



## **Defects of Investigation and Prosecution and Its Impact on Trial Advocate**

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### **Abstract**

*The purpose of this paper is to identify the defects of investigation and prosecution and their impact upon trial, investigation and prosecution are both the main pillars of criminal justice system if one fails to perform their duty and responsibility other part fails too, both are depends upon each other. Investigations have responsibility to search of truth and prosecution has responsibility to prove the truthfulness of the truth before the court. The sound and crime free society cannot be achieved without effective prosecution and main reason due to which a very large numbers of offenders go scout-free are either Faulty investigation or ineffective prosecution. If criminal justice system fails to provide justice to the citizens frustration will increase among the citizen resultantly it leads us towards a land of lawlessness.*

*Keywords: Criminal Justice System, Faulty Investigation, Ineffective Prosecution*



## Introduction

### Justice System in Pakistan

There are two types of judicial systems one is adversarial and second is inquisitorial; both systems have been explained by the Apex court in detail in case of Watan Party V/s Fed of Pak (SC 292).

Adversarial system is a legal system where two advocates represent their parties before an impartial person or group of people who determine the truth of the case. An “adversarial process” has been defined as “a process in which parties brings a dispute before judge to prove their claim Inquisitorial system defined as “A criminal justice in which judges serves as prosecutors and have ample authority of discovery” (Advance Law lexicon, 3<sup>rd</sup> Ed 2005) in this system courts are involved in probing the facts of the case.

Pakistan have been following adversarial system since its independence. In this system upon the occurrence of crime the police probe the matter, and challan submits by prosecutor.

### History of Investigation

#### The B.C. Years

Between 8000 and 4000 B.C., violent clan rivalries were widespread. During this period, agricultural settlements emerged across the Middle East, leading to increased interaction among populations. This created land disputes and the increased potential for crimes to occur.

Sumeria grew into the first known civilization in 3500 B.C., establishing the first city-states and governments to help settle disputes.

The republic of Roman emerged in 509 B.C., with its armed forces acting as the main upholders of law and order around 500 A.D. Their visible patrols in the urban centers and rural settlements helped deter criminal activity.

Between 428 and 347 B.C., the Greek thinker Plato—who studied under Socrates—proposed that people possess a natural inclination toward virtue. This idea later shaped Christian teachings and continued to impact perspectives on justice and penal systems for generations.

Aristotle, Plato’s pupil and mentor to Alexander the Great, advanced scientific inquiry and empirical study from 384 to 327 B.C. His work laid a foundation for modern forensic techniques and criminal examination methods.

Following Julius Caesar’s murder in 44 B.C., his body underwent what is considered history’s earliest documented postmortem examination

#### The 1st Century

During the first century A.D., Greek physician Pedanius Dioscorides practiced medicine in Rome while systematically documenting botanical specimens, their therapeutic properties, and



poisoning indicators. His seminal text, *De Materia Medica*, established fundamental principles that would later form the basis of toxicological investigation in criminal cases.

The Roman advocate Quintilian made legal history by employing contemporary scientific knowledge to demonstrate that bloody palm impressions found at a crime scene couldn't have been made by a defendant in a homicide case.

As imperial authority collapsed across Western Europe, societal structures deteriorated, reviving primitive justice systems. Communities reverted to kinship-based enforcement, where extended families assumed responsibility for maintaining order. This period saw the resurgence of inter-clan violence as collectives administered justice according to their own traditions without centralized oversight.

### **The 11 Century**

In 1035 a policy introduced called the concept of *Franlenpledge*. Males above 10 were divided into groups to capture those members of clans who commit crimes, groups were supervised by a Constables, Constables were under the authority of Shire Reeve as appointed by the Crown in Shire

### **The 13<sup>th</sup> Century**

*HIS DUAN YU* (The Washing away of wrongs) The medical treaties, published by an innovative Chinese physician in 1248, represents humanity's first systematic approach to postmortem examination and forensic pathology. This groundbreaking text established foundational techniques for determining cause of death that would influence investigative methods for centuries.

Medieval scholar Saint Thomas Aquinas, while composing his magnum opus *Summa Theologica*, expanded upon Platonic philosophy by articulating the concept of Natural Law. His work posited that criminal acts constituted offenses against divine order, harming both the victim and perpetrator alike. This perspective stemmed from his belief in humanity's intrinsic goodness - a view that would profoundly shape Western legal philosophy

### **The 14th Century**

The Renaissance ushered in profound changes in how society viewed government, crime, and punishment. As part of these evolving systems, kings appointed justices of the peace to support constables and shire reeves in maintaining order. These judicial officers held significant authority, including the power to issue warrants, conduct arraignment hearings, and adjudicate minor criminal cases.

During this same period, England developed the parish constable system alongside the traditional "hue and cry" method of community policing. Towns selected male residents to serve as constables for one-year terms. When a crime occurred, the constable could raise the alarm, requiring all able-bodied men to respond immediately. This call for assistance would



spread from village to village until authorities captured the offender or resolved the emergency. The system created a network of communal responsibility that became fundamental to early law enforcement practices

### **The 16th Century**

The scientific method transformed crime investigation by introducing systematic ways to collect the evidence.

Many of the western philosophers started to discuss the concept of “social contract,” in which the role of the executive (government) and the duties of the people and sovereign were explained. People transfer their authorities to the sovereign in return for protection and prosperity.

### **The 18th Century**

The method of collecting evidence were widely accepted in this era.

Cesare Beccaria (*Italian Advocate*) published his work called “*on Crimes and Punishments*, in 1764, in this he advocated that the punishment would increase based on the seriousness of crimes.

### **The 19th Century**

The birth of modern policing occurred in 1829 with London's Metropolitan Police Service, the first organized, uniformed, and professional law enforcement body. Each officer received Sir Robert Peel's foundational *Principles of Policing*, which outlined ethical standards for the force.

In 1827, Belgian mathematician Adolphe Quetelet analyzed French crime data, uncovering connections between criminal activity and social factors like age, gender, education, and economic standing. Decades later, between 1858 and 1909, Cesare Lombroso a psychiatrist and criminology pioneer established the Positivist School, proposing that criminal tendencies could stem from psychological and biological traits.

Technological advancements soon aided investigations. In 1888, George Eastman's Kodak camera made crime scene photography accessible, while Sir Arthur Conan Doyle's *Sherlock Holmes* stories (beginning in 1886) popularized forensic science by showcasing logical, evidence-based detective work. William Herschel and Henry Faulds in early 1880, published a groundbreaking *Nature* study proving fingerprint uniqueness, laying the groundwork for modern identification methods

### **The 20<sup>th</sup> Century**

In 1901, a new procedure to detect the remains/traces of blood by the use of Hydrogen peroxide was uncovered.



At the Lyon, France Police department in 1901, Dr Locard widely known as the father of crime scene investigation, established the first crime lab, he published his famous *Locard's Exchange Principle* in 1934, in which he states that there is always and evidence to be found because everything leaves its traces behind.

The Federal Bureau of Investigation pioneered digital forensics in 1984, creating specialized techniques to analyze electronic evidence from computers. This breakthrough coincided with another forensic milestone - the first use of DNA profiling in a criminal trial. In 1987, genetic evidence secured the conviction of Tommie Lee Andrews, marking both the debut of DNA technology in courtrooms and its first successful application in solving violent crimes. These parallel developments in digital and biological evidence analysis transformed modern investigative methods In Pakistan recently in Zainab case Accused Imran was convicted and sentenced hang to death on the basis of scientific evidence and DNA test. This is the only case in Pakistan in which punishment awarded on the basis of scientific evidence.

### **The 85-page ATC order said (Jung news)**

“In light of forensic evidence, the DNA reports, photographic test and medical evidence, the court is of the firm view that prosecution has successfully established its case through its own evidence against the accused beyond any shadow of doubt,”

### **Criminal Investigation in Pakistan / Background**

The investigative framework in the Indo-Pakistan subcontinent traces its origins to British colonial rule, mirroring the policing structures established by the imperial government. This institutional legacy stems from 1878 when London's Metropolitan Police first formalized their Criminal Investigation Department (CID), creating a specialized unit for systematic case documentation and intelligence sharing. During this period of British rule over united India, law enforcement reforms gradually extended to the colony. The critical recommendation for establishing provincial CIDs across the subcontinent appeared from the landmark Police Commission report of 1902-1903. In 1905, the department was established in Punjab, having Sir Edward Lee French as its DIG. The murder case of the European girl brought immense difficulty to Punjab Criminal Investigation, for murder an Anglo Indian Shouldam was held responsible. In 1911, criminal investigation department was established under Assistant Superintendent of Police. These branches investigates the crimes using different techniques includes fingerprints, forensic laboratories (Criminal Investigation).

### **What is Investigation**

Acc: to CrPC, 1898, it includes all proceedings for the collection of evidence conducted by police officer or by any person authorized by Magistrate in this behalf (crpc 1898).



In short it is:

1. It is a proceeding.
2. It is a proceeding by a police officer or a person authorized by a Magistrate to investigate.
3. It is for the collection of evidence.
4. It is to discover whether an offence is committed or not.

### **Principles of Crime Scene Investigation**

At the heart of modern crime scene analysis lies a fundamental concept developed by Edmond Locard - the principle of mutual exchange. This forensic axiom posits that every interaction between individuals and their surroundings results in a two-way transfer of physical materials. Commonly distilled to the phrase "every contact leaves a trace," this theory forms the bedrock of physical evidence analysis.

Investigators apply this principle to establish crucial connections between perpetrators, victims, and crime scenes. Such associative evidence - encompassing fingerprints, biological samples, weapons, hairs, fibers, and similar traces - serves as the physical documentation of criminal activity. Rather than merely indicating what occurred, these traces fundamentally address the central investigative question of personal identification: "Who is responsible?"

While associative evidence connects individuals to the location of a crime, reconstructive evidence helps investigators piece together the sequence of events that occurred at the scene. Elements such as shattered glass, bloodstain patterns, bullet trajectories, and footprints can provide vital clues about the incident. This category of evidence is essential for answering the critical question: "What events took place and how did they unfold?"

### **The Objects of Criminal Investigation**

The objects of the criminal investigation becoming more complex than anyone could imagine due to the continuous state of change in the nature and conduct of criminal activity and role of investigators.

Main objectives are as follows:

- Investigate a Crime.
- Find and determine individuals involved.
- Identify, document, and safeguard evidence in crimes
- Detain suspects in crimes
- Restore stolen assets
- Build Strong Criminal cases for trial/prosecution

The foundational concept underlying criminal investigations rests on a simple truth, perpetrators inevitably leave traces of their crimes. This principle recognizes that even the most careful offenders make errors that become valuable forensic evidence.



For instance:

- A burglar might inadvertently leave fingerprints on a window or transfer textile fibers from clothing
- A sexual assailant could deposit biological evidence such as hair, skin cells, or bodily fluids
- A thief may accidentally drop personal items at the crime scene

The foremost duty of investigator is to gather information about evidence, that where it can be found, in order to extract evidence investigator has to explore many resources:

- Testimonies and confidential sources offering firsthand details
- Use of modern techniques to secure evidence
- Investigator's own training and skills

In short, almost every criminal offenses necessitate a level of investigative response. However, the depth and intensity of any given investigation are primarily determined by two key factors: Departmental Resources and department priorities.

### **Methods of Investigation**

It is mostly conducted by three most important responses: reactive response, proactive response and preventive response, the reactive response deals with offences that have already been occurred, as murder, robbery, in It investigators duties are to collect evidence, record statement of witnesses and arrest alleged offenders, the proactive response deals with those investigations in which investigators anticipate the criminal activity Investigations are also conducted as a proactive response to anticipated criminal activity, as with many vice and organized crime investigations. Proactive investigations differ from reactive investigations in two major ways: (1) The investigation is conducted before the crime is committed (rather than after), and (2) the suspect is identified before he or she commits the crime. The third response is the preventive response in which the suspect is arrested before any criminal activity.

### **Characteristics of the Investigator**

What characteristics best define a professional criminal investigator? Certainly, while standards may differ across law enforcement agencies, certain fundamental qualities consistently define professional criminal investigators. Many departments employ structured performance evaluation systems to assess these competencies when selecting investigative personnel. These assessments enable police administrators to identify candidates possessing the most critical investigative attributes (Criminal Investigation).

### **Key Investigative Competencies**

#### **1. Information Acquisition & Management**

- Crime scene processing and preservation



- Effective interviewing and communication techniques
- Intelligence gathering and analysis
- 2. Field Operations Expertise**
  - Surveillance and stakeout proficiency
  - Crime pattern recognition and analysis
  - Informant development and management
  - Comprehensive knowledge of street dynamics
- 3. Essential Personal Qualities**
  - High motivation and professional dedication
  - Emotional stability and sound judgment
  - Persistence and intellectual acuity
  - Initiative and teamwork orientation
- 4. Operational Effectiveness Metrics**
  - Arrest performance (both quantity and quality)
  - Public and victim satisfaction indicators
  - Crime reduction impact and fear mitigation
- 5. Prosecution Support Capabilities**
  - Court testimony effectiveness
  - Case conviction rates
  - Evidence presentation skills
- 6. Professional Conduct Standards**
  - Attendance and reliability records
  - Complaint history and disciplinary profile
  - Recognition and awards received
- 7. Professional Qualifications**
  - Educational background
  - Specialized training completed
  - Relevant prior assignments and experience

Investigators are specialists in their field, they are responsible for law and order, maintain peace and help in the time of need, as, emergency help, locating lost children, traffic controls. They





assumed different duties: like detecting/gathering criminal information, arrest of offender and prepare a strong case for the trial.

### **Types of Information about the Crime**

LEA's can become aware of crimes through various channels. An investigation may be initiated based on information provided to investigators or prosecutors, discovered during legal proceedings, or published in electronic and print media. The Criminal Procedure Code of Georgia does not prescribe any special format for reporting crimes to the authorities. Such information can be conveyed verbally, in writing, or through any other recorded means. Furthermore, the law does not require any preliminary verification of the source's credibility. Instead, it mandates that an investigation must commence immediately upon receiving any report of a crime.

In real-world scenarios, crime-related information goes through several steps before a final decision is made. Regardless of how the information is received whether in writing, verbally, through a phone call, or as a confession it must first be officially recorded. As per standard practice, if the information is conveyed verbally, over the phone, or through a confession, the responsible officer is required to prepare a formal report documenting the notification (Investigation Methodology). The report is officially recorded as information if the applicant confirms its validity. In Pakistan, however, an investigation formally begins after F.I.R is launched under sec 154 of CrPC.

### **Verifying Information about Crime**

The investigative process commences as soon as a crime is formally reported. Unlike prosecution, the investigative phase is not entirely at the discretion of the authorities; it is triggered by the information received about the crime. The mandatory nature of the investigative duty concerning crime-related information should not be seen as a flaw in the Procedural Code. On the contrary, this obligation, as opposed to investigative discretion, plays a crucial role in preventing the development of a culture of impunity within the state (Eileen Overbaugh, Human Trafficking)

Interviews with practicing lawyers reveal that, despite the clear provisions in the Georgia's CrPC, there is no unanimous agreement among authorized officials on whether an investigation should commence based on any crime-related information. Investigative agencies categorize such information into three main types:

- Cases where the occurrence of a crime is evident.
- Cases where the presence of a crime is uncertain or debatable.
- Cases that point to a different legal or factual issue without containing elements of a criminal offense (Results of Interviews).

Although the Criminal Procedure Code mandates that an investigation must begin immediately after crime-related information is registered, in practice, authorities often conduct an informal assessment or verification before officially launching an investigation. However, there are no



standardized rules governing this preliminary assessment, leading to inconsistencies in its application. Both investigators and prosecutors play a role in evaluating crime-related information, typically resulting in one of three possible outcomes:

- **Initiating an investigation** when the information clearly points to a criminal offense.
- **Conducting a preliminary assessment or verification** when the presence of a crime remains uncertain.
- **Declining to investigate** if the information does not suggest criminal activity but instead relates to other legal or factual matters.

A significant challenge arises when crime-related information lacks clear evidence of criminal activity. In such cases, officials often resort to unofficial procedures outside the scope of the Criminal Procedure Code, using so-called "pre-investigative actions" to verify the information before making a final decision. As verification is not a legal procedure and not considered as an investigation action, it is always taken before to know that information is true or not or that any investigation process should commence or not.

At ground there are various types of methods are available for verification, LEA's mostly use the official inquiry, statements and requests supplementary information from interviewed persons, it is mostly taken from the receiver of the information of the crime.

It is mandatory to know that these pre-/informal responses to crimes are not written in CrPC. Not only do they contradict legal requirements, but they also create significant procedural issues. One major concern is that individuals providing information are not warned about the potential criminal liability for false reporting. Additionally, their defense rights are never explained during this process.

Another issue is the lack of time restrictions on these so-called pre-investigative actions. Authorities have complete discretion over the methods, duration, and procedures they choose to verify information. The applicant has no legal means to monitor the process, track progress, or receive timely updates on their submitted complaint.

This approach raises serious concerns about arbitrariness, unnecessary delays, and even unjustified refusals to initiate an investigation. The verification process itself is often extensive, yet, because it is conducted outside the framework of the Criminal Procedure Code, any information gathered through it holds no legal evidentiary value. As a result, if an investigation is eventually launched, authorities must repeat the process such as re-summoning witnesses to formally integrate the previously gathered information into the official investigation.

### **The Crime-Scene Response**

When arriving at a crime scene, the responding officer should remain vigilant to suspect any person who attempts to flee from the place of crime, he should document the description of people and vehicles coming to or leaving the area, as it helps in the investigation. He shall make an effective decision if he detects any suspect, he should decide whether to stop any



suspicious person who tries to flee, or if he runs away he must inform the other units about the information to stop the suspicious person.

### **Establish Security**

Locard's Exchange Principle states that anyone entering or leaving a crime scene will inevitably transfer or remove material. Therefore, securing the area as quickly as possible is essential. To control access, investigators may use crime scene tape, cones, or other barriers to cordon off the site. A designated entryway is typically established for all personnel, ensuring that movement is controlled and documented. Once the boundaries are set, everyone entering or exiting is recorded. If needed, additional spaces may also be designated for consultations and evidence storage to maintain the integrity of the investigation.

### **Aid to the Injured**

Once a crime scene is secured, the primary responsibility of police officers is to provide first aid and arrange medical assistance for any injured individuals. The well-being of victims takes precedence over all other considerations, even the preservation of evidence or the apprehension of suspects. However, if other qualified individuals are already administering aid, officers may focus on pursuing fleeing suspects.

While providing medical assistance, officers should minimize any disturbance to the crime scene. They should avoid moving furniture unnecessarily, using facilities, or leaving behind any materials. For instance, any lifesaving supplies that are used should be properly preserved afterward. Additionally, paramedics should be guided on how to come in and operate inside the crime scene to prevent unnecessary disruption of evidence.

### **Evaluate the Situation and Collect Evidence**

Once any injured individuals have been attended to, the officer should assess the crime scene before initiating the preliminary investigation. This initial assessment often helps avoid errors and missteps. By examining the entire scene, the officer can form a clear mental picture of how and where the crime took place. If additional support is required, the officer should promptly request assistance. Upon arriving at the scene, the officer must proceed with great care, concentrating on identifying potential evidence while minimizing disruption to areas that may contain vital traces, such as fingerprints. A wide range of physical evidence are available and maybe collected at a crime scene, including:

- **Living evidence** (e.g., blood, fluids, hairs etc.)
- **Latent evidence** (e.g., fingerprints, and footprints)
- **Footwear and tire track evidence**
- **Trace evidence** (e.g., fibers, soil, vegetation, and glass fragments)
- **Digital evidence** (e.g., cell phone records, internet logs, and email messages)



- **Tool and tool mark evidence**
- **Drug-related evidence**
- **Firearm evidence**

In addition to collecting evidence, the officer must carefully observe and document every detail of the scene. If specialized tools or expertise are required to properly secure evidence, additional forensic resources may be requested to ensure a thorough and accurate investigation.

### **Document and process the scene**

The longer an officer delays documentation, the higher the risk of overlooking small but crucial details. To prevent this, investigators should take detailed notes and use modern devices. In certain cases, sketches and diagrams may also be created to supplement photographic evidence.

During collection of evidence, crime scene investigators must adhere to proper SOP's for gathering, and preserving evidence, particularly when handling biological materials. Biological evidence is highly sensitive and can be compromised by environmental factors, accidental contamination by individuals, or even missed entirely. Proper handling and preservation are critical to ensuring the integrity of the evidence for forensic analysis.

### **Obtain early/basic Information**

The foremost source of information are those who are present at the place of occurrence of the crime, i.e. victims and witnesses, The officer can gather facts of the case from them, focusing on the following points:

- Identify the persons who are present at the place of occurrence.
- A brief account from each witness or victim of what occurred, including descriptions of any suspects

Once the initial information has been gathered, the officer should issue a **lookout alert** to notify other field units. Broadcasting details about the nature of the crime, the suspect's description, mode and direction of travel, vehicle details, stolen items, and any weapons used can significantly increase the chances of quickly apprehending a fleeing suspect.

### **Interview Witnesses**

The officer on the crime scene must take immediate steps to **detain witnesses** and secure their statements. All individuals should be promptly removed from the crime scene and prevented from re-entering until the investigation is complete. Witnesses must be separated to prevent them from discussing the incident with one another, as such discussions can unintentionally alter their recollections and influence their statements.

To ensure proper documentation, the officer must collect identifying details from all witnesses, making it possible to contact them later if needed. While some witnesses may willingly provide



information, others may be hesitant to get involved. One effective method for identifying potential witnesses is to observe the crowd and listen for individuals recounting what they saw. Additionally, witnesses should be asked to identify any who were present during the scene.

For serious crimes, the officer should also document the license plate numbers of vehicles stationed near the crime scene or at the surrounding area. Priority should be given to witnesses who have the most relevant and detailed accounts, while those with limited observations may provide brief statements.

If crime occurs in any residential building, the number of witness are less. However, crimes committed in **public spaces**, such as stores or streets, typically have multiple witnesses. In such cases, officers may need to expand their investigation by visiting nearby businesses, apartments, or homes to identify additional individuals who might have relevant information.

Merely taking witness statements is not enough; officers must critically assess the credibility of each account. They should remain observant and alert to inconsistencies or suspicious behavior among witnesses. Additionally, it is essential to cross-reference witness testimonies with physical evidence, the crime scene's layout, weather conditions, visibility at the time of the incident, and the witness's reason for being present. In short, Criminal investigation is a complex and evolving field, rooted in historical investigative practices and refined through modern research and methodology.

Research suggests that effective investigators possess distinct personality traits that enhance their ability to analyze and interpret crime scenes. Once trained, investigators must collaborate closely with first responders, ensuring that crime scenes are properly secured, and that evidence is identified, collected, and preserved with precision.

### **Defects in Investigation**

In order to identify the defects of investigation it is pertinent to go through the investigation step by step since First information about crime till submission of final challan.

### **FIR**

Police come into action after FIR of any cognizable offence is launched under sec 153 of CrPC, Police has power to investigate and make arrest of anyone in any cognizable offence without the permission of magistrate. After launching of FIR, a police officer not below the rank of Sub Inspector is designated to investigate the case.

### **Non-Registration of FIR**

This is common complaint of public regarding non registration of FIR by police. Under the law SHO is duty bound to lodge FIR and has no power to refuse to record statement under section 154 CRPC. FIR is a First Information report and Section 154 of the **Criminal Procedure Code (CrPC)** does not grant law enforcement any discretion in deciding whether or not to register a **First Information Report (FIR)**. Courts have repeatedly upheld this principle through



numerous judgments, reinforcing the legal obligation to register an FIR when a cognizable offense is reported. However, in practice, getting an FIR registered in Pakistan is often a challenging task. In such cases law provides two fold remedies in CR PC the complainant is required to move application under section 156 CRPC before concerned Magistrate or one can use the remedy provided by sec 22-A CrPC to seek orders against Police to register FIR, even if on the direction of Magistrate or Session court acting as Ex Officio justice of peace SHO does not record the FIR without solid reasons and when this fact is brought in the knowledge of the respective courts they can charge the concerned SHO under section 166 PPC and further in case of violation of such direction for registration of FIR these proceedings can be conducted under sec 200CrPC by filing a complaint before ATC (2012 PLD (Journal) 42).. According to the report submitted in Supreme Court of Pakistan in the year of 2011, in Punjab province total 419,365 FIRs were lodged and out of which 28,787 (approximately 7 %) were registered pursuant to orders of Justice of Peace and 554 FIRs (approx. 2%%) werenot lodged even despite of Justice of peace orders. It is clear that a number of persons suffer and pushed into litigation because of the failure of the police to register the FIR (2015 SCMR 1724). If FIR is launched due to the orders of the court, it is common practice that it can be launched by minimizing the severity of crime, or if there is a influence of any feudal lord so it can be launched by enhancing the severity of crime as from theft to dacoity. A common issue in Pakistan's criminal justice system is the tendency of complainants to exaggerate FIRs by fabricating details or falsely implicating multiple individuals in a case. This practice not only complicates investigations but also makes it difficult to prove the allegations in court. As a result, cases become prolonged, leading to delays in justice. One of the primary reasons for this problem is the inefficiency and corruption within police investigations (Chadhar, A. K. 2006).

### **Contents of FIR**

It is essential to document every detail of the crime in the FIR to eliminate any ambiguity and ensure clarity in the investigation process. The primary objective of an FIR is to record early information about an alleged criminal act, providing a formal basis for initiating an inquiry. An FIR serves as the starting point of the legal process, setting the machinery of law in motion for a thorough investigation and fact-finding (2008 P. Cr.LJ(Lahore) 1279).

If all facts and detail is not write down by writer or by the person who narrate the facts and detail despite having knowledge of all facts definatly creates doubt and all doubts gives favor to the accused. The Sharia Court has ruled that any irregularities or procedural flaws in an FIR can significantly impact the final outcome of a case. This is particularly true when the FIR is filed by someone who is not an eyewitness but merely a third party. Such inconsistencies can cast doubt on the credibility of the complaint and affect the overall strength of the prosecution's case (2008 P. Cr. LJ (shariat Court AJ& K) 613).

### **Delay in Registration of FIR**

Delay in registration of FIR is always considered suspicious in the eyes of law, as long as it takes time in registration of FIR, more chances to create ambiguity in FIR. If delay is explained and court satisfied with the explanation then delay shall not consider a ground to vitiate the



case of prosecution, in a reported case the honourable High court held that Delay of 10 days in lodging of FIR had satisfactorily been explained. Such delay was not fatal as there was no motive for false implication of accused (2011 P. Cr. LJ (Quetta) 1584). The effect of lodging FIR had not been considered fatal in every case, if lodging of FIR with delay was explained convincingly then the court would not terminate the proceedings on such score. Question of satisfying the delay is entirely related to the factual aspect of the matter (2006 SCMR 512). It is true that with the delay in length, complaint loses its truthfulness (2010 SCMR 97).

## **ARREST**

Section 54 of CRPC authorizes a police official to arrest any person who is involved in cognizable offence without a warrant, but he cannot arrest a person in any non-cognizable offence at his own sweet will he is bound to fulfil the necessary condition that there should be a reasonable complaint, that there should be a credible information and there should be reasonable suspicion against the person to be arrested (2010 MLD 271). Arrest by police officer without warrant U/S 54 CRPC cannot be invoked without credible evidence or material against the person, the arrest of a person by police official in violation of section 54 or 55 CRPC is illegal for which the police officer is liable for prosecution under Section 220 PPC before competent court of law (2012 PLD (journal) 42).

## **REMAND**

Section 61 of CRPC clearly says that no person shall be kept in custody more than 24 hours except by the special order of the magistrate this is also a fundamental right of citizen of Pakistan under constitution of Pakistan to produce him before the court within 24 hours after arrest. Section 167 says that investigation should be completed within 24 hours and if it not completed within 24 hours what action should be taken. The rationale behind remand under the law is that Magistrate is given authority under the law to authorize detention of person arrested beyond the period of 24 hours. Remand amounts a curtailment of liberty of a citizen which is a fundamental right of a citizen therefore it should not be freely granted by magistrates, illegal arrest and unjustified remand besides being illegal but also creates sense of insecurity in the mind of the people and no greater mischief than this can be imagined (PLD 2007 KAr 492). It is normally observed that after obtaining remand police resorts to illegal practice such as infliction of torture upon accused which is violation of Article 14 of the Constitution of Pakistan, At the stage of remand arrest of the person can be effectively checked on the basis of 2 factors. First whether police produce accused within 24 hours of arrest and second arrest of accused is justified under the law meaning thereby that allegation contained in FIR against the person is well founded.

## **Site Plan**

Site plan is not a substantive piece of evidence but it gives much valuable data about ascertaining the facts and circumstances of the case, Sometimes sketch map/Site plan of the place of occurrence are prepared without clear specification as such some valuable points, indications are missed. It has become practice of IO in Pakistan to not make out the site plan



at the place of incident, site plan normally prepared at police station as such always leave loopholes in Investigation which gives benefits to the accused being a favorite child of law. In investigation every detail is important such like distance, time, positions of victims and position of accused. The honorable high court has declared that it is a fact that it is not a substantive piece of evidence but it is also not a waste paper and it cannot be lightly ignored. It is referred for determining the respective position of the assailant, deceased and the eye witness and also reveals the circumstances which have been noticed by the investigation officer at the place of incident after his immediate arrival (2008 P. Cr. LJ (Lahore) 869).

### **Evidence collection and Recoveries**

It is an undeniable reality that many officers investigating murder cases lack the necessary training and expertise to properly secure and handle incriminating evidence. Critical items such as pieces of cloth, blood samples, fibers, and hair from the crime scene and its surroundings are often mishandled or overlooked. Similarly, officers may not be well-versed in lifting and preserving fingerprints from various objects at the crime scene, ensuring they are examined and matched correctly for investigative purposes. Proper procedures for collecting, securing, and transporting evidence to forensic laboratories in a way that prevents tampering are often not followed. Moreover, delays in obtaining forensic results further weaken the case. This lack of proper training and adherence to forensic protocols undermines the integrity of investigations and reduces the chances of securing convictions based on solid evidence. Addressing these issues requires specialized training, updated forensic techniques, and a more efficient system for processing and analyzing evidence (2015 SCMR 1724). Mostly Alamat are grasped in the police station long after the occurrence which is produced by the informant. It is the duty of the police officer to seize alamat at the place of occurrence immediately after the occurrence. Delayed seizure at some other places other than the relevant place of occurrence surely invites doubt. Evidence are usually sent to the experts in very unprofessional manners and Investigation officer do not adhere to the protocol of sending articles either and even articles are sent after lapse of time which cause negative results. As per section 103 CRPC two witness are required for conducting search and seizure the things during search. The investigation officer not complied with the section 103 of CRPC normally as such creates doubt regarding recoveries which again gives benefits to the accused. The apex court has held that provisions of 103 CRPC were not complied with while empties recovered from the spot were sent to forensic science laboratory with undue and unexplained delay, Supreme Court disbelieved the recovery of rifle at the pointation of accused (2006 SCMR 1707). In another case the apex court has held that it has been repeatedly held that the requirement of S. 103 CRPC mandatory unless it is shown by prosecution that in the circumstances of a particular case it was not possible to have two mashirs from the public, where no efforts made to secure two mashirs recoveries may be considered as doubtful (PLD 1997 SC 408). Further Investigation officer secure evidence from the place of incident with very unprofessional manner which not only manipulate the evidence but also damage the valuable evidence. Investigation officer also shows very lethargic attitude towards sending articles for FSL which cast the investigation by creating doubt. The honorable high Court has held that sending of crime empties and weapons





of offence together after long delay will cast a serious doubt and will be of no legal values (2009 P. CR. LJ (Karachi) 1226).

### **Statement under section 161 CrPC.**

Usually Investigation officer often fail to record witness statements on time during examination, instead they latter summarize the record based on the their own convenience as a result serious detail being omitted, so these delayed statements are not helpful for the prosecution instead it can be used by defence because due to memory loss many important details are being omitted. Because these officers has very little idea about the importance of the statements under 161 CrPC. It is a fact that under s. 161 CrPC is not a substantial piece of evidence and same can not be used against accused, but it is produced in support of prosecution story/version (2005 p. Cr LJ (Sc AJ&K) 988). If accused is apprehended he must produce before the court within 24 hours and if he voluntarily agrees to confess his guilt that must be recorded by the Magistrate under section 164 in manners of 364 of CrPC before commencement of trial. That confession must be voluntary and without pressure otherwise it would not be admissible (2006 P. Cr LJ (Peshawar) 998).

### **Testimony of Investigation Officer**

Officers conducting investigations may also be hesitant or unwilling to provide testimony during court proceedings. There are lots of reasons behind this, Sometimes Investigation officer transfer from one PS to another PS and as such they loose interest in previous cases which have been handed over to another IO, this practice makes sense in their mind that there is no burden on my shoulder now to prove this case. Another reason is that investigation and statements recorded by the Investigation officer is done in a room for his convenience, they never try to reach at place of incident, call witnesses in PS and record their statement as such so many vital points got missed in investigation. It is remain practice in Pakistan by the Investigation agency to use torture on accused to recover the truth by all means. Always try to force the apprehended person to admit the crime so his admission can be used against the accused before the court, However, the Honorable Court has firmly ruled that the determination of an accused person's guilt or innocence is the exclusive jurisdiction of the courts of law. This authority cannot and should not be exercised by the police or any other entity (2011 P. Cr LJ (Lahore) 895).

According to Chapter XV, Section 25.2(3) of the Police Rules, 1934, an investigating officer (IO) has a duty to uncover the truth in any case under investigation. The primary objective of the IO should be to ascertain the actual facts and ensure that the real offender is apprehended.

### **RULE of CORPUS DELICITI in Criminal Justice System.**

When we talk about investigation it is much needed to discuss here about Corpus Deliciti which is a Latin word means "Body of Crime" in Black's law Dictionary defined Corpus Deliciti as "the fact of a crime having been actually committed (Black's law dictionary (6<sup>th</sup> Ed))"

Corpus Deliciti is that it must be prove that some crime actually has been committed before person convicted, for example if some one tried for murder it must prove by having a dead



body with sufficient evidence which point out fingers towards accused. The corpus delicti is the objective proof that a crime has been committed, it is the body or substance of a crime has been committed (PLD 2009 journal 94.).

### **Prosecutor**

In our criminal justice system investigation is carry out for finding out the truth however proving truthfulness of truth in court is the responsibility of prosecution. Section 4(1)(t) of the CrPC,1898 defines the “Public Prosecutor” as under:-

A Public Prosecutor refers to an individual designated in accordance with Section 492 and also encompasses anyone acting under their guidance, as well as any person representing the state in criminal proceedings before a High Court exercising its original jurisdiction.

**Section 492 of CRPC Power to appoint public Prosecutor:-** Provincial Government has power to appoint public prosecutor for any special case or in general.

Burden of proof always lies upon prosecution under article 117 of Qanoon-e-Shahdat 1984 (PLD 1964 SC 205).



## **Object of Prosecution**

The only legitimate object of a prosecution is to secure justice must be done not a conviction (PLD 1965 SC 417) and in order to secure justice prosecutor have 3 basic duties.

1. Assist the court to arrive at conclusion
2. Punish the offenders in the best interest of society
3. Protect the innocents from illegal and unfair conviction

## **Structure of prosecution service**

In accordance with Sindh Prosecution Service (constitution, functions and powers) Act, 2009 administration of the service vest with the prosecutor general, who is assisted by Additional, Deputy and Asstt prosecutors, whereas at district level District public prosecutor supervise all prosecutor up to the hierarchy of public prosecutor within district.

## **Power and Function of Prosecutors**

The prosecutors are responsible for the performance of prosecution. The Prosecutor General distributes work to the Prosecutors, whereas a District Public Prosecutor distributes work to the Prosecutors with respect to the lower Court within a district (2018 PLC(CS) 174). Powers and functions of prosecutor set out under Chapter 3 of the Act from Section 9 to 11.

## **Examination and Submission of Police Papers**

Under Section 173 of the Code of Criminal Procedure, a police report, a cancellation report of the First Information Report (FIR), or a request for the discharge of a suspect or accused must be submitted to the court through the Public Prosecutor. The Prosecutor is responsible for scrutinizing the report or request. If any defects or discrepancies are found, the Prosecutor may return it within three days to the Officer In Charge of the Police Station or the Investigating Officer for necessary corrections. However, if the report is deemed complete and legally sound, the Prosecutor proceeds to submit it before the competent court for further proceedings (2010 YLR 470).

If police is unable to complete investigation so police can submit interim report under sec 173 CrPC, receiving this the prosecutor request the court to delay the trial or start the trial based on the evidence available. and the Prosecutor may forward the report under section 173 of the Code, to the Court and applicability of offences against all or any of the accused as per facts and circumstances of the case.

## **Calling record/report from Investigation agency**

A Prosecutor holds the authority to request reports, records, or any other relevant documents from law enforcement agencies within a specified timeframe in connection with an ongoing investigation. If required, the Prosecutor may also seek information from other government departments or agencies to aid in the prosecution process



## **Withdrawal of Prosecution**

A Prosecutor has the authority to rescue himself from prosecution of an accused entirely or for specific charges, but only with the consent of the court and after obtaining prior approval from the relevant authority, as follows:

1. For offenses punishable up to three years – Approval must be obtained from the District Public Prosecutor.
2. For offenses punishable up to seven years – Approval must be obtained from the Prosecutor General.
3. For all other offenses – Approval must be obtained from the Government.

The discretionary power vested in the Public Prosecutor under Section 494 of the Code of Criminal Procedure (CrPC) requires that the court independently assesses and satisfies itself regarding the validity and justification of the reasons put forth by the Prosecutor for withdrawing the case

## **Coordination with the Police**

An SHO or the IO

(a) shall inform the DPP about the registration of FIR.

(b) shall send the police report to prosecutor under sec 173 of CrPC.

(c) if an investigation is not completed or cannot be completed within the time provided under the law, record reasons for the delay and inform the Prosecutor and within the time specified by the Prosecutor, comply with the directions and remove the defects pointed out by the Prosecutor in a police report under section 173 of the Code, including report for cancellation of the First Information Report or request for discharge of an accused or suspect.

A District Public Prosecutor shall act as a member of the Criminal Justice Coordination Committee established under Article 110 of the Order.

## **Appeal**

On the believe of prosecutor if it consider necessary that an application for the enhancement of a sentence or revision is necessary to be filed, he shall refer it to DPP of the Prosecutor General, who will take the recourse of law. In the case of an acquittal:

1. If the acquittal is granted by a District Court, the District Public Prosecutor must report the case details, including grounds for appeal, to the Prosecutor General.
2. If any special court has granted the acquittal, so details will be sent to the Prosecutor General.



After review of the case, the Prosecutor General may request the provincial government for the filling of appeal/application.

### **Important factors for effective prosecution**

In numbers of judgment the honorable court s has issued instructions for prosecution as under:-

1. The prosecutor must avoid biasness and personal interest (PLD 1956 LAH 1).
2. The prosecutors should bring all the material Evidence before the court (PLD 1951 LAH 222).
3. All evidence needs to be examined by the prosecutor before submission in court (PLD 1965 KAR 139).
4. Criminal justice system requires quality of evidence not quantity of evidence as prosecutor have powers to withhold witness who seems to give favor the defence (1970 DLC 753).
5. Corporations with investigation agencies to ensure proper investigation (2015 SCMR 1724).
6. The District Public Prosecutor has the authority to identify and highlight lapses committed by the investigating officer, particularly in cases involving serious negligence. This allows for appropriate departmental-level disciplinary action, ensuring that investigating officers are held accountable for their performance
7. Prosecution shall bring previous conviction into the notice of the court.
8. If during investigation violates rights of any person, Prosecutor should protect the rights.
9. Prosecution should prove case without taking advantages of defence weaknesses (PLD 1964 SC 205).
10. To hold consultative meetings with investigative officers to solve their problems. Co-operate with the police.
11. To ensure supply of sufficient copies of documents for the opponents and the court to avoid unnecessary delays.
12. Prosecutor should avoid indulging in unilateral communication with the court.
13. Not negotiate with the accused and don't recommend a plea agreement.

In order to the effective prosecution, the prosecution should always cooperate with the court, police, the legal professionals, and other concerned agencies.

### **Conclusion**

In our criminal justice system investigation by the police is presented before the court through the prosecution with the objective to assist the court, punish the offender and protect the innocent but the coordination level between the two agencies together with professionalism is not up to the mark.



The honorable Apex court has pointed out the reasons of defective investigation (2015 SCMR 1724).

A defective investigation can arise due to several factors, including:

1. **Incompetency, mismanagement, and abuse of power by the police** – Corruption, bias, or mishandling of cases can lead to flawed investigations.
2. **Lack of proper training for police officers** – Inadequate expertise in forensic techniques and investigative procedures weakens case integrity.
3. **Weak communication between police and prosecution** – Poor communication results in missing evidence or procedural errors.
4. **Insufficient training for prosecutors** – A lack of legal expertise may lead to ineffective case presentations in court.
5. **Failure to protect witnesses** – Intimidation or lack of security discourages witnesses from testifying.
6. **Frequent adjournments requested by lawyers** – Unnecessary delays can weaken the prosecution's case and allow evidence to deteriorate.
7. **Delays in case scheduling** – Slow judicial processes contribute to prolonged trials and potential miscarriages of justice

The Apex Court issued several directions to tackle police inefficiency, abuse of power, and deficiencies in Pakistan's criminal justice system, including (2015 SCMR 1724).

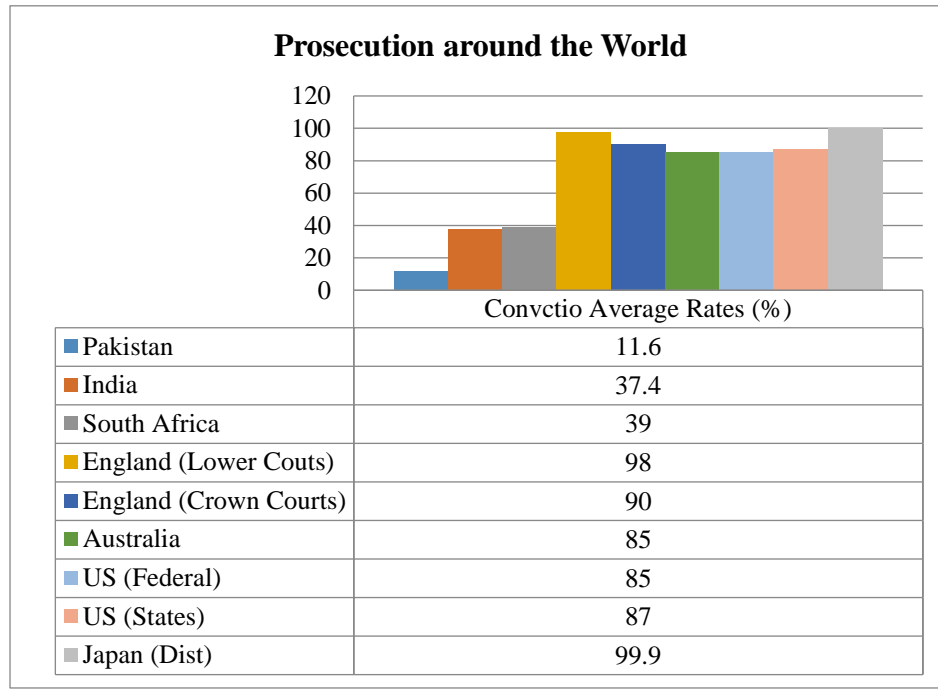
1. The general public should be given access to a Universal Access Number (UAN) along with a dedicated website to easily file their complaints and raise concerns
2. Frivolous, false, or malicious complaints must be treated with the seriousness they deserve. When appropriate, legal action should be taken under Sections 182 and 211 of the Pakistan Penal Code, 1860.
3. No individual should be taken into custody without adequate supporting evidence. If someone is wrongfully detained, the responsible police officer may be required to provide compensation. Additionally, the affected person has the right to seek justice by filing a claim in the civil courts for appropriate relief
4. Proper training programs should be established to enhance the skills and expertise of police officers, with a particular focus on developing specialized investigators and improving investigative facilities. Additionally, sufficient financial resources must be allocated to police stations to ensure they have the necessary tools, equipment, and support to conduct thorough and effective investigations. Investing in both training and funding will not only improve the efficiency of law enforcement but also strengthen the overall criminal justice system



5. Police officer should not be transferred in violation of the established principles of Supreme Court (PLD 2013 SC 195). Monthly report should be maintain in respect of transfer of police officials.
6. Police should not be Politicized and political pressure element should be eliminated from the police, appointment should be made in transparent manners.
7. Adequate funding must be set aside to ensure public prosecutors receive proper training and ongoing professional development to enhance their skills and effectiveness
8. The hiring criteria and compensation packages for public prosecutors should be reviewed and improved to attract competent legal professionals to the role
9. The respective bar councils should take appropriate disciplinary action against lawyers who intentionally seek adjournments to delay trials.
10. District judges should be empowered to impose costs on lawyers who intentionally seek adjournments to delay trials. Additionally, they should prioritize hearing criminal cases that involve personal liberty on a day-to-day basis, ensuring swift and efficient justice to the extent possible.
11. Respective heads of police of the federation and the provinces should maintain a report which detailed the relevant police complaints and accountability mechanisms in place and the actions taken under such mechanism against delinquent police officials.
12. Details of police budgets—broken down by district, local stations, specific functions, staffing, and how the funds are used—must be made available to the public. These records, along with police operational plans and yearly performance reviews, should be published on the official websites of both federal and provincial police department
13. Provincial Information Commissioners should establish and enforce transparency standards for police services and functions
14. The Law and Justice Commission of Pakistan should compile a comprehensive report consolidating all reports submitted to the court and the proposals presented by a senior Supreme Court advocate during the case proceedings. This report should outline the necessary legislative amendments aimed at enhancing the criminal justice system. Once finalized, copies of the report should be forwarded to both the National and Provincial Assemblies for consideration and implementation.

### **Comparison of Conviction Rate in Different Countries**

The following table highlights how the effectiveness of prosecution in Pakistan stacks up against that of other nation



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