

The Study of Procedure of Investigation under the Criminal Justice System: A Case Study of Pakistan

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Abstract: *Investigation plays a vital role in the criminal justice system. Because it is the main pillar of the criminal justice system, and without true investigation, it would not be possible to prosecute and convict the guilt and save the innocent from the agony of a trial. The purpose of the police is to gather evidence through investigation for the consideration of the Court to evaluate the same to arrive at a logical conclusion. With the beginning of the 21st century, advancement in information technology has changed the nature of the criminal activity. There is a need to study the existing investigation process to know that either the existing system is compatible with the changing nature of the criminal activity or not. The present study has tried to analyze the existing system and its compatibility with changing nature of the crime. After discussing a number of judgments, it is concluded that most of the criminal cases do not result in a conviction due to faulty investigation. At the end of the study, the researcher has given some recommendations for improving the criminal investigation process in Pakistan.*

Key Words: Criminal Justice, Justice System, Investigation, Investigation Process, Police the Investigation, Criminal Law, Pakistan

Introduction

The history of criminal investigation starts from the families and tribes. Individuals and families other than suspects used to perform the duty of investigation, and the rest of the people were responsible for detection, apprehension, and execution of the offending member. During the 14th century, there was no police system in the UK. The society had no institution or office to investigate the crime. Magistrates could prosecute the criminals if they were caught and brought before them by the public. In 1829, for the first time in London, police were introduced in the name of watch of London (Pike, 1978). In 1839, Henery fielding introduced bow street runners who were paid a percentage of recovered stolen property rather than salary (Blumberg, 2007). In 1842, the Detective Branch of Police was introduced at Scotland Yard, which was consisted of twelve members (Walton, 2015). In 1877, the investigating officers of Scotland Yard got organized into a new entity called the Criminal Investigation Department under the leadership of Howard Vincent (Britannica, 2017). Later on, a lot of steps were taken from time to time to upgrade the criminal justice system.

The meaning of investigation may be explained simply as a systematic fact-finding and collection of evidence. In a broader sense, inquiry (either judicial or otherwise) to discover and collect facts regarding certain proceedings is called investigation (Iftikhar Ahmed, 1999). The word investigation has its roots in the Latin word "vestige", which denotes to track or trace. The investigation is a multidiscipline field of study, but this particular work is limited to investigation in criminal cases in Pakistan.

A criminal investigation is conducted under the CrPC, (i.e., Section 154 to 176), Police Order of 2002 (Chapter III (8) 1, 2, 3, and 18), and Police Rules of 1934 (Chapters XXV and XXVI). Generally, criminal investigation means to collect the evidence relating to crime and evidence against the accused who committed the crime. The phrase "collection of evidence" cannot be confined to such evidence which favors the prosecution only (Liaqat Ali, 1998). It also does not mean that by all means, material has to be gathered against the accused. At the same time, the investigation only means that where suspicion is aroused regarding the fact in question, then it becomes the duty

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of the investigating office to inquire all the avenues to find the truth. The word investigation must be understood not only with reference to the powers of the police officer but also in the light of restrictions placed on them regarding the execution of such powers (Mst. Raheela, 1983).

There are the following three phases in every investigation:

- administrative phase;
- judicial phase; and
- executive phase.

The administrative phase starts after the occurrence when the case is reported, and investigation is started by the concerned investigating officer. This phase is completed when the report is submitted in the court after the completion of the investigation, whereas the judicial phase is started when the police submit its report (after the completion of an investigation) in the court for trial. During the judicial phase, it is the duty of police to peruse the case properly and produce the witnesses in the court well in time along with case property. Finally, the Executive phase means after the conclusion of trial if the accused is convicted by the trial court to implement the conviction and if the accused is acquitted, to file appeal against the verdict of the trial court. In this respect, a passage from Lord Reid's dialogue in *Wiseman*, (1971) may be quoted which is as follows.

"every public officer who has to decide whether to prosecute or raise proceedings ought first to decide whether there is a prima facie case..." (Imtiaz Ahmed, 1994)

The object of investigation is not an ultimate conviction. The rule of caution is that investigation must be impartial and honest, and it should in no way be capricious, arbitrary or whimsical. There should be no fabrication of evidence, and truth is to be sorted out by way of discovering method connected with the alleged offense. The purpose of the police investigation is collection of the best possible evidence, for consideration of the Court to arrive at a logical conclusion (Muhammad Ashraf, 2008).

Forensic science agency has been playing a great role in the criminal investigation process. For the analysis of evidence such as narcotics test, DNA test, finger print test, blood, semen, soils, hair, explosive materials, document examination, biologic examination, physical examination, and identification. Before forensic science, criminal investigation relied upon people's interactions. As soon as medical science and social science developed in the world and technology increased. People started to share their experiences. World become the global village. Knowledge of mathematics, biology, chemistry, and physics helps the forensic science for the detection of crime.

With the help of forensic science, investigation gets new change. Countries interact with one another on different subjects to share knowledge. Seminars and Conferences have been conducted on the investigation. During these conferences, it has been highlighted that investigation manners and techniques should be changed because the activities of the criminals have also been changed. In the era of 2000, especially after 9/11, the behaviour of criminals has been changed. Similarly, the investigation agencies, law enforcement bodies, and lawmakers thought to develop new techniques and methods to investigate the crimes. To make their investigation system compatible with the changing nature of the crime, they developed modern forensic labs, modern devices and started training programs for their investigating officers.

Since the creation of Pakistan in 1947, the governments did not focus seriously on developing a criminal justice system that could deliver free and fair justice to society. Due to this carelessness, the criminal investigation system still depends on old and conventional procedures, which are carried out by unskilled officers with minimized technical assistance and facilities (Sahito, 2009).

The Criminal Prosecution Service Act of 2006 was introduced to get the better results of the investigation. The evidence was used to be collected by the investigating agencies, but there was no proper lab to analyze the collected evidence and get proper results. Resultantly, Punjab Forensic Science Agency Lahore was established for the analysis of collected evidence. Before this, there was no proper arrangement to identify the finger prints and matching of handwritings. Thus, the said facility started playing its role in the criminal investigation process.

It is pertinent to mention that in a case when a five-year-old girl child was raped and murdered by an unknown accused, the learned Supreme Court of Pakistan took notice and ordered the government of Punjab to arrest the accused within seven days positively (Zainab, 2018). A joint investigation team was formed for proper investigation. Punjab Forensic Science Agency Lahore took the samples of twelve hundred and fifty (1250) suspects, and it was the third incident in the world where a huge number of samples were taken for the DNA profiling. As a result, the DNA samples of a suspect named Imran was matched with the victim's sample. He was arrested, and during the investigation he confessed his crimes. Surprisingly, the accused was also identified by a jacket's shoulder button that he was wearing on the day of occurrence through CCTV footage. The above-mentioned jacket was also analyzed by Punjab Forensic Science Agency Lahore. The corroborating evidence was that the same jacket was bought by the accused from a shop situated in the city of Kasoor, and he was also identified in the CCTV cameras of the shop. The case was, thus, solved with the help of latest investigation techniques.

Now a day's, modern technology is available against criminals in terms of geotagging, geo-fencing, polygraphic test, bite mark identification, hand bacterial identification, and the technology for the presence of any accused in any area by the smell of their body. It is a great effort that the Punjab Forensic Science Agency of Lahore has been helping to analyze the collected evidence. The necessity is that investigating officers should produce the samples in the time given by law and policy rules.

Existing Investigation Process

The investigation process starts after the commission of a crime, so it is necessary to define the term crime. Crime is a public wrong that includes any act or omission that is forbidden and punishable by the law. Crime disturbs society and the state. There may be certain reasons behind the crimes like poverty, illiteracy, injustice, bad governance, etc. When an offense is committed in the jurisdiction of any police station and information is received to such police station, the staff of the police station is duty-bound to enter the same in the daily diary (*Roz namcha*). An offense may be non-cognizable or cognizable.

The investigation is a basic element of the criminal justice system which assists the criminal courts in deciding the case on merits. All around the world, specifically in the technologically advanced societies, detectives, criminologists, etc., have been adopting new methods and investigation techniques to control crime.

From the beginning of the 21st century, advancement in technology generally and the information technology especially has changed the nature of crimes. Criminals use most advance techniques for the crime. Like all over the world, in Pakistan, we are facing changing modes of crime. There is a need to study the behavior of investigation agencies on one side and criminal courts on the other, where it is thought that the criminal courts must acquit the accused due to insufficient evidence or that the courts show their leniencies towards the accused. In Pakistan, the ratio of conviction is very low, and it is a fact that poor investigation spoils the prosecution case. In this scenario, it is very important to study the techniques and methods used by investigating agencies with changing modes of crime in Pakistan. So, this study aims to discuss the role of investigating agencies in Pakistan. The present study would also highlight the corners which will be helpful to make the effective investigation.

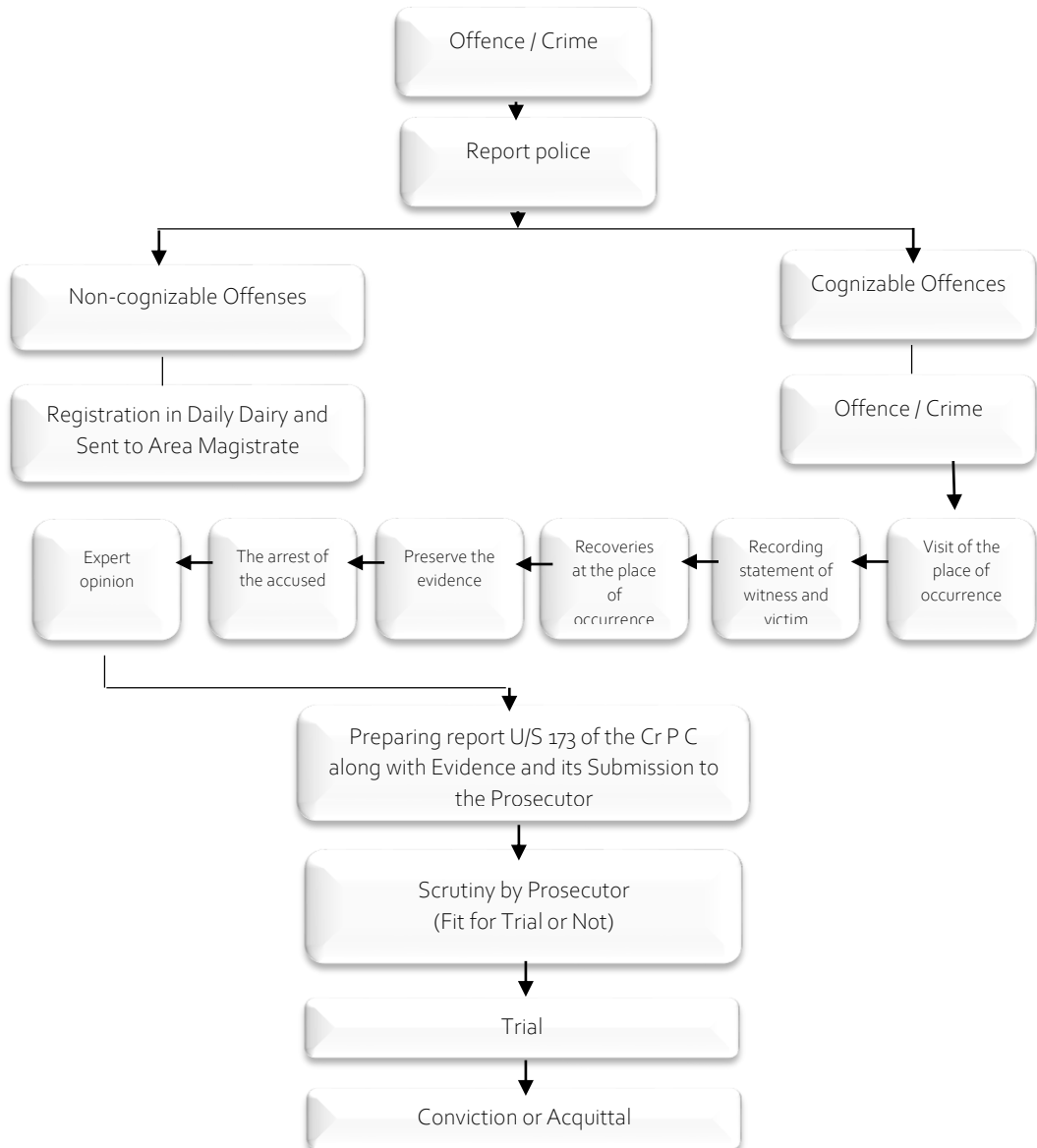
After a criminal case is registered either through FIR or a private complaint, the following steps are taken to reach a conclusion.

- a) Visit the Place of Occurrence
- b) Recording the Statement of the Witness
- c) Recoveries at the Place of Occurrence
- d) Preserving the Evidence
- e) Arresting the Accused
- f) Preparation of the Report U/S 173 CrPC along with all evidence
- a) Trial
- b) Scrutiny by Prosecutor
- c) Expert opinion (if required)

d) Conviction or Acquittal

Criminal Justice Process in Pakistan

The following flow chart explains the whole criminal justice process in Pakistan:



Theoretical Observations

The existing literature on investigation system generally explores the factors responsible for the poor investigation, i.e., improper collection of evidence, misuse of powers by police in the investigation process, corruption of police, political influence in investigation process, unskilled investigation officers, and lack of resources required for proper investigation.

Chaiken et. al (1976) studied the process of criminal investigation at municipal and country police departments. Data was collected through interviews, surveys, and observations. Investigators spent almost 7% of the time on procedures which led to solving the crimes. The authors also found that about half of investigation staff and case-related activities were dedicated to the post-arrest process; these activities were imperfectly responsive to meet the needs of prosecutors. Thus, poor collection of evidence at a crime scene cannot help in solving the crimes unless the evidence collecting staff's capabilities are sufficiently adequate.

The study conducted by Horvath et al., (2001) suggests that information technology can improve the working of the police and other investigating personnel. The modern devices and their use in investigation process would produce better results. Where criminals have become smart, it is necessary to combat them with an equal smart, and professional force.

According to [Abbas \(2011\)](#), to counter the insurgency, an effective system of police is critical. In Pakistan, the police force being understaffed and unskilled is called on to counter the growing insecurity and rebellious violence. This research assesses the impediments to updating the current police system and suggests innovative and traditional reform choices, which include the restructure of the law enforcement set up, which would improve the efficiency of the police force.

Hekim et al. (2013) analyzed the importance and contribution of information technology regarding the outcome of criminal investigations. The nature of the study was cross-sectional, and it analyzed the performance of the US police department. The researcher, through findings, disclosed that the usage of information technologies by the investigating department was not noteworthy.

[Ali \(2015\)](#), by comparing different criminal justice systems of the world, has suggested adopting the scientific methods during the process of investigation rather than following the outdated way of illegal beating and mistreating the accused in police stations or killings the criminals in extrajudicial fake encounters. The researcher has further suggested that the present Criminal Laws should be updated according to the changing needs of the time.

Haque & Saleem (2020) have focused the investigation with reference to evidence under the criminal justice system. They have pointed out the poor investigation method and poor handling of crime proofs which not only leads to long trials but also leads to poor verdicts. The authors are of the opinion that this is because of untrained investigation officers who lack modern investigation techniques, which leads to the destruction of evidence and failure of justice.

Case Law

Followings are some judgments of the superior courts that point out the flaws and weaknesses of an investigation by the investigating officer.

In a judgment titled [Allah Ditta v. SHO \(1996\)](#), the petitioner pointed out that investigating officer had joined hands with the opposite party, so he had little hope for justice. The petitioner requested the court that directions be issued to higher authorities of police to appoint another investigating officer. The court observed the grievances of the petitioner being genuine and issued the direction accordingly. As the learned court held that *"every citizen has right to fair and impartial investigation in a case."*

In another judgment titled *Gulnaz v. State (1996)*, the petitioner challenged the registration of FIR and requested the learned court for the quashing of FIR. The court quashed the FIR and observed that registration of FIR was a misuse of power and high-handedness of police which *prima facie* was based on *mala fides*, and malice would be quashed by the High court as the action of police was not sacrosanct and was not excluded from judicial scrutiny. Law laid down by Supreme Court that High Court had no jurisdiction to interfere in police investigation, *"does not give a free hand to the police to play havoc with life, honour, and liberty of citizens and to use its powers to commit atrocities towards the innocent citizens under the grab of investigation"* (Shahnaz Begum, 1971).

In *Mumtaz Alias Naza v. State (1997)*, during the decision of bail application, the court stated that co-accused obtained bail before on the ground that investigating officer declared the accused innocent on the basis of affidavits. The court observed that the procedure adopted by the investigating officer (IO) was neither permissible under the law nor in the Police Rules nor directed the State counsel to inform the superior police officers regarding

the conduct of IO. The court held that *the "procedure of declaring accused innocent during the investigation on the basis of evidence is not permissible either under law or under Police Rules."*

In *Muhammad Qasim v. State (2008)*, during the post-arrest bail application, regarding the case of Zina (U/S 10 & 16 of Hudood Laws 1979), it was held that the case was not investigated by the superintendent of police, whereas under amended S. 156(b) CrPC., no police officer less than the rank of SP would investigate such offenses nor would such accused be arrested without permission of the court. No permission from the court was sought for the arrest of the accused. Non-compliance with the said provisions was a serious omission and would entail consequences. Whole investigation and subsequent proceedings on the basis of the said investigation were declared illegal. The factual controversy involved in the case required deeper appreciation which was not permissible at the bail stage. The benefit of the doubt having been given to the accused, he was allowed bail.

In a case titled *Muhammad Khalid v. State (1998)*, the court held that police had no power/authority or right, whatsoever to torture persons who were in custody for investigation. High Court took notice of such torture by IO against accused and directed the IG Police to take appropriate action against the concerned IO for torturing accused during police custody and action so taken by IG Police to be intimated to the High Court within a period of one month positively. The police officer (ASI), who was the complainant in FIR, could not act as IO, as the law did not allow to assume that dual role of complainant and IO. It would be incumbent upon the complainant police officer to entrust the investigation of the case to another disinterested police officer. The very fact that complainant police officer had assumed the role of IO would render the very trial of the case is a sheer mockery.

With reference to [Amjad Ali v. State \(2008\)](#), the court held that crime empties not secured from the spot, but handed to IO by the complainant, was never sent to the fire arms expert either before or after the arrest of the accused. Eyewitnesses were supposed to be present at the scene of occurrence, but they were planted later on, which was against the spirit of justice.

In the *Rustam Ali Khan case (2008)*, the court held that "where investigation was launched mala fide by investigating agencies, same would be open to correction by invoking constitutional jurisdiction of the high court under Art. 199 of the constitution".

In *State v. Bashir (1997)*, the court held that it was the duty of an investigating officer to find out the truth of the matter under investigation. His object was to discover the actual fact of the case and to arrest the real offender/s.

In *State v. Hazrat Ramzan (1996)*, the court held that empties secured from the spot and the weapons recovered from the accused were not sent to the fire arm expert to find out if the same were fired by the said weapon. The occurrence had taken place at a different site than shown by the prosecution. The prosecution, thus, having failed to prove its case beyond doubt, accused had been rightly acquitted by the trial court. Appeal against the acquittal of the accused was dismissed in limine accordingly.

In another case titled *State v. Munir (1999)*, the court held that no person from whose house alleged weapon of offense was recovered could be a witness. In [Abdul Sattar v. State \(2002\)](#), the court held that investigation of a case by CIA police without authorization from S.H.O. of the concerned police station would be violative of Section 156 (1). Such illegal investigation of a case by CIA police would cause prejudice to the accused when the recovery memo was witnessed by CIA officials without citing an independent witness of the recovery.

The study of the above judgments shows the flaws of the investigation system, which needs to be removed by taking the appropriate steps.

Faults of Investigation

The study has found the following defects with reference to the investigation system:

- Unfair system of appointment and promotion
- Untrained and less educated investigating officer
- Low pay scale and corruption
- Non-availability of investigation budget and equipment
- Excessive workload due to shortage of manpower

- Non-co-operative attitude of the people especially while getting information
- Insufficient technical and expert support
- Lack of ministerial staff and record-keeping
- Lack of coordination with other inter-linked departments like prosecution, special branch, crime branch, and operational wing
- The poor procedure of law and slow system of courts
- Engaging police in tasks that are not the part of their domain
- Withdrawal of investigation to perform law and order duties in the midst of an investigation
- Political, bureaucratic or any other intervention
- Ineffectiveness of prevailing preventive laws
- Separation of Investigation Wing from Operation Wing
- Misuse of power by higher authorities

Conclusion and Recommendations

With the transformation of the world into a global village, investigation has become a science. People have been using latest technology like computers, mobile phones, the internet, WhatsApp and other social media, and different other software. Technological advances, mushroom urbanization, internally displaced persons (due to military operations against terrorism), changing geographical scenario and emerging new alliances has changed the nature and intensity of crime.

The criminal justice system aims to provide justice to all stakeholders of the case. The word 'justice' means to save the innocent and give the punishment to the guilty according to law. The criminal investigation process is the main pillar of the criminal justice system. During investigation, investigating agency digs out the truth, collects the evidence, and submits it before the court for better conclusion. If the investigation is proper, according to law, and in accordance with legal procedure, then the court becomes able to decide the matter on merit, otherwise in many cases at the time of deciding the bail applications or conclusion of the trial of the accused, the apex court has observed the faulty investigation as the main reason for acquittal of accused or for granting of the bail.

Investigation plays a vital role in the criminal justice system. Because it is the main pillar of the criminal justice system, and without proper investigation, it is impossible to prosecute and convict the guilty and save the innocent from the agony of a trial. The purpose of police investigation is to collect evidence, best possible evidence in fact, with the objective of the Court to access the same to arrive at a logical conclusion. In all the States generally and in technological and advanced States specifically, detectives, criminologists, investigators, etc., have been adopting modern ways to control the crimes with the help of new investigation techniques. However, in developing states like Pakistan, the methods of crime investigation generally are the same as we were in the past. Therefore, it may be concluded that most criminal cases do not result in conviction due to faulty investigation. It is also concluded that the current system of investigation as a whole is not compatible with international and modern standards.

The current study suggests the following steps to improve the standards of investigation:

- A fair system of appointment and promotion should be designed and implemented.
- Adequate training programs should be conducted from time to time to improve the functioning of investigating personnel.
- Revision of pay scale and incentives on a regular basis is necessary to motivate the investigating staff.
- Availability of investigation budget and equipment to meet the required needs is essential.
- Proper distribution of workload is also necessary to enhance the efficiency and quality of service.
- Education of the people to show cooperative attitude for getting information would help in investigation.
- Sufficient technical and expert support be provided.
- Provision of ministerial staff and other staff for record-keeping would improve the performance.
- Proper coordination with other inter-linked departments, especial branch, crime branch and operation wing would extend the scope and progress of investigation.

- Speedy procedures (relating to investigation and courts) are urgently required to be introduced.
- Proper supervision and check and balance will help to eradicate the negative practices.

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