



RESEARCH PAPER

**Criminal Justice System and its Impacts on Criminal Trial Law,
Practice and Procedure in Pakistan: An Analytical Study**

Muhammad Waqar *¹ Ahsan Iqbal² Syed Shair Abbas kazmi³

1. Lecturer, Department of Law, Mirpur University of Science and Technology (MUST), Mirpur, AJ&K, Pakistan
2. Lecturer, Department of Law, Mirpur University of Science and Technology (MUST), Mirpur, AJ&K, Pakistan
3. Lecturer, Department of Law, Mirpur University of Science and Technology (MUST), Mirpur, AJ&K, Pakistan

DOI

[http://doi.org/10.47205/plhr.2022\(6-III\)24](http://doi.org/10.47205/plhr.2022(6-III)24)

ABSTRACT

In criminal justice system, the basic need is to commence the criminal trial within time frame, so the issues between parties will resolve and law and order situation prevails. This study narrates the delay factors which affect the performance of criminal justice system. The core issues for in efficiency of a criminal judicial system are delaying tactic by law enforcement agencies, legal practitioners as well as case burden on Courts. At pre-trial stage of criminal cases, the Police role in lodging (First Information Report) FIR, investigation, visit to crime occurrence place inordinate delay in such process. Likewise, at trial stages, Prosecution Department shows lack of coordination, non-attendance in Courts, and Judicial Mismanagement such as transfer of Judges etc., frivolous conduct of law fraternity such as strikes and undue adjournments fade the justice system and shakes the public confidence. The study provides insights into such issues which linger the criminal cases in the genre of written discussion.

Keywords

Criminal Justice System, Judiciary and Trial, Police, Prosecution

Introduction

The well settled principle of law is "Justice delayed is justice denied". The basic need of fair trial is to provide the justice without delay and the undue influence. The speedy justice or trial is a fundamental principle of different countries, like in India and Bangladesh, it has been mentioned in their constitution as a fundamental right. However, the same article (speedy trial) has not been mentioned in The Constitution of Islamic Republic of Pakistan, 1973. In Pakistani context, the criminal judicial system observed many obstacles not only at accused side, but it is also observed the negligence of Law Enforcement Agencies as well as mismanagement in judicial system, which resultantly leads to the frustration, uneasiness and in secureness in the society (Ali & Hassan, 2022). It is contemplated that inordinate delay in criminal trial leads to unfairness to the accused specially and to some extent the Police prosecution and lawyers are also lame for unreasonable delay. Due to such delays, (khan, 2007) some inevitable lose may accrue to the victim party such as the memory of witness may fade due to passage of time and the credibility and reliability on witness statement may goes under question due to contradiction in statements (Chawdhary, 2013).

Mostly, the judges are impartial for both of the parties and every judge has knowledge, how to decide case on the base of evidence and the gravity of statement it is due to the fact that they take part in many cases and know to decide the critical issues between parties and proclaimed the final decisions in accordance to law (Ali & Alam, 2021). In England, the jury trials may also commence for the efficiency of trial (white, 1925) and further investigation to search the truth. However, the final decision is proclaimed by the Judge, who is competent to make a decision related to case.

In present scenario criminals use modern techniques to accomplish their missions, on the other hand, the judicial system are still relying upon the same structure and procedure to investigate the accused or offender which is followed in 19th century (Asad, 2018). The criminal justice system seems to be the out dated and the culprits have experienced that the system can't provide punishment to them so they fully involves in heinous crimes, without any fear and freely violates the criminal law. Secondly, Police has major role in investigation, bring accused behind the bars and to provide justice to the victim, however, there are certain situations in which negligence of Police may harm the case situation (Radhakrishna, 2008) such as Police is witness to crime scene pretended as they are absent as shown in (ghushla case in India). In some cases police also make blunder that the victims of cases turns as an offenders.

The Constitution of country guarantees the rights and provide the frame work for the every institution, whenever it abrogated or due to any reason suspended, its harm the independency of judiciary and badly influence the working of judiciary (Iqbal, 2009), though the decision which are made by judiciary may be contradicted, while the democratic government provide independence to judiciary and work as a guardian of the Constitution.

Due to these issues the problem solving courts are formed which are specially relates to these issues or cases which are not solves with in time. Police official they are busy in other duties like to control law and order situation to provide the protocol to high officials and also for the protections as a guard and there are so many other duties they have to perform so there is a dire need to form a special squad which deals with the court matters. Same as the prosecution branch, who's performance is very important because they have to check on Police and also the pursue the case in-front of judges, the collapse of prosecution and ineffectiveness by the Police and prosecution leads to fail trial ineffectiveness, collapse of trial and no- seriousness of Police prosecution department .

Literature Review

In 'An Analytical study of criminal justice system of Pakistan' (sardar Hamza,2015) in this study author magnify that criminal justice system which is being practice in Pakistan is between inquisitorial and Adversary system some time judge has to work as a referee and in some cases the judge is bound to find out the truth, then the prosecution has to prove the case. In this research the particular factors which cause the delay in commencement of trial under criminal justice system is not discussed. In 'combat delayed justice' (Zafar Iqbal) the journalist mention out the Lucan's in criminal justice system and no doubt various law commission

are formed but the focus of these commissions are on the amendments of civil procedure code. But no frame work is provided to overcome these Lucan's which causes hurdles in the dispensation of justice. In 'overview of criminal justice system of Pakistan' (Akmal wasim, 2008) the author work is to control crime, prevent the crime occurrence, punish the offenders, compensate the victims these rights are only privilege when criminal justice system perform in true sense. The time limit in which cases are decided are not mention.

'In criminal procedure before magistrate in England and Wales and India' (A.Sabonadiere). In this study the researcher intend to enlighten the criminal trial procedure before a magistrate and also spat the resemblance of sssstrial in issuance of warrants, appeals and also in the confession made by accused. But the author remain silent about the criminal trial procedure in Pakistan and not specifically point out the delays factors in commencement of criminal trial under criminal justice system of Pakistan.

Material and Methods

For the purpose of this research, qualitative research methodology is adopted. The research is library base research and the primary resources are research articles, online journal research gates statutory law, newspaper websites and electronic media is also used. In secondary sources different other resources like the speeches of honorable Judges, court decision, the reading of different books and the case laws are also the sources of research. The research based on qualitative method and the data which is collected is critically analyzed thus provide a frame work for efficient criminal justice system.

This division describes completely research methodology and specifies the practical way in which the research has been done. By using this qualitative method to enlighten the direction of criminal trail how commence.

At Trail Stage Delay in Investigation of Accused

The process of investigation of accused have a great important in criminal trial system and the whole of case based on the investigation but the investigator officer have not proper knowledge of law and the case management is poor by the Police and the techniques uses are also out dated. Rules and values which must be kept in mind are ignored by the Police, especially during the management of case (Fabri & Langbroek, 2003). Police have to coordinate with the prosecution branch and either

they have permission to discuss the matter with the prosecution branch. If they think that the case is fit to proceed further then they have to put forward otherwise the cases which have no grounds and have no proper witness, must be closed at pre-trial stages. In England, if it is observed that the case is groundless then it can be closed by the Police during investigation. However, in Pakistan, baseless, mala fide cases can be forwarded to show the performance of Police Department, thus, the pile of cases, resultantly increase the pressure on Courts. Due to this backlog, the other cases which must be decided within due time shall be effected (Kappeler, 2008). This leads to various complications, inefficiency and credibility of judiciary.

Backlogs of Court Cases

In present scenario, the cases load on the Courts shows the lack of capacity of Courts to take decision and also question on the performance and on the efficiency of Court system in Pakistan. Developed countries tries to handle this backlog situation by speedy trial, alternative dispute resolution (Shah & Farid, 2014). But the problems lie in system or in procedural law are the main hurdles in dispensation of criminal justice. List of cases in court which are at evidence stage are delayed due to nonattendance of witnesses. The transfer of judges also increase backlog. The delay at the end of prosecution also hurdles in criminal trial because prosecution is chain between the police and judiciary so its role is of great importance (Chawdhary, 2013). Last but not the least, unnecessary adjournments by the advocates in very serious nature of offences may cause the delay in commencement of criminal trial.

The following table along with pie chart elaborates the performance of Courts in our Country (*The Judicial Statics of Pakistan, 2020, pp. 3*) till December, 2020, as the available reliable data of Law & Justice Commission of Pakistan in the Judicial statics of Pakistan, 2020.

Name of Court	Pendency	Institution	Disposal	Balance
Supreme Court of Pakistan	42998.00	16755.00	13055.00	46698.00
Federal Shariat Court	176.00	131.00	129.00	178.00
Lahore High Court, Lahore	181999.00	124352.00	118175.00	188176.00
High Court of Sindh, Karachi	83920.00	28346.00	27155.00	81684.00
Peshawar High Court, Peshawar	40795.00	27562.00	26525.00	41832.00
High Court of Balochistan, Quetta	4849.00	5256.00	6117.00	3988.00
Islamabad High Court, Islamabad	15885.00	8095.00	7692.00	16288.00
Total - High Courts	327448.00	193611.00	185664.00	331968.00
District Courts, Punjab	1108461.00	2235122.00	2051818.00	1362423.00
District Courts, Sindh	93960.00	304719.00	288443.00	115815.00
District Courts, Khyber Pakhtunkhwa	196238.00	446307.00	408061.00	230474.00
District Courts, Balochistan	13776.00	51864.00	49606.00	16034.00
District Courts, Islamabad	41329.00	67733.00	60818.00	48244.00
Total - District Judiciary	1453764.00	3105745.00	2858746.00	1772990.00
Grand Total	1824386.00	3316242.00	3057594.00	2151834.00

Timely Submission of Challan

Submission of *Challan* (report by Police) in time, after the investigation, the main problem for commencement of trial is non submission of challan with in time. The Police is duty bond to submit the challan within 14 to 15 days (Syed sikandar shah V Inspector General Police Peshawar, 2008), but it is observed that in many cases, Police fails to submit challan within time, it happens due to many factors, the main important reason behind it are lack of establishment of forensic labs, which consumes a lot of time for any sample to be attested.. Further, in case of medico-lego report, the civil medical officer (CMO) who is authorized by the Government is under

obligation to certify the case but it takes months for the medical certificate to complete due to negligence of Police Department to submit the incomplete report to Courts which creates many doubt regarding the case and police report. If the complete report may send to Court timely, the criminal trial must take place well in time. The special Police branch must be recruited for the commencement of trial, which is responsible related to Court matter and provide facilities to prosecution. If the negligence on the behalf of Police or prosecution branch occurs, the judges must take strict action against them to curb the delay.

Reforms and Efficiencies in Criminal Justice System

- The team which is authorized to gather the data and the visit of crime scene must be timely reached without any delay.
- The data related to criminal, their routes and future planning regarding crime and all other secrets reports must be share with all the Law Enforcement Agencies and also with the authorities or other investigation professionals, which are directly related to these criminals and also take feedback.
- As the invention of new technology, the changes must be monitor and all the Government departments must equipped with modern techniques and technology to deal with them.
- The present need of the time is to made criminal justice system most transparent and accountable in front of public (Dandurand, 2014), so the performance can be checked by the public at large.
- The example of inordinate delay is established by the fact that, according to a roughly estimate, the two third of jail imprisonment are comprised of under trial prisoners (Mirza, 2016).
- Due to the reasons people confidence on the justice system and also on the administration is minimized, to establish effective system these reforms and efficiencies would be helpful.

Conclusion

It is observed that to point out the single reform in the criminal justice system to improve the efficiency is very difficult, sustainable improvements are required which enhance the efficiency of system and to improve public confidence. The successful initiatives must require to enhance the efficiency of criminal justice and also to increase the coordination between the Agencies and Institution which perform under the criminal justice system. The outdated practices of the Institutions which are made by pre-partition laws are inefficient on the various aspect of the present time.

Various law and justice commissions are formed for the betterment of criminal system, however, all rest in vain due to the different circumstances. Criminal justice system is shaped on the desires of individuals to use for their own benefits. Overall system is not performing well, there is dire need to supersede, instead of reinforcing the system with minor changes which is already exist in shape of accountability.

To achieve the desire goals in field of justice system and for improving efficiency, the leadership must be honest and responsible for each and every act so the fruitful result may be achieved. To enforce all new reform, proper attention should be given to system. Sometimes, public policies are adopted to create

incentives, which are not fully associated with objective of the system. Some reforms are insufficiently incentivized while others may introduce. The obstinate incentives' may harm or badly influence the performance of justice system and output of system is also affected by these types of willful incentives.

The criticism on laws, reforms, commission reports, practice and procedure related to criminal trial, justice system and jurisprudence may be minimized by positive reforms, which are helpful in providing speedy trial.

It is to ensure that all the departments which are working under criminal justice system must perform their duties under the rules which are prescribed and also working for the development of justice system and its strategy. Reforms to the system which are made for the improvement and efficiency of system must be made having full knowledge of all the consequences. Reform in one Institution may affect the performance of other, therefore, while making changes in the system or procedure all the issues must be kept in mind. To achieve timely commencement of trial, procedure of all the agencies in pre-trial trial stages and even in post-trial time frame, each their goal can be achieved by the collective efforts of the all agencies and institutions which are undermine.

The implementation plan which required for the action, the clear timeline and precise description of responsibilities must be fallowed and discussed. The judicial leadership perform their duties strictly so the justice prevail in the society and resultantly the crime ratio will decrease .The management groups shall be formed which are to perform their duties even in local areas and also gather the information at local level so the procedure which takes time identify the culprit and then even time consumption in searching of truth, all these judicial difficulties may be minimized by this type of management groups and these groups may perform their duties as a jury so the ambiguity behind these group minimize when they perform their duties as a jury.

Recommendations

- The laws related to criminal procedure must be amended.
- The judicial officers whose key role is to provide justice, their numbers must be increased so the burden and caseload can be minimized. As per Law & Justice Commission Report (*The Judicial Statics of Pakistan, 2020*) following are the vacant position in Judiciary at district level:

Name of Provinces	Vacant Position
Punjab	770
Sindh	51
Khyber-Pakhroonkhwa	111
Balochistan	74
Total	1006

- Number of Court rooms must be increased and the space in the room must be adequate, so, the parties must properly listening their case and can also purse in many cases, due to over crowd witness have to suffer from years to years.
- The investigation teams must work according to their rules and regulation and also for the sake of truth.

- Proper training shall be provided to judicial officers and the facilities may also be given to them.
- The agencies which are helpful in investigation or to curb the criminal, their numbers must be increased.
- The laws and procedure relating to judges recruitments and removal on basis of ages must be enact.
- Frequent adjournment by the lawyers shall be avoided by making and strictly implementation of the rules.
- All the functionalities of the sub ordinate courts are under the supervision and control of High Court, therefore, in case of any in efficiency or corruption, the High Court must take the appropriate notice related to such allegations.
- The delay in the dispensation of justice is only due to the parallel system of litigation, the powers related to the justice shall not be given in hand of private persons, the decisions must be taken on the grounds of rules and regulations which are provided by the legislator not by the single person .
- The sanctions must be provided on the panchayats system and declare it as an illegal act. Many of cases are deal at local levels, which are not come to courts, all these issues must be in mind to resolve all these problems at ground level, which is only possible when the local laws are also to be formed and the people must have awareness related to their rights and duties. The people of these remote areas are not left at any mercy of feudal mind set. It's the duty of legislature to revoke all these types of feudal lord's courts and all the decision shall be made by the courts itself. Likewise, people may get the fair trial without undue influence as enshrined and guaranteed by the Constitution as well as Universal Declaration of Human Rights (UDHR).
- Delay in criminal cases is also due to the poor performance by the prosecution services, the Prosecution Department of the Government acts as a ping pong between the Police and the Judges, so the performance by the prosecution must be according rules and regulations.
- The case of accused must be heard on its own motion, and the delaying for by co accused must be neglected.
- Delay in recording evidence and the recording of evidence is also the main step in the commencement of trial, it also causes delay, therefore this procedure if shifted to online video links or recorded evidence in the presence of legal offices of the Court may be admissible, it will minimize the main hurdle and delays.
- The jail administration must perform their duties efficiently to shift the under trial prisoner to the Court for hearing.
- The Judge transfer from one station to another may also cause undue delay.
- The transfer of cases even also causes of delay, when transfer from one to another judge.

- Judges also perform the non-judicial duties and other administrative duties are also assigned to them, it will maximize the delay in the case.
- Inadequate Court facilities, the proper Court facilities must be provided to judges, to perform their duties easily in civil, criminal and family cases (Iqbal, 2007).

The judge should be impartial for both parties and every judge shall have adequate knowledge how to decide case on the base of evidence and the value of statement. Therefore, frequent training session must be organized to update them with modern technology and techniques to decide the case well in time on merits (White, 1925).

References

- Ali, S., & Alam, M. S. (2021). Psychological Impacts of Covid-19 And Delay On The Administration of Criminal Justice System: A Comparative Study Of Pakistani And Indian Jurisdictions. *Journal of Asian and African Social Science and Humanities*, 7(3), 1-21.
- Ali, S., & Hassan, M. (2022). An Evaluation of Pending Cases in the Judiciary of Pakistan: Figures and Statistics. *Pakistan Social Science Review*, 6(2), 592-602.
- Arshad, S.J, (2017, February 15). Criminal Justice System In Pakistan: A Critical Analysis. *Dawn*.
- Asad, M. (2018, January 21). Over 1.8 Million Cases Pending in Pakistan' Courts. *Dawn*
- Dandurand, Yvon. (2014). Criminal Justice Reform and the System's Efficiency. *Criminal Law Forum*. 25. 383-440. 10.1007/s10609-014-9235-y.
- Fabri, M. & P. M. Langbroek. (2003). *Delay in judicial proceedings: A preliminary inquiry into the relation between the domains of the reasonable time requirement of article 6, 1 ECHR and their consequences for judges and judicial administration in the civil, criminal and administrative justice chains*. Preliminary Draft Report for the Council of Europe. Strasbourg: European Commission for the Efficiency of Justice (CEPEJ).
- Iqbal. N.A. (2009). *A view from Pakistan human rights*. American Bar association 36(1).21-23.
- Judicial Statistics and Figures. (2020). Law and Justice Commission of Pakistan.
- Kappeler, V.E. (2012). *what is the place of Police within the criminal justice system*. <https://ekuonline.eku.edu/blog/police-studies/what-place-police-within-criminal-justice-system/>
- Mirza, A. A. (2016). *Delays and lapses in pakistans criminal justice system*. London School of Economics and Political Science
- Rahman, M. M. C.. (2013). A Study on Delay in the Disposal of Civil Litigation: Bangladesh Perspective. *The International Journal of Social Sciences* 14(1):27-35.
- Radhakrishna, M. (2008). Crime of Vigilante Justice. *Economic and Political Weekly*, 43(2), 16-18.
- Shah, R. U., Shadi U. K, & Sumera F.. (2014). Causes for Delay in Civil Justice in Lower Courts of Pakistan: A Review. *Pakistan Journal of Criminology* 6(1), 47- 67.
- Syed Sikandar Shah V Inspector General Police Peshawar [2008] PCR.LJ 25, H.C ,P.29b
- White, M.A. (1925) *Trials In England*. 13 Cal. L. Rev. 304. <http://scholarship.law.berkeley.edu/californialawreview/vol13/iss4/2http://dx.doi.org/https://doi.org/10.15779/Z38T22W>