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Research Article

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CJS: FLAWS IN THE COURT SYSTEM, ITS EFFECTS AND AN OPTION OF CENTRALIZED COURT SYSTEM

Ali Raza Laghari*PhD Scholar at Shaheed Zulfiqar Ali Bhutto University of Law Karachi and Assistant Professor at Institute of Law University of Sindh Jamshoro Pakistan ORCID ID.NO.0009-0003-2980-415X***Shabana Kausar***PhD Scholar Dada Bhoje Institute of Higher Education Karachi and Lecturer at Institute of Law University of Sindh Jamshoro Pakistan ORCID ID.NO.0000-0002-4611-026X***Abdul Salam Soomro***LL.M Lecturer at Department of Law Shaheed Zulfiqar Ali Bhutto University of Law Karachi Pakistan ORCID ID.NO. 0009-0003-9426-6845*

ABSTRACT

This research article determine flaws in the criminal justice system of Pakistan with main focus on its main pillar judiciary especially in the heinous crimes which include murder, rape with murder etc, causing less conviction rate and losing trust of the people on whole criminal justice system of Pakistan. It appeared that threats to judicial officers, prosecutors, complainant and witnesses, and unnecessary adjournments during course of trial is the main reason of failure in the smooth delivery of justice. In view of this research measures for the improvements in criminal administration of justice has been suggested so that trust of the people can be restored, accused get convicted and complainant get justice/redressed his/her complaint and peace be restored. This researcher believes that by incorporation of these recommendations object can be achieved, for this there is no need of any amendment in the law but it just need an administrative decisions.

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1. INTRODUCTION

State has this responsibility to establish the system towards averting criminal offences in a country. Courts are one of basic components in criminal justice system of the country assigned to dispense justice. When an offence is registered at Police station, criminal law comes in motion. In Pakistan there are two modes of crime reporting one is manual and second is online. In Sindh and Balouchistan Province for registration of crime victim or informant has to come Police station physically and state his/her case, on the basis of stated facts if cognizable offence is made Police Officer has to write down his case on the prescribed form, however in Punjab and Khyber Pakhtunkhwa Provinces in addition to manually registration of crime there is also an option of registering crime online. (Laghari Raza, 2023) According to Supreme Court “criminal act is injurious to society as a whole, not just to an individual” (NLR, Page 555, 2008) Only precondition required for registration of F.I.R is that the information should disclose a cognizable offence on the face of the allegation. (Mst Khan bibi and others versus Abdul Malik and others, P.Cr.L.J 2012, Page 282) Supreme Court held that like any other accused person petitioner has right of all statutory safeguards but on the basis of holding previously high offices or status of the house of Parliament he has no immunity. Citizens without regard of their status have been guaranteed equality. (Abdul Rehman Malik versus Synthia D Ritchie and others, SCMR 2020, Page 2037).

If F.I.R is found false or based on mistake of fact Investigating Officer has authority to dispose of F.I.R as cancelled subject to confirmation by the Magistrate. (P.Cr.L.J, P 520, 2000) Police conducts investigation of the

case and through the prosecutor submit final report in the court.

During course of investigation Police office visits the place of incident, collects the things connected with offence, conduct search, do arrest if required so, records the statements of the persons acquainted with the facts of the case (PLD Lah page 8, 2013). Investigation is conducted for the purpose of formation of opinion that collected material implicates the accused. (P.Cr.L.J, Page 1357, 1999) However except big cities there is no crime scene unit in Police which is required to be established for proper pursuance of justice (Shabana Kousar, 2023).

In every investigation there are administrative, judicial and executive phases (SCMR, Page 304, 1997).

In Sind second largest Province of Pakistan there is a huge gap of forensic medico legal facilities between Karachi and other cities of Sindh and also between city and village. Autopsy centers are not properly equipped and there is a very miserable condition at autopsy centers, even in rape cases medico-legal examination is done very carelessly and delayed by several hours due to non-presence of lady MLO and all evidence destroyed which results in injustice (Shabana Kausar, 2022). Collection of the evidence is not within the domain of the Courts (P.Cr.L.J, Page 1054, 2001).“Behind the process of reinvestigation there is always instance of influential people and by it favourable reports are obtained” with such declaration the Supreme Court of Pakistan has disapproved the system of re-investigation (Bahadur Khan v Muhammad Azam, SCMR 2006, Page 373, Page 373).

In cognizable offences Police is empowered to arrest. For such arrest there is no need to seek warrant of arrest from the Magistrate. Police cannot be left to caprice, arrest and detention of persons without warrant are to be covered by the rules and principles of law (MLD, Page 271, 2010). After completion of investigation Police officer has to submit its report under section 173 of Cr.P.C in case of failure to submit final report; an interim report is required to be submitted, the result of investigation until that time period shall be mentioned in such report. (SCMR, Page 1430, 2011). Police has also the power to withdraw and submit fresh challan(P.Cr.L.J, Page 660 Pesh, 2001) Submission of report under section 173 has no concern with this fact that what mode has been adopted by the investigation officer (PLD, Page 243, 2007) On the basis of Police report and collected material accused will have to face trial or any order to be passed by concerned Magistrate (SCMR, P.1430, 2011).

Court under section 190 Cr.P.C takes cognizance of the case on the basis of Police report, complaint or information other than Police. Court frame charge against the accused person, after recording evidence of the prosecution side and then accused side, announce judgment, which may be either of acquittal or conviction. In cases covering the death penalty accused persons are awarded and executed death punishment though they have remained in pre-conviction detention for a long period. If an accused person has been awarded a sentence of imprisonment he can be given benefit under section 382-B of Cr.P.C but there is no such provision in the case if an accused is awarded death punishment. (Laghari Raza, CJS: Pre-Conviction Detention and Question of Double Jeopardy. A Critical Study of the Legal Status of Death Penalty in Pakistan, 2023) In a case law reported P.Cr.L.J at page 2892 it has been held by honourable Court that “in administration of justice time is not essence but importance of time cannot be ignored” justice delayed is deemed as justice denied (P.Cr.L.J, Page 2892, 1986) A Public Prosecutor has not to act as counsel of any party but his duty is to assist the Court (P.Cr.L.J, Page 440, 1986) Supreme Court in a case reported in SCMR 2011 at page 1813 has held that general rule for each criminal case is that case is to be proved beyond reasonable doubt. Accused only have to give explanations of the prosecution evidence which has been required by the section 342 of the Cr.P.C. Accused should be given benefit if such explanation is consistent with his innocence though may not be beyond the doubt. (SCMR, Page 1813, 2011)

In dispensation of the justice which is essential and primary obligation of the Courts; evidence of the case available on record is to be read, consider and conceive accurately by the Courts of Law” (PLD, S.C, 2001) Where there are two explanations possible one favouring the accused is to be accepted (PLD, Kar 152, 2002) It has been held by honourable superior Court that benefit of doubt is a matter of right in case of any doubt, not being artificial. In criminal cases there is no mathematical formula for acceptance or rejection of evidence because of in each case circumstance are different and Court has to consider evidence upon its intrinsic value (FSC, P.Cr.L, Page 374, 2014)It has been held in a case reported in the P.Cr.L.J 2001 page 1507 that an accused should not be deprived of his defence, same being his legal and legitimate right especially when question of his life is involved. (P.Cr.L.J page 1507, 2001)

Court has to base conviction upon a firm and straight forward convincing prosecution evidence and initial onus never shifts upon accused” (YLR, Page 1580, 2011) Before completion of trial court can acquit the accused if on the basis of available evidence and other material it is of the opinion that there is no chance of

conviction. High Court has inherent powers under section 561-A Cr.P.C. Under this power Court may pass such order as could be necessary. For this it is not necessary to wait for the orders of trial court under 249-A or 265-K of Cr.P.C. (P.Cr.L.J, P. 897, 2014). Supreme Court in a case reported in PLD 2010 page 642 has held that “law is a living organ and it is the duty of the Court to adopt a realistic and pragmatic approach for its application, looking to the peculiar facts and circumstances of each case” (PLD, Page 642, 2010) It has been held in the case reported in the YLR 2005 page 742 that “without leaning in favour of the party Court always has to administer justice with the parties.

Flaws and effects

Judicial officers, prosecutors, complainant and witnesses are important part of the criminal judicial system. Imparting justice is impossible without their role. No matter how strong the law is and how effective is criminal justice system it all becomes null and void when these stake holders are vulnerable and can easily be intimidated. Lack of security can render the whole justice system at halt and the justice fails. Pakistani society has seen a number of such instances where many high profile cases involving heinous crimes committed even against the powerful people such as philanthropists, political leaders and public figures remained unresolved, besides others reason one of the reason was that in these case their witnesses were eliminated or removed from the scene. This has caused a stigma to the criminal justice system in the country. This situation is a cause of mistrust of people and lack of confidence in the judiciary. (Bashir, 2019) Cyber security is also one of the issues in the country (Shabana, 2023). Supreme Court in the criminal appeal Somaid and other Versus Ali Gohar alias Gohar Zaman and others reported in SCMR 2019 page 1008 declared that person who recorded dying declaration was conspicuously missing in the array of witnesses and thus dying declaration could not be relied upon. Criminal appeal was allowed and conviction and sentence against the accused was set aside by the Supreme Court, accused acquitted from the charge of murder. (Somaid and others versus Ali Gohar alias Gohar Zaman and others, SCMR, Page 1008, 2019) The role of the witnesses and victims at large is of critical importance in this regard. However, as per the general perception and ground realities victims and witnesses are highly vulnerable to the harassment and coercion from the accused and their allies, which inhibit the victims from reporting a crime and witnesses from tending honest and candid testimony. As a result, the victims often escape the due punishment. (Uddin, 2020) In the criminal appeal Muhammad Arif versus the State reported in the SCMR 2019 page 631 Supreme Court held that witness made improvement in his statement hence conviction and sentence of an accused on capital charge on such testimony cannot be bases upon. For this reason Supreme Court allowed appeal, conviction and sentence recorded against the accused were set aside and accused was acquitted of the charges framed against him. (Muhammad Arif versus the State, SCMR, Page 631, 2019) Supreme Court in its judgment in the criminal appeal Bashir Ahmed and others versus the State and others reported in the SCMR 2019 page 1417 held that non examination of the investigating officer alongside some other witnesses exposed the accused to a grievous prejudice. It would not be safe to maintain the conviction of the accused as case against was doubtful. Supreme Court allowed criminal appeal and conviction and sentence of the accused was set aside and accused was acquitted from charge of murder by the Supreme Court (Bashir Ahmed and others versus the State, SCMR, Page 1417, 2019)

Study of the four years criminal appeals and petitions reported in the SCMR 2019 to 2022 it appears that approximately 32% convictions remain upheld at the stage of Supreme Court, more than 40% criminal appeals and petitions were allowed by the Supreme Court and accused were acquitted. From the trial court to Supreme Court it takes years in conclusion. Delay in the trial also causes burden on the prisons which are overcrowded. In the case of Abdul Jabbar and another versus the State reported in the SCMR 2019 page 129 Supreme Court declared that case against the accused and co-accused could not be proved by the prosecution beyond reasonable doubt, consequently appeal was allowed and accused and co accused were acquitted from the charges of murder. (Abdul Jabbar and another versus the State, SCMR, Page 129, 2019). Failure to establish a case against an accused covers multi sides. Supreme Court in the criminal appeal Munir Ahmad and another versus the State and others reported in the SCMR 2019 at Page 79 held that Maxim “falsus in uno falsus in omnibus” was not applicable in Pakistan’s system designed for dispensation of justice in criminal cases and courts were required to sift grain from the chaff in order to reach at a just conclusion. Supreme Court allowed this criminal appeal and acquitted the accused from the charges by extending benefit of doubt. It was declared by the apex Court that in this case there was no independent corroboration for ocular and medical evidence. (Munir Ahmad and another versus the State and others, SCMR Page 79, 2019)

In the courts completion of trial takes much time, some time in years, consequently parties becomes disappoint and approach to private justice. If bail is not granted an accused person remain in custody for the years till completion of trial and disposal of appeal. It is constitutional right of an accused to have a fair and

open trial. In the Constitution of Pakistan 1973 by 18th amendment right to “fair trial and due process” has been guaranteed both in criminal and civil proceedings. In the existing flaws other components of the criminal justice system are also responsible. Due to these flaws justice could not be done accused get acquittal either at the forum of trial court or due to some discrepancies in the proceedings and doubts in the prosecution case at the appellate stage. Defects in the prosecution case, defective evidence of the witnesses, lack of forensic laboratory examination of the recoveries of crime empties and weapons are some reasons of the acquittal of criminals. At the stage of trial local and political influence and threat to Police personnel, judicial officers, prosecutors and witnesses are also causes of the less conviction rate. The protection process may have different provisions such as starting from the minimum and gradually shifting towards more serious measures as per demand of the risk to life, coercion and nature of offence involved. The Witness Protection may be equally available to prosecution and defense witnesses. The program must not jeopardize the guarantee of free and fair trial of the accused. Supreme Court in the criminal appeal Muhammad Shafi alias Kuddoo versus the State and others reported in SCMR 2019 page 1045 held that there was inordinate delay in reporting the crime; and purported witness’s presence at the scene of occurrence was improbable. There was contradiction in the depositions of witnesses. There was conflict in ocular account and medical evidence qua number of injuries to the deceased. Supreme Court held that acquittal carried with it double presumption of innocence and merely on the basis of contra view acquittal can not be set aside. Supreme Court allowed this criminal appeal and acquitted the accused from the criminal charge. (Muhammad Shafi alia Kuddoo versus the State, SCMR, Page 1045, 2019) Supreme Court in the criminal appeal Altaf Hussain versus the State reported in the SCMR 2019 page 274 held that a set of witnesses disbelieved to the extent of some accused then without there being any independent and strong corroboration same could not be believed to the extent of remaining accused facing the same trial, while allowing appeal and acquitting accused from the charge Supreme Court declared that case against accused could not be established by the prosecution beyond the reasonable doubts. (Altaf Hussain versus the State, SCMR, page 274, 2019).

Problem statement

It is the responsibility of the State that to avert criminal offences in the country a system should have been established providing fair and fast trial. In this regard in the criminal justice system of Pakistan Courts are one of basic components assigned to dispense justice. Perusal of the criminal procedural law shows that criminal law comes in motion when an offence is registered at Police Station, on the basis of which Police conduct investigation and a final report is submitted through Prosecutor before the Court for the purpose of taking cognizance and conducting trial. Under section 190 of Cr.P.C Court takes cognizance of the case on the basis of Police report, complaint or information other than Police. After this charge is framed against the accused person, evidence of both sides is recorded, parties are heard and judgment either of acquittal or conviction is announced. Court before completion of trial can acquit the accused if on the basis of available evidence and other material it is of the opinion that there is no chance of conviction.

Pakistani society has seen a number of such instances where many high profile cases involving heinous crimes committed even against the powerful people such as philanthropists, political leaders and public figures remained unresolved, besides others reason one of the reason was that in these case their witnesses were eliminated or removed from the scene. This has caused a stigma to the criminal justice system in the country. This situation is a cause of mistrust of people and lack of confidence in the judiciary. (Bashir, 2019) In many cases Police officers or Prosecutors have been killed by the criminals. (Strasser, *The Evolving Pakistani Criminal Justice System: A Study of Ramond Davis Matter*)

Study of the four years criminal appeals and petitions reported in the SCMR 2019 to 2022 it appears that more than 40% criminal appeals and petitions were allowed by the Supreme Court and accused were acquitted, approximately 32% convictions remain upheld at the stage of Supreme Court, From the trial court to Supreme Court it takes years in conclusion. During course of the investigation and trial arrested persons and after completion of trial convicted person are kept in custody in the prison. In Pakistan there is a prison system inherited from British colonial period used as an instrument to suppress political opponents of British rule. Due to increase in the crime rate, delay in trial, less accommodation space there is overcrowding in the prisons with lack of facilities and vocation work for their rehabilitation increasing burden on the prison and causing security problems. They are often not produced in the courts on their date of hearings though it is primary responsibility of jail staff to produce them in the court. In the prisons convicted and under trial prisons can meet with each other consequently when they come out of the prisons they becomes more desperate and hardened criminals.

From the study of the detailed judgments of the Supreme Court it appeared that mostly prosecution failed

to prove its case beyond reasonable doubt. Not only is this but it effects on jails where detained persons are kept in custody till the decisions of their fate by the courts where their trials are being conducted. It shows that there is a problem in our criminal justice system which needs to be determined and addressed.

Research objectives and significance

Court is main component of the criminal justice system where trial is conducted and judgment is announced by it. Every person either accused or complainant he/she expect smooth delivery of justice with assurance of fair trial as guaranteed in the article 10-A of the Constitution of Pakistan. However due to various reasons accused get escape from the conviction and complainant do not get justice. Not only this but during course of trial arrested persons are kept in custody increasing security problems and burden on jails which are already overcrowded. Hence it is most important that such flaws should be removed so that justice not only should be done but it should be seen. Also the persons detained in the prisons during course of their detention rehabilitated instead of becoming hardened and desperate criminals. In view of these facts there is a severe need to study flaws in the court system and its effects and to suggest measures for the improvement of the system. In this regard objective of this research study are given below.

- I. To determine flaws in the court system causing less conviction rate
- II. To suggest measure for the improvement in the system
- III. To suggest measure to reduce burden in the prison

Research questions

For the purpose of this research following questions were asked from the law expert respondents.

- Q.1 Are you agree that people do not have trust on our criminal justice system”?
- Q.2 Normally how much time a criminal trial takes?
- Q.3 Whether judicial officers are given time frame for the disposal of case?
- Q.4 Whether judicial officers should be given time frame for the disposal of the case?
- Q.5 Whether experienced persons are appointed as judicial officers?
- Q.6 Whether judicial officers are given training about forensic and other scientific evidence
- Q.7 Whether judicial officer face local and political influence and threats in proceeding of the case?
- Q.8 Is it possible and convenient to conduct trial of all cases at jail?
- Q.9 Whether a centralized court system is a suitable option?
- Q.10 Will centralized court system will ensure fair trial in accordance with article 10-A of the Constitution of the Pakistan?
- Q.11 What should be mechanism of centralized court system?
- Q.12 What will be effect of centralized court system?
- Q.13 Whether a trial at jail is conducted safely, fairly and conveniently?
- Q.14 Is there any material effect of trial in the court at ordinary jurisdiction/place and trial at jail?
- Q.15 Arrested accused person should be released on bail in all cases?
- Q.16 Persons in prison are detained and released on the directions/orders of the Court?
- Q.17 Persons in prisons are kept detained before and after conviction?
- Q.18 In prison detained persons became hardened and desperate criminals?
- Q.19 Due to certain problems prisoners are often not produced at court?
- Q.20 In prisons detained persons have liberty to meet with each other?
- Q.21 Number of the detained persons is more than accommodation space?

Q.22 There is lack of facilities in the prisons?

Q.23 There in the jails, prisoners are got involved to do some kind of vocational work?

Q.24 Release on bail of under trial prisons will reduce burden from the prisons?

Q.25 Large population of prisoners in the prison cause law and order problems?

2. RESEARCH METHODOLOGY

To conduct research on the subject topic this researcher has chosen qualitative research methodology, applied data collection method such as review of relevant documents, case laws and response through questionnaire etc. In this regard to collect data sample of law professionals was selected which included judicial officers, prosecutors, advocates, police officers and law teachers. Sample of respondents selected by this researcher was very purposive and convenient. In this research, court trial is independent variable and judgment either of acquittal or conviction is dependent variable. Results are given in descriptive methods. All the suggestions given by the respondents have been incorporated in the recommendations.

3. RESULT AND DISCUSSION

A survey was conducted through questionnaire circulated amongst the judicial officers, police officers, prosecutors, advocates and laws teachers, their response has been incorporated in the conclusion and recommendations. Questions and response is mentioned below.

Q.1 Are you agree that people do not have trust on our criminal justice system”?

On the question that “are you agree that people do not have trust on our criminal justice system”? 47% responders were strongly agree with this statement, however 42% responders were partly agree with it, only 8% responders were strongly disagree. Less than 5% responders were not clear in their opinion and they said “no idea”.

Q.2 Normally how much time a criminal trial takes?

In response to the answer that “normally how much time a criminal trial takes”? 71% responders were of the view that it depends upon the nature of the case.

Q.3 Whether judicial officers are given time frame for the disposal of case?

In response to the question “whether judicial officers are given time frame for the disposal of case”? 43% responders said “yes”, 31% responders said “some times” whereas 18% responders said “no”.

Q.4 Whether judicial officers should be given time frame for the disposal of the case?

Responding to question that “”? 65% response was “yes”, 23% response was “in some cases” and 9% response was “no”. Less than 5% responders said “no idea”.

Q.5 Whether experienced persons are appointed as judicial officers?

In response to the question that “whether experienced persons are appointed as judicial officers”? 46% responders adopted all three given options which include “yes in the appointment of additional sessions judges experience is required”, “in some Provinces in appointment of Magistrate experience is required” and in the appointment of Magistrate experience is not required”. However 35% responders adopted option “yes in the appointment of Additional Sessions Judges experience is required”, whereas 9% responders answered as “in the appointment of Magistrate experience is not required”. Less than 10% responders answered as “in some provinces in appointment of Magistrate experience is required”.

Q.6 Whether judicial officers are given training about forensic and other scientific evidence

Answering to the question that “whether judicial officers are given training about forensic and other scientific evidence”? 39% responders said “yes”, 32% responders said “to some extent” 19% responders said “no”.

Q.7 Whether judicial officer face local and political influence and threats in proceeding of the case?

Answering to question “whether judicial officer face local and political influence and threats in proceeding of the case”? 47% response was “in some cases”, 27% response was “yes” and 20% response was “no”.

Q.8 Is it possible and convenient to conduct trial of all cases at jail?

In response to the question asked in the survey that “is it possible and convenient to conduct trial of all cases at jail”? 54% response was that “no, it would be inconvenient and will cause problems”, 22% responders were of the view that “yes there are judicial complex and separate court rooms for Magistrates and Sessions trial”, 18% response was “to some extent” however less than 5% responders were of the view that “fairness and transparency was compromised”.

Q.9 Whether a centralized court system is a suitable option?

Response on the question regarding “centralized court system”, response was very important. Answering to the question that “whether a centralized court system is a suitable option” 49% responded “yes”, 30% responders were divided in their opinion and they responded by saying “may be” only 17% people opposed it and said “no”. Less than 10% responders were not clear in their opinion and they answered “no idea”.

Q.10 Will centralized court system will ensure fair trial in accordance with article 10-A of the Constitution of the Pakistan?

“Will centralized court system will ensure fair trial in accordance with article 10-A of the Constitution of the Pakistan”? Answering to this question 45% response was “yes” 38% response was “may be” only 7% responders answered as “no”.

Q.11 What should be mechanism of centralized court system?

Responding to the question that “what should be mechanism of centralized court system”? 56% responders were of the view that “there should be time limit for the disposal of the case”, 18% responders were of the opinion that “cases should be proceeded at secure place like as trial in the jail” 17% responders were of the view that “there should be no adjournment” less than 10% responders were of the opinion that “witnesses should be bound to stay at specific place till the disposal of the case”

Q.12 What will be effect of centralized court system?

Responding to this question that “what will be effect of centralized court system”? 43% response was that “influence, threat and corruption will be reduced” 26% response was that “parties will get justice” 18% responders were of the opinion that cases will be disposed of expeditiously”.

Q.13 Whether a trial at jail is conducted safely, fairly and conveniently?

Answering to the question that “whether a trial at jail is conducted safely, fairly and conveniently”? 47% response was “yes in the jail premises judicial complex has been established by the Government”, 20% responders were of the view that “prosecutors and advocates feel difficulty in arrival at jail for conduct of trial”, 19% response was that “arrival of parties and witnesses is difficult”, 13% responders were not clear in their opinion and they said “no idea”.

Q.14 Is there any material effect of trial in the court at ordinary jurisdiction/place and trial at jail?

In response to the question put in the survey that “is there any material effect of trial in the court at ordinary jurisdiction/place and trial at jail”? there was not much difference in the response. 34% responders were of the view that “in the court at local jurisdiction there is always chance of attack”, 29% responders were of the opinion that “fairness in the trial in the court at ordinary place can be observed by any person” however 28% responders were of the view that “there is no effect of trial in the court at ordinary place or at jail trial”. Less than 10% responders were of the opinion that “fairness in the trial in the court at ordinary place cannot be observed by any person”.

Q.15 Arrested accused person should be released on bail in all cases?

Responding to the question that “arrested accused person should be released on bail in all cases” 50% response was that “accused person should not be released on bail in heinous crimes”, 32% response was “accused persons should be released on bail in less heinous crimes” however 13% responders were agree with this statement.

Q.16 Persons in prison are detained and released on the directions/orders of the Court?

Answering to the question that “persons in prison are detained and released on the directions/orders of the Court”? 79% responders answered “yes” whereas 8% responder’s response was “some times” less than 5% responder’s answer was “no”. However less than 10% responders were not clear in their opinion and they answered “no idea”.

Q.17 Persons in prisons are kept detained before and after conviction?

Responding to the question that “persons in prisons are kept detained before and after conviction”? 52% response was “yes”, 26% response was “some times” and 14% response was “no”. However less than 10% responders were not clear in their opinion and they responded as “no idea”.

Q.18 In prison detained persons became hardened and desperate criminals?

Responding to the question that, “in prison detained persons became hardened and desperate criminals” 50% response was “may be” 26% response was “yes”, 14% response was “no” and 9% responders were not clear in their opinion and they answered “no idea”.

Q.19 Due to certain problems prisoners are often not produced at court?

Answering the question that “due to certain problems prisoners are often not produced at court”? 48% response was “some times”, and 22% responders were agree with this and they answered “yes”, however 18% responders were not agree with above question statement and they declared it as “incorrect”, 11% responders were not clear in their opinion and they answered “no idea”.

Q.20 In prisons detained persons have liberty to meet with each other?

Responding to the question that, “in prisons detained persons have liberty to meet with each other”? 35% responders were agree with it and they responded “yes”, 25% responders were not agree with this and their response was “no”, 9% responders were of the view that it happens “hidden”. 30% responders not clear in their opinion and they answered “no idea”.

Q.21 Number of the detained persons is more than accommodation space?

In response to the question that, “number of the detained persons is more than accommodation space”? 50% responders were agree with this question statement, 37% response was “may be in some jails” 7% responders were not agree with this and they answered “no”. Approximately 5% responders were not clear in their opinion and they answered “no idea”.

Q.22 There is lack of facilities in the prisons?

Answering the question with regard to facilities in the prisons 70% responders were agree with the statement that “there is lack of facilities in the prisons”, approximately 5% responders were disagree with this statement, 21% responders were of the view that “in some jails there is lack of facilities”, less than 5% responders were silent in their opinion and they answered “no idea”.

Q.23 There in the jails, prisoners are got involved to do some kind of vocational work?

In response with the question that “there in the jails, prisoners are got involved to do some kind of vocational work”, 60% responders said “yes”, 11% response was “no”, 20% response was “may be”, 8% responders were not clear in their opinion and they said “no idea”.

Q.24 Release on bail of under trial prisons will reduce burden from the prisons?

62% responders are agreeing with the statement that “release on bail of under trial prisons will reduce burden from the prisons”, only 12% responders were disagree with this statement, 20% responders were divided in the opinion and they answered “may be”, approximately 5% responders were silent in their view and they said “no idea”.

Q.25 Large population of prisoners in the prison cause law and order problems?

“large population in the prisons cause law and order problems”? 47% responders were agree with this statement, 14% responders were disagree, however 25% responders were divided in their opinion and their answer was “in some jails”. 12% responders answered that they don’t know.

4. EFFECTS AND SOLUTION

From the above response it appears that at ordinary courts during trial, judicial officers, prosecutors, witnesses and complainants are given threats consequently affecting the trial and fate of the case. Besides problems of the prisons are also connected with the trials and its result as detained persons are kept in custody on the orders of the court. In this situation conduct of heinous cases at centralized court system or at Jail can be a suitable option. This option is already in practice, many criminal cases are being tried at the jails where judicial complex have been established by the Government with all facilities. At the central jail courts trial can be concluded speedily as there would be no need to bring the custody at ordinary court. It is only required in heinous cases, other cases can be proceeded at ordinary courts. During jail trial besides providing security to judicial officers, and prosecutors, witnesses of the cases should be given special protection and facilitation so that trial can be completed speedily and evidence of witnesses can be recorded without harassment. Also political and local influence, threat and corruption will be reduced.

Section 178 of Cr.P.C empowers the Provincial Government to set up venue for the trial of cases of a particular accused. This power seems to be in addition to power given to the Provincial Government under section 527 of Cr.P.C (Code of Criminal Procedure 1898, section 527) One of the object of the complainant being to harass accused in Court located far away from their normal place of business. Case remanded to Provincial Government for issuance of notification under section 527 of Cr.P.C. (P.Cr.L.J, page 2435, 1985) (Code of Criminal Procedure 1898, section 178) Provincial Government can also nominate any Session Judge or Additional Session Judge to try those cases which are to be specified by the said Government in notification. (P.Cr.L.J, 1687, 1990). Provincial Government is competent to order that cases against a particular accused or cases of a particular class be heard at a particular place, which can be prison and to appoint any Sessions Judge or Additional Sessions Judge to hear such cases as Ex Officio Additional Sessions Judge in jail. (MLD, Page 1994, 1990). It has been held by apex court in a case reported in the MLD that trial of offence can be held in camera or in a prison if circumstances so warrant. Place of sitting of Court may include Central Prison. (MLD, Page 2783, 1987)

From the above response it appears that prisons itself are causes of problem due to overcrowding. Under trial and convicted prisoners can meet with each other, there is corruption in jails and, violations of prisoner's rights, they are not given proper food, they are not produced at the courts consequently many of the prisoners remain in custody for years without any conviction. There are no such arrangements for rehabilitation of the prisoners. By granting bail in minor offence, speedy disposal of cases and such other methods overcrowding can be reduced.

5. CONCLUSION AND RECOMMENDATIONS

From the above discussion it appears that due to various reasons trial at ordinary course takes much time. Threats, corruption, political and local influence, lack of protection, training, forensic and other scientific knowledge and experience, lack of strict monitoring and lack of resources are some of the reasons affecting on the fate of the criminal case. Consequently people of Pakistan do not trust on the criminal justice system of the country. Measure should be taken to expedite the trial and provide protection. During course of investigation and trial accused persons are arrested and kept in custody at various jails till further orders of the court which causes overcrowding at jails and other prison related problems. Often when a person comes out of prison instead of getting rehabilitated as good human being he becomes hardened and desperate criminal. Except heinous crimes release of accused persons in other criminal cases can reduce burden on the prisons and consequently prison related problems will also be reduced.

6. RECOMMENDATIONS:

In view of above research and discussion following recommendations are suggested.

- I. Trial of murder case and other heinous offences should be conducted at a centralized court/jail
- II. During trial at centralized court/jail special security should be provided to judicial officers, prosecutors, witnesses and complainant.
- III. A time frame should be given for the disposal of the case

- IV. Special forensic and other scientific training should be given to judicial officers and prosecutors
- V. Arrested accused person should be released on bail in all cases except heinous crimes
- VI. Accused persons can also be released under Probation and Parole Act
- VII. Arrangments should be made at prisons for rehabilitation of the prisoners and make them good people
- VIII. Required facilities should be provided and rights of the prisoners should be protected.

References

1. FSC, P.Cr.L, Page 374 (2014).
2. NLR, Page 555 (Supreme Court 2008).
3. P.Cr.L.J page 1507 (2001).
4. P.Cr.L.J, Page 2892 (1986).
5. P.Cr.L.J, Page 440 (1986).
6. PLD, Kar 152 (2002).
7. PLD, Page 243 (2007).
8. PLD, Page 642 (2010).
9. PLD, S.C (Supreme Court 2001).
10. SCMR, Page 1430 (2011).
11. YLR, Page 1580 (2011).
12. Abdul Jabbar and another versus the State, SCMR, Page 129 (Supreme Court 2019).
13. Abdul Rehman Malik versus Synthia D Ritchie and others, SCMR 2020 (Supreme Court Page 2037).
14. Altaf Hussain versus the State, SCMR, page 274 (2019).
15. Arshad, S. J. (15 February 2017, February 15). Syed Junaid Arshad, Criminal Justice System of Pakistan: A critical analysis. Criminal Justice System of Pakistan: A critical analysis . Pakistan: Courting the Law, raising awareness and increasing accountability Portal.
16. Bahadur Khan v Muhammad Azam, SCMR 2006, Page 373 (Supreme Court Page 373).
17. Bashir Ahmed and others versus the State, SCMR, Page 1417 (Supreme Court 2019).
18. Bashir, S. (2019). Witness Protection and Judicial System of Pakistan in The Light of International Legislations and Best Practices. . International Journal of Arts and Commerce .
19. Code of Criminal Procedure 1898, section 178.
20. Code of Criminal Procedure 1898, section 527.
21. Editorial in Dawn. (21 April 2019, April 21). Editorial in daily Dawn news paper . Karachi, Sindh, Pakistan: Daily Dawn.
22. Laghari Raza, A. (2023). CJS: Pre-Conviction Detention and Question of Double Jeopardy. A Critical Study of the Legal Status of Death Penalty in Pakistan. Global Legal Studies Review , 31-43.
23. Laghari Raza, A. (2023). Mechanism of Crime Reporting in Pakistan: A Critical Study. Human Nature Journal of Socioal Sciences , 66-81.
24. MLD, Page 1994 (1990).
25. MLD, Page 271 (2010).
26. MLD, Page 2783 (1987).
27. Mst Khan bibi and others versus Abdul Malik and others, P.Cr.L.J 2012 (Page 282).
28. Muhammad Arif versus the State, SCMR, Page 631 (Supreme Court 2019).
29. Muhammad Shafi alia Kuddoo versus the State, SCMR, Page 1045 (Supreme Court 2019).
30. Munir Ahmad and another versus the State and others, SCMR Page 79 (Supreme Court 2019).
31. P.Cr.L. Page 1357 (1999).
32. P.Cr.L.J, 1687 (1990).
33. P.Cr.L.J, P 520, Abdul Qadir vs the State (High Court 2000).
34. P.Cr.L.J, P. 897 (2014).
35. P.Cr.L.J, Page 1054 (2001).
36. P.Cr.L.J, Page 1357 (1999).
37. P.Cr.L.J, page 2435 (1985).
38. P.Cr.L.J, Page 660 Pesh (2001).
39. PLD Lah page 8 (2013).
40. SCMR, P.1430 (2011).
41. SCMR, Page 1813 (2011).
42. SCMR, Page 304 (Supreme Court 1997).

43. Shabana Kausar, L. R. (2022). Analysis of Medico Legal aspects of Forensic Autopsy: Scenario and Challenges in Sindh, Pakistan. *Pakistan Journal of Criminology* , 89-104.
44. Shabana Kousar, L. R. (2023). Critical analysis of the forensic protocols and ballistic experts at crime scene in Pakistan. *Journal of Positive School Psychology* , 246-262.
45. Shabana, K. (2023). Analysis of the cyber security challenges and solutions. *Journal of Positive School Psychology* , 163-171.
46. *Somaid and others versus Ali Gohar alias Gohar Zaman and others*, SCMR, Page 1008 (Supreme Court 2019).
47. Strasser, P. G. (n.d.). *The Evolving Pakistani Criminal Justice System: A Study of Ramond Davis Matter. USA.*
48. Strasser, P. G. (n.d.). *The Evolving Pakistanin Crimnal Justice System: A study of the Ramond Davis Matter. USA.*
49. Uddin, A. (2020). Absence of witness protection as envisaged under the Constitution of Paksitan is a threat to fair trial. *Pakistan Journal of Applied Social Sciences*.