

The enigma of judicial hold-ups | Political Economy | thenews.com.pk

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ay God save you from police and courts” has become one of the most common prayers in Pakistan. Why so? Because legal battles affect the litigants in many ways, socially as well as economically. One can possibly understand why justice is expensive in our country, but why are there unnecessary delays? Let me explain.

The institutional mechanisms and the organisational configuration of Pakistan’s judicial system require several formalities disguised as the proper procedures or codes of conduct for justice. The litigants also have to pay for different costs, including lawyers’ fees, court fees, cost of documentation, etc.

The delay in the dispensation of justice has reached a point where it has become a factor of injustice. The volume of backlog, the loopholes and complexity in procedural law, and the case management system are some of the factors that delay and deny access to justice. The court machinery is overloaded, slow and not readily accessible to all.

Sluggishness of court proceedings indirectly favours those who are financially strong. It takes years to reach a conclusion, that too with lacunae. The poor are frequently compelled to give up against financially strong parties because they can often not afford the costs. So, they often give

up their cases with unconditional apologies or settle out of court, mostly against their wishes.

The unnecessary delays, at least as far as the civil cases are concerned, can be addressed from two standpoints: one unintentional and the other intentional. Unintentional delays can be controlled by revisiting our legal system – perhaps more appropriate for olden times but not for modern lives. The intentional delays must be penalised with effective enforcement.

The current regime of civil suits in Pakistan is governed by the Code of Civil Procedure enacted in 1908. No solid attempt has been to amend the rules of procedures according to present-day needs. Much of the delay occurs as the provisions of the Code of Civil Procedure are not properly observed, leaving speedy disposal of cases compromised. After filing a complaint, the processing fee is often not paid immediately. Therefore, the summons to the defendant are not served in time. After the defendant files his appearance, his advocate often seeks long adjournments to file written statements. Once the pleadings are closed, there comes the stage of producing documentary evidence before issues are settled. Quite frequently no documentary evidence is presented at this stage. Little use is made of the provisions for discovery and inspection of documents and for serving interrogatories.

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If these provisions are properly utilised, the disagreement between the parties can often be narrowed down before a case goes to trial. Instead, more often than not when the suit comes for trial, the advocates sit down in the court, open the files, probably for the first time, and begin laboriously to prepare lists of documents. Countless hours are wasted this way.

The Code of Civil Procedure, 1908, requires the defendant to submit a written statement within a stipulated period. In most cases, the defendant intentionally does not comply with the time-limit for filing such a statement. Applications are instead filed before filing written statements, causing unnecessary delays in the disposal of proceedings. Where the defendant has no defence, he is naturally interested in prolonging the trial. The liberal attitude of the court in respect of adjournment is one of the main causes of inordinate delay.

Access to justice hits different social classes differently. Upper middle income and higher income classes, in general, can manage the costs in such a way that these do not affect their routines and lives. There is at the most a slight impact. The only costs associated with the higher income classes seem to be with regard to their reputation and mental stress. With their high incomes, this group can hire lawyers or teams of lawyers who handle their legal affairs very effectively.

The poor and the middle and lower-middle classes have to make trade-offs in their budgets. They might have to curtail spending on food to leave money for lawyer's fees or seek a loan leading to mental stress and social problems. Thus, other transaction costs associated with seeking justice in Pakistan favour and tend to consolidate the advantageous position of the higher income classes.

Then there are some non-monetary costs for the litigants as well. These include but are not limited to frustration, depression, worsening of family ties, negative impact on children's education and reputation etc.

The way out of this legal morass is to prescribe timelines for civil cases and heavily penalise those who do not comply. Rules of procedures should be amended and forensics should be at the core of proceedings. Besides state prosecutors, more financing models and mechanisms should be introduced for those who cannot afford large legal bills. There should be checks on lawyers and judges as well. To this end, third-party monitoring and evaluation should be considered.

Lastly, there will still be a question of who will monitor the monitor? The focus should be on self-enforcing mechanisms. We should keep coming up with better systems. If we cannot eliminate the loopholes in the system, we can at least remove some of those.

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