

Adjudicating it Based Policing: Case of Maintaining Digital Daily Diary

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It is fashionable to link all the government business and public policy issues with the use of information technology (IT) nowadays; the propensity to do so is not entirely cosmetic, but has immense merit. IT based Policing is more than an efficiency enhancing tool as it can help realize implementation of constitutional fundamental and human rights that distinguish citizens of an independent state from a colonial state. In this constitutional and legal context, every IT based Policing is dependent on specific legislation that enhances the rule of law, minimizes the discretion and makes it sustainable for budget allocation. Balancing between competing human rights and benefits of information technology is the primary consideration while preparing these specific legislations. One such instance is provision of legislative cover for daily diaries of police stations that were being maintained manually in the Punjab. By amending Rule 22.4 of the Punjab Police Rules, 1934 on 15th December, 2017, it was required from police station clerks (muharrars) that daily diary registers that log every activity of police personnel and investigation officers shall be maintained both manually and electronically. The amendment was aimed at providing legal cover to both the manual and the digital records of police stations. In the amended form, the purpose of the Rule was to oversee the digital transformation. In practice, however, police started maintaining only the digital copies and the manual copies were not being maintained. The non-maintenance of the daily diary copies became a moot point in some of the latest decisions of the courts as precious fundamental rights were at stake.

Three cases warrant mention. First is the case titled as *Muhammad Tariq vs. SHO Police Station SaddarJampur*¹. The judgment was authored by Justice Ibad-ur-Rehman of the Multan Bench of the Lahore High Court. On his order, bailiff of the court, on surety of two thousand rupees, recovered five persons from the custody of police. While the electronic copy of their arrest was in the record, the manual copy as required in Rule 22.4 was not being maintained. The court summoned senior police officer of the Region (a Deputy Inspector General of Police) who 'candidly denied' that there was any instruction contrary to the rules and that the observation of the judge about non-implementation of Rule 22.4 was correct. The court directed the Inspector General of Police, Punjab to strictly follow the rule. The logic behind the decision was noted as:

¹ PLJ 2019 Cr. C. 131

“...it has been noticed with great concern that after launching online system in police stations there are rampant complaints relating to different police stations for the reason that manual police registers are not being maintained at all. Even there are some reports that some police officers had laid off their hands from manual entries after online entering the data in the computer for some time or even in some cases after some days. It means that before making the data online they have sufficient time to make changes in the data for some ulterior motive and they can easily cover their misdeeds/wrongs committed by them. Moreover, the data available in the computers is not fully secured and it is vulnerable due to different factors.”

In another case titled as *Khatoon Bibi vs. the State*², Justice Chaudhry Abdul Aziz of the Lahore High Court examined in detail the law related to maintenance of the daily diary in detail and linked it to constitutional fundamental right to life and to the right to be treated in accordance with law on arrest and detention. The facts of the case that came up for adjudication are very interesting as they undergird the importance of a daily diary and the way its rightful maintenance is linked with implementation of human and fundamental rights of the citizens. In this case, three persons were recovered from the custody of police. The police justified their arrest by relying on a supplementary statement to the First Information Report (FIR). The court when checked the record with the help of cross references, the whole case of theft against the recovered persons was found to be ‘dubious’ and ‘knit’ as a defence to frustrate the court’s adjudication. The court elucidated with the help of the facts of the case that how a police constable abused the criminal justice processes. The court noted that the law related to safeguard of cross-referencing of different police related registers and inspections was not being followed. The court noted with concern that police excesses and lack of accountability were violating the constitutional rights under article 9, 10 and 14 of the Constitution of Pakistan.

A third case on similar lines was *Mst. Asmat Parveen versus the State*³. Since the judgment was passed by the then Chief Justice Mr. Justice Qasim Khan, it captured headlines in media and excited a brief debate within justice sector about adjudication of IT based Policing by the courts. He directed the Inspector General of Police, Punjab, to ‘start/keep maintaining manual roznamchawaqaiti (Daily Diary) as per previous practice’. The facts leading to the direction were that

² 2021 P. Cr. L. J 593 Lah

³ PLD 2021 Lahore 105

two criminal cases i.e. First Information Reports (FIRs) were registered within a span of ten minutes in same police station of district MandiBahuddin against a husband and his wife for possessing saleable quantity of narcotics. The offence of possessing saleable quantity of narcotics attracts section 9 (c) of the Narcotics Substances Act, 1997 and is punishable with death penalty. Interestingly, both were booked in separate criminal cases. The recovery from the husband, as appears from the facts narrated in the judgement, was made in front of his own house and the recovery from his wife was made from the backside of the same house. Both were arrested in these cases. It must be noted that the time difference between the two cases was of ten minutes. The wife had moved for her pre-arrest bail, which was before court for examination. The court allowed the bail and noted that in the present situation, 'the possibility of fabrication' cannot be ruled out. His observation was in line with earlier judgments stated above.

The adjudication of IT-based Policing can be examined from multiple lenses. Jurisprudentially, the reasons of the judgments appear to be based on 'practical' reasons as Richard A. Posner would like to classify them. In his book, *The Problems of Jurisprudence*, he has authored a chapter on 'Neotraditionalism' and has opined that 'much of law's social value lies not in resolving disputes but in preventing them by laying down the rules that people live by'. It appears that in the while revering to the use of IT for policing, the courts were constrained to make a choice between the legitimizing the use of information technology or to prevent abuse of police powers and protect fundamental rights. The courts, it appears, preferred the latter. From viewpoint of police, the decisions of the courts implore their leadership to plan well and to follow the rules set especially while overseeing the transition from manual to digital record keeping. The public policy question would be: should government invest in IT based Policing? The answer is in affirmative, but for that it is important that all the constitutional safeguards be implemented in letter and spirit.