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# NOT JUST A CASE ABOUT IMPROVING INVESTIGATION

The Supreme Court of India, recently, in Rajesh & Anr. vs The State of Madhya Pradesh, while setting aside the conviction of three accused persons alleged to have been involved in murder and related offences, emphasised the need to devise 'a consistent and dependable code of investigation' so that the guilty do not walk free on technicalities. The Court not only pointed out some illegalities in the investigation but also echoed the comments of the Justice Malimath Committee on Reforms of the Criminal Justice System and the observations of the Law Commission of India in its Report number 239. Here is a reality check on both these observations.

## Varied interpretations

A major pitfall pointed out by the Court relates to Section 27 of the Indian Evidence Act which lays down conditions of the admissibility of any fact discovered in consequence of information received from a person 'accused of any offence', 'in the custody of a police officer'. The Court held that the person could not be said to be in police custody till he was formally arrested, as he did not figure as an accused person in the First Information Report (FIR) and was not accused of any offence till his arrest. This assumption does not appear to be a correct proposition of the law.

In Re: Man Singh (1959), the Court held that the word 'custody' does not necessarily mean detention or confinement. The submission to custody, by any action or words, is also custody within the meaning of this section. Even indirect control over the movements of suspects by the police has been held to constitute 'police custody'. In Chhoteylal vs State of U.P. (1954) and many other similar cases, the Court has held that 'an accused is in police custody within the meaning of the section when he is under surveillance of the police and cannot break away from the company of the police'.

The Court in State Of U.P. vs Deoman Upadhyaya (1960) held that the expression "accused of any offence" is descriptive of the person against whom evidence, relating to information alleged to be given by him, can be proved by this section. In Md. Dastagiri vs State (1960), the top court held that it is not necessary that when a statement is made by a person, he should be an accused, that it is enough, if he is an accused person when it is sought to be proven in court. There could be cases where the discovery of incriminating article(s) based on information revealed by the suspect (not mentioned as accused in the FIR) could be the first piece of evidence (whether substantive or corroborative), thereby necessitating arrest. Therefore, custody under Section 27 of the Indian Evidence Act does not necessarily mean formal arrest by the police.

Similarly, the Court laid too much emphasis on seeking compliance under Section 100(4) and Section 100(5) of the Code of Criminal Procedure (CrPC) relating to presence of independence witnesses during search and seizure of a closed place, in the discovery memos such as discovery and seizure of the body of the deceased and his clothes, and weapon of murder. In Musheer Khan@Badshah Khan & Anr vs State Of M.P. (2010), the Court held that 'if the discovery under section 27 of the Indian Evidence Act is otherwise reliable, its evidentiary value is not diluted just by reason of non-compliance

of section 100(4) or section 100(5) of the CrPC'. The reason is that Section 100 deals with processes initiated to compel the production of things on a search, whereas the very basis of facts deposed by an accused in custody is voluntary and pursuant to discovery taking place. They operate in entirely different situations. Therefore, the safeguards in search proceedings based on compulsion cannot be read into discovery on the basis of facts voluntarily deposed. Similar views were expressed by the top court in State (NCT of Delhi) vs Sunil (2001) also. In fact, such panchnamas are prepared by the police as a rule of caution, and not in compliance of any mandatory provision of law.

## Separation of investigation

By highlighting excerpts from the Justice Malimath Committee report and the Law Commission Report, the Court expressed regret that the standard of police investigation is still poor and that the principal causes of a low rate of conviction, inter alia, included inept and unscientific investigation by the police.

There is no doubt that the quality of investigation needs to improve and that the police should use the best available scientific tools of investigation. However, the Court also needs to review the reforms that have taken place in the police in pursuance of the recommendations made by various commissions and committees. On the subject of investigation, the Malimath Committee had recommended that the investigation wing should be separate from that of the law and order wing. Though this separation may not prove to be a panacea for improving investigation in its totality (in the absence of other factors), the efforts made by States must be reviewed before blaming the police in whole for the irregularities.

The Law Commission's Report number 239 which was submitted on the directions of the Court in WP(C) No. 341/2004, Virender Kumar Ohri vs Union of India and Others pertained to suggestions made with regard to 'Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities'. With regard to investigation, the commission observed that 'the police stations are understaffed', 'sufficient priority is not given for investigation of crime' and that 'there is no periodic exercise to upgrade the skills of investigation'. The commission not only mentioned its own 154th report (which recommended separation of investigation from law-and-order duties), but also reiterated the directions of the top court given in Prakash Singh & Ors. vs Union of India and Ors. (2006).

Prakash Singh, former Director General of Police (DGP), Uttar Pradesh, former DGP, Assam and former Director General of the Border Security Force, has reviewed the recommendations of all previous commissions and committees. Out of a total of seven directives by the Court, one pertained to a separation of investigation from law and order to ensure quicker investigation, better expertise and improved rapport with the people. This separation was to be taken up first in towns/urban areas (with a population of 10 lakh or more), and gradually extended to smaller towns.

## State responses

Summing up the responses of State governments, Mr. Singh writes in his book, The Struggle for Police Reforms in India (2022): 'Seventeen states have taken measures to separate the investigative and law and order functions of the police. The remaining states are not opposed to this directive but have yet to initiate necessary steps for separation'. When it came to overall compliance of the seven directives, nine States fell under the 'good and satisfactory' category and 20 States in the 'average and poor' category. However, going into the details of responses, one could decipher that most States have either made some provision in their State Police Act or have issued administrative orders. The police authorities are, however, aware that unless additional manpower is sanctioned, except in major cities such as Delhi and Mumbai, it is practically difficult to separate the two wings because of a lack of manpower. 'Separate staff for investigation has not been provided for', the book says about Madhya Pradesh, where the directive of designing a code of investigation was given by the Court.

It is difficult to believe that a code of investigation does not exist in the States. These are also revised from time to time, and the Supreme Court's instruction included wherever required. However, the investigating officers are not only inadequate in number but are also unable to upgrade their skills because there is a shortage of officers. Only symptomatic treatment of police reforms by having some provisions in the rules and regulations will not help much. The Supreme Court needs to step forward and ask every State and Union Territory to report compliance of its directives on investigation and other issues in letter and spirit. Similarly, there must be consistency in its rulings unless earlier judgments are clearly overruled for cogent reasons.

## Expected Question

**Que. Consider the following statements with reference to a reliable police investigation code:**

1. The Supreme Court in India has clarified the provisions of the Police Investigation Code through one of its decisions.
2. The 2003 report of Dr. Justice VS Malimath Committee and the 2012 report of the Law Commission of India were an effort in this direction.

**Which of the statements given above is/are correct?**

(a) Only 1

(b) Only 2

(c) Both 1 and 2

(d) Neither 1 nor 2

**Answer : c**

## Mains Expected Question & Format

**Que.: "The Supreme Court in a recent case stressed the need to formulate 'a consistent and reliable code of investigation' so that the guilty do not go scot-free." Analyze this decision of the Supreme Court and also discuss the Malimath Committee report and the Law Commission report related to it.**

**Answer Format :**

- In the first part of the answer, discuss the recent judgment of the Supreme Court and the need for a consistent and reliable code of investigation.
- In the second part, discuss the Malimath Committee report and the Law Commission report related to this.
- Finally give a conclusion showing the way forward.

**Note: -** The question of the main examination given for practice is designed keeping in mind the upcoming UPSC mains examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.