

Delaying Tactics used by Lawyers in Dispensation of Civil Justice in Lower Courts of Pakistan

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Abstract

Justice is the foundation and object of any civilized society. It is basic principle of justice that it should be delivered without delay if it is to be effective. In Pakistan civil cases take immensely long period of time presumably due to exploitation of different loopholes in the system by lawyers to protract a case to indefinite periods. To find out the delaying tactics used by lawyers responsible for the prevalent problem of delay in justice in lower courts of Pakistan a questionnaire survey was conducted in six districts of KPK province. The questionnaire was distributed among the three groups of stakeholders of justice system i.e. Lawyers, Judges and Litigants. The findings of the study proved that the main causes of delay related to lawyers were; common practice of instituting false and frivolous litigations by lawyers, lawyers seek adjournments from courts on false grounds, lawyers come to court without preparation, Lawyers exploit the technicalities in the legal procedure. While other causes of minor importance were; lawyers strive for adjournments to manage their case load, lawyers use delaying tactics for the interest of their clients and they make frivolous applications for amendment of pleadings.

Keywords

Civil Justice, Lawyers, Advocates, Delay, Pakistan.

Introduction

A state may not be called a state in its true sense, if it has failed to discharge its functions concerning the administration of justice (Chaudhry, 2012). Justice is indispensable for upholding property rights, enforcing contracts between the parties, checking abuses of government power, or ensuring the rule of law (World Bank, 2002). A strong system of justice is necessary for economic development (Mora, 2000). Regardless of the importance of administration of justice in our lives it is confronted with many problems all over the world (Wallis, 2009). Clogged dockets, higher dispute resolution costs, and delay in case disposition are the problems of global dimension (Hazra & Micevska, 2004). Among all these problems the problem of delay in justice is the most horrifying and frequently complained about (Kumar, 2012). Delay in justice means delay in the remedy for breach of legal rules and congestion of the court docket (Nawaz, 2004). Delay deteriorates the evidence, because of fading of memory or death of witnesses or in any other way the loss of relevant evidence (Reiling, Hammergren, & Giovanni, 2007). Delay in justice is mainly responsible for the prevalent culture of intolerance, by compelling

people to resort to extrajudicial means for settling their scores outside the courts (Xavier, 2009). It facilitates the lawyers and litigants by giving them time to approach the judge and mold the court decision in their favor (Reiling et al., 2007).

Lawyers owe their clients a timely professional advice and representation (Nahaki, 2011). But presently they are unable to fulfill their duties because of their lust for money, and their contributions to the problem of delay in justice (Law Commission of India, 1988). Their behavior albeit often with the acquiescence of the judges, is to blame for most of the delay (Asian Foundation, 1999). Lawyers seek adjournments from courts on false grounds (Khan, 2000). Lawyers make frivolous applications for amendment of pleadings (Mohan, 2009). False and frivolous litigations by lawyers are a common practice (Adler, 1982). Lawyers exploit the technicalities in the legal procedure (Krishnan & Kumar, 2011). Lawyers come to court without preparation (Crook, 2004). Lawyers keep on strikes from courts on different reasons (Nahaki, 2011). Lawyers summon unnecessary witnesses (Vos, 2004). Lawyers institute unreal appeals (Rehn et al., 2010). Lawyers unreasonably prolong oral arguments (Khan, 2000). Sometimes lawyers try to seek adjournments to manage their case load (Lone, 2011). Sometimes lawyers use delaying tactics for the interest of their clients (Krishnan & Kumar, 2011).

The objective of the present study is to establish the role of lawyers as against the problem of delay in justice in lower courts of Pakistan. For this purpose a questionnaire survey was conducted in six districts, randomly chosen one from each division of Khyber Pakhtukhwa province of Pakistan (except the Malakand division). The questionnaire was distributed among the lawyers, judges and litigants in these districts. This study will pinpoint different delaying tactics used by lawyers and their level of responsibility for the problem of delay in justice in order of importance.

Methodology

Population and Sampling Procedure

According to the recommendations of Sekaran (2003) as the population is divided into three groups i.e. judges, lawyers and litigants, probability sampling design of stratified random sampling was applied in this study.

The number of judges in different districts was taken from the Peshawar High Court' web site on December, 2012, and the number of lawyers in different districts were taken from the KPK bar council' web site, while the number of litigants was infinite. Consequently, a total of 10022 elements were selected for the desired population of judges and lawyers. The population includes 9806 lawyers and 216 judges, while the litigants' population was infinite so there sample size was calculated separately. Sample size was determined by using

Cochran (1977) formula; after the calculations the population size was 461, of which 20 were judges, 327 were lawyers and 114 were litigants taken from different districts using disproportionate stratified random sampling procedure.

Hypotheses of the Study

Hypothesis	Test to be Applied
(Ha1): Lawyers related causes are highly correlated with delay in civil justice in lower courts of Pakistan.	Correlation
Ha2: Delay in justice is predicted by the lawyers' related causes of delay.	Simple Regression
Ha3: There is statistically significant difference between the perception of lawyers, judges and litigants about the Lawyers related causes of delay in civil justice.	One way ANOVA

Results and Discussion

For hypothesis one correlation was applied and the predictor i.e. Lawyers' related causes of delay were found strongly and significantly correlated with the criterion variable of delay in justice. Figure 1 about the predictor' lawyers related causes of delay ($p = .000$) demonstrates a strong linear relationship based on the cluster of dots. This scatterplot shows that the cluster of dots between the lawyers' related causes of delay and delay in justice is very strong.

Secondly results for regression analysis indicate that in every district court the use of delaying tactics by lawyers has a positive impact on delay in justice. Which simply means that the more the lawyers used delaying tactics the greater the chances of delay in justice or we can say that in the courts where lawyers try to delay the case by using delaying tactics the decisions are more prone to be delayed.

Although the regression analysis revealed that as a whole the lawyers related causes of delay are mainly responsible for delay in justice in our lower courts. But to dig out the major factors making the lawyers mainly responsible for the delayed justice, mean response scores of the respondents to the specially designed questionnaire as shown in table 3 were evaluated and the following results were obtained.

All the respondents agreed with 'lawyers seeking adjournments from court on false grounds' as a cause of delay which was substantiated by Khan (2000). Judges, lawyer and litigants unanimously agreed with Mohan (2009) who said that frivolous applications for amendment of pleadings made by lawyers' play its role in the delay of justice. As far as false and frivolous litigations by lawyers are concerned judges, lawyers and litigants agreed with its being a cause of delay proving Hazra(2005) to be right. All the respondents confirmed the findings of Hossain and Hossain (2012) by being agreed with the lawyers' exploiting the technicalities in the legal procedure to delay cases. Regarding the issue of lawyers coming to court without preparation the respondents agreed with Crook (2004)who considered it as a cause of delay. Kumar (2012) said that lawyers always keep on strikes from courts on different pretexts due to which it becomes mandatory for judges to adjourn the case for the next hearing. In our study however the respondents were below slightly agree, belittling the significance of the issue as a cause. One of the protracting tactics used by lawyers is to summon unnecessary witnesses wasting court's time (Vos, 2004) but about this issue the respondents remained neutral in their opinion. As against Rehnet al., (2010) the respondents response about the problem of lawyers instituting unreal appeals in cases as a reason of delay was below slightly agree excluding it from the list of major causes responsible for delay in justice. About the question of "lawyers unreasonably prolong oral arguments" the response was below slightly agree which was not in conformity with Kumar (2012). Lawyers may resort to delaying tactics either to manage their own case load or to serve the interests of their clients(Krishnan & Kumar, 2011; Lone, 2011). Judges, lawyer and litigants all accepted these facts while responding to the questionnaire in our study.

To find out the perceptual difference between the lawyers, Judges and litigants regarding the causes of delay One-way ANOVA was applied which revealed that there were statistically non-significant differences between their perceptions.

Conclusions

Overall lawyers related causes of delay were found mainly responsible for delay in justice. Regarding the individual lawyers related causes of delay all those causes which got a response score of more or equal than slightly agree are enlisted below in the order of priority with more important preceding lesser important in the list.

1. False and frivolous litigations by lawyers is a common practice
2. Lawyers seek adjournments from courts on false grounds
3. Lawyers come to court without preparation
4. Lawyers exploit the technicalities in the legal procedure

5. Lawyers try to seek adjournments to manage their case load
6. Lawyers use delaying tactics for the interest of their clients
7. Lawyers make frivolous applications for amendment of pleadings

Recommendations

1. To ensure effective administration of justice, Bar Council should be reformed and institutionalized as watchdog machinery. Advocates should be reprimanded, suspended or removed from practice by the Bar Council if he is found guilty of professional misconduct.
2. Lawyers should be required via the code of conduct to take as many cases as they can handle and should come to court all prepared to defend their client.
3. An advocate should prepare and submit a monthly statement of his professional works to the Bar Council through the president of his Bar Association, which must include disposal of suits in the month conducted by him.
4. A time limit for disposing of every suit by an advocate should be specified by the Bar Council.
5. Lawyers should be trained in a way to make them accept that they are servant of the court instead of their clients and should try to dispose of cases on merit not for their clients.

Future Prospects

Despite, this research offered a number of contributions to the on-going investigation with reference to the Major causes of delay in justice in the lower courts of Pakistan, yet a lot can be performed to expand the understanding in this field. Considering the limitations of this study, the following recommendations are made for the future research.

1. Although we suggest Bar Councils to proactively regulate case handling by lawyers, exact mechanism needs to be devised through further research to bring lawyers activities under a systematic control.
2. Study needs to be conducted for finding out measures to transform the role of the lawyers to a servant of the court; in which capacity instead of fighting for the interest of their clients they will try to dispose of cases on merit.
3. We need to find out a way in which to train both the lawyers and judges and thus to change their expectations about the period of time which an ordinary case needs to be disposed of.

Table 1: Model Summary (Lawyers related causes of delay in justice and delay in justice)

Model	R	R Square	Adjusted R Square	F	Sig.
1	.683 ^a	.467	.466	402.362	.000 ^a

Table 2: Coefficients of Regression (Lawyers related causes of delay in justice and delay in justice)

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	3.457	0.107		32.253	.000
	Lawyers Causes of Delay	0.392	0.020	0.683	20.059	.000

Table 3: Question wise descriptive statistics about the lawyers related causes of delay

Question	Mean Response	Std. Deviation
Lawyers seek adjournments from courts on false grounds	6.27	1.137
Lawyers make frivolous applications for amendment of pleadings	5.16	1.946
False and frivolous litigations by lawyers is a common practice	6.38	1.166
Lawyers exploit the technicalities in the legal procedure	6.16	1.054
Lawyers come to court without preparation	6.25	1.249
Lawyers keep on strikes from courts	4.75	1.713
Lawyers summon unnecessary witnesses	4.10	1.718
Lawyers institute unreal appeals	4.45	1.736
Lawyers unreasonably prolong oral arguments	4.85	1.642
Lawyers try to seek adjournments to manage their case load	5.93	1.230
Lawyers use delaying tactics for the interest of their clients	5.35	1.713

Table 4: ANOVA results of (respondents groups) and lawyer' related causes of delay

	df	Mean Square	F	Sig.
Between Groups	2	.351	.573	.564
Within Groups	458	.612		
Total	460			

Table 4.32: Independent samples t test results of lawyers and judges having experience of 'up to ten years' and 'above ten years' about lawyers' related causes of delay

		Levene's Test for Equality of Variances		t-test for Equality of Means				
		F	Sig.	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference
Lawyers causes of delay	Equal Variances Assumed	.250	.617	1.857	345	.064	.16179	.08715
	Equal Variances not Assumed			1.873	270.16	.062	.16179	.08638

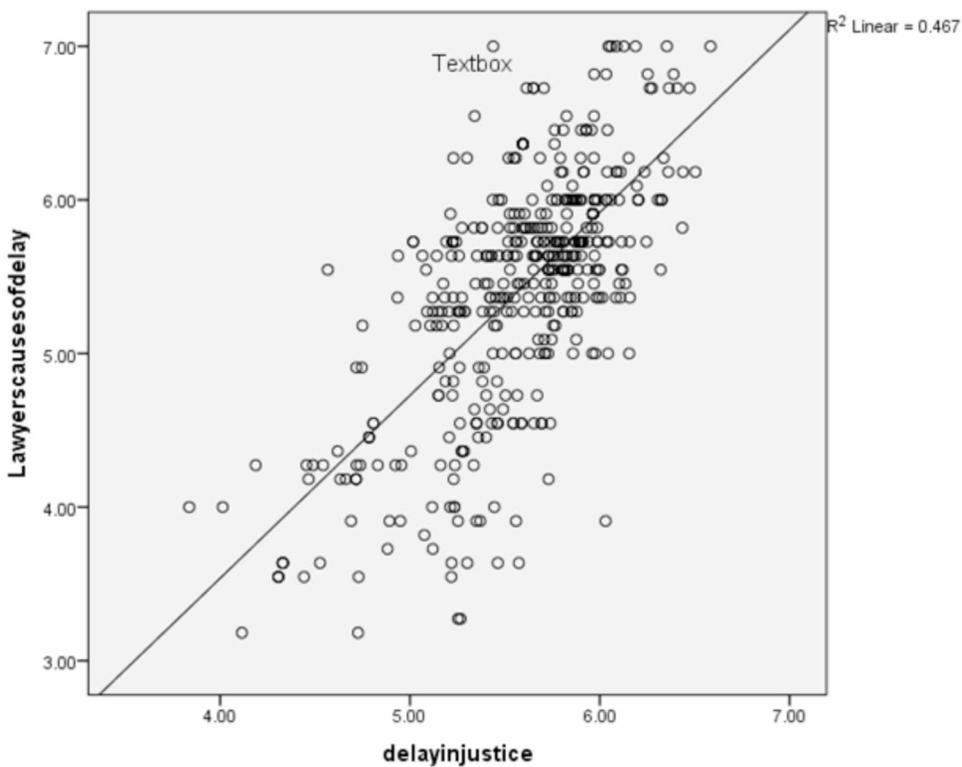


Figure 1: Regression Plot About Lawyers Related Causes of Delay in Justice

References

- Adler, J. W., Felstiner, W. F., Hensler, D. R., & Peterson, M. A. (1982). *The pace of litigation*. Paper presented at the The pace of litigation, Santa Monica.
- Asian Foundation. (1999). Pakistan legal and judicial reform project: Integrated final report. Islamabad: The Asian foundation Pakistan.
- Boucher, D., & Kelly, P. J. (1994). *The Social Contract from Hobbes to Rawls*. Routledge.
- Chaudhry, I. M. (2012). *Keynote Address*. Paper presented at the International Judicial Conference, Islamabad.
- Cochran, W. G. (1977). *Sampling techniques*. New York: John Wiley & Sons.
- Crook, R. C. (2004). Access to justice and land disputes in Ghana's state courts : the litigants' perspective. *Journal of legal pluralism and unofficial law Journal of Legal Pluralism and Unofficial Law*, 50(1), 1-28.
- Hazra, A. K. (2005). *The Need for Judicial Reforms: A Look at India*. Paper presented at the Law and policy reform at the Asian development bank: Challenges in implementing access to justice reforms, Michigan, United States.
- Hazra, A. K., & Micevska, M. B. (2004). *The Problem of court congestion: evidence from the indian lower courts*. Paper presented at the Royal Economic Society Annual Conference 2004. Swansea.
- Hossain, M. S., & Hossain, M. I. (2012). Causes of delay in the administration of justice: A look for way out in Bangladesh perspective. *ASA University Review*, 6(2), 103-116.
- Khan, A. U. (2000). Delays, costs and glorious uncertainty - how judicial procedure hurts the poor. In S. Gangopadhyay (Ed.), *Economic reforms for the poor* (pp. 298-343). New Delhi: Konark Publishers.
- Khan, I. H. (2000). *The Judicial System of Pakistan Measures for Maintaining Independence and Enforcing Accountability*. Paper presented at the Global Conference on Comprehensive Legal and Judicial Development, Washington, D.C.
- Krishnan, J. K., & Kumar, C. R. (2011). Delay in process, denial of justice: the jurisprudence and empirics of speedy trials in comparative perspective. *Georgetown Journal of International Law*, 42(4), 747-784.
- Kumar, V. A. (2012). Judicial delays in India: causes & remedies. *journal of law policy and globalization*, 4, 16-21.
- Law and Justice Commission of Pakistan. (2003). *Expediting trial proceedings Report no 60*. Islamabad.

- Law Commission of India. (1988). Resource allocation infrastructural services in judicial administration (a continuum of the report on manpower's planning in judiciary: a blueprint) 127. New Delhi: Law commission of India.
- Lone, A. A. (2011). *Responsibility of the bench and bar in dispensation of justice*. Paper presented at the National judicial conference, Islamabad.
- Mohan, A. (2009). *Justice, courts and delays*. New Delhi; India: Universal Law Publishing Co.
- Mora, L. P. (2000). *Making People the Focus a Risk worth Taking. Comprehensive Legal and Judicial Development*. Washington DC.
- Nahaki, A. A. K. (2011). *Responsibility of the Bench and Bar in Dispensation of Justice*. Paper presented at the national judicial conference Islamabad.
- Nawaz, C. H. (2004). delay reduction with effective court management. *PLD*.
- Rehn, N., Naik, A., Jain, D., Singh, A., Robinson, N., So, W. W., . . . Kanwar, V. (2010). Justice Without Delay: Recommendations for Legal and Institutional Reforms in the Indian Courts. *Jindal Global Law Review, Vol. 2(1)*.
- Reiling, D., Hammergren, L., & Giovanni, A. D. (2007). *Justice Sector Assessments a Handbook*: The world Bank.
- Sekaran, U. (2003). *Research methods for business: A skill-building approach*. New York: Johan Wiley & Sons.
- Vos, W. D. (2004). Delay in South African civil procedure. In C. H. V. Rhee (Ed.), *The Law's Delay: Essays on undue delay in civil litigation* (pp. 335-342). Antwerp: Intersentia
- Wallis, J. D. (2009). A Critical Evaluation of Delay in an Ohio Criminal Trial Court *Court Executive Development Program 2008-2009 Phase III Project*. Illinois: Institute for Court Management.
- World Bank. (2002). World development Report: Building institutions for markets. New York: World bank.
- Xavier, A. (2009). A mission; a responsibility towards creating a loving and caring world. *The Indian Arbitrator, 1(1), 2-5*.

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