



QUEST FOR JUSTICE



Judicial System IN Pakistan



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Preface

Fifty seven years ago, when the people of Pakistan won independence from the British, they awaited a great metamorphosis. From being the subjects of a powerful and brutal empire, they were to become citizens of a free country, a homeland that was to be shaped by their dreams and aspirations. Independence, however, soon turned into a "false dawn" and people realized that it meant little more than a change of masters. The promise of equitable development and democratic rule in the country has eluded the people ever since, with the ruling elite faithfully sticking to its colonial mindset and methods of subjugation.

As the world discovers the importance of good governance in solving some of the most pressing problems confronting the developing world, the civil society in Pakistan is also increasing its involvement with key public issues. It is cognizant of the fact that meaningful development effort must pay attention to issues of public policy, governance and citizen's rights. Moreover, "good politics" must precede and reinforce good governance.

This paper is seventh in the series of publications intended to contribute to the larger civil society struggle for realizing the cherished dream of development and democracy. These publications are aimed at raising people's awareness on vital political, social and economic issues. They seek to break the silence, ignite public debate and open a serious dialogue, thereby strengthening the demand for democracy and good governance.

In the absence of justice, societies cannot flourish or survive for long. And rule of law is as indispensable to a nation-state as oxygen is to human beings. Yet the *thana-kutchery* problems top the list of issues confronting people in Pakistan. Such everyday problems are a manifestation of the state's insensitivity towards the people, and they tend to perpetuate the prevalent power dynamics. Since easy access to justice is not available to ordinary citizen in Pakistan, this paper is intended to contribute to the struggle for a social order based on justice and rule of law.

This paper, synthesized from a broader research study of the author, Ms. Foqia Sadiq Khan, analyzes the issue by first examining both the formal judicial structure at the local level and the informal or alternate dispute resolution institutions, especially in rural Pakistan. It then looks into the frustrating and exploitative functioning of these structures. The paper provides not only a systematic and diagnostic understanding of the working of formal and informal systems of justice in Pakistan, but many deep insights into these issues. It contains a number of very touching narrations and case studies depicting the pain and suffering, and the trials and tribulation, of the ordinary people in their vain quest for justice.

There is a common saying these days that if you can afford it, then try to hire a judge rather than a lawyer - as many case studies in this paper testify. Delay, bribery, extortion, exploitation of the weak party, insults at every step, physical torture by police, calculated absenteeism from court appearance, replacement of judges, frivolous litigation, etc. characterize the current state of our judicial system. Thus we can hardly blame a poor and weak citizen for his/her lack of confidence in the judicial system. This paper not only profiles the abysmal situation of access and dispensation of justice in Pakistan but also sheds light on the way forward through comprehensive reform in the judicial system.

I appreciate the partnership and support of The Asia Foundation for this project, and hope that it will mark the beginning of a long association. The project team led by Zaigham Khan has done a commendable job and I congratulate him and his project colleagues, Raja Ehsan Aziz, Mohammad Najeeb, Haniya Aslam, M.Y. Khan and Madiha Sandhu. We are also thankful to SDDP (Supporting Democratic Development in Pakistan) project partners who contributed in the initial discussions that brought clarity to our efforts.

Dr. Zafar Mirza
Executive Coordinator
The Network for Consumer Protection

Executive Summary

This paper is primarily based on two field studies, focusing on patterns of access and dispensation of justice at the local judiciary level in Pakistan. It discusses the nature of disputes and the role of formal and informal justice dispensation institutions. It also briefly reviews past attempts to reform the justice system and assesses the way forward.

"Rule of law" is intrinsically linked to the concept and functioning of the modern nation-state, as it epitomizes the notion of a "social contract" between citizens and the state. However, the justice system in Pakistan is in a state of disarray. Although Article 25 (1) of the Constitution promises equality before law, the gap between this pledge and its actual dispensation is far too wide. Justice is a basic social service that the state is obliged to deliver to its citizens, and is closely linked to issues of poverty, social justice and economic growth.

In Pakistan, there exist both formal and informal mechanisms of dispute resolution. Informal mechanisms, such as the *panchayat* and the *jirga*, predate the modern nation-state. The former comprises two levels of judiciary: the "superior" and the "subordinate", or "lower", judiciaries. The superior judiciary

comprises High Courts with appellate jurisdiction in all the provinces and a Supreme Court, the highest judicial body of the country, in the federal capital. The lower judiciary is situated at the district level. In practice, the formal and the informal justice systems often complement each other.

Most disputes in Pakistan revolve around property. Perceived violation of *izzat* (prestige) is often catalytic in disputes, particularly in rural areas. Police harassment is also a major issue. The police generally refuse to register First Information Reports (FIRs) and will instead register an interim report that has no legal validity. This enables the police to 'kill' the case off-the-record if adequately bribed by an interested party.

The poor avoid involving the police, since it usually results in harassment and extortion, and works in favour of the rich and influential. They also tend to avoid the courts, particularly against an influential party, given the prohibitive costs of litigation and the power of their opponents to 'buy' justice through money and influence.

The courts are often used by the influential as an instrument to settle scores. The courts can act very expeditiously when there is vested interest involved. It is usu-

“ Although Article 25 (1) of the Constitution promises equality before law, the gap between this pledge and its actual dispensation is far too wide. Justice is a basic social service that the state is obliged to deliver to its citizens, and is closely linked to issues of poverty... ”

ally the influential rather than the poor and victimized who initiate litigation. The judges sometimes become a party to delaying tactics, even to the point of violating the law.

There are inordinate delays in civil and criminal cases that can be avoided through a systematic process review. Most criminal cases end up in acquittal or, owing to long delays by the prosecution, eventually as out-of-court compromise - generally at the cost of justice and the right of the weaker party. Almost half the average expense incurred on litigation is in the form of illegal fees and outright bribes.

Various laws, such as those pertaining to *Ehteram-e-Ramzan* (sanctity of the month of fasting), price control, unlicensed guns and drug abuse, are used by the

women are often killed for the sake of "honour", while others are treated like chattel.

There are some parallels in the nature of disputes and dispensation of justice in Larkana, Sindh and Sibi, Balochistan. In these districts, *karo-kari*, robbery, kidnappings, and theft are the main crimes. The tribal *sardars* (chieftains) or their nominees resolve disputes. This system is speedy and does not entail the costs of the formal court system. However, it is also coercive, authoritarian, subjective, and without any system of checks and balances or appeal.

Gender comes up as a significant factor in dispensation of justice. Moreover, gender discrimination is closely linked to socio-economic status. It means that the poor and less influential

“ *The judges sometimes become a party to delaying tactics, even to the point of violating the law... Gender comes up as a significant factor in dispensation of justice. Moreover, gender discrimination is closely linked to socio-economic status.* ”

police as a means to exploit the less privileged. In Larkana, Sindh, *karo-kari* ("honour" killing) is predominant and often results in killing the woman (*kari*) and claiming 'compensation' from her family. This compensation could involve the pledging of another woman from the *kari* family. In any case,

women are most likely to be discriminated against, because of gender and also their socio-economic status. However, women from higher socio-economic strata are able to deal with judicial institutions better despite the endemic structural discrimination along gender lines.

Pakistan's downslide

towards institutional collapse notwithstanding, formal justice remains an indispensable service. Women as a group, however, face critical access to justice problems. In rural Sindh and Balochistan, the majority of criminal cases are linked to "honour" killings. Only a negligible number of these murders are reported to the police and courts, while most go unreported. Even the few that are reported do not result in justice for the victims, since perpetrators of these crimes secure pardon under the Qisas and Diyat Ordinance, 1984, one of the many discriminatory legislations passed by the Zia-ul-Haq regime.

There are huge pricing distortions in the provision of judicial services which need to be linked with routinized bribery in the courts. There is also a need to review the role of lawyers and determine how their perceived role can be transformed, from being only interested in fleecing litigants into legal experts who give advice to courts in an independent manner. It will also contribute to the process of judges taking more control over proceedings rather than allowing the cases to drag on at the behest of the litigants and lawyers. In order to do so, legal education and physical and human resources of the court need to be improved.

An important question arises as to why the government has not been able to ensure a properly functioning system of access and dispensation of justice, despite the fact that judicial structures

have been scrutinized by successive government appointed commissions since 1956. There are no easy answers. Researchers and international organizations have conducted studies on the state of justice systems as well. The Asian Development Bank has come up with a multi-million dollar justice reforms programme, presently in its implementation phase. These reforms are management-oriented in nature. The key recommendations (most of them being voiced from other

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forums since the 1970s) pertain to legal education, training of judges, improvements in the Bar, upgradation of libraries, dissemination of laws and procedures relating to information, case flow management, automation, incentives for judges, improvements in physical infrastructure of courts, professionalization of court clerks and process serving mechanisms, a legal endowment fund and institutionalization of reforms within the Pakistan Law Commission. Besides, a whole range of social, economic, legal and administrative reforms, including transparency, and repeal of discriminatory laws, are needed.

Introduction

“ Access and dispensation of justice are thorny issues in Pakistan's governance paradigm... The situation is particularly alarming at the level of the district judiciary where "common" people approach courts to get justice. ”

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This paper on the judiciary in Pakistan focuses on issues of access and dispensation of justice, particularly at the local level (also known as "subordinate" or "lower" level judiciary).¹ The paper has three sections. The first broadly introduces the debate on dispensation of justice and discusses the judicial system. The second takes into account issues regarding access to justice systems and their functionality vis-à-vis citizens. A brief analytical summary of reform efforts and recommendations form the concluding section.

In a broad conceptualization, "rule of law" (and dispensation of justice inter alia) is a defining characteristic of the modern nation-state. Since the nation-state stands on the edifice of a "social contract" between citizens and the state, the state is bound to function by the "rule of law" to ensure individual and collective rights and responsibilities of citizens. In the context of this broader conceptualization of the relationship between the citizen and the state, the constitution of the state represents the social contract since it is a document that binds citizens to the state and upholds the rule of law.² The rule

of law and the establishment of the nation-state are linked to the rise of modernity in the Enlightenment period in Europe from the 16th century onwards. Modernity is reflected, among other things, in feudalism being replaced by a capitalist mode of production and impersonal market relations, barter trade by an invisible exchange and communitarian values by individualism.

Access and dispensation of justice are thorny issues in Pakistan's governance paradigm and in the day-to-day reality of its people. The situation is particularly alarming at the level of the district judiciary where "common" people approach courts to get justice. Dispensation of justice is quite a complicated issue and can be viewed from many angles:

1. Constitutional guarantee: Article 25 (1) of the Constitution of Pakistan says, "All citizens are equal before law and are entitled to equal protection of law." Despite this constitutional guarantee, the poor and the less influential sections of society face problems while accessing the institutions of justice. The common perception is that "there is

no justice for the poor." It is reflective of the fact that influential, rich and resourceful people can buy justice and deprive the poor of their property as well as their socio-political and legal rights.

2. Service-delivery and Governance: Dispensation of justice is a basic service which the state provides to its citizens. Like provision of education, health, water, shelter, basic infrastructure and town and municipal services, it is obligatory. Its near dysfunctional status in the country is comparable to the performance of other public services such as public education and health. It is seen as a governance issue and the inability of the state to provide a credible and accessible justice system is interpreted as an indication of weakness of governance structures in the country.

3. Poverty, Justice and Growth: Poverty can be defined not only in terms of low income (income poverty), but also as a lack of assets and opportunities, and the vulnerability and risks faced by the poor (poverty of opportunity). Access to justice and its fair dispensation provide an institutional asset that the poor need. Certain quarters, like the International Financial Institutions (IFIs), are of the view that rule of law serves the interests of both the business community as

well as the poor. It is, therefore, critical for economic growth as well as poverty reduction. In other words, the parameters of growth in business activity and addressing the institutional gaps of poverty are not mutually exclusive. Access to justice and its fair dispensation are critical both for economic growth (in terms of ensuring the validity of contracts) and realising the rights of citizens, particularly the poor.

On the basis of these assertions, it is obvious that there is a need to reform the justice system in Pakistan, particularly from the point of view of the rights of the poor and less influential sections of society. The questions to address are:

- How can this possibly be achieved?
- What are the problems in the prevalent systems of justice?
- What are the prevalent mechanisms of dispensation of justice in the formal and informal justice forums?
- What is the nature of disputes?
- What are the differences across the urban-rural divide?
- What are the differences between various types of disputes, such as property, criminal and family?
- What is the behaviour of courts, members of the Bar and litigants?
- How is the dispensation of justice related to existing

“ Access to justice and its fair dispensation are critical both for economic growth... and realising the rights of citizens, particularly the poor.”

power structures? And also, what happened to recommendations for reforms in the last five decades and where do we stand today?

The Structure of Judiciary

In Pakistan, there are formal, informal and quasi-formal mechanisms of dispute resolution. The formal institutions are those established by the state to dis-

istan, they were officially disbanded with the introduction of Basic Democracies in 1959.³ The Chairman of the District Council assumed most of the powers vested previously in *panchayats*. However, *panchayats* are still functional in villages as an informal mechanism of dispute resolution. Their character and composition change from time to time, dispute to dispute and village to

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pense justice. The informal mechanisms of dispute resolution, such as the *panchayat* and *jirga*, predate the modern nation-state.

Informal Structures

Informal mechanisms of dispute resolution have been functioning since many centuries in the subcontinent. The administration sought to institutionalise them as Alternative Dispute Resolution (ARD) mechanisms during the colonial era. *Panchayats* are still working as official bodies of village development and dispute resolution in India. In Pak-

village. The *jirga* and *sardari* systems of justice are prevalent in the tribal areas of Pakistan, including about 90% of Balochistan. *Jirga* and *wadero faisala* (decision by elders/influentials) institutions also exist in other parts of the country at the informal level.

Formal Structures

The British established the modern formal judiciary structure in India. Bengal was the first province where the modern judicial system was introduced. It gradually spread to the rest of

India with the strengthening of colonial control. The colonial administration sought to document the prevalent systems of dispensation of justice and case law in order to integrate them with British law. In the personal sphere, religious laws of various communities were used to make decisions. The gradual process of documentation of legal practices and development of codes led to the writing up of civil and criminal procedure codes. Pakistan's formal judiciary and criminal procedures code follow the colonial judiciary structure. "The functions of the courts are limited to interpretation of law. Judicial power is a system of sovereign powers vested in the judiciary. The courts derive their authority from the Pakistan Penal Code (PPC) 1960 and the Code of Criminal Procedure (CrCP) 1908. The latter deals with practice and procedures and supplements the former."⁴

There are two levels of judiciary in Pakistan: the superior judiciary and the "subordinate", or "lower", judiciary. The superior judiciary represents the appellate courts and consists of High Courts at each provincial headquarter and a Supreme Court at the federal capital.

The lower judiciary is situated at the district level. There are essentially two levels of courts in the district judiciary with an intricate hierarchy within these levels:

1. Civil Courts; and
2. District and Sessions Courts.

Civil Courts are the lowest tier in the hierarchy. Within the Civil Courts (CC) category, there are three levels:

- CC Class III (the junior-most with a limited jurisdiction);
- CC Class II (senior than Class III, but also with a limited jurisdiction); and
- CC Class I (senior-most in the CC category with unlimited jurisdiction).

There are similar hierarchies at the District level, with a District and Sessions Judge in the district, and then the Additional District and Sessions Judge(s). There is some inter-provincial variation among the four provinces of Pakistan regarding the number of Additional Sessions Judges.

The higher judiciary, i.e. the Supreme Court and the High Courts, are constituted on the basis of Article 175 of the Constitution. The Federal Shariat Court, the Service/Administrative Tribunals, the Martial Law Courts, the Special Anti-Terrorist Courts and the Tax Tribunals have been part of a parallel judiciary set up at both the higher and the subordinate level on the basis of their relevant jurisdiction.⁵ Their objective is either to expedite the judicial process, to cut back on delay in dealing with important cases or to provide ideological safeguards (as in the case of the Federal Shariat Court). However, this parallel legal system has not been effective in cutting down

““ *The British established the modern formal judiciary structure... [and] made an attempt to document the prevalent systems of dispensation of justice and case law in order to integrate them with British law.* ””

“ Before the separation of the executive from the judiciary... bureaucrats under the district commissioner used to perform magisterial functions. It was a continuation of the colonial district administration policy.”

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delays in the dispensation of justice.

The separation of the executive from the judiciary was recommended by the Law Reform Commission report published in 1970.⁶ It was finally implemented in 1997. Before the separation of the executive from the judiciary, the executive arm of district administration, i.e. bureaucrats under the district commissioner used to perform magisterial functions. It was a continuation of the colonial district administration policy.

Under the old system, civil judges and magistrates used to enjoy separate jurisdictions. Since the separation of the executive from the judiciary, judges admit civil as well as criminal and family cases. A Class I Judge acts as a Civil Judge Class I in a property case, a Judicial Magistrate Class I to hear the trial of a criminal case, and a Family/Guardian Judge/Presiding Officer while adjudicating family/guardian/election commission cases. However, the government has expressed its desire to re-introduce separate jurisdictions to deal with higher case-loads.

The judges/magistrates have their respective jurisdictions. These are described in CrPC's Schedule by the order of offence committed rather than by the class ranking of a judge. CrPC's Schedules are revised regularly. The lowest rung of the judiciary, i.e. Civil Judge Class III, is meant essentially for training purposes. A trainee is generally promoted

after six months. The other two levels of jurisdiction, i.e. between Civil Judge/Magistrate Class II and Civil Judge/Magistrate Class I are more reflective of the reality on ground. The various existing jurisdictions⁷ are given below:

Jurisdiction of Judges/Magistrates

Criminal Cases: Magistrate Class I can award a sentence of not more than four years of imprisonment and a fine not exceeding Rs. 50,000. S/he can, if granted the powers under Section 30 of the CrPC, hear cases that demand imprisonment for life but can only award a maximum punishment of up to 7 years of imprisonment.

Magistrate Class II can award a sentence of not more than one year of imprisonment and a fine not exceeding Rs. 10,000.

Magistrate Class III can award a sentence of not more than six months imprisonment and a fine not exceeding Rs. 5,000.

The next tier of the judiciary consists of the District and Sessions Judge and Additional Sessions Judge(s). They form the first appellate tier, i.e. if the complainant or the accused in a criminal case wishes to appeal against the decision of Civil Magistrates, s/he can approach the District and Sessions Court. High Courts in all provinces form the second appellate tier, i.e. appeals against the decisions of the Sessions

Judges are admitted by the High Court. Though the Supreme Court does not have appellate functions according to the code of procedures, the Constitution of 1973 grants it an appellate status. It can, therefore, admit appeals against High Court decisions with the permission of the respective High Court.⁸

Civil Cases: Civil Judge Class I can admit property cases regardless of their worth since s/he has an unlimited jurisdiction.

Civil Judge Class II can take up property suits worth up to Rs. 200,000. Civil Judge Class III can take up property suits worth up to Rs. 100,000.

The appellate procedure is similar to the one described above for criminal cases.

Progression of Stages in Criminal and Civil Cases

In all categories of cases, each phase of the case is dependant on the previous one. For example, in civil cases, unless summons have been served and pleadings (suit and rebuttal) completed, or one of the parties declared ex-parte, the judge cannot move to the next phase of framing the issues. Similarly, the plaintiff's and defendant's evidence is crucial to moving the case to the next phase(s) of arguments and judgment. In criminal cases, the general progression of a case is as follows:

- The FIR (First Information Report) is registered.⁹

- Police presents the *challan* (charge sheet) in order for the trial to commence.
- The judge reads out the allegations against the accused.
- Prosecution present evidence, which is cross-examined by the accused (defendant).
- Accused presents evidence, which is cross-examined by the prosecution.

“ Under the old system, civil judges and magistrates used to enjoy separate jurisdictions. Since the separation of the executive from the judiciary, judges admit civil as well as criminal and family cases.”

- Arguments are heard from both sides.
- Judgement is pronounced.

It is important to note that generally, for the proceedings to get underway, the accused are required to be present in the court. The case is held up if one or more of the accused are missing, unless their case is separated from those present.

In civil cases, the usual pro-

gression is as follows:

- The plaintiff files a case.
- The respondent party is summoned to the court through the process-serving mechanism. The proceedings cannot formally begin unless both parties are present (or duly represented) in the court, except when the court declares one of the parties to be an ex-parte. This occurs when the judge determines that the party has been informed but is not interested
- Once both parties are present or if one of them has been declared ex-parte, the respondent is asked to submit the rebuttal.
- Upon submission of rebuttal, the issues of the case are framed. These are issues of law that the court frames on the basis of the suit and its rebuttal.
- After the framing of issues, court proceedings begin. The plaintiff presents evidence and is cross-examined

“It is difficult for the judge to declare the absentee an ex-parte if the process-server fails, due to genuine or contrived reasons, to serve summons... This is one of the frequent causes of delay in court proceedings.”

in court appearance. It is difficult for the judge to declare the absentee an ex-parte if the process-server fails, due to genuine or contrived reasons, to serve summons (court notice to appear on the date of hearing). This is one of the frequent causes of delay in court proceedings.

- The defendant presents evidence and is cross-examined.
- Arguments from both sides are heard.
- Jent is delivered.

A generally similar procedure is followed in family cases.

Issues of Access and Dispensation of Justice

Nature of Disputes

Summary Findings of Field Research Samples

- The nature of disputes in rural areas varies considerably with locality. However, most of the disputes appear to revolve around land. The prime cause of criminal disputes, too, is often traceable to land.
- Police harassment seems a major issue. The police often refuse to register FIRs. This is particularly noticeable in rural Sindh. They register, instead, an interim report that has no legal validity. This allows the police to 'kill' the case, if adequately bribed by the accused party.
- The poor avoid involving the police, since it usually results in harassment and abuse, which naturally works in favour of the rich who have more resources for bribing.
- The poor also tend to avoid courts, particularly against the influential, given the prohibitive cost of litigation and the power of the influential to buy justice through money or social contacts.
- Most of the criminal cases end up - after long delays caused by the prosecution - in either acquittal or a compromise.
- The police use several laws, including those dealing with *Ehteram-e-Ramazan* (sanctity of the month of fasting), price control, guns, and drug abuse, to harass the less influential.
- Interestingly, the courts can move expeditiously when they want to. The influential use courts as an instrument to settle scores.
- It is usually the influential, rather than the aggrieved party that initiates litigation.
- The judges are party to delays - sometimes to the point of violating the law.
- There are inordinate delays in civil and criminal cases that can be avoided through step-by-step process review.
- Only two fifths of the cases in

““ *The poor also tend to avoid courts, particularly against the influential, given the prohibitive cost of litigation and the power of the influential to buy justice... The influential use courts as an instrument to settle scores.*””

“ Almost half the average expense incurred for litigation in our research sample is in the form of some illegal fee or bribe... Despite being in a near dysfunctional state, formal justice remains a necessary service. ”

this study's research sample arrived at some resolution.

- Almost half the average expense incurred on litigation in the research sample is in the form of some illegal fee or bribe.
- In Larkana, Sindh, *karo-kari* or so-called "honour" killings are predominant. This often results in killing the woman (*kari*) and claiming compensation from the *kari's* family. The compensation could be the pledge of a woman from the *kari* family and represents the equivalent of a bride price. In any case, women are often killed or treated like chattel.
- Theft and robbery by dacoits (bandits) has also become common in rural Sindh with the influx of wealth resulting from rural-urban migration. Most theft cases ended up in acquittals, blamed on inefficiency of the police and the courts.
- There were some parallels in the situation in Larkana, Sindh and Sibi, Balochistan. In these districts, *karo-kari*, robbery, kidnapping, and theft were the most frequent crimes.
- The tribal *sardars* or their nominees resolved local disputes. This system is speedy and does not entail the costs of the formal court system. However, it is coercive, authoritarian and subjective and lacks checks and balances. There is no provision of appeal.
- Gender comes up as an important factor in the dispensation of justice. Women are discriminated against as a group. However, gender discrimination is closely linked to socio-economic status. Thus, poor and less influential women are likely to be discriminated against, both for their gender and socio-economic status. Women placed higher up on the socio-economic ladder are better able to deal with justice institutions, despite the endemic structural discrimination along gender lines.
- Despite being in a near dysfunctional state, formal justice remains a necessary service. Women, as a group, have access-to-justice problems. In rural Sindh and Balochistan, a majority of the criminal cases are linked to the so-called "honour" killings. Only a negligible fraction of these murders is reported to the police and dealt by courts. Most of these are not reported.
- Even the few cases that are reported do not lead to justice for the victims, as perpetrators of these crimes are par-

done under the Qisas and Diyat Ordinance, 1984. (Qisas resolved locally through the *pan-chayat*. Even if some people do

Case Study 1: Dispensation of Justice and Poverty

The defendant, Yousaf, works as a night guard for Rs. 2,200 per month and is embroiled in a property case. A relative tried to fraudulently sell his mother's property. According to Yousaf, "My opponents have contacts with the influential and with rascals. They met the judge and... he refused to accept me as the owner of that land. He did not listen to me because I was poor. During the 'stay' period, my opponents continued to construct the house (on the disputed plot and in violation of court injunction) and nobody was there to stop them because they were influential."

When asked how his opponents could get away without appearing before the court, he said, "Just observe how things happen. They have a deal with their lawyer to ensure they will not come to attend hearings".

As for his relationship with his lawyer, he said, "I cannot afford to pay. You can ask my lawyer. I have yet to pay him anything... I am compelled to attend all the hearings. Otherwise, the judge will send me to jail and there is nobody to arrange bail for me."

and Diyat is one of the many discriminatory legislation passed by the Zia-ul-Haq regime. The others are Hudood Ordinance and the Law of Evidence.) Some of these issues are discussed below in detail.

Poverty

Poor households generally find it difficult to access the formal justice system because of the prohibitive costs associated with litigation. Poor people residing in villages often do not approach the formal legal system, i.e. police, courts, and the district bureaucracy. They view the police and courts and their delaying tactics as means to generate bribes and as a luxury for the rich. These institutions are perceived as partial in favouring the influential. Hence, they prefer to have their disputes

approach the formal legal system, they are often forced to abandon it due to the high cost involved.

The poor are discriminated against in property cases. Poor litigants also face a longer wait when suspected of having been involved in some petty crime. This phenomenon was observed in Punjab, NWFP, and Sindh. In a Toba Tek Singh case concerning the theft of Rs. 100, it took the court 4 years and 3 months to decide not to pursue the case. One of the accused had absconded while the other kept appearing in the court for over 4 years before finally deciding to discontinue appearing. The court decided to declare both absconders and stopped the proceedings until their arrest. Thus, one of the accused was made to suffer repeated but futile appearances. The plight of poor litigants

“ So denigrated is the formal system that a tribal chief of Balochistan claimed with some pride that their one person qazi (judge) system was far superior to the formal police and court system.”

involved in petty crimes is particularly bad in rural Sindh. This raises questions of judicial competence and accountability.

Sometimes the courts take a sympathetic view where the poor are involved. Two cases in rural Punjab demonstrate this point. In both cases, the court awarded a lesser sentence than prescribed by law. It was not clear, however, whether this was deliberate or on account of ignorance. Also, this was not until after the patience of those involved was tested to its limits.

As mentioned already, the concept of poverty is not limited to the poverty of income but includes poverty of opportunity. In the context of dispensation of justice, the empowerment of the poor lies in the formal justice institutions addressing their risks and vulnerabilities. Similarly, a broader conceptualization of poverty is needed to understand the litigant's ability to garner contacts and support through non-monetary and social networks. It is not surprising that across the board, the poor shunned the police and the courts. So denigrated is the formal system that a tribal chief of Balochistan claimed with some pride that their one person qazi (judge) system was far superior to the formal police and court system.

The rich are more likely to engage the formal system partly as a mark of their status, and partly because they can purchase justice.

While women are discrimi-

nated against as a gender group, their plight is made even worse when coupled with a poor socio-economic status. Women with relatively better socio-economic status and contacts in urban settings do not fare badly in their pursuit of justice. In one urban case, both parties fought their cases without going to the court since both parties were relatively well-off and represented by their lawyers. The defendant, a woman, seemed better connected to the judicial system through an uncle and was able to sway the case in her favour before it ended in a compromise. Therefore, gender cannot be seen in isolation from the litigant's class.

Prestige/Honour (Izzat)

Prestige comes up as a major issue in rural litigation. Among others, Cohn and Lefebvre have written on the issue of prestige in North Indian and North Pakistani societies respectively.¹⁰ In the course of this study, one of the litigants gave this reason for spending more money than the actual worth of land: "getting it (the land) back from the possession of our opponents is a matter of prestige for us (the rural people). We can sacrifice our lives for the land."

The violation of *izzat* (honour/prestige), directly or indirectly, underlies many disputes. Litigants often spent more money than the worth of the property at stake for the sake of *izzat*.¹¹ Middle-class or wealthier households are willing to engage in litigation

even if the cost is several times the value of the disputed land. At times, village factions get involved, and the courts become an instrument for playing out factional rivalry.

While *izzat* is generally translated as honour, a more appropriate translation is "prestige" or "face saving."¹² It is also important to maintain one's prestige in status-ridden societies since a loss of face can encourage others to invade and plunder one's property and belongings. While disputes relating to women are generally viewed as "honour" related, the concept of prestige is much broader.

Spending money and time to uphold prestige represents a strong cultural compulsion in the "honour conscious" societies of rural Pakistan. Socio-economic status is determined not only by wealth or assets (land) but also by intangible indicators such as *izzat*. This partly explains the high incidence of *izzat*-related property and criminal disputes.

Several households interviewed had spent five to ten times the monetary value of the disputed property on litigation. One on-going case in rural Rawalpindi centred around cutting trees at 8:30 p.m., after prayers in Ramazan. The plaintiff was pursuing the case because cutting a neighbour's trees after the *Isha* (night) prayers in the holy month of fasting is perceived as a big insult. He was spending quite a bit on litigation, as it had become an issue of prestige for him and his

family. But he was quite agreeable to taking back his case if the defendants were willing to apologise.

Like rural Punjab, *izzat* was also important in explaining the motives behind disputes in rural NWFP. *Izzat* is closely linked to gender. Men kill others if they suspect a violation of what they view as the "honour" of their women and most murder cases pertain to this issue. *Karo-kari* murders in rural Sindh and Balochistan constitute over 90% of criminal cases in the villages. The prevalence of "honour" crimes is likely to be quite high in NWFP and Punjab, although a very small percentage of such crimes is actually reported. In rural Sindh and Balochistan, the discrepancy between the actual prevalence of *karo-kari* related murders and their virtual absence in case files of the courts reflects the grave problem of under-reporting. In the villages, an overwhelming part of all "honour" related crimes and murders are not reported to the formal judicial system.

Although prestige comes up as a major issue in rural litigation more frequently, it is not altogether absent in urban litigation. The urban and rural are not always mutually exclusive. In some cases, the litigants live in urban areas while pursuing cases related to property in rural areas.

Alienation from the Formal Judicial Processes

Alienation of people from the

“ Spending money and time to uphold prestige represents a strong cultural compulsion in the "honour conscious" societies of rural Pakistan... This partly explains the high incidence of *izzat*-related property and criminal disputes.”

“ Alienation from the formal judicial culture is also found to be one of the main reasons behind frivolous litigation in Pakistan. ”

formal judicial process is one of the major reasons behind a high percentage of frivolous litigation in rural courts. In a comparative context, Cohn has done seminal work on the community's interaction with the formal justice system in a village in Jaunpur district of Uttar Pradesh, Northern India, in 1952-3. He thought that Indian culture was starkly different in its interaction with the formal justice system, in that it was not "decision" oriented. People mostly talk and give vent to their feelings. He observed that in a village *panchayat* (informal dispute resolution body), people talked at great length about issues that were not directly related to the current dispute. While, the formal system is geared at arriving at a "decision", the informal dispute resolution system goes for compromise because it helps both parties keep their face. Cohn illustrates that litigants use the formal system to adapt it to their perceptions.¹³

Nelson, in his recent unpublished PhD dissertation, points out that the root cause of delay in courts is the litigants' interest in delaying rather than expediting things. The litigants want to delay cases to adjust to this historical institutional shift from the informal justice system to the formal one.¹⁴ Alienation from the formal judicial culture is also found to be one of the main reasons behind frivolous litigation in Pakistan. As an institution, the formal judicial system is so removed from the rural litigants' daily life, their language and their ethos, that

even if they master it fully - quite a few people become "court birds" - they approach it as something "outside", something "other". Hence, they feel no ethical qualms in manipulating the courts to suit their interests. At times, litigants also get trapped and misinformed by those vested in the system - court officials, court litigants, etc.

Role of Informal/Formal Justice Institutions and Socio-Economic Status of Litigants

As discussed earlier, poor households generally have problems in accessing institutions of justice and getting justice. The absolute poor cannot afford the rising costs of the litigation process. The poor are least likely to engage in litigation since it is not affordable. Thus, they are also likely to be most receptive to institutional innovations like the *musalihat anjuman* (conciliation council, a new informal institution introduced by the Devolution of Power Plan 2000), that are meant to formalize the *panchayat* or *jirga*, institutions they are already familiar with. Poor households prefer traditional dispute resolution mechanisms such as *panchayats* or *jirgas* even when they were forced to deal with the formal judiciary, as in the case of a household in a remote village in Haripur, in the NWFP. One of the family members had been murdered, yet they compromised with the other party after two months. In a village, where people had to hike for two hours

to get water and food items, pursuing a murder litigation in the court in a far off city was an impossibility.

However, middle income or richer households only approach the *panchayat* or *jirga* if they are able to influence it. Its more general acceptance would have to be premised on establishing its credibility as impartial in dispensing justice and being able to get decisions implemented. In rural Sindh, mediation is often done by a *wadero* (landed influential) at the local level. If unresolved, the case moves to bigger *waderos* within the tribe, all the way up to the district or provincial levels.

Despite a great deal of apprehension about the role of *panchayats* and other forms of informal justice institutions, these are widely used all over the country in rural areas.¹⁵ This fact is confirmed by quantitative findings (see Table 4). 33% of the people involved in disputes approached informal justice institutions, followed by 22% who went to the court. However, informal institutions such as *panchayats* were not perceived as impartial or effective in resolving disputes. A few influential members therein played a regular role in mediating disputes. However, they usually decided cases on behalf of the powerful so that the *panchayat* was perceived as reinforcing the balance of power or catering to the powerful party.¹⁶

The *panchayat* is also considered ineffective because it does not have any formal imple-

mentation authority. There also exists a hierarchy of disputes. Civil and family cases go to the *panchayat* first. If they remain unresolved, they enter the arena of the formal judiciary. Criminal cases, such as physical assaults and murders, are directly reported to the formal institutions of police and courts. Then negotiations continue on the side through *panchayats* or *jirgas*.

In reality, the formal and informal institutions of justice complement each other rather than being mutually exclusive - a key finding of this study. According to the study:

- People may be receptive to institutional innovations in villages if they embody enforcement authority and are perceived as impartial.
- They have a greater desire for a reformed police and court structure, and are willing to spend large sums of money to get "even".
- They generally did not trust the *nazim* or members of the union council to resolve their disputes.

The contest between litigants of differing socio-economic status is not always a pre-determined tussle between the exploiting and the subjugated classes. It merely represents the fact of their different socio-economic and endowment levels.

Rich households do not gen-

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erally like to approach the formal legal system, such as the police and the courts, and view it as a waste of time. The dividends of getting involved in a dispute or approaching the formal legal system do not outweigh the cost. Rich households, therefore, refrain from getting into litigation to avoid the time and money costs. Hence, in a prosperous village of a developed rural district in Punjab, people preferred to resolve their disputes through the *panchayat* to save on costs. A similar phenomenon was observed in an urban criminal case in Rawalpindi, where the complainant, a small businessman, preferred to hire the services of gangsters to recover his money rather than relying on the legal system. He had filed a fraud case only as a fallback strategy and withdrew it after receiving his money through muscle-flexing "informal" means.

However, the few rich households of similar socio-economic backgrounds who had approached the formal legal system for "face saving" reasons, were involved in endless litigation. Sometimes, when influential households get involved in a dispute, it assumes a life of its own. They tend to continue litigation for years, bleeding each other monetarily. Similarly, in the tribal areas of Balochistan, while the *sardar* dispenses justice to common villagers, intra-*sardar* disputes go on endlessly. There is no supra-*sardar* body to resolve these enmities and feuds.

Devolution Plan's Institutional Innovations

The structure and role of *musalihat anjuman*, introduced under of the Devolution of Power Plan 2000, have been defined in the National Reconstruction Bureau's documents. The *musalihat anjumans* were not yet in place in most union councils at the time of research for this study. Only a few union councils had established *musalihat anjumans* where there was a prior record of informal dispute resolution. Few people knew about the *musalihat anjuman*, even where it was present. The *anjuman* mostly dealt with family cases. In this regard, it followed the old union/district council role of dispute resolution. The institution of *musalihat anjuman* is capable of bridging the gap between the informal *panchayat/jirga* system and the formal legal system. Although its recommendations are not binding, they are given weight by the police/revenue departments and the courts. Finally, the composition of a *musalihat anjuman* varies a great deal in that it adapts to existing informal dispute resolution patterns.

Gender

Gender plays an important role in rural disputes. A high degree of gender discrimination existed in almost all the villages visited in the course of this study. In rural Punjab, brothers often do not want to share their deceased father's land with their sister(s) according to Islamic inheritance

laws. Those doing so are viewed as weak and often subjected to taunts and ridicule. This leads to disputes and sometimes to endless litigation. Thus, gender discrimination and land disputes often co-exist. "Honour" killing can also be viewed as a form of gender discrimination.¹⁷ This phenomenon is observed, to a

cash or another female from his family.

In some locations, *karo-kari* is practiced as a form of exchange. Thus, both parties are pardoned in exchange for money and *sang* (committing a female associated with the family of the guilty party for a future marriage). If a *kari's* life is spared,

“ If a *kari's* life is spared, she is sold in marriage for a price higher than other women... Thus, women are bought, sold, owned, and dispatched off like a mere commodity. ”

large extent, in rural Sindh and Balochistan, and could well be no less prevalent in Punjab and NWFP.

It was inferred during the fieldwork that most of the murder cases in Larkana are related to *karo-kari* ("honour" killing)¹⁸, the only form of murder reported.¹⁹ The practice is linked to the region's cultural history and socio-economic situation, and hence varies. In some villages, where Baloch traditions are strong, both the *karo* (accused man) and *kari* (accused woman) are killed. In other communities, only the *kari* is killed and the *karo* is spared in exchange of

she is sold in marriage for a price higher than other women. Perhaps her sale outside the community fetches a higher price than within the community. Thus, women are bought, sold, owned, and dispatched off like mere commodities.

Karo-kari cases are dealt with according to the cultural and economic customs of the tribe. Decisions are adjudicated mostly by the informal justice system. Even when such cases reach the formal justice system, the relatives of the victims generally reconcile with the opposing party for compensation. This practice is endorsed by the "Islamic" legisla-

““ *FIRs are widely withheld in rural Sindh and Balochistan, the problem also persists in Punjab and NWFP... Non-registration of the FIR is a serious access-to-justice issue.*””

tion enacted in the 1980s. A representative of the local judiciary told us:

...what can we do if parents are willing to sell the blood of their children?

Karo-kari is prevalent in its worst form in Balochistan. As in Sindh, it is a form of economic exchange and has social acceptance. According to a district official, it is one of the easiest ways of getting rid of one's wife, and earning some money also.

As in Larkana, the resolution of *karo-kari* in Balochistan is dependent on the socio-economic status of the household and the norms of the tribe. *Karo-kari* cases are grossly under-reported, and there is no way of finding out the exact number.

In addition to poor households, better-off women also find it difficult to access the formal system of justice. Unlike poor households in general, who do not approach the courts and police due to prohibitive costs, women are subjected to social sanctions in case they resort to the formal system. As such, crimes against them are not considered "violations." Under social and economic pressure, parents or guardians of *karo-kari* victims are often obliged to pardon the offenders even if the murder is reported and makes it to the court. This leaves the judge with no choice but to accept the pardon. A recommendation voiced by the women from Balochistan and Sindh asked for these "honour"

killings to be treated as any other murder and made a non-pardonable offense.

Since most criminal offenses have become compoundable due to the Islamic legislation passed in 1984, after experiencing court procedures and the attending costs, the parties are generally willing to compromise and agree to an out-of-court settlement.²⁰ This is an alarming problem, particularly with "honour" crimes, since their perpetrators are generally family members pardoned in a court of law by other family members - even if such cases get reported to the formal judicial system.

Police Harassment and Registration of the First Information Report (FIR)

Inefficiency, corruption, harassment and deliberate non-registration of the FIR are some major police performance issues that affect dispensation of justice.

Non-registration of the FIR is a serious access-to-justice issue. Although fieldwork documented that FIRs are widely withheld in rural Sindh and Balochistan, the problem also persists in Punjab and NWFP. In a case in rural Rawalpindi, an influential party was able to get a false FIR registered, besides tampering with the revenue record and the medical report. In NWFP too, influential parties were able to sway things their way. Yet the magnitude of the problem is far greater in Sindh and Balochistan.

The police in Sindh had

introduced an innovation in the registration of complaints. When an aggrieved party went to the police to record its complaint, instead of registering the FIR required under the law, the police registered a so-called NC (non-official complaint on a plain piece of paper).²¹ The objective was to dismiss the complaint without any official record, after extorting bribes from one or both parties. People spent money to even get their NC noted and the other party paid money to ward it off. In a few cases, the NC is changed into a formal FIR, whereas in most cases it is eventually dismissed, without ever placing the matter on record.

In rural Balochistan, which is 90% tribal, approaching the *tehsildar*²² and "levies" (tribal areas police) without the *sardar's* permission is strongly discouraged by the tribal system of justice. In the Dera Bugti area, anyone found guilty of getting an FIR registered without the *sardar's* prior consent is fined Rs. 25,000. Such unlawful practices are an effective deterrent against access to justice. An analysis of case files in Sibi confirmed these trends.

A small percentage of cases still do get registered with the police or levies in tribal Balochistan. However, there is a sizeable time lag between the occurrence of crime and the registration of an FIR. In Sibi, for instance, it makes sense given the tribal system of justice and the investigation time granted to the office of

the *tehsildar*. In Larkana, however, non-registration of the FIR is even more appalling. The registration/occurrence of crime ratio is relatively better in Punjab and NWFP.

Besides abusing its authority to block access to justice, the police also exploits legal loopholes to harass citizens, particularly the less influential and the poor. The sight of a traffic policeman harassing cyclists, motorcyclists and taxi drivers is familiar to people living in big cities. It does not, however, end there. The study found from sampled case files that several laws, such as the Ehtaram-e-Ramazan Act, the Price Control Ordinance, the Prohibition of Liquor Ordinance and Drugs Act are widely used to extort money and harass people. This phenomenon is particularly noticeable in rural Sindh and NWFP. Small shopkeepers and roadside stallholders were prosecuted for overcharging. The price controlling power under these laws gave the police yet another opportunity for extortion.

In NWFP, people had found a way around police harassment. Instead of bribing the police, they let themselves be *challaned* (charged) and produced before the court. Most of those charged pleaded guilty on their first appearance in the court. The punishment for such crimes is generally detention till the rising of court²³ and/or a fine of a few hundred rupees. Thus, opting for such convictions was preferred over bribing the police and

“ In the Dera Bugti area, anyone found guilty of getting an FIR registered without the *sardar's* prior consent is fined Rs. 25,000. Such unlawful practices are an effective deterrent against access to justice.”

encouraging harassment. The judiciary in NWFP has routinized its response in such convictions.

In Sindh, the level of harassment is much higher. A few sampled cases involving violations of *Ehtaram-e-Ramazan* provided evidence of police harassment in connivance with the judicial

sumed in rural NWFP.

The follow-up survey indicated that the shopkeeper who pleaded guilty in Larkana is better off than the average person in rural Sindh. He was clever enough not to get trapped by the system. In a similar case, a few shopkeepers who were caught

“ He was clever enough not to get trapped by the system. In a similar case, shopkeepers who were caught pleaded guilty, were charged Rs. 50 each and discharged. This is the tactic used by less influential people to escaped the shackles of the police and judiciary. ”

process. People were generally not aware of the advantage of pleading guilty to wriggle out of the process. They were trapped in the litigation process, lest they bribed the police to avoid being charged. The guilty plea trend is, however, slowly catching up. In one criminal case in Larkana, a shopkeeper was arrested for violating the sanctity of the holy month of Ramazan. He pleaded guilty, was convicted the same day and fined Rs. 50. Price control cases in Larkana were similar to those in Haripur and the accused pleaded guilty. This kind of police harassment also applied to cases involving possession of hashish, which is widely con-

pleaded guilty, were charged Rs. 50 each and discharged. This is the tactic used by less influential people to escaped the shackles of the police and judiciary.

Thus, besides money and socio-economic status, knowledge of court procedures proved an asset to these shopkeepers. Poor hashish addicts in rural Sindh were not aware of the possibility of getting off the hook by pleading guilty. However, there is a price to pay. Those convicted are disqualified from government service or entry into public educational institutions. Most of those charged with petty crime were willing to pay this price rather than deal with the judicial

process.

A third critical role of the police is the prosecution of crimes. The police does not seem to be effectively dispensing its duties of prosecution. In a fraud case in urban Rawalpindi, an influential person, previously employed at an overseas construction management enterprise, committed fraud and the court had issued warrants for his arrest. The prosecution officer appeared in the court hearing claiming his inability to find the accused, who was running an overseas recruitment agency to swindle money from vulnerable people living in nearby towns and villages with false promises of sending them abroad. He was also wanted in another similar fraud case. The survey team was able to find his house using the address given in

lied to the court, hearing after hearing. Commenting on the judicial process, one of the main complainants who lived in a nearby village said,

I am disappointed with the court procedures and attitude. We spent more money on our visits to M.M. Khan (the accused's) office and court than the original amount (Rs. 5,000) due to us. Finally, all of us lost hope and decided to forget about our money and never to visit the court again. I don't know if the case is still in the court or not. There is no law for the poor. Nobody can take action against the rich. We the poor are to suffer.

“ Finally, all of us lost hope and decided to forget about our money and never to visit the court again... I don't know if the case is still in the court or not. There is no law for the poor. Nobody can take action against haves. We the poor are to suffer. ”

the case file and interviewed him too, even though the police was unable to arrest him on court orders. He lived in a spacious two-kanal (1200 sq yds) house in a posh colony in Rawalpindi Cantonment. The prosecution officer

Since the effective implementation of separation of the judiciary from the executive in 1997, High Courts have come up with more effective ways to deal with criminal cases. They have

“I had to pay Rs. 300 to get his [patwari's] signatures... Finally, I requested the tehsildar for demarcation of land and he did it for a Rs. 4000 bribe.”

allocated a certain number of police stations to a judge who acts as a magistrate in criminal cases. This may relatively improve the magistrate's powers vis-à-vis the police. However, we did not observe its effectiveness in our fieldwork.

Role of the Revenue Department

Although revenue department problems are more common in rural areas, there are a sizeable number of such cases involving urban areas as well. The majority of cases in rural Punjab are civil or property related cases. Most civil disputes are land related and the role of the revenue department and its functionary, the *patwari*, at the village level, is crucial. The *patwari* maintains the record of property held in the village, issues attestation of ownership for land transactions, verifies status of ownership and helps in the demarcation of land boundaries amongst other things. Most disputes in villages are land related, and land is viewed as a symbol of prestige, besides being an economic asset. Even criminal disputes (i.e. murder or assault) are often linked to land related disputes. The extortionist role of *patwaris* often exacerbates disputes.

One civil case in an urban Rawalpindi court saw a poor man caught in the judicial system as the defendant in an alleged fraud at the revenue department. The defendant claimed that his opponents were part of a *qabza* (illegal

land-grab) group. They tried to sell his plot by getting hold of the defendant's identity card, in collusion with the *patwari*. Later on, the police also sided with the influential plaintiff.

Land revenue problems are the root cause of much rural litigation. The monopoly of department officials over land and revenue documents gives them a free hand to indulge in rampant extortion. Another civil case, "Zia versus Nafees", was dismissed against the plaintiff due to his inability to handle the revenue department. The plaintiff, Zia, had clearly stated in his suit, and in his in-depth interview with the research team, that he had problems dealing with the local revenue officials. According to Zia:

The first step was demarcation of land before filing the case. I made repeated requests to the patwari²⁴ and the girdawar²⁵ for the demarcation of land but they did not listen to me. I needed to get one signature from patwari and it took me six months to get that done. I filed a complaint against him. Nothing came of it. In the end, I had to pay Rs. 300 to get his signatures. There was no way for demarcation of the land. Finally, I requested the tehsildar²⁶ for demarcation of land and he did it for a Rs. 4000 bribe.

After completing the requirements I filed the case in the court.

The role of *patwaris* is, however, not limited to causing civil litigation. They also play a role in delaying proceedings, usually in collusion with the influential party. Property suits are filed to manipulate out-of-court settlements in order to maintain or change the status quo at the local level. Generally, delaying tactics used by the influential party (whether plaintiff or defendant), in collusion with the lawyers and the court, influence the outcome.

In a civil case in district Haripur, the plaintiff delayed the proceedings with help from a *patwari*. There was not much substance to the suit, and he was aware that it was not going to be decided in his favour. However, he managed to get a temporary injunction against any change in the status quo regarding the property. Despite quick pleadings and framing of the issues, presentation of prosecution evidence began twelve months later. Though the plaintiff had submitted the list of witnesses, his lawyer and the *patwari* took turns in being absent. The plaintiff's lawyer would show up for the hearing intending to declare the plaintiff as an ex-parte, and thus save his client from being thrown out of the proceedings, only to disappear again. Every prolonged absence was pleaded on the pretext of some urgent

matter or the other (e.g. being out of the city on urgent business or hospitalised).

The *patwari* was similarly absent and the court sent non-bailable warrants for his arrest. He appeared on the very next hearing citing an urgent reason for his absence. Hence, the prosecution evidence began one year after the framing of issues. Then the defendant was unable to present his evidence due to the absence of the *patwari*. The court's practice of summoning the *patwari* and other revenue officials violated the strict provision of Chapter 5B, Vol. 1, of High Court Rules and Orders, which require satisfactory affidavits as to why the authorised copy of the revenue record cannot adequately serve the purpose. Thus, this practice of seeking the presence of revenue officials is a violation of the law committed by judges in civil courts. In this particular case, it was not clear why the judge did not declare the plaintiff an ex-parte. The delays continued until a compromise was reached two years and eight months after the filing of the suit.

The case showed that the courts allow themselves to be manipulated. The judge granted adjournments without imposing costs on the party at fault or compensating those not at fault. There is no need to summon a *patwari*, or any other official of the revenue department in person, unless there are substantive grounds for believing that the

““ *The case showed that the courts allow themselves to be manipulated. The judge granted adjournments without imposing costs on the party at fault or compensating those not at fault.* ””

Case Study 2: State versus Allah Bux and Kamal Din

A decided criminal case between a middle level landowner and his tenant in *Tehsil Jhand*, District Attock is an eye-opener. In State versus Allah Bux and Kamal Din, the tenants were crushed by the landlord after a conflict that took place in February 2000. Allah Bux and his relatives were tenants on the land of a local landlord. They refused to pay their peanut crop's share, worth Rs. 20,500, to the landlord's cousin, insisting that they would only pay it to the landlord himself, according to the prevalent practice. The landlord's cousin went back in anger and provoked the landlord to act against the tenants for the loss of his prestige. After a few days, the landlord tried to forcibly take back possession of the land in violation of their verbal contract. The tenant's nephew, one of the defendants, narrated the story of their long ordeal:

I was working on the nearby land and my sister came over and told me about the dispute. I rushed to see my uncle, as he is quick to lose his temper. I went there to avert conflict. When I reached there I saw that some of my other family members were rushing towards the site. When we reached there my uncle and the landlord were having a heated discussion. The landlord had an axe in his hand and suddenly struck my uncle on the shoulder. He was severely injured. We stopped the landlord and sent him back to his home.

I took my uncle to the nearby police station to register an FIR. The policemen told us to get a doctor's report first. We went to the Jhand hospital. We were surprised to see that after half an hour the other party members were also there and they also had injuries. A notable of the village, a medical doctor, is closely related to them. The doctor had inflicted the wounds on them under anesthesia to give them the legal ground to file a case against us. They got a medical report from the hospital and went back. We asked the doctor to give us the medical report but he did not give it to us. He told us that he had examined the injury and

he would prepare the report after a few days.

We went back to the police station without the medical report to discover that the landlord had filed a case against us and had also provided the medical report as evidence. The SHO (Station House Officer) told us that the landlord had filed a complaint against five people of my family. That was very shocking to us because we did nothing and none of the accused members were involved in the quarrel. Two cases were filed against us... We told the truth to the SHO and he allowed us to go home but asked us to come back the next day.

For the next week, we would go to police station in the morning and come back in the evening every day. We approached the police station to get justice but everything was turned against us and the person who should have been punished was calm. The landlord is rich and influential and we are very poor. Throughout this, my uncle was at the hospital. After a week police came to our home and arrested all of us and took us to the police station.

The SHO told us that he was under pressure to arrest us. All the residents of the village were aware of the actual situation (that the defendants were not guilty) but none of them came to our help. The SHO took Rs. 8,000 from us and promised to help us. We were taken to the Jhand court for a three-day remand to recover arms that the landlord had alleged in his FIR against us. During the remand the attitude of police was good towards us. After three days, they again took us to the court to get another three-day remand. This time it was very painful for us. The police did not torture us during confinement but in their investigation report they falsely mentioned that they had found the arms that were mentioned in the FIR. They did so as the landlord had bribed them. They also claimed in the report that we were not cooperating with the police and that they had had to raid our house five times to arrest us. The police did its best to write a fictitious report against us.

They succeeded...

We were sent to judicial lock-up in Pindi Gheb. There was no capable person (in the defendants' family) to follow the case. We engaged a lawyer and sent in the bail application. It was rejected. In bail refusal cases, the judge has to record the reason. In our case, the judge did not have a valid reason. The judge said that the bail application had been filed before time. The other party influenced the judge to reject our bail application.

Then we approached the sessions judge for bail and the judge's stenographer demanded Rs. 5,000 bribe for the bail. We paid the money after ten days. However, our opponents got to him (the sessions judge) before we did and paid him Rs. 10,000 to reject the application. Our application was rejected by the sessions judge as well. All of us were in jail and there was no capable man in our family to properly pursue the case while the other party was at home in dealing with the courts.

Next, we approached the High Court for bail and the Court granted bail to three persons out of five. Elderly men, aged more than sixty years, were released on bail. My uncle and I were not released. That was very surprising. All this happened because of our lawyer. We got to know later that our opponents had even bribed our lawyer to keep us in jail. We were disappointed and our opponents succeeded in their objective of keeping us in jail for as long as possible.

Our last hope was the Supreme Court. But we were afraid when our application got there, as one of the members of the other party is in-charge of the Holy Family Hospital, Rawalpindi and a very resourceful person. Meanwhile a few people from the village started mediating for a compromise. One of the notables of the village (not related to the landlord) was involved in these talks. The other party was in a strong position and we were afraid of rejection of our bail from the Supreme Court as well. We were helpless and had to settle on very humiliating and unfair terms.

We were innocent but had to pay Rs. 50,000 to the other party as compensation money. The other party finally recorded the compromise statement in the Jhand court and we were released on bail by the very judge who had earlier rejected our application. We had already spent another Rs. 50,000 on the bail application process in four different courts (Civil Court-Jhand, Sessions Court in Attock, Lahore High Court, Rawalpindi Bench, and the Supreme Court). We had to visit the court even after the compromise statement.

This interview is self-evident. The way the landlord used the instrument of denial of bail against his tenants' family shows how the judicial system can be manipulated against the poor. It also revealed that poverty is not related to lack of income or wealth only. Poverty of contacts, networks and access to institutions is equally important, particularly so in rural societies. During an in-depth interview, the so-called plaintiff did mention his contacts with doctors and other resourceful people.

It was not surprising to hear the defendants' perception of the judicial process:

...our law and courts are only for the rich. The poor have no access to justice. Justice is a slave to the rich. The judge rejected our bail to please the other party and then accepted the application when the other party wanted him to do so. We had to spend four-and-a-half months in jail. The judge's behaviour towards us was most unfair. The behaviour of the police was also very painful for us. They created lots of problems for us. They registered a complicated FIR, leaving us with no way out. They presented false evidence in the court. We paid Rs. 300 per month to them while we were in jail. That case ruined us and resulted in our borrowing a huge amount - Rs. 80,000. We compromised due to our bitter experience of the courts. Secondly, we were being buried under a heavy debt and were afraid that soon nobody would be prepared even to advance us a loan.

“ The case files reviewed provide further insight into why there is so little confidence in the ability of the courts to dispense justice. Except for Balochistan, delays in courts and the accompanying expense and loss of time are major problems. ”

certified copy is not adequate proof of the official record, something that was routinely done by the court. In such cases, the courts contribute to delays by even violating the law. The courts also adjourned cases in response to applications seeking interim relief because a party to the dispute was involved in another case. In most such situations, the two cases could proceed simultaneously.

In the above-mentioned case, the plaintiff wanted to delay the proceedings to buy more time vis-à-vis the status of his property. He achieved this in collusion with the *patwari* and by exploiting the loopholes in the civil litigation system. The lack of, or selective application, of certain civil procedures was duly exploited.

Plaintiff Not Aggrieved Party

Since financially and socially well-placed people have better access to the judiciary, it is not always the aggrieved party that goes to the court first. In cases of an influential versus a less resourceful party, often the influential party goes to the court as plaintiff even if it has wronged the defendant. Their easier access and influence enables them to use the institution of the judiciary to inflict more suffering on the other party. Also, after getting the less influential party trapped in the legal process, the influential party remains absent from the legal process while the poor

defendant keeps on attending hearings. They come back to hearings when about to be thrown out of the legal process. It was observed that the influential plaintiff never showed up for hearings, while the poor defendants would be in the court at 8:30 a.m. and wait for hours for their turn in all hearings witnessed.

Generally, each party filed additional cases against the other, and their supporters, as a pressure tactic, and the influential party accessed the legal system first. In such situations, there are no clear-cut boundaries between plaintiff and defendant.

Delay in Proceedings

The case files reviewed provide further insight into why there is so little confidence in the ability of the courts to dispense justice. Except for Balochistan, delays in courts and the accompanying expense and loss of time are major problems. Balochistan is relatively efficient due to widespread prevalence of the informal *sardari* system and a lower case-load. The influential used the courts to settle scores and the police and courts obliged them, and seemed to collude with them to harass the poor. Delay occurs in civil cases due to various reasons:

- faulty process-serving mechanism;
- non-service of summons;
- non-adherence to the High Courts rules pertaining to the

presence of local revenue and other officials in court;

- inability of judges to declare the non-interested litigants ex-parte;
- gross bureaucratic neglect;
- allowing an undue number of miscellaneous applications, temporary injunctions and interim relief;
- lack of witnesses and frivolous litigation.

Delay in criminal cases occurs due to:

- poor and ineffective prosecution services;
- inability among judges to separate the case of the accused present in the court from those absconding;
- delay in recording evidence; and
- inability of jail administration to send the under-trial prisoners to attend hearings.

Other issues that cause delays include:

- transfer of judges;
- transfer of a case from one judge to another;
- non-judicial or administrative duties of judges; and
- inadequate court facilities (physical as well as human), common to civil, criminal and family cases.

Criminal Cases: Serious criminal cases like murder take a very long time to conclude because the courts insist on getting the witnesses served through the prescribed procedure as speci-

fied in Section 173(5) of the Criminal Procedure Code.

While there is a provision for separating a particular party for the trial to proceed if there are delays in serving the summons, or if the accused absconds, this is rarely done.

One of the main causes that delays criminal proceedings is the inability of the judge to separate the accused present from the absconding ones. Generally, the practice in courts is that criminal cases cannot proceed unless all the accused are present. The way around this is for the court to separate the case of the attending accused from the ones absent and to proceed. However, courts do not follow this approach. The field team came across delays up to eight years in cases involving absconding accused.

The slow recording of prosecution evidence is also a major cause of delay in court proceedings. The police play a central role in the presentation of the prosecution evidence.²⁷ This problem was noted to be particularly serious in courts in Larkana, although it was not confined to Larkana, or to Sind.

In a criminal case in rural Punjab, one of the accused regularly attended court hearings while the other did not show up. The court took 20 months to separate the trial. The case was adjourned twenty times due to the absence of one of the accused. Such delays are unjust to the complainant/accused who

““While the FIR was readily registered... there was a long delay before the trial proceedings got underway... Not a single case in the research sample showed that the prosecution evidence was presented in criminal cases.””

“An important factor that explains the efficiency of the district judiciary in Balochistan is that they have a less demanding judge-to-case ratio, given the province's sparse population...”

regularly attends hearings. Besides, no compensation is given to the defendants who are acquitted after such a long trial.

While the FIR was readily registered, as indicated in an analysis of some cases in Haripur, there was a long delay before the trial proceedings got underway. This often allowed time for a compromise and out of court settlement, which is what the plaintiff seemed to be striving for. Not a single case in the research sample showed that the prosecution evidence was presented in criminal cases. A large proportion of the criminal cases in Haripur involved physical assaults and drug abuse

Most of the cases (98 percent) in our Larkana sample were criminal. Many of these cases pertained to theft. Honour killings were not reported and so were missing entirely in the sample. Massive court delays often resulted because of absconding accused or because of delays in the presentation of prosecution evidence.

The district judiciary has, however, successfully cut down delays in Balochistan. An important factor that explains the efficiency of the district judiciary in Balochistan is that they have a less demanding judge-to-case ratio, given the province's sparse population, and the prevalence of the tribal justice system in areas constituting over 90% of Balochistan. The judiciary in Balochistan is also able to dismiss civil cases if one of the par-

ties, particularly the plaintiff, does not show interest. In certain cases, these suits are re-admitted for hearings on a party's request. However, this puts the onus on the parties to pursue the case, rather than using courts as an instrument to embroil the other party in frivolous litigations.

Other causes of delay include the transfer of judges or the transfer of a case to another court. Judges are often transferred without being replaced. In a case in Toba Tek Singh, the judge was on leave during eight successive scheduled hearings and twelve hearings were adjourned because the case was transferred to another court. In another case, eleven hearings were adjourned because the judge had been transferred. In none of these cases were alternative arrangements made.

Slow presentation of prosecution evidence emerges as a major cause of delay. Generally, the stronger party uses this as a delaying tactic. Since police officials are an integral part of the prosecution's evidence in criminal cases, they can also delay court proceedings. For instance, it took the prosecution three years to present its evidence in a case in Toba Tek Singh. Witnesses were absent during eighteen of the hearings. Field research quantitative findings strongly confirm the delay caused by the prosecution services (see Table 6). On average, it took over eleven months for the prosecution to present evidence in the cases sampled. This

Case Study 3: Theft case in Larkana

A case in Larkana pertained to the theft of buffalos. It went on for eight years. The complainant had four buffalos worth Rs. 50,000 stolen from him. He employed the services of a *khoji* (tracker) to trace footprints to the village of the accused. The police initially registered an unofficial report. An FIR was lodged a year after the incident. One of the accused was held but released on bail. During the 14 months from the date of registration of the FIR and submission of the court notice (*challan*), he kept attending hearings that were held almost every month. The other three were declared missing. Another accused then appeared, and, for the next eight hearings, two accused were present. This went on for five months.

Then for the next two and a half months the Judge was transferred without a replacement. When a replacement arrived, hearings continued for two months and then the Judge went on leave for a month. The proceedings resumed on the Judge's return, but then one of the two accused was absent and did not appear for 13 months. Following that, the police arrested one of the remaining accused but did not bring him from jail to the court for two months.

Finally, on August 21, 1996, 3 years and 7 months after the trial began, all four were present for the first time. However, the Prosecution Inspector was missing. The remarks for the next hearing, a month later, were intriguing:

All present, adjourned, no reason given.

Again, after another four hearings, it was noted:

All the accused present.

However, this time the Judge adjourned the proceedings to allow for the framing of charges.

The accused were then granted bail and all of

them went missing for eight months. One of the accused then started appearing again for the next five months. For the next seven months, two of the accused were present on bail. Following that, the Judge was on leave for the next hearing. Two of the accused remained absent for the next eight-and-a-half months. Then one of the accused was arrested and put in jail but not produced in the court for the next three-and-a-half months. After that, two accused were present for another four-and-a-half months. Finally, one of the absent accused got killed and the other was declared absconding on April 7, 2000, 7 years and 3 months after the case started, and the trial at last commenced.

The complainant was asked to fill the criminal disposition form when the trial began. The prosecution witnesses began recording their statements three months after separating the case of the absconding accused on July 13, 2000, and the recording of prosecution evidence continued for two months. This was followed by another delay as the prosecution witnesses went missing for the next six months. Finally, when the witnesses reappeared, it took only four hearings to examine them, record the statement of the accused, hear the arguments, and acquit the two attending accused. One of the absconders was noted to be a public offender. The other one was dead.

When the court chose to act expeditiously, the case was disposed in only four hearings. No compensation was provided for the long delay and expense to either the defendants or the complainant. The Judge could have declared the missing accused absconders much earlier. In any case, the process was not just to either the accused present or the complainant in terms of the time, trouble, and justice delayed.

““ *The high rate of acquittal in Sindh and Balochistan also follows an interesting pattern... Delay occurs in civil cases due to ineffective, inefficient and corrupt process-serving.*””

period is longer than any other stage of a criminal case.

Criminal cases normally represent an offence against the state. When a person physically harms or kills another person, it is not only a crime against the victim or his/her family, but also a crime against society and the state and, therefore, a non-compoundable offence. However, as earlier stated, the Islamic legislation introduced in the 1980s changed such cases into compoundable offences. Since these cases have been made compoundable, sooner or later, barring a few exceptions, the parties compromise under social pressure, in exchange for compensation, or owing to a lack of faith in the judicial system.

Most criminal cases end up in acquittals, particularly in rural Sindh and Balochistan. Cases involving murder, physical injuries and fraud generally end up in compromises in Punjab and NWFP. In NWFP, those accused of murder are released on bail after two years. Therein appears to be a pattern in NWFP, which needs to be further investigated.

The high rate of acquittal in Sindh and Balochistan also follows an interesting pattern. In cases of petty crimes, the accused plead guilty and are convicted in no time. In substantive criminal cases, the proceedings drag on for years for various reasons and end up in the acquittal of the accused. A few cases end in out-of-court settlements. The trend clearly points to the inefficiency

of the prosecution and the courts, and involves both the police and the judiciary.

Most of the criminal cases reported in Larkana involved theft and robbery and ended up in acquittals. A few criminal cases in Larkana experienced delays because the accused were not brought from jail and no reasons were recorded for their lack of appearance. A closer look at case files suggests that the courts can move quickly when they choose to speed up the disposal of cases.

Civil Cases: Delay occurs in civil cases due to ineffective, inefficient and corrupt process-serving. In civil cases, pleadings are generally delayed due to a lack of process service or a lack of interest on the part of one or more parties (see Table 5). Pleading took, in the sampled cases, over 15 months to complete on average. This period was much longer than any other phase of the case except passing the judgment. However, a District and Sessions Judge was of the opinion that generally, presentation of evidence takes much longer and delays court proceedings more than any other phase. Witnesses are summoned (again through inefficient process-service), but they often do not appear and when they do, either one of the parties or their lawyers do not show up, thus, the evidence stage drags on.

When a civil suit is filed, the first step is to order the defendant to appear in the court to explain

Case Study 4: Property Case in Toba Tek Singh

A property case in Toba Tek Singh went on for 16 months during which twenty-five hearings took place. The case was filed for property worth Rs. 26,000. The limit for the exemption of court fee was Rs. 25,000. The plaintiff was presumably not aware that his case would be subject to a court fee. In any case, he did not submit the court fee despite repeated notices. It is instructive to present the details of the twenty-five hearings in chronological order.

- ▶ Notice to submit the remaining court fee issued;
- ▶ Notice issued again;
- ▶ Judge transferred;
- ▶ Notice issued again;
- ▶ Notice issued again;
- ▶ One of the defendants appeared but the other was absent;
- ▶ The address of the second defendant was not correct in the plaint (written complaint), hence, the plaintiff was asked to provide the correct address;
- ▶ Notice issued once again;
- ▶ The plaintiff filed an application to amend the plaint;
- ▶ The defendant submitted a reply to the application;
- ▶ No objection was made on the amendment pleaded by the plaintiff;
- ▶ Judge on leave;
- ▶ Adjournment to receive the amended plaint;
- ▶ Lawyers on strike;
- ▶ Amended plaint was filed and notices were re-issued;
- ▶ Notices issued again;
- ▶ Notices issued again;
- ▶ Notices issued again;
- ▶ Notices issued again;
- ▶ Notices issued again;
- ▶ Notices issued again;
- ▶ Notices issued again;
- ▶ Notices issued again; and
- ▶ Notices issued again.

The plaintiff was not present, and the case was therefore dismissed due to non-prosecution. The court record for this case illustrates how judicial institutions can be needlessly engaged in litigation, adding to the congestion of cases, and misused to harass defendants.

his/her case. This is done by serving summons to the other party. This is where the delay takes place. Process-servers are few in number and do not have modern facilities such as motorcycles. A lot of opportunities for corruption open up at this stage. Any party that wants to delay proceedings, or wants to get an ex-parte decision against the other party, can easily collude with the under-paid process-server so that summons are not served, or not served properly, and misreported. This antiquated system of process-serving needs to be revamped. The Asian Development Bank 2003 report suggests that the system should be modified in a way that summons are also sent through registered post or courier service, depending on the plain-

mise, or in the abandonment or withdrawal of proceedings. Compromises are usually not reflected in decrees. Cohn and Nelson think that the main aim of the parties is to delay proceedings and to use the legal process as a bargaining tactic to settle the dispute outside the court. Delaying the proceedings with the help of lawyers does not seem to be irrational in that context. However, it is unfair to the party which does not want to delay proceedings and is trapped in the litigation process.

As mentioned already, the plaintiffs are not always the aggrieved party. The influential party can initiate proceedings as the plaintiffs to delay justice. They sometimes delayed the litigation by not actively pursuing the case.

“...the plaintiffs are not always the aggrieved party. The influential party can initiate proceedings as the plaintiffs to delay justice. They sometimes delayed the litigation by not actively pursuing the case.”

tiff's choice. This needs to be done in addition to modernising process-servicing management and facilities.

Delay also occurs due to the parties' lack of interest. The research shows that core property cases involving title, inheritance, and encroachment took a long time in the courts and ended mostly in some sort of compro-

The inability of judges to declare the non-interested litigants ex-parte also delays proceedings. In an inheritance case from the sample, the judge was not able to declare the defendants ex-parte despite a massive delay spanning several years. Non-appearance of the defendants blocked the completion of pleadings - the first stage of a civil suit.

Thus, the issues were framed after three years and nine months. The preliminary decision was finally granted in favour of the plaintiff after six years and one month. At that stage, the parties compromised. If one takes the view that *justice delayed is justice denied*, the plaintiff was denied justice given the six-year delay that benefited the defendant.

Delay in civil cases also takes place due to introduction of miscellaneous applications by parties, a classic delaying tactic. Civil suits typically proceed from one stage to another, i.e. from completion of pleadings to framing of issues, appearance of witnesses, arguments to decision. However, if a miscellaneous application is introduced at any stage of the case, the progress is halted and proceedings get diverted to settling the status of that application first. Only when the nature of the application has been decided can proceedings recommence. If the application is admitted, for example, to include another party in the case, then proceedings need to initiate afresh to follow the due process. Thus, court practice of accepting and taking up miscellaneous applications causes avoidable delay in the disposal of the main case. In one case in Toba Tek Singh, the court took two years and six months to complete the pleadings because of miscellaneous applications.

Temporary injunctions are another cause of delay. Generally,

influential parties get a temporary injunction against any change in the status quo in property cases. The prime motive for getting a temporary injunction is to delay proceedings. Courts also adjourn cases in response to applications seeking interim relief if a party to

“*Frivolous litigations were more common in the sampled property cases in rural Rawalpindi*”

the dispute is involved in another case. In most such situations, the two cases can proceed simultaneously.

Litigants also delay the proceedings in cases where this is the most they can achieve. The delay also forces the other party to come to the negotiating table.

Frivolous litigations were more common in the sampled property cases in rural Rawalpindi than in urban Rawalpindi. Court fee acted as a deterrent against frivolous litigation in the past. The Federal Shariat Court ordered an exemption from the court fee for property cases worth less than Rs. 25,000. This was done to make the formal judiciary more accessible to the poor. However, most of the frivolous cases observed during the fieldwork were below the Rs. 25,000 mark. According to The Asia Foundation (TAF)'s

““The judges in Sibi efficiently dismissed the civil cases if the plaintiff was not pursuing them. This is something that judges in the other provinces can also easily do... The judges in Sibi handle both the simple and the more complicated cases expeditiously.””

Integrated Report 1999, frivolous litigation has increased manifold. This research confirms TAF Integrated Reports' findings on the lack of court fees actually encouraging frivolous litigation.

As mentioned earlier, the judiciary in Sibi, Balochistan is more efficient than in the other districts. The reliance on the *sardari* system for justice and lesser litigation and congestion also contributed to cutting delay. Cases are informally investigated by the *tehsildar*, and then sent to the courts.

The judges in Sibi efficiently dismissed the civil cases if the plaintiff was not pursuing them. This is something that judges in the other provinces can also easily do. Limited access to police for registration of cases is a possible cause for delay. Another likely reason is the special role of the *tehsildar* in the tribal belt in Sibi. The latter performs police duties along with revenue duties. If an incident takes place in the tribal belt, he can investigate it himself before formally recording it with the district police.

The judges in Sibi handle both the simple and the more complicated cases expeditiously. In one criminal case, there were more than one accused. The Judge examined the case of each accused separately and came to a quick decision.

Civil cases, too, are disposed of quickly. For instance, a civil suit was dismissed within three months due to a lack of evidence. This manner of cutting down

delays is not practiced in other districts. If a case is not pursued, it is dismissed within months for lack of prosecution. Sometimes, parties appear again to initiate a re-trial. In one case, arguments on the legal issues involved were heard without the plaintiff's and defendant's evidence. This is another useful innovation to minimize delay.

One of the key recommendations in the Asian Development Bank's 2001 AJP report is that judges should take active control of proceedings rather than leaving them at the mercy of the lawyers. An active involvement and tracking of cases will result in better case flow management and an assertive role played by judges will cut down delay.

Family Cases: In most family cases, whatever the nature of the dispute, a compromise outside the court and within the family circle was reached, particularly in rural areas. Often the defendants simply did not appear while the court pursued the cases. Usually one spouse chose to be *ex-parte*. However, family cases were contested in mostly urban areas, as was reflected in urban Rawalpindi courts.

The Lahore High Court has sent special directives to civil courts to expedite family cases so that the average family case is decided in six months. However, using the tactics discussed in the civil cases section, one of the parties can indefinitely prolong family cases.

In dissolution of marriage cases filed by women, not incorporating the right to divorce in the *nikahnama* (marriage contract deed) is a major problem. Extensive litigation can be avoided if there is a greater awareness across the society about granting the right of divorce to women. In a family case in urban Rawalpindi, a twenty year old girl was stuck in a dissolution of marriage case. She had lived with her husband and in-laws for only three days. Upon finding that her husband was a drug addict and an irresponsible person, her family had asked her to return to her parents' home. She had been embroiled in the conflict for three years at the time of her in-depth interview. She had suffered a major heart attack due to the tension created by the dispute. Her in-laws were also interviewed. They declared that they would never let her husband divorce her.

Proceedings of the case were observed. As the defendant's lawyer told the court about the absence of his client, the research team spotted him in the vicinity of the court. Such delays are made possible in collusion with the court staff. The plaintiff in this case said that she did not ask for the right to divorce in the *nikahnama* because her father thought it was a "bad omen to think of such things prior to the wedding. I wish we had. We wouldn't have to go through all this trouble had we just marked that option." Hence, one way to

cut delay and misery involved in dissolution of marriage cases is to publicise and popularise the right to divorce.

In another family case in urban Rawalpindi, the plaintiff was able to get a divorce in a few months. In one of those rare cases, justice was seen being delivered in a relatively short time. However, the fact that the plaintiff was an intelligent, assertive and well-connected spiritual healer also went to her advantage. She seemed to be better connected than her husband.

Another set of family cases deals with custody of children. Often husbands file such cases to harass wives/ex-wives. In one of the cases in the urban Rawalpindi sample, a mother from a lower middle class background had to resort to the High Court to regain custody of her children.

Interestingly, dissolution of marriage cases figured only in Punjab. In the sample in rural NWFP and Sindh, no dissolution of marriage cases came up. In Haripur, family cases often included guardianship and custody matters, dowry money and maintenance. There was only one family case in the sample in Larkana where a husband sought restoration of conjugal rights. The wife did not contest the case despite being serviced under the process. In Sibi, a woman sought the dissolution of her marriage, but the suit was withdrawn and the case ended in a compromise. The lack of appearance in dissolution of marriage cases in three

““ *She had been embroiled in the conflict for three years at the time of her in-depth interview. She had suffered a major heart attack due to the tension created by the dispute... they would never let her husband divorce her.* ””

“*The official fee for a record copy is Rs. 4... Eventually, each copy costs the litigants between Rs. 100 to 150, besides the opportunity cost of the time that they spend trying to access documents in the relevant courts.*”

provinces is reflective of the impact of socio-economic development on women's rights. In Punjab, it is probably more acceptable for women, even if they are from the lower middle class, to seek dissolution of marriage through court. Given the relatively higher socio-economic development in Punjab, such a broad correlation with women's rights seems probable.

Generally in family cases, women are at a disadvantage in prosecuting the cases in courts. The longer such cases remain pending the greater is their suffering and expense.

Courts, Staffing, Lawyers, Judges and Justice

The physical condition of buildings, human resources, quality and quantity of staff and judges' heavy work loads speak volumes about the conditions under which justice is dispensed.

A civil judge (the lowest tier of the civil judiciary) in Punjab hears 150 cases per day on average. This makes an average hearing of 3,600 cases per month. Even discounting repetition of hearings, the average number of cases heard by a civil judge per month is close to 2,000. The facts are more revealing if the daily equation is looked at: a case gets 2.8 minutes of a judge's time. No meaningful exercise of dispensation of justice is possible in such an overloaded judiciary. This is only a part of the picture. The pathetic condition of buildings, furniture, facilities for litigants

and availability of record are some of the other factors.

Visits to the central record room of the Rawalpindi Courts in 2001, before some litigants who did not want the records to be examined burned down the record room, showed that files were shoved in bundles of cloth and then placed on shelves, one on top of the other. Each bundle had at least an inch thick layer of dust on it, with tags of files scattered around, pages flying by. It was a scene of absolute chaos. Yet, the record room clerks were able to retrieve what was left of the records and provide them to litigants by pocketing Rs. 50 to Rs. 100 per copy.

Interestingly, even poor litigants were willing to pay the required and routinized bribe to get the record copies. This is a clear example of institutionalized corruption.

The official fee for a record copy is Rs. 4 (deliverable within 10 days). The official fee for an urgent copy is Rs. 10 (deliverable within 3 days). There was no way one could get the record within the stipulated number of days through official channels. Files of decided cases do not reach the record room for months. The clients have to go to the relevant courts to get records by paying bribes to *ahlmads* and readers, and then have to get them photocopied at their own expense. After getting a photocopy, they bring it to the copy section to get it officially stamped. Once again they pay Rs. 50 on the average per

copy for stamping. Eventually, each copy costs the litigants between Rs. 100 to 150, besides the opportunity cost of the time that they spend trying to access documents in the relevant courts and negotiating with the clerks. This phenomenon is reflective of pricing distortions for judicial services. The question remains, why can this informal over-charging not be legalised? If litigants, including poor litigants, are willing to buy a copy for Rs. 100, then why is it not possible for the government to increase the price of an official copy to Rs. 50, for instance, and make it available to litigants with better staffing, buildings and furnishing? In this way, litigants will have to pay less than the prevalent bribe price and the service will be available to everyone across the board in a reliable and uniform manner.

Members of the Bar play the role of 'rotors' in the judiciary. Fieldwork revealed, particularly in Punjab, that lawyers almost preyed on the litigants in property cases. They continued to give false hopes about the imminent end of the trial, while enriching themselves and court officials (including secretarial functionaries referred to as the *munshi* and *ahlmad*) at the expense of the litigants. Many lawyers, defence as well as prosecution, encouraged the use of their office to bribe the judge when the time for the final decision approached. The lawyer of the losing party would return the

money stating that the other side had offered more. A few litigants with big stakes admitted having 'purchased' judgement. A few judges interviewed were of the opinion that the lawyers, besides colluding in delaying tactics to extract money, also attempted to monopolise court proceedings and formed powerful cliques to curtail judges' powers vis-à-vis the lawyers.

Members of the Bar also expressed their grievances against the overall structure of the judiciary where they had to operate in dilapidated Bar Rooms, make-shift tin offices and deal with court clerks who were not willing to share records with them unless they were bribed.

Besides improving the quality of law education and Bar facilities, there is a need to consider whether an independent legal services system can replace the present system. In such a system, lawyers will not argue on behalf of any party. Rather, they will assist the court on points of law. Such a system will also enhance judge's control over the case proceedings.

Findings of Quantitative Data

The key quantitative findings from the semi-structured survey in the twenty-six villages of our four-district sample are provided in Table 1, which provides background information for two groups in order to put the responses into perspective.

For the most part, the two

“ Fieldwork revealed, particularly in Punjab, that lawyers almost preyed on the litigants in property cases. They continued to give false hopes about the imminent end of the trial, while enriching themselves and court officials at the expense of the litigants.”

“ The survey gathered information on total expenses, and these averaged at Rs. 46,721 per case. The 42 respondents who reported paying illegal fees (bribes) reported this amounted to a mean of Rs. 22,663 per case, or roughly half the total expenses incurred.”

40

Table 1: Background characteristics of respondents and control group

Background characteristics	Respondents	Control group
Education (mean years)	4.2	3.3
Age (mean years)	42.8	39.2
Gender (% female)	29	39
Marital status (% married)	83	78
Household size (mean)	11.0	9.2
Status (% head of household)	46.4	42.9
N	207	64

Source: SDPI Survey, Khan and Khan, 2004.

groups were sufficiently similar for a valid control group comparison. However, the control group was slightly less educated and had more females. For the most part, neither the respondent nor the control group households were wealthy. Only one household in each category owned an air-conditioner, which is what we used as a proxy for identifying rich households in a rural area.²⁸

In another survey on the background of the litigants (as opposed to the survey of households involved in disputes in the villages), the characteristics revealed were generally similar to those of the respondents and control group (Table 1) interviewed in the village survey as is evident from Table 2 (p. 41).

The notable differences in background characteristics are that fewer litigants in the follow-up survey were women and more

were heads of household. The survey gathered information on total expenses, and these averaged at Rs. 46,721 per case. The 42 respondents who reported paying illegal fees (bribes) reported this amounted to a mean of Rs. 22,663 per case, or roughly half the total expenses incurred. Considering that only four of the households visited could be classified as rich (had air-conditioners), these expenses represented a significant burden.

The other key findings of the village survey were:

Disputes: In determining the nature of disputes that the individuals were involved in, the research design allowed for the possibility of multiple responses. Table 3 (p. 42) identifies the main dispute categories. These have been aggregated for presentation from the 38 possible responses. Women were engaged in a higher

number of criminal cases, 55 percent of which pertained to murder or "honour killings." Of the property cases, for males almost two-thirds were land related, and one-fourth indicated that the other disputes were also indirectly land-related. At the time of the survey, about half of the disputes had been resolved for both males and females.

Dispute Resolution: The community, *panchayat*, police, and courts figured most prominently in dispute resolution and

reasons for this decision.

Those who went to the *panchayat* generally had to make one to three visits to various dispute related meetings. The local landlord was the chairman of the *panchayat* in 44 percent of the cases and the *lumberdar* (village headman) in another ten. Thirty-five respondents cited an average expenditure of about Rs. 30,000 and another 8 respondents cited an average expenditure of over Rs. 150,000. Again, there was a very high level of satisfaction

“Again, there was a very high level of satisfaction expressed with justice provided by the *panchayat* and of the 118 respondents, 79 percent said they would continue to use the *panchayat* in the future.”

Table 2: Background characteristics of litigants

Background characteristics	Litigants
Education (mean years)	5.4
Age (mean years)	43.7
Gender (% female)	12.2
Marital status (% married)	78
Household size (mean)	9.5
Status (% head of household)	59.3
N	264

Source: SDPI Survey, Khan and Khan, 2004.

the new dispute resolution mechanisms instituted by local government were so far not being approached. Only a few respondents reported having actually approached the new local body institutions set up to dispense justice.

Of the 42 who went to the community, 36 were satisfied and said they would approach the community again, with fairness and expense prominent among

expressed with justice provided by the *panchayat* and of the 118 respondents, 79 percent said they would continue to use the *panchayat* in the future. Fairness (31.5 percent), speediness (30.6 percent), and expense (26 percent) were the reasons cited for this confidence in the traditional system of justice.

Fifty-six respondents had approached the police, and of these, 54 percent thought it was

difficult to file an FIR that is necessary for a case to be investigated. The bulk of those who thought it was difficult said this

Only 4 out of 56 who responded to this question said they would go back to the police because they considered the police fair.

Table 3: The experience of disputes involving rural households by key category and gender

Dispute type	Male (%)	Female (%)
Property / civil	43.8	34.6
Criminal	43.4	57.7
Family	2.1	7.7
With state agency	3.2	-

Source: SDPI Survey, Khan and Khan, 2004.

was the case because the police required a bribe to file the FIR and, as poor people, they had difficulty in coming up with the requisite funds. Moreover, they thought the police generally catered to the rich and influential. Eighty-four respondents said that they had made up to an average of 19 visits (with the maximum in the range cited as 300).

Given that the average distance of the police station from where they lived was nine miles, this represented a high time cost. Other expenses, including fees, documents, transportation costs, and particularly bribes were also high. Sixty-four respondents claimed to have spent an average of Rs. 95,000 and another 10 claimed to have spent an average of over Rs. 40,000, significant amounts for poor households. Even so, two-thirds said they would go back to the police and 86 percent said this was because they had no other real choice.

Only ten respondents mentioned having gone to the local bureaucracy such as the assistant commissioner (5) or the deputy commissioner (1).

The courts represented a major problem for many respondents because of repeated visits. One set of respondents mentioned having had to visit the courts an average of 72 times with one respondent saying that he had made about 500 visits over the years. Another set of ten respondents, who cited it as their second case, mentioned having made an average of 25 visits.³⁰ On average, nineteen respondents mentioned having to visit once a month, 34 twice a month and 9 three times a month.

The courts also proved to be very expensive for most respondents. Including legal and illegal "fees", documents, transportation, and lawyer's fees, the average amount spent by 89 respondents was Rs. 270,000 per case.

“ Only 4 out of 56 who responded to this question said they would go back to the police because they considered the police fair... One set of respondents mentioned having had to visit the courts an average of 72 times with one respondent saying that he had made about 500 visits over the years.”

Table 4: The experience of disputes involving rural households by key category and gender

Institution	Respondents (%)	Control group (%)
Family or community	12.9	11.7
Panchayat	33.4	37.8
New local body institutions	9.9	11.7
Police	18.0	19.8
Rural bureaucracy	2.8	2.7
Court	22.3	16.2
Responses	395	111

Source: SDPI Survey, Khan and Khan, 2004.

For 14 cases (out of 18), in which the case had been resolved, the mean expenditure was about Rs. 22,000, which is still substantial for poor households. For the 18 respondents who said the case was resolved, more than three-fourths said they would go back, but two-thirds said this was so because they had no other choice. Those whose cases were going on echoed these responses.

Respondents were given a range of choices to indicate their preferences for various institutions for dispute resolution based on their experience, allowing for multiple responses. Table 4 reports these for both the respondents and the control group.

The similarity in responses across the two groups is striking and suggests credibility of the findings. Notable in the responses

is the relatively high level of confidence placed in the *panchayat* and the relatively low level of confidence placed in the courts. About a tenth of the respondents, and slightly more among the control group, are willing to try the new institutions, but the percentages suggest a very high degree of skepticism and weariness of institutional innovations.

The patron-client system is relied upon for dispute resolution and about two-thirds of the respondents and the control group indicated that they relied upon someone influential to help them with their legal or law-and-order problems. Over half the respondents and about three-fifths of the control group mentioned that they relied on a *wadera* or tribal leader to help resolve their problem. Another 10 and 13 percent,

“Notable in the responses is the relatively high level of confidence placed in the *panchayat* and the relatively low level of confidence placed in the courts.”

Table 5: Break down of delays in civil cases

Stages of the case	Months (average)
Service and completion of pleading	15.6
Framing of issues	4.5
Plaintiff's evidence	9.7
Defendant's evidence	4.6
Arguments	5.3
Judgment	22.9

Source: SDPI Survey, Khan and Khan, 2004.

“...only two-fifths of all cases ended with a court decision, 23 percent of the cases ended with a compromise, while the rest were either dismissed or otherwise unresolved.”

respectively, relied on the village headman. This system of relying on a patron will continue, as will the feudal system, until fair and speedy justice is available to the poor.

The break down of the delays in civil cases is generated on the basis of proformas³¹ of case files filled by a prominent legal expert and listed in Table 5.

It is clear that the delays were exceedingly long, as is evi-

dent from our earlier narrative. The break down of criminal cases was done separately because it follows a different cycle. The results are reported in Table 6.

Once again, Table 6 indicates how prolonged the trials were. Despite this, only two-fifths of all cases ended with a court decision, 23 percent of the cases ended with a compromise, while the rest were either dismissed or otherwise unresolved.

Table 6: Break down of delays in criminal cases

Stages of the case	Months (averages)
Occurrence of crime	0.9
Filing of police report	6.7
Commencement of trial	6.7
Prosecution's evidence	11.8
Defendant's evidence	2.2
Argument	0.8
Judgment	6.9

Source: SDPI Survey (Khan and Khan, 2004).

It is illustrative to look at the following findings and observations on dispensation of justice issues in Pakistan presented in an Asian Development Bank (2001) document:³²

The basic problems of judicial administration in Pakistan relate to governance and administration, case management and delay reduction, automation and court information systems, human resources and infrastructure. The practical manifestations of these problems in Pakistan include the following:

- *A high percentage of cases are filed but not dismissed.*
- *Few cases are settled before trial (90 percent go to trial).*
- *A high level of "unmet demand" is revealed by those who would access the courts with meritorious claims but for the unpredictable results that attend the application (unpredictability being a core element of illegitimacy in judicial organs).*
- *Related to the previous point, confidence in the courts is so low that it provides the perverse incentive to aggrieved parties to remain so, rather than accessing the courts, or even threatening to access the courts (because the threat provides no meaningful inducement for the injurer to settle).*
- *A high percentage of cases are appealed.*
- *Judgments enjoy virtually no voluntary compliance; few judgments are self-executing, and the execution of judgment is woefully delinquent, if it happens at all.*
- *The legal/judicial system provides little, if any, socially beneficial deterrence.*
- *The motivation to sue, and the ultimate goal of litigation, is mostly to delay.*
- *Risk allocation mechanisms, such as insurance, are woefully underdeveloped.*
- *Self-help in criminal cases is tradition and sanctioned, in part, by law; criminal prosecution for resort to self-help is unlikely, and conviction a highly remote possibility.*
- *Knowledge of the other party's case is virtually nil except through the trial medium (less than 2 percent cases have any discovery whatsoever).*

The description raises some management-related and other substantive issues. Some of the findings, such as courts being used to delay cases and achieve objectives other than litigation, resonate the survey's findings. Non-compliance of judicial decisions, even after going through the lengthy process, indicates why litigants prefer compromise over contestation of cases and also why the informal justice systems are being widely used.

The Way Forward

“Voices from the civil society have also come up with ideas for judicial reform. One such idea was to revamp the judiciary through improvements in incentives, institutions, infrastructure and information.”

46

The crucial question is as to why access and dispensation of justice have become such elusive goals. Some link it to lack of resources, whereas others to the lack of political will of the state.

The government of Pakistan has come up with a large body of commissions and committees on judicial reforms since 1956. They are:

- Commission on Marriage and Family Laws, 1956;
- Law Reform Commission, 1958;
- Law Reform Commission, 1967;
- High Powered Law Reform Committee, 1974;
- Law Committee for Recommending Measures for Speedy Disposal of Civil Litigation, 1978;
- Secretaries' Committee set up by the President to Examine the Recommendations of the Law Committee set up for Recommending Measures for Speedy Disposal of Civil Litigation, 1979; and
- Committee to Formulate Concrete Proposals for Simplifying the Present Legal Procedure, Law of Evidence, and Other Allied Matters, and Bringing These in Consonance with Islamic Injunctions, 1980.

In 1981, the government set up a permanent Pakistan Law Commission (PLC). It has been recording and publishing judicial statistics and the Pakistan Law Digest (PLD), but has not been very effective in changing the nature of dispensation of justice. Some of the recommendations of these commissions relating to the Family Laws Ordinance, establishment of the Federal Judicial Academy and Pakistan Law Commission, and separation of the executive from the judiciary have been implemented after a considerable delay. Substantive issues concerning day-to-day dispensation of justice, such as those concerning court facilities, buildings, salaries of the judges, changes in process-serving, production of witnesses, improvements in investigation and prosecution of criminal cases, implementation of rules and codes to cut down on delay and prolonged inaction and prison reforms have not been implemented despite their repeated articulation in report after report.³³

Voices from the civil society have also come up with ideas for judicial reform. One such idea was to revamp the judiciary through improvements in incentives, institutions, infrastructure and information. The analysis says that the government's political will to reform needs to lead to motivation

of judicial officials through better incentives and appointing a Federal Public Service Commission, better internal and external accountability and monitoring by introducing measures such as the trial by jury system and appointment of a parliamentary protector of citizens' rights, changing infra-structural parameters such as provision of professional court clerks, computation facilities, law interns, libraries and facilitating a better quality of decision-making through proper law education and training for judges which would require improvements in law colleges' curricula.³⁴

The Asian Development Bank started a comprehensive judicial reforms programme (entitled Access to Justice Programme) in 1999 in collaboration with the Government of Pakistan. The predominant approach in the judicial reform literature is management-oriented.³⁵ The Asian Development Bank (ADB) has funded extensive studies on judicial reforms in Pakistan.³⁶ These studies have fed into the ongoing "Access to Justice Program" (AJP) funded by the ADB and implemented by the Government of Pakistan. AJP is one of the most extensive programmes on judicial reform undertaken in Pakistan. The research phase has been completed and the project is in its implementation phase. It remains to be seen how successful this effort to overhaul the dispensation of justice is going to be.

One of the key suggestion of the ADB's AJP is improving the

management of judiciary through:

- improved legal education and training;
- better case and load management;
- automation;
- dissemination of information on legal procedures; and
- enabling citizens' access, better library facilities, an automated and uniform compilation of judicial statistics.

It also recommends:

- setting up of a process serving establishment;
- introduction of case flow management software;
- publishing of a bench book;
- an efficient system of budgeting, accounts and personnel;
- improvements in monitoring through regular visits to lower courts (as required by High Court Rules) and through complaints;
- a public inquiry system;
- increasing the remunerations for judges, particularly for district level judges;
- citizens-court liaison;
- ombudsman reforms;
- better infrastructural facilities for litigants, particularly women litigants;
- encouraging the induction of more women judges;
- creating advocacy funds;
- instituting judicial reforms with the Pakistan Law Commission in the long run;
- a court management plan by which legal records, case

“ The Asian Development Bank (ADB) has funded extensive studies on judicial reforms in Pakistan. These studies have fed into the ongoing "Access to Justice Program" (AJP) funded by the ADB and implemented by the Government of Pakistan. ”

“...because even a first rate management-oriented approach to legal and judicial reforms may not fully ensure justice for the poor and the marginalised groups, unless it focuses on transforming the local power structure into a more just and equitable one.”

- flow processes, finances and trial court proceedings can be better maintained;
- Bar associations;
- budgeting and expenditure process;
- relationship with legal and executive branches; and
- improvement in the content and quality of legal training needs to be planned and implemented.

In this context, the innovative idea of case flow management is quite interesting. The proposed software could handle functions from case institution to case fixation and compilation of case lists till the time of judgment is given. It could improve case tracking to a large extent and also feed a public inquiry system.³⁷

Though a better management of the judicial system is a welcome step towards legal reforms, such efforts are not going to affect the existing power structures. It is important to maintain limitations on the management approach because even a first rate management-oriented approach to legal and judicial reforms may not fully ensure justice for the poor and the marginalised groups, unless it focuses on transforming the local power structure into a more just and equitable one.

A strong critique of AJP's questions raises the following issues:

- Does ADB's largely market-friendly agenda for justice have the capacity to carry out

its proposed reforms?

- Can it accomplish anything other than increasing Pakistan's indebtedness?

The lack of reference to the state's role in ensuring constitutional rights of citizens of Pakistan is highlighted and so is the absence of analysis of exploitative and oppressive socio-economic systems that incubate poverty.

Another important point is that ADB reports promote management-oriented apolitical reforms where "the most constraints are found in the political culture" and politics and political power are part and parcel of the structures under which justice is dispensed. Along with not analysing in detail the relationship and impact of reforms on the poor, AJP's implementation through the Federal Ministry of Law, Justice and Human Rights and its monitoring is something to be skeptical about and needs to be seriously reviewed.³⁸

On the basis of discussions thus far, the following recommendations emerge:

- Since the influential are able to buy or manipulate justice, the only long-term way to reform state institutions is to decrease inequality of financial, social and human development. Realisation of social justice is closely linked to the dispensation of justice and it can be realised through ensuring a more equitable socio-economic distribution of

wealth and assets through land-reforms, employment generation, education, economic growth and provision of opportunities to the poor and less influential sections of society;

- Making improvements in the dispensation of justice a priority and allocating more funds for developing the human and physical infrastructure of the judiciary as a percentage of annual government expenditures, so that judicial reforms are not seen as a one-off expenditure, paid by external loans;
- Administrative and management systems are discussed in detail in ADB's recommendations, as well as others such as those relating to legal education, training of judges, improvements in the Bar, libraries, dissemination of laws and procedures related information, better case flow management, automation, incentives for judges, improvements in physical infrastructure of courts, professionalisation of court clerks and process serving mechanism;
- Revamping prosecution services of the police is critically important for criminal cases. There is also a need to set up a permanent commission at each district headquarters to monitor the registration of FIRs and police harassment, hear citizens' complaints, take required action and report to

the respective High Court on a regular basis;

- The so-called "honour" killings need to be discouraged through all possible means. The Qisas and Diyat Ordinance 1984, which makes murders a pardonable offence, needs to be amended, particularly with respect to "honour" killings so that the perpetrators of such crimes cannot be pardoned;
- Evolving a system to check the abuse of powers in the revenue department is imperative. There is also a need to make land revenue data accessible, reliable and secure. A good way to save people from being dependent on local revenue officers (*patwaris*) could be automation of land revenue records, provided the security of the data can be ensured;
- A greater number of people approach informal justice systems, such as the *panchayat* and *jirga*, than the formal judiciary (Table 4), which denotes a space for improvement in the informal justice arena. The devolution-plan-based local justice institutions can effectively contest the law-and-order and judicial space since the current mistrust of the police and courts by the poor allows the feudal system a free hand in manipulating justice and perpetuates a patron-client system;
- Conferring the right to

“ The Qisas and Diyat Ordinance 1984, which makes murders a pardonable offence, needs to be amended, particularly with respect to "honour" killings so that the perpetrators of such crimes cannot be pardoned. ”

“ Conferring the right to divorce for woman in the *nikahnama* needs to be popularised in order to save women who want divorce from the agony of languishing in courts.”

- divorce for woman in the *nikahnama* needs to be popularised in order to save women who want divorce from the agony of languishing in courts;
 - Judges need to monitor applications of the relevant provisions of the Civil Procedures Code, the Criminal Procedures Code and the High Court Rules that cut delays, such as an affidavit of the *patwari's* statement, rather than wasting time on the appearance of these officials in court;
 - Judges can also separate cases of the accused present from those absconding to cut delay.
 - Various laws, such as *Ehtaram-e-Ramazan* and price control laws amongst others, need to be amended or stricken out to stop them being used as instruments of police harassment.
 - The *sardari* justice system, despite appearing swift and effective, is not desirable because it is capable of systematically discriminating against women and the poor. Measures need to be taken to gradually phase out the *sardari* justice system from tribal areas.
 - Dispensation of justice and police performance need to be an integral part of the human development indicators of the UNDP and other development institutions for on-going monitoring.
 - There is a great deal of inter-provincial variation in patterns of disputes and their resolutions. Loosely, patterns in rural Sindh and Balochistan are more similar to each other. It is an important finding for public policy as devolved institutional mechanisms for more effective service delivery continue to evolve.
 - Some of the other relevant issues that need more research are the blooming population of under-trial prisoners, the deteriorating conditions of prisons, police brutality and issues of *habeas corpus* (i.e. producing a person before a court which has the powers to release that person from unlawful custody).
- However, once more the key question is whether or not these recommendation can or will be implemented. Any discussion on these reforms should be undertaken in the context of the following key trends in judicial reform approaches:
- Since the modern judicial system is alien to our culture, litigants and other stakeholders act to delay the proceedings and subvert the dispensation of justice to fill the gap between local tradition, politics and formal law. This view, as briefly discussed in the issues section, indirectly suggests that delay in the judicial process cannot be

reduced through improvements in management structures only. Efficiency clashes with litigants' hidden preferences, therefore, this is difficult to achieve.

- ADB and others have come up with a management reforms approach by automation, better case flow management, better management and budgetary structures, better management of court statistics and improvements in legal training. This approach is based on improved incentives and efficient management systems. Though, most of the reforms proposed by ADB are needed to improve the physical, human and information infrastructure, its most obvious flaw lies in its being entirely apolitical in nature.
- Another critical approach flows out of SDPI's research, discussed in detail in an earlier section, which views the issues of access and dispensation of justice in the context of power structures. The poor can never be empowered, nor service delivery improved, unless the power structures that impede such service delivery are altered in favour of the poor. The most obvious of such reforms include land³⁹ and other asset redistribution and human and social capital formation required to undermine the power of the feudal system. In fact, implementation of land reforms is critical

to achieving the desired objective of diffusing power. Merely passing the Acts is meaningless. However, the importance of local culture and traditions in addressing the issues of law-and-order and the dispensation of justice cannot be ignored. Informal justice systems and other conceptual constructs such as socio-economic status, gender and, at least in an informal sense, *quoms* (caste) and *beraderis* (clan/tribes) have a strong bearing on the dispensation of justice.⁴⁰

- A holistic analysis of justice systems includes the role of inter-related factors like social institutions (caste and tribes), determinants of influence (land and wealth), factions (based on local socio-political interests), social mobility (achieved through education and migration) and gender.
- The political economy perspective advocates the view that the rule of law is pivotal to the transformation from feudalism to capitalism. From this perspective, rule of law is not only a service but is also the lever through which capitalist transformation is achieved. One strong academic view⁴¹ is that unless the transition towards dynamic capitalism fully takes place in post-colonial countries like Pakistan, rule of law and dispensation of justice cannot be achieved by apolitical governance-related reforms.

“ The poor can never be empowered, nor service delivery improved, unless the power structures that impede such service delivery are altered in favour of the poor.”

Notes and References

¹The author of this paper is presently Visiting Research Associate at the Sustainable Development Policy Institute (SDPI), Islamabad and a PhD Candidate in the Department of Development Studies, Faculty of Law and Social Sciences, School of Oriental and African Studies, University of London. The author conducted two research studies on justice, the first on *An Analysis of Access of The Marginalised to the Judiciary at the Local Level in Northern Punjab* in 2001-2002, supported by The Asia Foundation, Islamabad. In this study, 18 cases (new, one-year old and decided) were followed both in the courts and also by interviewing the litigants in urban Rawalpindi courts and in *tehsil* Jhand, District Attock. Out of a list of 36 litigants, 30 interviewees were available for in-depth interviews. Besides observing these sampled cases, stake-holders were interviewed; judges, lawyers, court clerks, record room clerks, and random litigants were also interviewed. The second study was a UNDP Islamabad commissioned research, *A Benchmark Study on Law-and-order and the Dispensation of Justice in the Context of the Devolution of Power Plan*, co-authored with Shahrukh Rafi Khan, submitted to the UNDP in 2003 and published as a monograph by SDPI in 2004. In this study, disputes in 26 villages in the most advanced rural districts of Punjab (Toba Tek Singh), NWFP (Haripur), Sind (Larkana) and Balochistan (Sibi) were systematically researched. In the process, 193 respondents and 109 control group were interviewed using semi-structured instruments in 26 villages. Quantitative findings in the study are also based on these interviews. Similarly, in another phase of study, 203 decided (property, criminal and family) cases were sampled in the district courts of Toba Tek Singh, Haripur, Larkana and Sibi. The case files were gathered with the permission of the respective District and Sessions Judges and were analysed both by the author and our legal expert, Justice (retired) Shafi-ur-Rahman. Findings on case records are based on the study of these files. Justice (Retd.) Rahman filled in 199 proformas (4 missing) of these cases. A few statistics in the quantitative findings section are based on these proformas.

This issues paper has made generalizations by using terms like "rural Punjab" for findings from districts Toba Tek Singh and Jhand, "rural NWFP" for Haripur, "rural Sindh" for Larkana and "rural Balochistan" for Sibi. However, it needs to be clarified that these research findings are only representative of the districts studied. Broad generalising terms have been used due to the nature of the issues paper and also

considering the fact that an in-depth focus on a district can point to a few general trends in the province. However, the purpose is not to discount the huge inter-district diversity in the provinces.

²Constitution and its relationship to the rule of law are discussed in Ahmad, Nazir, *Constitution of Pakistan and People's Rights*, Islamabad, The Network Publications, 2004.

³Ali and Arif, 2004.

⁴Yasin and Sardar, 2004. p. 79.

⁵Yasin and Sardar, 2004.

⁶The Law Reform Commission, 1967-70, 1970.

⁷The information on respective jurisdictions is available in books, though, some of it is outdated. The information given below has been gathered through discussions with practicing lawyers.

⁸Yasin and Banuri, 2004.

⁹An FIR can be registered on receiving a complaint and/or police itself can register an FIR on suspecting a crime.

¹⁰Cohn, 1987; Lefebvre, 1999.

¹¹Lefebvre (1999) has also studied the impact of "honour" in his study of two villages in Punjab. The high expense resulted both from court delays and their being fleeced by lawyers and other court functionaries and their unwillingness to let go because their *izzat* (honour) was at stake.

¹²In more simple terms one could refer to it as ego.

¹³Cohn, 1987.

¹⁴Nelson, 2002.

¹⁵The notion of compromise needs to be separated from the functions of the institutions of informal justice such as *panchayat* or *jirga*. A high percentage of urban cases also end up in compromise, however, such a compromise may not be achieved through the *panchayat*. In rural areas, these institutions function widely.

¹⁶"Party" does not necessarily refer to groupings based on political affiliations. A more accurate term to capture the village reality is factional politics. There can be several factions in the village, and they can result from previous disputes and who sided with whom in those disputes. Generally, the original basis of the alignment is perceived to be *beraderi*. However, these factions can change their character, and there can also be two or more factions within a *beraderi*.

¹⁷Murders related to honour varied across region and locality as will become evident by the end of this section.

¹⁸The accused woman is called *kari* (literally a black woman) and the accused man is called *karo* (literally a black man). In 2002, the Human Rights Commission of Pakistan claimed in its annual report that 450 women fell victim to "honour killing". The electronic bulletin of Lawyers for Human Rights and Legal Aid (Madadgaar) developed a database based on press reports that they conceded grossly understated

the problem. They cited 549 cases of women killed due to this rite in the first eight months of 2002. In addition, 106 men, 19 girls, and three boys were killed. Of the 677 cases, the provincial distribution was 377 in Sindh, 227 in the Punjab, 41 in Balochistan, and 32 in the NWFP.

¹⁹In almost all the villages, women respondents were willing to talk about *karo-kari* cases. This was quite different from our experience in Sibi where very few *karo-kari* cases were mentioned. The female research team interviewed about half a dozen respondents on some days in different villages in Larkana and all spoke of "honour" killings.

²⁰In a non-compoundable offence, it is not sufficient for the offender(s) to be pardoned by the aggrieved person(s). The court also needs to pardon the offence.

²¹We were unable to determine what this abbreviation stood for. Perhaps, it stood for a non-complaint, since that is how the complaint was treated. The NC had no official validity.

²²*Tehsildar* has dual functions in tribal Balochistan. He acts as the local police officer along with his duties of the revenue officer. He is also authorised to investigate the cases before reporting them to the court.

²³Meaning that the convict will stay in the court room as a punishment till the end of day's business.

²⁴Revenue clerk based at the village level.

²⁵Senior revenue clerk who supervises *patwaris* of a cluster of villages.

²⁶Revenue officer at the *tehsil* level. The number of *tehsildars* varies from *tehsil* to *tehsil*.

²⁷One of the civil judges in Taluka Ratodero was reluctant to pass on the judicial record to the research team despite being asked to do so more than once by his superior officer, the District and Sessions Judges. This record was finally accessed three months later after the whole record had been re-typed and made available for use of the researchers.

²⁸Given the respondent's reluctance to reveal household income and the difficulty in computing it for farm households, possessing luxury durable goods is often used as a proxy for wealth. Apart from air conditioners, other relevant durable goods are automobiles and VCRs. The study used VCRs and automobiles in Chapters 4 and 5 as proxies for identifying rich households. However, when presenting the work, it was pointed out that air conditioners were an even better indicator because on occasion an old personal automobile might be used to run a taxi and households sometimes receive VCRs as gifts from relatives working abroad.

²⁹A *lakh* is equal to 100,000.

³⁰These responses result from our allowing for a multiple response option in case individuals were involved in more than one dispute.

³¹Our legal expert filled in 199 proformas (two missing). Of these, 57.3 percent were for criminal cases, 28.6 for civil cases, and 14.1 for fam-

ily cases. These files of decided cases were gathered by the field research team in the four sampled districts. They were collected on the basis of a sampling method. The data set generated by our legal expert confirms the findings reported earlier, but the numbers provide an important complement to that analysis.

³²The Asian Development Bank, 2001, p. 6.

³³Yasin and Shah, 2004.

³⁴Banuri, 2004.

³⁵For example, refer to The Asia Foundation, 1999.

³⁶Asian Development Bank, 2001 and 2003.

³⁷Asian Development Bank, 2003 and 2001.

³⁸Erceawn and Nauman, 2004.

³⁹While police, judicial and administrative reforms have been proposed or implemented, land reform, the most critical of the required set of reforms was only briefly discussed and quickly abandoned.

⁴⁰There is much anthropological and sociological literature on the nature of castes and tribes and their social impact. According to Ahmad (1997), caste does not play as rigid a role in the Canal Colonies of the Punjab as it does in most parts of India.

⁴¹See publications by Mushtaq H. Khan, lecturer, Department of Economics, School of Oriental and African Studies, University of London, U.K.

Suggested Reading

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About The Network

The Network for Consumer Protection was formed in 1992 with a focus on public health, later expanding its attention to consumer protection. Since then, the organization has become an effective advocacy group, working at the grassroots, national and international levels. The Network activities include public policy advocacy, community mobilization, research and publication.

The Network's programme seeks to assist citizens-consumers to influence public policies in order to meet their livelihood needs and to develop informed opinion on relevant policies. The Network enjoys a track record of compiling and disseminating information for citizens and mobilizing action around key issues.

To join activities of The Network and receive its publications, consider becoming a member of the organization.

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“ A few litigants with big stakes admitted having ‘purchased’ judgment. A few judges interviewed were of the opinion that the lawyers, besides colluding in delaying tactics to extract money, also attempted to monopolize court proceedings and formed powerful cliques to curtail judges’ powers vis-à-vis the lawyers.”

The paper contends: “Access and dispensation of justice are thorny issues in Pakistan’s governance paradigm and in the day-to-day reality of its people. The situation is particularly alarming at the level of the district judiciary where “common” people approach courts to get justice.”