

Enhancing the Scope of Investigation in Pakistan's Criminal Justice System: A Comprehensive Case Study

Dr. Muhammad Ramzan Kasuri

Assistant District Public Prosecutor, Anti-terrorism Court-1, Rawalpindi
m.ramzan.adpp@gmail.com

Tahir Mahmood

LLM Scholar, University of Lahore
tahirnawaz222@gmail.com

Faisal Ghulam Rasool

LL.M Scholar, University of Lahore
advfaisalch1@gmail.com

Abstract

The investigation process is the foundation upon which the edifice of criminal justice is built. Effective investigation hold offenders accountable, provide relief to victims and their families, deter future crimes, enhance peace and stability, improve a state's standing in the international community, and most importantly, foster a sense of justice in society. The investigation plays a crucial role in discovery of the truth in a criminal case. No doubt the primary responsibility for criminal investigation lies with the police force of any state, however, it is not limited to the police. The Code of Criminal Procedure (Cr.P.C) 1898 grants criminal courts in Pakistan the authority to assign the task of investigation or inquiry to Magistrates, Justice of Peace, private persons (natural or legal), or the police. However, despite instances where superior courts have expressed skepticism regarding the honesty and competence of the police, a dedicated alternative mechanism for investigation has not been developed. Consequently, this has led to a de facto monopoly of police in conducting criminal investigations, despite judicial concerns. Moreover, higher courts have restricted the scope of investigation by defining it narrowly as 'merely the collection of evidence'. In contrast, foreign jurisdictions view investigation as a process conducted by police officers to determine whether a person should be charged with an offence or whether a charged person is guilty. This restrictive approach not only limits the effectiveness of investigations but also impedes the prosecution of offenders, akin to the challenges posed by poor quality of investigation.

Keywords: *Adjudication, Discovery of Truth, Investigation, Prosecution, Restrictive Approach*

© 2024 The Authors. This is an Open Access article distributed under the terms of the Creative Commons Attribution Non-Commercial License.

1. Introduction

The investigation has a pivotal role in the criminal justice system (CJS). Good and strong investigation results in successful prosecution however, the defective and faulty investigation results failure of the prosecution and acquittal of the guilty persons. The role of investigation has very critical importance in functioning of CJS. Investigation is a duty of police, if it is vitiated due to error and malpractices, the serious miscarriage of justice will occur. It is duty of police to collect all evidences whether in favour or against the accused, investigate thoroughly and fairly and focus should be to ascertain the truth. The Supreme Court of Pakistan recently observed that in our CJS,

the task of uncovering the truth rests with the investigative agency, while the judge's role is to determine whether the prosecution has proven the allegation against the accused in accordance with the law (*Ali Gohar case*, 2020). So, the police play a crucial role in discovery of the truth within the CJS, fostering public confidence and promoting respect for law and order. The quality of investigation poses a significant barrier to bringing offenders to justice. To address this, legal reforms are essential to enhance the standards of both investigation and prosecution (*Police Reforms Report*, 2019).

In Pakistan, there is general consensus that revamping the CJS is need of the hour for fighting against terrorism, extremism, serious crimes and the superior judiciary of Pakistan mostly pointing out that more deserving area for revamping is investigation and prosecution (*Police Reforms Report*, 2019). No doubt that most deserving area for reforms is investigation and prosecution but according the researcher no desired result can be obtained without taking all interlinked laws and organization together for reforms. Unfortunately this strategy is not under consideration of reforming community of Pakistan.

2. Importance of Investigation

The investigation process is the foundation upon which the edifice of criminal justice is built. Effective investigation hold offenders accountable provide solace to victims and their families, deter future crimes, enhance peace and stability, improve a state's standing in the international community, and most importantly, foster a sense of justice in society. The primary responsibility for criminal investigation lies with the police force of any state. This role is demanding, taxing on officers and dangerous in its application, yet the police in Pakistan continue for perform their duties with dedication. The criminal investigation process is ever-evolving, requiring constant improvement in techniques, knowledge, and capacities. Following the registration of a First Information Report (FIR) by the police, the CJS is set into motion. The police investigation process is critical, as it often determines the case's outcome in court, ensuring justice for victims, their families, and offenders alike (*Handbook of Criminal investigation*, 2021).

Ensuring law and order and enforcing laws in the society are primary responsibilities of the police. It is crucial for the police to bring criminals and lawbreakers to justice through thorough investigation. Without proper criminal investigation, proving a crime in court is impossible. Therefore, criminal investigation holds immense importance in every society, including ours (Sahito, 2009).

3. Who can investigate under the provisions of Cr.P.C

In practice within the CJS, the police serve as a central and pivotal entity, solely responsible for investigating criminal cases. This dominance persists despite alternative mechanisms provided in procedural law. However, over time, the credibility, honesty, and impartiality of the police have increasingly come into question. Despite this, all investigations continue to be conducted by the police, with the courts unwilling to develop or utilize the alternatives provided by the procedure. The stance of our courts has granted extraordinary and monopolistic power to the police for conducting criminal investigation. Despite the fact that the area Magistrate or trial court on receipt of private complaint has the authority to delegate investigation to any justice of peace, any person other than the police, or the police themselves, and can even conduct inquiries personally or through any justice of peace (applying a purely inquisitorial procedure), this authority remains underutilized. Additionally, upon receiving a private complaint, the Court of Sessions is empowered to delegate investigations to its subordinate magistrates. However, our courts have yet to develop an effective method of inquiry and have consistently relied on the police for criminal

investigations, disregarding the potential roles of magistrates or other individuals (Sec. 202, Cr.P.C 1898).

Furthermore, Section 4(I) of the Cr.P.C. defines an investigation as all proceedings conducted by the police or any person authorized by a magistrate for the collection of evidence. This provision clearly indicates that investigation can be carried out by individuals other than the police, as the magistrate is fully empowered to authorize any person to conduct an investigation.

The definition of investigation provided by Cr.P.C is inclusive and not exhaustive so, allowing for flexibility in its application (*Karim, 2020*). Investigation involves the collection of evidence to enable the Investigating Officer to form an opinion for the submission of a final report under section 173, Cr.P.C., to the court of competent jurisdiction. As elucidated in the case of *Muhammad Nawaz Khan*, the purpose of an investigation is to ensure that no individual faces trial without a compelling case against them. The investigative objective is twofold: to scrutinize allegations of an offence and ascertain their veracity (*Muhammad Nawaz Khan case, 1976*).

3.1. Investigation by Magistrates, Justices of Peace or private person

Any criminal court upon receiving private complaint either directly or under reference may inquire the matter itself for ascertaining truth or falsehood or direct any inquiry or investigation to be made by any justice of peace, or by a police officer or by any person (Sec. 202(1) Cr.P.C, 1898). The Court of Sessions has also power to direct any magistrate subordinate to it to investigate any case for ascertaining truth and falsehood of the matter reported to it through private complaint (Sec. 202(2) Cr.P.C 1898). The private person who directed by the court to investigate or inquire the matter, has all powers of an officer-in-charge (SHO) of a police station other than power to arrest without warrant (Sec. 202(3) Cr.P.C 1898). So, the Cr.P.C empowered the criminal courts to direct magistrate, justices of peace, private person or even police to investigate or inquire the matter but the courts in Pakistan did not develop any mechanism for conducting investigation other than police. Resultantly, the courts created monopoly of police in conduction of investigation instead the superior courts in many judgments has shown mistrust on the police institution regarding their honesty and competency (*Kaura case, 1983*). The courts are responsible for faulty and defective investigation due to creation of monopoly of police in investigation. The court neither developed the private complaint mechanism nor the mechanism of investigation other the police. The evidence collected by the police, mostly could not get appreciation of the court, could not stand to the touch stone of the legal admissibility and criminal cases fell like house of cards before the court. Even the basic legal requirements are not fulfilled during the collection of evidence by the police which mostly results in the acquittal of the criminals, fingers are raised towards the CJS resulting frustration of the people from the system and the courts are responsible for this state of affairs. Because the mechanism of alternative investigation is available in the Cr.P.C which is under discretionary powers of the criminal courts but unfortunately, the courts are not taking responsibility on their shoulders and in every situation compelling the people to approach the police for investigation of criminal cases.

4. Monopoly of police in Investigation of crimes

in the present practice, without the co-operation of police, the aggrieved person is unable to get justice although the alternatives are available in the system but due to non-interest of judiciary and its non-serious attitude in the exercise of alternatives, the CJS became dependent on sole function of the police that itself is under serious crises and admittedly most of the criminals got acquitted due to faults and defects of police investigation. Now the important questions are that why the whole system should become hostage of unprofessional police and gets paralyzed? Why the judiciary not exercising and encouraging the alternative avenues to ensure expedites and

inexpensive justice to the citizens. Why the police not working up to the expectations despite the introduction of Police Orders? Police Order 2002 requires separating investigation function of police from executive and demands to establish District Investigation Branch (DIB). Is it possible to convert DIB into judicial police and place it either under Prosecution Department or Judiciary or make it independent to bring a positive change? Why not to use Magistrates and professional private agencies for proper investigation of complicated and heinous crimes? (Sec. 202 Cr.P.C, 1898). There are number of fundamental and key issues of police and investigation which are seriously undermining state of CJS of the country. How the same can be tackled? What reforms should be introduced for making police an effective component and for solutions to illness of police in investigation skills, collection of evidence, discovery of truth and formation of opinion for efficiency and smooth functioning of CJS? It is impossible to discuss all issues of police and investigation therefore, some key issues discussed along-with remedial measures to give a new thinking to the judges, judicial officers, prosecutors, lawyers, other legal professionals and public particularly on investigation and generally on effective administration of criminal justice.

5. Definition of Investigation

Investigation is defined in Section 4(1) of Code of Criminal Procedure as “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, Cr.P.C, 1898).

5.1. Interpretation of the term “Investigation” by Higher Courts

The higher judiciary of Pakistan has elaborated the term investigation as ‘investigation is nothing more than collection of evidence’ (Bank of Punjab case, 2010). According to the courts, a straightforward reading of Section 4(I) of the Cr.P.C. reveals that investigation is solely concerned with gathering evidence (Syed Muhammad Ahmed case, 2006). The supreme court held in *Muhammad Bashir* case that “investigation as defined in Section 4(1)(b) of the Code means only the collection of evidence and no more (Muhammad Bashir case, 2007 & Karim, 2020).” in another case, the Supreme Court held that the duty of I.O is just collection of evidence, he has no power to form his opinion even the court stated that formation of opinion by the I.O would be a grave illegality which could lead to grave injustice and serious resulting consequences (*Muhammad Arshad* case, 2011). In some cases the courts have observed that the purpose of an investigation is to uncover the truth by meticulously collection of relevant material (Abdul Khaliq case, 2015).

We with due respect disagree with the contentions of the higher courts that investigation is name of collection of evidence and nothing more. This contention is against the scheme of Cr.P.C and even against the understanding of international community. Basically investigation is answer of some basic questions like who, what, where, when, why & how the offence was committed. The definition of investigation provided in Cr.P.C is inclusive and not exhaustive therefore, it includes many things other than the collection of evidence i.e. formation of opinion by the investigating agency as to the innocence or guilt of the accused which ultimately leads to the decision whether to prosecute or not to prosecute but unfortunately, the higher courts interpreting ‘investigation’ as just collection of evidence and nothing more than collection of evidence (*Karim*, Judicial Review, 2020). It is justifiable only if the word “includes” in Section 4(I) is replaced with the word “means” and not otherwise.

Chapter XIV of the Code outlines that the investigation process involves spot inspections, determining the facts and circumstances related to the offence, collecting evidence, and arresting the accused once sufficient evidence supporting the charge is obtained (UNDP & KPK Judicial

Academy). The Indian Supreme Court held In *H.N.Rishbud* case, that investigation consists of the following steps; i) proceeding to the crime scene, ii) ascertaining the facts and circumstances of the case, iii) discovering and arresting the suspected offender, iv) collecting evidence related to the offence, which includes; a) examining various individuals, including the accused, and recording their statements in writing, b) Searching locations and seizing items deemed necessary for the investigation and eventual trial and v) forming opinion on whether the collected material justifies bringing the accused before a magistrate for trial, and if so, taking the necessary steps by filing a charge sheet under Section 173 of the Cr.P.C (*H.N.Rishbud*, 1955). In this context, section 157(1) of the Cr.P.C is particularly relevant. It stipulates that if the officer in charge of a police station has reason to suspect the commission of cognizable offence based on received information or otherwise, he or a deputed officer must proceed to the scene to investigate the facts and circumstances of the case, and if necessary, take measures for the discovery and arrest of the offender (Section 157(1) Cr.P.C, 1898).

The point to be focused is that without formation of opinion, how can the I.O decide to prepare cancellation report or challan against the accused? The investigation agency forwarding its report u/s 173 under the title of Challan, Cancellation or untraced but courts declared that Challan is not proper name of the Report u/s 173 Cr.P.C. what the purpose of preparation of Report u/s 173 Cr.P.C if the investigation means only collection of evidence and its placement before the court? Why the Report u/s 173 Cr.P.C is forwarded to the Court through Public Prosecutor? Why the prosecutor is required to furnish his opinion regarding the charges against the accused at the time of forwarding Report u/s 173 Cr.P.C to the Court?

5.2. Definition of Investigation in United Kingdom

The Criminal Procedure and investigation Act 1996 (CPIA 1996) defines the criminal investigation as the proceedings conducted by police officers to determine whether a person should be charged with an offence or whether a person charged with an offence is guilty of it (Sec. 22, CPIA, 1996). The Code of Practice under Section 23 of CPIA 1996 further elaborates the criminal investigation as it encompasses various activities: probing crimes that have already occurred, examine whether a crime has been committed to potentially initiate legal proceedings, and monitoring situations where law enforcement suspects a crime may occur. This includes actions like observing premises or individuals over time, with the intent to potentially initiate legal proceedings. Charging someone with an offence can involve prosecution through summons or postal requisition (Sec1, CPIA, 1996). The principle duty of the Investigating officer is recording information and retaining record of information and other material. The I.O is also responsible to ensure that proper procedure is adopted while recording information and retaining record and other materials during the course of investigation ((Sec1, CPIA, 1996).

Rod Gehl described criminal investigation as a sequential process, stating that the investigation process involves a series of steps starting with evidence gathering, followed by information analysis, theory development and validation, and forming reasonable grounds to believe, culminating in the arrest and charge of a suspect (Gehl, 2012). Investigation is often defined as ‘a lawful search for people and things to reconstruct the circumstances of an illegal act, apprehend or determine the guilty party, and aid in the state’s prosecution of the offender’ (Berg & Horgan, 1998). Another definition is ‘the collection of information and evidence for identifying, apprehending, and convicting suspect offenders (*Ostrum, Park, Whitaker*, 1978)’.

6. Purpose of Investigation

The primary goal of an investigation is ‘to determine the events and identify those responsible (Karim, Access to Justice, 2020).’ Section 202 of the Cr.P.C states that investigation aim to

establish the truth or falsehood of an allegation. Investigations are administrative processes that do not conclude with a decision; instead, they necessitate reporting to another authority with recommendations for subsequent actions (*Karim, Access to Justice, 2020*). Whereas, the primary goal of any definition of criminal investigation is to uncover the truth behind a criminal act. Law enforcement agencies, particularly the police, achieve this by employing specific methods to gather evidence and ultimately present their findings in a court of law along-with evidence (*Rana & Imran, 2022*).

7. Supervisory Role of the Magistrate

The procedural laws assign a supervisory role to the area Magistrate during investigation; however, they often fail to oversee the activities of the I.Os to ensure efficient and effective investigation. The primary reason for this lapse is the doctrine of separation of powers, which delineates investigation as an executive function and decision-making as a judicial prerogative. Evidence collections falls under the executive's purview. Consequently, courts frequently assert that they can only act upon the material and evidence presented to them and cannot be held accountable for any failure by the executive or police in fulfilling their duties (*Wattan Party case, 2012*). Intervention of court into the investigation is considered serious irregularity and same the decision making by the executive. The investigation agency is answerable before its hierarchy of authorities regarding whether it does so honestly, fairly and efficiency and same the judiciary. The police is bound to investigate cognizable offences but many FIRs quashed by High Courts u/s 561-A of Cr.P.C although it is observed time and against by the higher and superior court that High court cannot assume the role of investigator and cannot interfere in the police investigation. Even manner and conduct of investigation cannot be scrutinized under constitutional jurisdiction might be amount to interference (*Ajmeel Khan case, 2009*).

The supervisory role of the Magistrate is crucial for ensuring the lawful and fair conduct of investigation and trials.

8. Commencement of Investigation

Investigation commenced upon registration of FIR which is one of the modes for setting the wheel of criminal law into motion. Registration of FIR regarding occurrence of cognizable offence u/s 154 is mandatory and Police has no discretion whether to register FIR or not upon receiving such information (*Haider Ali case, 2015*). It is not substantive piece of evidence (*Gulnawaz case, 1998*) and its only purpose is to give information to the police regarding the commission of cognizable offence (*Fatima bibi case, 2002*) but at ground reality it has much importance and significance. Frivolous, false and vexatious FIR got registered for pressurizing, harassing and settlement of family and civil disputes. Biggest misuse of the police authority is registration of false FIRs resulting arrests and taking not legal action against the person who got registered fake and false FIR. Although PPC provides measures to discourage and punish such false complaints through Sections 182 and 211 but few cases registered and prosecuted for using the police as an instrument to implement bad designs. Police after registration of FIR directly proceed to arrest of the accused persons without applying minds that whether there are sufficient grounds to enter into investigation (Sec. 157, Cr.P.C, 1898). Unless sufficient evidence is available for the arrest, the police should not move to arrest the accused nominated in FIR (*Muhammad Bashir case, 2007*). Prior to the case of *Mst. Sughranbibi vs The State (2018)* second FIR was possible to be registered in same occurrence but the said case laid town the rule that only one FIR can be registered in one occurrence and other will be recorded as version/cross version in the case u/s 161 Cr.PC. In *Kaura case (1983)*, in which second FIR was allowed to be registered, an observation was made as:-

While our criminal legal system is founded on the presumption of honest, God-fearing, and fair police officers, as well as an impartial and honest investigation system, this ideal is often far from reality. When courts recognize that due to mala fide, dishonest, or motivated actions or omissions, an investigation has been or is likely to be misled, compromising the prosecution's case, they have the authority to order the recording of a new FIR presenting the real culprits and misleading the investigation or prosecution. However, such authority must be exercised with extreme care and caution and not routinely, merely to satisfy an individual's dissatisfaction with the contents of the initial FIR or the direction of the investigation, or to serve an ulterior motive (*Kaura case*, 1983).

It is clear from the above observation that in our society police officers are not honest, God-fearing and investigation is no longer impartial and honest. The biggest injustice is misuse of process of justice and police mostly misuse the process of justice at the time of registration of FIR especially in the cases of fake encounters. Many fake FIRs are registered on the political pressure and on the order of high ups of the police. It is also clear that justice cannot be done properly without proper investigation and presently whole CJS is dependent on police investigation.

9. Issues related to First Information Report (FIR)

FIR became a most important and influential document in criminal case (*Muhammad Hussain case* 2011 and *Umer Hayat case* 2005). In practice, FIR is considered most important at every stage of criminal case; remand stage, bail stage, framing of charge even final arguments stage as accused/defense counsel heavily relies on the contents of FIR to secure acquittal and courts always give benefits to the accused. It assumed central, primary and overwhelming significance with all the stakeholders of CJS; it is treated as biblical by police thus it control their investigation, scrutiny by prosecutors also affected due to its controlling effect and decision of the courts at bail stage especially and at trial stage generally affected due to its centrality and primacy. Although, it is not a substantive piece of evidence but considered a foundation stone of criminal case and mostly used for contradiction (*Nasima bibi case*, 2008, Art. 140 QSO 1984, *Alimdad case* 2002, *Imran Shah case* 2004). Any omission in FIR always goes in favour of accused (*Dr. Khalid Moin case*, 2006). On the name that it furnishes the clue of the possibility of the truth of allegation as it is a statement which is made soon after the incident, when the memory of occurrence is fresh without consultation and also cause a firm impression of the prosecution case (*M. Mahmood*, Cr.P.C, 1898), FIR became sole touch stone for ascertaining truth and false which ultimately led to include everything in it which is not possible, therefore, it became much problematic in dispensation of justice. Lodging FIR is very difficult job for innocent and gentle man however, somehow easy for influential people. Police mostly avoid lodging FIR due to certain reasons and in unavoidable situations they register FIR. Exaggeration in FIR for spreading wider net and implication of more and more persons by telling false story is general trend due to inefficiency of the system (*Ahmed Khan case*, 2006). Mostly police do not take action against those persons who got registered false FIR or provided some untrue story in FIR due to lack of proper investigation and corruption in police department (*Chaudhry*, 1997). The registration of FIR is not a kind of punishment but people more afraid from it and considered it harsher punishment therefore; getting bail; pre-arrest or post arrest, is considered victory of accused by the general public as most of the cases resulted in acquittal. Un-explained delay in registration of FIR is always beneficial to the accused and fatal to the prosecution which creates impression of consultation, negotiation deliberation and after thoughts with ulterior motive, which diminishes the fate of prosecution story (*Muhammad Nadeem*

case, 2011, *Hajan case*, 2014, state through AG NWFP, 2016, *Mst. Shopri bibi case*, 2015, *Arshad case*, 2015 and state v. *Mukhtar case*, 2015).

Whether there could be more than one FIR in the same incident? Presently only one FIR can be registered in one incident (*Sughran bibi case*, 2018). Whether the enquiry can be held by the police prior registration of FIR? Sections 154 and 155 of Cr.P.C do not authorize or visualize the holding of enquiry prior registration of FIR to assess the correctness or the falsity of the information provided. “if such enquiry is made before recording of the information, the FIR would be hit by the provisions of section 162 and the FIR would be inadmissible at the trial”. (*Karim*, access to justice, 2020) FIR became a tool for getting revenge and illegal settlement with weaker therefore; present mechanism of FIR should be abolished for avoiding its excessive misuse. The mechanism of registration of criminal case on pattern of Anti-corruption Act, FIA and NAB should be used in ordinary law as well. The status of FIR should be given to the Report of police u/s 173 Cr.P.C for deciding bails and other matters.

10. Proceedings for Collection of Evidence

Procedure of investigation is given in Part V, Chapter XIV of the Code of Criminal Procedure (1898), Chapter XXV of the Police Rules, (1934) and Chapter XI of Rules and Orders of the Lahore High Courts, Lahore, Volume III. Perusal of Chapter XIV of Code of Criminal Procedure reveals that u/s 154 of the Code, FIR is registered on the information relates with the commission of cognizable offence and forthwith investigation commenced without any order of the Magistrate. As regard to commission of non-cognizable offence, order of Magistrate is compulsory for commencement of investigation u/s 155 of the Code. Sec. 156 of the Code empowered the officer-in-charge of a police station to investigate himself the cognizable offence and u/s 157(1) he is empowered to depute any his subordinate officer for investigation. Officer-in-charge of police station also empowered by Sec. 157(1)(b) not to investigate if there are no sufficient ground and he is required to inform the complainant and also to the concerned Magistrate in this regard. In Sections 160 to 175 of the Code, the powers and privileges of investigating officer are given (Cr.P.C, 1898).

The principle purpose of criminal investigation is to provide answers to certain questions relating to crime. These include: the identity of victim; the exact place, at which the offence occurred; how the crime was committed and means employed in its commission; the time of attack; the motive or object of attack; and the identity of the offenders. Criminal investigation is employed also in the search for an interrogation of material witnesses who are able and willing to give competent and relevant testimony against the suspect or offender, and in reconstruction of all facts connected with the crime in order that, at the trial of a defendant, true picture of what occurred may be presented so as to leave no doubt in the minds of the jurors or judge regarding the guilt or innocent of the accused (*Raza*, 2012).

Investigation is basically an art of ascertaining the truth through collection of evidence for successful detection and prosecution of offences. One of the Predicaments is that often investigation is assigned to Assistant Sub Inspector or Sub Inspector rank officers – whatsoever, the nature of the criminal case may be – who are unable to comprehend the legal and scientific details of the evidentiary material while preparing the cases and submitting reports to the courts through public prosecutors due to their dull educational background and poor I.Q levels. Most of the criminal cases concluded in failure of the prosecution due to defective and faulty investigation due to irresponsible and clumsy attitude of the investigation officers while conducting

investigation. Senior police officers over the rank of ASP are neither themselves conducting investigation nor properly supervising the same. Even the senior police officers who start their career as ASP's have no experience of investigation due to that they fail to properly supervise the investigation. It is also noted that the priorities of the senior police officers are different and they do not pay active attention to the investigation of the cases.

11. Probable innocence or guilt

The investigation process is a screening process where probable innocence and guilt of accused is determined by police and prosecutor who are experts of their fields. The accused persons found as probable innocent during investigation are screened out whereas who are screened as probably guilty sent up to court to face trial. In Pakistan, the accused screened out as probably guilty in investigation and prosecution stages does not mean 'presumed to be guilty' (Karim, Access to justice, 2020). In adversarial system, the accused is presumed innocent till he is found guilty on the conclusion of judicial trial however, in inquisitorial system, if accused found probably guilty in investigation process then no presumption exist; neither the presumption of innocent nor the presumption of guilt. Whether is it logical to presume a person innocent whose probable guilt is found during investigation process and recommended by the prosecution for trial on probable cause and sufficient evidence for seeking conviction of the accused? In the opinion of the researcher, the approach of inquisitorial system is suitable as the person found probably guilty during investigation process and recommended by prosecution for trial on the basis of sufficient evidence is not deserved to be presumed innocent. The researcher do not recommend him to be presumed guilty but there should be no any presumption when the accused is sent up to the court for trial by prosecution after scrutinizing the whole investigation. What the value of the opinion of Investigator about truth and false of the case?

12. Opinion of Investigating Officer

The whole scheme of criminal justice distrust on police including investigating officer due to that the evidences collected by police is not admissible per se and statements recorded by the I.O is also not admissible till the witness appears in the court and got recorded his statement on oath. In short, the statements recorded by the I.O and evidences collected by him has no presumption of truth and the same are not admissible per se in the court except in limited cases where it can either be used as a Dying Declaration or only insofar as it leads to a recovery.

The Supreme Court of Pakistan held that I.O has no power to form his opinion and he has only a duty to collect evidence and place before the court. The job of a police officer in conducting an investigation is limited to collecting evidence. Once gathered, this evidence is presented to the competent court, which alone has the authority and responsibility to determine the guilt or innocence of the accused. Allowing a police officer to form such an opinion would constitute a serious legal breach, potentially leading to significant injustice and severe consequences (Muhammad Arshad case, 2016) A bench of the supreme court of Pakistan demonstrated mistrust on police while commenting that "in our society, the police officers are no longer honest, God fearing and fair and the system of investigation is no longer impartial." (Ali Muhammad case, 2016)

13. Flaws and Defects in Investigation

The current CJS faces strong criticism due to its high acquittal rate. The defense counsel often exploits the investigation's flaws and loopholes during trials, significantly contributing to this issue. The crime investigation process is criticized for being inefficient, ineffective, and tainted by subjective and coercive elements (Sangroula & Sangroula, 2016).

13.1. Defective Investigation

When I.O does not perform his duties honestly and diligently and conduct defective investigation that leads to failure of prosecution case and acquittal of the culprits. Some are the failures of I.O in performance of his duties; delay in conducting postmortem upon which courts take adverse inference (*Muhammad Sarwar* case, 2015, & *Ghulam Shabbir* case, 2013), illegal confinement of the accused resulting registration of FIR in which accused produced evidence of his illegal confinement lacunae in recording statements of witnesses u/s 161 Cr.P.C or delay in recording (*Ghulam Shabbir* case, 2013, *Dilshad* case, 1995, Amir Bux case, 1990, state v *Zuhra bibi* case, 1992, *Muhammad Basher* case, 1992, Dr. Khalid case, 2006, *Mst. Shamim* case, 1992, *Habibullah* case 2011 and *Mst Salam bibi* case 2012), delay in Identification parade diminish its evidentiary value ““The identification of the accused after 11/13 days of his arrest diminishes the evidentiary value of the test” (State v. *Ghazi* case, 1978 & state v. *Taj Muhamamd* case 2011) illegalities in recoveries especially during police custody as joint recovery (*Abdul Hameed*, case 1994, *Abdul Ghani* case, 1976 & *Mujahid Hussain* case, 1983), non-collection of crime empties (*Khalid Hussain* case, 2007), non-provision of forensic or expert report (*Abdul Wahid* Case, 2013), non-compliance with Section 103 Cr.P.C (*Muhammad Amin* case, 1990, *Muhammad Akram* case, 1993, state v *Gurmukhdas* case, 1980, Ata-ur-rehman cae, 1980, *Muhammad hanif* case, 1980, *Muhammad Shafi* 1973, Riaz case, 1998, *Muhammad Abbas* case 2005 & *Masood Qureshi* case 1971) late dispatch of sample to Forensic Agencies (*Muhammad Saleh* case, 2016, *Muhammad Azeem* case, 2015, state through AD KPK Case, 2015), irregularities in preparation of parcels as consolidated sample parcels (*Ameer Zeb* case, 2012 & *Shoukat Ali* case, 2015), discrepancies in weight of narcotics (*Muhammad Qasim* case, 2014).

The major reason of defective investigation is lack of training of police and development of specialized investigation officers (*Haider Ali* case, 2015). Any misuse of power or irregularity by the I.O will destroy the value of evidence and give benefit to the accused. The establishment of chain of evidence as ‘one end at the dead body of the deceased and other round the neck of the accused’ should be maintained. In any discussion on investigation, it is inevitable to analyze the police, its historical context, its brutality and misconduct, evolution of police laws in Pakistan, concept of separation of investigation function from other functions of police etc. It will be discussed in a separate article.

14. Conclusion

In Pakistan, investigation of crimes is a duty of police. The investigation has very critical importance in functioning of CJS. In the present practice, the cooperation of the police is essential for an aggrieved person to obtain justice. Although there are alternative within the system, the judiciary’s lack of interest and non-serious engagement in exercising these alternatives has rendered the CJS heavily reliant on the police. This reliance is problematic, given the serious crises facing the police force, resulting in numerous criminals being acquitted due to investigative faults and defects. The purpose of an investigation is to determine what happened and who is responsible. According to Section 202 of the Cr.P.C, the objective is to ascertain the truth or falsehood of an allegation. However, courts are increasingly getting angry on the seeing I.O’s opinion regarding guilt or innocence of the accused. The SCP in a recent judgment noted that in the CJS, uncovering the truth is the responsibility of the investigating agency, while the judge’s role is to decide whether the prosecution has proven the allegations against the accused according to the law.

Lodging FIR is very difficult job for innocent and gentle man however, somehow easy for influential people. FIR became a tool for getting revenge and illegal settlement with weaker therefore; present mechanism of FIR should be abolished for avoiding its excessive misuse. FIR

became a most important and influential document in criminal case. In practice, FIR is considered most important at every stage of criminal case; remand stage, bail stage, framing of charge even final arguments stage as accused/defense counsel heavily relies on the contents of FIR to secure acquittal and courts always give benefits to the accused. It assumed central, primary and overwhelming significance with all the stakeholders of CJS; it is treated as biblical by police thus it control their investigation, scrutiny by prosecutors also affected due to its controlling effect and decision of the courts at bail stage especially and at trial stage generally affected due to its centrality and primacy.

Inefficiency of police is main cause of defective investigation which is the major reason of high rate of acquittal. There are many reasons for inefficiency of Police especially in investigation but the major ones are; political interference; corruption, Lack of Transparency, Lack of police capacity or inadequate Training, lack of modernization, Lack of Credible accountability mechanism, unconnected institution or non-coordination, dysfunctional relationship between Police and Intelligence Organizations, Lack of implementation, colonial mind set of police, dishonesty, ease lower, Maladministration of police.

In Pakistan, there is a general consensus that revamping the CS is essential to effectively combat terrorism, extremism, and serious crimes. The superior judiciary frequently highlighted the need for reforms in investigation and prosecution. While these areas undoubtedly require urgent attention, research indicates that meaningful results can only be achieved by addressing all interconnected laws and organizations together. Unfortunately, this comprehensive approach has not been adopted by the reforming community in Pakistan.

15. Recommendations

Based on the above discussion, here are some recommendations to enhance the scope of investigation in Pakistan's CJS.

1. Establish independent investigation agencies: Given the monopoly of police over investigation and the skepticism regarding their competence, independent bodies should be established to conduct investigation in complex or sensitive cases. This can help mitigate issues of bias, corruption, and political interference.
2. Judicial Oversight and Alternative Investigation Mechanisms: Courts should actively utilize their powers under the Code of Criminal Procedure to assign investigations to Magistrates, Justices of Peace, private individuals, or third-party agencies where appropriate. This can reduce the over-reliance on police and foster greater accountability in the investigation process.
3. Broaden the Definition of Investigation: Revisit the restrictive definition of "investigation" as merely the collection of evidence. Instead, align it with international practices where investigation is a comprehensive process to discover the truth and determine the factual guilt and innocence. This would promote a more thorough and impartial approach to gathering information, discovering factual truth and gathering relevant, admissible and reliable evidence.
4. Abolish the FIR system in its Current Form: Given the abuse of the FIR mechanism, consider abolishing or reforming it. A new system should be implemented that ensures fair initiation of criminal proceedings, reduces its misuse, and decreases its overwhelming influence at every stage of CJS.
5. Strengthen Training and capacity Building for Police: To combat inefficiency, political interference, and corruption, comprehensive training and capacity-building programs are necessary. These should focus on modern investigative techniques, transparency, and

ethical standards. Additionally, enhancing forensic support for investigations could lead to more reliable evidence collection.

6. Enhance Coordination Between Agencies: Dysfunctional relationship between the police and intelligence agencies weaken investigative outcomes. Improving coordination, sharing intelligence, and forming specialized task forces for certain types of crimes can enhance the overall investigation process.
7. Introduce Accountability Mechanisms: Create a transparent and credible mechanism for holding police officers accountable for investigative errors, malpractices, and misconduct. This could include external oversight bodies with power to review investigations and recommend disciplinary action.
8. Comprehensive Legal Reforms: Instead of focusing solely on investigation and prosecution, reforms should address the entire criminal justice ecosystem, including judicial practices, evidentiary laws, and procedural safeguards. A holistic approach will ensure long-lasting and meaningful improvements.
9. Reduce Political Interference: Effective measures to minimize political interference in police investigation are essential. This could include revising laws and regulations governing police appointments and promotions to ensure merit-based criteria, free from political influence.
10. Enhance Public Awareness and Engagement: Raise awareness among the public about the correct procedure for lodging FIRs, the rights of accused persons, and the role of the police in investigation. Empowering citizens to hold the police accountable can improve transparency and trust in the CJS.

References

- Abdul Hameed v. State*, (1994) P.Cr.L.J., 769.
- Abdul Khaliq v. the State*, 2015 YLR 1015
- Ali Muhammad v. Syed Bibi*, (2016), PLD 2016 SC 484.
- Ali Gohar, etc v. Pervaiz Ahmed etc*, Judgment of the Supreme Court in Criminal Miscellaneous Application No. 200 of 2019. https://www.supremecourt.gov.pk/downloads_judgements/crl.p.230_2019.pdf
- Ameer Zeb v. State*, (2012), PLD 2012 Supreme Court 380.
- Arshad Mehmood v. Abdul Haq*, (2015) YLR 1690.
- Alimdad alias Khan v. State*, (2002) P.Cr.L.J., 1785.
- Ata-Ur-Rehman v. The President, Summary Military Court No. 21, Gujrat*, (1980) P.Cr.L.J., 832.
- Abdul Wahid v. Umer*, (2013) P.Cr.L.J., 192.
- Amir Bux v. State*, (1990) P.Cr.L.J., 1765.
- Ajmeel Khan v. Abdur Rahman*, (2009), PLD 2009 SC 102.
- Abdul Ghani v. State*, (1976) P.Cr.L.J., 1462.
- Ali Gohar etc. v. Pervaiz Ahmed, etc.* (2019) Judgment of the three-member Bench of the Supreme Court in Criminal Miscellaneous Application No. 200 of 2019. https://www.supremecourt.gov.pk/downloads_judgements/crl.p.230_2019.pdf.
- Bank of Punjab v. Haris Steel Industreis*, PLD 2010 SC 1109.
- Berg Bruce L. and Horgan John J. (1998), *Criminal Investigation*, 3rd ed., Westerville: Glencoe/Mc Graw- Hill) 1998.
- Chadhar, Ahmed Khan: *Jurm Nishan Chorta Hi* (Urdu), (2006), Lahore: Jahangir Printers 2006.
- Code of Criminal Procedure, (1898), (Cr.P.C).
- Criminal Procedure and Investigation Act (1996) of United Kingdom.

- Chaudhry M.A.K.: *Policing in Pakistan*, (1997), Lahore: Vanguard Books (Pvt) Ltd. 1997.
- Dr. Khalid Moin v. State*, (2006) P.Cr.L.J. 639.
- Dilshad v. State*, (1995) P.Cr.L.J., 248.
- Fatima bibi v. Sardar Ali and 3 others*, 2002 P.Cr.L.J. 668.
- Gulnawaz v. the State*, 1998 P.Cr.L.J. 1730.
- Ghulam Shabbir v. State*, (2013) YLR 806.
- Habibullah v. Ghulam Sarwar*, (2011) P.Cr.L.J., 1490.
- Haider Ali and Other Vs DPO Chakwal and others*, (2015) SCMR 1724.
- Hajan v. State*, (2014) P.Cr.L.J., 1123.
- H.N.Rishbud v. the State*, (1955), AIR 1955 SC 196.
- Handbook of Criminal Investigation in Pakistan, (2021) available at <https://www.npb.gov.pk/storage/videos/1379939696.pdf>.
- Haider Ali and Other Vs DPO Chakwal and others* (2015) SCMR 1724.
- Imam Shah Advocate v. Muhammad Jamshed Kundi, Judicial Magistrate, Lakimarwat*, (2004) YLR 447.
- Kaura v. the State and others*, (1983) SCMR 436.
- Karim Justice Fazal (2020) *Access to justice in Pakistan, Karachi*: Pakistan Law House, Second Edi.
- Karim, Justice Fazal Karim, (2020) *Judicial Review of Public Actions*, Pakistan Law House, Second Edi.
- Khalid Hussain v. Muhammad Zahid alias Aji*, (2007) MLD 1975.
- Muhammad Nawaz Khan v. Noor Muhammad*, (1976) PLD 1976 Lah 176.
- Muhammad Abbas alias Ajmi v. State*, (2005) YLR 3193.
- Muhammad Bashir v. Station House Officer, Okara Cantt. and others*, PLD 2007 SC 539.
- Muhammad Arshad and other vs. the state and others* (2011), PLD 2011 SC 350, 360-362.
- Mst. Sughran bibi v. the state*, (2018), PLD 2018 SC 595.
- Mushtaq Hussain v. State*, (2011) SCMR 45.
- Muhammad Qasim v. State*, (2014) P.Cr.L.J., 119.
- M. Mahmood: Major Acts 2004 ed, Part-v. Chapter xiv, p.297.
- Muhammad Saleh Malah v. State*, (2016) P.Cr.L.J., 432.
- Masood Qureshi v. Azizul Hameed*, (1971) PLD Lahore 678.
- Muhammad Shafi v. The State*, (1973) P.Cr.L.J., 1066.
- Muhammad Hanif v. State*, (1980) P.Cr.L.J., 345.
- Muhammad Arshad and other vs. the state and others* (2011), PLD 2011 SC 350, 360-362.
- Muhammad Sarwar v. Mehboob Alam*, (2015) YLR 2734
- Muhammad Bashir v. State*, (1992) P.Cr.L.J., 119.
- Mujahid Hussain v. State*, (1983) SCMR 654.
- Mst. Shopari Bibi v. State*, (2015) P.Cr.L.J., 1584.
- Muhammad Nadeem v. State*, (2011) SCMR 872.
- Mst. Shamim Ghafar v. Ghulam Shabbir*, (2010) YLR 2216.
- Mst. Salam Bibi v. Amanullah*, (2012) YLR 2408.
- Muhammad Ameen v. State*, (1990) P.Cr.L.J., 84.
- Muhammad Akram v. State*, (1993) MLD 551.
- Nasima Bibi v. State through Advocate-General*, (2008) P.Cr.L.J., 613.
- Ostrum Elinor, Park Roger B. and WhitaKer Gordon P.(1978), *Patterns of Metropolitan Policing* (Cambridge: MA: Ballinger, 1978) p.131.12

Police Rules, 1934.

Qanoon-i-Shahadat Order 1984

Rabia Rana and Imran Muhammad, (2022) “Critical Analysis of Criminal Investigation System in Pakistan” *Journal of Law and Social Studies*(JLSS), (2022) Vol. 4, Issue 4, pp- 556-564.

Report on 01-Week Training on Substantive & Procedural Law for Prosecutors (Batch-1)”, UNDP and KPK Judicial Academy, Peshawar available at <http://www.kpja.edu.pk/all-publications> (last accessed 02.6.2021).

Rod Gehl, *Introduction to Criminal Investigation: Processes, Practices and Thinking* , “The Process of Investigation” Chapter 4 available at <https://pressbooks.bccampus.ca/criminalinvestigation/chapter/chapter-4-the-process-ofinvestigation>.

Report of Law and Justice Commission of Pakistan, Police Reforms: Way Forward, available on the website of the L&JCP. <http://ljcp.gov.pk/nljcp/home/publication> (last accessed 13.04.2020).

Rules and Orders of the Lahore High Courts, Lahore, Volume III with the title ‘Investigation’.

Raza, Hafiz Muhammad Ejaz, (2012) *Understanding The Criminal Trial*, (Karachi: Sind Law Journal Publications, 2012), 103.

Riaz v. Station House Officer, (1998) PLD 1998 Lahore 35,

Shaukat Ali alias Billa v. State, (2015) SCMR 308.

Syed Muhammad Ahmed v. the state and others, PLD 2006 SC 316.

Sahito Imdad Hussain (2009) “The Criminal Investigation in Pakistan: Trends and Reality”, *Journal of Pakistan Vision*, Vol. 10 No.2 (2009), pp. 175-196.

The State v. Muhammad Azeem alias Sohni, (2015) P.Cr.L.J., 1580.

The State through Advocate-General N.W.F.P. v. Fazal Hakim, (2016) MLD 61.

The State v. Mukhtar Ahmad, (2015) MLD 1840.

The State through Advocate-General Khyber Pakhtunkhwa, Peshawar v. Amir Rehman, (2015) YLR 1786.

The State v. Mst. Zuhra bibi, (1992) P.Cr.L.J., 825.

The State v. Ghazi, (1978) PLD 1978 Quetta 191.

The State through Advocate-General Sindh v. Taj Muhammad, (2011) PLD 70 Karachi.

The State v. Gurmukhdas, (1980) P.Cr.L.J., 148.

Umar Hayat Sajjad v. SHO Police Station Mochi Gate, Lahore, (2005) YLR 1313.

Umer Hayat v. IG Police Islamabad, 2015 P.Cr.L.J 1551.

YugichhaSangroula and YubarajSangroula, (2016) “Use of Informal Mechanism in Criminal Justice System: Critical Observation of Principles, Theories and Prospects”, *Journal of Civil & Legal Sciences*, Vol. 5, Issue 3, Kathmandu, Nepal.

Wattan Party v. Federation of Pakistan, (2012) PLD SC 292.