CHAPTER-3

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Police investigation in the initial step in the criminal process. The FIR is registered under section 154 cr.p.c. and the quest for truth, i.e. the investigation ensures. This stage is very crucial as the entire further process is based on this stage. If the truth about the motive of the crime, the real culprits and the modus operandi is not brought to light thus no meaningful prosecution can ensue in the courts of law. Evidence collection is a specialized art which the sine qua non of any good investigation. A very important cause for acquittals in the court is faulty investigation. Sometimes the investigations are done in a cursory and hurried fashion without unearthing any valuable evidence hence proving fatal to the cause of prosecution and the victim. The many shortcomings of an investigation include delay in registration of FIR, omissions or mistakes in recording the FIR, cursory inspection of the scene of crime, preparing a defective diagram of the scene of crime, contaminating the evidence at the scene of crime, ignorance of law are lack of proper training of the investigating officers, failure to conduct the identification parade when warranted, not recording the evidence of key witnesses and last but not the least not proving the ‘mens rea’ or the motive of the crime.

The National Police Commission and the Malimath Committee have given valuable recommendation to address this malady. The recommendations are the result of an in depth and comprehensive study of this aspect of criminal process. They are reproduced below. First, The National Police Commission:

Investigation

The major problems of reform as viewed by the Law Commission in its Thirty-seventh Report were-

(a) separation of the judiciary and the executive;
(b) abolition of the jury trial;

(c) simplification of the various categories of trials;

(d) Magistrates in Presidency Towns;

(e) abolition or retention of the ordinary original criminal jurisdiction of High Courts;

(f) the law of arrest; and

(g) the duty to give information about offences.

It, therefore, happened that in the above view of the matter, the report of the Law Commission did not adequately deal with several other aspects of procedure which created difficulties for the police while conducting investigations in the field. Compliance of certain provisions in law proved unrealistic and difficult in actual investigations and, therefore, led to the adoption of certain improper methods and practices by investigating officers to meet the requirements of case law as it developed over several years. In the course of our tours in States and discussions with judges, magistrates, lawyers, police officers, general administrators and representative sections of the public, we have identified some aspects of the present procedural law relating to investigations where there is urgent need and ample scope for meaningful reform to make investigations conform to the real situations in the field and help in the expeditious conduct of investigations with minimum inconvenience to persons who may be concerned in specific cases as complainants, witnesses or accused persons.

Section 154 Cr.P.C. may be amended to-

(i) Enable the officer in charge of police station to ascertain adequate information from a complainant and incorporate it in the form prescribed for registering First information Report;
(ii) Make it clear that the registration of First Information Report is mandatory whether or not the alleged offence has taken place in the jurisdiction of the police station and

(iii) Facilitate the recording of First Information Report in constituent units attached to the police station—for example; police out post or such other reporting centers as may be evolved in due course.

The cadre of investigating officers has to be increased. The police hierarchy has to be restructured to secure, inter alia, a larger number of officers to handle investigational work.

Provision of adequate transport, strengthening of forensic science laboratory facilities and scientific aids to the detection of crime, the provision of mechanical aids like typewriter and tape recorders at the police station level, improved supply of printed forms and standardized stationery for documentation and scriptory work and the introduction of computers for the maintenance of crime records as suggested in Chapter XXIV of our Third Report would greatly improve the quality and quickness of investigations.

Section 37 Cr.P.C. may be amended to facilitate the conduct of identification parades by police themselves as an aid to investigation.

It would greatly help cordial police-public relationship if the examination of witnesses is conducted, as far as practicable, near the scene of offence or at the residence of the witnesses concerned or at some convenient place nearby. This arrangement might be secured by the issue of appropriate departmental instructions.

It is desirable to make a specific provision in law that when a person is examined by a police officer under section 161 Cr.P.C. no other person shall, except in the exercise of powers under the law, have the right to be present during such examination.

The Code of Criminal Procedure 1973 has done away with the procedure of preliminary enquiries by magistrates in cases exclusively triable by a Session Court. Before this Code came into force, the procedure envisaged the examination of material witness twice over,
once by the committing Magistrate and later by the Sessions Judge. Thus, for the same witness, we would have three sets of statements on record, one recorded by the police during investigation, the second recorded by the committing Magistrate and the third recorded by the sessions Judge. It is a basic Principle of justice that the findings of the trying judge should be based on what the witnesses actually depose before him; but the availability of detailed statements from the same witnesses before another forum recorded on an earlier occasion provides scope for arguments based on contradictions however, trivial or natural they might be in the circumstances of any particular case. We consider it wholly improper, if not unjust for the conclusions in judicial proceedings to be largely determined by contradictions in evidence by a mechanical or routin comparison of the statements made separately by the witness before different authorities instead of by probabilities flowing from the evidence. The Code of Criminal procedure 1973 has rightly eliminated one unnecessary stage of recording the detailed statement of a witness by the committing magistrate. A further step would be to do away with the detailed recording of statement as made by a witness in the course of investigation, and substitute in its place a revised arrangement in which the investigating officer can make a record of the facts as ascertained by him on examination of a witness. This shift in emphasis from the statement made by the witness to the statement of facts ascertained from the witness would imply that the statement made by the witness to the statement of facts ascertained from the witness would imply that the statement could be in third person in the language of the investigating officer himself. This statement of facts as recorded by the investigating officer would be adequate to assess the evidentiary value of the different witnesses and accordingly cite them in the charge sheet, if and when it is laid in court on conclusion of investigation.

When the statement as described above becomes a statement of facts as ascertained and recorded by the investigating officer, it loses its significance to serve as an earlier statement made by the witness himself in his own language, and therefore, the question of
using that statement for contradiction or corroboration would not arise. The present provisions in section 162 Cr. P.C. relating to the restricted use of the statements of witnesses would, therefore, become redundant.

A police malpractice brought to our notice is the habit of some police officers to be very cursory in their examination of certain witnesses and then proceed to make a detailed record of the witness's statement, assuming it to be what they would like it to be in the context of statements of other witnesses already recorded. It is imperative that we put down this malpractice to ensure the honesty and cleanliness of investigations. A great measure of credibility could be imparted to the statement of facts as recorded by the police officer after examination of a witness, if we provide in law that a copy of the statement so recorded shall, if desired by the witness, be handed over to him under acknowledgement. A similar arrangement already exists for the delivery of a search list prepared under section 100 Cr. P.c. to the occupant of the place searched or the person searched.

For giving effect to the revised arrangements proposed above, sections 161 and 162 Cr. P.C. may be amended on the lines recommended in the Report.

Section 172 Cr. P.C. relating to the case diary may be amended on the lines indicated in the Report.

Section 100 Cr. P.C. may be amended to facilitate the admission of search list as a piece of evidence without having to call search witnesses to depose in court, and further to facilitate public servants to function as search witnesses in certain situations.

Section 102 Cr. P.C. may be amended to give greater discretion to the police for releasing seized property.
The police may be required through departmental instructions to initiate appropriate steps immediately after the disposal of a case for the prompt return of the case property to the person entitled to get it.

A new section - 50 A - May be added to Chapter V of Cr. P.C. requiring the police to give intimation about arrest of a person to anyone who may be reasonably named by him for sending such intimation, to avoid agonizing suspense for the members of his family about his whereabouts.

It is most important for improving police image that the senior officers and the supervisory ranks in the police deem it their special responsibility to put down the practice of third degree methods at the operational level in police stations and elsewhere. Some remedial measures are indicated below :-

(i) Surprise visits to police stations and similar units by the senior officers would help the immediate detection of persons held in unauthorised custody and subjected to ill treatment, Malpractices, if any, noticed during such visits should be met by swift and deterrent punishment.

(ii) A Magistrate or Judge before whom an arrested person in produced by the police for remand to custody should be required by administrative rules of criminal practice to question the arrested person specifically if he has any complaint of ill-treatment by the police, and if he has any complaint the Magistrate or Judge should get him medically examined and take appropriate further action.

(iii) In Chapter X of our First Report, We have already recommended a scheme of mandatory judicial inquiries into complaints of death or grievous hurt caused while in police custody. Such an arrangement would itself act as an effective check against the continuance of third degree methods in police work.
(iv) Supervisory ranks, including the senior levels of command in the police and the Government, should strictly eschew a purely statistical approach while evaluating police performance. Any administrative review of a kind which is likely to induce the subordinate ranks to adopt ad hoc and short cut methods to show results should be avoided. Adequate emphasis should be laid on the honesty and cleanliness of investigation and the adoption of proper methods while handing all the connected work.

(V) Training institution should pay special attention to the development of interrogation techniques and imparting effective instructions to trainees in this regard.

We are convinced that if the average police officer is assured of adequate time and facility for patiently examining an accused person and pursuing the examination from point to point through a process of simultaneous verification of facts mentioned by the accused, it would facilitate a proper examination of the accused person without resort to questionable methods involving pressure tactics. This would become possible if the police can secure the remand of an arrested person to police custody for a few days under orders from a Magistrate. When the accused remains in police custody under specific orders from a Magistrate, the scope for using third degree methods while interrogating him in such custody would get greatly reduced since he would be liable for production before Magistrate on expiry of the brief custody. In the light of the present phraseology of section 167 Cr. P.C., some conventions and practices have developed in several States for the Magistrates not to grant police custody unless the Investigation Officer pleads that the accused has already made a confession and his continued custody with the police is necessary to take him from place to place and recover property. This peculiar requirement of convention and practice drives police officers to make false statements before the Magistrate while in fact the accused would not have made any such confession and they
would merely be requiring to verify several facts mentioned by him and continue with his examination. Existing subsections (3) and 4 of section 167 which imply that remand to police to police custody should be exceptional may, therefore, be deleted and a new subsection (3) may be added to facilitate remand to police custody in the interest of investigation whenever required.

Section 167 Cr. P.C. may be amended on the lines suggested in the Report to facilitate remand by Executive Magistrate in certain specified situations.

Section 2 Cr. P.C. may be amended on the lines indicated in the report to facilitate the establishment of special police stations to deal with particular case or classes of cases.

Sections 26 and 27 of the Evidence Act may be deleted and section 25 of the same Act may be substituted by a new section as recommended in the Report to facilitate the proof of a confession recorded by any person in authority (including the police) in the course of any judicial proceedings against a person making the confession, not to be used as an evidence against him but to be taken into consideration by the court to aid it in an inquiry or trial in the manner provided in section 30 of the same Act and section 172 Cr. P.C.

The comprehensive amendments in procedural law and Evidence Act as proposed above would not by themselves bring about noticeable improvement in the quality of investigations unless the supervisory ranks in the police hierarchy pay adequate attention to the detailed supervision over the progress of individual investigations. The quality and quantum of supervisory work done in regard to crime investigation as distinct from mere ad hoc maintenance of public order from day to day on a 'somehow' basis should be carefully assessed for each supervisory rank and taken due note of for his career advancement.

The Malimath Committee’s recommendations are as below:

The machinery of Criminal Justice System is put into gear when an offence is registered and then investigated. A prompt and quality investigation is therefore the
foundation of the effective Criminal Justice System. Police are employed to perform multifarious duties and quite often the important work of expeditious investigation gets relegated in priority. A separate wing of investigation with clear mandate that it is accountable only to rule of law is the need of the day.

Most of the laws, both substantive as well as procedural, were enacted more than 100 years back. Criminality has undergone a tremendous change qualitatively as well as quantitatively. Therefore the apparatus designed for investigation has to be equipped with laws and procedures to make it functional in the present context. If the existing challenges of crime are to be met effectively not only does the mindset of investigators need a change, they also have to be trained in advanced technology, Knowledge of changing economy, new dynamics of social engineering, efficacy and use of modern forensics etc. Investigation agency is understaffed, ill equipped and therefore the gross inadequacies in basic facilities and infrastructure also need attention on priority. There is need for the law and the society to trust the Police and the police leadership to ensure improvement in their credibility.

In the above backdrop following recommendations are made:

The Investigation wings should be separated from the Law and Order Wing.

National Security Commission and the State Security Commissions at the State level should be constituted, as recommended by the National Police Commission.

To improve quality of investigation the following measures shall be taken:

i. The post of an Additional SP may be created exclusively for supervision of crime.

ii. Another Additional SP in each district should be made responsible for collection, collation and dissemination of criminal intelligence, maintenance and analysis of crime data and investigation of important cases.
iii. Each state should have an officer of the IGP rank in the State Crime Branch exclusively to supervise the functioning of the Crime Police. The Crime Branch should have specialized squads for organized crime and other major crimes.

iv. Grave and sensational crimes having interstate and transnational ramifications should be investigated by a team of officers and not by a single IO.

v. The Sessions cases must be investigated by the senior most police officer posted at the police station.

vi. Fair and transparent mechanisms shall be set up in place where they do not exist and strengthened where they exist, at the District Police Range and State level for redressal of public grievances.

vii. Police Establishment Boards should be set up at the police headquarters for posting, transfer and promotion etc. of the District level officers.

viii. The existing system of Police Commissioner’s office which is found to be more efficient in the matter of crime control and management shall be introduced in the urban cities and towns.

ix. The burden of investigation placed by certain statutes on the Deputy SP level officers be reduced so that they can devote sufficient time to effectively supervise the investigation by subordinate officers.

x. Criminal cases should be registered promptly with utmost promptitude by the SHOs.

xi. Stringent punishment should be provided for false registration of cases and false complaints. Section 182/211 of IPC be suitably amended

xii. Specialised Units/Squads should be set up at the State and District level for investigating specified category crimes.
xiii. A panel of experts be drawn from various disciplines such as auditing, computer science, banking, engineering and revenue matters etc. at the State level from whom assistance can be sought by the Investigating Officers.

xiv. With emphasis on compulsory registration of crime and removal of difference between non-cognizable and cognizable offences, the workload of investigation agencies would increase considerably. Additionally, some investigations would be required to be done by a team of investigators. For ending the existing pendency and for prompt and quality investigation increase in the number of Investigating Officers is of utmost importance. It is recommended that such number be increased at least two-fold during the next three years.

xv. Similarly for ensuring effective and better quality of supervision of investigation, the number of supervisory officers (additional SPs/Deputy SP) should be doubled in next three years.

xvi. Infrastructural facilities available to the Investigating Officers specially in regard to accommodation, mobility, connectivity, use of technology training facilities etc. are grossly inadequate and they need to be improved on top priority. It is recommended a five-year rolling plan be prepared and adequate funds are made available to meet the basic requirements of personnel and infrastructure of the police.

The training infrastructure, both at the level of Central Government and State Governments, should be strengthened for imparting state-of-the-art training to the fresh recruits as also to the in-service personnel. Handpicked officers must be posted in the training institutions and they should be given adequate monetary incentive.
Law should be amended to the effect that the literate witness signs the statement and illiterate one puts his thumb impression thereon. A copy of the statement should mandatory be given to the witness.

Audio/video recording of statements of witnesses, dying declarations and confessions should be authorized by law.

Interrogation Centres should be set up at the District Headquarters in each District, where they do not exist, and strengthened where they exist, with facilities like tape recording and/or videography and photography etc.

i. Forensic Science and modern technology must be used in investigations right from the commencement of investigations. A cadre of Scene of Crime Officers should be created for preservation of scene of Crime and collection of physical evidence there-from.

ii. The network of CFSLs and FSLs in the country needs to be strengthened for providing optimal forensic cover to the investigating officers. Mini FSLs and Mobile Forensic Units should be set up at the District/Range level. The Finger Print Bureaux and the FSLs should be equipped with well-trained manpower in adequate numbered adequate financial resources.

Forensic Medico-Legal Services should be strengthened at the District and the State/ Central level, with adequate training facilities at the State/Central level for the experts doing medico-legal work. The State Governments must prescribe time frame for submission of medico-legal reports.

A mechanism for coordination amongst investigators, forensic experts and prosecutors at the State and District level for effective investigations and prosecutions should be devised.
Preparation of Police Briefs in all grave crimes must be made mandatory. A certain number of experienced Public Prosecutors must be set apart in each District to act as Legal Advisors to the District Police for their purpose.

An apex Criminal Intelligence Bureau should be set up at the National level for collection, collation and dissemination of criminal intelligence. A similar mechanism may be devised at the State, District and police station level.

As the Indian Police Act, 1861, has become outdated, a new Police Act must be enacted on the pattern of the draft prepared by the National Police Commission.

Section 167 (2) of the Code be amended to increase the maximum period of police custody to 30 days in respect of offences punishable with sentence more than seven years.

Section 167 of the Code which fixes 90 days for filing charge-sheet failing which the accused is entitled to be released on bail be amended empowering the court to extend the same by a further period up to 90 days if the court is satisfied that there was sufficient cause, in cases where the offence is punishable with imprisonment above seven years.

A suitable provision be made to enable the police take the accused in police custody remand even after the expiry of the first 15 days from the date of arrest subject to the condition that the total period of police custody of the accused does not exceed 15 days.

A suitable provision be made to exclude the period during which the accused is not available for investigation on grounds of health etc., for computing the permissible period of police custody.
Section 438 of the Code regarding anticipatory bail be amended to the effect that such power should be exercised only by the court of competent jurisdiction only after giving the Public Prosecutor an opportunity of being heard.

Section 161 of the Code be amended to provide that the statements by any person to a Police Officer should be recorded in the narrative or question and answer form.

In cases of offences where sentence is more than seven years it may also be tape/video recorded.

Section 162 be amended to require that it should then be read over and got signed by the maker of the statement and a copy furnished to him.

Section 162 of the Code should also be amended to provide that such statements can be used for contradicting and corroborating the maker of the statement.

Section 25 of the Evidence Act may be suitably amended on the lines of section 32 of POTA, 2002 that a confession recorded by the Superintendent of Police or officer above him and simultaneously audio/video recording is admissible in evidence subject to the condition the accused: was informed of his right to consult a lawyer.

Identification of Prisoners Act. 1920 be suitably amended to empower the Magistrate to authorise taking from the accused finger prints, foot prints, photographs, blood sample for DNA finger printing, hair, saliva or semen etc., on the lines of section 27 of POTA. 2002.

A suitable provision be made on the lines of sections 36 to 48 of POTA. 2002 for interception of wire, electric or oral communication for prevention or detection of crime.
Suitable amendments be made to remove the distinction between cognizable and non-cognizable offences in relation to the power of the police to investigate offences and to make it obligatory on the Police Officer to entertain complaints regarding commission of all offences and to investigate them.

Refusal to entertain complaints regarding commission of any offence shall be made punishable.

Similar amendments shall be made in respect of offences under special laws.
A provision in the Code be made to provide that no arrest shall be made in respect of offences punishable only with fine; offences punishable with fine as an alternative to sentence of imprisonment.
In the schedule to the Code for the expression "cognizable", the expression "arrestable without warrant" and for the expression "non-cognizable" the expression "arrestable with warrant or order" shall be substituted.

The Committee recommended for the review and re-enactment of the IPC, Cr.P.C. and Evidence Act may take a holistic view in respect to punishment, arrestability and bailability.

Consequential amendments shall be made to the First Schedule in the column relating to bailability in respect of offences for which the Committee has recommended that no arrest shall be made.

Even in respect of offences which are not arrestable, the police should have power to arrest the person when he fails to give his name and address and other particulars to enable the police to ascertain the same. Section 42 of the Code be amended by substituting the word "any" for the words, of non-cognizable"
As the Committee has recommended removal of distinction between cognizable and non-cognizable offences, consequential amendments shall be made.

The First Schedule to the Code be amended to provide only the following particular.

i. Section

ii. Offence

iii. Punishment

iv. No arrest/arrestable with warrant or order/arrestable without warrant or order.

v. Bailable or non-bailable

vi. Compoundable or non-compoundable

vii. Triable by what court

Consequential amendments shall be made to part II of the First Schedule in respect of offences against other laws.

Rights and duties of the complainant/informant, the victim, the accused, the witnesses and the authorities to whom they can approach with their grievances should be incorporate in separate Schedules to the code. They should be translated in the respective regional languages and made available free of cost to the citizens in the form of easily understandable pamphlets.

Presence of witnesses of the locality or other locality or neighborhood is required under different provisions of the existing laws. The Committee recommends that such provisions be deleted and substituted by the words "the police should secure the presence of two independent witnesses".

*The Ribeiro Committee dwelt on this issue and recommended as follows:*

The investigation wing of the Police will be insulated from undue pressure if the DGP is selected in the manner prescribed above and given a tenure and also if the PPAC discharges its role of overseeing police performance and ensuring accountability. All
investigating officers should be specially trained in scientific methods of investigation and not utilised for law & order duties except in small rural police stations where it may not be possible to strictly demarcate the two important police functions. The investigating officers should not be shifted to law and order or other duties for five years at least. The recommendations of the Law Commission about insulating the investigative functions of the police from its law and order work should be implemented urgently.

The Padmanabhaiah Committee has recommended the following on this aspect:

Investigation should be separated from law and order work. In the first phase, this separation should take place at police station level in all urban areas. An Additional Superintendent of Police should be exclusively responsible for crime and investigation work.

Sections 25 and 26 of the Indian Evidence Act should be deleted and confessions made to police officers of the rank of Superintendent of Police and above should be made admissible in evidence. Every police station should be equipped with 'investigation kits' and every sub-division should have a mobile forensic science laboratory.

A perusal of the recommendations of these four national level commission/committees clearly bring home the point that the process of investigation needs to be reformed at the earliest. It also brings to light the fact that the lack of these very essential reforms has done incalculable harm to the judicial process and justice to the victim. All of them are unanimous that the investigation and law and order police should be separated. They also feel that the section 25 & 26 of IEA which reek of distrust towards the police need to be amended. Other suggestions regarding police custody, remand, anticipatory bail, need for local respectable witnesses at the time of search and seizure need to be implemented post haste. Section 161 & 162 CRPC need to be amended in order to facilitate better conviction rates. At the end, it can only be said that these reforms can be postponed only to the extreme detriment of the CJS in our country.