FACTORS AFFECTING CONVICTION RATE:
A CASE STUDY OF KHYBER PAKHTUNKHWA

Parveen Gul¹, Bahadar Ali²

Abstract

The contemporary view about a Criminal Justice System is the institutionalized respond by the society to a crime involving coordination between the various components of Criminal Justice System like the Police department, Prosecutors, Courts and the Correctional Agency. For the purpose to control crime and maintain public order the punishment of the criminals is very necessary in a system. It upholds social harmony, obedience to the laws and compliance to the accepted rules. Severe punishment might not weed the crime but it is the certainty of the punishment which is helpful in bringing down the crime ratio in a state. In any country the rate of conviction serves as an indicator of a healthy Criminal Justice System. The burden of proving the guilt of the accused person lies on the prosecution because the accused person is presumed as innocent until proven guilty. Hence, prosecution faces a lot of difficulties in proving the guilt of the accused persons which, as a result, substantially affects the conviction ratio. This research paper aims to focus upon the problems and issues which are associated with the Criminal Justice System which due to the lack of sufficient mechanism results in the low conviction rate. With the help of this Descriptive cum Analytical study an attempt has been made to find out the state of affairs (causes or factors) that are prevailing in the

¹ Lecturer in Law, Department of Law, University of Malakand; Email: parveengul28@gmail.com
² Lecturer in Law, Department of Law, University of Malakand; Email: babkha191@gmail.com
society at the time of study and which are resulting in the low conviction rate particularly in Khyber Pakhtunkhwa.

Key Words: Conviction, Conviction Rates, Session Courts, Courts of Magistrates.

1. Aim of the Study

This study aims to find out the inherent weaknesses in the Criminal Justice System in the Province of Khyber Pakhtunkhwa and to consider how to redress the problem of poor enforcement mechanism in Pakistan. A special concentration is made on the issues concerning the low conviction ratio. The Research question which the study aims to answer involves the following points:

- To make suggestions for strengthening the Criminal Justice System, policies and the laws of Pakistan.
- To find out a possible way for the state to overcome and solve the problem in hand on permanent basis.

2. Scope of the Study

Primarily the study is limited to the Criminal Justice System prevailing in Pakistan with a key focused area and case study of conviction ratio in Khyber Pakhtunkhwa.

3. Approach and Methodology of the Study

This was an ex post facto cum analytical study. The Topic “Factors Affecting Conviction Rate” is basically a qualitative study. In the current study a descriptive method was adopted for the purpose to get a clear picture of the current situation of the phenomenon and where it does exactly targeted the community members following an analytical approach towards the relationship of cause resulting in the
effect. In the study both methods went side by side to get a thorough analysis of the factors which affects our conviction ratio. For this paper secondary data in the form of books, articles, case laws, civil society reports, journals and other government’s annual publication were collected and analyzed to explore the issue in hand.

4. Introduction

In the chain of Criminal Justice, Prosecution provides the main link because the prosecution is involved with Criminal Justice System from the day of commission of an offence till final decision of the Court. In the Province of Khyber Pakhtunkhwa the conviction ratio is very low and the acquittal ratio is very high. As the accused person is presumed to be innocent in the eyes of law until proven guilty by the Prosecution, therefore, the required evidence must be conclusive in nature and the case must be proved beyond reasonable doubt if a person wants to secure conviction in a court of law. But practically, this is not possible due to the problems and issues associated with System of Justice which due to the lack of sufficient mechanism right from the stage of lodging FIR (First Information Report), during investigation, Prosecution, and Trial ultimately results in the low conviction rate. The factors or causes concerning different elements of our Criminal Justice System and affecting our conviction ratio have been analyzed in detail in this Article.

5. Conviction and Conviction Rate

The verdict of the court would results in conviction whenever it finds a person guilty of an offence. The opposite of conviction is Acquittal meaning thereof that a person is not proven as guilty. Any Criminal Proceedings may end in four possible results. It may be conviction of the innocent. It may be conviction of the guilty. It may be an acquittal of the innocent, or it may be an acquittal of the guilty. At the end of any Criminal Proceedings, these four are the final possible
outcomes which may be expected. For many reasons our Criminal Justice System is not perfect or flawless.

Occasionally, it opens the doors of acquittal for guilty persons and the innocent person suffers conviction. If a guilty person is acquitted it would be tolerable but the most unbearable situation is the conviction of an innocent person. Such problems may be lessened by using an appellate mechanism and in case if these problems are not alleviated by appellate mechanism then it would be the failure of justice if an innocent person is convicted. The rate of conviction is a method of disclosing the fact that how well our Criminal Justice System is doing. There are two ways to express the rate of conviction. Firstly; the quantity of the reported cases in police stations, and secondly; the number of cases undergoing trials. Different countries have different rate of convictions. It is based upon the methods which they undertake to apply in criminal cases. Countries like Russia, China and Japan have a very high conviction ratio of above 90%. Contrary to this, some countries have a very poor rate of conviction below 40% such as India and South Africa.

Dr. Shuaib Suddle in his address on “Criminal and Police Reforms” provided vision into International Best Practices highlights a flaw which exists in the system inborn, and methods of its development. He argued that Pakistan is a very low conviction ratio of only 10% unfortunately and that too through bribes and influences.

6. Conviction Rates in Khyber Pakhtunkhwa

The conviction ratio in the KP Province in Anti-Terrorism Courts and Session Courts is very low, and the rate of acquittal is high. The Conviction rates for the Years 2012-2016 collected from Directorate of Prosecution, Government of Khyber Pakhtunkhwa are as under:
• The rate of conviction in Khyber Pakhtunkhwa in the year 2012 in Anti-Terrorism Court was 4.9%, and in Session Court it was 31%.

• The rate of conviction in Khyber Pakhtunkhwa in the year 2013 in Anti-Terrorism Court was 15%, and in Session Court it was 30%.

• The rate of conviction in Khyber Pakhtunkhwa in the year 2014 in Anti-Terrorism Court was 17%, and in Session Court it was 28%.

• The rate of conviction in Khyber Pakhtunkhwa in the year 2015 in Anti-Terrorism Court was 23%, and in Session Court it was 33.6%.

• The rate of conviction in Khyber Pakhtunkhwa in the year 2016 in Anti-Terrorism Court was 30%, and in Session Court it was 33.4%.

7. Factors Responsible for the Low Rate of Conviction in Khyber Pakhtunkhwa

a. First Information Report (FIR)

If we want to compute the performance of prosecutorial services regarding conviction ratio then FIR would be of much importance. It is the responsibility of the police officers that they shall report immediately by providing a copy of FIR to the DPP (District Public Prosecutor). But this promptitude in providing a copy of FIR, in actual practice is timely avoided due to which prosecution’ scope in the process of investigation is limited. SHO (Station Hose Officer) is statutory bound that in case of cognizable offences, he shall lodge FIR in the prescribed form. And after lodging of FIR, either by
himself or by any other officer investigates the matter. The genuineness of First Information Report would be made doubtful if it was recorded after preliminary investigation. If FIR is promptly lodged then it reduces the chances of false implications. The object of FIR is to start investigation of case and in this regard it is considered as an important piece of evidence. Police officers, therefore, are very careful in recording FIR because it is considered as a sin on part of them if negligence is committed on their part in preparing First Information Report.

b. Poor Investigation

Every criminal case begins with an investigation which is conducted by the Police or other Investigative Agencies. The police investigatory independence not only from the courts but also from prosecution has also been highlighted in Judicial Decisions. The following citations strengthen this point:

“For conducting investigation by the investigating officer, the mechanism and methodology has been given in detail. It is the reason due to which the Higher Judiciary holds that in criminal matters conducting investigation is the duty of the police officers, and it doesn’t fall within the Court’s Jurisdiction.”

Conviction ratio would definitely suffer if investigation is not conducted properly, because conviction depends upon evidences and evidences depend upon investigation. Now if poor investigation is conducted then eye witnesses would be affected and if eye witnesses would affect then for sure the rate of conviction would suffer.

c. Delayed Submission of Challan

It is required by the investigating officers to provide complete investigation file along with FIR and challan to the Prosecution. The
following obligation has been imposed upon the police officials in criminal matters by The National Judicial Policy:

“The police officers are bound to submit challan in criminal matters within 14 days as is given under section 173 of Criminal Procedure Code. If they fail to submit challan within the aforementioned period and they submit only interim report, then in such cases the court shall not grant remand of the accused person beyond 14 days.”

But in our Province normally challan is not submitted in majority cases within a period of 14 days for numerous reasons such as lack of facilities to the investigating officers; a forensic science report usually takes three to four months etc. etc. Police officers are also overburdened. Rush of cases is the main cause behind delayed submission of challan. Population is increasing on daily basis and with the increasing number of population, crime ratio is also increasing. If years back only one offence is committed within jurisdiction of only one police station, now three to four offences are committed which resultanty overburdened the Investigation officers. When the Criminal Procedure Code was enacted, by then burden was not as much as it is now-a-days. In such situation how can it be possible for an investigation officer to submit a challan within Fourteen days or seventeen days or even within twenty days? Such a delay in the process of investigation gives benefits to the accused and does affects our conviction rate. I will narrate few cases here which clearly show that how delayed submission of challan will give benefits to the accused person and vice versa.

In case of Rehan Vs. The State, 2009 SCMR 181, it was decided that if it is not possible for the Investigation Officer to submit challan within the prescribed period, then he is bound under section 173 (1) Cr. P.C to submit the interim challan for trial through public
prosecutor and should not keep in his custody the accused person for indefinite period without any legal justification.

In case of Akram Pur Vs. The State (D.I.Khan), NLR 1995 Cr. LJ 789, it was decided that the accused would be entitled to bail when no challan was submitted before Special Court despite passage of six months after occurrence.

In case of Shehzad Ahmed & another Vs. The State, PLD 2001, Karachi 6, it was decided that despite the detention of accused in jail for the last eleven months challan against them had not so far been submitted in the court by the I.O. who was bound to submit the report U/S 173 within seventeen days after the registration of the FIR. Prosecution was unable to explain such delay. Hence, bail granted.

In case of Muhammad Aslam VS. The State (Lahore), 1997 PCr. LJ 1736, it was held that two months having been passed since the registration of the case and no final or interim challan having been submitted in the court, mandate of S.173 CrPC had been violated by the Investigating Agency and detention of accused in jail after the period of fourteen days had become unlawful and violative of Article 9 & 10 of the Constitution.

All these cases provide a clear picture that benefit of delayed submission always goes in favour of the accused person.

d. Lack of Witness Protection Program

Though witness protection programs are of worth significance but the fact is that we lack such programs. It is the need of hour to make legislation on it in our province. The non-availability of such program results either in acquittal or in dismissal because witnesses fear threats to their lives and are hesitant in giving testimony. And,
therefore, justice is stifled at its birth due to witness hesitancy in giving testimony as they have threat to their lives.\(^\text{11}\)

\textbf{e. Lack of Cooperation and Coordination}

In the Administration of Justice, both the prosecution and the police play a significant role because while proving accusation against the criminals the prosecution always depends upon investigation which is conducted by the police officials.\(^\text{12}\) This thing shows that though the prosecution and the police officers have separate roles to play in the Administration of Justice, still, the final determination of guilt or innocence of the accused cannot be achieved unless and until both the parties work together.

It is the responsibility of the police to provide copy of FIR immediately to prosecution and bring in their notice that a crime or offence has been committed. It is also their duty to share with the prosecutors all their observations which they observed while visiting the crime scene for the first time. It is of great significance that pre-trial advices shall be given by the prosecutors to the police officers. Through such advice, the investigating officers will be in a position to know about different techniques and in such a way strengthen evidential basis of their cases. Likewise, it is the responsibility of the prosecutors to issue guidelines to the I.Os (Investigating Officers). But unfortunately we do not see the coordination or cooperation between the police officers and prosecutors.

\textbf{f. Lack of Forensic Science Laboratories}

The KP Province is suffering from lack of institution include Pathological Institution, Forensic Sciences Laboratories, and Psychiatric Institutions both in terms of quantity as well as quality. Neither we are sufficient in terms of their quantity nor quality. In the Province of Khyber Pakhtunkhwa, only one Forensic laboratory is
functional, the other one is initiated in Malakand Division but is not yet functional. The issue that substandard FSL causes delay in conviction has been discussed at various forums nationally and internationally. Even psychiatric institutions are not yet exist in our Province. If we look at it qualitatively, herein KP, Forensic Science Laboratory in itself is not sufficient as it lack facilities for all types of examinations/tests. Due to this reason the police officers sent samples to Islamabad/Lahore for DNA (Deoxyribonucleic Acid) test or opinion etc. To support my viewpoint that it does affect our conviction ratio, I will give an example. Suppose that a crime is committed. The I.O collects blood stains from the crime scene and sent it to FSL in order to know that whether it is human blood or not. Now, if it consists of the blood of more than one person then how would we know about that? We don’t have sufficient resources for it. Whether this would affect our conviction ratio? Obviously, it does affect because our FSL is not well equipped to provide us the information that what exactly the situation is.

**g. Inadequate Scrutiny**

To avoid any sort of outside interference in administration of justice, independence is given to the police officers in their mandate. But this independence in the context of administrative capacity does not mean that the police officers will work in organizational or legal vacuity. It means that their work, in the continuum of justice process, will be securitized by the prosecutors, it would be tested by the defense attorney, and will be ruled upon by the superior judiciary before the completion of process. During the review and investigative stage, effective communications with the prosecutors will greatly assists in ensuring that those cases which are on merit will put in courts and will be presented affectively during trial.  

It is the responsibility of the public prosecutor to scrutinize all his cases and then put in court for trial. But in our Province as the
83

prosecutor has bundle of cases on daily basis therefore it is not humanly possible for him to remember all the cases. If a prosecution is successful, it helps not only in advancing investigation’s standards but it acts also as a purifier to reject initially a case which is not fit for prosecution, because when a case file is received by the prosecutor, he has an option either to take no further action or to continue with it. Thus the rate of conviction is affected in this way.

h. Delay in Trial

Delay in the process of criminal justice negates most of the fundamental rights such as the right of dignity of man, freedom of movement. A well-known principle is that whenever justice is delayed then Justice is denied. In the context of Pakistan generally and the Province of Khyber Pakhtunkhwa particularly, the issues associated with the delay of justice are neither new nor unique. The causes which are responsible for delay in trial are; absence of poor supervision of courts, inadequate services of process, inadequate transport facilities, delay on part of investigative agency, non-observance of the provisions of Procedural Laws, non-observation of the provisions of Procedural Laws, absence of witnesses, shortage of stationaries, frequent adjournments, dilatory methods by lawyers and parties, frequent transfers of judicial officers, stay of proceedings, transfer of cases from one court to another court, and interlocutory orders etc. 14

8. Conclusion

8.1. Findings

Our Criminal Justice System strongly necessitates the second look; higher standard of professionals are required in the criminal investigation system accompanied with technical support. Classification should be made for the serious offenses in order to
specialized investigation, experience, skillful and trained investigators should be encouraged. These investigators must not be over-burdened by performing other responsibilities like to maintain law, security and bank duties etc. They should be given the power to investigate the cases of serious crimes. The numbers of forensic science institutions together with latest technology like DNA test, finger prints technologies must be made available. Plea bargaining which is suggested by the law commission must be provided as a part of process of decriminalization.

Thus the major and important loopholes and deficiencies in the Criminal Justices System in Pakistan, in general, and in the Province of Khyber Pakhtunkhwa in particular, which ultimately results in the low conviction rate are; false implications or frivolous charges, delay in the registration of FIR, delayed submission of challan, poor investigations, lengthy and delayed trials, malpractices during litigation, corruption and other extraneous causes such as bribery etc, poor prosecutorial academies, lack of forensic science laboratories, lack of transport facilities, delay on part of investigating agencies, non-compliance of the provisions of procedural laws, non-attendance of witnesses, lack of stationaries, lack of witness protection program, threat to witnesses, prosecutors and in courts, dilatory methods by parties and lawyers etc. All these are resulting in low rate of conviction and constant increase of acquittal in the Province of Khyber Pakhtunkhwa.

8.2. Recommendations

a. Though it is mandatory to register FIR, yet it is required to amend section 154 of the Criminal Procedure Code, and it is inserted that subsequent action should be based on solid grounds in case of arrest by the police officers. If it is done, it will be effective in the prosecution’s process.
b. Due to section 173 Cr.P.C, a delay accrued which is responsible for high rate of acquittal and low rate of conviction. It is, therefore, suggested to amend section 173 of the Criminal Procedure Code and give some extra time for submission of challan. Because it is difficult to collect forensic report and conduct investigation within 14 days.

c. It is also suggested that Khyber Pakhtunkhwa government should take initiative for making law protecting witnesses during criminal trials.

d. It is also need of time that the prosecutors and police personnel must be trained well. So emphasis should be given on their trainings. For this purpose it is suggested that like judicial academy there must be prosecution academies for prosecutors.

e. As the KP Province lacks forensic science laboratories both in terms of quality and quantity, therefore, it is suggested that well-furnished laboratories should be established in Khyber Pakhtunkhwa.

f. The procedure which is provided to conduct investigation is outdated. To meet the modern challenges which investigation officers faced in field of investigation, such procedure should be updated. For this purpose, it is suggested to amend the Police Rules 1934 and particularly Chapter XXV. The rules which are given in Chapter XXV should be amended in order to highlight and recognize the importance of evidences in terms of modern sciences of forensics e.g. videos, photographs instantly and capturing the scene where crime is committed etc, is of great significance in the investigation procedure.
Suggested Readings


8. Key Note Address of Dr. Shuaib Sudde on “Criminal and Police Reforms” in a Meeting of the Committee of the Whole in Senate Hall at Parliament House, Islamabad on August 20, 2015.


10. S.M. Atia Naznin and Tanjina Sharmin “Reasons for the low rate of conviction in the vaw cases and inconsistencies in the legislative framework” retrieved from http://dspace.bracu.ac.bd/bitstream/handle/10361/4185/COVER%20PAGE%2c%20JUNE%2c%202015.pdf?sequence=1 on 08/02/2017.


15. The Police Rules, 1934.
Notes and References

4. Key Note Address of Dr. Shuaib Suddle on “Criminal and Police Reforms” in a Meeting of the Committee of the Whole in Senate Hall at Parliament House, Islamabad on August 20, 2015.
14. S.M. Atia Naznin and Tanjina Sharmin “Reasons for the low rate of conviction in the vaw cases and inconsistencies in the legislative framework” retrieved from http://dspace.bracu.ac.bd/bitstream/handle/10361/4158/cover%20PAGE%2c%20IJUNE%2c%202017%2c%202015.pdf?sequence=1 on 08/02/2017.