INVESTIGATING PROCEDURAL, INSTITUTIONAL & CIRCUMSTANTIAL IMPEDIMENTS LEADING TO DELAY IN DISPENSATION OF JUSTICE

Ahsan Jamal Pirzada, Sabeeka Zafar, Tanees Fatima and Muhammad Adil

(CGP #04-084)

3RD RASTA CONFERENCE

Thursday 14th & Friday 15th September 2023

Gun & Country Club, Islamabad

This document is unedited author's version submitted to RASTA.

RESEARCH FOR SOCIAL TRANSFORMATION & ADVANCEMENT

Competitive Grants Programme for Policy-oriented Research

Pakistan Institute of Development Economics

ABSTRACT

The paper aims to explore the procedural, circumstantial and institutional barriers that lead to backlogs in the administration of justice. It examines national and international reforms and their success in improving the judicial system. Additionally, in order to achieve the objective of this study, review of cause lists, order sheets have been conducted, whereas, key informant interviews with legal practitioners, academics and judicial professionals have also been conducted to develop a model procedure that may be able to address the issues of delays in the adjudication of civil cases. Moreover, this paper has also examined the judicial models and reforms of various countries, including the United Kingdom, the United States, Canada, and Australia, to identify and propose an optimal solution to existing problem. The paper recommends a complete overhaul of the Code of Civil Procedure, 1908, and advocates for automation of court processes, active case management, and the establishment of an independent body of observers to evaluate the performance of the judiciary.

PREFACE

This research was funded and supported by Research for Social Transformation and Advancement (RASTA) CGP. We thank our supervisors, Mr. Sultan Mehmood and Mr. Khalid Chauhan from RASTA, whose insight and expertise greatly assisted the research process. We would like to thank President Islamabad Bar Council, Advocate Supreme Court of Pakista ("**ASC**") Qaiser Immam, Honorable Judges of District Judiciary Islamabad and Province of Punjab and other esteemed lawyers such as Adv Hassan Ali Raza, Prof. Alam Zab Khan, Prof. Muhammad Waqas, Dr. Saqib Jawwad (Civil Judge, Islamabad), Dr. Saima Sarwar, ASC Attaullah Kundi, Barrister Asghar Pathan and many others, for assisting us in determining the impediments that cause backlog in the district judiciary and giving recommendations in developing the model procedure to replace the archaic judicial system.

We would also like to express our appreciation to Advocate Roha Tahir Ghauri, Ms. Maham Abid, Mr. Sanan Javed, Advocate Hamza Khan and Advocate Tayyab Abbasi for their valuable contribution during the working of this research paper.

TABLE OF CONTENTS

LIST OF FIGURES

PROLOGUE

1.1 Current state in Pakistan

Mounting judicial backlog and delays are long-standing problems that have been plaguing Pakistan's justice sector for several decades. According to the latest statistics provided by the Law and Justice Commission of Pakistan, there are about 2 million cases in pendency with some cases taking up to 20 years to be resolved. The problem is particularly acute in the lower courts where a lack of appropriate resources has led to 82% of pendency being attributed to the District Judiciary (Law and Justice Commission of Pakistan, 2021). It can safely be stated that the major driving force behind this issue is the Code of Civil Procedure, 1908 (the "**CPC**"), which is not only, in itself, an anachronistic relic inherited from the British Raj but also suffers from piecemeal amendments that lack a systematic policy framework that would allow them to be implemented seriously.

In light thereof, this research paper aims to demonstrate how overburdened the civil justice sector is in Pakistan, by providing a 'review of cases' showing excessive workload and other impediments faced over the course of proceedings. The paper will also provide a breakdown of the civil procedure as-is to identify the bottlenecks and loopholes that allow the prevalence of dilatory practices at various stages during the life cycle of a civil trial, leading up till its disposal. An examination of cause lists and order sheets has also been conducted. Finally, this research paper will, by drawing upon the findings from the aforementioned and in conjunction with responses from key informant interviews of prominent legal professionals, members of the judiciary and experienced academics, attempt to propose a model procedure which, if implemented, could significantly reduce the caseload and streamline the procedural landscape governing various stages of a civil trial.

1.2 Reasons Behind Delay

Judicial backlog and delay are multifaceted issues with a range of stimuli leading to the sustenance of the current adverse scenario Pakistan finds itself in. However, as delay within courts and connected judicial backlog remains an international issue, affecting nearly every country in the world, (Hazra & Micevska, 2004) said stimuli have been illustrated through academic discourse and research.

The question then is, what are these said stimuli? They can be attributed to judicial, societal and procedural causes. To best communicate their effect on the prevalence of backlog and delay, each shall be discussed individually.

Judicial factors mostly pertain to certain corrupt practices within the subordinate judiciary, with court staff being highly susceptible to receiving gratuity/bribes in return for either delaying or expediting cases. (National Accountability Bureau, 2002) It may come as no surprise that this has created a hostile attitude towards the court and has resulted in people losing confidence in the justice system, as it stands. Beyond this, judges also suffer from the issue of regular transfers, (Iqbal, 2006) as a direct result of which the cases are abruptly interrupted, with the newly transferred judge needing additional time to acquaint himself with the case and repeat certain important procedural requirements. (Alam, 2010) These factors have a compounding effect towards increasing delay and pendency.

Social factors, mainly concern the attitudes of the legal fraternity towards cases and the connected attitudes of judges, this is most prevalent regarding adjournments where lawyers have shown a tendency to apply for adjournments on frivolous grounds (Siddique, 2010) and correspondingly judges have a "blanket" approval approach to such applications. (Feeley, The

Process is Punishment: Handling Cases in a Lower Criminal Court, 1992) It may be highlighted here that, most of the time these adjournments are granted at the request of clerks, appearing on behalf of the lawyer(s), engaged in the case before the concerned court. This symbiotic ignorance of the speedy dispensation of justice remains to be one of the major causes of delay.

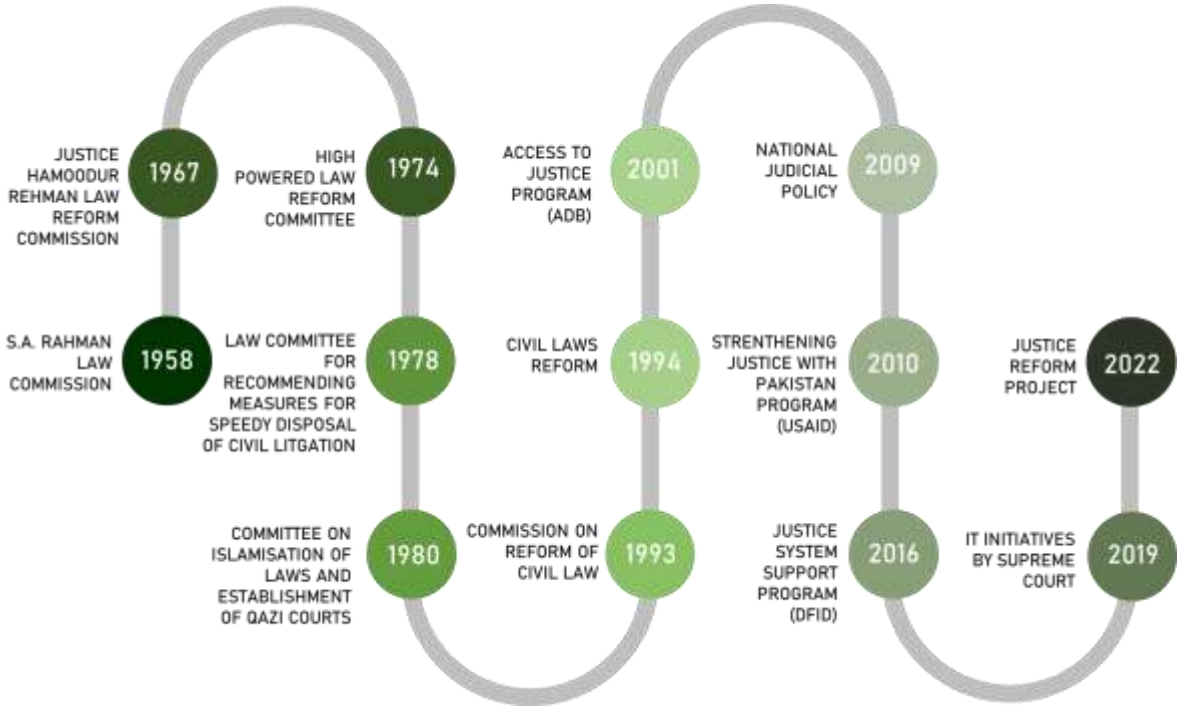
Moreover, social factors also extend to the evidence phase where witnesses called are usually found to be in complete repudiation of court orders for them to come in for evidentiary hearings, this leads to circumstances where the evidence phase, on average, takes twice as long as the rest of the steps of the case. (Asia Foundation, 1999) The foregoing may be attributed to the piecemeal basis on which witnesses are called which results in some witnesses being heard months apart, (Asian Development Bank, 2003) leading to lawyers requiring additional adjournments to prepare their cases. It is imperative to note that, at times, this is done on purpose, as a part of a well-thought-out strategy, by the lawyers, to cause further delay in order to appease their respective clients.

The root of all these problems can be found in the procedural deficiencies found within the CPC, these deficiencies result in the above-mentioned issues and many more. Hence a separate chapter (chapter 3) has been allocated to discuss the overall effect of a procedural law regime which is lacking as well as a discussion of its problematic application.

ATTEMPTS AT REFORM

This section is dedicated to elucidating upon and analyzing the various national and international reform efforts to develop a contextual understanding of what considerations must be taken into account to ensure the success of future policies and initiatives.

Figure 0-1: Major reforms through the years



2.1 National Efforts for Reform

With the promulgation of the Ordinance (LXXI) of 2002, the National Judicial Policy Making Committee (the "**NJPMC**") was established as the apex judicial forum for formulating policy for improving the capacity and performance of the judiciary. The Committee is headed by the Chief Justice of Pakistan as Chairman with the Chief Justices of the Federal Shariat Court and the High Courts as members. Since its inception, the NJPMC has been responsible for, *inter alia*, collecting data on the institution, disposal and pendency of cases in the courts, monitoring and setting standards for performance in the judiciary, its functions also include coordinating, harmonizing and ensuring the implementation of judicial policy. (Law and Justice Commission of Pakistan, 2021)

In 2003, the NJPMC approved an 'Automation Plan' for the judiciary and accordingly, the National Judicial Automation Committee was constituted for its implementation. The plan proposed the replacement of the courts' manual information management system with a computerized one. The idea was to develop case flow management software for the automated tracking of institution/disposal of cases and the generation of electronic cause lists. The system was also envisioned as a tool for monitoring and evaluating judicial performance and complaints as well as a research and reference system. (Law and Justice Commission of Pakistan, 2004) However, since 2003, there has been limited progress in terms of automation with courts continuing to manage cases manually and most efforts on this front being piecemeal, limited in scope or not being appropriately taken advantage of due to a lack of awareness and training.

The Law and Justice Commission of Pakistan (the "**LJCP**"), in an attempt to provide an opportunity for all justice sector stakeholders to come forth and deliberate upon recommendations for reform, began hosting annual National Judicial Conferences, from 2007 onwards. The said event is often attended by judicial officers, representatives of the Bar, academics, and other prominent figures in the legal industry and have covered topics surrounding clearance of backlog, legal education, ADR, automation and eradication of corruption et al. (Law and Justice Commission of Pakistan, 2022) However, while the intent behind the initiative is certainly admirable, little of what has been discussed has been translated into real change.

In a 2008 report by the International Crisis Group, it was noted that the judiciary of Pakistan was suffering from not only a severe shortage of judges but also a superior judiciary that was unwilling to hold the subordinate judiciary appropriately accountable. The result of this was that where an efficient system required that no judge have more than 300 cases in their file at a time, most judges had to take up excessive caseloads which meant the quality of judgments often suffered. Furthermore, while lower court judges were often reprimanded by the superior judiciary for inefficiency and misconduct in the form of corruption, they were seldom held accountable even though the High Courts' revisional jurisdiction would allow them to take action on unfair proceedings. The NJPMC has also acknowledged that there was a pressing need for the superior judiciary to increase their monitoring of the lower courts. (International Crisis Group, 2008)

Moreover, the National Judicial Policy 2009 (amended in 2012) (the "**NJP**") was formulated with the objective of reduction of judicial backlog, establishing timelines for civil and criminal proceedings, eradication of corruption and incorporating modern technologies and techniques to increase judicial efficiency. However, in the years that followed its publication, very little implementation was seen with regard to the objective of expeditious disposal of civil cases. For example, the policy recommended that there be 4-month timeline for rent cases along with guidelines on how to make that possible, however, to date, there has been no such initiative whereas, even in the case of family disputes, where a 6-month timeline was established by virtue of s.12A of the Family Courts Act 1964, a study in 2021 showed that approximately a third of all

family cases take over 6 months to be resolved. (Munir, 2021) Reflecting on the achievements of the NJP, Sara et al. noted that the NJP had failed to meet any of its objectives and was essentially just another document without any real implementation. The primary precipitating factors leading to this outcome included the fluctuating presence of a political will, lack of appropriate training and development of judicial officers, lawyers and a legal culture that is resistant to change. (Sara, Ansari, & Jabeen, 2018)

Notable efforts towards automation in the lower courts were made by the Sindh High Court which developed the Case Flow Management System for District Courts ("**CFMS-DC**") in 2011. The system was later adopted by Baluchistan and Islamabad and partially adopted by Khyber Pakhtunkhwa. The Punjab High Court resisted its adoption due to reservations that the system's data would be stored in servers in Sindh, however, later implemented the case management system as well. Despite these initiatives, the LJCP acknowledged that automation in the justice sector was still suffering from fundamental issues such as lack of a foundational policy, poor intra-sector and inter-provincial integration, patchy implementation and volatile administrative will. (Law and Justice Commission of Pakistan, 2016) The result of such a half-hearted implementation is that since the 2003 'Automation Plan', the full potential of IT systems in reducing delays and resolving backlogs has yet to be reached. On the other hand, turning to the Supreme Court where the judiciary has been relatively proactive in the implementation and use of case management systems in recent times, a marked reduction in backlogs has been observed minimizing the caseload from 54,735 to 52,450 cases in February, 2023, alone. (Supreme Court of Pakistan, 2023)

As has been depicted in Figure 2-1, provided hereinabove, there have also been several Law Commission Reports through the decades which attempted to effect systemic reform in the existing legal regime, however, many of them have remained either inconsequential or found their recommendations later withdrawn due to poor reception from the public or legal profession. An example of this was the Law Reform Commission of 1958 which, under the chairmanship of Mr. Justice S. A. Rahman, proposed radical changes to the CPC , however, by 1962, most of the amendments were withdrawn as the litigants, members of the bench and bar had become accustomed to the technicalities of the existing procedure. Needless to say, to a certain degree, such resistance to change continues to be reflected in legal culture even today. An increase in the number of judges, courtrooms and better working conditions was also a common recommendation that was regularly ignored[1] and to date, many vacancies persist across various judicial posts in the country, further compounding the problem of an understaffed judiciary. (Law and Justice Commission of Pakistan)

Most recently, in 2022, the Islamabad High Court launched the Justice Reform Project (the "**JRP"**) intending to transform the existing justice delivery system in the Islamabad High Court and District Courts, within the capital territory. The project was proposed to kick off with a 10-week diagnostic study providing for a Charter of Key Reforms and a Transformation Roadmap which would inform a 5-year transformation program in 12 identified reform areas including the development of an institutional framework for ADR, case flow management, organizational redesign etc. The JRP currently has approved funding of approximately PKR 310 million for 3 years, courtesy of the Departmental Developmental Working Party. (Islamabad High Court, 2022) The project appears promising in that it is heavily focused on not just diagnosing the problems but also on operationalizing and implementing practical reforms. However, transparency, accountability and political will shall remain the major determinants of the JRP's success. If the

[1] See: High Powered Law Reform Committee 1974, Law Committee for Recommending Measures for Speedy Disposal of Civil Litigation 1978, Commission on Reform of Civil Law 1993

project is successful, it could stir the much-needed overhaul of our colonial justice sector, not just in the capital but across the country.

2.2 International Efforts for Reform

Considering that judicial efficiency has a direct bearing on the economic growth of a country, and Pakistan being a nation rich with economic potential, many international bodies have tried to aid Pakistan in its battle against case pendency. The foremost of these efforts was the "Access to Justice Program" launched by the Pakistani government with funding and aid from the Asian Development Bank in 2002. (Asian Development Bank) The aid awarded to Pakistan amounted to 350 million dollars in the form of a loan, (Asian Development Bank) the project focused on three urban centres in Pakistan with the highest case rates, namely Karachi, Lahore and Peshawar. (Chemin, 2009)

The project took ten judges from each of these areas (seven civil and three criminal) and put them through three different steps, the first being the sending of said judges to Singapore to learn from its "state of the art" subordinate courts. This was followed by workshops on case management at the Judicial Academy. Lastly, a bench/bar liaison committee was established in each pilot district to monitor operations, develop and organize regular meetings and workshops. (Chemin, 2009)

These activities accrued a cost of 3 million dollars, (Chemin, 2009) this amount did not even account for 1% of the total aid awarded. There is also no financial breakdown available online to illustrate where the rest of the funding went. Though the project was fruitful within the ambit of the courts of the judges it took on as it's subject, (Saeed, 2020) the overall effect on pendency is so ignorable to the point of completely being dismissed, where the project started at a time when pendency was at 1.2 million cases, (Armytage, 2003) today pendency stands at more than 2 million cases. (Law and Justice Commission of Pakistan, 2021)

Other notable results of the project were, the publishing of court statistics, (Saeed, 2020) albeit said statistics were not analyzed and hence are difficult to appraise as a reflection of the judicial system. Moreover, the project also improved courthouses, increased the number of judges and improved the benefit packages judges receive, (Asian Development Bank, 2008) however, there was no data published to illustrate what effect these steps had on court efficiency.

The narrow scope of the training aspects of this project, focusing on select districts, and, even within those districts, on select judges meant that the project focused too much on training individuals rather than creating long-standing remedies within court institutions. Beyond that, the other aspects of improving judges' work and living standards as well as the publishing of statistics also were too sporadic and open to interpretation, lacking any justification or analysis to conclusively reflect a positive effect on pendency.

Further collaborative attempts have been made in recent times, an example of which is the "Rule of Law in Pakistan Programme 2016," a project in which the Pakistani government collaborated with the UK government along with the Department for International Development (DFID). (Department for International Development) To this end, the UK government awarded Pakistan a sum of 9.98 million pounds for stability and prosperity. Among its many proposed outcomes, the programme also aims to improve cross-institutional standards, by improving professional standards. (Department for International Development) Importantly, the programme was projected to complete in March 2020, (Department for International Development)however, at the time of writing this paper, its findings, methodology and results have yet to be published. This lack of transparency in programs and projects means that their results remain immeasurable, however, the steady increase in case pendency from 2013 to 2021 (Law and Justice Commission

of Pakistan, 2021) does reflect that the intended results of the project were not materialized, within the justice sector.

Pakistan has over time also ratified several international conventions whose objectives are to ensure and nurture judicial efficiency. Paramount amongst these are the Bangalore Principles of Judicial Conduct 2002 and the Latimer House Guidelines 1998. The former in its Value 6 (The Bangalore Principles of Judicial Conduct, 2002) contains an undertaking for judges to be "competent and diligent," however, the entire value mostly contains moral and professional competencies a judge must have, not measurable outcomes. The latter in a similar vein also contains moral and professional competencies with the addition of the requirement for judges to keep up with the times for expeditious justice. (Latimer House Guidelines, 1998)

2.3 Conclusion

The overall picture that emerges from the above exposition is that reform efforts, both national and international, have had lacklustre outcomes in terms of expediting the dispensation of justice in civil courts. In fact, most of these efforts amounted to little more than comprehensive reports on the subject that spurred temporary and sporadic bouts of reform that were seldom meaningful in the grand scheme (for example the ADB's Access to Justice Project and the NJP). Certain reforms, such as those relating to automation and digitization, have been in the pipeline for decades, seeing only partial and halfhearted implementation which has led to a gross underutilization of its potential to optimize and facilitate effective case management. Lack of transparency and accountability is perhaps another limiting factor in that the subordinate judiciary is accountable only to the high courts and there is no independent observer that can audit its performance against an objective standard. While the independence of the judiciary is a priority, this also means that there are limited external motivators. This is reflected in the negligible impact of various international efforts and law reform commissions. It is evident that there is a great need for a radical reimagining of civil procedure that allows for the institutional incorporation of automation and other modern procedural tools. However, this may not be possible in the absence of sustained institutional demand and acceptance of change. In such circumstances, the Bar Councils and Associations can play a pivotal role in not only regulating the industry and providing appropriate training to professionals but also in implementing policies keeping in view local concerns.

REVIEW OF CODE OF CIVIL PROCEDURE – PROCEDURAL SHORTCOMINGS

This chapter aims to set out findings from a detailed review of the CPC to identify key provisions that either recommended to be updated, revised or repealed. These conclusions are drawn based on a diagnostic analysis of all relevant provisions (Orders I-XX, XXXVII, XXXIX) using various recognized commentaries, relevant caselaw, available literature as well as drawing from professional experience.

3.1 Pre-trial Phase

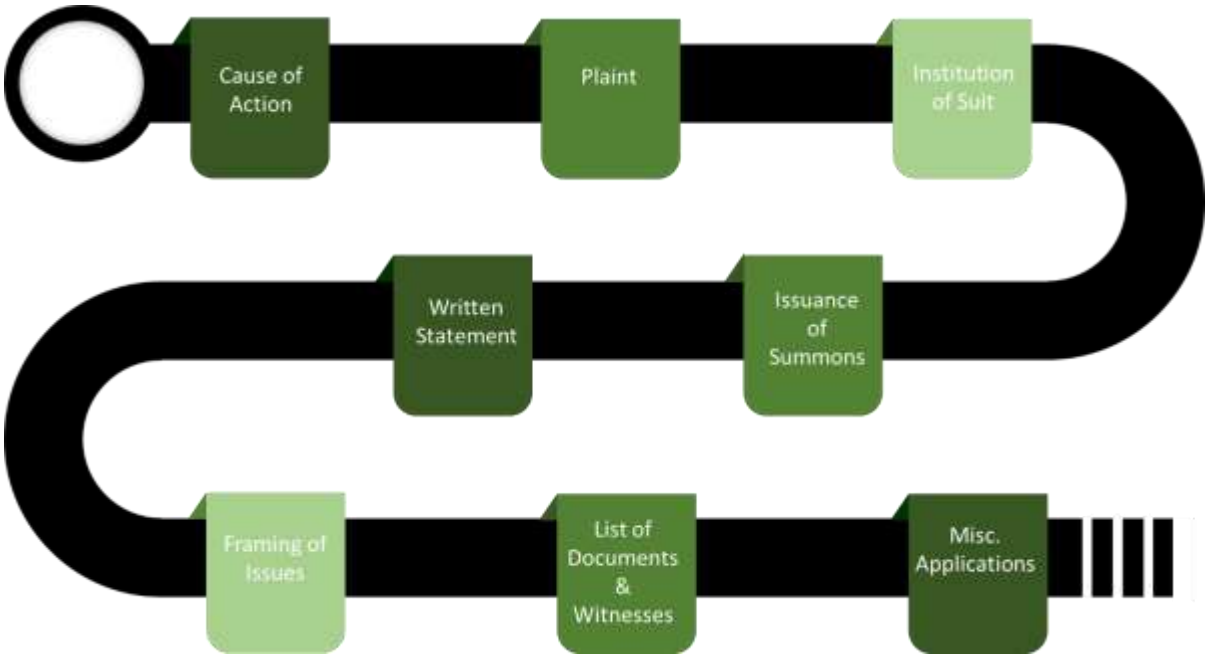


Figure 0-1: Snapshot of the Pre-Trial phase

The pre-trial phase consists of preliminary matters arising either at the time of the institution of a suit or shortly before the trial and evidence phases commence. This includes identification of appropriate causes of action, jurisdiction (geographical and pecuniary), necessary parties, filing of plaint, subsequent issuance of summons, filing of written statements, framing of issues and any relevant amendment to pleadings alongside filing of lists witnesses, to be summoned by the Court.

To this end, the first necessary part of any suit is establishing who the plaintiff and defendant shall be, commonly referred to as the parties to a suit. This is a necessary step as relief can only be sought by and sought from specific persons with interest in the suit. Impediments at this stage usually take the form of a party taking inordinate liberties to request the impleadment/removal/substitution of all 'proper and necessary parties' at the expense of time and costs to the court and other stakeholders.

Starting with Order I of the CPC, which deals with parties to the suit, the roots of procedural delay regarding parties can be found in its rules. Importantly, Order I Rule 10 is, perhaps, the provision that is most exploited in this regard. The rule deals with the court's power to add, subtract or substitute any of the necessary parties to best decide the controversy in a case, if satisfied that the suit was instituted due to a bona fide mistake.

This rule can be enforced at any point of the suit (Muhammad Shaban v Malik Sher, 2007), and the court may exercise this jurisdiction of its own volition or through a relevant application (Order I Rule 10 (2)), the court need only be satisfied with a bona fide mistake, i.e. an unintentional error (Blacks Law), and necessity of replacement of necessary party for determining the real matter in dispute.

Due to the subjective nature of such applications and the fact that containing necessary parties is important for passing an effective decree, (Vidur Impex Traders Pvt Ltd v Tosh Apartments Pvt Ltd, 2013) a suit can only proceed in the presence of such parties (Ghulam Sarwar v Province of Punjab, 1982). This means that many lawyers manipulate this rule by filing applications for the striking out or for addition of parties, wasting the time and resources of the court. Moreover, if

such an application is successful at a later stage of a case, it can mean a suit and its proceedings must start anew, quite literally.

Once the parties to a suit have been decided, the next step in a suit is the issuance of summons to the defendant, this is another phase where the procedure is often manipulated to cause further delays. The relevant provision for service of summons is Order V, therein, service may be made through three modes: personal service, as per Order V Rules 12, 16 and 18, service by affixation, as per Order V Rule 17 and substituted service, as per Order V Rule 20. (Messrs Ark Garments Industry Pvt Ltd v National Bank of Pakistan, 2013) Service of summons is a considerable hurdle as where a service is ineffectual, mere knowledge of a suit is immaterial (1955 1 C 119). For service simply serving a family member is also not sufficient unless the defendant has appointed them as their agent. (Tahir Mehmood Afridi v Muhammad Dayar, 2011)

The current procedure, with reference to the issue of summon, is erroneous as it works in steps, where at first, as per Order V Rule 10, the court orders service to be made in person, whereas, if the defendant or their agent not being found at the address provided or the defendant or their agent refusing to sign the acknowledgement, a copy of summons is affixed to a conspicuous part of the property, whose address had been provided as per Order V Rule 17. It is to be noted that, this is not usually the case, as the common practice is for the courts re-issue summons multiple times, costing precious time and resources. Finally, if all else fails then, the procedure for substituted service is followed under Order V Rule 20, whereby alternate methods may be used such as affixation as mentioned above, electronic mail such as fax e-mail etc., courier services or an ad in the press. According to Order V Rule 20, either one or all of these methods may be used simultaneously.

These steps waste time and lead to needless adjournments (Peshawar High Court, 1990) as the court is only empowered to deliver an ex-parte decree if and where the court is convinced that the service of summons was done in a proper and timely manner. Moreover, the current situation of having to personally serve summons leads to added costs on the court. Additionally, judges often wait for an application under Order V Rule 20 to make an order for substituted service, however, judges are empowered to make relevant orders for substituted service without having received an application, (Hassan, Ahmed, & Siddiqui, 2021) further wasting the time of the court.

Beyond this, another essential part of the pre-trial phase is pleadings, i.e., the plaint and written statement of the plaintiff and defendant, respectively. The provisions concerning pleadings are Orders VI, VII and VIII of the CPC. Many problems arise out of pleadings, primarily regarding their amendment, the rejection or return of plaints and the striking off of defence.

Order VI Rule 17 states that pleadings may be amended at any stage of the suit, with the leave of the court, to determine the real controversies in a suit. The only basis for rejecting such an application would be if the application is made due to *mala fide* (AIR 1940 PAT 555) i.e. any plea which is derogatory (Mumtaz Baig v Sarfraz Baig, 2003) or where an application is made with undue delay (AIR 1956 A 439).

Untimely, amendments and frivolous applications for such amendments can lead to delays. Frequent amendments to written statements and plaints have been attributed as one of the leading causes of judicial delay (Alam, 2010) with 80% of all applications made under this provision being made to cause delay. (Mohan, 2009) To remedy this, the Peshawar High Court Amendment of Order VI Rule 17 states that rather than the amendment of pleadings being allowed at any stage, it may only be allowed before the framing of issues. However, the effect this amendment has had is yet to be seen.

There are also issues which specifically apply to plaints and written statements individually. Concerning plaints, the first issue is the return of a plaint under Order VII Rule 10, this action can be taken by the court itself or through a relevant application. Return of plaint usually follows where the court does not have the correct jurisdiction to try a suit. Applications for the return of a plaint are often used as a dilatory practice, alongside applications made under Order VII Rule 11 for the rejection of a plaint, which is an application made based on either jurisdiction or improper filing of suit or no cause of action. It is claimed that on average, 20 applications are filed in the lifespan of a suit leading to delay (Zaidi, 2017) applications under these rules add to this number. To further delay applications under Order VII Rule 11 are often appealed and further challenged in the High Court, which takes an average of two years to review and dispose of such applications. During this time, a suit cannot move forward in the district court leading to further delay. (Zaidi, 2017)

The procedure for written statements is also used as a mechanism to create delay. The relevant provision for written statements is Order VIII, Rule 1. It provides that, a defendant has 30 days to file a written statement and no more than two adjournments will be granted for this filing. Failure to file the written statement within the given period activates Order VIII Rule 10, which empowers a judge to make an ex-parte decree or any order the judge sees fit. The main problem here is that in most cases, more than two adjournments are granted for the filing of the written statement, with a study by the Legal Aid Society showing that on average, the period for filing of written statements is 5.78 months far exceeding the 1-month time limit prescribed. (Zaidi, 2017) This is because as long as a lawful justification is provided, extensions may be granted for the filing of the written statement (Sarwas v State, 2017). Vague terms such as lawful justification and a lenient approach to the provision, along with the fact that the provision itself allows the court to make any order it sees fit, rather than proceeding ex-parte, are therefore a leading cause for delay.

The proper institution of a suit is a necessary pre-requisite of speedy disposal. The current scenario allows litigants to create halfway houses where; a suit may be instituted but there is negligible substantive development. Such suits not only clog the judicial machinery by act as drain on public and private resources. For this reason, it is important that the language used to frame these procedural provisions be altered to carry a more imperative connotation (as opposed to directory or discretionary). Chapter 5 shall further expand on potential solutions by putting forward a model procedure which posits a potential solution whereby institutional hiccups are handled by streamlining procedure and allocating a responsible body for it.

3.2 Evidence Phase

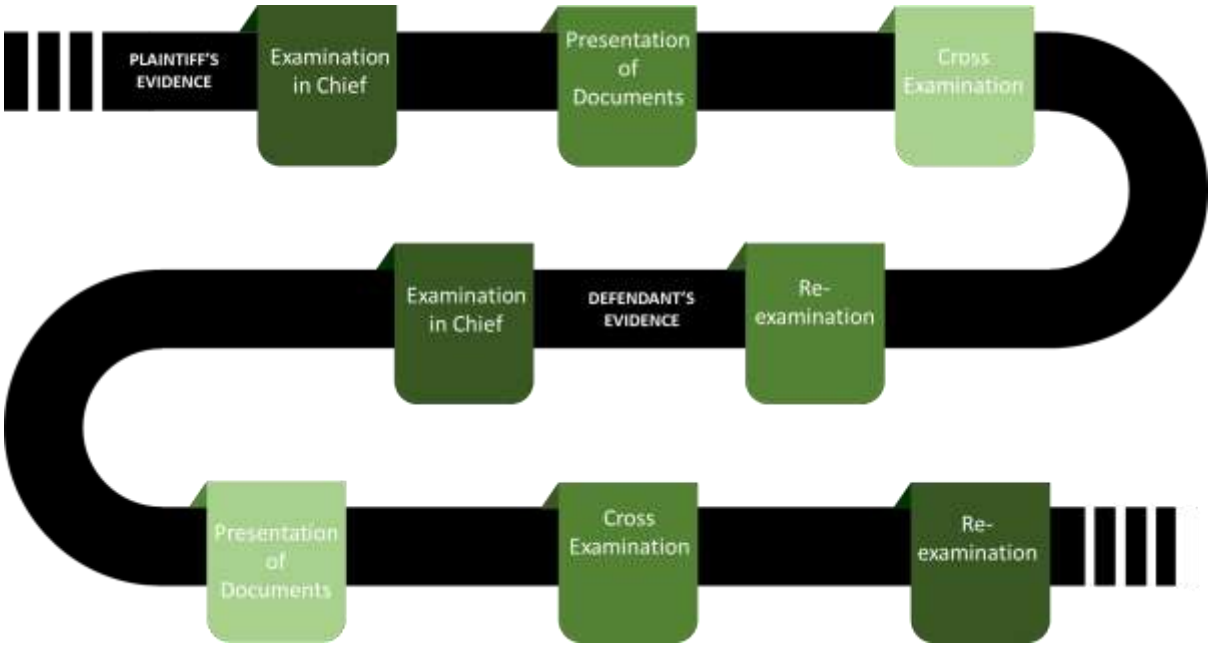


Figure 0-2: Snapshot of the Evidence phase

The evidence phase comprises of the considerations regarding admissibility and weight of evidence at trial by way of examination of witnesses and documentary or other types of evidence. This stage reportedly takes twice as long as the other stages of a suit, (Asia Foundation, 1999) which is partly due to the lax nature of witnesses who disobey summons, the court's tendency to grant an adjournment rather than enforce the summons, (The Law Reform Commission of Tanzania, 1986) and partly due to complex and confusing procedure attached to this phase, and a tolerant approach to the production of documentary evidence.

Regarding the production of documents, the first relevant provision is Order XII Rule 8, which provides the procedure for a notice to another party to produce evidence where it is relevant to the suit. Yet, there exists no provision for non-adherence to such a notice, meaning that necessary documents cannot be enforceably produced, this may lead to delay where such documents are necessary for the advancement of a suit. The subsequent relevant provision to produce documents can be found under Order XIII Rule 1, whereby a party must produce all relevant documents in their power on the first hearing of the suit. Rule 2, of the said Order, further states that, the court shall receive no documents in the parties' possession after the first hearing unless good cause is shown why such documents were not produced earlier. To this end, there is no hard and fast rule as to what good cause is it can be defined as any adequate, sound or genuine reason. (Shah Muhammad v Habibullah, 2020) Though necessary, this leniency opens documentary evidence to unscrupulous practices, as there is no time bar for when such documents may be produced. Meaning that documents produced after the evidence phase may lead to the court having to re-open the evidence phase wasting time.

To remedy this, the Peshawar High Court Amendment of Order XIII Rule 1 provides an additional 30 days after the first hearing in which a party may provide supplementary documents. However, this only partially solves the issue as it still needs to create a time bar beyond which further documentary evidence shall not be entertained.

In addition to the aforementioned, non-appearance of witnesses has been cited as one of the main reasons behind the delay. (Nawaz, 2004) This leads to a trial being carried out on a piecemeal

basis where certain witnesses are examined months apart. This goes against the principle of continuous hearing, making it difficult for all stakeholders in a suit to remember every witness statement (Sato, 2001) this leads to the need for more adjournments after the evidence phase to prepare litigant cases and to pronounce relevant judgements.

To combat this issue of non-appearance, the Code of Civil Procedure, 1908 contains three provisions. It has tried to reduce costs associated with the appearance of a witness by making provisions under Order XVI Rule 2 for the remuneration of witnesses so that witnesses feel encouraged to attend on time. The CPC has also made provision for the enforcement of attendance in Order XVI Rule 10, which empowers a judicial officer to issue a warrant for arrest in the name of a witness not complying with a summons to give evidence under Section 32 CPC. This, coupled with the Rs. 2000 fine a witness may incur under Order XVI Rule 12 for failing to appear in court or satisfy the court with their evidence, represents the right attitude towards witness compliance. However, unfortunately, these provisions are rarely applied as represented by the Legal Aid Society's research in the district courts of Larkana which showed that on average, the plaintiff's evidence alone took more than 9 months. (Zaidi, 2017)

This can also be attributed to Order XVI Rule 1, which clearly states that a list of witnesses shall be submitted in court, at most, by seventh day after the settlement of issues, and only witnesses named in the list shall be called for examination. However, it also says that additional witnesses may be called through an amendment to the list where good cause is shown for the prior omission of the further witness from the list before. To remedy this, different jurisdictions have amended the rule. The Peshawar High Court Amendment extends the time for the initial list to 30 days after providing the list of witnesses. Still, it maintains that where an omission has been made, it may be remedied with the court's permission. Whereas, the Lahore High Court Amendment allows other witnesses to be called for the examination, which is not contained in the list if good cause as to prior omission is shown, this is possibly to avoid procedural formality and to save time. These amendments reflect an ignorance of the real issue: there is no bar on the number of witnesses which can be called in a case, which has been referred to as one of the leading causes behind lengthy evidence phases. (Vos, 2004)

While the concerns regarding open-ended and discretionary language are certainly carried forward in this and later phases in the life-cycle of a trial, it must simultaneously be borne in mind that such flexibility is also important for carrying forward the interests of justice in a dynamic manner as the facts and circumstances of each case are undoubtedly unique. Therefore, while a complete overhaul of discretion (such as where inclusion of evidence at a later stage or re-examination of witnesses is concerned) may not be possible, it is crucial that there are appropriate bars such as bars on the maximum number of witnesses, to encourage a sense of urgency among litigants and the judiciary alike.

3.3 Trial Phase

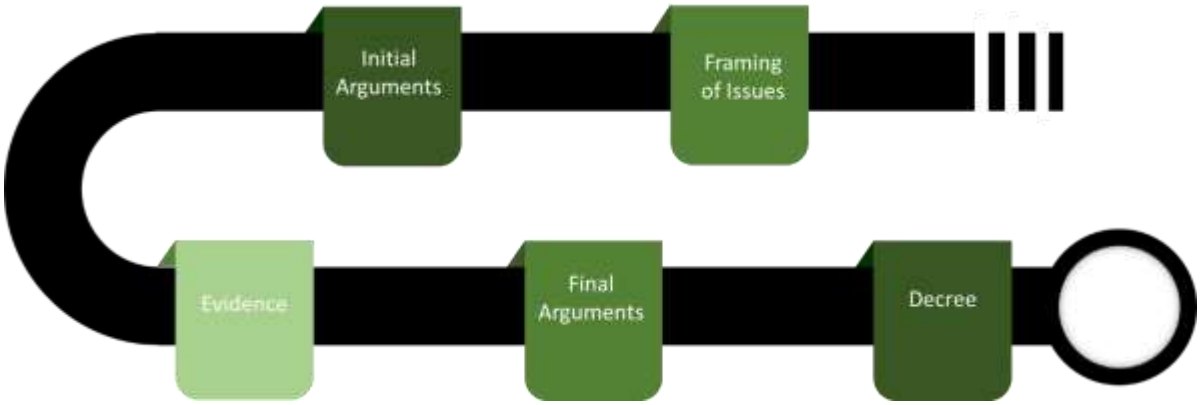


Figure 0-3: Snapshot of the Trial phase

The trial phase is the most critical segment in the life-cycle of a case where issues are framed, arguments are made and a judgment is passed. One of the main impediments faced at this stage is the non-appearance of parties (Chaudhry, 2011), and frequent adjournments by litigants not contested by the other side. (Shah, 2017) This leads to many cases being dismissed for non-prosecution and, following that re-fixed often due to lack of preparation by the counsels (8th Judicial Conference Pakistan). The Legal Aid Society's research in Karachi also showed that 37.7% of the time the plaintiff was absent, whereas, the defendant was absent 56.6% of the time during the life span of a case. (Zaidi, 2017)

The question then becomes, what provisions allow such blatant inefficiency reached through frivolous adjournments? Surprisingly many provisions of the CPC empower the courts to deal with such situations. Foremost amongst these is Order IX Rule 3, which empowers (note, however, it does not still *require*) the court to dismiss a suit where neither party appears. Following this Rule 8, of the said Rule, also empowers (this time, the provision is mandatory) dismissal when only a defendant appears, whereas, if only the plaintiff appears Rule 6, of the said Rule, empowers an ex-parte decree, subject to proper service of summons or any other relevant order. On the contrary, Rule 7, of the said Rule, allows defendants to be saved from an ex-parte decree so long as they can show good cause for their previous non-appearance. Good cause here simply being a justifiable reason which is wider than a sufficient cause (Muhammad Anwar v Mst. Ilyas Begum, 2013). Such vague, and difficult-to-precisely-define parameters allow the judiciary considerable discretion in the management of case timelines.

This leeway within the procedure is often abused and most cases are adjourned. Order XVII Rule 2 specifically empowers the court to make an order for adjournment where both parties are absent. It also allows for adjournments during evidence even where sufficient time has been provided to parties to produce evidence as per Order XVII Rule 3. The party seeking an adjournment need only show sufficient cause. In a study conducted by the Legal Aid Society, it was shown that in an individual case, a total of 70 adjournments were applied. (Zaidi, 2017) This behaviour subsists even in the presence of provisions for adjournment costs, however, save for rare examples these are rarely enforced and judges provide blanket approval to adjournments, (Feeley, Court reform on trial: why simple solutions fail., 1983) with most adjournments being sought on frivolous grounds. (Siddique, 2010)

It is evident from the above discussion that, once again, the relaxed language used to frame procedural provisions fails to adequately reflect the pressing need to expeditiously resolve cases. Even where the CPC itself provides for enforcement mechanisms such as the dismissal of suit in case of non-appearance and orders for adjournment costs, the discretionary nature of these

powers means that there is no impetus to move beyond default practices or keep in view the bigger picture when considering matters that affect case timelines. As a result, while there is certainly need for an update for the procedural framework as a whole, such linguistic considerations must be taken into account. Furthermore, any radical changes in the framework must be made in replacement of and not ancillary to the pre-existing structure to guarantee that reform is taken seriously. This is to ensure that, implementation of critical reform efforts is not made dependant upon justice sector which, as discussed earlier, is liable to resist change as was seen in the treatment Order IX-B (KPK and Punjab amendments) which introduced concepts of active case management but has been largely ignored (see Chapter 5).

3.4 Costs

One of the most central enforcement mechanisms contained in the CPC is perhaps that of costs. According to s.35, the Courts have the full discretion to impose actual costs upon whichever party it deems fit and under s.35A, the Court is further empowered to impose special compensatory costs upon a party in respect of false or vexatious claims or defences.

3.4.1. Actual costs

The term 'actual costs' refers to all expenses borne out of litigation including court fees, stamp fees, counsel fees, process fees or any other incidental costs. Black's Law Dictionary defines costs as the pecuniary allowance made to the successful party (and recoverable from the losing party), for their expenses in pursuing an action. This does not, however, take into account any actual injury to the person or their property which may be claimed via a separate suit for damages, and it is important that costs awarded are reasonable as opposed to nominal, fixed or unrealistic costs. (Mehr Ashraf v Station House Officer, 2022)

The objective is to allow the successful litigant to secure their expenses and is not intended to penalize the unsuccessful party nor be a source of profit for the successful party. (Abdur Rahim Sathi v Ghulam Sarwar, 2009) In theory, the provision also serves to deter frivolous litigation and encourage pre-action settlement as the unsuccessful party would be burdened by not only its own costs but also those of the successful party. (Edwin Co LLP v Naseim Ahmed Sarfraz, 2022) However, it should be noted that despite the critical role of this provision in ensuring reasonable party behaviour, it has been woefully underutilized. This is partly attributable to the permissive language of s.35 which means that while judges certainly possess the discretion to make a costs order, need not feel compelled to do so as a standard practice. Furthermore, even though sub-section (2) requires judges to record reasons where they choose not to order costs, this is seldom seen in practice.

To remedy this, the Cost of Litigation Act, 2017 was brought into force in the Islamabad Capital Territory (ICT) which mandatorily required Courts to indemnify successful litigants. Following this and a number of recent judgments[2] in the Islamabad High Court, judges have reportedly started making cost orders on a routine basis. (Ladha, 2022) Justice Babar Sattar asserts that it is the "right of the winning party" to be awarded costs. (Edwin Co LLP v Naseim Ahmed Sarfraz, 2022) To further facilitate its implementation, the Act also requires parties to file a form with the details of the actual costs of litigation prior to the announcement of the final order/judgment/decree.

At a Federal level, the Supreme Court reasserted the importance of imposing costs in the case of Qazi Naveed ul Islam v District Judge, Gujrat (2023 SCP 32) however, without the imperative

[2] See: Edwin Co LLP V Naseim Ahmed Sarfraz 2022 CLC 1064

language as provided by the Cost of Litigation Act, 2017, s.35, as it applies to regions outside the ICT, remains toothless.

Another salient feature is that, while normally it is the unsuccessful party that is required to pay costs, however, by virtue of the specific construction of s.35, the Courts are empowered to decide 'by whom' costs can be made i.e., in special circumstances, an individual who is not a party to the proceedings may be ordered to pay costs. For example, in a case filed by a *benamidar*[3], the real owner may be ordered to pay the costs of the successful party even though they were not a party to the proceedings (however, a party desirous of such should raise the point the Court so that the Court may implead such a stranger to the proceedings). (AIR 233, 1942)

3.4.2. Compensatory costs

Compensatory costs, like actual costs, are not intended to penalize an unsuccessful party and are separate from damages in that they do not take into account any actual injury to the party. Instead, they are merely provided to compensate an aggrieved party who has been unfairly strung along in a false or vexatious claim or defence in addition to any actual costs. (Mehr Ashraf v Station House Officer, 2022)

The maximum amount that can be awarded as compensatory costs varies significantly from province to province with KPK and Sindh still offering only Rs.25,000, whereas, in Punjab and Baluchistan, the maximum amount awarded can go up to one hundred thousand and one million rupees respectively. The amount, as offered by KPK and Sindh, has remained unchanged since 1994, which means that taking into account inflation, the twenty-five thousand figure no longer remains commensurate with the original legislative intent. This problem was identified by the LJCP in 2007 when they recommended, in their working paper, that the amount ought to be increased to fifty thousand rupees (Law and Justice Commission of Pakistan, 2007) but as has already been seen with most reform recommendations, this was largely ignored. The omission in the revision of this figure, all this time, further reflects the extent of neglect in the utilization of costs as a procedural tool.

Notably, the amendment in the ICT by the Cost of Litigation Act, 2017, effectively restructures the framework for compensatory costs. Per the amendment, s.35A deals with adjournment costs which are to be imposed at no less than five thousand rupees per adjournment unless there are unavoidable reasons beyond the control of the party. It should be noted that Order XVII, Rule 1 already provided the Courts with the discretion to impose costs, however, s.35A goes further in creating a mandatory requirement. Furthermore, the language of the new s.35A flips the starting position regarding adjournment costs to where Courts must impose adjournment costs unless there are appropriate reasons why this should not be done as opposed to leaving an open-ended discretion where Courts impose costs where the need for them is made apparent. This is a welcome initiative given that industry practice generally meant that costs were only imposed after several adjournments had already been granted, thus making the provision somewhat pointless in its objective of deterring dilatory practices or providing just compensation to the affected party. (Haider, 2019)

S.35B, as added by the Cost of Litigation Act, 2017, provides for special costs in case of false or vexatious averments. In this version, there is no upper limit on the amount that can be awarded as compensation and in using the phrase "shall award special costs" as opposed to the prior, "may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order…" it is perhaps once again intended to encourage the Courts to feel empowered in making

[3] According to s.2(9) Benami Transactions Prohibition Act 2017, a benamidar is "a person or a fictitious person…in whose name the benami property is transferred or held."

such orders. Additionally, the Act also extends the use of these provisions to appeals which is another useful feature worth noting as previously this was not possible (Karim Dad v Mst. Shahzadgai, 2021). This has led to situations where appellate courts have been left powerless to impose costs even where there is obvious *mala fide* such as in the case of Sindh Industrial Trading Estates v Mst. Qamar Hilal (2001 SCMR 1680).

Interestingly, s.35C, which was also inserted, states that the Government shall not be liable for costs under the aforementioned section. The addition of this provision is concerning, given that not only is it a well-established precedent that the Government may be attacked with costs where it has acted with *mala fide* but also that the casual attitude of the Government in preparing reports or filing comments is a major source of delay in relevant proceedings. As such, the addition of this exception is manifestly against the interests of justice given that there is no conceivable public policy justification for condoning bad faith practices on part of the Government. (Haider, 2019)

Throughout the CPC, various provisions make specific reference to costs. These include s.26A (costs when seeking an adjournment to file written statement), Order XI Rule 3 (costs of interrogatories), Order XII Rule 2 LHC Amendment (heavy costs for denying document that is later proved in the trial), Order XII Rule 4 (costs to be imposed where notice to admit facts is refused or neglected), Order XII Rule 9 (costs where notice to admit or produce unnecessary document), Order XVI Rule 12 (fine of up to Rs.2000 where witness fails to appear) and Order XVII Rule 1 (costs of adjournment). The object of these is primarily to signpost to the Courts opportunities to consider costs, however, beyond that, these carry little applicability given the discretionary construction of most of these provisions.

Overall, the use of costs orders as a procedural tool for regulating reasonable party behaviour has remained a missed opportunity within the district courts of Pakistan. While the introduction of the Costs of Litigation Act, 2017, supported by the recent judgments from the Islamabad High Court, has certainly been a laudable effort in promoting the use of costs orders, there are still ways to go in firmly establishing it as standard industry practice. Barring the questionable s.35C, it may also be worthwhile to expand the jurisdictional territory for the Costs of Litigation Act, 2017, to the other provinces as empowering the courts to impose costs through mandatory provisions is certainly the need of the hour, however, such introduction can only be done if their exists legislative intent.

3.5 Alternate Dispute Resolution

The main objective in the administration of justice is to resolve a dispute by making the process cost-effective and resolving it without causing any delay. (Mr Justice Jillani, 2012) However, in a State like Pakistan, courts are encumbered with a plethora of cases due to the archaic system in place which condemns litigants to prolonged litigation. Hence, many jurisdictions including Pakistan have attempted to incorporate Alternative Dispute Resolution ("**ADR**") mechanisms to displace caseloads from the formal adjudication so that the use of the court's time and resources can be optimised.

There is no specific definition of the term ADR but broadly it provides a range of alternatives to litigation available in order to resolve a civil dispute. (Blake, Browne, & Sime, 2016) Under the Alternative Dispute Resolution Act, 2017, ADR is defined as a method by which parties resolve a dispute other than adjudication by courts and includes, but is not limited to, arbitration, mediation, conciliation and neutral evaluation. (The Alternative Dispute Resolution Act, 2017) Drawing focus towards mediation and arbitration, the former is a facilitation-based process which encourages parties to settle with the help of a mediator. (Awan, Hashmi, & Ali, 2019) In contrast, arbitration is a process where a dispute is contested and adjudicated upon by an

arbitrator and the parties agree to be bound by the arbitrator's terms (Awan, Hashmi, & Ali, 2019).

The benefits of ADR in resolving civil disputes and then releasing its finances to the economy are known and real. (World Bank Group, 2011) Its benefits can be summarized in the figure below (World Bank Group, 2011):

Figure 0-4: Benefits of ADR

Currently, in Pakistan, many laws encourage the use of ADR i.e. The Arbitration Act, 1940, The Probation of Offenders Ordinance, 1960, The Small Claims and Minor Offences Courts Ordinance, 2002, The Local Government Ordinance, Family Law provisions and so on. But for the purpose of this research, the procedural laws that contain rules pertaining to dispute resolution are:

- The Code of Civil Procedure 1908 (Section 89A, Order IX -B, and Order X Rule 1.
- The Alternative Dispute Resolution Act, 2017.
- The Code of Civil Procedure 1908 (Sindh Amendment, 2018).
- The Punjab Alternative Dispute Resolution Act, 2019.
- The KPK Alternative Dispute Resolution Act, 2020.

In 2002, an amendment was made in the CPC wherein the resolution of disputes through mediation and conciliation became part of the law. The inserted section 89A provides that the Court may, when it deems necessary, with the consent of the parties adopt ADR for the expeditious disposal of cases. This means that it is the discretion of the court to make use of ADR after looking into the facts and circumstances of the case. Such provisions were also incorporated through the addition of Order IX-B and Order X Rule 1A of the CPC. However, after the 18th amendment of the Constitution of Pakistan, when the provinces were empowered to make their own amendments to procedural laws, the province of Sindh specifically chose to insert section 89A wherein it provided that the Courts may use ADR to resolve civil and commercial disputes. It is pertinent to mention here that the said amendment defined the ambit of ADR methods and provides that it only includes mediation, conciliation and negotiation. For arbitration, the rules of The Arbitration Act 1940 shall apply.

The law provides that the case is to be forwarded to mediation in the following cases:

- Upon consent of parties.
- Upon examination of the merits of the case, the court finds it beneficial for the parties to resolve the issue through ADR methods.
- At any stage even after the recording of admissions or denials, the court finds it beneficial for the parties to resolve the issue through ADR.

The court can then refer the case to ADR by issuing notice to the parties to show cause as to why their case should not refer to ADR, however, if there is no objection the Court shall refer the case. The **Alternative Dispute Resolution Act, 2017**, is applicable in Federal Capital, and it also recognizes that certain civil matters can be referred to mediation. **The Punjab Alternative Dispute Resolution Act, 2019**, provides that the court shall refer the cases mentioned in Schedule I of the Act within 30 days of the appearance of the defendants. While the Act further provides that the cases mentioned in Schedule II may be referred to at any time when the court deems fit that it can resolve the dispute through ADR. The time frame provided in the Act is 60 days but in total the proceedings of ADR cannot exceed 6 months in any case.

Moving on, Order IX-B Rule 1 provides that where no complex question of law or facts is concerned, the court may refer the same for mediation. While referring to the matter, the court may determine which issues are to be settled through mediation.

When the court refers the case for mediation the parties have to appear before a mediation centre. After the mediation when parties reach an agreement, the mediator will certify that and submit it to the court.

Order X Rule 1-A is very significant as it provides that court can adopt any lawful procedure to conduct preliminary proceedings and issue orders or issue a commission to examine witnesses/documents for trial. The term 'lawful procedure' also includes in its ambit any other ADR method which the court adopts with the consent of parties to expedite the judicial process. The mediators for this process are nominated by the court under Order X Rule 1 C of CPC. The following organizations/persons can act as mediators or conciliators:

- Mediation Centres established or recognized by Sindh High Court.
- A person who has been accredited as a mediator or conciliator by a certified organization or a person who has undergone skill-based training of a minimum of 40 hours in mediation.
- Any judge who is certified as a mediator.
- Any other persons nominated by the parties are subject to the approval of the court.

These CPC provisions outline the whole contemporary concept of ADR methods in Pakistan. It has thoroughly explained the procedure of how and when courts can adopt these and provide speedy justice. On this front, the courts believe that as settlement of a dispute by parties is a recognized mode of dispute resolution, it would not only save the time of the court but also relieve parties of prolonged litigation (Dr Mrs Yasmeen Abbas v Rana Muhammad, 2005). In fact, it has been asserted that ADR methods are now universally accepted to be less cumbersome or time-consuming and hence courts should encourage such a fruitful and beneficial exercise (Messrs ALTSTOM Power Generation through Afaq Ahmed v Pakistan Water and Power Development Authority through Chairman, 2007).

In another case, the court provided that Section 89A not only allowed an alternate mode of resolution but it was actually a preferred mode of resolution. (Nisar Khan and 7 others v Sawal Faqil and another, 2020). The idea is that in a state like Pakistan where the judiciary is so grossly overburdened, an effective ADR system carries the potential of significantly alleviating excessive workloads and providing speedy justice. The process as provided by the law is as follows:

Figure 0-5: The Mediation process

The Constitution of Pakistan, 1973, in Chapter II 'Principles of Policy' explicitly made it mandatory for the state that it shall ensure inexpensive and expeditious justice. One of the features of ADR methods is that it is expeditious, and it allows for the adjudication of disputes without the hassle of litigation. But the language of Section 89A makes it clear that it is the 'discretion' of the court that it may refer the matter to alternative dispute resolution. As a result, ADR is still viewed as optional rather than a point of first reference. It has also been observed by the Supreme Court of Pakistan that the rules relating to ADR provided in CPC were to give effect to Article 37(d) of the Constitution of Pakistan but not much attention is being paid to them. (Muhammad Sharif v Nabi Baksh, 2012)**.** All this means that the courts have failed to reap the full potential benefits ADR has to offer.

In the Alternative Dispute Resolution Act 2017, it is provided that the court shall refer every civil dispute to ADR, however, exceptions are provided, e.g. when a party does not agree to go for ADR. This exception takes away from the effectiveness of the provision, therefore, it is important that the party which refuses to engage with ADR should suffer the cost of litigation even when it stands victorious in the trial. This will ensure that people opt for ADR and not oppose it unreasonably.

To make this method effective it is imperative that before litigation, in every civil dispute, it is made mandatory for every party to adopt ADR unless there are cogent reasons why this is not possible. This will then ensure the implementation of Article 37 (d) of the Constitution of Pakistan. To this end, **The Punjab Alternative Dispute Resolution Act, 2019** has made it mandatory for courts to ensure that certain civil disputes mentioned in Schedule I should be referred to ADR within 30 days. This means that by law one can provide a general rule that all civil disputes should first proceed with ADR and then only exception should be given where it is extremely essential and not otherwise. This will ensure that mediation, conciliation and neutral evaluation resolve disputes without litigation. This will be beneficial as courts' resources and time will be better allocated towards cases that need it the most. Furthermore, this will help the backlog of cases and also save the parties from spending time and money agonizing over protracted litigation.

On the other end of the spectrum, there is the debate that ADR should not be made compulsory as it infringes on the basic human right of access to justice. However, this argument carries little weight because ADR does not preclude access to the courts but rather, should be viewed as simply the first step towards dispute resolution.

3.5.1. ADR in Pakistan

Though the amendment in the CPC regarding alternative dispute resolution was made in 2002, the courts have remained slow in the adoption of ADR. However, with time, this appears to be changing and significant work has been done in provinces and federal capital to incorporate ADR.

PUNJAB: In Punjab, the Lahore Chamber of Commerce and Industry (the "LCCI") established a mediation centre in 2012. The main objective was to settle commercial and business disputes through mediation without litigation. A major development in this regard was that the Lahore High Court referred three cases to LCCI (The Express Tribune, 2017) in 2017 for mediation. This was momentous as it showed that the courts were finally opening up to the use of ADR. Furthermore, the Lahore High Court established mediation centres as a pilot project in Lahore in 2017. Three mediation centres were established in Lahore with 'no litigation but reconciliation' as their motto. The project was so successful that in the same year, all 36 districts of Punjab inaugurated ADR centres in the lower courts.

Moreover, the province of Punjab gained so much from ADR centres that an ADR report of Punjab from June 2017 to 30th April 2021 indicated that the success rate of mediation of ADR centres was around 56%. (Imran, 2020) In a seminar," Mediation - A New Code of Adjudication" organized by The Asia Foundation and Kinnaird College Lahore, a district and sessions judge stated that 60% of cases in District Chakwal are resolved by ADR centres. (Hussain, 2019) All these statistics indicate that with further encouragement from courts and public awareness, these ADR centres can prove to be very useful in ameliorating judicial burdens.

SINDH: Karachi Centre for Dispute Resolution is considered to be the oldest mediation centre established with the consent of the Sindh High Court in 2007. Later on, it was renamed the National Centre for Dispute Resolution (the "NCDR") and it has reportedly been working efficiently and has resolved civil disputes worth over 21 million dollars and has trained more than 1100 individuals in conflict resolution. (Shamsi, 2017) Due to the success of NCDR, recently, in December 2022, 'Musaliha International Centre Karachi' and the Legal Aid Society (the "LAS") were also recognized by the Sindh High Court as approved ADR centres. Other than Karachi, ADR centres have also been established in Sukkur and Hyderabad.

KHYBER PAKHTUNKHWA: The Jirga system has always been prevalent in KPK and tribal areas where, even after their merger with Pakistan, the system remains popular. These Jirgas are the source of mediation between the parties and its decision are accepted and implemented. They are also the most prevalent form of out-of-court settlements in the tribal areas of Pakistan. In 2014, the KPK police established ADR centres in the province, however, the first codified law regarding ADR was passed in 2020 in KPK, i.e. The KPK Alternative Dispute Resolution Act, 2020. Apart from North Waziristan, the Act is enforced throughout KPK. The Act provides that a civil dispute can be referred by the relevant court, deputy commissioner or any other officer nominated by the government for alternative dispute resolution. Under this law, Saliseen (mediators) Selection Committee will select mediators. These mediators can be engaged through the commissioner's office in 7 divisions of KPK which include Peshawar, Mardan, Hazara, Malakand, Bannu, D.I Khan and Kohat. This is commendable progress on the ADR front which means that people can now engage with Saliseen (mediators) and resolve their issues without adjudication by the courts.

BALUCHISTAN: The province of Baluchistan still has not framed any parallel to the Alternative Dispute Resolution Act, hence, ADR methods are deployed under the Local Government Ordinance. This means that government and the high court have yet to take any active steps towards the incorporation of ADR methods. It is quite alarming that while the provision of ADR has been recognized since 2002 still no work is being done to implement the same in the province.

Despite, all that has been accomplished, with reference to ADR, there is still room for improvement, and ADR must be established as a standard practice of the court. The province of Baluchistan still lags in the adoption of ADR methods and it is the duty of the state and courts to ensure ADR implementation there. In a recent development, a specialized course on ADR was developed by The Asia Foundation which is currently being offered to undergraduate law students at the International Islamic University, Islamabad (female campus) and Kinnaird College for women in Lahore. Such initiatives can play a pivotal role in paving the way for mainstreaming ADR as they allow for the cultivation of a generation of legal professionals that are not only better trained on the subject but are also more amenable to welcoming such change and may encourage their respective clients to consider such alternatives.

Additionally, Section 8 of The Alternative Dispute Resolution Act, 2017, provides that parties can opt for ADR even before initiating legal proceedings. This can be done by giving an application to the court or ADR centre and then followed by the procedure provided by the law as outlined above. This process of referral of cases directly to ADR centres should be encouraged further in all other jurisdictions as this will help in reducing a lot of caseload from courts. Moreover, this practice will save the resources of the courts and save parties from bearing the costs of prolonged litigation. In all, ADR is an effective and reliable tool and should be mandatorily engaged prior to initiating legal proceedings in most civil disputes.

3.6 Conclusion

This chapter has highlighted some of the overlapping issues within the Civil Procedure Code 1908. As can be seen throughout the prior sub-units, many provisions already exist in the CPC to remedy many of the issues the judicial system currently faces. It is also apparent that these provisions are either grossly underutilized, mismanaged or are not completely in tune with the practical realities of what leads to the judicial backlog in the first place. Therefore, a system re-write is required to jump-start the legal machinery and provide efficient and more importantly quick solutions to the backlog goliath. Hence, the next unit explores just that, taking inspiration from success stories of backlog around the world and melding them with the pragmatic reality which is Pakistani society.

Though many more issues exist within the legislation, lack of empirical data and reliable research has shortened the scope of this chapter regarding this report. To this end, an examination of cause lists and order sheets has been conducted (see below).

EXAMINATION OF CAUSE LISTS AND ORDER SHEETS

4.1 Cause Lists

To ascertain the actual case load judges face on a day-to-day basis, data was collected from the five major provinces in Pakistan namely, the capital (Islamabad), Punjab, Khyber Pakhtunkhwa, Baluchistan and Sindh in the form of Cause Lists from the courts of five Civil Judge Magistrates ("**CJM**") from three separate districts within each province.

It is to be noted that, "***Cause List***" is a list of cases set for adjudication on any given day. These lists in the case of Civil Judge/Magistrates consist of both civil cases (which can be claims of unlimited pecuniary jurisdiction except in Sindh where a pecuniary jurisdiction of a civil judge is less than fifteen million rupees) and criminal cases (which are related to offences punishable to not more than 3 years and a fine not more than forty-five thousand and whipping).

The lists are hence an efficient marker to work out the daily workload a judicial officer faces. To this end, Cause Lists were sourced throughout the month of January 2023 to gain an efficacious sample size. Below are graphs that represent the caseloads of various judges as well as relevant findings and analysis.

To further understand the effect of case load data was taken from the Law and Justice Commission Pakistan's annual reports and used to determine disposal, institution and pendency rates. This information can be found in figure 4.9.

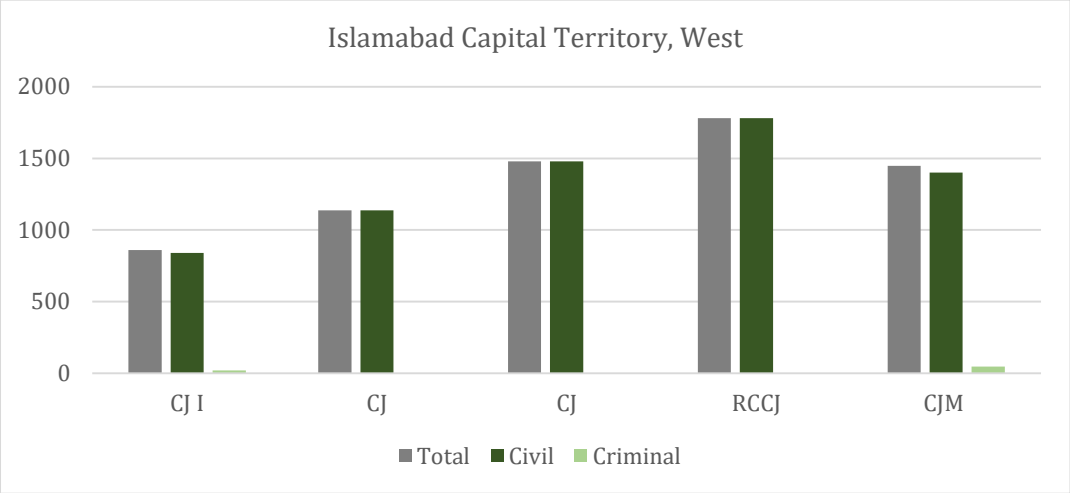


Figure 0-1: Number of cases across 5 separate civil and magistrates courts in Islamabad for the month of January 2023.

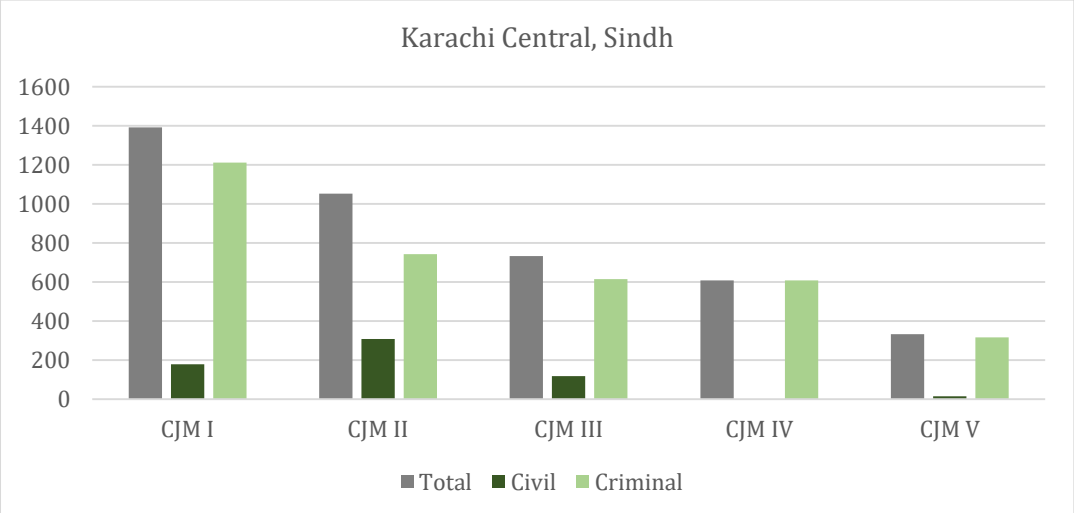


Figure 0-2: Number of cases for 5 civil and magistrates courts in Karachi Central for the month of January 2023

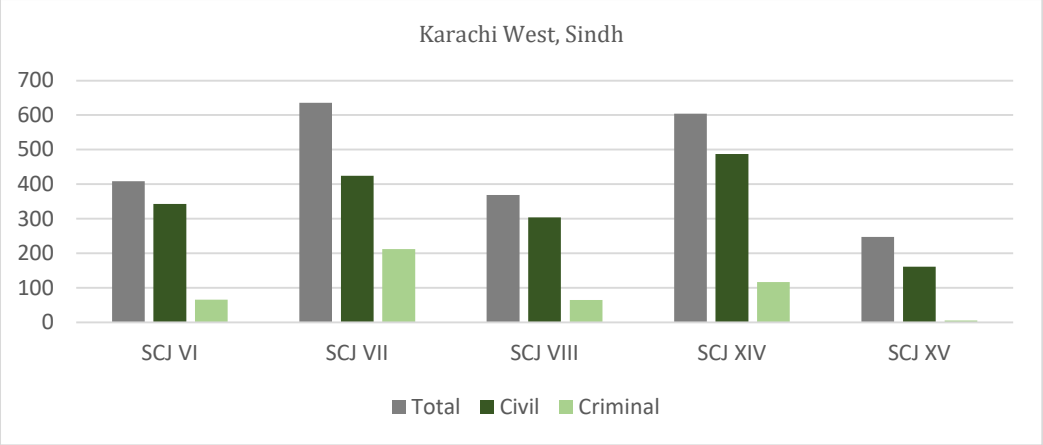


Figure 0-3: Number of cases 5 civil and magistrates courts in Karachi West for the month of January 2023

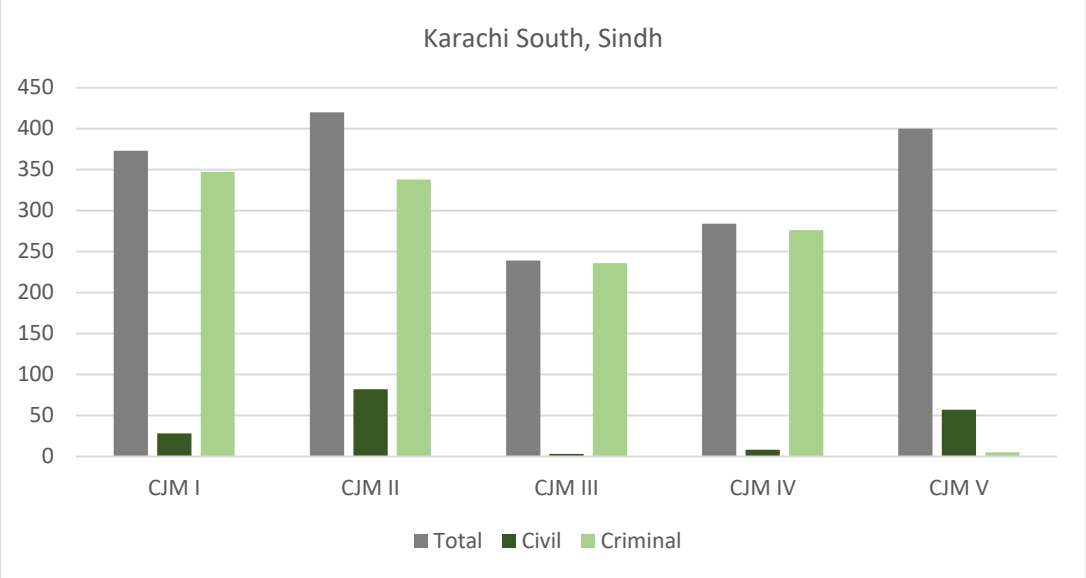


Figure 0-4: Number of cases for 5 civil and magistrates courts in Karachi South for the month of January 2023

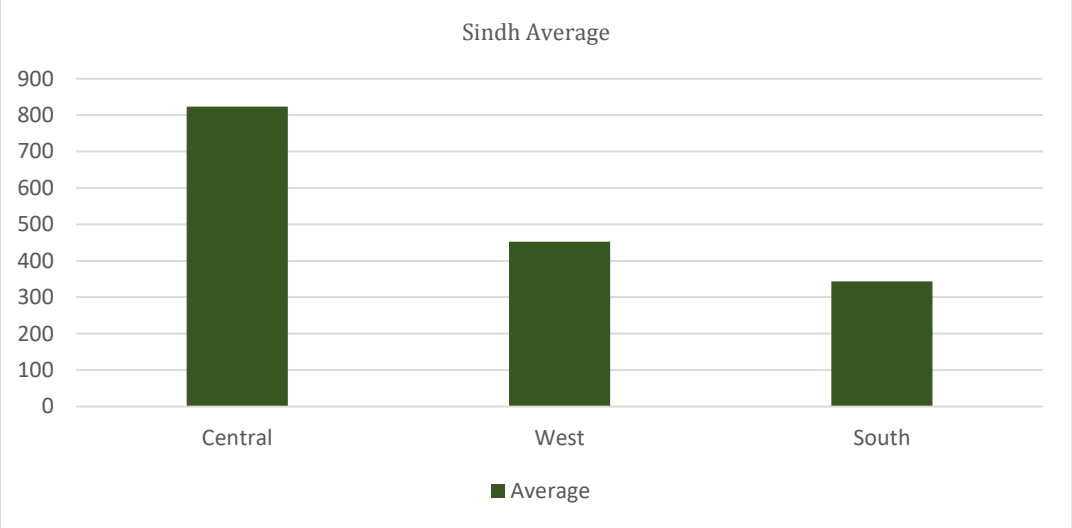


Figure 0-5: Average number of cases across every 5 courts in 3 separate districts for the month of January 2023 as above..

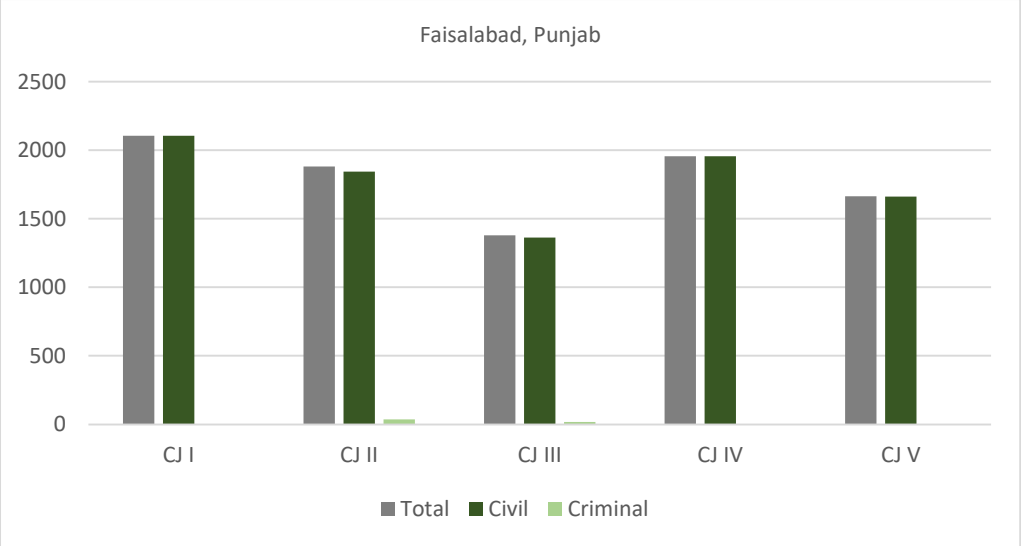


Figure 0-6: Number of cases across 5 separate civil and magistrates courts in Faisalabad for the month of January 2023.

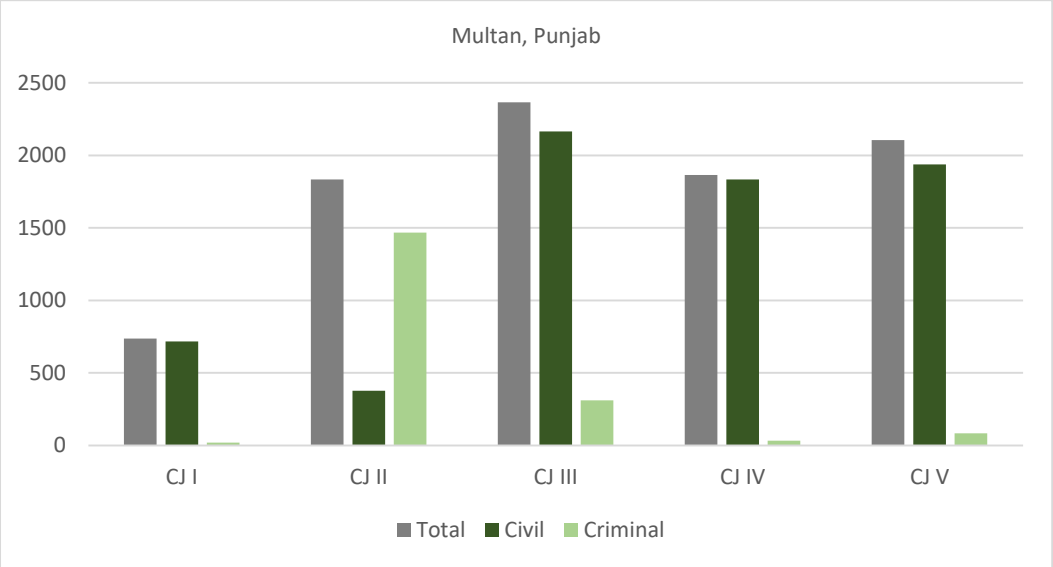


Figure 0-7: Number of cases across 5 separate civil and magistrate courts in Multan for the month of January 2023.

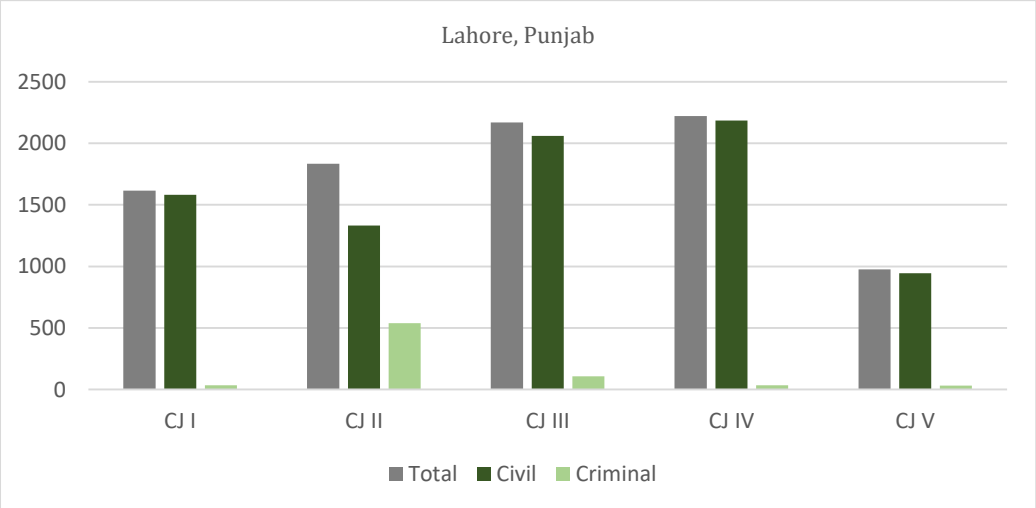


Figure 0-8: Number of cases across 5 separate civil and magistrates courts in Lahore for the month of January 2023.

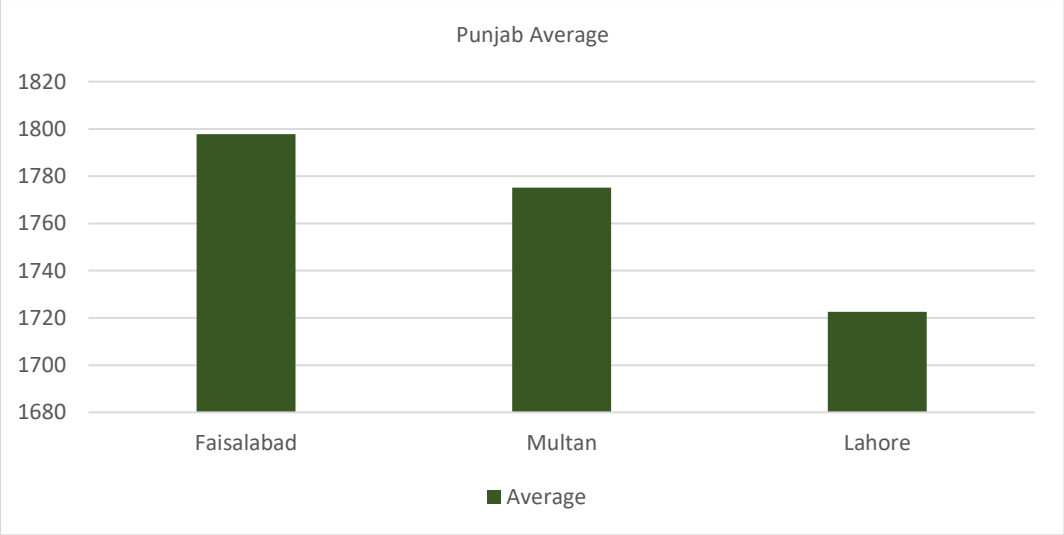


Figure 0-9: Average number of cases across every 5 courts in 3 separate districts of Punjab for the month of January as above.

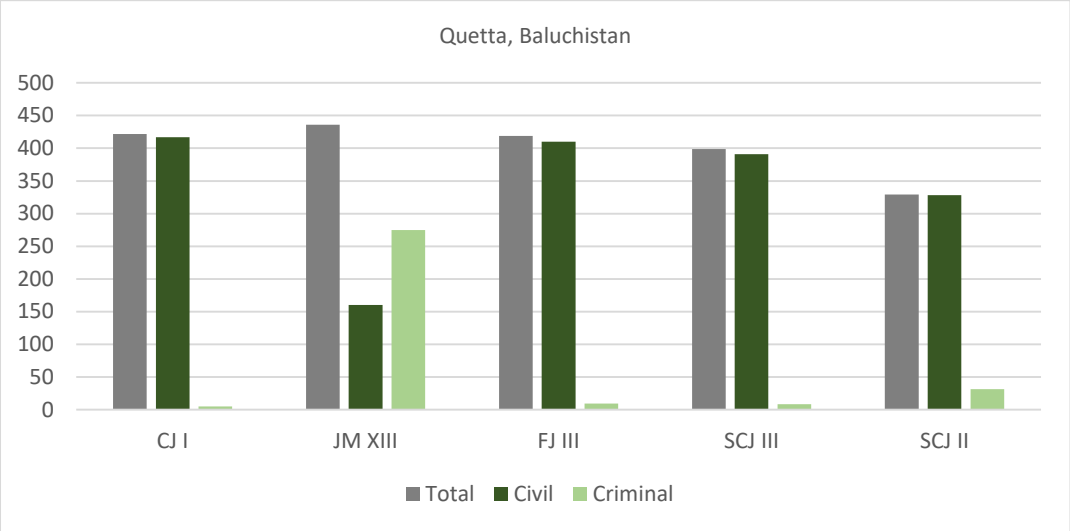


Figure 0-10: Number of cases across 5 separate civil and magistrates courts in Quetta for the month of February 2023.

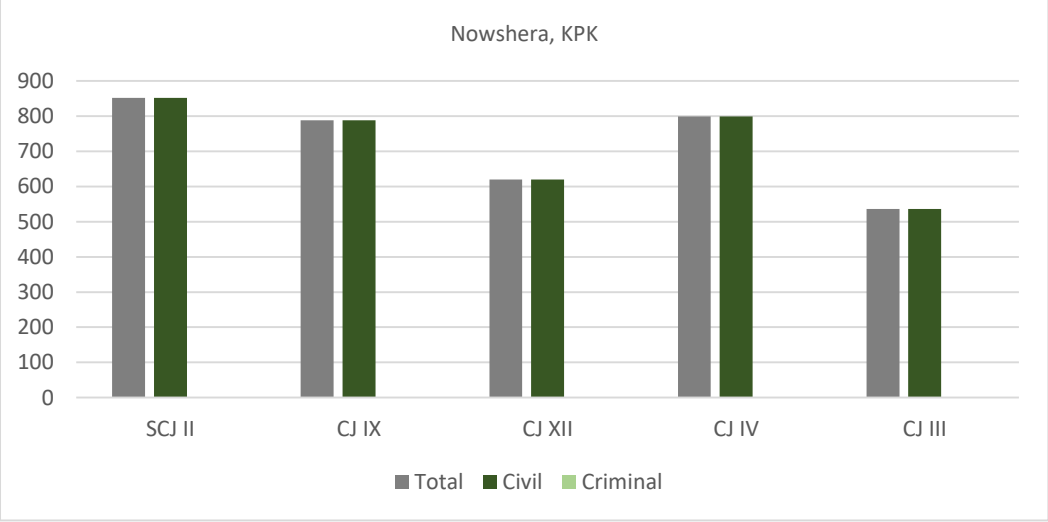


Figure 0-11: Number of cases across 5 separate civil and magistrates courts in Nowshera for the month of January 2023.

Figures 4.1 to 4.4 represent a disparity between courts in the target districts in Punjab and Karachi. Figure 4.1 and Figure 4.3 represent foremost a disparity between the distribution of criminal and civil cases between Courts/Judges. It is not difficult to assert that due to the overbearing amount of criminal caseload a judicial officer has, they may tend to under-prioritize their civil caseload. Especially where on average, a judge has between 300 and 800 cases per month.

It is also interesting to note the disparity in caseload of judges within the same locality as represented by Figure 1.4, where judges in Karachi Central have more than 800 cases in the month of January, however, judges in Karachi South have less than half of that, having close to 300 cases. This represents a potential improper distribution of work and resources.

Figures 4.6 and 4.7 represent another problem as to distribution of caseload. Where certain courts within a district are overburdened with more than 2000 cases in a month, some are dealing with only 500 for the month. This means that certain judges deal with around 83.33 cases a day, whereas, others must only deal with about 20. Caseload distribution could be based on judicial officer seniority, where senior or experienced judicial officers receive higher caseloads as they have more legal acumen and capacity on the coattails of their experience. However, this represents a dearth in judicial training of newer judicial officers who should be properly prepared to enter the profession rather than the need to be eased into it.

Figure 4.11 is interesting in that it shows an even workload distribution across the entire district, which is made even more apparent when juxtaposed to Figure 4.1 which has great difference between each court. Figure 4.10, represents a more manageable case load per judge per day with most courts in Quetta having close to 400 cases or less per month.

Through this, it is evident that, the current system lacks the capacity to deal with such large numbers of cases effectively and efficiently, hence the proposed model in chapter 5 seeks to posit a solution by providing a new system with better case flow management and other best practices that have been time tested in other jurisdictions.

The figures represented in this chapter were sourced from the Sindh and Punjab online case management systems, however, no third-party research has been published prior to this paper hence statistics from previous years cannot be compared. Moreover, only the LJCP has published somewhat recent reports of judicial performance in 2023 showing judicial performance up till 2021. Yet, there is a lack of transparency as to the method through which these statistics were calculated or what the current situation is. In the research after the mid-term phase further research into statistics will be undertaken to mirror the true reality of judicial performance in Pakistan.

There is also a lack of transparency in providing the public at large with statistics in general. Several letters were issued to the LJCP and district courts to obtain recent judicial data on the basis of the Right of Access to Information Act 2017, however, these letters were either met with references to older data or no replies at all.

4.2 Order Sheets

To understand common causes of adjournment, with the objective of demonstrating the phenomenon described in the above literature review and key informant interviews, a review of order sheets (consisting of the original plaint, details of all subsequent hearings and orders passed, and final decree) from various jurisdictions was undertaken. Specifically, 20 order sheets of decided civil cases were procured from each district studied with 5 cases pertaining to *Khula*, Rent, Recovery and Specific Performance respectively. Presently, a total of 120 order sheets have been collected from Islamabad, Rawalpindi, Lahore, Peshawar, Multan and Swabi district courts.

The aforementioned categories were selected as they represent a few of the most common types of litigation encountered at the lower court level. It was also a point of interest to compare Khula and Rent (only in Punjab) cases with Recovery and Specific Performance cases as the former two

have separate dedicated courts, procedures and codified time limits for disposal by virtue of the West Pakistan Family Courts Act 1964 and the Punjab Rented Premises Act 2009. S.12A of the West Pakistan Family Courts Act 1964 stipulates a six-month period for disposal of family matters whereas s.27 of the Punjab Rented Premises Act 2009 sets out a four-month period for rent disputes.

It should be noted that challenges were faced in the collection of this data due to frequent court holidays and difficulties in identifying the correct order sheets due to lack of file organization in record rooms and non-availability of digital record keeping infrastructure especially in the Punjab and Islamabad district courts. In contrast, scanned copies were readily made available from the KPK district courts. Other notable difficulties included the handwritten entries on order sheets which were often illegible and the practice of not recording reasons for adjournments in certain cases. These problems further illuminate the crucial need for the digitisation and inter-province integration of case management and record keeping systems.

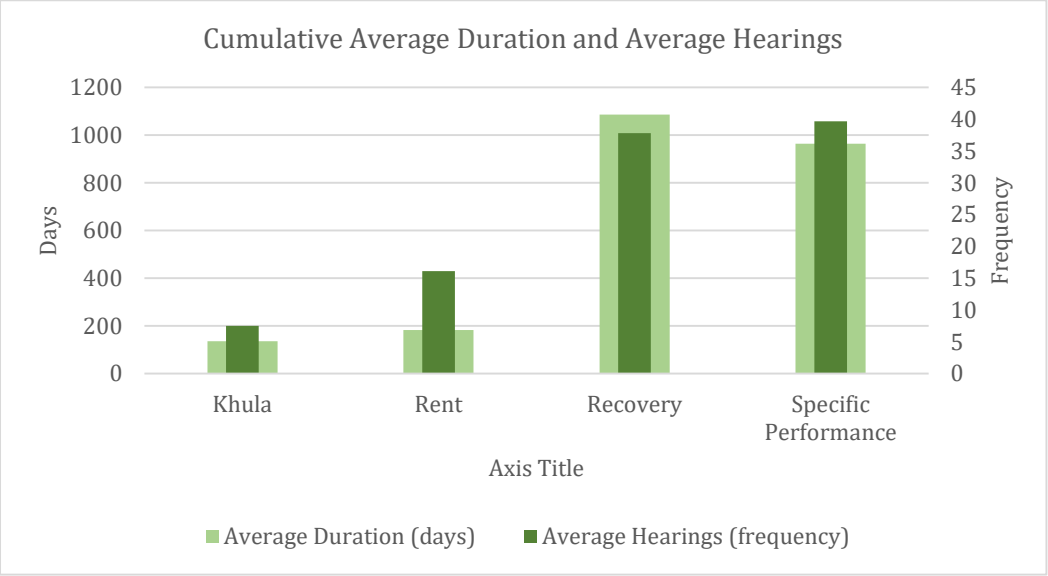


Figure 0-12: Cumulative average duration and average number of hearings across 80 cases from Rawalpindi, Lahore, Swabi and Islamabad.

RAWALPINDI		
Type of Case	**Average Duration (days)**	**Average number of hearings**
Khula	131.4	6.8
Rent	192.8	15.8
Recovery	946.2	29.8
Specific Performance	2231	92.4

Figure 0-13: Average Duration and Average Number of Hearings in Rawalpindi

LAHORE		
Type of Case	**Average Duration (days)**	**Average number of hearings**
Khula	76.6	7.8
Rent	167.2	18.4
Recovery	1213	54.2
Specific Performance	774.4	38.6

Figure 0-14: Average Duration and Average Number of Hearings in Lahore

SWABI		
Type of Case	**Average Duration (days)**	**Average number of hearings**

Khula	105.2	5.6
Rent	258.8	23.8
Recovery	1095.8	49.6
Specific Performance	223.6	10.2

Figure 0-15: Average Duration and Average Number of Hearings in Swabi

ISLAMABAD		
Type of Case	**Average Duration (days)**	**Average number of hearings**
Khula	233.4	9.6
Rent	112	6.4
Recovery	1087.2	17.6
Specific Performance	626.2	17.6

Figure 0-16:Average Duration and Average Number of Hearings in Islamabad

What is immediately apparent from the above tables is that there is marked difference between durations of Khula and Rent cases versus Specific Performance and Recovery cases (especially in Rawalpindi and Lahore). While the former tend to be resolved well within a year, the latter possess significantly longer lifespans. One might immediately jump to the conclusion that this is due to the abbreviated procedures and time limits however, a similar effect is also seen with Rent cases in Swabi and Islamabad despite the fact that the procedures outlined in the Punjab Rented Premises Act 2009 are not applicable in those regions.[4] Regardless, it is not denied that this type of division of labour in the creation of separate courts allows for more efficient case management and limits the arbitrary discretion of the courts in granting adjournments but the relative simplicity of Khula and Rent cases may also be a factor. Nevertheless, interview respondents, when inquired on the subject, have attributed this effect to the unique arrangements made for Khula and Rent cases.

It should be noted that prescribing alternative procedure and creating separate courts for specific types of cases is not a pragmatic solution to the problem of judicial delays as branches of law are far too diverse and each type of case may not be able to be abbreviated to the extent of some cases such as Khula, which, by virtue of being a no-fault cause of action, depends relatively less on evidence. The conclusion that can be drawn from this is that increasing the number of judges, dedicated active case management and flexibility of court procedures is at the core of expediting case processes.

[4] Note that Rent cases in Islamabad and Swabi still do have dedicated courts in the form of "Rent Controllers" and summary procedures are still encouraged by the applicable laws in specific cases.

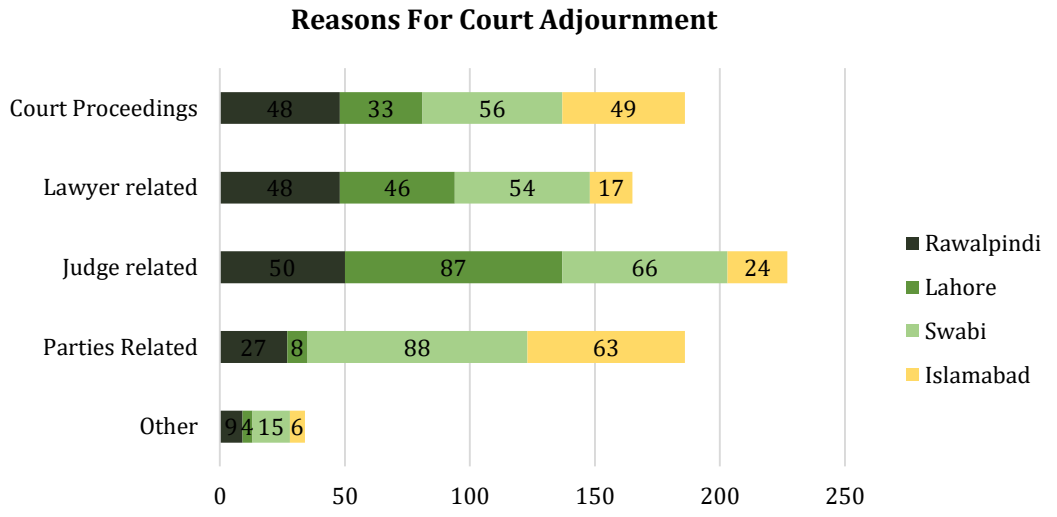


Figure 0-17:The most common reasons for adjournment of court proceedings. "Other" reasons include public holidays and closures due to the Covid-19 pandemic.

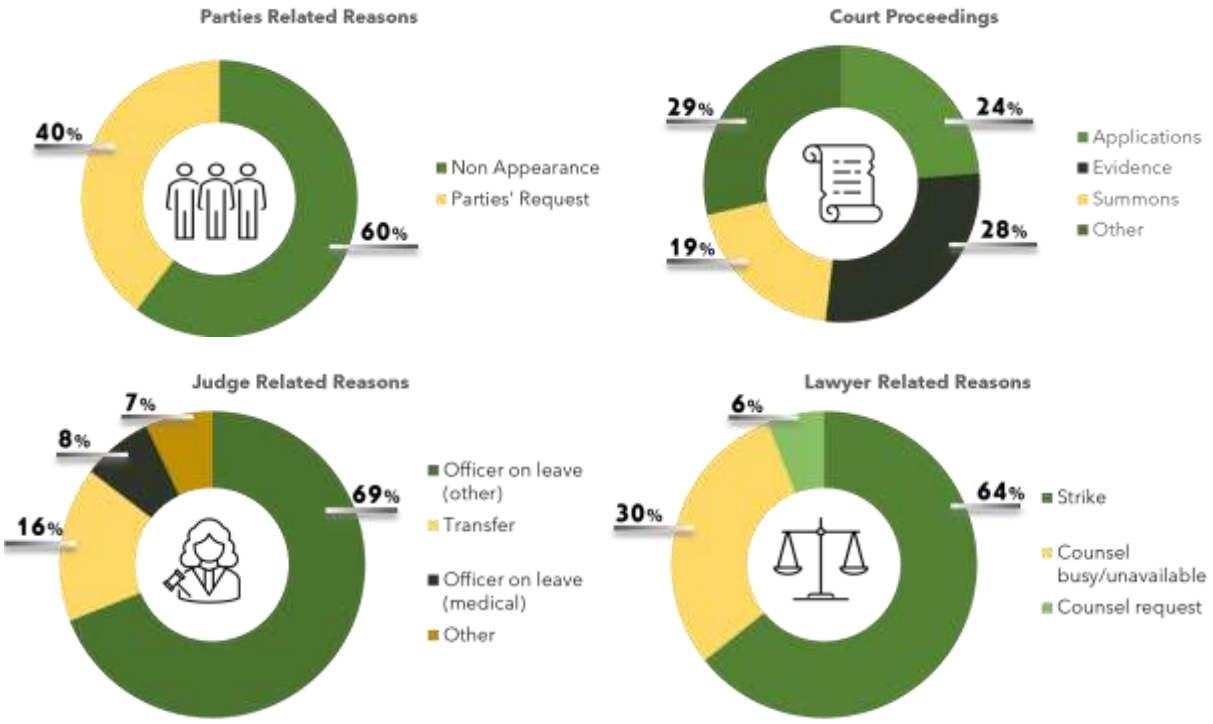


Figure 0-18: Breakdown of causes of adjournment

** Clockwise from the top: This diagram shows the main reasons why adjournments may be granted due to parties; This diagram demonstrates which procedural stages were the most common causes of adjournment - "other" here generally refers to time given to parties to submit their replies or arguments; this diagram represents how lawyers may be contributing to adjournments; this diagram shows the main reasons judges remain unavailable for certain hearings – "other" here represents leaves due to judicial strikes, trainings and requiring time for consideration due to excessive workload.*

Figure 4.18 summarises the key findings from our review of order sheets regarding the causes of adjournments. Significantly, the most common causes of adjournment across all case types and jurisdictions were often attributed to judges in the form of casual leaves, medical leaves, transfers,

trainings and other commitments. Interestingly, in our discussion with key informants regarding causes of judicial backlogs, no respondent referred to this phenomenon. On the contrary, reasons falling within the other categories i.e. lawyer related, court proceedings and parties related were more commonly cited.

Furthermore, of the 2051 total hearings across 80 cases, there are only 798 recorded reasons (39%). This is troubling as this makes it harder to evaluate the necessity of each adjournment. Even where reasons are recorded, there is often insufficient detail for example, in the case of judge related reasons, officers were on non-medical leave 69% of the time (or for 156 hearings). There is no further context as to what necessitated these leaves and this is problematic as it was of the leading reasons cited for adjournment. In a similar vein, adjournments were sometimes granted on frivolous grounds such as "Counsel unavailable due to Eid Milan party" or "death of [distant] relative". All this points to a need for reducing judicial discretion and increased monitoring.

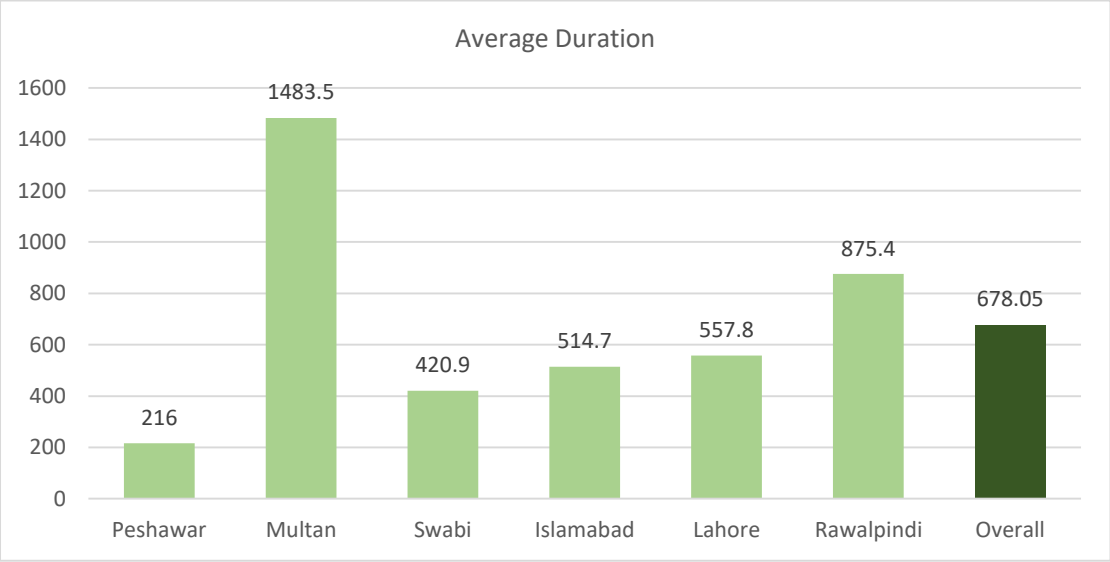


Figure 0-19: City-wise and overall average duration of cases from a sample of total 120 cases

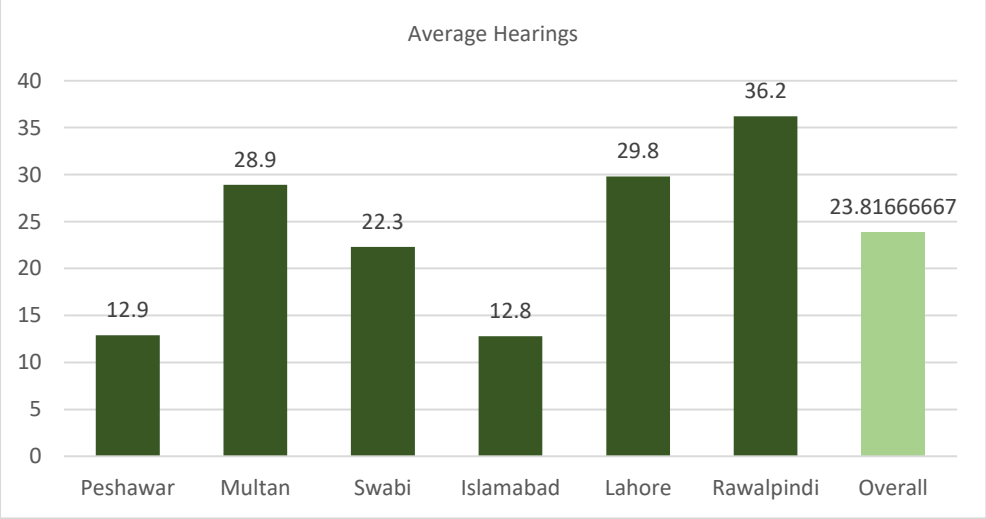


Figure 0-20: City-wise and overall average number of hearings of cases from a sample of total 120 cases

Looking at the average durations and average number of hearings across the different cities it becomes apparent that there is no discernible pattern or trend across cities that underscores the

delays in each city. This suggests that there may be local reasons unique to each district that contribute to the pendency of cases. While the overall averages that emerge are not too alarming, it must be remembered behind these numbers, there are cases of relative simplicity that have taken up to 15 years. Such cases are the ones responsible for the excessive backlogs we see today and so, even if, according to judicial statistics, more cases are resolved in any given year, backlogs will likely continue to accumulate without effective management. It is even more concerning to note that from our data, cases which exceeded proportionate durations, tended to end with either dismissal, withdrawal or settlement out of court. Again, this points to the fact that these delays are not the result of the pursuit of substantive justice.

PROPOSED MODEL

This research study thoroughly examined all the institutional and circumstantial impediments that cause judicial backlog and has developed a model procedure that will not only minimize prolonged litigation but will make the existing archaic judicial system compatible with the modern world. The proposed model procedure has been formulated through a multi-faceted approach including; comparative analysis with the international best practices while keeping in mind Pakistan's circumstantial and institutional realities, a comprehensive literature review to further address the deficiencies of the present legal system and devising a plan for its improvements, and lastly, a peer-review of the procedure by presenting it to various esteemed bar council members, judges and academics from different jurisdictions, for their feedback. All the be above has culminated in the following procedure expounded in its most pragmatic and detailed form.

The challenges faced while conducting key informant interviews were that some members of the lawyer's community and judiciary were reluctant to freely express their opinion due to the strain relationship of bar and bench. The influence of the inherent political dynamics in the legal industry meant that respondents often felt that they had to take a diplomatic stance. This, along with the excessive workloads shouldered by legal professionals made scheduling interviews considerably difficult. However, those who assisted with the proposed model procedure were found to be enthusiastic. The interviews revealed the difference of opinion between lawyers and judges on various propositions. The research was not possible without their valuable contribution, and we are very much obliged for all the lawyers, judges and academics who took part in interviews and group discussions.

This chapter aims to provide an elaborate structure of our model procedure and the findings from the key informant's interviews. The suggestion and propositions made by the interviewees are incorporated while the dissenting views are also mentioned.

Figure 0-1: Model Procedure

5.1 E-Portal and Pre-action Protocols

In an age where digitization is at the forefront of all reform, with many countries moving towards online databases, contactless processes, and even Artificial Intelligence integration; Pakistan too ought to reap the benefits that technology may provide, not only in the form of citizen facilitation but also largely in cost reduction and judicial ease. In leu of this the first recommendation as per the model procedure is the inculcation of e-portals. Much in the same vein as technology makes analog processes more efficient and less time consuming, many countries have instilled pre-action protocols to supplement their legal industries and, in some cases, discourage frivolous litigation while encouraging less adversarial means of dispute resolution. Pakistan is in dire need of incorporating such protocols and though efforts have been made, this section explains a detailed road map of what principles and systems may be incorporated and how.

The system is envisaging to have two main portals - one for lawyers and one for judges. The purpose of judge's portal is to oversee the digitized diaries of lawyers and give them date according to their calander. Institution will take two forms either through the newly formed e-lawyers/vakalat portal or if a litigant has not hired a lawyer, the main point of reference will be the kiosk desk in the admin wing (for an explanation of the admin wing please refer to section III). The lawyers' portal will allow them to initiate legal proceedings on behalf of their clients and enable judges to view and manage cases assigned to them via their respective portals. Each lawyer will have their own personal login profile based on their District or High Court license number. Additionally, special kiosks will be available at the proposed administrative wing in district courts, allowing litigants to initiate legal proceedings themselves. The number of kiosks will be dependent on the population density of an area. When a case is instituted through the system, litigants will provide their contact details, details of their claim, details of the potential defendant, their CNIC, and other details that are generally needed in a claim form. Based on this information, a provisional case number will be generated, along with a power of attorney form that must be verified biometrically and a letter of claim to be sent to the potential defendant. At this stage, the case will be held in suspension to allow the parties time to comply with pre-action protocols, which consist of steps the Court expects parties to have taken prior to commencement of proceedings with a view to promoting consistency in pre-action correspondence and investigation, as well as promoting the settlement of issues without further need to litigate.

Drawing inspiration from the UK, the establishment of certain "Pre-action Protocols" is recommended. These consist of steps the Court expects parties to have taken prior to commencement of proceedings to promote consistency in pre-action correspondence and investigation as well as promoting the settlement of issues without further need to litigate. Even where parties commence proceedings, the protocols require parties to exchange sufficient information to identify the matters in controversy for the expeditious disposal of issues. To this end, it may be worthwhile to develop specific protocols for certain types of common claims e.g., suits for specific performance, tenancy, family, suits for maintenance and custody, restitution, and injunctions alongside general directions for pre-action conduct.

Potential Directions may include:

- Letter of Notification/Claim – The claimant and their counsel should take steps to notify the proposed defendant(s) of the intention to issue proceedings at the earliest opportunity, especially where the defendant(s) may have limited knowledge of the facts giving rise to the claim. The letter should contain relevant details available that may assist the defendant in determining issues of liability and suitability of a claim for an interim payment or early rehabilitation. The letter should contain a clear summary of the facts on

which the claim is based, what the claimant wants from the defendant and in the case of money, how much and how it has been calculated.

- Response – Proposed Defendant should take steps to respond to the letter of claim within a reasonable amount of time (e.g., 30 days from the receipt of the Letter of Claim).
- Disclosure – Parties should aim towards early disclosure of relevant documents and information. The objective of this is to assist with the framing and resolution of issues. Early and appropriate disclosure also allows for the protection of weaker parties especially where there is a great discrepancy between bargaining powers of parties. A non-exhaustive list of relevant documents potentially material to specific types of claims may be provided. The recipient party may also be imposed with a duty to preserve documents or evidence and in the case of destruction, the party may be held liable for contempt of court.
- Alternative Dispute Resolution – Litigation must be a last resort. Parties should actively consider whether negotiation or some other form of ADR might enable them to settle the dispute without recourse to formal proceedings. If parties still wish to litigate, parties should be required to present evidence of them having considered ADR along with an affidavit furnishing reasons for why ADR has failed/may not be appropriate.
- Offers to Settle – Referred to as "Part 36 Offers to Settle" in the UK, the proposed defendant should consider making a formal offer to settle to the claimant. This is, once again, an opportunity for the parties to settle the matter outside of court. However, even where the offer is not accepted, it places a burden on the claimant to seriously consider whether they would like to reject or ignore such an offer. This is because if the offer is not accepted, the issue regarding costs in proceedings is whether the judgment in the proceedings is for a sum exceeding the amount of the offer. If the judgment does not exceed the amount of the offer, then the claimant should have accepted the offer and therefore, the judge will award the defendant costs following the offer to settle.

Note that specific timelines for particular protocols may vary and templates for letters of claim and response may also be provided for further structure and clarity.

The idea behind the imposition of pre-action protocols is that it not only places greater emphasis on out-of-court settlement, but also clearly defines how prudent parties to a suit ought to act allowing for greater accountability. Parties should be compelled to comply with these protocols as prerequisite to commencement to proceeding keeping in view principles of proportionality i.e., it must be ensured that parties are not using these protocols as a tactical device to gain an unfair advantage over the other party and parties should not be compelled to incur disproportionate costs in attempting to comply with the protocols. Failure to sufficiently comply should be taken into account in the giving of directions for costs. (Sime, 2020)

Furthermore, the rationale behind these pre-action protocols was to encourage the adjudication of disputes before going into litigation and to save time of Courts. The efficacy of pre-action protocols can be found from The Retail Lease Statistics of Australia from year 2002-2011. The figures provides that from year 2002-2011 in Australia, the successful outcome of mediation increased from 52.3% to 64.8%. (Sourdin, 2012) Similarly, The Annual Reports of the Office of Victorian Small Business Commissioner (VSBC) play out that approximately 80% of the matters are resolved during mediation. (Sourdin, 2012) Moreover, the research project that focused on the Retail Lease in Australia provided that mediation is a such a success that 76% of the cases are concluded and finalized without the need for formal adjudication. (Sourdin, 2012) In contrast, the data regarding success rate of mediation centers in Pakistan is limited and statistics for province of Punjab reveal that success rate of mediation centers stand at 56%, which is very good but it is low as compared to Australia. Moreover, this is case of one province in Pakistan, and it would

remain toothless unless it is encouraged throughout Pakistan. This shows the need of pre-action protocols and demonstrates that when claimants comply with pre-action protocols and opt for mediation, they resolve their disputes without going into the hassle of prolonged litigation process.

One may contemplate whether pre-action protocols serve a useful purpose or not. The answer to this was presented by The Report of Lord Justice Jackson Published in 2009. The report states that there was a consensus that these specific [pre-action] protocols serve a useful purpose. (Sourdin, 2012) The report recommended that these must be retained, and we have seen that in United Kingdom pre-action protocols now extend to the matters of resolution of clinical disputes, construction, engineering and judicial review.

On the question of establishment of lawyer's portal, majority of the informants called it a 'progressive idea' and agreed with it. Informants provided that making lawyer's diary digitized will be a step in right direction and this will help in managing case load of lawyers. However, few of the informants provided that portal as an idea seems like a good option but keeping in mind the realities and practicalities, it may not be a viable option.

Regarding pre-action protocols, most of the informants were of the view that it is essential that this is adopted. However, the prudent thing to do is to start with the awareness sessions on pre-action protocols and then work on its enforcement. Informants provided that one of the features of pre-action protocol is Alternative Dispute Resolution, which is already present in Pakistan, but it lacks implementation. Few of the informants proposed that ADR is cost effective method and one of the concerns for lawyers is that they can charge for litigation much more and in ADR there is no established fee structure. To make it much more effective it is essential that certain renumeration for lawyers is fixed to make it financially viable for them, if the same are engaged by the Parties.

Informants, on the question of making ADR mandatory in all civil cases, agreed that it should be made mandatory. Few of the informants told us that Pakistan has adopted Turkish model and in Turkey ADR was made mandatory in 2012. However, it wasn't very operational until 2017 when it was made mandatory for land disputes and later expanded to commercial disputes in 2019, whereas, in 2020, it was made mandatory across the board. Hence, the informants proposed that this phase wise implementation should be adopted in Pakistan as well.

Therefore, this paper recommends that it is essential that e-portal and pre-action protocols are adopted as it will resolve many issues of litigation even before the institution of suits. This will also help in resolving the backlog as one of the informants recommends that all the backlogs should now go through the process of ADR to resolve the matters expeditiously.

5.2 Automation

The proposed model for reform shall be based on an integrated online register of suits, court schedules and counsel diaries which will allow for optimal allocation of court time and resources and is hoped to add an element of accountability and remedy the issue of unnecessary adjournments caused by clashes in counsel schedules alongside being a record-keeping tool.

- Scheduling Trials - Upon the commencement of proceedings, a date may be set for trial, for example, 6 months from the institution of the suit, with precise allocation of date, time, location and **total time allocated for the case hearing**, keeping in view availabilities in court and counsel schedules.
- Record-keeping – The system will also be used to keep record of file number, litigant and counsel details (address, phone number, CNIC), court fee status as well as special notes

such as relinquishment of claims and other details pertaining to the maintainability of the suit.

- NADRA database – This system may also be integrated with NADRA's database to allow the court access to important contact information for the purposes of service and summons. Note that in order for this to be possible, there must be a requirement for parties to provide their CNICs upon submission of pleadings.
- Progress updates – All developments in ongoing cases shall be tracked. Parties and their counsels shall be given regular progress updates and reminders via SMS regarding upcoming hearings, issuance of any orders/decrees or any other crucial developments.
- Accountability – It may be possible to hold counsels and courts accountable for use of unprofessional dilatory practices as all instances of unnecessary adjournments and amendments will be readily accessible to relevant authorities.
- Biometric attendance record – Counsels, court staff and officers shall be required to log biometric attendance to ensure utmost punctuality in proceedings.
- Privacy and Security – Given that this system will be carrying a great deal of private and sensitive information, protection of privacy and resilience to data breaches must be given top priority in the development of the software. Furthermore, access to the system must be strictly restricted to authorized personnel only.

Court Automation not only helps in expediating the judicial process, but it also makes the court operational in times of crisis. The World Bank Report demonstrates that during pandemic states which had in place court automation systems managed to avoid interruption of judicial process in approximately 44% of the cases. (Popova, Maroz, & Gamez, 2021) In contrast, states without automation process had to suspend the judicial services in around 71% of the cases. (Popova, Maroz, & Gamez, 2021) This proves the worth of court automation and clearly provides that to makes the civil justice system more accessible and affordable digitization is the way forward.

In Pakistan, currently Supreme Court, Federal Shariat Court and High Courts have in place their own automated system covering the case flows and case management processes. The superior judiciary has the resources and infrastructure to adapt to the automation process. But the status of automation in district judiciary is grim. The law and Justice Commission Report on Application of Information Technology in Justice Sector demonstrates that in Sindh, district judiciary has adopted automated functions, but KPK has partially adopted the system. The report provides that Punjab has been reluctant and Gilgit Baltistan still follows the manual procedures. It concluded that the existing automation model is very limited and even the general functions like management and finances of the organization are not integrated in the automation model. This clearly depicts that lack of cooperation among the superior and subordinate judiciary and their reluctance towards IT procedures is the main reason that our courts are still working manually.

On the question of court automation and integration of judicial data with NADRA Database for effective summoning, majority of the informants praised this idea and provided that in many civil suits 'summoning' of defendants and witnesses causes delays. One of the key informants, who is a civil judge in Islamabad, suggested that the process of summoning should involve district management and they should deploy the NADRA Database as proposed to issue summons. The informant gave example of Saudi Arabia where district management issues summons and there is never an adjournment on summons as the office make sure that summons are properly issued and served to the relevant person. Another informant further suggested that along with NADRA Database, summons should also be served by using the SIM card address of the person. Another informant, while calling it a progressive idea, said that it is not difficult to implement this model as passport offices are linked with NADRA hence same can be done with judicial system.

A High Court Advocate from Lahore said that this can solve 40% of the problems as majority of the adjournments and delays are caused due to summons. The informant further suggested that lawyer's information should also be linked with the database so that fake lawyers are held accountable as system will have all the relevant information. In contrast, one informant was of the view that this can be applicable in modern world but in Pakistan it is not a practical solution.

Regarding the use of video links and flexible trail options, all the informants agreed that it should be adopted as a standard practice of the court. One of the informants, who is Advocate Supreme Court, mentioned that Supreme Court Lahore and Peshawar registry conducts trial on video links so if they can adopt this method then it should not be a problem for district judiciary. However, few concerns were raised by informants that there is lack of infrastructure in this regard in District Judiciary so firth they should be equipped with all the system required to conduct seamless trials. Another concern on video link trial was that there is no mechanism which will regulate the process of verification or authentication so this aspect must be considered.

Hence, the research recommends that procedures of courts must be compatible with the modern world, and this could be achieved by using advance technology. Additionally, with court automation there is a need to establish a more secure server which cannot be breached because it will have all the relevant and confidential information. Moreover, the privacy and security of the court database must be reviewed and maintained in accordance with international standards so that it can combat any hacking attempt. IT professionals must be given this task to make the automation process secure so that it smoothly runs the daily affairs of the judicial process without being exposed to the threats of data breach.

5.3 Administration Wing

In 2018, the Peshawar High Court made an amendment in Order IX-A of CPC which provided that the court shall in each case, start case management and schedule conference. The purpose of this amendment was to streamline the process of a trial through early identification of issues and disclosure of evidence. In a similar fashion, Lahore High Court also made an amendment in the said Order and provided that plaintiff and defendant should fill and submit a case management questionnaire. However, this amendment is not thorough and lacks basic requirements of active case management. The said amendments do not provide for the constitution of a separate administrative wing which would essentially prioritize the whole pre-trial phase and make case management more effective. Additionally, the effects of these amendments are yet to be seen.

As a proposed model, the research recommends that a separate administrative judicial wing should be constituted. This wing will act in the capacity of the court for the purposes of disposing of all preliminary matters pertaining to a suit that does not include substantive adjudication. The department will be run by separate judicial officers who will be specifically trained in active case management. The body should be empowered to make all orders pertaining to the management of a case except for final determination of substantive issues.

Case Management broadly refers to the following duties:

- Monitoring and controlling the progress of the case
- Requiring submission of pre-trial checklist or conduct pre-trial review
- Issuing notices/summons
- Ensuring equality of arms between all parties involved
- Giving directions for appropriate pre-trail disclosure e.g., specify documents for disclosure.
- Facilitating and providing guidance to unrepresented parties

- Identifying issues and deciding the degree of investigation required
- Determining appropriateness of pleadings, considering joinder of parties, causes of action
- Decide on other preliminary matters e.g. maintainability, jurisdiction, appropriateness of court fees
- Consolidation/separation of trials where necessary
- Allocation to fast track/multitrack based on complexity of issues.
    - Fast track – cases to be resolved in a single day, submissions/evidence may be filed as affidavits, telephone submissions.
    - Multitrack – allocation of an appropriate number of hours for adjudication, assess need for pre-trial checklists/review, filing of proposed directions (including a proposed timetable, provision for disclosure)
- Encouraging and facilitating settlement and cooperation between parties
- Managing practical considerations for an efficient and expeditious trial e.g., fixing timetables, carrying out a cost/benefit analysis of any further steps to be taken, whether attendance of parties is necessary, how to best utilize technological infrastructure available.
- In making any orders for adjournment/amendment/impleadment of parties/rejection or return of plaint/adding witnesses the admin judge should keep in view the primary objective as stipulated under s.1(4) of the CPC and principles proportionality.
- Costs may be imposed for repeated applications.
- Extend/shorten time limit for compliance of any particular step.
- Potential Directions may include:
    - Parties must submit a bundle of documents at least 7 clear days before trial.
    - Parties must exchange skeleton arguments 3 clear days before the trial.
    - Give directions for any further information if necessary.
    - Specify which documents/evidence should be disclosed
    - Consider a date for further CMC.
    - Direct simultaneous exchange of witness statements

Note that directions are instructions which the parties must comply with to the best of their abilities. Non-compliance will need to be justified and there may be cost implications for failure to comply.

Parties may also be required to file directions questionnaire and a cases summary prior to a CMC. To this end, there may be a need for greater emphasis on practical judicial training that focuses on active case management and prioritizes the need to run cases expeditiously and ethically. (Sime, 2020)

Based on the information provided, the administrative wing will assess the case. For small claims, the case may be directed to a specialized small claims court with specific directions, such as relying on affidavits or conducting trials through web links. In complex matters, the administrative wing will schedule a conference where both parties can present their cases, and the court will establish a timeline. After assessing the case, the administrative wing will provide a timeline within 2-4 weeks. This timeline will be accessible through the portal and sent to both parties via push notification. Witnesses will be notified of their designated time slots for court appearances. If a witness is unavailable, they will have three opportunities to request a change, provided they inform the court at least one day in advance through the portal. Failure to comply or repeated non-appearance may result in penalties.

The automated system will also address adjournments, additional evidence, and the addition of witnesses. It will introduce a small/short claims court that will expedite the litigation process,

primarily following the directions given by the administrative wing. The court may require additional documents and consider written arguments, ultimately delivering judgments or conducting short hearings. Lawyers will face penalties for taking adjournments, including costs, and may be flagged based on the timeline and profile, prompting action by the local Bar Association/Council. If a party wishes to add a witness, they can make an online application to the administrative wing, which will evaluate the necessity of the witness and determine if costs should be incurred.

The success of an effective case management system on judicial backlog can be drawn from the fact that a tech company in Canada submitted its report in Senate Standing Committee on Legal and Constitutional Affairs and demonstrated that case management system has the ability to reduce the number of court rooms that are scheduled inappropriately and thus maximizing the capacity of courts to hear more cases. (Government of Canada, 2017) The report further provides that an effective case management system in place can resolve the issue of adjournments as it will update the availability of counsel/witness without scheduling a court date to address the change. (Government of Canada, 2017) Thus, the research recommends that establishment of an administrative wing and case flow management form be duly incorporated and implemented in civil trials in order to resolve the issue of dilatory practices and judicial backlog.

The question regarding a separate administrative wing was not very well received by most of the lawyers and judges from Islamabad and KPK. They believed that there is no need to create separate admin wing as it was not successful. Furthermore, they mentioned that the number of judges is not in any way equal to the number of cases allotted to them. Hence, to have effective case management it is essential that the number of judges is increased. Moreover, one of the key informants, who is a civil judge said that "*if you want judges to be able to set timelines effectively then the court's power to enlarge time under s.148 needs to be done away with*". One of the respected informant was in favor of admin wing and claimed that one such system known as "Directorate of District Judiciary" does exist which handles judges transfer and internal management, therefore, according to him, there should be separate administrative courts where all interim applications are expeditiously decided.

In contrast, key informants from Punjab were in favor of separate administrative wing. They said that the model is present in Lahore and some minor improvements are observed therefore, this should be implemented in letter and spirit. One of the informants from Sindh was also of the view that this would be very beneficial for lawyers as it will make the whole process very smooth and easy.

In context of Pakistan, case management through an established admin wing with trained administrative judges can be extremely beneficial as they can save time and speed up the process in pre-trial phase. As mentioned in chapter 3, during trial there are many instances where courts allow amendments to pleadings and accordingly statistics indicate that 80% of all applications made for the purpose of amendments in plaint or written statement cause delay. By law, the time limit prescribed to file a written statement is one month but due to adjournments given by courts studies indicate that defendants take up to 5 months for filing the written statement. Moreover, provisions of CPC regarding return and rejection of plaint are also abused and this can be resolved through active case management where the issues regarding jurisdiction, maintainability are decided beforehand and there is no need to make applications once the trial has commenced. Note that the OECD found that spending on computerization supported by active case management techniques alongside the systematic production of statistics has been associated with greater judicial performance. The idea is that such a system allows for effective monitoring

and enforcement of deadlines, screening of cases for the appropriate track allocation and early identification of complex cases. (Palumbo, Giupponi, Nunziata, & Mora-Ganguinetti, 2013)

Therefore, the research recommends the establishment of separate administrative wing where specially trained judges empowered with all the powers of a trial court will be responsible for active case management. Further, the admin wing will also determine the issues regarding interim applications, maintainability of the suit and matters pertaining to jurisdiction. This system, if adopted, can resolve the problem which increases the life span of a case and make the matters pending in the court for years.

5.4 Costs, Penalties and Adjournments

The primary means for encouraging responsible party behavior for courts in the UK is via the imposition of costs. The general rule is that a successful party in a claim will be awarded an order for costs against the unsuccessful party which would in turn act as a disincentive against unnecessary litigation (Hoare v United Kingdom (2011) 53 EHRR SE1).The court, in making an order for costs, must consider all circumstances of the case including conduct of the parties (e.g. willingness to settle, compliance with protocols, use of dilatory practices) and whether the party has succeeded on part of their claim. Moreover, frequent adjournments are a commonly cited cause of judicial delay. To remedy this, a two-tier cap on adjournments is recommended with a statutory maximum (e.g. only a total of ten allowed) with additional limits placed during case management based on what the administrative wing determines is needed for that particular case. Not only will this involve mandatory incremental costs for every adjournment but any adjournment beyond the decided amount by the admin wing shall be met with exuberant costs except where acts of God, death or public emergency e.g. insurgency, imposition of martial law, tsunamis etc.

To this extent, various provisions in CPC make reference to costs, however, it has been ignored by District Judiciary and still it has not been established as a standard court practice. This indicates that provisions regarding costs are under-utilized and therefore there are a lot of unmeritorious and vexatious cases. But with the enactment of Cost of Litigation Act, 2017 courts in Islamabad Capital Territory (ICT) are working vehemently to awards costs to successful litigants. The Act is laudable as it also provides special costs in case of false or vexatious averments. This step can change the procedural landscape of civil cases in Pakistan however, as this law is applicable only in federal capital it effects on preventing frivolous petitions cannot be accessed unless all provinces enact the law on awarding costs and make mandatory provision as in present in Cost of Litigation Act, 2017.

Supreme Court of Pakistan has recently ruled to impose costs and fines in a case to discourage and end frivolous and vexatious litigation which is a welcome step as it will set a precedent for subordinate courts. The case was just about granting of a succession certificate to the legal heirs, but the petitioner, the apex court held repeatedly abused the court process and went on with this frivolous case through various courts. The court dismissed the petition with costs of Rs, 100,000/ for not only abusing and wasting precious time of the Courts but also for causing pain to the party for this prolonged litigation. Hence, vexatious litigants who misuse the freedom of access to courts by launching large numbers of unmeritorious actions or numerous interim applications with the object of causing trouble for their victims may be hit by a Civil Proceedings Order. With such an order in place, a litigant who habitually and persistently institutes vexatious or meritless proceedings without reasonable cause, may be barred from commencing further proceedings without the permission of the Court. (Qazi Naveed ul Hassan v District Judge, Gujrat, etc., 2023)

The current situation of costs, according to the majority of the informants is, that this practice has been adopted by superior courts as mentioned above however, district judiciary is still adamant to award costs. In our session with the key informants, every one of them was of the view that heavy costs should be imposed and discretion of judges should be curtailed by making the provisions mandatory. One of the informant, who is a judicial officer, mentioned that these words "Every adjournment shall be with costs" must be added in the statute and mimimum amount of

costs should be mentioned in Civil Procedure Code. Another interesting observation made by one of informant practicing in twin cities is that district judiciary in Islamabad is awarding costs and a change has been observed in this regard however, same is not being implemented in Rawalpindi. On this information and for the purpose of this research when we tried to procure judgements form district judiciary of Islamabad, we observed that there are no order as to cost and the same is not being executed in Islamabad, even after the promulugation of Cost of Litigation Act 2017. This indicates that Judiciary is not implementing the law in letter and spirit due to which we do not see any substantive change.

Regarding, cap on number of adjournments for a particular case, the majority of the informants were of the view that there should be a definnite capping and it should be codified. In contrast, few of them were of the opinion that instead of introducing a cap on adjournment there should be heavy costs as situation is such that in some cases due to the case load on each judge, he has to give adjournment. Therefore, unless number of judges is compatible with the number of cases they hear each day, this should not be a cap on adjournments.

Hence, the research recommends that costs should be adopted as a standard practice of courts and penalties should be imposed on every litigant/lawyer who abuse the court procedures. Furthermore, as adjournments are a major cause of delay in every civil case, there should be definite capping and imposition of incremental costs on every adjournment. This will help in minimizing all the frivolous cases that are filed in judiciary on daily basis and also help in building a more efficient system for dispensation of justice.

5.5 Independent Body of Observers

The presence of 'Independent Body of Observers' can be an evidence-based diagnostic tool that can provide a mechanism to monitor and evaluate performance of judges regarding dispensation of justice. With proper authorization and mandate, they can oversee the functioning of courts, court staff, lawyers and judicial proceeding and thereby analyze and evaluate each judge's performance. The frame-work for appraisal of judges may include quantifiable indicators such as case closure rate, volume of back log of cases, total number of cases and comparison with judges working under similar working condition. This can draw attention towards those judges who are adjourning trials time and again without any sufficient cause. Further, observers can visit court rooms and carefully monitor the behavior of judges towards litigants and assess their judgments on different cases.

Moreover, the observers can then draft impartial reports on their findings and submit it to the Chief Justice of the respective province. The report may include further suggestions and guidelines as to how to make the judge accountable for his actions. For instance, if the performance of a judge is not par with the best practices for a period of six months, he may be given show cause notice as to why disciplinary action may not be initiated against him. However, if a judge satisfies the Chief Justice, then he should only be given a fair warning for future. This whole mechanism can make the subordinate judiciary accountable and can therefore, enhance the performance of the judicial system.

In USA, Federal Judiciary has office of 'administrative oversight' ("**AO**") for the purpose of preventing fraud, abuse of resources and waste, which also oversee comprehensive audits of judicial funds conducted by certified public accountant firms. (US Courts) Additionally, the AO regularly, accesses the judicial workloads and surveys the court operation to check the system's effectiveness and then submit biannual reports to Judicial Conference Committee. The AO makes certain that the courts are working in compliance with the legal rules and ethics to administer effective and expeditious justice. The American Bar Association in 2005, updated its guidelines of Judicial Performance Evaluation ("**JPE**") and recommended that in order to enhance quality of judiciary and judicial self-improvement all courts must have system in place for court room observations. (Woolf, Nicholas, Yim, & Jennifer, 2011) The State of Utah, then enacted Judicial Performance Evaluation Commission Act, 2008 and created an independent body for the purpose of evaluation. (Woolf, Nicholas, Yim, & Jennifer, 2011) This impartial commission, recruits and

train individuals for court-room observation who observes judges in courts, score their performance and also add comments. (Woolf, Nicholas, Yim, & Jennifer, 2011) The criteria laid down for observers is simple as he/she had to report about neutrality, respect, voice and the behavior of judge with litigants. This whole qualitative based exercise benefits the judges and overall judiciary as it gives them feedback and provides necessary recommendations for self-improvement.

This clearly depicts that the monitoring and evaluation of judges or the formation of body of observers is neither a novel concept nor it undermines independence of judiciary in any way. In fact, this ensures much needed transparency and accountability in judicial system and paves way for it to be more efficient. According to European Networks of Councils for the Judiciary (ENCJ), citizens do not trust a judiciary if it is not accountable and this trust deficit thereby endangers the independence of judiciary hence they provide that: *"Independence must be earned. It is, by no means, automatic. The best safeguard is excellent and transparent performance."* (ENCJ, 2014)

Currently, in Pakistan, all high courts have established MIT (Member Inspection Team) wings with the purpose to monitor and evaluate performance of district judiciary. They are given the mandate to monitor the institution and disposal rates of district judiciary and also to inspect the courts at random. The problem is that these MIT wings are part of the high courts and they do not fall under the category of independent observers and one may question their method of transparency and accountability. Further, there is no empirical evidence which suggests that the steps taken by MIT have reduced the backlog or otherwise, improved judicial performance. Additionally, they are only deploying quantitative indicators and not addressing issues relating to the behavior of judges with litigants and lawyers which can be best assessed through qualitative approach and by the recruitments of trained observers of courts.

In all the interviews with the informants, the question regarding 'Independent body of observers' was not very well received as judges considered it as an attack on the integrity and indepenedence of judiciary. It was a sensitive subject in our all group discussions as well and the relationship between bar and bench was revealed to be very much strained. Almost all judicial officers from various juridistions opposed this idea and provided that judges are already under strict scrutunity and they are held accountable on misconduct. They said that this a bit excessive step and there is no need to establish an independent body. In addition, lawyers were also not very receptive to this idea and stated that it will be a stop cap arrangement and will not be very effective in the long run. However, one civil judge from Islamabad, said that MIT branch of High Courts is a general branch and it supervises everything hence, it is essential that there is an independent body of observers for the purpose of making qualitative and quantative analysis reports on all judges.

During these key informant interviews, one of the informant recommended that instead of independent body of observers for judges there should be an 'independent body' to issue licenses for lawyers. The informant further elaborated that authority of bar councils in issunace of licenses should be done away with as they never take action against their fellow lawyers due to the fact that they have to take votes from them each year.

When question regarding independent body to issue licenses was put forward to lawyers and judges, majority of the informants hailed this suggestion. One of the informant said that this will resolve the isssue of fake lawyers as currently bar councils neither check degrees of lawyers nor take any disciplinary action. The informant further explained that the situation of fake lawyers in Lahore is worse as two famous lawyers (Jameel Asghar, Shah Nazwaz Ismail) who practiced for 30 years and were eleceted as vice chairman bar councils twice had fake degrees hence, this shows that there is a need of independent body for lawyers.

Thus, the research recommends that MIT Wings of High Courts should be replaced with the office of 'Administrative Oversight' (**AO**) which would act as an independent body. The AO office should consist of inspection teams which would randomly inspect the courts and monitor institution/disposal rates. Inspection teams should consist of people from academia to avoid

conflict of interest. Moreover, it should have a department of certified accountants who would conduct audit of district judiciary. In addition, AO should recruit Independent Observers who would sit in court rooms during the proceedings and evaluate judges' conduct. The recruiters must be qualified professionals from various field of social sciences so that they can bring an impartial and independent mind while observing the court rooms. A team of professionals must conduct trainings of all recruiters so that they can conduct courtroom observation with perfection. Furthermore, the head of AO office would seek reports from all departments and then send a comprehensive and impartial report to CJ's of respective province with recommendations and guidelines.

Moreover, this research study further recommends that AO office should have a separate and independent body with the sole purpose of issuing licenses to all the lawyers in Pakistan. Bar councils should focus on welfare of lawyers and other issues. However, this step must be taken while consulting all the stakeholders involved.

5.6 Conclusion

The proposed model for reforms in civil justice system of Pakistan is operational in United Kingdom, Australia and other states. The empirical evidence suggests that with the adoption of pre-action protocols and an effective ADR, many cases are concluded without the need of going into litigation. In fact, UK has further expanded the ambit of pre-action protocols to other various areas because it is beneficial in dispensing civil justice more effectively and expeditiously. The proposed e-portal for lawyers, which was well received by the majority of the key informants, can significantly change how cases are instituted and improve the overall situation. The suggestion of flexible trial and conducting trials on video link can be a step in the right direction as it can be cost effective and time efficient. In a State like Pakistan where resources are already limited and judges face backlog and plethora of new cases it is imperative that Pakistan not only adopt best practice of pre-action protocols, automation and effective mediation but implement it wholeheartedly. With the establishment of Admin Wing at subordinate and superior courts, all petty matters can be adjudicated and with case management system the trial phase can be streamlined by resolving the issue of adjournments. The Administrative Oversight office with independent observers and its separate department for the issuance of licenses to lawyers, can revolutionize the judicial system. In essence, all the shortcomings of judicial services, processes of civil litigation and circumstantial impediments can be resolved by adopting the proposed model. However, this requires a strong commitment and will to change the archaic system that has been in place for decades.

EPILOGUE

In the dispensation of civil justice in Pakistan, the overall national and international efforts at reforms demonstrate that they were seldom meaningful and had little impact. The in-depth analysis of the provisions of CPC provides the procedural shortcomings and problematic provisions which in turn cause delays, hence, there is a dire need to revisit them. As discussed, several provisions in place pave way for an 'adjournment culture' which is known to prolong the litigation process. Similarly, the discretionary nature of provisions relating to costs and ADR fundamentally destroy the legislative intent of providing swift and cost-effective justice to the citizens which are ensured by the Constitution of Pakistan 1973. Though the laws enacted on this front are noteworthy, they are limited by the discretion of the court. Furthermore, while the judiciary has taken steps to encourage it in judgments and seminars, it has little meaning without implementation in the subordinate courts.

In addition, the research paper conducted a review of selected cause lists and order sheets from various jurisdictions. The review of cause lists revealed that the judges of all jurisdictions are overburdened with cases and to salvage the reputation of judiciary it is imperative that the number of judges are increased. The analysis of order sheets provided further evidence and

specifically highlighted impediments within the procedural landscape of the judicial system. The findings from the order sheets manifest that both lawyers and judges contribute towards the adjournment culture and this problem can be resolved by digitization and flexibility of court processes including active case management.

As an answer to our antiquated judicial system, this research paper has attempted to frame a model procedure based on international best practices. It must be noted that the proposed framework's various aspects are not novel concepts, rather, they are already operational in multiple jurisdictions in some form with a notable degree of success as demonstrated by empirical data. Hence, by making reforms in the CPC and adopting the best practices necessary in the litigation process we can curtail the menace of prolonged and frivolous litigation.

Additionally, the research conducted key informant interviews from lawyers, judges and academics from different cities of Pakistan. This allowed the investigators to further build upon the proposed framework with the object of identifying enforcement mechanisms that are critical for the practical implementation of reforms. Finally, the findings and recommendations from the key informants were incorporated in our model procedure, keeping in view the practical realities and resources, to resolve the underlying problems that cause the judicial backlog.

BIBLIOGRAPHY

1 C 119 (1955).

1955 1 C 119.

Abdur Rahim Sathi v Ghulam Sarwar, CLC 1039 (PHC 2009).

AIR 1940 PAT 555.

AIR 1956 A 439.

AIR 233, AIR 233 (Allahabad High Court 1942).

Alam, M. (2010, February 25). Problems of delay and backlog cases. *The Daily Star*.

Armytage, L. (2003). Pakistan's Law & Justice Sector Reform Experience - Some lessons. *13th Commonwealth Law Conference.* Melbourne.

Asia Foundation. (1999). *Pakistan legal and judicial reform project: Integrated final report.* Islamabad.

Asian Development Bank. (2003). *Annual Report.* ADB.

Asian Development Bank. (2008). *Pakistan: Access to Justice Program*. Retrieved from ADB: https://www.adb.org/projects/32023-013/main

Awan, H., Hashmi, A. S., & Ali, S. M. (2019). Peaceable Mediation: A challenge to Judicial Skill Set. *ISSRA Papers*, 1-16.

Blake, S., Browne, J., & Sime, S. (2016). *The ADR Handbook.* Oxford: Oxford University Press.

Chaudhry, I. (2011). Concluding Speech. *National Judicial Conference.* Islamabad: National Judicial Policy Making Committee.

Chemin, M. (2009). The impact of the judiciary on entrepreneurship: Evaluation of Pakistan's "Access to Justice Programme". *Journal of Public Economics*, 114-125.

Department for International Development. (n.d.). *Pakistan: Rule of Law Programme.* Retrieved from United Kingdom Government: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/842483/Pakistan_Rule_of_Law_Programme.odt

Dr Mrs Yasmeen Abbas v Rana Muhammad, PLD 742 (LHC 2005).

Edwin Co LLP v Naseim Ahmed Sarfraz, CLC 1064 (IHC 2022).

ENCJ. (2014). *Independence and Accountability of the Judiciary; ENCJ Report 2013/2014.*

Feeley, M. M. (1983). *Court reform on trial: why simple solutions fail.* New York: New York Basic Books.

Feeley, M. M. (1992). *The Process is Punishment: Handling Cases in a Lower Criminal Court.* Russell Sage.

Ghulam Sarwar v Province of Punjab, SC 46 (Supreme Court 1982).

Government of Canada. (2017). *Standing Senate Committee on Legal and Constitutional Affairs: Study on Matters Pertaining to Delays in Canada's Criminal Justice System.* Ottawa: Government of Canada.

Haider, S. H. (2019). Law in Courts regarding frivolous cases in Pakistan: An inter-disciplinary critique. *Journal of Law and Society, L*(75), 43-54.

Hassan, R. S., Ahmed, N., & Siddiqui, F. A. (2021). Judicial System and Public Policy: Strategy for Expeditious Disposal of Backlog. *JISR*, 193-205.

Hazra, A., & Micevska, M. (2004). The Problem of court congestion: Evidence from the Indian lower courts. *Royal Economic Society Annual Conference .* Swansea.

Hussain, S. A. (2019, December 18). *Alternative Dispute Resolution Gains Traction in Pakistan*. Retrieved from Asia Foundation: https://asiafoundation.org/2019/12/18/alternative-dispute-resolution-gains-traction-in-pakistan/

Imran, S. K. (2020). Alternative Dispute Resolution for Prompt Disposal of Cases. *Pakistan Journal of Criminology*, 30-47.

International Crisis Group. (2008). *Reforming the Judiciary in Pakistan.*

Iqbal, J. (2006). The Role of the Judiciary as a catalyst of change. *International Judicial Conference.* Islamabad.

Islamabad High Court. (2022). The Justice Reform Project: Reimagining Justice in the 21st Century and Restoring Confidence of the People in the Justice Delivery System.

Karim Dad v Mst. Shahzadgai, MLD 642 (PHC 2021).

Ladha, A. (2022, March 1). *At what cost?* Retrieved from Dawn: https://www.dawn.com/news/1677677

Latimer House Guidelines. (1998).

Law and Justice Commission of Pakistan. (2004). *Annual Report.*

Law and Justice Commission of Pakistan. (2007). *Amendment in section 35 A of the Code of Civil Procedure, 1908.* LJCP. Retrieved from http://www.ljcp.gov.pk/Menu%20Items/Reports_of_LJCP/10/99.pdf

Law and Justice Commission of Pakistan. (2016). *Towards a National Policy and Strategy for the Application of Information Technology in the Justice Sector.*

Law and Justice Commission of Pakistan. (2021). *Annual Report.*

Law and Justice Commission of Pakistan. (2021). *Judicial Statistics of Pakistan.*

Law and Justice Commission of Pakistan. (2021). *Judicial Statistics of Pakistan.* LJCP.

Law and Justice Commission of Pakistan. (2022). *9th Judicial Conference*. Retrieved from LJCP: http://www.ljcp.gov.pk/njc/9njc/index.html

Law and Justice Commission of Pakistan. (n.d.). *Reports of Ad Hoc Law Reform Commissions*. Retrieved from LJCP: http://www.ljcp.gov.pk/Menu%20Items/Publications/Summary%20of%20reports%20of%20Ad%20hoc%20Commissions/3-summary%20of%20reports%20adhoc%20commissions.htm

Mehr Ashraf v Station House Officer, PLD 328 (LHC 2022).

Messrs ALTSTOM Power Generation through Afaq Ahmed v Pakistan Water and Power Development Authority through Chairman, PLD 581 (LHC 2007).

Messrs Ark Garments Industry Pvt Ltd v National Bank of Pakistan, MLD 1349 (2013).

Mohan, A. (2009). *Justice, Courts and Delays.* New Delhi: Universal Law Publishing Co.

Mr Justice Jillani, T. H. (2012). Delayed Justice & the Role of ADR. *Unpublished paper as cited by the International Judicial Conference 2012*.

Muhammad Anwar v Mst. Ilyas Begum, PLD 2013 SC 255 (Supreme Court 2013).

Muhammad Shaban v Malik Sher, SCMR 882 (Supreme Court 2007).

Muhammad Sharif v Nabi Baksh, SCMR 900 (Supreme Court 2012).

Mumtaz Baig v Sarfraz Baig, CLC 713 (2003).

Munir, M. (2021). Fast-track Procedure and Slow-track Results: Time Frame of Family Law Case Disposals in Pakistan. *LUMS Law Journal*, 43-60.

National Accountability Bureau. (2002). *National Anti-Corruption Strategy.* Islamabad.

Nawaz, C. H. (2004). *Delay Reduction with Effective Court Management.* Federal Judicial Academy.

Nisar Khan and 7 others v Sawal Faqil and another, CLC 923 (Peshawar High Court 2020).

Palumbo, G., Giupponi, G., Nunziata, L., & Mora-Ganguinetti, J. (2013). *Judicial Performance and its Determinants: a Cross-Country Perspective.* OECD.

Peshawar High Court. (1990, June 2). Instructions regarding peedy disposal of cases, filing documents, non observance of High Court rules and orders. *Circular Letter*.

Popova, O., Maroz, R., & Gamez, M. A. (2021, July 15). *The undeniable benefits of court automation*. Retrieved from Wold Bank: https://blogs.worldbank.org/developmenttalk/undeniable-benefits-court-automation

Qazi Naveed ul Hassan v District Judge, Gujrat, etc., SCP 32 (Supreme Court 2023).

Saeed, M. (2020). Assessing the efficiency of the dictrict courts of Pakistan - Why is better evaluation needed? *Amicus Curiae*, 418-38.

Sara, S., Ansari, D., & Jabeen, D. (2018). A Critical Analysis of Judicial Reforms: Through the Prism of National Judicial Policy, 2009. *Journal of Political Studies, 25*(2), 121-135.

Sarwas v State, SCMR 1811 (Supreme Court 2017).

Sato, Y. (2001). *Commercial Dispute Processing and Japan.* Kluwer Academic Publishers.

Shah Muhammad v Habibullah, PLD 5 (2020).

Shah, R. U. (2017). Budgetary Contraints as Third Angle to Delayed Justice: Reviewing Peace-Building Efforts through Judicial System. *Pakistan Journal of Peace and Conflict Studies*, 47-62.

Shamsi, V. (2017, March 1). *National Centre for Dispute Resolution Celebrates a Decade of Achievement*. Retrieved from Courting the Law: https://courtingthelaw.com/2017/03/01/commentary/national-centre-for-dispute-resolution-celebrates-decade-of-achievement/

Siddique, O. (2010). Law in Practice - The Lahore district courts litigants survey (2010-2011). *DPRC Working Paper*.

Sime, S. (2020). *A Practical Approach to Civil Procedure.* Oxford: Oxford University Press.

Sourdin, T. (2012). *Exploring Civil Pre-Action Requirements: Resolving Disputes Outside Courts.* Melbourne: The Australasian Institute of Judicial Administration Incorporated.

Supreme Court of Pakistan. (2023, February 25). Press Release No.4/2023.

Tahir Mehmood Afridi v Muhammad Dayar, YLR 615 (2011).

The Alternative Dispute Resolution Act, 2017. (n.d.).

The Bangalore Principles of Judicial Conduct. (2002).

The Express Tribune. (2017, April 1). *Historic decision: Court refers three cases to LCCI for mediation*. Retrieved from The Express Tribune: https://tribune.com.pk/story/1371053/historic-decision-court-refers-three-cases-lcci-mediation.

The Law Reform Commission of Tanzania. (1986). *Report No.1 of 1986 on Delays in the Disposal of Civil Suits.* Dar es Salaam: The United Republic of Tanzania.

US Courts. (n.d.). *Administrative Oversight and Accountability*. Retrieved from US Courts: https://www.uscourts.gov/about-federal-courts/judicial-administration/administrative-oversight-and-accountability

Vidur Impex Traders Pvt Ltd v Tosh Apartments Pvt Ltd, SCMR 602 (Supreme Court 2013).

Vos, W. (2004). Delay in South African Civil Procedure. In C. Rhee, *The Law's Delay: Essays on Undue Delay in Civil Litigation* (p. 335). Antwerp: Intersentia.

Woolf, Nicholas, H., Yim, & Jennifer, M. (2011). The Courtroom-Observation Program of the Utah Judicial Performance Evaluation Commission. *Court Review: The Journal of the American Judges Association.*, 368.

World Bank Group. (2011). *Alternative Dispute Resolution Center Manual: A Guide for Practitioners on Establishing and Manging ADR Centers.* Washington: World Bank Group.

Zaidi, S. (2017). *Delays in the Delivery of Justice in Civil Cases: Empirical Evidence from Four Judicial Districts in Sindh.* Karachi: Legal Aid Socirty.