



ANALYZING THE ADVERSE EFFECTS OF DELAY IN THE ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM IN PAKISTAN

Dr. Sadaqut Ali
Assistant Professor Law
Bahria University Law School
Islamabad - Pakistan
Sadaqut.buic@bahria.edu.pk

Hafiza Amina Sadia
Assistant Professor Law
Bahria University Law School
Islamabad - Pakistan
amnasadia.buic@bahria.edu.pk

Abstract:

Expediting Justice, hence not having a delay in the disposal of criminal cases, is the hallmark of every modern society nowadays. All countries have continuously strived to improve their criminal justice system to ensure justice is done to a common man. When justice is delayed, it has harmful and destructive effects on the victims, accused persons, witnesses, and tarnishes the image of the administration of justice. This research is an attempt to explore and analyze those adverse effects of delay because the criminal justice system is not functioning properly and justly in Pakistan. The main object of the judiciary is that no accused is being convicted without complying with the criminal due process. However, when the justice system is not prompt and speedy in the disposal of criminal cases, then it has several effects on all the persons concerned. For the purpose of determining the adverse consequences of delay, the researchers have analyzed some criminal cases from Pakistan and India where the accused, victim, witness, and society have suffered from the issues created by the delay in criminal trials.

Keywords: Delay, Criminal Justice, Adverse Effects, Accused, Victim, Witness

Introduction

Delay in criminal justice system is not acceptable in Pakistan and it is a serious threat to timely justice (Ali, 2021). One of the reasons and causes of delay in the judiciary of Pakistan is the huge backlog of the cases in the courts (Ali, 2021), which is now around 2 million as per the figures and stats by Law and Justice Commission of Pakistan. Gigantic list of pending cases in all courts from inferior to superior has become a very chronic issue in Pakistan and a big concern of legal



entities like chief justice of Pakistan, advocates and legal advisors to cope with this pendency (Shahid, 2018). Judges, lawyers and column writers have written a lot on the issue of pendency in the courts of both criminal and civil as well (Javaid, 2019). Massive amount of pending cases in courts also violates the true spirit of the right to speedy justice. Right to speedy justice or speedy trial is recognized as the most important essential practical right of the accused in national as well as international law (Farrell, 2003). In Pakistan, courts are filled with many pending cases due to delays in both civil and criminal cases and they are increasing day by day (Blue, et al., 2003). The backlog of cases, the gaps, and complication in the process of lawsuit and mismanagement of the case system are also the factors hampering cases from being expeditiously disposed (Chowdhury, 2013). Furthermore, transfer of judges from one court to another also makes dispute lengthier because a new judge may decide to restart the case once again and recall the witnesses (Shah and Farid, 2014). The delay can also have detrimental effects on the accused and the defendants or victims (Fabri and Langbroek, 2003). Delays may affect the general confidence of the people in the legal system, may cause protracted frustration, worry and distress to those involved, and may prevent victims of crime, and those associated with them, from 'moving on' (Hanna, et al., 2010). The very huge list of pending cases in the courts results into the delay of justice. When justice delays, it means, justice denies, according to the maxim "Justice delayed is justice denied (Gladstone, 2018).

The current study has focused on the adverse effects of delay on the administration of criminal justice system in Pakistan. How delay has resulted in the violations of procedural rights, and mental health of the accused and victim. The clients of justice desire uncorrupted, inexpensive and speedy justice without any delay. However, it will not be extravagant to say that the existing criminal justice system in Pakistan has been affected by delay while creating psychological and procedural frustration for all parties concerned.

1- Effects of Delay on the Accused/ Defendant

Firstly, delay has affected the rights of the accused to fair and speedy trial. Because of the pandemic of Covid-19, courts are closed, not functioning at the time, while accused living in the jails waiting for their trials. This type of delay has caused psychological effects on the mental health of the accused in the prison. A criminal case's pendency is like a sword hanging over a person's head, which directly impacts their rights, free movement, and engagement in society, even though the accused is not in detention (Surprenant, 2020). For all these purposes, speedy trial, or "reasonably expeditious trial," has been considered an important and necessary part of the Supreme Court's constitutional right to life and freedom (Constitution of Islamic Republic of Pakistan, 1973). It is necessary to note that delays in enforcing justice impact not just the accused's rights but also the victims' rights. Long trials may lead to evidence being missed or lost, particularly eyewitness testimony, which decreases the likelihood of conviction (Ali and Shakieb, 2021). Since victims have a very limited role to play in prosecuting a criminal case, and therefore no influence over its progress, delays in the conclusion of the trial that prevent victims from actively filing or pursuing the case. Finally, there is an aspect of law and order to consider. As the Law Commission of India's 239th Report observed, delays in investigating and



prosecuting criminal cases erode confidence in the rule of law and the criminal justice system, which has significant consequences for the judiciary's credibility. Justice is deferred, and so justice is withheld (Bhandari, n.d.). The criminal justice system of Pakistan has given maximum protection to the person accused by providing the informed procedure; however, it curtails delay in its ways. Provisions in criminal procedure code give the maximum opportunity to the accused for his trials, but these trials take a too long time. This protracted trial disturbs the rights of the accused provided to him by criminal procedure code and constitution (Constitution of Islamic Republic, 1973).

The right to speedy justice and immediate disposition of the case is provided to the accused to avoid delays in the administration of the criminal justice system and the courts are duty-bound to adjudicate within a reasonable time. Court delays are an extensively perceived prodigy. An accused ended up with an extra period in prisons than they would have if convicted for the original felony. Accused detaining in the jails of Pakistan is suffering from the adverse effects of delay. Sometimes, accused persons are detained in jail for a period more than the punishment of offence charged against them. In the case of Asma Nawab vs. State, the Supreme Court of Pakistan had acquitted the accused whose name as Asma Nawab, after 20 years living in the jail. The accused spent twenty years of her life in jail. She was charged with the murder of her parents and one brother in 1998. However, she was declared innocent by the Supreme Court of Pakistan after being in jail for 20 years. Supreme Court of Pakistan held that there was not sufficient evidence against her for the guilty of the offence. (Asma Nawab vs. state, 2018). Her trial took just 12 days for her conviction but her appeal took 20 years from the day of conviction to the day of final judgment by the Supreme Court. The delay, in this case, has affected the life of an innocent woman who was unjustly confined to jail for twenty years. Delay in the trial does have adverse effects not only after conviction but also during the trial and during custody. Many studies and researcher found that there are adverse consequences and effects on the accused and explained as:

“The effects of a criminal charge do not commence with conviction; being under suspicion has its dishonor. The presumption of innocence exists in the courtroom by placing the onus of proof on the prosecution, but among society at large, it would be fair to say that being charged with a criminal offence often gives rise to a presumption of guilty which in many cases is not dispelled even on acquittal. There is a natural human tendency to think "he would not be in that position if there were not some truth in the allegation". On being charged, even if he is not kept in custody, the accused may face suspension from employment, disruptions in his social relationships, and suffer emotional anguish. The longer he has to wait for trial, the more severe these effects become: and they may be perceived as the punishment of a kind, experienced before the trial itself.” (Osborne, 1980).

It has also been asserted that consequences and effects of a lengthy delay before trial are unquestionably adverse and severe for those accused waiting in custody, whether it amounts to



mere deprivation of liberty or something more. (Lewis R. Katz, 1972). There is almost universal recognition of the impropriety of punishing someone who is only accused of a crime, but in certain circumstances, the interests of society override such reservations. The mental torture and anxiety suffered by an accused of a long length of time are to be treated as sufficient punishment inflicted on him. (Arun Kumar' Ghosh. Vs State, 1991).

Punishment before trial may not be the only injustice suffered by those remanded in custody. They may face considerable difficulties inadequately preparing their defense: they are unable to obtain statements, seek evidence, interviews, witnesses, and access to legal advisors depends on the cooperation of the prison authorities. They can do little to further their defense and must depend on others to act in their best interests. Faced with such obstacles, the accused may give up his defense, valid or not, and plead guilty to expedite the process and get on with the task of serving his sentence. Though the Constitution of the Islamic Republic of Pakistan guarantees that every person has a right to a fair trial, and speedy justice, however, the Pakistani criminal justice system lacks behind all these guarantees and protections. In Pakistan, the criminal justice system keeps the accused in jails for years while waiting for the trial to commence and to complete.

In the case of Mazher Farooq, he was declared innocent by the supreme court of Pakistan after 24 years in prison. The Supreme Court stated that not sufficient evidence had been provided by the prosecution in the same murder case. This case is the best example of inexpensive justice in Pakistan because Mazhar Farooq has got the acquittal after giving a heavy price. He has lost the two-hundred-acre land while facing the very long criminal trial in courts. But now he has nothing of his land because of contesting his cases in different courts over the last two and a half decades. Delay in a criminal trial has adversely affected the accused in this case.(Iqbal, 2016). Another example of such delayed justice in criminal cases in courts of Pakistan, which has affected the lives of the accused, is of two brothers, Ghulam Qadir, and Ghulam Sarwar, who got acquittal from the supreme court of Pakistan after 2 years when they had already been hanged. Their punishment of death was executed in the Bahawalpur central jail on Oct 12, 2015. Paradoxically, on Oct 6, 2016, then three Justices named Asif Saeed Khosa, Dost Muhammad Khan, and Manzoor Ahmad Malik accepted the appeals against their conviction in the Supreme Court of Pakistan and set aside their death punishment uphold by Lahore high court on May 26, 2009. In this case, the Supreme Court of Pakistan held that prosecution had sadly failed to prove the case "beyond a reasonable doubt." In this case, the delay has affected the accused so adversely that both the accused had been deprived of their lives due to the inefficiencies of the systems. (Supreme Court of Pakistan, 2016).

Several other cases found in Indian jurisdiction, where accused persons had remained in jail for a longer time than the punishment of the offence charged against him if he was found guilty. Accused spent more time than the total punishment before trial. Raghubir Singh. Vs. State, 1987) In the case of the delayed criminal trial, when the accused is innocent, he is subjected to mental anxiety economic damage till proved innocent. On the other hand, when he is guilty, delay nerves his confidence in the system of criminal justice and makes him insecure. The impact



of delay in criminal cases also extends to dependents of the person accused, who may suffer from undue loss. (Rajan and Khan, 1982). Moreover, when the accused is the head of the family who has to run his whole family, then delay in criminal trials can cause serious damages to his family members. His family may suffer from social stigma and the loss of income due to the arrest of the accused person and delayed criminal trials. The families of the accused also suffer from the lack of money to defend the defendant. The most notorious case in India and that is Ajay Ghose vs. State. Ajay spent thirty-seven years of his life in jail when was arrested in the case of the murder of his brother in 1962. Later, he became insane and certified too as insane. His mother followed his case in the court but after her death in 1968, no anyone did come to see him in jail. The delay had affected his life in jail from 1962 to 1999 in such a manner that the trial judge and all the witnesses had died and his case was not followed by the court concerned. However, in November 1999, an activated group of human rights gave the notice to the supreme court of India about the accused. Consequently, the Chief Justice of the Supreme Court of India had handover him from jail to the missionaries of charity home. So he was released in 1999 having remained in jail from 1962. Mr. Ajay's life is the ultimate sacrifice to the Indian Justice System. All these criminal cases from Pakistan and India illustrated the adverse effects and consequences of delay in the criminal justice system on the accused person or the defendants.

In criminal trials, delay creates difficulties for the accused that are in the prison. (Bassiouni, 1993). Delay in the administration of criminal justice violates the true spirit of the principle of presumption of innocence provided almost in all criminal codes in the world, where accused persons are detained into the prison waiting for trial because sometimes they are not provided with bail due to felony offences (Bassiouni, 1993). They often live in prison for a period more than the punishment prescribed for the offences charged against them. So delay in waiting for trial erodes the confidence in the principle of presumption of innocence.

2- Effects of Delay on the Victim

Delay has adversely effected the rights of the victims of the crimes and offences for their speedy remedy and justice. Victims are those persons who, on the violation of their rights, expect immediate justice from the courts. In other words, we can say that Victims have been defined as those persons who have suffered from any kind of harm such as bodily or intellectual, emotional, monetary harm, or extensive damage of basic rights provided by the constitutions and international laws in the cases of the violation of laws.¹ Victims would always be preserved with sympathy and self-respect. They have the right of access to the spirit of justice and to speedy justice within reasonable time according to all those laws provided by the national legislation, because of the loss or injury they got from the accused or culprits. As far as the speedy remedy to the victims is concerned, judicial and administrative instruments would be recognized and encouraged, essential to allow the victims to get compensation through the procedures that are prompt, reasonable, low-priced, and reachable. They shall be up-to-date to the basic and

¹ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power Adopted by General Assembly Resolution 40/34 of 29 November 1985



fundamentals rights for compensation through speedy tools and apparatuses.²

However, when justice is delayed, it adversely affects the rights of the victims (Fabri and Langbroek, 2003). Every person has a right to a fair and speedy trial and fairly quick due process in any civil and criminal proceedings. (Constitution of the Islamic Republic of Pakistan, 1973). Furthermore, this right has also been recognized and provided by international conventions and documents of human rights which stated as:

“In the determination of his civil rights and obligations or 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” (European Convention of Human Rights, 1959).

This international document unquestionably asserts the right of the fair and speedy trial and a public hearing to the victim within a reasonable time. It states that when any person's fundamental right is infringed, he has the right to the speedy remedy within a reasonable time. However, the problem is that delay in providing a remedy to the victims is considered as an obstacle to speedy justice. The delay can also affect the rights of the victims. (Fabri and Langbroek, 2003). Moreover, Delay in criminal cases causes the hindrance, grief, and misery to the parties concerned. Furthermore, the delay may stop the victims to get the remedy expeditiously. (Hanna.et.al, 2010)

Likewise, the constitution of the Islamic Republic of Pakistan provides that the state must provide expeditious and inexpensive justice (Constitution of Islamic republic of Pakistan, 1973) to the victims. But more than 2 million pending cases in courts are violating this right of the victims in Pakistan. When 2 million cases are pending in the courts of Pakistan, one can imagine how delays in the criminal justice system are affecting the rights of the victims and their families. Because due to delay, they have to wait for many years to get justice from the courts. The supreme objective of the justice system is to give relief to the victim and to give a penalty to the lawbreakers; however, delay violates this significant objective. The person, who is the victim, always desires from the court to punish the criminals as soon as possible. In this way, the public has lost its faith in the judiciary. A massive amount of delayed criminal cases for years is causing excruciating mental and financial burden on complainants. In a lot of criminal cases, the victims suffered more than the accused. (Das, 2001)

During trials of any criminal case, the accused should be treated as a privileged person and he should be given security against unlawful arrest and detention. But the victims, who have suffered from the assault of crime, and any loss of money or property, have the more right to seek a cure or relief at the same time. Unquestionably such harms inflicted on the victims by the offenders are enormous and irreparable. (Guar, 2000). Victims may also suffer when their witnesses forget their relevant facts especially when a delay occurs in criminal cases. Legal

² Ibid.



researches showed that delay may affect the memory of the witnesses. Delays in trials deleteriously affect the memory and ability of the witnesses to give evidence and testimony in courts. Victims of crimes need relief or compensation as quickly as possible, but the delay in criminal cases is adversely affecting the grievances. Financial and economic compensation is suitable and effective for the restoration of the fundamental right of victims in cases of infringement. The well-known proverb “The victim is the forgotten man of the criminal justice system” suits fit when justice is delayed. He is not only the victim of crimes but also the victim of the criminal justice system because the prosecuting agency does not conduct the investigation properly and justly but for their personal motives and objectives.³

Both the victims and their family members are adversely being affected by delays in speedy dispensation of criminal cases. At one time, victims of the offences and crimes are suffered from the assault by the offenders, and delay in justice creates a further disturbance to them. As compared to the right to speedy trial of the accused, the right of the victim of the crime gets more importance for a speedy trial. So the right to a speedy trial of the victim should have high regard as far as delay is concerned. As a final point, the truthfulness of the judicial process is questionable when the trial is unreasonably protracted.

3- Effects of Delay on the Preservation of Evidence

As far as justice in any society is concerned, the production of evidence and the presence of witnesses is the basic requirement of any kind of criminal trial. But when justice is delayed, it can cause vigorous effects on the value of evidence and on the memory of the witnesses. On the way of delaying justice, evidence may be destroyed, and witnesses may lose their memory as it has been proved by a lot of legal researches. Covid-19 has let the courts to be closed, which results in the delay in justice system. When justice is delayed, it takes a too long time, and with the passage of time, the memory of the witnesses may lapse. Although their testimonies are recorded while conducted criminal trials, but it may affect the whole spirit of justice (Ali, 2021).

In criminal trials, the prosecution is duty-bound to collect the evidence for proving the facts which are alleged beyond any reasonable doubt. Evidence in criminal trials includes the oral testimony of witnesses and the facts which they remember. Because of the fragility of human memory, the criminal trial requires to be conducted within a reasonable time of the incidence in question. If an accused faces the time longer than reasonable before trial, there will be a possibility for the loss of memory of evidence needed for trial, and moreover, that testimony or evidence may be considered not as reliable in the court. (*Asia b.b vs state*, 2019). The effect of delay in this way goes in the favor of the accused, where the defendant tries to delay the trial so that the evidence would become weak and not reliable in the court. The failure in the system is quite large and the most important reasons for the slippage are probably the fading of the evidence and the growing unwillingness of witnesses to keep returning to court.

³ 1996 Cri.Lj. (Journal Section) 39 at 4.



Traditionally, criminal cases are hardly heard on the original trial date. Witnesses are forced to return to court again and again without ever testifying as the case is repeatedly postponed and often finally disposed of without a trial if the accused lodges a late plea of guilty. Witnesses who were the victims of the crimes may find little solace or justice in this treatment. When a case is repeatedly postponed witnesses often give up and do not return for the next scheduled appearance. This may force the prosecutor to drop the charge because of a lack of evidence or to agree to reduce the charge or give some other consideration in return for a guilty plea. Once again, knowledgeable defendants, usually those who have been in court on several previous occasions, may try to take advantage of the system's delays and turn them to their advantage by out-waiting the witnesses. (Osborne, 1980). Similarly, it has been explained as: "Fairness to victims and witnesses demands that they are subjected to a minimum of intrusions and interruptions of their daily routine. Justice is not purely a property of defendants; due consideration must also be given to the other participants in the criminal justice system, though, it must be emphasized, not by eroding the rights of the accused." (Osborne, 1980).

So, when delay exists in the criminal trial, it affects not only the accused but also witnesses and quality of evidence as well. The very chronic problem of delay in criminal justice has the deleterious effects on witnesses that they tend to lose the accuracy of their memory and also the ability to calibrate their memories exactly through the passage of time. Witnesses may lose their trust and confidence while giving their testimony to the court concerned. When justice is delivered after taking many years, then the clash hazes the truth, deteriorates the memory of witness, and creates faults in the production of evidence.(Bassiouni, 1993). Prolonged delays in criminal trials become the cause for evidence to be vanished, spoiled, or devastated. Besides, an association occurs "between time and the accuracy of eyewitness testimony." (Asia bibi vs. state of Pakistan, 2018). Some empirical studies also explored that the passage of time affects the memory of the witnesses and they may lose accuracy of their testimony.(wheatcroft et.al, 2015). The delay in the criminal justice system has detrimental effects on the ability of the witnesses to provide correct testimony in the court as their memory may have lapsed significantly.

Conclusion

This research has identified the detrimental and adverse effects of delay on the administration of criminal justice system, rights of the victims, and rights of the accused, preservation of evidence and upon the society by analyzing many criminal cases from Pakistani and Indian jurisdiction because both have the same procedure and laws.

Delay in a criminal trial has detrimental effects on the accused. Every accused facing criminal charges has the fundamental and legal right to speedy trial. An accused in judicial custody is entitled to be released unconditionally in case of an inordinate delay in the trial. Delay always resulted in the long imprisonment of the accused in jail. Delay in trial becomes worse, especially when the accused is not given bail. Sometimes, an accused remained in jail for a period more than the punishment of the offence charged against him.



Delay in criminal justice has detrimental financial effects also on victims and their families. Delay in criminal cases is also affecting the right of the victim for speedy remedy and the preservation of their evidence. If there is a delay in providing the speedy remedy to the victims, then it proves the failure of the criminal justice system because the victim is the person who needs speedy justice and speedy remedy for his damages from the courts. Moreover, the researcher found that there is no mechanism of compensation for the victim provided by law in Pakistan.

The researchers have pointed out that delay does have detrimental effects on the witnesses and evidence also. When witnesses cannot be called on times in courts to give evidence, their memory lapsed, which may result in the inaccuracy of the evidence. Adverse effects of delay in a criminal trial have also damaged the deterrent goal of the punishment for society as well because when justice is not disposed within a reasonable time, people take the law into their own hands and commit their own retaliation; it creates the situation of anarchy and frustration in society.

To wind up, there is the need to adopt the modern ways for the improvements of the criminal justice system in Pakistan as ADR, E-Court-System, and Modern Scientific Investigation Techniques. All these modern techniques would improve the criminal justice system of Pakistan. Furthermore, technologies would ease judges' workload, simultaneously preempt and reduce delay in disposing cases. To deal with the problems created by delay, it is the duty of the state to adopt some urgent and fast policies to reform the criminal justice system and those can be mentioned as are to set up special courts to deal with the issues by pandemic; to increase the number of court judges; to hire the ex-judges as far as the issues and problems are concerned and to adopt some new policies to avoid the problems in the future.



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