

An Evaluation on Means to Enhance the Effectiveness of the Police “First Information Report” in Cases Involving Sexual and Gender Based Violence in Pakistan

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Abstract

A critical obstacle that chronically plagues female crime and domestic violence victims in Pakistan has been the tendency for law enforcement personnel, predominantly male police officers, to not file the official police “First Information Report.” Without the introduction of this key document, the criminal justice process does not commence and the concerns of female victims are not addressed. Recommendations to improve this institutional inadequacy will be proposed.

Keywords: Domestic violence; Pakistan; Police First Information Report; law enforcement

Introduction

After the enactment of legislation within Pakistan against violations of human rights and gender oriented violence, the enhanced sensitization of civil society, and increased media reporting regarding these laws, the number of cases registered against such violators has increased considerably. But regardless of this increased awareness and despite the support of human and women rights advocates, most of the perpetrators have been routinely set free during the police investigation or while on bail, or have been acquitted during the court process.

While analyzing these cases, it was recognized by concerned members of the EVAWG (End to Violence Against Women and Gender) Alliance in the Province of Khyber Pakhtoonkhwa (KP) and Federally Administered Tribal Areas (FATA) and representatives of the Pakistan Society of Criminology that the lack of proper knowledge and understanding by the human/women rights advocates in correctly lodging the **First Information Report (FIR)** was one of the major reasons for the lack of success in investigating and prosecuting these cases. In addition, these committed individuals involved in the fight against violence against women and who are responsible for delivering services to these victims are generally unable to ensure:

- the administration and documentation of required medical and legal assistance;

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- proper investigation and follow-up;
 - adequate pursuance of the case in the court of law;
 - proper psychosocial assistance to the victims; and
 - personal security and safe accommodation for the victims during police or judicial custody.

These issues must be addressed as a priority if justice is to be ensured and the survivor is to receive suitable assistance. These factors are clearly the responsibility of the government. No one can disagree with this argument, but it is also true that civil society needs to play its due role of advocate and actor by filling in the gaps until the proper systems are enacted by the government.

The EVAWG Alliance in KP/FATA deliberated to develop a work plan to address this critical issue. Since it was identified that the FIR provides the foundation of these cases, a one day training session for the members of the EVAWG Alliance was conducted. It was additionally decided that based on the outcomes of the interactive session, further steps will be planned to ensure that the EVAWG Alliance of KP/FATA should gain sufficient knowledge and abilities to adequately assist the Sexual/Gender-Based Violence (S/GBV) survivors in getting the required justice, assistance and treatment.

To clarify further, a First Information Report (FIR) is the written document prepared by police when they receive information about the commission of a cognizable offence. It is basically an informational statement to the police by the victim of a cognizable offence, or by someone on their behalf, or ultimately by anyone to provide information either orally or in writing to the police if there is a reasonable suspicion or credible information about the commission of a “cognizable” offence. A ‘cognizable offence’ is a criminal offence in which the police are empowered to register an FIR, investigate the case, and arrest an accused without a court warrant. In contrast a ‘non-cognizable offence’ is an offence in which police shall not affect an arrest without the expressed permission or directions from the court.

Upon receiving a FIR, the officer in-charge of a police station, called Station House Officer (SHO), will listen to the complainant and shall reduce it to writing by drafting it in a formal report. The official will then read the draft to the complainant and after consent of the complainant will transfer the same to form 24.5(1) in the FIR register under Section 154¹ of the Pakistan Penal Code, 1860. The complainant will thereafter sign or fix a thumb impression on the form. Each FIR must have four copies, one being original while three are copies. The original copy stays in the register while one of the copies will be given to the complainant, the other sent to the Superintendent of Police in that

District, and the third copy will be sent to the concerned court. In case the complaint is received in writing, a copy of the same will be reproduced in the FIR register. Ideally, FIRs can also be registered based upon the report of the village chowkidar and involving crimes that come to the knowledge of the police despite the fact that there is no known or identified complainant. It should be highlighted that in cases of rape / *hadood* / *zina*, an investigation officer shall not be below the rank of a Superintendent of Police, and this is clearly defined within Section 156-B² Code of Criminal Procedure, 1898.

Upon formal registration of the FIR, the government mechanism will be set into motion, and the SHO will personally initiate the investigation under section 156³ or will identify an official for this specific purpose. The responsible investigation officer will visit the scene of the crime, make the sketch, site-plan, collect all the evidence, and tag them and send them to the authorized forensic laboratory or medical officer, as needed. Simultaneously, the SHO will initiate efforts to arrest those identified in the case and will record their statements as outlined within section 161⁴ of Pakistan Penal Code, 1860 and present them before a competent court as required by law. A final Report of Investigation, called *chalan* will be produced in the concerned court under Section 173⁵ CrPC at the conclusion of the investigation. It will be up to the discretion of the court to hand the accused to the police for remand, send the suspect(s) to detention, or release the accused on bail.

In the case of sexual/gender-based violence, the victim will be sent to the authorized “medico-legal” officer. In cases when the victim is a female, it will be ensured that a female doctor performs the medical examination, writes a proper report, takes samples, and sends them to the designated laboratory for tests if required. Ideally, the victim should not be provided medical help by a medical professional other than the designated medico-legal officer as there are chances that vital evidence might be lost. At the same time, efforts must be made to secure the scene of the offence until the response of the investigating officer, who will make the sketch, collect all the evidence, and have them sent for forensic testing. These actions will be documented in the first Case Diary called *Zimni*. According to the experts the first *Zimni* normally comprises almost 50% of the entire investigation.

The SHO cannot refuse to lodge the FIR, as it could be considered assisting the crime and under section 116⁶ of the Pakistan Penal Code, it can result in disciplinary action against the SHO and a sentence of up to one half of the maximum sentence for the said crime. The same will be applicable if a police official is found to have tampered with the records related to the crime. In case the SHO feels that the complaint is suspicious, the SHO will register

this separate complaint in the Daily Diary, known as *roznamcha*. It is mandatory for the SHO to give concrete reasons as to why they think that the complaint is doubtful as simply writing that it is suspicious is not sufficient. A copy of the *roznamcha* with valid reasons of doubt must be given to the complainant who may take it to the concerned Superintendent of Police or judge for review. The time period of a *roznamcha* in a Police Station is only two years. All photocopies must be attested to ensure their admissibility in the court of law.

It is pertinent to note that an FIR must be registered as soon as possible, since delayed FIRs are often viewed as lacking honesty and good intention. It is also important to give only the facts and not to implicate anyone other than those involved. It has been observed that in many cases people other than the identified offender/s have been implicated. When wrongly implicated persons in the case provide credible proof that they were not at the scene of the crime and prove their *alibi*, they get be exonerated and the victim / survivor is considered as “have come to the court with no clean hands.” A case can easily be tainted by an inaccurate statement. It is advised that a complete list of the suspects, related circumstances, and names of victims and witnesses be made an integral part of the FIR, even though the FIR is not normally considered an overly comprehensive document. Regarding witnesses, extra care should be taken to give the names of only those who were the actual witnesses, are trustworthy, and who likely will stand by the statements of the victim. It is vital to note that the FIR is like the foundation and the investigation is like the building on that foundation. If the foundation is proper and on sound ground, the building will stand; otherwise it will collapse and crumble. Vague and contradictory supplementary statements should also be avoided since they can weaken the case.

In many cases, victims (or surviving relatives) and those helping them have not been provided with the details of the investigation. In addition, some investigating officers often have created excuses for investigative inaction, i.e. the file concerned is not available or has been lost. It must be kept in mind that the details of the investigation and investigative officer are noted on the rear of Form 24.5(1) in the FIR register. Under Police Rules 24.2(3),⁷ notices are to be displayed in the police station stating that police officials are not to be paid for registration of FIRs, and if any one demands payment or a bribe, the matter should be reported to the Superintendent of Police. The notice also states that police are public servants and are paid from the taxes of the people and the public should resist such demands.

Conclusion and Recommendations

The End to Violence against Women and Gender Alliance in the Province of Khyber Pakhtoonkhwa (KP) and Federally Administered Tribal Areas (FATA) has concluded that the suspects in many recent high profile cases have been released since the FIRs were not registered properly or due to the medico-legal procedures not being correctly followed. It is therefore imperative to the success and effectiveness of police investigations involving sexual and gender based violence that the human rights and female advocates, such as the EVAWG Alliance, comprehensively and accurately understand the following:

- Human rights advocates should know precisely the difference between a FIR and the Daily Diary, the two main registers in Police Station criminal documentation.
- The FIR is like any other extrajudicial statement, which is neither substantive evidence nor an exhaustive document, but is used to corroborate or contradict evidence at trial; the purpose of which is to put the legal system in motion without delay and which is the only basis for carrying the investigation in the right direction, to probe the commission of a cognizable offence, and to reveal the truth.
- When registering the FIR, a person must have a checklist consisting of the “6-Ws,” (i.e. what, when, where, who, whose and why) in one’s mind. A proper checklist will ensure that the basic and relevant details are recorded and should support a strong case.
- The FIR should not be recognized as the same as the supplementary statements which are recorded after the investigation has commenced, or as a mere complaint, or as statement before a police officer under section 161 CrPC.
- Provisions of Section 154 CrPC include ‘shall’ which means that the provisions are mandatory, pre-emptory as well as obligatory, and police have no jurisdiction to cause delay in filing the FIR
- The FIR is regarded as an independent right of an aggrieved person.
- Human rights advocates and members of civil society working for victims of SGBV must focus on the first Case Diary, the collection of evidence, medical reports, case property, and other critical documents by ensuring that these are properly processed in the very initial stages of the case.
- Efforts must be made to ensure that a FIR is filed with the police without unnecessary delay.

The position of the Pakistan Society of Criminology is that there is a strong need for the development of a formal working group that can assist the

victims and related survivors and co-survivors with the registration of proper FIRs, ensuring timely medical and legal aid, and the recording and safeguarding of all available evidence. In addition, the following recommendations are proposed:

- Establishment of a toll free helpline to guide the S/GBV survivors, co-survivors and friends/well-wishers in lodging an FIR.
- The development and dissemination of written Standard Operating Procedures for registration of an FIR and subsequent steps.
- Advocating the production of posters regarding Police Rules, 24.2 (3) that are printed in easily understandable Urdu and that are displayed at the entrance to each police station, the offices of the SHO, and with the station clerk (called *Moharir*).
- Creation of comprehensive orientation on medico-legal assistance and investigation processes.
- Training and orientation on the prevention of crimes, the investigation of crimes, court procedures, the prosecutorial process, bail and custody, and other critical issues to be conducted for all human and women rights advocates to ensure that there is understanding of police work, police rules, relevant laws, common causes for acquittal, and the need for credible witnesses and solid evidence.

Without immediate and proper attention being provided to these issues, inaction by concerned groups and civil society and ineffective police investigation and prosecution will only lead to further and at times fatal victimization.

END NOTES:

- [1] **Section 154 CrPC.** Information in Cognizable Cases. Every information relating to the commission of a cognizable offence if given orally to an officer incharge of a police-station shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer such form as the Provincial Government may prescribe in this behalf.
- [2] **Section 156-B CrPC.** Investigation against a women accused of the offence of Zina. Notwithstanding anything contained in this Code, where a person is accused of offence of Zina under the Offence of Zina (Enforcement of Hudoood) Ordinance, 1979 (VII of 1979), no police officer below the rank of a Superintendent of Police shall investigate such offence nor shall such accused be arrested without the permission of the Court.

- [3] **Section 156 CrPC.** Investigation into cognizable case. (1) Any officer incharge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial. (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. (3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned.
- [4] **Section 161 CrPC.** Examination of witness by police. (1) any police-officer making an investigation under this Chapter or any police-officer not below such rank as the Provincial government may, be general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case. (2) Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. (3) The police-officer may reduce into writing any statement made to him in the course of an examination, under this section, and if he does so he shall make a separate record of the statement, of each such person whose statement he records.
- [5] **Section 173 CrPC.** (1) Every investigation under this Chapter shall be completed, without unnecessary delay, and, as soon as it is completed, the officer incharge of the police-station shall, [through the public prosecutor] (a) Forward to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the Provincial Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and (b) Communicate, in such manner as may be prescribed by the Provincial Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given. [provided that, where investigation is not completed within a period of fourteen days from the date of recording of the first information report under section 154, the officer incharge of the police station shall, within three days of the expiration of such period, forward to the Magistrate through the Public prosecutor, an interim report in the form prescribed by the Provincial government stating therein the result of the investigation made until then and the Court shall commence the trial on the basis of such interim report, unless, for reasons to be recorded, the Court decides that the trial should not so commence]. (2) Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Provincial government by general or special order so directs, be submitted through that officer, and he may pending the orders of the Magistrate, direct the officer incharge of the police-station to make further investigation. (3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit. (4) a copy of any report forwarded under this section shall, on application, be furnished to the accused before the commencement of the inquiry or trial: [provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost]. (5) Where the officer incharge of a police-station forwards a report under sub-section (1), he shall alongwith the report produce the witnesses in the case, except the public servants, and the Magistrate shall bind such witnesses for appearance before him or some other Court on the date fixed for trial.

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- [6] **Section 116 PPC.** Abetment of offence punishable with imprisonment. If offence be not committed. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provisions is made by the Code of the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for the offence; or with such fine as is provided for that offence, or with both. And if abettor or person abetted be a public servant whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for the offence, or with such fine as is provided for the offence, or with both.
- [7] **24.2(3) of Police Rules, 1934.** A notice in Urdu shall be prominently displayed in every police station in the Province, drawing the attention of the public to the fact that the payment of gratuities by the public to police officials for recording complaints is strongly disapproved by Government. The notice shall state as briefly as possible that police officials are the servants of the public and paid by it, and that acceptance of gratuities is strictly forbidden by the rules of the police department and renders defaulters liable to serious penalties the notice shall conclude with an admonition that demands for such gratuities should be invariably resisted and reported to the Superintendent of Police.

About the Author:

Syid Wajid has been working with various NGOs, INGOs and UN agencies on human rights and especially S/GBV for more than 30 years and possesses a Master's degree in Economics.