AN ABSTRACT

Role of Special Investigating Agencies in Criminal Justice System in India: A Study of Emerging Trends

An ideal legal system aims for a nation whose inhabitants are free from any kind of fear of crime. It includes judges, advocates, para legal personnel as well as various investigating agencies like the police, Central Bureau of Investigation, Criminal Investigation Department of States and many other preventive and enforcement agencies, this machinery helps in combating the crime.

The criminal justice system consists of three main parts: (1) Law Enforcement (Police); (2) Adjudication (Courts); and (3) Corrections (jails, prisons, probation and parole). In a Criminal Justice System, these district agencies operate together both under the rule of law and as the principle means of maintaining the rule of law within the society.

The first contact an offender has in the criminal justice system is usually with the police (or law enforcement) who investigate a suspected wrong-doing and make an arrest.

Under the constitution, criminal jurisdiction belongs concurrently to the Central Government and the states. The prevailing law on crime prevention and punishment is embodied in two principal statutes: the Indian Penal code and the Code of Criminal Procedure of 1973. These laws take precedence over any state legislation and the states cannot alter or amend them. Separate legislation enacted by both the states and the central government has also established criminal liability for acts such as smuggling,
illegal use of arms and ammunition and corruption. All legislation, however remains subordinate to the constitution.

Normally when a crime is committed the police department of that jurisdiction in which the crime has occurred is responsible for bringing the culprits to the notice of the law. But there are situations in which crimes of very complex nature and which are related with larger public interest need to be investigated. They may vary from organized crime to financial crimes or economic crimes etc. In such cases either the police department itself feels that such investigation is not their cup of tea or the law suo motto hands over the case, to ‘Special Investigating Agencies’. Here starts the function of ‘Special Investigating Agencies’. The special investigating agencies have to work in a particular legal framework which comprises of various acts such as the Indian Penal Code, Indian Evidence Act, and Criminal Procedure Code, to name a few. The special investigating agencies have to move stepwise in a staircase known as the legal framework and if a step is not taken with utmost care, the legal setup can be disturbed and its vibrations can be felt all over. Though the Special Investigating Agencies have been equipped with range of powers for combating the crime and the criminals, yet only the proper use of such powers leads to an effective working of such agencies. Role of such Special investigating agencies is very wide, much far from the thinking of a layman.

The role of Special Investigating Agencies (SIA) cannot be dismissed at any cost. Various Special Investigating Agencies like the Central Bureau of Investigation, National Investigating Agency, Enforcement Directorate etc. to name a few play a very important role in the enforcement of law.
They have been studied extensively in my research study in order to know their role in the Indian Criminal Justice System. The study has been conducted in context to the emerging trends present in the criminal justice system of India. The working of such Special Investigating Agencies has to be very efficient since they are the protectors of life and liberty of the subjects of the country. The Special Investigating Agencies have been provided with extra powers and the expectation from them is also much extra in comparison to the normal investigating agencies.

My research study has explored into the basic constitution of the Special Investigating Agencies and has gone into the depth of their working criteria. The research study has also tried to answer the most important question i.e. whether there exists any relation between the politics of the country and Special Investigating Agencies (SIA)? To answer this question I have used various important cases which depict how political pragmatism is present in our country. Also my study favours the Special Investigating Agencies by depicting the realities which have been realized by them in order to make criminal justice system of India as one of the best systems. Various recent reports of the working system of Special Investigating Agencies (STA) have been explored since the efficiency of Special Investigating Agencies (STA) can be concluded or infused very easily from them.

Since law and order is a state subject and the basic jurisdiction to investigate crime lies with the State Police hence my research study also clarifies the need of having such Special Investigating Agencies.

With the advent of the civilization, there was a gradual increase in the rate of crime among society. Again when the world went through a sleep rise in the
globalization, the effect was visible in the crime rate too i.e. increased growth rate of crime. The effect of the above was more responsibility on the enforcement agencies. Increase in the number of such agencies crime and criminal justice system are ever existing components of our society so are the agencies responsible for controlling, supervising and monitoring them.

The present law enforcement system has been developed after a long period of transition. Each nation in this world has its own legal system which aims to protects and secure its subjects. In ancient times law of revenge was the only source of security and protecting the life of people. After much transition this method reached it culmination point and attained the name of ‘Law Implementing Machinery’. Our present day ‘Law Implementing Machinery’ consists of well established courts, the police and a number of other Investigating Agencies. Infact they are the nucleus of the whole system. We can say that ‘Law Implementing Machinery’ and its role in the field of investigation is of great importance in a democratic country like India. ‘Law implementing Machinery’ has been present in society in one form or the other. Only the forms may be variable i.e. either it was not in a formal way as it is today i.e. in a technical way. Such machinery has been combating crime and the criminals and their revolutionary activities.

This research study is aimed to understand the multiple facet of role of special investigating agencies in achieving the ultimate object of law enforcement. The study has also gone into the depth of wide range of burning problems associated with the formation, working, legislative disorders, incapable functionalities, political pragmatism of the ‘Special’ Investigating Agencies’. The study seriously emphasis on the literal and interpreted meaning of Special Investigating Agencies (SIA).
In order to analyze certain problems during a research study, the researcher usually tries to trace the cause and gravity of the problem, the challenges and problems intrinsic to the subject matter of research, thereby reaching to certain conclusions and upon such conclusions, he/she draws necessary and initial suggestions. The above process becomes more complex when the subject matter of the research is associated with ‘Law’. Since ‘Law’ is a dynamic concept, hence the suggestions drawn need to suit the conditions present at that particular frame of time. It’s because with changing society, law has to be moulded according to the vital conditions present at the particular time. Even stagnant water becomes contaminated and so is the case with law. A stagnant law may enforce such harsh realities to the human kind which may not be acceptable by them. So the suggestions drawn may be acceptable only during a particular course of time and not after that.

The chapter scheme of the thesis has been so designed so that all the concepts become very clear in the mind of knowledge amid readers. Concept of crime and criminal justice system in India gives a comprehensive reading to whole concept of crime from the ancient times to the present scenario. The research study depicts the concept of crime in the Indian culture right from the ancient period to the modern period. The history of crime and criminal justice system in India right from the ancient period and travelling through the medieval period to the present times have been elaborately explained. The study pinpoints some of the most crucial challenges which are and have always been faced by our criminal justice system. The thesis includes a chapter on ‘Enforcement Agencies and Investigations’ in order to firstly understand the meaning of ‘Enforcement Agencies’ since the Special Investigating Agencies are a very part of
them. Infact the Experiment Agencies are the parent body. Meaning of ‘Investigations’ has been tried to make crystal clear since the special Investigating agencies are primarily responsible for conducting investigations. What kind of investigations are they supposed to conduct, with their limitations has been made obvious. The research has emphasized on a new concept which explains the effect of sociology on law enforcement. It depicts how the healthy interaction between the society and law enforcement agencies help in enforcing law by enforcement agencies in a better way. Various problems and challenges faced by the enforcement agencies have been classified further into technical, legal and operational challenges. Thus making it easier for the readers to differentiate and classify the problem. It has been tried to make it clear that inorder to have an effective investigation, all the elements of investigation need to be in sync. Also the suggestions have been drawn at places where needed. The legal setup made for such ‘Special Investigating agencies’ within which they have to conduct their job has been aptly explained. The multiple facet role of Special Investigating Agencies is explained through an Eagle’s eye view. Intelligence has also been not left out since both the entities i.e. Intelligence and Investigation are two sides of the same coin which are inter-dependent on each other. My research study thrusts special emphasis on the ‘Role of Supreme Court’ in guiding the ‘Special Investigating Agencies in conducting their investigations through an effective and efficient way. Various case laws have been referred at right places in order to know about the fallacies, still present in the working of such ‘Special Investigating Agencies’ which they have to conduct their job has been aptly explained. The legal mandate for Special Investigation Agencies (SIA) under which they work has been properly explained for
example, under the code of Criminal Procedure Code, 1973, various provisions relating to arrest without warrant, mandatory requirements while effecting an arrest without warrant, those relating to search and seizure by police, investigation of offences by police etc. Under the Indian Penal Code, 1860 mainly containing the Penal Provisions for isolation of lawful authority of investigating officers. While under the Indian Evidence Act 1872 confession of accused persons either before the police officers or under their custody are contained. Apart from above mentioned Major Acts, several other minor Acts like the Prevention of Corruption Act 1988 (Act No. 49 of 1988), the Narcotics Drugs and Psychotropic Substances Act of 1985 etc are explained.

Various ‘Special Investigating Agencies’ of India have been studied at a length with the conclusions drawn. Many immaculate investigations conducted by special investigating agencies have also been cited in order to know that their working is not always fallacious.

Central Vigilance Commission which is an administrative body has been studied at length. It gives a picture about the administration technique above such ‘Special Investigation Agencies’.

The thesis has been studied through different scopes in order to know the merits and demerits of the ‘Special Investigating Agencies’, for this; country like United States of America which is considered as one of the strongest nations today with some of the most distinguished ‘Special Investigating Agencies’ like the Federal Bureau of Investigation and (Internal Revenue Service) IRS – Criminal Investigations has been chosen. The comparative study has shown the results which may be worth for results for consideration in gauging where we lag behind and where we surpass them.
Last but not the least the suggestion which I make and conclusions which I draw have been depicted in a very simple manner hoping that they may turn valuable in administering our ‘Special Investigating Agencies towards a more concrete path.

The thesis has been conducted on the doctrinal lines with emphasis on qualitative aspect in order to have an interpreted and natural approach to its subject matter. Legal propositions and doctrines have been studied in the research in order to understand, explain and justified in context with our Indian Criminal Justice System. Various case laws of Supreme Court of India and High Courts have also been cited at apt places. Also interviews, Reports of the Indian Law Commission, Records etc are used as data collection techniques. Drawing certain conclusions and suggestions. Finally the thesis draws an end by drawing various conclusions and suggestions. Some of the few suggestions I have made in this thesis are as below:-

1- Co-operation between inter agencies

Since cooperation is an aspect which I feel is lacking during the execution process of investigation. Intelligence and Investigating Agencies need to be more communicative among themselves since both are working on the same lines. Although they are inter dependent yet they cannot do without one another.

2- Improvise the selection procedure of Investigating Officer

It is a very vital part of the formation of good investigating officers in our Special Investigating Teams, because this aspect decides whether the officers of ‘Special Investigating Officers’ really qualify the subjective test of being in such cadre.

3- More Strong and Effective Legislations
In order to fight corruption, organized crime, economic and financial crime we need more powerful legislation. Since these are the problems which we are being faced by our investigators today.

4- Effective Implementation of Laws

We are not having any dearth of laws but it is only their effective implementation process where we are lagging behind. We need to actually bring our legislations into motion so that we actualize our dreams of attaining a crime free nation.

5- Providing Statutory Status to the Central Bureau of Investigation (CBI)

The Central Bureau of Investigation (CBI) demands a statutory status for itself, as it is the country’s premier investigating agency. In order to have an efficient CJS, our Special Investigation Agencies (SIA) should be granted constitutional status. C & I is still governed by DSPE Act, thus making hindrance for the investigators to do their jobs sometimes.

6- Scientific Investigations and Tools

With the advent of science and technology, the tactics and working of investigating authorities has completely changed. Hence we need to inculcate more scientific ways of investigation in India too.

7- Adequate Staff and Training

On Special Investigating Agencies (SIA) need adequate staff and earmarked exclusively for them to investigate offences.

Proper Training is also another aspect necessary for Special Investigating Agencies to work efficiently. Since proper training of officers refines them to a much better quality officers which is needed for investigating crime.
8- **Transparent and free from Malpractices Transparency** of action and accountability are two possible safeguards to prevent any abuse of the we need to make ‘transparency’ as the order of the day. For this the Right to Information Act Right to Information (RTI) Act need to be interpreted with a non-extremist approach. Where needed, the Right to Information (RTI) Act must come as a strong weapon against the wrongdoers. It has to be in sync with the welfare of the state and the wrongdoers. Thus the thesis studied / researched have tried to touch all the aspect which are necessary for the effective and efficient working of our ‘Special Investigating Agencies in order to make the Criminal Justice System as one which other nations would look upon to. Thus for a proper and effective criminal Justice administration we need a well coordinated ‘Law Implementing Machinery’.

The thesis can be summarized by saying that most of the countries which are democratic have their own specialized agencies which work separately from the police for the collection and gathering of domestic intelligence. For example the Central Bureau of Investigation, India’s leading national counter terrorism agency have got the full police powers and can detain, arrest and submit for prosecution. Indeed, all sub-national counter terrorism is carried out by police. Although the police in all democratic countries, centralized and non centralized, are authorized to engage in investigating crimes which are less or high linens. Yet there are special investigating agencies which have concurrent jurisdiction to investigate crimes. The research study has been refined much more by comparing the police and Special Investigating Agencies. Since both of them are needed to control crime. Our system needed Special Investigating Agencies because it became very clear that corruption is rooted deeply in our system and the
police cannot be left untouched. Also due to many technical and operational difficulties they cannot handle each and every task as effectively as the Special Investigating Agencies.

Though the Special Investigating Agencies are also not left untouched with the plague of corruption yet it has been infused into the minds of general public that the police is the most corrupt.

The research study has been conducted on the lines of Indian Criminal Justice system together with the trends prevalent in today’s scenario. Factors such as corruption, organized crime, or other financial and economic crimes have been taken in view when studying the role of Special Investigating Agencies. Some of the recent Special Investigating Agencies such as National Investigating agency has been given a detect view on certain circumspect which show discrepancies while formulating the Act. By looking at those discrepancies, the legislators can once again have a second look at it. The thesis has been formulated very thoroughly and carefully and it is tried to the level best that fallacies are avoided, but since ‘to’ err is human, hence there can be many of them. The thesis is prepared with the sole aim that if any reforms are needed in our Special Investigating Agencies, the legislators can consider some of the defects mentioned in the thesis. The conclusions and suggestions drawn can be helpful in doing so.