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Castigation and the Punjab Sentencing Act, 2019 – An Overview of Criminal Law and Convictions in Punjab, Pakistan

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Abstract

Castigation is the infliction of severe moral or corporal punishments. There are different theories regarding castigations are given to tackle the crime and criminal minds and to make society peaceful. Even the Islamic theory of punishment derives from the Holy Quran and Hadith. Overall, the Holy Quran has about 200 verses dealing with legal issues. For every wrong, there is a remedy provided in law. Castigations are the remedies provided by the lawmakers to redress the grievances of victims of offences as prescribed by the law of the state. Pakistan being a developing country slowly enlightens its society with various redresses and punishments to nip the evil in the bud and for this legislature is introducing new laws now and then. The study adopts qualitative means to examine Pakistan's province of Punjab's criminal law on castigation and provides insightful understanding for the readers.

Keywords: Castigation; Punishment; Pakistan Penal Code; Sentences

1. Introduction

This research paper begins by introducing the background of castigations. Afterwards, it describes the punishments under Islamic criminal law and those prescribed by the Holy Quran and Prophet Muhammad's Sunnah. Then it analyses castigations according to Pakistan Penal Code, 1860, and the principles underlying for awarding sentencing in Punjab Sentencing Act, 2019 and concludes with some recommendations.

The term "red line" refers to an invisible line that cannot be crossed and will result in legal consequences if it is. As defined by law, causation is a definite criminal punishment with a specific outcome. Main law for awarding punishments in Punjab is Pakistan Penal Code, 1860 and now the Punjab Sentencing Act, Provincial Assembly of Punjab has introduced 2019 with the object to provide guidelines and factors that are necessary for judges while passing sentences to improve consistency in sentencing. The Criminal Justice System in Pakistan, including Punjab, comprises of five components, i.e., the police, judiciary, prisons, prosecution, probation and parole (Arshad 2017).

Human beings are known as social animals (Tomasello 2015). A complex structure of humanity. A diverse organism, showing multiple characteristics, psychologies, interests, and forms. However, they vary the fact that humans are animals will not be wrong. This statement may appear absurd to many, but let us talk about it, and then we can decide.

Humans belong to all civilisations and eras. What was the driving force? The driving wheel of humans in all ages was power — "Power" which was an amalgam of wealth, rage, wrath and sanction. The "Power" of sanction is mainly what this paper is going to discuss. Why the so-called social, organised, well behaved, ruling the planet earth being, need any sanction?

Has it ever occurred to anyone why the penalties are formed because humans apart from how civilised they depict themselves they are animals? They behave like animals. Their rage, their lusts, their desires, their greed and their undying love for themselves make them blind and force them to leap bound the boundaries of civilised, organised being. Moreover, like every animal when they cross the boundaries, they must be crucified or jolt back to the initial points.

Sometimes the backing is not that easy, and it is the point where the penalties, retributions come into action. Adam, the first being was expatriated from heavens/paradise as a penalty (Bowers 1969). Lucifer was condemned for disobeying the divine orders (Cervigni 1989). It was turning the pages of the history of every nation, civilisation, community and religion. Every page is tainted with the darkness of punishments. Moreover, whenever someone crosses the limits, it is always the retribution that brings back the balance. And not only the retributions bring back the balance, but it also helps to ease away the agony of victims and his loved ones. It is not that this study supports the extremist approach. However, this study is an advocate of equality. If there are rights for the wrongdoer than some retribution for the victim will help him to ease away all the trauma.

Starting the debate, the first argument is that the very concept of heaven and hell is the base of the penalty (Oestigaard 2015). Why this concept was introduced, have anyone ever thought what if there was no hell or heaven? Will the earth humanity would have been similar? Well, we guess no. Either there would be chaos, or there would be true love without any fear.

Today Mullas¹ make us fear God. Why don't they make us love God? Maybe the very concept of penalty is in human nature. Maybe we cannot work till we get that whip of penalty on our back. Maybe we do not understand that anything can work without the concept of sanction. Although the roots of punishments are rooted in the history of humanity, moreover, it is hard to extract the base of punishment; however, with the evolution of humanity it also evolved and emerged out with its new forms (Henrich et al. 2010). The Greeks concept that Zeus Greek God chained Prometheus a form of sanction (Colarusso 1989). We witnessed several corporeal punishments in ages but after the Renaissance, even the theories on which the punishments are based emerged out. We all know that concept of sanctions is old; however, these theories are newborn as compare to them. Main theories that deal with criminal sanctions are Retribution, Deterrence, Reformative and Rehabilitation (Meyer 1968). This paper will not discuss the concept of fine and costs as it involves the concept of governance and relation with the Government, which will surely open another side of the aspect. Rehabilitation and reformative are at one side, and somehow, they can be interlinked. At the same time, retributive and deterrent are on the other side.

The concept of introducing reformation and rehabilitation in punishments is wise and psychological approach as the underlying principle is that the offender must be considered a human being first and offender later. A crime, if the offender does it, must be given a chance to remorse on his act and allowed to open a new gate to life so that he can not only amends his ways but reconstruct his life again. For which reformation and rejuvenation to his mind and life be brought.

Rehabilitation is likewise the same it brings the concept that a crime is a disease; it is a virulent virus that causes severe infection in the minds of innocent persons. Furthermore, lusts desire rage hormones, and sometimes misconceptions misunderstandings infect their minds. It is an addiction and victim of such disease and addiction be dealt like every other addiction. The person be submitted in a rehabilitation centre where the experts root out the cause of the addiction and try to mend the damage caused. They try to heal the traumas and ease away the pain. Once the healing is done, the person can be brought to life again. Because the school of thought behind these theories support the very concept that life is the most significant gift of nature. Moreover, we humans we have easily driven away with

¹ A Muslim scholar, teacher, or religious leader.

our needs, so if a person does a crime, he must not be condemned forever. However, a better way must be adopted to bring back the balance. Likewise, when a person gets infected with a disease, he is not left alone to die alone, but the advanced science and doctors try to shun the disease, not the diseased. Same the crime must shun not the offender.

Now coming back to the other side of the story where the more challenging concepts await. Deterrence and retribution. A crime occurs, and the scholars of these theories say the retribution must be in order to bring back the harmony that was lost. They put up their case with the solid argumentation on the nature that if the offender is given an easy way out, then it will be more convenient for crime to flourish in a society. To curtail the crime to nip this evil in the bud, someone must cut off some of the shrubs. As it is rightly said sometimes, we must be hard to be kind.

If the retributive and deterrent act is not adopted in reaction to a crime, the criminal will never realise the actual agony and pain of the victim. Furthermore, the victim likewise will start losing his faith in the system of justice, which will somehow lead to his rebellious behaviour. The society of rebellions is a herd of hyenas. To gain the trust of people of society in the justice system, someone must bring justice to them. Justice needs to be done. The primary thought behind is that the central concept of justice is not only that sheets are dyed with the inks of jurist and judges, but we see that people get what they seek. Justice is done. Moreover, retribution is one of the most primitive and exclaimed forms of punishment. Even the very concept has his roots in Islamic law.

Quite often, Muslims are criticised for being the aggressors in the concepts of retribution (Azzam 2020). Imagine someone as a victim of rape or someone's loved one was brutally sliced to death. What will that person do? Keeping the trauma, the torture that has tainted someone's mind and life forever. Would someone easily accept that the offender pays compensation or a fine to Government? Alternatively, quickly get away with what he has done. Will the fire of that incident be easily anguished? Won't someone desire him to at least have a taste of what it feels like to have a sanction for what he has done? This paper is not directing the debate to the concept of mitigation and compromise right away. So, the retribution and deterrence are also to keep the balance maintained. So now it can be said that retribution and deterrence favour the victim and rehabilitation and reformation support the accused.

2. Overview of Criminal Law on Castigation in Punjab

After the emergence of theories of punishment, the legislatures started embodying sanctions and various penalties in laws of lands, making the justice rule the lands. The concept of the rule of law prevailed, which somehow offshoot the concept a person doing wrong must be punished accordingly.

This study will now likely to divert the debate to the laws of penalty in Punjab, Pakistan. Primary law for the penalty in Punjab is Pakistan Penal Code formed in 1860. It is not the ultimate and the absolute penal law of the land. However, it is the primary law dealing with penalties. Hadood laws² and various special laws contributed to their share in the concept. Islamic law distinguishes three sorts of punishments for criminal offences: fixed punishment, known as Hadood, retaliation, known as Qisas, and discretionary punishment, known as Tazir. Fixed punishment is the most severe of the three categories of punishments. Hadood, or fixed punishments, are predetermined by Allah the Almighty and His last Prophet Muhammad in the Holy Quran and the Sunnah of Prophet Muhammad and can be found in the Quran and the Sunnah of Prophet Muhammad. Hadood punishments are mostly reserved for five types of crimes: adultery, false accusation of adultery, theft, intoxication, and apostasy (conversion to another religion). Zina (adultery), false charge of adultery, consuming Khamr (alcohol), and theft were the four criminal offences that General Muhammad Zia-ul-Haq, Pakistan's fifth President, introduced into Pakistan in 1979 (Govt. of Pak 1979) under the Hadood codified laws. Instead, an ordinance on the regulation of whipping was enacted, which was eventually abolished by the Pakistani parliament in 1996. (Mukhtar 2016). It is categorically expressed as: "God commands justice, righteousness, and spending on one relative and prohibits licentiousness, wrongdoing and injustice".³

Criminal Procedural Code played a part in determining the jurisdictions of jurists and courts—their methodology of awarding sanctions (GoP 1997). High Court Rules and Orders volume 3 made the canvas clearer of criminal law (LHC 2020). The jigsaw puzzle started to settle down with every new year and every new legislation.

Sec 53 of Pakistan Penal Code is the core of penalty law. It includes almost all penalties available in the country. This paper deliberately used the word almost because penalties like whipping and the concept of probation is not

² The Hudood Law was intended to implement Shari'a law or bring Pakistani law into 'conformity with the injunctions of Islam', by enforcing punishments mentioned in the Quran and sunnah.

³ 2020 PcrLJ 662 Muhammad Rashid VS the State.

present in the sanctions mentioned above. This section provides the list of sanctions as death as tazir meaning death awarded according to penal law, imprisonment both rigorous and simple, fine, qisas, arsh, daman, forfeit of property.

Qisas is the concept that is directly interpretation of retribution. However, facts circumstances strict criteria's when not fully obeyed they either direct the penalty towards death as tazir or imprisonments in cases of heinous crimes. At the same time, arsh and daman are concepts of compensations awarded to the victim or his legal heirs—their manner of distribution. The rates of compensation everything is keenly taken into consideration by the legislation while cooking the broth of criminal law.

Pakistan Penal Code also highlights the concepts of fractions of terms of punishments. Even it elaborates the concept if the amount of fine is not paid what another way is present to meet the ends of justice by awarding additional imprisonment. Commutation of penalty and pardon by the President⁴ of the state highlights the concepts of sanctions by giving new hopes to the offenders showing the reflection of theories of reformation is in the minds of legislation. Commutation pardon goes hand in hand with the concept of compromise and compounding of offences. Section 345 of the Criminal Procedure Code⁵ enlists the offences that are given the liberty of compound with or without the permission of the court. This permission is not arbitrary; it meets the demands provided by the High Court Rules and Orders volume 3. If the court is agreed that the compounding is not entirely out of coercion, it can refuse the demand and conduct the trial and proceed to sentence what do ever it is.

In 2016, legislatures of Pakistan introduced a new concept. The concept of fasad-fil-arz in S. 299 ee in Pakistan Penal Code⁶. The main object was that if a case falls in the category of fasad-fil-arz the hopes like commutation, compromise, compounding should not be given. Again, depicting and showing the reflection of deterrence theory, meaning thereby to leave a mark in the pages of history that no one can dare to commit filthy crimes again (GoP 2016).

If awarding of the sentence is classified, then there are two types of sentences, one is determinate sentences, and other is indeterminate sentences.

Determinate sentences are those in which sanctions their extent and details are clearly given there is no ambiguity left behind. However, in indeterminate sentences, the legislation handed over the authority of sanctioning in the honoured hands of the judge who has to while keeping the limits of punishments, has jurisdiction, facts of the case, circumstances prevailing and last but not least the essence of law in mind to award that punishment.

However, it was observed that the judges, while awarding punishments in cases of indeterminate punishments acted in a manner that was hardly governed by any principle. It was observed off and on that two identical cases in every manner, but the sentence awarded was entirely different from each other. It would be rude and an allegation if it is said that the court arbitrarily used the discretion. However, more appropriate, it would be that the jurist without the proper guidance and proper lightening strayed in their ways sometimes.

This method of quickly getting dodged away and getting themselves forget and follow the same principles followed by them in previous cases started making the decisions of courts questionable. The apex courts, governments and society started having their doubts in the esteemed profession of the judiciary.

People started doubting that the judge has taken illegal gratification; that is why there is an evident and definite difference in the judgements. To remove such doubts from the minds of society, it appeared that there is a need for the introduction of a new scale and criteria in determining the indeterminate sentences. For such ambiguity to be

⁴ According to Article 45 of Constitution of Islamic Republic of Pakistan, 1973 'The President shall have power to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority'.

⁵ Section 345 of the Code of Criminal Procedure 1898, enforced on July 01, 1898, http://www.fmu.gov.pk/docs/laws/Code_of_criminal_procedure_1898.pdf, accessed on 25 November, 2020.

⁶ According to Section 299 ee 'fasad-fil-arz' includes the past conduct of the offender, or whether he has any previous conviction, or the brutal or shocking manner in which the offence has been committed which is outrageous to the public conscience, or if the offend. is considered a potential danger to the community, or if the offence has been committed in the name or on the: pretext of honour.

removed and justice to shine in the clear sky, the legislator of Punjab once again introduced a new law named The Punjab Sentencing Act, 2019. The law, as it is quite evident from its name, deals with the concept of punishment.

The Punjab Sentencing Act 2019 (Act XXXVI of 2019) having been passed by the provincial assembly of Punjab, Pakistan on 27 November 2019 and was assented by the Governor of Punjab on 10 December 2019 and was published in Punjab Gazette on 13 December 2019 (GoPP 2019). This paper will not dissect the law section-wise, but few things that are to be appreciated in the law is that the legislature introduced the concept of factors that are mitigating and aggravating while awarding sentence. Now, as this paper has already discussed the visualisation of compromise and compounding, the mitigating factors help us to determine whether the case is to be dealt in a way where mitigation is possible or not.

Fasad-fil-arz and aggravating factors help us to exclude the heinous crimes and criminals from rest and help us award the well-deserved sanction so that the society learns deterrence from it. For the first time, the land laws introduced the purpose of sentencing while penning down the law. The said law provides us with the concept of factors which can help us that the case is to be dealt in terms of mitigation or the aggravating factors are going to axe down the ropes of hope of offender.

Even after the determination, the legislature did not leave the discretion of the court to be unwatched. It has given a schedule according to which the court and the prosecutor can help the case fall in a category and a specific zone is provided according to which the indeterminate sentence is to be awarded. So that the fully inordinate sentence and in the discretion of courts now can be organised well according to the latest law and its procedure.

3. Data Analysis

The Punjab Sentencing Act 2019 (Act XXXVI of 2019) was passed by the provincial assembly of Punjab, Pakistan and it was published in Punjab Gazette on 13 December 2019. After the implementation of this Act the following figures were issued by Punjab Police to consider the authenticity and applicability of the said Act (GoPP 2020).

According to an official report by Punjab Police, from 01-01-2020 to 31-07-2020 there were total 326714 cases were reported in Punjab. Out of which 30294 crimes reported were against person, 68445 crimes reported were against persons, 109313 crimes reported were falling under local & special laws and 118662 were miscellaneous crimes reported (See Figure1).

Similarly, according to an official report by Punjab Police, from 01-01-2020 to 31-07-2020 there was a total of 326714 cases registered in Punjab. Out of which 245492 cases were challaned, 59499 cases are still under investigation, 6972 cases are still untraced, and 14751 cases are cancelled during these six months (See Figure2). Likewise, according to an official report by Punjab Police, from 01-01-2020 to 31-07-2020 there were total 32097 accused were convicted, and 20344 were acquitted (See Figure3).

Figure1: Punjab Crime Profile (01-01-2020 to 31-07-2020)

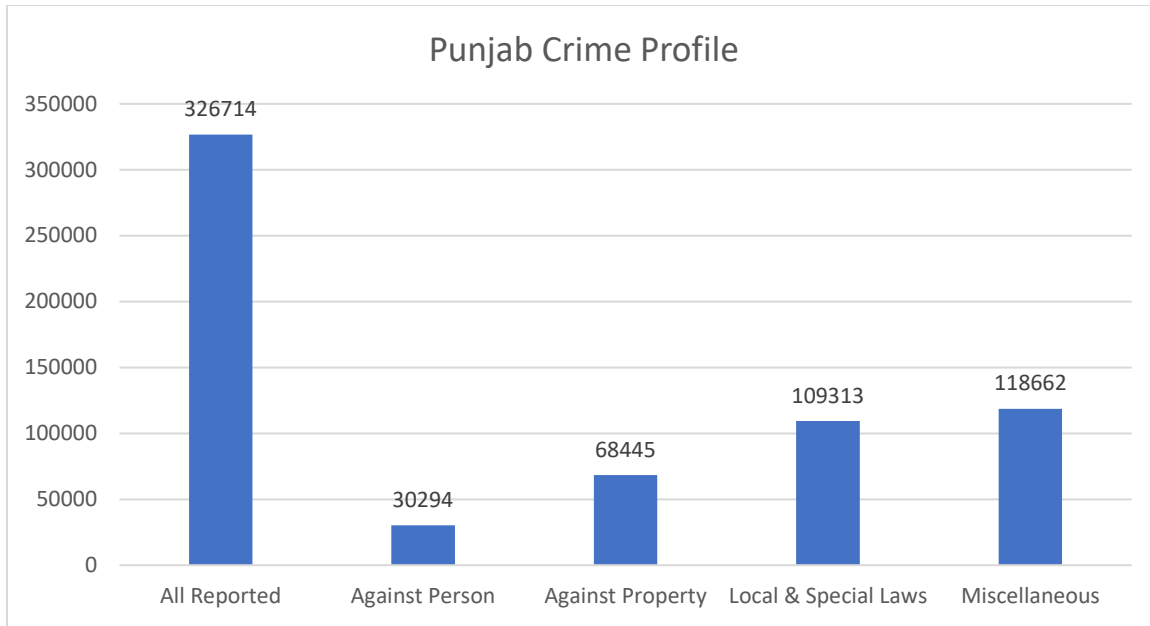


Figure2: All Reported Crimes (01-01-2020 to 31-07-2020)

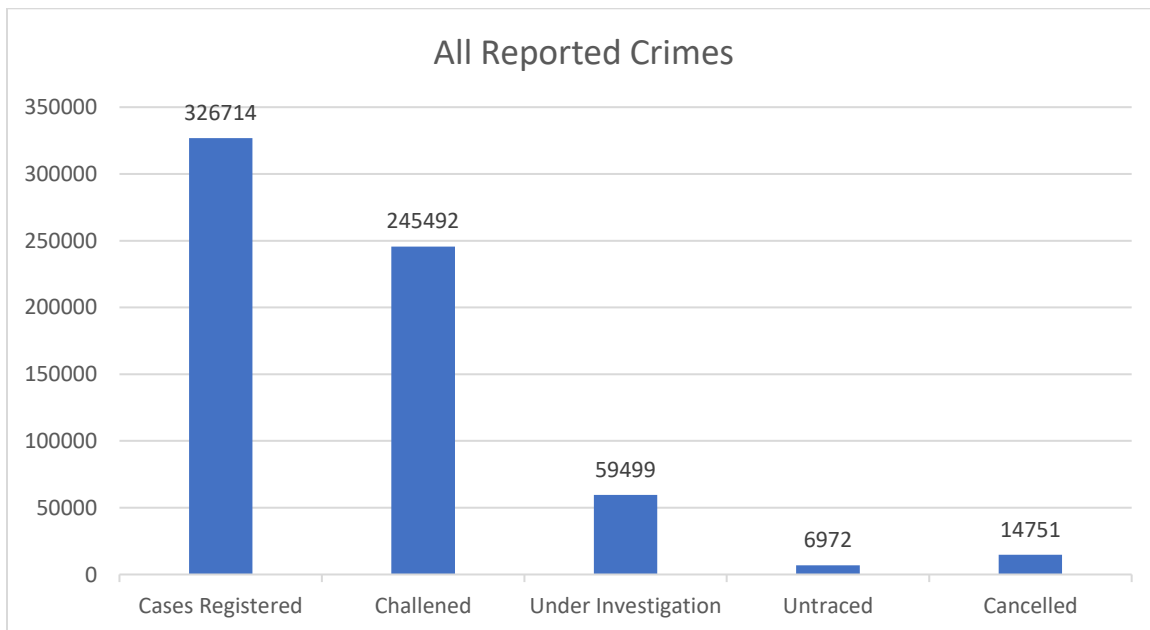
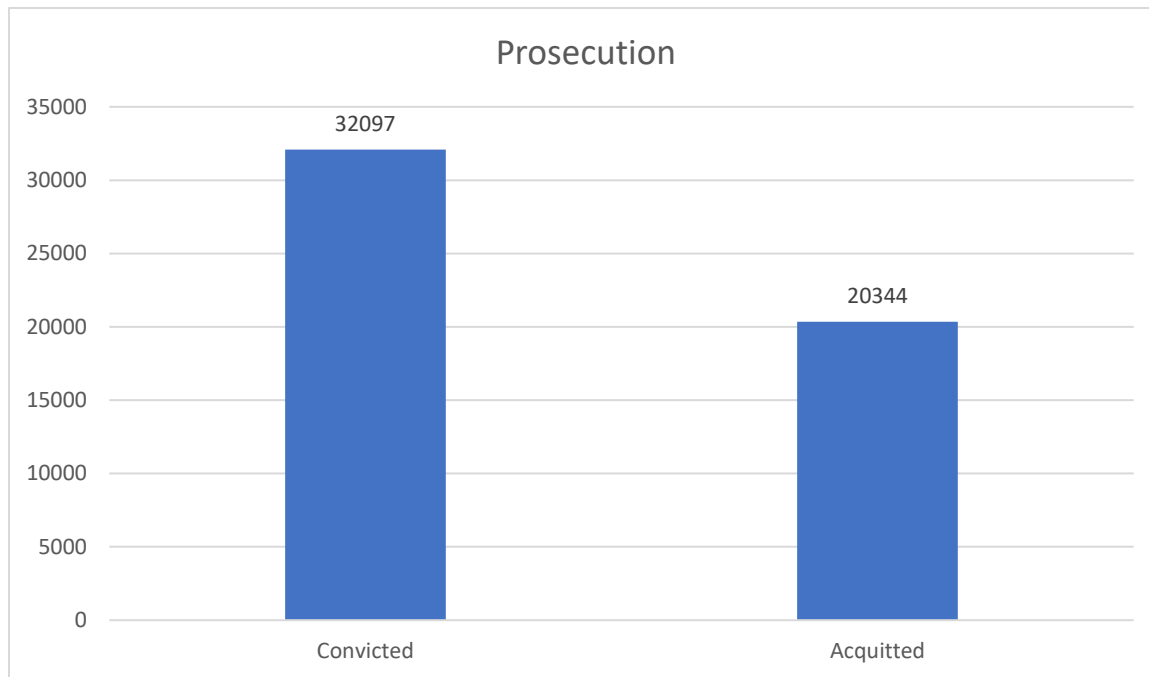


Figure3: Prosecution (01-01-2020 to 31-07- 2020)

By looking into these figures, it is very much clear that after coming into force of The Punjab Sentencing Act, 2019 the performance of the courts has increased but still there is need of some changes in penal laws of Punjab. By bringing the change into criminal law and the Punjab Sentencing Act, 2019, the performance of criminal courts can be increased.

4. Recommendations

If we dissect the penal system in Punjab, we will come to know that the penalties are having the rank and status of monuments. We are a nation living in history. We witness that the criminal legal system is so defective. Cancer of injustice has spread so deeply in the roots, shoots and stems of this tree of the system of justice that to have a fruit of justice as an outcome is nearly impossible. Moreover, if someone somehow achieves the fruit, it is not sweet as it is supposed to be. Penalties are present in statutes, but the mechanism to achieve them is making them highly impossible to achieve. Furthermore, for this, there will be blame on public, police and judiciary.

Firstly, the public has somehow accepted the very fact that there has to be corruption. We have to pay some illegal remuneration to achieve our rights. This mind set up is the fuel of the vehicle of corruption.

Secondly, the investigation authorities and the well-known police department is notorious for its corrupting ways and illegal methods. However, can it be said that here only police is to be blamed? Of course not. The excess burden of workload, protocol duties and numerous investigations at a time. The burden of excess work forces them to adopt nasty and corrupt ways. The police department trying just to fill papers with ink, they show progress but, in contrast, no proper investigation is conducted. There is not any proper investigation and proper ways as per guided by the laws. Because courts in Punjab are courts of evidence, not the court of justice; they see what they are shown. Furthermore, when the documents procedures are not according to the requirements of the law, the main defect is faced by the complainant or victim party. Further, the accused being the cherished child of law, enjoys the favour given to him because of doubts arose. The authorities annexed to help with the investigation like forensic laboratories, Government hospitals etc. They also use hasty and corrupt ways, and their lusts lead to injustice.

Thirdly and lastly the burden of collapse of the system is on our esteemed judiciary. Again, two reasons, excess of burden and corruption. All these reasons are responsible for the failure of our justice system. To erect the building of justice again, we must start with the base. Reforms must be brought.

The Punjab Sentencing Act, 2019 is only applicable in the cases where a time range (duration) of imprisonment is a punishment. Capital punishment is out of its purview (Hanif 2019). There must be some guidelines regarding awarding capital punishments.

Establish a need for judges to complete certification before hearing criminal cases, which is contingent on training, law knowledge, expertise, and regular evaluation of judicial decision-making. This will ensure the independence and efficiency of the judiciary. There needs to be a link between judicial promotion and expertise, training, and regular qualitative evaluation of judicial decision-making in order for this to work. The relevant authorities must increase the number of judges in order to minimise the time pressure on the courts, as there are some locations where the number of judges are in line with population growth, as previously stated (FFR 2019).

It is necessary to raise the pay of judges in order to recruit highly competent legal practitioners to the bench who have a thorough understanding of the Pakistani criminal justice system and the appropriate criminal statutes and regulations.

Improved standards in the courtroom must be achieved by the provision of particular judicial training on the burden of proof relating intent and motive. Furthermore, statutory and case law relating to the admissibility of confessions, as well as Supreme Court precedent on sentencing practises, should be considered when applying sentences in accordance with the Punjab Sentencing Act, 2019, which includes specific training on mitigating factors that must be taken into account before applying a sentence.

It must ensure that convictions/castigations are only issued on the basis of the most significant and most trustworthy evidence possible by evaluating the procedures by which eyewitnesses identify suspects and bringing them into compliance with best practice guidelines.

As required by Article 164 of the Qanun-e-Shahadat Order 1984, castigations must be awarded only after an evaluation of the process of evidence collection in all criminal cases has been completed and after using the modern technology.⁷

Police should conduct independent, evidence-based investigations by establishing a task force to review the independence of the police and prosecution process, with particular attention paid to the role that the FIR plays in the criminal cases. This will aid in the awarding of sanctions in accordance with the provisions of the Punjab Sentencing Act, 2019..

5. Conclusion

The Punjab Sentencing Act, 2019 can indeed be admitted another milestone in the journey of criminal law, but the outcomes of the said Act are yet to be observed. Moreover, the journey of justice and criminal law can never be ended it will last till the last life lasts so who knows what waits for us in future and what will become of these punishments. May be an entirely different concept is introduced in the future, which will both benefit the criminal and the victim. However, until then, fingers crossed, and it all relies on the justice system awarding the punishments to ease the victim's agony somehow and keep the chaos in control.

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⁷ According to Qanun-e-Shahdat Order, 1984 Article 164 'In such cases as the Court may consider appropriate, the Court may allow to be produced any evidence that may have become available because of modern devices or techniques. Provided that conviction on the basis of modern devices or techniques may be lawful'.

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