**PRINCIPLE AND PRACTICE OF CRIMINAL INVESTIGATION IN PAKISTAN**

Investigation is the backbone of every Criminal Justice system. Prosecution is responsible to prove guilt of accused beyond reasonable doubt and accused is presumed to be innocent and cannot be convicted in absence of trustworthy, confidence inspiring evidence. This high standard of proof can only be achieved if evidence is properly collected, secured and documented at stage of investigation so that it can later on be produced in court to prove charges against accused. Its importance can be estimated from the fact that any evidence either not collected by investigating officer or not collected in accordance with the prescribed law and rules can directly affect the result of litigation. Courts in any Criminal Justice system are not involved in collecting evidence, its exclusive domain of investigating officer. Functions of court are to draw inference from evidence and then conclude either an offence has been committed or to give judgment that a particular person is not guilty.

**WHAT IS INVESTIGATION:-**

Ø   In legal terms **investigation includes all the proceedings for the collection of evidence conducted by a police officer or by any person who is authorized by a Magistrate i**n this behalf.

Ø   A good investigation is a rigorous process that consist of identification, collection, preservation and presentation of evidence in court of Law.

Ø   Investigation means scrutiny, search or an inquiry into a matter to find out truth, to know about facts or solve crime.

Ø   Investigation is,--

§   A multidisciplinary approach.

§   Involves systematic and logical thinking.

§   Requires minutes and detailed inspection.

§   Includes observation, examination and fact finding inquiry of witnesses.

§   A rigorous process based on evidence.

Ø   Code of Criminal Procedure draws distinction between investigation and Inquiry.

Section 4(l) of Code of Criminal Procedure defines Investigation as following:-

**“Investigation includes all the proceedings under this code for the collection of evidence conducted by a police officer who is authorized by a Magistrate in this behalf.”**

Whereas,--

Section 4(k) states as under:-

**“Inquiry includes every inquiry other than a trial conducted under this Code by a Magistrate or Court.”**

Cr.P.C. limits the scope of investigation only to collection of evidence; an investigating officer is confined only to collect evidence without formulating any opinion as to guilt or innocence of accused.

Another important aspect is authorization. A person cannot assume role of investigator. Investigation can only be done by a police officer or a person authorized by a Magistrate.

Evidence means “anything that tends to prove or disprove anything”.

In strict sense of Qanun-e-Shahdat Order 1984, evidence includes:-

All statement which the court permits or requires to be made before it by witness in relation to matters of fact under inquiry; such statements are called Oral Evidence

All documents produced for the inspection of the court, such documents are called Documentary Evidence.

In Pakistan investigation of offences under Pakistan Penal Code 1898 is conducted under Part V, chapter XIV of code of Criminal procedure 1898 and police Rules 1934.

In case of offences created under special Laws, there is separate law that regulates procedures of investigation eg, anti- corruption and anti terrorism court, Federal Investigation Agency etc.

Investigation begins with a response to a reported incident i. e; lodging of FIR u/s 154 Cr.P.C, and ends when it is closed either with the assessment that there is no sound evidence that the crime was committed (cancellation report) or with the submission of one or more reports describing what was done( submission of challan in Court through prosecutor).

**GOALS OF INVESTIGATION:**

**1.       To recognize evidence.**

            This is done by a detailed survey and research of crime scene. Everything that is present on a crime scene may or may not have a probative value; an investigator must be able to recognize what evidence can be helpful and what should be collected.

**2.       To Collect Evidence.**

            Most of the crime scene involves massive physical evidence that can be collected by the investigator to be later produced in court i-e, empty cartridges, DNA, finger prints and other trace evidence etc.

            Evidence must be labeled properly describing FIR No. No, nature/type of evidence, position and place of its collection, time date and name of witness in whose presence such evidence was collected.

**3.       Preservation of Evidence.**

            It is as essential as collection of evidence because if integrity of evidence is compromised it cannot be made basis for conviction of accused. To achieve this goal chain of custody must be maintained.

            Chain of custody is described as chronological log of handling of evidence from place of seizure/collection to its presentation in the court of law. It implies principle that there should be no unauthorized handling of evidence at any stage.

**4.       Documentation of crime and other proceedings.**

            Recording of statement of eye witnesses must be done at crime scene and witness must be separated before recording their statement eliminating possibility of fabrication.

            Crime sketch that can be scaled or unscaled. But it must show North, important landmarks, presence of accused and witnesses if any.

            Modern techniques involve crime scene photography at different range, angle and even video graphy can be done.

            First inspection note.

            Preparation of inquiry report, injuiry statement in cases of murder.

**POWERS OF POLICE OFFICERS UNDER CODE OF CRIMINAL PROCEDURE REGARDING INVESTIGATION**

1.         Under sec. 156 of the code of Criminal procedure 1898, a police officer is authorized to conduct investigation in cognizable cases without order of the Magistrate,

2.         A police officer may by order in writing require the attendance of any person who from information given or otherwise appears to be acquainted with the circumstances of the case u/s 160 Cr.P.C.

3.         Under Section 161 Cr.P.C. a police officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case

4.         Police officer shall day by day enter his proceedings in investigation diary u/s 172 Cr.P.C.

**DEFECTS IN INVESTIGATION CARRIED OUT IN PAKISTAN:**

Unfortunately investigation in Pakistan is not conducted properly and thoroughly and is responsible for collapse in Criminal Justice system. Integrity of investigation is very critical for admissibility of evidence in court of law. Major defects in Criminal investigation in Pakistan are:

1.         Lack of proper knowledge of prescribed procedures to conduct investigation

            Investigation is a failure in our country due to lack of training and development of skills. Common examples of lack of knowledge knowledge, proper and skills that results in failure of investigation are:

1.      Lack of knowledge of different provisions of law especially when offence falls under different jurisdictions e.g. provision of Anti-terrorism Act, or provisions of sec. 5(2) of Prevention of Corruption Act 1947.

2.      Lack of knowledge as to offense falls under what jurisdiction and which agency shall hold investigation.

3.      Lack of knowledge of proper procedure e.g., procedure for proclamation of accused and seizure of property.

4.      Lack of training to collect biological and other evidence at crime scene and due to improper collection important evidence at crime scene is contaminated before it reaches labortary for analysis and consequently important evidence is either lost or compromised at crime scene.

2.         Lack Of Professionalism:

A major reason for failure of our Justice system is lack of professionalism and irresponsible attitude towards Criminal investigation. Procedures are not followed and adherence to standards is not in existence. Investigation process is influenced by media, political pressure and corrupt practices. Investigators mostly hold panchayats instead of collecting evidence to support charge or establish guilt. Similarly, opinions as to innocence or guilt are given by police officer without reasoning and in absence of evidence. They do not verify alibi of accused if claimed and usually give opinion on basis of suspicion without realizing the fact that determining the guilt or innocence is the duty of the court and investigation is only confined to collection of evidence.

3.         Biased Investigation, Lack of Impartiality:

            Impartiality means decisions must be based on sound reasoning and without any undue influence or favor to anyone. It is an ability of a person to formulate his decision on the basis of facts and without being prejudiced. Preconceived notions, conjectures, suppositions, presumptions and suspicion are different forms of prejidice.There should be no personal belief or intuition or a judgment not founded on proof or certainty.

            Prejudice or bias can seriously effect results of investigation. Various elements can affect impartiality of an investigator. Bias can take various forms e.g., religious bias, racial discrimination, gender, ethnicity, sect, class or caste, all can influence investigation. However there is a distinction between holding a bias and acting as bias.

4.         Role of Logic, Good Observation and Good Judgment:

            Every crime is unique. There is no universal formula to investigate a case. A good investigation requires proper planning. it is a team work that cannot be done in isolation. Composition of team depends on nature of crime.

            Crime scene is a scene of incident irrespective of the whether a Criminal or illegal action has been established.

            When arriving at crime scene an officer must determine what offence has been committed and what level of investigation he is required to conduct. It is common that investigating officers do not apply their own reasoning and are only confined to story narrated to them by witness. Even in that case they even do not bother to corroborate their testimony, verify presence of witness at the spot and collect other circumstantial evidence, usually police officers acts in mechanical way by recording FIR, statement of witness, drawing rough sketch, making or planting recovery and then submission of challan. Have they collected evidence properly from crime scene, it can help prosecution to prove their case. It could also be kept in mind that there is tendency in our country to rope falsely all family members of the accused.

5.         Integrity:

            Twisting of facts is not very uncommon. It happens in almost in every case. Facts are twisted by parties in order to either involve innocent or to destroy evidence. In unseen murder case usually witness are planted, in dacoity cases usually identification parade are not held, instead this requirement of law is fulfilled by insertion of supplementary statement that never discloses source of information.

            Observations made are not brought on record. Confession are not recorded before Magistrate and police confession forms part of police diary which is neither admissible nor can secure conviction.

            Injured victim dying declaration is not recorded, or if recorded no independent person is cited in whose presence such dying declaration is recorded. Similarly statement of injured witness is recorded without making enquiry from doctor regarding whether such injured is in position to make statement or not.

            These are all issues that have impact on integrity of evidence collected and produced during trial. How a court can convict a person when there is no evidence or there is evidence which is tainted.

6.         Improper Documentation:

            The gravest defect of our investigation is improper and inadequate documentation. Court can formulate opinion only on basis of those facts that are relevant and are brought on record. If statement of an important witness is not reduced to writing by a police officer, how court can determine facts that were witnessed by a witness which is not included in the calendar of witnesses by police officer during submission of challan.

            Similarly omission on part of the police officer to mention the description of crime scene, position of body and articles found on crime scene can seriously destroy prosecution case.

            Usually police officers do not take into possession crime empties and thus prosecution is deprived of opportunity to prove an important piece of evidence that can establish link between crime, victim and suspect.

7.         Chain Of Custody:

            It means documentation of evidence from time to time when it was taken into possession describing time, place or condition, or brief description of item and name of persons/witnesses in whose presence such articles were taken into possession to its production in laboratory/agency or court. It also signifies that there should be no unauthorized handling of evidence.

            It is very common that proper chain of custody is not maintained and report of expert i-e, ballistic expert, chemical examiner, serologist become inconsequential which results not only in damage to prosecution case but also amounts to wastage of time and money consumed in obtaining expert opinion.

8.         Delay:

            Delay which is unnecessary has fatal impact on fate of Criminal case. Delay on part of police in sending corpse for postmortem examination, delay in recording statement of witness, delay in holding identification parade, delay in sending parcels to laboratory for expert opinion are all considered fatal to prosecution case and this delay is caused by negligence of police.

REMEDIES:

            Following measures can be taken to rectify the above defects:-

1.   Reorganization of investigation wing:

                  An investigator should be authorized to investigate the case on basis of his qualification, experience and training. For major offences like murder, rape, forgery/fraud, electronic crimes, kidnapping investigator should have relevant expertise to investigate that crime.

                  An investigator who have never conducted investigation in forgery should not be allowed to investigate that offence instead of this he should be assigned task according to his expertise and interest and knowledge.

2.   Development of investigation protocols:

      It is very important to develop various protocols in shape of guidelines and instructions or standard procedures that must be followed in investigation of different offences.For example an investigation of a murder case should include more than just formality of injury statement and inquest report and conducting postmortem. various steps of investigation must be described and there should be a clear policy statement regarding procedure and proceedings of investigation.

      Police trainings must be carried out in letter and spirite rather than being conducted as formality

3.   Development of professional attitude:

      Police officer should develop professional attitude. Government and our media also plays vital role. Both government and media should stop exploitation and should not interfere with process of investigation. Media should be briefied only when investigation has been completed. Political parties should not dictate police officers rather they should be allowed to proceed with investigation without being influenced. Illegal practices of holding panchayats, formulating opinions of investigation on basis of oath, and deciding cases in police station must be stopped. It is duty of police to collect evidence without compromising its integrity and it is duty of court to determine guilt or innocence on basis of evidence. An investigator is not party to Criminal case. He must be impartial.

      We cannot correct police until we provide hosnest police officers privilege of not being dimissed on frivilous grounds and stop safarish and baradari system we are facing two problem one is we promote baradari culture by giving 4.undue favors and second honest persons are threatened Of being dismissed from service.

4.   Independence of investigation wing

      Investigation wing of police must be independent. There should be no interference at level of investigation. It offen happens that media causes exploitation of cases and this causes undue harrasment and biased investigation. Similarly political pressure groups must not be allowed to approach the officials.Another important aspect in this respect is frivolous registration of cases must be strongly discouraged

5.   Punishment of investigator for corrupt practices:

      Investigators who are properly trained and skilled in investigation if destroy evidence or temper it, they must be punished exemplary to have deterrent effects. However it must be kept in mind before punishing an investigator that whether he had willfully caused destruction of evidence or not because parties may often lodge frivolous complaints against police officers and gross negligence are sometimes remains unchecked. There must be clear and logical criteria for punishment.

6.   Proper Training & Continuous Professional Development:

      Due to rapid development of technology, investigators must be provided with training and continuous development. Incentive should be given on basis of merits otherwise they shall further deteriorate the existing system.

CONCLUSION

To conclude, police investigation in Pakistan is not conducted properly due to which our Criminal Justice system has become ineffective. Investigations must be provided specific training to investigate different crimes. Investigation in Pakistan can never yield best results unless investigators develop an impartial professional attitude and investigate case on basis of what facts are actually rather than twisting with facts to produce desired results.