

Executive Summary

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The need for better administration of Criminal Justice has been felt by humanity since the dawn of civilization and continues to be the goal of human endeavour. One of the essentials of administration in modern democracies is the system of Criminal Justice. A number of institutions have been developed in course of time to administer justice to the people. In the operative part of the system of Criminal Justice there are four distinct components or constituent elements, namely; the Police, that is the investigative agency; the Prosecution, that is the agency to pursue a case in a court of law on behalf of the society; the courts, that is the Judiciary to try and decide about the guilt or innocence of a certain person and the Prison and correctional institutions.

I. The fundamental functional basis for the Criminal Justice System is the 'law of the land'. The very process of law in a democratic society ensures a measure of public sanction for law through the consent expressed by their elected representatives. The entire criminal justice system in our country therefore revolves round the Criminal Law enacted by the Union Parliament and the State Legislatures. After laws are made by the legislative institutions their enforcement is taken up by various agencies set up for the purpose by the Government. The Police steps in at this stage as the primary law enforcing arm of the state-machinery. Enforcement by Police is primarily an exercise of taking due notice of every serious infraction of law as soon as it occurs and then proceeding with ascertainment of the connected facts thereof including the identity of the offender. This particular task in the system of Criminal Justice is aptly called as '**Investigation**'.

II. **Object of the Study:** Quality of the governance and peace is assessed by just one measure, i.e., the conviction rate. It is alarming that the present conviction rate is approximately 4%, while rate of the incidence of the crime is always increasing. Because of this the criminal justice process is now at cross roads and is apprehended as almost on the verge of collapse. In this regard the Justice V S Mallimath Committee has suggested seven years ago that the entire criminal justice system needs an over haul. This research work is a modest step in quest of suggesting improvement of the investigating system in direction of overhauling the system in direction of those suggestions. The researching NASLAR team has selected the first stage of the criminal process i.e., investigation and tried to analyze to what extent a defective investigation will lead to a wrong acquittal and also to make an enquiry into various other factors impacting the process of investigation such as delay in filing of charge sheet, illegal search and seizure, improper recording of 161 statements etc. The NALSAR team also focused on understanding the kind of hurdles the key role players in the field of investigation are experiencing in the field and to find out the ways and means to gear up the system towards a new direction with new goals and objects of better administration of criminal justice machinery. All through the process the team also was also looking at the aspect of whether there is any need in changing the present criminal procedure relevant to this aspect.

III. **Latest statistics of crime from Andhra Pradesh:** The total number of cases under investigation in the entire state as on 30.04.2010 is 58876 cases, in Hyderabad City, 12034 cases and in Cyberabad 2842 cases. Pending trial cases: Total no of pending trial cases in the entire state as on 30.04.2010 for the year 2010 is 322176 cases, in Hyderabad 261116 cases and in Cyberabad 31133 cases. As on 31.05.2010 for the year 2010 IPC cases registered are 40079 cases out of which in 2430 cases the accused was convicted, in 488 cases the accused was acquitted and 14980 cases are pending for trial. For the year 2009 total no of registered cases are 91040. Out of which the accused was convicted in 13549 cases, acquitted in 6182 cases and 50385 cases are pending. Total conviction percentage in Andhra Pradesh for the year 2007 is 37.81%, for the year 2008 the percentage is 42.88%, for the year 2009 the percentage is 47.53%, and for the year 2010 the percentage is 55.11%. There is an increase in the conviction percentage from the year 2007 to 2010 but the rate of increase is dismal.

In the city of Hyderabad including Cyberabad, there is a significant increase in the incidence of crimes such as murders, murder for gain, culpable homicide, dacoities, robberies, burglaries and riotings (detailed statistics are available in the annexure –V).

IV. **Methodology Adopted:** The project was completed in five stages.

- In the **first stage** the research team studied the literature relating to the investigation. The team could get a fair understanding about various kinds of investigation followed in various special laws apart from the general criminal procedure, CrPC. The powers given to the police department by the law to conduct the investigation are enumerated and analysed. Various technical aspects involved in the forensic investigation were also focused upon. The research team studied all the National Police Commission reports to learn the suggestions made by them to improve the quality of investigation.
- In the **second stage** the research team studied cases decided on various issues pertaining to investigation by the Supreme Court from 1950 to 2009. The case summary is provided in the part –II of the Report. It is found in the survey of cases that the police report consists of two parts. The first part is confidential and is only submitted for the courts perusal. The second part of report is open to the public. The research team perused the records of one year i.e. 2006-2007. The research team perused the records of grave offences such as Murder, Rape, Dacoity, Kidnap and Abduction. The team took the permission from the Chief Metropolitan Sessions judge to study the records. The team has further classified the cases to be perused on the basis of conviction and acquittal. The team has gone through the records of the cases in which the accused was acquitted. It is found that the investigating officers generally file all relevant and required documents. But there is delay in the submission of the same. The team could find all documents like sketch of the crime scene, doctor's report, any other documents relevant. It is found that in all cases there is an inordinate delay in filing the or forensic experts' report.

- In the **third stage** the research team studied the process of investigation followed in other countries such as United States, United Kingdom, France, Switzerland, Germany etc and tried to understand the system of Investigation existing there and noted the important points of difference from the Indian System.
- In the **fourth stage** the research team has conducted empirical study in Hyderabad Secunderabad districts. Team has concentrated on important areas of investigation such as FIR, Section 161 statements, maintenance of case diary, filing of charge sheet, medical reports from forensic department etc,. The team has distributed questionnaires to all police stations, courts, prosecutors and some criminal law practitioners. 60 % of the people only responded to our questionnaires whereas many of the recipients did not respond to it. The data received from the key role players was analysed and interpreted by the research team.

The following are the observations made by the team from the data interpretation of the study.

1. At least 40 % of the cases are lost because of the faulty investigation.
2. Legal advisor is needed to be appointed in all police stations to help the investigating officers. This helps the Police in collection of correct evidence and to not to waste the time in collecting unwanted evidence or inadmissible evidence.
3. Regarding the recovery of stolen property the police officers had a problem of admissibility of evidence if the identity of the goods is changed.
4. Most important cause for the delay is non cooperation of the public in general.
5. To collect the evidence, the 'clues' teams are working only in city limits. The number of Clues Teams have to be raised so that investigation is improved in districts also.
6. Many cases registered in the police stations are of civil nature.
7. The delay in filing of charge sheet is one of the reasons for the wrong acquittals.
8. The case diaries are not maintained properly for lack of time and it is also affecting the out come of a criminal case.
9. Some formalities mentioned in CrPC such as getting independent and respectable witnesses is difficult and because of not getting them the genuine cases are also lost.

10. On some issues the judiciary and the police has expressed diametrically opposite views such as recovery of the stolen property. The police pointed out that the court rejects the ingot recovery, where as the judges said; 'if the entire process is explained to the court along with sufficient proofs, for example, if a gold chain is lost and the person melts it, then if the police can produce the evidence that the chain was melted in some goldsmiths shop and produce evidence to that effect they will admit the ingot recovery'. In the same manner views about recording of section 161 statements are also conflicting; judges say that police doesn't do it properly and the statements recorded are the statements of the police and not of the witness. This is the main reason for loosing the cases. Whereas the police simply deny this and say that they always record the statements properly.
11. The crime scene is disturbed by the people generally by the time police reaches the crime scene because of which crucial evidences like finger prints, hair follicles and other things are lost.
12. Delay in forensic experts in sending the medical reports to the police leads to delay in the submission of charge sheet.
13. Witnesses turn hostile and don't cooperate with police during the trial.
14. Judges felt that interference of media in matters of investigation should be restricted otherwise it would hamper the investigation.
15. Judges opined that in cases of damage to public property no charge sheet is being filed.
16. Scientific investigation has to be developed and used in all cases.
17. In the **fifth stage**, a consultation workshop was conducted, where prominent and experienced persons from different fields of criminal justice machinery, such as High Court Judges, Senior Public Prosecutors, Senior Criminal Lawyers, senior police officers participated in the workshop and contributed valuable suggestions from their rich experience.. The suggestions emerged in the workshop are the following:
 - i. In Murder cases statements recorded under sec 161 along with the inquest report, statements recorded through audio video electronic means shall be submitted to the court immediately. (Objective: This will help in preventing the alteration in the statements by the witnesses. By following this procedure the scope of manipulation in the statements could be minimized to a great extent. The acquittal rate is high because of hostile witnesses).
 - ii. The general practice in recording of statements is that it is done at the time of the inquest, and produced for the first time when the charge sheet is filed. A better practice would be to record the

statements audio visually and transmit the same to the competent court simultaneously. This will help avoid any possibility of manipulation.

- iii. Separation of law and order from the wing of investigation is essential at organizational level. (Objective: The investigative branch will have free time, independence and expertise to focus on the investigation only. Lack of sufficient human resource is sited as reason for not doing it. Senior Police officers stated that separation was experimented in Cities like Hyderabad and proved good. For mofussil areas, it was felt that the two functions were interlinked deeply for which separation may not be a solution.
- iv. If the witnesses are taken to nearest magistrate to record their statement before the magistrate, witnessed may feat to deny. Fear of law and some legal consequences must also be instilled in the mind of witnesses so that they do not deviate from the statements they have made before. However, sometimes even decoy statements are recorded- forcing witnesses to stand by which might be detrimental to the general interests of justice.
- v. All acquittals cannot be attributed to weak investigation. Because most of the cases are settled before the stage of conclusion reached. The consumption of long time in trial, and repeated attendance and waiting at court will dilute the initial enthusiasm of complainant and witnesses to fight the case, and that will force them to get into some sort of settlement. In the process justice is casualty. Even otherwise, witnesses turn hostile and depositions water-down the earlier witness, making courts become helpless but to acquit.
- vi. Record reasons for the delay for registering FIR itself on the day of registration itself.
- vii. Create awareness among police personnel as to relaxed practice of registering FIR. (Lack of awareness among the police personnel as the procedures and notifications relaxed the process of registration of FIR even in absence of seniors is main reason. Since almost 55% cases are civil in nature, the police personnel do not bother to know the need for registering the FIR without looking for senior. Delayed registration often results in diluting gravity of offences such as theft or extortion to something that is not a grave crime. In rural areas specifically, false accused are often included in FIR. This is why earlier, village local body used to record and forward the complaint. Absence of the senior at SHO need not be a reason for delay because it is possible to consider HC or Senior Constable if the seniors are not available as SHO, for registration.)
- viii. Use the Information Technology to communicate the copy of FIR. There should be a nodal agency to supervise this activity. Sending FIR by Fax and email to the SDPO, and considering SP as

- responsible officer regarding complaints, will solve the delay problem. But anonymous FIR might pose problems in such a case.
- ix. There must be a person or an independent & impartial agency to help the illiterate in processing complaint. (Reason: Where the IT facilities are not available and people are poor and illiterate, this measure does not go a long way in redressing the problem. The unfortunate reality today is that the police is perceived as promoting the interests of the rich.)
 - x. The SDPO has to first register the FIR and then proceed to the scene of offence, where the job of SDPO is reconstruction of the scene of offence. But this must follow and not precede registration of FIRs. In civil cases, most of the proof is documented so this is not such a great problem. But for crimes, Law does condone delay of even one or two days, even if police take time to verify bona fides. This is due to unnecessary over anxiety to make case strong, they make case very weak.
 - xi. Separating high profile accused cases from others is unconstitutional as it will be in violation of principle of equality under Article 14.
 - xii. Measures to ensure Police accountability are very important
 - xiii. Practice of waiting for permission of superior officer for registration has to be immediately curbed. Superiors exercise this power to permit indiscriminately which is very bad in law. Unfortunately the prevalence of malpractice is due to connivance and lack of supervision and it must be remedied. This practice is strictly followed in some special legislation such as Prevention of Atrocities against SC, ST Act. Under no Act is permission a requirement.
 - xiv. Encourage written complaint so that minimisation of gravity of offence is curbed. The problem of the minimisation of the gravity of any one particular offence generally arises only in the case of an oral complaint – the question does not arise in a written complaint.
 - xv. There must also be institutional checks in both the law and the police manual to rectify the charge if the gravity of the offence has been minimised.
 - xvi. It should be mandatory for issuing receipt for complaint or furnishing a copy of FIR immediately would serve the purpose.
 - xvii. Further training to police as to their attitude with the people is most important
 - xviii. A related issue is accessibility to police stations is a logistical problem, a very real one, and must not be ignored while dealing with substantive lacunae in the law. It was highlighted that the falsity of the complaint is not to be tested or verified when an FIR is being lodged. Yet, this is often done. Often the police feel that they are being diligent by making sure that the FIR is *pukka*. So time expended on travelling and investigation complicates the

issue besides causing delay in the registration of FIR. The suspicion that police might have tutored the witnesses and the complainant to give information according to their convenience will arise. This suspicion will be highlighted in cross examination, which weakens the case.

- xix. The problem with the above practice is that even though the statement of witness is truthful he might not be believed later in a court of law due to the delay surrounding registration of the complaint. This results in an acquittal for the accused. A higher rate of conviction will involve timely lodging of FIRs. In such a circumstance, the whole village will know who has committed the crime, and an acquittal will only serve to erode their faith in the system.
- xx. Practice of seniors instructing juniors not to register case until the superior advises or permits has to go. Only when the people come with a recommendation from a “contact” is this done without hitches. Often the senior officers themselves direct that no complaint should be registered without their assent.
- xxi. It must also be noted that there is nothing making it mandatory for FIRs to be recorded in English. This must not deter the officers of a lower rank in allowing for registration of complaints.
- xxii. As on today there are 3,25,000 cases pending trial in AP. However there are 394 lower courts only to hear this high number of cases. There are 25,000 non-bailable warrants that have been issued at different times. The number of acquittals is so high that people apprehend that we are a drifting democracy. According to the Malimath committee, for rape cases the conviction rate is 10.3%; 23% for murders, 50% in cases of Robbery (but mainly brought about by admissions) and 7.5% for cheating. These low rates are indicative of a failing institution. In the UK these rates are higher because there are tie-ups with NGOs to provide for extensive counselling and support to the victims as well as witnesses.
- xxiii. There is need for counseling at police stations for processing complaints.
- xxiv. There must be victim-witness support programs in each and every police station limits.
- xxv. On section 161 statements, it was suggested that the provision to get them signed by the person making them should be incorporated into the present code of criminal procedure. This is in practice in most of the developed countries. People abroad are shocked that we are still following the age old law. This was one of the important recommendations of the Malimath Committee. Videographing can help to prove that there was no coercion while recording these statements. However, the efficiency of this safeguard is highly questionable.

- xxvi. Genuine and prompt entries in General Diary under section 172 are essential.
- xxvii. An increase in manpower and increase in number of Scientific Experts for all clues teams in entire state is essential.
- xxviii. Investigation can also be improved by providing Travelling allowance/dearness allowance to witnesses which might act as an incentive to people to come forward and give evidence.

V. On the basis of the entire study the research team is forwarding the following suggestions:

1. **Appointment of a legal officer to assist the Investigation:** A legal officer may be appointed for all levels of the police to render advice and guidance on the legal aspects of investigation to strengthen the utility of the documents collected by the Investigating Officer.
2. **Alternative to the appointment of Legal Officers:** as an alternative to the appointment of legal officers the state can allow the Investigating officer to consult the prosecutor during the investigation and take advice, which will help to improve the legal quality of investigation. This is suggested inspite of the SC's declaration that prosecutor shall not interfere with the investigation. In our research it is found that the police officers don't know the nuances of the law of evidence and the case cant stand the vigorous cross examination of the defence counsel.
3. **Setting up of prosecution houses:** Special provisions shall be made to protect the witnesses in the Courts of Justice. There shall be a provision for a "Prosecution house" in the court complex with police protection, so that the complainant/victim is not left at the mercy of the perpetrator of crime or exposed to their threats and terror for lodging of a complaint or deposing against. This move might help to minimize the hostile witnesses problem.
4. **Networking the Police Stations with the Criminal Courts:** Networking all the police stations and linking with trial courts will improve the situation a lot as there will be immediate transmission of documents, by which possibility of manipulating or changing the documents would drastically reduce.
5. **Verification of the truth of FIR:** At the outset the police officers present at the police station should immediately register the complaint without probing into the falsity or otherwise of the complaint. Suspecting the complainant should not become a stumbling block in discovering reality. The falsity of the complaint is not to be tested or verified by the police officers at the threshold of FIR lodging.
6. **Recording Reasons for delay by IO:** If the IO records the reasons for the delay in lodging of FIR if any, that might help the prosecution in getting the delay condoned. While conducting the survey of cases in number of cases we have observed that the defence counsel raised an objection whenever there is a slightest delay in lodging of FIR and in some cases the cases were quashed on this ground. By observing the above precaution this problem could be solved to some extent.

7. **Protection of the crime scene:** Besides reaching the scene of crime, the Investigators also should see that the crime scene is not disturbed by the people generally before police reached so that the crucial evidences like finger prints, hair follicles and other things are properly secured and documented. While conducting the survey of cases in the nampally criminal courts we found that very often the crime scene is disturbed and crucial evidence is lost.
8. **Panch Witnesses:** Regarding the panch witnesses a change could be introduced in code of criminal procedure as two 'independent witnesses' instead of two '**respectable inhabitants of the locality**'. Alternatively is suggested to go for govt panch witnesses, ie. The Govt may appoint some officers as govt panchs who work under the DPP(prosecutorial system and not as a part of police department to ensure fairness).
9. **Sec 161 Statements:** The statements may be in question answer format. Now these statements are not recorded when they are stated to the police officer.the statements are mostly doctored by the IO and all the statements would more or less will be the same for all the witnesses in a case. When these statements are shown to the witness for the first time in the court to verify they are obviously are not in a position to identify their own statements and the court declares the witnesses as hostile or they loose the credibility. In 70% of cases the cases are lost because of improper registration of 161 statements. This move might help to improve the situation.
10. **Hostile Witnesses:** To avoid the problem of witnesses turning hostile and frustrating entire criminal justice system including the efforts of the police, every effort should be made to support the witnesses, secure their morale, provide safety to their physical being and make it easy and respectful for them to depose truth in court hall. Witness support systems, honouring their needs and respecting their time is needed.
11. **Witnesses shall not be summoned by courts:** According to sec 100 (5) panch witnesses should not be summoned to the court and shall not put to unnecessary harassment. Awareness about this provision shall be given to the public to encourage them to come forward for being a witness.
12. **Mandatory recording of statements of witnesses in the presence of the Magistrate:** All important witnesses to grave offences such as murder, rape, dacoity etc shall be immediately and mandatory taken to the nearest magistrate to record their statements before magistrate. This might help the prosecution in preventing the witnesses from turning hostile.
13. **Police –Prosecution:** The coordination and cooperation in between prosecutors and police has to be established in a methodical and meticulous manner at micro and macro level. There should be no speedy communication of important documents to the prosecutor in the right time so as to remove suspicions about genuineness of the case to secure the convictions.
14. **Prompt filing of Charge-sheet:** There should be a very comprehensive and cohesive effort by all means to drastically reduce the delay in filing of charge sheet. The research team found that this is one important reason for the wrong acquittal.

15. **Case Diary:** Every arrangement should be made to see that the case diaries are maintained properly for any reason such as lack of time as that affects the outcome of a criminal case.
16. **The problem of Stock Witnesses:** Situation where stock witnesses and stock panchs or sometimes stock advocates will worsen the trial and destroy the case. We need to avoid this situation.
17. **Presence of IO in the Trial:** Investigating officer shall be present all through the trial to provide the necessary inputs to the court.
18. **Recovery of the stolen property:** Changes shall be made in the criminal procedure in order to restore the recovered property to the owner as soon as possible. At present the recovered property is sent to malkhana where it lies for years. By the time the property is restored to the owner it would become useless for him.
19. **Forensic Experts:** Since forensic evidence is growing as a significant component of every crime investigation, the number of forensic experts should be increased as those experts working in Hyderabad and Secunderabad are over burdened resulting in inordinate delay in preparing the medical report and sending it to prosecutor. It is found that this delay leads to delay in the submission of charge sheet, which destroys the case. Unanimously all the prosecutors and police officers said that there is inordinate delay in getting the FSL report. Hence it is suggested to recruit more number of Forensic Experts. They must be made available to the rural areas of the state also. This might expedite the process and strengthen the prosecution case.
20. **Collection of scientific Evidence:** Using scientific evidence is very essential. Though clue teams are working in city limits to secure scientific evidence, there is a need to increase number of clue teams to investigate the crimes in districts also.
21. **Increasing the number of Scientific Experts:** the number of scientific experts shall be increased to meet the needs of the state.
22. **Increasing the Police personnel:** The police personnel are absolutely insufficient to handle the growing rate of crimes and increasing the staff should be the immediate concern of the Government.
23. **Increasing the number of police stations and courts:** Number of courts and police stations shall be increased to the tune of the increasing population. (Mallimath committee observed that an investigating officer on an average investigates 45 cases in a year. Whereas in AP the Investigating officer is attending to 145 cases approximately in a year which is relatively very high).
24. **Training to Police Personnel (Investigating Officers):** There is need for increasing levels of awareness through intensive training in law (IPC and CrPC) besides local laws, special laws, special procedures and related aspects for Police Officers on regular basis. These training programmes shall also include aptitude test as an important component of the content. This might help the police personnel to get closer to the public and to be sensitive towards them. The standards of the training shall be raised. It is found that now the police personnel are attending the training programmes only for the sake of promotions, otherwise they are not really helpful for them for their professional life.

25. **Separation of Law and Order Wing:** This suggestion is been given by number of committees including mallimath committee and national police commissions. But the Government did not respond till today. The first step the government should take is to improve the quality of investigation to prevent collapse of the entire criminal justice system.
26. **Providing adequate funds and infrastructure to Investigating Officers:** There is a dire need to increase the allocations and resources for implementing the safeguards under CrPC and other practices such as furnishing a receipt or copy of FIR to the complainant etc. In our research we found that some police stations doesn't have stationery, mobile phones, jeeps etc. they have to depend on the local people for these bare minimum things and are obliged to give undue favours to them in future.
27. **Salaries and Allowances:** Salaries and allowances of the police personnel should increase to match their work and needs. We found in our research that the incentives provided for the IO are commensurating the challenges taken up by them.
28. **Counseling in the Police Stations:** There must be a counseling provision in police station and there shall be a psychiatrist in each Jail to counsel the under trial prisoners.
29. **Securing the cooperation of Public:** Since the members of general public are scared of the court process, they do not come forward to sign the panchnama or Inquest report. If the police officers sign it, it will loose its credibility and validity and become the sole reason for acquittal. Hence it is suggested to create awareness among the public about Sec 100(5) of CrPC where it is mentioned that the witnesses need not be summoned to the court.

The research team found that the poor or improper investigation is the substantial cause leading to wrong acquittals in about half of criminal cases prosecuted. The higher judiciary including the Supreme Court opined many a time that faulty investigation was sole cause for the quashing of charges. What came out in the research is that this conclusion is not true because the team discovered some vital weaknesses in investigation which are fatal to the prosecution. The research led to finding the following areas as grey spots which urgently require through improvement. They are: prompt registration of FIR, drafting of s161 of Statements, communication of documents to the prosecutor without any delay, need for scientific investigation, increasing strength of the cyber forensics department and infra structure, increasing the police personnel at all levels, imparting training to the police on a regular basis updating them with the developments in the technology, separating the investigation from other duties of police, providing legal assistance to the investigating officers, avoiding frequent transfers of Investigating officers, networking the police stations with the courts for the transmission of documents etc.,.