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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **ANALYSIS OF THE CRIMINAL INVESTIGATION SYSTEM IN INDIA**

AUTHORED BY - SAGAR DUTTA & SAPTARSHI ROY

## **Introduction**

An important step in the criminal process is an investigation. Information given to the police of any act committed which is against the law and has a criminal consequence is the starting of an investigation. Finding the evil guy is the goal, followed by a trial and punishment in accordance with the provisions of the Code of Criminal Procedure of 1973 (the Code). Police are given the authority to investigate cases that are cognizable under Section 156 of the Code.<sup>1</sup> The law enforcement officer is forbidden from conducting research in non-cognizable situations without a warrant and is required to get one in accordance with Section 155(2) of the Code.<sup>2</sup>

## **Investigation Procedure:**

Section 157 of the Code specifies the investigational process that must be followed by the police when gathering evidence.<sup>3</sup> When a police officer has cause to believe that an offense is known to have been committed based on the information in the first information report (FIR) or other information obtained, the investigation into a known case begins. It is necessary to notify the justice immediately after filing the FIR.<sup>4</sup>

The officer will then send one of his subordinate officers to the scene to investigate the facts and circumstances, if necessary. The police will also take action to capture and detain the subject, if required. When the officer receives inadequate information, there is no need to engage in direct confrontation or assign a subordinate officer to conduct an immediate investigation. Additionally, the officer is not allowed to look into a case if there are no good reasons to do so. The officer will

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<sup>1</sup> Code of Criminal Procedure, 1973, § 156, India.

<sup>2</sup> Code of Criminal Procedure, 1973, § 155(2), India.

<sup>3</sup> Code of Criminal Procedure, 1973, § 157, India.

<sup>4</sup> Rahul Rai, 'Role of police and its power to investigate' (legalserviceindia.com) (accessed 15 May 2022), available at <https://mail.legalserviceindia.com/legal/article-5464-role-of-police-and-its-power-to-investigate.html>.

then transmit this report back to the magistrate who has the authority to demand that the offense be recognized. The commanding officer notifies the justice that an officer is looking into a specific matter in a police report that is sent to the court.

According to Section 159 of the Code, the main objective of causation in a report is to change the legal system in order to manage the investigation and offer direction as necessary. In Swati Ram v. The State of Rajasthan, it was determined that a mere delay to deliver the report had not entirely damage the prosecution's case.<sup>5</sup> At various stages of an investigation, the police must submit a number of reports to the court system.

Section 2(h) of the Code defines the term "*investigation*." It refers to all legal actions taken pursuant to the Code for the purpose of gathering evidence, including those taken by police officers or by anyone else (other than a magistrate) with a magistrate's permission.

The goal of an inquiry is to identify the criminal, possibly using data from an FIR or other information obtained through other inquiries. According to Section 154(1) of the Code, the station house officer (SHO) is required to register an FIR upon receiving a complaint and to undertake a preliminary investigation based on that FIR.

Section 157 of the Code specifies the process that the police must follow to gather evidence during an investigation. In Lalita Kumari v. Government of Uttar Pradesh (2014), the Supreme Court decided that an FIR must be filed in compliance with Section 154 of the Code.<sup>6</sup> The information recorded in sub-section 1 will be sent to the informant for free right away. Anyone who has been dissatisfied by an officer's refusal may make written notification to the relevant Superintendent of Police (SP) via mail service. Depending on how frequent and serious the crime is, the SP will either conduct the investigation himself or appoint an officer who will have full police station authority in relation to the crime, if the SP is satisfied with the information surrounding a crime that is subject to prosecution.<sup>7</sup>

Cognizable offenses and non-cognizable offenses are the two main categories of offenses.

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<sup>5</sup> Sawai Ram vs State Of Rajasthan, 1997 (1) WLN 33

<sup>6</sup> Lalita Kumari v. State of Uttar Pradesh & Ors., Writ Petition (Criminal) No. 68 OF 2008

<sup>7</sup> Code of Criminal Procedure, 1973, § 154, India.



## **Information and Investigation of Non-Cognizable Offence under the Code:**

If an officer in-charge of a police station receives information about a non-cognizable offense that falls under the station's jurisdiction, the officer must enter the information or cause it to be entered into a book by the officer designated by the State Government and refer the informant to the Magistrate.<sup>8</sup> Without a Magistrate's approval, no police officers may investigate a non-cognizable matter.<sup>9</sup> Officers in charge of police stations may employ their investigative powers in a cognizable case, with the exception of the ability to make arrests without a warrant.<sup>10</sup>

According to Section 155(4) of the Code, a case is considered to be a cognizable case if it involves two or more offenses (including both cognizable and non-cognizable offenses) and at least one of those offenses is a cognizable offense.

### **Attendance and Examination of Witnesses:**

The investigating officer may ask a witness to appear in accordance with Section 160. No minor (under the age of fifteen) or female shall be obliged to attend any site other than the one in which she resides, according to the preceding rule.<sup>11</sup>

Police have the right to interview witnesses under Section 161 of the Code. The testimony of witnesses is crucial because it determines whether a person is guilty or innocent. Investigation personnel is obligated to honestly address any questions posed to them about such incidents. They are not completely qualified to respond to questions that could result in one type of charge or another, including criminal charges.

Following the examination<sup>12</sup>, the investigating officer will limit the number of statements made by the subject during the examination. The investigation officer must also retain a separate record

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<sup>8</sup> Code of Criminal Procedure, 1973, § 155(1), India.

<sup>9</sup> Code of Criminal Procedure, 1973, § 155(2), India.

<sup>10</sup> Code of Criminal Procedure, 1973, § 155(3), India.

<sup>11</sup> Code of Criminal Procedure, 1973, § 160(1), India.

<sup>12</sup> Shailja Singh, 'Procedure of Investigation under CrPC' (ipleaders.in, 17 April 2020) (accessed 14 May 2022), available at [https://blog.ipleaders.in/procedure-of-investigation-under-crpc/#Power\\_of\\_Police\\_to\\_Investigate](https://blog.ipleaders.in/procedure-of-investigation-under-crpc/#Power_of_Police_to_Investigate).

of an equivalent if done in this way. Although the investigation officer is not obligated to put the statements in writing, it is most likely that the officer will do so.

### **Evidentiary Value of Police Statement:**

Section 161 of the Code says, any police officer of proper authority, conducting an investigation, or any police officer not below the rank that the State Government may, by general or special order, prescribe in this regard, acting on the officer's request, may interview any person alleged to be familiar with the facts and case situations. This individual is required to honestly respond to any inquiries from the officer regarding the case, with the exception of inquiries whose outcomes would subject him to criminal prosecution, fines, or confiscation. Statement made to the police officer during an examination conducted in accordance with this section may be reduced to writing, and if so, the police officer shall create a separate and accurate record of the statement of each such individual whose statement he records. Now section 162 of the code says, No statement made by a person to a police officer during the course of an investigation may be reduced to writing without being signed by the person making it, nor may any record of such statement, whether in a police diary or otherwise, or any portion of such statement, or record, be used for any purpose, except as hereinafter provided, at any inquiry or trial in relation to any offense under investigation at the time such statement was made, As long as a witness called by the prosecution in a trial or investigation whose testimony has been any portion of his statement that is properly proven to have been reduced to writing as described above may be used by the accused, and with the prosecution must obtain the court's permission before contradicting a witness in accordance with section 145 of the Indian Evidence Act, 1872 (1 of 1872). When a statement is used in this way, it may also be used in the witness' re-examination, but only to clarify any points raised during his cross-examination.

So any statements made by the witnesses during the examination are not needed of him to be signed. Both should not be used in any investigation or legal proceeding. The testimony given by the witness is frequently utilized in court just to disprove him, not to prove him.

According to Section 173 of the Code, the report of a police officer on completion of investigation shall contain the facts and therefore the conclusion derived by the officer. The competent court will use its legal authority to review the final report and support it by using its judicial mind before deciding whether to accept or reject the final report once the investigation is finished and considered to be complete as per Section 173 of the code. A magistrate might dissent from the

police report, be it a charge sheet or be it a final report. Even if the police argue that there isn't a strong enough basis for continuing any further investigation, the magistrate may decide to issue an alternate method to conduct the investigation. However, if it chooses to dismiss the case and the litigant files a protest petition, the magistrate is chosen to begin proceedings on the petition.

However, merely submitting the protest petition wouldn't be sufficient to require the magistrate to treat it as a critical case if the informant gave no indication that his protest petition might be treated as criticism and the magistrate failed to also continuously continue as in an exceeding criticism case. The Magistrate must notify the litigant in advance if he intends to dismiss the case despite the protest petition.

As soon as the investigation is completed a report that is usually known as a "charge sheet" or "challan" is to be submitted to the magistrate that has jurisdiction. The need of finishing the investigation on time is stressed by giving a general direction that each investigation may be completed while not supererogatory delay per Section 173 of the Code.

In an investigation, the police may ask witnesses to provide their testimony, and it is their responsibility to answer all questions truthfully related to any potential criminal activity. Refusing to answer inquiries or deliberately providing false answers are considered offenses under Section 179 and Section 193 of the Indian Penal Code (IPC) respectively.

## **Measures to overcome shortfalls of the Indian Criminal Investigation System**

A police force that upholds the aspirations of the populace for democracy is necessary in a contemporary, progressive India. It is necessary to update the Police Act and the expertise of our police force in order to fight crimes in modern times. In the case of Pratap Singh v. The Union of India, the Supreme Court issued directions advocating changes to the police system, such as separating their roles in maintaining law and order and conducting investigations.<sup>13</sup>

A primary focus of legislation reform must be on identifying the rights of crime victims. A step towards restorative justice will be the implementation of victim and witness protection programs,

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<sup>13</sup> Prakash Singh & Ors vs Union of India and Ors., (Writ Petition (Civil) 310 of 1996)

the use of victim impact statements, and the improvement of victim compensation and reparation rights. The victim's ability to take part in the granting or revocation of bail was championed by the V. S. Malimath Committee (2003)<sup>14</sup> and the 268th Law Commission Report of India (2017)<sup>15</sup>, which also recommended "victim impact assessment" reports on bail issues.

## **Conclusion**

So now after discussing the entire Indian Criminal investigation system in India, we can say criminal investigation results can be improved when the investigation is conducted collaboratively. For all the information acquired throughout the investigation, it is advisable to create a central repository and to appropriately safeguard it with access controls. All relevant case material should be available to every investigator on the team, but no one investigator should be able to sabotage an entire investigation. Where the future rocket would be fired from is a mystery to the accused. The biggest challenge is that, unlike an investigative journalist, the IO is responsible for ensuring that relevant facts are turned into admissible evidence during trial court procedures. It's a challenging issue, and Section 164 of the Criminal Procedure Code needs to be suitably updated to include preservation of all relevant evidence. But the initial step is to start compiling knowledge and information about the physical evidence that is obtained at the scene and is validated, verified, and correlated with other pieces during the strenuous investigative processes. Experts should be able to assess pertinent information from any source and add to the appreciation of the evidence. As a result, all relevant data can be captured and stored digitally in a way that complies with the law.

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<sup>14</sup> Government of India, Committee on Reforms of Criminal Justice System, Report (Ministry of Home Affairs, 2003).

<sup>15</sup> Law Commission, Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail, Law Com No 268, para 11.28 (2017).