

## The Gaps in Criminal Justice

### What is the issue?

States could do better in incorporating the Supreme Court's crucial guidelines to overcome the gaps in criminal justice.

### What is the Supreme Court guideline about?

- In 2021, the Supreme Court of India took suo motu cognisance of certain inadequacies which occur during the course of criminal trials and issued necessary directions.
- These directions 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
  - Separation of prosecution from the investigation
- The High Courts and the State governments were asked to notify the draft "Rules of Criminal Practice, 2021".

### What does the guideline say on preparing a site sketch?

- The Criminal Procedure Code (CrPC) mandates that the officer-in-charge of a police station on receiving information a cognisance offence shall proceed to the spot of the crime in person to investigate the facts and circumstances of the case.
- The next step is to prepare a site sketch that shows details of the crime scene and to collect evidence.
- **Court's earlier view-** A site plan drawn on scale is admissible if the witnesses endorse 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.
- **Present guidelines-** The site sketch prepared by the investigating officer shall be followed by a scaled site plan prepared by a draftsman.
- Looking at the importance of a site plan which captures the details of a crime scene and its surroundings, 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 on its reverse and injuries shall be indicated on such a sketch.

### What is the inquest report about?

- An inquest report is made primarily to look into the causes of unnatural death.
- 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 is taken up even without any formal complaint from anyone.
- 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.

- 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.
- 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.
- It can only be used as an aid to refresh the memory of the doctor while giving evidence.

## What is the direction regarding deaths in police custody?

- **NHRC directions**- National Human Rights Commission had directed States that within 24 hours of occurrence of any custodial death, the Commission must be given intimation about it.
- The Commission has instructed that all reports including post-mortem, video and magisterial inquiry report must be sent within two months of the incident.
- Magisterial inquiry has to be completed in such a way that within the two months' deadline this report is also made available.
- **The SC directions**- The Supreme Court has directed the magistrate or the investigating officer to inform the hospital to arrange for photography and videography for conducting post-mortem examination of the person deceased in police custody.
- 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.
- Supreme Court's ruling of 2018 in *Shafiq Mohammad vs the State of Himachal Pradesh* of having trained photographers at police stations is also under way in a phased manner.
- The draft Code provides that the investigating officer shall seize such photographs and videographs, preserve the original and obtain certificate under Section 65B (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.

## What is the Court's guideline on investigation?

- The Supreme Court has directed the state governments to appoint advocates, other than public prosecutors, to advise the investigating officer during investigation.
- 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.
- Since, investigation and prosecution are two different facets in the administration of criminal justice, the Supreme Court has now asked the States to separate the two wings.

### References

1. <https://www.thehindu.com/todays-paper/tp-opinion/closing-the-gaps-in-criminal-justice/article65304759.ece>
2. <https://nhrc.nic.in/press-release/nhrc-issues-fresh-guidelines-regarding-intimation-custodial-death>