



FORENSIC INVESTIGATION AND TRAIL: AN INDIAN PERSPECTIVE

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Abstract:-Three main statutes, the Indian Penal Code (IPC), the Code of Criminal Procedure (Cr PC) and the Indian Evidence Act were enacted shortly after 1857, when the British Government took over the governance of India from the East India Company, to regulate the administration of criminal justice in India. In addition, there are offences which are not dealt with in the Penal Code, but are dealt with under a number of special and local laws enacted from time to time. Some of these prescribe special procedures also. The criminal laws are supplemented by rules framed by the government, superior courts like the High Courts and the Supreme Court, and are included in court, police and prison manuals.¹ As the criminal justice system evolved, crime investigation methods underwent an incredible spread in terms of scientific infusion, as seen in the previous ten years. The identification of alleged criminals and offenders by police officers using scientific methods and procedures aids in creating a vital link between the legal system and the police force. Additionally, they consider these tangible proofs that are reliable and assess the correctness of the criminal or offender's innocence or guilt.²

INTRODUCTION: - A discipline that operates within the confines of the legal system, forensic science may make a significant contribution to advancing justice in the investigation of major crimes. Its goal is to aid people conducting criminal investigations by helping them identify and locate evidence at crime scenes and by giving them accurate information they can rely on to settle criminal and civil issues. Murder, rape, accident-related incidents, undisclosed individuals, displaced individuals, fraud-related instances, and forgeries are all considered forms of crime.³ A medical practitioner will have to frequently give evidence as an expert medical witness in a court of law to prove the innocence or guilt of an accused, or to authenticate or disprove a criminal charge of assault, rape or murder brought against an individual. A medical practitioner must remember that his responsibility as an expert medical witness is very crucial, for very often, his is the only factually reliable evidence on which the liberty or life of an individual depends. Therefore, the medical practitioner has to acquire the habit of making a careful note of all the facts observed by him, and to learn to draw conclusions correctly and logically after considering in detail the pros and cons of the case, instead of forming hasty judgment.⁴ It is essential for an expert medical witness to have a fair knowledge of all the branches of medical and ancillary sciences taught to a medical student in the course of studies. An expert medical witness is often required to invoke the aid of these subjects in the elucidation of various problems of medico-legal interest in the courts of law. He must also be well acquainted with the government orders, statutes and Acts affecting the privileges and obligations in medical practice.⁵

The police generally conduct all preliminary inquiries into offences against a person or the state and into sudden and suspicious deaths. The police is authorized to take an injured person or a dead body to the nearest Civil Surgeon or any other Medical Officer appointed and authorized by the

¹ P.C Dixit, *Medical Jurisprudence and Toxicology*, Lexis Nexis Butterworths, New Delhi, 2002, p. 16

² Forensic science under criminal law available on <https://www.peertechz.com/articles/FST-4-111.php> at 19/05/2023

³ <https://www.peertechz.com/articles/FST-4-111.php>

⁴ B. V. Subrahmanayam, *Modi's Medical Jurisprudence and Toxicology*, Lexis Nexis Butterworths, New Delhi, 2003, p. 19

⁵ Ibid



Government to undertake medico-legal examinations. Apart from the Police, District or Sub-Divisional Magistrates, and other Magistrates especially empowered by the Government, or by the District Magistrate may conduct an inquest. They may order the exhumation of a body for post-mortem examination. Should a person die while in police custody, a magisterial inquest must be held.⁶ A Medical Officer's examination report is sent to the Investigating Officer (IO) of the case. In cases in which reasonable suspicion rests against an accused person, a magistrate will require the attendance of the reporting medical officer at his court, to make a deposition in the presence of the accused. The Medical Officer may be cross-examined if the accused, or his representative, thinks fit. A medical report cannot be admitted as evidence until it has been deposed to and recorded anew by the magistrate in the presence of the accused. The Law often requires medical men to assist it in laying bare the facts in connection with offences against the person or rights of the individual or of the community. Medical practitioner is, therefore, liable to be called upon at any time to give evidence as a medical jurist. It is consequently advisable that he should learn to look from medico-legal standpoint upon such of his cases as may possibly become the subject matter of judicial investigation He should note carefully everything likely to be of medico-legal importance.

CRIMINAL COURTS IN INDIA

As per Code of Criminal Procedure, 1973 (Sec 6) the various classes of criminal courts are:⁷

- (a) High Court
- (b) Sessions Court
- (c) Assistant Sessions Court
- (d) Courts of Magistrates—Chief Judicial Magistrate
- (e) Courts of Magistrates—Chief Metropolitan Magistrate
- (f) Judicial Magistrates-1st Class.
- (g) Judicial Magistrates-2nd Class.
- (h) Metropolitan Magistrates-1st Class.
- (i) Metropolitan Magistrates-2nd Class.
- (j) Special Judicial Magistrates
- (k) Special Metropolitan Magistrates
- (l) Juvenile Court/Juvenile Justice Board

a) **High Court:** A High Court is the highest court in a State. A single High Court may cover more than one State. In criminal cases, High Courts hear appeals and confirm death sentences passed by lower courts. Even if the verdict of a lower court is not challenged in cases where the death sentence has been awarded, the High Court has to confirm the sentence before it is executed.

b) **Sessions Court and Additional Sessions Court:** A Sessions and Additional Sessions Court may award any punishment authorized by law. A death sentence awarded by it has to be confirmed by the High Court (Cr.P.C. Secs. 6, 7, 9, 28, 366)

c) **Assistant Sessions Court:** Such a court may award any punishment authorized by law except a death sentence, sentence of life-imprisonment or imprisonment exceeding a period of ten years (Cr.P.C. Secs. 6, 7, 9, 28 (b))

d) **Courts of Magistrates—Chief Judicial Magistrate :** They are appointed by the High Court and are empowered to award any sentence authorized by law except a death sentence or life imprisonment or imprisonment exceeding seven years (Cr.P.C. Secs. 11, 12, 29).

e) **Chief Metropolitan Magistrate:** They are appointed by the High Court and are empowered to award any sentence authorized by law except a death sentence or life imprisonment or imprisonment exceeding seven years (Cr.P.C. Secs. 11, 17, 29).

⁶ T.D. Dogra, Abhijit Rudra(eds.), *Medical Jurisprudence and Toxicology*, Delhi Law House, New Delhi, 2008, p. 6

⁷ Id at p. 9



- f) **Judicial, Magistrates-1st Class:** They are appointed by the High Court. They can award punishment up to three years, imprisonment and/or fine of up to Rupees five thousand only (Cr.P.C. Secs. 11, 12, 29).
- g) **Judicial Magistrates 2nd Class:** They are appointed by the high court. They can award punishment up to one year imprisonment and/or fine of up to Rupees one thousand only (Cr.P.C. Secs. 11, 12, 29).
- h) **Metropolitan Magistrates 1st Class:** They are appointed in metropolitan cities by the High Court. They can award punishment up to three years imprisonment and or fine of up to Rupees five thousand only (Cr.P.C. Secs. 11, 12, 16, 29)
- i) **Metropolitan Magistrates 2nd Class:** They are appointed for metropolitan cities by the High Court. They can award punishment up to one year imprisonment and/or fine of up to Rupees one thousand only (Cr.P.C. Secs. 11, 12, 29)
- j) **Special Judicial Magistrate:** When requested by a State Govt. or the Central Govt, a High Court may point a person who possesses requisite qualification or experience in a particular category of cases as a Special Judicial Magistrate. A Special Judicial Magistrate may be granted the powers of a Judicial Magistrate 1st and 2nd Class. The Appointment is for one year only (Cr.P.C. Secs. 11, 13, 29).
- k) **Special Metropolitan Magistrate:** A Special Judicial Magistrate may be granted the powers of a Judicial Magistrate 1st or 2nd Class. The Appointment is for one year only. The area of jurisdiction of such a Magistrate may exceed the limits of the metropolis (Cr.P.C. Secs. 11, 13, 32).
- l) **Juvenile Court/Juvenile Justice Board:** The Juvenile Justice (Care and Protection) Act of 2000 has provided that a juvenile is a person who has not completed eighteenth year of age. Such an offender is to be produced before the Juvenile Justice Board. It consists of a Metropolitan Magistrate or a Judicial Magistrate of the first class, and two social workers of whom at least one shall be a woman. The Board shall enjoy all powers conferred by the Cr.P.C., 1973. Where an inquiry into a juvenile offender has been initiated, and the offender ceases to be a juvenile, the inquiry shall continue nevertheless in the same Board. The Magistrate is designated as the principal magistrate of the Board (Sec. 3, 4).⁸

PROCEDURE IN COURT

a. Summons or Subpoena

The medical man, when required to give evidence, is summoned to attend at court by a summons or subpoena, a writ commanding attendance under penalty. A Subpoena must be complied with punctually. Non-compliance in a civil case may render him liable for damages, whereas in a criminal case it might result in a fine or imprisonment.

Summons is classified as:

1. Subpoena Ad Testificandum—by which a witness is summoned to give evidence.
2. Subpoena Ducts Tecum—by which a witness is asked to produce documents.

A summons is issued in writing in duplicate, is signed and sealed by the court. It may be served by post or personally by a police official. It may be sent to a witness through the head of a Government office or whose jurisdiction he resides (Cr.P.C. Secs.61-69)

A witness may be summoned to attend two courts on the same day. Should one of the courts be a civil court and the other a criminal court, he must attend the criminal court and inform the civil court in writing of his must inability to attend, citing the other summons. In case both courts are civil or criminal courts, he should first attend the higher court. In case both courts are of the same status he should first attend the court from which he received a summons first, and then attend the second court, or inform It in writing his inability to attend giving the reason.

⁸ T.D. Dogra, Abhijit Rudra(eds.), *Medical Jurisprudence and Toxicology*, Delhi Law House, New Delhi, 2008, p. 11
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Failure to attend a court summons may result in a warrant of arrest (bailable non-bailable) to compel attendance by a witness (Cr.P.C. Sec. 71).

b. Oath or Affirmation

In entering the witness box, and before his evidence is taken, the witness will be sworn. The form in which the oath is administered will depend on the religion of the witness. The Court will hand to the witness a book the witness regards holy and speak the words of the oath. The witness will repeat the words clause by clause, holding the book. This is a legally binding declaration to the effect that the witness "will tell the truth, the whole truth and nothing but the truth". In England the words are "I swear by Almighty God that the evidence I shall give to the court touching the matters question shall be the truth, the whole truth and nothing but the truth".

A witness objecting to the oath will give his evidence on affirmation as follows : "I, A.B., do solemnly, sincerely and truly affirm and declare that I shall tell the truth, the whole truth and nothing but the truth".

c. Perjury :

The purpose of the oath or affirmation is to compel a witness to state the truth. Failure to be truthful under oath constitutes perjury. Perjury is willful utterance of falsehood under oath and makes a person liable to be prosecuted under Sec. 193 1.p.c]

CRIMINAL INVESTIGATION

Criminal Investigation plays the pivotal role in keeping law and order in a society. It establishes *corpus delicti*. It identifies the culprit (and the victim). It finds evidence to link the criminal with the crime and the innocence of the innocent. The process involves mainly the following entities:⁹

- The crime
- The crime scene
- The criminal
- The investigator
- The witnesses
- The material Clues
- The situations
- Pertinent Law
- Process

Suspects, against whom there is a prima facie case of committing a crime, are arrested and kept under custody unless they are on bail or have obtained anticipatory bails. Usually, they are put under judicial custody if the detention is expected to be long. There are no separate jails for the detenues and prisoners under trial. They are often put along with the convict.

Criminal investigation involves understanding the nature of the crime and the criminal for effective results. The investigator cannot carry out the work single-handed. A number of specialists assist him. Crime, in sociological parlance, is deviant behavior of a person vis-a-vis the established or accepted standards of behavior of a society. The deviance is determined by social, religious, educational and political norms. It is time variant, region variant and affected by the religious beliefs and social practices of the group in which the incident has happened.

For orderly, normal and proper societal functioning, crime has legal concept, delineations. It is an act of an individual or individuals which involves breach of the established rules or laws, usually enacted law: national or international laws; or, the rules and norms of a functional group, society or of a community. The crime as a legal concept varies from country to country, society to society and even from locality to locality Examples; Gay marriage is no offence in some countries, while in others, it is unlawful.

⁹ B. R. Sharma, *Forensic Science in Criminal Investigation and Trials*, Universal Law Publications, Delhi, 2014, p. 53



Crime has been classified variously. The common traditional classification divided the crime into two main classes:

1. Offences against person.
2. Offences against property.
3. Crimes against State

The crimes have also been grouped (classified!) into various categories in the Indian Penal Code. The offences have been grouped into chapters (Chapters V to 001I) and the nature of the crime and the punishments thereof have been discussed.

The National Crime Record Bureau (NCRB), Ministry of Home Affairs, Government of India has also classified the crime via victimology. The major classes give by the NCRB are:

1. Violent Crimes
2. Crime against 'Women
3. Crime against Children
4. Crime against Scheduled Castes and Scheduled Tribes
5. Property Crimes
6. Cyber Crimes.

IDENTITY OF CRIMINAL

Any person who commits a crime is a criminal. In legal terms it becomes complicated. In law, a person committing a crime is not a criminal unless a court finds that the evidence produced proves that he has committed the crime beyond reasonable doubt and he (the judge) declares him a criminal. Till such pronouncement the person is just a 'suspect' or an 'accused.' The police suspect an individual(s) for committing a crime; investigate the crime to identify the criminal (and the victim sometimes), to find evidence against the suspect; and to dub him as an 'accused', If it finds sufficient evidence against him, it goes to the court with the evidence. The court decides whether the evidence produced by the prosecution is sufficient to identify him as a criminal beyond any reasonable doubt and the accused is culprit. If the evidence is insufficient the accused or the suspect is innocent. Thus, most of the criminals continue to be non-criminals. Only legal conviction of the accused for his criminal act brings him the epithet of 'criminal' in legal terms.¹⁰

The identity of the perpetrator of a crime and linking him with the crime are the major tasks in criminal investigation. The following pieces of evidence help to identify the criminal:

1. Confession of the culprit
2. Identification of the culprit by eyewitnesses
3. Portrait Parle, Artist's sketch, identity Kit Sketch or Photofit photograph built on the description given by the eyewitness
4. Interrogation of the culprit and the victim
5. Evidentiary dues the culprit leaves at the scene, with the victim, on the discarded weapon of offence, on the route or in the vehicle used in the commission of crime.
6. Evidentiary dues the culprit picks up from the scene, from the victim, from the discarded weapon of offence or from the vehicle used in the commission of crime
7. Circumstantial evidence
8. Acts of commission and omission and behaviour of the suspect after the committing the crime.
9. Motive(s)
10. Post-incident activities

The investigating officer(s) interrogates the subjects, locates the clues, collects them, get them evaluated and collates the total evidence to identify and link the suspect with the crime. He often

¹⁰ B. R. Sharma, *Forensic Science in Criminal Investigation and Trials*, Universal Law Publications, Delhi, 2014, p. 58
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procures experts' help in these processes. Forensic Science assists criminal investigation in all its varied aspects and provides evidence to identify the culprit and to link him with the crime.

The police are the main organization to investigate crime. Some persons employ private investigators also. The police and other investigators find answers to the above questions: establish corpus delicti, identify the culprit, locate, collect, preserve, evaluate (or get evaluated) evidentiary dues and collate the total evidence: oral and circumstantial including physical evidence to link or de-link a suspect with the crime beyond reasonable doubt.

The police investigators are police officers of status which the government fixes. They are also called Investigating Officers (IO). They use the departmental network of intelligence which informs them about the activities of the various relevant suspect criminals and the likely explosive situations and happenings which can lead to crime.

THE INVESTIGATOR

Major tasks of the investigating officers in the investigation of crime are:¹¹

1. Examine the situation at the scene of occurrence.
2. Guard the scene.
3. Record the scene
4. Locate, collect, preserve and maintain the integrity, authenticity and continuity of the material evidence including the scene of occurrence
5. Assess the need of expert and other help and procure the same.
6. Ascertain the possible culprit and arrest him immediately.
7. Interrogate the men involved individually: the victim(s), the culprit(s) and the witnesses.
8. Get the evidence evaluated from the specialists concerned.
9. Collate the total evidence.

The task of an investigating officer is tough and taxing. He has to be:

- Intelligent to anticipate and to understand the mechanization of the criminal.
- Alert and physically fit to guard himself against the sudden attack of the criminal.
- Hamadan (Know-all person). He has to know investigation techniques, human psychology to understand the mental working and behavior of the men involved and law so that he does not trespass the legal and human rights.
- He has to be go-better to get cooperation of the various individuals including that of the culprit and his near and dear ones.

The men involved in a crime are the criminal(s), the victim(s), the witnesses He arrests the culprit if they are identified and are available. He segregates the witnesses, and the culprits and later interrogates them. He carries out detailed interrogation of all the persons who know something about the crime. He is assisted in the interrogations by experts in Forensic Psychology.

Various types of scientific expert are helping the investigator in his investigational activities increasingly. In fact the societal sea change is making the scientific methods of investigations indispensable. They are not costly in terms of the total cost of the investigation and trials. Governments are encouraging, the change over because non-scientific investigations are increasingly bringing in investigative failures and hence the public wrath. The following Forensic specialists help:

1. **Crime Scene photographer and videographer:** He records the some permanently and makes it mobile. Even the judge can 'visit' the some in the courtroom. He records the nature and position of the evidence also, which help to reconstruct the crime correctly.
2. **Medico-legal Expert:** He deals with the dead apt sometimes won ex injured. He ascertains the factum of death, the cause of death, the time of death and a lot of other relevant information especially about the identity of the victim and personality of the culprit. His report is a great help in the reconstruction of the events of the occurrence.

¹¹ B. R. Sharma, *Forensic Science in Criminal Investigation and Trials*, Universal Law Publications, Delhi, 2014, p. 62
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3. **Forensic Specialist:** He is an all-rounder expert. He is indispensable and should be associated with most of the criminal investigations, whenever possible.

4. **Miscellaneous Experts:** Other experts who help the criminal investigation are Fingerprint Experts, Explosives Experts, Arson investigator and soave others.

In short, Forensic science has come up in a big way to assist criminal investigation. It helps:

1. To establish corpus delicti.

2. To interrogate suspect, victims and even witnesses to get at the truth Hypnosis, Psychological Detection of Deception (lie detection), Naito-analysis and Brain-Printing has revolutionized the police interrogation saving time, money and effort and providing far superior results. The scientific methods of interrogation have made the interrogation humane and legal, eliminating the notorious III-degree methods; which sometimes proved disastrous.

3. To fix the identity of the culprit, the victim, the witness beyond all reasonable doubt. Fingerprints have been serving criminal investigation for more than a century now for definite identity of the subject. But DNA profiling has brought the real revolution in the last two decades of the last century. The identity of any person can be fixed from the tiniest body material, even from a single hair shaft or root. And the culprit is bound to leave his body material almost invariably, at the scene. A rapists even in a gang rape can be identified individually without mistake

4. To link the culprit with the victim, with the scene, with the weapon of offence, with the vehicle used in the crime.

5. To reconstruct the sequence of events.

6. To provide leads to the criminal.

7. To indicate the sources/locations of evidence.

8. To dank the innocent accused.

Forensic science has indeed arrived! It facilitates criminal investigation in all its varied facets and plays the pivotal role in keeping law and order in a society. Forensic science has become an inseparable partner of criminal investigations and the two will never part.

FORENSIC SCIENCE IN TRIALS

Modern trials can be divided into two categories for our purposes: criminal trials and civil trials. The former relates to crimes and criminals. Usually, government is a party to such trials. The latter relates to civil cases usually relating to property, claims and other non-criminal disputes. The Criminal Procedure Code and the Civil Procedure Code regulate criminal and civil trials respectively.¹² There are two types of criminal trials: adversarial and inquisitorial trials. In the former the suspect is accused and evidence is produced by the accusing party (usually government) to prove the guilt. The accused defends himself by producing defence evidence and arguments to negate the incriminating evidence. The judge weighs the evidence from both sides and decides the guilt or innocence of the accused.

In inquisitorial system the judge also act as investigator, collects evidence, interrogates witnesses and the accused. Both the prosecutor and defence lawyers have limited role to play in this system.

In India the adversarial system prevails. Both the parties try to put up such evidence which favours them. Presumption of innocence, burden of proof on the prosecution and cross-examination of witnesses by the defence are the hallmark of the system. However, moneybags hire loudmouths and often win the day.

In our adversarial system of trials, as the burden of proof lies on the prosecution. The person facing the trial need not say a single word about the crime, his involvement or his innocence. The prosecution must prove the case beyond reasonable doubt. The proof often falls short of the dictum 'beyond reasonable doubt'. The benefit goes to the accused. Many a criminal are thus let loose.

Certain court conventions favour the accused under trial. They are:

¹² B. R. Sharma, *Forensic Science in Criminal Investigation and Trials*, Universal Law Publications, Delhi, 2014, p. 100
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- The oral evidence is the best evidence
- Hundred culprits may get acquittal but no innocent person should get conviction
- The proof in the trial should be beyond reasonable doubt.
- The benefit of doubt goes to the accused. He gets acquittal

CONCLUSION

The employment of these technologies in judicial proceedings and criminal investigations received more attention in the Indian case. The deployment of crime detection technologies will make the system more effective, according to commissions established to study criminal justice reform. The relevant laws have occasionally been updated to allow for the use of forensic technologies in crime investigation and prosecution. However, it may be claimed that the current regulations need to be altered since they are flawed. Additionally, because of their conservative outlook, courts are hesitant to depend on empirical evidence or other defects that exist in the evidence that is offered in court and prohibit them from relying solely on it. Equal justice is the main tenet of the criminal justice system.¹³ Forensic science is useful to the criminal justice system since it is a scientific methodology. In order to advance, we must fix the problems we currently have. At the same time, it's important to make sure that law enforcement and investigative organisations once again recognise and utilise forensic science as a comprehensive resource for problem-solving. It is clear that this technique, rather than limiting it to a one-dimensional reactive procedure, is integrated within a context that enables an understanding of the input that a specific type of evidence may provide meaningfully in terms of sub-source, source, operation, or offence-level proposals for a given collection of case-specific circumstances. a maintained but interpreted method of evaluating forensic science evidence that is relevant to a particular case.

¹³ Available on <file:///C:/Users/user/Desktop/Forensic%20science%20under%20criminal%20law%20-%20iPleaders.html> at 19/05/2023.s