

Relevance of Scientific Investigation of Criminal Cases in Kerala: A Critical Analysis

Udayakumar V.^{1*}, Simranjeet Kaur Gill²

Abstract

In Criminal Justice System, a Criminal Investigation is the proceedings initiated by the Police to gather all the information about the crime which has been reported to the Police. This process is carried out in two steps: i) to identify and to arrest the accused and ii) to conduct search and collect all the material evidence and produce before the court of law at the time of trial. It is the duty of the Police to identify and to arrest the accused involved in a crime and adduce evidence before the court. But it is not so easy in determining a person whether a he is guilt or not. But it can be done with the application of modern technology. To prosecute a person involved in a crime beyond doubt, there must be sufficient evidence against the accused to be collected by the Investigation agencies. The collection, preservation and analysis of material evidences are to be done with utmost care. If the chain of completion of documentation of evidence is incomplete or inaccurate or omitted, it will adversely effect the prosecution of the case in the court of law. In order to prevent this, remedial measures are to be taken by the Government. The Investigating Officer who is the key role player in every crime cases and he is capable of recognizing, identifying and preserving material evidence from the scene of crime. The identification process involves collection of information, prioritization and evaluation. But to provide conviction, it requires physical evidence, witnesses, confession of accused persons etc. The Physical evidences are the objects found in Crime Scene such as fingerprints, foot prints, cut marks, tool marks, hand prints, blood stain etc., which are to be collected carefully and examined using forensic techniques. Lack of evidence causes acquittal of criminals involved in crimes. In every year, reporting of Criminal cases in Kerala increases alarmingly, but the conviction rate is not improved as expected. Lapses either in the investigation or by the Prosecution denying justice to the victims. With the advancement of Modern Technology, Criminals are aware of using new methods and techniques for committing crimes. On the other hand, the latest forensic technologies are helping Investigating agencies to find out the criminals and culprits. The research problem is mainly based on problems in Criminal Investigation with respect to increasing acquittal in Criminal cases in Kerala and remedial measures to be taken by the Govt. of Kerala by promoting Forensic Techniques towards making statutory exercise to update the components of administration of Criminal Justice System with the International standards.

Keywords: Criminal justice system, investigating officer, forensic science

*Author for Correspondence

Udayakumar V.
E-mail: advshiji@gmail.com

¹Phd Scholar, C T University, Ludhiyana, Panjab, India

²Principal, School of Law, C T University, Ludhiyana, Panjab, India

Received Date: January 01, 2022

Accepted Date: January 10, 2022

Published Date: February 22, 2022

Citation: Udayakumar V., Simranjeet Kaur Gill. Relevance of Scientific Investigation of Criminal Cases in Kerala: A Critical Analysis. National Journal of Cyber Security Law. 2021; 4(2): 24–29p.

INTRODUCTION

Due to modern advancement of science and technology, the modus operandi of committing crimes has been totally changed. The criminals are committing crimes with the latest invention of science and technology. So for combating such types of crimes, the ordinary and obsolete method of crime-detection is not tenable in the present day circumstances [1]. Today normal criminal behaviour has been transformed into electronic criminal behaviour relating to cyber crimes. For

detection of such types of modernised crimes, forensic science is a must. But there is very poor forensic awareness all over the country. Even the exact meaning of “forensic science” is not known to many persons [2].

There may be a little forensic awareness among the educated persons but not to all. Today there has been a growing medical awareness among the mass-section of the community. But majority of persons are ignorant about forensic science and its applications excepting the experts [3].

The ignorance of the basic principles of forensic science, very often deprives the victims of the offence to establish the charge against the offenders and this forensic ignorance helps the offenders to be acquitted and in many situations, the evidence in the crime spot are damaged or not properly utilised resulting in a defective investigation of criminal cases [4]. As successful prosecution depends on successful investigation of criminal cases, there should be growing forensic consciousness among the common people of India, because they are generally deprived of their right to combat with the offenders.

FORENSIC SCIENCE-CONCEPTUALISATION

The meaning of the word *Forensic* according to Encarta World English Dictionary is crime-solving relating to the application of science to decide questions arising from crime or litigation [5]. According to concise Oxford Dictionary *Forensic* means “used in courts of law”. According to the Modern English Dictionary, *Forensic* means: “Pertaining to Law Courts” [6].

According to Dictionary of the English language, *Forensic* means “belonging to, used in or suitable to courts of judicature.” According to Oxford Advanced Learner’s Dictionary. *Forensic* means: “Related to or used in course of law”. So, it is clear that-*Forensic Science* is a science, by means of which material evidence is analysed, collected, preserved and used in a court of law especially in relation to a crime [7]. So, when a crime is committed, forensic science has many things to do, which is unknown to common people even today [8].

Etymologically the word ‘forensic’ is derived from the Latin word “forensic” which means public. This Latin term is related to the English word ‘Forum’ which means a market place where Roman courts originally used to conduct their sessions. The term “forensic” can be defined as ‘related to court procedures’. Forensic science is defined as the application of the laws of nature to the laws of man [9]. It embraces all branches of science and applies them to the problems of law. Though its techniques are borrowed from various scientific disciplines like chemistry, medicine, surgery, biology, photography, physics and mathematics but over the years it has developed its own branches like anthropology, ballistics, DNA fingerprinting, entomology, hairs and fibres, fingerprint odontology, pathology, questioned documents and toxicology [10]. Forensic engineering, forensic neuropathology and forensic accounting and fraud auditing are some of the recent additions [11].

According to Herbert Leon MacDonnell "Physical Evidence cannot be intimidated. It does not forget. It sits there and waits to be detected, preserved, evaluated and explained [12]. "The increasing rate of crime and its complexity emphasizes the role and importance of forensics in the current scenario. The word ‘forensic’ was derived from a Latin word “forenses” means a forum. Earlier in Rome, a forum referred to public place where Judicial Proceedings and debates were held.” Forensics is a systematic study of evidence found at the scene of occurrence. It’s principle is purely based on the famous Locard's Principle. According to this principle,” the perpetrator of the crime always carries or leaves behind some traces at the crime scene or the place of occurrence” [13].

A feature of forensic evidence is that there is no scope for ‘bias’ or ‘injustice’ when Scientific techniques and methods are used for the investigation of Crime cases [14]. Hence, these evidences are widely used in Courts across the World. In Countries like United Kingdom, United State of America,

Canada and Australia etc., special legislation for the improvement for rendering of forensic services has been enacted. Therefore, it ensures the detection of Crimes with greater certainty and consequently, the conviction rates also increases. The study of forensic science has played a major role in the legal system and for investigating of Criminal Cases. Forensic evidence is characterized by the presence of a laboratory analysis and an expert witness prepared to interpret and testify to the Scientific findings in a court of law. Forensic evidence may be from a Crime Scene in order to assist in Criminal Investigation. Collecting and analysis of evidence may include blood spatter analysis, identification of biological fluids, trace evidence, finger prints, impression, fire arm etc. The collection of forensic evidence is not depends on qualification and experiences but dependent on the integrity of the Crime Scene and the skills of the investigator [15].

In India we are following the adversarial system of criminal justice'. It is a system of administration whose primary duties is preservation of law and order, detection of crime and enforcement of laws. The Police Officers are said to be the real backbone of administration, because the primary duty of the Police is the maintenance of peace and order in our society [16]. In Kerala, there are 455 Police Stations and more than 50,000 Police personnel are working in different categories. Reporting of Criminal cases is increasing in every year, it is an average of 6 lakhs cases report in every year. The Police has to perform numerous duties such as: Registration of FIR and investigation of crime cases, maintaining public safety, controlling traffic, passport verification, maintenance of law and order duties at public places, providing securities to VIPs etc. Fruitful enjoyment of democratic country by the society depends on the law enforcement agencies i.e. Police Officials by way of performing their duties. Police plays an important role not only in maintaining law and order in the society, but they also sets rescue operation at the time of natural calamities, terrorist attack etc., they provide 24 hours services on 365 days without any holidays.

First Forensic Science Laboratory was established in Kerala State at Thiruvananthapuram in 1961. At present 19 District Mobile Labs in all Police Districts and two fully functional Regional Forensic Science Laboratory at Thrissur and Kannur respectively. The Headquarters lab situated in Police Headquarters, Thiruvananthapuram which has eleven divisions: Physics, Ballistics, Biology, Serology, DNA, Documents, Documents-Civil, Cyber, Chemistry, Explosives and Polygraph. Forensic experts examine the scene of crime and material objects seized by Investigating agency and submit their reports before the courts. These experts are also called upon to give evidence relating to their findings in the court of law.

Kerala High Court had criticized over the delay in investigation of crime cases and asked the Government to think about separation of Investigation wing from law and order maintenance. Moreover, the Supreme court as well as High Court of Kerala directed the Police Officers to ensure genuine, committed and timely action on the part of Investigating Officer which would have earned much more credibility to the Police force. Investigation of serious crimes, if entrusted to unskilled and influenciable Police Officers will make great amount of disservice to the citizens in our country. The Supreme Court of India in Prakash Singh V Union of India held that the law and order and Crime Investigation are two wings of the Police, both the wings should be separated for better expertise and speedier investigation.

Examination of Crime Scene often give forensic evidence that leads to detection of crime and apprehension of accused persons. As the physical evidence is reliable and admissible to court, it has immense value. But, in many cases, the Crime Scene contamination leads to loss of evidence which been an issue in forensic community. Poor training of forensic technicians and law enforcement Officers, and contamination of Crime scene by Curious Officers, detectives and supervisors may lead to hampering proper investigation which may result the loss of evidence. The powers and duties of a police officer making an investigation are laid down in sections 157 to 173 of Cr.P.C. The Hon'ble Supreme Court in H.N. Rishbud v. State of Delhi [17] laid down the following steps for the investigation of Criminal cases:

- i. Proceeding to the spot;

-
- ii. Ascertainment of the facts and circumstances of the case;
 - iii. Find out and arrest the suspected offender;
 - iv. Collecting evidence related to the commission of the offence. The collection of evidence may consist of
 - a. the examination of various persons (including the accused) and record their statements,
 - b. conduct search at places where accused are suspected to be hide or seizure of things (such as weapons or any other material evidences to prove the offences) considered necessary for the investigation and to be produced at the trial;
 - v. Formation of the opinion as to whether on the material collected is necessary to place the accused before a Magistrate for trial, and if so further steps may be taken for filing of charge-sheet under 173 CrPC before the court concerned.

However, Improper Investigation will always benefit to the accused. Benefit arising out from faulty investigation go to accused and not to prosecution [18]. Therefore, it is necessary to conduct investigation properly and impartially within a reasonable time as per the law. It is often said that “a criminal may be very smart but he always leaves behind a clue”. The Investigating Officer in the criminal cases has to collect evidence against culprits from the place of occurrence and prove the case beyond reasonable doubt. The Police as well as Prosecutor plays important role in the conviction of the wrongdoer [19].

It is noticed that one of the major reason for acquittal of major crime cases is turning hostile by the victims as well as important witnesses. Victims change sides during trials in courts either by threatening of the accused persons i.e. the victims are forced to change their statement against their will. Moreover, in some cases, the matters are settled out of court, due to the influence of money. In such cases, the will and feelings of victims are not taken into consideration. While delivering the judgment in Jessica Lal and Priyadarshini Mattoo cases, the court opined that the judge was forced to acquit the accused even though he assure that the accused had committed the murder, but lack of evidence by poor investigation by the Police and hostility of accused during trial the accused were acquitted. It is a fact that the poor performance of the Police for the collection of evidence adversely effects the investigation of cases. The co-operation of witness during trial is very important to the prosecution. Remedial measures on the part of prosecution is necessary to prevent the witnesses and victims turning hostile during trial. Professional as well as Scientific Investigation can ensure even when the witnesses turn hostile [20]. The medical, chemical, DNA analysis, Brain mapping and other digital and physical evidences are collected properly, even the victims cannot save the accused. Hence, the forensic evidence which is proved scientifically can only increase the conviction rate. Similarly, the protection of witnesses is also very important. In sensitive cases, the witnesses are to be relocated in a safest place at the Government’s expense as in Western Countries and ensure that the witnesses are well protected in court rooms and testimonies are given without fear.

On detailed study of various criminal cases reported in Kerala, serious lapses on the part of Police as well as Government is noticed. To overcome these difficulties certain suggestions are made as follows:

1. Non Registration of FIR or No Proper Registration of FIR [21]: In many cases, it was observed that no senior responsible police officer is available in the concerned police station for the registration of FIR because the Police Personnel in the Police Station concerned are involved in either in law and order duties or making security arrangements for the high dignitaries of the state. Similarly, Some Police Officers refusing to register the FIR when a Complainant directly approach the Police Station. Improper registration of FIR will also address the problem of minimizing the gravity of the offence while registering the case.
2. While recording statements under 161 CrPC, the provision insisting for signature of the person making the statements should be incorporated into the present code of criminal procedure as this practice is used in most of the developed countries. Mallimath Committee also recommended that Video graphing is necessary while recording statement of a persons which

can help to prove that no coercion was inflicted to the person at the time of giving statements to the Police

3. In Police force, law and order to be separated from Investigation wing is essential at organizational wing. Justice K.T. Thomas Committee favoured, appointed by Kerala Government to study the problems in Kerala Police, advised for separation of law and order from investigation duties to enable continuous and sustained investigation of Criminal cases. Similar recommendations were also made by Padmanabhaiah Committee and Justice Mallimath Committee on Police Reforms. While separating Police Personnel from law and order duties, efficient Police Officers with sufficient knowledge in law and science or on their area of interest should be selected. The selection may be conducted on the basis of written test and interviews. In the State, Law and Order duty is separated from Investigation wing, However, due lack of Police Strength, Police Personnel from Investigation side also detailed for law and order duties, this adversely effects the investigation work. The investigation party should not be detailed for law and order duty at any circumstances, thereby the investigation branch will have free time, independence and expertise to focus on the investigation only.
4. Proper training to police personnel in relevant laws are to be given periodically. Latest Judgements from Supreme Courts as well as from High Courts are to be discussed among the Police Staffs in Police Stations and direction from Higher Courts are to be studied. Various Scientific techniques such as DNA Profiling, Narco Analysis, Finger printing etc., are complex Scientific procedures and therefore skill and expertise are needed to Investigating Officers to handle the samples. For this, proper and periodical intensive training to the Investigating Officers for collection and lifting of samples, method of preservation. DNA profiling, Fingerprinting and Narco tests is are a complex [22].
5. Legal advisor or a legal Officer with sufficient knowledge in Criminal Law is needed to be appointed in all police stations to help the investigating officers for collecting connecting [23] evidence or admissible evidence. The opinions of such legal officers are to be sought before filing chargesheet of a case.
6. Even though, there are Forensic Science Laboratories, Regional Laboratories and Mobile Laboratory in each Districts, they are not sufficient to meet the present requirement of the State. Many cases are still pending in court as well as in Police Stations for want of expert opinion. Delay in getting reports from Forensic Science Laboratory adversely effects the results of the Prosecution of a case If more crimes occur in various parts of a District, Crime scene observation with Scientific expert cannot be conducted in time. Therefore, more Mobile Laboratory, Forensic Science Laboratory with sufficient experts are to established at each Sub Division level.
7. A "Prosecution house" [24] is to be established in the Courts of Justiceso that the complainant/victim can lodge complaint before the court without the threats and threat from the accused. In additional to it, Police Officers are to be deployed in Prosecution House to guide the Prosecution witnesses for giving evidence before the court. This will prevent witnesses from turning hostile to a great extent.
8. Recording of section 161 statements by Police are also conflicting; judges have the complaint on police that they do not do it properly and the statements recorded are the statements of the police and not of the witness. This is one of the main reason for loosing the cases during trial. But the police simply deny this and argue that they record the statements properly. For avoiding this controversy, it is better to record 161 statements in question answer form so as to reduce the time consumption and introduction of unnecessary statements by police.
9. Number of courts and police stations shall be increased to the tune of the increasing population and increasing reporting of Criminal cases.
10. The delay in filing of charge sheet is also one of the reasons for the wrong acquittals. Delay in forensic experts in sending the medical reports to the police leads to delay in the submission of charge sheet. Similarly long delay for trial in court will also effect adversely in prosecution of cases.

11. Necessary amendments in CrPC, Law of Evidence and IPC are to made so as to include Scientific techniques and so that the courts can be delivered judgements without any ambiguity.

CONCLUSION

Crime rate in Kerala is getting increased alarmingly as per the Crime Status published by National Crime Record Bureau and at the same time, the conviction rate not improved. The frequent acquittals of Criminals are mainly because of the loopholes in the absolute investigation. So, for scientific investigation, scientific techniques and their way of usages are necessary. Victims of offenses seek justice through the courts by filing criminal cases for awarding punishment to the offenders. The State is required to prove the guilt of the offenders through the Public Prosecutor by providing adequate evidence beyond the shadow of doubt. Medical and Scientific pieces of evidence are used by investigating agencies to prove the guilt of the accused. This Article has tried to analyze the use and misuse of the technique and methods and the judicial approach in India as well as concerned laws on the Scientific methods like Finger Printing, Narco Analysis, DNA Finger Printing, etc., in the administration of service in a better way.

REFERENCES

1. "Forensic Awareness in India", (2003), Cr.LJ Journal Section, p.73.
2. H.J. Walls, Forensic Science, 2nd edn. (2008)
3. (2003), Cr.LJ Journal Section at p.73
4. Ibid.
5. (2002), Cr.LJ Journal Section at p.99
6. (2003), Cr.LJ Journal Section at p.73
7. Ibid
8. Prof. (Dr.). P. Chandrasekharan, "Forensic Science in Criminal Investigation", Encyclopaedia of Police in India, pp.180-182.
9. Alex Samuel & Dr. Swati Parikh, DNA Test in Criminal Investigation and Paternity Disputes (2009), p.255
10. B.R. Sharma, Forensic Science in Criminal Investigation and Trials, 3rd edn.
11. (2003), Cr.LJ Journal Section at p.38
12. S.S. Sanjay Krishnan & H M Shambhavedi; Forensics - A way to Justice
13. Colin Evans & John L French, Crime Scene Investigation (Criminal Investigations) 2009 p 13
14. Barry A.J. Fisher, "Techniques of Crime Scene Investigation" 7thedn. 2004
15. Gayathri.S, "Application of Forensic Science Technique in Crime Scene Investigation" IJESMR 2018
16. Anandaswarup Gupta 1974 Crime and Police in India (upto 1861)
17. H. N. Rishbud And Inder Singh vs The State Of Delhi, 1955 AIR 196
18. Kailash Gour v. State of Assam, (2012) 2 SCC 34.
19. Durga Prasad Inturu, "Criminal Justice Systems in India – Reasons for Delay in Disposal of cases: A comprehensive Study" 2016
20. Dr. K.V.K. Santhy, 2016 "Problems in the criminal investigation with reference to increasing acquittals: A Study of Criminal Law and Practice in Andhra Pradesh"
21. ibid
22. Surendra Kumar, New Scientific Tests Reference to DNA, Fingerprinting and Narco Analysis
23. The Padmanabhaiah Committee on Police Reforms A Critical Analysis of Some Important Recommendations
24. Dr. Justice V.S. Mallimath, Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs;