CRIMINAL INVESTIGATION – ACCESS TO JUSTICE:
NEED FOR REFORMS

C.L.V. Sivakumar,
Senior Grade Assistant Professor,
VIT Business School, VIT University,
Vellore – 632 014, Tamil Nadu

ABSTRACT

While making arrests of the persons alleged to have committed any offence, the police have to play a very significant role. They have to act very cautiously and with an unbiased mind and approach. A little negligence on their part can jeopardize the liberty of an innocent person and bring stigma to his family for all times to come. With the introduction of the stringent legal provisions in several laws, it has been observed that in many cases some innocent families have been put to lot of hardship and have to face unnecessary and detention on account of the casual and mechanical approach of the police and investigating agencies. Therefore, dire need to streamline these provisions and brings improvement in the grant of relief in the matters relating to alleged crimes under the administration of criminal justice. In the present paper, it is discussed on various issues relating to the efficient administration of criminal justice system identifying the constitutional provisions under the chapter Fundamental Rights, the nature and purpose of criminal investigation protecting the “Right to Access Justice” thereby made an attempt to highlight the need for reforms for the effective and efficient administration of criminal justice system. The present paper is purely qualitative study and hence no empirical data is adapted.

Key Words
Introduction:

“Access to Justice” is one of the constitutionally recognized human and fundamental rights which has become gradually critical in the recent years. One can witness disturbing and serious lacunas in the functioning of the judicial system as well. The common man’s perception about access to justice has been very eloquently expressed by Sri A.P.J. Abdul Kalam: “I would like to share with you a point that has direct relevance to common man’s access to justice. Equality before Law and equality of access to courts is only a theory. Even for literates, it is not easy to file a case which is the first basic step to law. The process is so complex. What will be the fate of others? Can they be freed from the web of complexities? The channel of communication between the courts of law and the common man is now complicatedly phrased in un-understandable legalese whether it is summons or any other format. This forces the common man to rush to practitioners of Law which of course, ass you all know entails expenditure and makes access to justice that much more difficult. Therefore, there is a need to make all these formats and procedures user-friendly so that access to justice is easy, meaningful, cost-effective and productive. And let me say, that could be the justice thereby the criminal justice system is possible to administer as expected under the provisions of law”.

History of administration of criminal justice system supports the view that a good investigation fosters economic growth and promotes law and order. Good governance is essential in the administration of criminal justice for the growth of reduction of crime rate. Tackling crimes be it violent or economic, is important for ensuring the rule of law. A fair justice delivery system is also essential for the promotion of law and order. Therefore, good governance and efficient investigation in the administration of criminal justice system as well as economic growth of the country are all interdependent.

Criminal Investigation:

In criminal proceedings, investigation is the most significant state and this task of investigating the crime alleged to have been committed by any person has to be performed with great diligence, dedication and devotion. On receipt of reliable information about the commission of an offence the Police Officer competent under the provisions of the law, at once proceeds to the place of occurrence, ascertains the relevant facts, and collects evidence whatever is available from the eye witnesses or from some other sources concerned, and moves the law in to action.

According to Section 2(h) of the Code of Criminal Procedure, 1973 “Investigation” includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. Though the definition is not exhaustive as given in the Code, yet the courts in various judgments have made an attempt to explain the meaning of the word “Investigation” which is the backbone of any criminal trial as a part of effective administration of criminal justice system.

Purpose and Objective of Investigation:

Every criminal investigation is a voyage of discovery in which truth is the quest. Every stage of investigation in a criminal trial is of great significance. The powers of the investigating
Officers are very wide, but these powers have to be used keeping the ultimate goal in mind, i.e., to find out the truth of the case.

The Gujarat High Court in one of its judgments has observed that “the provision relating to the power of the police/investigating agency to investigate into offences and the procedure to be adopted by them are to be found in Chapter XII of the Code of Criminal Procedure, 1973 that the “information to the police and their powers to investigate”. These provisions are clearly intended to secure that an investigation do not take place into a reported offence and the investigation is carried out within the limits of the law without causing any harassment to the accused, and is completed without unnecessary or undue delay. The manner and method of conducting the investigations are, however, left entirely to the police and the Magistrate has no power under any provision of the code to interfere with the same.”

Further, as for a fair and impartial investigation, the truth should be the quest for every police officer who is entrusted with the assignment of investigation. The aim of the investigating officer should be to find out truth and to achieve this. It is necessary to have the presence of an open mind throughout the investigation. The investigation in criminal offences must always be free from any objectionable features or infirmities which may lead to grievance of accused that investigation is carried on unfairly or with ulterior motive. The administration of criminal justice system requires that every act done by the investigating agency responsible for the investigation of crime must be fair, upright and free from any fault of any sort.

The investigation of an offence must be straightforward and free from padding. The court also expects the police officer/investigating officer to investigate the offences in a fair and legal manner and to refrain from falsely collecting or exaggerating relevant circumstances which may throw light on the true nature of the incident, under investigation and trial.

**Basic Requirements for an Effective Investigation:**

In order to achieve the basic objective of the successful investigation thereby protecting the fundamental right (“Right to Access Justice”) of the people involved in the criminal offence, it is for us to look at various basic requirements for an effective investigation carried out by the investigating agency in the administration of criminal justice…

- Assess the complaint, and decide how it should be dealt with;
- Determine the nature of the investigation required: who or what is being investigated, and how it will be done;
- Recognize and manage any possible conflict of interests;
- Develop an investigation framework;
- Gather evidence effectively;
- Maintain confidentiality;
- Afford procedural fairness, and
- Avoid abnormal delay in the administration of Criminal Justice

**Modalities to eradicate long delay in administration of justice:**

Occurrence of long delay in conclusion of litigation and huge arrears of cases are the major headaches in the administration of justice and to a greater level, it also affect the programmes for strengthening access to justice.
Recently, certain positive changes are made in the traditional system of administration of justice. Provisions were introduced in the statutes to conclude the adjudications in a time bound manner. Outer time is prescribed for issuing court notices, appearance of parties in the cases, filing of defence and conclusion of trials. Provisions were introduced in the statutes to allow examination-in-chief, by filing affidavit and appointment of commissions to record the oral examinations, in cases of civil nature. In certain fiscal statutes, outer time limit is prescribed to conclusion of statutory adjudications, including disposal of appeals.

There are radical changes implemented in the structure and process of traditional court system, in recent times. The scheme of “Fast Track Courts” is introduced in criminal justice administration to enable speedy trial of grave offences. The recent trends is that almost all the special enactments are providing special courts to adjudicate the offences and violations, like Children’s Court, Human rights Court etc. Introduction of Gram Nyayalaya in grass root level that is in the Panchayat level is another significant measure to enable speedy dispensation of justice and easy accessibility of justice to the people from rural and tribal areas.

An unreasonable delay in the administration of justice is nothing but an unconscionable denial of justice. There are two principal causes for delay in administration of justice. One is the increasing population and the corresponding increase in cases. Other is lack of resources that is the large numbers of vacancies of Judges and a low judge-population ratio. The Law Commission of India in its 127th Report, in the year 1988, suggested that the state should improve the Judge-population ratio, which at that time was 10.5 Judges per million populations, to at least 50 judges within five years, to overcome the issues of arrears of cases in the courts. The Commission had further recommended that by the year 2000 India should command at least 107 Judges per million of population. But we could reach to ratio of 12 to 13 Judges per million, in the year 2002, which has come down to 12.5 in the year 2009.

Need for Reforms for an Effective and Efficient Criminal Investigation:

The major problems besieging the criminal justice system are huge pendency of criminal cases along with the inordinate delay in disposal of criminal cases on one hand and the low rate of conviction in cases involving serious crimes on the other hand. The problem of court congestion in India has been a historical one and the inefficiency of the system has contributed to the problem. The huge arrears in turn further erode efficiency of both police and investigating agencies. Furthermore, this is also another reason for inordinate delay in the investigation and disposal of cases, the police and investigating agency is lacking advanced training and technical skills wherein judiciary also is not in a position to address on these issues. To create confidence in the minds of common people for an effective and efficient criminal investigation thereby to make the investigating system people-friendly, it is high time to consider for further reforms for an effective and efficient criminal investigation.

It is inevitable to say that there are problems concerning every aspect of the investigating system, right from the stage of recording the First Information Report to Investigation of the case (which often involves search, arrests and interrogation), prosecution, trial, conviction, imprisonment, parole, review, remission and rehabilitation. Under these circumstances, several committees and commissions made their recommendation for several reforms for an effective and efficient criminal investigation system.
Report of the National Police Commission, 1979-1981:

The National Police Commission submitted its report in eight parts, between 1979 and 1981 as this Commission was formed in the year 1977 to look into the role of the police in the administration of criminal justice system. The report concentrated into the issues like arrests, detention in police custody, interrogation of women and delay in investigation. This Commission, acknowledging the pressures on the police, recommended for stopping political interference in the process of investigation and also in the matters relating transfer of investigating officers. Further, in the interest of victims and witnesses, the National Police Commission also recommended that the statements recorded by police and investigating officers during investigations of witnesses or the accused should be made admissible in the court of law. It should be left to the court to rely on the statements of the investigating officers or reject them.

The National Police Commission also recommended that the police may be empowered in law to compound offences even at the stage of investigation in certain situations when both parties to a dispute are themselves keen to settle the matter. Another reform that is long overdue is the separation of investigation from the police officers deployed in law and other duties. Successive police commissions including the National Police Commission have made this recommendation, but owing to misplaced priorities and strong internal oppositions from the police department, the recommendations have not been implemented.

Report of the Ribeiro Committee, 1998 and 1999:

The Ribeiro committee recovered for setting up of proper procedures to select the chiefs of police forces and providing a minimum secure tenure to them; and insulating the investigating wing of the police from its law and order functions.

Padmanabhaiah Committee Report, 2000:

The Padmanabhaiah Committee Report laid greater emphasis on forensic science and the role it can play in investigation of murder, sexual assault, terrorist and other anti-social crimes besides drug offences.

This Committee recommended that the police manual must be amended to make it mandatory to collect samples and to obtain expert forensic opinion in all such serious crimes wherein ordinary phenomenal criminal investigation achieve expected results.

The Committee observes that the present classification of offences into cognizable and non-cognizable, made 150 years ago, is not very relevant today. It recommends that the Law Commission of India should review the entire classification and empower the police with further powers to investigate criminals and criminal offences.

The report also recommends a mandatory judicial inquiry into all cases of alleged rape of a women or death of any person in police custody.
Reports of Law Commission of India:

Several reports of the Law Commission of India went into issues that fall within the ambit of Police Reforms or issues that the National Police Commission dealt within its reports. The 78th Report of the Law Commission of India on “Congestion of Under Trial Prisoners in Jails”, which was submitted in 1979, made certain recommendations as follows:

a) Release a person on bond without sureties, where such a release is permitted by Court.
b) Provide for release on Bond without sureties in cases under Sections 395 and 439 (1)(a) of Criminal Procedure Code.
c) Release on Bond without sureties even in regard to non-bailable offences under Section 437 (1) of Cr.P.C.
d) Create a offence in the Indian Penal Code for punishing the failure of a person to appear and surrender to custody in conformity with a bond executed by him.

However there are two caveats. There should be due regard, before the bail is granted, for: (i) the likely affect on the public order and public peace by release of such person, and (ii) his conduct after release on bail on a previous occasion.

The 142nd Report of the Law Commission of India, submitted in 1994, was on “Custodial Crime”. In the report the Law Commission of India noted that the victims of the Custodial Crimes and deaths usually belong to the weaker sections of society. The poor, the downtrodden and the ignorant with little or no political and financial power are unable to protect their interests. Consequently, even if the victim or the kith and kin launch a formal prosecution, no direct evidence is available to substantiate the charge of torture or causing hurt resulting into death. This is happening because; in the police lock up the sole witnesses are either policemen or co-prisoners who are highly reluctant to appear as prosecution. Hence, it was recommended that “it is essential to make appropriate provisions in the Indian Penal Code, the Criminal Procedure Code and the Indian Evidence Act to foreclose torture in custody by police and to protect the interests of the victims of custodial crimes”.

Reports of National Human Rights Commission:

The National Human Rights Commission (NHRC) in all its reports expressed deep concern on the state of affairs affecting the police in India. In particular, it made the certain points in relation to a case in the Supreme Court, which was reiterated in the Annual Report of the Human Rights Commission during 1997-98 as follows:

a) Separation of the investigation wing of the Police with executive crime detection duties so as to insulate the investigation wing from political pulls and pressures.
b) Constitution of the ‘Police Security and Integrity Committee’ as a recommendatory and advisory authority, to begin with broad policy guidelines and directions for the performance of preventive tasks and service oriented functions by the police and illegal transfers, promotion orders, illegal or irregular orders in the performance duties, no premature transfers and by a competent authority only.
c) District Police Complaints Authority to look into misuse of power and abuse of Authority including wrongful arrests, detentions, custodial violence etc.,
d) Institution of ‘lay visitors’ to Jails and police lock-ups by respectable and independent members of the public without interfering in any manner.
e) Improvement in the mode of appointment of prosecution personnel for effective administration of Criminal Justice System.
Conclusion:

Law is a living process, which changes according to the changes in society, science and so on. The Legal System should imbibe developments and advances that take place in science as long as they do not violate fundamental legal principles and are for the good of the society. The criminal justice system should be based on just and equitable principles. After analyzing different provisions of the Criminal Procedure Code as well as the reports of various committees it can be submitted that though the system adopted by the Indian justice administration is adversary in nature but the reflections of inquisitorial system can also be not negated. The Code provides a balancing approach while dealing with these kind of systems. As far as other basic components of fair trial are concerned, the adherence of these components can be seen in different provisions of the Code.

REFERENCES:


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