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## Powers of Justice of Peace: A Tale of Inconsistency and Incomprehensibility in Decisions of Pakistani Courts

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### Abstract

*The concept of Justice of Peace thrives in the Code of Criminal Procedure 1898 while in Pakistan Sessions Judges and Additional Sessions Judges are serving as Ex-officio Justice of Peace. In Pakistani Court Jurisprudence, the conflict arises whether the powers conferred to Ex-officio Justice of Peace are executive or quasi-judicial. In this way, this paper qualitatively surveys all cases regarding power of Ex-officio Justice to resolve the conflicting, inconsistent and incomprehensive decisions of Pakistani Court; this paper is an endeavor to elucidate the issues regarding the nature of powers and limitations on powers of Ex-officio Justice of Peace.*

**Keywords:** Ex-officio Justice of Peace, Quasi-Judicial, Executive, First Investigation Report (FIR), Transfer of Investigation

### Introduction

The Provincial Government appoints Justice of Peace to maintain the peace and tranquility in the society. However, in the history of Pakistan, no Justice of Peace (JOP hereinafter) has been appointed but Sessions Judges and Additional Sessions Judges serve as Ex-officio JOP. The Code of Criminal Procedure 1898 (Cr.P.C hereinafter) primarily provides the concept of Ex-officio JOP as in Section 22-A of Cr.P.C the powers of EX-officio JOP has been inscribed while

Section 25 of Cr.P.C appointment of Ex-officio JOP. This research article provides that despite the clarity of provisions of the Cr.P.C on these points, there is inconsistency and incomprehensibility in the decisions of Pakistani Courts.

With this purpose, this article critically analyses Pakistani Courts Judgments on Ex-officio JOP to scrutinize the historical perspective on the role of Justice of Peace in maintenance of law and order and peace and tranquility in the society. This article investigates the powers and duties of JOP and Ex-officio JOP to describe what sort of directions Ex-officio JOP can issue to police while exercising his jurisdiction. The paper also inspects whether powers conferred to Ex-officio JOP are quasi-judicial or executive in nature and highlights the conflicts in Pakistani Courts in determining the nature of powers of Ex-officio JOP. The paper elucidates to what extent Ex-officio JOP can utilize his powers and what limitations are imposed on the powers of Ex-officio JOP. This article also explores the status of the office of Ex-officio JOP whether the office of Ex-officio JOP is a criminal court or it is an office of quasi-judicial officers. This discussion ends on a reasonable conclusion.

### **Historical Discourse of Powers of Justice of Peace**

The concept of JOP, in Pakistan, originated from England as English colonists introduced justice of peace to the local system of governance of the sub-continent. In Past the duty of JOP was to maintain peace via administrative and ministerial measures but at that time he was able to enjoy restricted powers. With the passage of time, JOP gained the judicial roles in England and he had authority to try the minor civil and criminal cases. However, his judicial role was not recognized by any law. However, in the beginning of 14<sup>th</sup> century the duties and powers of JOP was accepted by the express legislation as they got inherent jurisdiction to dispense justice by administrative and judicial act.

Peace Act 1361 created the office of JOP and gave all the powers of magistrate to him. JOP were also called the Holders of Peace or Common Plea's justices or peace restorers or conservators. They were elected by the elections on suggestion of Lord Chancellors, Lord Steward and Lord Marshall. In 14<sup>th</sup> century, JOP were peace regulatory bodies hence they were authorised to punish and try the cases subjected to peace violation. (Halsbury, 1979) Moreover, the Liberties Act 1535 recognized the judicial powers of JOP but the judicial powers of JOP fluctuate according to the will of the King. Sometimes they got ministerial or sometimes they gained judicial powers. Their ministerial powers were invoked when any indictable offences had been committed in the state and at the same time, they were authorised to issue warrants of apprehension; take the depositions; initiate the case proceedings. (Jowitt, 1977)

In the 16th, 17th, and 18th centuries the post of JOP became nobler and they were ascribed as virtual rulers of peace. However, the 19th century was a turning point because most of the administrative powers of the justice of peace were transformed to elected councils even though the extent of judicial powers of the justice of peace were retained. (American Jurisprudence, 1969) They had only one power that they could punish anyone who had infringed the public peace.

Gradually, the domain of their powers increased, and they were endorsed to sit with the Crown Courts judges to hear the appeal from the courts of magistrates. After that they were able to

certify the sale of alcoholic liquor. (Jowitt, 1977) They had no jurisdiction to punish or fine anyone.

The history discourses that JOP had a job to maintain peace and harmony in the society. They were not an independent and were shadowed by the king of the time. JOP had criminal and civil jurisdiction along with it they have judicial and ministerial powers. (Muhammad, 2017) Interesting fact is the powers of JOP were inconsistent in the past either judicial or ministerial.

### **Powers and Duties of Justice of Peace under Cr.P.C**

Section 22-A of Cr.P.C. discusses the powers of JOP. JOP has all powers like a police officer or officer in charge when he is on the purpose to arrest an accused. After arresting the accused, JOP is obliged to report the incident and produce him in front of the officer in charge of the nearest police station so the police will arrest the accused. JOP has authority to call the police force for his assistance in any case regarding the maintenance of public peace and tranquility. The call order of JOP has a great impact on the police; his call is considered as the call of a competent superior authority.

JOP has power to arrest any person or accused about whom he received any reasonable information or about whom he is suspicious that such person has been or will be involved in the commission of any cognizable offence. JOP has power to issue identification certificates as well as he has authority to verify and attest any document.

The duties of JOP are protected under section 22-B of Cr.P.C. According to section 22-B JOP conducts inquiries of causes related to breach of public peace. With or without police, JOP conducts the inquiries of crime scenes where the cognizable offence has been committed. After conducting inquiries JOP submits the inquiry report to the magistrate and officer in charge of the police station. JOP has the duty to record the dying declaration of the person in respect of whom any offence is believed to be committed or had been committed.

However, it is an interesting fact that there is no JOP in Pakistan but there exists an Ex-officio JOP. There are differences in powers and duties of JOP and Ex-officio JOP. The concept of Ex-officio JOP has been entrenched in Cr.P.C in section 22-A clause 6 and section 25 after Cr.P.C. (Third Amendment) Ordinance, CXXXI of 2002 (21.11.2002). In *Syed Zafar Ali Shah v Falak Sher Farooka*, the court stated that ex-officio JOP shares the burden of High Courts. But High Courts have the authority under Article 199 of the Constitution of Pakistan 1973 to dismiss any order passed by Ex-officio JOP in which material facts and features of the suit are disregarded or overlooked.

Main difference between JOP and ex-officio JOP is that JOP is one who is the citizen of Pakistan and has integrity and is suitable for that post while Ex-officio JOP is a Sessions or Additional Sessions judge. According to Section 25 of Cr.P.C Additional Sessions Judges are nominated by Sessions judges as Ex-officio JOP.

Section 22-A clause 6 while describing the powers of ex-officio justice of peace states:

“6) An ex-officio Justice of the Peace may issue appropriate directions to the police authorities concerned on a complaint regarding-

- (i) non-registration of a criminal case;
- (ii) transfer of investigation from one police officer to another; and
- (iii) neglect, failure or excess committed by a police authority in relation to its functions and duties.”

### **Nature of Power of Ex-officio Justice of Peace**

Sessions or Additional Sessions judges hold the office of Ex-officio JOP. A conflict arises while determining the nature of power conferred to ex-officio JOP. Question arises whether the powers conferred to Ex-officio justice executive or quasi-judicial in nature.

In “*Khizir Hayat case*” Lahore High Court conceded that an ex-officio JOP enjoys quasi-judicial powers and these powers are not of executive nature. Lahore High Court in another case stated that Sessions and Additional Sessions judges while performing their function as ex-officio JOP cannot perform their duty as court because at that time they inherent quasi-judicial powers. The court evinces that by quasi-judicial or partly judicial powers Ex-officio JOP possesses the right to conduct investigations and to hold the hearing regarding institution of FIR.

However, 3 membered bench of the Supreme Court of Pakistan in *Muhammad Ali v Additional I.G. Faisalabad*, upheld that the power conferred to Ex-officio JOP in section 22-A (6) are the executive, administrative or ministerial in nature although the decision was not comprehensive. Moreover, the executive powers to judicial officers like Sessions Judges and Additional Sessions Judges violates the doctrine of separation of power protected under Article 175(3) of Constitution of Pakistan, 1973 as Article 175(3) deliberates the separation of power between the judiciary and the executive.

By enjoying the executive powers Ex-officio JOP causes delay in the dispensation of justice, impedes proper investigation and interferes in the role of police by transferring the investigation from one police officer to another. Even the High Court has no power to impede the justice or be an obstacle in investigations unless the High Court finds that investigation done does not meet the criteria of justice and fair play. In *Saeed Hussain Shah v The State*, the Supreme Court stated that When the Ex-officio JOP interferes in the investigations it seems that it is entertaining the powers that are given to the High Court under section 561-A of Cr.P.C and Article 199 of 1973 constitution.

A larger bench of the Supreme Court containing 4 judges and the Chief Justice of Pakistan resolved the matter regarding the nature of powers inherent to Ex-officio JOP. *Younas Abbas v Additional Sessions Judge*, Supreme Court upheld the stance of Lahore High Court and stated that the powers of Ex-officio JOP are quasi-judicial in nature.

This discussion led to a question if an executive role is performed by Sessions Judges and Additional Sessions Judges being Ex-officio JOP may violate the doctrine of separation of power or if the office of Ex-officio JOP is quasi-judicial whether it is protected under doctrine of Separation of Power. Before going to this discussion there is a need to describe the concept of Separation of Power.

“Separation of Power” is an ancient democratic concept which ensures the separation in roles of three organs of the State including “legislature, judiciary and executive.” The role of legislature is to legislate law hence separation of power ensures that the role of legislature must not be affected by the judiciary or executive. Separation of Power is the doctrine of “*Baron de Montesquieu*” which describes the sovereign roles of executive, legislature and judiciary. Montesquieu introduced an idea of “checks and balances” to inspect the dispersion and separation of powers in organs of state for safeguarding the concept of efficacious democratic values in society and state. Check and balance offer the aptitude, responsibility and privileges to one organ to watch the utilization of power by another organ. The work of “Montesquieu” is inspired by Aristotle’s concept of three organs of state however; the work of *Aristotle* was precise and less defined.

“Trias Politica” is the base of the doctrine of Separation of Power and this idea works for the promotion of stability in democracy. “Trias Politica” was an idea of the Greeks and was firstly implemented by the Romans although the Roman Constitution was uncodified but was based on the idea of separation of power. Moreover, the American Constitution ensures the doctrine of power separation as “Article 1 of American Constitution authorizes congress to legislate laws, Article 2 gives all executive powers to the president while Article 3 of the Constitution of America lends all judicial powers to the Supreme Court.”

Additionally, the Indian Constitution protects the doctrine of Separation of Power. But in India such a concept has never been rigidly applied as it is applied in America. This debate is cited in *Indira Gandhi v. Raj Narain*, wherein the court concedes that India doesn’t follow separation of power as much as America or Australia does. The Pakistani Constitution has the concept of separation of Power the preamble of the Constitution ensures an independent judiciary, Majis-e-Shora legislates laws while executive powers belong to the president. Furthermore, Article 175(3) ensures the separation of Power between organs of state.

Executive powers include the issuing of any order as Ex-officio justice issue order either to file FIR or to transfer investigation. But his issuing of such orders is not executive in nature but is quasi-judicial because while issuing such orders Ex-officio JOP conduct the hearings regarding the dispute either for filing FIR or to transfer investigation and make decisions in the general manner of “courts quasi-judicial bodies.”

The Supreme Court stated that Ex-officio JOP technically does not carry out or mechanically does not deal with things. Section 22-A (6) of Cr.P.C gives quasi-judicial powers to Ex-officio JOP hence it doesn’t violate the doctrine of separation of power. Because the Ex-officio JOP, by applying his mind, seeks the records, checks applications, listens to the parties and then gives directions and orders. The cases that he tries, requires discretion and judgment; however, such functions are not performed by executives. Landmark judgment pronounced that the actions, orders and directions issued by Ex-officio JOP are under protection of judiciary and it is wrong to say such actions, direction or orders issued by ex-officio JOP are under the aegis of executive as ex-officio JOP has authority to take the executive below the thumb of law rather than residing himself under the executive’s thumb. So, the Court stated that the doctrine of Separation of Power is not violated by the office of Ex-officio JOP.

In the views of the Supreme Court, in the past, if the report about the commission of cognizable offense would not be registered by police then the only remedy that an aggrieved party could enjoy was to institute a petition in High Court for issuance of any suitable writ. Much of the evidence was vanished or destroyed before the conclusion of the petition in his favor.

However, after the inclusion of section 22-A (6) in CR.P.C, Ex-officio JOP provides a similar remedy which was provided by the High Court. So, justice had reached at doorstep due to Ex-officio JOP. Poor aggrieved party having no money for hiring a lawyer for filing writ petition in High Court can easily get justice by Ex-officio JOP. Furthermore, if the station house officer under any pressure refused to register the FIR then by forwarding a simple application to Ex-officio JOP an order for registration of FIR can be obtained.

In short, the Supreme Court stated that Ex-officio JOP facilitates aggrieved parties, protects their fundamental rights and is the source of expeditious and inexpensive justice. Consequently, Ex-officio JOP never interrupts the domain of independence of judiciary and never influences, interrupts or disturbs the concept of separation of power.

The assumption that the power of Ex-officio JOP to transfer the investigation is interference in the function of police has no logical grounds because the main reason for conferring such power to Ex-officio JOP could be to balance the society. In Past, investigations were transferred from one police officer to another on the bid of riches and the poor could not even dream of it. But now such relief is provided to everyone including the poor. The option to change investigation from one police officer to another is also protected under Article 18(A) of Police Order 2002. This option is invoked when the police have no independence to operate properly or when the honest and judicious police officers are transferred by the influence of riches. So, empowering the Ex-officio JOP with the power to transfer the investigation is not a new enactment. Legislature by introducing section 22-A (6) in Cr.P.C, made the poor capable to gain their rights by active and reasonable investigation. Consequently, the legislature might have good yardstick, reasoning and acumen behind giving such powers to Ex-officio JOP.

On March 11, 2019 a meeting of the National Judicial Policy Making Committee was held. The meeting was chaired by Former Chief Justice of Pakistan Asif Saeed Khosa. This meeting was attended by Former Chief Justice of Pakistan Gulzar Ahmad and all the Chief Justices of High Courts of Pakistan.

Justice Asif Saeed Khosa indicated that the powers conferred to Ex-officio JOP violates the doctrine of separation of power as the conferred power to Ex-officio JOP is synonymous to the interruption of judiciary in the role and domain of executive. The statement made by Justice was not comprehensive and no reasons were given by him although he ignored the facts and reasons lent by the larger bench in *Younas Abass* case.

### **Limitations on Powers of Ex-officio Justice of Peace**

The Ex-officio JOP enjoys very restricted powers although such restrictions are not imposed by Cr.P.C but the jurisprudence of Pakistani courts evince that the courts being confused restricts the powers of Ex-officio JOP. The cause of confusion of courts is that they feel worrisome in determining the nature of power of Ex-officio JOP. The incomprehensive judgment of courts

discloses that courts are reluctant in ascertaining powers of Ex-officio JOP. The courts presume that their decisions might authorise the JOP to be either executive or judicial.

In *Mureed Hussain v Additional Sessions Judge*, the court at first instance was unable to determine whether Ex-officio JOP can seek the report of police when an application has been lodged by the party submitting that police is not lodging his FIR. Consequently, the court conceded that Ex-officio JOP must pass the order after the perusal of fact in application without seeking the report of police. The decision of the court doesn't sit well with *audi alteram partem*. The stance of police should be heard either by seeking their report or calling the officer to inquire the reason why they failed to lodge a report. Calling police for assistance is the power of JOP whether inquiring the police on any matter is power of JOP or not.

Ex-officio JOP directs police to lodge FIR when any right of the aggrieved party has been violated by commission of cognizable offence. In such circumstances, Ex-officio JOP must only give the directions for the registration of the criminal case but he has no powers to analyze the allegation, material or the record inscribed in the application. (Almas, 2010) Moreover, in *Zahid Ali v Station House Officer*, the court stated that when any application has been instituted the only power which Ex-officio JOP can invoke is examine whether the cognizable offence has been committed or not and he cannot thoroughly check the facts of cases, nature of offence as well as he cannot check either the information in the application is true or false. The Ex-officio JOP is not competent to check the merits of filed applications. *Muhammad Abdul Rauf Siddiqui v S.H.O. Police Station* can be cited in this regard. In cases the courts have not described any other method for determining the commission of cognizable offence because ex-officio JOP is unable to check facts or records, nature of crime and how could he come to determine the commission of such offence.

Karachi High Court in *Abdul Karim v Station House Officer, Police Station Jamshoro* stated that Ex-officio justice has no power to advise the party of suit to seek proper remedy before civil courts instead of criminal court as when Ex-officio justice finds that the filed application is not a matter of criminal prosecution but it is the matter of civil court in this scenario Ex-officio justice cannot advise the party to try the competent forum for remedy.

Giving the direction for registration of case is a power which depicts that Ex-officio JOP tries the pre-trial proceedings after the case is registered the original and proper trial is initiated in the appropriate court. It can be stated that up to an extent Ex-officio JOP functions as administrative judge so Ex-officio JOP may also enjoy the power to advise the party to institute the case in proper forum. If Ex-officio justice is not empowered with such power, then the case of aggrieved party can be time barred.

In *Shafaqat ur Rehman v Daud ur Rehman*, the case of claimant was considered time barred by district court because aggrieved had wasted the time in civil court which according to the subject law was not a proper forum to initiate the proceeding. So, it is necessary that Ex-officio JOP should guide the parties about the competent forum for their case.

In the meeting of NJPMC, Justice Asif Saeed stated that Sessions Judges and Additional Sessions Judges are suffering the burden of backlog of suits regarding the registration of FIR. NJPMC informed that nearly "614307" suits have been instituted in District Courts and "47,029"

cases in High Courts of Pakistan related to directing the police for registration of FIR form “first January of 2017 to 28 February of 2019.” (Wasim, 2019)

So, a decision was made by NJPMC to activate the “Police Complaint Redressal Mechanism” at district level in whole Pakistan on the recommendations made by “Police Reforms Committee.” Superintendent police will head the “Police Complaint Redressal Mechanism.” Consequently, application to Ex-officio JOP under section 22-A will not be accepted unless such application is accompanied by the decision of Superintendent of Police (Zubari, 2019).

Limiting the power of Ex-officio JOP on the ground that courts are suffering the burden of backlog is a passive assumption. As the backlog of pending cases are present in all courts of Pakistan. Nearly the “2177527” cases are pending in all courts of Pakistan as it affirmed by “Consolidate statement of pending cases, pendency, institution and disposal of cases during the period August 2021.” There are “53686” cases pending in SCP while “175” cases are pending in Federal Shariat Court. High Court Punjab has “197907”, High Court Sindh has “86679”, High Court Balochistan has “4538”, High Court Khyber Pakhtunkhawa has “44513” while High Court Islamabad has “16858” pending cases meanwhile “350495” cases are pending in all High Courts of Pakistan. However, District courts of Punjab has “1336315”, Sindh “117938”, Khyber Pakhtunkhawa “249013”, Balochistan has “17306” and Islamabad has “52599” number of pending suits and overall “1,773,171” are pending in all district courts of Pakistan. (Consolidate statement, August 2021)

However, in *MFMY Industries Ltd. v. Federation of Pakistan*, the SCP stated that “Court cannot, legally and morally, take excuse of ‘rush of work’.”

So, limiting the power of Ex-officio JOP on an assumption that district and sessions Courts are facing the backlog of pending cases is less advantageous because the issue of backlog of pending cases cannot be resolved by seizing power of Ex-officio JOP as the issue of pending cases can be resolved by advancing the infrastructure and management of judiciary, amending complex and ancient laws, rectifying the intricate and multifarious procedural technicalities, making several judicial reforms, introduction of advanced technology and e-court system, increasing the number of court, judges and court staff, promoting Alternative Disputes resolutions methods including promotion off arbitration, mediation, reconciliation and compromise.

### **Is the Office of Ex-officio Justice of Peace a Criminal Court?**

Every Session division has a Court of Session. Provincial government establishes the Court of Session in which Sessions Judges and Additional Sessions judges are appointed. (In re, 1990) The courts of Sessions Judges and Additional Sessions Judges are the criminal courts and have jurisdiction to try the criminal cases. Sessions Judges and Additional Sessions Judges have power to pass any sentence authorised by law. The death sentence passed by Sessions Judges and Additional Sessions Judges is confirmed by the High Court of the province. (Haji, 1998)

Session Judges and Additional Sessions judges sit in Courts of Sessions, try criminal cases, listen to witnesses, record evidence and pass sentences to the convict. Session Judges, Additional Sessions judges and Assistant Sessions judges are the judicial officers and perform their



functions as a court. All the actions, orders, and directions issued by Judges, Additional Sessions judges and Assistant Sessions judges have judicial immunity.

However, Section 25 of Cr.P.C empowers Sessions Judge and, on his nomination, Additional Sessions Judge to be Ex-officio JOP. In *Makhdoomzada Syed v Additional Sessions Judge*, the court stated that:

*“In virtue of their respective officers, the judges of the High Court are Justices of the Peace within and for whole of Pakistan; Sessions Judges are Justices of the Peace within and for the whole of the territories administered by the Provincial Government under which they are serving.”*

Section 25 states that Sessions Judge and Additional Sessions Judges are Ex-officio JOP however actually they are judicial officers of criminal courts. Now the questions arise whether the court of Ex-officio JOP is a criminal court because in the Court of JOP, the judicial officers of a criminal court are sitting. Whether the office of Ex-officio JOP is a Court of Sessions? Whether the office of Ex-officio JOP is a criminal court? Whether Cr.P.C recognizes the office of Ex-officio JOP as a court?

Section 6 of Cr.P.C provides the classes of criminal courts as:

“(1) Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be two classes of Criminal Courts in Pakistan, namely: -

- (i) Courts of Session;
- (ii) Courts of Magistrate.

[There shall be the following classes of Magistrate, namely: -

- (i) Magistrate of the First Class;
- (ii) Magistrate of the Second Class; and
- (iii) Magistrate of the Third Class,]”

Section 6 of Cr.P.C provides that besides High Court there are two categories of court that are “Courts of Sessions and Courts of Magistrates.” So the office of Ex-officio is not a criminal court because it is not recognized as a criminal court by Cr.P.C. Section 6 of Cr.P.C establishes the Criminal Courts while the discussion on Ex-officio JOP is in section 25 Chapter-E of Cr.P.C it shows that intentionally the legislature has not given the status of criminal court to the office of Ex-officio JOP. Consequently, the office of Ex-officio JOP is an office of quasi-judicial officers.

## Conclusion

The history of JOP discourses that the powers of JOP had fluctuated from time to time. Sometimes they have had jurisdiction to try civil as well as criminal cases. Sometimes they have had some other administrative roles and powers. At present, the conflicting attitude of Pakistani courts is a worst-case scenario. Now, in a country that has established laws and a legal system then such conflicts not only affect law and order but the basic purpose of JOP to maintain peace and order is at stake. A larger bench of the Supreme Court had resolved the conflict by establishing quasi-judicial powers of Ex-officio JOP with a comprehensive and reasonable judgment then the reversal of this decision by NJPMC without any extensive or comprehensive arguments is a bad decision. The matter regarding the status of the office of Ex-officio JOP can be resolved by considering his office as an office of the quasi-judicial officer. The limitation on powers of Ex-officio JOP on the ground of pending cases is false ground because the Pakistani Judiciary is facing a backlog of millions of cases that backlog cannot be resolved by reversing the power of Ex-officio JOP and the introduction of police complaints redressal mechanism is against the object of Ex-JOP as they were introduced to redress the rights of the public when such rights are infringed by Police.

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