

Criminal Investigation in Criminal Justice System: A Comparative Study¹



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Abstract

Criminal justice system is a sine qua non for development of any society. Criminal investigation is an indispensable part of this system. The criminal investigation is directly linked with establishment of sound criminal justice system and maintaining peace in the society. This paper analyzes the different components of criminal investigation. The scope of this paper is limited to the investigative aspects of conventional crimes like murder, rape, assault, bride burning, robbery and theft etc. It has been estimated that from one-third to one half of all the serious crimes are not reported due to a variety of reasons, including intimidation and harassment of victims. It is generally felt that the Criminal Justice System in our country is in a very sad state. Hardly six or seven percent cases go up for trial, result in conviction. It means that either too many innocent persons are prosecuted unnecessarily or that a high percentage of guilty persons are being acquitted due to some shortcomings in the system. Either way the position is unacceptable. The police forces of different states, formed under the respective police Acts of such states, are the main organs who are assigned with duty of investigating conventional crimes. The Supreme Court in State of Bihar V. JAC Saldanha and others 1980 (1)SCC 554. Observed that there is a clear-cut and well demarcated sphere of activity in the field of crime detection and punishment. Investigation of an offence is the field exclusively reserved for the executive through the Police Department the superintendence over which vest in the State Government. The executive who is charged with a duty to keep vigilance over Law and Order situation is obliged to prevent crime and if the offence is alleged to have been committed, it is its bounded duty to investigate into the offence and bring the offender to book.

Under the legal system in the United States of America and England, there are definite series of steps that are taken in the handling of any person who is believed to have violated the Law. This procedure has been set-up by the courts and the legislatures. In this process, a number of rights and safeguards are guaranteed to every accused person. The process is started by the commission of the crime. It proceeds through the investigation by the appropriate police agency, to a decision to prosecute, to an arrest, to detention in jail or freedom to await trial while out on bail, to the criminal trial, to the sentencing, to the serving of the sentence or to release on probation, to a return to freedom on the street. The paper is divided into different parts. The first one is introductory in nature. The other parts deal with the powers of investigation, abuse of such powers and recommendations for improving the position. A comparative study has also been made with investigative organs of other countries. The last part is concluding in nature.

Keywords: Criminal Investigation, Criminal Justice System

Introduction

Administration of justice is one of the most important functions of the State. If men were Gods and angels, no law courts would perhaps be necessary, though even then the person who doubts the truth (sceptics) might refer the quarrels among Gods, particularly in the context of Goddesses. Though man may be a little lower than the angels, he yet shed off the brute. To curb and control that brute (cruel like-beast) and to prevent degeneration of society into a State of tooth and claw, which is required i.e. rule of law. Being human, disputes are bound to arise amongst each other. For the settlement of these disputes, there is a need for guidelines in the form of laws to redress the grivances by courts. Laws and courts have always gone together. There is a close relationship between them; neither court can exist without the laws or laws without the courts. The State deals with the administration of the laws through the agency of the courts. The courts are the institutions to which One turns whenever one feel victimized and there arises within one an urge to seek redress or justice. Nothing

rankles more the human heart than a broadening sense of injustice. No society can allow a situation to grow where the impression prevails of there being no proper and effective redress for grievances of its members.²

Concept of Criminal Justice System

With the march of time, crimes are becoming more and more sophisticated. It is therefore, essential that if the forces which have to meet the challenges of crime are to prove equal to the task, they must keep abreast of and acquire the technique of handling and controlling such crimes.³ The administration of criminal justice all over the world seems to be guided by one cherished principle i.e. the protection of rights of the accused and it is to be secured at all costs while a criminal system determining liabilities. This is the reason for which the entire criminal jurisprudence has been dedicated thereon and plethora of criminal laws has been enacted with the changing social attitudes towards crimes and criminals. When any crime has been committed the offender is apprehended, tried, punished or acquitted or even in some situations he is released on probation when the reformatory slogan dominates floor of the court, even if, he is found guilty. The entire criminal justice system is concerning more in defending rights of the accused than inflicting punishment.⁴ The quality of justice determines the quality of society and of governance. Just as pollution poisons the physical atmosphere, the poor justice system poisons the social atmosphere. Equal and fair justice is the hallmark of any civilized society. The quality of justice in any civilized society depends in large measure on the quality of judges and lawyers.⁵

Every government whatever is its form, must uphold the law and maintain order in the society which it governs. These are the basic functions, which any government has to perform. This is essentially, done through what is called as 'criminal justice system'. The system as the very term suggests consists of all the functionaries, who are concerned with the basic functions of the State i.e. maintenance of law and order. As per the Oxford Dictionary, the term 'system' means "*set of connected things or parts*", "*set of organs in body with common structure or function*." The various functionaries involved in the process of maintenance of law and order are governmental functionaries, such a police, prosecution, judiciary and prison.⁶ All these functionaries, though they perform their functions independently are interdependent and interrelate to one unit when issue is seen in its totality. The issue is to achieve the goal of the system, which is to ensure justice, punishment to the criminal and compensation to innocent involved in the process.

Suppression of crime essentially requires certain agencies to detect and apprehend the criminals, to adjudicate upon their guilt or innocence and if convicted, subject them to punishment through various penal institutions. These multiple functions of detection, trial and administration of punishment are discharged by different agencies of justice viz. the police, the criminal law courts and correctional institutions like prisons where the offender is kept after his conviction.⁷ The police are primarily concerned with the detection of crimes, apprehension

of the criminals and to bring them to a criminal court for trial. On the other hand, the criminal courts conduct the trial of the accused on the basis of evidence available and decide whether he is guilty or innocent under the existing law. It also awards different punishments to the convicted persons for the offences committed by them. After conviction the offender is sent to institutions like the prison, jail, reformatory institutions etc. to undergo his term of sentence. Therefore, it is evident that the police, the criminal courts and the prison are the main agencies of criminal justice administration. Besides these, the system of parole and probation are yet two other agencies of justice which seek to reform the corrigible and young offenders during the term of their sentence and return them to normal society as a law abiding citizen.

Criminal Justice Administration in England

The modern criminal law of England derives from the English common law of crime. This body of law had its origins in judicial decisions which by the middle of the 13th century were applied throughout the realm and thus 'common' to it. Even in the medieval period, however, legislation played an important role in the development of the English law of crimes. In some instances legislation was confined to matters of procedure or the stipulation of penalties, leaving definition of the elements of the offences of judicial precedents.⁸ English criminal law still consists of a collection of statutes of varying age, the oldest still in force being the Treason Act (1315), and a set of general principles that are chiefly expressed in the decisions of the courts. England's lack of a criminal code is not due to a lack of effort. In the early 19th century there have been several attempts to create a code. The first effort (1833-53) was by two panels of criminal law commissioners, who systematically surveyed the prevailing state of the criminal.

The conception of the crime is very old, though the actual wrongs which were classified as crimes were drastically redefined at the conquest. According to Pollock and Maitland, on theme of the conquest the law of wrongs had four essential elements i.e. the punishment of out lawry, the recognition of blood feud, tariffs of war and bot and wite (that is the punishment of life and limb) and the existence of pleas of the crown.⁹

At the time of the conquest, however, the King's peace remained local and personal; it died with King and it was confined to certain places, the seasons of the year. The King's peace was destined to grow and flourish till it had covered the face of England at all times and in all seasons. When this had come to pass no man committed violence without being liable to a fine at the suit of the King. Yet the fact that the wrong was a breach of the peace did not prevent the injured party from recovering compensation from wrong doer.¹⁰

In the twelfth century Henry II was able to substitute a simple notion of liability. He set apart certain wrongs as matters for the interference of the Crown. In this century three salient features in the law of wrong emerged. These were a few crimes of wide definition, such as robbery with violence (punishable at the discretion with death of maiming), wite became

a discretionary (amercement) and outlawry had grown into a matter of process rather than punishment.¹¹

The criminal courts in England are the Magistrates Courts and the Crown Courts. Those offences considered least serious are summary offences, triable only in the Magistrates Courts. Those offences considered most serious and triable only in the Crown Court. A large number of offences such as theft and most burglaries are triable either way in a Magistrate Court or the Crown Court.¹² The Magistrates may decide that the case is so serious that it should be committed to the Crown Court for trial. If they decide not to commit it to the crown Court, the defendant still has an absolute right to elect trial by jury. In practice a majority of either way offences are dealt with in Magistrate's Courts, since neither the defendant nor the Magistrates think Crown Court trial necessary. Finally, it should be added that virtually all prosecutions of persons under eighteen years are brought in youth courts, where hearing are less formal and take place before especial trained Magistrates.¹³

Criminal Justice Administration in America

In the colonization of British North America, the common law of crime was received and applied in America. With the rupture of sovereignty in the colonies at the time of the American Revolution, however a strong movement arose to establish all law, including the criminal law, on the foundation of legislative enactments. Initially, this took the form of legislative enactments that simply declared the common law, including the common law of crime to be in effect except as displayed by particular statutory provisions.¹⁴

Today the paradigm of penal legislation, both in substance and format is the Model Penal Code, promulgated by the American Law Institute in 1962. The Code is a comprehensive reformation of the principles of criminal liability that is drawn from previous codes, decisional codes, decisional law and scholarly commentary. It has been substantially adopted in many States and is the prominent source of guidance in revision and reform of substantive law in the United States.¹⁵ The Model Penal Code establishes a hierarchy of substantive criminal proscriptions and a corresponding hierarchy of social values. It can be considered as having two dimensions. The first consists of the principle of criminal liability and the second of the definition of various specific crimes.

Under the legal system in the United States, there is a definite series of steps that are taken in the handling of any person who is believed to have violated the law. This procedure has been set up by the courts and the legislatures of all the States, as well as by the federal courts and the United States Congress. In this process, a number of rights and safeguards are guaranteed to every accused person, in both the State and the federal courts. The process is started by the commission of the crime.¹⁶ It proceeds through the investigation by the appropriate police agency, to a decision to prosecute, to an arrest, to detention in jail or freedom to await trial while out on bail, to the criminal trial, to the sentencing, to the

REMARKING : VOL-1 * ISSUE-9*February-2015
serving of the sentence or release on probation, to a return to freedom on the street.

American society is primarily regulated by two legal systems – State and federal. Most of laws regulating the conduct are State laws i.e. law that are promulgated by the State and local governments or State Court decisions. The federal legal system is headed by the United States Supreme Court, which has original jurisdiction and appellate jurisdiction.¹⁷ A Court's jurisdiction refers to matters that it is legally authorized to hear and jurisdiction obviously cannot be invoked unless there is a legal dispute. A more particular aspect of the court concept is the distinction between trial courts, of which there are many and bulk of judicial work and the appellate courts, of which there are relatively few. Trial Courts stated legal purpose is to resolve disputes by applying legal principles to facts presented in a case.¹⁸

The criminal justice system in America proceeds from the crime take place within a city and the police department is called for. The police conduct an investigation and make a report. Evidence is gathered and they talk to the suspect and secure a search warrant for arrest from the Municipal Court. The suspect of arrested is informed of his constitutional rights. The defendant is booked if he does not release on bail, he is placed in a cell. The defendant is then indicted at the preliminary hearing held by the inferior court. The next step is a superior court hearing where he makes his plea of guilty.¹⁹ A probation officer makes recommendations based on several factors, including the fact that the defendant has been involved in similar incidents in the past. The judge then sentences the defendant, in this instance, to a stay in a State prison.

Criminal Justice Administration in India

The criminal justice system exists because the society has deemed it appropriate to enforce the standards of human conduct so necessary to protect individuals and the community. It seeks to fulfil its goal of protection through enforcement of reducing the risk of crime and apprehending, prosecuting, convicting and sentencing those individuals who violate the rules and laws promulgated by society. The offender finds that the criminal justice system will punish him for his violation by removing him from society and simultaneously will try to dissuade him from repeating such antisocial acts through rehabilitation. The criminal justice system consists of three major components – law enforcement, the agencies i.e. police, courts and corrections. Each one of the components of the criminal justice system shares certain common goals. They collectively exist to protect society, maintain order and prevent crime.²⁰ But they also individually contribute to these goals in their own special way.

Police as law enforceable agency are responsible for controlling crime and maintaining order. The courts are responsible for judging the suspected offender by determining innocence or guilt. The prosecution and defence are an integral part of this subsystem. Finally, the goal of the correction subsystem is institutionalizing or monitoring the activities of the offender and rehabilitating him to full and useful participation in society. Two integral parts

of the corrections subsystem are probation and parole.

Drawbacks in the Present Criminal Justice System in India

The primary task of any government is to protect the personal rights of the people. Security of the person and property of the people is an essential requisite of good governance and this can be achieved by the criminal justice system. Prof. Harvart Wachslar has rightly observed:

"Whatever views are held about the penal law, no one will question its importance in society. This is the law on which men place their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and institutions. By the same token, penal law governs the strongest force that we permit official agencies to bring to bear on individuals its promise as an instrument of safety is matched only by its power to destroy. If penal law is weak or ineffective, basic human interests are in jeopardy. If it is harsh or arbitrary in its impact, it works gross injustice to those caught within its coils. The law that carries such responsibilities should surely be as rational and just as law can be. Nowhere in the entire legal field is more at stake for the community or for the individual."²¹

Effective, efficient and just criminal system of a nation is the backbone of its very foundation. Effective systems not only deliver justice but also deliver it in time. India has inherited and borrowed from colonial power system of criminal law and procedures, as well as rules of evidence, courts, police and correctional system. Crime control implies orderly and efficient method for arresting, prosecuting, convicting and punishing the guilty and for deterring crime by others. The protection of individual's rights is a necessity to guard the accused against the arbitrary exercise of power by the State. The rising crime rate and the high rate of recidivism clearly indicate that the system is not effective deterrent.²² Today, cases of murder, rape, theft, assault, robbery, disorderly conduct, corruption and bride burning occur much more than in the past. The open violation of laws, bribery of police, and pressure of professional criminals, intimidation of victims and witnesses are experienced in day to day life.

Today, what we understand by criminal justice system is somewhat fractured and a centrifugal system with all the segments of the system forcing away from each other leaving at its very focal point. The criminal justice today plagued with many drawbacks:

1. The most important drawback of the system is the ever decreasing rate of conviction in India. Efficacy of criminal justice system in any country is primarily judged on the basis of the conviction rate as it is the ultimate result of the combined efforts of the system. In India, the conviction rate is far from the satisfactory and in a serious matter from overall maintenance of law and order in the society.
2. As a result of poor cooperation between the police, prosecution and the judiciary, the number

REMARKING : VOL-1 * ISSUE-9*February-2015

of cases pending trial has been increasing at a tremendous rate. Cases number few lakhs are estimated to be pending in the various courts in the country.²³ A direct result of this is corresponding increase in the numbering of under-trial prisoners in the jail and subsequent problems associated with it.

3. It is well known that in States where the criminal justice system was unable to deliver the goods, the unauthorized groups like private army, militant organisations, underworld gangs, etc. have taken over the task of grievance removal at their level. Many States in India are the glaring examples of this fact.²⁴
4. Lack of commitment and decreasing coordination and cooperation among various functionaries of the criminal justice system result in failure not only on the part of the police to deliver justice to the victim, but also by the judiciary. This, many time, forces the police to resolve to third degree methods on the suspects. In its enthusiasm to provide fast relief, policemen are slowly falling prey to the shortcut methods.
5. The increasing corruption in the system also attracts attention. As a result of lack of commitment of effective control over functionaries it is not easy to find the weak link. The corruption in the various levels of the criminal justice system is the direct result of the different units working in isolation and the complete lack of accountability, on the part of functionaries.

Indian Judiciary on Criminal Investigation

The Indian judiciary led by the Supreme Court has exhibited judicial activism in recognizing and enforcing the laws.

Commenting on the role of legal profession and lawyers in the judicial system, Mr. Justice H. R. Khanna, former Judge of the Supreme Court of India observed that "the legal profession is designed to be a profession of service . . . service to the community. The important duty of the profession is to act as an interpreter, guide and faithful servant of the community."

In State of Bihar and another v. JAC Saldanha and others²⁵ the Supreme Court observed as under:

There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive who is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to

provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate.

The Supreme Court referred to in several decisions and gave its view as under:

In India as has been seen there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judiciary authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491, Criminal Procedure Code, to give directions in the nature of habeas corpus. In such a case as the present, however the Court's functions begin when a charge is preferred before it and not until then.

Suggestive Measures

Therefore, in view of the above observations, the following suggestions deserve for the consideration:

For implementing speedy criminal justice large number of courts are to be established in those areas where large number of the cases are instituted, for early disposal of cases this is necessary because it will be an extra ordinary work load on the part of judicial magistrate to dispose large number of criminal cases, where more courts are necessary. Retired judges, jurists, law teachers, eminent lawyers, shall be invited to deliver lectures on special skills, tactics for speedy disposal of the criminal cases. This will be of enough help to the learned judicial magistrate expediting the criminal trial.

A separate independent authority, by what ever name called fully insulated from political interference comprising a chairman and at least two members (with the Director General of police of the concerned State or Union Territory as ex-officio member), should be created in each State or Union Territory to supervise the progress of investigation and regulate the flow of cases to court by examining if the case is prima facie strong enough to be put up for trial before the report under Sec. 173 of the Criminal Procedure Code, 1973 is submitted. The appointment of the Chairperson and members should be made with the concurrence of the Chief Justice of the State. This will also reduce the number of under trial prisoners and avoid their association with

REMARKING : VOL-1 * ISSUE-9*February-2015 hardened criminals. This will help to reduce the volume of weak cases being carried to court.

An independent investigation agency should be established, under the exclusive control of the authority contemplated in the previous paragraph, which should impart intensive and extensive training in scientific investigation that would eschew partiality, bias and third degree practices and be answerable for posting, promotions and the transfer of said authority only. Such agency should have facility at all the major police station in the city for providing immediate finger print, forensic and pathological assistance to the investigation officer, while awaiting the official report to arrive from the established laboratory and figure print bureau.

The concern government should work out a time table for equipping the investigation machinery with the skills and tools needed for the scientific investigation.

Conclusion

In our constitutional scheme, Indian judiciary has been assigned the role of ensuring social justice and envisaged in the Preamble, Fundamental Rights and the Directive Principles of the State Policy. Indian judiciary led by the Supreme Court has exhibited a judicial activism in clearing the misconceptions about the concept of the criminal trial under the procedure prescribed in the country which has resulted in the weakening of the criminal justice system. Realising such misconception, the Hon'ble Supreme Court in the State of Punjab v. Jagir Singh²⁶ observed:

a criminal trial is not like a fairy tale where in one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused assigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of inter play of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yard stick of probabilities, its intrinsic birth and animus of witness. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the court should not at the same time reject evidence which is ex facie trustworthy on the grounds which are fanciful in the nature of the conjectures.

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REMARKING : VOL-1 * ISSUE-9*February-2015

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