

INTERFERENCE AN INVESTIGATING OFFICER CAN DO WITHOUT

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

It is an accepted axiom in a democracy such as India that the Executive shall abide by the Constitution. By the same logic, the bureaucracy is answerable to the lawfully elected government. It is this unassailable legal position which keeps a check on police conduct in a democratic nation.

Writing just after a Minneapolis police officer was sentenced in the United States, on June 25, to 22-and-a-half years in prison for the horrific murder of a hapless citizen, George Floyd, and the enormous media publicity it has received the world over — Floyd was videotaped in May 2020, that showed him dying as the officer was kneeling on his neck — my uneasy feeling is that government and public distrust of the police will further widen. Even a straightforward and law-abiding policeman will hardly be believed. The onus will be on him to prove that he is honest and humane.

The CBI and the rules of political combat

The Minneapolis court verdict will no doubt receive support from everyone who believes in a system of checks and balances. My question, however, is whether happenings of this kind and our own horrific episode in Sattankulam, Tamil Nadu, when in June 2020, a 58-year-old father and his 31-year-old son were subject to police brutality and died, justify further curbs on the police authority to investigate an established crime. I know well that I will be in the minority when I plead for at least a slightly kindlier view of police conduct and more latitude to them in the standard operating procedures which they follow, especially when they investigate a complicated crime.

It is in this context that I cite [a recent Supreme Court of India observation](#) that courts have no authority to direct an investigating officer to in turn direct the arrest of any particular individual connected with a crime. This view should be examined in the background of growing instances of subordinate judicial officers, and even High Courts sometimes, directing the investigating officer to effect the arrest of a particular individual who has come to adverse notice as a suspect in the commission of a crime.

I am happy that the highest court of the land has intervened in the matter. I have come across many instances of courts bullying police officers, asking why 'x' has been arrested and not 'y'. Such directions cut at the roots of criminal justice ethics, because the bedrock of English jurisprudence that we have adopted with some modifications is the principle that anyone hauled up by law should be considered innocent unless he is proved guilty. The direction to the police with regard to arrests during a criminal investigation is harmful to police morale and cuts at the roots of field policing. Court observations that smack of a lack of faith in police ability and integrity will make grass-root level policemen even more arbitrary than now and force them into carrying out questionable actions that will cast aspersions on an officer's ability to think for himself.

Of police and political quagmires

I strongly believe that the Code of Criminal Procedure (CrPC) vests sufficient discretion in the

investigating officer to take such decisions as arrests and searches, and even the dropping of further action after registering a first information report

Court interference — mind you, it is not intervention — in the day-to-day investigation is not only undesirable but is also not sanctioned by law. I am of the view that except for the Supreme Court, in whom the Constitution vests enormous authority and discretion which are not questionable, the lesser courts shall not give directions in the matter of arrests and searches.

Courts should remember that the police are a well-established hierarchy that is obligated to ensure objectivity during a criminal investigation. Every investigation is supervised by at least two immediate senior officers. In the more important cases, there are a few more levels. It is their duty to ensure that every investigation is handled lawfully and impartially. Where supervisory officers fail in their duty because of sheer indolence or buckle under external pressure, they deserve to be pulled up by courts. But not before they are found guilty of indifference or malfeasance.

We need to educate the Executive and the common man that it is now well-established law that a first information report is not an act of charity to the aggrieved complainant. It is mandatory that every police station in the land should register a complaint under the relevant sections of a statute the moment a cognisable offence is made out in the complaint. The complaint may be false or frivolous in order to settle personal scores. But the basic requirement is registration.

Still awaiting police reform

There is another safeguard against police misconduct. The CrPC makes it obligatory for the investigating officer to write a diary that details the action taken every day following registration. To such a diary are attached witness statements. When in doubt, the competent court, which already has a copy of the first information report, can demand to see the case diary. If the content of such a diary establishes the complicity of an individual, the court can question an investigating officer as to what he proposed to do on the basis of such evidence. Directing an investigating officer to go ahead with an arrest even before he has scrutinised the evidence collected is unsustainable in law.

I am not pleading the cause of police officers, many of whom are burdened with the task of unravelling the truth in a complicated occurrence. I also concede that there are many dishonest police officers at all levels who work overtime to sabotage an investigation with a view to saving an offender or are waiting to please a rank outsider for monetary consideration. To paint all police officers with the same brush is hugely unfair to a majority of investigators.

To sum up, I would place the blame for the ills that affect the police, particularly in the area of criminal investigation, squarely at the door of many senior officers who are waiting to be browbeaten by outsiders or are looking for unethical avenues to aggrandise themselves.

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