VOLUME 5 | ISSUE 3

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

FAIR INVESTIGATION

- Sivakoti Savera[1]

ABSTRACT

"Men may lie but circumstances don't", this legal principle is supposed to linger invariably in the minds of the investigating officers, as in the labyrinthine corridors of justice, the investigation serves as the crucial fulcrum that balances the scales between liberty and law. Fair investigation, often heralded as the backbone of criminal justice, is not merely a procedural necessity but a fundamental right enshrined in constitutional jurisprudence. It transcends the act of collecting evidence, evolving into a sophisticated blend of ethics, technology, and human judgment aimed at unveiling the unvarnished truth.

The essence of fair investigation lies in its ability to ensure that justice is impartial and transparent. It is not only about safeguarding the rights of the accused but also about preserving the integrity of the judicial process. As technology advances, the methods of investigation must evolve to address new challenges such as digital evidence and algorithmic decision-making. These developments raise critical questions about maintaining fairness and preventing bias in the quest for justice.

This research paper explores the pivotal role of fair investigation in ensuring justice, examining the intricate interplay between investigative processes and legal principles. With a focus on both traditional methods and contemporary challenges such as the integration of technology, the ethical challenges and the research paper also delineates about the delay in justice delivery and

[1] Student at Damodaram Sanjivayya National Law University

its implication and focuses on restorative justice. The study seeks to illuminate pathways toward enhancing fairness and transparency in the criminal justice system.

I. INTRODUCTION

"False accusations can touch anyone; thus, every individual accused of a crime is entitled to fair investigation and trial to safeguard justice."

- John Goramendi

The mainstream uncontrolled egocentrism dominant within the relationships, and, at times, even within life itself, falsity surfaces, and with it – ill Markup aims at proving that in situations when ego dominates love, people can turn into manipulators able to even make false allegations. The only ray of hope for the falsely accused is a proper investigation, which creates the basis for the proper trial. This format is also necessary for those poor victims whom the system does not protect since the accused may have political power or influence to prevent such a case. This then is how the truth may surface; that perjury is stamped out, the guilty made to face the law and the unsuspecting victims are made to receive adequate compensation for the plight that they have had to endure.

However, false accusations are not the only problems which face the investigation procedure. Timely investigations represent a major issue, raising questions on the concept of timely justice. These delays are the cause of extended detentions, diminished evidence, and people loss of faith in the legal process. What is often said about justice is especially appropriate in this case, justice delayed is justice denied. Similarly, justice rushed is justice delayed; you can get injustice, injustice and more injustice where the judgement is precipitated through means such as hasty investigations that would do justice to a show trial. Hence, the problem of striking an appropriate balance between speed and completion of a case that is without bias comes in handy in an attempt to balance time and thoroughness.

However, the misuse of investigative authority, corruption and lack of transparency make it even difficult for the mandate to reach justice at the right time. Inadequate resources, political interference and publishing bias often lead to substandard investigations that have unsuitable

consequences to the vulnerable populations. The rate at which technology is being introduced in the field especially the use of Artificial Intelligence brings in front new problems regarding fairness of the algorithms or social media influencing the human decision making process.

Finding the truth in the fight for justice might occasionally feel like looking for a hidden Horcrux—difficult, full of obstacles, and frequently requiring more than just facts, but a little "magic" to distinguish fact from fiction. This emphasizes how important a fair investigation is.

The adversarial model of the Indian criminal justice system emphasizes a struggle between the defense and the prosecution, with an unbiased judge presiding over the proceedings. In contrast, the judge actively participates in fact-finding and evidence-gathering under the inquisitorial system prevalent in many civil law nations. The inquisitorial system uses judicial investigation to try and find the truth, whereas the adversarial model concentrates on putting out opposing viewpoints. Both systems seek to guarantee

In India Articles 20[2] and 21[3] of the Indian Constitution guarantee constitutional rights, including a fair trial and a fair investigation. As a result, the investigation must be **impartial, transparent, and prudent** as a minimum requirement of the rule of law. The investigating agency is not allowed to to carry out an investigation in a corrupted and biased way in order to deny the accused their fundamental right—which is to be presumed innocent until proven guilty—under the law. A victim would have an equal right to a thorough investigation.

II. LEGISLATIVE ASPECT

Section 173[4] and 174[5] of Bharatiya Nagarik Suraksha Sanhitha (Section 154 of the CrPC) forms the backdrop of the investigation process, wherein, only after the FIR is lodged – investigation begins. That is where the difference between cognizable and non-cognizable offenses is critical. Cognizable offenses eliminate need for prior approval of a magistrate thus

[2] Article 20 of the Indian Constitution: Protection in respect of conviction for offences
[3] Article 21 of the Indian Constitution: Protection of life and Personal Liberty
[4] Section 173 of the BNSS, 2023: Information in cognizable cases
[5] Section 174 of the BNSS, 2023: Information as to non-cognizable cases and investigation of such cases

enabling the police officers to arrest the suspect on their own without delay. This laid down step helps in avoiding works of justice to be delayed as from the progressive entrance.

From the time that FIR is registered, procedural oversight become crucial. **Section 176 BNSS**[6](S.157 CrPC) makes it the responsibility of the Investigating Officer (IO) to immediately send the FIR to a magistrate hence eradicating off chance of dubious dealings. Forwarding the FIR to a magistrate, ensuring accountability and transparency.Whereas in delicate circumstance like the current one involving sexual offenses, the principle of procedural fairness reigns supreme. The tape-recorded statements that the victims supply should be done under conditions of sensitivity, and friendliness to show that the system has consideration for their dignity and emotions.

The pursuit of truth is protected by guidelines in the process that seek to eliminate force in the statement and hence making it genuine. S**. 183 BNSS**[7](S. 164 CrPC) that all the statements and confessions must be recorded by the magistrate either personally or through electronic means. It requires statements and confessions to be recorded by a magistrate, often through electronic means. This provision guarantees that such evidence is willingly made, genuine and not influenced. Likewise sections **185 BNSS**[8](165 Crpc) laid down conditions for searches which must be reasonable and lawful. All together these safeguards on the one hand afford individuals certain measure of protection from investigative overzealousness on the other hand they guarantee the credibility of the evidence that is to be adduced in Court.

Transparency in the conclusion of investigations is guaranteed by **Section 193 BNSS**[9](S.173 CRPC), which compels the police to submit a final report to the magistrate. This procedural requirement is not a mere formality but a vital step in fostering trust and accountability. Furthermore, the constitutional framework provides an overarching shield. **Article 22 of the Indian Constitution**[10] ensures protection against arbitrary arrest and detention. It mandates that any individual arrested must be informed of the reasons for their arrest and produced before a magistrate within 24 hours, reinforcing the rule of law.

[6]Section 176 of the BNSS, 2023: Procedure for investigation
[7]Section 183 of the BNSS, 2023: Recording of confessions and statements
[8]Section 185 of the BNSS, 2023: Search by police officer
[9] Section 193 of the BNSS, 2023: Report of police officer on completion of investigation.
[10] Article 22 of the Indian Constitution: Protection against arrest and detention in certain cases

Sections 58[11] and Section 187 BNSS[12] (57 and 167 ofCrPC) build on this foundation by limiting the period of detention without magistrate approval to 24 hours. If further detention is necessary, it is strictly capped at 60 or 90 days depending on the severity of the offense, ensuring judicial oversight over the investigative process. The judiciary's role in safeguarding justice is also enshrined in **Section 528 BNSS[13]**(S.482CrPC), which empowers the High Court to intervene and prevent the abuse of judicial processes. This inherent power underscores the judiciary's commitment to upholding fairness and preventing malpractices during investigations.

Besides, there are other legal rules and requirements which put the moral foundation of investigative process, namely **principles of natural justice and human rights.** Bias-free, complete, and highly legal processes are very important in a system that encourages equity. Witness protection is another critical facet, recognizing witnesses as the **"eyes and ears of justice."[14]** Ensuring their safety and encouraging truthful testimonies are paramount for uncovering the truth. Equally significant is the human right to a fair trial, a principle guaranteed under **Article 21[15]** of the Constitution. A fair trial is not only a dream but also a real-life battle when all forums are fair and it does not allow injustice anywhere.

THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022

This modern enshrines preventive detentions laws that violated the rights of the innocent citizens and probably their privacy. The previous law barred restrictions only to convicts who have to serve not less than one year in prison – the new law applies to all convicts and those detained under preventive measures and prolonged the state's control over personal data. The modern approach, aimed at liberalizing the Criminal Procedure (Identification) Act, 2022, has been introduced scientifically. This Act which repeals the **Identification of Prisoners Act, 1920** allows the taking of measurements of prisoners in relation to their identification. Combined with

[11] Section 58 of the BNSS, 2023: Person arrested not to be detained more than twenty-four hours.
[12] Section 187 of the BNSS, 2023: Procedure when investigation cannot be completed in twenty-four hours
[13] Section 528 of the BNSS, 2023: Saving of inherent powers of High Court.
[14] Jeremy Bentham, an English Philosopher
[15] Article 21 of the Indian Constitution: Protection of life and Personal Liberty

Section 5[16], the various measurements can be taken by magistrates thereby linking old school with neo- scientific approaches.

The collection of basic physical measurements and photographs was made possible under the 1920 Act which was a colonial statute. However, the 2022 Act dramatically extends this, effectively permitting data collection from a far more extensive class of persons, namely, those who are detained or are awaiting trial. This change affords such measurements to law enforcement officers including subordinates to take; issues of police brutish authority and infringement of individual rights creep in.

The Act also takes a questionable position with the right to privacy – Article 21 of the Indian Constitution. Some of the criticisms people gave us regarding the Act include an assertion that it provides the numerous powers to the policing bodies in fetching and sharing the personal information. This information is currently managed, stored, processed and disseminated by the National Crime Records Bureau (NCRB) thus violating principles of purpose limitation and data protection.

The Act has been described as ‘ Draconian’ by critics because it empowers the police to carry out data collection of individuals which is against the right to privacy. The problems include the usage of such terms and provisions as ‘**may**’ with regard to the taking of measurements inasmuch as they reduce the protective aspects of the law that could be loopholes that could be exploited. The Act’s threat to use data collated for other purposes than outlined is against the principle of purpose specification which also poses additional privacy risks.

Perhaps the most important aspect of this Act is that its constitutional critique shows how hazardous to democratic freedoms the war on crime often is. The enlargement of data retention powers accompanied by lack of sufficient protection is the primary reason that calls for a

[16]The Criminal Procedure (Identification) Act, 2022

proportionate approach in keeping with the objectives of crime and the right to privacy at the same time. [17]

More than just a technicality therefore, a fair investigation is a **moral and constitutional duty**. It embodies the principles of justice, fairness, and dignity of the human person as part of an extensible framework that is in the pursuit of truth and a protection of the rights of every participant.[18]

III. JUDICIAL ASPECT

Legal opinions have over the time avouched the significance of undertaking fair investigations in determination of justice. The apex court in the constitutional case of **Joginder Kumar v. State of U.P. (1994)**[19]the Apex court for the first time emphasized on the accountability of those magistrates whereby they provide safeguard to arrest or detain the police officers who violates the rights of the accused person.

Similarly, in **Param Pal Singh Gandhi v. The State of Bihar**[20], the Patna High Court highlighted the inextricable link between fair investigation and the constitutional guarantee of a fair trial. These judicial pronouncements emphasize that an unbiased investigation is not merely an institutional duty but a constitutional mandate, vital for maintaining public trust in the justice system.

[17] Live Law , The Criminal Procedure (Identification) Act, 2022; A Constitutional Critique, by Vaishnavi Singh &Abhijeet Raj <https://www.livelaw.in/lawschoolcolumn/criminal-procedure-identification-act-identification-of-prisoners-act-218140>

[18]Justice U.C. Dhyani, Chairman, Public Services Tribunal, Dehradun AT NJA, Bhopal; Elements of Fair, Impartial and Competent Investigation.

[19] 1994 AIR 1349

[20] Case No.993 of 2016

In **Maneka Gandhi v. Union of India**[21](1978) this case furthering of the Article 21 that protect the principles of procedural fairness and the concepts of right to substantive due process, so investigations must be conducted fairly in manner that adheres with principles of natural justice.

In the case of **Shri Rama Murthy v. State of Karnataka (1997)**[22] , the Court said while there are 1,93,240 prisoners, it amounted to 1,37,838 under trials and many of them should be released to lest the situation aggravate the miscarriage of justice due to delay in investigations. Judicial insights have consistently reinforced the importance of fair investigations in upholding justice.

The Supreme Court, in the case of **Kabir Shankar Bose v. State of West Bengal**[23], emphasised the accountability of protection of a fair and impartial investigation in the politically sensitive scenarios of West Bengal. The case emerged from charges brought before the court by the Indian police which the BJP politician Kabir Shankar Bose said were based on political rivalry by Kalyan Banerji, a TMC MP. The Court, constituted by Justice BV Nagarathna and Justice Pankaj Mithal noted the propensity of bias as Bose is affiliated with the BJP, which is the ruling party at the Centre while Banerji is headed with the TMC, the ruling party in West Bengal. Relying on the adverse political climate in Kenyan politics, the Court held that the state police may not be in a proper place to conduct a politically neutral investigation.

The Court emphasized that "**justice may not only be done but it must appear to have been done**," referencing **R.S. Sodhi vs. State of U.P**[24]. The justification given for the transfer of the investigation to the CBI was twofold, that of establishing the credibility of the investigation but also more crucially, public credibility of the investigation.

The judgment noted that inquiries into high-ranking persons, political antagonists or state entities call for the involvement of constitutional courts to ensure adjudication's fairness. The Court said that local police cannot be permitted to probe charges against the central force like CISF which may involve complex circumstance and there could be possibilities of counter roles to be played by state police.In conclusion, the Supreme Court ordered the furnishing of all investigation

[21] 1978 AIR 597,
[22] AIR 1997 SUPREME COURT 1739
[23] 2024 LiveLaw (SC) 950
[24] 1994 AIR 38

reports of the FIRs lodged against Bose to the CBI from the West Bengal Police so that investigation might well be free of differential bias.

In **Om Prakash v. State of Rajasthan**[25], the Rajasthan High Court emphasized the critical need for fair and impartial investigation, especially in cases involving political rivalries. Justice Farjand Ali observed that it has become **common for political opponents to use legal cases to tarnish each other's reputations.** To counteract this, the Court directed the Superintendent of Police (SP) to **personally monitor** the investigation to ensure it is conducted fairly, impartially, and expeditiously.

Again and again, the Court emphasized the need to ensure the independence of those investigations, noting that justice should not only be done, but also manifestly be manifestly seen to be done. The SP was directed the process of the investigation with the purpose to maintain the process open and credible in order to eliminate the abuses of the legal system for political purpose. The recommendation for a fair investigation underlines for the judiciary the task of carrying out a legal and impartial probe in politically sensitive circumstances.

In **The State of West Bengal & Ors.v. Rebeka Khatun Molla & Ors.,**[26]the Supreme Court underscored the importance of **balancing the need for fair investigations with the operational capacity of investigative agencies**. The Court cautioned against the routine transfer of cases to the Central Bureau of Investigation (CBI), emphasizing that such practices overburden the agency and demoralize state police officers.

Justice Surya Kant noted that frequent entrustment of cases to the CBI could imply incompetence or inefficiency within the state police forces, potentially undermining their morale and credibility. The Court highlighted that state police officers should be given the opportunity to

[25] 2024 LiveLaw (Raj) 367
[26] 2024 LiveLaw (SC) 1047

conduct impartial and effective investigations, as doing so fosters confidence in their abilities and promotes institutional integrity.

To address the concerns of fairness and impartiality without overburdening the CBI, the Supreme Court ordered the formation of a **Special Investigation Team (SIT)** comprising senior police officers from outside the state. This decision reflects the Court's commitment to ensuring fair investigations while maintaining the operational balance between different investigative bodies.

The Rajasthan High Court, in **Kailash Tolani v. State of Rajasthan &Ors**[27]**.,** emphasized that an individual aggrieved by an allegedly unfair or slow investigation of an FIR should first approach a superior police officer under **Section 30 BNSS** (S.36 CrPC). If the issue remains unresolved, the aggrieved party can then petition a Magistrate under **Section 156(3) CrPC** to order a proper investigation. Additionally, the court noted that filing a criminal complaint before a competent court is another available remedy. The court dismissed the petition, urging the petitioner to exhaust these legal remedies before seeking judicial intervention. This case underscores the importance of following procedural hierarchies for grievances regarding police investigations.

In Court on its own motion v. State of Himachal Pradesh[28], it justified its order for transferring IPS officer Sanjay Kundu from the post of DGP as such decision would prevent any outside influence over the investigation into a businessman who lodged a complaint that his life was threatened by a former IPS officer and a lawyer. The investigating officer also testified that Kundu had tried to mediate a business dispute that was not part of his professional responsibilities, as well as provide an account which suggested that he tried to intimidate the investigating officer.

The court said that it could not sacrifice an impartial inquiry for an officer involved. It emphasized that **fair trial cannot exist without a fair investigation** and highlighted the failure

[27] 2024 LiveLaw (Raj) 193

[28]Aiman J. Chishti ; Culprit Behind Theft And Fire At Judicial Officer's House Not Brought To Books Yet, Punjab & Haryana High Court Orders Speedy Investigation.

of the officer in charge, ShaliniAgnihotri to prove hardworking and caring to the case, apart from her performance of being busy celebrating while there is a real life danger.

The court dismissed the request of the officers to transfer the case to the CBI but recommended the formation of the SIT in order to sidestepping and secure the complainant.

In this case, **Tikam Khandelwal S/o Shri Mohan Khandelwal v. State of Rajasthan**[29], the Rajasthan High Court set aside the order passed by the DGP, for the fourth time transferred the cases to different police stations for investigation. The court emphasized that the right to a fair trial and fair investigation is a **fundamental right of the victim, not just the accused.**

The DGP had not offered explanation for the several transfers of the investigations, thus being in sharp violation with the administrative directions that set the transfer limit at three. The court had expressed displeasure that the transfer orders did not contain much logical intent as seen where a transfer was made in June 2023. In this case, it said that the advancement of the probe has been unduly slow and the first one by the Commission was only made after seven years.

The court ordered that the investigations should be handed over to the Additional DCP (West), Jaipur, and the Commissioner of Police directing the team that the investigations should be completed within two months and thereafter, report to the court.

This was with the backdrop of the case pointed out by the petitioner that earlier transfers of the investigations were to shield the accused.

The following judicial decisions emphasize consistently that the fairness is not only a cornerstone of the justice but the public trust to the legal system as well is crucial. This follows as an investigation presumption of impartiality has been established as a constitutional requirement especially in ‘sensitive’ matters such as the political ؚ and in other cases involving notable figures. From these cases, one can understand that obligation to apply the principles of fairness rests both on investigative agencies as well as judicial authorities very often requiring

[29] S.B. Criminal Miscellaneous Application No. 246/2023

intervention in order to provide certain levels of transparency, accountability and integrity of the investigation process.

IV. THE LAW ABHORS DELAY

The Latin maxima "**justice delayed is justice denied**" makes the core of any discussion related to justice delivery systems. It just emphasizes that the principle of fairness, which can be applied not only to judicial trials which involve a certain number of legal procedures and courtroom analytics , however, to the investigation, which serves as the basis of any criminal process.

Justice P.N. Bhagwati, in the landmark case of **HussainaraKhatoon v. Home Ministry**[30], understood the efficiency interest as a fundamental right under Article 21 of the Indian Constitution. He elaborated that inadmissibility causes delay and in effect most of under trial prisoners remain detained during investigation hence infringing on their right to life and liberty. The judgment also pointed out that investigations need to be time-sensitive and bias in order not to lock up the defendants for unnecessary time. Undertrial prisoners: As it has been seen in a document, about 70% of prisoners in Indian jails are under trials, and most of them remain in prison for a term that is longer than the extremity of the presumptive offenses.

In the beginning of the year 2022, the occupancy rate in prisons of India crossed 130 per cent and reached 131.4 per cent that also show overcrowded prisons. One of the main issues is the high rate of undertrial prisoners; at the end of 2022, they made up 75.8% of the total number of prisoners – a consequence of the slow judicial proceedings. Furthermore, we identified 63 inmate deaths in 2022 for which causes are still unknown, and there are questions regarding prison deaths investigation too timely, conclusive, and for which they are adequate. New cases of insecurity are observed , for instance, in 2022,257 inmates escaped with only 113 of them being rearrested as well as 45 cases of group fighting were recorded in the year. These problems are exacerbated by staffing shortages: according to the data as of December 31, 2022, the jails' staff shortage reaches 30.27%; thus, the overall management of jails and a number of fair

[30]1979 AIR 1369

investigations might be influenced. Nevertheless, 1,83,320 inmates were availed legal aid in 2022 and a considerable number of prisoners.[31]

The judiciary has emphasized the need for more accessible bail procedures to prevent arbitrary detention. In **Supreme Court Legal Aid Committee v. Union of India**[32], The Court stated that undertrial prisoners must be released where they had been detained for more than half the maximum punishment for the bailed offence. The judiciary has also urged investigative agencies to follow strict time line in filing charge –sheets and completing the investigation since any failure in doing this is void of the legal requirements besides contributing to the existing backlog in the courts. It is imperative for the concerned authorities to make investigative officers responsible for delay and bias in the criminal justice system.

Many judicial delays have serious **psychological repercussions** impact on the parties, especially on defendants. One paper found that excessive pretrial detention leads to substantial mental health concerns or anxiety and feelings of hopelessness due to terrible detention policies. These delays infringe on the right of 'in custody but not convicted,' defendants are prejudiced both personally and financially before acquittal or conviction is given. Instead, it only extends justice whereby litigants will wait for years before their day in court is heard only to be harmed emotionally and only worsened by the biased media and social stigmatization.[33]

This is because the main functions of the judicial system are punishment in equal measure to reforming offenders and this cannot be fully achieved due to delays. The accused have problems for the defense since they are held for long before trials; they also lose their jobs and family breakages occur. This has raised issues on proportionality of trials apart from reintegrating our defendant's back in society as constructive citizens.

[31] Live Law: Udit Singh, Prison Statistics India 2022: Above 75% Prisoners Are Under Trials, Actual Occupancy Of 131% In Indian Prisons; 1.9% Incidence Of Recidivism; Reasons Of 63 Unnatural Deaths In Prisons Un Known

[32]1994 SCC (6) 731

[33]The ripple effect of judicial delays, EiriniPatsea, Programme Co-ordinator, Regional Trial Monitoring Project; <https://www.osce.org/blog/579151#:~:text=A%20system%20that%20fails%20to,public%20trust%20in%20the%20judiciary.>

This hampers basic tenets of justice such as the doctrine of fairness and equity eroding the public confidence in the legal systems. Thus, extended proceedings lead to increased cynicism and manage to make people disappointed in the judiciary as either it cannot provide judgments as fast as it should or it does not want to do that. This perception erodes the social glue, thus the expectation and confidence in the system to deliver justice in the most efficient manner.

The code of civil procedure-1908 and the code of criminal procedure-1973 also have provision to have the trial on a day to day basis for the protection of the interest of parties. Notable judgments, such as **HussainaraKhatoon vs. Home Secretary**[34] and **Rekha Rani vs. State of Uttar Pradesh**[35], underscore the constitutional right to a speedy trial under Article 21. These cases have directed the judiciary to expedite pending cases and address systemic inefficiencies.

In order to overcome the problem of delayed justice, it is essential to enhance the topic with thorough changes. To enhance the necessary capacity for managing the current case load, there is need to hire more judges, more courtrooms, and more supporting staff. Reducing the possible delays and adjournments of the cases will make possible to accelerate the resolutions of the cases and introducing the complex management services, NSS Hearings and Records Management Systems including virtual record holding capacity will help for reducing the complexities of the judiciary systems. Also, encouraging ADR may help to reduce the load on the regular courts, and provide the parties with the opportunity to find a solution more quickly litigation.[36]

According to National Judicial Data Grid as of December 2022, there were approximately 48 million pending cases in the Supreme Court, High Courts, and subordinate courts across India[37]. This figure gives an implication that the judicial system is under pressure. The average time for disposal out of cases is quite a concern—fifty-three years for civil cases in the supreme court and eighty-eight years for criminal cases. In such cases, the delays may take several decades, and people involved, whether as claimants in a case or victims, remain trapped in limbo.

[34] 1979 AIR 1369
[35]APPLICATION U/S 482 No. - 10485 of 2023
[36] Justice Delayed is Justice Denied: The Plight of the Indian Legal System <https://lawcrust.com/justice-delayed-india/#:~:text=One%20of%20the%20major%20reasons,delays%20in%20hearings%20and%20verdicts. >
[37]https://timesofindia.indiatimes.com/readersblog/the-legal-perspective/the-unsettling-consequences-of-justice-delay-in-india-a-grave-situation-with-alarming-data-55042/

The following statistics prove that backlog or inadequacy in carrying out investigation works ails vulnerable cohorts in society and upholds social and legal marginalization.

V. AI & FAIR INVESTIGATION

There are a number of key issues that are currently affecting **the criminal justice system among them being inadequate resources, slow process** in handling cases, and inadequacies in cracking crimes. The efficiency of such a solution has given Artificial Intelligence (AI) a new role in solving such problems through quick searches, processing large amounts of data, and identifying correlations that can be missed by human officers. The application of AI can be of great useful in suspect identification and evidence collection in that processes are made more accurate and fast. It also performs an important step for forensic investigations to analyze DNA, fingerprints, and others with little or no time, thus relating crimes or reconstructing incidents.

The principle of fair investigation is one of the most important parts of justice systems all over the world, based on objective, comprehensible, and fair process. The right to be presumed innocent until proven guilty as the Supreme Court said in**Woolmington v. DPP (1935)**, [38]places throws the burden of proof into the prosecution and most importantly emphasizes the importance of impartiality in the conduct of any investigation. Prime Law Lord Sankey described this as the **'golden thread'** of English criminal law and it goes without mentioning that this is so universally. Similarly, the provision for the right to life and personal liberty under Article 21 of the Constitution of India, enshrine fair investigation as part of procedural fairness. Judicial provisions such as **Section 168 BharatiyaSakshyaAdhiniyam**[39](165 of the Indian Evidence Act) empower courts to delve deeper into evidence, ensuring no relevant facts are overlooked, while **Section 187 BNSS**[40](167 of the CrPC) protects individuals from arbitrary detention by mandating judicial approval for extended custody during investigations.

Artificial intelligence is becoming the new normal in investigation practices all over the world. In USA uses of tools such as **COMPAS** aims to predict specific sites likely to be prone to crime

[38] [1935] UKHL 1
[39] Section 168 BSA, 2023: Judge's power to put questions or order production.
[40]Section 187 BNSS, 2023: Procedure when investigation cannot be completed in twenty-four hours.

and probable offenders with view of allocating right resources. In India for instance, technologies such as **JARVIS** commonly known as Just Automated Real-time Video Intelligence and Analysis System developed by Staqu is revolutionalising the field of policing and crime prevention by automatically analysing CCTV footages for suspicious activities, with the view to improving security in sectors such as retail, banks and other sensitive sectors.[41]**JARVIS** has been deployed in over 70 prisons in Uttar Pradesh, where it monitors 700 cameras for activities such as frisking, unauthorized access, crowd analysis, violence detection, and facial recognition.[42] This advanced technology does not only enhance security measures inside prison compounds were criminals run black markets but also assist in the early detection of prohibited activities such as contraband such as mobile phones and weapons, alerting police agencies in an instance. In addition, JARVIS is being deployed in various states in India such as Punjab, Haryana and Rajasthan making this a scalable solution to the fight against crime. Through the use AI-based forensic technologies like deoxyribonucleic acid matching, fingerprint recognition, and virtual crime scene modeling, JARVIS fully supports both rapid identification of missing subjects and criminals on the basis of accurately analyzed and compared physical evidence on criminals[43]. The application of such advanced techniques into law enforcement does not only enhance the rate of investigation but also assist in nation building in enhancing its fight against crime.

The judicial decision-making process is also helped by AI platforms that are SUPACESupreme Court Portal for Assistance in Court's Efficiency, an automated workshop that helps judges by summarizing case data and analysing the precedents, which, however, are not binding on the judges. Other advanced systems include the Interoperable Criminal Justice System (ICJS) that

[41]Staqu Technologies; <https://www.staqu.com/>
[42] Deccan Chronicle, India\'s own JARVIS AI to monitor prison activities across 70 Indian jails ; <https://www.deccanchronicle.com/technology/in-other-news/071119/indias-own-jarvis-ai-to-monitor-prison-activities-across-70-indian-ja.html>
[43] There's No Escape for Criminals in India <https://analyticsindiamag.com/ai-highlights/theres-no-escape-for-criminals-in-india/>

enhance in the sharing of information among the police, courts, as well as in prisons to enhance cohesion during investigations.[44]

But the creativity of incorporating AI use in investigative processes comes with barriers that distort fairness, transparency and accountability. One of the issues is that of algorithmic bias According to which AI is built into the data with which it was trained. For example, COMPAS in the U.S. has been said to bias toward African- American defendants and label them as high risk, thus the questions on racism. Similar risks remain in India and where caste and socio-economic inequalities are inherent in available data sources. Further, the majority of AI systems work as "black box", which provides little or no possibility of how the AI arrived at its decisions, which denies the principles of openness contained in the concept of open justice. The overuse of AI may also demote human reasoning in certain situations since each case requires certain knowledge of context. Additionally, the huge portions of personal information processed by investigative AI models cause severe privacy issues, which have set high demands for data security measures.[45]

In order to apply AI for investigation legally and ethically, there are some measures which are required. Bias detection and reduction can be done through annual reviews of AI systems, and pre-implementation of tools and systems must have their risks assessed through impact assessments. AI processes must be transparent; the algorithms used are explainable, and their methods must be accessible. It was evident that they need to introduce ways of critical analysis of AI products and ensure that judicial and investigating personnel remain the decision-makers. Angle neutrality and anti-bias recommendations remain important while addressing the problem of trust in AI-aided investigations. Additional steps to build an accountability regime and ensure fairness involve public awareness and heath, as well as continuing dialogue between technologists, legal scholars, and civil society.

[44] AI Portal SUPACE; Drishti IAS <https://www.drishtiias.com/daily-news-analysis/ai-portal-supace/print_manually>

[45] International Journal of Science Academic Research Vol. 05, Issue 07; AI AND THE RIGHT TO FAIR TRIAL: LEGAL STANDARDS AND TECHNOLOGICAL ADVANCES, Rahul Kailas Bharati

AI's abilities and powers to transform investigations are very clear. When it comes to solving real-life criminal cases, it can make some improvements to the current criminal justice system, and eliminate such problems as inefficiency or delays. Though, if precisions are not taken AI can actually hamper the principles of justice that it purports to foster. The main methodological lesson that can be derived from these examples is the need for an 'AI starts With Ethics' approach, in the sense of a proportional and human-sensitivity approach to AI that guarantees fairness and protect the principles of natural justice.

Therefore, the increase of AI efficiency and its ability to provide accurate, objective information having already been stated, one may conclude that the employment of AI in criminal investigations is valid and reasonable only if the use of these technologies in the investigation process will not override the principles of fair investigation. Preventing algorithm bias, a call for algorithmic accountability, and the integration of human supervision are cardinal in making sure the tools improve justice without coming at the cost of impartiality, procedural fairness or individual rights.

VI. ETHICAL ISSUES IN INVESTIGATION & THEIR IMPACT ON FAIRNESS

It is common to observe that one of the hood challenges seeking to contribute towards the achievement of fairness during the investigation is the issue of **caseload.**Most of the time, detectives categorize cases depending on their ability to solve those cases, which in turn leaves behind complicated cases which are worthy of justice. This creates a consequentialist dilemma where "**the end result is seen as the most important aspect of the investigation**". Such practices pose a valid possibility of distorting fairness of decisions where such things as prejudice such as undercompensated victims especially those from minority groups impact decisions. "Officers must be cognizant of their personal biases and consider variables such as perishable evidence and continuation of the offence".[46]

[46] Ethical Issues during an Investigation <https://opentextbc.ca/ethicsinlawenforcement/chapter/ethical-issues-during-an-investigation/>

Fairness is further tested by the use of **lies, deception, and tricks** in investigations. While the Supreme Court of Canada in **Regina v. Rothman**[47]permits the use of certain **"tricks,"** it draws the line at methods that **"shock the community"**. For instance, permissible tactics include undercover operations, such as posing as gangsters to obtain confessions, but acts like impersonating a lawyer are prohibited. The ethical dilemma here is clear: while some officers argue that lying is the best policy because it is beneficial in utilitarian terms, others claim that lying is more-or-less certain to compromise credibility, undermine the public's confidence, and transgress basic professional standards of conduct, not to mention either Kant's categorical imperative.

Moreover, the use of deception and surveillance raises pressing concerns about privacy and rights. As emphasized, "balancing the necessity of deception with principles of honesty and fairness is a constant challenge for investigators".[48]

Finally, the principle of innocence until proven guilty is a basic principle of any investigation process. According to the above commendations, "the investigators have to presume everyone is innocent until established how guilty he or she is, to make sure they are treated unfairly or biased". This principle cannot work in isolation with the search for evidence because there should be a harmony to work a balance between a citizen's rights and justice.[49]Thus, the question is Flavours of ethical considerations to uphold fairness in criminal investigations while protecting individual rights and avoiding endemic bias, deception and denial of presumption to innocence ,Police officers decide the tactics they use, therefore they need to remain bias and keep the process public. Lastly, there is need to ensure that fair investigations are conducted in order to help to promote the due process of the law in the criminal justice system.

VII. RESTORATIVE JUSTICE

[47] [1981] 1 SCR 640

[48] Ethical Dilemmas in Investigative Practices: ABI Perspectives <https://www.linkedin.com/pulse/ethical-dilemmas-investigative-practices>

[49] 7 Strategies for Conducting Investigations on Ethical Dilemmas; <https://www.polonious-systems.com/strategies-investigation-ethical dilemma/#:~:text=In%20practice%2C%20this%20involves%20clear,build%20confidence%20in%20the%20process . >

The idea of restorative justice which focuses on compensation for loss that has been occasioned by offences and acknowledging need of the offenders, victims, and the public in general has some policy implications for fairly investigating offences. Restorative justice aims to be a sentencing model which seeks to replace the retributive justice system; however it mainly targets post-sentencing practices, its principles could be applied to investigations so as to balance the situation.

Justice Krishna Iyer aptly noted in **Rattan Singh v. State of Punjab**[50]

"**Criminal justice would look hollow if justice is not done to the victim of the crime. The victim cannot be a forgotten man in the criminal justice system**."

As much as this statement suggests that investigations are important they should not be seen or treated as a bypass to victim's rights. An independent examination should consider the state of perpetrator and victim and their responsibilities regarding the case. This is well supported by the concept of restorative justice which prizes on compensation to the victim and repairing harm between the offender and the victim as seen in **Manohar Singh v. State of Rajasthan**[51]. The Supreme Court said that making the offenders to compensate the victims is fairness in addition to punishing them.

Witnessed also in restorative justice is offender responsibility that is congruent with the identification of the real culprit. Bias-free, intensive, and evidence-based are the three features that use of a fair investigation must include.In State of Bihar , the Supreme Court pointed out that the importance of preventing prejudices or outside pressures from affecting the investigation also means that the investigation must deal with harm comprehensively – which is the restorative value of fair investigations. In **RamjiNisar v. State of Bihar** [52], the Supreme Court emphasized the importance of ensuring that investigations are not influenced by biases or external pressures, aligning with the restorative justice principle of addressing harm comprehensively and the significance of fair investigations.

[50](AIR 1980 SC 84):
[51] (AIR 2015 SC 1124)
[52] AIR 1963 SC 1088

Appealing for justice in crime prevention as well as in trial, Mahatma Gandhi summed up crime as a sickness that requires cure. Sometimes mistakes are made and this can lead to increase of sufferings of the affected parties by possibly going to jail for crimes they never committed. As noted by Howard Zehr, the "founding father" of restorative justice:

"**Crime is essentially a violation of people and relationships. Investigations, therefore, must prioritize repairing these relationships rather than merely punishing offenders.**"

It is possible to pick up such examples as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power from 1985, which focuses on victims' rights to justice and equality. Applying these principles to the conceptualisations of investigations promotes transparency, responsibility, and fairness. Statistics of the UK based Restorative Justice Council explain how under restorative justice the victim satisfaction escalates to 85% compared to the 33% systems.[53]This then provides a strong rationale for integrating VO principles in various investigative models.

Correct investigation is the basis for a fair criminal justice system. Finding out is made more equitable and efficient when enriched with the theoretical concepts of restorative justice including compensation to victims, acceptance of responsibilities by offenders, and involvement of stakeholders. The shift from a purely retributive approach to a restorative framework ensures that justice serves all parties involved, fostering trust in the criminal justice system.

VIII. CONCLUSION

Among the proportions of law and freedom, the purity of a genuine investigation is the vanguard of justice. The harrowing tale of **Nambi Narayanan**[54], a brilliant scientist wrongfully accused reminds us that the failure of investigative processes can devastate lives, shatter reputations, and erode the public's trust in the justice system. His suffering, a result of systemic lapses, underscores the critical need for investigative processes to be impartial, thorough, and guided by truth.

[53]Ligi TK, Introduction of restorative justice practices in criminal justice system: An overview <https://www.criminallawjournal.org/article/77/4-1-22-902.pdf>

[54] SC (2018) 10 SCC 804

The ongoing investigation into the tragic incident at R.G. Kar Medical College serves as a solemn reminder of the crucial role that fair and transparent investigations play in safeguarding justice. While the final judgment is awaited, the collective grief and outrage of a nation underline the necessity for accountability, thoroughness, and integrity in the pursuit of truth. These cases highlight not only the devastating impact of investigative failures but also the paramount importance of upholding the highest standards of fairness and transparency.

Fair investigation is not merely a procedural formality, it is the lifeblood of justice. It is the cornerstone upon which trust in the legal system is built. We must strive for a system where every investigation serves not as a weapon but as a shield—protecting the innocent, honoring the truth, and delivering justice with unwavering integrity.

As we reflect on these poignant examples, let us renew our commitment to ensuring that investigations are conducted with fairness and impartiality. Let the stories of those who have suffered due to lapses in the system inspire us to build a society where justice is not delayed or denied, but delivered with dignity and respect for all.