

CLOSING THE GAPS IN CRIMINAL JUSTICE

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

Still a way off from ensuring uniformity of procedure | Photo Credit: Getty Images/iStockphoto

Last year, the Supreme Court of India, while hearing a criminal appeal, took *suo motu* cognisance of certain deficiencies and inadequacies which occur during the course of criminal trials. As a result, it issued the necessary directions in [In Re: To issue certain Guidelines regarding Inadequacies and Deficiencies in Criminal Trials vs The State of Andhra Pradesh \(2021\)](#). These directions inter alia included presentation of site plan, inquest report and body sketches (in a post-mortem report) in a uniform manner, photographs and videographs of a post-mortem in certain cases, and separation of prosecution from the investigation. The High Courts and the State governments were, accordingly, asked to notify the draft “Rules of Criminal Practice, 2021” which all the States and the High Courts had agreed upon with minor variations, and make consequential amendments in their police and other manuals. The Guwahati High Court issued the essential notification and incorporated the necessary changes in January 2022.

The Criminal Procedure Code (CrPC) mandates that the officer-in-charge of a police station shall, on receiving information about the commission of a cognisable offence, proceed to the spot (of the crime) in person to investigate the facts and circumstances of the case. The general practice (on reaching the spot) is to prepare a site sketch that show details of the crime scene and collect evidence which could connect the presence of the criminal. The Court has previously held that a site plan drawn on scale is admissible if the witnesses corroborate these statements of the draftsman that they showed him the places. The contents of the site map would not become admissible as evidence merely by its exhibition by the investigating officer.

The guidelines issued now say that the site sketch prepared by the investigating officer shall be followed by a scaled site plan prepared by a police draftsman, if available, or another authorised or nominated draftsman by the State government. Therefore, looking at the importance of a site plan (which captures the details of a crime scene and its surroundings) particularly in a case of suspicious death, the police need to develop its own cadre of draftsmen.

The guidelines mandate that every medico-legal certificate and post-mortem report shall contain a printed format of the human body (with both a frontal and rear view) on its reverse and injuries, if any, shall be indicated on such a sketch.

The purpose of preparing an inquest report is to ‘ascertain whether a person has died under suspicious circumstances or died an unnatural death and if so, what the (nature of) injuries are and the apparent cause of death’. However, if the evidence and materials collected during an inquest ‘make it a prima facie case of any offence’, a criminal case is registered and regular investigation taken up even without any formal complaint from anyone. It is settled law that the contents of the inquest report cannot be treated as evidence, but they can be looked into to test the veracity of the witnesses of the inquest. However, if the investigating officer himself observes and records evidence, it is treated as ‘direct or primary evidence in the case and the best in the eyes of the law’.

Similarly, the post-mortem report is a ‘document which by itself is not a piece of substantive evidence. It is the statement of the doctor in court, which has the credibility of substantive evidence’. The post-mortem report can only be used as ‘an aid to refresh the memory of the doctor while giving evidence’. The significance of the ‘evidence of the doctor lies *vis-à-vis* the

injuries appearing on the body of the deceased person and the likely use of a weapon’.

The National Human Rights Commission, India (NHRC) has already laid down similar guidelines for cases of deaths in police custody. The importance of body sketches (in a uniform format) in an inquest report and a post-mortem report cannot be overemphasised. Their standardisation will not only help the court to better appreciate these reports and scrutinise the evidence, but will also help the investigating officers and doctors to refresh their memory with more clarity.

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The Supreme Court has directed that ‘in case of death of a person in police action or death in police custody, the magistrate or the IO [investigating officer] shall inform the hospital to arrange for photography and videography for conducting post-mortem examination of the deceased’. Similar guidelines, first issued by the NHRC back in 1995 — and then revised from time to time — are being meticulously implemented by the enforcement agencies. The Supreme Court in *People’s Union for Civil Liberties vs State of Maharashtra* (2014) issued similar guidelines for deaths in exchange of fire with the police.

The implementation of the scheme of having trained photographers at police stations (in accordance with Supreme Court’s ruling of 2018 in *Shafhi Mohammad vs the State of Himachal Pradesh*) is also under way in a phased manner so that scenes of heinous offences are videographed and photographed using digital cameras as a “desirable and acceptable practice”, and their hash values taken to make the evidence tamper-proof.

The draft Code now provides that the investigating officer shall seize such photographs and videographs, preserve the original (separate memory card) and obtain certificate under Section 65B (regarding admissibility of electronic records) of the Indian Evidence Act, 1872.

The purpose of these guidelines is to ensure that there is uniformity of procedure in dealing with cases of death in police action or police custody without any tampering of evidence. Therefore, it will be appropriate for the police forces across the States to speed up implementation of the above scheme and have their own cadre of photographers so that expertise is maintained at the police station level.

The Supreme Court has further directed that ‘the state governments shall appoint advocates, other than public prosecutors, to advise the investigating officer during investigation’. Currently, in many States, a public prosecutor advises the investigating officer to check and make up for any deficiency in investigation before submitting the charge sheet in the court.

Previously, there have been conflicting judgments by the Supreme Court on this issue. The Court in *R. Sarala vs T.S. Velu* (2000) held that as per the scheme of the CrPC, the investigation ends with the formation of an opinion by the police as to whether, on the material collected, a case is made out to place the accused for trial. The formation of the said opinion by the police is the final step of investigation, and this final step is to be taken by the police and by no other authority. The public prosecutor is an officer of the court and his role essentially is inside the court.

More recently, in *State of Gujarat vs Kishanbhai* (2014), the Court, while taking note of the many lapses in investigation, directed that ‘on completion of the investigation in a criminal case, the prosecuting agency should apply its independent mind, and require all shortcomings to be rectified, if necessary, by requiring further investigation’.

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Since, investigation and prosecution are two different facets in the administration of criminal justice, the three judge Bench of the Supreme Court has now rightly asked the States to separate the two wings. Chhattisgarh has sanctioned a cadre of law officers (who shall function independently of the public prosecutors and will have no role in the court) to assist the investigating officers in educating and improving investigation work. Other States should also follow suit. Similarly, while the creation of a cadre of draftsmen and photographers may take time, executive orders may be issued without further delay, followed by training of investigating officers and medical doctors, in order to implement the Supreme Court's directives.

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