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Criminal Law: Equity and Justices of Peace

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About the Author

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Executive Summary

Issue

There is a vagueness and confusion in the exact nature of the role of Justice of Peace in Pakistan's Criminal Procedure. This role was created to provide helpless an access to justice and protect them from tyranny of Police. Therefore, it is essential that law is clear in this regard so that people know their exact rights and an awareness can be created within the populace.

Recommendations

The Federal and Provincial Governments need to adopt the following options:

- There is no need for an application under the Police Order for the transfer of investigation before initiating a request to Justice of Peace ("JoP").
- Under Section 22 of CrPC, cognizable offence need to be registered in the form of an FIR, if there is a deliberate ignorance of the complaint from the executive branch of the government.
- In section 22 – A of CrPC, the power of *ex – officio* JoP does not in any way curtail powers of the High Court. The determinants for the grant of writ petition can also be used for the exercise of powers of the Sessions Court under section 22 – A (6) of CrPC.
- In light of the interpretations of Superior Courts of Pakistan, there is a requirement of clarity in section 22 – A and 22 – B regarding the powers of the JoP. It must be mentioned within section 22 – A (6) of CrPC that special powers of *ex- officio* JoP do not equate to the powers of regular JoP.

I) Original Role of the Justices of Peace

While perusing the evolving jurisprudence of Pakistan, a history of contention in relation to the nature of powers accorded to Justices of Peace (“JoP”) emerges especially after the introduction of Sub-Section 22-A (6) and Section 25 in the Code of Criminal Procedure (“CrPC”), 1898. While interpreting the aforesaid provisions, the Supreme Court of Pakistan (“SCP”) initially reasoned that JoP essentially performs an executive role which is ‘administrative’ and ‘ministerial’ in nature. Therefore, the original role of JoP was to maintain peace and there is no ‘inherent judicial character’ embedded in JoP as most of the powers of JoP are limited to apprehending the culprit and rendering assistance to the police in investigation.

To supplant this style of reasoning, SCP also noted that no mention of JoP in the classes of the courts of magistrates and their respective jurisdictions under sections 6, 28 and 29 of CrPC is an indicant that JoP performs executive function.¹ In 2007, SCP further reiterated this position as it clearly stated that the precise forum for the determination of correctness and falsity of allegations is a court of law and not an *ex officio* JoP.²

II) Current Role of Justice of Peace

The current position of SCP is different. In 2016, SCP ruled that the insertion of section 22-A (6) and section 25 of CrPC makes the powers of JoP no longer administrative. In fact, powers of JoP are quasi-judicial in nature as JoP “hears application, examines the record, hears the parties, passes orders and issues directions with due application of mind which demands discretion and judgment.”³

¹ *Khizer Hayat v. IG Punjab*, PLD 2005 Lahore 470 Para 9,10,11,12.

² *Muhammad Bashir v. SHO Okara Cantonment*, PLD 2007 SC 539 Para 37, 40, 42.

³ *Younas Abbas v. Additional Sessions Judge*, PLD 2016 SC 581 Para 11, 14.

Thus, it can be stated that powers of JoP are now essentially working complementary to the powers of police and sought to limit the misuse of powers by the police.⁴

III) Justice of Peace and Powers of First Information Report (“FIR”)

Section 22-A (6) (i) empowers JoP to order police authorities to register FIR. In 2005, SCP interpreted this provision with due regard to section 154 of CrPC and stated that section 154 of CrPC is mandatory in nature for police. In contrast, section 22-A (6) (i) uses the word ‘may’ and JoP can exercise its powers through discretion. However, such discretion should be exercised only if such an application is made to JoP who can then call upon the relevant police officer to furnish justifiable reasons for non-registration of FIR. If the concerned police officer offers no reasonable explanation, then JoP can order registration of FIR.⁵

In 2007, there was some modification in this interpretation as SCP declared that the jurisdiction of JoP was only to consider the nature of offence in relation to characterization of cognizable offence and non-cognizable offence. If an offence is cognizable, then JoP should order registration of FIR and JoP cannot deliberate into the veracity of information at this forum.⁶ However, the current interpretation of SCP is rooted in its remedial concern in relation to imbalance of power in society which frequently reflects in the non-registration of FIR for the poor.⁷ In 2016, SCP considered that JoP acted under the ‘aegis of judiciary to put executive under the ‘thumb of law’ and can use powers of Section 22-A (6) (i) of CrPC as required in relation to the context of an application to JoP.⁸

⁴ Ibid, Para 20,21

⁵ Ibid (n.1), Para 16

⁶ Ibid (n.2), Para 36, Para 40.

⁷ Ibid (n.3), Para 12

⁸ Ibid (n.3), para 20

IV) Police Order and Justice of Peace

Section 22-A (6) (ii) allows JoP to order transfer of investigation from one police officer to another. In early 2000s, the interpretation of SCP of this provision was observed in a restricted manner. SCP opined that JoP should not itself order transfer of investigation. Rather, JoP should only order initiation of the process for transfer of investigation under Article 18(6) of Police Order 2002 provided the applicant has already tried to take this recourse but was not attended by the Police.⁹ In 2007, SCP noted that origins of the transfer of investigation is only rooted in the delegation of work for Station House Officer. Therefore, SCP discouraged the practice of transfer of investigation as it results in the delay of trial and incoherent opinions of the investigating officers.¹⁰ However, the current interpretation of SCP holds an entirely different point of view.

In 2016, SCP categorically ruled that JoP can order for transfer of investigation from one police officer to another as Section 22-A (6) (ii) has an active regard for the welfare of downtrodden of society. SCP further reasoned that remedy provided in Article 18(6) of Police Order 2002, in the social context of Pakistan, was simply beyond the reach of the poor as Police does not entertain their requests.¹¹ Thus, JoP can give all necessary orders in relation to such an application so that it can undo any *mala fide* actions of the Police during its investigation.¹²

V) Powers of Justice of Peace and High Court's Power to Grant Writ

The perusal of case-law demonstrates some confusion in relation to the nature of the statutory powers under section 22-A of CrPC and the writ petition filed in High Court under Article 199 of the Pakistani Constitution. In 2005, SCP initially considered that writ petition shall not be equated with the powers of JoP under CrPC. However,

⁹ Ibid (n.1), Para 26,27

¹⁰ Ibid (n.2), Para 46,47

¹¹ Ibid (n.3), Para 13

¹² Ibid (n.3), Para 19

recourse to JoP can be an 'adequate alternative statutory remedy' which can prevent direct recourse to the High Court, as in this remedy, JoP can order Police authorities to attend to the grievances of the complainant under the law.¹³

In 2007, similar position was reiterated by SCP. SCP noted that, as opposed to the complaint before JoP, some requirements generally need to be met for filing a writ petition which includes *inter alia* qualification of the petition for remedy in equity.¹⁴ However, in contrast to the aforesaid interpretation, current position of SCP is different as it has now equated the powers available under section 22-A (6) of CrPC with the powers available to High Court under a writ petition so that JoP can restrict *inter alia* excess and failure committed by Police authorities. SCP substantiates this reasoning on the fact that access to JoP is on the doorstep of aggrieved person as opposed to High Court and that even section 481-A of CrPC has allowed powers such as granting of habeas corpus to the Session Court although traditionally such a power was in the domain of High Court. Therefore, all parameters which High Court follows in granting writ petition are equally applicable on the discretion exercised under section 22-A (6).¹⁵

VI) Recommendations

- There is no need for an application under the Police Order for the transfer of investigation before initiating a request to Justice of Peace ("JoP").
- Under Section 22 of CrPC, cognizable offence need to be registered in the form of an FIR, if there is a deliberate ignorance of the complaint from the executive branch of the government.
- In section 22 – A of CrPC, the power of *ex – officio* JoP does not in any way curtail powers of the High Court. The determinants for the grant of writ petition can also be used for the exercise of powers of the Sessions Court under section 22 – A (6) of CrPC.

¹³ Ibid (n.1), Para 13, 35(xvi)

¹⁴ Ibid (n.2), Para 41

¹⁵ Ibid (n.3), Para 15,16,17,19

- In light of the interpretations of Superior Courts of Pakistan, there is a requirement of clarity in section 22 – A and 22 – B regarding the powers of the JoP. It must be mentioned within section 22 – A (6) of CrPC that special powers of ex- officio JoP do not equate to the powers of regular JoP.

Action Matrix

Legal Options for Government

Recommendations	Pathways to Solution	Implementation of Solution	Actors Responsible	Implementation Timelines
Amendments in Laws	Consultation process from Police, local judges, and criminal lawyers to discuss the drafting of the amendments.	Amendments in Section 22 – A of CrPC, Section 22 of CrPC and Police Orders.	1. Federal and Provincial Ministries of Law and Justice 2. Federal and Provincial Ministries of Interior	2-6 Months for consultation 6-12 Months for amendments in provincial laws and federal laws.
Trainings	Training capacity of judges to understand the significance of and to provide consistent jurisprudence on the role of Justice of Peace.	Ministry of Law provide a clear policy paper to serve as soft law for judges and a bench - book for the judges.	1. Federal and Provincial Ministries of Law and Justice 2. Federal and Provincial Ministries of Interior	3 - 6 Months to formulate the policy and training manuals.