

Cost of Access to Justice and Exclusion in Pakistan: An Empirical Analysis

*Anwar Shah and Sohaib Ahmad**

ABSTRACT

This paper examines the cost of access to justice and analyses whether such a cost is affordable by the average citizen of Pakistan. It is assumed that the foundation on which the current judicial system has evolved is unfair. It facilitates the rich and wealthy, while the poor are excluded as they cannot bear the cost of access to justice. The paper tests this assumption of accessibility due to cost presumption of exclusion empirically based on primary data collected from lawyers in the District Courts of Islamabad (Pakistan), together with data on the average income of representative individuals from the Household Integrated Economic Survey 2015-16 (PBS 2017). The paper shows the cost of access to justice in different types of cases across various types of courts in Islamabad, and then compares the cost with the average income per year of an ordinary citizen. It finds that the average cost of almost all types of cases is higher than what an average Pakistani can afford. The study notes that one of the reasons for this costly access to justice is because lawyers' earnings are linked with the disputes on commercial basis. Hence, affordable access requires that judicial disputes between people should not become sources of earning for others and should be resolved with non-commercial objectives.

Keywords: Justice, Accessibility, Courts, Judiciary, Lawyers.

* **Dr Anwar Shah** is Assistant Professor at the School of Economics, Quaid-i-Azam University (QAU), Islamabad, Pakistan. **Mr Sohaib Ahmad** is an MPhil graduate at the School of Economics, Quaid-i-Azam University (QAU), Islamabad, Pakistan.

1. INTRODUCTION

The primary objective of any judicial system in society is to help people settle their disputes in a short time with low or no cost. However, neoclassical economics has played a key role in the development of the judicial system across the world in general, and Pakistan in particular.

Pakistan borrowed the British law (Government of India Act, 1935) and, after some amendments, enforced it just after independence. Hence, the organisational structure of the judiciary and the rules of almost all its constituents, have been adapted from the rules of the British system. In the current judicial system, people involved in disputes are allowed to seek restitution based on market forces. In other words, forces of demand and supply are applied in the attainment of justice, especially to the benefit of lawyers. A person who wants justice has to pay a cost to the forces who provide justice or those who help in accessing it. Ironically, the cost of accessing a lawyer is not affordable for many in society. This lack of affordability of the price/cost of accessing justice is forcing the judicial system to exclude many people of Pakistan. Justice has become a commodity, the price of which is determined by market forces.

A literature review about the judicial system of Pakistan was conducted. However, most of it was related to delayed justice and burden on the judiciary and was in the form of reports (Shinwari 2015; World Justice Project 2017). According Shinwari (2015), 98.2% Pakistanis were of the opinion that the poor were excluded from the judicial system; 42.8% thought that women were excluded; and 25.2% noted that poor agriculture labour class did not have access to justice. The study further mentioned that when people were asked about the reason of exclusion from access to justice, more than 50% blamed high legal fees as one of the causes of such exclusion. The report of World Justice Project (2017) ranked the criminal justice system of Pakistan 81st out of 113 on the 'Rule of Law Index'. Likewise, its civil justice system was placed 106th out of 113. None of the respondents thought that litigation through courts was affordable, while 40% thought that the process was time-consuming, while the remaining 60% thought it was cumbersome.

This study was unable to find empirical work examining the actual cost of various court cases to analyse how many people are unable to afford such costs. Hence, the aim here is to fill this gap. It is assumed that 'market forces' between lawyers and clients have turned access to justice into a 'commodity' which only the rich can afford.

Primary data was collected about the cost of various cases from the District Courts of Islamabad. For this, a questionnaire was developed and data from 150 lawyers based on convenience sampling technique, was gathered. Data on the total time, postponement and adjournment of cases was also accumulated. It was found that on average, a litigant paid PKR 98,198 for a case in the civil courts of the capital city, Islamabad. In addition, a

litigant waited for at least 3.3 years for the disposition of cases. Likewise, a litigant bore fee and non-fee cost equal to PKR 1,19,679 and PKR 2,32,455 for a case in District Courts and High Courts, respectively. The cost of seeking justice surged to PKR 5,04,788, and PKR 1,25,151 for a case in the Supreme Court and Tribunals, respectively. The waiting time was almost 2.7 years for District Courts, 1.9 years in High Courts, 1.5 years in the Supreme Court and 2.1 years in Tribunals/Services Courts.

The authors also calculated the average annual income of an ordinary Pakistani from the Household Integrated Economic Survey (HIES) 2015-16 (PBS 2017). It was found that an average citizen of Pakistan earns PKR 4,27,944 per year. When annual expenses worth PKR 390,936 were excluded, PKR 37,008 was the annual surplus or saving. In case, the citizen faces litigation in the courts of Islamabad, s/he has to either borrow or unload assets for meeting case expenses, including lawyer fees etc. This cost did not include lodging, food and other social costs for litigants.¹

The rest of this paper is organised as follows: Sections 2 and 3 provide an overview of the literature review and the theoretical background. Section 4 provides information about the data and methodology. Sections 5 and 6 analyse the results and offer concluding analysis.

2. LITERATURE REVIEW

This section explains the related literature on different aspects of the cost of access to justice.

Worthington and Baker (1993) conducted a study in Australia to identify the cost of litigation. Their main focus was on lawyers' fee for the defendant and plaintiff. They collected data from 26 firms from New South Wales and Victoria. They found that the defendant paid higher fees than the litigant.

While a lawyer's fee is an important part of the cost of litigation, there are also other costs that make access to justice more difficult. Researchers have also focused on these types of costs. For example, Kakalik and Pace (1986) estimated the total cost of tort litigation in the United States in 1985. This included operating costs of the courts, and the cost faced by insurance companies. They used two different methods to get estimates. The first method started with insurance industry aggregate data on direct losses and expenses paid in 1985, adding self-insurance, and then separating out payments for claims that were not lawsuits. The second estimate was based on a bottom-up approach, starting with data

¹ This is one of the limitations of this study. Costs have been calculated based on the information provided by lawyers, but the study has not calculated the cost of litigation based on information from clients. The true picture about exclusion from access to justice requires having information from both sides. One reason for this is because lawyers may under-report their fee, which is generally the case while describing one's income. However, people generally avoid under-reporting expenditure.

from surveys of individual tort lawsuits, appropriately adjusting the numbers to 1985, and then multiplying by the number of tort lawsuits. The yearly expenses of all types for tort litigation ranged from USD 29 billion to USD 36 billion. Defendants total cost was in the range of USD 8-10 billion. Plaintiffs' total cost was in the range of USD 6-8 billion. The costs faced by the defendants was higher than the litigants.

Trubek et al. (1983) examined the factors affecting the time spent by lawyers on different cases. They collected data from American lawyers and from the Civil Litigation Research Project (CLRP). They found that lawyers either charged on an hourly basis or charged regardless of time. They used time as a dependent variable and checked the effect of 29 different variables. The R^2 for an hourly lawyer was more than for non-hourly lawyers. They also investigated the recovery-to-fee ratio. They found that plaintiffs received more benefit than the cost in 89% of cases. Defendant's results did not follow a pattern. In case of recoveries under USD 10,000, fees and recovery were almost equal. But the case where recoveries were more than USD 10,000, the recovery exceeded the fees paid to lawyers. The study also found that 71.8% of the people complained against the defendant, out of which 63% cases ended in dispute, and the rest were resolved mutually. They also found that disputes of around USD 1,000, only 10% were filed in court. They also found that the most filed cases were 'post-divorce' cases.

Sample (2015) examined the private and health cost of civil justice. He conducted interviews of 250 litigants involved in different types of cases from Ontario, British Columbia, and Alberta. The study found that the fees of lawyers varied from CAD 204 to CAD 386 per hour. The time required to solve a case depended on the nature of issues. For example, 23% of the cases related to land/house, and 55% related to personal injuries and lasted more than three years. Some 27% respondents of family cases reported that it took more than a year to resolve a problem. Psychological issues were also reported and in 79.9% of the cases, respondents shared negative sentiments like increase in anger, stress, humiliation, hopelessness, and frustration. The study suggested initiatives at the public and private level for reducing costs. Restrictions on lawyers' fee and increase in competition were some possible measures. Likewise, the study suggested that by making people aware of the legal structure and legal process, governments can help citizens deal with their cases without the support of a lawyer, and thus, reduce cost.

Williams et al. (1992) analysed cases in the range of AUD 20,000-100,000, which were mostly dealt in intermediate courts of Australia. They sorted the data on the basis of large and small law firms. The cases were also categorised based on their nature. They found that the stage of disposition of a case played an important role in determining its cost. If a case was solved early, the cost dropped as compared to the cases where disposition was late. The study also found that defendants utilised fewer resources than plaintiffs.

Genn (1996) took data of 200 cases from the Supreme Court Taxing Office for examining cost and found that the complexity of a case and its duration mattered the most with regard to costs incurred. Stipanowich (2004) investigated the effect of mediation on the cost for the cases registered in the federal and state courts and found that mediation had a positive impact on cost.

In the context of Pakistan, this study found perception-based surveys (Shinwari 2015; World Justice Project 2017) about the cost of litigation. However, the review could not find any study that explored the actual cost of various types of cases. This work is an effort in that direction.

3. THEORETICAL FRAMEWORK

The Constitution of Pakistan ensures access to justice for all citizens. In particular, Article 4 and Article 10-A provide details regarding how to ensure the delivery of justice. Article 4 of the Constitution of Pakistan states:

‘Right of individuals to be dealt with in accordance with law, etc.

1. To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

2. In particular

a. no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

b. no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

c. no person shall be compelled to do that which the law does not require him to do.’

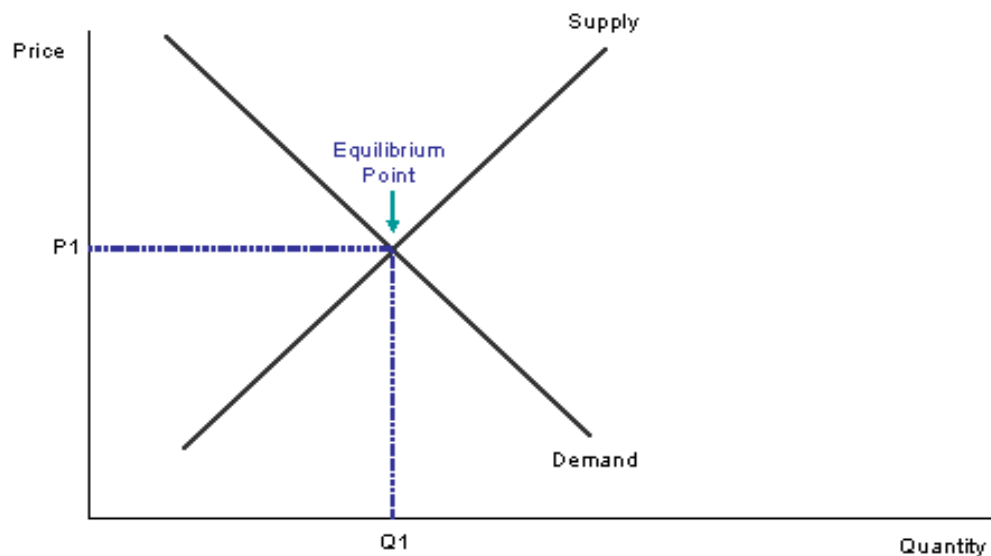
Article 10-A provides right to a fair trial. ‘For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.’

To control, minimise and to recover the cost of litigation from the responsible party, the National Assembly of Pakistan passed the ‘Cost of Litigation Act, 2017.’ According to this Act, which is enforceable for the Islamabad Capital Territory only, a court has to define the cost of litigation and such cost would have to be paid by the party responsible for accruing this cost and paid to the party who afforded it due to baseless adjournments and prolonging of trial.

In light of the above articles of the Constitution, access to justice is the right of every citizen of Pakistan. However, the institutional framework and organisational structure of the judicial system is such that it requires many formalities. The litigants have to bear various types of costs such as fee of the lawyer, fee of the court, etc.

Hence, the study's hypothesis is that the institutional framework of the judicial system of Pakistan is not equal for everyone. It works like a neo-classical structure of a commodity market. Under the neo-classical structure, the market is a better place for efficient allocation of a commodity. However, in the market, one has to pay the price of a commodity and those who cannot pay the price are excluded. The same would be the case for the 'market' of justice. In the market for justice, there is a demand (litigants) and supply side (producer). The competition among demand side litigants increases willingness to pay and takes the equilibrium price to a point where only those have access to justice who are rich and able to pay the price of access to justice. Those people who are needy but cannot pay the equilibrium price are excluded. This phenomenon is shown in Figure 1:

Figure 1: Equilibrium of a Commodity Market



Source: Authors' own.

The demand for justice comes from the consumer (client/litigant). The supply of justice comes from the lawyers. One can ask the question that lawyers are not the direct producers of justice, rather they are facilitators, then why are they shown as suppliers? The answer is that although, they are not the 'producers' of justice, without paying their cost, on average, one cannot attain justice. So, one can argue that there is a price of access to justice which is determined by the market. Those people, who can afford the price, are provided access to justice, the rest are denied access and are excluded from the market.

It is also worth mentioning that the above analysis works under perfect competition. However, the market of justice does not fulfil the requirement of perfect competition. One of the reasons is the absence of complete information about the nature and quality of services provided by each lawyer. The services are not homogenous and have variation in delivery. They have different levels of experience, education, reputation, etc. Hence, this heterogeneity gives monopoly power to lawyers, which makes the market of justice similar to a monopoly or near monopolistic competition. A single lawyer may sometimes enjoy monopoly power and the customer has to pay the price as per his/her demand. Likewise, every lawyer has a brand, which makes him/her charge fees different than the fee of other lawyers for a service which is not very different in the same market. The demand of lawyers to some extent also resembles a tourist market where a tourist after landing in a shop has no motivation to switch to another shop. Such switching requires search, which is costly. The same is the case with clients who, once they land in the office of a lawyer, find no incentive in switching as it is costly in terms of searching and in terms of tacit collusion among lawyers that they will avoid taking clients of others. This monopolistic structure gives more bargaining power to lawyers, and thus, further increases the cost of access to justice.

Based on the above discussion, this study hypothesises that access to justice has the nature of a non-competitive market, and thus, is costlier and exclusive. Moreover, clients come to this market due to some compulsion, which makes their demand inelastic. This information is known to lawyers, who use it for increasing their fee. Hence, the more the compulsion/constraints of the litigant, higher is the cost of access to justice.

4. DATA AND METHODOLOGY

Data on affordability was extracted using the Household Integrated Economic Survey (HIES) 2015-16 (PBS 2017). For the collection of cost of access to justice, primary data was collected through 500 questionnaires dropped at the chambers of lawyers in sector F-8, Islamabad, Pakistan. The filled questionnaires were collected after a couple of days. The total number of questionnaires received was 50 (10%).² With this low ratio of return,

² The survey was conducted in 2017. However, future research can adjust for increase in cost and income. 50 completely filled questionnaires and 20 incomplete questionnaires were received.

the authors decided to collect information directly from the respondents after making appointments. Table 1 provides a summary of the conducted survey of District Courts lawyers in Islamabad:

Table 1: Survey Data Summary

	Number of Questionnaires Shared	Number of Filled Questionnaires Received	Number of In-person Questionnaires/ Direct Interviews	Number of Completed In-person Questionnaires/ Direct Interviews
From Lawyers practicing in District Courts of Islamabad	500	50	80	77
From Assistant (Munshi) of Lawyers practising in District Courts of Islamabad	100	25	NA	NA

Source: Survey Data.

The main objective of the questionnaire was to explore the cost of access to justice in various types of cases and in different courts. In other words, authors were interested to know how much it cost a client from filing to the settlement of different cases in different courts. The information is required to estimate the number of people who are unable to afford such a cost. For this purpose, all possible types of costs and all those factors which could play a role in determining such costs, were included. The following sections provide details of the variables included in the questionnaire for calculating the cost of access to justice.

4.1. Lawyers' Fee

This is the fee charged by a lawyer for providing legal services to clients. For example, fee for a case in the following:

1. Civil/Magistrate Court
2. District/Session Court
3. High Court
4. Supreme Court
5. Tribunal/Service Court.

Lawyer's litigation fee also depends upon the level of the court. For lower courts (like District and Session Courts), the fee is low and for higher courts (such as High Court and

Supreme Court), fee is high. There is no defined range of fee by law for a lawyer, hence, it mostly depends on bargaining between parties.

4.2. Expenses other than Lawyer Fee

This includes expenses such as documentation charges (photocopies), transportation charges, amount paid to reader, amount paid to police, fee of court and tip (for tea or water) to the assistants of lawyers and other parties.

4.3. Non-Monetary Costs

Non-monetary costs include time, health related stress due to litigation, and social cost such as delay in marriage, missing funerals, etc. The non-monetary costs were captured through the variables mentioned below:

4.3.1. Average Duration of Court Trials, Frequency of Hearing and Postponements

Average duration of court trials shows time spent on each case from initiation till the termination of a case. If duration of a case is more, then higher is the frequency of a client attending court during this trial time. The frequency of postponement of case hearings indicates length of a trial. The study assumes that cases are adjourned due to the absence of a lawyer or judge or strikes by lawyers, etc. It is also possible that one party attends the court for hearing, but the other party intentionally avoids attending, which causes postponement.

To find the impact of various variables on the cost of access to justice, an econometric model was formulated. Such analysis allows one to quantify the effect of various factors that influence the cost of access to justice. The following equation has been used:

$$CJ_i = \alpha + \beta_1 HEXPE + \beta_2 MAR + \beta_3 LLM + \beta_4 OEXP + \beta_5 SEN + \beta_6 PROEX + \epsilon \quad (EQ\ 1)$$

Where i varies from 1 to 5, it takes value of 1 for Civil Court, 2 for District Court, 3 for High Court, 4 for Supreme Court, and 5 for Tribunal/Services Court.

Table 2: Description of all Variables in Regression Equation

Variables	Abbreviations	Description
Cost of Justice	CJ	Monetary cost of litigation in different types of courts in PKR*.
Household Expenses	HEXPE	Household expenses faced by lawyers in PKR (hundreds). It is assumed that a lawyer having higher household expenses will ask for a higher fee.
Marital Status	MAR	MAR is a dummy variable and takes the value of 1 if the lawyer is married, otherwise zero. It is assumed that a married lawyer charges higher fee than an unmarried lawyer.
LLM	LLM	LLM is a dummy variable and takes the value of 1 if the lawyer holds LLM degree, otherwise zero. It is assumed that a lawyer having LLM degree will charge a higher fee.
Other Experience	OEXP	OEXP is a dummy variable and takes the value of 1 if the lawyer has any other experience like teaching, civil service, any other profession, otherwise zero. It is assumed that a lawyer having this type of experience charges higher fee than an inexperienced one.
Status of Lawyer	SEN	SEN is a dummy variable and takes the value of 1 if a lawyer is senior, otherwise zero. The study assumes that the fee of a senior lawyer is likely to be high.
Professional Expenses	PROEX	Professional expenses/case faced by lawyers in PKR. It is assumed that professional expenses have positive impact on the cost of justice.

Source: Authors' own.

*Note: PKR = Pak Rupees.

5. RESULTS

This section provides an overview of the results and explains various types of costs on various types of cases. Next, it is discussed how an average Pakistani is excluded from having access to justice. This analysis is done by comparing the average earnings of a Pakistani citizen with the average cost of a case. Finally, given the data analysis, it is concluded that without changing the institutional structure of the current judicial system of Pakistan, the state may not be able provide access to justice to its citizen, especially not those with average earnings.

5.1. Overview of Findings

Table 3 presents an overview of cost of cases across different courts. It is evident that a litigant has to wait on average 3-4 years for settling a case in the Civil/Magisterial Court. In addition, during these years, s/he has to appear 36 times before the court. It needs to be pointed out that 15 out of 36 times, litigants face postponement without any hearing. In addition, after waiting for 3-4 years, the litigants have to wait for another 3-4 years for the complete disposition of the case. During this time, s/he has to bear PKR 50,955 in lieu of lawyers' fee only, while the expenses surge upward with the addition of other types of costs.

Table 3: Monetary and Non-Monetary Cost Per Case Across Courts

Type of Court	Average Fee charged by Lawyer (PKR)	Other Costs per Case (PKR)	Average Duration of a Case (Years)	Average Number of Hearings per Case	Average Number of Postponement of Hearings per Case	Life Span of a Case (Years)
Civil/Magistrate Court	50,955	47,244	3.3	36	15	6.4
District/Session Court	63,054	56,625	2.7	26	11	5.9
High Court	1,06,049	1,26,405	1.9	9	6	7.4
Supreme Court	2,36,903	2,67,885	1.5	3	6	7.1
Tribunals/Service Court	70,358	54,793	2.1	16	5	2.9

Source: Authors' own.

Table 4 provides information about the monthly income and expenditures of an average Pakistani household based on HIES 2015-16 (PBS 2017). The overall average monthly income of a household is PKR 35, 662. The average monthly income of a household in rural areas is PKR 30, 110, and the average monthly income of an urban household is PKR 45, 283. On the other hand, the average monthly expenditure of a household is PKR 32, 578. For a rural household, it is PKR 27, 414; while for an urban household, it is PKR 41, 529. On the basis of this information, the average income of a household per year is PKR 4, 27, 944. In the same way, the average income of a household in rural and urban areas is PKR 3, 61, 321 and PKR 5, 43, 396, respectively. While the average expenditure is PKR 3, 28, 968 per year for a rural household; and PKR 4, 98, 348 per year for an urban household. A rural household spends 91.04 % of its income on daily expenses; and an urban household spends 91.70% of its income on daily expenses.

The left-over earnings of a household per year is PKR 37, 008. For rural and urban, the average saving per year is PKR 32,353 and PKR 45,048, respectively. In case a person,

irrespective of being from rural or urban areas, faces a legal issue in Civil Court of Islamabad, s/he is not even able to afford the fee of a lawyer in this court, which is PKR 50, 955, while the other charges are PKR 47, 244 (Table 3).

Therefore, access to justice is difficult, if not impossible, in the Civil Courts for an average Pakistani citizen. This analysis is based on the assumption that even savings of one year are not enough for bearing the cost of access to justice. In addition, such costs do not cover food, lodging and transportation cost, which further increase litigation costs. Moreover, a case is generally against an individual, while the calculations of income/savings are for the entire household. Hence, the individual savings are likely to be even lower, and a citizen might not be able to bear the expenses of a case spanning more than a year. For bearing the expenses, s/he will likely have to take loans within or outside the family or unload assets.

Table 4: Average Income and Expenditures of Households per Month (PKR)

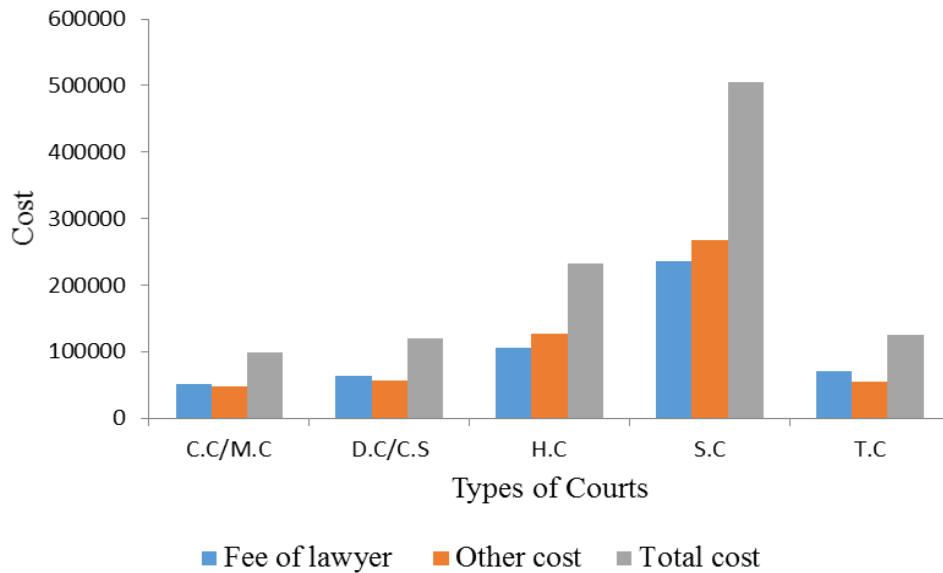
	Total	Rural	Urban
Average Income	35,662	30,110	45,283
Average Expenditures	32,578	27,414	41,529

Source: PBS (2017).

5.2. Lawyers' Fee across Courts

Figure 2 shows the average fee a lawyer charges as well as other costs for the cases in different courts. Average fee of a lawyer for cases in Civil Courts is PKR 50, 955. The same amount increases to PKR 63,054 for a case in the District Courts. It increases to PKR 70,358 for a case in the Tribunal Court. It further rises to PKR 1,06,049 for a case in the High Court; and to PKR 2,36,903 for a case in the Supreme Court.

Figure 2: Cost of Justice across Courts



Source: Authors' own.

The highest fee a lawyer charges is for a case in the Supreme Court which shows that the cost of access to justice is very high there. Hence, a higher proportion of the population is denied access to justice from the Supreme Court. Without bearing the fee of a lawyer, an average Pakistani is even unable to file a case in the Supreme Court. This also indicates how much deterrence an average Pakistani citizen might feel in case s/he has to seek justice from the latter. Therefore, an average Pakistani would knock on the door of the Supreme Court under very exceptional cases. On the other hand, access to justice is not an issue for the rich. They can easily afford the fee of a lawyer for filing a case in the Supreme Court.³

The average fee of a lawyer in all types of courts is also beyond the affordability level of an average citizen of Pakistan.

Apart from the lawyer's fee, there are other expenses which a client has to bear. This includes, but not limited to, the charges of documentation, photocopy, tip for the lawyer's assistant and other junior staff of the courts, travelling, meals and food expenses, rental expenses for accommodation, etc. The data shows that the amount of such expenses for a case in the Civil Court is PKR 47, 244. Likewise, the amount of such expenses for a case in the District Court is PKR 56, 625; while for a case in the Tribunal Court, it is PKR

³ This is the reason behind the term 'justice for sale' about Pakistan's judicial system.

54,793. The amount increases to PKR 1, 26, 405 for a case in the High Court and reaches PKR 2, 67, 885 per case in the Supreme Court.

Table 3 looks at the average fee of lawyers. There are many types of lawyers and the fee of each type of lawyer is different. The table depicts the average fee of each type of lawyer:

Table 5: Fee of Various Types of Lawyers across Courts (PKR)

Types of Lawyers\ Types of Courts	Senior	Junior	Part-time	Full-time	Famous ⁴
Civil/Magistrate Court	56,562	36,000	41,805	54,032	1,23,882
District/Session Court	65,916	55,368	49,264	67,476	2,93,058
High Court	1,23,358	54,121	84,852	1,13,403	8,81,666
Supreme Court	2,60,150	1,00,000	2,50,000	2,34,384	8,02,857
Tribunals/ Service Court	73,205	44,375	72,857	69,483	2,60,000

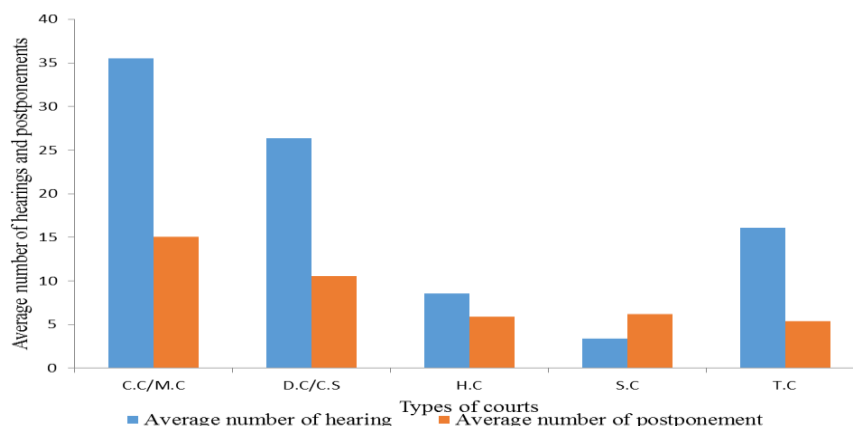
Source: Authors' own.

Table 5 shows that the fee of a part-time lawyer on average is lower than the fee of a full-time lawyer. However, the situation is different for the cases in the Supreme and Tribunal Courts. In the Supreme Court, a full-time and part-time lawyer charge on average PKR 2,34,384 and PKR 2,50,000, respectively. Here, the fee of part-time lawyers is higher than the fee of full-time ones. One of the probable reasons might be that part-time lawyers are more specialised in Supreme Court cases, and they may not file cases in the lower courts. In the same manner, full-time lawyers charge lower than part-time lawyers in Tribunal Courts. The average fee charged by the part-time lawyers in the Tribunal/Services Courts is PKR 72, 857, while it is PKR 69,483 for a full-time lawyer.

5.3. Hearings and Postponements across Courts

Figure 3 depicts the number of hearings and postponements per case across different courts. For each hearing, a client has to bear many expenses such as the expenses on travelling, food and refreshment. Likewise, s/he has to pay the expenses of people who come along with him. Sometimes s/he might pay compensation to witnesses, pay extra for pleasing lawyers (other than fee) and offer some amount for documentation and other expenses.

⁴ The calculation of fee of famous lawyers is based on data provided by assistants of lawyers. Remaining calculations in this table are based on data given by the lawyers.

Figure 3: Hearings and Postponements (Court-wise)

Source: Authors' own.

The Civil and Magistrate Courts have the highest number of hearings on average. The second highest number of hearings take place in the District and Session Courts, followed by Tribunal Court.

In the District /Session Court, the average number of hearings as well as postponements was found to be 26 and 11, consecutively. While in Tribunal Court, the number of hearings was 16. Figure 3 also shows that the lowest number of hearings (three) and postponements (six) was in the Supreme Court followed by High Court where the number of hearings was nine and postponements six.⁵ This shows that in terms of monetary cost, a lawyer's is the highest in the Supreme Court. However, in terms of hearings, this cost is low.⁶ It can be presumed, therefore, that the higher monetary cost of a case in the Supreme Court is cancelled out by the low number of hearings (opportunity cost). On the other hand, the fees are low in the Civil/Magistrate Court. Nevertheless, the lower fee of a lawyer is cancelled out by the higher number of hearings in the same courts. The low number of hearings in the Supreme Court shows that poor people will prefer cases in the latter due to the opportunity cost in lower courts (Civil/Magistrate/District/Session).

⁵ Data was also collected from the lawyers' assistants (*Munshi*) and some differences were found in this regard. For example, according to the lawyers, the average number of the hearings of a case in Civil Court was 35, but according to the assistants, this number was 56. Likewise, per lawyer, the average number of hearings was 26 in the District Court, but according to the assistants, this number was 23. In the High Court, the average number of the hearings was 9, but according to the assistants, this number was 7. Both agreed that the average number of hearings in Supreme Court was 3. For the cases followed in the Tribunal/Services Courts, the average number of hearings was 16, but according to the assistants, this number was 9.

⁶ According to the assistants, the number of postponements was 42, 19, 12, 1, 3 for Civil, District, High, Supreme and Tribunal Court, respectively.

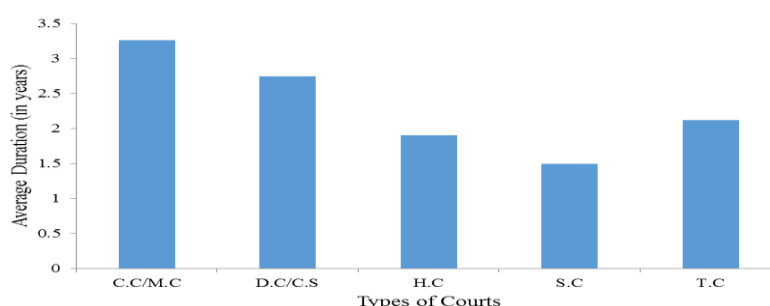
Hence, excludability increases for a client who is even rich but ‘time poor’ in lower courts and cannot spare time to attend each hearing.⁷

5.4. Duration of a Case Across Courts

Figure 4 shows the average duration of a case across courts. It was found that the longer duration of a case was in the Civil Court followed by the District Courts. The average duration of a case in Civil Court was three years and three months, while in the District Court, two years and nine months. However, the average duration of a case in courts other than these two types of courts was less. It was one year and 11 months in High Court and one year and six months in the Supreme Court. In Tribunal Court, it was two years and one month.⁸

It has been mentioned earlier that it is not the average duration of a case that matters for clients in terms of non-monetary cost, it is also the number of total hearings. The reason is that length as well as the number of hearings determine the opportunity cost of waiting or struggling for justice. On the one hand, the average duration of the cases in Civil Court was high. On the other hand, the number of hearings was more than in other courts. This dual level of cost increases the excludability of people from access to justice. Hence, access to justice not only depends on a lawyer’s fee, but also depends on the time, number of hearings and postponements of a case. The higher this cost, the higher is excludability from access to justice.

Figure 4: Duration of Court Cases



Source: Authors’ compilation.

⁷ The relationship between time poverty and excludability can be further analysed. It is also likely that such people try to settle cases out of court to save time and cost. But this needs further research.

⁸ According to the assistants of lawyers, average life of a case was five years and two months; three years and three months; four years four months; six years and four months; and two years for Civil, District, High, Supreme Court, and for Tribunals, respectively.

5.5. Regression Analysis

Table 6 provides regression results based on Equation 1 for determining the factors that enhance cost, and thus, make affordability of access to justice more difficult:

Table 6: Regression Results with Dependent Variable of Cost of a Case in Log

Variables	Civil/ Magistrate Court	District/ Session Court	High Court	Supreme Court	Tribunals/ Service Court
Household Expenses	0.00044 (0.000296)	0.00042** (0.00019)	0.00051* (0.00022)	0.00091 (0.00094)	0.00078*** (0.00025)
Marital Status	0.56 (0.76)	-0.018 (0.412)	0.20 (0.35)	0.71 (0.43)	0.35 (0.34)
LLM Degree	-0.18 (0.32)	-0.60*** (0.199)	-0.61*** (0.23)	-1.06 (0.66)	-0.91*** (0.30)
Other Experiences	-0.54 (0.34)	-0.059 (0.172)	-0.34* (0.184)	-0.41 (0.30)	-0.27 (0.24)
Seniority	0.95 (0.81)	0.25 (0.40)	0.93*** (0.30)	1.44*** (0.43)	0.73* (0.38)
Professional Expenses	0.00035 (0.00026)	0.00028* (0.00015)	0.000070 (0.00017)	-0.00039 (0.00030)	.000029 (.00025)
CONS	9.81*** (0.77)	10.67*** (0.40)	10.65*** (0.32)	11.11*** (0.51)	10.33*** (0.40)
Number of Observations	145	142	131	62	84
R-square	0.11	0.10	0.20	0.23	0.24
F-statistics	0.0025	0.0020	0.0000	0.0001	0.0003

Source: Authors' own.

Note: standard Errors appear in parenthesis. Where * shows significance at 10%, ** shows significance at 5% and *** shows significance at 1%.

Table 6 shows that the role of household expenses of lawyers, seniority, professional expenses and having LLM degree plays a role in determining cost. The seniority of a lawyer is significant for High Court, Supreme Court and Tribunals. This shows that hiring a senior lawyer is not affordable for many people of Pakistan and for having access to justice in these courts.

Results show that those lawyers who are more qualified are less expensive. This is clear from the sign of coefficients of LLM Degree for regression of District Courts, High Court and the Tribunals. This result is not per prior expectations and general perception. The study has been unable to provide any precise answer for this anomaly, however, the probable reason could be late entry into the market by lawyers with LLM degrees. On the other hand, lawyers with simple LLB degrees enter the market just after graduation, and thus, have a bigger client base and become famous. It is also possible that since the data includes observations of such famous lawyers, thus making the findings biased in favour of LLB degree holders as compared to LLM degree holders.

The findings also show that professional expenses significantly influence the cost of access to justice. Lawyers with more professional expenses are likely to charge a higher fee. However, in this study's data, this impact was very negligible. If there was an increase of PKR 10,000 in professional expenses, the increase in the cost of access to justice in the District Court was PKR 2. The third regression in Table 6 shows that lawyers having other experiences and who are practising in High Court are charging 34% less fee as compared to lawyers who have no other experience. It is possible that such lawyers have more earnings from other sources. Hence, are charging less fee.

The overall finding is that cost of access to justice is not dependent on one particular variable in the current judicial system of Pakistan. There are myriad factors that play a role and make access to justice difficult, if not impossible, for people in general and for citizens of Islamabad, in particular.

6. CONCLUSION

The main focus of this study was to explore the cost of access to justice and find affordability of the people of Pakistan for bearing such costs. For calculating this cost, a survey was undertaken in the District Courts of Islamabad. For calculating affordability, data was extracted on income and expenditure from the Household Integrated Economic Survey (HIES) 2015-16 (PBS 2017).

According to the Constitution of Pakistan, a fair trial and access to justice is a fundamental right of every citizen. High cost of access to justice compromises this right. This study shows that if cost of access to justice is high than its affordability, the system of justice is not inclusive and there is a need to make it so. It was also found that the cost of hiring lawyers for obtaining access to justice is out of the reach for the average Pakistani citizen.

The authors showed that the current literature does not offer evidence of a unique relationship between cost and various types of cases. The cost depends on various factors such as status of justice seeker (defendant or plaintiff), lawyer (charges hourly fee or contingent fee), status of lawyer (junior, senior, or famous) and types of courts (Session Court, High Court and Supreme Court), etc. In addition, cost has many aspects and shapes. It could be monetary as well as non-monetary, such as the stress faced by the litigant. While the research related to cost of justice is mostly based on a perception survey, this work provided evidence based on primary data, not only about the cost of access to justice, but also about the level of excludability of the average citizen of Pakistan. The findings showed that the average cost of access to justice is above the average income level of annual savings of the ordinary citizen. On average, each household consumes more than 91% of its income. The remaining 9% is not sufficient for bearing the average cost of a case in the lower courts of Islamabad. Thus, there exists the

issue of affordability, which calls for the need to reform the judicial system of Pakistan in terms of inclusion. In this regard, ‘Cost of Litigation Act, 2017’ could be helpful.

Moreover, the burden on courts could be decreased by solving the issue of pendency. Alternative Dispute Resolution (ADR) institutes (like *Jirga* and *Panchayat* within the constitutional and human rights framework) can be encouraged so that the cost of access to justice can be minimised. In 2017, the National Assembly Standing Committee on Law approved the ‘Alternative Dispute Resolution Bill, 2017’ relating to out-of-court settlements. According to the Bill, trial courts can appoint arbitrators with the consent of both parties to settle their disputes, mutually. The public should be made aware of this so that the problem of affordability and pendency can be solved.

This study was based on primary data. Hence, one should be careful about generalisations due to some limitations. One such limitation was that the cost was derived based on data collected for Islamabad, while information about income and savings was based on HIES 2015-16, which is a national level survey (PBS 2017). Hence, for comparison, one needs more information about the cost of access to justice from other areas of Pakistan. Future researchers can collect such information and make the comparison more realistic. Moreover, the data on cost appears under-reported by lawyers with 36 hearings per case in the Civil Court. The average fee per hearing was cited as approx. PKR 2,000, which appears, to some extent to be an unrealistic value. Likewise, this work is a little bit wider and extensive in terms of calculating the cost of access to justice. The study could not conduct in-depth analysis of exclusion in each court. It will be more helpful if future research is more focused and calculates the cost of access to justice for each particular court, and then examines the issues of access to justice and exclusion.

REFERENCES

- Genn, H. 1996, ‘Effects of Claims on Doctors’, *AVMA Medical & Legal Journal*, vol. 2, no. 6, pp.181-185.
- Kakalik, J.S. and Pace, N.M. 1986, *Costs and Compensation Paid in Tort Litigation*, California: Institute for Civil Justice, RAND Corporation, California, p. 37.
- PBS 2017, ‘Household Integrated Economic Survey (HIES) 2015-16’, Statistics Division, Pakistan Bureau of Statistics, Government of Pakistan, <https://www.pbs.gov.pk/sites/default/files//pslm/publications/hies15-16/write%20up%2015-16-HIES-final_0.pdf>.
- Semple, N. 2015, ‘The Cost of Seeking Civil Justice in Canada’, *The Canadian Bar Review*, vol. 93, no.3, pp. 639-673, <<https://scholar.uwindsor.ca/lawpub/36>>.
- Shinwari, N. A. 2015, ‘Understanding the Informal Justice System: Opportunities and Possibilities for Legal Pluralism in Pakistan’, Community Appraisal and Motivation Programme, Embassy of Federal Republic of Germany, Islamabad.

- Stipanowich, T. J. 2004, 'ADR and the "Vanishing Trial": The Growth and Impact of "Alternative Dispute Resolution"', *Journal of Empirical Legal Studies*, vol. 1, no. 3, pp. 843-912.
- Trubek, D. M., Sarat, A., Felstiner, W. L. and Kritzer, H. M. 1983, 'The Costs of Ordinary Litigation', *UCLA Law Review*, vol. 31, no. 1, pp. 72-94.
- Williams, P., Williams, R., Goldsmith, A. and Brown, P. 1992, *The Cost of Civil Litigation before Intermediate Courts in Australia*, Australian Institute of Judicial Administration, Victoria.
- World Justice Project 2017, *The Rule of Law in Pakistan*, World Justice Project, Washington, D.C.
- Worthington, D. and Baker, J. 1993, *The Costs of Civil Litigation: Current Charging Practices, New South Wales and Victoria*, Sydney: Law Foundation of New South Wales,
<[http://www.lawfoundation.net.au/ljf/site/templates/reports/\\$file/The_costs_of_civil_litigation.pdf](http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/The_costs_of_civil_litigation.pdf)>.