



RESEARCH PAPER

Multiple Frames of Reference: Causes of Delay in Civil Suits in Swat, Khyber Pakhtunkhwa

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ABSTRACT

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Delay in civil and criminal suits hold a key role in social and legal research. This study presents a comprehensive explanation of the delay in civil suits' in Khyber Pakhtunkhwa, Pakistan. A total of 361 respondents were selected through stratified random sampling whose cases were pending before various courts in Swat. For data collection, interview schedule was utilized as a tool owing to illiterate or less educated respondents. The data was analyzed through SPSS by presenting descriptive and inferential statistics. The results reveal that delay has significant associations with various causes including lawyers managing their caseload ($P=.004$), stronger party compelling weaker through delay ($P=.000$), frequent transfers of judges ($P=0.009$), non-appearance of one party ($P=.000$), more witnesses ($P=.001$), summons delivery ($P=.000$) and lesser number of judges ($P=.000$). It can be argued that delay can be effectively dealt with by implementing procedural reforms that make the process more transparent and less time-consuming.

Introduction

Delay in the justice system has been reported around the world but studies have confirmed that the extent of delay is largely prevalent in civil matters than those of criminal matters (Blue et al. 2008). Delay came into existence the day civil procedure was adopted and since then its prevalence is a matter of concern for all the stakeholders of the judicial system. Since delay is measured in time and it is a fact that no lawsuit can be disposed of justly without spending a minimum period of time between the first presentation of a case before the court and the final judgement of the court. Such delay is not problematic and could be differentiated with undue delay which is the elapsing of too much time between filing of a case and the courts' ultimate decision of that case (Rhee, 2004). Though it is difficult to measure what amount of time could be regarded as too much as opinions on the issue may differ with respect to time and from one country to another but generally, it is acknowledged that delay is the part of the modern justice system since its inception (Mansoor and Ullah, 2022). After the promulgation of Shariah Nizam-e-Adl Regulation in 2009, courts in Swat are obliged to resolve all cases of civil matters

within six months of time (Fleischner, 2011). Hence the cases which are delayed for more than six months could be included in the umbrella of undue delay and therefore this study included only those litigants whose civil suits are pending before various courts for more than six months of time.

Delay in the formal justice system is one of the critical issues which has harmful impacts on the socio-economic lives of litigants and hinders the development of society. In many western countries, delay in the justice system is frequently studied in a bid to understand and minimize the delivery of justice system and to prevent the harms of delay on the user of justice system. Such delay is perceived as detrimental to the people who are already a poor and marginalized segment of society. Though some seek to benefit from prolonging their cases and using delaying tactics through their lawyers and other stakeholders of the justice system, these tactics tend to compromise the genuine rights of the poor and weaker party. Delay in justice is considered a denial to justice. The Russian proverb reflects the situation which leads delayed justice to the dysfunction of law like “law exists only for protecting the rich and punishing the poor” (Mahmood, 2013).

The justice system of Pakistan has been confronted with a number of problems since the birth of the country. Our justice system is inherited from the colonial British empire, and no effort was made to develop the justice system drastically. People who go to court for their due rights are confronted with a myriad of problems. People often level the charges of costliness, inefficiency, and inequality along with the undue delay in the justice system (Chase, 1988). All of these issues are interrelated and where undue delay may further exacerbate the situation of poor and marginalized litigants whose civil suits are pending before courts while timely justice could enhance the situation of litigants. Therefore, the pace of litigation is often used as a benchmark for determining the health of the justice system. Staats (2005), relates the undue delay in disposing court cases to the judicial efficiency which is an important aspect of judicial performance. Delay in civil procedure not only affects the judicial performance but it has detrimental impact over the lives of poor and marginalized litigants so it is vital to study what factors in our courts culture leads to this problem. The present study is aimed to evaluate views of litigants about the causes of undue delay on the basis of their experiences of spending time and resources while going to courts and meeting with their legal counsels.

Literature Review

The disposition of cases is prolonged by the complex procedural code in civil matters (Djankov et al. 2003). The very important role is played by the technicalities of law which could be serious for either party of a case. A litigant can be exploited by these technicalities by prolonging the case for the indefinite period of time if one party wants to get benefit from it (Nahaki, 2011). The procedural law of Pakistan is outdated and complex which date back to colonial era which resulted in the frivolous litigation and often misused to delay the case to benefit one party (Ghazi, 2006). These complexities tend to result in corrupt behavior more easily as lawyers could control the pace of litigation either expedite or delay the trial and sometimes even influence the result (Blue et al. 2008). There is huge time wasted in the procedural matters like cause of action, argument of jurisdiction, sufficiency of notice and amendments of plaint etc. Furthermore, these technical terms are beyond the understanding of laymen (Aggarwal, 1978). To address the grievances of the litigants, the World Bank

(2002) report has stressed on the procedural simplification so as to minimize the problems caused by delay in the justice system.

Socio-legal culture or local legal culture is often named by the lawyers which is the informal set of rules and regulations that guides the behavior of lawyers and judges which is the new area of research and most of the researchers are conducting studies in this area presently (Steelman & Fabri, 2008). To study this concept is not only helpful to expedite the judicial process of trials but theoretically it is also useful in understanding the various elements that hinders the smooth performance of judiciary (Coolsen, 2008). It is the need of the hour to change socio-legal norms of court culture and for changing this norm the behavior and expectation of judges and lawyers should be modified because this norm exists as the lawyers and judges have accepted it as the norm of judicial culture (American Bar Association, 1986). In order to expedite the pace of litigation, the behavior of all the stakeholders of the legal community should be changed (Buscaglia & Dakolias, 1996).

A study on the causes of undue delay in civil suits in Bangladesh have identified that certain factors have contributed in delaying the disposition and settlement of civil claims of litigants. The factors which leads to delaying civil suits in Bangladesh according to this study are lesser number of courts, malpractice of court staff for financial gains, frequent adjournments of the courts, unethical issues in delivery of summons, lack of utilizing modern technology by the courts and lawyers using delaying tactics for their financial gains while there is no sanction available to regulate such behavior of lawyers (Asrafuzzaman & Hasan, 2021). The issues which exist in the civil justice system of Bangladesh are relevant to those of Pakistan because the civil justice system of both countries are inherited from England.

Sometimes judges are involved in corrupt practices. They are bribed either by litigants or lawyers to withhold their judgment or to grant unnecessary adjournment. These corrupt practices result in undue delay in the justice system which brought frustration and anxiety to aggrieved parties (Asrafuzzaman & Hasan, 2021). The corrupt practices prevailed in the subordinate courts because of the huge backlog of cases pending to these courts which provide opportunities to many judges as they look for bribes to call for early hearing of a case (Abbas, 2011).

The punctuality of judges at the lower courts is also one the main problems in Pakistan. There are numerous complaints forwarded about the punctuality of judges. The maximum disposition of cases is not possible until judges give proper time to and to sit for at least five hours hearing cases (Sherwani, 2006). Courts should start with the determination of finishing the maximum number of cases at the end of the day (Wallis, 2009).

Judges are transferred frequently from one court to another which cause delay in civil suits (Iqbal, 2006). When one judge examines evidence and witnesses and transfers from that court, another judge may start the trials from the beginning and he may repeat some of the processes which had already been fulfilled by the previous judge. Hence this transfer and rotation of judges hinders the continuous process of trial and results in the delay of cases (Alam, 2010). Sometimes the judges are transferred and there is no other judge to take his place as Khan and Khan (2003) discovered that the judges were transferred time and again without being substituted.

Unnecessary and frequent adjournment of trials was declared by most of the researchers as the major factor of delay in the clearing of cases (Sherwani, 2006). The court has the unrestricted power to adjourn the trial at any time under Order XVII Rule 1 of the CPC if ample reason is presented to the court. But the judges do not differentiate between rightful and "concocted" causes presented by either party and they do not care to adjourn the court which results in the delaying of the trial (Feeley, 1992). However, in some cases, adjournment is unavoidable and it is genuinely required by the judge to adjourn the court because of the ample reason shown for the adjournment. So to eliminate adjournment absolutely is impossible but the number of adjournments can be fixed so to grant it when it is required genuinely (Whittaker et al. 1997).

According to Siddique (2010), the lawyers always seek to adjourn the court on the frivolous grounds which is a major reason behind delaying trials. Heise (1999), referred to the problem of manipulation in the judiciary that some lawyers are expert of getting the adjournment of court not only for the benefit of their client but they do so for the management of their caseload. However it is the court instead of lawyers who shall control the pace of trial by not giving the unnecessary adjournment (American Bar Association, 1986). The lawyers will be efficient and dispose of the cases speedily when a court puts pressure and controls the pace of trials because the lawyers know how to finish the case rapidly (Adler et al. 1982).

Influential and wealthy parties often go to court to do injustice with weaker and poor people or to deprive them from their rights where a very small portion of powerful litigants knock the door of justice for their genuine claims (Khan, 1988). The majority of cases are frivolous cases where these kinds of cases are either totally forged or sometimes genuine claims along with supplementary claims registered for the purpose of harassing the other party (Shah, 2005). There are many frivolous suits registered for the harassment, and to affect the evidence, and to one's own honor in the society and sometimes for the purpose of diminishing the value of loss which were awarded by the court (Rehn et al. 2010). To cope with the issue of frivolous litigation, there is no law to protect the innocent litigants from this menace in Pakistan (Azad, 2012).

Most of the lawyers always seek to get maximum cases along with keeping the old cases irrespective of the fact that every case requires enough time to study and they need to appear before the judges in every case frequently. The uncertainty in the mind of lawyers that whether they could get another case or not makes them take more cases. This resulted in them only appearing in court for hearing and could not prepare the case with devotion (Adler et al. 1982). As lawyers are not well prepared so they could not present their case in a more effective manner because of their busy schedule (Crook, 2004). This results in the wastage of public funds and court time which ultimately affect the performance of the court by listening time and again to the baseless argument of these lawyers and hence the court could not make any rational conclusion on which it could decide the case (Sattar, 2012).

It has been found that there is a notorious group of lawyers who know how to delay the case and they are specialists in such tactics (Krishnan, 2006). These lawyers use the procedural technicalities to prolong the case for indefinite time (Iruoma, 2005). For lawyers, their legal struggle is their business and they sell out their professional and legal skill so that they can benefit their client and for this

purpose they do not avoid even if they have to abuse the procedural rules for the benefit of their party (Asser, 2004).

The major factor behind delay in the justice system is that the demand from court to dispose of cases is increased than its ability to resolve the case which results in the imbalance of demand and supply and hence cases are delayed (Kakalik et al. 1990). In plain language delay is imagined as a problem where few judges have to deal with too many cases to be disposed of in a limited time (Hamid, 2007). Judges have limited capacity to do work for a longer period of time just like other human beings (Blue et al. 2008). In such a situation where few judges have to deal with a lot of cases and they are stretched more than their capacity, then the court system could not deliver justice to ordinary citizens on time (Sattar, 2012). The judge will not hesitate to grant adjournment to the court so that they can get a relief from this kind of workload in the court (Aggarwal, 1978).

Until one of the parties is declared by the court as an ex-party, the presence of both parties, plaintiff and defendant in the court is necessary for initiating the trial process. The decision of ex-parte is taken by the judge because of the unserious attitude of one party towards the trial (Khan & Khan, 2003). However the judges are very cautious about taking ex-parte action and hence grant adjournment to the court which results in the further delay of cases (Macnair, 2004).

There is a mechanism to deliver the summons of the court to the respondent (defendant) whenever a plaintiff registers a case at a court office (Khan, 2004). But on the hearing date, the courts are adjourned for the reason of showing summons which are served by the already established mechanism (Peshawar High Court, 2011 as cited in Shah & Ahmad, 2016). The presiding officers should look into the matter and should enquire that why the summon is not deliver which will help to eradicate the negligence of those who deliver the summons (Nawaz, 2004). There is a possibility of the genuine reason behind not delivering a summon which might be the lack of transport or not enough amount of TA/DA paid for delivering the summon. The process of delivering a summon of court could be made fast and correct by applying modern technology such as fax message or Email through the internet (Asrafuzzaman & Hasan, 2021).

Materials and Methods

Due to the nature of the study -being explanatory- this study was conducted through a quantitative approach (See Neuman, 2014). The data were collected from a total of 361 respondents selected through Krejcie and Morgan (1970) technique and whose suits were pending before the courts in Swat, Pakistan. While most of the respondents were less educated, therefore, an interview schedule was used as a tool for data collection. The respondents from various courts at the study area were selected through stratified random sampling (SRS), which is a type of sampling technique wherein samples are subdivided into strata and random samples are taken from each stratum (Bryman, 2016). The collected data were analyzed through Statistical Package for the Social Sciences (SPSS) and presented through tabular and descriptive form indicating descriptive and inferential statistics. The results of this study have also been supported by literature where deemed necessary.

Results and Discussion

Table 1
Causes of Delay in Civil Justice System

Statements	Agree		Disagree		Uncertain		Total
	F	P	F	P	F	P	F
Lawyers use delaying tactics to manage their caseload.	223	61.8	93	25.8	45	12.5	361
A stronger party prolonge the suit to compel weaker party for compromise.	236	65.4	72	19.9	53	14.7	361
Judges are not punctual and spend less time hearing civil suits.	182	50.4	91	25.2	88	24.4	361
Judges are often transferred.	262	72.6	65	18.0	34	9.4	361
Non-appearance by one party delay cases.	183	50.7	101	28.0	77	21.3	361
More number of witnesses cause delay in civil suits.	200	55.4	67	18.6	94	26.0	361
Summons aren't delivered timely	197	54.6	76	21.1	88	24.4	361
There is a lesser number of judges.	264	73.1	73	20.2	24	6.6	361

Note: F represents frequency and P represents percentage Univariate Analysis

Table 1, highlights the various causes responsible for delay in the civil litigation in the study area. The statistics from the first question show that 61.8 percent of the litigants had agreed that lawyers use delaying tactics for managing their caseload while 25.8 percent disagreed however, the remaining 12.5 percent did not have a clear understanding. Out of the total 361 respondents, 65.4 percent agreed that one of the stronger parties prolonged the case in order to pressurize the weaker party to accept a compromise; however, 19.9 percent disagreed to the question asked while the remaining 14.7 percent replied that they are not sure. When asked about judges, half of the litigants i.e. 50.4 percent agreed that judges are not punctual because they spend less time in hearing the cases, in comparison to that 25.2 percent disagreed while the remaining 24.4 percent responded that they are not aware about this. 72.6 percent of the total litigants responded in affirmative that judges are frequently transferred in their cases while 9.4 percent did not agree with the statement and were thinking otherwise. When asked about the blocades from the other parties, 50.7 percent of the litigants agreed that the other party delays the case through non-appearance while 28 percent of the respondents disagreed with this statement. However, the remaining 21.3 percent did not have any clue about this. A total of 55.4 percent of the litigants agreed to the statement that more number of witnesses results in civil suits' delay while 18.6 percent of the 361 litigants disagreed with the question however, 26 percent litigants did not choose between the two options. When asked about the postage and delivery of summons, 54.6 percent of the respondents declared that their summons were not delivered on time and hence may be one of the causes of the civil suits' delay while 24 percent of our respondents disagreed to the question asked; however, the remaining 21.1 percent chose to be neutral. Regarding the question of the number of judges in civil courts, 73.1 percent of the litigants agreed that the number of judges are few and the total number of cases are more while 20.2 percent of the respondents disagreed that the number of judges are not few. However, the remaining 6.6 percent were not sure about the first two options.

Table 2
Association of Delay in Civil Suits with Its Causes

Statements	Delay in Civil Justice System				Total	Statistics
	Agree	Disagree	Uncertain	Total		
Lawyers use delaying tactics to manage their caseload	Agree	169	33	21	223	X ² =15.622 P = .004
	Disagree	64	19	10	93	
	Uncertain	24	18	3	45	
Total		257	70	34	361	
A stronger party prolonge the suit to compel weaker party for compromise	Agree	184	43	9	236	X ² =28.601 P = .000
	Disagree	41	15	16	72	
	Uncertain	32	12	9	53	
Total		257	70	34	361	
Judges are not punctual and spend less time hearing civil suits.	Agree	132	31	19	182	X ² =4.357 P = .360
	Disagree	63	23	5	91	
	Uncertain	62	16	10	88	
Total		257	70	34	361	
Judges are often transfered frequently.	Agree	200	43	19	262	X ² =13.447 P = .009
	Disagree	37	17	11	65	
	Uncertain	20	10	4	34	
Total		257	70	34	361	
Non-appearance of a party delays the suit	Agree	141	31	11	183	X ² =28.788 P = .000
	Disagree	70	12	19	101	
	Uncertain	46	27	4	77	
Total		257	70	34	361	
More number of witnesses cause delay in civil suits.	Agree	157	34	9	200	X ² =18.255 P = .001
	Disagree	40	14	13	67	
	Uncertain	60	22	12	94	
Total		257	70	34	361	
Summons aren't delivered timely	Agree	147	36	14	197	X ² =21.686 P =.000
	Disagree	61	5	10	76	
	Uncertain	49	29	10	88	
Total		257	70	34	361	
There is a lesser number of judges	Agree	205	41	18	264	X ² =22.452 P = .000
	Disagree	38	24	11	73	
	Uncertain	14	5	5	24	
Total		257	70	34	361	

Bivariate Analysis

The above table provides statistical analysis for the prevalent causes of delay in civil suits in the study area. Delay in many ways is detrimental to both the litigant parties, judicial system and our society. Delay has serious consequences for the people involved in litigation and their family members for example social and economic consequences including loss of income and sore family relations (See Ullah and Mansoor, 2022; Mansoor and Ullah, 2022).

A significant relationship was revealed between the delay and tactics used by lawyers for managing their caseload with (P=.004). Previous studies highlighted the problem of manipulation in the judiciary where some lawyers use the tactics of

adjournment of court not only for the benefit of their client but they do so for the management of their caseload while these lawyers seek the adjournment of court most frequently on false or fabricated grounds so that they could manage their workload or caseload (Heise, 2000; Nahaki, 2011).

A strong significant association ($P=.000$) was found between delay and the strong parties prolonging the case to pressurise or compel the weaker parties for compromise. Nahaki (2011), found that litigants can be exploited through technicalities of prolonging while the case may take an indefinite period of time and money.

The results highlight a significant association ($P=.360$) between the delay as independent variable and judges punctuality as dependent variable. The main rationale behind this variable was to ascertain the seriousness of the judges involved in civil suits through the litigants. The study conducted by Sherwani (2006), also confirms the current findings where, it was found that the punctuality of judges at the lower courts is seen as one the main problems in Pakistan judicial system and numerous complaints forwarded about the punctuality of judges.

A significant relationship was calculated ($P=.009$) between delay and the transfer of judges. Delay is also significantly impacted by the transfer of judges from the already initiated cases. Studies conducted on the same issue show that the judges' transfer broadly contributed to the delay. The transfer has been highlighted on many instances and is one of the key contributors to the delay in civil and criminal cases (Khan and Khan, 2003; Iqbal, 2006).

The analysis revealed a significant association ($P=.000$) of delay with the variable non-appearance. The non-appearance by one party normally delays the disposition of cases. Khan and Khan (2003), discuss the court procedure as until one of the parties is declared as an ex-party by the court, the presence of both parties, plaintiff and defendant in the court is necessary for initiating the trial process. The ex-parte decision is taken by the judge due to the non-serious attitude of one party. However, the judges are cautious of taking ex-parte action and hence, ultimately grant adjournment which contributes to further delay of cases (MacNair, 2004).

The analysis shows a significant association ($P=.001$) between delay and more number of witnesses presented in the case. It shows the unwarranted witnesses significantly contribute to the delay in civil suits. Studies found that notorious groups of lawyers know how to delay the case while they are being specialists in such tactical things (Krishnan, 2006). The lawyers utilize procedural technicalities e.g. more number of witnesses to prolong the case (Iruoma, 2005).

A significant relationship was found ($P=.000$) between the delivery of summons to the parties and the delay. The participants through their response meant that one of the causes of delay is non-delivery of summons from the courts while sometimes the staff can deliberately misplace the summons to favor the other parties. There are numerous complaints registered in regard to summons not delivered on time where those who are responsible for the summons carry this on the behest of one party while they make a false report that the one who was summoned was not available (Asrafuzzaman & Hasan, 2021).

The results from this study show a strongly significant association ($P=.000$) of delay with the total number of judges and the backlog of cases. The demand of judges is more while their supply is less therefore it is creating a backlog and resulting in delay of civil and criminal cases (Kakalik, et al.1990). Delay means that there are more cases and less number of judges to deal with the cases (Hamid, 2007).

Conclusion

While delay is an important issue affecting the litigants and their families, the studies conducted on the causes of delay in civil suits presented a brief overview of the problem (See Kallem et al. 2020; Shah et al. 2014). This study comprehensively covers the causes of delay in civil suits with a relatively larger sample size. Through the results, it can be argued that there are multiple reasons that cause delay in civil suits; however, some of the prominent causes are because of fewer judges, lawyers caseload and interference of stronger parties in the trial process. The results further show that sometimes judges are not punctual and give less time to the litigation process therefore, the parties experience delay in resolution of their cases. While delay has also been amplified by the late or non-delivery of summons to the litigants, the exaggerated number of witnesses presented by the other parties are also equally contributing to the prevalence of delay in civil suits and may also be true for criminal cases. It is suggested for policy makers and high officials in the judicial system to curtail the delay by increasing number of judges, courts and also introducing reforms in procedural formalities and rules for example, number of witnesses, summon delivery, keeping an eye on lawyers and performance evaluation on the basis of delayed or less delayed cases

Recommendations

1. A comprehensive tracking system shall be introduced where details of the case can be tracked from the very start until latest progress.
2. Less complex procedures may be adopted in regard to adjournments, number of witnesses.
3. Transfer of judges shall be kept to a minimum especially in the middle or at the final stages of the cases.
4. Special consideration shall be given to the delayed cases and a fast track resolution policy should be adopted.

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