

Challenges in Police Investigation in India

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Abstract

The current police force is plagued by numerous shortcomings. The nation's police force is in poor shape for a variety of reasons, including issues with organization, infrastructure, and environment; outdated weapons and intelligence gathering methods; a lack of personnel; and corruption. It's arguable who has more authority over the police and how. Political executives oversee and have authority over both the Central and State police forces in accordance with the police statutes. As a result, there isn't enough direction or democratic functioning. Political bosses' wishes often dictate changes to police priorities. The police department appears to have been reduced to a political puppet. There isn't a system in place to file a complaint against negligent police officers. The Supreme Court and the Second Administrative Reform Commission have agreed that it is necessary to have an impartial complaint body to look into instances of police misconduct. The author will make some recommendations on how to enhance the administration and investigative process.

Introduction

A key component of efficient law enforcement is the employment of specialized investigators. There are no detectives in India in the Indian Police Service, the civil service, or the federal or state governments. State-level officers are the only ones authorized to conduct investigations; for this reason, they are referred to as "investigating officers," whereas IPS officers are managers. Each officer has an average of several hundred cases at any given moment across the country, and they are all expected to investigate everything at the same time. Another peculiar aspect of state and local police agencies is their organizational structure. Certain branches are responsible for strange things like political action, expensive rice, and thinned mustard oil.

Although the relatively recent Protection of Children from Sexual Offenses Act, 2012 was passed, there aren't enough experienced detectives to handle these kinds of cases.¹

Therefore, the onus has once again placed on the investigating officer and his network of paid spies at the expense of science-based detection. To control crime at the state level, a very basic framework is needed: forensics and a uniform side for operational street police, where detectives are called in to take over investigations related to their department and skill base. A veteran sergeant at a lower rank who has worked for decades is just as valuable as a detective. A detective with the necessary skill set will be well-versed in everything, from what forensic and physical evidence to gather at the location of the recent crime to how to preserve witness and victim statements so that the defense does not destroy them during the trial. The "who, what, when, where, why, and how" query will lead a bloodhound in the correct direction with any carefully calibrated investigation. Furthermore, an expert will be needed to determine the level of evidence needed to get a conviction that is consistent with the crime and its severity, based on the nature of the offense and its degree. The police reform process, which has been discussed for decades without producing any results, is the answer to all of these issues. Several commissions have periodically examined

the reform procedures. The administration has established six committees thus far, one of which being the National Police Commission. These committees recommended significant reforms to the police. These include the Group of Ministers on National Security (2000–01), the Padmanabhaiah Committee on Police Reforms (2000), the Gore Committee on Police Training (1971–1973), and the Malimath Committee on Reforms of Criminal Justice System (2001–03). It shows how unwilling the bureaucracy was to follow through on the directive and how little political will there was. Politicians and bureaucrats alike are averse to losing command of the armed forces. The Police Act of 1861, which is mute on "superintendence" and "general control and directions," contributes to this issue of unclear control. This allows the CEOs to use the police as little more than instruments in the hands of political figures in order to further their own agendas.

The laws of the nation serve as the essential cornerstone of the criminal justice system. A democratic society's legal system itself guarantees a certain level of public approval for laws by means of the permission given by the people's elected representatives. As a result, the Criminal Law, which the State Legislatures and the Union Parliament passed, serves as the focal point of the entire criminal justice system in our nation. Following the creation of laws by the legislative branches, the government assigns different agencies to carry out the task of enforcing the laws. At this point, the police are the State's main accessible law enforcement agency. The main task of law enforcement is to promptly notify the public of any violations of the law and to investigate the relevant details, including the name of the perpetrator. In the criminal justice system, this specific duty is referred to as "investigation."

Meaning and Definition of Investigation

"Investigation" refers to a search conducted to ascertain the truth of the situation. Stated differently, it refers to gaining awareness of something through visual or mental means.

The main duties of a criminal investigator are to obtain information, assess its veracity, identify and track down the criminal, and present proof of his guilt to a court of law, according to Richard Ward, the author of "Introduction to Criminal Investigation." This role entails a need to safeguard the defenseless. There are two categories into which the methods the investigator uses to perform his duties might be placed: internal and external. External refers to the instruments, scientific aids, extra staff, and other resources that he puts to bear on the research; Internal refers to the process of logic, expertise, intuition, experience, and knowledge that he brings to the investigations. Criminal investigation is a permissible search for persons and objects helpful in reconstructing the circumstances of an illegal act or omission and the mental state preceding it, according to Paul B. Weston, author of "Criminal Investigation: Basic Perspectives." It is an investigation that goes backward in time, from the known to the unknown, with the aim of discovering the truth to the extent that any post-factum investigation is capable of discovering it. "Criminal Investigation is a probing from known to the unknown and a step by step reconstructive process of what has occurred," claims Charles M. Bozza. Its theory can be applied to any Police function and is based only on logical sequences. An individual who gathers information in order to achieve a purpose is typically a criminal investigator. Finding the guilty, gathering evidence for a prosecution, finding witnesses, or determining whether a crime has actually been committed are some examples of possible objectives. The approaches an investigator uses to gather information for a criminal investigation—such as perception, observation, or scientific theories and facts—are considered important methods of criminal investigation. Any procedure under the Code for the gathering of evidence carried out by a police officer or by someone (other than a magistrate) who has been given permission by the magistrate in this regard is referred to as a "investigation."

The Supreme Court stated in Directorate of Enforcement v. Deepak Mahajan that the term "investigation" is defined in Section 2(h). This definition is broad. Since the definition is broad, it is impossible to ignore the term "investigation's" common meaning. "Investigation" refers to the process of looking for evidence and information to determine whether or not a crime has been committed. Whether the statement is made by a police officer or a customs officer wishing to file a complaint is irrelevant.

The Gujarat High Court stated in N H Dave, Inspector of Customs vs. Mohammed Akhtar that the term "investigation" has a definite meaning in Section 2(h) while reviewing a case of investigation under Section 104 of the Customs Act. This definition is broad. Without a doubt, as far as the inclusive element is concerned, it will not strictly fit inside the concept of "investigation." However, since the definition is inclusive, it is impossible to ignore the usual meaning of the word "investigation."

Investigation agencies under the general law

The Central Legislature enacted several laws that established the Police Force, among other things, with the duty of conducting investigations. Some of these laws are listed below.

Police force Constituted under the “ The Police act,1861”.

The Central Legislature approved the Police Act in 1861 with the goal of organizing the Police and making it a more effective tool for crime prevention and detection. All individuals who are to be enrolled under this Act are referred to as "Police" in this context. For the purposes of the Police Act, every State Government's police administration is considered a single police force, with a fixed number of officers and personnel, assembled in a way that the State Government may occasionally direct. Every police officer has an obligation to swiftly comply with and carry out any directives and warrants that have been legally given to him by any appropriate authority, to collect and communicate intelligence affecting the Public Peace, to prevent the commission of offences and public nuisances, to detect and bring the offenders to justice, and to apprehend all persons whom he is legally authorized to apprehend and for whose apprehension such ground exists, and it is lawful for every Police Officer to enter and inspect drinking shops, gaming house of other places of resort of loose and disorderly characters.

Delhi Special Police Establishment :

The Central Legislature enacted an Act in 1946 that established a special force to look into certain offenses committed in the Union Territories. The Act established the oversight and management of the aforementioned force as well as the extension of the members' authority and jurisdiction to other regions for the purpose of looking into the aforementioned offense. A Central Police Force called the Delhi Special Police Establishment was established to look into cases of bribery and corruption by officers or others working in Central Government departments. The Delhi Special Police Establishment will investigate certain offenses or classes of offenses, as determined by the Central Government through a notice published in the official gazette. The superintendence of the Delhi Special Police Establishment is vested in the Central Government, and the administration of the said force is vested in an officer appointed by the Central Government who may exercise such powers as are exercisable by the Inspector General of Police in respect of the forces in a State. The Central Government may by order extend to any area (including railway areas) in a State the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences which are within the purview of the Delhi Special Police Establishment.

Central Bureau of Investigation:

The primary organization for looking into allegations of corruption by Central Government workers is the Central Bureau of Investigation. It was established by an April 1, 1963, resolution of the Indian government, which was governed by the Delhi Special Police Establishment Act of 1946. "The Government of India have had under consideration the establishment of a Central Bureau of Investigation for the investigation of crimes currently handled by the Delhi Special Police Establishment, including specially important cases under the Defence of India Act and Rules particularly of boarding, black marketing, and profiteering in essential commodities which may have repercussions and ramifications in several areas," the resolution states, outlining the goals and duties of the bureau. the maintenance of crime statistics and

dissemination of information relating to crime and Criminals; the study of specialized crimes of particular interest to the Government of India or crimes having all-India or inter-State ramifications or of particular importance from the social and the coordination of laws relating to crime. As a first step in that direction the Government of India have decided to set up with effect from 1st April, 1969 a Central Bureau of Investigation at Delhi with the following six Divisions namely; Investigation and Anti-Corruption Division (Delhi Special Police Establishment, Technical Division; Divisions of Research, Legal and General, Administration, and Crime Records and Statistics. The annexure contains the charter of functions for the aforementioned divisions. The State Police Forces will have access to the Central Bureau of Investigation's help upon request for the investigation of interstate crimes as well as other challenging criminal cases.

INVESTIGATION BY PERSONS OTHER THAN POLICE OFFICERS

Under Chapter XV of the Code of Criminal Procedure, under the heading "Complaints to Magistrates," Section 202(1) of the Code states that any magistrate who receives a complaint of an offense of which he is qualified to take cognizance or which has been made over to him under Section 192 of the Code can direct an investigation to be made by a Police officer or "by such other person as he thinks fit"

INVESTIGATION BY MAGISTRATES

The majority of procedural systems assign the Police the responsibility of conducting criminal investigations. However, even in cases when the law grants the Police the authority to investigate, it also occasionally grants Magistrates and other non-Police individuals the same authority. A magistrate may, in accordance with Section 159 of the Code of Criminal Procedure, direct an investigation or, if he deems it appropriate, proceed immediately or designate any magistrate who is subordinate to him to proceed to hold a preliminary inquiry into the case or dispose of the case in the manner specified by the officer in charge of the police station that reports a particular case is not of a serious nature and that there is not sufficient ground for making an investigation on the spot. Any Magistrate may, if he sees fit, postpone the issuance of process against the accused and either look into the case themselves or order an investigation to be made by a Police officer or by such other person as he thinks fit in order to determine whether or not there is sufficient ground for proceeding. This is permitted under Section 202 of the Code of Criminal Procedure. Any Magistrate may receive a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under Section 192.

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INVESTIGATION AGENCIES UNDER THE SPECIAL LAWS:

It was explicitly stated at the time of the Indian Penal Code's enactment that it would not impact local laws, special laws, or special jurisdiction. The Code's Section 5 stated: "Nothing in this Act shall affect the provisions of any Special or Local Law or the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors, or airmen in the service of the Government of India." The Code of Criminal Procedure, 1973, which continues the rule that was there in the earlier Codes, says: All offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

The provisions of the procedural law of crimes and the substantive law of crimes both admit a specific rule for the investigation, trial, and questioning of offenses subject to the special laws. The socioeconomic offenses are the primary focus of the special laws. These offenses differ from more traditional offenses in their nature. Additionally, the procedural guidelines differ from those pertaining to ordinary offenses. New categories of offenses, new techniques for inquiry and investigation, and new trial procedures are all covered by the Special Laws that have already been passed.

I. Investigating Agency under the Prevention of Food Adulteration Act, 1954 :

The Central Government may designate Food Inspectors under the Prevention of Food Adulteration Act of 1954. These inspectors are authorized to collect food samples from vendors and forward such samples to the Public Analyst. In accordance with Section 8 of the Act, the Central or State Governments may designate individuals who meet the necessary qualifications as Public Analysts for any local area that may be assigned to them by the relevant Government, by publishing a notice in the official gazette.

The Act gives the Central Government the authority to form the Central Committee for Food Standards, a body that will advise both the Central and State Governments on issues related to the administration of the Act and perform the duties delegated to it. According to Section 4 of the Act, the Central Government may create one or more Central Food Laboratories by publishing a notice in the official gazette in order to carry out the duties assigned to the Central Food Laboratory by this Act. The Committee may engage with the Central Government before establishing regulations that specify:

- A. the duties performed by the Central Food Laboratory and the neighborhood or neighborhoods in which those duties may be performed.
- B. the process for submitting food samples for testing or analysis to the aforementioned laboratory, the forms for laboratory reports that must be completed, and the fees associated with those reports;
- C. any additional matters that may be expedient or necessary to allow the aforementioned laboratory to perform these tasks.

II. Investigating Agencies under the Foreign Exchange Regulation Act, 1973 :

The Foreign Exchange Regulation Act was passed by the Union Parliament in 1973 with the intention of consolidating and amending the laws governing specific payments, dealing with foreign exchange and security transactions that indirectly affect foreign exchange, as well as the import and export of currency and bullion, in order to preserve the nation's foreign exchange resources and ensure their proper use in the interest of the nation's economic development.²³ The following classes of officers of enforcement shall exist in accordance with Section 3 of the Act, namely;

(a) Directors of Enforcement; (b) Additional Directors of Enforcement; (c) Deputy Director of Enforcement; (d) Assistant Director of Enforcement, and (e) Such other classes of officers of enforcement as may be appointed for the purposes of the Act.

The Central Government may designate individuals as officers of enforcement under Section 4 of the Act. It may also give the Director of Enforcement, the Additional Director of Enforcement, a Deputy Director of Enforcement, or the Assistant Director of Enforcement permission to designate officers of enforcement lower on the hierarchy than Assistant Director of Enforcement.

An officer of enforcement may use the authority granted to him by the Act and carry out the responsibilities assigned to him, subject to any restrictions and requirements that the Central Government may impose. If these different categories of law enforcement officials have a good faith suspicion that someone is acting in violation of the Foreign Exchange Regulation Act, they are authorized to stop and search vehicles, search suspected individuals, and make arrests.

III. Investigating Agencies under the Narcotic Drugs and Psychotropic Substances Act, 1985:

The Central Government may take any action it deems necessary or appropriate to prevent and combat the abuse of narcotic drugs and psychotropic substances in accordance with Section 4 of the Narcotic Drugs and Psychotropic Substances Act 1985. It may establish an authority or a hierarchy of authorities under any name or titles it thinks appropriate in order to carry out the Central Government's powers under this Act and to take actions regarding things that are under the Central Government's control. government, as required to further the Act's objectives. The Central Government may designate a Narcotics Commissioner in accordance with Section 5 as well as any other officers with the designations it deems appropriate for the Act's purposes. The Narcotics Commissioner is authorized to carry out any duties assigned to him by the government in addition to exercising all authority over the supervision of the cultivation and production of opium. In addition to the Central Government, the State Government may designate any officers with any designations that it deems appropriate in accordance with the Act.

The Narcotics Drugs & Psychotropic Substances Act of 1985, Section 53, grants officers of the Central and State Governments the authority of a police station officer to conduct investigations into offenses covered by the Act. In a similar vein, State Governments may also assign powers of an officer in charge of a police station to any officer of the Departments of Drugs Control, Revenue, or Excise, or any class of such officials, to investigate offenses under the Act.

IV. Investigation into offences Punishable under Prevention of Corruption Act, 1957:

The Prevention of Corruption Act 1947, Section 5-A, addresses the Act's case investigation process. The statement reads as follows: "Despite the provisions of the Code of Criminal Procedure 1898, no Police officer below the rank:

(a) in the case of the Delhi Special Police Establishment of an Inspector of Police; (b) in the presidency-towns of Calcutta and Madras, of an Assistant Commissioner of Police; (c) in the Presidency-town of Bombay, of a Superintendent of Police; and (e) elsewhere, of a Deputy Superintendent of Police; shall investigate any offence punishable under Section 161, Section 165 or Section 165-A of the Indian Penal Code or under Section 5 of this Act, without the order of a Presidency Magistrate of the First Class, as the case may be, or make any arrest therefore without a warrant; Provided that if a Police officer not below the rank of an Inspector of Police is authorized by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Presidency Magistrate of the First Class, as the case may be, or make any arrest therefor without a warrant; Provided further an offence referred in clause (e) of sub-Section (1) of Section shall not be investigated without the order of a Police officer not below the rank of a Superintendent of Police”

THE ROLE OF THE POLICE IN INVESTIGATION

Throughout the course of a criminal case, the police carry out a variety of tasks. The role of the police and how they handle a case change from time to time, contingent on the individual in charge of the case. Following the filing of the charge sheet, the investigational efforts made to The process of gathering, preserving, and presenting evidence in court is abandoned, leading to a systematic dilution of these efforts, which therefore impacts the case handlers' productivity. Any of these procedures, when changed, can impact the administration of justice. These procedures include serving summonses and warrants, calling witnesses into the courtroom to testify about the real facts, and refreshing the witnesses' memories.

CHALLENGES FACED BY THE POLICE IN INVESTIGATION

1. There is constant doubt about the legitimacy of the nation's police and investigative organizations. However, I think it's absurd to label every police officer as unreliable.
2. One of the most frequent difficulties police officers encounter when conducting an investigation is their inability to question an accused person more than once to confirm the accuracy of the claims they have made. The only way the police can learn pertinent information about the crime is if they question the accused for a long time and thoroughly. But the maximum period of time that police can hold and question someone is 14 days. Custodial interrogation makes it easier for the police to question the accused and witnesses and gets leads from them for confirmation.
3. Therefore, it is imperative that police custody and questioning be permitted as a matter of right. It is not necessary for the 14 days of police custody to run continuously. As confronting the accused with the information gathered is crucial to wrapping up an investigation, police officials would really prefer it to be intermittent.
4. The police frequently blame a lack of appropriate investigative equipment, witness antagonism, public indifference, and a lack of faith in the force for their inability to bring a criminal to justice. The biggest issue in criminal investigations is gathering all the evidence that links the perpetrators of the crime to the evidence and making sure it is preserved in a way that is both legally permitted and tamper-proof.

THE ROLE OF THE JUDICIARY BY GUIDING INVESTIGATION

The accused was found not guilty due to inconsistencies in the investigation, including the filing of the FIR too late, uncertainty over the commencement date, and the recording of 161 statements. Article 21 of the Indian Constitution of 1950 recognizes the right to a prompt investigation as a basic right.

The Malimath Committee of 2003 recommended incorporating some of the beneficial aspects of the inquisitorial system into the adversarial system with appropriate changes. The guidelines include for the court to mandate that judges take a proactive role in the investigation process, to instruct investigating officers and prosecution agencies in their work, and to present evidence with the goal of obtaining the truth and emphasizing victim justice.

Presently, the court has the authority to call any relevant witness and question everyone in attendance under Section 311 of the Cr.P.C. Similar to this, a judge may ask any questions or order the production of any document or object in order to find out or acquire accurate proof of pertinent facts under Section 165 of the Indian Evidence Act, 1882. These clauses, however, simply require the court to call witnesses "for proof of relevant facts" or "for a just decision" in the case; they do not impose an affirmative obligation on the court to use its authority to call witnesses "in order to seek the truth."

The Malimath Committee's recommendations must be respected in light of these clauses.

In Prakash Singh vs Union of India the Supreme Court of India issued guidelines as below:

1. Constitute a State Security Commission in every state that will lay down policy for police functioning, evaluate police performance, and ensure that state governments do not exercise unwarranted influence on the police.
2. Constitute a Police Establishment Board in every state that will decide postings, transfers and promotions for officers below the rank of Deputy Superintendent of Police, and make recommendations to the state government for officers of higher ranks.
3. Constitute Police Complaints Authorities at the state and district levels to inquire into allegations of serious misconduct and abuse of power by police personnel.
4. Provide a minimum tenure of at least two years for the DGP and other key police officers (e.g., officers in charge of a police station and district) within the state forces, and the Chiefs of the central forces to protect them against arbitrary transfers and postings.
5. Ensure that the DGP of state police is appointed from amongst three senior-most officers who have been empanelled for the promotion by the Union Public Service Commission on the basis of length of service, good record and experience.
6. Separate the investigating police from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people.
7. Constitute a National Security Commission to shortlist the candidates for appointment as Chiefs of the central armed police forces.

In all but two of the 35 states and union territories (excluding Telangana), State Security Commissions and Police Establishments had been established, according to a 2016 NITI Aayog report. boards in every state. In August 2016, the State Security Commissions were not established in Jammu and Kashmir or Odisha. The State Security Commissions and the Police Establishment Boards did not follow the Supreme Court's directives about their makeup and authority. For instance, government and law enforcement personnel dominated the State Security Commissions in states like Punjab, Gujarat, and Bihar. Furthermore, a large number of these Commissions lacked the authority to make legally binding recommendations.

CONCLUSION

By involving a team in every inquiry, criminal investigations can be improved. All pertinent case data

should be available to every member of the investigating team, but no one person should be able to sabotage an investigation from start to finish. The following missile's projected source is unknown to the accused. The sole obstacle lies in the fact that, in contrast to an investigative journalist, the investigation officer must guarantee that pertinent facts are converted into evidence that may be used in trial court procedures. This is a difficult task that calls for appropriate modifications to Sections 161 and 164 of the Cr.PC. in order to preserve all pertinent evidence. Experts must to possess the ability to evaluate significant facts regardless of their location and contribute to the evaluation of evidence. Thus, it is possible to compile and save all pertinent information digitally in a way that is acceptable to the law. India's criminal justice system has to be reformed immediately.