns with the court's stance regarding the safeguarding of the rights of individuals under suspicion. In the case of *Ahmed Noormohmed Bhatti v. State of Gujarat*¹⁸, the Supreme Court found that section 151 of the Criminal Procedure Code, 1973 was found to be consistent with the constitution. There cannot be a claim that the preventive detention powers are unconstitutional just because they can be abused by the administration. These safeguards are set out in the section itself. The court ruled that failure to adhere to the criteria outlined in section 151 may result in legal action being taken against the individuals who are in violation.

The Law Commission of India, in its *277th report*, has proposed the addition of a new chapter in the criminal procedure law of 1973. This chapter will address the issue of providing compensation to individuals who have been wrongly prosecuted. Despite the implementation of multiple directives by the Supreme Court against the abuse of preventive arrest authority, the police force persists in subjecting citizens to harassment. A significant proportion of the individuals who have been arrested display a lack of awareness or disregard for the rights granted to them by the constitution. Many individuals abstain from taking action against the repressive acts of the police due to their fear. Many individuals remain incarcerated for extended periods of time due to their limited knowledge and inability to access legal assistance.

In the case of *H.N. Rishbud v. State of Delhi*¹⁹, the Supreme Court stated that the investigation typically involves the following stages:

- i. Arriving at the scene ;
- ii. Collecting and confirming the details and conditions of the incident;
- iii. Recognizing and capturing the alleged offender;
- iv. Collecting evidence related to the commission of the offence, which may involve
 - (a) Interrogating individuals, including the accused, and recording their statements, if considered suitable by the police.

¹⁷ D.K. Basu v. State of West Bengal [1997] AIR 1997 SUPREME COURT 610

¹⁸ Ahmed Noormohmed Bhatti v. State of Gujarat [2005] AIR 2005 SUPREME COURT 2115

¹⁹ H.N. Rishbud v. State of Delhi [1954] AIR 196

- (b) Performing searches or confiscating objects that are deemed essential for the inquiry and will be submitted as evidence during the trial.; and
- v. Forming a conclusion based on the gathered evidence regarding whether there are enough reasons to bring the accused before a Magistrate for trial. If so, take the required actions by filing a charge sheet under section 173 of the Criminal Procedure Code before the appropriate court.²⁰

An inadequate investigation will consistently favour the accused, as it is the responsibility of the prosecution to establish the case with undeniable evidence. The benefit resulting from an erroneous inquiry should be granted to the accused rather than the prosecution. Therefore, it is imperative to carry out an inquiry in an unbiased manner, by the law and within a reasonable timeframe.

Challenges of Police Officers during Crime Investigation

1) Financial limitations

The constraint of budget is a significant factor that can have a detrimental impact on various aspects of police organizations. This can result in situations that harm police effectiveness, including insufficient training leading to a lack of skills, inadequate or insufficient equipment, and a lack of logistic support that diminishes operational capacity and affects the motivation of police officers. Additionally, low pay contributes to a lack of motivation among personnel and leads to low recruitment for the police service.

As a result of inadequate budgets, police officers are required to personally cover the expenses of investigations and then recover these costs from the public through means such as bribes. This is a contributing factor to corruption within the police system.

2) Insufficient public collaboration

The reason for this is the absence of confidence in the police system. Often, eye witnesses are hesitant to provide a statement to the police officers.

²⁰ H.N. Rishbud v. State of Delhi [1954] AIR 196

3) Forensics

The integrity of fingerprints, footprints, and other evidence at the crime scene may be compromised or eradicated if there is a delay in conducting an inspection. Police dogs may prove ineffective as the scent of the suspects is unlikely to endure on tangible evidence.

The extent of change is contingent upon the duration of maintenance and the appropriate or inappropriate utilization of the specific item. Over time, the object may completely lose its practical relevance in relation to a specific period.

When gathering and preparing the material for inspection by an expert, it is important to exercise caution because the expert will analyse what is submitted to them. If the object upon which the figure is imprinted sustains significant damage, the inquiry will be unsuccessful. This issue can be avoided by capturing close-up images.²¹

4) Government intervention

Investigations that involve high-profile individuals, VIPs, and political parties are unlikely to be successful. In the case of *Prakash Singh & Ors. v. U.O.I. & Ors*²², the Supreme Court issued a directive to the State Governments to establish a State Security Commission (SSC) with the purpose of (i) preventing the State government from exerting undue influence or pressure on the police. (ii) Establish comprehensive policy guidelines and (iii) Assess the performance of the State police.

However, despite the existence of written guidelines, political parties continue to exert direct or indirect influence on police investigations.

5) Transfer of police officer in the duration of an investigation

The presence of a new officer in the inquiry leads to a delay as they need to familiarize themselves with the case and commence the investigation.

6) Media's role

Undoubtedly, it is the responsibility of the media to provide timely information to the public.

²¹ Poorti Sharma and Sushma Kanwar 'Critical Analysis of Police Investigation in Cr.P.C' 2021 4 (4) IJLMH < <https://doi.org/10.1000/IJLMH.111281> > accessed on 29th April 2024.

²² *Prakash Singh & Ors v Union of India & Ors*, [2006]

However, the media should use discretion in determining what information to publish and when to do so. It has been established that the media broadcasted the entire 26/11 Mumbai terrorist assault occurrence live on television. The ease with which the task was accomplished facilitated the terrorists' ability to provide guidance on how to carry out the operation.

7) Overburdening of Police Officers

The duty of police officers is excessively burdened with the tasks of keeping order and conducting investigations. The police officers have two distinct responsibilities: maintaining order and preventing crime, as well as conducting investigations. In the latter role, a greater amount of intellectual effort is necessary. In order to speed up investigations, enhance expertise, and establish better rapport with the public, it is necessary to segregate the investigative police from the law enforcement police.

8) Hostile witness

It is commonly believed that even God lacks knowledge of how the human mind functions. Over time, some witnesses may become unfriendly or uncooperative towards the police. They may be swayed, coerced, or unjustly compensated by the perpetrator or their party. The victim is subject to the same situation. The victim may experience empathy or even endeavour to negotiate a resolution with the wrongdoer.

Recommendations:

1. It is the government's duty to allocate adequate funds.

The government has a responsibility to offer financial assistance to the police, taking into account their demands for investigation, equipment, travel, and other vital necessities.

2. Specialized team dedicated to investigation

There should be a distinct division established inside the police system that is only responsible for handling investigation problems, independent from maintaining public order.

3. Establishing trust

Establishing trust with witnesses and victims is essential to prevent them from becoming

hostile. It can be achieved through effective counselling and demonstrating advancements in the research. Ensuring transparency within the police system is crucial for gaining the trust of the citizens.

4. Elimination of political intervention

Adherence to the Japanese police system is important, as it is founded on principles of political neutrality and democratic oversight, designed to prevent any form of arbitrary or political intervention.

The National Police Safety Commission and the National Police Agency fall under the authority of the Cabinet Office, and the Prime Minister does not have the authority to directly command or manage them. This ensures the Commission's autonomy and guarantees its impartiality.²³

5. Press and Law Enforcement

It is imperative to have friendly connections between the police and the media. Law enforcement authorities should seek assistance from the media in conducting the investigation of the crime. The media should refrain from disclosing confidential information to the public.

6. Gathering proof

Collecting fingerprints at the crime scene is essential because if the object containing the fingerprints is damaged, it becomes challenging for experts to provide an accurate analytical report. It is recommended for the police officers to use the Investigation officer's evidence collection kit. The kit contains of a photographic kit-camera, a finger print kit, a measuring kit and other articles such as magnifying glass, flash light, tissue paper, etc.

7. F.I.R

The First information Report which is given under section 154 of the Criminal Procedure Code is not considered as substantial evidence.

²³ Poorti Sharma and Sushma Kanwar 'Critical Analysis of Police Investigation in Cr.P.C' 2021 4 (4) IJLMH < <https://doi.org/10.1000/IJLMH.111281> > accessed on 29th April 2024.

According to section 145 of the Evidence Act it is applicable for cross-examination.

Thus, it is imperative to provide a comprehensive and detailed explanation of every aspect, including even the smallest details, in the First Information Report (F.I.R).

The F.I.R. contains all the essential details, including the identities of the attackers, the reason for the act, and how it occurred.

Problems:

Third-degree interrogations, custodial fatalities, and the falsification of evidence are grave crimes that damage the reputation of the police and provoke public anger. These tactics create a sense of isolation between the police and the public and hinder collaboration in investigations. According to Chief Justice Y.V. Chandrachud of India, “there needs to be a change in the legislation to stop police officers from getting away with it because there isn't enough evidence, The lawmakers should reassess the burden of proof in such circumstances to prevent the oppression of innocent persons by the police.”²⁴

The First Information Report (FIR) is an essential component in criminal investigations. However, numerous police officers hold the belief that the absence of key information such as the names of the accused and witnesses can significantly undermine the prosecution's case. This results in the incorporation of additional information, which generates uncertainty in the court and frequently leads to the dismissal of the prosecution's case. Instead, the investigating authorities should thoroughly interrogate witnesses and record the authentic basis for their statements. If there are valid objections, the prosecution is not automatically assumed to be in the wrong. Furthermore, it is crucial to promptly document the First Information Report (FIR) without delay in order to prevent casting doubt on the credibility of the prosecution's narrative.²⁵

The case diary and police statements are essential records that can be tampered with to undermine the reliability of a prosecution case. Although section 172 of the CrPC does not mandate the immediate writing of the diary, numerous police regulations need its simultaneous

²⁴ Deb R, ‘POLICE INVESTIGATION : A REVIEW’ (JSTOR, 4 April 1997) <<https://www.jstor.org/stable/43953271>> accessed 1 May 2024.

²⁵ Deb R, ‘POLICE INVESTIGATION : A REVIEW’ (JSTOR, 4 April 1997) <<https://www.jstor.org/stable/43953271>> accessed 1 May 2024.

preparation and prompt submission to higher-ranking officers. Errors in recording can lead to ambiguity and hinder the ability to make precise recordings. In addition, it is advisable to document assertions on unnumbered blank sheets of paper, as these can be easily manipulated by dishonest officials. Reinstating this procedure is crucial for conducting a just and thorough examination.

The First Information Report (FIR) is of utmost importance in criminal investigations, however, several police officers hold the belief that the absence of key information such as the identities of the accused and witnesses can significantly undermine the prosecution's case. This results in the incorporation of additional information, which generates uncertainty in the court and frequently leads to the dismissal of the prosecution's case. Instead, the investigating authorities should thoroughly interrogate witnesses and record the authentic rationale behind their statements. It is crucial to promptly record the FIR without any delay to avoid undermining faith in the prosecution's narrative.

Conclusion

The process of investigation in the criminal justice system as given in Cr.P.C. is fundamental for the foundation of justice in today's society. Investigation involves the collection of evidence, identifying suspects and preparation of cases for trial. However, as seen the process is full of issues such as financial constraints, political interference and forensics problems that hinder the effectiveness of criminal investigation.

In order to address these issues, reforms are necessary to ensure investigation is carried out efficiently. These reforms can include more funding, enhanced training of the police and stricter regulations to prevent political interference in investigation. Also, by promoting a better relationship between police, public and the media, can help in building a more effective criminal justice system.

Keeping the rights of the accused and the proper handling of evidence are also of high importance. By addressing these issues, the effectiveness of the criminal procedure in India can be significantly improved, leading to a more just and fair society.