

TRANSACTION COST OF JUSTICE IN PAKISTAN: A CASE STUDY OF PESHAWAR

HIGH COURT

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Abstract

Justice market is not obsolete from the issue of increasing transaction cost and pending cases, which increases burden on Government. In this study the concept of transaction cost in the delivery of justice is explored and estimated. The study has adopted mix approach using qualitative as well as quantitative methods to estimate the transaction cost of justice to the end users in Peshawar high court. For qualitative analysis, this study has utilized the support of three FGDs with thirty lawyers. In quantitative analysis, the researcher has employed three econometric models. The study found that the key determinants of justice transaction cost are: Case duration, lawyer fee, litigant's income, meeting with Jirga members, changing lawyer, bribery and special reference. It was also found that bargaining for achieving justice increase the transaction cost. The study also found that paying the transaction cost of justice is unaffordable for poor people living below the poverty line, which include almost forty percent of the country population. This research also found that the existing national judicial policy lacks inclusive capacity to assess poor and low-income people for their legal needs. This thesis recommends the revision of National judicial policy to cater the issue of transaction cost and establish efficient alternatives for the delivery of inexpensive justice to indigent people.

1: INTRODUCTION

Transaction cost refers to the cost associated with the provision of some good or service through the market rather than having it provided from within the firm. In economic terms, Transaction cost refers to the total cost associated with a transaction for trading in a market structure. It is the fractional cost caused by the imperfection in a market structure. In this study transaction cost refers to the actual cost befall upon the end users of justice in the judicial market of Peshawar, Pakistan.

Justice is not a common commodity with fix price and uniform supply because it requires multiple transactions costs to access. The transaction cost of justice includes monetary and non-monetary costs which affect the supply of justice. Monetary cost includes lawyer's fee, travel cost, opportunity cost, court charges, stamp paper fee, bribery and

other out of pocket expenses while non-monitory cost include emotional stress and hopelessness during justice procedure. High transaction cost caused by Complex and costly courts procedures generate imperfection in justice market and effect justice delivery.

1.1: The Delivery of Justice:

The delivery of justice and fair legal representation is not free at all. Although it is a fundamental human right in democratic countries, yet it keeps a huge transaction cost to access justice which is the quintessential element of society that improves socio-economic development and enhances the establishment of a democratic culture (Hulle et al, 2015). The provision of free and fair justice system improve society and accelerate economic growth (MacPhail, 2012). Despite universal recognition, the provision of inexpensive justice is still a day dream for a major fraction of population in Pakistan (Khan, 2004). The complexities in judicial process, unnecessary liabilities and costs compels indigent people to avoid legal processes and select low cost justice procedures like Jirga or panchayat system (Khan F. S., 2003).

Moreover, there are always some rules for legal services. A negotiation produced between two parties is surrounded by law which also keeps limitations. Literatures regarding efficient production of justice suggest a mix system of common laws, civil laws and social laws for the efficient production of justice in a society. Studies explain that a mix system of legal traditions backed by both: courts precedence and legislators will be the base to produce law for efficient production of justice (Shleifer, 2007).

An analysis of Pakistan legal system reveals the fact that justice sector has always remained underfunded with very low level of government investment. Colonial practices still prevail in Pakistan judiciary which effect court performance negatively (Siddique, June 2010). Moreover, the interference of unusual forces and interests in the justice market of Pakistan also played a key role in the distortion of democracy and resulted inefficiencies in the delivery of justice (Armytage, 2003). It is also a fact that inefficient performance of judiciary leads to congestion and pendency problem. According to annual judiciary reports, the pendency rate of cases is ascending disproportionately against the disposal rate (SCP, 2016). The institution of cases per year is on rise against snail's pace

disposal rate which shows the higher demand for justice as well as incompetence of Pakistan judicial system. This shows that the judicial setup is lagging behind in the delivery of timely justice. There are many cases pending in our judiciary from decades without serious efforts for resolution.

1.2: Imperfection in the Market of Justice:

If the delivery of free and fair justice is troublesome and costly in presence of the fact that it is the core responsibility of state, then it can be concluded that there exist extensive imperfection in the market of justice. Access to justice is troublesome and expensive for low income sector living below the standard of per capita income. The burden of costly legal formalities compels poor people to either choose alternative dispute resolution or keep silent and get aside from the perplexity of justice procedures (Zofeen T. Ebrahim, 2015). There are multiple reasons which impede the impartial supply of justice to individuals. Uncertain and lengthy court processes, information asymmetry and transaction cost are the most important factors which affect public decision to file sue and address their grievances in front of legal authorities (Talekar, 2011).

In economic perspective, Judiciary is a public market where demands are satisfied but this satisfaction carries high litigation cost for getting justice as a legal right. Calculation of Travel cost, opportunity cost, court fee and lawyer fee are the crucial components for finding the total transaction cost for accessing justice (Martin Gramatikov et al, 2009). To answer the critically important questions like, what is the transaction cost of justice for the resolution of civil disputes in Peshawar high court? And when we know the cost, what are the determinants of implicit and explicit cost of legal representation for civil case in Peshawar high court? Finally, it is also important to know that, does bargaining reduce transaction cost of justice at formal place like high court? likewise other dealings and settlements in the markets?

- To advocate judicial policy for reducing transaction cost of justice.

According to world legal empowerment report approximately four billion people around the globe are living without the protection of formal laws (Golub, 2013). Laws are the means to get the end of justice. Similarly, in Pakistan access to justice is also one of the

major problems for low income population. Yet, no serious effort has been invested for the solution of this issue. Pakistan is failing down on legal and social indicators. Having a worst rule of law condition and economic downfall, the citizens is facing immense trouble to bear the cost of achieving justice through formal means. In presence of the fact that a major portion of poor people household income, almost 91 pc, is devoted only to consumption for survival then how it is possible for indigent people to bear the cost of legal services for getting formal justice (Shah, 2017). The institutional arrangement for free and fair justice delivery is inadequate to assist poor population. Along with the fact that a minor fraction of population gets legal aid it becomes troublesome and expensive for poor people to desire formal justice. The formulation of national judicial policy in 2009 which was revised in 2012 has brought forward some important issues and problems in the delivery of justice. The policy was formulated in the light of recommendations presented by National judicial and policy making committee (NJPMC) in 2009. It is focus on the issues of speedy disposal of cases, corruption in legal procedures, frivolous cases, authority allocation in judiciary and other related issues. The policy shed no light on the issue of transaction cost incurred on end users in the process of justice delivery. Although it is an establish fact that the provision of free and fair legal representation has a constitutional cover and the state is responsible for its delivery yet “Justice for all” is still a day dream for a major portion of population.

There is a wide gap between the formulation and implementation of policy. The latter is more problematic because it requires a web of executive structure backed by resources to enact and produce desired outcomes. At first place the formulation of policy itself need a research base knowledge of the issue to design a refine policy targeted to achieve the goal of free and fair justice delivery to all. In this context it is imperative to explore and calculate the cost of unit justice in Peshawar. Key findings regarding transaction of justice from end user perspective would be beneficial in formulating and advocating judicial policy.

2: LITERATURE REVIEW

Court processes are not cost effective for low income sector which increase the probability for them to rely on other less costly alternatives such as Jirga system or other community level justice (Shinwari, 2015). The transaction cost of accessing legal services is a less explored area. In usual analysis, Economists adopt a paternalistic approach and assume that the state has guaranteed the enforcement of property rights and contract at no cost (Soto, 2000). Hernando De Soto gives an insight into the problem of transaction cost in the delivery of legal services. He investigated the costs and benefits of property right registration in Peru and other developing countries. Economics of justice has been conceptualized in some studies for the purpose of understanding the basic concepts of demand, supply and cost in judicial market (Talekar, 2011).

Perception survey in selected district of Khyber Pakhtunkhwa shows that strong opponent, distant courts and costs are the major reasons behind the reluctance of poor people from formal justice system. According to this study on average it cost 0.021 million PKR per case in the district courts of Khyber Pakhtunkhwa. Lawyer fee and travel cost are the main contributor in public expenditure on justice (OAKF, July 2012). Transaction Cost is one of the main factor which effect human decisions and actions. In economic terms when the transaction cost of a commodity turns out to be higher than individual budget line then it is not possible for him to catch up with higher utility curve out of his budget line. Transaction cost economics is a vast area of research and is expanding since last four decades. This area was uncovered by Ronald Coase, who was of the view, that price of a commodity in a market is not the true representative of the cost incurred for the transaction. According to him this extra cost is the transaction cost, which increase the real cost of making a transaction. In his view bargaining and other relevant efforts which enhance the allocation of fair exchange between two parties will be efficient in the reduction of transaction cost.

2.1: The Market for Legal Services:

There is a vast literature gap in this area of research to understand transaction cost of justice which needs substantial academic research to cover this naïve area and bring plausible alternatives for efficient allocation of justice. In literature, market for legal

services and justice delivery is similar in nature to other professional services. There exist an asymmetry of information between lawyer and client which arose the problem of market failure. Regulating entry to market by setting efficiency standards will address the issue of adverse selections. Moral hazard caused by lawyer for achieving self-interest may also add up more costs in the processes of accessing justice (Stephen, 2006).

The bar is operating in a self-regulatory network. They may execute and formulate such Regulation which may work in better way for profession but not consumers. Literature shows that the provision of legal services is restricted through heavy regulations which cause limited entry and innovation in market, and unnecessary costs (Hadfield, 2008). In view of some researchers the high stake commercial lawyers and professionals are like closed shop with the interest to perpetuate the law, making it complex and achieve the self-interest (Hadfield, 2008). The commodification of justice and legal services for the purpose to bring it to an affordable range is inevitable (Susskind, 2008). Researchers with legal background are mainly interested in studying the problem of accessing courts. Advance researches in this area are focusing efficiency standard of court services. Theoretically, courts system is analyzed in context of incentive structure (Fitzpatrick, 2008). Empirical researches in this area approve the fact that judges are liable to give answer to higher courts which advance their dependency on system for career building instead of delivering free and fair justice (Schneider, 2005). It is almost impossible for a justice seeker to monitor lawyer just like other service provider. Lawyers mainly respond to the reaction of opponents, the time he spends on a case is directed by the client reaction which may be caused by the lawyer itself to gain more monetary value from a case. There are some studies favoring the fact that in order to convince the court and dominate justice the opponent parties may try to outspend each other and get trapped in an arm race fueled by lawyer interests (Reinganum, 2014).

The market for legal service is costly and troublesome especially for low income and poor people. The judicial structure is exclusively evolved in a manner where the haves have an edge over the have not because the system operate in a pay and get procedure. Wealthy people enjoy more leverage over poor in a high price commodity markets. In the non-competitive market of justice delivery, it is more likely that the poor and all those

who cannot pay the price will suffer the most while those who can pay will prevail. It is the task of government to allocate equilibrium point between supply and demand of justice (Shah, 2017).

2.2: Reforms for efficient justice delivery:

Literature on justice sector reforms in third world countries provide an evaluation of justice reforms struggles in developing countries (Hammergren, 2007). Complex court procedures and a lack of incentives are the most important factors behind the underperformance of courts (WBO, 2003). Better performance may not be produce by increasing funding. Reforms in incentive structure targeted to achieve accountability, advance user choice and improve competition are important for the solution of this issue. Extensive reforms efforts along with monitoring and evaluation strategy are also important for the efficient performance of court system. A mix of formal and informal justice systems may achieve the standard of efficiency in justice delivery (CLE, 2008).

Top to bottom approach in justice sector reforms has failed to deliver efficient policies and reduce transaction cost. A smart policy which adopt a bottom up approach and incorporate the legal needs of indigent litigants will perform efficiently for lowering the transaction cost of justice. Mediation will be more feasible and cost effective for courts as well as individuals if the disputes get resolved in an informal environment where both parties present their claims and grievances in front of neutral party (Barendrecht, 2009). Access to Justice Program worth of 350 million USD dollars by Asian Development Bank is the only real investment in the known history of Pakistan. The program passes three stages and included different measures to address the problem of congestion and pendency of cases. It enhanced the reduction of case backlog and remains successful in its time. Various projects including Lawyers training and case management was utilized for the efficient performance of justice sector to reduce backlog. The program loses its worth due to unavailability of funding from Asian Development Bank (Armytage, 2003).

In Pakistan, there is a lack of holistic discourse in justice sector reforms which address critical policy aspects and bring out effective and efficient alternatives. Current reforms discourse needs a shift from court and case approach to society and dispute approach. This will likely improve the speedy delivery of justice when public disputes get resolve at

society level (Siddique, 2010). Justice is not a common commodity with fix price and uniform supply because it requires multiple transactions to access it which generate complexity in measuring the total cost of justice. There are complex procedures and paths to access justice which need extensive research to explore and estimate the transaction cost of justice paid by an end user for getting justice. In usual approach, access to justice is explored through qualitative studies. There are procedural difficulties explored by legal scholars that impede access to justice, but they are unable to develop a holistic theory of access to justice (George, 2006). Approaching justice through formal procedures is like a game, more troublesome and expensive for new players than practicing players (Galanter, 1978). A study explored the difficulties and problems of choice on path to justice for common litigants. These studies have also tested the hypothesis that the users of justice evaluate the cost and benefits of different interventions for accessing justice (ABA, 1994). To some scholars out of court settlement is an important mean of getting justice. According to the study of Omar Asghar Khan Foundation, accessing justice cost 0.021 million PKR in the district courts of Khyber Pakhtunkhwa where lawyer fee and travel costs were the main contributor.

3: DATA AND METHODOLOGY

3.1: Theoretical framework:

For theoretical insight this study has utilized the concepts of Ronald Coase regarding transaction cost economics, bargaining and trust (Wang, 2003). It is the assumption of Coase theorem that bargaining between two parties is efficient for the reduction of transaction cost. This assumption is tested in context of taking justice as a public good to investigate how bargaining effect transaction cost of accessing justice in Peshawar. A handbook, published by Tilburg institute, provides a methodological framework for measuring the cost and quality of justice is significant in this study (Martin Gramatikov et al, 2009). For calculating the transaction cost of unit justice in Peshawar this study has guided my questionnaire. Other relevant literature in support of this research is reported and utilized for the procurement of existing research objectives.

3.2: Area of the study:

Peshawar is the capital city of Khyber Pukhtoon Khawa. Peshawar, Once a gateway to India remained the hub of different civilization like Gandhara, Persian, Bhuddhist, Kushan, Afghan, Sikh and British. Peshawar witnessed the rise and fall of many civilization and dynasties. In British India it was part of North-West Frontier Province. District Charsadda and Nowshera were the parts of Peshawar division till July 1988. Currently Peshawar has the status of a city district under the promulgated act of 2001.

3.3: Data Nature and Data Collection:

This study is based on primary data, which is collected as per the study objectives requirements. The data for supporting statements and transparency of concept is taken from secondary sources, like Pakistan judicial reports and research hobs, where researcher found important statistical and empirical information regarding transaction cost in legal practices. A well-structured questionnaire was designed to collect the data from end users or common litigants of justice in Peshawar high court, information on case process and other qualitative terminologies and factors were taken through focus group discussions (FGDs). Three FGDs were conducted with 30 Lawyers. Lawyers are more aware about the internal environment of justice system, so it is important to incorporate their insight about the expensive mechanisms of justice market for a common litigant.

3.4: Sample Size and Sampling Method:

Because of economic and human capital limitations current research includes 50 civil law cases. Sample of the study is selected through systematic methodology. However, the author will ask form individuals, randomly but specifically those cases are included, which are in the domain of common disputes such as family disputes, tort cases, property cases etc. So, it's more like target random sampling. Moreover, five in-depth interviews with the respondents of important cases have also been conducted for the understanding of costs incurred on paths to justice.

3.5 Dependent variables

3.5.1: Monetary cost of transaction in legal issues:

Transaction cost of justice is dependent variable in this study. It is dependent on Monetary and intangible costs which is complementary in getting justice. It further includes subcomponent which effect transaction cost of justice for the end users in legal market. The sub variables of monetary cost include court visiting costs, lawyer's fee and bribery incurred, and evidence collection cost. The collective costs of all these components have different values for each of our respondents. The set of these components differ across each respondent. Below is the detail explanation of each variable utilized in this study.

3.5.2: Intangible Cost:

This cost is associated with non-monetary actions of the person, where stress during case is a factor to total cost, worry about it and not enjoying the social setup is the part of intangible cost. Constructed as, if the person or his family members have been stressed during case proceedings takes value one otherwise zero. This variable is used as a dependent variable in model TWO:

3.6. Independent Variables:

3.6.1: Opportunity Cost:

This cost is associated indirectly with the transaction cost of justice. The respondents were asked about his/her monthly income or daily income forgone for case hearing etc. this part of information is important for calculating opportunity cost of litigation for that specific user, as much the time of the case increases, this cost increases over the time because the person is restricted to earn during the case presentation.

3.6.2: Monthly Income:

This is independent variable which shows the socio-economic position of respondents. It is taken in thousands PKR.

3.6.3: Education:

This variable shows the education level of respondents, which is taken in number of years.

3.6.4: Case type:

This is an important variable. It reveals about the nature of case. It shows what the case is about. Is it a Family dispute, a local conflict, a property right case, a tort case or other. These cases will be arranged in a sequence that, the cost related to different cases could be easily decomposed to its section wise case costs and can be modelled for its important determinants.

3.6.5: Case Duration:

This variable shows the duration of case which is taken in years. It is the age of a case in court which has a direct effect on the transaction cost of justice.

3.6.6: Monetary Value of Claim:

This is the independent variable of the study, which is the monetary value of claim made by case filer. This is a continuous variable which is taken in millions PKR for each case, which varies across respondents from case to case.

3.6.7: Visits to Court:

This variable is an independent variable of the study taken in number of visits made during case proceedings.

3.6.8: Trust on System

This is a dummy variable used as an independent variable of the study, where if the person trusts the system takes value one otherwise zero.

3.6.9: Legal Aid during Case:

This is an independent variable of the study, which is a dummy in nature, if the person has received legal aid during case takes value one otherwise zero.

3.6.10: Special Reference for the Case

This is an independent variable of this study, which is binary in nature, if the person has used special reference during case takes value one otherwise zero.

3.6.11: Changed in the Lawyer:

This is a taken in binary form, where, if the person has changed the lawyer during case takes value one otherwise zero.

3.6.12: Bribery:

This is binary form constructed variable where if the person has used bribery as way of escape of compensation during case takes value one otherwise zero.

3.6.13: Hopelessness:

If the person has felt hopelessness during case takes value one otherwise zero. Used as an independent variable.

3.6.14: Meetings with Jirga:

This is count variable, which is taken as, number of meeting conducted with Jirga members

3.7: Econometric Methodology:

3.7.1: Model one: Ordinary least square method, (OLS):

This study has used primary data, where the nature of dependent variable is continuous, y (cost of justice) is the dependent variable. It explains the time and amount of money spent on accessing the unit of justice. Cost of justice (y) is dependent variable. The variation is explained by some important independent variable or control variables, like: age, income, education, time span of case proceeding, distance from court, number of trips to court and many other variables. The study has use OLS regression method to estimate the variation in cost of justice explained by given important factors. The function form of the model is given below.

3.7.1.1: Ordinary Least Square OLS Linear Multiple Regressions:

$$\text{Monetary cost} = (Y) = \beta_0 + \beta_1(\text{Monthly Income}) + \beta_2(\text{Education}) + \beta_3(\text{Case Duration}) + \beta_4(\text{Monetary Claim Vlaue}) + \beta_5(\text{Visits to court}) + \beta_6(\text{opportunity cost}) + \beta_7(\text{Trust on System}) + \beta_8(\text{Legal aid recieved during case}) + \beta_9(\text{Special reference for case}) + \beta_{10}(\text{Change in lawyer}) + \beta_{11}(\text{bribery}) + \mu_i \text{ Equ.....3.1}$$

3.7.2: Model two: For Intangible Cost: Logistic Regression:

The cost of justice also includes the emotional cost incurred by end users and their family members. To model the intangible emotional cost this study has used binary logistic regression with estimation of odd ratios to present the probabilities for being emotionally affected due to costly justice procedures. The dependent variable in this model is binary in nature (1, 0), where if the person is emotionally stressed takes value one otherwise zero. The functional form of the model is given bellow:

$$\ln [p/(1-p)] = \alpha + \beta X + e$$

Where “p” is the probability that the event Y occurs: $p(Y=1)$

And $p/(1-p)$ is the odds ratio,

$\ln[p/(1-p)]$ is the log odds ratio,

The logistic distribution constrains the estimated probabilities to lie between 0 and 1.

$$p = 1/[1 + \exp(-\alpha - \beta X)]$$

If $\alpha + \beta X = 0$, then $p = .50$

When $\alpha + \beta X$ gets really big, p approaches one

And when $\alpha + \beta X$ gets really small, p approaches zero

3.7.2.1: Functional form of econometric Model:

$$\text{LOGIT}[P(\text{Emotional stressed} = 1)] = \beta_0 + \beta_1(\text{Case Duration}) + \beta_2(\text{Trust on System}) + \beta_3(\text{Reference}) + \beta_4(\text{Claim Vlaue}) + \beta_5(\text{Hopelessness}) + \beta_6(\text{Income}) + \beta_7(\text{Meeting with Jarga}) + \beta_8(\text{Justice acheived}) + \mu_i \text{ Equ.....3.2}$$

4.0 RESULTS AND DISCUSSION

4.1: Field observations and important case studies:

Fifty cases of different natures have been studied in a period of thirty days in the field. Much of the cases were of property rights, and family disputes. Civil disputes including minor conflicts and tort cases were also observed. There were simple cases and disputes converted gradually into criminal cases because of courts inefficiencies and complex due processes. Some cases took birth from the issue of land disputes between family members

and have now given life to other different criminal cases and caused a huge cost to both parties including irreparable loses of their family members. There was a plethora of cases in courts files waiting for justice delivery. The seekers of justice need speedy justice while the pace of case disposal is very slow which generate emotional and economic costs not only for the plaintiff but for his family too.

Case No.1:

One of the respondent's case was filed in Peshawar in 2009 after a clash between two family members over a piece of land which keep worth of 2.5 million rupee. Since then, clashes were transformed into disputes and murder cases with no end in sight. Both parties are now engaged in four different cases in the last nine years. In this time span seven people from both sides died in cross firing in different confrontations and costed 7.5 million to the respondent's party. The offenses include the murder of opponent party in the premises of lower court which fired ignition in confrontation and caused enmity between them. For nine years, more than fifty attempts have been conducted by Jirga members but fail to resolve this dispute. The respondent is running four cases in two different places. He is uncertain about the outcome and has invested a huge cost, almost four times higher than the worth of disputed land.

Case No.2:

The case of a land dispute between a married sister and her brother was instituted in 2012. The worth of the land is 3.5 million in rupees. The issue came to surface when the sister claimed land from him through Jirga, but he refused to accept her claim. Her husband filed a case against his wife's brother. In 2015, the lower court decision came in support of the brother. The sister was unsatisfied from the decision and filed an appeal in Peshawar high court which escalated aggression in the opponent party. After a delay of one year in high court, the case adopted a bloody face when the claimant encountered with opponent party in the disputed land which caused three deaths from both parties in 2017. The formal procedures costed 8.5 million to the claimant party including life loses. Moreover, intangible costs incurred during the process caused a complete disruption in social relationships between two families and generated enmity between them. Both

litigants are now indulged in murder and property cases in the lower courts. Despite immense efforts from Jirga members and courts processes the resolution of this case is far from the sight. Both parties are not able to create a win-win situation for the resolution of this issue.

Case No.3:

The case of a land dispute between two parties was instituted in 2011. The claim value in this case is 4.3 million rupees according to the property market of that land. One party claimed that despite paying the price of the land, the opponent party is not willing to formally transfer it to us. On the other side, in defense, the opponent party claimed that they are lying about paying the price. In response, they also filed a forgery case on the first party. In 2014, the lower court disposed the case in favor of the claimant, but the opponent party was not able to accept the decision. In the same year, they filed an appeal in high court against the decision of lower court. The case is still in the high court waiting for a fair allocation of justice. The respondent told that they have spent more than 8 million in formal and informal paths of justice. He also added that the issue keeps potential enmity and can lead to violent confrontation.

Case No.4:

A land dispute case between a farmer and landlord was instituted in 2012. The farmer claimed that he has bought the disputed land from landlord back in 1995 while the landlord claimed that the stamp paper of farmer is frivolous and illegal. The worth of disputed land was two million at that time which is now ascended to ten million. The case was resolved in 2006 in favor of landlord. During four years of litigations at lower and higher courts both parties lost millions of rupees. The landlord take was rational. He was on view that making a back step in this dispute will affect his reputation and can encourage other rival parties to encroach his nearby property. The landlord claimed that the dispute has costed more than five million dents to his pocket. On the other side, the farmer is still filing appeals in high court against the decision which is given in the favor of landlord. This case is still boiling and can any time lead to criminal offenses from farmer side.

Case No.5:

This case was instituted in 2013 by the plaintiff against the removal of two hundred soldiers on the order of FC commandant. All of them were not capable to pay the cost of legal paths but some of them decided to file an appeal. Their removal from the department in the last years of retirement caused turmoil in two hundred families. Economically, the returns on retirement are higher than forced removal from a government department so they decided to select a group of ten members for filing an appeal in high court. The group gathered a mass of thirty members after filing of petition in high court. In this case the users of justice were distant from each other which caused a huge communication cost. The cost of this case was paid through divide and pay mechanism. To pay the cost of legal procedures they borrowed money from relatives. The case was disposed in favor of soldiers in 2016 and costed more than 7.5 million rupees. The litigation also caused emotional cost to the family of each user of justice.

Three focus group discussions have been conducted with thirty lawyers in Peshawar high court. The concept of transaction cost was discussed in detail for the purpose to get a clear picture of expenditures on justice and its quality. Questions regarding court efficiencies and cost of justice to end user were in focus to explore various dimensions of judicial market in Peshawar. In addition, lawyer's views about National Judicial Policy were also explored to understand the judicial network and its regulation for the efficient delivery of justice. The results and discussion has been presented in thematic order. Each theme is a composite of responses to different questions asked during discussion. Questions were tailored precisely to address the research objectives.

4.2.1: The formal system of justice delivery:

Pakistan has adopted a colonial structure of judicial system which caused challenges for the society to cope with. The society system of justice delivery was gradually transformed into state level justice delivery. Comparatively, the formal system of getting justice requires more costs and formalities than informal justice. Instead of decreasing the level of misery and frustration to end users, especially indigent users, the formal system of justice further increase this level and cause hopelessness which generate a lack of trust on the institution.

The provision of inexpensive justice is the key responsibility of state, but it remains ignored all the times. There is wide gap between the formulation of law and application of law. The later keep its own complex structure of operation and processing which is costly for low income people. The statement about similarity between market structure and judicial structure is plausible because both have a share common ground of pay and get procedure. The justice market is more complex and costly than other markets. For poor people justice is a luxurious good because their income capacity is much lower than the operational cost of achieving justice. The complexities and costs incurred on path to formal justice push away lower income people from the orbit of legal procedures. Their reliance on informal justice or taking law in hands remains the only options to follow. A poor person with no legal protection could be a potential criminal if not heard properly. Moreover, the path to justice is uncertain and troublesome because it requires a legal suite backed by police FIR and other decisions of court which enable a justice seeker to be heard under the umbrella of law.

The very first step on path to justice is the filing of an FIR in local police station. After that the case will be forwarded into session or lower courts at tehsil or district level. If the lower court came up with a decision which is unacceptable for any party, they can make an appeal in the high court against their decision. The litigant can also utilize the Supreme Court if his case is strong and the decision of high court came against him. These procedures are cost effective for high income people but are not for low income people living below the standard of poverty line which cause an uneven distribution of opportunity for poor and rich to achieve justice.

4.2.2: The issue of transaction cost in the delivery of justice:

The issue of transaction cost is an accepted fault in almost every market structure. In practical life people makes transaction in different forms to approach their needs. These needs include legal needs which can be satisfied by passing through paths of justice inside a legal network. Unfortunately, the judiciary system is not immune to this disease of unbearable transaction cost. Multiple fees and other out of pocket costs including bribery make it inefficient for an indigent litigant to approach formal justice. In some cases, the total transaction cost has been increased three fold in comparison to the claim

value. There are some property rights and land dispute cases running since decades with no resolution in sight. In some cases, both parties have lost a sizable amount of money to prove their claims and are still dragging each other in legal circus. Some litigant in such cases are not seeking justice, they are only struggling to destroy the money, time and energy of the opponent party. They utilize court terror against their opponents to get their desired interest.

4.2.3: Alternative dispute resolution and justice delivery:

Under arbitration act 1940, which is still in force, the court can delegate the power of decision to informal or Jirga system. This happen mainly in common law cases which include land and family disputes. It is mostly recommended in cases where both parties are from the same family. The rationale behind arbitration as an alternative dispute resolution is that the elders of the family or local Jirga are more in touch to local issues than a court. Hence it is logical to delegate authority to local Jirga through arbitration agreement. The court will guard the decision of arbitrator and will solve the case as soon as the Jirga members provide the resolution agreement signed by Jirga members, witnesses and disputants.

Alternative dispute resolution is a complimentary component of judiciary especially in common law cases. There are more than hundred operating centers of arbitration in Punjab and Sindh. In Punjab, these centers were operationalized after the decision of Lahore high court in 2014. Courting the law, a law firm based in Lahore is monitoring these ADR centers and share its success stories. Likewise, in Peshawar, we have also some non-government organization which assist and support people for their rights but the domain of their interventions is very limited and specific. They mainly focus those cases which attract media attention because such cases keep the potential to attract donor to pay for their organization.

Despite being low cost and easily available, there are also some limitations were its operation get failed or produce biased justice. This scenario mainly arises in criminal cases at village level. The criminal in such cases influence and sometimes dominate Jirga decisions and get his favor. The Jirga members are also humans. They may favor culprit if they feel that he is stronger than his counterpart and have a long hand in government

bodies. In criminal cases the court favors informal settlement but is reluctant to delegate authority to Jirga because chances of manipulation and abuse of weaker party in such situations is high.

4.3 The production of inexpensive justice:

The production of inexpensive justice is the need of time to make people believe that the government is efficiently acting on their behalf. The role of judiciary in a democracy is to build people trust on institutions and shape society disorder. There are multiple alternatives which can really make justice inexpensive and a common good. For instance mobile court system, arbitration or ADR centers at village level, electronic court system and free legal aid system can significantly reduce the transaction cost of justice to end users. An incentive structure which attracts lawyers to fight the cases of indigent litigants and other human rights cases will be efficient for the role of law and also for the provision of inexpensive justice.

4.4: Age Distributions of Respondents:

Results show the age distribution of respondents involved in cases in Peshawar High court, where maximum of respondents is between 41-50 years of age, followed by 15 respondents of 30-40 years of age. This is the most peak age of individual career in most of the professions. Running in court and jail can incur high opportunity cost. minimum income level of the respondents is in the range from 20-30 thousand. 1.7 % has low income level while 23% respondents have income in the range of 41-50. High income respondent is in the range of 71-80 in term of percentage 27% have high level of income. From The result we concluded that in the study area mostly respondents are middle class. The number of poor and high class is minimum in the study area.

4.5: Litigation Type:

Results of the study show, that there were different type of cases, taken from the study area. Total 26 % cases were of family disputes, which are second the highest, recorded problem, 12 % are crime related cases, while 44 % cases are property right cases, which is on top of the problem line, while 12 % are minor conflict and 6 % is Breach of contract. From the field survey we concluded that mostly cases of the respondent are property cases followed by family dispute cases.

4.6: Duration of cases:

Table 4.1 shows the duration of cases proceeding in Peshawar high court. Mostly cases are from 1 to 3 years which are approximately 13 % respondents while from 4 to 8 years are approximately 10 % and 9 to 17 years proceedings are 2 % only. We concluded that mostly cases of the respondent are from last 1 to 3 years followed by 4 to 8 years proceedings.

Table 4.1: Duration of Case Proceedings

Number of years	Frequency	Percent	Valid Percent	Cumulative Percent
1.00	6	10.2	12.0	12.0
2.00	7	11.9	14.0	26.0
2.50	1	1.7	2.0	28.0
3.00	8	13.6	16.0	44.0
4.00	9	15.3	18.0	62.0
5.00	3	5.1	6.0	68.0
6.00	5	8.5	10.0	78.0
7.00	5	8.5	10.0	88.0
8.00	3	5.1	6.0	94.0
9.00	1	1.7	2.0	96.0
11.00	1	1.7	2.0	98.0
17.00	1	1.7	2.0	100.0
Total	50	84.7	100.0	

Figure 4.1: Relationship between Claim Value, Case Duration and Total Cost Incurred

Monetary cost of a case is positively associated with claim value and case duration. The figure 4.1 shows that higher claim value case have higher total cost, it is due to the fact that, litigants want to win the case, which is backed by high claim value. Most of the times long duration cases are associated with hug claim values, and higher total cost.

Monetary cost of case increases due to additional daily opportunity cost with increase in case duration.

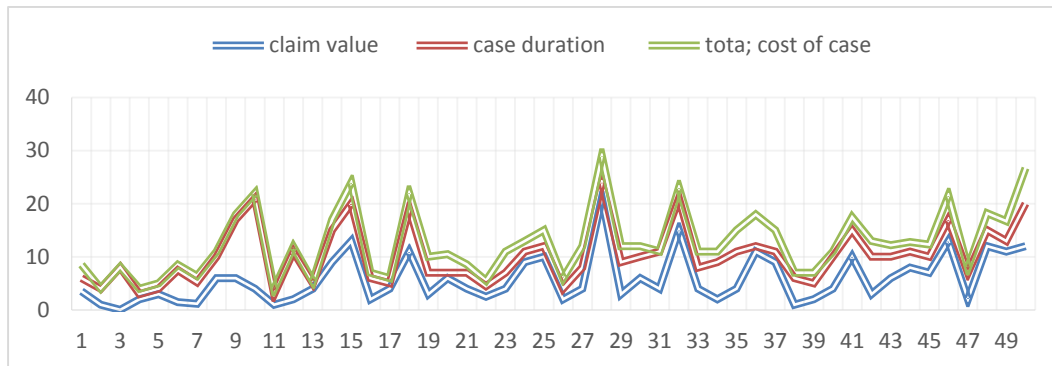


Figure 4.1: All variables are taken in (Millions PKR)

4.7: How Many Meetings the Person Has conducted with informal institutions (Jirga Members)

Table no 4.2 shows that thirty-one (31) respondents haven't conducted any meeting with Jirga members during case proceedings. Seventeen respondents (17) have conducted only one meeting during case proceedings. Two respondents conducted four and two meetings, which is the highest in the enlisted observations.

Table no: 4.2: Meetings with Jirga members

Number of meetings	Frequency	Percent	Valid Percent	Cumulative Percent
.00	31	52.5	62.0	62.0
1.00	17	28.8	34.0	96.0
2.00	1	1.7	2.0	98.0
4.00	1	1.7	2.0	100.0
Total	50	84.7	100.0	

4.8: Socio-Economic Factors, Influencing the Transaction of Cost of Justice in Peshawar:

The result in table no: 4.3 show that income is positively associated with transaction cost of justice in legal cases, which indicates that high income individuals incur higher expenditures during the case proceedings. These expenditures are associated with travel cost, food and expenditures; lawyer, court and other fees. The respondent income is positively and statistically significant with cost of justice incur by the respondents to achieve the unit of justice on existing case. Cost of justice is positively influenced by the education of person in our case, which indicates that educated person incur higher cost to achieve justice. The reason behind the increasing cost of justice for educated person is, that educated person has higher opportunity cost as compare to non-educated person in common. However, the respondent's education is not statistically significant in our case.

The transaction cost is positively associated with time duration of case, increase in time duration of case will lead to increase in cost of justice for specific case. It is driven positively because of increasing opportunity cost of justice with increase in time duration of case. The employees fighting to restore their jobs are facing the same issue of increasing cost of justice as the time of Case duration increase, means until the problem is solved, which increase the opportunity cost on daily, monthly and yearly basis.

Monetary value of claim (MVC) is the value claimed for against which the case is filed. MVC is positively associated with cost incurred by respondent for achieving the justice against opponent in court. MVC is statistically significant with 90 percent of confidence level. In case of high MVC of case better lawyer is hired and high expenditures are incurred for evidences. Cases like property rights have high monetary value claims.

However, few cases were very minor issues stretched out to real monetary values over the time. Monetary cost of justice is also influenced by high no of visits to court for hearing or looking for influential people to help in case. High Opportunity cost is positively associated with transaction cost of justice, the individual, who faced high opportunity cost are more active in case proceedings and try to solve the case as soon as possible, for which these individuals incur high single time cost in monetary terms. This

monetary cost is incurred to resolve the matter, which help case fillers to reduce their opportunity costs in long term.

The results indicate that significant opportunity cost influence the transaction cost of justice positively. Trust on system do not affect transaction cost in real terms, because a person who trust system follows the rules, which takes case time to abnormal length and thus increase cost of justice, however the coefficient sign is positive in our case but statistically not significant. Legal aid is negatively significant to the transaction cost of justice. Legal aid is defined as free lawyer or other facility, which can reduce the cost of justice for litigants in our case study of Peshawar high court.

If a person has special references, which can help in solution of case, finding evidence and reducing time frame of case duration of case, faced lower cost as compare to many, who do not have special references. Special reference is negatively associated with total cost of transaction in Peshawar high court. However, in our case special reference is statistically not significant, because this type of reference is not commonly accessible to everyone. Changing lawyer increase the transaction cost of justice but the cost might not be significant in every case because it is single time substitution cost, where some time the new lawyer is hired at lower cost than the lawyer before and vice versa. Important factor, which influence transaction cost of justice is bribery, it is used to facilitate or to reduce huge costs. In our study this factor reduces the cost of justice, but the effect is statistically not significant. The data of this study is cross sectional on single time slot and the model is good and fit with 85 R and 73 R Square, which is highly significant for primary and cross-sectional data set.

Table No: 4.3: Linear Regression Transaction Cost of Justice

Model Summary				
Model	R	R Square	Adjusted R Square	Std. Error of The Estimate
1	.858 ^a	.736	.657	.89116

Coefficients

Model	Unstandardized Coefficients		Standardized Coefficients	T
	B	Std. Error	Beta	
(Constant)	-1.524	.717		-2.126
Monthly Income	.464	.126	.337	3.675
Education	.014	.036	.035	.377
Case Duration	.062	.052	.124	1.200
Monetary Value of Claim	.090	.052	.260	1.740
Visits to Court	.025	.108	.031	.232
Opportunity Cost	1.439	.335	.506	4.297
Trust on System	.205	.272	.067	.753
Legal Aid During Case	-.725	.387	-.186	-1.875
Special Reference	-.151	.339	-.043	-.445
Changed the Lawyer	.257	.273	.084	.941
Bribery	-.067	.299	-.020	-.224

4.9: Intangible Cost and Its Influencing Factors in Peshawar High Court:

Table 4.4 shows emotional cost as dependent variable, which is influenced by multiple factors, like case duration, trust on system, special reference and individuals socio-economic back ground. The study result shows that increase in case duration of one year will lead to 47 percent chances of being emotionally stressed. In other words, it can be stated that case duration is positively associated with emotional cost bear by the person who is fighting for justice. There are examples of case duration which has caused many psychological problems to litigants and their families. This factor is highly significant in real life but weakly significant in our case studies. Trust is very important intangible strength, if a person trust system that the system will provide justice no matter how much time it takes which show that there are fewer chances for litigants to be emotionally stressed in such cases. This simply indicates negative association between trust on system and emotional cost. This factor is highly significant on both, practical and statistical grounds.

This study also found that the person having special reference for the case is less emotionally stressed because of hope, developed due to reference. Reference has shown negative relationship with intangible cost of agents¹, but this is not significant in our case. Claim value is highly significant with emotional cost, emotional stress known as intangible cost in current study. High claim value at stack, lead to high emotional stress. The study shows that those agents who are hopeless suffer from high emotional cost, but this variable is not significant in our case, which might because of very few hopeless respondents. Income of the person or agent is negatively and significantly associated with intangible cost of cases in Peshawar high court. High income class individuals are less vulnerable, single case cannot drag them into crises and vice versa. Increasing meeting with Jirga members increase intangible cost but in our case this factor does not influence the intangible cost associated with litigation. Finally, the most important factor, justice achieved is positively associated with intangible cost, because after achieving justice if the case reopens in higher courts then the probability of emotional cost gets high. Out of 49 observations 44 respondents are gone through emotional stress during case. It includes both the situations during case emotional stress and second, when the decided cases were reopened again due to legal appeal in upper courts.

Table no 4.4: Influencing factors of Intangible cost of justice

Variable	Coefficient	Std. Error	z-Statistic
CASEDURATION	0.479209	0.261374	1.833419
TRUSTONSYSTEM	-2.131167	0.899768	-2.368575
REFERENCE	-1.362517	0.913909	-1.490867
CLAIM VALUE	0.588483	0.177514	3.315139
HOPLESSNESS	1.361577	0.862318	1.578973
INCOME	-0.552902	0.282714	-1.955692

¹ Agent is a person who is fighting for justice in court or the person who has filed the case or the person against whom the case has been filed. The person who claim against other party or the person against claim has been instituted.

MEETINGWITHJARGA	0.071938	0.451784	0.159231
JUSTICEACHIEVED	2.812730	1.029158	2.733040
Mean dependent var	0.897959	S.D. dependent var	0.305839
S.E. of regression	0.267691	Akaike info criterion	0.689560
Sum squared resid	2.937987	Schwarz criterion	0.998429
Log likelihood	-8.894219	Hannan-Quinn criter.	0.806744
Deviance	17.78844	Restr. Deviance	32.29532

Dependent Variable: EMOTIONALCOST

4.10: Major Findings of the Study:

- The study found that transaction cost of justice in Peshawar varies from case to case type, where highest transaction cost is faced by property right case claimants, specifically land disputes required higher transaction cost, comparatively. It was one of the sole reasons behind many enmities among siblings and other close relative. The land disputes were arisen due to small, minor clashes, between family members which lead to family fragmentations.
- The study found that legal aid and reference at court, during the case proceeding, can significantly reduce the transaction cost of justice, which is available to very few influential families. The study also found that people were not satisfied from law implementing institutions, mainly police and court staff behavior
- The study found that there is positive association between changing lawyers and increasing transaction cost of justice.
- The study found that the average cost of justice in Peshawar high court is 2.6 million PKR with an average case duration of 4.47 years. Based on these results the average transaction cost of justice per month is 0.048 million PKR.

- The study also highlighted inverse relationship between the long case duration and chances to achieve justice in Peshawar high court. It indicates that there were fewer chances of achieving justice, when the duration of case increases, because of Judge Transfer and other legal restrictions imposed by the due processes of court.

CONCLUSION AND POLICY RECOMMENDATION:

5.1: Conclusion:

The dilemma of justice and poverty remained as a tug war in every society from many centuries. Justice is not a common good, when it comes to the nature of judicial system in Pakistan. Poor person is often extremely vulnerable in corrupt judicial system, but also equally insusceptible in a fair justice system. Transaction cost determines willingness to file a case against prejudice for a poor person in a society. Lawyers consider clients with rich background for higher economic gains and poor person sometimes become poorest due to social attention, which often compel claimant to, even sell out his/her property and sometimes bear irreparable losses and have not achieved justice yet.

Transaction cost for a case can be reduced, if Government of Pakistan insures the management of government lawyer's supply and other resources effectively. Market of justice is imperfect, because every lawyer differentiates his/her specialization and supplies his/her services on different prices accordingly for other economic amenities. In other words, there are multiple currencies and modes of transaction to buy or to avail the services of a lawyer.

With reference to the results, of current study, it is very clear that justice achieved is significantly driven by legal aid and special references inside judicial system, which is helpful for specific case. On the other hand, informal institution, the Jirga system is undeniably, less costly and enhance fast track justice in comparison to formal mode of justice delivery but in some cases it has also been portrayed significantly expensive, where external Jirga members are inducted for the case proceedings or conflict resolution. In context of formal justice system, our investigation indicates that, the

interaction of informal system sometimes lead to increasing monetary cost and emotional cost of respondents. There are some cases, where the agents went back disappointed despite significant amount of meetings with Jirga. Some unforgivable acts of disrespect, murder and conflicted properties issues are good example for such phenomenon and court cases. Most importantly facing Jirga is a tough job and unsecured in many cases, when agents starts fighting back on spot, in front of Jirga members and many members have been killed during Jirga proceedings.

Transaction cost of justice is significantly high for cases, with long time span, which is imperatively critical to look after, for the future of judicial system and the trust, which run the whole justice system engine in formal setups. The study concludes that huge transaction cost of justice has reduced the chances of achieving justice for low income households. These barriers for common man can increase duration of common law cases, which ultimately increase economic burden on judicial budgets and household budgets. The inefficiencies in justice delivery can generate significant disruption in state-society relationship of Pakistan.

5.2: Policy Recommendations:

- The duration of case should be no more than six months and judge should be kept liable if the case is not resolved in the given time frame.
- There is a dire need to formally establish price ceiling mechanism for lawyer's fee in different nature of cases. Adopting a regulatory mechanism in this regard will significantly reduce the transaction cost for indigent users of justice.
- To assess indigent people on path to justice, it is complementary to establish an incentive structure of promotion and other perks for those lawyers who bring forward the cases of poor people. It will create competition among lawyers to perform in the interest of low income people which will enhance the efficient delivery of justice.
- Installation of community dispute resolution centers at village level, where court assigned arbitrator who will monitor and report the proceedings of Jirga meetings, will be significant for the free, fair and efficient justice delivery.

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