De-biasing Criminal Investigation

Aaditya Gore 1; Prof. Dr. Anuradha Parasar 2

1 Practising Advocate and PhD Scholar, School of Liberal Education, Galgotias University, Greater Noida, Bharat (India); 2 Professor, School of Liberal Education, Galgotias University, Greater Noida, Bharat (India)

Email ID: 1 adigore@gmail.com; 2 anuradhaparasar99@gmail.com

Abstract: Policing and Criminal Investigation in the present age must necessarily move towards more humane forms that avoid physical torture to extract truth from suspects. Criminal investigation consists of fact-finding based on certain factual theories formed by the investigator in order to arrive at the best possible explanation. Childhood socialisation has an invariable effect on the manner in which an individual perceives matters requiring cognitive problem-solving skills which even training cannot fully align into uniformity. Police departments recruit from different backgrounds: urban, semi-urban and rural. Differential socialisation among police personnel implies differential investigative approaches to similar criminal cases. This paper seeks to understand from the literature in the field, the possible solutions to investigative bias induced by differential socialisation as also the need for instituting in a reasonable system of criminal defence investigation so as to achieve better Police human resource management and to ensure better delivery of justice.

Keywords: Criminal Investigation, De-biasing, Socialisation, Differential; Police Management.

Introduction

Education and professional training are intimately related aspects of practical disciplines (Bryant et al, 2014) [1]. Direct recruitment to the post of Police Sub-Inspector in India requires candidates to be graduates from a recognized university [2]. Training is a routine process that allows an organisation to sustain and transmit its understanding of its operational requirements to future generations of professionals (Dhameja, 1998) [3]. Professional training imparts to the personnel concerned, the technical and operational skills required for fulfilling the organisational goals of policing (Dhameja, 1998) [3]. However, professional training of Police personnel does not cover aspects of undoing individual prejudices which may be the result of social background and upbringing, inasmuch as the syllabus prescribed by the Bureau of Police Research and Training for Police Sub-Inspectors consists of only 4 out of a total of 405 sessions prescribed, devoted to human behaviour and socio-psychological factors [4]. A discussion-based training module is not sufficient in order to deal with the sociological aspect of socialisation-based prejudices.

The scientific management model of F. W. Taylor [5] is designed to train personnel in matters of operational responses. In the context of Police investigators, this would involve the manner in which an
investigator responds to new evidence, how they collect it, and process it, etc. In a discretion-oriented matter like investigation, where the intuition of an investigator is an important factor determining the direction taken by the investigation (Halilović & Korajlić, 2014) [6], the operational training of responses would be invariably coloured by the individual experiences and socialisation-related factors (Peshkovskaya et al, 2017) [7]. This is not to discount the professional socialisation that every personnel undergoes during training and on the job. However, professional socialisation remaining constant, the point of consideration here is the early-life socialisation and psychological implications on investigative decision-making, and whether training modules can be designed to address the differences in such early-life socialisation.

**Related work**

**Significance of Psycho-Social Background in Reaction Systems and Ideology**

Schaffer and Emerson (1964) [8] have established that early childhood socialisation, especially in terms of care-giving, determines social attachments formed by individuals. Sørensen (2016) [9] has shown that bonding social capital was found significantly higher in rural areas than in urban areas, i.e. the ability to derive benefits from being social (Claridge, 2014) [10] within the community is higher in rural areas. Childhood socialisation has an effect on the way an individual’s civic and political ideology is shaped (Healy & Malhotra, 2013) [11]. Investigative skills requiring intellectual application like question selection, eliciting free narrative and rapport-building (Acka et al, 2021) [12] showed less improvement after training. Tyler and McKenzie (2014) [13] have shown that owing to the nature of emergency response situations involved in law enforcement work, reflection-in-action is limited. Northup (2019) [14] has qualitatively analysed the construct reflection and found that reflection-before-action, based on prior experience, was preferred by investigative police officers over reflection-in-action or reflection-on-action. The above literature shows that a trained individual's experiential background which invariably contributes to their application of mind and quality of socialisation would play a definite role in the exercise of intellectual skills, which remain less affected due to training than other operational skills, like physical reflexes.

**The Need for Socialisation Bias Testing in Professional Training**

Investigative Police work like any other organised state activity is regulated by a set of legal norms and its major function is to detect crime and bring its perpetrators to justice under the Indian Police Act, 1861. In order to strengthen the efficacy of an organised activity like investigative policing, a common training system that is responsive to the current requirements of society is essential (Glasgow & Lepatski, 2012) [15]; (Blumberg et al, 2019) [16].

Childhood socialisation effects need to be taken into consideration while designing a training module for Police personnel, as recruits into a particular batch of Police officers may come from different backgrounds: urban, semi-urban, rural. The real-time investigative effects of variable childhood socialisation shaping the civic ideology which affects cognitive function is an area of training research that requires further exploration and experimental research. In addition to a common training module, psychological reorientation based on detecting childhood socialisation bias is an area that can be explored in Police training modules. This would have to involve testing a recruit individually during training for certain investigative technique preference traits and to ensure that the effects of socialisation-related
bias are minimised by targeted, individual-specific correction courses for such an individual. Trying to eliminate socialisation-related bias is essential for the Police organisation as its responses including investigative choices are bound to be similar in similar situations and not tainted by socialisation bias of its practitioners.

**Investigative Decision-Making**

Age influences performance more than managerial experience (Taylor, 1975) [17]. Marksteiner et al (2011) [18] have shown that evidence inconsistent with guilt perceptions is susceptible to asymmetrical scepticism among investigators. Ask and Granhag (2007) [19] have shown that investigators are less likely to change their perceptions about the guilt of an accused when faced with the constraint of time to finish investigation. Investigators’ judgement of evidence from witnesses is more likely to suffer asymmetrical scepticism than with biological evidence (Ask et al, 2008) [20]. De-biasing techniques like Analysis of Competing Hypothesis (ACH) can only reduce confirmation bias in investigative approaches (Ask & Fahsing, 2020) [21], however it is limited in its efficacy in reducing confirmation bias (Dhami et al, 2019) [22]. No matter how much a single individual or agency tries to de-bias its approach, the fact remains that the same agency cannot and is not statutorily expected to play regular turncoat in their exercise of investigative functions and duties.

**Criminal Defence - Legal and Expert Investigator Assistance At Pre-Trial Stage**

The investigation stage is now recognised as the most important point of defence-building as against the criminal trial stage (Pivaty, 2020) [23]. The prosecution is expected to fairly disclose exculpatory evidence in theory (Brady v/s. Maryland, 373 U.S. 83 (1963); United States v. Bagley, 473 U.S. 667 (1985); Shiv Kumar v. Hukam Chand, (1999) 7 SCC 467; Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble and Ors., (2003) 7 SCC 749; Nikhil Ashokrao Waghmare v/s. State of Maharashtra, 2023:BHC-NAG:15764-DB). However, in order to safeguard against the imbalance of power in the investigative setting and in view of the phenomenon of asymmetrical scepticism as seen supra, as also to ensure that evidence that may be within the special knowledge of the accused (Nikhil Ashokrao Waghmare v/s. State of Maharashtra, 2023:BHC-NAG:15764-DB, Dated 18th October 2023) is taken into consideration, the accused in a criminal investigation needs a distinct modality for being able to establish exculpatory evidence during investigation.

Multi-agency probes also present the problem of ‘grey policing’ (Hogenboom, 1991) [24], where different agencies utilise each other’s powers and exchange protected information. While grey policing on one side, i.e. prosecution alone is itself a problem as far as establishing exculpatory facts is concerned, competing agencies under one roof or serving in the same uniform could lead to either mutual competition or excessive cooperation, both of which would destroy the basis of such separation.

In many European jurisdictions, the failure to afford access to a lawyer is recognised as a serious procedural lapse (Pivaty, 2020) [23]. The presence of a lawyer during interrogation is a recognised statutory right under section 41D of the Code of Criminal Procedure, 1973 and under section 38 of the Bharatiya Nagarik Suraksha Sanhita, 2023. The right to access a lawyer of one’s choice is necessary for accused persons to be able to plead their innocence and to put their best case before the authorities. Legal assistance while an accused is in Police custody would form the legal part of an accused person’s defence.

Active factual defence which includes the finding and furnishing of exculpatory evidence is an equally important aspect of building a defence case. Private investigators are employed for a variety of in-house
jobs by private corporations which may include fraud investigation (Button et al, 2023) [25]. However, this system does not take the place of a public defender investigator. A defence detective attached to the office of the Public Defender can help in reducing the number of cases that would otherwise invariably have to go through the rigmarole of criminal trial (Bliss, 1956) [26]. Under Indian law however, there is no statutory provision for criminal defence investigation (Deb, 1997) [27] or protection accorded to any act of defence investigation and if a witness feels intruded upon by an agent of an accused, such a fact could land both the fact-finding agent as well as the accused in trouble with the law. It is pertinent to note that a proposed Bill, i.e. the Private Detective Agencies (Regulation) Bill, 2007 [28] was withdrawn from the Rajya Sabha (the upper House of the Indian Parliament) in 2020. However, there is scope for further legislative enactments in this respect which may be brought in in the future[29].

**Key Contribution**

This paper tries to apply the current literature in the field to find an optimum solution in the domain of criminal investigation by suggesting systemic devices to achieve processual fairness in custodial interrogation. Defence investigation and a fair chance to put exculpatory facts go hand in hand. This paper explores and suggests the manner in which fairness in investigative process can be practically achieved.

**Conclusions**

A feasible way ahead would be to institute an office of Public Defender Detective (PDD) outside the control of the Police department, with powers of investigation without the powers of arrest, and with the sanctity and the protection of public office. This would make the defence investigation admissible as well as impartial to a good extent. It would be beneficial to make the office of the PDD subject to the overall control of the Law and Judiciary Department of every state, which is headed by a senior judicial officer on deputation to the State Government. Having a status equal to that of the prosecution department would instil the value of *audi alteram partem* in the entire system which would bring in a healthy balance of fact-finding in criminal investigations.

**References**


