

IMPACT OF DELAYED JUSTICE ON THE ECONOMIC LIVES OF LITIGANTS: THE CASE STUDY OF CIVIL SUITS AT DISTRICT SWAT, PAKISTAN

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ABSTRACT

Our Judicial system is struggling to cope with the exponentially rising civil suits and criminal cases in almost all parts of the country. However, due to the perceived less importance of civil suits in comparison to the criminal cases, it often results in major delays while getting to the resolution. This delay in civil suits is not only impacting the litigants socially and psychologically but also economically. Therefore, this study tries to fill this gap by investigating the economic impacts of the delay in civil suits on the litigants as well as their families. For this purpose, we adopted a quantitative research approach and collected primary data from 361 respondents through an interview schedule. The respondents were selected through stratified random sampling on the criterion of pending cases before the courts at the Swat district of Khyber Pakhtunkhwa. The results with 62% suggest that the actual cost of the cases for litigants was increased while 72% believed that this delay has put them under the financial constraints. The cost of the case and decrease in benefit for the litigants have significant association having $P=0.00$. While there was also a significant relationship between the civil suits and its negative impact on jobs or earnings and businesses of the litigants with $P=0.00$. It can be argued that quick resolution of civil suits will result in less financial burden on litigants while it can also help in saving their income sources and businesses which ultimately is helping their families.

Key Words: Civil suits, Delay, Economic impacts, Litigants, Civil justice.

1. INTRODUCTION

Globally, the demand for the resolution of civil disputes and other criminal cases has increased beyond the capacity of the concerned judicial systems to resolve these cases and to provide justice accordingly. This situation has resulted in the increased backlog of cases where the parties or litigants who seek justice wait for a longer period of time (Vereeck & Muhl, 2000). When it comes to civil matters, the situation is more threatening as the Law and Justice Commission of Pakistan (2003) has declared that persistent delay prevails in civil cases in comparison to criminal cases. This trend is bringing a bad name to the judicial system while parallelly resulting in some serious economic consequences for those who have civil cases pending before the courts. These circumstances point towards the dire need of investigation in order to identify the issues and to devise a comprehensive strategy to improve the civil justice system in dispensing speedy and affordable justice. While on the other hand to minimize the consequences of the delayed justice for litigants and their families (Shah et al. 2014).

People in Pakistan face numerous problems while litigating their civil suits. The pendency of civil suits in the country is increasing continuously without any barriers to it. There is not any fixed timeframe for civil suits in the Code (CPC) of Pakistan and the civil claims take longer to resolve by the Justice system in Pakistan. There are socio-economic and legal factors, which may prolong the litigation process and put some serious consequences on the socio-economic lives of the litigants. Due to the expensive system of our courts and huge fees of prosecutors, delay in the resolution of civil cases often results in the huge financial constraints faced by the litigants (Shah et al. 2014; Tabassum et al. 2021). As delay in civil suits results in wasting more time of the litigants while handling their civil cases, it results in the wastage of their precious time, and hence it affects their jobs and businesses. The aim of this study is to evaluate the consequences of delay on the economic lives of litigants.

2. REVIEW OF LITERATURE

Nelken (2017) defines delay in the justice system as the extra time spent than the expected time which is perceived as sufficient for a reasonable decision while disposing of civil or criminal matters in the courts. There are different time periods at different stages of a case in court which are often not discussed in terms of delay. The court delay consists of four stages between the start of conflict and the final judgment which should be distinguished to investigate the court performance. Before registering a suit to the court, there is a negotiation time in which parties to dispute negotiate between or among them in the first phase. In the second phase, different documents are submitted and other requirements of the court are fulfilled so as to prepare the case for examination. In the third phase, the parties wait between registering the case and the starting of judicial procedure (which is the actual court delay mainly dependent on the performance of the court). Finally, after the commencement of the trial till the final judgment is the fourth phase of court delay. In this study the researcher will evaluate the socio-economic causes and consequences of delay in the last three stages of civil suits in the area (Vereeck and Muhl, 2000; Gravelle, 1995).

In the US largest trial courts, litigants wait for at least four years on average between registering a case and the final award by the court. Such statistics is an alarming condition which results in the problematic situation. The National Centre for State Courts have recently studied 18 trial courts of state general jurisdiction located in the different major cities of the US. In these studies, the primary focus was on time disposition of tort suits i.e. the time between registering a suit to the final award of the court. The median time was observed as 721 days in the slowest court for tort suits for disposing a suit. In fewer than 2 years, only 51 percent of suits were disposed of and it took more than 1750 days which is equal to four years to resolve 10 percent of the tort suits (Galanter, 1986).

The justice system across the world is confronted with a lot of problems regardless of attention that is given to cope with this issue. Huge legal costs, heavy backlogs of cases and delay are the problems that have worsened the situation in most parts of the world (Hazra & Micevska, 2004). The judiciary has failed in the area to provide speedy justice which has hurt the expectation of people (Krishnan & Kumar, 2011). The prevalence of this undue delay has resulted in the huge dissatisfaction with the justice system (Adler et al., 1982).

There were more than 2.5 million pending cases in the different courts in Pakistan which showed the seriousness of the situation. Even if new cases were not to be registered at courts, these cases needed around 15 years to be disposed of. (Akhtar et al., 2008). In Pakistan, it takes almost 20 years to resolve a civil matter and 5 additional years for the execution of court decree (International Crisis Group, 2008).

Delay in the justice system not only hinders the effective operation of the judicial system but it brings financial implications along with many other serious consequences for the litigants who have pending cases in the courts. The cost of litigation increases as the case delays (Economides, Haug & McIntyre, 2013). Delay in justice exposes the weaker party to an early settlement or abandoning the genuine rights, where the wealthier party gets the benefit of it (Galanter, 1974).

An ex-president of the American Bar Association said that the general masses “are terrified of going to court” where the expenses and length of trials are the reason behind this kind of situation and he said further “stunned by the length of time it takes to serve on a jury” (Landoni, 2007). The average fee of legal counsel ranges from 150 to 250 USD (United States Dollar) in the federal courts which results in the decrease of individual clients and their only corporate clients who consulate for litigation (Hadfield, 2000).

The cost of litigation is unpredictable in most cases irrespective of whether the case is simple or complex (Zuckerman, 1996). So it is therefore the cost of litigation that is the major focus of litigants in the entire process of litigation (Genn, 1999). In Ontario and England, the litigants perceived in their minds that the benefit from their cases is lower than that of the cost incurred in their cases (Jacob, 1987). Litigants want to enquire about the expected cost before the commencement of their trials because the cost is the major focus of litigants in most cases where it results in more distress and anxiety to litigants than that of the original disputes which they had (Sherr, A., & Webley, 1997).

Giddings and Robertson (2001) analyze different kinds of legal aid services in Australia where they have found that there is an increasing number of unrepresented litigants in the courts. Community Legal AID and Legal Aid Commission are successfully providing legal services to those litigants who cannot afford legal fees and such litigants resolve their cases with the help of these services. These services also helped to minimize delays in various types of cases in Australia.

It is revealed by many studies that litigants were not provided with adequate, clear information about the cost of litigation by the legal counsels and even some studies have revealed that not only the information related the cost were not provided but the actual chances of winning or losing were not provided as well (Baldwin, 1997). Some researchers found that the actual fees charged by the legal counsels were far higher than those which were provided at the beginning of the case. (Matruglio, 1994). It has been found by many studies that the litigants paid unfair, unreasonable and inordinate charges for their cases which have put a huge financial burden on the litigants and their families (Genn, 1999).

Moreover, litigants are most often hesitant to go to courts because of unreasonable delay, huge cost, fear of losing, frustration, complex and cumbersome procedures (Raymond, 1992). There are still some litigants who are happy for being involved in litigation and for going to court. Such litigants often survive with the delay in their cases and had good experience with the court procedures (Galanter, 1983; Genn, 1999). Interview data of a study on litigants in the US illustrates that courts are good and powerful means to provide justice (Merry, 1986).

Theoretically, the optimum choice analysis aims to minimize time and cost required for disposing a case under the justice system. This analysis provides a way forward to judges, prosecutors, and legal counsels for how to reduce time consumed per case and the likelihood of settlement. This framework also analyzes the individual action for whether access to court for dispute or not. A disputant will tend to consult with legal counsel if they expect the benefit minus the cost of the case which he/she is going to register at the court office to be greater than the benefit minus the cost of not registering the case. The legal counsels and judges can fasten and slow down the disposition of cases with the help of this analysis where the benefits are increased and costs are reduced by making time-saving decisions. This will happen if the judges and legal counsels are awarded for time-saving decisions and performance in the courts e.g. increasing the salaries of judges and fees of legal counsels or giving them bonuses for disposing of more cases speedily. if they have reduced the average time consumed per case. Although, legal counsels can also slow down the speed of litigation by making time lengthening decisions where benefits are decreased and the cost of litigation is increased. To cope with such decisions and actions, judges and legal counsels should be penalized so that they could not prolong the cases deliberately (Nagel & Neef, 1978).

3. RESEARCH QUESTION

How are the economic lives of the litigants impacted by the delay in the civil suits?

4. MATERIAL AND METHODS

In this study we utilize quantitative research design by collecting quantitative data from 361 respondents as advised by Krejcie and Morgan (1970). For this purpose, inferential and descriptive statistics were employed for analyzing and organizing data into tabular and descriptive forms. Stratified random sampling (Creswell et al. 2016), was employed to collect the litigants whose cases were pending before the courts. While the data was collected through the interview schedule because the majority of the respondents were uneducated or less educated. The association between delay and its economic impacts was analyzed and presented in frequencies, percentages as well through chi-square test.

5. DATA ANALYSIS

Data analysis is divided into three sections. First section includes the biodata which consists of questions about their family background and financial status. The second section consists of univariate analysis which presents the responses of the litigants about the consequences of the delay in civil suits on their economic lives in terms of frequency and percentages. The third section includes the bi-variate analysis wherein the association between delay and its economic aspects for litigants and their families were tested with the help of chi-square test and the results are thereby supported with the relevant literature.

5.1 Details of suits and litigants

5.1.1 Case filed since (in years)

Time (y)	Frequency	Percentage
Less than 1	77	21.3
1-2	63	17.5
2-3	89	24.6
Above 3	132	36.6
Total	361	100

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Table 4.1.1 discloses the duration for which the civil suits were under trial. There were a majority of suits i.e. 36.6 percent which were under-trials for more than 3 years while 24.6 percent were under-trials for 2-3 years. There were only 17.5 percent suits which were under trial for the last 1-2 years and the remaining 21.3 percent suits were under trial for less than one years.

5.1.2 Estimated Cost spent on litigation till now (in thousands)

	Frequency	Percentage
Up to 50	114	31.6
51-100	57	15.8
Above 100	190	52.6
Total	361	100

Table 4.1.2 tells about the total cost spent on litigation. There were a majority of litigants i.e. 52.6 percent who had spent more than 100 thousands PKR on their suit while 31.6 percent had spent up to 50 thousand PKR and the remaining 15.8 percent had spent 51-100 PKR on their suits.

5.2 Consequences of Delay in Civil Justice System on Litigants' Economic Life

Statement	Agree		Disagree		Don't Know		Total
	Frequency	Percentage	Frequency	Percentage	Frequency	Percentage	Frequency
The actual cost of money has exceeded from the initial cost estimate which were provided by the lawyer.	224	62.0	51	14.1	86	23.8	361
The net benefit from the suit is decreased by the cost of litigation.	204	56.5	105	29.1	52	14.4	361
The delay has increased the financial constraints faced by litigants as well as the family	286	79.2	1	.3	74	20.5	361
Litigants cannot afford the educational expenditure of their children and other family members.	256	70.9	23	6.4	82	22.7	361
Litigants cannot afford the educational expenditure of their children and other family members	216	59.8	95	26.3	50	13.9	361
The absence of free legal assistance makes it difficult to continue the legal struggle.	243	67.3	45	12.5	73	20.2	361
The absence of financial assistance mechanism for litigation makes it difficult to continue the legal struggle.	257	71.2	36	10.0	68	18.8	361
Litigants are often un-represented by the legal counsel at court owing to financial constraints.	187	51.8	51	14.1	123	34.1	361
Litigants cannot give proper attention to their jobs/earning.	284	78.7	28	7.8	49	13.6	361
Litigants cannot afford the cost to continue their legal struggle through formal mechanism of justice.	236	65.4	55	15.2	70	19.4	361

Table 4.2 describes the economic lives of litigants. There were a majority of litigants i.e. 62 percent agreed with the statement that actual cost of money has exceeded from the initial cost estimate

which were provided by the lawyer while 14.1 percent disagreed with the statement and the remaining 23.8 percent had no idea about this statement. There were more than half of the litigants i.e. 56.5 percent who viewed that the net benefit from the suit is decreased by the cost of litigation while 29.1 percent disagreed with this view and 14.4 percent were doubtful about this view. There were a majority of litigants i.e. 79.2 percent who declared that delay has increased the financial constraints faced by litigants while only 0.3 percent disagreed with this consequence of delay and 20.5 percent were uncertain about whether it has increased or not the financial constraints for them. There were a majority of litigants i.e. 70.9 percent who argued that delay had brought financial constraints to other family members while 6.4 percent were against this argument and 22.7 percent did not know whether other family members faced financial constraints or not.

There were a majority of litigants i.e. 59.8 percent reported that they cannot afford the educational expenditure of their children and other family members while 26.3 percent disagreed with this statement and the remaining 14.9 percent had no idea whether they can afford the expenses of their children's education or not. The majority of litigants i.e. 67.3 percent were of the view that the absence of free legal assistance make it difficult to continue the legal struggle while 12.5 percent were against this view and the remaining 20.2 percent were uncertain about this view. There were a majority of litigants i.e. 71.2 percent who declared that the absence of financial assistance mechanism for litigation made it difficult to continue the legal struggle while 10 percent were against this statement and the remaining 18.8 percent had no idea about this statement. There were majority of litigants i.e. 51.8 percent who were agreed with the statement that most of them were un-represented by the legal counsel at court owing to financial constraints while a significant portion of them i.e. 34.1 percent were doubtful about this statement and the remaining 14.1 percent disagreed with this statement. The majority of litigants i.e. 78.7 percent were in favor of the statement that they could not give proper attention to their jobs/earning while 7.8 percent were against this statement and the remaining 13.6 percent did not know about this statement. There were a majority of litigants i.e. 65.4 percent who were of the view that they cannot afford the cost to continue their legal struggle through formal mechanism of justice while 15.2 percent were not in the favor of this view and 19.4 percent were uncertain about this view.

5.3 Consequences of Delay in Civil Justice System on Litigants' Economic Life

Statement		Delay in Civil Justice System			Total	Statistics
		Agree	Disagree	Don't Know		
The actual cost of the case has exceeded the initial cost negotiated with the lawyer.	Agree	172	37	15	224	$X^2 = 13.115$ $P = .011$
	Disagree	27	15	9	51	
	Don't Know	58	18	10	86	
Total		257	70	34	361	
The net benefit from the suit is decreased by the cost of litigation.	Agree	165	28	11	204	$X^2 = 23.011$ $P = .000$
	Disagree	61	27	17	105	
	Don't Know	31	15	6	52	
Total		257	70	34	361	
The delay has increased the financial constraints faced by litigants as well as the family	Agree	199	59	28	286	$X^2 = 11.865$ $P = .018$
	Disagree	0	0	1	1	
	Don't Know	58	11	5	74	
Total		257	70	34	361	
Litigants cannot afford the educational expenditure of their children and other family members.	Agree	163	38	15	216	$X^2 = 10.123$ $P = .038$
	Disagree	65	21	9	95	
	Don't Know	29	11	10	50	
Total		257	70	34	361	

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The absence of free legal assistance makes it difficult to continue the legal struggle.	Agree	184	38	21	243	$X^2 = 29.058$ $P = .000$
	Disagree	25	20	0	45	
	Don't Know	48	12	13	73	
	Total	257	70	34	361	
The absence of a financial assistance mechanism for litigation makes it difficult to continue the legal struggle.	Agree	188	43	26	257	$X^2 = 10.628$ $P = .031$
	Disagree	23	13	0	36	
	Don't Know	46	14	8	68	
	Total	257	70	34	361	
Litigants are often un-represented by the legal counsel at court owing to financial constraints.	Agree	130	38	19	187	$X^2 = 3.620$ $P = .460$
	Disagree	33	11	7	51	
	Don't Know	94	21	8	123	
	Total	257	70	34	361	
Litigants cannot give proper attention to their jobs/businesses	Agree	206	53	25	284	$X^2 = 12.897$ $P = .012$
	Disagree	13	8	7	28	
	Don't Know	38	9	2	49	
	Total	257	70	34	361	
Litigants cannot afford the cost to continue their legal struggle through formal mechanisms of justice.	Agree	177	45	14	236	$X^2 = 12.168$ $P = .016$
	Disagree	33	14	8	55	
	Don't Know	47	11	12	70	
	Total	257	70	34	361	

Table No. 4.3 analyzes the association of delay in civil cases with its consequences on the economic life of litigants. A significant association ($P=.011$) was found with the increasing expected cost of the trials. Similar findings were found by some studies that the actual fees charged by the legal counsels was far more higher than those which were provided at the beginning of the case. (Matruglio, 1994). While Zuckerman (1996) argued that the cost of litigation is unpredictable in most of the cases irrespective of whether the case is simple or complex, important or not and quick or delayed. There was a highly significant association ($P=.000$) observed with the statement that net benefit from the suit is decreased by the cost of litigation. Nagel & Neef, 1978 presented a rationale behind why a dispute registered a case. They argued that a disputant will tend to consult with legal counsel if they expect the benefit minus the cost of the case which he/she is going to register at the court office to be greater than the benefit minus the cost of not registering the case. Hence from this analogy it is clear that the cost reduces the net expected benefit from the suit.

The association with the increased financial constraints faced by litigants was found significant ($P=.018$). Similar results were given by Economides Haug, and McIntyre (2013), where they pointed out the economic consequences as delay in justice system not only hinders the effective operation of the judicial system but it brings financial implication along with many other serious consequences for the litigants who have pending cases in the courts. The cost of litigation increases as the cases are delayed. Similarly, the association of financial constraints to other family members was also found significantly associated ($P=.044$). The literature also confirms this finding that litigants wants to enquire about the expected cost before the commencement of their trials because cost is the major focus of litigants In most of the cases where it results in more distress and anxiety to litigants and their families than that of the original disputes which they had (OSS, 1997). There was a significant association ($P=.038$) calculated with the statement that litigants cannot afford the educational expenditure of their children and other family members. It has been found by many studies that the litigants paid unfair, unreasonable and inordinate charges for their cases where it has put a huge financial burden on the litigants and their families (Genn, 1999).

There was a highly significant association ($P=.000$) found with the absence of free legal assistance which made it difficult to continue the legal struggle by the litigants. Similarly, a significant association ($P=.031$) was observed with the absence of a financial assistance mechanism for litigation which had also made it difficult to continue the legal struggle. There was a non-significant association ($P=.460$) found with the statement that litigants are often un-represented by the legal counsel at court owing to financial constraints. Giddings and Robertson (2001) analyze different kinds of legal aid services in Australia where they have found that there is an increasing number of unrepresented litigants in the courts. Community Legal AID and Legal Aid Commission are successfully providing legal services to those litigants who cannot afford legal fees and such litigants resolve their cases with the help of these services. These services also helped to minimize delay in various types of cases in Australia. There was a significant association ($P=.012$) found with the giving of proper attention to the jobs/earning by the litigants.

Kidder (1973) highlighted the prospect of delay over the business of litigants. Delay is perceived as a threat for most of the businessmen as they view cost on litigation as a loss while they often abandon their due rights to prevent further loss on litigation. There was a significant association ($P=.016$) found with the affording of cost to continue the legal struggle through formal mechanism of justice by the litigants. This finding is in line with the literature where Galanter (1974) highlighted that delay in justice exposes the weaker party to an early settlement or abandoning the genuine rights, where the wealthier party gets benefit of it. Maiman et al. (1992) also pointed to litigants' expectation about the outcome of their cases that they are also persuaded by their lawyers that do not expect too much from the formal justice system.

6. CONCLUSION

There is an extensive body of knowledge that focuses on the delay in criminal cases; however, there are few studies that address the delay in civil suits due to the perceptual importance of civil suits in our society (Law and Justice Commission of Pakistan, 2003). This study tries to fill that gap by arguing that there are thousands of civil suits pending before the courts which is resulting in serious economic repercussions for litigants as well as their families. It can be concluded from the uni-variate analysis that 86% of the litigants agreed that the actual cost of the litigation has increased from its initial cost while 82% of the participants agreed that this delay in their civil suit has brought financial constraints to them as well as their families. While through bi-variate analysis, a significant relationship with $P=0.000$ was found between delay in civil suits and increase in the litigation cost.

A similar significant relationship was found between delay in civil suits and lack of proper attention and time by litigants to their jobs and businesses with $p=0.012$. It can be recommended that free of cost assistance shall be provided to the litigants so that legal costs of the litigation can be mitigated while the upper judiciary may lay strict guidelines for speedy justice and resolution of civil suits.

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