

Psychological Impacts of Covid-19 and Delay on the Administration of Criminal Justice System: A Comparative Study of Pakistani and Indian Jurisdictions

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ABSTRACT

COVID-19, as pandemic declared by WHO in March 2020, has brought several adverse effects on the functioning of the criminal justice system not only in one nation but also all over the world. This research examines the psychological impacts of the pandemic on the administration of the criminal justice system and all the parties concerned like accused, victim, and witnesses/evidence. As far as the objective of the research is concerned, the research is based on the data found by the international organizations while highlighting the problems and effects of the COVID-19, and based on the empirical method where the survey and interviews have been conducted by the researchers in Pakistan and India. COVID-19 has added to the problem of delay while harmfully affecting the process of criminal justice with a huge backlog of the cases, and rights and mental health of the accused, victim and witnesses. The pandemic of COVID-19 has negatively affected the criminal justice system which resulted in the huge backlog of the cases, delay in dispensation of the justice, and

several psychological and procedural effects on the rights of the accused and victims as well.

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INTRODUCTION

The unusual coronavirus or COVID-19 has caused destruction for all living in all fragments of the world and severally impacted millions of the people in more than 200 countries, affecting their economic, physical and social realities. It had been declared as a global pandemic in March 10, 2020, (WHO, 2020). Apart from a decease, it has generated unprecedented psychological and legal issues for national and international justice systems. It has caused several mental problems for those accused who are waiting for their criminal trials while living in the jails. Though the crime rate has decreased because of the covid-19, yet cybercrimes have increased all over the world as reported by the monthly reports of the crimes. Thousands of people are being affected by covid-19 while in prison waiting for their trial in USA (Surprenant, 2020). COVID-19 has made this already-bad situation worse, as courts have shut down. Overcrowded jails act as hotbeds for infections. Even as local law enforcement is acting to ameliorate the situation in the short term, reforms such as reducing the number of crimes requiring jail booking, eliminating cash bail, and encouraging alternatives to jail are necessary in the medium term (Surprenant, 2020). Millions of people in the prisons are affected by the covid-19 and many may die because of the covid-19 (Sheri, 2020). (S, 2020). Several prisoners in the jails have suffered from very long-lasting and meagre health issues like high blood pressure, sugar and hepatitis C etc. Most of the prisoners are old-aged, and much suffering from the pandemic of COVID-19, (McKillop and Boucher, 2018). The situation is worse in India, because prisoners are being affected in jails in India by covid-19. Huge debate has resulted in freeing the prisoners from the jail whether they are convicted or not? (Sushant Kulkarni , Sadaf Modak, 2020). Moreover, covid-19 has also added to the 3.5 crore pending cases in the courts of India. There are 59,867 cases pending in the Supreme Court, and 44.75 lakh cases in various high courts. At the district and subordinate court levels, the number of pending cases stand at a shocking 3.5 crore, said the Union law minister Ravi Shankar Prasad on Wednesday (The Wire, 2019). COVID-19 has thrown adverse impacts not only on the existed proceedings in the courts but also on the upcoming proceedings in the future. It has adversely impacted and changed the criminal law with its procedures. (Szesny and Anna-Lena, 2020). As far as the impacts of covid-19 is concerned, Germany is trying to make its system effective and powerful to deal with issues and challenges caused by the pandemic. (Szesny and Anna-Lena, 2020).

Covid-19 is an addition to the problem of delay in the criminal justice system of India and Pakistan because there is already a huge amount of the pending cases in the criminal courts. One of the reasons and causes of

delay in the judiciary of Pakistan is the huge backlog of the cases in the courts 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). 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 covid-19 on the administration of criminal justice system in Pakistan and Indian jurisdictions. How covid-19 has resulted in the 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 and India has been affected by the pandemic while creating psychological and procedural frustration for all concerned.

RESEARCH METHODOLOGY AND INSTRUMENT

As it is stated that the research aimed to assess the effects of COVID-19 on the functioning of the criminal justice system in India and Pakistan while focusing on its adverse psychological impacts of the pandemic on the administration of the criminal justice system and all the parties concerned like accused, victim, and witness. To do so the researchers have adopted qualitative library-oriented analytical method where they concerned with primarily resources such as government and courts' reports and statistics and secondary such as those journal and newspapers

articles and reports among others including books. As study focused on COVID-19 pandemic psychological effects, therefore, due to lack of data on the subject, researchers distributed online close-ended six survey questions namely: 1) what effects of COVID-19 occurred on the administration of criminal justice system on backlog of the cases, accused, victim and witness; 2) who is the most affected by COVID-19 in relations to backlog of the cases, accused, victim and witness; 3) what kinds of adverse effects occurred on victims by COVID-19 specifically delay in speedy remedy, mental health, mental disaster and all of the above; 4) what kinds of adverse effects occurred on accused by COVID-19 specifically delay in fair trial, long imprisonment, mental disaster and all of the above; 5)) what kinds of adverse effects occurred on witness by COVID-19 specifically loss of the evidence and memory; 6) and what is the best solution for the adverse effects of COVID-19.

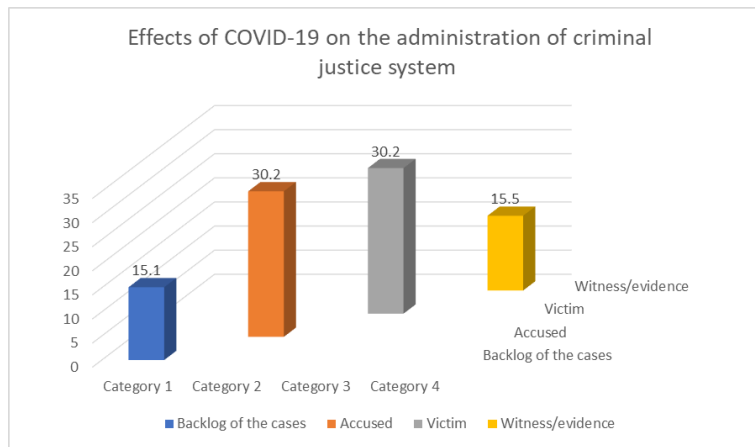
The study has focused on three elements namely accused, victim and witness which have been considered as pillars of any criminal justice system and without them neither a justice system can be established nor any judgement can be pronounced. That is the primary reason of including those factors in this study because the entire judiciary functionality depends on them. However, the probable effects listed after each question is based on previous literature that claimed and established that India and Pakistan experience an extreme sort of backlog of the cases. Similarly, how delay in pronouncing the judgement creates psychological impacts on accused, victim and witness as explained by international reports. Thus, as demonstrated how Covid-19 has affected on entire spectrum of life today including the criminal justice system throughout the world, it pushed researchers to conduct this study.

The researchers used purposive and snowball sampling method to collect the data to ensure information received are not based on assumptions and ignorance. Because, the purposive sampling method allowed researcher to select respondents who are well informed of the researched matter. In this case, they were lawyers who practice in the courts of India and Pakistan as well as researchers whose specialization is law. Similarly, snowball sampling method allowed researchers to reach out respondents through their colleagues and they requested to their colleagues and so forth that eased the task and also given a sense of reliability in the data. However, it took a longer period what expected in the beginning by researchers. The data collection of 100 respondents in total (N=100); 50 from each country (n=50) took about two months from 25th October 2020 to 3rd January 2021. About 65% of respondents were those who practice law while remaining 35% were researcher whose interest is law and similarly 80% of respondents were male while only 20% were female.

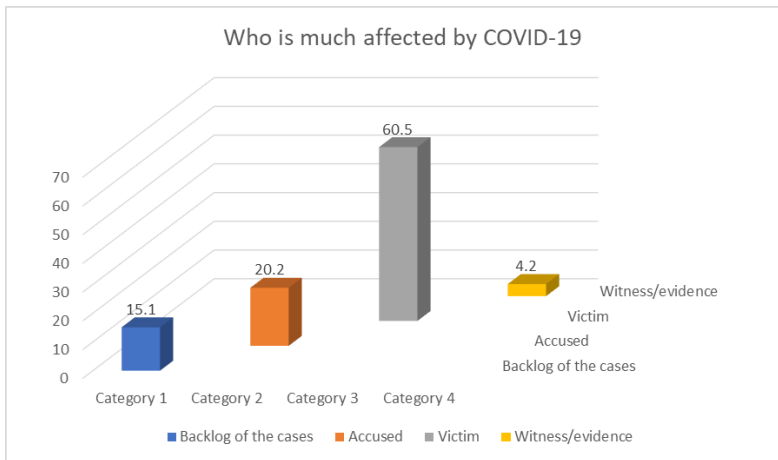
RESEARCH FINDINGS

Empirical research method has been performed by the researchers in order to achieve the quality of the study. This research is based on empirical

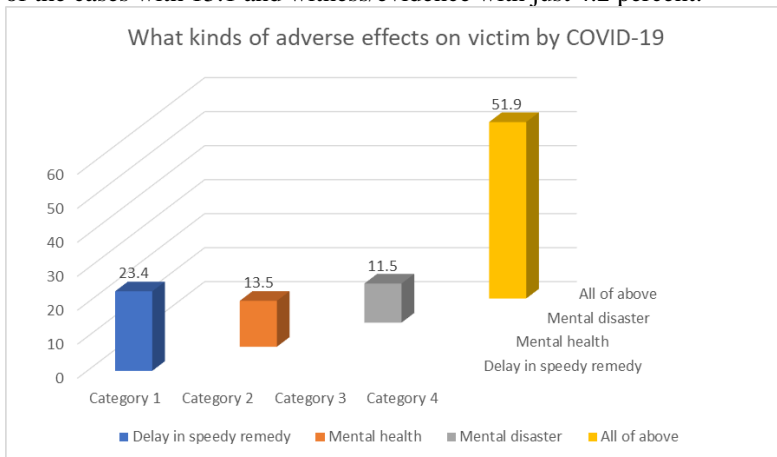
field where a survey has been conducted in Pakistan and India for the purpose of exploring the psychological effects on the accused, victim and witnesses while waiting for their justice. Persons have expressed their point of view based on the questions provided to them. Five types of the questions were asked to them as who is most affected by the covid-19 among of the accused, victims and witnesses, and what kind of the psychological impacts of covid-19 on them. Based on the adverse impacts of the COVID-19, in the survey, the first question was asked to the people about the general effects on the backlog of the cases, accused, victims and witnesses. They expressed their opinions as described in the following chart.



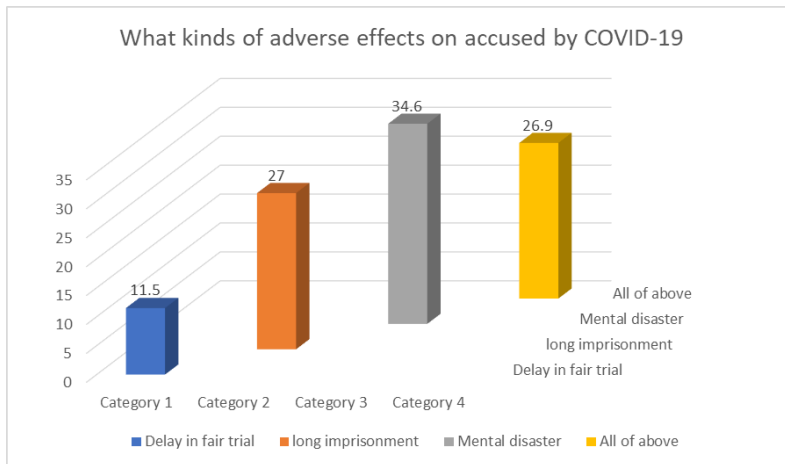
All the persons have opined that COVID-19 has adversely affected the criminal justice system in Pakistan and India. Among 100 persons, males and females, 30.2 percent opined that accused and the victim have much affected as compare to the evidence/witness and backlog of the cases with 15.5 and 15.2 percent. The next question was put to them about accused that what kind of effects occurred on the accused. They explained that



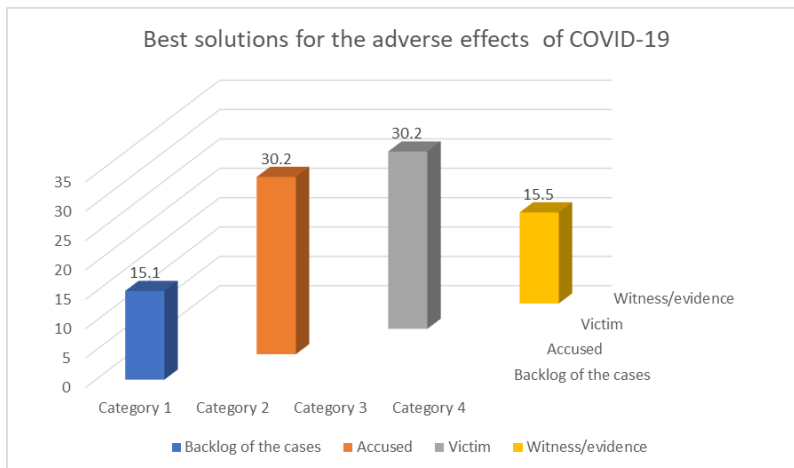
This chart shows that victim is the most affected person by the COVID-19 as compare to others. Victim stands with 60.5, accused with 20.2, backlog of the cases with 15.1 and witness/evidence with just 4.2 percent.



This chart shows that the victim is the most affected person by the covid-19 and delay in the criminal justice system. People opined in the survey that victim has been affected with the issues of delay in the speedy remedy, mental health and mental disaster. All these effects stand at 51.9 together while separately delay in the speedy remedy with 23.4, mental health with 13.5 and mental disaster with 11.5.



This chart depicts that mental disaster has much affected the accused as compare to other adverse effects. To the people in the survey, accused is suffered from mental health 34.6%, long imprisonment 27%, delay in trial 11.5 % and all these 26.9%. In the following chart, people have also provided their suggestions and solutions that how stakeholders may provide the justice timely and may cope the problem of delay.



This chart has consisted the suggestions and solutions provided by the people interviewed in the survey. They have depicted their intention to avoid the effects of COVID-19 as 32.1 percent for special courts, 19.6 percent for compensation to the parties, 12.5 percent for increasing the number of judges, and 32.1 percent for all of above.

DISCUSSION OF THE STUDY

Covid-19 and high backlog of the cases in Pakistan and India:

First and foremost, covid-19 has adversely impacted the proceedings of the courts and resulted in the huge amount of pending cases in both Pakistani and Indian courts. Both the countries have already millions of pending cases and now more caused by the pandemic. Covid-19 is an addition to the problem of delay in the criminal justice system of Pakistan and India because there is already a huge amount of the pending cases in the criminal courts. Law and justice commission of Pakistan has pointed out the list of the pending cases which is around 2 million cases in all courts of Pakistan and 1.5 crore in India. Because courts are closed during the pandemic period, so it may cause the more cases into the logjam. Though the crime rate has decreased because of the covid-19, yet cybercrimes have increased all over the world as reported by the monthly reports of the crimes. Therefore, it has resulted in the huge backlog of the cases during pandemic.

The justice system in India — hardly recognized in the most convenient times for its pace — is no unlike. Official figures indicate that while new cases have dropped since the national lock-up started on 25 March, the rates of disposal are still seriously affected, both in the higher judiciary and in the subordinate judiciary, due to forced closure of tribunals (Staff, 2020). To balance public health issues with access to justice, the judge faced tremendous pressure to innovate during the pandemic. The reduced court operations may extend the duration of preliminary prisoners or prisoners eligible for early release. Without adequate judicial review, persons detained during emergencies cannot be taken before a judge on a timely basis following the measures to contain the virus (UNDP, 2020). The socio-economic effect of the crisis would also have major effects on justice as disparities are compounded. Specific initiatives will be required to increase access to legal resources and legal information to enable individuals and communities to resolve their conflicts, pursue redress for violations of rights or to combat discrimination on a variety of issues, including housing, jobs, legal/residency status, access to health benefits or other social security mechanisms (UNDP, 2020).

India is facing numerous challenges related to significant backlogs and cases in the particular field of the judicial delivery system. The Indian judicial system faces many concerns even though the judicial system is separate from the executive and legislative bodies. The major problems facing the system are the pendency of cases, bribery, lack of transparency (in particular in the selection of judges) the prosecution of the accused and satisfactory interaction between citizens and courts (Staff, 2020) India's legal system has the biggest backlog of pending case law across the world, according to the National Judicial Data Grid (NJDG) which oversees courts nationally, there are 3.7 million pending cases for over a decade or about 10 percent of the 37.7 million cases before high courts, district and taluka courts throughout India. It includes 2.8 million districts and taluka

and 920,000 high court cases. For 20 years 660,000 cases have been pending and 131,000 lawsuits for more than three decades (Krishnan, 3.7 million cases pending in courts for over 10 years: Data, 2020). This figure is rising all the time and this also demonstrates the inadequacy of the legal system. Perhaps also because of this backlog, most of the inmates in India's jails are in custody awaiting sentencing.

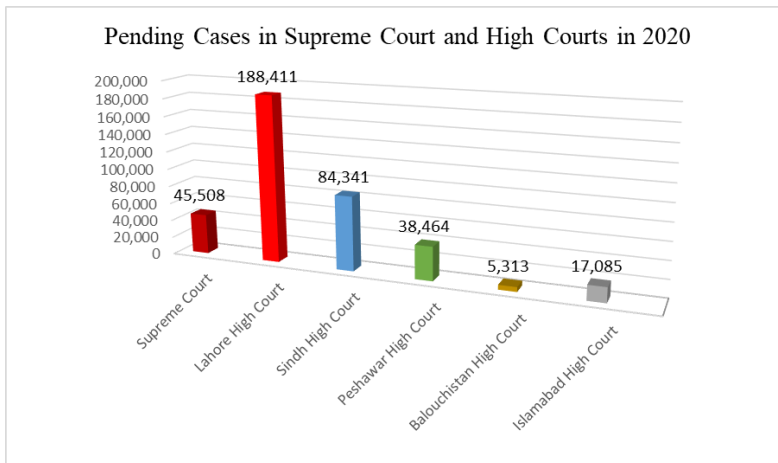
With few benches presiding over selected subjects every day, cases pending before constitutional benches have been put on the back burner. During April 2020, the Indian courts were presented with 82,725 cases, and 35,169 cases were tried. The average number of cases filed per month was about 14 lakhs (170 crores) compared to 2019, with average cases disposed of at 13.25 lakh per month equated this with 2019. In the nation's 19,683 subordinate courts, nearly 3.23 crore cases are pending in which 90 lakhs of these were civil cases and 2.32 crore were criminal. The situation is no better in the lower courts as well. Seemingly, around 48.16 lakh cases, including civil and criminal cases, are currently in existence (Staff, 2020).

In 2009, a scathing report was issued by the New Delhi High Court's chief justice in which he said it would take 466 years for the court to clear its backlog. Despite spending less than five minutes per case on average, in 2009 the court had 600 cases brought more than 20 years earlier (Mashru, 2013). The typical pendency is in the district judiciary anywhere from two to nine years, as the 2019 Indian Justice Study shows. They need to focus on concerns that lead to regular delays by that assurance of outcome in each hearing and avoiding burdening a judge in a way that promotes deferments. A typical district judge has about 50-60 cases identified daily before him. It is difficult to hear too many issues meaningfully, and so the judge must delay at least 40 of these cases without any noticeable progress. This happens throughout the year in each court every day. Naturally, there will be gaps and backlogs at year-end. It is these everyday problems that magnify over time and turn the institution's functioning into systemic problems. It can take approximately 20 years today if a case goes from the lower court to the high court and then the Supreme Court. Twenty years means several generations of litigants, immense costs, and frustration—a case that takes so long to settle is symptomatic of an inefficient and dysfunctional judiciary; any 'justice' delivered after 20 years will be stripped of its true sense. (Narasappa, 2013).

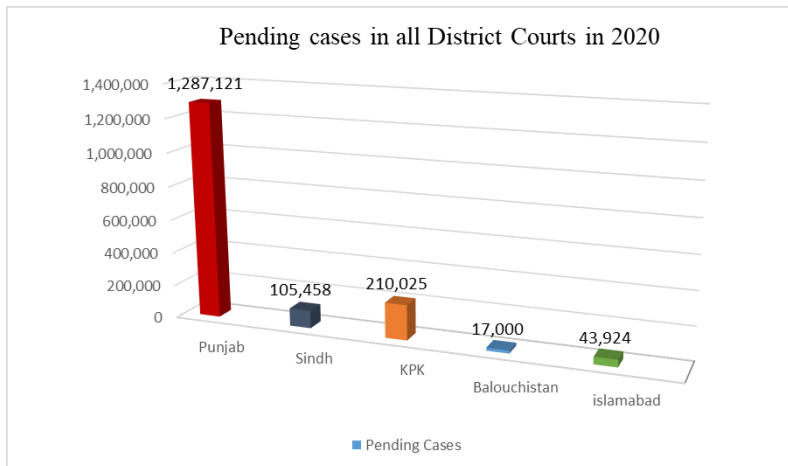
An alarming and devastating reason of delay in the administration of the criminal justice system is the huge number of pending cases in all courts of Pakistan. The criminal courts of Pakistan are overburdened. According to the report of the Law and Justice Commission of Pakistan, there are around 2 million cases of all types of criminal and civil pending in the courts. Though the constitution of the Islamic Republic of Pakistan provides for expeditious and inexpensive justice to the citizens (Constitution of Islamic Republic of Pakistan 1973) however, such amount of pending cases violates the spirit of justice. It is pertinent to highlight

that how pendency of cases may cause the delay in a criminal trial from district courts to the Supreme Court of Pakistan. The researcher here has put the two tables of pending cases in the Supreme Court and all High Courts from Pakistan, which shows all the details from all provinces. Data is followed by the law and justice commission of Pakistan 2018. (Gishkori, 2019).

National Judicial Policy Making Committee in Pakistan has issued the data on the pending cases in all courts of Pakistan. More than 2 million cases are pending in the Supreme Court, Federal Shariat Court, high courts and the district judiciary.



This chart has depicted the data provided by the national judicial policy of Pakistan and and shown that 45,508 cases were pending in the Supreme Court till July 31, 188,411 cases were pending in Lahore High Court, 84,341 cases were pending in High Court of Sindh, 38,464 cases were pending in Peshawar High Court, 5,313 cases were pending in High Court of Baluchistan, 15,847 cases were pending in the Islamabad High Court. Moreover, the list of the pending cases in district judiciary provided by the national judicial policy can be analysed by the following chart:



This chart shows that 1287,121 cases were pending in District Judiciary Punjab, 105,458 cases pending in district judiciary Sindh, 210,025 cases were pending in district judiciary Khyber Pakhtunkhwa, 17,000 cases were pending in district judiciary Baluchistan and 43,924 cases were pending in district judiciary Islamabad. Comparatively the list of the pending cases in 2020 is higher than previous reports provided by the law and justice commission of Pakistan in 2018, 2017, 2016, 2015 and 2014. The researcher may withdraw that pendency of the cases is increasing over time in all courts of Pakistan. Therefore, the huge list of the pending cases in all court is the leading reason and cause of the delay in the administration of justice in Pakistan.

Effects of covid-19 and Delay on the accused/ defendant

Secondly, covid-19 has affected the rights of the accused to fair and speedy trial. Because of the pandemic, 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. 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 enshrined in Article 21. 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. 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's 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.

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) (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. Raghbir 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.

Effects of covid-19 and Delay on the Victim

Covid-19 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. 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 fundamentals rights for compensation through speedy tools and apparatuses.

However, when justice is delayed because of covid-19, it adversely affects the rights of the victims. 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 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.

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.

Effects of covid-19 and 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 because of covid-19 or any other reason, 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.

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.

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

The unusual coronavirus or COVID-19 has caused destruction for all living in all fragments of the world and severally impacted millions of the people in more than 200 countries, affecting their economic, physical and social realities. It had been declared as a global pandemic in March 10, 2020. Apart from a decease, it has generated unprecedented psychological and legal issues for national and international justice systems. It has caused several mental problems for those accused who are waiting for their criminal trials while living in the jails. Though the crime rate has decreased because of the covid-19, yet cybercrimes have increased all over the world as reported by the monthly reports of the crimes. Thousands of people are being affected by covid-19 while in prison waiting for their trial in USA. COVID-19 has made this already-bad situation worse, as courts have shut down. Overcrowded jails act as hotbeds for infections. Even as local law enforcement is acting to ameliorate the situation in the short term, reforms such as reducing the number of crimes requiring jail booking, eliminating cash bail, and encouraging alternatives to jail are necessary in the medium term. Millions of people in the prisons are affected by the covid-19 and many may die because of the covid-19. Several prisoners in the jails have suffered from very long-lasting and meagre health issues like high blood pressure, sugar and hepatitis C etc. Most of the prisoners are old-aged, and much suffering from the pandemic of COVID-19. The situation is worse in India, because prisoners are being affected in jails in India by covid-19. Huge debate has resulted in freeing the prisoners from the jail whether their convicted or not? Moreover, covid-19 has also added to the 3.5 crore pending cases in the courts of India. There are 59,867 cases pending in the Supreme Court, and 44.75 lakh cases in various high courts. At the district and subordinate court levels, the number of pending cases stand at a shocking 3.5 crore, said the Union law minister Ravi Shankar Prasad on Wednesday. COVID-19 has thrown adverse impacts not only on the existed proceedings in the courts but also on the upcoming proceedings in the future. It has adversely impacted and changed the criminal law with its procedures. As far as the impacts of covid-19 is concerned, Germany is trying to make its system effective and powerful to deal with issues and challenges caused by the pandemic.

COVID-19, as pandemic declared by WHO in March 2020, has brought several adverse effects on the functioning of the criminal justice system not only in one nation but also all over the world. This research has examined the psychological impacts of the pandemic on the administration of the criminal justice system and all the parties concerned like accused, victim, and witnesses/evidence. As far as the objective of the research is concerned, the research is based on the data found by the international organizations while highlighting the problems and effects of the COVID-

19, and based on the empirical method where the survey and interviews have been conducted by the researchers in Pakistan and India. COVID-19 has added to the problem of delay while harmfully affecting the process of criminal justice with a huge backlog of the cases, and rights and mental health of the accused, victim and witnesses. The pandemic of COVID-19 has negatively affected the criminal justice system which resulted in the huge backlog of the cases, delay in dispensation of the justice, and several psychological and procedural effects on the rights of the accused and victims as well. To deal with the problems created by the pandemic, it is the duty of the states to adopt some urgent and fast policies to reform the criminal justice system especially during the period of pandemic. As far as the speedy dispensation of criminal justice is concerned, there are dire need 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; to adopt some new policies to avoid the problems in the future.

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