

### Analysis of Barriers, Causing Delay in Formal Judicial System of Pakistan: A Case Study of Malakand Division



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**Abstract:** *A strong, un-biased, efficient and well-organized judicial system is necessary in every State. Judicial structure we are having today in Pakistan is based on the long evolution of time but still it is confronted with numerous issues, amongst which unnecessary delay is the most detrimental part of litigations. This study was an attempt to analyze the barriers causing delay in judicial system of Pakistan in general and Malakand Division in particular. For this purpose, data was collected through qualitative research design, the collected data was initially edited, coded, translated, transcribed and incorporated in the relevant sections for further thematic analysis, understanding and reaching to the facts. It was found that judiciary cannot deliver justice expeditiously; resulting in a society plagued with extremism, terrorism etc. Indefinite delays in disposition of cases result in loss of public trust on judicial system and people resort to taking laws in their hands*

**Keywords:** Delay, Judicial System, Barriers, Dispute Resolution

#### Introduction

According to Kunal (2011), unsettled disputes lead to disruption in society and history reveals that since the inception of human settlement, disputes are unavoidable part of social interaction (Eshetu & Geta, 2009). Some formal and informal systems of dispute resolution exist in various societies (Attaullah & Saqib, 2016) of which, judiciary is the main formal one (Karim, 2003). Despite of countless benefits of formal judicial system it has some disadvantages, which include high cost of litigation, delays and procedural inconveniences (Kalanuri, 2012a). The current piece of research is an attempt to

find out different causes of delay in judicial system of Pakistan in general and particularly Malakand Division.

The 1973 Constitution of Pakistan, under Article (37), guarantees inexpensive and speedy justice (Mahmood & Shukat, 2017). However, in Pakistan, civil and criminal litigation are confronted with numerous problems such as delayed justice, high cost of litigation etc. (Iqbal, 2012). Sometimes even a petty nature dispute can take years to be decided by the court that results in huge loss of resources to both parties (Hussain, Dinar, Ghazanfar, 2015). From general experience it is observed that justice

delivery system is slower than majority of rest of the countries. World Justice Project Rule of Law Index 2021 reported that Pakistan's judicial system is 129<sup>th</sup> out of 140 countries in the rule of law with a score of 0.39 out of 1.00. In South Asia and other neighboring countries Pakistan is rated second last below Afghanistan. Based on the above realities it is cry of the day to conduct research to highlight and mitigate the issues causing delay in justice. The study is of great importance as after identification of issues in justice delivery system it's easy to resolve the issues. Findings of this study will greatly contribute to benefit of the society in such a manner that it will help to find out various issues causing delay in the justice system of Pakistan and it will give solution to already existing hurdles in justice delivery system in Pakistan. Furthermore, the findings of the study will also enhance the existing body of knowledge.

#### **Research Question:**

1. What are the various issues which causing delay in the judicial system of Pakistan in general and particularly in Malakand Division?

#### **Objectives**

The aims and objective of the study is:

1. To examine the issues which causing delay in the judicial system of Pakistan in general and particularly Malakand division.

#### **Research Methodology**

This study is qualitative in nature. Qualitative research focuses on obtaining data through open-ended and conversational communication (Gubrium & Holstein, 2003). In this context, this research study has predominantly relied on qualitative methods of sample selection, data collection and analysis. This study has primarily focused on Judges, Lawyers and general masses i.e. disputants of Khyber Pakhtunkhwa as target population. As the universe was widely extended comprising of a huge number of judges and lawyers; the target population was delimited to Malakand Division particularly in four districts i.e. District Dir lower, Dir Upper, Malakand and Swat. From the selected locations

of the research area, a sample comprising of 02 judges, 04 lawyers 04 disputants from each district's court were selected through Convenient Sampling Technique, making a total of 40 sample size. For collection of in-depth information, face-to-face interviews were conducted through an Open-ended interview guide. The collected information have been passed through the process of analysis. As the study was qualitative, the collected data was initially edited, coded, translated, transcribed and incorporated in the relevant sections for further thematic analysis, understanding and reaching to the facts.

#### **Literature Review**

Supreme Courts is the supreme judicial body, 04 High Courts in every Federating Unit with a capital bench of high court and Federal Shariat Court established under the constitution of Pakistan (Orakzai, 2009). It comprises of Chief Justice assisted by sixteen other judges.. Supreme Court holds three types of jurisdiction; the original, the appellate and the advisory jurisdiction. Where the matters in public importance including enforcements of fundamental rights and inter-governmental disputes are involved it invokes its original jurisdiction on the other hand if any matter weather civil or criminal in nature and other matters in which leave to appeal may be granted by the court while the advisory jurisdiction in constitutional, legal or any other matters to concerned government. The court comes with decisions of binding in nature on all subordinate courts (Haq, 1999). Article 175(3) of Constitution clearly talks about separating Judiciary's other organs such as the Executive, which seems to be independence of judiciary in order to enable it to perform its functions according to the mandate of the constitution. Federal Shariat Court holds jurisdiction to check the repugnancy of any law to the injections of Quran and Sunnah. Judge of apex judiciary can be sent back to home by the Judicial Commission if he is unable in performing his assigned duties properly by any reason of bodily or mental inability or have been proven guilty of gross-misconduct (Ali, 2015). In addition to above, we have two types of lower courts; civil

court, those which were established under West Pakistan civil court ordinance 1962 and criminal courts which were established by virtue of Criminal Procedure Code 1898. Besides these, we have a plethora of other civil as well as of criminal tribunals as well, formed under special laws by time to time (Hussain, 2015). Just existence of laws by no means leads to their intended outcomes. In many countries, laws remain unimplemented, or they are selectively implemented, or they are impracticable to implement (Mahmood & Shukat, 2017). The justice system in Pakistan is very complicated and the disputes presented to court for solution take many years even from judicial history it is evident that it took more than twenty years in some cases. Some cases are decided after death of petitioners (Kalanuri, 2012a).

Keeping in view, the above issues, the government tries to provide speedy justice to the citizens on their doorsteps; the government has established Civil Mobile Court in 2015.

### **Results and Analysis**

Justice enjoys a sensitive position in man's life, for it is a source of all noble traits. A society where life enjoys the beauty of justice, satisfaction prevails. However, when justice is delayed the society plunges into anarchy. In case of Pakistan, judiciary cannot deliver justice expeditiously; resulting in a society plagued with extremism, terrorism etc. Indefinite delays in disposition of cases result in loss of public trust on judicial system and people resort to taking laws in their hands. The gravity of this issue demands for calculated intervention immediately, unfortunately which is less understood.

Our current legal system is based on the procedure made by the British Empire. We have no connection with the British since 1947, but it is an irony of time that since independence, the old system is still prevailing in our country. Human behavior in the sub-continent is continuously changing; the law must be changed according to human behaviors to cope with current socio-cultural structure through the new

development in the system. The procedure must also be changed by adopting new technologies. Our judicial system functions under a proper procedure; we follow civil procedure for the civil cases and criminal procedure for the criminal cases. Under the said procedure, there are certain prescribed rules, which must be adopted by judiciary, presiding officer (Judge), the Council and the parties. These cannot be overlooked and ignored, and deviation from those prescribed rules results many issues in the dispute resolution process.

In case of Pakistan, judiciary cannot deliver justice expeditiously; resulting in a society plagued with extremism, terrorism etc. Indefinite delays in disposition of cases result in loss of public trust on judicial system and people resort to taking laws in their hands. The gravity of this issue demands for calculated intervention immediately, unfortunately which is less understood. It is historical and universal phenomena that delay causes irreparable loss to the parties both financially and emotionally. After thorough investigations, one can certainly conclude that the problem of delay is complicated, and multiple factors contribute to the time taken by court proceedings. Delay is a blanket term covering a host of different problems caused by various factors, all requiring different responses. The law and judiciary are central to dispute resolution; the decisions of the court have far-reaching impact on every sphere of life every decision of the court is like a brick or layer of bricks in the wall of the societal structure.

There are different reasons of delay in our existing judicial system; as a result the confidence of people on justice system minimizes. Besides, other reasons some of such reasons of delay are follows;

- Malicious and baseless litigation, which result in burden on the court.
- Strikes,
- Less number of judges, in routine work engagement of one judge in multiple proceeding at the same time is not

humanely possible.

- The system is not systematic as the lawyers has cases in the civil court, sessions court, high court and even have cases on the revenue side whereby the counsel become engage in more area. Now if he is busy in high court and his case in Sessions, Civil or in Revenue courts are left un-attended resulting in direct delay in the cases.
- Less rate of disposal of cases than its institution,
- Infrastructural deficiencies
- Unnecessary adjournments,
- Judges on the other hand also adjourn the cases in order to manage their workload.
- Sometime the advocate tries to earn more money he/she would always seek adjournments to increase number of appearance in courts.
- Technicalities in procedural law are also a hurdle in the speedy disposal of civil/criminal cases. The lengthy and gruesome procedure of the current legal system is also a reason of delay in the administration of justice.
- Week professionalism of lawyers, those who have week case, trying to delay the same for many years.

### **Conclusion**

After thorough investigations, one can certainly conclude that the problem of delay is complicated, and multiple factors contribute to the time taken by court proceedings. Delay is a blanket term covering a host of different problems caused by various factors, all requiring different responses. The formal justice system of Pakistan works under a proper procedure. There are certain prescribed rules and guidelines, which must be adopted by the judiciary, council and parties. Malicious and baseless litigation, Strikes, Less number of judges, unsystematic procedures, Less rate of disposal of cases than its institution, Infrastructural deficiencies,

Unnecessary adjournments, Week professionalism of lawyers, Technicalities in procedural law, will and interest of judges and lawyers to delay the cases to manage their workload and earn more money are main causes of delayed justice specifically in the selected area and generally in Pakistan. People therefore prefer to go for ADR rather than formal justice system.

### **Suggestions and Recommendations:**

1. The procedure given in Civil Procedure Code, Criminal Procedure Code and *Sharia Nizam-e-Adl* Regulation 2009 should be adopted by presiding officer, State Council and Council of the parties in its true spirit.
2. The current number of judges and court rooms should be increased in order to meet the need of the time.
3. False litigation should be stopped and huge fine may be imposed upon the parties who brought such frivolous ligations.
4. The concerned Bar Council may take action on the non-professionalism of lawyers on unnecessary adjournments.
5. The method of recording evidence must be made systematic and smooth which is very much dependant on the proper maintenance of record diary.
6. Unnecessary strikes should be discouraged.
7. It is obvious that our law is the law before partition but human behavior in the sub-continent is continuously changed. I think that law must be changed according to human behavior and with the new development in the society. The procedure must also be changed by adopting new technology like DNA, Video calls etc. The British used the same law and procedure but they have changed the procedure by minimizing the duration of legal proceedings in the court, like for recovery of damages there were only

four appearances before the court, so they managed to save the time of litigants. Our government tries to frame strict rule but failed to follow those rules. Judiciary itself does not obey the already provided procedure in Code of Civil Procedure in strict sense. Like in Order 8 Rule 10 of Code of Civil Procedure struck off the defense of the defendant if he failed to submit written statement in stipulated time, but the judiciary does not follow this rule which cause delay.

8. Attendances of private and official witnesses must be ensured; it will definitely save the time of the court and parties.
9. Handsome amount of money must be allocated in annual budget for the administration of justice. The population of Pakistan is increasing with a rapid speed, ultimately huge population need the construction of new court rooms and the induction of new judges but deficiency of budget is always a hurdle in this regard. When there are more court rooms like at union council/ urban council level then burden on tehsil court tehsil and district level should be curtailed.
10. Settlement record should be made digitalized in order to save the time and money of the litigants.

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