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Abstract:

The whole edifice of the criminal justice system depends upon the solid foundation of fair investigation. An improper investigation may lead to the acquittal of a perpetrator or the conviction of an innocent person. There are many cases where the courts have reflected upon the problem of failing of the justice delivery system just because of a faulty investigation that was insufficient in establishing the chain of events, preserving the forensic evidence, or collection of the required evidentiary material to prove the offender's guilt beyond a reasonable doubt. These lapses may result from an inadvertent omission or a deliberate attempt on the part of the investigating officer. Whatever may be the causative factor for such a lacuna, an erroneous investigation may cause prejudice to both the victim and the convict and results in the denial of their due process rights and ultimately shakes the faith in administration of justice among the common masses. For the present work, a doctrinal research method has been used where four cases have been analysed to find out the types of lapses during the investigation that resulted into denial of victim justice. This will further be supplemented by a analysis of judicial and existing legislative measures provided for addressing the issue of ineffective investigation and will finally endeavour to identify the gaps which needs to be addressed to ensure fair and impartial investigation.

Introduction

To ensure criminal justice, it is of great importance that a crime should be proved beyond reasonable doubt and therefore it becomes indispensable that the circumstances relating to the commission of an offence should be properly investigated. A fair investigation brings out the real unvarnished truth and helps in ascertaining the guilt or innocence of the accused and helps in ensuring victim justice. Highlighting the importance of fair investigation, it was observed by the Delhi High Court in *BMW Hit and Run case*¹ that investigation is a skilled exercise that helps in discovering the truth about the crime incident and is essential for prosecution. A fair trial depends upon the preceding fair investigation and therefore a lot of discretion has been given to the investigation officer to conduct an impartial investigation to the extent that the police have unfettered power to conduct the investigation and even the judiciary is not expected to direct the investigating agency to conduct the investigation in a particular manner². Many times, the trial courts and appellate courts have highlighted the importance of fair investigation and have been very critical of the

frequent disobeying of the laws relating to the investigation procedure and the malpractices adopted by the investigation officers during the investigation of an offence.

This article analyzes this issue with a victim-centric approach and is divided into four parts. In its first part, the article tries to ascertain whether the victims' right to justice including his right to fair investigation has been recognized under the Indian criminal justice system. In the second part, the article delves into the inquiry as to how an erroneous investigation and misuse of discretionary powers during the investigation may affect the rights of the victim of crime. For this purpose, a case analysis of four relevant cases on the subject has been undertaken to find out the types of lapses that affected the fair investigation generally because of which pursuit of justice remained unfulfilled. In the third part, the researcher endeavours to find out how the judicial and legislative measures deal with this misuse of discretionary power exercised by the police during the investigation and their relevance in ensuring victim justice. Finally, the fourth part of the article analyzes the judicial and legislative measures to

¹ *Sanjeev Nanda v. The State*, 2009 SCC OnLine Del 2039.

² *The King Emperor v. Khawaja Nazir Ahmad*, 1944 SCC OnLine PC 29.

check to what extent these measures complement each other and can be effective in providing the remedy to the victim who has suffered in his right to a fair investigation.

Part I- Fair Investigation as part of the right to justice for the victim of crime

Victims' right to justice:

UN Declaration³ recommends for establishing and strengthening judicial and administrative mechanisms so that victims can obtain redress for the harm that they have suffered through "procedures that are expeditious, fair, inexpensive and accessible."⁴ Furthermore, it is provided that such processes should be made responsive towards the needs of victims⁵ and this responsiveness should be facilitated by: "Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system."⁶

The judicial view in India resonates with the views of the United Nations as is deducible from the judgements of various High courts and Supreme Court in India.⁷ Courts in India vehemently recognize victim's right to justice. Recognizing this right, it was emphasized by the Rajasthan High Court that:

"One of the principal objects of Criminal Justice System is to vindicate the right to justice of unfortunate victim. Noble concept of victimology is a step towards fulfilling the avowed promises made by our Constitution makers. Thus, the Judicial Administration Mechanism should be established and strengthened, where necessary, to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive, and accessible. International Human Rights Law requires the States to adopt effective measures for the prevention, investigation,

prosecution, and punishment of sexual violence to ensure its citizens the highest attainable standard of health and to provide reparations to victims of serious human rights violations."⁸

Victims' right to justice is well-recognized under the Indian Constitution. Constitutional values as enshrined in the Preamble of the Indian constitution unambiguously accentuate justice and equality.⁹ Emphasizing on this constitutional guarantee, it was observed by the division bench of Punjab and Haryana High Court that: "The need to address cry of victims of crime, for whom the Constitution in its preamble holds out a guarantee for 'justice' is paramount."¹⁰ article 14 encompasses "equality before law" thus making it clear that no person shall be denied equality before the law, and all shall be treated equally by the state or provided equal protection of laws.¹¹ The right to life as envisaged under article 21 of the Indian Constitution has been given wider interpretation through judicial pronouncements and it was observed by the Supreme Court that: "The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim."¹² Similarly, the Patna High Court went on to note that the application of the principle of fair trial inherent in this article is not limited to ensuring the rights of the accused only. The right to a fair trial is as much a fundamental right for a victim as for an accused and made its observation thus: "article 21 of the Constitution of India does not, thus, confer fundamental right on the accused alone, but it also confers, on the victim of an offence, the right, fundamental in nature, to demand fair trial."¹³

³ UN General Assembly *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* 1985, A/RES/40/34 (November 29, 1985) available at

<http://www.un.org/documents/ga/res/40/a40r034.htm>

⁴ *Id* at pt 5.

⁵ *Id* at pt 6.

⁶ *Id* at pt 6 (b).

⁷ *Suo Moto v. State of Rajasthan*, 2005 SCC OnLine Raj 658, para. 19; *Sonalal Soni v. State of Chhattisgarh*, 2005 SCC OnLine Chh 132, para. 22.

⁸ *Suo Moto v. State of Rajasthan*, 2005 SCC OnLine Raj 658, para. 19.

⁹ The Constitution of India, Preamble.

¹⁰ Para 18 in *Rohtash @ Pappu v. State of Haryana*, CrI.A.No. 250 of 1999, as cited in *Abdul Rashid v. State of Odisha*, 2013 SCC OnLine Ori 493, para 9.

¹¹ The Constitution of India, art. 14.

¹² *State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal*, (2010) 3 SCC 57, para. 68 (ii).

¹³ *Ram Padarath Singh v. The State of Bihar*, 2014 SCC OnLine Pat 6564.

The Courts now recognize victims' right to a fair trial¹⁴ and speedy justice.¹⁵ Even the directive principles speak volumes about the right to justice on an equal basis.¹⁶ It is for the State to ensure that all citizens are accorded equal opportunity to access justice. It was observed by the division bench of Punjab and Haryana High Court that: "Right of access to justice under article 39-A and principle of fair trial mandate right to legal aid to the victim of the crime."¹⁷

Victim's right to justice includes fair investigation:

The phrase "fair and proper investigation" has a twin purpose in criminal jurisprudence. Firstly, to ensure that it is just and honest as per the law and is free from prejudices, and secondly the investigation is to bring out the factual truth before the courts.¹⁸ Constitutional mandate for upholding justice and fairness of a trial cannot be ensured until the preceding investigation which is meant for bringing out the unvarnished truth before the courts, is also fair. The constitutional obligation of the State to ensure a fair trial gives a right to a victim of crime to demand a fair investigation also. This results into a consequential duty on the State to ensure a fair investigation that is not prejudiced, motivated, perfunctory, and reckless. As observed by the Patna High Court in the context of extended dimensions of article 21:

"Logically extended, this would mean that every victim of offence has the right to demand a fair trial meaning thereby that he/she has the right to demand that the State discharges its constitutional obligation to conduct a fair investigation so that the investigation culminates into fair trial."¹⁹

¹⁴ *Ibid.*

¹⁵ *Mohamed Maraikkayar v. The Director General of Police*, 2014 SCC OnLine Mad 9759, para. 7.

¹⁶ article 39 A of the Indian Constitution provides: "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

¹⁷ Para. 20 in *Rohtash @ Pappu v. State of Haryana*, Crl.A.No. 250 of 1999 decided on 1.4.2008, as cited in *Abdul Rashid v. State of Odisha & Others* 2013 SCC OnLine Ori 493, para. 9.

Unfair investigation: Denial of victim's right to justice:

Unfairness in an investigation not only affects an accused adversely but also a victim of a crime equally and may be detrimental to the very concept of fair trial. It denies a victim his fundamental right to justice. An investigating officer is entrusted with the task of ensuring fairness in the investigation. It includes quick registration of a case, an impartial investigation and timely final report. These are the concomitants that lead towards a fair trial. Emphasizing upon these features of fair trial, Madras High Court made its observation thus: "To be fair to the victim, fair to the accused and fair to the society at large are the constitutional obligations of the police. If there is any deviance, it is likely to result in failure of justice."²⁰

Rule of law requires a judicious investigation. An unfair investigation is equally harmful to society because an offender roams freely not because of a lack of evidence but because of a faulty investigation. The criminal justice administration cannot afford faulty investigation as it may be beneficial to the accused and potentially lead to the travesty of justice for the victim. Thus, it is of utmost importance that the investigation is conducted as per the procedure provided by the law.²¹ The notion of fair trial becomes the casualty in case the investigation is motivated, biased, improper, or injudicious. Referring to the apex court judgment in *Babubhai v. State of Gujarat*²², Punjab and Haryana High Court observed that: "It would equally be for the aggrieved person and a victim to allege that he is not being treated fairly by injudicious investigation to favour the accused persons. Thus, it would violate his constitutional rights."²³

¹⁸ *Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762, para. 48.

¹⁹ *Ram Padarath Singh v. The State of Bihar*, 2014 SCC OnLine Pat 6564.

²⁰ *P. Sathish Kumar v. State of Tamil Nadu*, 2014 SCC OnLine Mad 347, para. 1.

²¹ *State of Bihar v. Niranjan*, 2020 SCC OnLine Pat 2112, para. 86.

²² (2010) 12 SCC 254.

²³ *Gurbax Singh Bains v. State of Punjab* 2013 SCC OnLine P&H 4245, para. 3; See also, *Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi)*, 4 (2010) 6 SCC 1.

The observations made by the Kolkata High Court in *Rijiya Bibi case*²⁴ reflects how misuse of investigative powers adversely affects the cause of victim justice:

“Such dereliction of duty to fairly investigate a crime is a brutal denial of the fundamental right, of access to justice and equality before law, to the family members of the deceased. Fair investigation is a fundamental right of every individual. Criminal Justice System is based on bulwark of a fair and impartial investigation at the behest of the investigating agency. In the event, there is an infraction of such basic duty, it results in complete eclipse of Rule of law and a denial of access to justice and equality before the law to a victim and his family members in the matter of seeking justice and redressal against crime in society and gross infraction of Rule of law by failing to ensure an effective and impartial investigation.”²⁵

Part II Relevant Cases: An analysis

Cases are on the rise where police fail to capture clinching evidence even in cases of murders committed in broad daylight. It has been seen that too many times there are loopholes in the investigation due to the lack of knowledge regarding the procedure to be followed and regarding the collection and preservation of forensic evidence. It has also been seen that quite often police as an investigation agency do not perform their duties fairly and favours the accused or tries to save the actual culprit or the ulterior motive of an investigating agency decides their course of action. To cite a few cases are *Pehlu Khan mob lynching case*²⁶, *State of Gujarat v. Kishanbhai*²⁷, *Nepal Krishna Roy V. State of West Bengal*²⁸ and *Golam Sarwar v. State of West Bengal*.²⁹

The case analysis raises some pertinent issues being faced by the criminal justice system.

Case 1. *Pehlu Khan mob lynching case*³⁰

In the Pehlu Khan mob lynching case, despite there being the existence of a video recording of the alleged mob lynching a grave miscarriage of justice was allowed to take place, only because of the shoddy investigation conducted by the police agency. In this case, the accused charged under sections 147, 341, 323, 308, 302, 379 and 427 read with section 149 of the Indian Penal Code, were given benefit of doubt by the Additional District Court, Alwar. Despite accepting the fact that the victim died because of fatal injuries caused by the mob, the court acquitted the accused since the prosecution case could not be proved beyond a reasonable doubt. What led to this failure of the prosecution case was the role performed by the investigating officers in the case. The investigation into the case was found to be full of lacunae. The court mentioned the following lacunae in the investigation of the case. The persons named by the victim (in his statement that later became his dying declaration) as his attackers were not charge sheeted though it was stated that there was a prima facie case against those persons. The investigating officer did not give any evidence regarding the investigation carried out with reference to the named persons. The test identification parade³¹ becomes necessary in such cases where the persons other than the persons named in F.I.R. or named under section 161 Cr.P.C. are charge-sheeted but still in this case, no test identification parade was held during the investigation stage. The investigating officer did neither obtain any fitness certificate from the doctor before recording of victim-statement nor did the doctor attest to the said recording of the statement. The investigating officer sent the victim's statement to the police thane (post) after a gap of sixteen hours. The investigating officer had admitted that the video of the incident that showed involvement of the said named accused was handed over to him by the informant but neither the mobile of the informant was seized nor

²⁴ *In re Mst Rijiya Bibi case*, W.P. 10061 (w) of 2008, order dated 19/03/2014 available at http://judis.nic.in/Judis_Kolkata_App/content.asp

²⁵ *Ibid.*

²⁶ *State v. Vipin*, Session case No. 24/ 2019, ADJ Court, Alwar Rajasthan available at

https://services.courts.gov.in/ecourtindia_v4_bilingu_al/cases/ki_petres.php?state=D&state_cd=9&dist_cd=2#

²⁷ 2014 SCC OnLine SC 21.

²⁸ 2014 SCC OnLine Cal 17637.

²⁹ 2014 SCC OnLine Cal 10762.

³⁰ *Supra* note 26.

³¹ In *State of Gujarat v. Kishanbhai*, 2014 SCC OnLine SC 21, test identification parade was emphasized as an important part of investigation.

the mobile of the investigating officer and the informant was sent to the Forensic Science Laboratory.³²

Case 2. *State of Gujarat v. Kishanbhai*³³

In this very heinous case of rape and murder of a six-year-old girl child, because there being “more than ten glaring lapses in investigation and prosecution” of the case as observed and deprecated by the court, the case resulted in acquittal. The lapses included:

No examination of key witnesses, no test identification parade to ensure whether the witness had correctly identified the accused, no sketch map, IO left the station without making an entry in the station diary, FIR after seven hours (though the high court inferred that the accused was kept in detention within one hour of the incident) but the arrest time was shown as the next morning of the incident, fudging over the time at which victim went missing reflective of investigating agency trying to show the offence differently from the actual, inquest panchnama drawn before registration of FIR, and accused not examined medically within 24 hrs of the occurrence. The Court highlighted the need for investigating agency to resort to latest scientific and forensic techniques to establish the facts emphasized but same was not done as was clear from the fact that no DNA profiling of blood samples was done.

Case 3. *Nepal Krishna Roy V. State of West Bengal*³⁴

In this case of the murder, a police case was registered on 22nd July 2013 under sections 448/326/307/34 on a written complaint filed by the widow of the deceased. Police arrested five persons (fringe players) to save the actual culprits after forcibly taking victims’ signatures on blank papers. The case was first given by the court to the CID and later to SIT. Being dissatisfied with the performance of both, the case was transferred to CBI. The following order, showing dissatisfaction of the court, is reflective of the way, the investigation was being handled in the case:

³² In another case where viscera was not sent to Forensic Science Laboratory for chemical examination, it was held by the Supreme Court as an ‘investigation coloured with motivation.’ Apex Court referred the investigation as ‘irresponsible investigation’ in following terms “It, in fact, smacks of intentional mischief to misdirect the investigation as well as to withhold material evidence from the Court. It cannot be considered a case of bona fide or

“I hope and trust that by the returnable date ‘meaningful progress’ in investigation shall be made and by ‘meaningful progress’ is not meant arresting three or four of the several accused a day prior to filing of status report, but collecting material evidence, inter alia, to link the assailant(s) and the abettor (s) with the offence of murder of the victim as well as to unearth who was/ were responsible for manufacturing documents to implicate the petitioners as the assailants of the victim, as alleged in the writ petition, and letting the victim leave for the other world without obtaining his statement regarding the identity of his assailants while he was conscious but reportedly ‘disoriented and restless’.”³⁵

The court mentioned various lapses during the investigation of the case. Statements of the eyewitnesses i.e., the wife of the deceased and the daughter-in-law of the deceased were not recorded under section 164 of the CrPC. It was observed by the court that the investigation was influenced by the government, tainted with extraneous influence. There was total distortion of statements recorded by investigating officer. Statement of witnesses ignored and not recorded under section 164 CrPC. Hriday Ghosh, son of the deceased disclosed various facts that were not taken into consideration and his statement under section 161 CrPC revealed various names including political leaders, but his statement was not recorded under section 164 CrPC.

The court recorded its dissatisfaction with the functioning of DGP who submitted his report without looking into the video footage containing the speech instigating murder. S.I.T. filed a charge sheet before the jurisdictional magistrate thus denuding the court from the power of monitoring. DGP appeared personally and explained that the same was done on the advice of state advocates who informed that it shall not amount to disobeying the court and same can be done.

unintentional omission or commission. It is not a case of faulty investigation simpliciter but is an investigation coloured with motivation or an attempt to ensure that the suspect can go scot free.” see *Dayal Singh v. State of Uttaranchal*, 2012 SCC OnLine SC 580 para. 22.

³³ 2014 SCC OnLine SC 21.

³⁴ 2014 SCC OnLine Cal 17637.

³⁵ *Id.* Order 14th Feb 2014.

Case 4. *Golam Sarwar v. State of West Bengal*³⁶

In this case eleven persons were brutally murdered in broad daylight, investigating officers did not bother to record statements of all the witnesses, no seizure of assault weapons was done and no seizure of any other relevant item such as the tractor or cycle was done. The observations made by Calcutta High Court regarding the slipshod way in which the investigation was conducted, reflect upon the sorry situation:

“Investigation conducted in this case was abysmal reflecting an alarming state of affairs where the police did their utmost to ensure that the perpetrators of the crime went scot free. Statements of all the witnesses have not been recorded by the police. There is no seizure of the weapons used in the assault, nor of any other relevant articles. This is the sorry situation although there were three investigation officers who handled this case consecutively. The careless, perfunctory and lackadaisical investigation reflects a sad story and is a telling comment on the role of the police in this case.”³⁷

The High Court upheld the conviction and sentence against 25 accused, set aside the conviction of 19 accused and acquitted them by giving them benefit of doubt. Though the conviction was upheld by the High Court based on other sufficient incriminating evidence, it criticized the investigation by referring to it as “callous and careless” because of the manner in which it was handled by three investigation officers.³⁸ Another judge made the following observations regarding the perfunctory investigation in the case as:

“A designedly notable omission pertains to the preparation of the sketch map. The sketch map makes no mention of the club house at Suchpur village which was the place of occurrence and mentioned by PWs 1, 4, 6 and 9. Among the other notable omissions in the investigation is the designed failure on the part of the police to take

statements from witnesses who signed the inquest report. No test identification parade was held. The photographs taken at the inquest were not marked as exhibits. The charge sheets were submitted beyond time thereby enabling the accused persons to take statutory bail despite the ghastly nature of the crime.”³⁹

It is clear from the analysis of these cases that too many times, victims’ right to justice suffer due to an improper investigation that potentially may result into denial of justice. A timely judicial intervention in the form of direct monitoring of the investigation or by transferring the investigation to some other agency instill faith in the justice delivery system as was in the case of *Nepal Krishna Roy case*⁴⁰. Sometimes, the relief comes in the form of directives from the judiciary as was seen in the case of *Kishanbhai case*⁴¹ where the court emphasized upon use of emerging scientific tools of investigation and its inclusion in training programs to make the investigation more effective and up-to-date with technological advancement. Supreme Court also issued directions for training programs to be put in place within six months for purposeful and decisive investigation. But sometimes judiciary may also fail to provide course correction despite highlighting the lacuna left during the investigation of a case as was seen in the *Pehlu Khan case*.⁴²

Part III Judicial and Legislative Measures to Check Investigative Lapses

Judicial Measures:

Expounding the role expected from the courts to play while dealing with cases of faulty investigation, it was observed by the Apex Court in the case of *Dhanaj Singh v. State of Punjab*⁴³ that:

“In the case of a defective investigation the court has to be circumspect in evaluating the evidence, But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of

³⁶ 2014 SCC OnLine Cal 10762.

³⁷ *Id.* at para 3.

³⁸ *Id.* at para 59.

³⁹ *Golam Sarwar v. State of West Bengal*, 2014 SCC OnLine Cal 10762.

⁴⁰ *Nepal Krishna Roy v. State of West Bengal*, 2014 SCC OnLine Cal 17637.

⁴¹ *State of Gujarat v. Kishanbhai*, 2014 SCC OnLine SC 21.

⁴² *Supra* note 26; see also; “Multiple lapses, shoddy probe: SIT’s 84- page report on Pehlu Khan lynching”, hindustantimes, Jaipur, available at <https://www.hindustantimes.com/india-news/pehlu-khan-case-sit-finds-lapses-in-probe-seeks-relook/story-qfS2gJTALfStmKIBD40FKJ.html>

⁴³ 2004 SCC (Cri) 851.

the investigating officer if the investigation is designedly defective.”⁴⁴

In *Dayal Singh & Ors, v. State of Uttaranchal*⁴⁵, the Supreme Court not only prescribed what role is expected of an investigating officer while conducting investigation but also exposed the duties of the judicial officer if he notices defective or improper investigation during the trial. The Court laid down certain determinative parameters to check whether an investigation is defective or improper and provided certain measures that the trial judge may take to deal with a defective investigation. These are;

“(i) Whether there have been acts of omission and commission which have resulted in improper or defective investigation;

(ii) Whether such default and/or acts of omission and commission have adversely affected the case of the prosecution;

(iii) Whether such default and acts were deliberate, unintentional or resulted from unavoidable circumstances of a given case;

(iv) If the dereliction of duty and omission to perform was deliberate, then is it obligatory upon the court to pass appropriate directions including directions with effect to taking of penal or other civil action against such officer/ witness.”⁴⁶

The Hon’ble Supreme Court emphasised that to ascertain the defective or irresponsible investigation, it is a must to examine the prosecution evidence in its entirety.⁴⁷ The investigation officer is required to act with ‘diligence’ according to the Police Manual and the provisions of the Criminal Procedure Code mandating the investigation to be conducted in a particular manner and hence is obliged to be “diligent, truthful and fair in their approach and investigation.”⁴⁸ This was further made clear by the court that: “An investigating officer is completely responsible for the manner and methodology adopted in completing his investigation.”⁴⁹

In another case⁵⁰, where the investigation was conducted with unconcerned and uninspiring

performance and no sincere efforts were made on the part of the investigating agency to establish the guilt of the accused, the Hon’ble Apex Court while acquitting the accused and setting aside the conviction and sentence passed by the High Court, has reiterated above ‘diligence’ criteria and was critical of the role played by the investigating officer in the following words:

“The approach of the investigating officer in recording the statements of witnesses, collecting the evidence and preparation of site map has remained unmindful. The investigating officer, dealing with a murder case, is expected to be diligent, truthful and fair in his approach and his performance should always be in conformity with the police manual and a default or breach of duty may prove fatal to the prosecution case.”⁵¹

Regarding the second parameter, it was observed by the Apex Court in *Dayal Singh* case⁵² that consideration of *effects* upon prosecution case is irrelevant. It is not required to be shown that such commissions or omissions by the investigating officer should have resulted in the failure of a prosecution case and it was stated that still the *acts* might be prejudicial. Only the deliberate act or irresponsible attitude is sufficient to constitute the misuse of investigating powers by the police.

Regarding the third parameter, Apex Court observed that: “The consequences of these defaults should normally be attributable to negligence.”⁵³ But an intentional omission or commission to misdirect the investigation or to withhold the material evidence from the court, would result in a deliberate, designedly defective and motivated faulty investigation and would not only be a faulty investigation simpliciter.⁵⁴

Regarding the fourth parameter, the Apex Court observed that the court must ensure justice to all and to see that such deliberate dereliction of duty or designedly defective investigation or intentional acts or omissions in violation of professional standards do not come in the way of justice delivery. The courts are required to deal with such issues seriously and where it necessitates, issue directions for initiating enquiry,

⁴⁴ *Id.* at para. 5.

⁴⁵ 2012 SCC OnLine SC 580.

⁴⁶ *Id.* at para. 19.

⁴⁷ *Id.* at para. 20.

⁴⁸ *Id.* at para. 21 & 26.

⁴⁹ *Id.* at para. 21

⁵⁰ *Mahavir Singh v. State of Madhya Pradesh*, (2016) 10 SCC 220.

⁵¹ *Id.* at para. 26.

⁵² *Dayal Singh v. State of Uttaranchal*, 2012 SCC OnLine SC 580, para. 21.

⁵³ *Id.* at para. 26.

⁵⁴ *Id.* at para. 22.

disciplinary proceedings and penal action against the police officers responsible for such misuse of investigative powers. The Supreme Court directed thus:

“it shall be appropriate exercise of jurisdiction as well as ensuring just and fair investigation and trial that courts return a specific finding in such cases, upon recording of reasons as to deliberate dereliction of duty, designedly defective investigation, intentional acts of omission and commission prejudicial to the case of the prosecution, in breach of professional standards and investigative requirements of law, during the course of the investigation by the investigating agency....”⁵⁵

In *Kishanbhai case*⁵⁶, the Apex court specifically highlighted the necessity of updated training programs for the investigating officials so that they cannot claim innocence because of lack of knowledge.⁵⁷ Further, the SC directed the Home Department of every State to devise a mechanism within six months of these directions to fix the liability of erring investigating or prosecuting officials.⁵⁸ To ensure purposefulness and decisiveness in the investigation, it was directed by the Supreme Court that there should be an identification of the official responsible for the lapse, a finding should be made regarding the nature of the lapse whether same was innocent or blameworthy, a departmental action such as withdrawal from investigative responsibilities temporarily or permanently based on the culpability should be taken.⁵⁹ As emphasized by the court:

“All such erring officials/ officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties and would ensure that investigation and prosecution are purposeful and

decisive. The instant direction shall also be given effect to within six months.”⁶⁰

To ensure that the State provides a procedural mechanism for proper administration of justice the court further mandated that a standing committee should examine all cases of acquittal and record reasons for failures of prosecution cases. The points considered by the committee should be used to address the errors committed by the investigating agency, the prosecuting agency or both.⁶¹

Legislative Measures (section 166 A of the Indian Penal Code):

The police, the very embodiment of state authority and the executive branch of the Government, which is responsible for enforcing the law, must discharge their duties and execute investigative powers strictly as per the procedure provided by the law and they must be held accountable by the law if there is clear non-compliance of the investigation procedure as provided by the law. If due to such irregularity, injustice results and harm the private citizens, they should face criminal charges.

To ensure fairness in the investigation, it is required that the police investigative powers must be guided by the detailed legal provisions prescribing the fair investigation procedure and also the mechanism to make them accountable for their action and to force them to work within their legal bounds. By incorporating section 166 A in Indian Penal Code, The Criminal Law Amendment Act, 2013, formulated such a bound for investigating agency by recognizing that they should perform their task of investigating a case in a fair manner without being biased towards anyone.

Section 166 A (a) of the Indian Penal Code provides for penal consequences in case a public servant knowingly disobeys any direction which prohibits him from requiring the attendance of any person at a place other than as prescribed under the Code.⁶² section 166 A (b) of the Indian Penal Code

⁵⁵ *Id.* at para. 47.5.

⁵⁶ *State of Gujarat v. Kishanbhai*, 2014 SCC OnLine SC 21.

⁵⁷ *Id.* at para. 22.

⁵⁸ *Id.* at para. 23.

⁵⁹ *Id.* at para. 23& 25.

⁶⁰ *Id.* at para. 23.

⁶¹ *Id.* at para. 22.

⁶² The Indian Penal Code s.166 A inserted by the Criminal Law (Amendment) Act, 2013 provides as under,

“166 A. Public servant disobeying direction under law-
Whoever, being a public servant,-

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

provides for penal consequences in case a public servant knowingly disobeys the direction of the law concerning how he should conduct the investigation, and it causes prejudice to any person.⁶³

Part IV Analysis of Judicial and Legislative Measures

Comparison between parameters laid down in Dayal Singh's case and section 166 A of IPC.

Regarding the acts of omission and commission resulting in an improper and defective investigation, the Supreme Court emphasized upon the requirement of 'diligence'⁶⁴ whereas section 166 A is silent regarding this 'diligence' requirement rather refers to the 'Disobedience with knowledge'. Parameters laid down by the Supreme Court impose a positive obligation of performing one's duty with 'diligence' with respect to conduct investigation as per Police Manual and provisions of the Procedure Code whereas on the other hand, section 166 A of IPC penalizes violation of a negative obligation i.e., not to disobey any direction of law concerning conduction of an investigation.

Regarding the effects of unfair investigation upon the prosecution case, the Apex court in the above Dayal Singh case⁶⁵, observed that consideration of effects is irrelevant. It is not required that such acts or omissions should result in an adverse effect on the prosecution case. Only the nature of the act is sufficient to fix the liability of the erring officer irrespective of the consideration that the act constituting the misuse was sufficient to adversely affect the prosecution case or not. Observation made by the Hon'ble Apex Court is quite relevant to be cited here:

"Where the default and omission is so flagrant that it speaks volumes of a deliberate act or such irresponsible attitude of investigation, no court can afford to overlook it, whether it did or did not cause prejudice to the case of the prosecution. It is possible that despite such default/omission the prosecution may still prove its case beyond reasonable doubt and the court can so return its finding. But at the same time, the default and

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation Shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine."

omission would have a reasonable chance of defeating the case of the prosecution in some events and the guilty could go scot-free."⁶⁶

Section 166 A of IPC mentions 'Prejudice' to any person but the 'Prejudice' is not required according to the standard set in the Dayal Singh case. The phrase used in the section refers 'to the prejudice' is open to interpretation as to whether the section will apply in cases where there is a possibility and a reasonable chance of causing some prejudice to any person or the prejudice actually must have shown to occur as a result or the consequence of such defaults during an investigation. There might be cases where despite such defaults in the investigation that could affect the prosecution case adversely, the prosecution succeeded due to some other factors. This section is silent about the applicability of this section in such cases.

Dayal Singh case requires a lower threshold for the liability of investigating officer, setting standard that is 'with diligence'. Section 166 A of IPC provides for the criteria of 'Knowingly Disobeys,' thus fixes liability based on subjective knowledge. section 166 A (a) talks about 'knowledge' whereas section 166 A (b) talks about both 'knowledge' and 'prejudice'. The use of the term "knowingly" is quite surprising here because ignorance of the law is not an excuse and, especially for the law enforcers when being public servants they are supposed to know the directions of the law. An investigating officer is supposed to know the law or the general/specific directions given by the courts from time to time relating to the manner of conducting the investigation. This issue was also raised through the note of dissent on the 167th report of The Parliamentary Standing Committee on Criminal Law (Amendment) Bill, 2012. This dissent note also suggested to delete this requirement of 'knowledge' and observed: "The word 'knowingly' should be deleted as lack of knowledge of law cannot be allowed to be a defence and will always be used as a convenient defence in these cases."⁶⁷

⁶³ *Ibid.*

⁶⁴ *Dayal Singh v. State of Uttaranchal*, 2012 SCC OnLine SC 580, para. 21.

⁶⁵ *Id.* at para. 19.

⁶⁶ *Id.* at para. 21.

⁶⁷ Note of dissent given by shri D. Raja, Member, Rajya Sabha and shri Prasanta Chatterjee,

Regarding the *deliberate, circumstantial or unintentional nature of the default*⁶⁸ it was noted by the Apex Court that a specific finding should be returned to initiate enquiry and action against the erring police officers if there was a designedly defective investigation. This section 166 A of The Indian Penal Code though fixes liability or provides punishment in case of disobedience of any direction of law concerning the investigation but does not take into consideration the 'diligence' requirement as was observed by the Apex Court in the case of Dayal Singh. The use of the phrases 'knowingly' and 'to the prejudice of any person' makes its scope limited. Still, the incorporation of section 166 A in the Indian Penal Code is a welcome step since it tries to take into consideration victim justice issues. A wider interpretation can ensure fair investigation to a large extent.

Conclusion

Time and again, it has been emphasized in unambiguous terms by various courts that fair investigation is a fundamental right of every citizen and on a fair investigation depends the fairness of a criminal trial. In view of the significance of a fair investigation, the courts generally have responded by evaluating the prosecution evidence closely to check whether the prosecution is suffering from any defect due to the lapses committed during the investigation of the case. Many a time to meet the needs of the victims and to ensure justice, the courts have gone ahead by laying down the guidelines for effective investigation. Proper findings should be placed on record that make it clear that any fault committed during the investigation was deliberate or unintentional.

Section 166A is a valuable piece of legislation and is a welcome step since it creates legal bounds for the investigation wing of the criminal justice system. The scope of section 166 A should be extended to include the '*diligence*' requirement while fixing the liability in case of faulty investigation. If given due recognition this provision can go far in safeguarding victim justice and ensuring that no culprit go scot-free due to the irresponsible or faulty investigation. A

synthesized reading of Dayal Singh case and section 166 A will be an effective measure to deal with designedly defective investigation and guaranteeing fair investigation.

Member Rajya Sabha at para 9, Department Related Parliamentary Standing Committee, "167th Report on The Criminal Law (Amendment) Bill, 2012", (Ministry of Home Affairs, 2013), , available at

https://sansad.in/getFile/rsnew/Committee_site/Committee_File/ReportFile/15/15/167_2016_6_16.pdf?source=rajyasabha

⁶⁸ *Dayal Singh v. State of Uttaranchal*, 2012 SCC OnLine SC 580, para 19.