

Enhancing Justice: Overcoming Barriers in the Criminal Justice System of Pakistan

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Abstract: The Criminal Justice System plays a pivotal role in the dispensation of justice and peace in society. Crime is the bitter reality of our society as well as prevailing all over the world. However, its nature may be different. No doubt criminals in Pakistan get acquitted due to different reasons and causes. In this study, a struggle has been made to define the topic as an introduction to crime and acquittal, history of crime, Islamic laws, and punishment. In this research work researcher aims to find out the deterrents for improvement and different factors of the criminal justice system, criminal justice system challenges, and hurdles owing to that it can't perform up to benchmark. In this research work, I conclude that different reasons affect criminal justice and how to overcome those factors for effective criminal justice.

Keywords: Criminology, Investigation, Criminal Justice system, Pakistan, Punishment theories

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1. Introduction

Justice is compliance with encoded law. It has a twofold purpose, of preventing the crime and punishing the wrongdoer. Justice is not delivered to get some benefit out of it. It should not be denied to any and it should be delivered to everyone when anyone sought it. Justice is not to cause injury to anyone. Justice does not look at the father or mother and it only considers what truth is. The ultimate goal of both tends to implement of rights of people on the civil side and penalize wrongdoers on the criminal side. Civil justice related to the rights of the plaintiff, on the other hand, criminal justice relates to the wrongdoer and his criminal actions. As to the implementation of the criminal justice system, the same may be divided into three different phases. The first phase is related to the investigation, the second phase is related to the inquiry and the trial is the final phase after which the accused may be punished if found guilty of committing an offence. To implement the administration of justice, institutions of Police, Prosecution, Magistrate, and Sessions Courts have been created by law and concerned establishment, the authority of each department of administration of the justice system.

Has been clearly defined to avoid any confrontation between the different departments of the administration of justice. Some of the laws prevailing in Pakistan are the reason for the bad functioning of the criminal justice system of Pakistan. Proper investigation in criminal cases is the foundation of strong criminal cases and the chance of being unpunished of criminals remains low. Section 173 CRPC bounds down the investigation officers to submit a report under section 173 CRPC maximum of 17 days [1]. This phenomenon sometimes causes the basis of defective investigation. Similarly, some other laws are also to be revisited.

1.1 New Legislation but Lack of Implementations

Pakistan faces the problems of regulation and supervision in Counter terrorism prosecution. In Pakistan laws, plans structures, and documents are drawn up but unfortunately, the practical implementation of these is far from ideal. Legislation is passed but then not rolled out or implemented [2]. We cover the lack of implementation of laws and administrative inefficiencies with the promulgation of new laws. Pakistan is over legislative country in the world [3]. Anti-terrorism courts are established to ensure that the trial of cases under the Anti-terrorism Act and of scheduled offenses are conducted fairly and speedily [4]. The purpose behind the establishment of these specialized courts is to eliminate terrorist activities through speedy trial of terrorism cases which is evident from sec 19(7) ATA [5]. After the plane reading of sec 19(7) ATA, it is clear that a special court has 7 days for the completion of the trial, but in practice, this rarely or rarely happens. Once a trial began, most defense counsel used delaying tactics. Strikes, street protests, lockdowns, and scuffles with police by lawyers cause delays in trials. Courts seem to be helpless to do punitive or disciplinary actions against the councils that delay trial. Sometimes delay occurs due to non-submission of complete challah, non-producing of accused because of security reasons, and non-appearance of witnesses due to threats made to them and their families by the terrorists. Resultantly trials are either delayed or the accused persons are acquitted due to lack of evidence so this scenario challenges the letter and spirit of section 19(7) [6]. In the Mahram Ali case, the Supreme Court highlighted the importance of the efficiency of ATAs in conducting terrorism trial and their speedy disposal [7]. For the protection of witnesses, sec 21-ATA already exists but non-implementation is another example of lack of regulations.

2. Defective Legislation

The lack of proper case management mechanisms in ATA enhanced the far-reaching litigation in anti-

terrorism courts. Most ATC judges in Pakistan face a heavy backlog of cases and due to that backlog real cases of terrorism are delayed, and terrorists have much time to manage the witnesses and ultimately, they are acquitted. An analysis of the major reported judgments relating to the ATC were not acts of terrorism per se. Rather those cases were observed to be ordinary criminal offences in which no terrorist intent appeared. Consequently, ATCs lost their precious time in those cases that have no nexuses with terrorism as defined u/s 6 of ATA [8].

The tangential litigation in Anti-Terrorism Courts (ATC) in Pakistan can be attributed to the broad definition of terrorism under Pakistani law [9]. While there is no international consensus on the definition of terrorism, sovereign states define it according to their specific ground realities for prosecuting terrorism cases [10]. Pakistan's expansive definition of terrorism has significantly extended the jurisdiction of the ATCs. Continuous amendments to the Anti-Terrorism

Act (ATA) has further broadened the scope of terrorist activities to include crimes such as kidnapping for ransom, extortion, arms trafficking, gang rape, brutal murders, aerial firing that creates public fear, damaging electric transformers, breaking vehicle windows during political rallies, cases of cannibalism, and child molestation [11]. Consequently, special ATCs, originally intended to handle cases involving terrorist organizations and terrorism-related offenses, are now also dealing with ordinary criminal cases [12].

.For example, in Karachi city alone in (2010) where 35 suspected Pakistani Taliban awaited trial in the special Anti-Terrorism Courts [13]. Till July (2015) in Sindh ATCs 3300 cases were pending [14]. The majority of cases pending in ATCs are that do not fall into terrorism. In a large number of kidnapping for ransom cases, terrorist organizations are not involved and that offense is included in ATA by default. The growing caseload delays justice in actual terrorist cases and contributes to the acquittal of these actual terrorists [15].

2.1 Direct Ocular Evidence and Its Impact

At the very start, it needs to be made clear that the usage of ocular direct evidence by courts is not a legal flaw per se, but a major source of evidence in the arsenal of the prosecution and defense. Statements, confessions, depositions, and many other forms of evidence are used routinely throughout the world, and their usage is the norm rather than an anomaly. However, what distinguishes Pakistan from many developed criminal justice jurisdictions is almost exclusive reliance on ocular evidence in ATC cases, and criminal cases generally. This amounts to the scenario whereby a 'witness A' is supposed to have seen 'accused B' committing a terrorist act with his or her own eyes. This becomes prob-

lematic since many terrorist acts in Pakistan are in the form of ambushes, targeted killings, suicide bombings, or bombs being covertly detonated in crowded public spaces. It is very difficult to incriminate unknown terrorists through eyewitnesses in such cases, but the courts in Pakistan have traditionally used this device, and seem loath to move away from it. It should be made clear at the outset that ocular evidence can, and does result in convictions even in Pakistan, albeit usually in ordinary crimes. The unimpeachable and consistent testimony of eyewitnesses, corroborated by medical and other corroborative evidence, is valid grounds for conviction.

2.2 Non-Implementation of FASAD- UL-ARZ Term

To control the law and order situation in society, the state must control the same. In some cases where the aggrieved persons enter into a compromise with the criminals but the offense is heinous and shocking to the public at large, the court has the power to convict the accused u/s 311 PPC [16]. The condition for applying this section has been discussed in section 311PPC.

2.3 Non-cooperation of Police and Prosecution

In criminal cases, police prosecution cooperation is very poor because it starts at a later stage of pretrial scrutiny, and at that stage, procedural defects cannot be rectified. Lack of police prosecution communication mostly resulted in the acquittal of the accused [17]. A threshold test may be applied when the police seek custody of a suspect for investigation or a bail risk is present but traditionally investigation officers deem that the advice of the prosecutor creates a hurdle in the traditional way of investigation. The efficiency of investigation officers to collect evidence in criminal cases can be improved with the coordination of prosecutor Communication.

2.4 Traditional Investigation and Reactive Policing

In Pakistan, policing is reactive, and in most cases, the police start an investigation of an offense after its commission and after registration of FIR because registration of FIR is a condition precedent for investigation as held by Apex courts in different cases [18]. Even in terrorism cases police come into action after the registration of FIR and pay no heed to counter-preparation of terrorist activities. Although the law provides for proactive policing of terrorism in the offense of conspiracy and incitement, and planners logistic suppliers and facilitators of terrorism, linkage or membership of the banned or proscribed organization [19]. These measures are proactive but unluckily not in practice. In many terror-

ism cases, the accused belongs to fourth schedulers, [20] and they are bound to seek permission from their local SHO to visit any public place [21]. The SHO is and coordination of departments is need of time to curb terrorist activities. Overburdened by laborious law and order duties he can't monitor fourth schedulers and on trial, their incrimination regarding violation of control orders would be difficult to prove and cases tend towards acquittals [22]. On the other hand, evidence generated by the secret agencies is inadmissible in court. Now according to The Fair Trials Act 2013, [23] such evidence has become admissible which obviates the requirement of direct evidence [24].

Pakistan's police system suffers deficiencies in several areas including a lack of resources, insufficient and outmoded equipment, political influences, technology, poor training, and intelligence capability [25]. Police usually commit procedural errors and defects due to lack of knowledge about procedure and terminology [26].

2.5 Inability to Use Modern Evidence

Now forensic evidence is considered as primary evidence in terrorism cases and the accused may be convicted based on forensic evidence [27]. However, this provision has not been taken seriously because to date only one judgment passed on this point [28] in which the court has recognized the importance of scientific evidence such as DNA [29]. But the police have never adopted the trends of modern evidence. Custody and preservation of forensic evidence are not satisfactory because most IOs fail to seal it properly or cause delays in dispatching the parcels. Without producing any expert submission of call data records (CDRs) has also destroyed many cases in Pakistan [30]. It needs to be remembered that sociolect-religious attitudes can play a large part in the professional conduct of stakeholders involved, and controversies like the one above can create cognitive dissonance [31].

3. Political Victimization

Keeping in view the answers the basic cause of the phenomena prevailing in the society regarding going unpunished the real culprits is the inefficiency of the department responsible for law and order in Pakistan.

As Pakistan is a developing country and facing so many problems similar criminal justice system in Pakistan is also progressing steps. Departments included in the criminal justice system are not working up to mark almost all the participants as shown their reservations on the functioning of the department, especially on police department and generally on prosecution and judiciary.

3.1 UN-Healthy Environment

It is universally acknowledged that society is always made by individuals. The mindset of the people residing in rural areas is not appreciable. They always use unfair means to achieve their goals by hook or by crook. Corrupt practices are being used in some unhealthy elements of society which are miserable for the majority of the people of Pakistan. In some cases, we find out those witnesses of the prosecution cases by receiving illegal gratification from the accused turn hostile in favor of the accused person while denying their previous statements to save the real offender from legal punishment.

4. Defective Investigation

The output that came to light after the meeting with the participants, almost all of the participants was aggrieved by the defective investigation of the police. This is due to corruption or maybe in some cases inefficacy of investigating officers. Police in Pakistan are reluctant to apply modern techniques during investigations without any plausible explanation. Police use traditional methods for the investigation. Police do not believe in forensic evidence. We observed that almost the majority of participants pointed out the deficiency of modern evidence.

5. Corruption

Almost except a few, all the participants have leveled allegations of corruption against the officers and officials of police. All participants are directly or indirectly victims of corruption. Corruption almost exists in all departments but police are famous for this and in acquittal or conviction police role is key and they intentionally make mistakes to favor a specific party. Corruption has a bad effect on society, the political system, and the economic condition. Corruption is just like cancer as well as other diseases such as AIDS and HIV [32].

6. Lack of Resources

Almost all participants agreed that police officials and other officers of courts and prosecution departments do have not sufficient resources to keep pace and technological innovations. They have a conventional method which is too old and outdated. Interviews of participants belonging to police departments are important here. They categorically stated that they do have not sufficient funds for the proper functioning and investigation of criminal cases.

7. Aggressive Attitudes of Lawyers

After conducting research it can easily be given that the aggressive attitude of the lawyer during court proceedings is also fatal for the deposition of the witnesses of the courts. Many participants pointed out this point that they were being harassed during cross-examination. Undue pressure minimized the capacity of witnesses to depose properly in the court.

7.1 Non-Protection of Witness

Almost all the countries of the world witness protection programs running positively. But in Pakistan, there are no such programs for the protection of witnesses to save them from illegal threats and undue pressure. Now in Pakistan after study, it has come to knowledge that enactment is successful but implementation on ground realities is to be awaited. We can hope for better.

7.2 Standard of Appreciation of Evidence

Some of the case laws of the honorable high court and August Supreme Court have also emphasized the technicalities that lead to the acquittal of real culprits. Further inquiry and burden of proof together with the benefit of doubt exercised by courts is discretionary and no hard and fast rule has been established in this regard. The reason behind this factum may be that the facts and circumstances of each are different. In some cases, apex courts settle the principle of law which becomes a precedent for lower judiciary and trial court.

7.3 Huge Pendency of Cases

Courts in Pakistan are overburdened due to the huge quantity of under-trial. There are so many reasons behind these phenomena. Delay techniques by the litigants who are being failed due to their false cases. Lawyers are the element to delay the cases. About one decay back struggle started to decrease the pendency which is still in progress [33].

8. Conclusion

After conducting interviews, document analysis, and observation researcher concluded that in Pakistan criminal justice system has many shortcomings that can be overpowered by hard work and good governance. During my research work, so many causes and reasons concerning the failure of the system dealing with law and order situations are not properly working. After conducting research and interviews of the participants and observation while visiting police stations, court proceedings observation

and meeting with criminal lawyers results of my research meet with the research problem. Acquittal of real offenders adversely affects the feelings of heirs or victims as the case may be and forces them to lose their confidence in the system. Causes of acquittal of real offenses in Pakistan that came to light during my research work are defective investigation, shortcomings in the collection of evidence, lack of knowledge of using modern techniques, disinterest in forensic evidence, non-protection program, and fealty and unpleasant environment.

The impact of all these acquittals on society is that there is an increase in the crime's sense of insecurity, provocation for retaliation, and overall lack of confidence in the criminal justice system of Pakistan.

The main objectives of the study are to point out the flaws in the criminal justice system that give undue benefit to the criminal/real offender, through light on the importance of a strong judicial system to counter the criminals and offenders, determine how the acquittal of criminals affects public at large and its opinion and to contribute for better understanding of causes of chaos in society due to acquittal of real culprits and how it affects the members of the society. During my research work, I concluded and came to light the causes of the acquittal of offenders, and the impact of the same on society as well as the main hindrances to counter these problems. A lot of work still has to be done to throw light on the causes of real offenders being acquitted. The researcher has conducted interviews with stakeholders of the criminal justice system as victims, complainants, accused, and leading lawyers practicing in the criminal side.

The researcher observed and concluded the following.

9. Recommendations

After conducting research researcher has pointed out the shortcomings in the system and has tried to discuss its impact on society. To meet the phenomena in this research work. The researcher has reached to conclusion about the following recommendation to improve the situation and criminal justice system in Pakistan.

9.1 Capacity of Departments should be improved

Keeping in view the answers to the basic cause of the phenomena prevailing in society regarding going unpunished the real culprit is the inefficiency of the department responsible for law and order in Pakistan

As Pakistan is a developing country and facing so many problems similar criminal justice system in Pakistan is also progressing steps. Departments included in the criminal justice system are not working

so it is a great need of time to improve the efficiency of the department to get maximum results.

9.2 Healthy Environment should be provided

It is universally acknowledged that society is always made by individuals. The mindset of the people residing in rural areas is not appreciable. They always use unfair means to achieve their goals by hook or by crook. Corrupt practices are being used in some unhealthy elements of society which are miserable for the majority of the people of Pakistan. In some cases, we find out that witness of the prosecution cases by receiving illegal gratification from the accused turn hostile in favor of the accused person while denying their previous statements to save the real offender from legal punishment. There is a great need to make the court environment friendly and healthy to improve the situation.

9.3 Improvement in Investigation

The output that came to light after the meeting with the participants, almost all of the participants were aggrieved by the defective investigation of the police. This is due to corruption or maybe in some cases inefficacy of investigating officers. Police in Pakistan are reluctant to apply modern techniques during investigations without any plausible explanation. Police use traditional methods for the investigation. Police do not believe in forensic evidence. Improvement in investigation is needed. Police should convert his method from conventional method to modern techniques being used all over the world.

Corruption free Environment

Almost except a few, all the participants have leveled allegations of corruption against the officers and officials of police. Corruption almost exists in all departments but the police are famous for this in acquittal or convection police role is key and they intestinally made the mistake of favoring a specific party. Corruption in Pakistan is a major problem and should be eliminated to get maximum results and improve the situation.

9.4 Resources must be provided

Police officials and other officers of courts and prosecution departments do have not sufficient resources to keep pace and technological innovations. They have a conventional method which is too old and outdated. Interviews of participants belonging to police departments are important here. They categorically stated that they do have not sufficient funds for the proper functioning and investigation of criminal cases. For better results, it is compulsory to provide resources to all staff to get results.

9.5 Enhance Cooperation between Police and Prosecution

Police and prosecution are two important organs of the criminal justice system. Like all countries of the world, we should also improve prosecution services in Pakistan. The investigation must proceed according to the line of inquiry given by the prosecutor. The prosecutor is the person who has to present his case in a court of law and has to establish evidence behind any shadow of doubt.

9.6 Code of Conduct for Lawyers

After conducting research it can easily be given that the aggressive attitude of the lawyer during court proceedings is also fatal for the deposition of the witnesses of the courts. People are being harassed during cross-examination. Undue pressure minimized the capacity of witnesses to depose properly in the court. There is a great need to apply a code of conduct strictly on conduct for lawyers.

9.7 Protection of Witness must ensure

Almost all the countries of the world witness protection programs running positively. But in Pakistan, there are no such programs for the protection of the witnesses to save them from illegal threats and undue pressure before 2018. The subordinate courts treated the directions of the respective high courts in the form of rule as judicial precedents. Now in Pakistan after study, it has come to the knowledge that the Witness Protection Act 2018 has been enacted but implementation on ground realities is to be awaited. We can hope for better.

9.8 Delay in Conclusion of Trial should be discouraged

Delay in the conclusion of the trial is one of the big problems facing our criminal justice system in Pakistan. Due to the delay in the conclusion of the trial. So many problems and failures of prosecution cases and complainants are being caused by the prosecution case.

9.9 Amendments in Laws

Most of the prevailing laws have been inherited from the British era. Laws at that time were enacted to suppress citizens against any movement irrespective of basic human rights. Section 345 CRPC deals with the procedure of entering into a compromise, whether with the permission of the court or without permission of the court. This section also gives the procedure that who is legally competent to enter into a compromise with the offenders and in case of murder or death of the victim, the legal heir of the victim. Amendment in section 173CRPC is unavoidable for a successful investigation.

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