



**Abstract:** *The present study aims to identify the causes of delay regarding the criminal trials under the criminal justice system of Pakistan. A society cannot survive where the justice system does not respond to wrongs in time. An inefficient justice system not only jiggles the confidence of people but also creates unrest among the people. On one hand, it loses its efficacy, and on the other, it promotes the culture of private vengeance. The Criminal Procedure Code 1898 (CRPC) expressly states that when the cognizable offense is reported to the police for lodging First Information Report (FIR) under section 154 of CRPC. The police is legally bound to lodge FIR and initiate an investigation in terms of recording statements and collecting evidence to fix the responsibility within the stipulated time, if any. However, the study indicates that there are ample reasons for causing a delay in criminal justice for the administration of justice sternly. Further, Study also reveals that lack of provision of security to participants in the criminal justice system is also one of the reasons for causing the delay. Moreover, the researchers have adopted doctrinal research methods by using primary and secondary sources and suggested certain recommendations to remove the inappropriate delay in the criminal justice system of Pakistan.*

**Key Words:** Causes of Delay, Criminal Trial, Criminal Justice, Judicial System, Pakistan

## Introduction

There are certain reasons for the delay that occurs at every stage of the criminal trial, starting from the lodging of FIR, conducting of investigation, submission of challan, procuring the attendance of witnesses, etc. Further, the conduct of the parties during the trial to delay the proceedings conduct of the advocates are the main reasons for causing a delay in a criminal trial. The study also reveals that there are certain loopholes in the criminal justice system of Pakistan, which may cause delays in dispensing speedy justice by ordinary courts. It requires that deficiencies be fixed positively in the criminal justice system of the eighteenth century to provide expeditious and enduring solutions within the ambit of the Constitution. It is an undeniable fact that the prevalence and up-to-date criminal justice system plays a pivotal role in any State in combating criminals [Farrell et al., 2019]. It requires that relevant laws be applied in true spirit for the administration of justice [Soehartono et al., 2021].

However, for the achievement of the proposed research objectives, this study adopted a doctrinal research method. The researchers have carried out an in-depth critical analysis in the purview of primary

and secondary sources. In the primary sources, this study analyzed the relevant Statutory laws and judgments of superior courts of Pakistan. Subsequently, in secondary sources, police reports, law journals, and newspapers are examined and critically analyzed.

## Causes of delay in criminal trials

### Delay in Lodging of FIR

Police always remain reluctant to lodge a First Information Report (FIR) under Section 154 of Criminal Procedure Code (CRPC) 1898, which is a contributory factor in the delay. Normally, initially, a litigant has to file applications before the District Police Officer and other higher authorities of police. In addition, the petition is also filed under Section 22/A and 22/B of Criminal Procedure Code 1898 before Justice of Peace for getting direction against police regarding the lodging of FIR [PLD 2005 Kar 285; 2010 P. Cr. L. J. 1466]. If any cognizable offense is committed, it is the duty of the police to register a criminal case under Section 154 and start an investigation, and in the case where the offense is

\* Assistant Professor, Department of Law, The Islamia University of Bahawalpur, Bahawalpur, Punjab, Pakistan.

Email: [ahpanwar@iub.edu.pk](mailto:ahpanwar@iub.edu.pk)

† Additional Sessions Judge, Punjab, Pakistan.

† Visiting Lecturer, Department of Law, The Islamia University of Bahawalpur, Bahawalpur, Punjab, Pakistan.

not cognizable, then police proceed under Section 157 of CRPC.

The police are responsible for causing a delay in registering FIRs [Arshad, 2017]. Sometimes, it does not lodge FIR simply for the reason that no such occurrence took place, and litigants have to resort to other remedies, which causes an increase in pendency. The right direction for police is to record statement U/S 154 of CRPC, and if found false during the investigation, proceed with U/S 182 of CRPC. If this practice is adhered to, it will demoralize the false litigation and minimize the burden on Courts.

### **Delay in Conclusion of Investigation**

Poor quality of investigation may cause a delay in concluding the trials [Arshad, 2017]. After registration of the case, the police are bound to investigate the case if the offense with which the accused is charged is cognizable. Sec 173 of CRPC prescribes fifteen days' time for completion of the investigation. According to Section 61 CRPC, every police officer is bound to produce an arrested person before a magistrate within twenty-four hours and request the judicial magistrate for extension of detention, if necessary, for the purpose of completion of the investigation. But in Pakistan, the situation is quite different. Persons are arrested and detained by police for days without incorporating their arrest in the record. Police misuse the power some time to fulfill the demands of influential political mafia and some time to spleen their grudge. Persons arrested or detained illegally are kept in different places than a police station, which makes the required procedure of law ineffective. The investigation officer also planted recovery on the arrested accused by making a bogus recovery memo. This type of planted recovery are usual in cases under 13/20/65 [Arms Ordinance] and Prohibition of *Hudood* Ordinance 3/44/79.

It is the duty of the investigation officer to register the recovered articles in Register No.19 maintained at the police station for said purpose, but the same requirement of the law is violated. A police officer does not check these important registers. As per rules, if any contraband is recovered from the accused, it should be sent to the chemical examiner within 72 hours, but there are countless cases in which the samples were transmitted with the delay of months, without any reasonable excuse, which cast doubt on prosecution and result in acquittal of accused.

There are insufficient Laboratories to meet the requirements of the rapidly increasing crime rate. Chemical analysis, either that is of a firearm expert,

handwriting expert, or chemical examiner is not properly and expeditiously conducted and sent to court. In CNSA case, it is the duty of the investigation officer to get a sample from all the recovered packets, and if he does not, it will be presumed that only the contraband packet out of which sample was separated was recovered. [Muhammad Riaz v. State, 2006; Qaisarullah v. State, 2008]. But this necessary obligation is sparingly complied with, resultantly, the accused get the benefit and acquittal from courts.

Register of *Roznamcha* is very important to register to be properly maintained at the police station. If concerned officer DSP/ASP/SP inspects it monthly or quarterly, it will be very helpful because false stories mentioned regarding the arrival and departure of police officials and raiding teams can be pointed out and regularized, which will improve the functioning of the investigation process.

### **Case Diaries of Police**

Investigation officers do not adhere to provisions of Section 172 CRPC, by which investigation officers are required to incorporate their daily proceedings in the investigation of a case mentioning the time at which information was received, the time at which they started and closed the investigation, the place or places visited by them, and a statement of circumstance ascertained by them through investigation. These diaries, although inadmissible in evidence, can be perused by the court for moral satisfaction. [Subhanuddin v. State, 1976]. Even if such diaries are consulted by the court for elucidation of certain facts, no judgment can be passed on the basis of information contained in diaries [Tordi Khan v. State, 2005]. If police declare the actual culprit as innocent while placing him in column 2 of challan, the court is competent to summon them [Khush Bakhat-ur-Rehman v. The State, 1985]. The court of sessions can also summon an accused in respect of whom an order of discharge has been passed by magistrate [Waqar-ul-Haq v. State, 1988]. This practice of police declaring the actual culprit as innocent also cause delay, and more than often informant of FIR has to file a private complainant.

### **Scrutiny by Prosecution**

Poor performance of Prosecution Department is another reason of delay [Arshad, 2017]. Non-submission of report U/S 173 CRPC/challan by the investigation agency is a major factor of delay in a criminal trial before the court. It is the duty of the prosecutor to check the said report/challan before forwarding it to court. But the prosecutors are in the

habit of raising hyper-technical objections to grab some amount from the investigation officers, due to which the investigation officer do not submit the challans in time. Here are some examples of the objections:

1. Whether there is any difference in handwriting in the script of the complaint and recovery memo?
2. Whether there is any difference in handwriting in different *Zimnis* of investigation?
3. Whether the lady constable who searched the lady accused is made witness on the recovery memo?
4. Why the challan and police file are not numbered?
5. Whether the sample parcel of the narcotics substance was sent to the chemical examiner within 72-hours, according to Rule-4 of the Control of Narcotics Substances Analysts Rules, 2000?
6. Whether the date of receiving of the original substance and the sample parcel is indicated in the statement of *Moharar*?
7. Whether the date of handing over of the sample to an official for obtaining the result from the Chemical Examiner is entered in the statement of *Moharar*?
8. Whether the issuance of the docket for analysis of narcotic substance is mentioned in the statement of *Moharar*?
9. Why the statement of the constable, who received the docket, has not been recorded U/S 161 CRPC and included in the file?
10. Why the date of receiving of the sample parcel is not mentioned in the statement of the constable who received the parcel?
11. Why has the challan not been forwarded by the concerned circle police officer?
12. Why the serial number of *Malkhana* is not mentioned in the recovery memo?
13. Why the quantity of the recovered narcotics is not mentioned in the note of site plan?
14. Why the identification certificate is not attached under Police Rules?
15. Why the description of the face & stature of the accused has not been entered in the sentence slips?
16. Why the police file does not contain the signature of its compiler?
17. Why the officer, who got the case registered as complainant, himself investigate the case, violating the principle of law?
18. Why the departmental and personal telephone numbers of the officers/officials

mentioned in the list of witnesses have not been entered in the challan?

19. Why a police official of the rank of ASI has conducted a raid/proceedings against the accused violating section 21 of CNSA, 1997?
20. Why the investigating office has not mentioned in *Zimni* No.1 the receipt of case property and the sample collected by the complainant from the place of occurrence and handed over of the same to the *Moharar*?
21. Why any evidence has not been collected for the identification of the accused who ran away throwing the narcotics at the time of the raid?

These are the objections that are not material rather can be cured; hence due to the above objections, the challans are kept pending in the police stations with the investigation officers for months which cause the delay.

### Delay caused by misuse of bail.

Misuse of concession of bail is one of the causes of delay. Bail either Pre-arrest or after arrest sometimes causes the delay (PTI, 2021), because when the accused is on pre-arrest bail, he sought adjournment on one or the other pretext, which sometimes takes months to decide. But there is no specific law as to up to what period it can be enlarged or extended. It is often observed that the accused, when admitted to bail after arrest, is relaxed and does not feel that pressure which is faced by an undertrial prisoner, and he avoids the expeditious decision from the fear of conviction and sentence for that purpose, he used his advocate as a tool, who submits miscellaneous applications one after the other which takes a lot of time, and even after the decisions of those tainted/engineered applications he prefers to file an appeal or revision before the higher forum, i.e., Sessions Court or High Court where new proceedings start. Sometimes higher courts stay the proceedings of trial court till the decision of miscellaneous applications. In other words, the party who wishes not to let the case decide speedily succeeds in his evil designs. And there is no specific legislation in this respect that even if any miscellaneous application is filed that will not affect the rapid trial procedure. It is also seen that the accused, after getting bail, sometimes misuses it. Seeking unnecessary adjournment should be termed as misuse of concession of bail and would be taken as a ground for cancellation of bail.

### Procuring the attendance of accused

After the submission of challan, the procedure starts to procure the attendance of the accused. A lot of

time is wasted in procuring the attendance of accused persons. Summons, bailable warrants, and non-bailable warrants are issued. Sometimes, the accused does not appear despite a non-bailable warrant, and the court has to declare him proclaimed offender who takes months. In this regard, police official who is process server also plays an important role. He usually submits false reports such as the accused was out from his house for earning livelihood or that some other person was told regarding the date of the hearing of the accused without visiting the house of the accused. Even if the court, after wastage of a considerable time, comes to the conclusion that accused was intentionally hiding himself to avoid service of the warrant, the proceedings under Section 87 CRPC cannot be completed before the expiry of 30 days as is the requirement of the said provision of law, which causes the delay.

There is another factor that after the appearance of the accused before the court, when the case is fixed for evidence and the prosecution witnesses are present, at that stage the accused absents himself intentionally on under the pretext of urgency so that the evidence may not be recorded and witnesses have to return without examination. This practice also causes a negative impression upon the witnesses as well as on the general public. Hence, there is a need of specific amendments in the CRPC to cope with such type of situations.

### **Procuring the attendance of witnesses**

After submission of report U/S 173 CRPC and summoning of the accused, the copies of incriminating material against the accused are supplied to him, and the formal charge is framed. After framing of charge, the prosecution is required to produce its witnesses. Sometimes, the complainant knows that he has a weak case and has no convincing evidence to get the accused convicted, he intentionally does not produce the witnesses to the court with the intention to keep the accused dragged in the trial for the maximum period. In this regard, the prosecution does not produce evidence for months and, in some cases, for years, which causes the delay. When a strict order is passed by the court with the warning to close the prosecution evidence, then partial evidence is produced to which usually the defense counsel does not cross-examine on the pretext that he will cross-examine one set of the witnesses at one time and in case of piecemeal cross-examination his defense will be exposed to the remaining prosecution witnesses which will damage his case.

### **The role of Advocates/Bar**

The advocates play an important role in the dispensation of justice. They represent the parties who are not aware of the legal formalities. It is the prevailing practice now a day that lawyers do not attend the court on one or the other excuse either on the wishful demand of his client to prolong the case or on his own to linger on the matter due to his incapability or *malafide*. It is observed that a number of advocates are reluctant to appear before the courts with the intention not to get the case decided rather to bound the party to attend their chambers and to pay something on each and every date on the ground of getting any copy of the order or to submit any fresh miscellaneous application which causes the delay [Gladstone, 2021].

### **Incompetence of lawyers**

The incompetence of lawyers is also a reason for the delay in decisions of the cases because they eagerly sought adjournments and do not prepare their cases. They always remain reluctant to appear for arguments, for cross-examination and even for submissions of applications and their reply due to shyness and fear of their incompetence.

### **Transfer of Police witnesses**

In criminal cases, the police officials play an important role as the criminal proceedings initiate from the lodging of FIR by the police. Then comes the stage of the investigation, which is also conducted by the police, and after submission of challan, all the said witnesses are necessary to be produced before the court to prove the prosecution case. But it is observed that due to the transfer of the investigation officers and other police officials, i.e., recovery witnesses, etc., the criminal case cannot be concluded. In this regard, there is a need to form a policy not to transfer the investigation officer from one district to the other without any reason. Such non-appearance of the police witnesses also causes a serious delay in the conclusion of trial.

### **Inefficient Medical officers**

It is observed that delay is also caused due to the inefficiency of the medical officers who issue the medical-legal certificates. Generally, the fresh graduates are deputed to conduct the medical examination of injured and autopsy of the deceased persons. They are sometimes asked for such expert opinion, which can be given only by a competent medical officer himself. Such kind of referrals enhance the burden and also cause delay.

## Delay in submission of Chemical Examiner Reports

In a criminal trial, the reports of chemical examiner play an important role for just and proper decision of the case and almost in every case pertaining to murder, sexual assault or hurt. These reports are sought in different cases, but due to deficiency of the number of Forensic Science Laboratories, these reports took months and in some cases even longer, which caused the serious delay in decision of the criminal cases.

## Insufficient number Judicial Officers

In every country, judicial officers are appointed keeping in view the population of the country and pendency of the cases. According to international standards, there should be one Judge on the population of ten thousand people [Sagar, 2016] and every Judge should not be entrusted with more than five hundred cases. But in Pakistan, there is one judicial officer appointed against the population of about 45,000 persons and one judicial officer has an average of 1500 to 2000 cases in his court and the daily cause list consists of about 100 to 150 cases. This state of affairs speaks volumes about the insufficiency of the Judges resultantly causing the delay in the decision of the cases. A reasonable number of judicial officers are required to be appointed to conduct the trials expeditiously to reduce the burden of cases [Arshad, 2017].

## Lack of interest and Incompetence of Judge

The lack of interest of judges is also one of the reasons to delay the decisions of the cases. According to the High Court directions, every Judge is under obligation to decide at least ten contested cases, and when those required figures are completed, the judicial officer tends to adjourn the other cases for the next month. They do not take their responsibility to deliver up to the optimum level rather they satisfy themselves by adjourning the cases in routine. This practice also causes the delay in deciding the cases.

The incompetence of judges is also one of the reasons for causing delay in deciding of the cases [Riaz & Khan, 2018]. These judges cannot record the evidence or decide the objections raised by the counsels during the recording of evidence, which also causes the delay. Likewise, incompetent judicial officers hesitate to announce the order even of the miscellaneous applications and interim orders which also causes the delay in expeditious administration of justice.

## Attendance of Expert Witnesses

In criminal case, especially in hurt case the medical officers, serologists, nephrologists, finger experts, firearm experts, etc. are required to attend the court but due to shortage of the expert witnesses, it is not easy for them to appear before the courts [Senderayi et al., 2019] of the whole province which also causes serious delay in conclusion of criminal trials.

## Strike of Advocates

It has become a fashion now a day to call for a strike by the lawyer community on petty matters. Sometimes, the reasons mentioned for the strike are ridiculous, i.e., some police official did not let him go without any driving license, or any official of any department has not conceded to his dictation, or a lawyer or his relative has died. The strikes are also called against the attitude of the judges, which actually means that the judges have refused to accept their illegal demands and when any judge decides the case against an advocate that is also taken as that the attitude of the judges is not cordial and cooperative towards the bar. It is also observed that the Bar Councils call for the strike on international issues such as the decision of America regarding the foreign policy or regarding transfer of the capital of Israel or on the movement of Kashmir. The Bar Councils have nothing to do with the above mentioned issues nor their strikes can change the foreign policy of any other country. This practice causes the maximum damage in expeditious decision of the cases [Tripathy, 2020] and this thing is in practice at least since the last fifteen years. On principle, a lawyer is an agent of his client and cannot go on strike during the court hours because he is paid by the client to attend the court on his behalf [Harish Uppal v. Union of India, 2003]. There is no bar to show its affiliation or attachment towards welfare of the country but at the same time it should be kept in mind that such affiliation can be displayed by having the bandage on the shoulders while appearing before the courts, so that the public at large must not suffer [S. M. Jaffar v. A. Q. Shaukat and another, 1969; Jamat-Islami Pakistan v. Federation of Pakistan, 2000].

## The Procedural Laws

It is the duty of the state to maintain peace and tranquility by curbing the offenders. There are substantive laws that provide different kinds and tenor of punishments for different offences, and these punishments can only be awarded while adopting the procedures laid down for trial or inquiry for the said offences to conclude the criminal trials. Technical procedural laws hamper the smooth

administration of justice which causes the delay in conclusion of the criminal trial within a short span of time. The laws are needed to be amended/updated in accordance with the modern requirements ([Gladstone, 2021](#)).

### **Conclusion**

A stable criminal justice system is necessary to keep balance in the society. If it would be compatible with the modern needs, it would play an effective role to combat the criminal element of the society. On the other side, the conventional and ill-equipped legal system does not meet the standard criteria to deal with new challenges. Similarly, Pakistan did not respond timely and adequately against offenders in terms of updating the criminal justice system, which was enacted in the name of the Criminal Procedure Code, 1898 by the British rulers. It is currently applicable in Pakistan with certain modifications. The government did not think over the problem holistically

but retaliate in a shortcut and palliative manner rather than providing enduring and long lasted solutions. The instant research shows that Pakistan has indeed been facing and suffering chronic malaise of inordinate delays and poor conviction rates due to the aforesaid reasons. Although, to some extent, certain reforms were duly incorporated as suggested by the various commissions in the criminal justice system. However, further amendments are needed to confront the current challenges of the society. The present research suggests there is a need to extend the scope of the provisions of prevailing criminal laws. Further penal legislation is also required under which a person who causes deliberate delay may be held accountable. The vacations of the judges must be reduced. The vacancies in the judicial branch should be filled with suitable and competent judges to meet the judges-population ratio.

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