

Why the police don't register FIRs

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Afzal Shigri

The recent statements by responsible and senior government officials about the FIR registration procedure give the impression that the entire criminal justice system hinges on this issue, with the key to solving the complex problem of providing justice lying in the police's effective registration of reports.

The FIR registration process will be modified to provide relief to the victim, said the Prime Minister. The Ministry of Law, Justice & Human Rights has proposed that if an officer in charge of a police station fails to register an FIR, he should be prosecuted under article 155 of police Order 2002. The Law and Justice Commission has recommended that an aggrieved person may file a complaint with the area magistrate if police refuse to register an FIR; it has proposed an amendment in the CrPc by providing that "if the police refuses to register an FIR, then the complainant or informer may lay such information before the area magistrate, so that no undue delay is caused in the registration of FIRs." (*The News*, March 20, 2005).

These magisterial powers already exist in the law, empowering a magistrate to take cognisance of a case and issue appropriate orders to police. The Police Order 2002 also provides punishment for refusal to register an FIR in cognisable cases.

However, even if they are enacted, the proposed amendments will not address the grievance of the people at large: what's needed in the overall context of the criminal justice system is for certain fundamental amendments to be implemented. Otherwise, we will continue to conveniently scapegoat the police department without solving the real problem. And the real issue that needs to be addressed in the FIR process is the division of complaints into 'cognisable' and 'non-cognisable'.

Almost half of the sections in the Pakistan Penal Code deal with offences against person, property, defamation and criminal intimidation, laying down the broad parameters of the citizen's rights. Violations of these rights are defined as offences for which there are specific punishments.

The Criminal Procedure Code (CrPc) regulates action against the offenders and defines the authority and powers of police. It divides offences into two categories: cognisable and non-cognisable. For cognisable offences the police can arrest the offender without a warrant, while they need a warrant to make arrests in non-cognisable offences.

According to CrPc sections 154 and 155, information regarding commission of a cognisable offence or a non-cognisable offence is to be recorded in books to be specified by the Provincial Government. The register specified under section 154 CrPc for cognisable cases is called the FIR register, while in cognisable

cases police is empowered to investigate the case on its own.

For non-cognisable cases, the officer is required to lay the information before the area magistrate, and can take up the investigation only on court orders. The problem of registering an FIR (First Information Report) starts with this distinction, which debars police from investigating non-cognisable offences without a magistrate's orders.

Police functioning in Pakistan is based on preventing and detecting only cognisable cases. All inspection reports are designed to reflect the performance of police in relation to the results achieved in the investigation of cognisable cases. Non-cognisable cases taken up by the police are not included in the statistics included in the police reports that assess their performance.

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The investigation process is immediately initiated in a cognisable case, but in non-cognisable cases, no action is taken and complainants are advised to approach the magistrate for relief. Certain categories of hurt and even wrongful confinement are non-cognisable — section 337 L (2) & 347 PPC — and police cannot take any action except laying the information before the magistrate. This is seldom done, and the complainant is routinely referred to the magistrate.

Contrary to the legal position, the common man expects the police to take action on his complaint for all penal offences, and is not interested in the legal definitions. When he is wronged, he rightly expects the state to come to his rescue. Since action is only initiated when the report is entered in the FIR register, the complainant wants his FIR to be recorded. This cannot be done for non-cognisable offences, for which section 155 (2) debars the police from investigating the complaint without a magistrate's orders. They can only record the substance of such information in a register called the daily diary, and refer the complainant to a magistrate.

This flawed legal arrangement results in the common complaints about cases not being registered. It also gives rise to other malpractices as the law is bent to suit the requirement of a given situation. When a non-cognisable offence is reported to the police, they either resort to preventive action under the CrPc or twist the

complaint to make it a cognisable case.

In some cases the police also water down the offences to avoid registering cognisable cases to keep the crime graph down on paper, and project a positive picture of its performance. This in turn has a negative impact on the entire criminal justice system as the state fails to shoulder its primary responsibility of providing security to the citizens at large and bringing the offenders to book.

In advanced countries, all offences are cognisable and it is the duty of the police to investigate them without any distinction. The offences however are divided into two categories, arrestable and non-arrestable depending on their gravity. In non-arrestable offences, the police are required to obtain an arrest warrant from a competent court before arresting the offender, while in other cases they can arrest an offender without a court warrant. But they are responsible for investigating all offences without any distinction.

There is a need to examine the existing system in this perspective instead of making cosmetic changes that will lead us nowhere. If we are prepared to bring about this fundamental change we will have to review how we assess police performance and provide additional resources to police and the courts to cope with the manifold increase in their workload.

The proposed change will entail investigating all complaints and submitting them before a court for adjudication. We will need more investigating police officers and additional courts and political will, to cope with the upsurge in the crime figures that are currently not reflected in any statistics or police reports. The police leadership will have to redefine the parameters for assessing subordinates' performance and not relate these to the crime figures. If the government has the political will to deal with the fundamentals the rest will fall in place.

Unfortunately we have remained stuck in the groove and are not prepared to adopt progressive and modern concepts of law enforcement. Even laws that were enacted after extensive consultations are abandoned or distorted before their implementation when vested interests feel threatened. If the government cannot sustain such pressure it would be better not to touch the existing laws.

We have the bitter experience of Police Order 2002 that was condemned and dismantled even before its implementation as it did not suit the police, the politicians and the civil service. We are now saddled with a defaced law that has effectively destroyed even the existing structures, with very negative and painful ramifications for the country. If we cannot bring about fundamental changes in the existing law, we should not interfere with it and focus our attention to limited administrative improvements within the existing legal framework.

The writer is former Inspector General of Police.
Email: skardu14@yahoo.com