

JUSTICE DELAYED: UNPACKING THE BACKLOG CRISIS IN PAKISTAN'S COURTS

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ABSTRACT:

The backlog of cases in Pakistan's judicial system is a complex issue. This study aims to explore the major factors contributing to this problem. These factors include the old laws inherited from the colonial era, such as the "Code of Civil Procedure, 1908," and the "Code of Criminal Procedure, 1898." These laws have complex and time-consuming procedures. The role of lawyers, such as adjournment of cases, overburdened and less-trained court officials, and a huge gap between the number of judges and the population of Pakistan, are also major factors. In addition, less-trained judicial officials, less-effective judicial performance evaluation systems, frivolous litigation, administrative inefficiencies, and less-effective coordination of land and criminal justice systems are also major factors contributing to the judicial crisis. The study further aims to explore the roles of ineffective prosecution, outdated investigation techniques, and over-specialisation among judges. To address this issue, the study suggests several reforms, including the digitisation of judicial systems, judicial capacity enhancement, alternative dispute resolution systems, legal reforms, and enhanced judicial accountability.

KEYWORDS:

- a. Judicial Backlog
- b. Case Delays
- c. Pakistan Legal System
- d. Court Efficiency
- e. Legal Reforms

BACKGROUND:

Satisfying the need for timely justice is an integral part of the rule of law and a vital condition for maintaining public trust in the system of law. However, the situation is quite different in Pakistan, where the administration of justice has always been plagued by a long-pending workload of cases at all levels of the judiciary. The courts have millions of pending cases of civil, criminal, constitutional and family law, which lead to extended litigation, higher litigation costs to litigants and delayed implementation of rights. The right to speedy and cheap justice as guaranteed in the Constitution has therefore become elusive ever since. The backlog situation is not a single institutional shortcoming but is the result of several structural, procedural and institutional shortcomings. Pakistan is still using the time-consuming and cumbersome procedures inherited from the colonial era that include the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1898. In addition, the number of judges is not adequate, court personnel are overworked, judicial case management is poor, court adjournments are common, judicial training is lax, performance monitoring of judges is weak and frivolous litigation is growing. In criminal cases, lack of police investigation and prosecution further delays the disposal of cases, and civil courts remain overrun with land and property disputes due to inadequate administration. The impact of judicial delay goes beyond just being inconvenient. Delay in justice has a negative impact on the faith people have in the judicial institutions, raises the costs of litigation, deters investment, stifles enforcement of legal rights, and threatens the rights of common people. These challenges also put undue stress on judges, attorneys and court staff, making the system of court administration less efficient and reinforcing the backlog of cases. Considering the multidimensional nature of the problem, this study focuses on the main legal, institutional and administrative causes of judicial backlog in Pakistan.

It also addresses issues of practical reform, such as court modernisation, digitisation of court proceedings, judicial capacity development, judicial accountability, adoption of alternative mechanisms of dispute resolution and coordination of institutional activities. The study aims to shed light on the causes and possible remedies for the issue, thereby contributing to the current debate on judicial reform and creating a more efficient and accessible justice system in Pakistan.

RESEARCH PROBLEM

In Pakistan, the judicial backlog remains an impediment to timely justice delivery as there are multifaceted legal, procedural, institutional and administrative challenges that need to be comprehensively analysed and addressed.

RESEARCH QUESTIONS:

1. What factors are responsible for judicial backlog in Pakistan at the main level in terms of law, procedures, institutions and administration?
2. What impact do these have on the process of justice in Pakistan?
3. What are the legal and institutional changes that can address judicial backlog and enhance the performance of the judicial system in Pakistan?

RESEARCH OBJECTIVES:

1. To find out and analyse the key legal, procedural, institutional and administrative causes of judicial pendency in Pakistan.
2. To study the effect of these on the efficiency and efficient administration of justice in Pakistan.
3. To recommend judicial and institutional changes to minimize the backlog in courts and improve judicial efficiency in Pakistan.

RESEARCH METHODOLOGY:

The method used in the research in this study is a qualitative doctrinal research method. It mainly depends on the analysis of primary law sources such as the Constitution of Pakistan, laws, judicial precedents and pertinent rules relating to the judiciary system. To understand the causes of judicial backlog and to assess possible legal and institutional reforms, secondary sources like books, journal articles, reports of the Law and Justice Commission of Pakistan, and other scholarly publications are also analysed. The study has adopted a descriptive and analytical method to critically examine the current legal structure and to make recommendations for making the judiciary more efficient in Pakistan

SIGNIFICANCE:

This study adds to the current debate on judicial reforms by offering a detailed study of legal, procedural, institutional and administrative causes of judicial backlog in Pakistan. It provides concrete suggestions which could help policy makers, legislators, judicial officials, lawyers and researchers in designing effective reforms that will enhance judicial efficiency, access to justice and disposition of cases in a timely fashion. The study is also of great educational value for future research about judicial administration and judicial reform in Pakistan.

REASONS FOR JUDICIAL BACKLOG IN PAKISTAN

There is a complex crisis of delays and inefficiency in the judicial system of Pakistan, which is due to the combination of the antiqueness of the legal system, the malfunctioning of the administration, and structural constraints. The laws of the colonial era, like the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1898, still govern procedures that are too cumbersome, slow and ill-suited to the requirements of modern litigation practices. To make this problem worse, the poor performance of the staff in the courts, the unavailability of adequate judges, the absence of professional training, excessive specialisation of the judges, frivolous lawsuits and the inability to coordinate courts and the regulatory body have led to a bottleneck that does not easily grant access to justice. These key points

are then enumerated in the discussion that follows, as collectively they have led to the ever-growing backlog of cases in both civil and criminal courts around the country.

Outdated Laws, Lengthy and Complex Procedures

The reason behind the long-pending cases of Pakistan has been largely because the old procedural laws that are cumbersome are still being applied. Even the judicial system uses traditions of colonial times, which include the Code of Civil Procedure, 1908 (CPC) and the Code of Criminal Procedure, 1898 (CrPC), that were developed in a completely different social and administrative environment.¹ These amended legislations still maintain procedures that are unnecessarily complex, lengthy and do not adequately match the quantity and complexity of modern litigation.

A delay in the civil proceedings is one of the first during the issuance and delivery of a summons. Order V of the Code of Civil Procedure, 1908, provides that a summons directing the appearance of the defendant can be personally served, or, in the event of the absence of the defendant, on any member of the family who is an adult male and living with the defendant.² This clause has historically been meant to be convenient, but in reality, it has been a platform of confusion and manipulation.

As an example, the summons can be given to a relative who does not deliver it to the defendant or who intentionally hides it. In this instance, the defendant might not be aware of the proceedings, hence non-appearances, ex parte, and restoration applications that follow and increase the process. Moreover, nowadays, with the popularisation of digital communication, email service, and electronic notifications, this mode of service seems to be old-fashioned and ineffective. It represents a procedural approach that is, to this day, stuck in the early twentieth century and does not adapt to the technological realities.

Further, Order V Rule 19 demands that the officer serving to do so affidavit and have the satisfaction of the court as to the due service, and in such a case, an inquiry will easily produce several verifications,

¹ Government of Pakistan. (1908). *Code of Civil Procedure, 1908*.

² Government of Pakistan. (1908). *Code of Civil Procedure, 1908*, Order V

enquiries, and adjournments.³ Every level of the procedure costs the case several weeks or even months. In rural and remote locations, there is a delay created by poor record-keeping and poor access to the post.

After summons and pleadings have been made, the next bottleneck is the recording evidence stage. Digital deficiency, low utilisation of the contemporary evidence-recording programs, and years of stagnation due to the absence of time-limited witness examination. Cases are adjourned on numerous occasions because of the unavailability of the witnesses, and the right of the court to make an adjournment is misused.⁴

All these combined render the judicial process in Pakistan time-consuming, outdated, and not amenable to reform. The inflexibility in procedure and the old-fashioned terms, such as those under Order V of CPC, create wastage at the very first phase of litigation.

a) Contribution of the Role of the Lawyers to Judicial Delays.

The other major issue leading to the case backlog in Pakistan is the behaviour and professionalism of the lawyers themselves.⁵ Although bar members play a significant role in the justice system, the joint effort of all members, especially due to workload, financial interests, or strategy, has become a key source of the stagnation of the process.

In most instances, there are dozens of cases that are being handled by several lawyers, especially those who work in busy district courts and high courts, which is way beyond a manageable professional capacity. Consequently, they are more likely to concentrate on cases that are high-value or financially rewarding and delay or ignore less profitable cases.⁶ Such selective attention results in frequent adjournment demands in cases not as profitable as they are in other cases, which require a long time to get disposed of.

³ Government of Pakistan. (1908). *Code of Civil Procedure, 1908*, Order V Rule 19.

⁴ Supreme Court of Pakistan. (2017). *Case management and adjournment practices guidelines*.

⁵ Law and Justice Commission of Pakistan. (2020). *Judicial statistics of Pakistan*.

⁶ Cheema, A., & Mohmand, S. (2020). *Access to justice and legal delays in Pakistan*. Lahore University of Management Sciences.

According to the Code of Civil Procedure, 1908, the courts are entitled to provide an adjournment on valid grounds, including illness, witness unavailability, or argument preparation.⁷ This is, however, often taken advantage of by the counsel as a conscious strategy to buy time or to irritate the other party. Attorneys often make applications for adjournment on frivolous grounds, including unavailability of a party, inaccessibility of a document, or even occupancy in another court.⁸ As the judiciary is only too reluctant to quash those requests immediately (with courtesy to the bar or the possibility of losing colleagues), these adjournments, when added up, cost some months or even years.

In cases where the lawyers believe that they have a weak case or that a judgment will be made against their client, they can also use dilatory methods to delay the case. These are making unnecessary or redundant interlocutory applications (e.g. requests to amend or stay, or transfer of case) which waste time in court.⁹ In civil cases, these motions may put the entire action at rest until the side applications have been adjudicated. This practice not only clogs the docket but also makes the judicial process lack integrity.

The other problem that is coming up is the extension of the evidence stage. Counsel will often bring up useless witnesses or present loathsome evidence to drag out the proceedings. There are also delays due to the inability of lawyers to bring out witnesses in good time or seek adjournment claims on the excuse that parties are indisposed.¹⁰ Sometimes such procedural laxity is deliberate, as a kind of bargaining power, or to induce the opponent to settle.

The judicial system is also further paralysed by occasional strikes and boycotts of court proceedings by lawyers who are mostly involved in political or professional grievances. Thousands of cases are adjourned every single day of the strike, which is another factor that directly adds to the backlog that is continuously increasing.¹¹ The Supreme Court of Pakistan has on numerous occasions ruled that lawyers' strikes are

⁷ Government of Pakistan. (1908). *Code of Civil Procedure, 1908*.

⁸ Law and Justice Commission of Pakistan. (2018). *Delay reduction strategies in Pakistan judiciary*.

⁹ Cheema, A., & Mohmand, S. (2020). *Access to justice and legal delays in Pakistan*.

¹⁰ World Justice Project. (2022). *Rule of law index: Pakistan*.

¹¹ Law and Justice Commission of Pakistan. (2020). *Judicial statistics of Pakistan*.

unwarranted and unprofessional,¹² but the act is repeated in the country now and then, most particularly in the district courts.

All these are indicators of a systemic problem of professional accountability. The work overload, focus on the high-fee cases, routine adjournments, and abuse of procedural rights are evidence that the practices of the bar can greatly impede judicial effectiveness. The issue of delay will not disappear regardless of the changes in the legislation unless more powerful judicial disciplinary measures, time-limited case processing, and enforcement by the bar-council measures are established.

b) Incompetent and Work Overload Court Staff

Besides the judicial officers and lawyers, the ineffectiveness and overwork of court personnel contribute significantly towards the further increase in the delay of cases and backlog in the Pakistani legal system. The efficacy of any court is not confined to the activity of the judges who are the president of the court, but also to the administrative machine that assists the judges; this means that there are clerks, record-keepers, process servers, readers, and other people¹³. In most courts, unfortunately, especially the district and tehsil courts, these staff members work under the pressure of heavy workloads, ineffective systems and minimal accountability, which lead to long procedures and disappointed litigants.

Court officers like Ahlmads (record keepers), Readers (judge assistants), and Process Servers usually have hundreds of cases that they are required to handle at the same time. Many of them cannot, or even cannot want to keep the cases timely and accurate since they are staffed poorly, not sufficiently trained, and poorly remunerated. There are cases of files being lost or not received in a timely manner in other departments or not even updated in time, leading to unnecessary adjournments and confusion for both litigants and judges.

The staff of the court is also obligated to provide services to the citizens, which include informing the parties about the subsequent hearing dates, finding the case files and making sure that the applications are duly filed. In practice, however, this facilitation is in

¹² Supreme Court of Pakistan. (2019). *Judgment on lawyers' strikes*.

¹³ Asian Development Bank. (2019). *Judicial performance and delays in South Asia*.

many cases overlooked.¹⁴ Litigants, particularly unrepresented ones, find it challenging to access simple information concerning the case, since members of staff either do not want to interact or are unwilling to do so. This not only results in missed hearing dates but also demotivates the people in the court about the judicial process.

One area of delay that is critical is with the process-serving staff, whose duty is to make summonses and notices available to parties.¹⁵ The process servers often cannot serve summonses in time because of the large number of pending cases that they have to serve. They must also provide service reports and verification statements to the court, even after service, which also requires a few weeks to do.

In most instances, process servers have to cover a long distance, particularly in rural jurisdictions, but are not supplied with proper logistical support or transportation. The subsequent delay in submitting their reports will delay the initial phase of the case,¹⁶ the appearance of the defendant, therefore establishing a trend of inefficiency that will prevail over the proceedings.

The other reason is the lack of strict administrative control. There are few assessments of the supporting staff's performance, and very few disciplinary actions are taken. Consequently, even small negligence, like failure to refresh registers, to forward case records to the appropriate branch or even to notify the judge of an impending process report, is likely to cause significant delays in proceedings.

This is made worse by the manual record system, which is still used in the majority of lower courts.¹⁷ The lack of a unifying digital case management system implies that each document has to be transferred to the hands of several individuals, which opens the chances of being lost, damaged, or delayed excessively.¹⁸

This is because the inefficiency of the court personnel serves as an invisible but potent obstacle to the delivery of timely justice. The strained clerical system, coupled with demotivation, out-of-date practices, and poor supervision, is also factors that add up to the pending cases. To restore order in this area, capacity building,

¹⁴ World Justice Project. (2022). *Rule of law index: Pakistan*.

¹⁵ Government of Pakistan. (1908). *Code of Civil Procedure, 1908*.

¹⁶ Cheema, A., & Mohmand, S. (2020). *Access to justice and legal delays in Pakistan*.

¹⁷ World Bank. (2021). *Pakistan judicial efficiency report*.

¹⁸ Asian Development Bank. (2019). *Judicial performance and delays in South Asia*.

computerisation of court records and proper accountability procedures for the administrative staff are a must in order to have procedural efficiency equal to the judicial performance.

c) Judicial scarcity and Low institutional capacity

The reason that the Pakistani judicial system is experiencing a backlog, which is deeply rooted in the structure of the Pakistani legal system, is the severe lack of judges compared to the population and the number of litigation cases in the country. The judicial capacity, i.e. the number of judges to hear the cases against the number of pending cases at each level of the judicial hierarchy, still leaves much to be desired. Such an imbalance has caused massive workloads on the available judges, leading to delays in the dispensation of cases and the discovery of a large discrepancy between cases flowing in and those being disposed of.¹⁹

As per the different reports of the Law and Justice Commission of Pakistan (LJCP) and judicial reform studies, Pakistan has the lowest ratio of judges to population in the South Asian continent.²⁰ It has been estimated that there are about 3,000 judges (including magistrates) attending to far more than 2.2 million pending cases in the country.²¹ This implies that a single judge manages close to 60,000 individuals, which is frightening against international standards.²²

An example is that in certain countries, like India, there are about 21 judges per million, and in the United States, there are more than 100 judges per million.²³ Pakistan, on the other hand, has fewer than 10 judges per million people.²⁴ This sharp imbalance shows the institutional inadequacy of the judiciary in Pakistan in handling the continuously increasing civil, criminal, and constitutional cases litigated in the country every year.

As a result of this scarcity, every judge, particularly the ones at the district and sessions level, must preside over thousands of cases in a day, listening to dozens of cases in a few hours. The result of this scenario is a lack of time to assess evidence, inadequate rationality in

¹⁹ Asian Development Bank. (2019). *Judicial performance and delays in South Asia*

²⁰ Law and Justice Commission of Pakistan. (2021). *Judicial reform reports*.

²¹ World Justice Project. (2022). *Rule of law index: Pakistan*.

²² Cheema, A., & Mohmand, S. (2020). *Access to justice and legal delays in Pakistan*.

²³ World Bank. (2021). *Global judicial comparison report*.

²⁴ Asian Development Bank. (2019). *Judicial performance and delays in South Asia*.

judgments, and adjournment most of the time, since the court system does not have adequate time to hear all cases in a given day.²⁵

The massive workload of the judges also leads to judicial fatigue, lack of concentration and diminished justice delivery. Numerous judges have other administrative responsibilities, like processing inspection reports, handling employees, or even dealing with election tribunals, and this puts even more strain on the already constrained capacity.

Although the number of people is on the increase and the litigation trend is on the rise, the judicial infrastructure has not been increasing accordingly.²⁶ The judges have had virtually no change in the number of posts that are approved in the last ten years, and the number of new cases has been on the rise. This has been due to budgetary limitations, failure to recruit and delay in appointing judges by the Judicial Commissions, which has thus led to failure to set up new courts where they are most required.

Moreover, judges in rural and remote districts are likely to work in understaffed courts,²⁷ where cases in various jurisdictions are handled. This not only postpones cases but also makes litigants not take any case because of the costs of commuting and the inaccessibility of the courts.

The efficiency of a judicial system may be determined worldwide by the ratio of cases to the number of judges and also by the overall time taken to dispose of the case.²⁸ The purpose of the developed jurisdictions is to sustain a ratio that will enable every judge to manage an achievable number of cases annually (e.g. approximately 1,000-1,500 in developed judicial systems). However, the ratio is also exponentially greater in Pakistan, as there are cases when more than 7,000/10,000 cases per judge in a year, and timely adjudication is virtually impossible.

Not only a numerical insufficiency, but the shortage of judges is thus a systemic inefficiency that contributes directly to the backlog crisis. In the absence of significant judicial appointments, infrastructural investment, and reallocation of workload, the vision statement of fast and easy justice, as promised in Article 37(d) of the Constitution of

²⁵ United Nations Development Programme. (2021). *Justice sector reform reports*

²⁶ World Bank. (2021). *Pakistan judicial efficiency report*.

²⁷ Asian Development Bank. (2019). *Judicial performance and delays*.

²⁸ International Commission of Jurists. (2019). *Judicial standards*.

Pakistan, will always be out of reach.²⁹ It requires a long-term increment of judges, administrative coverage and performance-based control to balance the judiciary with that of the world in terms of effectiveness and equity in Pakistan.

d) Lack of Judicial Training and Issues of Competence

The other significant factor that has contributed to the increasing number of backlogs in the judicial system in Pakistan is the lack of professional training and specialisation among judges. Judicial officers (particularly those who work at the district and civil court level) are usually recruited via competitive examination, but little post-recruitment training is provided.³⁰ The already established capacity-building initiatives in the Federal Judicial Academy (FJA) and provincial judicial academies are useful but too limited in scope, length, and practicality.³¹ This fact has made most of the judges find it difficult to approach complicated issues effectively, resulting in procedural flaws and remands that are unwarranted.

Because of the absence of specific legal knowledge, especially in such areas as family law, banking, intellectual property and cyber-offences, judges are often heard by judges who do not have the necessary subject-matter competence.³² This results in issues likely to be discussed by a court which is outside its jurisdiction or specialisation, and only after months of hearings are the issues remanded or referred to the appropriate court.³³ This practice not only causes a waste of judicial time but also compels litigants to commence the proceedings again, which causes delays of several months or even years before a case can be effectively adjudged.

Equally, the upper courts usually send back a case to the lower courts to have it re-heard with respect to the irregularities in the procedure or incomplete findings,³⁴ which is a direct factor when the lower courts are inadequately trained. These remands contribute to the amount of

²⁹ Government of Pakistan. (1973). *Constitution of Pakistan*, Article 37(d).

³⁰ Federal Judicial Academy. (2020). *Training programs report*.

³¹ United Nations Development Programme. (2021). *Justice sector reform reports*.

³² Asian Development Bank. (2019). *Judicial performance and delays*.

³³ International Commission of Jurists. (2019). *Judicial accountability*.

³⁴ Supreme Court of Pakistan. (2018). *Case law on remand practices*.

so-called recycled litigation, which artificially increases the pendency data.³⁵

The other gauge of poor judicial performance and minimal preparation is the difference between the filing and disposal rates. Recent LJCP Judicial Statistics (2023) data indicate that in Punjab alone, unprecedented cases of family cases were registered, although the case disposal rate was much lower.³⁶ This disproportion demonstrates that judges in most cases do not have the time-management abilities and the procedural expertise to rule cases within the boundaries of the statutes. In family courts, which are supposed to be settled within six months as per the West Pakistan Family Courts Act, 1964, most of the cases take years to go through because of inefficient hearing and adjournment.³⁷

In most of the lower courts, judges are still not conversant with the changing legal principles, digital evidence, or innovations that have been embraced worldwide in regard to procedures. Lack of lifelong education on the law and regular review of skills has placed most of the judiciary in old-fashioned methods. Judicial academy training programs are still usually based on short-term training, but with more theoretical lectures than on case-flow management, adoption of technology or ethical training.³⁸

The other, more delicate aspect is judicial corruption that further undermines efficiency and citizen confidence.³⁹ Even though most judges are serving in noble capacities, favouritism, outside pressure, and discretionary abuse have been witnessed at different levels of the judiciary system. The absence of an effective internal accountability system and a weakly functioning judicial council's oversight system permits the existence of corrupt practices (e.g. control over the timetable of cases, selective adjournments or biased interim orders) to continue. Even weak, unethical behaviour challenges trust in the judicial process and adds to the manipulation and postponement of its procedures.

³⁵ World Bank. (2021). *Pakistan judicial efficiency report*.

³⁶ Law and Justice Commission of Pakistan. (2023). *Judicial statistics of Pakistan*.

³⁷ Government of Pakistan. (1964). *West Pakistan Family Courts Act, 1964*.

³⁸ Federal Judicial Academy. (2020). *Training programs report*.

³⁹ Transparency International. (2022). *Corruption perceptions report: Pakistan*

All of these, and the absence of an organised judicial training, the absence of specialisation, and the enforcement of ethical standards, have directly added to the lack of efficacy and backlog. This is because, due to the low capacity of the judiciary to handle modern litigation with limited exposure to international best practices, the management of cases, misplacement of cases, and the number of cases that are remanded are poor.

To bring about sustainable reform, Pakistan needs to employ stronger judicial academies, institutionalise obligatory refresher classes, encourage specialisation in subjects, and institute transparent accountability frameworks. The number of judges cannot be increased without professional capacity-building so that the systemic backlog can be overcome.

e) Evaluation of Judges' Competency and Performance

The other major cause of the unresolved cases in Pakistan is the low competency and old performance appraisal system of the judges, more specifically, the district and civil courts. A great number of judges do not have the professional focus, analytical skill, and procedural discipline that would enable them to adjudicate efficiently.⁴⁰ The fact that they are unable to or sometimes reluctant to adequately read, evaluate, and determine cases has led to an increasing number of appeals, revisions, and remands in superior courts, thus creating an additional burden on the judicial hierarchy.⁴¹

In most cases, judges do not take time to study case files, evidence, and pleadings, and in most cases, make perfunctory or illogical orders. Appellate courts find it easy to overrule such superficial judgments, as they are regularly overturned, sent back, or returned, on appeal, because of procedural or factual inadequacies.⁴² Such a trend not only hinders the delivery of justice but also leads to a work overload of higher courts that are required to look into cases repeatedly that ought to have been decided his-and-out in the lower courts.

The existing system of determining the effectiveness and performance of judges is also out of date and performance blind. Quality, accuracy or fairness of judgment is not indicated in any

⁴⁰ Asian Development Bank. (2019). *Judicial performance and delays*.

⁴¹ World Bank. (2021). *Pakistan judicial efficiency report*.

⁴² Supreme Court of Pakistan. (2019). *Appellate review practices*.

standardised or merit-based evaluation model.⁴³ Rather, the judiciary remains dependent on a numerical system of points that were established decades ago; judges are rewarded through the number of cases they dispose of, and not on their merit or the soundness of their decisions.

According to this conventional pattern of evaluation:

- A judge is assigned one (1) point when s/he dismisses a case because of the non-appearance of parties.

One (1) extra point is awarded for accepting an application to revive such a dismissed case.

Two (2) points are awarded on full adjudication of a case -evidence, cross-examination, arguments, and final judgment.

This system is also a system that inherently rewards quantity and not quality.⁴⁴ Rather than taking time and effort to hold full trials, investigations, and pass well-thought-out verdicts, judges usually choose procedural shortcuts like non-prosecution (1 point) and, after that, restore them (1 point), giving themselves the same numerical advantage as they would get by going through a full trial.

As a result, a great number of judges tend to deal with cases shallowly to achieve performance benchmarks instead of dealing with them effectively. This not only compromises the integrity of the judiciary, but it is also a source of judicial wastefulness, given that the same case is dismissed, restored, adjourned, and remanded over and over in an endless cycle.⁴⁵

A lack of a qualitative performance audit enables judges⁴⁶ to gain high scores of disposition, and yet render no substantial justice. Institutional review of the correctness of decisions, rate of appeals and order timeliness is not reviewed. The judicial appraisal system in most jurisdictions across the world incorporates peer review, quality of decisions and timeliness, whereas the evaluation system in Pakistan is

⁴³ Law and Justice Commission of Pakistan. (2018). *Judicial reforms*

⁴⁴ World Justice Project. (2022). *Rule of law index*.

⁴⁵ Cheema, A., & Mohmand, S. (2020). *Access to justice*.

⁴⁶ International Commission of Jurists. (2019). *Judicial accountability*.

only tied to the mechanical scoring system that does not assess judicial efficiency or diligence.

It is an out-of-date appraisal system that creates a tradition of quantitative discarding as opposed to qualitative justice. Administrative judges who are under pressure to deliver certain numbers of cases off their books within a specific month tend to pick and choose complicated cases that need a great deal of reasoning or evidence, which leaves the cases that were left undecided, poorly decided or reversed. The absence of standardised metrics of judicial performance, coupled with the non-existent retraining, creates a vicious cycle of inefficiency that contributes to the backlog at all levels of the judicial system.

To bring any meaningful change, Pakistan needs to establish a new model of judicial performance, the model that would assess the judges based on the quality of their decisions, their rate of appellate affirmation, ethical behaviour, and timeliness, rather than the sheer number of cases disposed of.

f) Flimsy, groundless and harassing Lawsuits

A significant portion of the case backlog also consists of unwarranted and silly litigation by parties who have no bona fide legal complaint. Most litigants engage in such suits with the intent to stall the proceedings, harass the other party or even misuse the legal system and gain personal benefits. They want the other party to suffer by making him appear before the court over and over, incurring expenses in a court of law, and creating emotional anguish instead of demanding justice. This has been particularly evident in property litigations, family issues, and business issues, where a party seeks to cripple the other by dragging a case.⁴⁷

The courts are overrun with frivolous cases; a case has to be registered, a summons issued, and a series of hearings have to be held before it is determined that a claim is frivolous.⁴⁸ This wastes the court's time and distracts from the real cases and crowds the already overburdened court system. It is even worse when the same litigant makes several petitions or appeals over the same issue, leading to duplication of the same issue across the courts and jurisdictions.

⁴⁷ International Commission of Jurists. (2019). *Judicial accountability and delays*.

⁴⁸ World Bank. (2021). *Pakistan judicial efficiency report*.

Even though the law authorises the court to impose compensatory costs to an extent of Section 35-A of the Code of Civil Procedure (CPC) and dismissal of insignificant issues at an early stage, this is not the case in reality.⁴⁹ It is common that judges reluctantly give penalties because they fear that such orders may seem to be harsh and deter seeking justice. This has led to frivolous lawsuits going on unabated at the expense of people and slowing down the administration of justice to genuine litigants.

This case portrays a wider cultural issue of employing litigation as a pressure weapon as opposed to a resolution tool. Most of the parties use the slow speed of the courts to reach non-legal goals such as postponing eviction, obstructing recovery suits, or coercing settlements.

Without providing stringent action to discourage vexatious filing and to hold parties responsible for abusing the process, the courts in Pakistan will be left with no choice but to be congested in inappropriate ways and means, and the individuals who actually need justice can not get access to it.

g) Mismanagement

Another primary administrative issue that has contributed to the case backlog in Pakistan is the poor handling and misappropriation of cases in the Pakistani judicial system.⁵⁰ Most courts, particularly at the district and sessions courts, lack some form of uniform and efficient means of assigning cases to judges according to their specialisation or expertise. This has led to random allocation or transfer of cases through their lifetime, interfering with continuity and wasting time in the judicial process.⁵¹

Besides, the incoordination of both the administration and the judiciary takes place, resulting in regular re-posting or reshuffling of judges. When a judge has to be transferred without being in a position to deliver a verdict on outstanding cases⁵², this leaves the cases in limbo pending a new judge to assume office and get acquainted with

⁴⁹ Government of Pakistan. (1908). *Code of Civil Procedure, 1908*, S35-A

⁵⁰ World Bank. (2021). *Pakistan judicial efficiency report*.

⁵¹ Asian Development Bank. (2019). *Judicial performance*.

⁵² International Commission of Jurists. (2019). *Judicial accountability*.

the files. This leads to procedural interference as well as loss of judicial continuity, especially in the case of protracted civil and criminal cases.

This is also worsened by the fact that there is no effective case management system. Record-keeping, cause lists and transfer notifications continue to be done manually in most courts instead of being automated through a database.⁵³ This archaic method usually leads to misplaced documents, repetition of records and misunderstanding of which court has jurisdiction over a particular issue. Lack of computer tracking also permits human error and abuse, and there are sometimes delayed cases which are diverted on non-administrative grounds.

The issue of mismanagement and uncoordinated movement of cases in general is indicative of weaknesses in the judicial administration structure. This absence of specialised benches, lack of computerised case allocation and the constant reshuffling of judges all contribute to a situation whereby there is continual case delay, not because of a legal complication but because the organisation is inefficient. To overcome this, a centralised case digital management system, open transfer principles and subject-specific judicial assignment are necessary, whereby a single capable and consistent judicial officer would handle every case to the end. It is the modernisation of the administration that can make the judiciary decrease avoidable delays and bring back a sense of procedural discipline.

h) Growth in the Civil Lawsuits related to improper management of the land and property.

A fair share of the Pakistan backlog of cases is a result of the civil litigation based on the cases of land, property and ownership disputes, which are still increasing annually. The genetic reason for this rush is that the system of land registration and management of property records was ineffective and old-fashioned, and the negligence of areas of government, like the revenue offices, the development authorities and housing regulatory bodies.⁵⁴

Land records continue to be physically kept in the traditional patwari system that is prone to errors, manipulation, and corruption in most

⁵³ World Bank. (2021). *Pakistan judicial efficiency report*.

⁵⁴ World Bank. (2020). *Land governance assessment framework: Pakistan*.

parts of the country.⁵⁵ Lack of a centralised electronic registry implies that there is the possibility of having two or more parties claiming the same property based on contradictory or counterfeit documents.⁵⁶ In cases where the government departments do not check titles or make accurate corrections, a dispute will naturally take an avenue to the courts. Such disputes can be boundaries, inheritance, tenancy, illegal possession, or fraudulent transfers; all these will lead to a lengthy civil litigation.

Other common departments that are named in court cases as having failed to perform required regulatory functions, such as checking of ownership, building plan approval and land-use regulations enforcement, include Capital Development Authority (CDA), Sindh Building Control Authority (SBCA), the Lahore Development Authority (LDA), and revenue offices.⁵⁷ They are inefficient, and their bureaucratic delays frequently force people into the courts, thereby increasing the number of cases processed by the civil courts by thousands of cases every year.

The second problem is that there is no adequate registration of the sale deeds and agreements. Most of the property deals are informally done in the form of handwritten agreements or affidavits without registration under the Registration Act, 1908. These unregistered agreements subsequently result in litigation as ownership, possession, or payment issues and long civil lawsuits. On the same note, the inability to have the tenancy agreements or transfer deeds registered gives rise to legal uncertainties that have to be resolved in court.⁵⁸

The situation is also aggravated by the lack of communication and overlapping of the jurisdiction between government departments, which is non-coercive. As an example, a certain authority can issue an allotment letter, but later another authority will claim that the same land is encroached or reserved, thereby causing confusion and conflicting claims. Most of the time, the departments themselves fall under litigation, thus putting the courts at the end of the line with

⁵⁵ Transparency International. (2022). *Corruption perceptions index*.

⁵⁶ World Bank. (2020). *Land governance report*.

⁵⁷ World Bank. (2020). *Land governance report*.

⁵⁸ Government of Pakistan. (1908). *Registration Act, 1908*.

administrative fights that would have otherwise been handled by the department through coordination or proper record-keeping.⁵⁹

Simply put, the scale of the civil cases is growing exponentially, and this is a direct consequence of bad governance of the land, laxity in the enforcement of the rules and regulations, as well as a lack of transparency in the dealings of property. To eliminate this problem, full digitisation of land records, compulsory registration of agreements and institutional responsibility of development and revenue departments should be undertaken. The civil courts are not going to get rid of the backlog any time soon until these underlying systems are reformed in order to allow the civil courts to deal with the excessive number of litigation involving property issues.

i) Criminal Cases Backlog as a result of the Inefficiency in the prosecution and police procedures

The prosecution system is inefficient, and the quality of police investigations is low, which is a primary cause of the backlog of criminal cases in Pakistan. In Pakistan, the criminal justice system is still too reliant on the police to such an extent that registration of the First Information Report (FIR) all the way to submission of the challans (charge-sheets) before the courts. Nonetheless, the lack of coordination between the police and the prosecution department, as well as the use of outdated methods of investigation, has rendered the process sluggish, unreliable, and subject to procedural flaws.⁶⁰

In the majority of instances, the prosecution department does not adequately carry out its vital role of examining evidence and directing investigations until the case is brought before the court. Prosecutors are frequently not well-compensated, overworked and not trained on how to handle complicated criminal cases that may involve forensic or digital evidence.⁶¹ This has created a situation whereby the submission of challans is not done with due diligence, the court has to oblige twice, and hence a delay in framing of charges or initiating trial proceedings has emerged.

The police investigation process, per se, is flawed. Poor preparation of ziminis (interim investigation reports) and final challan is most times

⁵⁹ World Bank. (2021). *Governance indicators Pakistan*.

⁶⁰ International Crisis Group. (2018). *Reforming Pakistan's criminal justice system*.

⁶¹ United Nations Office on Drugs and Crime. (2020). *Criminal justice assessment Pakistan*.

delayed by several months as a result of negligence, lack of supervision or deliberate manipulation.⁶² In most instances, the investigating officers either fail to gather admissible evidence or even fail to take the witness statements as required by the Code of Criminal Procedure of 1898. The fact of weak or conflicting evidence brings about recurring adjournments, lengthy cross-examinations, and a high acquittal rate.⁶³ These gaps simply waste judicial time, besides compromising the social trust that the justice system is fair.

Moreover, constant change of the investigating officers makes the criminal cases disjointed. Every new officer has to go back to the record, remember witnesses or re-issue notices, leading to duplication and additional procrastination. The lack of contemporary forensic techniques, the fact that DNA or digital evidence has not been extensively utilised, or the is no coordination with the forensic laboratories makes the criminal trials even less efficient.⁶⁴

This has led to the court adjourning hearings in most cases where the prosecution and the police do not present the witnesses on time. The problem of delaying the production of under-trial inmates in jails, the inability to coordinate the efforts of prison and courts, and the inability to provide summons to witnesses are all contributing factors to the duration of the trial process. Such systemic inefficiencies provide a situation in which grave criminal cases are pending for years,⁶⁵ which negates the intention of justice being timely as promised in Article 37(d) of the Constitution of Pakistan.⁶⁶

The answer is in the enhancement of the institutional structure of the prosecution department in terms of financing it, permanent professional education, and its close collaboration with the police. The independent, evidence-based, and time-bound investigations need to be supported with the help of digital case tracking and accountability mechanisms. The backlog in criminal courts will only keep growing unless a complete overhaul of the criminal investigation and prosecution system is undertaken in Pakistan, which will deprive both

⁶² International Commission of Jurists. (2019). *Judicial accountability*.

⁶³ Asian Development Bank. (2019). *Judicial performance*.

⁶⁴ United Nations Development Programme. (2021). *Digital justice reforms*.

⁶⁵ Law and Justice Commission of Pakistan. (2020). *Judicial statistics*.

⁶⁶ Government of Pakistan. (1973). *Constitution of Pakistan*, Article 37(d).

victims and the accused of the constitutional right to the speedy and fair administration of justice.

j) Over-Specialisation and Limited Distribution of Cases Among Judges

Excessive concentration of certain kinds of cases in the hands of a small number of specialised judges is also another factor that leads to the existence of a case backlog in Pakistan. In most districts, and even in the upper courts, the percentage of judges who are appointed to listen to cases relating to a certain field, including family law, banking, customs or narcotics, is extremely low, sometimes one-third, or even less. Although specialisation aims to improve quality and consistency, in an actual sense, it has led to stagnation, work overload, and work bottlenecks.⁶⁷

When a few judges are assigned all the issues of a specific category, they have a lot of dockets which are overworked, and the other judges are underworked. This imbalance reduces the rate of total disposal and concentrates the lag in some areas of the subject. As an example, family or banking courts in major urban centres do not necessarily need to be complex to have a years-long pendency, but will be allocated too few judges to handle that work. The outcome is a structural choke-point as litigants languish over time, awaiting their turn to be heard.

Furthermore, judicial logic can be repetitive when a few judges pass verdicts on the same cases, and no new jurisprudence or variety in interpretation is created.⁶⁸ The past precedents are simply applied without originality and careful re-evaluation, and cause a standstill in the thought of law. To have a healthy judicial system, multiple benches should be exposed to similar issues of law to ensure that new viewpoints are developed and contradicting interpretations may be reviewed by the appellate court.

In order to address this, case allocation needs to be diversified and expanded. The judiciary ought to disperse similar issues in a larger pool of judges, say 1520 judges in the same locality, rather than confining a particular type of case to a small number of specially created courts, as this way balances workload and allows the jurisprudence to evolve naturally. This would raise the rate of cases being disposed of, improve

⁶⁷ World Bank. (2021). *Pakistan judicial efficiency report*.

⁶⁸ International Commission of Jurists. (2019). *Judicial accountability*.

learning in the institution and avoid the concentration of power on a few individuals.

Meanwhile, specialisation must not be completely removed, but instead it must be mutual and proficient. Short-term specialisation modules can train judges in specialised areas, after which continuity and intellectual diversity can be guaranteed by rotation.⁶⁹ This type of system would maintain the advantages of expertise and avoid stagnation and delay.

Overall, congestion, predictability, and a slow change in jurisprudence have occurred as a result of the over-specialisation of the court today, where a few judges deal with too many similar cases. Better distribution and rotation of the cases would improve efficiency, encourage an innovative approach to the interpretation of the law, and lead to the timely resolution of cases in all areas.

⁶⁹ World Justice Project. (2022). *Rule of law index*.