

**Police Investigation in Homicide Cases: Critical Analysis of the
Supreme Court Jurisprudence from 2007 to 2017**



Submitted in partial fulfillment of the requirement for the degree of
LLM (Human Rights Law)

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

FINAL APPROVAL

It is certified that we have gone through and evaluated the dissertation submitted by Mr. Malik Asif Tanveer, a student of LL.M. Human Rights Law under University Registration No. 187-FSL/LLMHRL/S16 titled “**Police Investigation in Homicide Cases: Critical Analysis of the Supreme Court Jurisprudence from 2007 to 2017**” in partial fulfillment for the award of degree of LL.M. Human Rights Law. We have evaluated the dissertation and found it up to the requirement in its scope and quality for the award of degree.

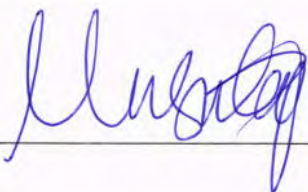
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Whoever kills a person unless it is for a murder or riot on earth it is as if he killed the whole of mankind; and whoever saves it, it is as if he saved the whole of mankind (Al-Quran 5:32)

"There is nothing more deceptive than an obvious fact." Sherlock Holmes

DEDICATION

This work is dedicated to:

Hazrat Sultan Muhammad Ali Sahib
(10th descendant of Hazrat Sultan Bahoo)

who gave vision of this project

Sahibzada Sultan Ahmad Ali Sahib
(10th descendant of Hazrat Sultan Bahoo)

for his throughout guidance

Sahibzada Sultan Bahadar Aziz Sahib
(10th descendant of Hazrat Sultan Bahoo)

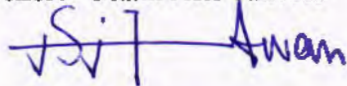
for his moral support

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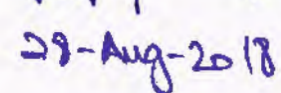
I, Malik Asif Tanveer, hereby affirm that this dissertation is original. It has never been presented in any other university or institution. I further declare that any secondary information used in this dissertation has been duly acknowledged.

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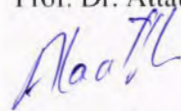
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TABLE OF CONTENTS

List of Abbreviations	1
List of Cases.....	2
Abstract.....	3
CHAPTER 1: INTRODUCTION	4
1.1 Investigation Definitio.....	6
1.2 Classification of Law Enforcement Organizations.....	9
1.3 Significance of Investigation in Homicide cases.....	14
1.4 Duties of Investigating officer.....	15
1.5 Powers of Investigating Officer.....	16
1.6 Stages of Criminal Investigation	17
1.7 Prosecution	19
1.8 Theorem.....	20
1.9 Negligent Attitude of Investigating Officer in Cross Examination.....	21
CHAPTER 2: FLAWS IN POLICE INVESTIGATION & JUDICIARY POLICE RELATIONSHIP	25
2.1: Forensic Science and Chain of Evidence Custody	25
2.1.1 <i>Forensic:</i>	25
2.1.2 Chain of Custody	25
2.2 Flaws in Homicide Investigation.....	26
2.3 Eye Witnesses Un-Availability: An Outstanding Issue.....	28
2.4 Adoption of Modern Techniques by Offenders.....	28
2.5 Classification of Relationship between Victim and Perpetrator in Homicide	29
2.6 Factors of Homicide	30
2.7 Homicide at International Spectrum.....	31
2.8 Psychological Context of Human Barbarity with Reference to Homicide.....	32
2.9 Guiding Principle of Holy Quran	33
2.10 Role of Judiciary in Ensuring Evidence	33
2.11 Power of Judiciary to Question Police	34
2.12 Mandate of Judiciary and Legislature	34
2.13 Collection of Evidence vs. Bringing Evidence in Court	35
CHAPTER 3: ANALYSIS OF INVESTIGATION STATUTES.....	37
3.1 Statutes Dealing with Investigation.....	37

3.2	Premature Presumption of Guilt.....	38
3.3	Technical Assistance	39
3.4	Opinion of Arsenal & Forensic Officials	39
3.5	Recoding Dying Declaration	40
3.6	Production of Documents	41
3.7	Foot Prints.....	42
3.8	Pardon and Confession	42
3.9	Jurisdiction.....	43
3.10	Duties Regarding Place of Occurrence.....	43
3.11	Case Diary	45
3.12	Investigation Bag.....	45
3.13	Police Order 2002 & Criminal Justice Co-ordination Committee	46
	<i>Article 14 of Police Order 2002:</i>	46
3.14	Preventing Crime Scene Contamination.....	47
3.15	Change of Police Investigation.....	48
	<i>Optional Investigation:</i>	48
3.16	Sufferings of Witnesses	49
3.17	Problems Faced by Investigating officer	50
CHAPTER 4: MODERN EVIDENCE COLLECTION MODES & CASE LAW STUDY		52
4.1	Modern Evidence Collection Modes (MECM)	52
4.2	Admissibility of Electronic Devices in Evidence.....	54
4.3	Punjab Forensic Science Agency Act 2007.....	54
4.4	Electronic Transactions Ordinance 2002.....	55
4.5	Law Regarding Admissibility of DNA Evidence.....	55
4.6	Judiciary Inadvertency regarding Evidence Insufficiency	58
4.7	Analysis of Police Rules 1934.....	59
4.8	Segregation of Police Duties: Investigation vs. Watch & Ward	59
4.9	District Public Safety and Police Complaint Commission (DPSPCC)	60
4.10	Case Law Study	61
4.11	Haider Ali and Others vs. DPO Chakwal and Others	61
4.12	Ali Sher vs. State	64
4.13	G. M. Niaz vs. State.....	64

4.14	Ali Bux vs. State.....	65
4.15	Gulfam vs. State	66
4.16	Usman alias Kaloo vs. State	66
4.17	Mst. Rukhsana Begum vs. Sajjad	67
4.18	Waqar Ahmad vs. The State	67
4.19	Touchstone of Evidence	68
CHAPTER 5: CONCLUSION & RECOMMENDATIONS		71
BIBLIOGRAPHY		76

List of Abbreviations

CCTV	=	Closed Circuit Television
CDR	=	Call Data Record
CJCC	=	Criminal Justice Co-ordination Committee
Cr.P.C.	=	Code of Criminal Procedure
DNA	=	Deoxyribonucleic Acid
DPSPCC	=	District Public Safety and Police Complaint Commission
ETO	=	Electronic Transactions Ordinance
FIR	=	First Information Report
IB	=	Intelligence Bureau
IO	=	Investigating Officer
MECM	=	Modern Evidence Collection Modes
NACTA	=	National Counter Terrorism Authority
NADRA	=	National Database and Registration Authority
PACE	=	Police and Criminal Evidence Act
PCC	=	Police Call Centre
PPC	=	Pakistan Penal Code
QSO	=	Qanun-E-Shahadat Order
SHO	=	Station House Officer

List of Cases

- Abdul Rasheed v. SHO, District Muzaffargarh, 2004 YLR 1663 P. 100
- Ali Bux v. State, 2018 SCMR 354 Supreme Court. P. 65
- Ali Sher v. State, 2015 SCMR 142, Supreme Court. P. 64
- G. M. Niaz v. State, 2018 SCMR 506 Supreme Court. P. 64
- Gulfam v. State, 2017 SCMR 1189 Supreme Court. P. 66
- Haider Ali v. DPO of Chakwal, 2015 SCMR 1724. P. 61
- Mst. Rukhsana Begum v. The State, 2017 SCMR 596. P. 67
- Naseem Akhtar v. State, 2010 PLD 938 SC. P. 35
- Nawabzada Shah Zain Bugti v. State, PLD 2013 Supreme Court 160. P. 36
- Usman alias Kaloo v. State, 2017 SCMR 662, Supreme Court. P. 66

Abstract

Homicide is classified as worst crime on the earth. It is violation of fundamental right of life. Identification of offender is the most important duty of investigating officer. Investigating officer is bound to collect all evidence so that court can reach at just decision. If he does not collect the important evidence, then such omission will go against the prosecution and benefit of doubt will be given to the accused. In homicide cases, without sufficient evidence guilt cannot be established that is why in many cases accused are acquitted just because of insufficient evidence. A number of times, Heirs of victim suffered just because of investigating officer's negligence and incompetency. Heirs of victim should not be left at the mercy of investigating officer in order to face injustice. Eye witnesses have much importance but availability of eye witnesses in every murder case is impossible that is why prosecution tends to produce fake witnesses, which at cross examination stage, declared untrustworthy and whole structure of prosecution case fell down. This irregularity can be eliminated by applying modern scientific modes in investigation because in every case presence of eye witness is not possible. Secondly, proper protection mechanism for witnesses is neither legislated nor any legal practices is developed in Pakistan. Due to adversarial system in Pakistan, Judges also feel relax and do not take pain in order to find missing portion of evidence. Although it is well settled law that judges should not act like a silent spectator but instead of this law, practice is contrary in Pakistan. Punitive actions by judiciary against investigating officer would not only make him responsible but also minimize the possibility of the loss of precious evidence. Quality investigation is much needed in homicide cases. Judges should take extra care in order to recover the missing portion of evidence. Up-to-date available technology is need to be used in order to trace offender in homicide cases. Investigating officer must be equipped with modern techniques and technology, so that Investigation of murder can set the standard for other criminal investigations in Pakistan.

CHAPTER 1: INTRODUCTION

Crimes are universal in nature. Technology is developed to facilitate humans. Developed countries are utilizing modern science technology in investigation process in order to collect evidence against criminal. In Pakistan modern science technology should also be used in investigation process for better results. ¹ In 2008, near to the village of loftahammar in Sweden, Ingemar Westlund found the dead body of his wife Agneta near a lake. He said, last time he seen his wife alive a couple of hours before she took the family dog for a walk in woodland. He just finished his weekly lawn cutting with his tractor. When she failed to come back, he went outside to search her. He found her dead in the woods. He at once called police. Due to the nature of injuries found on her body a murder investigation was initiated. Animal hairs were found on her coat which do not belong to her dog. Those hairs were not further analyzed. A lot of linear cuts containing fragments of grass on deceased's chest the police hypothesized that she was injured and asphyxiated by some mechanical cutting device such as lawnmower. No forensic evidence like blood, hair, or DNA was found on Mr. Westland's lawn mower. Although he had no motive of killing. Although, he had no irregularity in his statements. On suspicion of murdering his wife he was arrested. For ten days he was held in custody of police. He was under formal suspicion for five months. In interrogation he determinedly denied the murder of her wife and stuck to his stance. Police examined his tractor but couldn't found anything important. The case remained a mystery more than a year. From the public opinion and gossip it

¹ Imadad H. Sahito, "The Criminal Investigation in Pakistan: Trends and Reality," *Journal of Pakistan Vision* 10, no.2 (2009): 175-196.

become hard for Mr. Westlund to live his life in village and he left the village where he spent the most important moments of his life. After one and half year, at National forensic center an analyst found a clip, on internet where a woman was attacked by a moose. After watching this clip he discussed this matter with an elk specialist and together they discovered a lot of elk saliva on deceased's coat. The investigating police do not inform about this theory neither to Mr. Westlund nor media. Afterward few prints of sample elk hoof were matched with deceased's injuries. A local journalist later on informed Mr. Westlund about the fate of this investigation. The prosecution and police never apologized for all this happening but also they claimed that we did nothing wrong. Mr. Westlund said: My life is ruined. It was a night mare and modern day witch-hunt. ²

This incident shows how poorly investigating agency made the decision. It also shows that how important evidences are overlooked. Mistakes in investigating officer's decision are the most common error in criminal cases. The problem arose when police prematurely shift from evidence based investigation to suspect based investigation. Similarly, when an innocent is convicted due to poor investigation or when police remained fail to identify the murderer and deceased heirs felt their selves helpless, their lives are ruined when murderer of their beloved got acquittal due to insufficient evidence collected by investigating officer.

² Ivar A. Fashing, *"The Making of an Expert Detective, Thinking and Deciding in Criminal Investigations"* (Ph.D. Thesis, University of Gothenburg, 2016), 1.

According to Sir Robert Peel, identification of offender is the most fundamental duty of police.³ Quality investigation is vital for legitimacy of police.⁴ The basic purpose of criminal investigation is to find out; who, how, why, when, what, where and by whom a crime is committed or it will be committed. Result of killing human is not only limited to the initial loss of human life but it creates fear and uncertainty in whole society. It is gauge to measure violence and aggression in any country. Murder oppresses the family members and also to the community of the victim who can be treated as secondary victims. Investigation is a pure question of human rights, because without evidence justice cannot be done and without justice there is no right. Justice it-self means, proper provision and protection of rights. The Right to Life and Right to Justice is the supreme necessity enshrined in Pakistan's constitution as well as international human rights conventions. It is prime obligation of state to take effective steps to protect the lives of person, living within its jurisdiction.⁵

1.1 Investigation Definitio

Following are the definitions of Investigation:

A. Definition under section 4(l) of Code of Criminal Procedure 1898:

“Investigation includes all the proceedings under this code for the collection of evidence conducted by a police-officer or by any person (other than Magistrate) who is authorized by a Magistrate in this behalf.”⁶

³ R. M. Morris, “History of Criminal Investigation,” in *Handbook of Criminal Investigation*, ed. Tim Newburn, Tom Williamson, Alan Wright (Devon: Willan Publishing, 2007).

⁴ Mike Maguire, “Criminal Investigation and Crime Control,” in *Handbook of Policing*, ed. Tim Newburn (Devon: Willan Publishing, 2003).

⁵ UNODC, *Global Study on Homicide 2013*, United Nations publications, sales No.14.IV.1.

⁶ Section 4(l) of Code of Criminal Procedure 1898.

This definition is consisting of two elements. First, the purpose of this proceeding is to collect evidence. Second, it must be by a police official or by the person authorized by the magistrate.

B.

“A lawful search for people and things to reconstruct the circumstance of an illegal act, apprehend or determine the guilty party, and aid in the states prosecution of the offence.”⁷

The above mentioned definition is consisting of three elements. First, Search of person and property. Second, this is search is made out in order to arrest the guilty person. Third, to help out the prosecution in order to redress its grievances.

C.

“The Collection of information and evidence for identifying, apprehending, and convicting suspected offenders.”⁸

The above mentioned definition is consisting of two elements. It includes, the collection of information or evidence and the detention of offender.

D.

“The term Investigation includes all the proceedings under the code for the collection of evidence conducted by a police officer.”⁹

⁷ Bruce L. Berg and Jhon J. Horgan, 3rd ed., *Criminal Investigation* (Westerville: Glencoe/Mc Graw-Hill, 1998).

⁸ Elinor Ostrum, Roger B. Park and Gordon P. Whita-Ker, *Patterns of Metropolitan Policing* (Cambridge: MA: Ballinger, 1978).

⁹ Liaqat Ali v. State, 1999 P. Cr. L. J 1357.

The above mentioned definition is determined in a case law. This definition briefly describes the idea of investigation. It says all the proceeding conducted by a police official for the purpose of evidence collection is known as investigation.

E.

*"Investigation means collection of evidence and only an honest investigation which could guarantee a fair trial."*¹⁰

The above mentioned definition is determined in a case law. It gives the definition of investigation and further explains that for a fair trial honest investigation is indispensable.

F.

*Investigation simply means all necessary steps taken by police officer to dig out the facts regarding offence or to know whether an offence has been committed or not and if it is actually committed than who has committed and what are the evidence against him for prosecution.*¹¹

The above mentioned definition is consisting of three elements. First, to ascertain the facts of the case. Second, to discover whether an offence is happened or not. Third, to identify the offender. Fourth, to collect evidence against the offender concerned.

G.

*"The word investigation includes all the proceedings under the code for collection of evidence conducted by police, no matter such evidence favors the prosecution or accused."*¹²

The above mentioned definition states a unique aspect of investigation. It states that investigating officer must collect all available evidence. No matter it favors the prosecution or accused.

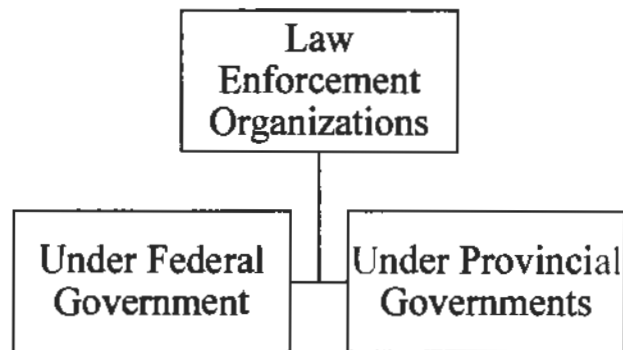
¹⁰ Bank of Punjab v. Haris Steel Industries, PLD 2010 S.C. 1109.

¹¹ Code of Criminal Procedure 1898, p. 135.

¹² Ibid., p. 136.

1.2 Classification of Law Enforcement Organizations

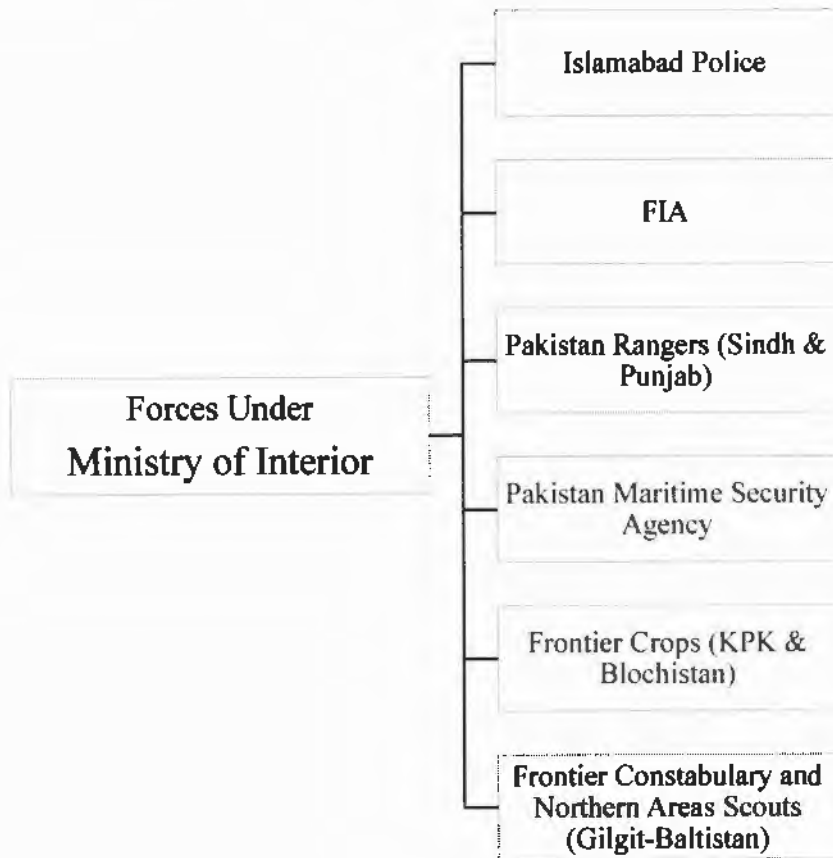
Law enforcement organizations working in Pakistan can be classified into two classes, as following;



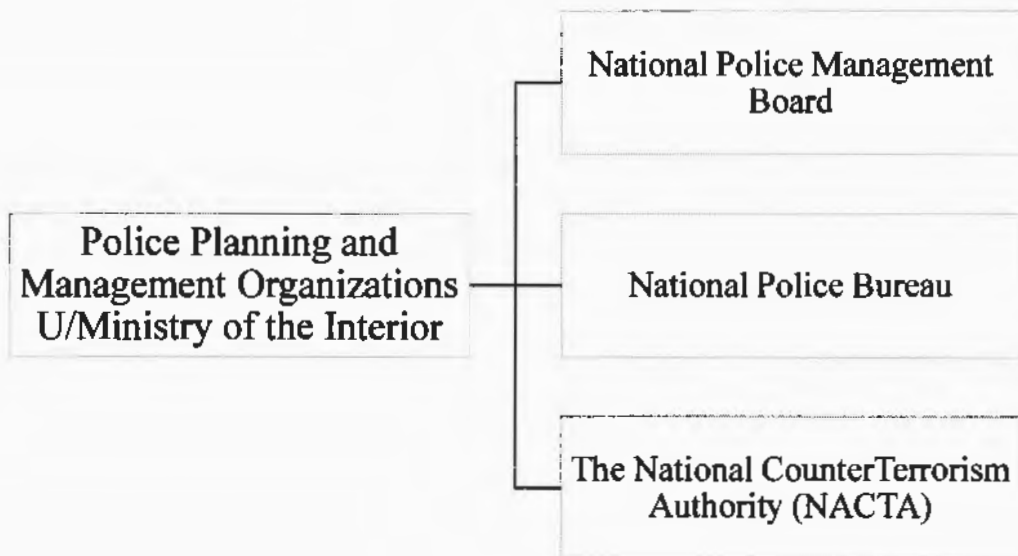
Nineteen main organizations directly function under the federal government dealing with law implementation duties. Total number of law enforcement officers under the federal government are Two Lakh and Ten Thousand (210,000).¹³ Classification of these nineteen organizations are as under;

¹³ Hassan Abbas, "Reforming Pakistan's Police and Law Enforcement Infrastructure: Is it too flawed to fix?" *United States Institute of Peace, Special Report number 266*, February 2011.

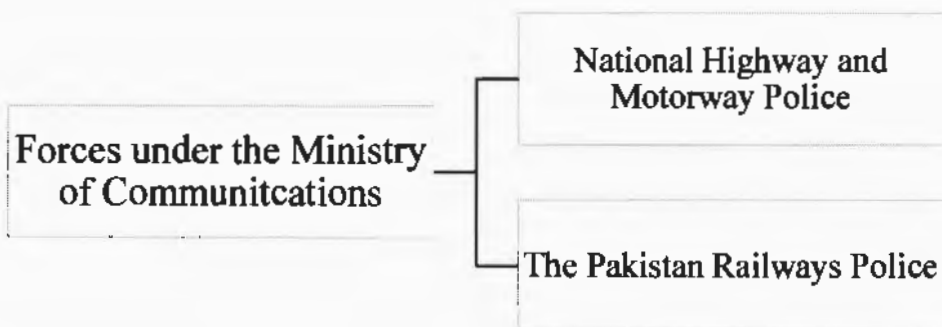
Six law enforcement agencies are working under the Ministry of Interior, which are exhibited as follow;



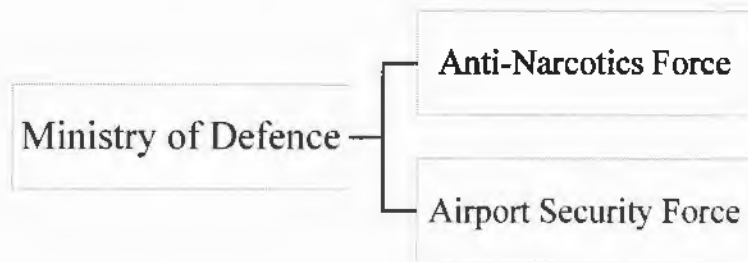
Three law enforcement agencies are working under the Police Planning and Management Organizations, which are exhibited as follow;



Two law enforcement agencies are functioning under the Ministry of Communications, which are exhibited as follow;

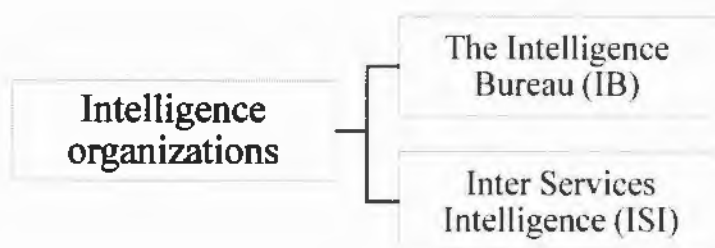


Two law enforcement agencies are working under the Ministry of Defence, depicted as following;



exhibited as following:

Two law enforcement agencies are working under the Intelligence Organizations, which are exhibited as follow;



It is also worth mentioning that policymakers had not given an adequate attention to the police sector for reforms and investment. That is why, police structure is not well

made. Total number of police personnel in Pakistan including (Paramilitary and related wings of intelligence) are Five Lakh and Seventy-Five Thousands (575,000). It means 1 Police official for 347 persons approximately.

If we specifically see the situation in capital city of Pakistan (Islamabad) than how it is possible that only Eleven Thousand police personnel can efficiently guard people of Islamabad along with following important places in Islamabad;

22 UN Offices	14 Hospitals	20 Universities	305 Madrassas
81 Embassies	1044 Schools	77 Markets	
76 Ambassadors' Residences			Head of State & Govt. Persons

A competent investigating officer is essential to counter insufficiency of evidence particularly in murder trials because killing someone is the sheer violation of human rights. At the same time, it is compulsory to decrease acquittals of barbaric killers, because of these criminals, society is on stake.

1.3 Significance of Investigation in Homicide cases

Historical perspective: In fifteenth century the employment of witnesses as the jury's main source of information and fact was found. Later on, major developments were also made during the years of 1790-1830.¹⁴

Importance of Investigation increases very much in homicide cases. To solve the homicide case there is dire need to conduct proper investigation. This is not only in Pakistan but around the globe as well. As we see that Inspector of Constabulary in United Kingdom stated,

*"The investigation of murder should set clear standards of excellence that all other criminal investigation can follow."*¹⁵

Murder is one of worst heinous and brutal crime on earth that's why its investigation method can set standards for investigation in other crimes.

*"Criminal homicide is considered the capital crime and the investigation of murder often seen as the ultimately challenge for detectives."*¹⁶

Investigation of homicide had much significance because public see it as an index of police competency. Public demand that criminals of homicide must be arrested and punished but when police remains fail then public criticizes severely.¹⁷ For this particular aspect the Police investigation in homicide cases is the scope of this thesis.

¹⁴ John H. Langbein, "The Historical foundations of the Law of Evidence: A view from the Ryder Sources." *Faculty Scholarship Series*, (1996): 1168.

¹⁵ Ivar A. Fashing, "The Making of an Expert Detective, Thinking and Deciding in Criminal Investigations (Ph.D Thesis, University of Gothenburg, 2016) 5.

¹⁶ Fiona Brookman and Martin Innes, "The problem of success: What is a 'good' homicide investigation?" *Policing and society* 23, no. 3 (2013): 292-310.

¹⁷ David H. Bayley, *Police for the Future (Studies in crime and public policy)* (Oxford University Press, 1994).

1.4 Duties of Investigating officer

- a) It is duty of investigating officer to build up the case of complainant party with available evidence so that court can decide the fate of case in just manner and bring the real culprit to the book. ¹⁸
- b) To proceed towards spot in order to ascertain the circumstances and facts of the offence.
- c) To discover and arrest the suspected offender.
- d) To collect evidence regarding offence including the examination of witnesses and the accused.
- e) Recording statements under section 161 of the Criminal Procedure Code. ¹⁹
- f) To search the place.
- g) Cease the things which he deems important in investigation perspective.

Investigating officer must have the knowledge of forensic sciences. so that, he can take measures to save the evidence from external factors.

Information is not always freely available to investigator, ... they must be skilled in a range of techniques in order to pursue, locate and recover it... physical material can degrade rapidly for environmental reasons, and memories can become less reliable for psychological reasons... recorded

¹⁸ Mir Zafarullah Khan Jamali v. State, PLD 2001 Quetta 10.

¹⁹ Section 161 of Cr.P.C.: "Examination of witnesses 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, by 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."

*data such as CCTV or financial information can be disposed of or overwritten.*²⁰

It is very much obvious that how evidence is perished, altered and eliminated due to above mentioned reasons, that is why it is important for investigating officer to collect material as early as possible.²¹

1.5 Powers of Investigating Officer

Powers of investigating officer are mentioned in Rule 25.2 of Police Rules 1934.

Which are as under

An officer so making an investigation shall invariably issue an order in writing in Form 25.2(1) to any person summoned to attend such investigation and shall endorse on the copy of the order retained by the person so summoned the date and time of his arrival at, and the date and time of his departure from the place to which he is summoned. The duplicate of the order shall be attached to the case diary.

*(2) No avoidable trouble shall be given to any person from whom enquiries are made and no person shall be unnecessarily detained. The jurisdiction of which the offence was committed, Meanwhile, all possible lawful measures shall be taken to secure the arrest of the offender and the detection of the offence.*²²

Investigating officer is required to play impartial and neutral role and strive hard to unearth the true facts of the case. Investigating officer cannot investigate a case where he himself is party to case, because his investigation will be biased and it will be contrary to the principle of 'No one can be a judge in his own cause.' Investigation is the solitary right of Police. He is authorized to record statements of all those persons who are well acquainted with the facts of offence.

²⁰ Ivar A. Fashing, *The Making of an Expert Detective, Thinking and Deciding in Criminal Investigations* (Ph.D. Thesis, University of Gothenburg, 2016) 5.

²¹ Ibid.

²² Police Rules 1934, Rule 25.2

The basic object of investigation and recording of version is to acquire true facts with which concerned persons are acquainted.²³ Investigating officer has power to convert accused as a witness and if he does so than he has not contravened his authority.²⁴ The powers and privileges of an investigating officer are also provided in section 160 to 175 of the Code of Criminal Procedure, 1898.

1.6 Stages of Criminal Investigation

First stage is registration of F.I.R. (First Information Report). Practically registration of F.I.R. is not an easy task in Pakistan. Reason being the every SSP is bound to write his performance report that during his tenure how much crime occurred and does crime rate increased or decreased? Just to show that during his tenure crime rate is decreased, most of the time his subordinate refuse to lodge FIR on the pretext of certain technicalities. For instance, this a civil case and not a criminal case OR this is a non-cognizable offence, etc. The tool which initiate investigation is F.I.R. Public cannot get registered there F.I.R. Police avoid registration of F.I.R. in order to avoid the investigation process. They keep avoiding unless their palm is greased, political figure influenced, or court direct the police to lodge F.I.R.²⁵ Whenever an information regarding commission of cognizable offence is given to Station House Officer (S.H.O), he is duty bound under section 154 of the Criminal procedure code 1898²⁶ to record this information in writing

²³ Maqbool Ahmed v. Station House Officer, 1999 P. Cr. LJ 1198.

²⁴ Muhammad Saeed Ahmad v. Federation of Pakistan, 2015 P. Cr. L.J. 73.

²⁵ Imadad H. Sahito, "The Criminal Investigation in Pakistan: Trends and Reality," *Journal of Pakistan Vision* 10, no.2 (2009): 182.

²⁶ Section 154: "Information in cognizable cases: information relating to the, commission of a cognizable offence if given orally to an officer in-charge of a police station, shall reduce to writing by him or under his direction and then 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 in such form as the Provincial Government may prescribe in this behalf."

which is known as First Information Report (F.I.R). After lodging of F.I.R. investigation is commenced. S.H.O. himself or he depute a subordinate police officer to proceed towards the place of occurrence. Investigating officer is required to take certain steps in order to ensure recovery and arrest of offender if tangible evidence against accused is found. Chapter 5 of the Criminal Procedure Code, 1898 deals with arrest of the accused. Section 54 of Cr.P.C., provides four reasons, when a policeman can arrest a person without warrant.

1. If involved in Cognizable offence.
2. Rational complaint has been lodged against him.
3. Reliable information received that he is involved in commission of such offence.
4. Reasonable suspicion exists against him.

At the time of arrest, person will be informed about the guilt or reason of his detention. He will be entitled to consult with lawyer. He will be brought before the magistrate within twenty-four hours of arrest. Safeguard as to arrest and detention is provided in Article 10 of the Constitution of the Islamic Republic of Pakistan, 1973. If any dispute occurs regarding the jurisdiction of investigation. For instance, two officer of different police station believe that they both have jurisdiction in this homicide case. In such situation both police officers are required under 25.5 of Police Rule 1934²⁷ to carry out the investigation until the question of jurisdiction resolve.

²⁷ Rule 25.5: "Disputes as to jurisdiction - Should the officer who is thus summoned to the spot dispute the jurisdiction, both officers shall jointly carry on the investigation under the orders of the senior officer and neither shall leave until the question of jurisdiction has been settled and acknowledged. The case record shall be kept at the police station where the information was first received until the question of jurisdiction has been decided."

1.7 Prosecution

According to Black' Law Dictionary word 'Prosecution' means;

*A criminal action; a proceeding instituted and carried on by due course of law, before a competent tribunal, for the purpose of determining the guilt or innocence of a person charged with crime.*²⁸

It simply means to initiate a criminal proceeding against someone before the court of law. The Punjab Criminal Prosecution Service Act 2006 also deals with investigation. Its Section 10, deals with powers of prosecutor. Which states that Prosecutor General or District public prosecutor can refer to concerned authority to take disciplinary action against any public servant who is linked to investigation. Under section 10 sub clause 3(c)²⁹ they can call any document from law enforcement agency. According to Section 12 clause (c)³⁰ If IO remain fail to complete investigation within specified time then he must explicitly provide the details of delay to prosecutor. Prosecutor would analyze the report and give his remarks and direction which would be obligatory upon IO to comply with those directions within specified period of time. Mostly we examine that prosecution do not thoroughly analyze IO's report and do not take pain in checking their negligence and flaws which consequently cause irrevocable loss to complainant.

²⁸ Black's Law Dictionary, 4th Edition p. 1385.

²⁹ Section 10 of sub clause 3 [c] of Punjab Criminal Prosecution Service Act 2006: "Call for record or any other document within a specified time from a law enforcement agency and if necessary, from any other Government department or agency as may be necessary for the purposes of prosecution."

³⁰ Section 12 of sub clause [c] of Punjab Criminal Prosecution Service Act 2006: "If an investigation is not completed or cannot be completed within the time provided under the law, record reasons for the delay and inform the Prosecutor."

1.8 Theorem

Mr. A is under the charge of Mr. B's murder. Prosecution collects evidence, trial start and after 2 or 3 years of exhaustive proceedings Mr. A got acquittal due to insufficient evidence against him. Murder File of Mr. B closed, and no further investigation is made to recognize if it was not Mr. A then who actually murdered Mr. B. who was actual criminal and why the evidence against actual criminal cannot gathered? Under law it is duty of investigating officer to find out who has committed the offence. To recognize the true culprit and bring it before the court. All these reasons and outstanding issues are need to be addressed in order to;

- a. Ensure Human Rights Particularly Right to Justice.
- b. Protect Human Society.

Issue 1

Police Diary of Investigating officer for Sale: As per law, defense counsel cannot approach police diary but it is common practice to purchase police diary from Naib-Court by paying him only a few thousand rupees. Defense counsel reads the police diary and note what the deficiencies and negligence are done by investigating officer during the course of investigation. By reading these things, defense council ask questions to investigating officer during cross examination and at that time I.O could not answer properly. This non-answering, create doubt in the mind of Justice and also create doubt on the veracity of evidence. This diary illegally helps the counsel to quash the evidence easily.

Issue 2

Court File for Sale: Court file is a collection of courts record regarding a specific case. It includes the documents of prosecution, defense and police. As well as order sheet. After hearing the case, court file is sent to record room which is under the custody of a person called "*Ahlmad*". In Pakistan it is a practice that clerk of defense council approaches *Ahlmad*, give him bribe and take the court file for photocopy. Defense council read all the documents of his opponent, remarks and points of Judge. After reading all these documents defense counsel prepare rebuttal. Hence these miscarriages also led towards injustice.

1.9 Negligent Attitude of Investigating Officer in Cross Examination

It is duty of investigating officer (IO) to collect all evidence. No matter it is in the form of Fingerprint, DNA, Weapon, Blood, CCTV video, Mobile Record, Witnesses testimony and Documentary Evidences. It is included in his duty to identify and search out the offender. He is bound to abide by all rules during his duty. Mostly I.O commits negligence sometime deliberately and sometime unintentionally. Under Rule 25.53 of Police Rules³¹ I.O is under obligation to record all his official proceedings in police diary

³¹ Rule 25.53. "Case diaries: (1) Section 172(i), Code of Criminal Procedure requires that a case diary shall be maintained and submitted daily during an investigation by the investigating officer. In such diary shall be recorded, concisely and clearly, the steps taken by the police, the circumstances ascertained through the investigation and the other information required by Section 172(i), Code of Criminal Procedure.

(2) Case diaries shall be as brief as possible; shall not be swollen with lengthy explanations and theories, and shall be written either in English or in simple Urdu. Only such incidents of the investigation shall be included as have a bearing on the case.

(3) Detailed lists of stolen property, or of property seized in the course of a search, shall be entered in the first case diary submitted after the facts relating to such property were reported to, or discovered by, the investigating officer.

(4) The fact that copies of the record prepared under the provisions of section 165 or 166, Code of Criminal Procedure, have been sent to the nearest Magistrate empowered to take cognizance of the offence shall also be noted."

on daily basis. He is bound to collect enough evidence and produce before the court and give his statement as a witness. That I have seen this, I done this work at that time and all other details of investigation. During Cross-Examination, defense council ask the questions to trap IO;

Defense Counsel: What is the source of information about the incident?

I.O: Phone call.

Defense Counsel: Whatsoever call you receive on your wireless, you record it on Log Book, so did you recorded the particulars of that specific call on Log book?

I.O: No.

Defense Council: Did anyone/anything stopped you from recording the particulars of that call concerned?

I.O: No.

Defense: Were the people of locality gathered on the place of occurrence?

I.O: Yes.

Defense: Did you joined any person as a witness?

I.O: No, because people were not willing.

Defense: Under section 160 of Cr.P.C. 1898,³² do you have power to record the statement or require the attendance of any person who is well acquainted with the occurrence?

³² Section 160 of Cr.P.C: "Police-officer's power to require attendance of witnesses: Any police-officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person, being within the limits of his own or any adjoining station who, from, the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required."

I.O: Yes.

Defense: Did you exercised your power when people of locality were not willing to become witness?

I.O: No.

Defense: Did someone stopped you to exercise that power?

I.O: No.

Defense: If no one stopped you then it means that omission was willful and based on *malafide* intent.

Above mentioned negligence on the part of IO cause loss to the prosecution. At the time of cross examination, we see no police officer is present to record all the willful omissions of his subordinate (I.O). To later ask, why you have not performed duties? No Police officer take disciplinary action against I.O for not doing his duty properly and giving undue benefits to the parties who paid the bribe money. There is no one, who is duty bound to ask I.O, why you have not gathered evidence properly? Why have you not given statements properly? Why have you done those willful omissions which can create doubt in the mind of judge and can give benefit to a criminal. He himself do not realize that the relatives of victim can suffer again because of his willful omissions. At the time of recording in-chief and cross examination of IO, no police officer remain present is to later on ask I.O that why have you spoiled the evidence?

Judges also not ask the IO that why have you not done your duty? Do you know your omission will give benefit to offender not to innocent? Do you know because of your omission it will be hard and difficult for me to reach at just conclusion? Do you know you

have committed guilt and now you will bear the consequences? Unfortunately, courts do not bother to do this. Practically, what is happening right now is, during hearing of case, Judges sit on their luxurious seats and just hear, no matter someone is asking leading questions, no matter I.O has done his duty improperly.

CHAPTER 2: FLAWS IN POLICE INVESTIGATION & JUDICIARY POLICE RELATIONSHIP

2.1: Forensic Science and Chain of Evidence Custody

2.1.1 Forensic:

“Forensic means the application of scientific knowledge to legal problems.”³³ It is also an opinion that “One can create witnesses, but one cannot fool the men of science.”³⁴ It means people can lie but documents cannot. As science or documents are non-living things and they are free from biasness.

2.1.2 Chain of Custody

Joseph Prahlow is an expert in Forensic and pathology. He defines chain of custody in one of his famous book in the following words;

Evidence of whatever type must be carefully and properly documented and evaluated. The nature of certain types of evidence cannot all be collected and preserved indefinitely. An example is a human corpse that is evaluated at autopsy. In such instances, proper documentation is essential in order to re-evaluate the evidence (the body) at a later date. In the case of an autopsy, such documentation is performed via diagrams, photographs, and an autopsy report. There are many other types of evidence that also require collection and preservation: for example, trace evidence such as hairs or fibers discovered at a crime scene. Some forms of evidence are actually consumed or destroyed during evaluation (for example, blood samples being tested for drugs). Maintaining a proper “chain of custody” involves producing and maintaining written documentation which accompanies the evidence and provides an uninterrupted timeline showing the secure location of the evidence from the time that it was discovered until the present time. Any transfer of evidence from one person or secure location

³³ Joseph A. Prahlow, *Forensic pathology for police, death investigators, attorneys, and forensic scientists* (Springer Science & Business Media, 2010), p. 17.

³⁴ Karloy Eotvos, *Closing Arguments*, Nyiregyhaza, July 30, 1883.

*to another must be documented. Maintaining this chain of custody helps to ensure that the evidence has not been contaminated or compromised in any way.*³⁵

He says that evidence should be carefully preserved and duly brought on record. No matter what is the nature or type of evidence. He says many evidence cannot be properly preserved for a long time, that is why their immediate evaluation should be documented. Photograph, video and diagram should be made regarding perishable evidence. Not only preservation of evidence is essential but its chain of custody also have great significance which reveals the proper and careful timeline and history of custody. Proper chain of custody is much important for authenticity of evidence.

2.2 Flaws in Homicide Investigation

It is common perception that several police personnel are involved in corrupt practices.³⁶ Murder is prevalent and citizens are prey of fatal murders. There is lack of modern forensic facilities in Pakistan. Once Asian Bank for Development granted Forty Million Dollar to Sindh police for upgradation of forensic science laboratories in Karachi and also for the installation of two laboratories in Larkana and Hyderabad but no progress was made.³⁷ Whenever a First Information Report (F.I.R.) of murder is lodged then police immediately rush towards accused and arrest it. It is clearly mentioned in judgments of supreme court that Investigation of case does not mean that after lodging of F.I.R the accused must be arrested. Investigating officer is not supposed to arrest the accused after lodging of F.I.R. Accused should be arrested after collecting tangible evidence against the

³⁵ Joseph A. Prahlow, *Forensic pathology for police, death investigators, attorneys, and forensic scientists* (Springer Science & Business Media, 2010), p. 18.

³⁶ Hassan Abbas, "Reforming Pakistan's Police and Law Enforcement Infrastructure: Is it too flawed to fix?" *United States Institute of Peace, Special Report number 266*, February 2011.

³⁷ *Ibid.*

accused.³⁸ According to a survey in a major city of Pakistan, 40% of reported crimes were registered and 60% complaints were turned away. From 40% of registered crimes hardly half of the cases were worked out and presented in court for trial. Among these 40% registered crimes, half of the accused were acquitted because of faulty investigation.³⁹

*A lack of attention to developing modern investigation and interrogation techniques is another serious issue... Most police training schools are in a deplorable state due to a paucity of funds. The instructors are often officials who were removed from field duties for political reasons, and it is hardly surprising that the performance of a demoralized and sidelined faculty leaves much to be desired.*⁴⁰

IO is under obligation to collect all possible evidence including the forensic evidence like DNA, Fingerprints etc. If IO do not collect such important evidence, then this omission goes against the prosecution and benefit is given to accused.⁴¹ For instance, in a murder case accused was acquitted just because investigating agency did not secured DNA evidence.

*Lapse in conducting DNA tests was committed by investigating agencies, but the burden of the consequential injustice had to be borne by the victims. This is because the courts in the prevalent adversarial system of proof and evidence do not feel obliged to extend their jurisdiction for the procurement of missing pieces of evidence such as DNA evidence.*⁴²

Hence IO should be vigilant and dutiful otherwise his omission would be fatal for the prosecution as well as for the heirs of victims. Heirs of victim should not be left unaided because of IO's carelessness and inefficiency. Judges must endeavor in order to recover

³⁸ Umer Hayat v. Inspector General of Police, Islamabad, 2015 P. Cr. L. J. 1551.

³⁹ M. A. K. Chaudhry, *Policing in Pakistan* (Lahore: Vanguard Books (Pvt) Ltd. 1997) p. 146.

⁴⁰ Hassan Abbas, "Reforming Pakistan's Police and Law Enforcement Infrastructure: Is it too flawed to fix?" *United States Institute of Peace, Special Report number 266*, February 2011.

⁴¹ Michael Briody, "The Effects of DNA Evidence on Homicide Cases in Court," *Australian & New Zealand Journal of Criminology*, 37 (2): 2004, p. 12.

⁴² Shahbaz A. Cheema, "DNA Evidence in Pakistani Courts: An Analysis," *LUMS Law Journal*, 3(1): 2016, p. 12-13.

missing portion of the evidence for the best interest of justice. It is said that collection of evidence is not the ambit of judiciary. But at the same time we see that, Supreme Court decided in one of its judgement that judges should not sit like a silent spectator⁴³ but take steps to ensure justice. It is a well know principle that: Not only must justice be done; it must also be seen to be done.

2.3 Eye Witnesses Un-Availability: An Outstanding Issue

Whenever murder occurs, and trial starts, it becomes necessary for the prosecution to produce their evidence. Eye witnesses are the primary evidence and they are given very much importance in deciding the fate of the case. Discharging burden of proof without primary evidence is much difficult. Probability of acquittal increases when ocular account is not available in murder case. To fulfill this legal requirement parties tends towards producing fake eye witnesses because availability of eye witness in every murder case is not possible. At cross examination stage presence of witnesses at the place of occurrence is challenged and in most of the cases their veracity is vitiated. Analyzing this phenomenon, we reach at the conclusion that court must give due weight to forensic evidence because in every murder, presence of eye witnesses is not possible.

2.4 Adoption of Modern Techniques by Offenders

Offenders are getting equipped with skills that is why skilled investigating officers are required to counter this menace. Skilled offenders clean the incriminating material from cell-phones and crime scene.⁴⁴ The stance of accused proves right and strong when investigation is not conducted with due diligence and scientific modes are not applied to

⁴³ Naseem Akhtar v. State, 2010 PLD 938 SC.

⁴⁴ Ivar A. Fashing, *The Making of an Expert Detective, Thinking and Deciding in Criminal Investigations* (Ph.D Thesis, University of Gothenburg, 2016) 4.

collect evidence. Faulty assessment of person cause injustice. It is job of investigating officer to solve the crime and provide the evidence for the conviction of killer. Most of the interrogations are deceptive. Accusations that accused is lying, interruptions, repeated questions (until the interrogating officer likes the answer) disrupt the quality investigation. Qualification of forensic examiner is also necessary. Errors in investigation leave perpetrators free to commit more crimes that is why interrogation reforms are indispensable. ⁴⁵

2.5 Classification of Relationship between Victim and Perpetrator in Homicide

Relationship between victim and perpetrator can be classified into three kinds:

1. *Homicide related to Interpersonal conflicts*
2. *Homicide related to other Criminal activities*
3. *Homicide related to Socio-political agendas* ⁴⁶

Homicide related to Interpersonal Conflicts: This type is related to family relationships. This is related to the nature of co-existing with others. Property dispute and revenge type murder are also the part of this classification.

Homicide related to Criminal Activities: The basic purpose is to obtain illegal profit, for removing rivals and state representatives, to show off power and control of some locality of territory. These are mostly done by organized groups of criminals.

⁴⁵ Deborah Davis, "A Damning cascade of Investigative Errors: Flaws in Homicide Investigation in the USA," *San Francisco Law Research Paper*, 2016.

⁴⁶ United Nations Office on Drugs and Crime, Research and Trend Analysis Branch, *Global Study on Homicide 2013*, Vienna, United Nations Publications.

TH-19622

Homicide related to Socio Political Agendas

Object of such type of murders are to obtain social or political gains.

2.6 Factors of Homicide

It is important to know the factors which leads a human being to commit murder.

It is necessary to know the factors of murder in order to curb this barbarity. Three basic factor are as following:

- Firearm as most prevalent killing Mechanism
- Illicit Drugs and Alcohol
- Homicide by Sharp Objects

Fire Arm as Most Prevalent Killing Mechanism

In Asia, means of killing includes blunt objects, poisoning, strangulations and physical assault.⁴⁷ Gun availability at home is a mean towards murder. Easy availability of weapon at home is curse, but the illegal trade of weapon has also made this evil more worst. Illicit trade has made easier to procure weapon.

Alcohol and Illicit Drugs

Use of intoxicant have numerous consequences. It increases the risk of becoming perpetrator and victim. Its usage cause change in biological functioning that cause serious change in behavior. It stimulates the dependent individuals, economic compulsive and addicted persons to commit crimes in order to purchase alcohol or illicit drugs.

⁴⁷ WHO International Statistical Classification of Diseases and Related Health Problems 10th Revision (ICD-10).

Homicide by Sharp Edge Objects

Sharp edge objects are also used to commit murder. These instruments can easily be accessed and concealed. In some countries sharp edge objects are excessively used for murder. For instance, in Australia, victims murdered by stab wounds are higher than the victims killed by firearm weapons. Usage of sharp edge objects for murder demands control mechanism as we see in different countries. For instance, in United Kingdom, two to four-year imprisonment is given to a person who is carrying a knife without good/sufficient reason. Child below the age of 16 years are not allowed to buy a knife and now in latest amendment this age limitation is increased from 16 to 18 years in UK.⁴⁸ At national level restricting Firearm and Knife through legislation proved effective in reducing the number of homicide.⁴⁹ Pakistan can follow the UK model in this regard.

2.7 Homicide at International Spectrum

In the year of 2012, 437,000 (approximately half million) people were murdered intentionally around the globe. 36% of total killing occurred in America, 31% in continent of Africa, 28% in Asia, 5% in Europe and 0.3% in Oceania.⁵⁰ According to Global report 8 out of every 10 victim of homicide in world are males.⁵¹ At international level 43 perpetrators of murder are convicted out of every 100 victims of murder. Polarization at regional level show that, 48 convictions per 100 victim in Asia and Europe has the highest conviction rate with 81 per 100 victims.⁵²

⁴⁸ Government of the United Kingdom, *Violent Crime Reduction Act 2006*.

⁴⁹ Ibid.

⁵⁰ United Nations Office on Drugs and Crime, Research and Trend Analysis Branch, *Global Study on Homicide 2013*, Vienna, United Nations Publications, p. 11.

⁵¹ Ibid.

⁵² United Nations Office on Drugs and Crime, Research and Trend Analysis Branch, *Global Study on Homicide 2013*, Vienna, United Nations Publications.

2.8 Psychological Context of Human Barbarity with Reference to Homicide

Psychology is the science which deals with mind and behavior of individual and society. According to psychology, Desires control organs and not vice versa. It is the fact that human being is oppressed on the earth although he is the crown of creation. Man is victimized by man and not by other creation. Why is this barbarity emerged in human being? According to Rumi:

"Last night the Shaikh went all about the city, lamp in hand, crying. I am weary of beast and devil; a true human-self is my desire."⁵³

This is a well-recognized principle that barbarity of human being can be eliminated by inner reformation.⁵⁴

When man understands the fact that his respect and superiority are due to divinity in his inner-self, then he sees the same divinity in other humans and holds them in high esteem because of it. The same can be explained through an analogy. If a room where I am sitting is showered with petals, the same are for me or the room? Similarly, if a room where I am sitting is being cursed, the same is for me or the room? Now we may apply this worldly example to the spiritual world of man's inner-self. If a man is targeted due to religious hatred or his blood is shed for fulfillment of personal agenda, is it desecration of his flesh or of divinity inside his spirit?⁵⁵

It means mankind is the creation of The One, Allah Almighty. As the Rumi says in *Masnavi*, that Lamps are different but the light inside is same.⁵⁶ We must respect each other and always have patience and tolerance. The love and respect for humanity can help us in living a positive and peaceful life and minimizing the criminal wrongs.

⁵³ Jalal Al-Din Rumi, *Masnavi Mawlana Rumi* (Kazi Publications, 1996).

⁵⁴ Sultan A. Ali, *How to Curb Human Barbarity?* (Lahore: Al-Arifeen Publications, 2014), p.1.

⁵⁵ *Ibid.*, p.4.

⁵⁶ Jalal Al-Din Rumi, *Masnavi Mawlana Rumi* (Kazi Publications, 1996).

2.9 Guiding Principle of Holy Quran

*O ye who believe! Retaliation is prescribed for you in the matter of the murdered: the freeman for the freeman, and the slave for the slave, and the female for the female. And for him who is forgiven somewhat by his (injured) brother, prosecution according to usage and payment unto him in kindness. This is an alleviation and a mercy from your Lord. He who transgresseth after this will have a painful doom.*⁵⁷

This is a best and golden rule for eliminating murder on earth. This principle has the beauty of equality and forgiveness. Holy Quran prescribe retaliation because retaliation has deterrence power. Allah Almighty ensured the protection of mankind by enunciating punishments that have the power of deterrence. Allah Almighty has provided the option of forgiveness to the heirs of the victim. This forgiveness can be for a consideration or without consideration. This Quranic principle gives a rational and reality based mechanism to curb human barbarity.

2.10 Role of Judiciary in Ensuring Evidence

Evidence is the backbone of every case in order to prove the facts and assist the judge to reach at the just decision. Without Evidence Justice cannot be ensured and without justice, there is no question of Human Rights. Does production of evidence come within the ambit of Judiciary? Does the judiciary have responsibility to take certain measures to ensure evidence? The answer is quite simple, according to Qanun-e-Shahadat Order 1984, Judge can attach the salary of Police witness and can take disciplinary actions to ensure evidence. Why judges do that? Because without justice, society will lead towards anarchy and in the states of anarchy the violation of human rights occurs on high density, thus to avoid the violations of human rights and to ensure the peace in society the availability of evidence is necessary. It is clear crystal in Pakistani law that judge cannot be a silent

⁵⁷ Al-Quran 2:178.

spectator, where ever he feels justice is not prevailing he will set aside the mere technicalities and take action to ensure justice. In a judgement, Supreme Court decided that, Court should not act only in a mechanical manner and should not sit as silent spectator.⁵⁸

2.11 Power of Judiciary to Question Police

Judiciary has powers to call upon and question the police officials i.e., Call upon Investigating officer in order to redress the miseries of a common man. Order passed by the judges or the magistrates in exercise of powers under section 22-A and 22-B of Cr.P.C. 1898, in conformity with the direction given by the High court would have the nature of plenary powers of the High Court and police is duty bound to obey the order passed by the judges. Under section 22-A and 22-B of Cr.P.C. 1898 judges have the power to direct the police personnel to do investigation properly. It is evident that Investigation means a process about “collection of Evidence”. Hence judges can direct police officials to properly collect evidence. Most of the time we see that IO spoils the evidence only because it receives direction from high political influential persons or because they receive heavy money from accused party as bribe.⁵⁹

2.12 Mandate of Judiciary and Legislature

If Judiciary and legislature start taking steps for the availability of evidence, then will it be considered the violation of “separation of power”? Have these two organs the mandate or jurisdiction to take such steps? The answer is quite simple that it is the mandate

⁵⁸ Naseem Akhtar v. State, 2010 PLD 938 SC.

⁵⁹ Rana Haider, “5 police officials held for taking bribes,” *Pakistan Today*, <https://www.pakistantoday.com.pk/2017/08/16/5-police-officials-held-for-taking-bribes/> (accessed 17 May 2018).

of judiciary to do justice and in order to do justice whatever is required within the ambit of law, judiciary can do. When court found that investigation (collection of evidence) was defective, it could not sit idle and had to exercise all enabling provisions under the law including Section 540 of the Criminal Procedure Code 1898 to discern the truth. Under section 540 of Cr.P.C. court without receiving any formal application from prosecution or accused, could “summon any person as witness or examine any person in attendance as a witness or recall and re-examine any person already examined.”⁶⁰ Under section 540 of Cr.P.C court have power to summon witness, Doctor/Medical Officer, Handwriting Expert, Public Analyst, Police Officers, Expert from forensic science laboratory, Magistrate and Fire Arm expert for evidence. But in practical, courts do not call such experts in most of the murder cases. *Secondly*, it is duty of legislature to enact laws for the welfare and betterment of people. Ensuring justice is verily linked with the welfare of people that is why legislature also have valid reason to take effective measures.

2.13 Collection of Evidence vs. Bringing Evidence in Court

Production of evidence is the business of prosecution and law enforcing agencies. There is dire need to draw a distinction line between collection of evidence and bringing of evidence in court. Collection of evidence comes solely within the ambit of police but bringing/calling it into court is the business of both systems. Collection of evidence is not the business of Judiciary and Legislature, but judiciary and legislature have ample powers to take steps which can ensure the availability of evidence so that justice can be ensured. When justice will prevail then everyone will enjoy their human rights. It is not possible for

⁶⁰ Nawabzada Shah Zain Bugti v. State, PLD 2013 Supreme Court 160.

Pakistani' courts to dispense justice in homicide cases by sitting aloof in investigation process irrespective of knowing the fact that important portion of evidence is missing.⁶¹

⁶¹ Shahbaz A. Cheema, "DNA Evidence in Pakistani Courts: An Analysis," *LUMS Law Journal*, 3(1): 2016, p. 15.

CHAPTER 3: ANALYSIS OF INVESTIGATION STATUTES

3.1 Statutes Dealing with Investigation

Chapter XXV of Police Rules 1934⁶² provide a detailed chapter on investigation, enshrining the guiding principles for conducting investigation. Sub clause 2 of Rule 25.1 of Police Rules 1934⁶³ states that police should proceed towards spot. Police will proceed towards spot is written in very generic sense. Who, When, Where, Why, Why and What will be done is totally missing as well as procedure is lacking in worst format. This is the problem which led a police officer to conduct the investigation as per his own whims and thoughts. Law states that police can conduct re-investigation if further material relevant to case is required.⁶⁴ Section 160, 161 and 162 of the Criminal Procedure Code 1898 contain narration that is “any person”. It simply means all those persons who are well acquainted with the facts of the crime. This term also includes accused as well. These sections confer power upon investigating officer to examine all these persons and record their statements in order to ascertain the truth.⁶⁵

3.1.1 Explanation of Section 160 of the Cr.P.C. 1898

This section empowers police officer to ensure attendance of witnesses. He can order in writing to call on the appearance of witness.

⁶² Syed I. Hussain, *Police Rules 1934* (Lahore: Imran Law Book House, 2016), p. 1055.

⁶³ Rule 25.1 (2): “He is also empowered under Section 157(1), Criminal procedure Code, to depute a subordinate to proceed to the spot to investigate the facts and circumstances of the case, and if necessary, to take measures for the discovery and arrest of the offenders. Any police officer may be so deputed under this section, but where a police officer under the rank of assistant sub-inspector is deputed the investigation shall invariably be taken up and completed by the officer in charge of the police station or an assistant sub-inspector at the first opportunity.”

⁶⁴ Syed I. Hussain, *Police Rules 1934* (Lahore: Imran Law Book House, 2016), p. 1056.

⁶⁵ AIR 1932 Mad. 391 ref. *Maqbool Ahmed v. S.H.O Kasur*, 1999 P. Cr. LJ 1198.

3.1.2 Explanation of Section 161 of the Cr.P.C. 1898

This section confers power on police officer to examine any person who is well acquainted with the facts of the case and such person is bound to answer all questions asked in this regard. Police officer will record into writing his statement.

3.1.3 Explanation of Section 162 of the Cr.P.C. 1898

Above said section narrates that, statement recorded under section 161 do not contains the signature or thumb impression of deponent just because it does not have evidentiary value. Recording of such statement serve two purposes:

- 1: The preparation of cross examination by the Defence side
- 2: Confrontation with witness' new statement at the trial stage.

3.2 Premature Presumption of Guilt

Rule 25.2 of police rules 1934 states that investigating officer should not presume guilt on any party at premature stage of investigation. IO is required to draw its opinion based on evidence and not on mere suspicion. According to a judgment if IO is party to the case, then he may not be able to perform his duty as demanded by him under police rules, 1934.⁶⁶ Most of the time IO perform his duty in bona fide perspective but due to not following the procedure, there intention is challenged and consequently benefit goes to accused and sufferings of victim remains unaddressed. For instance, In Muhammad Saddique v. State⁶⁷ case, S.H.O was chasing accused and meanwhile he travelled to the jurisdiction of another police station, finally he caught accused but failed to inform the concerned S.H.O of that jurisdiction. Later on, at trial stages it was decided that S.H.O had

⁶⁶ Muhammad Saddique v. State, 2011 YLR 2261.

⁶⁷ Ibid.,

violated the procedure given in the criminal procedure code of 1898 and Police Rules of 1934. Therefore, it is decided that court should be careful because in above mentioned circumstances capital punishment cannot be imposed hence proceeding conducted by court are illegal and impugned judgment is set aside.

3.3 Technical Assistance

Rule 25.14 of Police Rules 1934 ⁶⁸ is also vague in the sense that acquisition of technical assistance is provided but the question is what type of technical assistance an IO will take and the more important question is that what type of technical facilities, a police officer can approach. Do the institutions are available? Whether such institutions are upgraded and efficient enough that each IO of homicide case can take their assistance? Such questions related to investigation are unanswered in Rule 25.14.

3.4 Opinion of Arsenal & Forensic Officials

Homicide is one of the heinous and major offence in the list of crimes. Taking expert opinion of Arsenal official and forensic scientist is very much important in each investigation in order to unearth the truth. Although these experts are not sufficient for entire homicide investigation. Opinion of other experts are also required. Rule 25.15 ⁶⁹ says that expert assistance should be confined to cases of major importance only. Here question arises, who will decide that such case is of major importance? What is the scale to judge

⁶⁸ Rule 25.14. "Technical assistance in investigation. - (1) Investigating officers are expected to take steps to secure expert technical assistance and advice, whenever such appears desirable in the course of an investigation for purposes of evidence or for demonstration in court....."

⁶⁹ 25.15. "Hand-writing. - (1) The above rules do not apply to references to the Finger Print Bureau and the Chemical Examiner to the Punjab Government, to whom, under the rules applicable, Superintendents of Police are required to make references direct. The Criminal Investigation Department is, however, in direct contract with both these technical officers and investigating officers should enlist its co-operation when any specifically intricate work is required of them...."

the importance of case? Therefore, rule should be in clear form, i.e., expert evidence could be taken in each crime wherever it is necessary.

3.5 Recoding Dying Declaration

Rule 25.21 of Police Rules, 1934⁷⁰ states that dying declaration should be made before magistrate. Here question arises, Will the person on death bed be taken out of homes and produced before the magistrate? Is this a rational or feasible procedure for a person who is dying? Does this law mean that relatives or dying person or the police will call on the personal number of magistrate that certain injured person is dying that's why you please come so that he could record his dying declaration before you? The line is written in police rules of 25.21 without any rationale and proper procedure of this assignment. Who would call the magistrate? The heirs of victim, police or someone else? This rule states that if magistrate is not available then Medical officer, if medical officer is not available then such statement will be recorded before Gazetted police officer. Procedure of recording dying declaration is made much complex. In this era of technology, this technicality should be made easy in the best interest of justice. His statement can be recorded through digital means.

⁷⁰ 25.21. "Dying declarations. -(1) A dying declaration shall, whenever possible, be recorded by a Magistrate.

(2) The person making the declaration shall, if possible be examined by a medical officer with a view to ascertaining that he is sufficiently in possession of his reason to make a lucid statement.

(3) If no magistrate can be obtained, the declaration shall, when a Gazetted police officer is not present, be recorded in the presence of two or more reliable witnesses unconnected with the police department and with the parties concerned in the case.

(4) If no such witnesses can be obtained without risk of the injured person dying before his statement can be recorded, it shall be recorded in the presence of two or more police officers.

(5) A dying declaration made to a police officer should, under Section 162, Code of Criminal Procedure, be signed by the person making it."

3.6 Production of Documents

Sub clause (3) of Rule 25.23 ⁷¹ confer sufficient right on Gazetted officer to take disciplinary actions against IO who carry out searches under section 165 without necessary reasons. The gist of Rule 25.24 ⁷² states that records of a post office, production of documents or thing should be provided to investigating officer if case pending is relevant. Rule regarding production of documents or thing in the custody of Postal or Telegraph department is provided in section 95 of Cr.P.C. of 1898.

This law deals with the production of post and telegraph instruments but with modern development, modes of communication are shifted from post to electronic means i.e., Email, SMS, Phone call, Facebook, WhatsApp, Twitter and other social media modes. This law does not facilitate Investigating officer to get the data of the person concerned from social media companies. Major problem occurred in this process are as following:

- I. Are the Investigating officers well acquainted with modern technology in order to understand the technicalities of communication modes?
- II. Is the IO as much able to retrieve the data from electronic gadgets of the accused persons?
- III. Had the police department contract with social media companies in order to get personal data of any accused person?

⁷¹ "(3) Gazetted officers supervising investigations and inspecting officers shall take disciplinary action against investigating officers who carry out searches under Section 165, Code of Criminal Procedure, without sufficient justification."

⁷² Rule 25.24. "Records in custody of the post office. - The law regarding the production of documents or things in the custody of the Postal or Telegraph Department is contained in Section 95, Code of Criminal Procedure....."

3.7 Foot Prints

Rule 25.26 of Police Rules 1934⁷³ deals with footprints. Footprints are also very important evidence in order to recognize criminals. But this rule prescribes a condition that; such method will be utilized in cases of notorious criminals. This condition is quite ambiguous and unnecessary because this method should be observed in each criminal case. Suffering from minor crimes cannot be negated just because of little more work. At the same time this practice is not much expensive that is why it cannot be limited with cases of notorious criminals. Secondly, what is the scale for measuring the notoriousness of a criminal? If there is no prescribed and settled scale than how the question of notoriousness of criminals can be evaluated? This evaluation cannot be left on the sole discretion of police hence proper detail and procedure is required regarding this principle.

3.8 Pardon and Confession

Rule 25.29⁷⁴ confer certain duties on IO that he must be aware of pardon and confession procedure. Most of the times IO made irregularities and omissions in recording these very important statements, which are necessary for the safe administration of justice. In the investigation of homicide cases, most of the times approver plays important role in revealing true information and evidence about murder. Psychologically each criminal tends

⁷³ 25.26. "Importance of foot-prints and track evidence. - (1) Footprints are of the first importance in the investigation of crime. For this reason, all officers-in-charge of police stations shall instruct their subordinates as well as all lambardars and chaukidars that, when any crime occurs all footprints and other marks existing on the scene of the crime should be carefully preserved and a watch set to see that as few persons as possible are permitted to visit the scene of the crime....."

⁷⁴ Rule 25.29 of Police Rules 1934: "Confessing accused and approvers. -(1) The Criminal Procedure Code supplemented by the High Court instructions quoted in Appendix 25.27 prescribe a number of precautions which are intended to give to a court conducting a trial the maximum assurance that a confessing accused has not been subjected to such pressure or inducements as to invalidate this evidence under Section 24, Indian Evidence Act. All police officers, who exercise any authority in connection with investigations, are required to have a thorough understanding of these provisions. The departmental instructions here given merely supplement and in no sense replace them...."

towards pardon and ransom that is why IO must be well acquainted with that particular procedure. He must know that under section 21 of Act II of 1900 or Section 401 of Cr.P.C he can make application for this very purpose to the District Magistrate.

3.9 Jurisdiction

Rule 25.31 deals with Jurisdictional Principle. Whenever a police officer receives information about the sudden or unnatural death of any person. He shall start investigation in the way provided under section 174 of Cr.P.C. He should not stop himself from initiating the investigation just because of this technicality that he is not sure whether that dead body is within the jurisdiction of his police station or not.

3.10 Duties Regarding Place of Occurrence

Rule 25.33 of Police Rules 1934 gives details of those duties which IO must perform at crime scene. It is written in Sub clause (1) that he shall prevent the destruction of evidence relating to the cause of death. Here is the question, how an IO will prevent the destruction of evidence? What would be the procedure? All these things are not clarified and an open ended statement is given in this rule. All things cannot be left mere on the reasoning of IO, who is not well qualified and equipped with modern and forensic knowledge.

Sub Clause (2) states that he would endeavor to save the footprints and prevent people to gather around the dead body. What instruments IO would take along with him at the time of leaving police station and moving towards crime scene? How, who and till how long, the crime scene will be prevented form the mingling of people? Such information is not provided.

Sub Clause (3) states that, till the completion of investigation, unnecessary access will not be given to the body. Problem is how long heirs will be prevented from the burial of deceases and how long police will take the body in custody?

Sub Clause (4) states that he just covers up the footprints? Footprints are very necessary in order to identify the accused. But here is a question, Do the all investigating officer are familiar with the procedure to take footprints on safe substance? How they will be preserved from mud and how from dust and how from concrete road (due to ink/charcoal/other liquid footprints on hard substance can be made)? What technology he will use? Procedure about all these necessary steps are overlooked in the main chapter of Investigation of Police Rules, 1934.

Sub Clause (5) deals with site plan. Site plan has very much importance in homicide cases but the point to ponder is that, does every IO is well versant in drawing? Does every IO know what necessary particulars he must draw in the sketch of death scene? No proper rules are prescribed. This lacking is causing havoc at trail stages when material contradiction arose between scaled and un-scaled site plan.

Sub Clause (6) states that if surgeon or other medical officer are not available than IO himself note all abnormal appearances on body. Here is the Question, docs every IO is well acquainted with medical knowledge to note down the exact level of injuries? Does IO know the difference between homicidal and suicidal injuries? If answer is no, then murder investigation would seriously suffer due to insufficient knowledge of the IO.

3.11 Case Diary

Rule 25.53 of Police Rules 1934, is about the case diary. Case diaries are written on daily basis, including the all steps taken by police regarding investigation. Every IO is required to write the case diary on daily basis.

3.12 Investigation Bag

Rule 25.58 of Police Rules 1934, give brief account of bag given to investigating officer. This bag contains instrument necessary for conducting and preserving the evidence. The items of these bag are necessary to be revised and updated with modern devices as well. This must include:

- Digital Camera with extra flash memory card
- Crime Scene barricade tape
- Directional marker/Compass
- Evidence Seal
- Gloves/masks/hair covering
- Body Fluid Collection Kit
- First Aid Kit
- Magnifying lass
- Chalk/Spray Paint/Permanent Markers
- Sketch paper
- Shoe print lifting equipment
- Notebook
- Thermometer
- Waterless hand wash

- Water
- Dummy

3.13 Police Order 2002 & Criminal Justice Co-ordination Committee

*Article 14 of Police Order 2002: "Appointment of experts. – (1) The Government may, on recommendation of the appropriate Public Service Commission, appoint one or more experts to assist the Provincial Police Officer and Capital City Police Officer or City Police Officer."*⁷⁵ Expert opinion is helpful in reaching at right conclusion but in majority of murder cases police do not appoint expert hence this in-advertency defeats the justice. According to the chapter XI of Police Order 2002, a Criminal Justice Co-ordination Committee (CJCC) will be established in every district. This commission will be comprised of following members;

- Head of Investigation
- Head of District Police
- District and Session Judge
- District Superintendent Jail
- District Parole officer
- District Probation Officer
- District Public Prosecutor

Article 111 of Police Order defines functions of Criminal Justice Coordination Committee as following;

(a) keep under review the operation of the criminal justice system and work towards the improvement of the system as a whole;

⁷⁵ Article 14 of Police Order 2002.

- (b) promote understanding, co-operation and coordination in the administration of the criminal justice system;*
- (c) exchange information and give advance notice of local developments, which may affect other parts of the system;*
- (d) formulate co-ordinate priorities and plans to give effect to locally agreed policies;*
- (e) raise relevant issues with the appropriate authorities;*
- (f) promote the spread of good practices; and*
- (g) review the implementation of any decisions taken by the Criminal Justice Coordination Committee.⁷⁶*

This section also imposed duty on this commission that, meeting of the Criminal Justice Coordination Committee shall be held at least once a month. All such functions are necessary for the betterment of investigation but this commission is not functional and it can only be found on papers.

3.14 Preventing Crime Scene Contamination

Whenever the report of homicide is conveyed to police station the first and most important step is to proceed towards the spot and prevent crime scene contamination. Contamination means something new is added in crime scene which was not present earlier. Most contamination comes with public, who come for examining the crime scene. IO should immediately seize the crime spot. Regrettably, this important rule of Police Rules which regulate these things is also an open ended statement. It is duty of investigating officer to find and preserve evidence. Contamination is serious problem; it ruins the evidence and jeopardize the criminal case. Head must be cover at the time of inspection, so that dropping of hair could be avoided. Access should be made limited to the scene. From crime scene we can gather, finger print, foot print and DNA as well. It is also required that after touching one thing gloves should be changed because first might have DNA and

⁷⁶ Article 111 of Police Order, 2002.

if you touch the item and grab something else, you could transfer evidence onto the second item. Eliminating contamination in murder is much important because it can make or break the case. In foreign states, police officers pulled on gloves but here in Pakistan investigating officers do not wear gloves and just go to work.

Rule 25.10 of Police Rules 1934⁷⁷ states that police officer will take all possible steps to preserve the scene of crime from disturbance. This rule is an open ended statement. It is lacking entire procedure and mechanism. At receiving murder information, what measures an IO must take in order to secure the crime scene are not exactly mentioned in Rule 25.10.

3.15 Change of Police Investigation

Rule 25.4 of Police Rules⁷⁸ states that after registration of a case, if an IO come to conclusion that offence in hand is committed within the jurisdiction of another police station then he at once inform the concerned police station and the officer of such police station without any delay proceed to the place of occurrence and undertake the investigation.

Optional Investigation: Police rules provide the concept of optional investigation in its Rule 25.9 of Police Rules 1934. Under section 157 (b) of the Cr.P.C. vast powers are conferred on In-Charge of police station to refrain from investigation in unimportant cases

⁷⁷ 25.10. "Immediate dispatch of an officer to the spot. - When a report of a cognizable case is recorded and it is decided not to dispense with investigation under Section 157(b), Criminal Procedure Code, a police officer shall proceed to the scene immediately. The officer who first proceeds to the spot shall, if he be not competent to complete the investigation, take all possible steps to preserve the scene of the crime from disturbance, to record particulars of and secure the presence of potential witnesses, obtain information relating to the case and arrest the culprit."

⁷⁸ 25.4. "Where offence appears to have occurred in other police station. - (1) If a police officer after registering a case and commencing an investigation discovers that the offence was committed in the jurisdiction of another police station he shall at once send information to the officer in charge of such police station.

(2) Upon receipt of information such officer shall proceed without delay to the place where the investigation is being held and undertake the investigation."

but at the same time they have the duty to look critically the matter, to evaluate worth and importance of the case. Most of the times it happens that many less important cases trigger a clue to the operation of professional criminals or help in producing valuable material at a later date for preventive action.

(2) If investigating officer is too much occupied with cases at hand and further case will interrupt the ongoing investigation in such case investigating officer can deny the investigation in further case.

3.16 Sufferings of Witnesses

Witnesses have the status of primary evidence. Testimony of witnesses have the value of substantial evidence. Practically, witnesses are reluctant to appear for testimony due to following reasons:

- They have to wait standing outside the court for long hours.
- No proper sitting arrangement is available. Lack of courtesy and respect is shown to witnesses in court.
- Travelling and food expenditures are not provided to witnesses.
- No protection is provided to witnesses. In high profile cases, witnesses' life is on stake. Many witnesses assassinated. Many living under the fear and threat. Instead of all these hardship, their grievances are not addressed.

It is pertinent to mention here that not only witnesses' life is on stake but in high profile murder cases life of Investigating officers is also on stake. In many cases IO's have gunned down. For instance, Malik Ishaq of Sipah-e-Sahaba. His charge sheet includes seventy murders but he had never been convicted and those who testified against him are

now in fear of reprisal.⁷⁹ It is necessary that when murderer is highly influential or belong to terrorist/banned organizations then reliance on eye witnesses is needed to be reduced and weight must be given to scientific methods adopted for evidence collection.

3.17 Problems Faced by Investigating officer

Investigating officer cannot be held wholly solely responsible. Certain genuine constraints also exist which makes efficient investigation difficult for an investigating officer. Few of constraints are as below:

- a) Lack of funds, allocated for investigation purposes.
- b) Security threats to IO's in high profile murder cases where accused happens to be highly influential or belongs to a terrorist organization.
- c) Insufficient compensation is given to IO's which compels him to take bribe.
- d) Hard Duty schedule and indeterminate duty hours of IO.
- e) Foreign involvement in the form of donation to police department bring policy shift as per donor's interest.
- f) No professional detectives are trained to investigate homicide cases.
- g) One investigating officer has to handle 30 to 40 cases at a time. Overburden makes them less focusing.
- h) Inadequate training.
- i) No departmental appreciation or reward on best investigation.
- j) Media tends to portray the negative role of police, which demoralize the working officers and destroy their credibility.

⁷⁹ Hassan Abbas, "Reforming Pakistan's Police and Law Enforcement Infrastructure: Is it too flawed to fix?" *United States Institute of Peace, Special Report number 266*, February 2011.

- k) Political influence is also a challenge. Politicians try to appoint friendly investigating officer in order to manipulate investigation for ulterior motives.
- l) Mostly investigations are done by junior ranks police officer but professional and international training facilities are provided to senior rank police officers. This policy needs shift so that IO's can get professional trainings too.

CHAPTER 4: MODERN EVIDENCE COLLECTION MODES & CASE LAW STUDY

4.1 Modern Evidence Collection Modes (MECM)

4.1.1 Historical Perspective of Fingerprints

The first use of fingerprint in history is traced in 1858, when *Kanhaya* of Bengal for the very first time imprinted his thumb impression on a deed for authentication and avoiding chances of fraud.⁸⁰ In 1897 an independent committee was formed by Government in Bengal. Later on a resolution was passed giving assent to utilize fingerprints for identification of criminals.⁸¹ In 1896, fingerprint system was introduced in Punjab and a few fingerprint bureaus were installed in British India.⁸² Usage of bio information especially fingerprints is valuable in assisting the detection and prosecution of crime. It is a reliable way for identification of the criminal. Science is developing and one should take the benefit of this scientific development especially in the field of evidence collection and detection of criminals. It can be termed as honest witness because scientific experiment does not lie itself. This practice is used internationally. In this regard, National Database and Registration Authority (NADRA) of Pakistan can help police in matching fingerprints, which were collected from crime scene. The importance of fingerprint technology can also be accessed when we see that Government of United Kingdom has invested approximately 10 million pounds since 2000.⁸³

⁸⁰ Nazir A. Razvi, *Our Police Heritage* (Lahore: WAPDA, Printing Press 1961), p. 114.

⁸¹ *Ibid.*, p. 115.

⁸² *Ibid.*

⁸³ Nuffield Council on Bioethics, *The Forensic Use of Bio Information: Ethical Issues* (London: Cambridge Publishers, 2007).

4.1.2 Footprints

Foot Tracking and shoe prints are helpful for the identification of criminal.

4.1.3 Forensic Science Laboratory

In 1930, first forensic science laboratory was established in Lahore and in 1947 this laboratory started actively serving a training center besides dealing with examination of hand written material, secret inks, forged currency, coins, counterfeit, dust, fiber, clothes and weapons.⁸⁴

4.1.4 DNA (Deoxyribonucleic Acid)

The method of DNA was invented by Mr. Alec Jeffreys. He was student of Leicester university. By DNA samples we can differentiate between individuals/persons of the same species. DNA profiling is a process where cells are broken to release DNA. Small amount of DNA is also sufficient. By polymerase chain reaction (PCR) small amount of DNA can be enlarged. By using DNA, we can not only detect the guilty persons but also can release the innocent persons from prolonged inquiries and sentence. According to National DNA Database Annual Report 2006-2007 in United Kingdom, in one year 44,224 crime scene samples matched with one or more suspect sample profiles.⁸⁵ In Pakistan, situation is totally averse. At first hand, IO remain fail in collection of DNA from crime scene just because of lacking basic training and required instruments. If such things can be implemented here, then IO will collect the DNA and match it with arrested accused. If it

⁸⁴ Ibid., p. 133.

⁸⁵ National DNA Database, *National DNA Database Annual Report 2006-2007*, accessed March 18, 2018, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117785/ndnad-ann-report-2006-07-sec1.pdf. (Accessed on 26 March, 2018).

got matched, then well but question arises when DNA do not match than how criminals can be recognized? When DNA is available at crime scene but accused is un-identified then in this situation DNA Database is required like we have Fingerprint database in form of NADRA. In United Kingdom when police began taking DNA, consent was required but parliamentary action was taken and The Police and Criminal Evidence Act (PACE) 1984 was enacted which conferred discretionary power to police to take biological samples without consent.

4.2 Admissibility of Electronic Devices in Evidence

Supreme Court in the case of *Asfandiyar v. Kamran*⁸⁶ decided that, Closed Circuit Television (CCTV) footage is admissible evidence. Defense has responsibility to produce the person who had prepared the footage from the CCTV system. Opponent party has right of cross examination on such witness regarding genuineness of such footage.

4.3 Punjab Forensic Science Agency Act 2007

Section 4(f) states that, Forensic Science Agency recommend the method for the conservation, management and collection of forensic material. Section 4(1) states that, Agency will hold program and other activities for the promotion of awareness about matters involving forensics. Section 10 states that any Court, Tribunal, Police officer or Public servant authorized to hold investigation can send forensic material collected during investigation for the purpose of examination or expert opinion. Subsequently, agency will send its expert opinion on the material submitted. Expert who conducted examination will mention his name and signature on the report.

⁸⁶ 2016 SCMR 2084, *Asfandiyar v. State*.

4.4 Electronic Transactions Ordinance 2002

This ordinance helps us to recognize originality of any document, information (message, data, voice, sound, video, software, program and codes), signature, transaction, record and communication available in electronic form. This ordinance provided admissibility of all electronic information in evidence. Now no document, message, data, voice, sound, video and communication cannot be declared inadmissible just because it is available in electronic form. Under section 18 of this ordinance, Electronic Certification Accreditation Council is constituted in order to provide above said services.

4.5 Law Regarding Admissibility of DNA Evidence

In court, evidentiary value of DNA is equivalent to expert opinion.⁸⁷ Evidentiary value of DNA is required to be maximized in order to attain more benefits in crime investigations.⁸⁸ DNA database has capability of enhancing the possibility of profiled criminals' arrest because it is a reliable way. It is said that DNA expert is similar to medical doctor. But reality is different because Doctor can state the explanation of injuries, cause of death and weapon used but he cannot tell the exact name of the offender. But DNA can exactly tell the name and complete identification of an offender. Hence, worth of DNA is greater than opinion of medical doctor. There is dire need that court should interpret law progressively in this regard. It is an opinion in the developed states that maintaining DNA database and taking involuntary DNA, is against the constitutional protection against privacy, search and seizure.⁸⁹ Law always see the public interest; that is why public interest has priority over individual's interest. Courts are reluctant to take punitive action against

⁸⁷ Shahbaz A. Cheema, "DNA Evidence in Pakistani Courts: An Analysis," *LUMS Law Journal*, 3(1): 2016, p. 1.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*, p.2.

IO, for not collecting forensic evidence. If forensic evidence is not brought on record, then prosecution face the consequence and accused get the benefit. Due to adversarial law system in Pakistan, courts also feel relaxed and do not strive passionately in order to find missing portion of evidence.⁹⁰ In few countries DNA evidence is commonly used in homicide cases.⁹¹ Such practice is need to be exercised in Pakistan. Federal Shariat Court has also given a verdict regarding use of latest technology for locating criminals.

*The prosecution agencies should take heed and use latest available technology to trace and locate the actual criminal. Under Article 164 of QSO, a court might allow to be produced any evidence available because of modern devices or techniques. Furthermore, the Holy Qur'an and Sunnah did not forbid employing scientific or analytical methods in discovering the truth.*⁹²

As DNA evidence is used in sexual abuse cases, similarly such method should also be used in homicide. It helps investigating agencies to recognize actual criminal. This type of evidence is not much prevalent just because of insufficient scientific infrastructure in Pakistan.⁹³ Shahbaz A. Cheema in his article "DNA Evidence in Pakistani Courts: An Analysis" has desperately misperceived the admissibility and evaluation of DNA in courts. He said "DNA evidence is discouraged in paternity/legitimacy cases." There are two different things, one is DNA as a non-reliable evidence and second DNA as a reliable evidence. In paternity matters, court did not say that DNA itself, is not an accurate way that is why it should not be used in paternity/legitimacy cases. They said that in paternity related matters, DNA cannot be used because its usage will bring more havoc than good.

⁹⁰ Ibid., p. 9.

⁹¹ Michael Briody, "The Effects of DNA Evidence on Homicide Cases in Court," *Australian & New Zealand Journal of Criminology*, 37 (2): 2004, p. 231.

⁹² PLD 2010 FSC 215, Muhammad Shahid Sahil v State.

⁹³ Shahbaz A. Cheema, "DNA Evidence in Pakistani Courts: An Analysis," *LUMS Law Journal*, 3(1): 2016, p. 15.

They never discouraged the DNA as evidence. They never said that DNA technology is not accurate that is why it should not be used in paternity matters. It is very much evident in our enacted statutes that DNA evidence is permissible evidence. For Instance:

DNA evidence is admissible under section 9(3) of the Punjab Forensic Science Agency Act, 2007 read with Articles 59⁹⁴ and 164⁹⁵ of Qanun-e-Shahadat Order, 1984, dealing with expert opinion, within contemplation of section 510 Code of Criminal Procedure 1898. Section 164(A) and 164(B) inserted into C.R.P.C. in 2016, enable the authorities to obtain and use DNA evidence in rape cases. Furthermore, section 27-B of ATA permits admissibility of electronic and forensic evidence.⁹⁶

Qanun-E-Shahadat Order 1984 regulates law regarding evidence. It treats the report of DNA as Expert Opinion. Section 27 of The Anti-Terrorism Act, 1997 gives a unique proposal that if any investigating officer willfully remains failed to conduct investigation properly or do not pursue the case in appropriate manner than he will be punished with imprisonment for the maximum period of two years or with fine. Section 27-B clearly states that conviction can be made on the basis of electronic and forensic evidence.

⁹⁴ Article 59 of QSO: "Opinions of experts: When the Court has to form an opinion upon a point of foreign law, or of science/or art, or as to identity of hand-writing or finger impressions, or as to authenticity and integrity of electronic documents made by or through an information system the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of hand-writing or finger impressions or as to the functioning, specifications, programming and operations of information system, are relevant facts. Such persons are called experts...."

⁹⁵ Article 164 of QSO: "Production of evidence that has become available because of modern devices, etc.: In such cases as the Court may consider appropriate, the Court may allow to be produced any evidence that may have become available because of modern devices or techniques."

⁹⁶ Muhammad A. Pansota, "Can DNA Evidence Lead to Capital Punishment: A Look at Zainab Ansari's Case," *Pakistan Law Digest*, (2018).

4.6 Judiciary Inadvertency regarding Evidence Insufficiency

After Exhaustive study of Annual Law Digests⁹⁷ and certain other Law Journals⁹⁸

I hardly found any discussion on Police Order 2002 and Police Rules 1934. I just found to the extent that how implementation of these two statutes about services matter of police officials are not applied rightly. Implementation and guidance regarding investigation is not brought under discussion. Such an important aspect is overlooked especially when the tendency of insufficient evidence is increasing and Judiciary itself is acquitting hard-core criminals on the basis of insufficient evidence. It is weird, judiciary is neither pondering to find out the reasons of this insufficiency nor taking requisite steps to solve this issue. Although they are well acquainted with the consequences of this insufficiency, that criminals are moving free because they are enough smart to remove incriminating evidence. One of the judgment clearly reflects that how police officials and investigating officers are indulged in misconduct and because of their misconduct investigation suffered and it is causing a big barrier in collection of sufficient evidence. High Court stated,

*High court directed district police officer to register case under S. 342 PPC, and under S. 155 of police order, 2002 against delinquent police officials and set both the detenus at liberty. High court further directed to ensure that delinquent police officials would not coerce petitioner either to make a compromise or to do anything giving impression that he was being forced to withdraw the F.I.R.*⁹⁹

It is unfortunate that judges do not work to find out the missing portion of evidence. On one hand we have adversarial system and on the other hand we have investigating officers who are not well acquainted with investigating techniques. Sometimes IO do not

⁹⁷ ALD 2013, ALD 2014, ALD 2015.

⁹⁸ PLD, P. Cr. LJ, YLR, SCMR.

⁹⁹ Abdul Rasheed v. SHO, District Muzaffargarh, 2004 YLR 1663.

pursue the case in appropriate manner and resultantly important portion of evidence could not come on record.

4.7 Analysis of Police Rules 1934

Police Act 1861 and Police Rules 1934 is considered a colonial legacy that was meant to control and suppress the colonized people rather than providing services. In 2002, Police Order was enacted but unfortunately it is not fully operational in whole Pakistan. Numerous police officials are indulged in corrupt practices, consequently justice is elusive. Murders are at rise and ordinary citizens are the victim of inhuman murders. Police lacks modern investigative methods which include Pakistan's forensic liabilities. Usage of forensic methods in police investigation are not as much as their usage is required. It is duty of investigating officer to bring all possible evidence on record. Sometimes investigation officer observes some evidence but do not record it on its diary due to negligence. This thing later on provide benefit to accused on the basis of "benefit of doubt goes to accused" law.

4.8 Segregation of Police Duties: Investigation vs. Watch & Ward

Article 18 of Police Order 2002 discuss the Separation of Police Investigation with other functions of the police like watch & ward. This principle was inserted to ensures the proper and timely investigation. But the situation of Islamabad police is opposed to this guiding principle. It would be highly impractical to hope a better investigation by a policeman who is performing investigating duties and at the same time he is also deployed for watch & ward duties. Definitely it will affect his performance and efficiency. A human body needs proper rest. When a person will be overburdened then undeniably he will not be able to pay his full attention and he will feel mental stress regarding his duties. That is

why watch & ward and investigation duties should be allocated to different groups. Investigating officer is duty bound to conduct investigation as per investigation statutes. It is necessary for supervisory officer to keep eye on the working of investigating officer so that IO could not cause mala-fide and could not give undue benefit to any party. Whenever investigating officer is found in mala-fide activities, supervisory officer must take departmental action and also refer this matter to the Board so that fair and honest investigation can be ensured. Most of the times investigating officers do not hold honest investigation as it is explicit in National Law Report of 2008 which states,

*Investigation of case conducted by S.H.O. found to be dishonest, partial, motivated, tainted with mala fides and extraneous considerations of S.H.O. High court recommending strict departmental action against S.H.O. with direction that result of action so taken shall be communicated to the High Court within one month.*¹⁰⁰

Courts have power to initiate punitive actions against IO, who follow the caprice and not the principles and rules provided in Police Statutes. Punitive actions have deterrence power. It not only makes them responsible but also stop them to commit the same wrong.

4.9 District Public Safety and Police Complaint Commission (DPSPCC)

Police Order 2002 gives concept of establishing District Public Safety and Police Complaint Commission. This concept is enshrined in article 37 of Police Order 2002. Basic purpose of commission is to maintain check on Police and receive complaints against the abuse of power and neglects committed by police personnel. The composition of commission is provided under Article 38 of Police Order 2002, which states that there

¹⁰⁰ NLR 2008 Criminal Lah. 133.

would be the members Zila Council, Chairperson of the district selection panel and independent members includes the persons who are appointed by the Governor from the list recommended by the District Selection Panel. Functions of the District Public Safety and Police Complaints Commissions are provided under Article 44 which states that “Commission can receive from an aggrieved person a complaint in writing supported by an affidavit of neglect, excess or misconduct against a police officer.”¹⁰¹ Article 80(b) states, this commission will “Take steps to prevent the police from engaging in any unlawful activity arising out of the compliance with unlawful or mala fide orders.”¹⁰² Idea of this commission is commendable but this commission does not exist except on papers. Non-functioning of this commission is also evident from the judgments of Supreme Court as mentioned below.

4.10 Case Law Study

Case law study is having great importance. Following judgments of Supreme Court provides comprehensive account of faulty investigations.

4.11 Haider Ali and Others vs. DPO Chakwal and Others ¹⁰³

Brief Facts of the Case: A Party filed a complaint with the police to allegedly pressurize the other party. Initially police refused the complaint. Then Party tried to get register their case through Justice of Peace but it was also denied by justice of Peace. Consequently, a writ petition was filed in High court and High court ordered for investigation of this case. In the result of such order, a number of petitions and appeals took the matter right up to the supreme court. The Supreme court noted that Police do not register the FIR, even though

¹⁰¹ Police Order 2002.

¹⁰² Ibid.,

¹⁰³ Haider Ali v. DPO of Chakwal, 2015 SCMR 1724(d)

section 154 of Cr.P.C. do not give them any right to decide whether or not FIR should be lodged. Ineffective investigation is another issue, which has ruptured our Justice system. In many cases Police official indulge in criminal behavior and misconduct and to deter this offensive attitude of police sufficient measures are neither taken by police nor any hard and fast rule is provided in Police Order. That is why Supreme court also observed and stated in one of its judgment that,

Sufficient measures were not taken by senior police officials to deter criminal behavior and misconduct by police officials. Accountability forum which were created pursuant to the police order 2002, in the form of National and Provincial public safety commission and Police complaint authority were either inactive or not operational—information regarding funds allocated to the police plans and annual performance reports were not publicly available---lack of accountability of delinquent police officials and transparency of funds allocated to police highlighted.¹⁰⁴

According to this judgement, institutions for the check and balance of Police functioning, provided in Police order 2002 are neither existing nor working. This is the worst violation of Police Order 2002, which is causing chaos in society.

Flaws

It is a bitter truth that, a police official investigating a murder case has no idea of:

(1) Securing scene of the crime so that the place where occurrence has taken place as well as the surrounding area is not trampled or invaded by the general public before the investigating officer has had an opportunity to collect evidence from the place of occurrence.

(2) How to secure incriminating articles, likes pieces of cloth, fingerprint, blood, fiber, hair etc., from the place of occurrence and its surrounding area.

(3) How to lift and secure fingerprint from various articles found inter alia at the scene of the crime and to get them examined and matched for the purposes of investigation.

(4) How to ensure that all incriminating articles are properly secured from the spot and delivered promptly and intact to a forensic laboratory and/or

¹⁰⁴ Ibid.,

fingerprints expert in safe custody and without being tampered with, and to expeditiously obtain the results from the forensic laboratory so as to be credibly admitted in evidence during the trial .¹⁰⁵

Securing Crime Scene, avoiding evidence from contamination, securing incriminating material and protecting chain of custody of evidence is much essential procedure which investigating officer must be well acquainted of it. Without all such necessary techniques investigation requirements remain unfulfilled.

Issues

- The lack of training and emphasis on the development of specialized investigating officers and facilities, is perhaps indicative of the wider issue in policing.
- It is phenomena that our police are manipulated by dominant political persons and mostly used to protect dominant political regime.
- In 2015 Supreme Court observed that only in Punjab 65% of criminal cases do not result in conviction. Mostly a person convicted through trial courts, get release on appellate forums just because of weak investigation and poor evidence.
- Lack of cooperation between Police and Prosecution Department at investigation stage.
- No standardized SOPs are available in statutes for guiding relationship between police officer and prosecutor. That allow them to aid each other in completion of investigation.
- Protection of witnesses is not ensured. Many key witnesses deviate from their stated positions because of threat or pressure by the accused. No efficient and viable

¹⁰⁵ Haider Ali v. DPO of Chakwal, 2015 SCMR 1724(d)

mechanism is available for witness's protection. Witness is a substantial evidence and it should not be lost.

- Specialized funds are also required for Investigation betterment.

4.12 Ali Sher vs. State¹⁰⁶

Brief Facts of the Case: Co-accused lady was alleged to have murdered her husband with the help of accused. Motive for occurrence was having an affair with the accused and wanted to get her daughter married to the accused against the wishes of the deceased. Inimicality between complainant and accused. Supreme court has given the verdict that "Present case was a case of insufficient evidence and prosecution failed to prove its case." It means sufficient evidence could not have brought before the court by investigating officer. It could be because of not using modern techniques in collection of evidence or inadvertent attitude of investigating officer.

4.13 G. M. Niaz vs. State¹⁰⁷

Brief Facts of the Case: Occurrence had taken place at a tea stall but admittedly the owner or the staff of the said tea stall had not been produced by the prosecution before the trial court. Two witnesses appeared before the court, one was brother and second was parental cousin of deceased. They were the chance witnesses who remained failed to bring anything on record establishing their claimed presence with the deceased at the relevant time. Deceased was taken to the hospital in an injured condition by a police constable. Post mortem examination of the deceased was conducted belatedly after two days of his death. Blood stained clothed do not brought on the record. In this case no crime empty had been

¹⁰⁶ Ali Sher v. State, 2015 SCMR 142, Supreme Court

¹⁰⁷ G. M. Niaz v. State, 2018 SCMR 506 Supreme Court.

secured and consequently recovery of firearm from the accused custody cannot be connected with the weapon of alleged murder. No blood stained earth had been secured from the tea stall where the occurrence had statedly taken place. Conviction and sentence of the accused were set aside. According to forensic science, if bullet empty is not found than recovered weapon is of no use. On empty a special minor ridges appeared from the fire when it passes through barrel. Later on forensic make extra fire in water tank and match the ridges on both empties, if both match than it is decided that, empty found on crime scene is fired from recovered weapon. All possible evidence is spoiled by IO hence heirs of victims beard the consequences for the omissions and neglect done by investigating officer. No punitive action was taken against IO for such willful omissions.

4.14 Ali Bux vs. State¹⁰⁸

Brief Facts of the Case: According to the prosecution about 6/7 years prior to the present occurrence the accused party had suspected that deceased had murdered one of their relatives and despite taking of an oath by deceased on the Holy Quran maintaining his innocence in the matter the accused party did not feel satisfied. Nothing had been recovered from the custody of accused and although a firearm had allegedly been recovered from the custody of co-accused. Occurrence took place in broad day light and at a place where the same could have been seen by many persons available around the place of occurrence. No independent evidence was available on record. According to record, crime empties secured form place of occurrence had sent to the forensic science laboratory after the arrest of co-accused which factor denuded the alleged recovery of its evidentiary worth.

¹⁰⁸ Ali Bux v. State, 2018 SCMR 354 Supreme Court.

This is the fault of IO who sent crime empties with much delay which made its evidentiary value redundant.

4.15 Gulfam vs. State¹⁰⁹

Brief Facts of the Case: In robbery voluntarily caused hurt lead towards Qatl-I-Amd. Time of occurrence is midnight but source of light is not established. Courts incorrectly presumed that occurrence took place at medical store where availability of light is certain. Culprits not nominated in the F.I.R. Complainant could not have offered how they come to know about alleged offenders. Prosecution relied upon two witnesses. Who claimed that at the time of occurrence they were available at the food cart on a roadside. Two chance witnesses were available which could not justify their availability at place of occurrence. Accused persons were identified in joint identification parade which was against the procedure. No crime empty had been secured from the place of occurrence so as to connect the recovered weapon with the alleged offence. Similarly, recovery of motor cycle from accused persons which was allegedly used during the incident was of no avail to the prosecution because in the F.I.R. no color, mark or registration number had been mentioned.

4.16 Usman alias Kaloo vs. State¹¹⁰

Brief Facts of the Case: Murder happened at 11:30 outside a house, IO stated before the court that no electric light was available at the spot. F.I.R. had been lodged at the spot whereas the local police had arrived on its own, after being informed by a person who had not been produced before the trial court. Inmates of the house of occurrence, i.e.,

¹⁰⁹ *Gulfam v. State*, 2017 SCMR 1189 Supreme Court.

¹¹⁰ *Usman A. Kaloo v. State*, 2017 SCMR 662. Supreme Court.

the mother, wife and children of deceased had never been associated with the investigation of the case. No statement of the said natural witnesses had been recorded by the investigating officer nor were they produced before trial court. Pistol recovered from the accused had not been sent to the forensic science laboratory. Post mortem conducted with a delay of ten and half hours. Conviction and sentence of the accused were set aside.

4.17 Mst. Rukhsana Begum vs. Sajjad¹¹¹

Brief Facts of the Case: Time of occurrence was 11:00 A.M. Inquest report showed time of death at 12:40 P.M. No crime empty had been mentioned in inquest report. But in recovery memo, and site plan empties had been shown lying close to deceased. Site plan shows that complainant party had no land near or around the crime spot and even the cattle shed. Where they were allegedly sitting belonged to some other person therefore claim of complainant that they took a round of their crop prior to the occurrence stood falsified. One eye witness belonged to another village. Investigation conducted in the present case was neither fair nor honest, therefore the alleged recovery of crime weapons from accused persons lost its legal worth.

4.18 Waqar Ahmad vs. The State¹¹²

Brief Facts of the Case: Defective and improper investigation was done. Court imposed symbolic punishment on investigating officer. Symbolic punishment of the fine of Rupees four thousand having been awarded to appellant/DSP for improper and defective investigation in a criminal case. Appellant had filed appeal under Section 25 of Anti-Terrorism Act 1997 before High court. Appellant DSP having been held responsible for

¹¹¹ Mst. Rukhsana Begum v. The State, 2017 SCMR 596.

¹¹² Waqar Ahmad v. The State, PLD 2016 Psh 21.

defective/improper investigation under section 27 of Anti-Terrorism Act, 1997. Such conduct had eroded confidence of the general public in police in general and investigating agency in particular, which was touching the lowest ebb of its credibility. High court also observed that Investigation form backbone of criminal justice system and investigating officer, enjoyed authority in the matter of investigation and such authority would unquestionably demanded accountability. The court observed that investigating officer do not record where, when and in what manner accused was arrested. No investigation was made to find out the truth regarding alleged demand of ransom. Wrong person was implicated without sufficient evidence. Hence the mala fide of investigating officer that he violated his duties and destroyed the evidence is explicit. Similar to this case a lot of examples can be seen on daily basis that how investigating officer give undue benefit to accused and how they destroy the evidence in important cases. Consequently, courts have no other option but to acquit the accused in heinous crimes.

4.19 Touchstone of Evidence

What are the merits or principles used by the Judiciary as touchstone for deciding evidence as sufficient evidence or insufficient evidence? The answer to this question is that in law no mathematical principle can be found that is being used as standard to judge the sufficiency or insufficiency of the evidence. Although some guidelines and rules are available in generic form, which helps judiciary in order to reach at the conclusion. Judiciary has power to interpret the law. Sometimes such interpretations create new laws, which are known as Judge Made Laws. Judge made laws are also based on legal principles. That is why these laws are binding upon subordinate courts. For example, Article 189 of Pakistan's Constitution states that decision of the Supreme Court is binding on all other

courts of the Pakistan to the extent that it is based upon legal principle.¹¹³ Judges exercise their juristic approach in order to determine a legal principle. Judges who are well versant in the jurisprudence, they have a good juristic approach. This Juristic approach is the touchstone for the determination of sufficiency or insufficiency of the evidence. It is pertinent to mention that there is very much difference between Juristic Approach and Journalistic Approach. In Journalistic approach, a person is concerned about facts of the case. If he witnessed a murder, then he insists on sentence just because of his approach that I witnessed the murder. Such murder is actually happened, that is why accused must be sentenced. He analyzes only those things which are in front of him. His vision follows the 90-degree angle. But in Juristic approach, a person has broader vision and more understanding of jurisprudence. He analyzes the facts in the spectrum of 360-degree angle, keeping in mind the facts of the case as well as the principles of Jurisprudence. Although jurisprudence is same but the level of understanding of jurisprudence vary from judge to judge. In recent past, a bench consisting of three judges of Supreme Court decided a murder case.¹¹⁴ Despite of having the same facts, two judges were in the favour of conviction but one was in the favour of acquittal. This difference of opinion was not because of difference in facts but it was due to the difference in juristic approach of the judges. *Secondly*, Statutory Laws also help out the judiciary in order to determine the sufficiency or insufficiency of the evidence. It includes, conformity between Eye witnesses, Medical report, Site Plan and Forensic Report. Other standard includes, Is the Motive proved or not? Has the prosecution discharged the burden of proof or not? Is the identification parade

¹¹³ Article 189 of the Constitution of Pakistan, 1973.

¹¹⁴ Mst. Nazia v. State. 2018 SCMR 911 SC

held as per prescribed rules or not? Is the weapon of offence recovered or not? What were the circumstantial evidence? Relevancy of facts is another important factor. Judges do not examine the evidence just on the surface level but they adopt deeper appreciation of evidence. Judiciary gives worth to the quality of evidence and not to the quantity of evidence. Hence, Statutory laws and Juristic approach are the touchstone for the determination of sufficiency or insufficiency of the evidence.

CHAPTER 5: CONCLUSION & RECOMMENDATIONS

Insufficiency of evidence is a curable disease. It needs proper determination and thorough working with strong co-operation among Judiciary, Police and Legislature. Investigating officers' inefficiency in collection of evidence cause loss to heirs of victim and to the whole society as well. Investigating officer should be vigilant, dutiful and well acquainted with modern technology and techniques. Proper justice requires that; one should not be held guilty for others wrong that is why heirs of victim should not bear consequence for the inefficient working of investigating officer in collection of evidence. Following recommendations can possibly minimize the issue at hand.

Recommendations for Police Department

- Usage of Gloves/Hair Cover should be declared necessary at the time of crime scene inspection.
- Public access should be made limited to the crime scene. In order to avoid crime scene contamination.
- Mobile data of accused must be obtained in every murder case so that presence of accused at the time of crime should be brought on record through Call Data Record (CDR).
- An award can be announced for the general public for disclosing the very information leading to the apprehension and conviction of the offender.
- For the purpose of encouragement an award or promotion should be given to those investigating officers who collects best evidence in most of their cases.
- Trainings programs for investigating officers must be upgraded at advanced level.

- Facilities should be given to general public so that they can easily and quickly report the homicide occurrence to police so that investigating officer immediately reach at the crime scene and can seize that area.
- Investigation Kit used for the collection of evidence from crime scene should be upgraded with advance investigating instruments which are suggested in the heading number 3.12 of this thesis.
- Duty schedule of investigating officer is need to be revised and made according to the potential of normal human being.
- Usage of computer and modern scientific technology in investigation should be made compulsory for every investigating officer.
- Punitive actions should be taken against investigating officer if he is found guilty of violating rules and procedure of investigation, expressly provided in police statutes. Punitive actions would make him vigilant, dutiful and realize him the importance of evidence.

Recommendations for the Government of Pakistan

- In every Division a forensic team should be made, who immediately visit the crime scene and collect forensic evidence and then sent the evidence to forensic laboratory.
- A toll free number and website should be provided to public for their complaints regarding investigation.
- Adequate funds should be allocated for investigating officers' professional trainings. Annually workshops should be held in order to refresh the courses.

- Public must co-operate during investigation phase, especially those persons who witnesses the occurrence.
- Public awareness is need to be increased. If any person witnesses the happening of crime then he/she immediately call the Police Centre, do not touch the things on crime scene and must co-operate with the investigating officer at investigation stage.
- Mostly our media portray the negative image of police. It must show the positive aspects of police in order to re-arrange views of masses.
- Government should arrange special investigation courses for police Investigation wing with New Scotland Yard.
- Scientific infrastructure is need to be built in Pakistan.
- Salaries and incentives of investigating officers should be increased so that they do not tend towards corruption.
- Psychological department should be built so that psychological interviews of offenders, witnesses and complainant can be made possible.

Recommendations for the Legislature

- Detection, collection, preservation and production of evidence is need to be ensured and proper detailed mechanism is need to be determined in police investigating statutes through legislation.
- Police Statutes regulating the homicide investigation are written in the format of open ended statements and in vague format. They must provide proper mechanism and must address the question of Who, How, When, What and Where.

- A provision in Police statute should be added regarding establishment of Digital List of false witnesses so that the person concerned cannot appear for testimony in further cases.
- A provision in Police Statute should be added which ensures that investigating officer must use scientific instrument in investigation and prepare its report.
- Legislative actions are required to be taken in order to ensure witnesses' protection and reimbursement of their expenditures.
- Political influence on investigating officer must be ended by adding new provisions in Police Statutes.
- Rule 25.14 of Police Rules 1934 is written in vague form. It is necessary that it should not be an open ended statement. Secondly, Procedure about taking Technical Assistance should be made clear. Upgradation of institutions which provide technical assistance should be ensured.
- Rule 25.15 says that expert assistance should be confined to cases of major importance only. In this rule a clause should be added through legislative step which ensures that expert assistance will be available in all murder cases.
- Procedure of recording dying declaration is provided in Rule 25.21 of Police Rules 1934 is much complex. In current era, this technicality can be made easy by using technology in the best interest of justice.
- According to Rule 25.24, investigating officer has power to get post and telegraph instruments but with modern development, modes of communication are much shifted from post to electronic modes, i.e., Email, SMS, Facebook, WhatsApp, Twitter and other social media. This law does not facilitate Investigating officer to

get the data of persons from social media or telecommunication companies. In this regard power of investigating officer is need to be increased so that he could get social media data of alleged accused.

- Limitation about footprints provided in Rule 25.26 of Police Rules 1934 regarding notorious criminals should be amended and it should be extended to every criminal.
- Judges must direct investigating officer to find out missing portion of evidence. To legalize this direction legislative action should be taken.
- Rule 25.33 of Police Rules 1934 is written in generic form. It must explain the procedure. It must explain, what measures an investigating officer will take in order to prevent destruction of evidence? What instruments an investigating officer would take along with him at the time of leaving police station and moving towards scene of death? How, who and till how long, the crime scene will be prevented from the mingling of people gathered?
- Collection of finger prints, blood, semen, saliva, hair, fibers, tire tracks, shoe prints, DNA and other physical evidence from crime scene should be made essential by incorporating a new provision in police statute through legislative action.
- Photography and video of, crime scene, dead body and locale of injury should be made compulsory in police statutes.

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