

## **AN APPRAISAL OF CRIMINAL INVESTIGATION IN BANGLADESH: PROCEDURE AND PRACTICE**

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### **Abstract**

In absence of a separate investigating agency in Bangladesh, the investigating officers who belong to the police force are at times lagging behind the professionalism in wrapping up investigation of crimes for a plethora of reasons. In many instances the investigating officers are alleged to be discharging their duties in a casual manner. Though separate judicial magistracy started its journey about eight years ago, delayed, defective and biased investigation of crimes is one of the major stumbling blocks that haunt our crippling criminal justice system. Colonial rules, too much reliance on confession of the accused rather than evidence oriented way of investigation and heavy workloads of law enforcing agency are major causes for lackadaisical investigation. Many officers also tend to be conveniently indifferent to the modern trends and technical developments of investigation techniques and human rights of the accused. It is also critical that the investigating officers are well-versed with the essential ingredients of the offences they are investigating. The investigators are also often handicapped in undertaking effective investigation for want of modern gadgets and equipment etc. In this age, the crime detecting members can also in no way sideline the core human dignity of the accused. In this backdrop, this article explores the stumbling-blocks in criminal investigation and also offers a host of suggestions with the argument that reforms in the criminal justice system should be initiated first at the investigation stage.

### **I. Introduction**

Apart from maintaining law and order by engaging themselves in prevention of crime and enforcement of laws in some petty offences, detection and investigation of crime, arrest of accused and collection of evidence are delicate duties of the members of the law enforcing agencies in Bangladesh. In absence of separate investigating agency, members of the police force who are rather busy in a myriad of issues, in general tend to investigate the criminal offences in a casual manner. In many cases the investigating officers are alleged to be inefficient,

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negligent and biased in discharging their duties. However, with the mammoth workload and poor working condition, members of the law enforcing agency especially elite force like Rapid Action Battalion (RAB) at times deserve kudos in detecting serious and organised crimes. Though separate judicial magistracy started its journey about eight years ago,<sup>1</sup> delayed, defective and biased investigation of crimes is one of the major stumbling - blocks that haunt our crippling criminal justice system. Further, colonial rules, corruption, too much reliance on confession of the accused rather than evidence oriented way of investigation, alleged discourteous attitude towards public etc. are often alleged to be major causes for lack of confidence in the police force.

This article explores both primary sources including legislations, rules and regulations; and secondary sources including books, journals, law reports, periodicals and other resources from internet. Accordingly, an attempt has been made to explore the current procedure and practice of criminal investigation in Bangladesh. In particular, the challenges in the practice of investigation in Bangladesh are assessed. A host of suggestions are also offered with the assumption that the reforms in the criminal justice system should be initiated first at the investigation stage.

## II. Development of police organisation in Bangladesh

Following direct control of the Indian subcontinent by the British Crown in 1858 which followed the abortive *sepoy* mutiny in 1857, massive legislative endeavours in the field of criminal justice took place; and Penal Code 1860 and Code of Criminal Procedure 1861 were enacted.<sup>2</sup> In tandem with the above Codes, Police Act 1861 was enacted for the implementation of the criminal laws. Under s. 12 of the Police Act 1860, Inspector General of Police (IGP) is empowered to frame orders and rules relating to organisation, classification and distribution of police force and also regarding the efficient services to be performed by them. Such orders and notifications issued by IGP got approval of the Provincial Government and those were incorporated into Police Regulations

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- 1 In Bangladesh separate judicial magistracy started its journey on 1 November 2007 following pro-active intervention of the Supreme Court of Bangladesh in compliance of constitutional obligation of separation of judiciary from the executive organs of the state as enshrined in Article 22 of the Constitution. Also see, *Ministry of Finance v Masdar Hossain* 52 DLR (AD) 82. For a brief historical overview, see, Hussain M. F. Bari, "Separation of judiciary: How long will it take?" *The Daily Star*, 4 August 2004, available at <http://archive.thedailystar.net/law/2004/08/04/vision.htm>.
  - 2 S. M. A. Qadri, *Criminology*, (Eastern Book Company 1997), p. 304.

of Bengal in 1943.<sup>3</sup> Despite many political upheavals including achievement of our glorious independence in 1971, police organisation and functional activities even today largely revolve round above stated Police Act and PRB.

### III. Purpose of criminal investigation

The central goal of a criminal investigation is to identify, gather and preserve evidence. Criminal investigation is a search for witnesses and evidence to support the charge in court by proving beyond any reasonable doubt that the crime was committed by the accused. To be more precise, a criminal investigation is an applied science that involves the study of facts, used to identify, locate and prove the guilt of a criminal. It necessarily encompasses searching, interviews, interrogations, evidence collection and preservation and various methods of investigation. Our apex court has rightly observed that law enjoins upon a police officer the duty of investigation into a crime. In discharge of the said statutory duty he has to embark upon a quest for the discovery of truth.<sup>4</sup> In fact, investigation is an official effort to uncover information about a crime. In criminal cases, the judge relies on the information presented to determine how the crime occurred and whether the person accused is guilty.

### IV. Investigation of Crimes

#### (a) Initiation of criminal proceeding

A criminal proceeding is set in motion by filing a First Information Report (FIR) concerning commission of cognisable offence<sup>5</sup> to the officer-in-charge of a police station.<sup>6</sup> This is commonly known as GR case or police case.<sup>7</sup> An FIR may be lodged by any person, for it is meant just to set the machinery of law in action.<sup>8</sup> Further, a complaint may be instituted before a competent judicial Magistrate.<sup>9</sup> A police officer may investigate any cognisable offence without the order of the

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3 See, Md. Hamidul Haque, "About First Information Report", *Judicial Administration Training Institute Journal*, Volume VII, 2008, pp. 7-15.

4 *Khorshed Alam v State* 27 DLR 111.

5 Cognisable offence is one in which police may arrest the accused without warrant: Code of Criminal Procedure (V of 1898), s. 4(1)(f).

6 Code of Criminal Procedure (V of 1898), s. 154.

7 GR cases are those cognisable cases which are entered in the General Register in Form No. (R)3 (as found in Criminal Rules and Orders Volume II, p. 44) in accordance with Rule 381(4) of Criminal Rules and Orders (Practice and Procedure of Subordinate Courts) 2009, Volume I.

8 *Shah Alam v State* 42 DLR (AD) 446.

9 Code of Criminal Procedure (V of 1898), s. 200,

Magistrate.<sup>10</sup> An officer-in-charge is legally bound to reduce an information of cognisable offence into a FIR and to investigation onto the case.<sup>11</sup> If he does not investigate the case as such, some reasons must be recorded and with such reasons he should notify the informant that he would not investigate into the case.<sup>12</sup>

*(b) What is investigation?*

According to Code of Criminal Procedure, ‘investigation includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by Magistrate’.<sup>13</sup> Any step thus taken by a police officer or a person authorised by a Magistrate towards collection of evidence in regard to an offence falls within the ambit of investigation.<sup>14</sup> An investigation follows the commission of such an offence and does not precede it.<sup>15</sup> There is clear distinction between investigation and inquiry. Inquiry may be conducted by any person while investigation is always done by the members of the law enforcing agency.

*(c) Who can investigate?*

Generally, a police officer not below the rank of Sub Inspector (SI) is the investigation officer of a cognisable offence. Police has the statutory right to investigate into a cognisable offence whether a report is made to that effect or not and if reported, irrespective of the authority of the reporter.<sup>16</sup> It may be noted that members of the Detective Branch (DB), Criminal Investigation Department (CID) and Rapid Action Battalion (RAB) are also entrusted with the investigating power. Furthermore, members of the Metropolitan Police are engaged in criminal investigation in respective metropolitan area. Likewise, newly created Police Bureau of Investigation (PBI) is entrusted with the investigation of crimes.

*(d) Basic laws on investigation*

Investigative officers must adhere to the Constitution of Bangladesh,<sup>17</sup> Code of Criminal Procedure (Code in brief),<sup>18</sup> concerned special laws,<sup>19</sup> Evidence Act,<sup>20</sup>

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<sup>10</sup> Ibid, s. 156.

<sup>11</sup> *Yasmin Sultana v Bangladesh* 54 DLR 269.

<sup>12</sup> Ibid.

<sup>13</sup> Code of Criminal Procedure (V of 1898), s. 4(1)(I).

<sup>14</sup> *Sajedul Hossain Chowdhury v State* 7 BLC 635.

<sup>15</sup> *Ghulam Abbas v State* 20 DLR (WP) 48.

<sup>16</sup> *Md. Hayat v Chief Settlement Officer* 23 DLR (Lah.) 34.

<sup>17</sup> Constitution was adopted in 4 November 1971 and came into force on 16 December 1972.

Torture and Custodial Death (Prevention) Act,<sup>21</sup> Criminal Rule and Orders,<sup>22</sup> Police Regulations of Bengal (PRB),<sup>23</sup> Convention against Torture and other cruel, inhuman and degrading treatment or punishment<sup>24</sup> and the judicial precedents.

(e) *Supervising Court*

Concerned Judicial Magistrate and other special tribunals and courts established for specific purposes are the supervising Courts to see how the investigation is done. There is no denying that an investigator enjoys an unfettered discretion while investigating a case and interference from any quarter is simply unwarranted, save any specific legal direction from the supervising court.<sup>25</sup> It is also settled that a court is not bound by the investigation report.

(f) *Investigation steps*

The Supreme Court of Bangladesh summarised the following steps which are included in the criminal investigation:<sup>26</sup>

- Proceeding to the spot;
- Ascertainment of facts and circumstances of the case;
- Discovery and arrest of suspected offender/s;
- Collection of evidence relating to commission of the offence alleged which may require examination of various persons including the accused and the reduction of their statements into writing if the officer thinks fit,
- The search of places or seizure of things considered necessary for the investigation and to be produced at the trial.
- Formation of opinion as to whether on the materials collected there is a case to place the accused before a court for trial and if so, taking necessary steps for the same by filing of a police report under section 173;

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18 V of 1898.

19 For example, *Nari o Shishu Nirjaton Domon Ain* (Act VIII of 2000).

20 Act I of 1872.

21 Act of 2013.

22 Criminal Rules and Orders (Practice and Procedure of Subordinate Court) 2009.

23 Police Regulation of Bengal 1943.

24 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (commonly known as CAT), 1984; Bangladesh ratified CAT on 5 October 1998. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>. Last accessed 01 November 2015.

25 *Abdul Salik v State* 35 DLR 425; *Bangladesh v Tan Kheng Hock* 31 DLR (SC) 69; 1 PLD (Lah.) 87.

26 *Mosharraf Hossain v State* 30 DLR (SC) 112.

- Making a case diary (CD) containing the record of facts ascertained by the officer during investigation and action he has taken showing the time and date against every action he has taken.

After recording the police case<sup>27</sup> the officer-in-charge may himself/herself investigate the case or instructs a police officer not the below rank of sub inspector (SI) to investigate the same.<sup>28</sup> In practice, an investigating officer inspects the place of occurrence, prepares the sketch map along with the index of the spot, records the statements of the witnesses who are supposed to be acquainted with the facts and circumstance of the occurrence,<sup>29</sup> seizes the seized articles (*alamat*) and thus prepares the seizure lists in presence of witnesses,<sup>30</sup> arrests or tries to apprehend the accused and suspects and forwards them to the nearest Magistrate within 24( twenty four) hours of their arrest,<sup>31</sup> detains and interrogates them in his custody, prays for detention in his custody (remand),<sup>32</sup> produces the accused or victim before the Magistrate to have his confession/ statement recorded,<sup>33</sup> sometimes conducts the inquest of the deceased victim,<sup>34</sup> conducts Test Identification Parade (TIP), sends the deceased for autopsy, collects medical certificates and other expert reports, maintains diary of proceedings of investigation,<sup>35</sup> and finally submits the police report.<sup>36</sup>

Following points will also highlight the investigation - procedure in greater details:

(i) *Maintaining case-diary*: The case-diary is a pen picture of facts, circumstances and other related activities and observation of the investigating officer in respect of alleged crime. It furnishes a ready reference on the premise of which police report is finally drawn up. Further, it is of greater use to refresh his/ her memory when the police officer testifies during trial. A court may call for case-diary from time to time and may use it as an aid to such inquiry or trial; however, it can

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27 FIR is written in BP form no. 27. Every occurrence which may be brought to the knowledge of the officers of police shall be entered in a book which is called General Diary. GD is recorded in BP Form no. 65 as referred to Police Act 1861, s. 44 and as detailed in Police Regulations of Bengal 1943, Regulation 377.

28 Code of Criminal Procedure (V of 1898), s. 156.

29 Ibid, s. 161.

30 Ibid, s. 103.

31 Ibid, s. 61, Constitution, Art. 33.

32 Code of Criminal Procedure (V of 1898), s. 167.

33 Ibid, s. 164; *Nari o Shishu Nirjatan Daman Ain* ((VIII of 2000), s. 22.

34 Code of Criminal Procedure (V of 1898), s. 174.

35 Ibid, s. 172.

36 Ibid, s. 173.

never be used as evidence. Laws mandate the investigating officer to maintain a case-diary.<sup>37</sup> A case-diary is to be written in accordance with the instructions laid down in PRB and it has to be written in BP Form.<sup>38</sup> A case-diary generally contains the following:

- The time at which the information reached him;
- The time at which he started and wrapped up his investigation;
- The place/s visited by him;
- A statement of the circumstances ascertained through his investigation.

According to PRB, names of the witnesses, place and time of arrest of the accused and every step and clue of the case require to be mentioned in the case-diary.<sup>39</sup> It may be specifically pointed out that a case-diary maintained by the police cannot be treated as substantive evidence; however, it may be explored for the purpose of ascertaining the truth or otherwise of the evidence appearing in the case.<sup>40</sup>

(ii) *Inspecting the spot and preparing the sketch map:* According to Code, upon receiving the FIR, the concerned police officer is to send a report to the concerned Magistrate and shall proceed in person or depute his subordinate officers to the spot to investigate the occurrence.<sup>41</sup> PRB also provides for similar guidelines for the investigating officer.<sup>42</sup> However, inspection of the place of occurrence *per se* is not indispensable in a case where the offence alleged is not of a serious type and information is furnished against any person by name.<sup>43</sup> According to PRB, a sketch map of the spot is to be prepared in the cases involving murder, dacoity, serious riot, mail robbery, highway robbery, extensive burglary, theft of value Taka 600 (six hundred) and above.<sup>44</sup> Though a sketch-map of the place of occurrence is not legally required to be drafted in other offences, the investigating officer usually may prepare it at his discretion. Importance of sketch-map lies with its proximity with the spot of occurrence. It essentially gives a fair idea about the place of the occurrence to understand the evidence of the witnesses involving the alleged offences.

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37 Ibid, s. 172.

38 Police Regulations of Bengal 1943, Regulation 264, BP Form 38.

39 Ibid, Regulation 263.

40 *Abdus Sukur Mia v State* 48 DLR 228.

41 Code of Criminal Procedure (V of 1898), s. 157(1).

42 Police Regulations of Bengal 1943, Regulation 258.

43 Code of Criminal Procedure (V of 1898), s. 157(1)(a).

44 Police Regulations of Bengal 1943, Regulation 273(a).

(iii) *Recording of the statements of the witnesses*: While investigating a police case (GR case), the investigating officer (IO) may require the attendance of any person who is supposed to be acquainted with facts and circumstances of the occurrence.<sup>45</sup> Investigating officer may examine orally such persons who are legally bound to answer his queries in connection with the occurrence, except those which may expose their criminal implications thereby. Oral examination of the witnesses as such requires to be reduced into writing. This is known as statements of witnesses recorded under section 161 of Code. Such statements of witnesses made before the police do not require to be signed by the persons making them. It is a settled principle of criminal jurisprudence that no statement made to a police is admissible as substantive evidence unless something definite is recovered or collected in connection with the previous statements of the accused.<sup>46</sup> The maker does not take any oath before making such statements. The statement recorded as such is no evidence in law.<sup>47</sup> It cannot be used by the prosecution to corroborate or contradict the statements of its maker. In other words, ‘the statements of witnesses thus recorded under section 161 cannot be used by the prosecution, but can be used by the defence alone under section 162 of Code of Criminal Procedure 1898 to contradict the prosecution witnesses in the manner provided by section 145 of the Evidence Act 1872’.<sup>48</sup>

(iv) *Arrest of the accused*: A police officer may arrest an accused concerned in a cognisable offence without the permission of the Magistrate.<sup>49</sup> A concerned police officer may take measures to arrest the accused.<sup>50</sup> Even a police can arrest a person on mere suspicion.<sup>51</sup> An investigating officer is to produce the arrestee within 24 hours of such arrest to the nearest Magistrate save the time spent in the journey.<sup>52</sup>

(iv) *Search and seizure*: A police officer may conduct a search by observing the provisions as laid down in the Code.<sup>53</sup> An investigating officer should prepare a seizure list in BP Form in accordance with the provisions as laid down in PRB.<sup>54</sup>

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45 Code of Criminal Procedure (V of 1898), s. 160.

46 See details, Evidence Act (I of 1872), ss. 25 -- 27.

47 *Ekabbar Ali v State* 22 DLR 620; 53 CWN (DR. 1) 66.

48 Hussain M. F. Bari, “To explore the statements of witnesses”, *The Daily Star*, 28 October 2014, available at <http://www.thedailystar.net/to-explore-statement-of-witness-effectively-47669>. Last accessed on 1 November 2015.

49 Any reference to a Magistrate, without any qualifying word, shall be construed to be Judicial Magistrate: Code of Criminal Procedure (V of 1898), s. 4A(1)(a).

50 Code of Criminal Procedure (V of 1898), s. 157(1).

51 *Ibid*, s. 54.

52 Code of Criminal Procedure (V of 1898), s. 61; Constitution, Article 33.

53 *Ibid*, Ss. 102, 103, 165, 166.

(v) *Reports of experts*: Ante mortem, post mortem, chemical examination, DNA, Viscera, handwriting or fingerprint reports by the experts is an important step by which the investigating officer may ascertain the truth or otherwise of the allegations brought against the accused.

(vi) *Inquest*: When the officer-in-charge of a police station or other authorised officer receives an information that a person has committed suicide or has been killed by another or by animal or by accident or has died under circumstances raising reasonable suspicion that someone has committed an offence and none is accused in the information, the officer starts an Unnatural Death (UD) case and after giving information to the nearest Executive Magistrate regarding the unnatural death proceeds to the place where the body is lying. He is required to hold an investigation, draws up a report of the apparent cause of the death describing the nature and marks of injuries found on the dead body stating what weapons or instruments were used to inflict such injuries.<sup>55</sup>

(vii) *Autopsy*: Autopsy or post mortem examination is done by a forensic expert according to the direction of a Civil Surgeon. At least three doctors will append their signatures in the report. Concerned doctor will collect the relevant part of the body of the deceased for viscera examination. The investigating officer may seize the wearing apparels of the deceased for DNA test. Post mortem report is prepared in triplicate in BP Form.<sup>56</sup>

(viii) *Exhume*: According to Code, an Executive Magistrate may cause the body of the deceased to be exhumed and examined for ascertaining the cause of his death.<sup>57</sup> However, in a case of serious nature concerned Judicial Magistrate should give the directions to the District Magistrate for taking necessary arrangements and further order thereto.<sup>58</sup>

(ix) *Dying declaration*: A police officer, a Magistrate, a doctor or any person may record the statement of the person who is in imminent danger of death. A dying declaration made to a police officer shall be signed by the person making it and

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54 Police Regulations of Bengal, 1943, BP Form 44, Regulation 280.

55 Code of Criminal Procedure (V of 1898), s. 174.

56 See details, Police Regulations of Bengal 1943, Regulations 304-- 307 & BP Form 50.

57 Code of Criminal Procedure (V of 1898), s. 174(2).

58 Abdullah Al Mamun, "Investigation and Inquiry at a glance under Code of Criminal Procedure 1898", *Judicial Administration Training Institute Journal*, volume 13, 2014, pp. 155- 167.

same must be attested by witnesses.<sup>59</sup> At the time of recording the dying declaration, provisions as laid down in section 164, 364 of the Code should be followed.

(xi) *Remand and examination of accused*: A police officer can retain the accused in his custody upto 24 (twenty four) hours for interrogation. The investigating officer may keep the accused into his custody beyond this period only with the permission of the Judicial Magistrate.<sup>60</sup> This is popularly known as remand. However, use of third degree method like torture for investigation is not legally tenable in the eye of law. While investigation in general and conducting interrogation in particular, the investigating officer should adhere to the detailed guidelines as declared by the Apex Court.<sup>61</sup>

(xii) *Test Identification Parade (TIP)*: Importance of conducting TIP rests upon the ascertaining the person or property connected with the occurrence. The person or property under TIP should be mixed with similar kind of person or property whatsoever, preferably with 8 (eight) to 10 (ten) persons or property selected at random. It should be also be ensured that each identifying witness should be brought up singly and identification of such witness shall be conducted out of sight and hearing of the other witnesses. There must be a certificate to the effect that no previous communication has been possible between the police and the identifying witnesses.<sup>62</sup>

#### V. Police Report

Police report is the initial backbone of the criminal prosecution process. It is a record of the accusation and of the facts and events upon which the Court decides whether to take cognisance or not. After the investigation is wrapped up, the investigating officer is required to submit either the charge-sheet or the final Report.<sup>63</sup> Words “final report” or “charge-sheet” are hidden in section 173 of the Code. Under this section the police can submit a police report either for prosecution or release of the accused persons.<sup>64</sup> The investigating officer

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59 Police Regulations of Bengal 1943, Regulation 266.

60 Code of Criminal Procedure (V of 1898), s. 167.

61 BLAST v Bangladesh 55 DLR 363.

62 For detail guidelines, see generally, Criminal Rules and Orders (Practice and Procedure for Subordinate Courts) 2007, Rule 77; Police Regulation of Bengal 1943, Regulation 282, BP Form no. 45.

63 Code of Criminal Procedure (V of 1898), s. 173.

64 *Abdus Salam Master v State* 16 DLR (AD) 58; *Md. Zillur Rahim v Nazmul Karim* 28 DLR 1.

necessarily enjoys the unfettered right on an investigation within the periphery of law, to submit either a charge-sheet or a final report in a particular case, without any interference from the court.<sup>65</sup> It requires to be prepared in the prescribed form in accordance with PRB. Names of the informant, accused persons, suspects, nature of the accusation and names of the persons who appear to be acquainted with the facts and circumstances of the case should be mentioned in the report. Result of the investigation is informed to the informant in BP Form.<sup>66</sup> Police Report requires to be submitted through superior officer appointed under Code.<sup>67</sup>

*Charge-sheet:* Charge-sheet is a formal accusation against the accused to the court concerned for proceeding against the accused. It is submitted by following the laws and regulations as laid down in Code and PRB.<sup>68</sup> It is prepared in BP Form.<sup>69</sup> A charge-sheet filed before the court shall contain the matters as laid down in Code.<sup>70</sup> The police can file supplementary charge-sheet even after acceptance of the previous charge-sheet. There is neither any limitation nor any taboo in this regard.<sup>71</sup> The police may make further investigation in respect of an offence after submission of a report and submit a further report or supplementary charge-sheet in respect of any accused against whom evidence has been collected during further investigation, but Magistrate has no power to direct further investigation in respect of any accused persons against whom the police has once submitted a charge-sheet just to obtain a final report, nor can the police, after further investigation, submit final report in respect of a person against whom a charge-sheet was once submitted.<sup>72</sup> Police report cannot be used as evidence in the prosecution case.<sup>73</sup> Pending investigation by police the prayer for quashment of the matter under section 561A Code of is impermissible.<sup>74</sup>

*Final report:* Final report is also prepared in special form.<sup>75</sup> An investigating officer shall furnish a clear statement of the case and of the materials collected by

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65 *Khorshed Alam v State* 27 DLR 111.

66 Police Regulations of Bengal 1943, BP Form 40, 40A.

67 Code of Criminal Procedure (V of 1898), s. 158.

68 Police Regulations of Bengal 1943, Regulation 272, Code of Criminal Procedure (V of 1898), s. 173.

69 Police Regulation of Bengal 1943, BP Form 39.

70 Code of Criminal Procedure (V of 1898), s. 173(1)(a).

71 *Sultan Ahmed alias Sentu v State* 46 DLR 535.

72 *Golam Mostafa v State* 47 DLR 563.

73 *State v Mofizuddin* 10 BLC 93.

74 *Sheikh Ali Asgar v State* 8 BLC 729.

75 Police Regulations of Bengal 1943, BP Form 42.

him with the reasons for not sending up any person for trial.<sup>76</sup> Informant should be intimated about the outcome of the investigation through BP Form.<sup>77</sup> A police report in which an accused is recommended not to be prosecuted is ordinarily known as final report. There is no term specifically written like final report in the Code. However, this term is used in PRB to denote a report in which the investigating officer after investigation does not propose to prosecute any accused person even if he/ she had been implicated in the FIR. It is nevertheless well-decided that if the Magistrate is satisfied that a particular person has been improperly excluded from the charge-sheet, he may take cognisance against him on the basis of the same police report even if it is a final report.<sup>78</sup>

Final Report may be of five types:

*FRT (Final Report True)*: Final Report True is filed when the offence or occurrence is true, however, there is no evidence available to implicate the accused.

*FRF (Final Report as False)*: Such report is submitted when the version of the case is found totally false. In such a case, the investigating officer is to seek permission from the court to prosecute the informant under section 211 of the Penal Code 1860.

*FRMF (Final Report as Mistake of Fact)*: This is filed where informant filed different version of the case than what was actually occurred.

*FRML (Final Report as Mistake of Law)*: This is filed when a case is instituted in a totally wrong sections of laws.

*FRNonCog*: Such reports are filed when the investigating officer after investigation finds that only non-cognisable offence was committed. Obtaining the permission of concerned Judicial Magistrate is required for filing a prosecution report in such a case.

## **VI. Loopholes in criminal investigation**

This part mainly deals with the functional discrepancies apparent in the investigation of crimes. Investigation of crime is quite frequently encumbered with the following major challenges in Bangladesh:

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<sup>76</sup> Criminal Rules and Orders (Practice and Procedure of Subordinate Courts) 2009, Rule 76(1); Code of Criminal Procedure (V of 1898), s. 173(1)(b); Police Regulations of Bengal 1943, Regulation 278.

<sup>77</sup> Police Regulations of Bengal 1943, BP Form 43, 43A.

<sup>78</sup> *Abdul Awal v Abdul Mannan* 6 BCR (AD) 174; *Munshi Lal Meah v Khan Abdul Jalil* 1985 BLD 24.

(a) *Duration of investigation*: Code of Criminal Procedure does not provide for any specific time limit within which investigation is to be completed. However, there is a statutory indication in section 167(1) of Code that investigation is to be completed within 24 (twenty four) hours. Police Regulations also state that even most difficult criminal investigation should not take more than 15 (fifteen) days if the investigation goes at a stretch.<sup>79</sup> Justice Md. Azizul Hoque opined that the investigating officer should specifically pray for extension of time if the investigation could not be completed within time fixed by Magistrate.<sup>80</sup> Further, Code empowers the cognisance taking Magistrate or Sessions Judge to grant bail to the accused if investigation is not completed within 120 days and 180 days respectively.<sup>81</sup> However, such bail cannot be claimed as of right.<sup>82</sup> Code also specifically states that every investigation is to be completed without unnecessary delay.<sup>83</sup> According PRB, investigating officer will complete investigation without break of continuity.<sup>84</sup> One may find those provisions illusory as police personnel are busy with myriad types of works for which investigation is prolonged for years.<sup>85</sup> Further, there is a trend in special legislations for providing particular time- frame for wrapping up the investigation.<sup>86</sup> However, in practice, such time-frame for conclusion of investigation appears to be mere directory.<sup>87</sup> In practice, delay in completing the investigation is a perennial challenge which buries the enthusiasm of the justice- seekers. Quite strangely, Criminal Investigating Department (CID), Detective Branch (DB) or even Rapid Action Battalion (RAB) usually takes longer period in completing investigation than the regular police force does. However, such specialised departments generally conduct investigation into complicated and clueless crimes. The upshot is that delayed investigation leads to delayed trial. Such a situation may prolong incarceration of

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79 Police Regulation of Bengal 1943, Regulation 261.

80 Md. Azizul Hoque, *Todontokari Kormokorta ebong Magistrater Aashu Koronio*, (Universal Book House 2012), p. 35.

81 Code of Criminal Procedure (V of 1898), s. 167(5).

82 *Major (Rtd.) M Khairuzzaman v State* 3 BLC 344.

83 Code of Criminal Procedure (V of 1898), s. 173(1).

84 Police Regulation of Bengal 1943, Regulation 261(a).

85 Abdullah Al Mamun, *Op. cit.*, p. 155.

86 For instance, s. 18 of the *Nari o Shishu Nirjaton Domon Ain* (VIII of 2000) contains that the failure of the investigating officer to wrap up the investigation within statutory time limit may be termed as inefficiency and misconduct of the investigating officer. However, such discretion is rarely exercised by the judges.

87 *Alhaj Mamtaj Meah v State* 38 DLR (HCD) 152.

the accused persons pending their trial which may ultimately hit the constitutional guarantee of procedural fairness as well as their right to speedy trial.<sup>88</sup>

(b) *Delay in starting investigation*: It is often alleged that the investigating officers are subjected to influence by the accused sides and thus make inordinate delay in starting the investigation. As a result, many clues and articles disappeared in the meantime. They also tend to make delay in questioning and thus recording statements of the witnesses. Likewise, they deliberately omit to record the relevant statements of the witnesses implicating the accused.

(c) *Non-recording of information on cognisable offence*: In Bangladesh crime records are immensely increasing at an alarming rate. However, official recorded crime is a mere tip of ice berg as many of the crimes go unrecorded.<sup>89</sup> Though the rate of offence relating to violence against women has arisen consistently, such incidents largely remain unreported or substantially underreported.<sup>90</sup>

(d) *Lackadaisical recording of statement of witnesses*: In practice, investigating officers are not in the habit of recording the statements in black and white while examining the witnesses, but subsequently make a summary of what the witnesses said at the time of examination. They are alleged to prepare the record of those statements at their 'free time'.<sup>91</sup> As a result, many vital points are found to be missing in their recorded statements. Many investigating officers appear to be oblivious to the importance of statements made under section 161 of Code. It also appears in many cases that accused persons are acquitted in view of sheer discrepancies in the statements of witnesses before and during trial.

It is not expected that investigating officer is required to record the statement of witnesses in minute details. It is also now decided that minor omissions in the statements of witnesses do not materially affect the merit of the prosecution case. It is also settled by the precedents that recording of witnesses' statements in some

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88 Ridwanul Haque, "Criminal Law and Constitution: The Relationship Revisited", *Bangladesh Journal of Law*, Bangladesh Institute of Law and International Affairs, Special Issue, 2007, p. 45.

89 Hussain M. F. Bari, "Plight of Victims of Crimes", *The Daily Star*, 6 May 2014, available at: [http://www.thedailystar.net/print\\_post/plights-of-the-victims-of-crimes-22877](http://www.thedailystar.net/print_post/plights-of-the-victims-of-crimes-22877). Last accessed 1 November 2015.

90 Sharmin Jahan Tania, "Special Criminal Legislation for Violence against Women and Children: A Critical Examination", *Bangladesh Journal of Law*, Bangladesh Institute of Law and International Affairs, Special Issue, 2007, p. 201.

91 Md. Zakir Hossain, "Investigation and Trial of Criminal Cases: Challenges and Remedies", *Judicial Administration Training Institute Journal*, Volume XIII, 2014, p. 60.

boiled form is quite irregular. If such form of statements causes substantial prejudice to the accused, the trial may be vitiated.<sup>92</sup> Likewise, recording of joint statements of several persons is not proper in the eye of law. In delving into delicate right of accused, occasionally our apex Court skewed the evidence of witnesses out of consideration because they were examined by the investigating officer after long time.<sup>93</sup> Recording of statement of witnesses after a long lapse of time positively casts serious doubt if no explanation is given for such inordinate delay.<sup>94</sup> There is also chance of concoction and embellishment of prosecution story if the investigating officers are not vigilant enough to record the statements of the witnesses on time.

Apart from myriad of loopholes apparent in the investigation, lackadaisical and delayed recording of statements of the witnesses during investigation is a sure recipe to acquit the accused while discernable inconsistencies creep in between the statements of witnesses during investigation (before trial) and during trial.

(e) *Hazy sketch map of the spot*: Sometimes sketch map and index of the place of occurrence are prepared without clear specification. In practice, the provisions of Police Regulation of Bengal 1943, Regulation 273 is hardly followed. It may put the trial court at bay to gauge the real facts and circumstances of the occurrence.<sup>95</sup>

(f) *Faulty search and seizure*: Sometimes, *alamat* are seized in the police station long after the occurrence which is produced by the informant. It is the duty of the police officer to seize *alamat* at the place of occurrence or hospital immediately after the occurrence. Delayed seizure at some other place other than the relevant place of occurrence surely invites doubt. Sometime, seizure list witnesses are not local witnesses of the spot in contravention of provisions of section 103 of Code. Further, many a times the members of the police force intentionally obtains signature of the witnesses of the seizure list in blank pages at the spot and fill up the same in Police station after reaching there. Therefore, testimony of seizure list witnesses of such nature seriously casts a shadow over the veracity of the prosecution case. Further, cases involving murder, grievous hurt or sexual violence logically require some *alamat* like blood -stain wearing apparels/articles

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92 *Sarafat v Crown* 4 DLR 204; *Md. Israfil v State* 9 DLR 92.

93 *Alauddin alias Md. Alauddin v State* 12 BLC 137; *Sarafat Mondol v State* 11 BLC 1; *Moin Ullah v State* 40 DLR 443.

94 *State v Al Hasib* 59 DLR 653.

95 *Md. Zakir Hossain, Op. cit.*, p. 62.

etc. to be seized. In case of non- seizure of such vital articles, the investigating officer should assign explanation as to why such *alamat* was not seized.

(g) *Delay in collecting expert report*: Criminal investigation is the process of determining the events that happened before, during and after a crime was committed. Multiple law enforcement officials are involved in the investigation including the investigating officers, forensic experts and laboratory analysts. The primary goal in a criminal investigation is to find evidence to bring the criminal to justice. There is also delay in collecting medical certificates and other expert reports which ultimately procrastinate the proceeding.

(h) *Less-explored forensic science*: Criminal investigators now commonly employ many modern scientific techniques known collectively as forensic science. A criminal investigation is an undertaking that seeks, collects, and gathers evidence for a case or specific purpose. Criminal investigators undertake several scientific techniques in order to find the necessary evidence for a case. However, such avenue still remains largely unexplored in Bangladesh.

(i) *Remand*: In many instances, investigating officers do not send a case diary along with remand prayer. As a result, accused is sent to the jail custody pending hearing of the remand prayer for some other date. In this way accused becomes acquainted with hardened criminals in jail custody and makes deliberate attempt to dodge the investigating officer even he is in remand in a subsequent date. Further, there is wide speculation that the many officers often resort to third degree method with a view to divulging the facts and accusation involving the accused.<sup>96</sup> High Court Division observed that the very system of taking an accused on 'remand' for the purpose of interrogation and extortion of information by application of force is totally against the spirit and explicit provisions of the constitution.<sup>97</sup> In CPLA (Civil Petition Leave to Appeal) 498 of 2003, the Leave to Appeal was granted with the direction that the respondents be directed to observe and implement the directions in its letters and spirits till disposal of the appeal. Copy of the order of the superior court is transmitted to all Sessions Judges, Inspector General of Police, Chief Judicial Magistrates and Chief Metropolitan Magistrates for implementing these directions.<sup>98</sup> Furthermore, Torture and Custodial Death (Prevention) Act 2013 has already been passed in

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96 See, Shahdeen Malik, "Arrest and Remand: Judicial Interpretation and Police Practice", *Bangladesh Journal of Law*, Bangladesh Institute of Law and International Affairs (BILIA), Dhaka, Special Issue, 2007, pp. 259--292.

97 BLAST v State 55 DLR 363.

98 Vide no. Bichar-4/1 M-11/2010 dated 23/08/2010.

the Parliament as the first concrete step on the part of the government towards addressing impunity for police torture and custodial death.<sup>99</sup>

(j) *Confession*: Keeping the accused for long in police custody before being forwarded to the Magistrate for recording his confession under section 164 of Code obviously destroys the veracity of such confession.<sup>100</sup> In this regard directions as laid down by the apex court have to be carefully followed.<sup>101</sup> A good investigating officer is one who is capable to sort out the person who desires to confess the occurrence.<sup>102</sup>

(k) *Plea of alibi*: Sometimes the investigating officer submits the final report on the plea of *alibi* of the accused. However, section 169 of Code has not empowered the police officer to judge the credibility of the witnesses and to decide the plea of *alibi*.<sup>103</sup>

(l) *Investigation by informant*: Informant and investigating officer being the same officer is also fatal to the prosecution case if the reason is not plausibly explained.

(m) *Lack of legal perception about offence*: It is also critical to a successful investigation that the investigating officers know the essential ingredients of the particular crime(s) they are investigating, otherwise they do not know what evidence to look for to support each of those crime's essential ingredients.

(n) *Use of third degree method and too much reliance on confession*: It is widely believed that the investigating officer frequently resorts to the 'third degree method' as investigation technique.<sup>104</sup> There is also tendency to compel the accused to make confessional statement stating his involvement to the alleged occurrence. In doing so, the investigating officers are at times oblivious to human rights and fundamental freedoms of the accused.

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99 See, Anirudha Nagar, "Putting the Torture and Custodial Death (Prevention) Act to the test", *The Daily Star*, 3 August 2014, available at <http://www.thedailystar.net/putting-the-torture-and-custodial-death-prevention-act-to-the-test-35487>. Last accessed 1 November 2015.

100 A confessional statement is to be recorded in view of rules contained in ss. 164, 364 of Code of Criminal Procedure 1898 and rule 78, 79 of Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), 2009. Form no (M) 45 is to be used for recording the statements of accused.

101 *State v Lulu Mia* 30 DLR (AD)117.

102 Saira Rahman Khan, "The Use and Abuse of the Laws of Confession in Bangladesh", *Bangladesh Journal of Law*, Bangladesh Institute of Law and International Affairs (BILIA), Special Issue, 2007, pp. 79-106.

103 *Abdur Rouf v Jalaluddin* 51 DLR (AD) 22.

104 Shahdeen Malik, *Op. cit.*, p. 288.

(o) *Media parade*: In many instances, the arrested accused or suspect is paraded with some obnoxious tagging before the media personnel to make confessional statement. In this way, there appears a substantial risk of serious prejudice to the administration of justice and consequently, right to fair trial of the accused is liable to be jeopardized.<sup>105</sup>

(p) *No effective conference of prosecutor and witnesses*: There is no pre-trial conference between the investigating officer and the public prosecutor, and most the investigating officers have no knowledge on law of evidence. Investigating officers also feel reluctant to give testimony during trial though court issues all possible processes. Sometimes, during trial there is no trace of investigation officer who has been transferred to some other places. Further, victim and other prosecution witnesses also have no idea as to what have been written during investigation as their statements because such statements are never read over to them. It also appears that investigating officers are conveniently indifferent to the importance of statements made under section 161 of Code. In practice, there is no effective pre-trial meeting between the prosecutor and the prosecution witnesses which put the witnesses at bay during trial.

(q) *Plight of the victims of crimes*: Our criminal justice system is quite often oblivious to the concerns of the victims of crime. Restorative justice paradigm requires that their needs are addressed sincerely and empathetically by the justice sector agencies. It is imperative that criminal justice professionals working with crime victims have a complete and thorough understanding of the devastating effects of crime on its victims.<sup>106</sup>

(r) *Lack of modern equipment*: Police are quite handicapped in undertaking effective investigation for want of modern gadgets such as cameras, audio-visual surveillance equipment. Forensic science laboratories are scarce.

(s) *Illegible writing*: In practice, statements of the witnesses, First Information Report, seizure lists, Police Report are written in illegible shapes and patterns by the commercial scribes (popularly known as *Munshi*).

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105 Hussain M. F. Bari, "Media Trial in Bangladesh: Free Press vs. Fair Trial", *Media Asia*, Asian Media Information and Communication Centre & Nanyang Technological University, Singapore, Volume 41, Number 2, 2014, pp. 124-127.

106 See, Abdullah- Al Faruque et al., "Victim Protection in Bangladesh: A critical appraisal of legal and institutional framework", *Bangladesh Journal of Law*, Bangladesh Institute of Law and International Affairs (BILIA), Volume 13, Nos. 1&2, 2013, pp. 33-- 48. See, Hussain M. F. Bari, "Plight of Victims of Crimes", *The Daily Star*, 6 May 2014, available at: [http://www.thedailystar.net/print\\_post/plights-of-the-victims-of-crimes-22877](http://www.thedailystar.net/print_post/plights-of-the-victims-of-crimes-22877); Last accessed 1 November 2015.

(t) *Wrong quotation of laws*: Wrong quotations of title and sections of offence in the police report may create confusion.

(u) *Lack of efficient officer*: Paucity of efficient and committed officers haunt our investigating agency. There is dearth of forensic and cyber experts in Police force. The investigation of crime is a highly technical specialised art requiring a lot of patience, expertise, training and clarity about legal position of the specific offences and subject- matter of investigation and socio- economic factors. It obviously requires specialisation and professionalism of a type not yet fully perceived by our agencies.<sup>107</sup>

(v) *Lack of proper supervision*: Lack of proper and effective supervision by senior police officers is also a contributing factor for lackadaisical investigation.<sup>108</sup>

## VII. Recommendations

The following measures are suggested to deal with the stumbling blocks in criminal investigation:

- (a) The concerned Judicial Magistrate should maintain professional supervision over the investigating functions of the investigating officers.
- (b) Judicial Magistrate should call for the case- diary from time to time to review the pen- picture of the development or otherwise of the investigation, if required.
- (c) Colonial enactments including Police Act, PRB, even Code of Criminal Procedure and Evidence Act require review so far as provisions relating to investigation of crime, evidence and trial are concerned.
- (d) It is expected that the investigating officers write down the versions of the witnesses without delay by their own hands or by some computer compose.
- (e) Sound recording of the speech of the witnesses in some compact disc form etc. should be introduced. This sound recording will accordingly form part of the police report.
- (f) Suggestion for appending the signatures of the witnesses in the recorded statements may be under consideration. Accordingly, relevant provisions of laws may be amended.
- (g) Recourse should be had to scientific study of crimes and involvement of the offenders by resorting to techniques of forensic science, rather than too much reliance on lackadaisical recording of oral testimony by the investigators.

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107 Ehsanul Haque Shomaji, *Final Report on Proposed Amendments for The Code of Criminal Procedure 1898*, unpublished paper, Dhaka, p. 8.

108 According to Code of Criminal Procedure (V of 1898), s. 158, a superior police officer may be appointed to instruct the investigation through the officer-in- charge.

- (h) In case of investigation of heinous crimes, investigating officer may place the star prosecution witnesses before the concerned Magistrate to have their statements recorded.
- (i) Victims' rights should be high in the agenda of criminal justice reforms. Informant/ victim should be sensitised about their rights and duties.
- (j) Deliberate media parade of the accused requires to be reviewed in the sense that there is a subtle distinction between media activism and media trial.
- (k) Effective pre- trial conference of public prosecutor and prosecution witnesses is a must so that witnesses are well- supervised as to what exactly they will depose during trial.
- (l) Regular Police- Magistracy conference as contemplated in Criminal Rules & Orders is a must.<sup>109</sup>
- (m) National dialogue should be initiated regarding the plausibility of creation of an autonomous investigating agency.
- (n) Permanent and well- equipped prosecution office will help develop the professionalism and quality of criminal justice in the long run.
- (o) The development of infrastructure of criminal courts with the innovative exploration of modern technology is indispensable for proper administration of criminal justice.
- (p) The delinquent investigating officers should be admonished while efficient officers should be rewarded.
- (q) The judges, investigators, prosecutors should be well versed with modern practice, procedure and techniques of the investigation. Accordingly, they require to be trained- up and educated at home and abroad.

#### VIII. Concluding remarks

The dual role of the police for crime detection vis-a-vis maintenance of general law and order is not yet separated in Bangladesh. The members of the police force necessarily perform criminal investigation in addition to their day to day functions of maintaining law and order, which often result in poor investigation. In absence of a separate investigating agency coupled with other challenges apparent in their working conditions and procedure, our investigating officers are at times awfully lagging behind professionalism in wrapping up investigation. Many investigators save themselves from tedious task of collection of tiny and minute clues. Investigating officers heavily lean towards oral evidence, instead of concentrating on scientific and circumstantial evidence.<sup>110</sup> Further, inherited

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109 Criminal Rules and Orders (Practice and Procedure of Subordinate Courts) 2009, Rule 481 mandates monthly police -magistracy conference.

110 Md. Zakir Hossain, *Op. cit.*, p. 60.

colonial mentality, too much reliance on confession of the accused rather than evidence oriented way of investigation, discourteous attitude towards public etc. are major causes for lack of confidence in police force which in turn, undermines the process of criminal justice.<sup>111</sup> Factors such as heavy workload, insufficient time for rest and recreation, low pay structure, low public esteem of the profession, inadequate scope of promotion, frequent transfer, political-interference are also responsible for low morale of police force.<sup>112</sup> Investigating agency is yet to gain the full confidence of the public as the investigating officers, in many cases, are found to be not discharging their duties to their full potentials.<sup>113</sup> A service oriented, pro- people and human rights oriented police force is considered as equally important for effective functioning of criminal justice system. There is no denying that proper investigation is *sine qua non* for a balanced criminal justice system.

The prime object of investigation is to detect the accused persons who have committed the offence. In this way the investigating officer has to collect evidence to be used during trial. Likewise, a faulty investigation leads to miscarriage of justice when there is faulty evidence. It is worth mentioning that investigation is the basic substratum upon which criminal trial is founded. There is no gainsaying that unsolved crimes, unsuccessful prosecutions, unpunished offenders and even wrongful convictions are indicative of perennial fallacy that our criminal justice system suffers from. I am of firm view that reforms in the criminal justice system should be initiated first at the investigation stage. In conclusion, I would like to quote the observations of Honourable High Court Division:

We have come across many cases in which due to faulty investigation accused get benefit of reasonable doubt in spite of consistent and uniform evidence of prosecution witnesses about the occurrence. As a result, people of our country have been losing faith in the present system of administration of justice mainly due to the failure of the police to properly investigate the case and collect the evidence. It is high time that the system of the investigation of the criminal cases by the police alone should either be abandoned or completely reformed.<sup>114</sup>

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111 See, Abdullah Al Faruque, "Goals and Purposes of Criminal Justice", *Bangladesh Journal of Law*, Bangladesh Institute of Law and International Affairs (BILIA), Special Issue, 2007, pp. 1-32.

112 Ibid.

113 Md. Zakir Hossain, *Op. cit.*, p. 59.

114 *Ali Akbar v State* 4 MLR 87.