

BOTTLENECKS OR INEFFICIENCIES: A CRITICAL ANALYSIS OF JUDICIAL EFFICIENCY AND COURT PRODUCTIVITY IN THE LOWER JUDICIARY SYSTEM OF PUNJAB

Saima Sarwar and Alvina Sabah Idrees

(This document is unedited author's version submitted to RASTA)

INTRODUCTION

Sound judicial system is considered as one of the important pillars for economic development. Transparent judiciary not only builds the confidence and trust among investors but also promotes efficiency of the social, economic, and political system. However, in case of developing economies, the judicial system is facing major constraints such as poor infrastructure, poor incentive systems, malpractices, lack of accountability, delays and backlogs, high costs of litigation, complex procedures, lack of judges and supporting staff vis-a-vis lack of transparency in appointments. These challenges are ultimately triggering socio-economic and political unrest in the country. Furthermore, without a well-functioning judiciary system, it is difficult to induce public harmony and conflict resolution for creating an enabling environment towards sustained peace and security, enforcement of human rights, good governance, and economic development.

This study attempts to explore critically the hindrances in the way of speedy justice at districts courts of Punjab. Unfortunately, even after the adoption of the World Bank project for developing economies 'Access to Justice', the situation is still the same at district court level without any considerable improvement. The question is this 'Why is this so if judicial reforms are there?'. What are those factors which are restricting the performance of these courts, i.e., whether these are internal or external issues causing this delay every year. Punjab is the largest province of Pakistan both population wise and share wise allocated for resource mobilization but somehow the performance of lower courts is becoming a serious concern for masses which in turn is affecting their socio-economic lives. To the best of our knowledge, quantitatively analysis of these issues is not done so far dealing the efficiency issue of the Justice System both at higher and lower level of Judiciary in Pakistan. Moreover, the available literature is qualitatively in nature not covering specifically District Courts of Punjab both in the domain of criminal and civil cases. This study aims to examine the existing situation both using the available secondary datasets (reports and websites) and field survey for highlighting the issues from grass root level so that a proper solution can be provided to the responsible authorities in this regard.

METHODOLOGY

The study used both quantitative and qualitative techniques for targeting the objectives. First the facts are being reported using the secondary dataset from the published reports and websites for various case types and 36 districts of Punjab for the last four years from 2018-2021. Secondly two approaches were used for situational analysis; 1) Graphical, and 2) Non- Parametric Technique Data Envelopment Analysis (DEA) for measuring efficiency of each district court. DEA is considered an

ideal approach in building a deterministic and non-parametric production function comparing performance of different decision-making units which are 'courts' here in our analysis. The study adopted **output-oriented model** which assumes Variable Returns to Scale (VRS) and revealed that how the existing inputs are efficient in the desired production of output. Here output is the disposal of cases and resolution index while inputs Judges and Administrative staff and court expenses. This estimation is made to equip the readers that how much the existing inputs are conducive to produce justice efficiently in overall Punjab. Lastly, based on the findings from the efficiency estimates, three most inefficient districts i.e., Lahore, Multan and Rawalpindi were targeted for conducting the survey from their court users i.e., Lawyers, Litigants and Judges. The sample size was drawn using proportional sampling technique and almost 8300 respondents were approached for the survey. The collected data was used graphically to understand the dynamics of these three district courts and interestingly all were having the similar kind of issue with almost same intensity. In the end the Service Quality (SERVQUAL) analysis was used to show the gap between expectations and satisfaction level of both lawyers and litigants about the court service.

FINDINGS AND CONCLUSIONS

The findings of the study exposed that the district courts in Punjab are facing an alarming rise in their case pendency for civil matters. The disposal rate is satisfactory and speedy in case of criminal case matters while disposition time is observed startling for civil cases and family matters. Using efficiency analysis based on 36 districts of Punjab, District courts of Lahore showed the highest level of inefficiency and Khushab and Rajanpur occurred as the most efficient district w.r.t to court productivity. However, these results do not necessarily conclude that the institutional arrangements and quality of court services are very ideal there and therefore the clearance rate is high. Rather these are the socio-economic demographics of the region like the crime rate, customs and practices which can be held responsible for this and are somehow difficult to quantify. For example, in Khushab and Rajanpur districts, case filing in courts is not the usual practice of people for the demand for justice, rather they have their own '**Jirga System**' or '**Punchayet**' practice where they prefer to resolve their matters through arbitration. Hence the pendency is lower not because of higher clearance rate rather it's about lesser institution of cases which is portraying no backlog and efficiency of the district. And this is the reason when we incorporated the role of 'case institution' as the exogenous (external) factor, we have observed that the average efficiency declined overall from 50% to 3%. The findings of the study showed that the '**institution of cases**' in civil matters have played an intense regressive role as external factors in triggering the inefficiency of courts at district level compared to their 'pendency' and 'caseloads with judges' overall. All this shows the over-utilization of resources without increase in court output. In other words, this clearly exhibits the inability of existing resources i.e., judges and administrative staff to clear the backlog. Hence, if Lahore is regarded as the most inefficient district productivity wise then this may be due to the size of the city, its population dynamics and income disparities which is causing increased rate of crime and corruption leading to more case filing and adding into backlogs. Hence this calls for not only increasing the capacities of existing courts in mega cities for catering their demand for justice in the best possible way but also on the one hand, this stresses for the better role of Law enforcement agencies to control the malpractices in the society.

For measuring the capacity of courts, scale efficiency is calculated, and it shows that all the district courts are operating in decreasing returns to scale which means that court size is too large to take full advantage of economies of scale and operates at supra-optimum scale size. All this demonstrates that courts are overly congested and therefore dispensation of justice is slow.

The findings of the survey from all three districts reported that multiple adjournments, conduct of lawyers, and behavior towards poor people is highly disappointing and causing poor performance of the court. Moreover, the Service Quality Gap analysis proved that courts are less empathetic towards the poor both in terms of court fee and lawyer's fee and that's why they are unable to resolve their cases timely because of their inability to make payments. Behavior of lawyers is given the top priority by the litigants to make the system more efficient and user friendly. When the litigants were asked about the specifications of court fee, lawyers fee, and travel cost for completing the judicial process of their cases, they highlighted that its lawyer's fee which is covering almost 55% of their total expense in case of criminal cases and 43% for civil cases. Beside this, the respondents emphasized that the most troubling stage during the trial has been the '**stage of evidence**' for them in both types of cases (Civil and Criminal) due to which they faced a huge number of hearings. This made their position vulnerable both in terms of monetary and time cost. We also inquired people to know the '**age of pendency**' for their filed cases and they reported that for civil cases it had been even more than 30 years and for criminal matters, it was somehow less than 10 years. The litigants also blamed the less cooperation of 'police department' during the investigation process which instigates the issue of delayed disposal of cases. Nonetheless lawyers held responsible the performance of 'Forensic Department' and its less coordination with courts in the delivery of speedier court services. The overall findings described that there exists Quality gap between the expectations and satisfaction level of the court users which shows that this specific industry is underdelivering the services and the customer of the services is uncontended due to overly promising. Moreover, the survey outcomes also depicted that role of media is somehow damaging the sanctity of many court decisions due to exaggeration. About Alternative Dispute Settlement (ADR), both the litigants, lawyers and judges have showed strong positive response for avoiding delays in settlements. Judges showed disagreement for pre-trial detention of the cases and also regarded 'adjournments' one of the major causes of the delay and blamed ill-preparedness of lawyers, absence of witnesses and Bar strikes responsible for this.

RECOMMENDATIONS

Based on the findings, here are a few policy recommendations which can be helpful in improving the judicial process at lower district courts.

- According to the judges' perspective, there is a need to increase the capacity of existing courts by improving both the infrastructure availability and the number of serving judges so that on average the clearance rate can be improved. Judges have accentuated that the court automation for informing about hearings to the litigants and lawyers must be well-regulated in all districts for symmetry of information and for increasing the judicial governance.
- The lawyers' community also underlined the role of adjournments, political influence from external sources and lack of training of lawyer and judicial professionals which can really enhance the efficiency of the court systems at district level. Therefore, it is suggested as per the findings from survey that a penalty must be assigned to lawyers in case of multiple adjournments for avoiding intentional delays and to increase the turnover of the judges.
- The survey opinion from the litigants is very satisfactory in case of judges' performance, however they highlighted the inefficiency and lack of transparency in the behavior of **supporting staff** and **lawyers** which is to be corrected. Supporting staff is involved in taking

bribes and using many other informal means for exploiting the interests of both parties. The court should develop a plan of action for dealing with such kinds of crimes.

- As the cost of proceedings is beyond the capacity of a common man to fulfill the demands of lawyers and court fees therefore, it is suggested that the government should try to make such policies which could facilitate the poor people in bearing these expenses. In this regard we can observe an already existing policy solution in Western economies in the form of **pro bono culture**¹ for facilitating them. Our Judicial bodies should develop a policy framework to give protection to both the lawyers and litigants while using the court services. They should draft such a policy that minimum pro bono cases must be given weightage for the elevation of judicial professionals in their career.
- Adoption of **Pro bono culture** should also be used to give maximum exposure to our young students in this profession at the early stage of their career. This will provide them with an opportunity to work with highly skilled professionals for their training for the future. Here a policy should also be designed in such a way that this activity must be given a weightage in their career profile while entering in the field for job search.
- On the other side the lawyers should be incentivized by different harmonized policies towards them by the Government i.e. some sort of financial/medical security to the lawyers doing private practice because this will boost their trust and confidence level upon the system, and they will become more compassionate towards such clients who are unable to pay heavy fees. Medical card facility is already one kind of example in this regard however there still exists room for more such kind of policies like entitlement of basic education facilities for their children in both public and private schools, housing facility in particular societies. In this way we can make their conduct empathetic towards the poor.
- To reduce the multiple hearings and adjournments, a maximum limit should be fixed by the government in collaboration with judicial authorities so that resolution time could be minimized. On the other side there must also be a set mechanism for lawyer's fees at different stages of proceedings both in civil and criminal cases. And there should be a check as well by the authorities in the form of penalty for exceeding the prescribed limits of fee.
- Above all major amendments are required to be made in CPC and CRPRC rules for the early disposal and to restrict the interim appeals as shown by a serious concern in judges' survey. The ideal example of such modification of laws can be observed in the case of '**Punjab Rented Premises Act 2009**' in which after the judgment of district court, no further appeal is provided for high court and supreme court. Using these practical solutions will enhance the assurance and reliability of court services for litigants.

¹ In the legal profession, free legal services that are provided by an advocate to an individual who is not capable of hiring a lawyer and paying its fee is termed as pro bono service. However, the State can offer waiver of court fees to such lawyers for to avoid any kind of personal monetary loss. Pro-bono cases can also be used as a marketing strategy for lawyers and offer recognition, and increased clientele to the lawyers, and help them to earn a reputation. Even though pro bono cases do not allow the lawyers to earn enough money, it certainly offers several benefits and opens numerous doors of opportunities for them. If a lawyer represents a pro bono case that is highly publicized, then the lawyer also earns a lot of reputation and fame, thus increasing the possibility of future clients. If the lawyer wins the pro bono case, he receives an appraisal, and more people are willing to hire him.