

DELAY IN THE CRIMINAL JUSTICE SYSTEM IN
PAKISTAN: A CRITICAL ANALYSIS

BY

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ABSTRACT

There are numerous pieces of literature on the obligations to expedite justice to a common man. Unfortunately, what happens is, the courts themselves are guilty of inordinate delay. Delay in courts is a global concern as justice delayed is justice denied. Unlike other countries, the backlog in the criminal courts of Pakistan is increasing at an alarming pace. In countries using the common law system, the prevalent mode of resolving disputes continues to be adversarial, where a judge does not play an active role in investigation and prosecution as opposed to the inquisitorial system where a judge takes part in inquiry, investigation, and prosecution. This study has analyzed the causes of delay in the criminal justice system of Pakistan. As far as the delay is concerned, this study has examined and compared the criminal justice systems in common law countries in Pakistan and Malaysia, with the inquisitorial legal system in France. A qualitative research methodology has been conducted where apart from doctrinal research, a critical and comparative analysis is made by the researcher. Through analyzing each criminal justice system separately and comparatively, the shortcomings in the criminal justice system of Pakistan that contributed to the inordinate delay in the disposal of cases can be identified. Recommendations can then be provided to rectify those shortcomings hence ensuring the expeditious disposal of criminal cases. Besides, the adverse effects of inordinate delay to suspects, accused persons, victims, and witnesses are also discussed as their fates too are intertwined.

خلاصة البحث

هناك بعض المؤلفات عن التزامات التعجيل بالعدالة، فالتأخير في المحاكم مصدر قلق عالمي؛ لأن تأخير العدالة حرمان منها، وعلى نقيض البلدان الأخرى؛ يزداد تراكم القضايا في المحاكم الجنائية الباكستانية بوتيرة تندر بالخطر، فباكستان من البلدان التي تستخدم نظام القانون المشترك (القانون العام)، والأسلوب السائد فيه لحل النزاعات هو أسلوب الخصومة، فلا يكون للقاضي دور نشط في التحقيق والملاحقة القضائية، على عكس أسلوب التحقيق في النظام المدني؛ إذ يشارك القاضي في الاستعلام والتحقيق والمقاضاة، وعليه؛ تناول هذا البحث أسباب التأخير في نظام العدالة الجنائية في باكستان، وفحص نظامي العدالة الجنائية للقانون المشترك في كل من باكستان وماليزيا، وقارن بينهما، ثم قارنهما بالنظام المدني للتحقيق في فرنسا، وقد توسّل الباحث النهج النوعي، فأجرى تحليلاً نقدياً لكل نظام عدالة جنائية على حدة، ثم قارن بينها، مما أمكن معه تحديد حالات القصور في نظام العدالة الجنائية في باكستان، فقد أسهمت في التأخير المفرط في الفصل في القضايا القضائية، ومن ثم؛ قدّم الباحث توصيات لتصحيح تلك الحالات، والتخلص من آثارها، علاوة عن مناقشة الآثار السلبية للتأخير المفرط على المشتبه بهم والمتهمين والضحايا والشهود؛ لأن مصائرهم متشابكة أيضاً.

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DECLARATION

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LIST OF ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
AIR	All India Law Reports
BHC	Baluchistan High Court
CESCR	International Covenant on Economic, Social and Cultural Rights
CJP	Chief Justice of Pakistan
CPC	Criminal Procedure Code
CrPC	Criminal Procedure Code
CrLJ	Criminal Law Journal
CUN	Charter of the United Nations
FIR	First Information Report
HC	High Court
ICCPR	International Covenant on Civil and Political Rights
IHC	Islamabad High Court
LHC	Lahore High Court
MLD	Monthly Law Reports
NLR	National Law Reports
PCrLJ	Pakistan Criminal Law Journal
PHC	Peshawar High Court
PLD	Pakistan Legal Decision
PLJ	Pakistan Law Journal
PPC	Pakistan Penal Code
PSC	Pakistan Supreme Court
SCMR	Supreme Court Monthly Review
SCP	Supreme Court of Pakistan
SHC	High Court of Sindh
UDHR	Universal Declaration of Human Rights
UNCRC	United Nations Convention on the Rights of the Child

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CHAPTER ONE

INTRODUCTION

1.1 OVERVIEW

A quick, free, and fair justice is the hallmark of every civilized society. Every legal system of the world and international conventions, treaties, and documents have emphasized the improvements in cutting down delays in criminal trials. Justice should not be delayed because of the common law principle, “justice delayed is justice denied.” The main objective of the law and the criminal justice system is to ensure justice is expeditiously done. Every person has a right to a fair trial and by due process in any civil and criminal proceedings.¹ Furthermore, this right is also recognized in the international documents of human rights, one of which states as:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.²

However, those rights would not mean much if those rights are delayed. Every citizen all over the world has a right to justice, but this right has been confronted with the issue of delay. It has been globally recognized that delay in the criminal justice system is widespread and a cause for concern.³ Frequent indications and symbols have been found in the process of a criminal case that the criminal justice system is not running as competently or capably as required. For example, the length of the time for the

¹ Constitution of Islamic Republic of Pakistan 1973, Article 10(a)

² European Convention on Human Rights (adopted in 4 November 1950, entered into force on 3 September 1953) (ECHR), Article 6 part 1

³ A. Samuels, “Custody time limits”, *Criminal Law Review* (1997): 260-268. And see also Brian Manarin, “Bedeviled by Delay: Straight Talk about Memory Loss, Procedural Manipulation and the Myth of Swift Justice”, *Windsor Rev. Legal & Soc.* 27 (2009): 117.

processing of a case is a big concern of legal entities in the world.⁴ Having considered this problem, the ‘Stop Delaying Justice’ initiative’ has well been introduced by the judiciary in England and Wales to reduce the number of delays from the court. It requires that all judicial officers must be qualified and trained as this scheme requires.⁵ Delays while deciding cases in courts are the symptoms of inefficiency in the legal system. On the other hand, the delay can also have detrimental effects on the accused and the victims.⁶ Adding more to the effects of delay in the criminal justice system, people may lose their confidence in the judiciary; delay may create frustration and worry for the people and prevent the victim of crime from getting prompt and quick relief from the court as well.⁷

However, unlike other countries, in Pakistan, problems of delay in the disposal of criminal cases are unacceptable. There are manifold reasons of delay found in Pakistan. Plenty of studies have depicted that the bribe, unqualified and untrained judges, and the inefficiency of the judicial officers are considered as the main reasons of delay in criminal courts of Pakistan. There are also pending cases, extreme complications in the procedure of litigation, and mishandling of the issue that can cause the delay in the dispensation of expeditious justice.⁸ Moreover, when one judge is transferred from one place to another, it also makes the clash longer because a new

⁴ C.M. Webster, & A.N. Doob, “*Everything in its Own Time: A Preliminary Examination of Case Processing Time in Canadian Courts*”, Toronto: Centre of Criminology, 22 April 2004.

⁵ H Riddle, “The Stop Delaying Justice! Initiative”, The Law Gazette, 19 January, 2012, <http://www.lawgazette.co.uk/in-practice/practice-points/the-stop-delaying-justiceinitiative> (accessed 15 February, 2018).

⁶ M. Fabri and P. M. Langbroek, "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)* (2003).

⁷ Hanna, Kirsten M., Emma Davies, Emily Henderson, Charles Crothers, and Clare Rotherham, “*Child Witnesses in the New Zealand Criminal Courts: A Review of Practice and Implications for Policy*”, New Zealand Law Foundation, 2010.

⁸ Mohammad Mizanur Rahman Chowdhury, “A Study on Delay in the Disposal of Civil Litigation: Bangladesh Perspective”, The International Journal of Social Sciences 2013, 14(1):27-35.

judge may decide to restart the case once again and recall the witnesses.⁹ Many pending cases in all courts create delays in any type of civil and criminal cases, and they are increasing day by day.¹⁰

Inordinate delay in the process of a criminal trial in courts is not tolerable in Pakistan as opposed to the modern world, where it is manageable. International agencies tried to introduce some alternative resources to justice so that they would be able to tackle this issue. The delay is the problem that has been highlighted by different scholars of the world, such as it is universally recognized that delay in the criminal justice system is a widespread and challenging issue. Delay in the criminal justice system destabilizes the working of judicial systems all over the world.¹¹ Finnish legal system, which is most developed in the world, has also suffered from delays despite that there is neither corruption nor any other critical issues related to courts. People have great faith in the judiciary, but at the same time, their concern is how speedily cases are disposed of and administered by courts.¹²

The legal world is trying to improve the system to deal with the challenge of delays; however, factors and causes of procrastination are still unidentified and unspoken. Though many suggestions and recommendations have been found for expeditious justice, yet they do not deal with an increasing amount of the problem.¹³ The problem of delay results in frustration because there are different types of cases in

⁹Raza Ullah Shah, Shadi Ullah Khan, and Sumera Farid, "Causes for Delay in Civil Justice in Lower Courts of Pakistan: A Review", *Pakistan Journal of Criminology* 6, no. 1 (2014): 47.

¹⁰ R. Blue, H. Richard, and L. A. Berg, "Pakistan Rule of Law Assessment Final Report. [Washington, DC]: United States Agency for International Development (USAID)", (2008).

¹¹ Lode Vereeck and Manuela Mühl, "An Economic Theory of Court Delay", *European Journal of Law and Economics* 10, no. 3 (2000): 243-268.

¹² Smolej Mirka, "Time Management in Nordic Courts: Review of Proposals and Policies aimed at Reducing Delays in Courts", European Commission for the Efficiency of Justice (CEPEJ), 8th plenary meeting Strasbourg 6-8 December 2006.

¹³ Giuseppe Di Vita, "Production of Laws and Delays in Court Decisions", *International Review of Law and Economics* 30, no. 3 (2010): 276-281. See also J. Michael McWilliams, "Setting the Record Straight: Facts about Litigation Costs and Delay", *Business Economics* (1992): 19-24.

the courts that have a different time for its process as well as for a final decision. Their time varies from each other.¹⁴ It has been examined and explained in Europe that the inefficiency of the management in the courts of Europe can cause a backlog of work and too long delay as well, which is beyond the reasonable time specified for a case. This study and observation had made in 1999 by the president of the European Group of Public Administration.¹⁵ Courts and human rights commissions in Canada and Europe have already imposed some limits of time for the process and procedure of a criminal trial. They have also mentioned and defined the meanings of the reasonable time specified in the conventions like article 11 of the Canadian Charter and article 6 of the European convention on human rights and many others as well.

World Bank in 1999 stated that many types of research had been conducted in the USA to provide justice within a reasonable time. Apart from the legal researchers, some legislations are made and enacted to deal with delays in criminal courts while deciding cases. The Promulgation of the Speedy Trial Act is one of those examples. Likewise, in the UK, it was also reported by the criminal justice minister who described delays as the most outrageous and unforgivable, and he further explained that delay in criminal cases might become the cause of more crime.¹⁶

In this research study, the author focuses on analyzing the criminal justice systems in common law system in Pakistan and Malaysia, and the civil law system in France, and to identify causes of delay in disposal of criminal cases in Pakistan, and to analyze the drawbacks and technicalities in procedure which may be the primary causes

¹⁴ Mary Lee Luskin, and Robert C. Luskin, "Case Processing Times in Three Courts", *Law & Policy* 9, no. 2 (1987): 207-232.

¹⁵ David C Steelman and Marco Fabri, "Can an Italian Court use the American Approach to delay reduction?", *Justice System Journal* 29, no. 1 (2008): 1-23.

¹⁶ The Criminal Justice Minister, Mr Damien Green was reported in The Telegraph newspaper on 19th of February 2013.

and effects of delay in the determination of cases in criminal courts of Pakistan. As the dispensation of justice is essential, so author elaborates, examines, and compares both the adversarial and inquisitorial systems and will find the leading causes of inordinate delay in disposal of criminal cases and how Pakistan can learn to solve its delay.

1.2 STATEMENT OF THE PROBLEM

Free and fair trial without delay is an international and constitutional right of everyone in the world so that the object of law and justice would be fulfilled. The constitution of the Islamic Republic of Pakistan has also provided the right to a fair trial and speedy justice in its articles.¹⁷ However, the problem is that this international right has been confronted with abnormal, undue, and excessive delays in the criminal justice system in Pakistan. The criminal justice system in Pakistan has gained a dubious reputation for delayed dispensation of justice.¹⁸

It has been depicted that the solutions and suggestions made in the judiciary to provide expeditious justice, do not fulfill the demands of the increasing population in the country and especially where people, living in the country, are now well aware of their rights provided in the constitution of the Islamic Republic of Pakistan. Delays while deciding issues in courts are considered as one of the symptoms of inefficiency in the legal system. On the other hand, the delay can also have detrimental effects on the accused and the defendants or victims.¹⁹ Adding more to the effects of delay in the criminal justice system, people may lose their confidence in the judiciary. Delay may create frustration and worry for the people and prevent the victim of crime from getting

¹⁷ Constitution of Islamic Republic of Pakistan 1973, Article 10.A and Article 37.d

¹⁸ Law and Justice Commission of Pakistan.

<http://commonlii.austlii.edu.au/pk/other/PKLJC/reports/60.html> (accessed 12 June, 2017).

¹⁹ Jason Payne and Jason Payne, "*Criminal Trial Delays in Australia: Trial Listing Outcomes*. Canberra", Australia: Australian Institute of Criminology, 2007.

prompt and quick relief from the court as well.²⁰ This specific research has identified the reasons and causes of delay and tried to find out the adverse impacts on the parties concerned. Delayed criminal trials are a significant cause of long periods of confinement of an accused or suspect. So, the issue of delay in Pakistan needs to be resolved by taking examples from the best practices of the world.

1.3 HYPOTHESES

The research hypotheses are as follows:

- 1- The presence of delay in the disposal of criminal cases in Pakistan has been increasing quickly despite the efforts made by the government and administrative authorities.
- 2- Policy, legal framework, and Laws such as substantive and adjective, and many other administrative regulations are archaic and inadequate to ensure justice to a common man is not delayed. Laws are not updated, amended, or reformed as far as the delay in the disposal of criminal cases in Pakistan is concerned.
- 3- Delay in the expedited disposal of criminal cases affects accused persons, complainants, and the administration of justice.

1.4 RESEARCH OBJECTIVES

1.4.1 Specific Objectives

The specific objective of the study is to cope with the problem of abnormal delay in deciding criminal cases in Pakistan so that everyone in Pakistan would have speedy access to justice as his constitutional, international, fundamental, and inherent right.

²⁰ Hanna, Kirsten M., Emma Davies, Emily Henderson, Charles Crothers, and Clare Rotherham, “*Child Witnesses in the New Zealand Criminal Courts: A Review of Practice and Implications for Policy*”, New Zealand Law Foundation, 2010.

1.4.2 General Objectives

- 1- To clarify the right to expeditious justice and common law principle, “justice delayed is justice denied.”
- 2- To compare the criminal justice systems in common law country in Malaysia and civil law in France.
- 3- To identify the reasons and causes of delay in the criminal justice system in Pakistan.
- 4- To determine the effects of delays on accused persons, complainants, and administration of justice.
- 5- To suggest the practical methods and ways on how delays in Pakistan’s criminal justice system could be overcome and solved.

1.5 RESEARCH QUESTIONS

The study aims to answer the following questions:

- 1- What is the scope of the common law principle, “justice delayed is justice denied” and does Pakistan uphold it?
- 2- How is criminal trial different in the common law system in Malaysia and civil law in France?
- 3- Whether the delay in Pakistan is severe, and what are the main drawbacks and shortcomings in criminal justice systems in the common law system in Pakistan?
- 4- How delay in criminal justice affects accused persons, complainants, and administration of justice?

1.6 SIGNIFICANCE OF THE STUDY

This research has much significance for the expeditious disposal of criminal cases in Pakistan. The core idea to write it down is to identify and understand the leading causes and their effects upon the masses so that the judicial system may be dramatically improved accordingly. The principle of universal application that speedy justice is the right of every person in this global era, but unfortunately, in Pakistan, this right is not available to the citizens for several reasons and multiple issues. The delay is probably caused due to a defective and outdated system of procedure and evidence, and it could only be improved by adopting the new trends and methods in how cases are heard. It will serve no purpose if a person is detained for decades and, at last, acquitted. That will be too little and too late. To eradicate those issues and reasons, this study will provide a fruitful basis for the citizens and persons who are sitting in the top-notch to redress the issue meaningfully, and the ultimate advantage will go to the ordinary people of Pakistan.

Delay in the disposal of criminal cases is a severe issue to eradicate in Pakistan and is also prevalent in every country of the world. Many law books have been written in the world for the dispensation of justice to every human being, but despite that, the justice system is not functioning so well, and disputants are deprived of justice due to delay. The issue of delay is not manageable in Pakistan as compare to other countries in the world. So, this study has much importance to reduce the amount of delay in seeking justice, which has affected everyone. This study is to deal with the problem of abnormal delay in Pakistan so that everyone would have access to justice as a constitutional, international, fundamental, and inherent right.