

## Analytical Study of the Role of Justice of Peace in Registration of Fir in Pakistan



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**Abstract:** No legislation is beneficial unless it is helpful for the masses in general and downtrodden people in particular. Legislators usually focus on the deprived segments of society so that weaker ones may take advantage of the said legislation. Any legislation that does not benefit the weaker sections of society is meaningless. Registration of the First information report is the right of the citizen in case of cognizable nature of the offence. Lodgement of FIR is the responsibility of the police in such a scenario. Needless to mention that ours is not a utopian state, and because of dissatisfaction of people due to incompetence and high handedness of police officials in the lodgement of FIR, Section 22-A(6) was added in Criminal Procedure Code in 2002. Justices of Peace had performed their duties u/s 22-A(6) Cr.P.C. since then. . In a country like ours, the advent of the Justice of the Peace has changed the structure of our society. Common people of the state are quite satisfied with the emergence of Justices of Peace as voiceless and marginalized sections of society have been given an opportunity against the tyranny of powerful segments of society. This paper discusses powers of Justice of Peace to give directions to police for registration of FIR in the light of decisions of superior courts of Pakistan. The impact of the said power of Justice of Peace in our criminal justice system is also observed.

**Key Words:** Justice of Peace, Registration of FIR, Police, Criminal Justice System, Cognizable Offence

### Introduction

Police, judiciary, and general masses are important components of the criminal justice system. The concept of might is right, being the old notion, is not compatible with the modern world. It is the fundamental and basic duty of every country to provide a better system for its people in general and weaker ones in particular. If police officials of Pakistan perform their duties properly and do not follow illegal and unlawful orders of powerful people, a lot of issues of common men may be resolved. Police have been given authority to lodge FIR in case of information regarding the commission of the cognizable offence. Many problems arise due to non-registration of cases. The concept of ex-officio Justice of Peace in Pakistan was given, keeping in mind the ground realities of our country. Police officials do not lodge FIR at times, even when the law mandates them. Because of unprofessionalism and inefficiency of police officials, different powers were given to the Justices of Peace, including the power of directing police to register the cases. Justice of Peace was given the power to get

police reports (if any) from SHO and then decide whether direction regarding lodgement of FIR should be given or not. Superior courts of Pakistan have elaborated the role of Justices of Peace with regard to registration of FIR.

### Historical Perspective

As every society urges to maintain law and order, the institution of Justice of Peace assisted the police and other forces in the past. The concept of Justice of Peace was practically initiated in England and then was made known to other countries. The actual title "Justice of the Peace" was first introduced in a law enacted in 1361 in England. Maintenance of peace was the fundamental responsibility of Justice of Peace. With the passage of time, the role of Justice of Peace kept on changing. Administrative and executive powers are exercised by the Justices of the Peace in some countries where a crime is yet to be committed or, even if committed, not reported to the police. On

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the other hand, the role of the Justices of the Peace was extended by granting them certain judicial powers in other countries. The British acquainted us with the concept of Justices of Peace when we were ruled by the British in the Indo-Pak sub-continent. Owing to the powerful role of Magistrates, no judicial powers were granted to Justices of Peace, and assisting police in maintaining peace was their basic role (PLD, 2005). Through the provisions of section 22-A (6), an important role was given to the Justices of Peace in Pakistan in November 2002. The said section gives power to JoP to issue directions to the police regarding the registration of cases (CRPC, 1898). Functions performed by Justice of Peace are administrative in nature and non-mentioning of Justices of Peace in classes of criminal courts is quite clear in the Criminal Procedure Code (Ibid: Sec, 6). Similarly, we find no reference of Justices of Peace in the related sections of Cr.P.C. dealing with offences triable by each court (Ibid: Sec, 28,29).

### **Research Question**

- a) What is the criterion for the direction of registration of FIR by Justice of Peace in the light of decisions of superior courts of Pakistan?
- b) What impact has been put by the Justice of Peace in the criminal justice system with regards to the registration of FIR?

### **Discussion**

Section 22-A (6) Cr.P.C. bestows power to ex-officio Justice of the Peace to give directions to the concerned police officers regarding registration of FIR, transfer of investigation or neglect, failure or excess of police officials in their functions (Ibid: Sec, 22-A(6)). The Session Judges and the Additional Sessions Judges have been performing their duties as Justices of Peace in Pakistan (Ibid: Sec, 25). Insertion of section 22-A (6) Cr.P.C. had to make because police officials were unable to perform their duties in a proper way. It was thought that there should be a supervisory body that can direct police officials to act in accordance with the law. Registration or non-registration of first information report is the stage from which different issues arise. Police officers usually do not apply their mind properly when any information is given to them by the complainant and thus fail to interpret section 154 Cr.P.C. Selective lodgement of FIRs by police officers in similar nature of complaints is the negation of the basic concept of equality of citizens (The

Constitution of Islamic Republic of Pakistan, 1973). It is important for Justice of Peace to make his own independent opinion and then give direction accordingly. It is obligatory for any applicant/aggrieved person to give information regarding the commission of a cognizable offence to the concerned police officers, and if they refuse or fail to receive such information, then the aggrieved person can avail remedy u/s 22-A (6) Cr.P.C. Superior Courts of Pakistan have interpreted criteria for Justices of Peace to give directions of registration of FIR to the police.

The aggrieved person moved an application regarding the commission of a cognizable offence to the concerned SHO and later on to ex-officio Justice of Peace. The concerned JoP did not give direction for registration of FIR on the ground that the applicant/petitioner moved this application with malafide intention to harass the police officials. It was held that malafide intention or bonafide intention would be proved once a statement of the complainant under section 154 Cr.P.C. is recorded. Furthermore, the Justice of Peace should keep in mind that police report was not the sole criteria for giving any direction (MLD-736, 2012). Justice of Peace was not supposed to go deeply into the merits or demerits of the case rather, he was supposed to form an opinion if the offence was cognizable in nature or not and form his own opinion (PCRLJ-1347, 2014). It was held that if from the contents, the cognizable offence was made out, police was supposed to act under section 154 Cr.P.C (YLR-774, 2010).

It has been held very clearly that falsity or veracity of the allegations levelled by the complainant are not to be inquired prior to recording an FIR when the information is regarding the commission of a cognizable offence. If any complainant gets a false FIR lodged against anyone, proceedings u/s 182 PPC can be initiated against him (PLD-SC 539, 2007). This well-referenced case law basically interprets section 154 Cr.P.C. basically; two ingredients are to be fulfilled by the complainant. Firstly, there should be information, and secondly, that information should be regarding the commission of a cognizable offence. Inquiry prior to lodging an FIR regarding veracity or falsity of allegations by the police officers is unwarranted. No interpretation of Section 154 Cr.P.C. allows police officials to hold an inquiry before lodgement of FIR in cognizable cases. The investigation is basically a collection of evidence

(CRPC, 1898), and initiation of investigation before lodgement of FIR in case of cognizable offence would be a wrong interpretation of Sec. 154 Cr.P.C. Entry of information regarding the commission of a cognizable offence is mandatory in the book specified for this purpose (Ibid: Sec, 154).

Bare reading of section 154 Cr.P.C. shows that prerequisite of lodgement of FIR is a commission of the cognizable offence. Cognizable offense means an offense in which a police officer may arrest an accused person without a warrant (Ibid: Sec-4(f)). The aim of the first information report is to bring the law into motion, and it should contain material facts. If the delay is caused by the police officer because of inquiry regarding veracity or falsity of the allegations of the complainant against the accused person, there are chances that material facts may be forgotten by the complainant, and he may concoct story as it would not be first hand information.

It was held by the Supreme Court of Pakistan that as far as registration of case is concerned, police officials should strictly follow Sec.154 Cr.P.C. Furthermore, principles envisaged in PLD 2007 SC 539 should be followed. It was observed that police officials have failed to perform their duties properly, and a lot of people are suffering because of this failure (SCMR-83, 2014). In another case, it was also held by the Supreme Court that every case is to be seen on its own merits and direction for registration should not be given in a mechanical way. Furthermore, the malafide intention of the applicant is also an important factor (PLD-SC-691, 2010).

Usually, when an aggrieved person seeks direction for registration of FIR from the Justice of Peace, JoP calls for police comments from the concerned SHO. After this, he applies his mind regarding the matter in hand. In the famous Khizar Hayat Case, it was held that calling police comments is beneficial for Justice of Peace to issue a just direction. In another case, it was held that it was not obligatory for the Justice of Peace to call for police comments, but when he seeks a report from the police and the same is submitted, then he should not ignore those comments. If he tends to disagree with the said comments, he should give proper reasons in his order (PCRLJ 1146, 2014).

In another case, it was contended by the petitioner that police comments submitted in the court were not considered by the Ex-Officio Justice of Peace, but it was held that question of law regarding

the power of JoP and duties of police with respect to registration of FIR has been enunciated by the Supreme Court of Pakistan in two judgements namely PLD 2007 SC 539 and 2014 SCMR 83. The veracity of the allegations made by the aggrieved person is not to be seen at the stage of registration of FIR when information is regarding the commission of a cognizable offence. Articles 189 and 190 of the Constitution of the Islamic Republic of Pakistan, 1973 were cited as well (MLD 1256, 2015). According to Article 189 of the Constitution, decisions of the Supreme Court regarding the question of law are binding on all the courts in Pakistan (The Constitution of Islamic Republic of Pakistan, 1973). Similarly, it is obligatory for executive and judicial authorities of Pakistan to act in aid of the Supreme Court of Pakistan (Ibid: Art.190). So, the crux of this judgement is that if the information is regarding the commission of a cognizable offence, registration of FIR should be made.

PLD 2007 SC 539 and 2014 SCMR 83, Judgements of Supreme Court of Pakistan clearly lay emphasis on basic points regarding the question of law with respect to the first information report. Allegations levelled by the complainant may be true or wrong, but deeper appreciation and inquiry regarding those allegations before registration of FIR is unwarranted when the information disclosed by the complainant is otherwise regarding the commission of a cognizable offence. Justices of Peace should also follow this principle and apply their mind.

If information is regarding the commission of a non-cognizable offence, JoP should not direct police to precede u/s 154 Cr.P.C. as Sec.155 Cr.P.C. would come into play (PCRLJ 66, 2021). It was not necessary to give an opportunity of hearing to the accused person in case of urgent matter or where evidence may be destroyed because of delay in FIR while in routine matters, JoP should give an opportunity of hearing to the accused (YLR 44, 2020). Likewise, it was held that if police officials were performing their duties properly, Sec.22-A(6) Cr.P.C. should not be invoked unnecessarily (PCRLJ 1155, 2020).

In another case, it was held that Ex-officio Justice of Peace rightly dismissed the application of the complainant for registration of FIR upon police comments and by applying his mind (YLR 1884, 2020). In another case, it was held that civil dispute was pending between the parties, the direction of JoP to police regarding non-registration of FIR was correct

(PCRLJ 467, 2020). On the other hand, if allegations are of serious nature, direction for registration can be given even during the pendency of civil dispute between the parties. JoP can issue direction for registration of FIR without seeking a report from police when information is regarding the commission of a cognizable offense. The order passed by JoP regarding the non-registration of FIR was set aside by the High Court (MLD 1028, 2020). JoP declined to give direction for registration of FIR on the ground that a civil dispute is pending between the parties. The said order of JoP was set aside by the High Court on the ground that apparently, the specific allegation of commission of the cognizable offence was levelled by the complainant, which should not have been ignored by JOP (PCRLJ 28, 2019). In another case, it was held that sec.22-A(6) Cr.P.C. was an opportunity for the aggrieved persons to share their grievances before a forum which is at their doorstep so that redressed of grievances if any may be ensured. Furthermore, the opportunity of hearing should also be given to the accused (PLD 154, 2019). In a case of dishonour of cheque, it was held that malafide on the part of the complainant could not be ignored and impugned order of ex-officio Justice of the Peace for registration of FIR was not sustainable and the same was set aside by the High Court (YLR 510, 2019).

It was held by the Supreme Court that Sec.154 Cr.P.C. does not give any discretion to the police officials as this provision is mandatory in nature. The police is bound to register FIR if, from the contents of the application, a cognizable offense is made out. Unfortunately, they tend to misuse the said provisions and refuse to lodge FIR even when the law requires them to act otherwise. It was further reported that about 7% of FIRs were lodged on the directions of Justices of Peace, and ironically about 2% FIRs were not lodged by the police in spite of directions of Justices of Peace. Litigation starts among people when timely FIRs are not lodged. Needless to mention that relief is usually not guaranteed by such litigation. Proceedings under sections 182 and 211 PPC can be initiated in case of false complaints, but police officials do not act professionally (SCMR 1724, 2015).

In a case of a disputed document, JoP did not give the direction of registration of FIR; it was held that the opinion of JoP was not in accordance with the law. The genuineness of a document can be found out after FIR and investigation (PCRLJ 1551, 2015). It was further held that discretion of JoP in giving direction for

registration of FIR was controlled by section 154 Cr.P.C. information relating to the commission of a cognizable offense should be put before police or JoP and allegations levelled in the application are not to be examined in depth by JoP (YLR 1441, 2016).

One view is that power exercised by JoP is executive or administrative in nature (PLD-SC753, 2014). It was held that jobs tend to exercise discretion and apply their minds while passing orders, so functions of JoP are quasi-judicial in nature. It is a wrong assumption that they tend to interfere in police functions as the investigation is conducted by the police. Before entertaining an application for registration of FIR, JoP must ensure that the aggrieved person has moved an application for registration of FIR to the concerned SHO and complaint to DPO, RPO, etc in case of refusal or reluctance by the concerned SHO. Section 22-A is not ultra vires of the Constitution. The criticism that it is a hindrance in providing expeditious justice is wrong. Justice of Peace in no way pollutes the investigation process. The investigation is always conducted by the investigation agencies. Insertion of sec.22-A(6) Cr.P.C. was made to stop misuse of powers exercised by the police and to assist aggrieved persons. Before the insertion of this section, aggrieved persons had to move a writ petition under Article 199 of the Constitution and in this process, their precious time and money was wasted. Now in case of misuse of power by the police, aggrieved persons can get the requisite relief at the earliest. By exercising judicial review, orders, directions of JoP can be reversed. As constitutional guaranteed fundamental rights are not infringed, sections 22-A/22-B cannot be declared ultra vires (PLD-SC581, 2016). It is expected that JoP would not violate the concept of separation of powers and transgress directly in the domain of investigation officers.

## **Recommendations**

- a) Strengthening the office of Justice of Peace is the need of the hour.
- b) Strict action should be taken against those police officers who do not abide by the directions/orders of Justices of Peace.
- c) Regular workshops and training should be given to police officials because Justices of Peace cannot change the system on their own unless police officials co-operate with them.

- d) False complaints should be treated strictly in accordance with the law. Sections 182 and 211 PPC should be invoked to deal with false complainants.
- e) The ratio of registration of FIRs will not be increased if punishments are ensured to the false complainants.
- f) Disciplinary action must be taken against police officers who wilfully submit wrong comments to the Justices of Peace.
- g) Negligent and unprofessional police officials should be treated in accordance with law as envisaged in Police Order 2002.
- h) Adequate funds and facilities should be provided to the police department.
- i) Mechanism for better coordination among police officers and Ex-Officio Justices of Peace should be devised.
- j) Powers given to JoP must be well-thought-out, organised and clear.
- k) Sections 154 and 22A/22B are interlinked. It would be wrong to interpret these provisions in segregation.
- l) There should be a proper code of conduct for Justices of Peace.

## **Conclusion**

The basic aim of insertion of section 22-A (6) Cr.P.C. was to adhere to the grievances of the weak segments of society. Criminal justice system aims to focus on the oppressed ones in particular because no society can progress unless justice is ensured to downtrodden people. Superior courts held time and again that the police officers did not register FIRs even in offences of cognizable nature. Unnecessary litigation can be stopped by lodging FIRs in matters of cognizable nature. Emergence of Justices of Peace has improved

deteriorated situation and general public have an alternate remedy now. Aggrieved persons tend to go to Justices of People when they fail to get requisite relief from the police. Prior to this forum, people had to go to high courts. Wrongdoing of police in registration of FIR has lessened because forum of Justice of Peace is at the doorstep of common people. It can be said that Justices of Peace have played positive role in registration of FIR. Although the advent of the Justice of the Peace has brought about positive changes in our criminal justice system, much remains to be done. However, non-compliance of orders of Justices of Peace regarding registration of FIR by the police officials is a worrying factor and such officers should be treated in accordance with law. No strict action is usually taken against police officers who deliberately disobey the orders of the Justice of the Peace. Senior police officers should take necessary measures against such delinquent officers. We should also keep in mind that some people misuse this forum for their nefarious purposes and tend to blackmail and harass others, therefore it is necessary to deal with such persons strictly in accordance with law. Moreover, wrong notions of law should be discouraged. First information report does not give licence to police officials to arrest accused persons. Registration of FIR does not necessarily mean that the allegations levelled by the complainant against the accused person are true. Process of collection of evidence in cognizable offences is initiated after lodgement of FIR, and if no incriminating evidence is found against the accused person, he can be discharged. The Justice of the Peace should not take over as investigating officer as it would be negation of the concept of separation of powers. Justices of Peace are bound to apply their mind while giving directions for registration of FIR in the light of decisions of superior courts of Pakistan.

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