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CRIMINAL LAW OF PAKISTAN: THE FACET OF TIME LIMITATION

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ABSTRACT

Criminal law serves as the bedrock of any legal system, defining the boundaries of acceptable conduct, prescribing penalties for transgressions, and safeguarding the societal order. In Pakistan, a nation with a rich legal history shaped by a blend of Islamic principles and British legal traditions, criminal law plays a pivotal role in upholding justice and ensuring the protection of individuals and communities. One nuanced aspect that intricately intersects with the administration of criminal justice in Pakistan is the facet of time limitation. The "statute of limitations" in criminal cases is the deadline beyond which a complaint/FIR cannot be filed, a defendant cannot be prosecuted, a punishment cannot be given, or the sentence cannot be carried out. As a result, there are three types of statute of limitations under criminal law: prosecution, complaint, and punishment. For crimes of the first through third degrees, the statute of limitations is fifteen years; for crimes of the fourth degree, it is ten years; for crimes of the fifth and sixth degrees, it is five and seven years; and for crimes of the eighth degree, it is three years. There are no more criminal consequences for the lawsuit or conduct after these deadlines. A victim of a crime loses the right to register a complaint if he does not do so within a year of learning about the offense unless the defendant controlled him or stops him from filing for other reasons. In this case, the date of eliminating the relevant reason will be used to establish the deadline. As we all know Pakistan's legal system inherits a historical amalgamation of Islamic jurisprudence and British legal doctrines. The foundations of its criminal law were laid during the colonial era when the British introduced a legal framework that amalgamated elements of English common law. This historical context significantly influences the current legal landscape, and it is one of the reasons that we do not have statutes of limitation in criminal proceedings because English themselves did not have any statutes of limitation applied to criminal trials at that time and they believed that the time never run against the king. This chapter tries to find out how the absence of statutes of limitation affects the criminal justice of Pakistan. And deeply analyze the process of criminal trial and the effect of time/ passage of time in every step of criminal litigation, from the registration of F.I.R. to the execution of sentence with the help of case studies.

Keywords: Criminal law , Pakistan, Limitation , Justice , Case Studies

Criminal proceedings in Pakistan and the effect of statutes of limitation /passage of time

To maintain order in society, the criminal justice system comprises a collection of laws and concepts that are designed to safeguard citizens' lives and property. "The state must provide affordable and quick justice to advance social justice and eradicate social evils." The criminal justice system is activated when a crime is committed, and the process of litigation is started when an aggrieved party went to the police and registers the F.I.R. and this comes to an end by the conviction or acquittal of the defendant. In this whole process time is the most crucial aspect yet it has not been given any importance because our justice system works as time does not matter for them at all. For instance, there are a number of cases that are pending in courts for years and years and there is no end to litigation.

Registration of F.I.R and Effect of Passage of Time on it

The First Information Report (FIR) must be registered under section 154 of Crpc to start the process. The victim bears the burden of contacting law enforcement and promptly filing a formal complaint to the relevant police station. However, it is frequently seen that there is a lag between the commission of a crime and the filing of firs. In addition, these delays may be used against them in court. For instance, in judgement, it was held: "There is another circumstance that according to the prosecution the occurrence took place at 7 p.m. whereas the FIR was chalked out at 11:35 p.m. Although the complainant claimed that he arrived at the hospital within one or one and a half hours but even then, the report was lodged in the hospital at 11:15 p.m. There is no explanation as to why after reaching the hospital when both the deceased had succumbed to the injuries they had not reported to the police and where this time was consumed, obviously time was consumed for deliberation and consultation. This delay could not be explained by learned counsel for the complainant."

There are several detrimental effects of late filing of FIRs on the criminal justice system. The Supreme Court ruled in another case that each passing day without filing of First Information Reports (FIRs) raises the potential for falsification. Even while the courts consider pertinent facts, the prosecution typically finds it extremely difficult to establish the charge beyond a reasonable doubt when there are numerous delays. Hence, prompt registration of FIR is ideal for ensuring effective criminal justice. However, there is no statutory limitation to registering the F.I.R against any offense but delay in doing so may not result in the favor of the complainant.

Now the most important question emerges whether there should be a statutory limitation for the registration of FIR or not. Generally putting a time restriction for the registration of FIR may be leads toward injustice as every time circumstances for

victims are not favorable to go to the police station and lodge the FIR. However, it should left to court to decide whether the delay is justifiable or not.

Submission of Challan after filing F.I.R

After the registration of F.I.R, according to Section 173(1) of the Code of Criminal Procedure 1898, police officers must finish their investigations promptly and present their findings, or challan, to the appropriate court within fourteen days of the F.I.R. being filed. This requirement applies to both public prosecutors and police officials. However, in criminal proceedings, it has been normal to delay submitting reports under section 173(1), and police typically ask for further time to finish their investigations after submitting incomplete reports (interim reports/challans).¹³⁷ In addition to allowing star witnesses to disappear, escape, or die, this delay in the timely submission of court cases frustrates the legal system and makes it difficult for resentful parties to get their aims met.

Prosecution

The prosecution worked as the middle party between the police and the courts. Its role is to assess the evidence gathered by the police and select which cases, in terms of both quantity and quality, will go to trial. It was formerly a component of law enforcement agencies. The prosecution was first split from police organizations in 1986, but the arrangement was reversed in 1991, taking the UK as an example, where the UK Crown Prosecution Service (CPS) was established in 1986. Following that, distinct prosecution departments and related departments were established in each of Pakistan's provinces starting in 2003. Different provincial laws regulate the structure and operations of prosecution departments. The Sindh Criminal Prosecution Service operates as an attached department of the Sindh Law Department, with the Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2010 serving as its operating legislation.

The Punjab Prosecution Department was established in 2006 under the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006. Prosecution organizations are established in KP and Baluchistan by the KP Prosecution Service (Constitution, Functions and Powers) Act, 2005, and the Baluchistan Prosecution Service (Constitution, Functions and Powers) Act, 2003, respectively, with minor modifications.

The role of the Prosecutor in the light of his expertise and understanding of jurisprudence has been comprehensively articulated by Justice Sajjad Ali Shah in a case: "The conduct of the Prosecution on behalf of the government is the responsibility of the Prosecutors and every report under Section 173 of the Code of Criminal Procedure including the report for cancellation of FIR or discharge of a suspect or an accused has to be filed in Court after the same is scrutinized by the public Prosecutor ...Prosecutors

have the power to return such report to the officer In charge of a Police station or the Investigating Officer if they find it defective for the removal of identified defect...the result of such scrutiny as an expert opinion may be placed before the Court for its convenience and consideration of course without any binding force. Even otherwise, the Prosecutor having expertise in the field is in a better position to opine that based on the investigated fact the accused can be tried under a specific provision”.

In another case, which concerned the granting of bail to the accused charged under Sections 295-A, 295-B, and 295-C Penal Code, for desecration of the Holy Quran, the Supreme Court of Pakistan noted in paragraph no. 9 of the ruling that, although it is too late, we are compelled to issue a wake-up call to the prosecution that, in criminal cases involving the death penalty, the investigators and prosecutors—which consist of sizable fleets that are maintained and sustained at the expense of taxpayer money from the impoverished—must diligently perform their statutory duties/obligations; failing to do so will be guilty of violating the mandatory statutory provisions of the Cr.P.C., the Constitution, and Law relating to the prosecution branch. Every accused individual has the legal right to a prompt trial; as a result, any needless delay in these circumstances would be a denial of justice. This is a universal legal principle.

In another case, it was said that “However, as the trial in the case has been pending for long, we direct the trial court to conclude the trial within three months from the date of receipt of this order.” In another criminal case, there was a year delay on behalf of the investigation and the prosecution court held that it was abuse of powers, and proceedings were quashed.

In the case, the Supreme Court observed that the British colonial rulers had imposed the Code in 1898 and had committed to delivering inquiry reports, or challenges, on time. To encourage even more prompt report filing, a proviso was added to section 173(1) of the Code in 1992. However, the majority of these time limitations are observed in the breach. Even though we have made numerous sacrifices since gaining independence more than 73 years ago, the betrayal of the populace persists and the standard established by foreign rulers is not satisfied. Furthermore, it appears that the issue becomes worse every day. The submission of the investigation report (challan) within fourteen days of the FIR recording is an uncommon occurrence. The Supreme Court went on to say that we are forced to note that the Islamic Republic of Pakistan's Constitution, which guarantees "fair trial and due process," is violated by the unjustifiable delay in submitting investigation reports, or challenges.

Effect of the passage of time on Appeals to the Superior Courts

Superior courts have supported and safeguarded this harmful practice as a legal norm by using their inherent powers to excuse delays in criminal cases and appeals that are not filed within the statutory timeframe. The Supreme Court in Muhammad Nawaz v.

State excused the accused's 145-day delay in filing the motion for permission to appeal because it was satisfied that the accused's conviction was unlawful and because the Supreme Court normally excused delays in criminal cases. On the other hand, permitting delay harms how the criminal justice system is administered as a whole. The fact that criminal cases pending in higher courts, such as High Courts and the Supreme Court, have been left unresolved for decades presents a problem because there is no deadline for resolving criminal appeals, applications, and proceedings. Neither the Supreme Court Rules nor the High Court's Rules make any mention of this. There is no legal deadline or fixed time limitation specified by the Supreme Court Rules of 1980 for the fixing of a criminal case filed under original or appellate jurisdiction or for the court's decision in such case.

Effect of Time on Punishment

The Accused either receives his penalty or is released by the court when the trial is over and justice is done. Unfortunately, the number of years that went into this process also affected the sentences being imposed. For instance, in a case where More than seven years have passed since the offense was committed, and the accused has had to deal with the costs and stress of a drawn-out trial and two appeals before the case against him is finally resolved. Sentence lowered to already served, conviction upheld.

In another case, the offense under sections 376 and 366 was committed in 1968, after a year magistrate found him guilty and convicted him. In the same year appeal was filed in the high court after fifteen years, the appeal was heard, and the conviction/sentence was upheld. The Supreme Court ruled that returning the appellant to prison at that point would not serve the interests of justice. Sentence shortened to "already completed"

Effect of Time on Hudood Cases in Pakistan

In criminal cases, especially those falling under Hudood laws, the focus is often on the elements of the alleged offense, evidence, and legal procedures rather than the timeliness of bringing the case.

Effect of time on minor offences

There is a law called the Small Claims Minor Offences Courts Ordinance, 2002 which fixed the time limitation for the timely disposal and conclusion of minor offenses that fall under the category of offenses in which punishment is not more than three years or a fine or both. The court has two months to conclude these cases by conducting day-to-day hearings.

The temporal dimensions of legal proceedings hold profound implications for the pursuit of justice, the protection of individual rights, and the efficacy of legal systems. The purpose of this chapter is to try to find out the commonalities and differences between the legal approach adopted by Pakistan's legal framework and Sharia law, for

time limitation which was separately discussed in detail in previous chapters. Through this exploration, we aspire to contribute valuable insights to the discourse on legal temporality, facilitating a deeper understanding of the dynamic interplay between modern legal frameworks and foundational principles of Islamic law in the realm of criminal justice. Lastly, the chapter concluded the discussion and provide some recommendations.

Similarities and differences between Pakistan's and Sharia law's approach to time limitation:

Perpetual. Except for the Hanafi school of thought, which supports time limits for certain crimes (such as Qadhf and alcohol consumption), most Islamic scholars argue that victims' rights to prosecute offenders for crimes like Hudud, Qiyas, and Diyyat are not constrained by time. The Hanafi School, however, places limits on punishing certain offenses after a specified period, such as a month for Qadhf or immediately for alcohol consumption if the alcohol's presence is detected.

Comparison and Analysis Philosophical Differences

The differences in approach towards time limitation between the Hanafi, Hanbali, and Maliki schools reflect broader philosophical distinctions within Islamic jurisprudence. The Hanafi School, known for its flexibility in legal reasoning, has accommodated time limitations in certain cases, while the Hanbali and Maliki schools, with a stricter interpretation, lean towards perpetual accountability. In contrast, while incorporating principles from Islamic law, Pakistan's legal system operates within a modern legal framework influenced by British jurisprudence. The absence of explicit time limitations for the initiation of cases does not align with the flexibility seen in the Hanafi school and may pose challenges related to the efficient administration of justice. Adaptation and evolution both the Islamic legal tradition and Pakistan's criminal judicial system have evolved, adapting to changing societal norms and legal needs. The absence of time limitations in Islamic law and Pakistan's legal system allows for adaptability to varying circumstances.

Global Context

Considering the global context, the absence of explicit time limitations in both systems does not align with a broader trend in legal systems that recognize the complexities of certain offenses and the need for a nuanced approach to justice.

Conclusion

The numerous case examples discussed in this chapter draw attention to a recurrent issue in the Pakistani legal system: the negative effects of protracted delays in criminal trials. This problem is made worse by the lack of statutory set time frames, which results in poor administration and delayed justice. Prolonged delays, ranging from a few years to more than ten, damage the court system's legitimacy in addition to impeding the

prompt resolution of cases. Prolonged anxiety and financial stress for the accused are caused by excessive delays, which also lead to the deterioration of evidence and the loss of witness testimony.

In addition, the public's confidence in the judiciary is weakened by the slow pace of resolution, which further encourages doubts about the efficiency and equity of the legal system.

People may believe that justice is elusive or unreachable, which can cause them to become disillusioned and less inclined to interact with the judicial system. After all the debate a question comes to a person's mind how far back in the past can the state snoop on a citizen's records? Is there a timeframe under our law for starting an investigation and filing charges? No, is the common response. There is no statute of limitations for crimes in Pakistan. This legal loophole allows your opponent to go to the police station (or NAB), and accuse you of a 70-year-old offense. However, it would be challenging to prove guilt in this situation.

The absence of statutory time limitations in Pakistan's criminal justice system can be critically viewed through the lens of both fairness and efficiency. While the law allows victims to initiate criminal proceedings at any time, the courts have often remarked that delays in charging an allegation or bringing a case forward can significantly weaken the prosecution's case. This lack of temporal constraints can lead to the erosion of evidence, fading of memories, and the potential for witnesses to become unavailable, all of which compromise the integrity of the judicial process.

Furthermore, in cases where there is a prolonged delay in filing, defendants may argue that their right to a fair trial has been violated due to the potential for diminished evidence or the passage of time influencing the credibility of the charges. While the principle of justice demands that victims have an indefinite right to seek redress, the absence of limitations may inadvertently undermine the effectiveness and reliability of criminal proceedings, making it harder to uphold justice in cases where time has severely impacted the evidence and testimonies. Thus, a balance must be struck between the right to justice and the need for procedural efficiency.

Having reached the end of this research, it is important to note, first of all, that the doctrine of limitation is least accepted in criminal matters, in the legal systems examined in previous chapters. In one of its decisions, the Supreme Court of Pakistan stated that "It is also settled principle of law that although no such thing as limitation is prescribed in criminal prosecutions, but yet, on the other hand, the longer the complaint is delayed the less becomes the chance of believing in its truth, more particularly when it is based upon entirely oral evidence." Now for winding up the discussion and keeping in mind the situation of Pakistan, in my opinion, the absence of a statute of limitation is a huge legal gap in Pakistan's legislative framework. Such a

gap causes many problems for complainants and defendants in proving their truths, as said in above mentioned case law.

Additionally, the absence even for minor offenses creates a backlog of minor claims in courts and delays the prompt resolution of serious crimes. This problem is also made worse by the lack of a set statute of limitations for both prosecution and punishment, which leads to drawn-out court cases that frequently result in shorter punishments because of the length of time they take.

For instance, our courts are overly occupied by the minor claims, it was said by the police officials of Punjab, that in the year 2022, 20% of the F.I.R registered was of the claims against the person's fell under the category of minor offenses. This according to them creates problems to timely handle serious crimes because most of their time and energy is consumed in resolving minor claims.

Likewise, Islamic law also does not provide a statute of limitation for hudod offences, as the primary sources of law in Sharia (Quran and Sunnah) are silent about the time limitation and most schools of thought agree on one's perpetual right to claim for any crime done against him/her. Contrariwise only the Hanafi school of thought provides a more nuanced approach by giving judges the authority to set time limitations for offenses based on circumstances of their era. Though mostly based on the Hanafi School, Pakistan's legal system has not fully embraced this method, especially when it comes to Hudod offenses, for which there is a particular statute of limitations given by Imam Muhammad.

It is apparent from this comparative study that there is a commonality that emphasizes how both judicial systems permit victims to bring complaints without regard to a deadline. It also draws attention to Pakistan's divergence from the Hanafi method when it comes to defining the statute of limitations, mainly regarding Hudud offenses. Ultimately, a question emerges: is the limitation system beneficial for society or not? How do these statutes affect the administration of criminal law? Overall, we believe that statutes of limitation are beneficial for society, and this is because statutes of limitations are still in place in "all enlightened systems of jurisprudence" which indicates that there is a consensus that action limitations continue to be crucial for the smooth operation of society. It is judicious to set some kind of time limit.

However, to fully benefit from a limitation system, we must be prepared to admit that some legitimate claims may be rejected and that certain claims—valid or invalid—may not experience the catharsis of a merit hearing. According to one court's explanation: "The application of the statute of limitations combined with the inexorable passage of one-year results in a summary judgment preventing assertion of what may well have been a meritorious claim. This consequence, however, similar to that which frequently

follows the imposition of any rule possessing a fixed duration, is the price of the orderly and timely processing of litigation.”

We ought to reevaluate whether we want a limitation system if we are unable to pay that cost. If determining the validity of claims or judging them on their merits is our primary concern, then maybe we do not need a limitation system. If those goals are ultimately permitted to take precedence over all opposing factors, the law of limitations on acts will become illogical and unable to carry out the objectives that gave rise to it. Giving preference to those policies over the policies that underpin the overall limitation of actions robs the limitation system of any meaningful function.

On the reverse side, if we choose to legislate an action restriction system in place, even with some modifications in the current statute of limitation, it ought to function according to principles rather than on an as-needed basis. There should be fewer statutes, more explicit definitions of general limitations principles, and uniform enforcement of the law.

Next, the second most important question that arises is how these statutes affect the administration of criminal law. It appears that statutes of limitations serve society's interest in the efficient administration of criminal law and adjudications of guilt that are more likely to be just if based on relatively fresh and therefore reliable evidence. Such statutes encourage law enforcement agencies to concentrate on recent crimes, which offer a greater threat to society than those committed in the distant past.

It seems self-evident that if a person committed a crime for which he can no longer be prosecuted because of a limitation statute, either he represents no further threat to society because he has committed no further crimes, or the threat he represents will be met by the prosecution for his recent crimes. Unfortunately, there has been little discussion for statutes of limitation and the criteria to be applied in setting the limitation periods, which would ideally provide for "the assurance of a maximum degree of availability and reliability of evidence consonant with an adequate allowance of time for investigation and prosecution. " Despite all this and variations in time limits and exceptions, statutes of limitation remain a critical aspect of criminal law worldwide, influencing the handling and resolution of criminal cases.

In conclusion, the absence of statutes of limitations in the Pakistani criminal justice system exacerbates the already burdensome backlog of cases, leading to prolonged litigations that can take years to resolve. This situation underscores the need for a clear separation between minor and major offenses, with a defined time limitation period for bringing minor cases to court. The existing law mandating the conclusion of minor offense cases within six months serves as a model for addressing this issue. However, for serious crimes, the discretion of the court should be exercised based on the circumstances of each case.

Furthermore, the application of the principle of discovery of offense is essential, whereby the limitation period starts when the crime is discovered, rather than solely upon its commission. This approach helps prevent offenders from evading accountability through hidden crimes. However, it's crucial to acknowledge exceptions, particularly in cases of child sexual abuse, where victims may be unaware or unable to complain against the perpetrator. In such instances, the statute of limitations should not apply to ensure that justice is served for the victims despite any delays in reporting the crime.

By implementing a balanced approach that considers the severity of the offense, the court's discretion, and the principles of discovery and exceptions, the Pakistani criminal justice system can better address the challenges posed by prolonged litigations and ensure timely and fair resolutions for all parties involved.

It was long ago said, and much repeated since, that a criminal statute of limitations is a matter of legislative grace, not right;" but it has also been said and often repeated that protection under the statute is a substantive right, not a mere procedural one. Either way, a legislative review of the statute of limitations is long overdue. Although we think the limitations system's objectives are admirable, the advantages it aims to promote can only be attained by a set of regulations that function more reliably and with lower transaction costs than our current system.

Recommendations

- i.** Put in place statutory limitations to initiate criminal proceedings for minor offenses to give priority to serious offenses and reduce the workload for the courts.
- ii.** Establish fair deadlines for filing charges against defendants and provide precise instructions for prosecution responsibilities.
- iii.** To preserve the integrity of the legal system, put in place procedures to speed up court cases and guarantee that sentences are carried out on time.
- iv.** Apply the Hanafi approach's guiding principles, giving judges latitude to decide when crimes have their statute of limitations based on the needs of the times.
- v.** Raise public knowledge and improve legal education about the value of prompt justice delivery and the function of statutes of limitations in preserving an equitable and effective judicial system.

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