

Delaying Factors Regarding Civil Justice in Pakistan (Lower Courts)

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ABSTRACT

The study was aimed to signify several reasons that are making causes for delaying in civil Justice. The sample size was consisted of 60 respondents who were professionally Judges and Lawyers and holding duties in civil lower courts of Pakistan. The responses were collected on a questionnaire to compute the Role of diverse elements that causing a delay in Justice in lower court litigation. It has been focused mainly on the District Civil Courts Lahore. The study results established out that negligence of officials, Corruption, a massive backlog of cases, lengthy procedure, non-availability of plaintiffs and defendants, transfer of judges, insufficient number of judges are a few but significant which creating further problems in the way to speedy Justice among masses regarding civil litigation in the lower court of Pakistan. In this manner, the Judiciary's Role is weakened and unproductive, especially in civil lower courts of Pakistan.

1. Introduction

Justice is a much necessary issue and considered an initial need for human beings. (Iqbal, 2006). It is the most prominent and significant test to know the quality administration and determining the status of the nation (Chaudhry, 2012). It is also essential for maintaining conflict resolution, public harmony, safety and sustained peace, for enabling enforcement of rights as well as ensuring good governance (Kanwar, Naik, Robinson, Jain, & Wing, 2010). The good governance regarding Justice is compulsory to the development (Jiang, 2004) of any country because it is the only way to give better and friendly climate for investment and development (Sen, 2000). Whereas a weak judicial system entirely affected nation's development and investment, it can be seen many pieces of evidence which demonstrated the Role of Judiciary and law in the process of development in the literature regarding economic and law theory (Beck & Levine, 2005). To some extent, poverty can be seen because of the irregularities regarding the disputes resolution process (Baxi, 2008).

Currently, the justice system is contradicted with many causes around the universe (Wallis, 2009). Legal cost and congestion of the court dockets, as well as delays in the disposal of the suit, are the fundamental issues everywhere (Hazra & Micevska, 2004). While this phenomenon is universal, but especially in Pakistan, the situation becomes dire (Kumar, 2012). It has developed to an extent which is not only a reason of severe anxiety but also a problem that it can be said without any hesitation that is grinding down the organization regarding the administration of Justice (Shah & Ahmad). The sensitivity of this condition might be determined from pending cases which is round about 2.5 million in the Pakistani Courts (Sherwani, 2006). Currently, in Pakistan, the delay can be seen as a point where it becomes a cause of violation of human rights in the result of injustice. If some party come in civil litigation and approach for getting Justice, they become the part of torturing, protracted and prolonged process, and they don't estimate that when they will get Justice. They can't say that it will be decided within two or three years, because in Pakistan normally a civil suit goes on ten to fifteen years, sometimes goes to generation to generation.

Besides, the differentiation of class as well as the lengthy procedure which are aggressive and argumentative by nature, the party has a practical level that is strong background according to wealth. But if the Judiciary organs work under the procedural law, have a look for existing broad scope regarding delays, might be transformed the system that becomes hostile procedurally for disregarding sections of the society, beating the aims of civil Justice. The system of delivering Justice in Pakistan is so much time-consuming. In some extent, it is too expensive to the poor people to get Justice, especially in civil litigation. Current study intended to institute the Role of various reasons of delay in civil litigation in inferior courts of Pakistan.

2. Statement of Problem

There is no life without Justice. If any nation wants peace and comfort in society, then it is necessary to give speedy Justice, because Justice directly deals with the masses and masses make societies. So Justice should be necessary for public peace and to have a feeling of trust and confidence at the integrity of any nation's civil judicial/justice system because the public is entitled to affordable and timely civil Justice.

In Pakistan, the issue of delays in civil cases has developed in magnitude to the degree that it isn't just a reason for severe concern yet a problematic which, it might be said without distortion, is dissolving the very arrangement of organization of Justice. It has debilitated the network trust in the Judiciary. This common phenomenon of delay exists for both civil justice and criminal justice systems, but in civil side, it is dominant than the criminal (Shah, 2017). Customarily a usual civil matter is decided in fifteen to twenty years, and further four to five years are required to the execution (Faqr, 2014).

3. Study Objective

The objective of the study is to point out the significant causes of delay in the civil justice system of Pakistan then try to solve it.

4. Research Question

What are the main delaying factors in the civil justice system in the lower courts of Pakistan?

- a. Due to neglect of Officials.
- b. Corruption.
- c. Frequent Transfer of Judges.
- d. Insufficient of Judges.
- e. Heavy backlog of cases.
- f. Non-punctuality of plaintiff and defendant.
- g. Lengthy and complicated procedure.

5. Literature Review

The current era of the civil suit in Pakistan has been governed under the civil procedure Code 1908. The legal framework has been well elaborated but in practical costly and slow as well as the waste of talent, time and money (Chowdhury, 2004). Quick and speedy justice is a obvious demand and a fundamental human right (Menkel-Meadow, 2020). Including Pakistan, all the nations must provide quick and speedy Justice to their masses. At the same time, this privilege of quick Justice is likewise given a protected assurance in the constitution of the Islamic Republic of Pakistan, 1973 through its Article 37(d) specifying modest and fast Justice to its residents (Sherwani, 2006). Convenient resolved matter is fundamental for a productive general set of laws, as long and irrational delay in justice risks the interests of parties in any suits (C. R. van Rhee, 2020).

So as to get a matter settled through the system of current dispute resolution of Pakistan one should have the time of prophet Noah, an abundance of Quran, and persistence of prophet Ayub, which are incomprehensible for an average person in Pakistan, that is the reason individuals hurry to sort out their matter on their minds, and taking the law in their grasp (Ghazi, 2006).

As per the research conducted by F. S. Khan (2004) Pakistani courts are a huge issue because of the continuous visits required; a normal of 72 visits must be made by a respondent so that to finish up his case, costing him a normal of Rupees 270000 for each case.

F. S. Khan and Khan (2003) exposed that 87 percent of the defendants considered the unreasonable delays, just 37 percent of all cases finished with a choice from the court, 23 percent of the cases were undermined, while the rest of cases were either not decided or dismissed. 98 percent of the defendants believe that they were discriminated.

Judges are the only keystone in the judicial arc (Law Commission of India, 1988). In Pakistan, prevailing non-professional behaviour about the execution on time (Sherwani, 2006) as well as the frequent transfer of judges by the one court to other court is making the worst cause of delays in Justice (Alam, 2010). It can also be seen that undue adjournments grants given by the judges. It is not undue adjournment grant; it is happened because of the old and complex judicial system.

Lawyers mould the procedural law to get their relief. And judges are compelled because of law. Because of this, judges cannot take serious action against non/attending plaintiffs and defendants who involve in litigation (Shah & Ahmad). Most of the judges fail for compelling the lawyers to dispose of a civil suit in that manner regarding time or demand code of civil procedure 1908 (Adler, Felstiner, & Conference, 1982). Most judges are not trained regarding writing long and lengthy judgments (C. H. Van Rhee, 2004). It also happens delay because judges take so much time to decide the cases (Pekkanen, 2011).

Because of this absence of speedy justice people of Pakistan are demanding for the enforcement of sharia law and the other hands demand alternative disputes system as Panchayats Jirga and tribal-like that Karachi where young three thieves were firstly beaten and after that burnt from a protested masses (Blue, Hoffman, & Berg, 2008). After that brutal incident, Iftikhar Muhammad Chaudhry the ex-chief Justice of Pakistan also associated the order and law situation in Pakistan for justice delays that it was just the request of quick and speedy Justice nothing else which brought the public of the country (Shah, Khan, & Farid, 2014).

6. Material and Method

The quantitative survey method was used in this study for initiating the data collection to know about the main delaying factors in the system of civil justice in the lower courts of Pakistan. The sample size was consisted 60 participants who were professional acting as Judges and Lawyers in the Lahore Civil Courts. The responses were collected on a questionnaire to compute the Role of diverse elements that causing a delay in Justice in lower courts' litigation. The participants were selected randomly. The questionnaire sheets were distributed after getting permission from Judges and Lawyers to participate in this study. They had also been confirmed that the collected material would be kept confidential and used just for study purposes.

7. Results

7.1 Descriptive Statistics

The demographic data were collected to get the information by the first 4 questions in the questionnaire.

Table 1: Frequency Occupation, Age, Education and Experience-based Classifications

Variables	Frequency	Percent	Cumulative Percent
Occupation			
Judges	28	46.7	46.7
Lawyers	32	53.3	100.0
Total	60	100.0	
Age			
30-35	30	50.0	50.0
Above 36	30	50.0	100.0
Total	60	100.0	
Education			
LLM	29	48.3	48.3
LLB	31	51.7	100.0
Total	60	100.0	
Experience			

1-10 Years	30	50.0	50.0
Above 10 Years	30	50.0	100.0
Total	60	100.0	

Table 1 shows the demographic variable information regarding Occupation, Age, Education and Experience. The occupation was classified into two-part, i.e. judges and lawyers. Out of a total sample of 60 respondents, 28 (46.7 %) were judges, whereas 32 (53.3%) were lawyers. The age range was (30-35, above 36 years), and 30 respondents were (30-35) while 30 were (above 36 years). The education level was categorized into two classes, i.e. LLM and LLB. Out of total sample, 29 (48.3%) respondents were LLM, and 31(51.7%) were LLB. The experience level of the respondents was 1-10 year and above ten years, where 30 respondents were had 1-10-year experience while the other 30 respondents had experienced above ten years.

Table 2: Descriptive statistics on Research Variables

Variables	N	M	SD	Std.Error
Due to Neglect of Official Corruption	60	1.90	.817	.105
Transfer of judges	60	1.73	.756	.098
Insufficient number of judges	60	1.65	.732	.095
Heavy backlog of cases	60	1.52	.676	.087
Due to non-punctuality of plaintiff and defendant	60	1.93	.660	.085
Lengthy procedure	60	1.42	.720	.093

Table 2 depicts that the highest mean (1.95) of Corruption is variable of delay in Justice, while the lowest means (1.42) of the lengthy procedure has been calculated from the delaying predictors for Justice in the lower Judiciary. However, the 2nd most crucial mean belongs to non-punctuality of plaintiff and defendants (1.93) for the delay in Justice in lower Judiciary of Pakistan.

Table 3: One-Sample T-test on Research Variables

Variables	N	M	SD	t	Sig. (2-tailed)	df
Due to Neglect of Official Corruption	60	1.90	.817	18.010	.000	59
Transfer of judges	60	1.73	.756	17.756	.000	59
Insufficient number of judges	60	1.65	.732	17.450	.000	59
Heavy backlog of cases	60	1.52	.676	17.372	.000	59
Due to non-punctuality of plaintiff and defendant	60	1.93	.660	22.676	.000	50
Lengthy procedure	60	1.42	.720	15.241	.000	59

Table 3 confirms that all the Variables are causing the delay in Justice in the lower Judiciary. The value of the predictors Neglect of Official (t=18.010, p=.000), Corruption (t=16.950, p=.000), Transfer of judges (t=17.756, p=.000), Insufficient number of judges (t=17.450, p=.000), Heavy backlog of cases (t=17.372, p=.000), Due to non-punctuality of plaintiff and defendant (t=22.676, p=.000), Lengthy procedure (t=15.241, p=.000). The analysis shows that the entire Variables' values are significant and make the causes of delay in Justice.

Table 4: Pearson Correlation between delaying Variables

Variables		NO	C	TJ	INJ	HBC	DNPPD	LP
Neglect of Official	Pearson	1	.133	-.071	-.314*	-.273*	-.044	-.158
	Correlation							
	Sig. (2-tailed)		.312	.588	.014	.035	.739	.227
Corruption	N	60	60	60	60	60	60	60
	Pearson	.133	1	-.045	-.209	-.125	.023	-.125
	Sig. (2-tailed)							

	Correlation							
	Sig. (2-tailed)	.312		.731	.109	.341	.861	.339
	N	60	60	60	60	60	60	60
Transfer of judges	Pearson	-.071	-.045	1	.043	-.057	.201	.083
	Correlation							
	Sig. (2-tailed)	.588	.731		.745	.663	.123	.528
	N	60	60	60	60	60	60	60
Insufficient number of judges	Pearson	-.314*	-.209	.043	1	.234	.056	.024
	Correlation							
	Sig. (2-tailed)	.014	.109	.745		.071	.670	.855
	N	60	60	60	60	60	60	60
Heavy backlog of cases	Pearson	-.273*	-.125	-.057	.234	1	.116	-.102
	Correlation							
	Sig. (2-tailed)	.035	.341	.663	.071		.376	.440
	N	60	60	60	60	60	60	60
Due to non-punctuality of plaintiff and defendant	Pearson	-.044	.023	.201	.056	.116	1	-.154
	Correlation							
	Sig. (2-tailed)	.739	.861	.123	.670	.376		.239
	N	60	60	60	60	60	60	60
Lengthy procedure	Pearson	-.158	-.125	.083	.024	-.102	-.154	1
	Correlation							
	Sig. (2-tailed)	.227	.339	.528	.855	.440	.239	
	N	60	60	60	60	60	60	60

*. Correlation is significant at the 0.05 level (2-tailed).

Table 4 the Pearson Correlation between delaying Variables in the way of justice in lower judiciary The results confirmed that there are no Positive Correlation between the variables (1) Neglect of Official ($r = -.158$, $n = 60$, $p = .227$), (2) Corruption ($r = -.125$, $n = 60$, $p = .339$), (3) Transfer of judges ($r = .083$, $n = 60$, $p = .528$), (4) Insufficient number of judges ($r = .024$, $n = 60$, $p = .855$), (5) Heavy backlog of cases ($r = -.102$, $n = 60$, $p = .440$), (6) Due to non-punctuality of plaintiff and defendant ($r = -.154$, $n = 60$, $p = .239$).

8. Discussion

There are three classes regarding judicial system; one is Judges, the second one is Lawyers, and the last one is the administrative staff. These are all considered as official officers. They neglect in the proceeding by their ways. Order XVII Rule 1 of the CPC offers discretionary authority to the courts to give an adjournment to the parties if satisfactory cause is revealed. The reason of excessive adjournment is that the lower civil courts of Pakistan have so many loads of civil cases and the judges prefer to grant the adjournments rather than take attention in each case to differentiate the truth and to find out the reality or the case (Feeley & Simon, 1992). Lawyers also make the reason in delay in Justice because of their busy schedules, (Adler et al., 1982) strikes and absence of the courts (Gondal, 2011), as well as utilize technicalities in the procedure (Iruoma, 2008).

Currently, the Pakistani judicial system is damaged with Corruption, especially at the inferior judiciary level where the court administrative worker has been bribed at every step due to transfer or halt one's case. (Hussain & Riaz, 2012) It can be seen some cases about the corrupt practices of judges as in Ghulam Mustafa Shehzad v. Lahore High Court (2007) the petitioner was discharged from his post for having a corrupt reputé and accepting unlawful satisfaction. There also can be seen that judges have given adjournment sometimes to hold their decision for disappointing the other party which involved in the case and what is the reason, it happens because judges have taken bribes from the parties. There is also another reason for Corruption that judges get bribes for fixing an early hearing.

Delays in civil Justice are happened because of transfer of judge from one court to another court or from one station to another station. Transfer of judges may affect the case proceedings because a judge who see the whole case and hear the plaintiff and defendant but when the time comes to pronounce the judgment the same judge transferred from one court to another court. It is one of the significant and prominent reasons to delay in civil litigation and also make the reason for procedural delays. Khan and Khan (2003) discovered that the judges were mostly transferred without being substituted.

The fundamental reason for the delay is imbalanced between the need for courts and the ability of courts to deliver services (Kakalik, Selvin, & Pace, 1990). In another simple manner, that delay considered as a problem that the quantity of cases is too many and the judges in civil courts to hear the case are very few (Hamid, 2007). Though being a human intelligence, the capacity of judges to deal with the cases is minimal (Blue et al., 2008). So it can't say that the courts should have given hundred percent for delivering in Justice of the common man when the one judge in all level of the courts have too many cases, and it is beyond his limit for an individual judge to hear too many cases to give Justice (Shah et al., 2014).

A massive backlog of cases is one of the worst reasons regarding the way of Justice in civil courts of Pakistan why this reason is increasing day by day, it will not wrong if we say that false and frivolous litigation is the main factor for this reason, because In Pakistan, unfortunately, there is significantly less portion of confirmed cases in courts, while most of the litigants don't go to the court for seeking Justice, they go to the court for prolonging injustice and betrayal (G. Khan, 1988). Whereas miscellaneous applications and orders are another reason for above-describing factor because in Pakistan interlocutory applications in a weak case are made under different laws; which can change the whole shape of the case and change entirely the whole proceeding that is going on in the case, and also change the original structure of the instituted case for some time that makes the reason of delays in quick and floats Justice. (Qureshi, 1998)

There is another reason for the delay in civil Justice that is known as Non-punctuality of plaintiffs and defendants. As the above discussion, there is a lot of false and frivolous suit is instituted in civil courts of Pakistan just for teasing the other party. Those kinds of cases are not essential for the plaintiffs as well as defendants because of that plaintiffs and defendants do not appear before the court on the day of the hearing. In this manner, lawyers take adjournment from the courts for prolonging litigations. And they take plea in the court because of their busy schedules, as well as against strikes (Gondal, 2011).

It is the prime importance of procedural simplification in Pakistan for restoring the grievances of litigants (Marrijuddin, 1996). Like a superior level of complexity of the procedural law, lengthens is the result of the disposition of time regarding cases (Djankov, La Porta, Lopez-de-Silanes, & Shleifer, 2003). Procedures and technicalities play a vital role in a case and the times considered a serious to the case from both disputing parties (Nahaki & Ali, 2011). A case can be exploited and continued almost longer time, because of these technicalities in the legal procedure (Azeem, 2017). The procedural law of Pakistan is so much cumbersome and complicated and also outdated to the time of colonial.

8. Conclusion

Judiciary is an essential organ among the people because it deals directly with the society. People come to the court to establish their right not to lose it. When any person loses his rights, he tries to maintain it in any way. Judiciary is the last and only way to establish rights for the public who lost their rights. Due to procedural as well as practical loopholes and existing defective administration of Justice, our Judiciary is not proficient enough in delivering Justice. Because of this, people lost their trust from the Judiciary, and such kind of situation creates social disorganizations. There are many factors of delay in Justice which Pakistani courts are facing currently. Yet there has not been sufficient attention drawn over deteriorating cases backlog derived by such kind social disorganization. There is a need to take extreme attention and implementation regarding the administration of Justice, unless and until the administration of Justice is not framed out of complications, people will remain to get injustice in the name of Justice. A massive backlog of cases is the fundamental problems and concern for all. If it is true that Justice delayed, Justice, denied, then we can also say equally valid that 'Justice hurried, Justice buried. For the sake of elimination of delay in civil Justice, as well as disposal of civil suits, nothing should be done if there is no proper thought regarding its perspective. For getting actual purpose interaction among the lawyers, judges, and other administrative functions which relates to the judicial organ and also workshop, seminars and symposium round table conferences should be organized for the betterment of Judiciary. Because the more heads are put together, the better results are likely to come.

9. Future Work

- 1) A more qualitative study can be done in future by the interview of the administrative machinery of the civil lower courts regarding dispute resolution process and delayed in suits' judgments to get more specific knowledge because administrative staff know very well where is the problem in the process as well as deep understanding regarding factors, which are making the reasons for the delay in Justice.
- 2) Although in this study raised the major and prominent factors of delay whereas in future research could be done about irregularities regarding procedural law, this study shall develop the understanding which is making the reason of delay in civil Justice in Pakistan.

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