

FAIR INVESTIGATION: BACKBONE OF CRIMINAL JUSTICE SYSTEM



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Abstract

Fair trial and fair investigation are part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, the minimum requirement of rule of law is that the investigation must be fair, transparent and judicious. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner so as to take away the basic fundamental right of the accused who as per law is to be presumed innocent till proved guilty. A victim, would equally be entitled to a fair investigation. Thus, in this context, this paper tends to analyze as to whether our Investigating agencies have been able to embrace the objective modes of investigation or not?

Key words: Defective Investigation; accused; victim; crime; eyewitness; Applied science; Law of Individuality; Law of Exchange; scientific modes; Article 21 of the constitution; fundamental rights; Courts; disclosure statements; scientific investigation; crime scene; physical evidence; trace evidence; Section 161 Cr.P.C ; forensic kits; DNA profiling

Introduction

In a democratic setup, peace and harmony are two inevitable components. But equally true is the fact that commission of crimes can't be avoided. However, it's not always the commission of crime that may be the deleterious to peace and harmony of the society, but what may be, is the defective investigation.

Defective investigation tends to shake the faith reposed by the members of the society including the suspect/accused as well as Victim. The most effected would be suspect because all have to be presumed to be innocent till proved guilty and tainted investigation would curtail his freedoms i.e. life and liberty guaranteed under Article 21 of the Constitution of India (Nirmal Singh Kahlon vs State of Punjab & Ors, (2009) 1). Likewise, victims, as they have surrendered their rights in legitimate expectation of protection of their interests including safe environment. (Violence Against Children: International Criminal Justice Norms And Strategies) So, it necessitates striking a balance between the conflicting interests of accused and the Victim, for which, evidently fair investigation is the solitary solution.

With every commission of crime, race begins to decipher the most vital questions; who, why, where and how. Getting a good start is very important. There is no dictionary that can help the crime investigator. He has to use his wit and wisdom in quest of truth from the circumstantial/physical/trace evidence keeping in mind the adage that "Men may lie but circumstances don't"(Anand Sharma v/s NCT Delhi, 2014).

Fear of enmity, terror of revenge, unobtrusive attitude, nonchalant people; and lengthy, time consuming, uneasy, scary, frightening, petrifying and risky court procedures are some of the reasons those may keep the eyewitness accounts beyond the bounds of investigation. In addendum, desperate witnesses may tend to lead the investigation on the wrong path.

Hence, in such like situations, the sole alternative available with the investigating team is to lean upon applied sciences. Applied sciences(Applied science - Wikipedia) introduce objectivity. It rules out all kinds of bias; and allows the physical evidence to speak for itself as applied sciences follow the Principles of Law of Individuality(Safwi) and Law of Exchange(Sharma).

Scientific advancements have been a boon for Tech-savvy criminals. The cyberspace has made barbaric and archaic methods of enforcing social order in the society, especially the investigation, redundant. Hence, in the modern scenario, forensic investigation(forensic science-wikipedia) is the best thing since sliced bread. Thus, use of technology or scientific techniques for analyzing the physical evidence in order to get answers of the questions of legal interest becomes indispensable. Scientific methods not only help in early detection of the offenders but also help in prevention and foul play.

But whether our Investigating agencies have been able to embrace the scientific modes of investigation wholeheartedly would be question to be delved upon in the present paper?

At the outset, it needs to be appreciated that it's always the Fair investigation that would result in Fair trial. A prudent mind may out rightly question how?

As a matter of common prudence, courts of Common Law countries including India, have very little or no scope of intervention in the investigation process.(Investigation into crimes 'prerogative' of police, courts should not interfere: SC) Accordingly, courts have no option except to receive the mélange and proceed. But the courts are not as barehanded as perceived. Precedents lately have acknowledged that Courts are not the mute spectators as they definitely possess the power to monitor and supervise the Investigation(Sakiri Wasu v/s State of UP). Nevertheless, the fact remains that scope wouldn't be much. Moreover, the investigation should be kept under minimal pressure, be it any quarter. When that is so, the responsibility on the investigating officers increases many folds. The Investigating Officer has to keep in mind that his duty is not to bolster the case of prosecution for seeking the verdict of guilt but he has to bring out the real unvarnished truth (R.P. Kapoor Vs. State of Punjab, 1960).

Both fair trial and fair investigation are part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner(Babu Bhai vs. State of Gujarat, 2010).

The Criminal jurisprudence rests on a premise that accused is to be presumed innocent till proved guilty. So, the accused is entitled to fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e., to maintain law and order, public order and

preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation (Nirmal Singh Kahlon vs State of Punjab & Ors, (2009) 1)....”

When there is so much emphasis on Fair investigation, let us determine what would constitute Fair Investigation? Broadly, fair investigation comprises of several components including honesty and competence. In my considered opinion, Honesty and competence are interwoven. An Honest investigating officer would let his work speak for himself. Dishonesty requires pull strings and consistent loss of energy in making up the lacunae. Thus, it is emphasized that investigation must be based on scientific evaluation that is expected to give objective results at least superior to the verbal testimonies.

Hence, amid scientific advancements, it would be supine for the Investigating agencies to lean on the archaic modes of investigation like disclosure statements whose admissibility is always a moot question in Court of Law unless it leads to discovery of a fact that is in exclusive knowledge of the deponent (Malik, 2013). Even if it does, it still has to pass many tests to become admissible. On the other hand, Expert evidence, though weak, but still has a quantum force to connect the crime to criminal.

When that be so, it's time to prepare the checklist of the deficiencies/ grey areas that need to be touched upon for making the Investigations commendable and not a mere correspondence.

1. Investigating officer is the Kingpin of the Criminal Justice delivery system(Amitbhai Anil Chandra Shah v. CBI, , (2013) 6 SCC 348). As soon as the crime is committed, a police officer, the I.O is deputed to proceed on the basis of the gravity of the offence. However, what is missing is the Expertise and experience to handle the case. Thus experience should be given priority over the designation.
2. The Moment the I.O. takes over the crime spot, his first and the foremost effort should be to preserve the crime spot so that the trace/physical evidence is not destroyed or tampered. In case, it's not feasible to preserve the crime spot, then it is recommended that the field experts should be contacted with all promptitudes so that the valuable evidence for forensic analysis is not lost, tampered or contaminated. An investigating officer must appreciate that his best guide is the crime scene, so he must promptly reach there so that he must have a microscopic eye to make sure that no vital evidence is left behind.
3. If the crime scene involves biological evidence, then the Investigating officer must take aid of experienced and qualified officers comprised of forensic or other experts. Lifting, collection and preservation of sensitive evidence are the prime areas those need consideration. The forensic kits must be sterilized or replaced after every crime.
4. Ironically, the field study shows that the crime scene is being handled by the experts who are statistical experts as there are either no or very few experts who have biology, physics or chemistry as their academic qualifications.

5. Financial capacity for providing latest forensic kits is the major issue (kaur, 2015). The state and the central government must show concern and make the investigating agencies strong by equipping them with latest and proper scientific aids of investigation.
6. The investigating officer is also required by law to keep a record of the proceedings of the investigation in narrative form in a diary (ACT, 2013) with all promptness mentioning all significant facts in chronological order and with complete objectivity. Haphazard maintenance of a case diary destroys the main objective for which, it is required to be maintained. A copy of the diary relating to each day's investigation (along with copy of any statements that may have been recorded u/s. 161 Cr.P.C.) should be dispatched to the circle inspector the following day (M.R.Malik, 2013).
7. The statements recorded under Section 161 Cr.P.C. should not be the Xerox of what is written in the FIR. These statements should be recorded in verbatim of what is stated by the witness. But, in reality it is just the paper work. So, at-least in heinous crime including all crimes against women and children, the statements should be audio/video-graphed (Malik, 2008).
8. It is equally necessary to video-graph all the recoveries effected at the behest of the accused to remove all the bias and to make the prosecution case strong.
9. The investigation team heading for the investigation of serious crimes must not succumb themselves to the political and administrative pressures. This is possible if they have constant support of their superiors.
10. Submitting the body samples or DNA testing would yield best results especially in Rape's or paternity issues. However, optimum use of DNA profiling is possible if, we have DNA data-banks or DNA databases. It will help to locate the criminals as well. Hence, it is proposed that the parliament must pass the DNA profiling bill, 2012 (In Depth, DNA Profiling Bill, 2019) revisiting the entire Act as it is littered with striking human and ethical issues.
11. During Field Study by the author, it revealed that majority of the criminals belong to lower strata those are either illiterate or barely literate. Empirical study also reveals that they are hardly aware about DNA profiling. Hence, such people do not understand the pros and cons of the said technique. Utility of DNA profiling would increase if the accused understand that DNA profiling can also prove them innocent so they should not refrain from giving their body sample. For spreading awareness, it is proposed that aid can be taken from the Legal Services Authority established throughout India. Also, it is recommended that the police officials maintain good behavior with suspects that will provide additional aid in collection of samples for comparison purposes. Thus, the police officers must try to convince them that the technique is as much useful in inculcating as in exculpating.

12. Studying crime scene, illustrative sketching, and art of collection, lifting and preservation requires good observation skills, intelligence, expertise, and knowledge. Hence, it is proposed that a specialized training and refresher courses by experts be imparted to investigating officers especially chosen for collection of DNA and other biological evidence. The object of such training should be to make officers aware of all new techniques in the area of DNA profiling, and other scientific areas where samples are required to be taken for comparison purposes.
13. The Investigating officers should be given extensive training about the potentialities of good investigation and for this; special crash courses should be designed in which, the major portion of the course should be case study. Also, they should be given facts from already decided cases and should be asked to document as to what kind of evidence they would collect to prove the case. This would help the invigilator to understand as to whether the trainee's have understood the relevance of link evidences and the chain of custody.
14. Empirical study (kaur, 2015) reveals that the investigating officers in the States of Haryana prefer to send biological samples for DNA profiling only in cases of serious offences and the percentage of such forensic samples for comparison purposes is very low. This is mainly because they still rely on archaic modes of investigation or disclosure statements and because DNA profiling is costly. As far as first part is concerned, it is recommended that the Investigating Officer's should be sensitized to bring change in the methods of investigation. For the latter, it is proposed that government should provide more funds for forensic purposes.
15. The importance attached to chain of custody in collecting, preserving, and transporting evidence for DNA analysis must be accentuated upon the officers. So, it is proposed that they must keep a well documented log of all the details.
16. Fair administration of the police must be ensured. So, it is recommended that the corrupt officials should not be spared from punishment and those who excel in their work, especially in eliciting public co-operation through their humane/helpful attitude should be suitably rewarded.
17. Lastly, there is essential need to audit the role of Police, Forensic Science and Medical wings with an object to ascertaining their role in those cases where prosecution has failed to prove the guilt of the accused charge sheeted in a court. This audit process can be done by examining FIR, Inquest Report, Charge-sheet, Post mortem Report, FSL Report, Medico-legal Reports, deposition of different witnesses during Examination-in-Chief and in cross-examination with a perpendicular approach along with the Trial Court judgment to find out basis for adverse comments. The total process may be conducted on different points, which will help the audit to find out where the fault was found to exist

and which damaged the cause of prosecution. This process will not only be helpful in rectification of the flaws but also increase the conviction rate and also help the innocent.

The above checklist may not be considered as exhaustive but merely illustrative. Nonetheless, Criminal Justice system Is the backbone of democratic set up. The only approach to prevent it from crippling is Fair Investigation. Closing, it reminds me of an adage which reads as :

***“Should Law sit limply while those who defy it go scott free; and
Those who seek its protection lose hope” (Jennison v Baker)***

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