PREFACE

Crime investigation is inevitable in every criminal justice system. Greatness of the system depends on proper and efficient crime investigation and law enforcement. Therefore, no country could give up the idea of constituting a police agency for law enforcement and crime control. Crime control includes maintenance of law and order and the investigation. Police is conducting the investigation on behalf of the society because it reflects the will of the society. Entrusted with such duties, they became official crime fighters and the law enforcers. The purpose of investigation process is achieved by efficient, impartial and timely investigation.

The Indian police are carrying the inherited colonial character even now. Law breaking by the police is a usual phenomenon. News regarding abuse of police power always finds a place in the media. Controlling of police is very difficult, since outsiders protect them. Poor and vulnerable sections of the society are the worst sufferers of police abuses. Most of such incidents are not come to lime light. Even if reported, due to scant evidence they will escape from the clutches of law. In the area of investigation abuses of power by the police is very high. Custodial violence, non-recording of arrest, victimisation of innocent people, custodial rape, fabrication of evidence are some of them.

Though our courts are vigilant in dealing the abuse of power by the police strictly, the executive is not showing much concern over this issue. Several police commission reports were submitted, nothing has been done positively by the Government to solve this problem. In Prakash Singh v. Union of India, Supreme Court directed all the State
Governments to implement certain directions to improve the quality of police system. But, it seems that, the implementations of these directions will not do any good to the criminal justice system. In order to improve the efficiency of criminal justice system, not only the agency, which is conducting investigation but also the law dealing with investigation, must be changed accordingly. The change in one may not be fruitful and in the case of abuse of power, status quo may be the rule.

Acquittal rate is increasing and people are loosing confidence in the police system. People would think that they are not safe and secure in the country. Ultimately, the ‘rule of law’ will fail. Hence, it is high time to think of changes to be introduced in the criminal justice system.

How we could effect a change in the criminal justice system? How we can control the police to the aspirations of the society? Society wants a police system that is able to control crime and bring the culprits in time before the court. The criminal laws, which have so many loopholes, paved way for the police to abuse their power. Therefore, the law must also be changed and must be made definite.

The study concentrated on the control of investigative agency and the steps to be taken to improve the efficiency of criminal justice system, which is useful for the society. The criminal justice system and the characters of both accusatorial and inquisitorial systems of criminal justice are dealt with in the second chapter. It contains an analysis of the merits and demerits of the systems.

The third chapter deals with the investigative machinery and the crime investigation. Police history is briefly traced out in this chapter. Wide discretion is given to the police to conduct the investigation. But, at times these unfettered discretionary power may be misused by the
police and thereby violate the rights of the suspect and common man. This situation forced the Legislature to include provisions in the respective Acts to control the discretionary power. Even then, it is proved that, these control measures are ineffective and the abuse of power continues. Control of this discretion is inevitable in a democracy to protect human rights.

The police system in India is included in the State List. Though there is a national Police Act, each State has its own Police Act. Various laws determine the powers and functions of the police in India. The investigative functions are generally defined in the Criminal Procedure Code. Chapter four deals with these powers and the possible areas of abuse of powers. The importance of protection of human rights is also discussed in this chapter.

Control of police in India is of three types, viz., statutory, administrative and judicial. Statutory and administrative controls are exercised at three stages of a crime. One is before the starting of investigation. Second, during investigation and the third is after investigation. In all the areas of operation law tries to control the police. In certain areas, law is not definite, which helps the police to go out of the way. In such areas, control measures fail. All these aspects are dealt with in the fifth chapter.

Three different approaches are adopted by the courts in India to control the police, viz., punitive, compensatory and preventive. Judiciary interferes whenever there is a human right or procedural violation in the investigative process. In certain times, courts are also failed in their effort to control the police due to several reasons. Courts have no authority to interfere in the investigative process. How the courts exercise control over the investigative authority? How the
judicial control is made effective? Which are the areas where the court fails in the control process? All these are probed in the sixth chapter.

Control of the investigative machinery is a complex problem facing all the criminal justice systems in the world. A comparative study on how the investigative machinery is controlled in USA, UK and France is done in the seventh chapter. In all these countries, both statutory and judicial control measures are adopted. Exclusion of evidence is the technique used by USA to control the police from abusing their power. In France, complaints of power abuses are not entertained since investigation is conducted under judicial supervision. UK and India follow the same pattern of admission of evidence, which never considered the modus of obtaining the evidence.

Problems, which the investigative machinery is facing, are highlighted in the eighth chapter. All these problems are analysed and suggestions for improvement is given.

Concluding chapter is the crux of discussions in all chapters. Proper investigation is the cynosure of effective criminal justice administration. Investigation process includes two conflicting interests viz. interest of the accused to protect his rights and the societal interest. Police have to consider both while conducting investigation. Effective policing keeps people safe and secure.

The study conducted with the able guidance of Dr. N.S.Soman, now working as Reader, School of Legal Studies, Cochin University of Science and Technology. His continuous interest in my work, unfailing encouragement and inspiration forced me to complete this study. I express my sincere thanks to him for his able guidance through the
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Adequate reading materials are highly necessary to complete such a study. Books and journals from the libraries of School of legal studies, CUSAT, Govt. Law Colleges, Ernakulam and Thiruvananthapuram, Law Academy Law College, Thiruvananthapuram, Centre for Development Studies, Thiruvananthapuram, Police Training College, Thiruvananthapuram and School of Indian Legal Thought, Kottayam, valued most in this study. I was greatly benefited by the co-operation and assistance extended to me by the librarians and other staffs of these libraries. I express my heart full thanks to the librarians and other staffs of these libraries.

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P.C. JOHN