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## CRIMINAL INVESTIGATION TECHNIQUES: THE MAJOR ROLE IN CRIMINAL JUSTICE SYSTEM\*

### Abstract

The paradigm of society is changing rapidly. The forensic science is useful in yielding the concealed knowledge of crime. Actions taken at the outset of an investigation at a crime scene can play a pivotal role in the resolution of a case. Investigation is key to ensure that potential physical evidence is not tainted or destroyed or potential witnesses overlooked. The National Institute of Justice have played a role of prime support to the development of crime investigation.

The DNA fingerprinting has helped extremely in biological and physical identification of a person. The Deception Detection Test (DDT) such as narco- analysis, brain mapping, polygraph and others has its own pros and cons.

The research paper further deals with the sub parts of an investigation like preliminary documentation and evaluation of the scene, processing the Scene, completing and recording the crime scene investigation, etc.. The present paper undertakes empirical and analytical research to critically examine the impact of the advancement of science in the field of criminal justice system. Law operates not in vacuum but in social perspective and maintaining the ethical framework of criminal investigation techniques which has become one of the concerned issue of the day.

### Introduction

The main problem arise in Indian system of policing and criminal investigation is still very old ways of evidence gathering and torture out a confession form the suspected person. Because most of the recruits at the entry level are hardly school educated and come from background where their childhood has been influenced by their caste, religion<sup>1</sup>, community or their economic status and this usually comes in struggle when policing urban areas. where the mindset of society that they serve, is different from the one that they grew up in.

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<sup>1</sup> Article on modern techniques of interrogation and profiling of criminals. Available at <http://www.mapsofindia.com/my-india/government/problems-and-solutions-in-crime-investigation-in-todays-india>

This lack of education also hampers the police from the scientifically investigating any crime. In the case of Bombay high court, the division bench of justices VM Kanade and PD Kode said:

*While the police are within their right to interrogate an accused, a mechanism should be evolved to ensure that they do not use excessive steps or force so as to result in custodial death."*

Crime statistics in any case are not very reliable. A common complaint against the police is that they do not register crime fully. Concealment or burking of crime is quite common. One major reason for this is that police performance is evaluated on the basis of crime statistics. This encourages the police to adopt questionable methods of recording and controlling crime and even resorting to illegal acts. They suggested that incorrect registration of crime be adopted as one of the measure to evaluate police performance. However, whenever this is done, it leads to tremendous increase in crime figures, resulting in an outcry in the press and the legislature and causing considerable embarrassment to the government.<sup>2</sup>

According to the 61st report of the Parliamentary Standing Committee on Home Affairs, 25million cases were pending trial in different states courts in the country. The citizens expect the State to establish the rule of law and provide them freedom from crime and violence.

### **The failure of Criminal Justice System**

The public are hopeless not only with the police but with the working of other agencies of the criminal justice system. Crime has registered an increase. For example, the total cognizable crime registered under the Indian Penal Code (IPC) increased from only 6.25 lakhs in 1951 to 17.2 lakhs in 2003. The total cognizable crime in 2003 was about 55 lakhs, including 37.8 Lakh offences registered under the local and special laws. When there is an upsurge in criminal activities or a particularly heinous crime is committed, the public tend to blame the police. The general tendency is to hold the police solely responsible for any increase in crime. This attitude is reinforced by the manner in which the police react to public criticism. They either quote crime statistics, which are not too impressive or point out inadequacies of manpower and equipment at their disposal<sup>3</sup>

### **Inspection of Scene of Crime**

A scene of crime under investigation or an event under enquiry is a place from where and through which the Investigating/ Enquiry Officer may get crucial evidence relating to the commission of crime and identity of the accused or the individual responsible for the event. Therefore, examination of the scene of crime or event is very important task of the Investigating Officer. This is more so especially in crimes such as murder, rape, dacoity, kidnapping, rioting and explosion etc. because it exhibits:

(a) Information on the corpus delicti (body of the crime.) (b) Information on the modus operandi used by criminals. (c) Information to link a suspect with witness/victim, e.g., the evidence like blood, hair, cloth, fibres, cosmetics, documents and other items from the victim may be transferred to the perpetrator. (d) Information linking a person to the crime scene such as different types material like documents, fingerprints, blood, hair, fibers and soil, paint, etc. left by the criminal may be available at the scene of crime, which sometimes may provide one of the most vital clues. (e) Information to disprove or support a witness's testimony. (f)

<sup>2</sup> Available at [www.humanrightsinitiative.org/programs/aj/police/papers/gpj/police\\_accountability\\_in\\_india](http://www.humanrightsinitiative.org/programs/aj/police/papers/gpj/police_accountability_in_india) as last visited on April 27, 2016

<sup>3</sup> Available at [www.humanrightsinitiative.org/programs/aj/police/papers/gpj/police\\_accountability\\_in\\_india](http://www.humanrightsinitiative.org/programs/aj/police/papers/gpj/police_accountability_in_india) last visited on April 27, 2016

Information on identification of a suspect. (g) Providing lead to the investigation. (h) Information on identification of a substance

➤ **Plan of the Scene of Offence**

The plan of the scene of the offence is prepared by the Investigation officer itself. The I.O. may take help of the Technical Advisor or his staff in the CBI, if considered necessary. In trap cases, cases of murder, a sketch of the scene of occurrence has to be drawn and must be attached to the case diary.

➤ **Photographing/Video graphing the Scene of Crime/Trap/Search Proceedings**

As far as possible, the crime scene, steps during the course of investigation such as pre-trap and post-trap proceedings, search proceedings should be photographed as well as video graphed. In case, the photographs are taken by conventional method, the negatives must be preserved. In the event of digital still photography and videography, the images may be downloaded/transferred, in the presence of witnesses, to a 'write only' compact disk (CD) or 'write only' digital video disk (DVD) for preservation. This would prevent the independent witnesses turning hostile during the course of trial. In all important cases of disproportionate assets/ recoveries, search proceedings should also be video graphed so that the Court may appreciate the evidence collected by CBI about the luxurious lifestyle of the accused or the circumstances under which a particular recovery was made. A memorandum must be prepared to this effect by the I.O. on the spot in the presence of witnesses.

**Investigation**

There are also concepts of part investigation. Requests received for part investigation from the other Branches should receive prompt and adequate attention. The part-investigation should be completed within one month of the date of its receipt by the Branch concerned.

In order to know the whereabouts of the IOs, who go out of their jurisdiction for investigation and to ensure that they get proper assistance, they should report to the SP/DIG of the Branch where they go for enquiry/investigation. Such IOs should also intimate to the Branch SP the place where they would be residing during their tour. Whenever an I.O. visits the city where the office of the Regional DIG is situated, he must meet the DIG of the concerned Region or Zone for instructions, if any. When a case has been taken over by CBI, no other Officer or Department will have the right during the course of investigation to examine the records in the possession of CBI, except with the permission of the Superintendent of Police of the Branch concerned. When the other Government Departments like Income-Tax and Enforcement Directorate etc. request to see the documents in the possession of CBI for any official purpose, they may be permitted to do so by the SP in the presence of the I.O. in charge of the case or any other responsible Officer of the Branch.

**Powers of Investigating Officers**

There is certain power of investigating offices laid down under the provision of section 157 to 173 of the Cr.P.C are as following-

1. Under this provision it is necessary to summon the person to attend an investigation and Officer should issue an order in writing in the prescribed form to such person to attend investigation.
2. No male or female person under the age of 15 years shall be asked to attend at any place other than the place in which such male or female resides.

3. It is responsibility of the Senior Superintendent of Police or Superintendent of Police or any other Officer vested with task to supervise investigation of a crime or conduct of an enquiry to ensure that there is no inducement, threat or promise given to any person from whom enquiries are made or the information are elicited.

In many time it seen that above mention steps were not followed by the investigating officers and unnecessarily called or detained under any circumstance

### **Different stages of Investigation techniques**

#### **➤ Initial Response/Receipt of Information:**

One of the most important aspects of securing the crime scene is to preserve the scene with minimal contamination and disturbance of physical evidence. The initial response to an incident shall be expeditious and methodical. Upon arrival, the officer(s) shall assess the scene and treat the incident as a crime scene. The initial responding officer(s) shall promptly, yet cautiously, approach and enter crime scenes, remaining observant of any persons, vehicles, events, potential evidence, and environmental conditions. The initial responding officer(s) should:

- a) Noting or log dispatch information (e.g., address/location, time, date, type of call, parties involved).
- b) Be aware of any persons or vehicles leaving the crime scene.
- c) Approaching the scene cautiously, scan the entire area to thoroughly assess the scene, and note any possible secondary crime scenes. Be aware of any persons and vehicles in the vicinity that may be related to the crime.
- d) initial observations (look, listen, smell) to assess the scene and ensure officer safety before proceeding.
- e) Assuming that the crime is ongoing until determined to be otherwise. It is important for the initial responding officer(s) to be observant when approaching, entering, and exiting a crime scene.

#### **➤ Safety Procedures**

The safety and physical well-being of officers and other individuals, in and around the crime scene, are the initial responding officer(s)' first priority. The initial responding officer(s) arriving at the scene shall identify and control any dangerous situations or persons.

The initial responding officer(s) should:

- a) Ensure that there is no immediate threat to other responders — scan area for sights, sounds, and smells that may present danger to personnel (e.g., hazardous materials such as gasoline, natural gas). If the situation involves a clandestine drug laboratory, biological weapons, or radiological or chemical threats the appropriate personnel/agency should be contacted prior to entering the scene.
- b) Approaching the scene in a manner designed to reduce risk of harm to officer(s) while maximizing the safety of victims, witnesses, and others in the area.<sup>4</sup>
- c) Notify supervisory personnel and call for assistance/backup. The control of physical threats will ensure the safety of officers and others victims.

#### **➤ Emergency Care**

After controlling any dangerous situations or persons, the initial responding officer(s)' next responsibility is to ensure that medical attention is provided to injured persons while

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<sup>4</sup> Infra note 6

minimizing contamination of the scene. If medical personnel arrived first, obtain the name, unit, and telephone number of attending personnel, and the name and location of the medical facility where the victim is to be taken. If there is a chance the victim may die, attempt to obtain “dying declaration.” It is one of the most important record of the case diary of an I.O. If the victim or suspect is transported to a medical facility, sending a law enforcement official with the victim or suspect to document any comments made and preserve evidence.

Assisting, guiding, and instructing medical personnel during the care and removal of injured persons will diminish the risk of contamination and loss of evidence. Briefing the investigator(s) taking charge assists in controlling the crime scene and helps establish further investigative responsibilities.

The initial responding officer(s) should:

- a) Brief the investigator(s) taking charge.
- b) Assist in controlling the scene.
- c) Turn over responsibility for the documentation of entry/exit.
- d) Remain at the scene until relieved of duty.
- e) The scene briefing is the only opportunity for the next in command to obtain initial aspects of the crime scene prior to subsequent investigation. Prioritizing the collection of evidence to prevent loss, destruction, or contamination. The investigator(s) in charge and team members shall determine the order in which evidence is collected. Focusing first on the easily accessible areas in open view and proceed to out-of-view locations.
- f) c. A systematic search pattern for evidence collection based on the size and location of the scene is selected to determine the case facts more easily.
- g) Concentrating on the most transient evidence and work to the least transient forms of physical evidence.

Moving from least intrusive to most intrusive processing/ collection methods. Recognize other methods that are available to locate, technically document, and collect evidence (e.g., alternate light source, enhancement, blood pattern documentation, projectile trajectory analysis).

#### ➤ **Documentation of the Crime Scene**

Reports and other documentation pertaining to the crime scene investigation shall be compiled into a “case file” by the investigator(s) in charge of the crime scene. This file shall be a record of the actions taken and evidence collected at the scene. This documentation shall allow for independent review of the work conducted. The investigator(s) in charge shall ensure that reports and other documentation pertaining to the crime scene investigation are compile. The investigator(s) in charge should obtain the following for the crime scene case file:

- a) Initial responding officer(s’) documentation.
- b) Emergency medical personnel documents.
- c) Entry/exit documentation.
- d) Photographs/videos.
- e) Crime scene sketches/diagrams.
- f) Evidence documentation.
- g) Other responders’ documentation.
- h) Record of consent form or search warrant.

Reports such as forensic/technical reports should be added to this file when they become available.<sup>5</sup>This will ensure that reports and other documentation pertaining to the crime scene investigation are compiled into a case file by the investigator(s) in charge of the crime scene and allow for independent review of the work conducted.<sup>6</sup>

Investigating Officers of CBI are authorized to conduct investigation into the offences notified by Central Government under Section 3 of the Delhi Special Police Establishment Act, 1946. While investigation of the said offences may be taken up in the Union Territories, a notification from the Central Government is required to be issued under Section 5 of the DSPE Act, 1946 with the consent of the State Government concerned under Section 6 of the said Act to enable investigation to be conducted in the territories of different States. Consent once given in any particular case cannot be withdrawn as it has been stated by the Hon'ble Supreme Court in *K. Chandrasekhar etc. v. State of Kerala*<sup>7</sup>

The powers of investigation as granted by the DSPE Act do not vest any different powers other than those laid down in the Cr.P.C. 1973. Under Section 156 of the Cr.P.C. 1973, all Officers of and above the rank of an Officer in charge of a Police Station have statutory authority to investigate cognizable offences. Under Section 157 (i) Cr.P.C., 1973 such Officers are empowered to depute subordinate Officers to proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender(s). Officers of CBI of or above the rank of Sub-Inspector are empowered under Section 2(3) of the DSPE Act, 1946 to exercise the powers of the Officer-in-charge of a Police station for the purpose of investigation of any case. Therefore, no independent enquiries/investigation can be entrusted to Assistant Sub-Inspectors of Police or Head Constables in the CBI. In cases registered under the Prevention of Corruption Act 1988 only Officers of the rank of Inspector and above of CBI are authorized to investigate except in the state of Jammu & Kashmir (J&K). In J&K, under provisions of J&K Prevention of Corruption Act, only Officers of the rank of Deputy Superintendent of Police and above are authorized to investigate cases pertaining to the offences under the said Act<sup>8</sup>.

#### **Investigation in the non-cognizable offences**

Investigation in the non-cognizable offences should be taken up only after obtaining approval of the Magistrate of competent jurisdiction. When a Special Magistrate for CBI cases, who is competent to give such approval, is not available, the required approval should be obtained from the Magistrate in whose jurisdiction the offence was committed or from the Chief Judicial Magistrate.

The result of enquiry/investigation in every case shall invariably be communicated to the Ministry/ Department/ Undertaking concerned. A Closure Report should contain sufficient details to enable the Court to appraise as to why the case has been closed.<sup>9</sup>

#### **International framework on criminal investigation**

United Nations Convention Against Transnational Organized Crime (TOCC) is organized a meeting of different states to discuss about the issue of increasing of crime globally. Its main purpose of prevent and combat transnational organized crime more effectively and constitutes

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<sup>5</sup> Note: The above list is limited to crime scene documentation. This should not be considered a comprehensive list of the documents involved in an investigative case file

<sup>6</sup> Crime Scene Investigation, U.S Department of Justice, National Institute of Justice

<sup>7</sup> [JT 1998 (3) SC 612].

<sup>8</sup> GENERAL INSTRUCTIONS REGARDING INVESTIGATION & ENQUIRIES

<sup>9</sup> Article on GENERAL INSTRUCTIONS REGARDING INVESTIGATION & ENQUIRIES

the foundation document for the UNODC's anti-organized crime initiatives. Under Article 20 of this document is about the Special Investigative Techniques, which are the following-

1. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.
2. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned<sup>10</sup>.

### **Analysis of different Judicial pronouncements**

After realizing the problem in the investigation Hon'ble Supreme Court in *H.N. Rishbud V. State of Delhi*<sup>11</sup>, the investigation generally consists of the following steps: –

- i. Proceeding to the spot;
- ii. Ascertainment of the facts and circumstances of the case;
- iii. Discovery and arrest of the suspected offender;
- iv. Collection of evidence relating to the commission of the offence which may consist of
  - a) the examination of various persons (including the accused) and the, reduction of their statements into writing, if the Officer thinks fit,
  - b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial;
  - c) (v) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial, and if so, taking necessary steps for the same by filing of a charge-sheet under Section 173 Cr.P.C. before the competent Court.

In *M.P.Sharma Vs. Satish Chandra*<sup>12</sup> there was an issue that Article 20(3) provides right to the person witness in courtroom and not beyond that and same issue has been raised by the respondent in the Kathi kalu Oghad case which apex court clearly observed and held that since Article 20(3) has words “to be a witness” and not “to appear as a witness” so the protection is extended to compelled evidence obtained even outside of courtroom. The privilege against self-incrimination enables the maintenance of human privacy and right to silence pronounced by the Supreme Court.

In the case of *Nandini Satpathy Vs. P.L. Dani*<sup>13</sup> Supreme Court said that “No one can extract statements from the accused, who has right to silence during the course of interrogation (investigation)”. It was also claimed that the right to keep silence is by the virtue of Article 20(3) of the constitution of India and section 161(2) of Criminal procedure code and same was upheld by the apex court. In the case of Ram Jawaya Kapoor, Court clearly said that the executive power can't intrude on constitutional rights and liberty or any other rights of the person and if it is related with fundamental rights then must struck down as unconstitutional.

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<sup>10</sup> Report on- Current practices in electronic surveillance in the investigation of serious and organized crime published by United Nations Publication Printed in Austria ISBN 978-92-1-148246-1

<sup>11</sup> H.N. Rishbud V. State of Delhi (A.I.R. 1955 S.C. 196)

<sup>12</sup> 1954 AIR 300 SC

<sup>13</sup> AIR 1978 Sc 1025

In the case of *Selvi vs State of Karnatka*<sup>14</sup>, it was held by the Supreme Court of India that the results of the test cannot be admitted as an evidence even though consented by the accused because there is no conscious control is being exercised by the subject during the course of test but the court left one option that if the subject consented for the test then any material or information discovered that can be admitted under section 27 of the Indian Evidence Act, 1872. Further it was also held that according to section 25 of Evidence Act “Confession made before any police officer are not admissible as evidence before the court.” Thus the court is of the view that the statements made by the subject during custody are not admissible as evidence unless same has to be cross examined or judicially scrutinized.

In the case of *Rojo George Vs. Deputy Superintendent of Police*<sup>15</sup>, while allowing the narco analysis test Court is of the opinion that in present day the criminals started to use very sophisticated and modern techniques for committing the crime. So the conventional method of investigation and questioning to the criminals will not be successful for solution and there is need to utilize some new techniques such as polygraph, brain mapping and narco analysis. Court also said that when such techniques used in the presence of expert then it can’t be raised that the investigating agencies violated the fundamental human rights of any citizen of India.

In the case of *Santokben Sharmabhai Jadeja Vs. State of Gujarat*<sup>16</sup> the court while upholding the order for conduction of Narco Analysis test on the accused Santokben Sharmabhai Jadeja, it was observed that when after exhausting all the possible alternatives there was no possibility to find out the truth or nab the criminals and it is found by the prosecuting agency that there is no further headway of investigation, they are absolutely in dark then it is necessity of such tests. On the basis of this revelation if investigating agency finds some clues or records, some statement which helps or assists for further investigation of crime then there will not be any violation of Article 20(3) of constitution of India.

In the case of *Dharampal Vs. State*<sup>17</sup> it was clearly said by the Apex court that the criminal justice system cannot act properly if the person living in the society would not be cooperative so it is the duty of every person to assist the state in bringing criminal justice and detecting the crime. It must be known that no one can withhold criminal information and escape from social responsibility by avoiding such information in the name of right to privacy which itself is not an absolute right.<sup>18</sup>

### **Aryushi Hemraj murder case<sup>19</sup>**

In the of aryushi hemraj murder case where Narco tests are not admissible as legal evidence, but they are important indicators of which way an investigation should head. Section 27 of the Indian Evidence Act<sup>20</sup> also says if any incriminatory findings are obtained pursuant to a voluntarily administered narco test, then these discoveries become legally admissible. This, read with a Supreme Court judgment in *Selvi & Others vs State of Karnataka*<sup>21</sup>, could have made the beginnings of a strong case.

<sup>14</sup> AIR 2010 SC 1974

<sup>15</sup> AIR 1953 SC 131

<sup>16</sup> 2008 Cr.L.J. 3992

<sup>17</sup> MANU/SC/0260/2003

<sup>18</sup> Ajay Kr. Barnwal and Dr.S.N.Ambedkar, Narco-analysis Test: An analysis of various Judgements of Indian Judiciary, IOSR Journal Of Humanities And Social Science (IOSR-JHSS), Volume 19, Issue 10, Ver. I (Oct. 2014

<sup>19</sup> 2013 (82) ACC 303

<sup>20</sup>How much of information received from accused may be proved. —Provided that, when any fact is proved as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

<sup>21</sup> Criminal Appeal 1267 of; 2004 2010(7) SCC 263



## Conclusion

The State's failure to do sought out the problems regarding tampering with evidences gives rise to public fear of crime and criminals. Fear of crime feeds on itself and always grows at a rate faster than crime. It is public fear of crime, which sometimes provides a license to the police to ignore the law and deal with crime and criminals by using rough and illegal methods. Blinding of criminals done by Bhagalpur Police way back in early eighties was one example of such license. This has been followed by other incidents. Police deviance is bound to increase whenever the fear of crime whips up the rhetoric of war against crime, criminals and terrorists. Law is the cement of the society and an essential medium of social change. Law operates in social mechanism and not in vacuum. What the public want is a feeling of security and are not always willing to question the methods used by the police in achieving their success in the fight against crime and criminals<sup>22</sup>.



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<sup>22</sup> Available at [www.humanrightsinitiative.org/programs/aj/police/papers/gpj/police\\_accountability\\_in\\_india](http://www.humanrightsinitiative.org/programs/aj/police/papers/gpj/police_accountability_in_india) asvisited on April 27, 2012