

CRIMINAL JUSTICE SYSTEM IN INDIA: COMPLIMENTARY ROLES OF COURTS AND THE POLICE

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Judiciary and Police are the two integral parts of the society for securing justice. They are pillars of the administration whose role is to ensure that the individual liberty is protected and the crime from the society is eliminated. The two institutions are very much interlinked in their sphere of functioning and their mode of working. Though the functions and powers of courts and the police are inherently connected yet both are quite distinct in terms of the statutory powers conferred on them. In the course of the essay, the author has tried to elaborate in details the distinctive functions of the three pedestal of the criminal system in India, the Police, the Court and the Public Prosecutor. The complementary roles of police and the court have been discussed in context of the investigation of cases. The inherent power of the High Court has also been discussed in the paper elaborately. India has adopted an adversarial system of justice which views Court as a passive demonstrator, the viability of this model and its difference from the inquisitorial system is dealt with in length. Lastly the reforms suggested by the Malimath Committee Report are analyzed in light of the simultaneous functioning of the court and the police.

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The Court

Court is called the temple of Justice. A Court is an independent and impartial body whose function is to decide whether the accused person is guilty or not. In a criminal justice system, maximum faith is placed in the functioning of the court right from the arrest to the closure of the case. The code confers several rights upon the court to reach to the right decision and do complete justice to a case. Section 165 of the evidence act empowers the judge to ask for a proper explanation of the facts or evidence from the parties concerned and the police.² This section is meant to help the judge reach a conclusive opinion after taking note of all the relevant facts present in the case. A judge has power to ask for any relevant document at any time and the parties are not entitled to object to such questions and orders of the court. Also, in order to appreciate the evidence of the case, It sometimes become necessary to take an inspection of the place related to the offence, Section 310 envisages such a power upon the magistrate to have a local inspection of the place concerned.³

In relation to the investigation of the case, Section 157 gives the magistrate a power to direct an investigation in cases in which the police decide not to investigate the case.⁴ Section 159 empowers a magistrate to whom first information is submitted under section 157 to make a preliminary investigation.⁵ Section -156 (3) empowers the magistrate to order investigation independently of police.⁶

Magistrate has an important role to play in the process of arrest of the accused. Section 44 of the act provides for the arrest of a person who has committed offence in the presence of the magistrate or is suspected of having committed an offence. Also where a person is charged with the commission of non-cognizable offence, police cannot arrest him without the issue of the warrant by the magistrate. Section 204 of the code empowers the magistrate to issue summon and warrant for the arrest of the person.⁷ Magistrate has the power to take cognizance⁸ of any

² See Indian Evidence Act, 1872, § 165

³ See Section 310 Code of Criminal Procedure, 1973

⁴ Section 157, Code of Criminal Procedure 1973

⁵ Section 159, *ibid*

⁶ Section 156(3), *ibid*

⁷ See, Section 204, *ibid*

case that comes to him under section 190 of the code. The power to discharge the accused if no sufficient evidence against him can be found, lies in the domain of power of the Magistrate. Likewise framing of the charges⁹ if the judge has an opinion on the basis of materials and documents placed before him is one of the important functions of the court under section 228 of the code. Section 229 confers upon the judge a discretionary power¹⁰ to convict the accused if the accused pleads guilty before the court.

In relation to the enquiry, trial or any proceedings under the code, section 311 of the code envisages on the court the power to summon any person as a witness and to examine any person in attendance or recall or re-examine any person already examined.¹¹ The purpose of this section is to ensure that the true cases should not go unpunished for want of the material evidence and innocent person should not be punished for their failure to bring relative and material evidence on record at an earlier stage of the proceedings.¹²

Section 319 enlisted in chapter XXIV¹³ of the code enables the court to “proceed against any person not shown or mentioned as accused but if it appears from the evidence that such persons has committed such offence for which he could be tried along with the main accused against whom the trial is being held.”¹⁴ This power of the court to summon a person can be exercised at any stage of the enquiry.¹⁵

The code contains provisions for trial and punishment of offences. Chapter XXIV contains the powers to deal with these offences. Section 344 provides for a summary procedure for trial for giving false evidences.¹⁶ Section 348 empowers the court to discharge the offender on tendering

⁸ See S 190, *ibid*

⁹ See S 228, *ibid*

¹⁰ See, S 229, *ibid*

¹¹ Section 311, *ibid*

¹² Anil Sachdeva , *Inherent Powers of the Court*, (1st edition, India Law House, New Delhi, 2008) 231

¹³ Section 319, Code of Criminal Procedure, 1973

¹⁴ Y. Chandrachud, Ratanlal and Dhirajlal,- The code of Criminal Procedure (14th edition, Butterworth LexisNexis Publication, Mumbai, 1992) 493

¹⁵ Mahendra kumar v the state of Madhya Pradesh, 1987 CrLJ 1450 (MP)

¹⁶ See Section 344, Code of Criminal Procedure, 1973

of apology whereas S-349 enables the court to impose punishment for refusing to answer court's questions.¹⁷

Court has power to weigh the side of both accused and the prosecution and come to a right decision. A court not only punishes those who violate the law but also take care of the interest of the society along with the police and the public prosecutors. CrPC envisages several important power of the Court and in the long run of justice and peace, makes the Judge a beacon-holder for the protection of individual's interest.

Powers of the Court

Section 482 given in chapter XXXVII of the code lays down the inherent powers of the High Court where the High Court can quash the proceedings "either to prevent the abuse of process of any court or to secure the ends of the Justice".¹⁸ In the case of *State of Haryana v Bhajan Lal*, the Supreme Court laid down seven conditions, falling to which an FIR can be quashed by the High Court. First of the conditions read that if the allegations in the FIR of the case do not prima facie make out a case against the accused, the high court has the power to quash that FIR. Secondly, the allegation and the FIR must disclose a cognizable offence by the virtue of section 156(1), if in case it doesn't, proceedings can be brought to an end. Thirdly, the evidence collected must exhibit the support to the allegations made and complaint filed. Fourthly, if the nature of allegation is non-cognizable and an investigation is carried out by the police officer without the prior order of the magistrate, it is likely to be quashed. Fifthly, the allegations made in the FIR must be of serious nature and absurd and inherently improbable allegations on the basis of which a prudent person can never reach a conclusion will be discarded. Sixthly, if there is an express legal bar engrafted in any of the provision of the code or the concerned act to the institution to provide efficacious redress for the grievance of the accused, the order would be quashed by the court. Lastly, if the criminal proceedings are conducted with a malafide or if the proceeding is instituted with an ulterior motive under private and personal grudge, court normally would quash such order.¹⁹ Section 482 does not envisage any additional power to the High Court. The exercise of power under section 482 of the code is only an exception and not a rule.²⁰ In *Didigam*

¹⁷ See S 349, ibid

¹⁸ See S 482, Code of Criminal Procedure, 1973

¹⁹ State of Haryana vs C. Bhajanlal AIR 1992 SC 604

²⁰ Anil Sachdeva, Inherent Powers of the Court, (1st edition, India Law House, New Delhi, 2008) 221

Bikshapathi v. State of Andhra Pradesh, the Supreme Court held that section 482 of CrPC does not confer any new power on the High Court rather this section is meant only to safeguard the existing powers of the High court to establish the rule of law and procure justice to the people.. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of Court; (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts.²¹ The limitation lies to the use of this section for in the case of *S.M Seshagiri V State of Andhra Pradesh*, the Supreme Court held that the High court should be very slow and careful in its interference with the investigation or prosecution by virtue of this section. Only when the High court would be satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise its inherent power under section 482 of the CrPC.²² Though this inherent power is vested only in the High Court, the 141st report of the 12th law commission recommended for conferment of the inherent powers on the subordinate courts also other than High Court.²³

In case an accused feels aggrieved with the way police is investigating the case, he does not have an option to approach the magistrate since under section 156(1), a magistrate cannot interfere or take over the investigation or entrust it to any subordinate magistrate. All that the aggrieved person can do is to move to High Court and invoke Article 226 of the constitution.²⁴ In the case of non-application of Section 482, Article 226/227 of the constitution can be invoked because nothing in the code can curtail the constitutional power of the High Court if the conditions for the exercise of extraordinary power are present.²⁵ Article 226 provides for the writ jurisdiction to

²¹ *Didigam Bikshapathi v. State of Andhra Pradesh*, A.I.R 2008 SC 527

²² *S.M Seshagiri V State of Andhra Pradesh* AIR 2008 SC 787

²³ 141st Report, 12th Law Commission of India

²⁴ *Lakshmanam chetti v king emperor*

²⁵ *Durga Das Basu, Criminal Procedure Code, 1973* (3rd edition, Volume 2, Prentice Hall of India, Delhi, 1997) 495

the High Court which entails a procedure to obtain speedy and effective redress against an illegal exercise of power by the Executive.²⁶ Through writs, High Court comes in a position to control to an extent the administrative authorities of the society. In order to invoke Article 226, it is essential to convince the High Court that the power of investigation has been exercised by a police officer mala fide, in such cases the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal power.²⁷

Powers of the Police

Police is the anchor of the criminal system in India. Police ensures protection of people and their property and work to maintain peace in the society. Primarily the police have twofold roles to play- the investigation of the crime and the crime prevention.

In criminal justice system, police is the principal agency for carrying out investigations. When an offence committed is brought to the notice of the police, it is their responsibility to investigate into the matter to find out who has committed the offence, ascertain the facts and circumstances relevant to the crime and to collect the evidence, oral or circumstantial that is necessary to prove the case in the court. The success or failure of the case depends entirely on the work of the investigating officer. The police have got wide powers of investigation under section 156 and section 157 of the act. Section 156 confers on the police the power to investigate the commission of any cognizable offences. This section empowers the police officer in charge of the police station to investigate only cognizable offences which a court having jurisdiction over the particular local area may inquire into and try. This section places the statutory right on the police to carry out investigation of the circumstances of the alleged crime without requiring any authority from the judicial authorities and neither can a magistrate nor a High court can interfere with those rights by an exercise of inherent jurisdiction of the court.²⁸

The power of the police to investigate exists even without such information of cognizable offence if the police have the reason to suspect the commission of a cognizable offence by virtue of section 157. Section 157 of the code requires of the police officer to immediately commence investigation when he has reason to suspect the commission of a cognizable offence within the

²⁶ M.P Jain, Indian Constitutional Law, (6th edition, Volume 1, LexisNexis Butterworth Wadhwa, Nagpur, 2010) 559

²⁷ Emperor v jharihag A.I.R 1939 ALL 541

²⁸ Section 156(1), Code of Criminal Procedure, 1973

jurisdiction of his police station.²⁹ It is of utmost importance that the police must be prompt in the investigation of the cognizable offence as delay therein is likely to cause serious prejudice either to the accused or to the prosecution.³⁰

Police carry out investigation by virtue of section 156(3) as well where they receive the order from magistrate empowered to take offence under section 190.³¹

Complementary Role

An Investigation includes all the proceedings which are under the code for the collection of the evidence conducted by a police officer or by any person other than a magistrate who is authorized by the magistrate in this behalf.³² Primarily investigation is a domain under the control of Police. In many scenarios the power of the police and the court appears to be overlapping against each other. However the code in its various sections has separated the context of functioning of the court and the police. The powers of the police under 156(1) are independent of the powers of the magistrate under section 156(3) and thus are under no control of the magistrate. The case of *Emperor v Khwaja Nazir Ahmed* established the principle for the first time that “the functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course subject to the right of the Court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus.”³³ In the case of *Sakiri Vasu V State of UP*, court expressed its opinion that Section 156(3) confers an “implied power” on the Magistrate to order registration of a criminal offence and to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may

²⁹ See S 157, ibid

³⁰ B.B Mitra, Code of Criminal Procedure (Vol-1, 20th edition, kamal law House, 2003)

³¹ See S 156(3), Code of Criminal Procedure, 1973

³² Y. Chandrachud, Ratanlal and Dhirajlal,- The code of Criminal Procedure (14th edition, Butterworth LexisNexis Publication, Mumbai, 1992) 227

³³ Emperor vs Khwaja Nazir Ahmed (1945) 47 BOMLR 245

be necessary for ensuring a proper investigation including monitoring the same.³⁴ The role of 156(3) is to check if the police are performing its duty in the right way or not. Hence if therefore a police officer has taken up an investigation of a cognizable offence and is conducting the investigation properly, a magistrate cannot direct him to stop the investigation and substitute a magisterial enquiry by himself or by his subordinate. In core the function of investigating cognizable offence has been conferred on the police only in most general term by the code. A magistrate cannot restrain a police investigation if it is conducted properly.

Section 157 oversees the working of the police. It requires the copy of the FIR to be forwarded to the magistrate. In the cases where magistrate thinks it fit, he may himself make an investigation or direct a subordinate magistrate to ensure that the police investigate all the cognizable offences and do not refuse to do so by “abusing the right granted for certain limited cases of not proceeding with the investigation of the offence.”³⁵

In the case of *Dayanidhi Dhar v Dasarathi Dhar*, it was held that In respect of cognizable offences the powers of the police and the magistracy are simultaneous and the police should be left free to exercise their statutory functions of completing their investigation. So long as the investigation is pending, Magistrate should refrain from doing anything which can have adverse affect on the progress of the investigation.³⁶ The ruling in the case *State of West Bengal V S.N Basak* established that the court's functions begin only when a charge is preferred before it, and not until then.³⁷ In *Union of India v Prakash P Hinduja*, the legal position was established that the court cannot use its power in the investigation which means that from “filing of the FIR to the submission of the report by the officer in charge in the court under section 173(2), the court cannot interfere in the investigation process.”³⁸ Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed. In the case of *J.A.C. Saldanha V State of Bihar*, the Supreme Court held “investigation of an offence is the field exclusively reserved by the executive through the police department, the superintendence over which vests in the State Government. It is the bounden duty of the executive to investigate, if an offence is alleged, and bring the offender to book. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits

³⁴ Sakiri Vasu V State of UP 2008(2) SCC 409

³⁵ S.N Sharma V Bipen Kumar Tiwari, 1970 SCR (3) 946

³⁶ Dayanidhi Dhar v Dasarathi Dhar, 1964 cut LT 332

³⁷ State of West Bengal V S.N Basak 1963 AIR 447

³⁸ Union of India v Prakash P Hinduja, AIR 2003 SC 2612

report to the Court requesting the Court to take cognizance of the offence under section 190 of the Code of Criminal Procedure, its duty comes to an end. On a cognizance of the offence being taken by the Court, the police function of investigation comes to an end subject to the provision contained in Section 173(8), then commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime.” The scheme envisages a Magistrate being kept in the picture at all stages of the police investigation but does not authorize him to interfere with the actual investigation or to direct how that investigation is to be conducted.”³⁹

Limitation lies in the fact that an investigating agency has the statutory power to investigate a case without any interference so long as the exercise of the power is circumscribed within the provision of the law. The role of the police and the court is neither overlapping nor designed to thwart the exercise of power by the police by interference at the hands of the court. The power under section 156(3) is to order investigation and not to come in the way of investigation. Further the exercise of the power under section 156(3) is subject to the decision of the police to not to investigate the case. This section does not contemplate simultaneous police enquiry and magisterial enquiry. If the police have already started investigation the magistrate cannot start magisterial enquiry without stopping or suspending police investigation and there is no provision in the code authorizing the magistrate to do so.⁴⁰ In another leading case of *Abhinandan jha v Dinesh Mishra*, the court declared that a magistrate has the right to accept or reject the opinion of the police in regards to the investigation however it cannot compel the police to take the investigation in the line suggested by the court nor can compel to form an opinion and submit the report in that context. Such an act of the court would amount to severe encroachment on the right of the police to carry out independent investigation.⁴¹

Adversarial System of Justice

In India, British had introduced the adversarial system of criminal justice. The adversarial system involves an impartial and passive participation of the judges. In it, the onus to gather the evidence lies on the shoulders of the parties, police and the defence. The judge has the role to evaluate the evidence and to give the impartial decision. In this system, the accused is presumed to be innocent until proved that he is the culprit of the crime beyond the reasonable doubt.

³⁹ State of Bihar v J.A.C Saldanha, 1980 AIR 326

⁴⁰ State of Rajasthan v Nathuram, 1993 CriLJ 533

⁴¹ Abhinandan jha v Dinesh Mishra, 1968 AIR 117

Meanwhile, the system imposes on the accused the right to silence which protects the accused from being compelled to admit the guilt. The role of the victim is relegated only to a mere witness. There is no role for a victim to play either in pre-trial or in trial. Both the defence and the prosecution keep their own version of evidence and truth and seek to impress the judge from their side of point of view. The judge as an umpire sees that justice is done and if the prosecution fails to prove the guilt of the accused beyond the reasonable doubt, he gives the benefit of doubt to the accused. It is on the discretion of parties what all evidences and witnesses, they would put up. The opposing party has the right to cross examine the witness to undermine the opposing case and bring a new contrary fact to the case. Since in the adversarial system key players are prosecution and defence, the trial of the case is very much discretionary. A prosecutor may decide not to proceed with the case even when sufficient evidences exist to prove the charge. The accused too can plead guilty and thus can avoid the trial.

The Supreme Court has often been critical of the adversarial system of justice. In *Ram Chandra vs. State of Haryana*, the Supreme Court opined

*“there is an unfortunate tendency for a Judge presiding over a trial to assume the role of referee or umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortion flowing from combative and competitive elements entering the trial procedure”*⁴²

Even after independence we followed on the same line with the adversarial system. Many inherent problems lie with this form of criminal justice system since an absolute power is conferred upon the police and the parties of the case. In a country like India which is plagued with disease of corruption in the society, discrimination among people, inefficient institutions, lackadaisical attitude of the authorities, scarcity of resources, absence of technical support for the investigation and lack of firm punishment against the offenders in various other cases make the existing justice system rather weak. This model views maximum efficiency on the part of the criminal justice system as leading to increased tyranny. Hence in pursuit of this, efficiency is sacrificed in order to prevent the official repression of the individual by the oppressive coercive power of the state. This model works on the presumption that it is fair to set free a hundred guilty persons than to wrongly convict even a single person.⁴³

Inquisitorial System of Justice

⁴² Ram Chandra vs. State of Haryana AIR 1981 SCR 1036

⁴³ Patrick Anderson, Donald Newman, Introduction to criminal Justice,(5th edition, Mcgraw hill 1993) 46

The inquisitorial model has an active participation by the judges. The investigation process is overseen by either an independent prosecutor or a magistrate. They can issue warrant, can ask for particular evidence, can pass the arrest order and can examine complainants, witness or suspects. The judge in this system acts both as an investigator and a judge. A pre-trial process is of sheer importance in the inquisitorial system. The reliable evidences are filtered out, the favourable evidence to the prosecution and defence are largely established and by the time, the case reaches the trial, presumption of guilt is almost obvious. The judge put up the question to the witness and the parties can only suggest the questions to be asked to the witness. No process of cross examination takes place in inquisitorial system. The accused has the right to be heard. In contrast to the adversarial system, in this system, the discretion of the parties regarding the conduct of the trial is very limited. The prosecution must carry forward the proceedings of the case if sufficient evidences exist to prove the case. Also unlike the adversarial system, in this system, there is no provision to the accused to confess the guilt and close the trial. The conduct of the trial is in the hands of the court and the judge determines what witnesses to be heard, in what order they would be called and what questions to be asked from them.

Malimath Committee Report

Malimath committee was constituted by the Ministry of Home affairs of the Government of India in November 2000 for suggesting the reforms in the criminal law system of the country headed under former member of National Human Rights Commission, Justice V.S Malimath. The report was published in 2003 and it suggested various radical reforms with respect to the Police, Prosecution and Judiciary of India. The report was divided into two volumes and it contained a total of 158 recommendations for reforming the criminal justice system.

The committee led out a comprehensive research of the criminal justice system, fundamental principles of criminal laws such as rights of the accused, presumption of innocence, burden of proof and justice to victims and proposed far reaching changes in the context of investigation, prosecution, and judiciary and the crime and punishment. The report was critical of the adversarial system of justice on account of the lack of faith of the people in this model of criminal justice. The committee pointed out that the judge in order to show himself neutral becomes passive and truth becomes a mere “casualty”. There can be instances of failure of the investigating agency to find out truth on account of “errors or omission, faulty attitude of the parties, lack of witnesses or inadequacies in the principles and laws regulating the system.” Since no provision exists in the code to oblige the court to find out the truth, the general presumption is that falsehood generally succeeds in courts.

Malimath committee report appreciated the inquisitorial system of justice on account that in this model an effective role of magistrate comes into the picture. Under inquisitorial system, a magistrate seeks to conduct a fair trial; he examines all the evidences and the witnesses and tries to protect the accused from “arbitrariness”. The Malimath committee recommended the same on the line that:

“The shift to an inquisitorial system carries with it an increase in the competences and powers of the court, which has the duty to order further investigations on its own motion if it is not satisfied with the result of the investigations. The Indian law-maker must be aware of the implications of such a shift towards a court-controlled system, and build into a new system the safeguards necessary to such a system.”⁴⁴

Conclusion

Criminal Code of Procedure contains the procedures to seek substantive criminal law in India with regards to the offences like bailable and non-bailable offences, cognizable and non cognizable offences and offences on warrant case and summon case. It includes the various interlinked powers and functions of Police, Magistrates and Judges. The criminal trial process has to undergo through the active prism of Police and Judiciary. Police and courts complement the functions of each other. They are the two sides of the same coin whose ultimate aim is to deliver justice to the parties. Police tries out the best to garner evidences against the person accused of the offence and the court determines whether that evidence is reliable enough to base the decision on or not. Public Prosecutor is the officer of court and his role in putting up the case of the prosecution can in no way be undermined. Further, in an adversarial system of Justice which India follows, the role of the Police, Prosecutor and the defence is dominant. The recommendations of the Malimath committee if implemented would increase the participation of the court in the investigation and trial process though the recommendations have not yet been implemented fully. Also, a thorough research is required to be done before the application of the inquisitorial system in India with regards to the implication of giving in hands of the judges, such supreme power to decide a case as is given in the inquisitorial Justice System.

⁴⁴ Justice Malimath Committee report, Government of India, March 2003

