CHAPTER-VIII

Conclusion and Suggestions
Chapter VIII

CONCLUSION AND SUGGESTIONS

I. Conclusion

The Criminal Justice System is that collection of functions performed by the legislature, police, prosecutors, courts, probation and correctional personal and other related agencies both within and outside the government for the purpose of enforcing and adjudicating the criminal law. Criminal justice directly affects the life of people in the society. It leads to the organized and law abiding society. The Criminal justice system as a whole, means a set of various components working together for providing justice to the people and preventing criminal behavior in the society. It consists of three major components i.e. law enforcement agencies, courts, corrections and the specialized auxiliary service of probation, parole and juvenile justice system. Law enforcement agency is the first component of the criminal justice system. It consists of police agencies. The major function of the police agency is to prevent the criminal behavior. Secondly, the police agencies are engaged in Crime Investigation. It is the effectiveness of this component, which determines the number of cases before courts and correctional agencies.

The second component of the Criminal Justice System is courts. The Courts plays a dual role in the Criminal Justice System. They are both participant in the Criminal justice process and supervisors in its practice. As participant they determine the guilt or innocence of those, who are accused of crime and impose sanctions on them. As supervisors they act as guardian of the requirement of the constitution or statutory law. When the Court convicts a person of a crime then the third component of the criminal justice system comes into operation. Correction becomes the measure of the criminal justice system because it is from this sub-system that convicted offenders are released to society as free citizen. Those defendants whose conviction have
not been overturned on appeal or through collateral attack and who have been sentenced to imprisonment or probation or parole, enters into this last stage of the criminal justice system. Although, all these components of the criminal justice system are organizationally separate but they are functionally interrelated. Neither the police, courts nor the correctional agencies can perform their task without the efforts and co-operation of each other.

The basic function of the Criminal Justice system in India is that of a sequential crime control process with inbuilt inalienable safeguard for the protection of both rights of the society and the constitutional rights of the accused. This goal is achieved through adversarial system. In adversarial system the accused is presumed to be innocent until proved guilty and the burden is on the prosecution to prove the guilt of the accused beyond reasonable doubt. Adversarial system relies on the skill of different advocates representing their party’s position and not on some authority. The other system which is prevalent mainly in continental countries is inquisitorial system, in which power to investigate rests primarily with the judicial police officers. The judicial police officer has to notify in writing of every offence which he has taken notice of and submit the dossier prepared after investigation to the concerned prosecutor. In this system both accused and the victim are entitled to participate in the hearing before the trial judge. The standard of proof required is the inner satisfaction of the judge and not the proof beyond reasonable doubt as in the adversarial system. In inquisitorial system the Judge of instructions is combined to some extent the role of investigator and the judge. The defence lacks adequate opportunity to sort the evidence of the prosecution by cross examination. Both the systems have its own merits and demerits and there is no system which is free from the defects.

The Criminal Justice system has a multiple role in the relationship among the State, society and individual. The concept of justice for a common man in any country mainly refers to the criminal justice system. The criminal
justice system can revive in a particular State only if it live upto the expectations of the people to a reasonable extent. The system can function in effective manner if all the three components of the system works efficiently and cooperate with each other. The success and failure of the system can be seen from the effectiveness of its individual component. In our country the police plays an important role in dispensation of justice.

The alarming rise in crime rate clearly indicate that the system is not as effective as it is required to be. In 2010, a total of 67,50,748 cognizable crimes were reported showing an increase of 1.11 percent in one year i.e. over the year 2009. Specifically the economic offences are constantly increasing as compared to the other offences. The other factor to judge the working of a criminal justice system can be the disposal of cases of pending investigation by the police and disposal of cases by the courts. During the last four decades, the gap between the number of cases for investigation and the cases where investigation is completed is widening every year. In 1961 the number of pending cases for investigation under IPC Crimes were 1,09,876, which has increased up to 8,26,936 cases in 2010. The analysis of the statistics given in Crime in India shows that the disposed percentage of SLL cases were better as compared to the percentage of IPC cases. In 2010, 94.4 percent cases were disposed off by the police which include 0.9 percent of cases where investigation was refused. Though the investigation process is slow and number of pending cases is increasing year per year. But this gap is more on the part of Courts. In 1961, the trial was completed in 30.3 percent of the total cases, which indicated a slight increase of 1.7 percent as compared to 1971. However there is decrease in disposal of cases after 1971 and in the year 2010 only 13.3 percent cases were disposed off by the Courts.

From the analysis of statistical data regarding disposal of cases by investigating agencies and courts, it has now become clear that the pendency of cases is increasing rapidly both at investigation stage as well as at trial stage. The ratio of pendency is more in courts than at investigation level. This
delay in disposal of cases shows the inefficiency of the criminal justice system. The rate of conviction in our country also point out towards inefficiency of Criminal Justice System. In 1961, the conviction rate at the national level in IPC crimes was 64.8 percent, which has shown a constant decline during the last 40 years and has reached to 40.7 percent in 2010. However, the conviction rate in Special and Local Laws (hereinafter mentioned as SLL) Crimes is better than in IPC crimes. During the year 2010, the conviction rate of SLL crimes was much higher (91.7%) at national level than that of IPC crimes (40.7%). The reason for higher conviction rate may be that many of SLL crimes are petty in nature which does not require detailed investigation. Moreover, petty offences are usually not contested in the Court e.g. challans under the Motor Vehicle Act, 1988.

The inefficiency of Criminal Justice System can be due to various reasons such as lack of coordination between all the components, overburden of judiciary and police agencies, corruption, lengthy procedures, technicalities involved in the judicial process or flaws in the existing laws. In order to detect the defects in the present criminal justice system and to suggest the appropriate reforms, Law Commission of India has given various recommendations. The Law Commission has recommended in its 154th report for establishment of separate investigating agency and independent prosecuting agency. Apart from Law Commission of India, Government of India, Ministry of Home Affairs constituted a committee namely, Justice Mallimath Committee in 2003, which submitted its report in April 2004. This committee reviewed the Criminal Justice System and recommended some important changes in the existing laws and procedure relating to investigation. The committee made various recommendations about the rights of accused as well as suggested measure to make the investigation effective. The committee felt that some of the good features of the inquisitorial system can be adopted to strengthen the adversarial system and to make it more effective. This includes the duty of the court to reach the truth, to assign pro-active role of judges, to give direction to the investigating
officers and prosecution agencies in matter of investigation. The committee also recommended to amend section 313 of the Criminal Procedure Code, 1973, by adding a new clause, whereby direction is given to the court to draw adverse inference if the accused remains silent. Apart from this the committee recommended some rights to the accused person. The committee also suggested that the investigation must be conducted with the help forensic science and modern technology. Statements of the witnesses, dying declarations and confessions should be recorded in the form of audio/video recording. The committee recommended some changes in the court process to improve its effectiveness. Some of the recommendations of the committee has been adopted in our Criminal Justice System. But many suggestions of the committee are yet to be implemented.

Investigation is a very important component of the criminal justice system. Because it is through this process, the evidences are collected, which proves or disproves the charges on the accused person and ultimately results in the conviction of guilty person and acquittal of innocent. If the investigation is done by the investigating agencies properly, then the guilt can be proved in the Court beyond reasonable doubt. Investigation is the primary mode of collecting evidences of crime which has been or is being committed. Under the Criminal Procedure Code, “Investigation” includes all the proceedings under this code for the collection of evidence conducted by the Police Officer or any other person, who is authorized in this behalf by the Magistrate.

In the ancient period, there was no complicated code of criminal procedural law like the code of Criminal Procedure in the modern India. Investigation was in the charge of the King and for his help he could appoint, the lords and the spies.

During ancient period, it was considered the highest duty of the King to do the justice. Katyayana’s Arthashastra, which is a monumental work on law
at that time, specifically mentions that King for imparting this duty had appointed councilors and the spies. The prime functions of the councilors was to inform the King about happenings in their areas. The procedure for detection of criminals was, through secret agents, investigation through interrogation and through torture are given elaborately in the Kautilya Arthashastra. He has classified the spies into nine categories according to the nature of their work.

Police during this period was responsible for maintenance of law and order and prevention of crime. For this purpose, they were required to have a close eye on the persons of suspicious character. But once a crime was committed, the King was under a duty to find the truth. There were four modes of establishing the truth, possession, documents, witness and ordeals. The first three modes were known as human proof. In those cases where these modes were not available, then the forth mode i.e. divine proof was used to prove the guilt of the persons. However, in those cases where human proof were available, divine proof was not acceptable. Nine kinds of ordeals were recognized to prove the guilt of the persons. Hence, in those cases where the proper information or evidences were not collected during the investigation by the spies or the King. The guilt or innocence of the person could be proved in the court during trial by these means of proof. The police officials in general were not under the duty to investigate the case and collect evidences.

During the Mohammedan period, the condition was almost similar with slight changes. The King was at the centre and the highest judicial authority. However he had authority to appoint Mufti’s and Kazi’s for the purpose of deciding matters at the grass root level. They were appointed by the King by written order for administration of justice. They were considered as the representative of King. Evidences during the Mugal period generally consisted of statement of witnesses, oath and the written documents. The assistance of experts and their opinion was admissible in the Courts. There
was no prescribed procedure for investigation and trial of cases. The main emphasis was on the ascertainment of truth. Hence, due to the non-observance of the procedure, the chances of miscarriage of justice were very low. During this period, there was no distinction between civil cases and criminal cases.

The primary duty of collection and production of evidences was on the complainant. In India, it took much time for rulers to accept that it is the duty of the State to prosecute the case on behalf of the complainant as the crime is to be considered against the whole society and not against the complainant. This concept came to India with the Britishers when the western colonization overpowered the whole Indian life and established its own courts in India with its own laws. They introduced this concept that a criminal act, is not an offence against the individual but against the whole society. This automatically made necessary for the State agencies to establish a system wherein the criminal acts are to be investigated and the evidences are to be collected. The duty of investigation was given to the police agencies.

Opinion of the experts was made admissible in limited cases during Hindu period and Mohammedan period. Such as in order to ascertain the duration of pregnancy, the opinion of women having knowledge and experience in the pregnancy and delivery of women was admitted. But when the Britishers established their administration in India, they applied the same principles in India, as they were prevalent in England. In England, investigation was a private function in early English laws. However, in the twentieth century, Henry-I, introduced the concept of accountability of community. Hence, the investigation was made a public function. In the early English law, four methods including ordeals were recognized for proving the fact in trial. With the development of the institution of jury trial and its gradual displacement of the order form the trial. These juries were the bodies of neighbours, already acquainted with the facts, who partook the character of
witnesses, as well as of the judges. During this period, investigation process was conducted by the jury members to ascertain the truth. Later on this task was deputed to the police. By the seventeenth century the jurors had become clearly distinct from that of the witnesses. Then the experts in the present form came into light.

Presently, the procedure for investigation is provided under the Criminal Procedure Code, 1973. Investigation is a continuing process which begins with the collection of evidence obtained in exercise of power under section 156 of the Criminal Procedure Code and ends with the submission of the report under section 173 of the Criminal Procedure Code.

The investigator gathers evidence to identify a guilty person and collects adequate evidence to arrest and to prosecute him. The Criminal Procedure Code prescribes a specific procedure for investigation. For the purpose of investigation, the offences are divided into two categories, cognizable and non-cognizable. In cognizable offences police officer has the statutory power to investigate without a order of Magistrate and this power cannot be interfered by the Court. But in case of non-cognizable offences, the investigation starts only by the order of the Magistrate. The process of investigation may start in three situations, firstly, where the FIR is filed under section 154 of the Code. When the information about the commission of cognizable offence is given at the police station and is reduced by Police Officer to writing. It initiates the investigation process, provided it is given in the police station having jurisdiction. Secondly, where the police officer has authority to investigate without FIR. Under section 156(1) this vast power is given to the police officers to take cognizance at its own motion. Thirdly, investigation process starts where a competent Magistrate orders the police to investigate. In case of non-cognizable offence, investigation starts by orders of the Magistrate only. The Magistrate can also order investigation on receiving any complaint of a fact which constitutes an offence. Such
information may be received by him from police report or from the other source.

Once the process of investigation is started, the process can be divided into five components. The first component is proceeding to the spot without delay. Because any delay on the part of Police Officer gives opportunity to the culprit to fabricate or remove the material which can be produced in the Court as evidence. Once the police offices reaches at the spot the scene of occurrence should be cordoned and guarded against any possible damage to the physical evidence, which may be traced out at the spot. The next component of investigation is ascertainment of facts and circumstances. The commencement of an investigation is subject to two conditions. Firstly, the Police Officer should have reason to suspect the commission of crime. Secondly, he has to satisfy himself as to the existence of sufficient grounds for embarking an investigation. In those cases where information given to the police is not complete, ascertainment of facts and circumstances may start from the scene of occurrence. The third element of investigation is the discovery and arrest of the suspected offenders. Under Chapter V of the Criminal Procedure Code, 1973 from section 41 to 60 provides extensive provisions for arrest of persons. As soon as the accused is arrested by the police officers, specifically authorized in this behalf. The police officer is under obligation to disclose ground of arrest and inform him about his rights. After arrest, the accused person must be produced before the Magistrate within 24 hours of the arrest excluding the time for traveling.

Collection of evidence is the most important step of investigation. The collection of evidence includes the examination of various persons including the accused and the search of places or seizure of things. Such examination and search is considered necessary for investigation. For the purpose of investigation, the power to examine witnesses is required by the Investigating Officer. Their presence is provided under Section 161 of the Code which gives authority to competent police officer to examine the witness in any
case. The statement of witness is not required to be signed by the witnesses. Section 163 imposes a duty on the police officers not to make any inducement, threat or promise for extracting any confession or statement. Section 164 provide the procedure for recording the confession and statement of witness by Magistrate. The provisions have to be strictly adhered for the admissibility of the statements in the court.

For the collection of evidence, the investigating Officer is also authorized to search the places and seize the articles relevant to offence. The procedure for search is provided under section 100 of the Code. Although, the time limit for investigating is fixed as 24 hours. But, if the accused is in the police custody then section 167 provides procedure for extension of period of investigation. The accused can be sent to the judicial custody after the period of 15 days of police custody which is the maximum period for police custody. The period for investigation can be extended by the Judicial Magistrate according to the nature of the offence being committed.

Once the investigation is complete, the investigating officer can, release the accused when the evidences are deficient under section 169. In those cases, where the evidences are sufficient, the case will be sent to the Magistrate under section 170 and the investigating officer shall submit the report on the completion of investigation in the Court under section 173. This report is generally known as charge sheet.

Apart from the Criminal Procedure Code, there are certain other Acts, in which provisions relating to investigation of specific offences are given. This may be due to specific nature of offences given under such Acts, which requires the special procedure of investigation. Under Narcotic Drugs and Psychotropic Substances Act, 1985, Public Grambling Act, Suppression of Traffic in Women and Girls Act 1956 etc., special procedure for search and seizure of person and things has been prescribed.
The study reveals that though detailed procedure has been laid down for investigation. Yet the procedure is not followed in many cases. Non-compliance of the procedure results in acquittal of the accused on technical grounds. The Criminal Procedure Code gives a time limit of 24 hours for investigation. But the investigation is never completed within 24 hours. Investigation is done by the Police Officers not versed with law. The Investigating Officer is rarely accompanied by the forensic science experts. Apart from this the hostile witnesses is a major problem, which affects the investigation. As a matter of fact investigation should be a team work which is rarely constituted. Even in heinous crimes investigation is handed over to single person. The role of public prosecutor during investigation is minimum. He does not supervise the investigation. He is concerned only at the stage of prosecution. Hence the need is not only of the effective laws but also of the effective implementation of these laws.

In England, the broad principle of investigation are similar to the Indian legal system. So far as the procedural provision about investigation in England is concerned, broad outlines have been laid down in the Criminal Procedure and Investigation Act, 1996. For the purpose of detailed rules of investigation, the Secretary of the State is authorized to frame the code of conducts. Under this Act, eight Code of conducts have been laid down for investigation. Apart from this statute, the Police and Criminal Evidence Act, 1984 contains the procedure relating to power to stop and search of persons, entry, search and seizure, arrest detention etc. Under Italian Law, the Investigation process is different from Indian and English legal system. Under Italian legal system public prosecutor plays the role of investigator also. Italian Criminal Procedure system has features of both adversarial and inquisitorial system. The investigative function is assigned to the public prosecutor, while the judicial function is carried out by the judge in charge of the primary investigation. Public Prosecutor completes the investigation and submits the report to the Judge of the preliminary hearing. Under Italian legal
system, public prosecutor plays a different and more important role than in India.

The main objective of investigation in all legal systems is to collect all the relevant piece of evidences in respect of commission of crime. But when the investigation is defective either the prosecution case cannot be proved beyond reasonable doubt. There are various errors committed during investigation which result in acquittal of accused. Delay in lodging FIR often results in embellishment, which is a creature of an after thought. On account of delay in filing the FIR, collection of evidences etc., the accused gets benefit of spontaneity. Fabrication of records and partial investigation are the other factors which create doubt as to the credibility of the investigation where the investigating officers are negligent in collection of evidences. Some important link evidences may remain uncollected which ultimately results in the absence of the link evidences and the crime cannot be proved in the Court. Examination of witnesses must be conducted within reasonable time. If the investigation is not conducted within reasonable time then it casts doubt on the investigation.

Apart from this when the investigating agencies fail to seal blood stained weapons, cloths or contraband substance or finger prints etc. Such failure proves fatal to the prosecution case, because defence argues that there is chance of tempering.

There are certain Acts, where mandatory conditions for investigation are laid down. If these mandatory conditions are not followed, on the basis of these defects the accused are released. Where the investigation is conducted by the subordinate officials then the prosecution may cast doubt on the credibility of the investigation.

In Krishna Lai v. State of U.P., where the eye witness of the murder was examined after 56 days without any reasonable justification. The court
held that such delay raises a strong suspicion regarding genuineness of the
evidence of eye witness. Signing of statement under section 161 of criminal
procedure code also affects the credibility of the evidence of the witnesses
because under this section the person giving statement is not required to sign
the statement. If the police record made by the investigating officer becomes
suspect or unreliable on the ground that it was deliberately perfunctory or
dishonest. In order to improve the criminal justice system, it is necessary that
these defects of the prosecution must be removed.

Although comprehensive provisions are provided in India for
investigation, which gives vast powers backed with the responsibilities to the
investigating officers. But due to rapid growth of science and technology, the
new techniques has provided a magical rod in the hands of criminals. The
criminals are using science and the crime techniques are getting re-defined.
The fastest means of communication and transportation has provided wide
opportunities for committing crime and then hide themselves. The cyber
crimes are example of use of latest technology in commission of crime. The
offenders can commit crime by sitting at one corner of the world against any
person in the other corner of the world. Due to these reasons it has become
the need of the hour that the latest scientific means must be applied for
detection of these crimes.

The use of scientific means in investigation is gaining popularity and
generally termed as scientific investigation. In investigation, evidences are
collected with a view to establish them before the court. So the evidences
which are collected by using scientific means with the help of experts are
known as expert evidence. For the purpose of providing evidence in the
court, various fields of science are used. Forensic medicine or medical
evidence is the branch of medicine or medical evidence which deals with the
application of medical knowledge for the purpose of law. The evidence of the
medical expert is taken either in oral or documentary form as to the questions
relating to death, nature of injuries and their causation, determination of age,
assault, rape, for ascertaining paternity and mental condition etc. The primary problem of criminology is the identification of individual. For this purpose the help of medical experts is required. In case of offences against the human body, examination of victim as well as accused may provide important clues regarding commission of crime. Apart from the identification of persons, in vast majority of the cases the medical examinations reveal clues to the nature of weapons used. In the cases of homicide, forensic necessity for the medical experts is keenly felt. In all cases of alleged death by foul play, an autopsy by a medical expert is absolutely necessary.

The detection of poisons and their identification is an important aspect of forensic science. Chemical examination of the food, vomit, urine etc. reveals the presence of suspected person. Every poison has its own chemical composition and symptoms and it can be identified and detected with the help of medical practitioners and chemical examiners. Generally chemical examiners will receive from doctors a sample of blood, urine, possibly vomit. All the specimens are examined and analysed and finally the report is submitted before the Court mentioning what poisons he found and to what extent it has reacted on body. Opinion of medical practitioners is required to judge the state of intoxication in those cases where a person has committed an offence under the state of intoxication. In the offences against body medical experts plays a very important role.

Ballistics is another field which plays an important role in the criminal offences where the fire arms has been used. Ballistic experts after examination of fire arms, bullets etc. can give opinion with certainty as to nature of ammunition, the part played by the particular firearm in commission of offence. The Identification of Fingerprints and footprints has become most important branch of criminal investigation. A fingerprint is unique and individual mark of a person. If the specimen fingerprints are taken properly and compared by experts without any negligence, the fingerprint experts can draw unambiguous conclusions without committing any mistakes. The
The science of identification of footprints is not a fully developed science but it can be used to reinforce the conclusions as to identity of the culprit already arrived at on the basis of other evidences.

DNA fingerprinting is an authenticative technique that is capable of distinguishing from the other individual, with the exception of identical twins or clones. In criminal cases evidence sample is collected by the crime investigating authorities from the body of the victim for tracing DNA coming from the suspect. The evidence sample is matched with a reference sample taken from the suspect. The weight of DNA profiling match will be presented by means of a match probability and likelihood ratios. The other field which occupies an important place in the investigation is the identification of handwriting. A detailed study of handwriting enables the exposure of the fraud and forgeries etc. The experts with the technological knowledge and its proper application can provide the court with evidence that can change the outcome of the case. Now with the increasing use of the typewriters for the production of fraudulent writing of many kinds has certainly created necessity of identification of these documents by the experts in this field. The examination of the typewriting document is based on a scientific study of certain significant features of the typewriter. However, this evidence is not conclusive in nature. It only assists the court to establish the authorship of document and is only corroborative in nature.

The rapid growth of information and communication technologies over the past decades has increased the use of computers and other electronic devices for information, information storage and communication. The data stored in the computers is called electronic records. Whenever the genuineness of these records is in dispute then the certifying authority/experts may be called before the court to give opinion over the genuineness of these records.
The opinion of experts in all these fields has been made admissible under section 45 of the Indian Evidence Act, 1872. However, the evidentiary value of these fields depends on the fallible or infallible nature of science. Most of the fields of scientific evidence are not considered perfect science hence fallible. Sometimes the instruments, machines etc. are defective. In such cases though the test is conducted in correct way, but it does not lead to accurate result.

The court has given different criteria for assessing the probative value of expert witness. In some fields the qualification is necessary, whereas in some other fields experience may be enough. The trend of the judicial decision shows that the probative value behind the piece of evidence depends on the procedure followed by the expert for coming to the conclusion and perfection of the particular field of science. In *Darshan Singh & Others v. State of Haryana*, where the opinion of medical expert regarding injuries and the opinion of Ballistics expert was corroborated by two eye witnesses, was considered to be reliable enough to convict the accused person. The medical evidence is considered relevant and can be used for convicting the accused, when corroborated with other direct evidence. But it cannot act as a sole ground for convicting the accused. The opinion of the medical expert is admitted for determining the age, time of death, insanity, cause of death, nature of injuries and sexual offences etc.

Apart from the medical evidence, the other field, which is most commonly used to establish the fact is Ballistic evidence. Whenever any injury or death is caused by firearms, Ballistic experts help the court to reach at the correct conclusion. In *Sukhwant Singh v. State of Punjab*, the Supreme Court observed that “In those cases where injury is caused by firearms, the opinion of the Ballistic expert is of considerable importance.” However like medical evidence, Ballistics is also considered as a corroborative evidence. Like the other secondary evidences, opinion of handwriting expert has been given consideration. But it is considered to be
less satisfactory evidence and needs to corroborated by other direct
evidences. In *State of Maharashtra v. Sukhdeo Singh*, the Supreme Court
observed that before a Court can act on the opinion evidence of a
handwriting expert, two things must be provided beyond reasonable doubt.
Firstly, the genuineness of a admitted handwriting of the accused. Secondly,
that the handwriting expert is competent to give opinion as to handwriting. In
*State of Gujarat v. Vinaya Chandra Chhota Lal Pahi*, it was held by the
Supreme Court that the opinion of the handwriting expert is relevant but that
is not too conclusive. Therefore, the sole evidence of an handwriting expert is
not normally sufficient for recording a definite finding about writing of a
person. Typing and printing has been included within the meaning of section
45 of the Indian Evidence Act. The value of evidence of opinion of typing
expert will be same as of handwriting experts.

There are some fields of science, which due to their perfect nature are
considered to be more reliable then other scientific evidences like DNA tests,
fingerprints identification etc. In Naina Sahani’s case the Supreme Court held
that DNA test is very useful for establishing the identity of dead person,
whose body is recovered and not in identifiable condition because of
decomposition. These tests are very useful in establishing the paternity of a
person or identity of a person. Like DNA evidence, the fingerprint evidence is
considered as infallible evidence if proper procedure is followed for
conducting the test.

In *Murari Lal v. State of M.P.*, the Supreme Court observed that, the
more developed and perfect the science is, the less is the chance of an
incorrect opinion and converse, if the science is less developed and
imperfect. The science of fingerprints has obtained near perfection and the
risk of incorrect opinion is practically non-existent. In *Jaspal Singh v. State
of Punjab* also, the Supreme Court held that the science of identifying thumb
impression is an exact science and does not admit any mistake or doubt. But
in those cases where proper procedure is not followed for collection of
fingerprints or comparison of these fingerprints then it will be considered a flaw in the process and the validity of such evidence may be challenged. In *Mohd. Aman v. State of Rajasthan*, the Court gave benefit of doubt to the accused because the custody of the jug containing/having fingerprints on it, was in question and there were serious doubts as to the collection of these samples.

A particular field of science will have value in the eyes of law, depending upon the perfection of the science and its acceptability in the Court. There are some fields, which though very advanced, but are not acceptable in the courts as evidence, like lie detection tests. Because they fail to fulfill the conditions of law, as they are considered to be unconstitutional.

Investigation does not only help in collection of evidence and thus proving a guilt against the accused, but has deep relation with the criminal justice system as a whole. It is oftenly considered in relation to our country that the concept of plea bargaining is not working as the accused feel that he is going to be acquitted even if he has committed the offence. Incarceration and jail are only for poor. These things happen in any legal system only if proof is wholly left on oral disposition. In India, we follow adversarial system, where the accused unless proved guilty is considered innocent. The burden of proving guilt is on prosecution. Criminal procedure begins with investigation and investigation is generally conducted by the Police Officers. Hence investigation is considered main element of Criminal Justice System. For a successful detection of crime, honest and qualitative investigation is an indispensable requirement. Whatever evidences are collected by the investigating officer and produced before the court, the case is decided on the basis of those evidences, if the court considers them relevant.

If the investigation is done by the investigating officer with the help of scientific techniques. Then the evidences collected by such means will be
known as scientific evidences. There are less chances of manipulation of these evidences. Hence such evidences are considered as infallible. Such evidences can have more evidential value if the tests are conducted properly, the instruments are in proper condition and the tests are conducted by the qualified experts in that field. The judges will be in a position to give due weight age to such evidences if the judges are convinced about the reliability and infallible nature of the evidence. The scientific investigation can prove a boon to the criminal justice system it conducted properly.

II. Suggestions

Investigation plays a very important role in the criminal cases. Effective investigation facilitated by the latest scientific techniques can be a key factor to improve the conviction rate and to decreases the crime rate. There are various factors which are required to be removed for the effective justice delivery system. In order to improve the effectiveness of the system some important changes are suggested by the researcher.

1. The prosecution was separated from investigation under the new Criminal Procedure Code in 1973. It has been much debated in our country that investigation must also be separated from law and order enforcement agency of police. A step in this regard has been taken by State of Himachal Pradesh and many other states. However, the investigation still remain to be under the incharge of police station who is performing double duties i.e. law enforcement and investigation. Hence, practically there is no such separate branch as such. So it is suggested that independent investigation branches must be established exclusively for investigation.

2. There is generally no classification of work amongst the investigators. Many a times Investigation of grave offences are entrusted to the less experienced police officers. As a result their
remains loopholes in the investigation resulting acquittal of the culprits. Therefore, the investigation of grave offences must be entrusted to the police officers not below the rank of Station Head Officer (SHO). Under the Criminal Procedure Code all the police officers are investigating officers even if he may be Superintendent of Police of Districts. However, it is only in rare cases where investigation is done by superior officer of police.

3. The minimum rank of Investigation Officer in our country is sub-inspector. However some important police stations are headed by the officers of the rank of Inspector. It has been observed that the investigations are mostly conducted by lower rank officers and the SHO’s generally do not conduct investigation themselves. Investigation by lower rank officers, who are not trained to investigate, definitely deteriorate the quality of investigation and oftenly about the authority or authenticity of investigation. Therefore investigation by the minimum rank officers must be made a prior condition in every case.

4. With the advancement of science and technology, the manner of commission and the nature of crime have also changed. The criminals are using the latest techniques for committing the crimes. So for the investigation of such offences, the Investigating Officers are required to be properly trained to collect the evidences scientifically. But the proper training is not provided to all investigating officers. Training is generally given to the officers above the rank of Sub-Inspectors but practically due to over burden, investigation is conducted by the officers below the rank of Sub-Inspector. Due to lack of proper training they do not know the relevance of minute evidences such as hair, fingerprints etc. As a result such link evidences are either not collected or not collected properly by the Investigating Officers. Hence, the link evidence
remain missing. As a result the case can not be proved beyond reasonable doubt and culprits are acquitted. Therefore, extensive training must be given to these officers and the grading must be given to these officers according to their performance in the training. Only specially trained Police Officers, according to their grade must be entrusted with the job of criminal investigation.

5. Many culprits are acquitted in the court because most of our Investigating Officers do not have sufficient knowledge of law and court procedure. They fail to understand the requirement of law and statutory procedure. Much of their endeavours go in vain, where it does not fulfill the requirement of law and procedure. Therefore the Investigating Officers must be provided with proper training in the law and procedure through lectures, seminars and special training programmes.

6. The Investigating Officers must be aware about the judicial decisions especially those pointing the defects in the course of investigation. There are number of journals and police gazettes, which publish such extracts from the recent judicial decisions. These journals and Gazettes must be provided to the Investigating Officers, in order to spread the awareness amongst them. So that its repetition may be avoided. Seminars and discussions should also be arranged under the supervision of the senior police officers and public prosecutors.

7. In those cases where the statement of the eye witnesses are not recorded after the occurrence of incidence during investigation but at the later stages. Then such delay casts doubt on the investigation and there are great chances of fading the memory of witness. In many decided cases the court has refused to rely upon such statements, which are given by the witnesses at the later
stages, after the lapse of reasonable time. Hence, the Investigating Officers should record the statements of the eye-witnesses at the first opportunity to do so.

8. Delay in conducting identification parade by the Investigating Officer make such identification unworthy. Because with the passage of time the memory of the witnesses fades away. Such delay also gives chance to witnesses to see the accused in the police custody and make a note of his features. It affects the credibility of the test identification. So to remove this defect a time limit must be fixed by inserting specific provisions in the Criminal Procedure Code.

9. There exist a huge problem of inadequacy of the investigating staff in India. The Police Officers are hard pressed for time with the multifarious commitments and thus not able to devote adequate time for the investigation work. As a result the quality of investigation suffers, which in turn increases the chances of acquittal of culprits. Hence, adequate number of police officials must be appointed separately for investigation work.

10. During this research, the researcher found that during ancient time and to some extent in the medieval period the method used for obtaining information regarding commission of crime were well developed. Though investigation was the task (in the shape of adducing evidence) of the individual parties. In the modern times we find that due to mass activity the information system has not developed in the proper manner. It has resulted in less reporting of those crimes, where the individuals are not directly affected. Therefore more comprehensive crime reporting system is required, which has backing and support of the general public.
11. In India, adversarial system has been adopted, according to which the accused until proved guilty is considered as innocent. The role of the aggrieved person in the adversarial system has not been defined well. He can play a key role in the investigation of the crime committed against him. Therefore he should be allowed to join investigation and for this purpose the criminal procedure code is required to be amended. Such provisions must be inserted in the code.

12. It has been found that in majority cases investigation is one sided affair. The Investigating Officers only collects the material, which goes against the accused person. In case of oral evidence the accused can ask to examine the witness, however in cases of documents the examinations on the insistence of accused person may be difficult. This accompanied with the nature of evidence like examination of electronic record as genuine would prejudice the accused person. The scientific laboratories to examine the electronic record are very few. Hence, fair opportunity is required to be given to the accused at the time of investigation also. The laws are required to be amended accordingly in relation to the examination by the experts.

13. The accuracy of scientific evidence depends on the quality and facility of laboratories and skill and independence of person performing the experiments. This requires the establishment of appropriate number of laboratories. But the number of independent and well equipped laboratories with equal access to both accused and the prosecution right from the prosecution stage is not sufficient. Therefore, it is suggested that steps are required to be taken in this direction.
14. It has been observed that the opinion of experts as evidence carry different probative value depending on the nature of science. For example the thumb impression opinion is considered to be more authentic than the opinion of handwriting experts. Similarly the report of serological expert is also given more weight. Similarly the recent research has also established certain scientific experiments more authentic than others. However, there are no rules to guide the judge on these aspects. It is also difficult to judge from the opinion of expert about the authenticity of scientific experiments. It is therefore suggested that section 114 of the Indian Evidence Act in the shape of presumption to help the judge about the admissibility and probative value of expert evidence must be inserted. This can be done by incorporating the presumption of fact and law depending on the nature of authenticity/perfection of science. This will help in giving uniform probative value to such evidence, however the other factors which affect the privative value has also to be seen.

15. In India, the investigating agencies are not well equipped with the instruments to collect the samples e.g. fingerprints, hair, blood samples etc. from the scene of occurrence. For this purpose mobile forensic laboratory units have been established. But the number of such unit is very limited. As a result, the forensic laboratory experts fail to visit all the scene of crimes, resulting in use of improper methods of collecting sample. Such irregularities affects the evidentiary value of these evidences. It is therefore, suggested that sufficient number of mobile forensic laboratory units must be established.

16. A particular field of science may be a perfect science. But if the tools and instruments, by which such tests are conducted are not in proper condition. Then the chances of error are always there which
ultimately affects the evidentiary value of the evidences collected by using the scientific method. It is therefore suggested that latest tools and machineries must be provided to these experts and these instruments should be examined within reasonable time gap.

17. It has been found by the researcher that the reports of chemical laboratory in respect of contraband goods like 'charas' and 'opium' in many cases are not prepared as per requirement of law e.g.: 'Charas' is defined as separated resin obtained from the cannabis plant. Similar is position with opium as it has to be extract of specific plant. If the expert does not mention these things, it would result in acquittal of the accused. Scientific experts are conversant with the scientific techniques. However, they may not be conversant with the requirements of law in respect of the experiments conducted by them. Sometimes they fail to mention in their report specific things which are required by law for its admissibility before the court. In order to avoid this situation the forensic experts must be trained with the basic legal procedures by arranging legal training programmes for these experts.

18. Although, some fields of expert evidence is regarded as foolproof. But if the experts themselves are unsure of the reliability of the evidence, judges will be in no position to interpret the scientific evidence. While it is important to examine the analytical tests used and the manner in which these cases were conducted. Sufficient weight must be given to the origin of the sample being tested, how it was collected and presented what inferences may be safely drawn from the results obtained. The standard must be asking for beyond reasonable doubt.

19. The standard with respect to the chain of custody and match probability need to set and adhered to in order to eliminate all
possible doubts about the reliability of scientific DNA evidence. Also a commission comprising technical experts as well as police and judicial officers should be established to audit, examine laboratories and license them to conduct scientific DNA tests. The commission must have power to derecognize laboratories that do not adhere to prescribed standard and hear complaints with respect to misuse of samples.

20. The Indian Evidence Act came into existence in the year 1872. Very few changes have been made in the Act till today. The provisions relating to proof of scientific evidences specifically handwriting are scattered in different provisions of relevancy. The approach suggested by the Act is not as per the nature of the evidence, but is as per the nature of witnesses likely to dispose in the court. Therefore, changes are required to be made in the Indian Evidence Act to place rules regarding relevancy of handwriting and scientific evidence at one place.

21. The biggest problem in criminal cases today is regarding turning of witnesses hostile. The problem of hostile witness is revolving like a pendulum between the court and investigation agencies. The investigation agencies says that the witnesses has realized from their statement in the court and the statement recorded by the investigating officer is true. On the other hand the common version accepted by the court is that, it is statement which is made before the court which is true. Therefore, it is suggested that the investigating officer should prepare a video recording of the whole investigation including the statement under section 161 of Criminal Procedure Code and section 27 of the Indian Evidence Act to remove such conflict between the two agencies.
22. The presence of Magistrate during investigation is required under many provisions of law, e.g.: under Narcotic Drugs and Psychotropic Substance Act. The accused is to be given option to be searched by a Magistrate or Gazetted Officer. This has become more important in view of the decision of Supreme Court in *Narcotics Central Bureau v. Sukh Dev Raj Sodhi* (2011) 6 SCC 392. Similarly Association of Magistrate in investigation and inquiry is required at many places under criminal trial. It is therefore suggested that Magistrate may be extensively associated in investigation and for that purpose Investigating Magistrate may be appointed.

23. To increase scientific investigation, the forensic experts must be attached to every police station who are to guard the scene of occurrence and lift samples etc. from there. For that purpose, a team for investigation must be constituted. The moment there is information about the commission of offence, the whole team must proceed to investigate the crime. To begin with this may be done in heinous crimes like murder, rape etc.