Role of Police and Prosecution in Eliminating False Rape Cases: Applying the British No-Crime Label in Indian Criminal Justice Administration

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Abstract

The Criminal Law (Amendment) Act, 2013 brought about robust changes in the country's rape laws but not without its concomitant worries. With retribution and deterrence as its holy grail, the landmark legislation emphasised on police sensitisation in rape cases and improving police responses to rape complaints by women. However, this overhaul has led to a surge in filing of rape cases and has proved to be a poisoned chalice for the criminal justice system with numerous instances of malicious filing of false rape cases. When police officers come across false rape allegations, they are left with no discourse as they are bound by the mandate of the new law that gives blanket credibility to the victim's testimony. Such phenomenon has drastically changed the approach of police officers towards rape cases, especially when the offender is an acquaintance of the victim, resulting into spurious investigations. This paper examines the role of police along with the prosecution in eliminating false rape cases through a legitimate and rigorous exercise of fact-finding and drawing a concurrent reasonable conclusion all the while balancing the rights of the accused and justice to victims. Investigation must serve as a sieve to limit the trial of cases that would put the accused to great oppression and prejudice without sufficient grounds. Such can be achieved by applying the Britain-origin 'no-crime' label on reports that are found to be 'untrue' rather than to cases where the complainant withdrew or there was insufficient evidence to prosecute. The paper suggests that the prosecutor and the investigating agency must actively take part in finding out the truth, which is the overarching aim of every criminal justice system.

Keywords: False Rape Allegations, No-crime, Police Sensitisation, Rights of the Accused, Victim's Justice.

1. Introduction

The Criminal Law (Amendment) Act, 2013 aims at retribution and deterrence by enhancing punishment of sexual offenders, protecting victim's integrity during trial and prohibiting appalling police conduct towards rape complainants. With the advancement of legal awareness for the merits of the Act, it is observed that the number of reported rapes per 100,000 women in India have multiplied ever since and as per existing data published by

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National Crime Records Bureau 2016, the total number of reported rape cases in India is 38,947[3]. This number is likely to have increased over the years till present. However, the law does not provide for a mechanism to prima facie identify real from false cases at the early stage of filing a complaint. Police officers cannot test the veracity of the statement of the victim or complainant. In the cluster of aggregates, truth and rule of law may lose its way as criminal justice will be flouted with unfounded allegations and spurious investigations as police officers are under constant pressure by media and the public based on the new law to ensure that the accused person is put on trial and receives conviction.

The marvel of deceitful indictments of sexual assault is not new to the criminal equity framework in India. The International Association of Chiefs of Police (2005) characterises unfounded indictments as 'a rape report that demonstrated no wrongdoing was submitted or endeavored after an exhaustive examination'. The steady development of this problem prompts issues in examination and can cause contrary results for exploited people, accused persons and network police connections[4]. Bogus claims of rape often created a hostile environment of distrust between the police and the public, which more often than not negatively influences police's discernment, for example, seeing high paces of misleading allegations particularly when the injured individual is firmly familiar with the guilty party; acknowledgment of other assault legends, for example, "ladies cry assault" or "men cannot be assaulted" and underreporting[5]. India as a nation is already suffering from high rate of acquaintance rapes and underreporting and false rape allegations only further the problem.

Rooted with motives of revenge, hurt and protecting family honour, Indian women and parents often with contrivance opt for filing a rape case which sometimes lead to victims turning hostile or wrongful convictions. Either way, justice as a concept of fairness and equality stands tainted. The Delhi Commission of Women reported that 53.2 percent of the rape cases filed in the capital between 2013 and 2014 were found 'false'[6]. Subsequently, The Hindu on July 2014 conducted a six months' research on

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[3] Roshan Kishore (2018). *Why the severity of India's rape problem can't be captured by crime statistics*, *available at:* http://Why the severity of India's rape problem can't be captured by crime statistics (last visited on October 20, 2019).

[4] Danielle Ostrander, "Police Perceptions on False Accusations of Sexual Assault" Paper 3248 *Electronic Theses and Dissertations* 7 (2018).

[5] David Lisak, Lori Gardinier, Sarah C. Nicksa, & Ashley M. Cote, "False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases" 16(12) *Violence Against Women* (1318-1334)

[6] DNA. (2014). 53% rape cases filed between April 2013 and July 2013 false: Delhi Commission of Women. Retrieved from https://www.dnaindia.com/india/report-53-rape-cases-filed-between-april-2013-and-july-2013-false-delhi-commission-of-women-2023334 (last visited on October 28, 2019).

approximately 600 rape cases that were heard by six Delhi District Courts and the study and reported stark findings, wherein 20 percent of the cases were dismissed due to the absence or hostility of the victim. Out of the cases that were tried, 40 percent dealt with consensual sex, which involves a young couple eloping against the parent's wishes and another 25 percent dealt with cases of breach of promise to marry[7]. A similar study conducted in Mumbai's two Session Courts in Fort and Dindoshi in the year 2015, provided the voices of several investigating officers, who on being questioned about scripted First Information Reports, stated that "if the parents approach us saying their daughter has run away with a boy from the neighborhood, we *have to register a complaint* of kidnap of minor and later when she says she had relations with the boy, *we add the rape charge,* even when the girl is touching 18 years of age. Then it is for the court to decide whether it was rape or not"[8]. Later in 2017, a senior police official from the Jaipur Police Headquarters in his statement revealed that out of 276 cases that were solved in the city, 43% were false. In several of these cases, the complaint was filed to extort money or to falsely implicate an individual[9]. Such instances evince that police officers file charge sheet in a routine manner despite finding that the case is false after thorough investigation, as the current law does not empower them to decide a case on merit due to separation of executive from judiciary. This further contributes to the already existing challenge faced by our criminal justice administration today, which is to ensure a speedy trial to safeguard the rights of the accused as well as the victim.

The objective of this paper is not to shift the attention to victim blaming, which has already suffered a major setback in the 1970s, but it is to identify the role of police along with the prosecution in eliminating false rape cases through a legitimate and rigorous exercise of fact-finding and drawing a concurrent reasonable conclusion all the while balancing the rights of the accused and justice to victims.

2. Procedural Reform in Police Decisions Post Investigation

The whole criminal justice framework in our nation revolves around the Criminal Law sanctioned by the Union Parliament and the State Legislatures. The police function as the essential law implementing organisation of the state apparatus. Their main task in the criminal justice

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[7] Rukmini Srinivasan, "The many shades of rape cases in Delhi" *The Hindu,* June. 15, 2016.

[8] Ibid.

[9] Crime & city: 43% rape cases that we `solved' in 2016 were false, say police. (2017). Available at https://timesofindia.indiatimes.com/city/jaipur/crime-city-43-rape-cases-that-we-solved-in-2016-were-false-say-police/articleshow/56748082.cms (last visited on November 4, 2019)

system is to take cognizance of every serious offence as soon as it is committed and then proceeds to the spot to deduce the facts and identify the offender. Investigation as a matter of Criminal Procedure is the sole prerogative of police officers and alludes to all that occurs preceding one's being blamed for a wrongdoing under the steady gaze of a Judge or a Magistrate (Santhy, 2016).

The First Information Report pushes the wheel of criminal law in motion. In the landmark judgment of *Lalita Kumari v. Government of UP*[10], the Supreme Court held that officer in charge of a police station must lodge an FIR mandatorily on receipt of an information disclosing the commission of a cognizable offence. Likewise, Section 166A of the Indian Penal Code, 1860 which was included by the Criminal Law (Amendment) Act, 2013 provides for the punishment of public servants who disobey directions under law.[11] However, it must be noted that at the threshold of lodging of FIR, there is no need of scrutinizing into the truthfulness or otherwise of the complaint. This can happen only after thorough investigation.

Section 156 of the Code of Criminal Procedure, 1973 provides for immediate investigation by police officers without the order of the Magistrate in cases showing commission of cognizable offences. The procedure for investigation is given under Section 157 of the Code of Criminal Procedure, 1973[12]. The section requires that the officer in charge of

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[10] (2014) 2 SCC 1

[11] "166A. Whoever, being a public servant, -
(a) Knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or
(b) Knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or
(c) Fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure Code, 1973, in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509, Shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine."

[12] "157. Procedure for investigation-
(1) If, from information received or otherwise, an officer in charge of a police station has *reason to suspect the commission of an offence* which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender; Provided that-

a police station on receipt of an information of the commission of a cognizable offence, shall immediately sent the report intimating the same to the nearest Magistrate having jurisdiction and proceed to the spot for the collection of evidence, discovery and arrest of the offender. Proviso to Section 157 further provides that, *"if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case."* Rape cases are such wherein police officers cannot categorize them into "not serious offences" or "weak prosecution offences" and therefore they cannot use their discretion to disregard or refuse investigation.

The Department of Home Affairs of United Kingdom passed an Order[13] under section 23 of the Criminal Procedure and Investigations Act, 2016 to set out the way and technique in which investigating officers are to collect and disclose material evidence to the prosecutor that has been obtained during the investigation. The 'Act' explains that "the purpose of investigation is to ascertained whether a person should be charged with an offence, or whether a person charged with an offence is guilty of it".[14] This incorporates three premises:

(i) Investigations into offences that have been committed;

(ii) Investigations, whose object is to find out whether an offence has been carried out, with a view to possibly institute criminal proceedings; and

(iii) Investigations which begin with the presumption of guilt.

The first two premises set out the situational context that allows police officers to direct their crime investigation techniques for search of truth, while the last premise is for crime prevention. In all three, investigation must serve as a sieve to limit the trial of cases that would put the accused to great oppression and prejudice without sufficient grounds.[15]

"(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub- section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub- section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated."

[13] Criminal Procedure and Investigations (Code of Practice for Criminal Investigations) Order 2017.

[14] *Criminal Procedure and Investigations Act, 2016*. Article 3, s.2.

[15] Ibid.

However, in the Indian context, the criminal justice machinery is based on the "search of truth" premises and not necessarily on crime prevention. Despite having reasonable grounds to believe that the offence is not made out, investigating officers can only use their discretion partially on adjudging the guilt of the accused.

The investigating officer must form an opinion under Section 169 or 170 of the Code of Criminal Procedure, 1973 on completion of investigation regarding the status of the case and the need to forward the accused person to the Magistrate for trial. Section 169 of the Code allows the officer in charge of the police station to release the accused from custody after him executing a bond, with or without sureties when there is insufficient evidence to justify forwarding the accused to the Magistrate. The accused will then appear before the Magistrate whenever he is directed to appear.[16]

This provision of law only enables the officer in charge of police station to temporarily release the accused person from custody when there is no sufficient evidence against him, while a final report under Section 173 of the Code is mandated to be filed and submitted before the Magistrate, and the final discretion lies with the Magistrate to decide on the subsequent course of action. At this stage, the accused is not judged innocent by police officers, but it is for the court to decide the same. The investigating officer is only applying his knowledge, experience, and skill to the case. Also, the Criminal Law (Amendment) Act, 2013 inserted a proviso to Section 309 of the Code of Criminal Procedure, 1973 that states:

> *"Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of charge sheet."*

It can be observed that the law stated above attempts to secure the liberty and rights of the accused person, while upholding the principle of 'prove beyond reasonable doubt', when it is not clear as to the blameworthiness of the accused person. However, Section 169 of the Code is not enough as the bigger problem arises when the rape complaint is actually 'untrue'. Mere

[16] "169. Release of accused when evidence deficient- If upon investigation it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground for suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial".

release from custody because of insufficient evidence or speedy disposal of cases that leads to acquittal, will not cure the problem of stigmatization and labelling by society. The Labelling Theory that originated in the 1960s that were partly contributed by Howard Becker and Emile Durkheim states that people tend to behave and identify in ways that reflect how others label them[17]. Men falsely accused of rape are labelled criminals even before being adjudged as one. Yogesh Gupta, a victim of false allegation after being acquitted in 2017 remarked, "nobody listened to what I had to say. The police did not even consult me. I tried everything. Despite the acquittal, I did not get justice."[18] Cases like Gupta's are just one of those few reported instances, while there are thousands in the same plight.

Conviction rates in the country is extremely low. Out of 4 rape cases filed, only 1 leads to conviction[19]. There may be several factors responsible for low convictions, such as insufficient evidences, disappearance of complainant, victim turning hostile, faulty investigations, etc. In the case of false rape allegation, after a fair investigation is conducted, there is a high likelihood that the subsequent outcome will either be a dismissal, discharge, or acquittal. Even then, courts are unnecessarily burdened with having to deal with such unfounded cases. It is therefore required to empower police officers to label a particular rape report as 'no-crime' at the pre-trial stage prior to filing of charge sheet under Section 173 of the Code, so as to do away with the mechanical requirement of investigating officers having to submit a police report to the Magistrate, despite having reasonable and bonafide grounds to believe that the allegation in itself is false. The 'no-crime' label is to be applied to those reports that were false, as opposed to those situations where, for instance, the complainant pulled back her charge or where there was lack of proof to indict[20]. This concept is borrowed from the United Kingdom when the Home Office issued circular 69/1986 that sets out two criteria for an offence to be no-crime, that the complainant retracts the allegation and admits to fabrication[21]. In addition, the 'no-crime' label must strictly be used to categorize those rape cases where, in the opinion of the investigating officer after thorough investigation it is found that the prima facie facts as stated never happened or existed in the first place. It

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[17] Crossman, A. (2018). An Overview of Labeling Theory [Blog]. Available at https://www.thoughtco.com/labeling-theory-3026627 (last visited October 5, 2019).

[18] Joanna Jolly (2017), Does India have a problem with false rape claims? Available at https://www.bbc.com/news/magazine-38796457 (last visited on November 4, 2019). Also see, *State v. Yogesh Gupta* SC No. 08/16

[19] National Crime Records Bureau, "Crime in India Statistics" (Ministry of Home Affairs, 2016)

[20] L.J.F. Smith, "Concerns About Rape", Home Office Research Study 106 (1989)

[21] Susan J. Lea, Ursula Lanvers & Steve Shaw, "Attrition in Rape Cases", 43 British Journal of Criminology 584 (2003). Also see, a Home Office sponsored study by Harris & Grace, 1999

may be argued that there will be misuse of the "no-crime" label for reasons other than that the allegation was false. In acquaintance rape especially, finding the truth becomes difficult. Thus, investigating officers must take efforts to accurately collect physical evidences with the aid of forensic science. Lie detectors and NARCO Analysis that were often used on the accused persons should also be adopted on complainants or victims, with their consent when the officer has reasonable ground to believe that the allegation is false. Police officers must also be trained in utilizing the Theory of Fabricated Rape in their interrogation techniques. The above mentioned theory is useful in strengthening the prediction of a false allegation from a true allegation of rape based on the principle that "a false complainant of rape has not been raped and has to fabricate a story while the story of a true victim is based on recollections of the event"[22]. It is pertinent to note that problems like police officers misinterpreting victim's reactions will undoubtedly remain. It is worth emphasizing on the importance of educating police officers to better understand other variables that may influence police perceptions, such as victim's reaction to rape, victim's judgment of how they are treated by officers and external influences by relatives, etc.[23]

Therefore, there is a need to include prosecutors in the process of categorizing rape reports as "no-crime" at the stage of investigation so as to provide legitimacy to the police findings. This will be further explained in the latter part of this paper. Also, anonymity of the complainant increases the risk of false allegations[24]. It is highly recommended that the identity of the accused person also remains to be anonymous until the end of trial. As investigation is a sole prerogative of the police, Magistrates based on the 'no-crime' report may pass appropriate orders without further probing or conducting additional inquiry. This will effectively save time and resources of the court and also protect the dignity of the accused.

3. Expanding the Role of Prosecutor to Create Balance of Justice for Victim and the Accused

The fundamental principles of criminal jurisprudence are 'presumption of innocence', 'burden of proof on the Prosecution' and 'right to fair trial'. India follows the adversarial system of criminal justice, wherein the prosecutrix and defense go about as rival sides and compete to persuade the judge and jury that their variant of the reality is the most convincing.

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[22] Zutter De et.al., "Filing false vice reports: Distinguishing true from false allegations of rape" 9(1) *The European Journal of Psychology Applied to Legal Context* 1-14 (2017)

[23] Philip N.S. Rumney, "False Allegations of Rape" 65(01) *The Cambridge Law Journal* 128, 129, 150-152 (2006)

[24] Jeanne Gregory and Sue Lees, "Attrition in Rape and Sexual Assault Cases" 36 *British Journal of Criminology* 12-13 (1996)

Trial of the accused under the Indian Criminal Justice System includes the following stages:

1. Courts take cognizance of the case under S.190 of Cr.P.C.
2. Charges against the accused are framed
3. Prosecution evidence is recorded
4. Statement of accused is recorded
5. Defense evidence is recorded
6. Final arguments presented by prosecution and defense
7. On the basis of the evidence and arguments, judge pronounces the judgment

The role of the public prosecutor in a criminal trial is that of a commentator in all of the above-mentioned stages. He does not have the authority to decide if a case should be set up for trial and acts in solely advisory capacity during the pre-trial stages[25].

The Indian Criminal Justice System has evolved a great deal over a period of time since its establishment under the British regime. Some call the system archaic due to its almost ancient nature, however, there are others who want to preserve the sanctity of the existing system at all costs with limited scope for any major changes or an upheaval. Right to fair trial is an essential tenet of the Indian Criminal Justice System and 'speedy trial' is inalienable to fair trial. In *Husainara Khatoon v. Home Secretary, State of Bihar,* AIR 1979 SC 1360 the Supreme Court of India stated that "No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21."

According to a Times of India report on 31st December 2018, pendency of cases is at an all-time high of 2.9 crore cases and out of these, 71% are criminal cases. When the term used is 'Speedy trial' the focus is usually on the judge presiding over the trial who is held responsible for the lethargic process of a case. If the term of 'speedy trial' is recoined as 'speedy prosecution', the whole facet of reflection will change[26]. The public prosecutor could play a decisive role in a speedy of disposal of cases and contribute at the pre-trial stage through active participation in the process of investigation.

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[25] Rimpy Bhardwaj, "A Critical study of the role of prosecutor in criminal law" 3 *International Journal of Law* 2-4 (2017)

[26] V. Radha Krishna Krupa Sagar, "The Role of Public Prosecutor in Criminal Justice System" (2013) Ph.D. Thesis, Post Graduate Department of Legal Studies and Research Acharya Nagarjuna University, Indexed in Shodhganga available at https://shodhganga.inflibnet.ac.in/handle/10603/8115 (last visited on October 25, 20109

It is quite alarming to note that currently, 75% of the prosecution across the country fail to demonstrate the blame of the accused. In the adversarial framework, quittance of a charged just shows that the prosecution failed to prove the guilt of the accused and the unavoidable deduction drawn is that poor arraignment brings about enormous number of vindication. Poor prosecution could be the aftermath of poor investigation on the part of the police or poor performance of the public prosecutor or both. Therefore, repositioning the role of the prosecutor in the criminal justice system could not only improve the number of convictions but also improve the quality of prosecution carried out in trial.

The 41st report of the Indian Law Commission suggested that an individual accused of any crime must get a fair trial as per the standards of natural justice and all endeavors must be made to maintain a strategic distance from delay in investigation and trial. It is the obligation of the Magistrate to take cognizance of the matter if there is adequate material on record to continue against the accused. In nations, where criminal procedures travel through the component of adversarial framework, the accused is assumed innocent until proven guilty. The method and manner of proving the guilt is that of focused presentations by the Prosecution as a lawful agent of the state, and countered by the defense counsel as a delegate of the accused[27]

Prosecutor is an officer of the court. He holds great importance in a criminal trial. However, the Code does not lay out the role of the prosecutor during investigation. The Supreme Court held in *Hitendra Vishnu Thakur v State of Maharashtra*[28] that "There can be no manner of doubt that the Parliament intended that the Public Prosecutors should be free from the control of the police department." In *Shakila Abdul Gafar Khan v Vasant Raghunath Dhobale*[29] the Supreme Court emphasized on the crucial role of the Public Prosecutor saying, "A public prosecutor is an important officer of the state government and is appointed by the state under the Criminal Procedure Code. He is not a part of the investigating agency. He is an independent statutory authority." It is not debated that the office of the public prosecutor has to remain impartial and neutral to avoid influence and tremendous pressure from different factions leading to contentious actions on their end. However, in the arguments of empowering the investigating officer to label a false rape allegation as 'no-crime', the prosecutor must be acknowledged as a positive force in fairly concluding a matter during the investigative process and thereby, leads to quality improvement in the criminal justice delivery system.

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[27] *Amir Hamza Shaikh v. State of Maharashtra and Anr.* Criminal Appeal No. 1217 of 2019

[28] 4 SCC 602, 1994

[29] 7 SCC 749, 2003

The office of the public prosecutor in France is closely integrated with the enforcement machinery of the government. They sit at the center of the criminal justice system in France and decide which cases enter the system and influence the way they are dealt with starting from criminal investigations to sentencing. Prosecutors in France are like independent judicial officers with a strong sense of public interest with a mandate to adapt to an accusatorial-type procedure which pitch them in opposition to the defense and to the managerial imperatives of local and national hierarchies. The French criminal justice system is based on the inquisitorial system, in which, a state official, entrusted with collecting evidence, both incriminating and exculpatory, conducts an official inquiry[30].

Under the French Criminal Justice system, the prosecutor is given the responsibility of fact-finding for the court to come to a final decision on a case. With the rise of false prosecutions in India especially under the rape laws as per the Criminal Amendment of 2013, the prosecutor could prove to be crucial to the aspect of fact finding in cases of false rape cases filed by complainants. The prosecutor could also assist the police to not only identify false cases but also help victims or complainants who withdraw the case out of fear or lack of any evidence, societal pressure or any other reason.

Article 21 of the constitution provides for "fair and proper investigation" as part of the wider concept of fair trial. The objective of investigation is to prevent pendency of cases with no reasonable evidences before courts which ultimately leads to acquittal. If the search for truth is the overarching aim of every criminal justice system, then truth once founded on investigation or inquiry, based on the tenets of fairness and procedure established by law, can be concluded as a case falling under the 'no-crime' category and therefore, need not be filed before a Magistrate for further process.

4. Conclusion

In Common Law countries like India, evidence to show reasonable grounds to prosecute an accused is a must and the responsibility of collecting the evidence has been solely bestowed upon the police. Police function involves not just safeguarding the society and maintenance of peace and order, but it also includes investigation of crimes, collecting evidence and testifying in court on the same. However, with the appalling increase in the number of false rape cases, it has been proposed that the Public Prosecutor should be a part of the investigative process so that the over-

[30] Jacqueline Hodgson and Laurene Soubise, "Prosecution in France" *Oxford University Press* (2017) available at https://ssrn.com/abstract=2980309 (last visited on November 1, 2019)

arching aim of fact-finding is given precedence over all of the other niceties and procedures of the criminal justice system that has developed over time.

Criminal Law (Amendment) Act of 2013 mandates the filing of complaint in case of the offence being rape. However, this mandate does not provide room for exercise of any discretion before initiating an investigation into the complaint. Therefore, with the involvement of the prosecutor in the process of investigation, there would be room for discretion based on reasonable grounds on the foundation of solid evidence and fact-finding. Therefore, post conducting a preliminary inquiry on the complaint filed for rape, if the prosecutor along with the investigating officer concludes that there is lack of sufficient, reasonable grounds for any further procedure to be carried out against the accused, then the accused must not be subjected to any trial. However, if the Magistrate while acting on his supervisory powers, invoke the necessity of a trial, then the same should not be a lengthy one.

The Malimath Committee Report of 2003[31] has also suggested for the involvement of the prosecution in pretrial stage of a case. The report rightly points out that the amalgamation of the two wings, would neither place the prosecutor below the authorities of the investigating agency nor hamper the constitutionality of his office. Therefore, as it has been rightly said by Andre Gide:

> "Everything has been said already, but as no one listens, we must always begin again"[32].

To strike a balance between the executive and judiciary for the ends of justice has been a priority since times immemorial, however, when systems stop progressing, dialogue for a reform must begin in order to bring about changes to improve the existing procedure for the welfare of the victim and to protect the rights of the accused.

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[31] Government of India, "Report of the Committee on Reforms of the Criminal Justice System" (Ministry of Home Affairs, 2003)

[32] Andre Gide, Goodreads available at https://www.goodreads.com/quotes/414930-everything-that-needs-to-be-said-has-already-been-said (last visited on October 30, 2019)