

ROLE OF INVESTIGATING AGENCIES IN CRIMINAL JUSTICE SYSTEM: A CRITICAL STUDY WITH REFERENCE TO INDIAN PERSPECTIVE

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“Everything can be sacrificed for Truth, But Truth cannot be sacrificed for Anything”

- *Swami Vivekananda*

INTRODUCTION

Criminal justice administration is one of the areas for academic research and study and it continues to be the sub depiction of justice administration. Except for developed countries, the research and study on criminal justice have not got any attention to crime and criminal activities going around the world. Crime is considered as one of the most complex problems of modern civilization so it's difficult to build criminal justice administration using theoretical knowledge.¹ Since the beginning of human civilization, the hunt for peace, prosperity, and development has become common to all human beings. Generally, man is living in a society of more values. Self-preservation is one of the important rights that man prizes. Man will enjoy certain natural and inalienable rights on this earth.²

Davis Mc Entire and Joseph E. Weckler's article "The Role of Police" has been taken too know the attitude of the police in the investigation process. Ved Marwah specifies the violation of human rights by police in his article "Human Rights and Role of Police". R. Deb describes the role of police in the investigation process in his article "Police Investigation: A Critical Review". Indian Penal code, Code of Criminal Procedure and Indian Evidence Act have been referred for the role of police in the criminal justice system. The object of this research is to study the role of police in the Criminal Justice administration and to understand the role of the Indian investigating agency in the investigating process.

Police play an important role in the criminal justice administration. The investigating process

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¹ Available at: https://shodhganga.inflibnet.ac.in/bitstream/10603/150175/6/06_introduction.pdf

² K. I.Vibhute. Criminal Justice, [1st Edition], 2004, Eastern Book Company, Lucknow, P.109

is the main role of the police which directly influencing the criminal justice system. The major duty of the police is to protect life, liberty, and property of citizens. The criminal justice system has been constituted to give important responsibilities to the police. They have several duties to perform but the maintenance of Law and order and investigation of offenses were one of the important duties. They have also charged with farm duties to protect the Human Rights of the citizens. If there is an attack or threat of attack of one's Human rights, the citizens run towards the police for help. Tactlessly, the contribution of the police in this behalf is not appreciated, only the irregularities of the police have been observed, stressed and complained. The police play a difficult role while protecting the life of the individual even without looking at their own lives so that above-mentioned irregularities should get protected.³

HISTORICAL PROSPECTIVE

Indian police system has been made from British rule. The origin of police can be drawn from the earliest Vedic period of Indian History. Rig Veda and Atharva Veda mention certain kinds of crimes known to Vedic India. During the Harappan Civilisation, there is a piece of evidence which indicates the existence of security forces.⁴

Police: Ancient India

During this period, the criminal justice system was developed and it was continued for five to six hundred years with only one difference in Mauryan and Gupta period. During the Mauryan period, the administration system was centralized while in the Gupta period it was more decentralized. So it can be noticed that the basic structure of the police was nearly the same. The basic systems like the village police, the city police, and the palace police were developed or changed by various kings (Srivastava 1999).⁵

Police: Medieval India

During the medieval period, the sultan was the central power of political activity. At the provincial level, Faujdar was the head of the criminal justice administration. At the district

³ Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs Report Volume-I, March, India

⁴ Available at: https://shodhganga.inflibnet.ac.in/bitstream/10603/21078/10/11_chapter%202.pdf

⁵ *ibid*

level, Kotwal was the administrative owner of the criminal justice system and at the village level, Chowkidar has the duty of prevention and detention of crimes. The government of Mughals was always military. In the Mughal period, justice and police were the two weak points.⁶

Police: Under East India Company

Till in the middle of the nineteenth century, there is no adequate police system. This is due to Britisher's inexperience and lack of knowledge about the country. Till 1792, policing was not taken away from the zamindars. Cornwallis has been sent to India by East Indian Company's Governor-General. He abolished the Zamindari system and appointed thanedars for the maintenance of law and order. He introduced reform measures also, but his reforms create a lack of faith among the natives of the land and their institutions.⁷

Police: Background to the Indian Police Act of 1861

After the invasion of Sindh to the British Indian Empire in 1843, Sir Charles Napier was made a duty for the administration of the criminal justice system. Then he realized that there is a need for an organization that functions properly. He found that there is a need for a native police system which is in the form of a colonial model of police, namely Royal Irish Constabulary. This system was based on two basic principles: firstly, the police should be completely separated from the military and secondly, they can act as an independent body and the assistant collector can discharge the responsibilities for law and order. Napier's system provided Inspector General of Police and superintendents in each district. Then the system soon spread all over the country under the control of the East India Company. Police commission of 1860 didn't alter the main principles of the model and it designed the present police force of India.⁸

Indian Police Act, 1861

After the revolt of 1857, the British right has been legislated the Indian Police Act of 1861 to bring in powerful administration of police in the country and to prevent any future revolts. This act has continued even though Indians being transformed from a British colony to the

⁶ *ibid*

⁷ *Supra* note 5

⁸ *Supra* note 6

Sovereign Republic. The National Police Commission, 1979-1981 (NPC) felt that they need to be reform and then they drafted a Model Police Act in its Eighth Report which was submitted in 1981. The police powers were misused for political purposes during the emergency (1975-1977). The problem of political interference was also mentioned in the National Police Commission in its 1979 report. The National Police Commissions in 2000 found that police have been arresting indiscriminately as a source of corruption. The report says that power of arrest has been used in rarest of rare cases and such an allegation of commission of an offense cannot constitute as a ground for arrest.⁹

By the lack of effective accountability mechanisms and periodic review of performance, which caused police to lose their confidence in the public? Another problem is that extensive indiscipline and arrogant attitude towards law and procedures are corroding the faith of people in the police. The police Act, 1861 vests the superintendence of the police is always in the hands of the state government. At this time, the Head of the police (Director General/Inspector General) enjoys his/her terms at the pleasure of the Chief Minister. Without giving any reasons the head of the police can be removed. Such a state of affairs has been ruled by the political elite. The present legislation is having another problem is that only independent authority is having the capacity to investigate and direct police extremes is the National Human Rights Commission (NHRC). The commission is having only one power that is to advise the government. If any government failed to accept NHRC's advice, there is no provision in law to compel the government to implement its advice but they can approach higher courts and seek directions. In the last eight months, NHRC issued four summons to the Director-General of Police, Bihar for the two wrongful arrests of the activists. Then the government has been set up a Soli Sorabjee committee to suggest police reforms so they came up with a draft bill which was passed by the parliament for unknown reasons. After the Nirbhaya Rape case, J.S. Verma Committee was set up and this committee also suggested police reforms. Police reforms are needed then only police can be made accountable by the citizens. Police are having many powers but more powers in the police will not help. The Police Act, 1861 needs to be replaced with legislation then it will reflect the democratic nature of India's polity. In all parameters, the Act is very weak so it may govern democratic police

⁹ Available at: <https://blog.ipleaders.in/the-indian-police-act-and-police-reform-in-india/>

legislation.¹⁰

STATUTARY PROVISIONS RELATING TO THE CRIMINAL JUSTICE ADMINISTRATION OF POLICE

Understanding of police includes the understanding of the criminal justice system. Few characteristics of the system are the following:

Criminal law

The criminal law consists of both substantive as well as procedure law. The substantive law contained the Indian Penal Code as well as the special and local laws enacted by both central and state governments. The procedure law mainly laid down the Code of Criminal Procedure, 1973 (CrPC) and the Indian Evidence Act, 1872. During the second half of the 19th century, the British enacted three major Acts, i.e, IPC, CrPC and Indian evidence Act. On the recommendation made by the Law Commission of India, in the other two acts, some are remained unchanged and except for certain minor amendments.¹¹

Substantive Law

The IPC defines various types of crimes and their punishments. The offenses are classified into different categories i.e. offense against the state, armed forces, public order, property, etc. At present consists of 511 sections. Other local and special laws also contain in penal provisions. These provisions have been enacted relating to current crimes to save the interests of weaker sections of society. Most of the criminal offenses are registered under these laws only. Some of the criminal offenses like smuggling, excise, and prohibition of Food adulteration etc.¹²

Procedural law

Procedural law means it is a law that contains certain procedures that shall be followed in criminal cases. From registration, investigation and after a proper trial to its final disposal by a court of law. In all penal offenses, the police are not empowered to take cognizance.

¹⁰ *Supra* note 6

¹¹ J. C. Chaturvedi, *Police Administration and Investigation of Crime* 195 (Is ha Books, Delhi, 2006).

¹² *Supra* note 13

Criminal law consists of two types of offenses- cognizable and non-cognizable.¹³

Criminal Justice process

The process of criminal justice system contains the following steps:

Step 1 – First Information Report (FIR) shall be registered. Registration of the First Information Report is the first stage of the process of criminal justice. When police receive information regarding a commission of a cognizable offense, he will prepare a written document which was known as FIR.¹⁴

Step 2 – The police officer continues to the scene of the crime and investigates the facts of the case. Mainly includes in the criminal investigation by the police are an examination of a crime scene, examination of witnesses and suspects, recording the statements of witnesses, conducting searches, seizing the property, collecting various scientific shreds of evidence, making entries in various records, arresting and detaining the accused, interrogation of the accused.¹⁵

Step 3- The officer in charge of a police station after completing the investigation, he will send a report to the nearby magistrate. The report sends in the form of a charge sheet if there are sufficient grounds. If the report does not contain any sufficient grounds, then such report is called the final report.¹⁶

Step 4- The court will take cognizance and initiates the trial after receiving the charge sheet.

Step 5- when the charges are framed, the procedure involves the prosecution to prove the charges beyond the doubt. The accused has been allowed to defend himself.

Step 6 – if the trials end in conviction, the court may give various punishments like fine, forfeiture of property, simple imprisonment, rigorous imprisonment, imprisonment for life and death sentence.¹⁷

¹³ Indian penal code, 1860

¹⁴ Available at: <https://www.lawteacher.net/free-law-essays/criminal-law/registration-of-fir.php>

¹⁵ <http://docs.manupatra.in/newsline/articles/Upload/D3233B26-CBD0-4ACB-BFE7-205443A06DE8.pdf>

¹⁶ Available at: <http://www.mondaq.com/india/x/807764/Crime/Can+A+Person+Be+Charged+In+A+Criminal+Case+Before+Filing+Of+The+Charge+Sheet>

¹⁷ *Supra* note 16

ROLE, FUNCTIONS AND DUTIES OF THE POLICE IN GENERAL

The role and functions of the police in general are:

- To protect life, liberty, human rights, and dignity and to uphold and enforce the law impartially.
- To preserve and uphold public order:
- To protect from internal security, terrorist activists and other militants activists;
- To protect public properties including roads, railways, bridges, etc
- To protect against acts of vandalism, violence.
- To prevent crimes and implementing various agencies to prevent crimes;
- All complaints shall be registered brought by the complainant or his representative, in person or received by post, e-mail or other means, after duly acknowledging the receipt of the complaint;
- To register and investigate all cognizable offenses coming to their notice through such complaints, duly supplying a copy of the First Information Report to the complainant and where appropriate, to apprehend offenders, and extend requisite assistance in the prosecution of offenders;
- To maintain security in the community,
- All possible help should be given to the situations arising out of natural or man-made disasters and also assist other agencies in relief and rehabilitation measures.
- To provide aid to the individual who is facing physical damages;
- To collect intelligence relating to matters affecting public peace, and all other crimes include social offenses, communalism. Extremism, terrorism, etc
- A police officer on duty take charge on unclaimed property and take action for safe custody which was prescribed by law;
- To train, motivate and ensure police personnel.¹⁸

POLICE AS AGENT OF LAW AND NOT OF PARTY IN POWER

At the stage of an investigation, political interference has become a repetitive manner. What all manners coming from press and public and even in Punjab Police Commission (1961-62), the Delhi Police Commission (1968), the Gorey Committee on Police Training (1972), the

¹⁸ Available at: <http://www.bprd.nic.in/WriteReadData/userfiles/file/6798203243-Volume%202.pdf>

National Police Commission (1977-80), all these are headed by eminent judges, educationists or civil servants, they have in one voice judged political interference with the working of the police. According to the National Police Commission, political parties used their power to give promotions to the police officers when they act on their interests. A police officer having the authority given by law so that he should act accordingly with honest, he should not act for any personal interests or any executive authority. The statute has been given discretionary powers to the police (section 36 and 158, Crpc) subject to the supervisory control of department superiors or even the ministers in charge of police “has no power to direct the police how they should exercise their statutory powers, duties or discretion”.¹⁹

Malimath Committee

This committee recommended the separation of investigation agency from the law and order wing while referring to the 154th report of the Law Commission. Following are the reasons :

1. The investigating agency gets protection from the judiciary and also reduces external influences.
2. Reduce the possibility of unjustified and unwarranted prosecution.
3. It will help in speedier investigations and disposal of cases.
4. There will increase the expertise of investigation officers.

Investigating police in plain clothes will have greater rapport with police.²⁰

Separate law police from order police

In most of the countries, the investigating police work under the protection of the Ministry of justice. Chapter XI of the CrPC shows that an investigating officer is investigating the case under the supervision of the judiciary. Under section 156 of CrPC, the judicial magistrates direct an officer to investigate a case. Under section 157, the officer should send intimation to the magistrate if it is a cognizable case. Under sections 158 and 159, if the officer refused to investigate a certain case, the magistrate can order to investigate. Under section 164 CrPC, the officer should get the confession or statement which is recorded by the magistrate. Under section 165 CrPC, the officer should send the grounds on which he arrested the accused

¹⁹ R. Deb, "Police investigation : A Review", Journal of the Indian Law Institute, Vol 39, No.2/4, pp.260-271 (1997)

²⁰ Available at: <https://www.legal-tools.org/doc/70d1c6/pdf/>

without warrant. Under section 167 CrPC, the investigating officer should present the accused before the magistrate for seeking the extension of custody for further investigation and also for remanding the accused to judicial or police custody. Under section 169, 170 and 173, CrPC, the officer should present the report based on what circumstances on which investigation has been carried on before the magistrate and also present the exhibits of the case and in section 174 of CrPC, in all unnatural deaths the officer should send the intimation and inquiry report to the magistrate. These provisions are maintained to prevent the interference of other bodies from the investigation process doing by police.²¹

HUMAN RIGHTS AND ROLE OF POLICE

Police are one of the largest laws enforcing agency and they have a special duty for the protection of human rights. The main cause of human rights violations by police only in the matter of the functioning of the criminal justice system. Police are not violated by any individual or group of the state. They can use their power and take action to know that no one violates them. It mainly includes the weaker sections of the society: women, children, aged, poor, physically and economically weak, minorities who needed protection from the police. From the laws and procedures, only issues of criminal law enforcement arise. Police are responsible for the investigation of crimes and they share their duty with other agencies including the judiciary. After the amendment of the criminal procedure code, 1973 prevention of crime passed to the police. So that the extra-legal role of police becomes inevitable. Police are failed to get police remand of the suspect and he attempts to arrest him illegally. Human rights violations take place mostly during the arrest and interrogation of suspects.²²

Manipulation in First Information Report

First Information Report is a document that contains a full version of information regarding a crime. In *Arumugam v. Ponnalaga*,²³ the court held that the First Information report is not meant to be an encyclopedia. The FIR containing the details of prosecution, but still police officers having a belief that absence of details like names of accused, names of the witness, list of stolen properties, etc will ruin the prosecution case, then they try to add and interpolate

²¹ *Supra* note 26

²² Ved Marwah, "Human rights and role of police", *Journal of the Indian Law Institute*, Vol.40, No.1/4, pp.138-142 (1998)

²³ 1958 Cri LJ 385 (Mad)

information collected at the stage of investigation in to the body of FIR. So this will create a bonafide doubt to the court of law. Instead of doing malpractices, Under section 161, CrPC the investigating officer should examine the witnesses in their course of an examination, so the prosecution will examine them during the examination in court.

Manipulation in case diary and police statements

Case diary and police statements are the two important documents. If they are manipulated then it will affect the credibility of the prosecution case. Investigation officers should try to enter day to day investigating procedures to the case diary so that it will not make any confusion in the future. If they are postponing to enter certain details sometimes it will go away from the officer's mind. If the investigating officer making any delay or gap in the investigation, he should explain in the case diary. So it will not become under the suspicion.²⁴

PRESENT SCENARIO OF POLICE IN INDIA

After Independence, the transformation of India from a police state to a welfare state made so many drastic changes in police activities.

Today, India is going through the era of political, economic and social modernization, so these factors lead to an increase in the rate of crimes. A new level of crimes is very dangerous and harmful to the individuals as well as to society. So, there is a need for police to work with the people, the society's expectations are very much high in those circumstances. As a result, the police must work for the maintenance of peace and public order for the smooth working of the society. Police act as a functionary of the whole criminal system of the state. Police should have honesty, integrity, and impartiality towards society. But today people are looking at the police with fear, suspicion, and distrust. Nowadays, the people having a general impression that police are inefficient, brutal, corrupt and lawless. The police department is considered as the most corrupt department where bribes are taken from constable towards the highest officers. So the police are having low trust towards this noble department. It is a fact that every police officer is not corrupt, there are honest police officers also. But nowadays it is difficult to find out because it is too rare. Most of them are doing illegal activities and collecting money to satisfy their greed. Such officers don't have any ethics towards their duty. Police brutality towards poor people is increasing. The police are having power for

²⁴ *Supra* note 21

exploiting people regarding tackling criminals and use that power of interrogation to harass the poor people.²⁵

The investigation is the part and parcel of the duties of police but they are not using in proper ways and means. They compel innocent offenders to obey them. It is common in today's beating of police in the cases. The suspected persons or innocent persons are caught by the police by they will not use third-degree method for finding the truth nowadays, they will blows with the hands and kick them and arrest the innocent person without any reason, all these methods are common to get a confession from the suspected person or innocent persons. Some of the persons cannot tolerate these atrocities so they will be compelled to suicide in the lockups. This was very common in south India.²⁶

Article 20 and 21 of the Indian constitution prohibits any person including police officers from using force or a third-degree method for obtaining a confession from an accused person.

In *Kishore Singh v. State of Rajasthan*, the court held that the use of "third degree" method by police is violative of Article 21 and directed the government to take necessary steps to educate the police as to indicate a respect for the human person.²⁷

In *Niranjan Singh v. Probhakar Rajaram*, the Supreme court while dealing with the cases of custodial torture and use of third-degree method observed that "the police instead of being a protector of law has become the engineer of terror and putting people into fear".²⁸

In *Vineet Narain v. Union of India*, Supreme Court deals with CBI and revenue officials who face an inability to perform their duty due to some external pressures. Judgment throws light in the ample light on the difficulties facing by police in the present situation in India.²⁹

In *B. Prakash Singh v. Union of India*, Supreme court directed the central government to deal with state government and set up a mechanism for appointment, tenure, transfer, and posting of not merely the chief of the state police but also all police officers of the rank of

²⁵ Available at: <http://www.shareyouressays.com/knowledge/essay-on-present-scenario-of-police-in-india/116802>

²⁶ *Supra* note 24

²⁷ AIR 1981 SC 625

²⁸ AIR 1980 SC 785

²⁹ (1998) 1 SCC 226

Superintendents of police and above.³⁰

LAW ENFORCEMENT AGENCIES

Various law enforcement agencies are conducting law enforcement in India. At the union (federal) level, the agencies support the states in their duties and also it is a part of the Union Ministry of Home Affairs. Various policing lies in respective states and territories of India. Metropolitan police controlling cities are also under the control of the state government. All state police officers and federal agencies are the members of the Indian Police Services.³¹

Types of Law Enforcement Agencies

1. Local Law enforcement Agencies

These agencies don't have jurisdiction outside the city e.g, police force.

2. State Law Enforcement Agencies

These agencies are having jurisdiction in the entire state e.g, water police, marine and harbour control officers.

3. The Border Patrol

They provide surveillance and enforce various immigration laws of the border states.

Enforcement agencies have the power to prevent various criminal activities, help citizens for the need and also investigate crimes. Every state is having its enforcement agencies likewise each nation is also having thereon enforcement agencies. Nation or state having one or more enforcement agencies for dealing with various crimes such as economic offenses, drug-related crimes, etc. law enforcement is a part of the wide concept of policing.³²

Central Bureau of Investigation (CBI), Border Security Force (BSF), Indian Income Tax Department, Central Industrial Security Force, Central Reserve Police Force, Directorate of Revenue Intelligence, Indo-Tibetan Border Police (ITBP), National Security Guards (NSG), National Investigation Agency (NIA), Narcotics Control Bureau (Interpol), New Delhi etc are the federal law enforcement agencies under the control of central government which is also known as Central agencies. Law enforcement agencies are classified based on security, investigation and armed police forces. Internal security includes the Intelligence Bureau,

³⁰ (2006) 8 SCC 1

³¹ Available at: https://shodhganga.inflibnet.ac.in/bitstream/10603/9696/9/09_chapter%203.pdf

³² *Supra note 31*

Joint Intelligence Committee, Central Bureau of Investigation, etc. External Security includes Research and Analysis Wing, Aviation Research Centre, National Technical Research Organisation, etc.³³

In recent *walayar rape death case*, two minor girls who were siblings at walayar in Palakkad district of Kerala in 2017. On January 13, 2017, elder sister, aged 13 were found hanging in her house. Within two months, the younger girl also found to be hanged in the same place. ie, on March 4, 2017. Both of them belonging to a Scheduled caste community. Postmortem reports say that two girls were sexually assaulted and the autopsy report also suggesting that there is a possibility of homicidal hanging. But the police did not try to look further and arrested the four accused persons under the offenses of abetment of suicide, rape and unnatural sex under the Indian Penal Code and penetrative sexual assault under the POCSO Act. The Palakkad Session court acquitted the four witnesses by stating that “*I have no hesitation to hold that the prosecution has miserably failed to prove the alleged offenses against the accused beyond a reasonable doubt*”. The case was mainly based only on circumstantial evidence. The court observed that neither the prosecution nor the defense having the evidence to say that the girls are not died by committing suicide. in this case, the prosecution failed to give sufficient evidence. Police failed to collect evidence and also failed to prove before the court. The public prosecutor said that the accused were acquitted only because of lapses on the part of the police investigation. This case has become a debated subject all over the state. So the public will against the criminal justice system and they will lack faith in them.³⁴

CONCLUSION

In an investigation process, the investigating officer should not compromise to the conscience whether he succeeds or not. He should try to collect evidence as far as possible and also travels from evidence to accused, not from accused of evidence. He should always uphold their oath “*Satyameva Jayate*”. Criminal justice administration is regulated by the Indian Penal Code 1860, the Code of Criminal Procedure 1973 and the Indian Evidence Act 1972. Police used the laws in the cases as there on way. Sometimes there is a contradiction of the

³³ *ibid*

³⁴ Available at: <https://english.mathrubhumi.com/news/kerala/walayar-rape-case-culprits-escaped-due-to-lapses-in-police-investigation-alleges-public-prosecutor--1.4238750>

law as the interpretation of various provisions of the Indian Penal Code depends upon how the police officer acting in that situation. The Code of Criminal Procedure guides the police procedure but the police more often than not act contrary to the provisions of the code. Then also police often resort practices such as no registration of FIRs, arriving late at the crime scene, carrying illegal arrests, forcing witnesses, obtaining forceful confessions by torturing suspects and so on. The Indian Evidence Act applies to two both civil and criminal cases. Evidence is to assist the court of law. Police know how the court appreciates the evidence in criminal cases so they made according to that only. Police are doing so to convict the accused and no case should not be thrown out of the court. For example, police will mistreat and harass the honest victims to present before the court as witnesses.³⁵

Suggestions

- Police are engaged in many duties at the same time even in the case of VIP duties, deployment at festivals and processions, duties at private events, personal security officers, etc. In such above duties, private agencies can be appointed and it will reduce the burden of the police. So the police can be involved in duties related to society;
- practices like illegal arrests, harassment in police custody and obtaining confession forcibly should be condemned and the guilty officers should be punished;
- while arresting a person should not use excessive force and there is no submission to the custody by word or action as it would be violative of CrPC;
- FIR should be countersign by both complainants and accused and serve the copies to each of them so they can refer for there on need;
- The investigating officer should go to the crime scene without any delay, he should collect all the relevant documents which is needed, don't waste the time for collecting evidence;
- Evidence should be collected by the expert officers so that it will help the officers for investigation;
- Strict action should be taken for the officer who malpractice or manipulates the pieces of evidence/ witnesses and
- Police should catch the suspects only after getting credible information, not by mere

³⁵ James Vadackumchery, Indian Police and Miscarriage of Justice (APH Publishing House, New Delhi 1997).

suspicion.