

Role Of Criminal Investigation In Dispensation Of Criminal Justice: An Analytical Study To Identify Defective Criminal Investigation To Be A Root Cause For Low Conviction Rate In Pakistan

Sundus Rauf¹, Sadia Saeed², Amna Zahid³

^{1,2,3}Lecturer, College of Law, The University of Lahore, Lahore, Pakistan.

Abstract

Criminal justice system plays a vital role in prevention of crime through deterrence when the courts penalize the offenders for their wrongful acts. The courts pronounce their decisions on the basis of the cases presented before them by the prosecutors. The accused is considered to be innocent till the charge against him is established by the prosecution beyond reasonable doubt. Evidence collected during investigation of crime is important to support the case against the offender and to bring him to penalty. That evidence is equally important to exonerate the innocent if it is insufficient to disprove an allegation raised against him. This paper is highlighting the importance of criminal investigation for fair decision making by the court. Qualitative research methodology has been used for this research work. For analysis, the information has been collected from various sources including research articles, books, online sources, case laws, court decisions etc. The research concludes focusing on the extent of reliance of judges on evidence collected during investigation while deciding the cases in Pakistan and the factors involved for their lack of trust and rejection of any investigation along with its consequences on the judgment. The study finally recommends that the crime can be prevented by efficacious and prompt criminal justice administration that can only be possible through effective investigation digging out the truth and helping the court to pronounce its judgment basing on sound piece of evidence.

Keywords: Crime, Conviction Rate, Prosecution, Criminal Justice System, Criminal Investigation

Introduction

Access to justice is the fundamental principle of the rule of law. People are not able to exercise their rights and challenge discrimination in the absence of justice (United Nations and the Rule of Law, 2021). Justice is the right of every person. Prompt criminal justice is a prerequisite for

uploading the rule of law guaranteeing the right to equality of all the individuals before the law (UNDOC, 2021).

Pakistan is one of the forty-members of the United Nations who adopted the Universal Declaration of Human Rights (the UDHR) in 1948. In pursuance of the declaration several articles were incorporated in the Constitution of Islamic Republic of Pakistan, 1973 for the provision of justice and fair-play (Ishaq, 2014). Article 6 of the European Convention on Human Rights (ECHR) provides for the fair trial, public hearing, independent and impartial tribunal and publicly pronounced judgment along with several other requisites for the dispensation of justice and provision of security to individuals (ECHR, 2021).

The constitution of Islamic Republic of Pakistan, 1973 provides safeguards as to arrest and detention of any person and right to consult and be defended by the legal practitioner of his choice under article 10 whereas article 10-A provides that every person is entitled to fair trial and due process of law. Article 12 of the constitution provides protection against retrospective punishment. Protection against double punishment and self incrimination has been provided under article 13 (Article/s10,10-A,12,13).

The constitution also provides under article 14(2) that no person shall be subject to torture for the purpose of extracting evidence. The citizens are also ensured equal protection of law and to be dealt by law without any discrimination under article 25 of the constitution (Articles14(2)&25). All these provisions of the constitution enshrine the fundamental rights of citizens that guarantee the access to justice in an impartial, just and fair manner. The courts in Pakistan try to administer justice in its true spirit.

Unfortunately, the statistics about the conviction rate and acquittal rate show that the objectives of effective dispensation of criminal justice are not being achieved as they ought to be. The study (Rajput & Rajput, 2020) mentioned certain statistics from the report of PILDAT published in February, 2016 about the conviction rate in Pakistan with just 8.66% that is too low as compared to the conviction rate of technologically advanced countries i.e. Australia (85%), U.S. (85%), England Lower Court (98%), England Crown Court (90%) and Japan (99.9%). Even the countries like India and South Africa have the conviction rate higher than Pakistan with 37.4% and 39%, respectively.

In any country the rate of conviction is deemed to be an indicator of its healthy criminal justice system. The burden of proving the guilt of an accused lies on the prosecution. The accused is presumed to be innocent until proven guilty (Gul & Ali, 2018). The case of the prosecution depends upon the evidence collected during investigation. This evidence may be direct, oral, documentary, circumstantial and the opinion of an expert (Farooqi, 1997).

The major reasons spotted in different studies for defective criminal justice administration are bureaucratic model, social compartmentalization, nepotism, corruption, non-registration of cases, delayed response in emergency, lack of training and resources, lack of witness/victim protection programs, delayed challan submission and above all the poor and faulty investigation and insufficient forensic investigation facilities (Waheed, 2010) (Gul & Ali, 2018) (Arshad, 2017) and (Rajput & Rajput, 2020).

Criminal Justice System of Pakistan

Criminal justice system is defined as a combination of agencies and processes established by the government to combat crime and to impose penalties for violation of laws. The system has various components which work in harmony for dispensation of justice. Criminal justice system of Pakistan is adversarial in nature where judge acts as referee and the parties plead their case. It consists of law enforcement (police), prosecution, courts, prisons and correctional institutions (probation and parole) as described by (Arshad, 2017).

The Criminal justice system of Pakistan is regulated by Pakistan Penal Code, 1860, The Code of Criminal Procedure, 1898 and the Qanun-e-Shahadat Order, 1984. PPC contains the substantive law while other two are procedural laws (Adil, 2019). The most visible features of any legal system are the police, prosecution and the courts. The police investigate offences and prosecutor presents the case against the accused or the offender before the courts for trial whereas the function of the court is to try the offences, to reach at the truth as to the guilt or innocence of the alleged offender and to punish the offender in accordance with law.

Dependence of Effective Criminal Justice System

Under the Qanun-e-Shadat Order, 1984 the facts alleged by the prosecution are required to be proved by evidence on oath in the court of law as the evidence provides basis for the proof of the facts consequently resulting in conviction or acquittal of accused. The graver the offence the stronger and inspiring evidence is the essential ingredient for the administration of criminal justice (Salamat Masih vs. The State).

The objective of administration of criminal justice is achieved in three stages:

- **Pre-trial Stage:** Pre-trial stage involves the ‘investigation’ of the crime when a crime is reported. It is conducted by the law enforcement authorities. If during this stage no evidence is received against the accused, he may be released. If evidence is recovered against him the report is submitted to the court, prosecution prepares its case and present it to the court which takes cognizance of the offence and start trial.

- **Trial:** If the accused is found guilty during investigation, the court starts its trial according to the procedure provided by the Cr.P.C. It is concluded in the form of order of conviction or acquittal of the accused.
- **Post-Trial Stage:** After the order of the court the accused is either acquitted finally if found innocent or convicted if his guilt is proved beyond reasonable doubt and is sent to the prison. This is the post-trial stage of criminal justice system.

The present study is focused to discuss the pre-trial stage i.e. ‘investigation of a crime’. This is the most important stage on which the whole criminal system has its footing. The rest of study involves the detailed discussion of the titled issue.

Criminal Investigation

It is the process adopted by the law enforcement for the purpose of searching out the truth in order to help the court to declare a person guilty or innocent. The nature of criminal investigation depends entirely on the nature of the crime, the more serious the crime, the more complex the criminal investigation would be. Criminal investigation is conducted in every country or jurisdiction across the world in some form or the other but the basic objectives are broadly similar (Monkton-Smith, Adams, Hart, & Webb, 2013).

The term “investigation” is defined as:

4.(1)“Investigation includes all the proceedings under this 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 (Sec. 4(1), 1898).”

It was established in (Irshad Muhammad vs. The State) that the investigation consists of the inspection of the scene and collection of valuable evidence. It also includes the ascertainment of facts in the light of collected evidence and attending circumstances of the case. It ends in the apprehension of accused if the collected evidence is sufficient to connect him with the charge or his acquittal otherwise.

Cambridge dictionary defines investigation as the act or process of examining a crime, problem, statement, etc. carefully, especially to discover the truth (CambridgeDictionary, 2021).

The Criminal Investigation and Procedures Act, 1996 of United Kingdom defines criminal investigation as an inquiry to ascertain if an offence has been committed, to identify who is responsible, and to gather admissible evidence to be placed before a judicial authority.

Criminal investigation may either be ‘**reactive**’ or ‘**proactive**’.

- **Reactive Criminal Investigation** involves the response of the police to the previously committed crime. It involves several stages e.g. initial discovery about the commission of the crime and quick response to it, initial investigation, follow-up investigation which involves additional investigation in cases where the offender is not arrested during initial investigation and finally termination of investigative activities and shifting the case to the prosecutor (Encyclopedia.com, 2019).
- **Proactive Criminal Investigation** involves the investigation before and during the commission of the offence. Undercover investigation is of most significance in this regard. In such type of investigation any officer of police sometimes poses by adopting getup of any person interested to buy some illicit good (e.g. sex, drug etc.) for the purpose of reaching such people. Such type of under cove strategy is known as the sting or buy-bust strategy (Encyclopedia.com, 2019).

Objectives of Criminal Investigation

Main objective of the criminal investigation is to ascertain the truth and to punish the real culprit. It was held in (Nasarullah vs. Station House Officer, Police Station Jacobabad) that:

“Investigation continues till the crime is unearthed and guilt or innocence is determined by court of law.”

Basically there are three objectives of criminal investigation:

First objective is to discover if an offence has been committed or not by referring to the statutes and laws in any particular jurisdiction and the defining criteria for an offence.

Second objective is to identify who committed the crime through criminal investigation. It is considered as the key task in order to resolve an offence.

Third objective is to collect admissible evidence. There must be enough observable evidence gathered in a manner acceptable to the requirements of criminal justice system of any jurisdiction. This gathered evidence must be sufficient to prove a case ‘beyond reasonable doubt’. This evidence may be either physical evidence or information gathered from people.

Physical evidence is any tangible thing found at the crime scene which is suspected to be used, left or contaminated by the victim or suspect. It may include fingerprints, footprints, blood, fibers, hair, piece of skin or crime tools e.g. knife, gun etc. It is also referred to as scientific or forensic evidence when the evidence is scientifically analyzed and results are interpreted in order to be useful. Physical evidence can serve at least two important functions in the investigation or judicial process. Firstly, physical evidence can help to establish the elements of a crime and secondly, it

can associate or link victims to crime scenes, offenders to instruments and so on (Encyclopedia.com, 2019).

Apart from physical evidence, the second important source of information during investigation is people who are known as witnesses and suspects. Witnesses can either be 'primary' or 'secondary'.

- **Primary Witnesses** are individuals who have direct knowledge of the commission of crime. These witnesses would include crime victims who either observed the occurrence of or otherwise involved in the offences. Eyewitnesses are considered as primary witnesses. About the oral statement recorded by the witness, law provides that all the facts may be proved through oral evidence except the contents of a document (Art. 70, QSO, 1984). The oral evidence referred to in this provision must be direct. Direct oral evidence is considered to be primary evidence. The principle is further explained through Article 71 of the Qanun-e-Shahadat Order, 1984. Article 71 is explanatory in nature and provides that oral evidence must be the evidence of a person who had himself perceived a certain fact through any of his or her sense of observation.
- **Secondary Witnesses** are those persons who have not directly observed the commission of offence and have indirect knowledge about its occurrence. They would include informers and victims who may possess information about related events before or after the crime. Such kind of indirect evidence is dealt with by the court under the proviso of Article 71 of the Qanun-e-Shahadat Order, 1984 which states that if a witness cannot be produced before the Court due to any of the reason provided in this provision, the party may be allowed to produce any person to record his statement. In Hudood cases only direct evidence is admissible.

Initiation of Investigation of Crime

Investigation is initiated on the basis of F.I.R. which is the first information about happening of the crime (Mahmood, 2014). It was established in the case titled as "**Yousif vs The State**" that the investigation in a cognizable case commences with information supplied from any source and investigation officer is at liberty to investigate the case in such a manner which ultimately might lead him to find out the truth (Yousif vs The State).

The purpose of recording of F.I.R. apart from setting law into motion is to provide a ground to carry out investigation in the right direction. By laying an information, law is set in motion and the police comes into action, sites are inspected, persons are interrogated, statements are recorded, evidence is collected, accused are arrested, innocents are discharged while guilty are sent up to the court concerned to face trial (Mahmood, 2014).

Investigation as to commission of any crime is started by the police officer immediately after receiving the first information about the incident. The information as to then non-cognizable

offences is required to be reduced to writing under section 154 of the Code. Investigation in cognizable offences is started as soon as the information is received by a police officer under section 155 of the Code and such police officer is authorized to take action under this provision of law without prior order of the Magistrate.

Who may Conduct Investigation?

Criminal investigation in almost all jurisdictions is conducted by the investigators especially skilled and trained for this purpose. The duty of an investigator is to investigate into the matter in order to collect relevant and admissible piece of evidence. According to the Code the power of criminal investigation is vested with the police.

According to (Singh A. , 2013)“A person who conducts investigation is known as an investigator. ”An officer in-charge of a police station is authorized by law to work as an investigator. Under section 156 (1), Cr.P.C, 1898. the power to investigate a cognizable offence has been vested in any officer in charge of a Police Station having jurisdiction over the local area within the limits of such Police Station or any other person covered by the definition of the officer in-charge of a Police Station given in clause (p) of section 4, Cr.P.C, 1898.

- **Investigation by C.I.A.** Members of the C.I.A. Staff, irrespective of their rank and status, can investigate cases only when they have been entrusted to them by an officer-in-charge of the police station to whom they are subordinate i.e., in case of C.I.A. Staff the entrusting authority is Superintendent of Police of the District. C.I.A. Staff cannot take direct cognizance of the case in order to investigate of their own.
- **Investigation by F.I.A.** F.I.A. has exclusive jurisdiction to register a case and conduct investigation of cognizable and scheduled offences if committed by the employees of Federation and not else.

Stages of Investigation

Criminal investigation is conducted in several stages, using different techniques and ways in order to collect admissible evidence. It involves

Instigation and Initial Response

It involves initial response after reporting a crime and commencement of forensic investigation. This stage relates to the spontaneous and vigilant actions of first responders who are the first to arrive at a crime scene and who must spot and identify it as such.

The Investigation

This stage involves the whole process of collecting the evidence from various sources and arranging it in the correct order of crime narration pattern. It depends and involves social science, natural science and forensic science.

Case Management

It is related to the placing of evidence gathered during criminal investigation in a case file. It also involves the processing and scrutiny of evidence before eventually forming the basis for a prosecution presentation in a court.

Induction of Scientific Methods in Investigation

According to **Newburn**, historically the investigation had been conducted in three ways i.e. specific investigation by detectives, inquiry by special squad formed to solve particular issue and major inquiry conducted by the special investigation team constituted for specific crimes. The three organizational frameworks work independent of forensic science.

Forensics is a term relating to the use of any scientific process or technology to support the legal system. The concept of a 'forensic investigation' is often different from the criminal investigation. However, the purpose of both types of investigations is same i.e. prosecution. Investigation must be constituted of science and arts. Various techniques are needed to be used in order to solve a crime. Criminal investigation is more arts than a science borrowed from all other disciplines including the humanities. This is the reason which increases complexities of criminal investigation. Application of scientific method in criminal investigation is usually partial.

The successful investigation depends entirely on the combination of science and professional procedure. It involves the implementation of scientific methodology in analysis and interpretation of evidence, and professional procedure in the identification, gathering and storage of evidence to maintain its integrity for the purpose of justice. Criminal investigation involves two standards: **first**, the practicalities and processes of investigation and **second**, is the cultural, institutional and societal influence which interlink with those practical processes. The whole process depends upon the interrelation among social science, natural science, legal and judicial rules, organizational processes and inductive and deductive reasoning.

Understanding the importance of forensic evidence through modern techniques and technologies, provisions have also been added in the statutes to make such kind of evidence admissible. Law provides that the Court may allow, where necessary, any evidence available because of modern devices or techniques (Art. 164, QSO, 1984).

Steps Involved in Criminal Investigation

The crime scene includes all areas through which the perpetrators and participants moved around during the commission of crime i.e. while entering to commit crime, during commission of crime, and finally leaving the crime scene. Apparently, the crime scene is a single, well-defined area, but it may cover several non-contiguous areas. Because most human activity takes place in sheltered places, the majority of crimes occur inside e.g. buildings and vehicles. The outdoor recreation of people and commission of crimes is increasing the need for the investigators to develop the ability to deal with outdoor crime scenes as well.

Crime scene whether indoor outdoor involves following steps (Becker & Dutelle, 2012):

i. First Response:

The most valuable tool of the investigation team is the officer who arrives first on the crime scene. He must possess an understanding of the investigation process. He must also be familiar with an appreciation for forensic evidence as well as its processing, and handling and processing techniques.

ii. Methodical Approach to Crime Scene Processing

It is the first step in crime scene processing and should involve calculated and methodical steps to ensure the most affirmative results.

iii. Interview

It involves the interviews of people present at the crime scene including eye-witnesses, victim, or informer etc.

iv. Documenting the Crime Scene

Documentation at the crime scene is initiated from the moment the officer gets a call and continues until a case is closed. Documentation involves:

- a) Reports
- b) Note taking
- c) Photographs
- d) Video-graphy
- e) Crime Scene Sketching and Mapping

v. **Searching the Crime Scene**

It is important in order to search the valuable piece of evidence. Investigator collects physical evidence.

vi. **Collecting, Handling and Preserving Evidence**

After intensive crime scene examination and documentation, collection and preservation of evidence begins. This is very important phase of criminal investigation and needs expert skills for the protection of the material collected and its transportation to the labs where forensic examination is required.

Importance of Criminal Investigation for Administration of Criminal Justice

Investigation is important because its successful accomplishment leads to either the conviction of the accused or to exonerate him if found innocent. Actually, it is the investigation which gives strength to the prosecution case. The physical evidence recovered from the crime scene is important and helpful for the prosecution case. The court decided in (Muhammad Rehman vs. District Police Officer) as under:

“Investigation of case was to be held with a view to ascertain whether or not an offence had been committed.”

It is commonly considered that every crime can be solved because the offender always leaves some traces or clues at the scene of crime which may lead to his or her door. It is also believed that a person cannot exit a crime scene without taking or leaving something, perhaps something microscopic. Finding the traces does not guarantee that the investigation would be resolved, but it may enable to investigate in a proper direction (Becker & Dutelle, 2012).

Reconstruction of crime scene and the search for the truth proves to be futile if the evidence necessary for prosecution is lost, contaminated or destroyed during the process of investigation. In fact, the evidence recovered and the steps in its recovery are the concrete blocks on which prosecution builds its case and it increases the scope and importance of criminal investigation process (Becker & Dutelle, 2012).

Finding the perpetrator is often not as difficult as the search for the evidence in support of his conviction. Some successful investigations do not lead in convictions, and some failed investigations do result in conviction (Becker & Dutelle, 2012).

Criminal investigation must be transparent. There should not be selective or inconclusive investigation. The investigation is not always meant to find only such kind of evidence which

might incriminate a particular person or deliberately exclude others who might be involved in the commission of an offence.

Analysis of reported cases to scrutinize the ground of acquittal basing on defective investigation

The reported case laws were analyzed in order to study the attitude and trend of the superior courts of Pakistan while awarding punishment in matters of criminal nature. The reported judgments were randomly selected in which the courts decided the cases either by granting bail, awarding acquittal or allowing appeal against conviction. The information collected from the study of the selected cases is given as under:

1. Appeal against acquittal was dismissed by the Quetta High Court in (Ishaque vs Noor Ahmed) on the basis of contradiction in medical and ocular evidence. Bloodstained clothes and earth sample were received in the lab 17 days later of the incident. Firing was alleged to be made by nine persons whereas 4 empties were secured from the spot which were not even sent to the Arms Expert.
2. In (Muhammad vs State) the accused was charged for committing murder of nephew of complainant. Appeal against conviction was allowed on the ground of poor, insufficient, incompetent rather dishonest investigation apparent from the record.
3. Appeal against conviction was allowed in (Qamar Sultan vs State) where the accused was charged for committing murder of the brother of the complainant.
4. The Hon'ble Supreme Court acquitted the accused setting aside his conviction in (Parvaiz Khan vs State). The benefit of doubt was given to the accused due to the delay in lodging FIR, non-availability of the tractor used and the production of the same six days after the occurrence, delayed post-mortem, and contradictory and inconsistent statements of the eye witnesses.
5. In (Muhammad Naseem vs State) the appeal of accused against his conviction was allowed as the prosecution had failed to establish its case beyond reasonable doubt due to lack of supporting evidence, lack of interrogation from neighbours during investigation and inconsistent and reiterated statements of the complainant and the widow.
6. Accused was acquitted in (Abid vs State) by the court on the basis of delay in identification parade as well as delay in recording statement of kidnaped. Moreover, neither the kidnaped was recovered from custody of the accused nor the kidnaped had given any description of the accused for identification. It was found that the accused was wrongfully confined.
7. Appeal against conviction was allowed in (Muhammad Younas vs State) as the prosecution failed to establish the safe custody and transmission of samples of the recovered narcotics from the police to the chemical examiner which was made by a constable. Also the statement of the constable, who took the samples to lab, was also not recorded by the prosecution.

8. The court was pleased to allow the appeal against conviction in (Sarbiland Khan vs State) as the prosecution failed to establish its case against the accused beyond reasonable doubt for the reason that the statements of witnesses were doubtful.

Findings and Discussion

The deep analysis of the selected cases revealed that the courts tend to award acquittal due to the loopholes in investigation. The courts have to dispose of the cases by giving benefit of doubt to the accused when the prosecution fails to establish its case beyond reasonable doubt. The negligence on the part of the investigators proves fatal for the case of the prosecution. The common problems identified in this regard are:

- Delay in reporting the case and lodging FIR
- Delay in approaching the crime scene
- Negligence in recording the statements of potential witnesses
- Negligence in collecting, preserving and transmitting evidence in safe custody to the Forensic Labs

Future Study

This research work was intended to establish the importance of investigation of a crime in criminal justice system and impact of faulty investigation on the decision making of the courts. The study resulted into identification of several gaps in investigation that adversely affect the case of the prosecution consequently lowering down the conviction rate. There are numerous factors which affect the investigation in Pakistan and need a thorough research. The researchers would conduct next research to highlight such problems in details, in continuity of instant research work, so that the system as a whole could be improved by removing such issues and the dispensation of justice could be ensured for all.

Conclusion

The study revealed that the investigation of a crime is very crucial phase that ultimately enables the courts to pronounce the verdict in a just manner. Effective and fool proof investigation strengthens the case of the prosecution to be presented basing on doubtless evidence. Defective investigation of a crime may lead to the wrongful conviction or wrongful acquittal. It not only results into an increase in crime rate by promoting recidivism and encouraging the offenders to repeat the crime but also weakens the trust of the public at large in the courts due to denial of justice endorsing the sense of insecurity.

This research paper has identified various reasons as to why the prosecution fails to prove its case beyond reasonable doubt. The clues for this failure lead to the defects in investigation raising the

question mark on the skills, techniques and expertise of the investigators. This scenario is causing harm to the whole criminal justice system because the courts are not able to give relief to the victim. Many innocents are in jails and many offenders are moving freely due to the prevailing situation. Justice is being denied and the fundamental rights of citizens as to justice are being violated.

The situation can only be improved by focusing and prioritizing the investigation of crimes. It can only be done if the State and the concerned institutions would realize their individual as well as collective role and responsibility in this regard. The system can be improved through departmental capacity building, trainings of investigation personnel, increasing funds and resources, strong collaboration, public awareness activities, introducing modern techniques and using advanced equipment.

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Sundus Rauf (LLM, Masters in Criminology & Security Studies, Masters in Political Science), the first author, is a legal practitioner, humanitarian and criminologist and is deeply interested in highlighting various social and legal issues through her research work, to get those resolved for the improvement and betterment of society.

Sadia Saeed (LLM, Masters in Political Science), the 2nd author, has an outstanding approach in research and is ambitious to excel with her scholarly skills in the areas of law and criminal justice.

Amna Zahid (LLM, Masters in Criminology & Security Studies), the corresponding author, has a great contribution as law practitioner, researcher, humanitarian and criminologist. Her ambition is to explore social and legal issue through her research work and to highlight the same to be worked upon.