The *Sughran Bibi* Case and its Impact on the Criminal Justice System of Pakistan

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Situational Analysis

The Constitution of the Islamic Republic of Pakistan 1973 adheres to the principle of the rule of law. Accordingly, it provides for the treatment of every citizen, including any person within its jurisdiction, to be in accordance with the prescribed law.[1] Despite record-keeping by most of the components of the criminal justice system in the country, the rule of law is not officially measured. No statistics are collected to present a holistic view of the situation. Organisational data, like that of the judiciary, prosecution, or police, is, however, available.

In the absence of official data, one is constrained to use unofficial data. In this regard, the Rule of Law Index for the Year 2017-18,[2] compiled by the World Justice Project, shows that out of the 113 countries that were studied in terms of the overall performance, Pakistan ended up in the lower bracket at 105. In the regional terms, it stood second last, only above Afghanistan. In the category of 'Order and Security Factor',[3] Pakistan ranked at the bottom, at 113. In the category of 'Civil Justice', it stood at 107, and under 'Criminal Justice', the ranking was 81. The purpose of these rankings is to provide the context and situational analysis of Pakistan's justice sector, and its perception in relation to the rule of law.

Controlling Effect of the First Information Report

The situational analysis above, makes it abundantly clear that there is a strong case for legal and administrative reforms. Within the domain of the criminal justice, a key component of the legal reforms is to minimise the centrality and primacy of the document called the First Information Report (FIR).[4] For jurisprudential purposes, it may be noted that it is only a procedural device for recording and preserving information; in practice, however, it has assumed overwhelming significance by all the components of the criminal justice system. The police treat it as biblical, and thus it controls their investigation. Prosecution is then stymied by whatever work has been undertaken by the police, in view of the controlling effect of the FIR. On its part, the judiciary, on the strength of the precedent on criminal justice, is hamstrung to evaluate the evidentiary value of the FIR.

The superior judiciary in Pakistan has tried to take stock of this controlling effect of the FIR in its latest judgement in *Mst. Sughran Bibi* case;[5] the FIR shapes all the subsequent proceedings in a criminal matter, and have bearings even on the outcomes of trials; it virtually

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[1] Constitution of the Islamic Republic of Pakistan 1973, art. 4.

[2] World Justice Project, 'Rule of Law Index, 2017 – 18', <https://worldjusticeproject.org/sites/default/files/documents/WJP_ROLI_2017-18_Online-Edition_0.pdf> accessed 17 July 2018.

[3] Ibid, 36.

[4] Registered under Criminal Procedure Code 1898, s. 154.

[5] *Mst. Sughran Bibi v The State* PLD 2018 SC 595.

controls the criminal proceedings. Before discussing the law points, it will be apposite to first briefly highlight the facts of the case, in which the judgement has been delivered.

A Factual Resume of the Mst. Sughran Bibi Case

In brief, Mst. Sughran Bibi filed a human rights case in the Supreme Court of Pakistan, under Article 184(3) of the Constitution of Pakistan.[6] This case prayed for an issuance of direction to the local police to register a second FIR against the police officials who had killed her son, Mohsin Ali, in an encounter on 21-03-2008. These police officials had also registered the first FIR.[7] Prior to this, on 12-01-2010, as an alternate remedy, she had filed a private complaint[8] in the court of the Additional Sessions Judge, Lahore (ASJ, Lahore). This had remained pending till 18-06-2015, when the ASJ, Lahore summoned 16 accused police officers for trial, on the basis of *prima facie* evidence. The trial was on, but Mst. Sughran Bibi wanted 'arrest'[9] of the accused police officers, and therefore, she filed an application in the Human Rights Cell, housed in the building of the Supreme Court of Pakistan. The case must have been placed before a judge of the Supreme Court of Pakistan who, after going through the material in the case and the conflicting judgements of the superior courts, in the matter of the registration of multiple FIRs, requested the Chief Justice of Pakistan to constitute a larger bench. Thereby, the present case was initiated and heard by a bench of seven honorable judges of the Supreme Court of Pakistan. The bench was headed by Mr. Justice Asif Saeed Khosa, who is known to have rendered many important judgements on criminal law. The Attorney General of Pakistan, along with Advocate Generals of the provinces and the Islamabad Capital Territory (ICT), assisted the honorable judge. Barrister Salman Safdar, a renowned defence lawyer, was appointed as *amicus curiae*.

Reasoning

The judgement authored by Mr. Justice Asif Saeed Khosa is concise and erudite, and the honorable judge dealt with the matter in a systemic manner. Chiefly, he did three things in his reasoning. First, he analysed the case law on the subject; secondly, he interpreted the relevant statutory law; and thirdly, he deliberated on the nexus between the registration of an FIR and the power of an arrest entrusted to the police under the law. The three are, therefore, discussed here in the same order:

a. Case Law

In the case law, the honorable judge took note of three categories of the judgements. The first category of judgements[10] allowed only one FIR for an occurrence, and clearly provided that all

[6] Article 184 (3) of the Constitution of the Islamic Republic Pakistan 1973: "… the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II is involved, have the power to make an order…".
[7] FIR No. 177/08 under PPC, s. 324, 353 and 186, read with 13/20/65 AO in PS Shahdrah Town, Lahore.
[8] Code of Criminal Procedure 1898, s. 202.
[9] (n 5) 635.
[10] *Mansur Ali and 2 others v The State* 1970 P.Cr.L.J. 287, *Kaura v The State* NLR 1979 Criminal 3, *Qazi Rehmatullah v Dr. Ghulam Hussain* 1979 P.Cr.L.J Note 36, *Ghulam Siddique v SHO Dera Ghazi Khan and 8 others* PLD 1979 Lahore 263, *Muhammad Aslam v SHO, PS Mamun Kanjan, Faisalabad* PLD 1980 Lahore 116, *Mushtaq*

the subsequent statements to the police were to be recorded under section 161 of the Code of Criminal Procedure 1898 (Cr.P.C), and that the police officials were free to investigate the case. The net result of this category was that only one case was to be handled by the police, and consequently, only one trial had to take place (1st category).

The second category[11] provided that the police were bound to register FIRs under section 154 Cr.P.C, hence multiple FIRs could be registered. The outcome of this approach was that it allowed the multiplication of criminal proceedings. Hence, multiple FIRs meant multiple cases, and multiple cases meant multiple trials (2nd category).

The third category[12] left the matter to the circumstances of the case, thereby resulting in affirming the position of the 1st category, as a general rule, while treating the 2nd category as an exception (3rd Category). Tracing back case law from colonial times, Justice Khosa quoted from a Privy Council (PC) case,[13] in which the judges repelled the propensity to treat each statement as a separate information report, and thus established that only one FIR of an occurrence was permissible under the law. He quoted:

> The argument as their Lordships understood was that the only information report under Ss. 154 to 156, Criminal P.C., was that recorded on 31st August 1941, that the allegations recorded at a later stage of 5th September were not an information report, but a statement taken in the course of an investigation under Ss. 161 and 162 of the Code, that there was therefore no reported cognisable offence into which the police were entitled to enquire, but only a non-cognisable offence which required a Magistrate's order if an investigation was to be authorised. Their

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Ahmad v SHO Munawan 1984 P.Cr.L.J. 1454, *Wali Muhammad and 4 others v The State* 1985 P.Cr.L.J. 1342, *Hafiz Haji Muhammad v The SP Dera Ghazi Khan* 1986 P.Cr.L.J. 2167, *Ghulam Mustafa v SHO* KLR 1987 Cr. C. 134, *Muhammad Younas v SSP Faisalabad* 1987 P.Cr.L.J. 1464, *Rahmat Ullah v SHO* 1987 P.Cr.L.J. 2197(2), *Sharifan Bibi v M. Ilyas* KLR 1987 Cr. C. 739, *Muhammad Azim v SHO Abbas Nagar* 1988 P.Cr.L.J. 41, *Malik Muhammad Anwar Khan v The State* 1988 P.Cr.L.J. 986, *Yousaf v The State* NLR 1990 U.C. 149, *Sadiq Masih v SHO* 1994 P.Cr.L.J. 295, *Arif Khan v ASJ Kabirwala* 2006 P.Cr.L.J. 1937, *Syed Wahid Bux Shah v The State* 2011 MLD 64.

[11] *Sawant v SHO PS Saddar, Kasur* PLD 1975 Lahore 733, *Akram Ali Shah v SHO Kotwali, Kasur* PLD 1979 Lahore 320, *Mirza v SHO* 1982 P.Cr.L.J. 171, *Abdul Ghani v SHO PS Saddar, Sheikhupura* 1983 P.Cr.L.J. 2172, *Muhammad Ibrahim v SHO PS Mansehra* 1983 Law Notes (Peshawar) 686, *Halim Sarwar v SHO PS Headmarala* PLJ 1984 Cr.C. (Lahore) 369, *Fateh Sher v SHO* 1984 Law Notes (Lahore) 1169, *Karim Bibi v SHO PS Rajana (Faisalabad)* 1985 P.Cr.L.J. 213, *Ghulam Hussain v Sirajul-Haq* 1987 P.Cr.L.J. 1214, *Mst. Rehmi v SHO Basirpur* KLR 1987 Cr.C. 442, *Manzoor Hussain v SHO* NLR 1989 Cr.L.J. 39, *Abdul Rehman v SHO Karianwala, Gujrat* 1989 Law Notes (Lahore) 885, *Mrs. Ghanwa Bhutto v Government of Sindh* PLD 1997 Karachi 119, *Muhammad Ishaque v SP Jaffarabad* PLJ 1998 Quetta 1, *Ahmed Yar v SHO Shah Kot, Sahiwal* 2007 P.Cr.L.J. 1352, *Muhammad Azam v IGP, Islamabad* PLD 2008 Lahore 103, *Mst. Allah Rakhi v DPO Gujranwala* 2009 MLD 99.

[12] *Muhammad Rafique v Ahmad Yar and another* NLR 1982 Criminal 638, *Allah Ditta v SHO Basirpur Okara* PLD 1987 Lahore 300, *Pervez Akhtar v The State* 1989 P.Cr.L.J. 2199, *Firdous Barkat Ali v State* 1990 P.Cr.L.J. 967, *Muhammad Latif v SHO PS Saddar, Dunyapur* 1993 P.Cr.L.J. 1992, *Hamayun Khan v Muhammad Ayub Khan* 1999 P.Cr.L.J. 1706, *Muhammad Anwar v SHO Railway Police, Kasur* PLD 1999 Lahore 50, *Rana Ghulam Mustafa v SHO Civil Lines, Lahore* PLD 2008 Lahore 110*, Independent Media Corporation v Prosecutor General, Quetta* PLD 2015 Balochistan 54, *Pervaiz Rasheed v Ex Officio Justice of Peace and others* 2016 YLR 1441, *Imtiaz Ali v Province of Sindh* 2017 MLD 132, *Wajid Ali Khan Durrani v Government of Sindh* 2001 SCMR 1556, *Mst. Anwar Begum v SHO Kalri West, Karachi* PLD 2005 SC 297, *Ali Muhammad v Syed Bibi* PLD 2016 SC 484.

[13] *Emperor v Khawaja Nazir Ahmad* AIR (32) 1945 Privy Council 18.

> Lordships cannot accede to this argument. They would point out that the respondent in his case treats each document as a separate information report and indeed, on the argument presented on his behalf, rightly so, since each discloses a separate offence, the second not being a mere amplification of the first, but the disclosure of further criminal activities.[14]

The law remained trite afterwards, and was also adhered to in the judgement of the Supreme Court case of *Kaura v The State*.[15] The law was by and large followed in letter and spirit for some time thereafter. However, it started changing with *Mrs. Ghanwa Bhutto Case*[16] that dealt with the murder of Mr. Murtaza Bhutto (brother of the then sitting Prime Minister of Pakistan Benazir Bhutto) in Karachi. *Mrs. Ghanwa Bhutto Case* was endorsed in *Wajid Ali Khan Durrani Case*,[17] by the Supreme Court of Pakistan. Subsequent decisions of the Supreme Court of Pakistan cited *Wajid Ali Khan Durrani Case* as a precedent, and the practice continued.

Justice Khosa must be credited with distinguishing the precedent cases by taking pain in gauging the reasons employed by the earlier judgements. He noted with concern:

> The confusion gripping the issue, we observe so with great respect and deference, is because of the fact that in none of the precedent cases detailed above the actual scheme of the Code of Criminal Procedure, 1898 and the Police Rules, 1934 regarding registration of a criminal case through an FIR and its investigation by the police had been examined in any detail….[18]

He, therefore, undertook to examine the scheme of the Code of Criminal Procedure and the Police Rules 1934 – the statutory law – on the point in issue.

b. Statutory Law

As noted before, Justice Khosa decided to examine the scheme of the Code of Criminal Procedure and the Police Rules 1934. He commented on the purport of the statutory law, starting from section 154 read with sections 156, 157, 159, 160, 161, and 173 of the Cr.P.C. By interpreting the law in its literal sense, he distinguished 'information' from a 'case' and declared that in a single case, different hues of the information could be processed by a police officer. Besides interpreting the primary legislation, he also supplemented his interpretation of the primary legislation through delegated legislation as per 24.1, 24.5, 24.17, and 25.1 of the Police Rules 1934.

c. FIR and Power of Arrest

[14] Ibid.
[15] 1983 SCMR 436.
[16] *Mrs. Ghanwa Bhutto v Government of Sindh* PLD 1997 Karachi 119.
[17] *Wajid Ali Khan Durrani v Government of Sindh* 2001 SCMR 1556.
[18] (n 5) 624.

Finally, Justice Khosa tried to delink an FIR from an 'arrest'. He illustrated this point by asking Mst. Sughran Bibi about her insistence to get a 'second FIR' registered, despite the fact that she had availed the alternate remedy of the private complaint. As was expected, her response was that she wanted that the police officers accused of the 'murder' of her son to be arrested. The response led Justice Khosa to note that "[s]uch understanding of the law on the part of the petitioner, which understanding is also shared by a large section of the legal community in our country, has been found by us to be erroneous and fallacious."[19]

He, then, went on to dilate upon the legal position that clearly mitigates the control of the FIR on an investigation and a prosecution, by separating the registration of a criminal case from the power of arrest, which has to be reasoned. He cited in detail from his own judgement in *Khizer Hayat* case.[20]

Points of Law Declared by the Judgement

The following points of law were declared by the judgment:

> "(i) According to section 154 Cr.P.C. an FIR is only the first information to the local police about commission of a cognizable offence. For instance, an information received from any source that a murder has been committed in such and such village is to be a valid and sufficient basis for registration of an FIR in that regard.
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> (ii) If the information received by the local police about commission of a cognizable offence also contains a version as to how the relevant offence was committed, by whom it was committed and in which background it was committed then that version of the incident is only the version of the informant and nothing more and such version is not to be unreservedly accepted by the investigating officer as the truth or the whole truth.
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> (iii) Upon registration of an FIR a criminal "case" comes into existence and that case is to be assigned a number and such case carries the same number till the final decision of the matter.
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> (iv) During the investigation conducted after registration of an FIR the investigating officer may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161, Cr.P.C. in the same case. No separate FIR is to be recorded for any new version of the same incident brought to the notice of the investigating officer during the investigation of the case.
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> (v) During the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the

[19] (n 5) 635.
[20] *Khizer Hayat v Inspector General of Police (Punjab)* Lahore PLD 2005 Lahore 470.

incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules, 1934 "It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person.

(vi) Ordinarily no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigating officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest and for such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules, 1934. According to the relevant provisions of the said Code and the Rules a suspect is not to be arrested straightaway or as a matter of course and, unless the situation on the ground so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegations levelled against such suspect or regarding his involvement in the crime in issue.

(vii) Upon conclusion of the investigation the report to be submitted under section 173, Cr.P.C is to be based upon the actual facts discovered during the investigation irrespective of the version of the incident advanced by the first informant or any other version brought to the notice of the investigating officer by any other person."[21]

Analysis

Having discussed the brief facts, reasoning and declared law points regarding the judgement, it will be appropriate to analyse the judgement itself. By way of analysis, it becomes clear that firstly, the Supreme Court of Pakistan must be credited for passing a comprehensive judgement on the issue of the registration of multiple FIRs. The judgement clearly restated the law in a concise manner by implicitly distinguishing and overruling its earlier judgments. Multiplicity of registration of cases was a challenging and unhealthy development from the point of view of efficiency of the criminal justice system.

As was noted earlier, the FIR, which, in theory, was only supposed to act as a report to the police, started controlling the criminal justice system. Each FIR meant a separate case, which in turn meant separate investigation, distinct scrutiny by a prosecutor, beckoning a report under section 173 Cr.P.C, and culminating into a full-fledged trial. Checking the disturbing trend of multiple and parallel criminal legal proceedings was very much a desired action on part of the Supreme Court of Pakistan, more so when the registrations were amplifications of the same facts and were intended to counter-blast and counterweight the force of criminal law that was invoked by a law-abiding citizen. The surge in the practice of multiple and parallel criminal legal proceedings was seen after the introduction of an amendment in the Code of Criminal Procedure

[21] (n 5) 641-643.

Code,[22] that empowered judicial officers so they could issue directions to the police, in relation to the registration of criminal cases and other investigation-related matters.

Alongside, it may be noted that the instant judgment declares the law relating to the registration of criminal cases in a more refined manner, in comparison to the Indian law on the point. The Supreme Court of India, in *Surender Kaushik* case,[23] declared:

> 24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR relating to the same or connected cognisable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in Upkar Singh, the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible.

It can be seen that the Indian case provides for two FIRs in the same incident, which obviously leads to parallel criminal proceedings.

Secondly, the Bench, while examining the case law, noted with concern and deference that earlier case law did not examine the statutory legal framework;[24] no remedy has been prescribed to ensure that this does not happen again as all the courts are bound by Supreme Court's decisions to the extent of principles of law.[25]

Thirdly, the judgement has reiterated the law of investigation in Pakistan in its pristine form by trusting the police as an organisation. The approach taken by the judiciary is much different from the approach taken by the legislature that has chosen to punish only the police for a defective investigation.[26]

Fourthly, the judgement has forcefully delinked – as required by the statutory law and declared in earlier dicta of the Court – the registration of a criminal case from an arrest. The declaration has once again thrown the challenge of introducing internal controls on the exercise of the powers of the police on senior police leadership that, more often than not, clamours about increasing propensity of the judicialization of police powers in Pakistan.

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[22] Code of Criminal Procedure 1898, s. 22-A (6).
[23] *Surender Kaushik & Ors. v State of U.P. & Ors.* (2013) 5 SCC 148.
[24] (n 5) 624.
[25] The Constitution of the Islamic Republic of Pakistan 1973, art. 189.
[26] A proviso has been added to Pakistan Penal Code 1860, s. 166, vide the Criminal Law (Amendment) (Offences Relating to Rape) Act 2016 (Act XLIV of 2016) criminalizing defective investigation.

Finally, the Court passed a direction to the trial court seized with the alternative remedy of the private complaint to decide the case in four months.[27] Whereas, passing the time-bound direction in the case was very much in order, the issue of delay by the trial courts seized with such matters needed to be addressed at a systemic level.

All in all, the judgment must be seen as promoting the enforcement of fundamental human rights, and it may improve the working of the overall criminal justice system in Pakistan.

[27] (n 5) 643.