

Delays in the Delivery of Justice in Civil Cases

Empirical Evidence From
Four Judicial Districts In Sindh



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1 Executive Summary

This study provides both a qualitative and quantitative empirical insight into the state of proceedings for civil litigation through sampling from four judicial districts in Sindh i.e. Karachi (Central), Karachi (Malir), Larkana and Sukkur. The first of its kind in the province of Sindh, it is an important step in encouraging further research and ensuring that judicial reforms and proposals are based on empirical data analysis and are therefore more grounded in reality.

The process that a case takes from the time of institution to final disposal/conclusion represents the life time of the case which is regulated by the Civil Procedure Code, 1908 (CPC) and failure to follow the prescribed guidelines results in delays in the delivery of justice. Amongst other findings, the study identifies the average length of time certain categories of civil cases take from the date of institution or filing to the date of disposal. The primary aim of the study is not to elucidate upon ‘answers to problems’ causing delays in accessing justice but the main objective is to identify the problems based on empirical evidence and then to proceed with diagnosing them more deeply in order to establish causal factors of delays.

Starting with the executive summary and the introduction, Section 3 details the research methodology of this study. A mixed method was used to achieve a holistic perspective and involved perusal/study of case files, data from the Case Flow Management System Software, interviews with civil practitioners, surveys, and other literature on this topic. The limitations of this study are also dealt with in detail in this part to account for any shortfalls in the data collection or collation process.

Section 4 provides a window into the District Court Judiciary, from the number of courtrooms to the number of Judges and disposal and pendency rates. The aim is to provide an overview and a crucial context within which this study is being conducted to determine whether the same has any role to play in possible delays in the delivery of justice in civil matters.

Section 5 enumerates the key findings from Target Districts under study – Karachi (Central), Karachi (Malir), Larkana and Sukkur during the Target Month of October 2016. It also identifies the average time taken to achieve conclusion of the different stages in the civil procedure and identifies sample cases where the timelines imposed by the CPC were not followed or were partially followed.

The identification and discussion of the reasons for delays caused during the life time of civil cases is detailed in Section 6. These are from two main perspectives: procedural and institutional. The aim was to look at the possible delays caused by failure to follow timelines of the CPC and those caused by the parties to the case which include the Judges, Lawyers, Court Staff and the Litigants themselves. It is important to note that the responsibility of delivery of justice, though perceived as resting primarily on the shoulders of the Judiciary, is in fact a collective in nature and therefore shared by all the stakeholders in the process of justice delivery.

Section 7 focuses on existing judicial reform initiatives looking specifically at the National Judicial Policy, 2009 (NJP 2009) and identifies the relevant parts of the Policy which govern civil matters under review in this study. Further, amendments of the CPC have also been reviewed to determine whether the reforms introduced have had the desired effect. Case law and precedent research further informed this part of the study to understand how the same are interpreted and applied by the Courts in individual cases.

The penultimate eighth section analyses the value, if any, of Alternate Dispute Resolution (ADR) as an option to reduce the case load on the Judiciary. This part is reinforced by interviews with mediation experts who clarify the scope of ADR, specifically mediation, as a possible solution to the problem of backlog of cases in the Judiciary of Sindh.

The last section proposes possible reform proposals that have been observed during the course of the research process. The purpose of this part is to provide the grounds for further study of the delays caused in the judicial process, and this brief section is provided merely to initiate a deeper diagnostic effort in the future for designing further studies and interventions aimed at reducing delays and improving the public's confidence in the civil justice system as a whole. This section is followed by a short conclusion and ends with various supporting annexures.

2 Introduction

The oft quoted maxim *"Justice delayed is justice denied"* echoes in Pakistani Courts when lawyers argue that litigants suffer due to delays in the delivery of justice. It is a matter of natural justice that delays should not just be frowned upon but should be redressed through adequate procedural safeguards. For this paper, 'delays' refers to time wasted/spent, either due to a failure to follow the timelines prescribed by the CPC, or for any other reason which prevents a case from being disposed of within reasonable time.

Though the task of imparting justice may traditionally fall within the mandate of the Judiciary, there are other stakeholders in the process who can contribute to speeding it up or slowing it down, i.e. lawyers, litigants, court staff etc. This paper recognizes the collective nature of this responsibility and premises its findings to include all parties engaged in the attainment of justice.

Though litigation levels in Pakistan continue to rise, it can safely be said that the confidence of the public in the Judiciary is decreasing, and one of the primary factors for this is the delay in delivery of justice.¹ The current Chief Justice of Pakistan, Mr. Saqib Nisar, has expressed this in a meeting in Lahore where he noted that, *"the people were losing trust in the judicial system and urged the judges and lawyers to fulfil their duties honestly."*² Another Judge of the Supreme Court, Justice Dost Muhammad Khan observed that, *"unnecessary delays in finalizing cases, unwarranted and unsubstantiated court orders, poorly considered judgments, growing moral bankruptcy in society and other challenges have devastating effects on the lives of the people and put a strain on state resources too."*³ He identified the *"gap between the workload and the financial resources, the changing nature of legal proceedings and infrastructural needs"* as some of the primary problems faced by the Judiciary which negatively impact the *"speedy dispensation of justice."*⁴ The former Chief Justice of Pakistan, Mr. Justice Anwar Zaheer Jamali has also spoken about the backlog of cases which were *"causing emotional and psychological distress to litigants besides financial costs"* and

¹ <https://tribune.com.pk/story/585709/in-line-for-justice-/>, accessed 9.05.2017.

² <http://nation.com.pk/national/05-Feb-2017/cjp-asks-judges-lawyers-to-revive-public-confidence-in-judiciary>, accessed 16.03.2017.

³ <http://tribune.com.pk/story/1051739/backlog-of-cases-lack-of-resources-delays-speedy-justice-sc-judge/> accessed 30.01.2017.

⁴ *Ibid.*

suggested “*alternate means of dispute resolution as an attempt to reduce the pressure from the Judiciary.*”⁵

The Chief Justice of Pakistan, Mr. Justice Saqib Nisar, has also said that “*members of bar and bench need to be equally cognizant of their responsibilities towards the marginalized sections of the society*” and proposed that coordination between the SAARC countries is crucial to meet the ends of justice in the region.⁶ Furthermore, a 2015 Supreme Court Judgment, authored by the current Chief Justice of Pakistan states that “*Courts must...exercise all the authority conferred upon them to prevent any delays which were being caused at any level by any person whatsoever...*” and identifies that when the trial and final arguments are complete the judgment must be pronounced within a “*reasonable time.*”⁷ The benefit of following this reasonable time standard is that the Judge is in a better position to pass a judgment soon after the case has been completed because it is difficult to “*exactly recall and record with precision and exactitude as to what propositions of law and facts were argued...such delay shall have reflection upon the audi alteram partem.*”⁸ This judgment goes on to state that if a judge of a Trial Court failed to prescribe to the 30-day limitation imposed by Order XX, rule 1(2) of the CPC without sufficient cause, then the “*judgment was impaired in value if not invalid*” and failure to abide by this could result in “*disciplinary action*” against those who habitually delay the writing of judgment.⁹

The focus of this paper is to study these issues highlighted by Judges of the apex courts mentioned above. The intention is to provide an empirical snapshot of the average length of time a case takes in courts and to deconstruct delays by stratifying this against the various stages of the trial allowing for a deeper understanding and analysis of the obstacles that lie in the way of a litigant in accessing justice. Despite limitations, the empirical evidence presented will provide entry points for further studies and research and for intervention points within larger reform agendas.

The research was initiated during the tenure of former Chief Justice of the High Court of Sindh (SHC), Mr. Justice Sajjad Ali Shah, prior to his elevation to the Supreme Court of Pakistan (SC), who extended his support by allowing access to case files from the selected judicial districts. This support was based on the firm belief that more empirical and evidence based research is essential for guiding and informing any reform process that may be adopted by the SHC. This institutional support has continued under the tenure of the current Chief Justice of the SHC, Mr. Ahmed Ali Shaikh.

3 Research Methodology

Mixed methods were adopted as the most appropriate for this study. Basic quantitative analysis and qualitative interviews were conducted. Quantitative analysis was conducted on primary and secondary sources which comprised of the study of manual case files of matters that were concluded/disposed during the selected target month (discussed in detail in Section 3.3.1) and information available on the Case Flow

⁵ <http://tribune.com.pk/story/1060187/cliقة-hijacked-democracy-to-divide-pakistan-cjp/> accessed 30.01.2017

⁶ These remarks were made during the SAARCLAW Conference held in Karachi on 28th January 2017; <http://pakobserver.net/top-judge-stresses-need-for-affordable-speedy-justice/>, accessed 16.03.2017.

⁷ Mfmy Industries P(Pvt.) Ltd and Others v. Federation of Pakistan, 2015 SCMR 1550.

⁸ *Ibid.*

⁹ *Ibid.*

Management System – Software (CFMS-S) (discussed in detail in Section 3.3.2) which is maintained by the IT Department of the SHC.

A perception survey regarding the reasons for delays was also filled out by lawyers practicing in the selected districts. These responses were studied and incorporated into the analysis of the system as a whole and is discussed in Section 3.3.3. Qualitative semi-structured interviews were conducted with various stakeholders of the justice system, including lawyers, serving and retired judges. These interviews were then analyzed thematically and are discussed in Section 3.3.4. This mixed method approach enabled triangulation to achieve more accurate results.

3.1 Sample

The study was conducted on a sample of civil cases which were concluded in the month of October 2016 (Target Month) in the selected judicial districts of Karachi (Central), Karachi (Malir), Larkana and Sukkur (Target Districts). The Target Month was selected due to the reason that it provided the most recent picture of the state of civil justice in the District Judiciary at the commencement of this study (the research process started in November 2016) and the case files were expected to be complete and comparatively more accessible than those for earlier months. Further, by limiting the study sample by disposal during a particular month, any potential bias would be automatically eliminated since the files to be studied did not have to be selected on any other arbitrary basis. The SHC, which gave permission to access the case files, did not influence the determination of the Target Month nor the Target Districts.

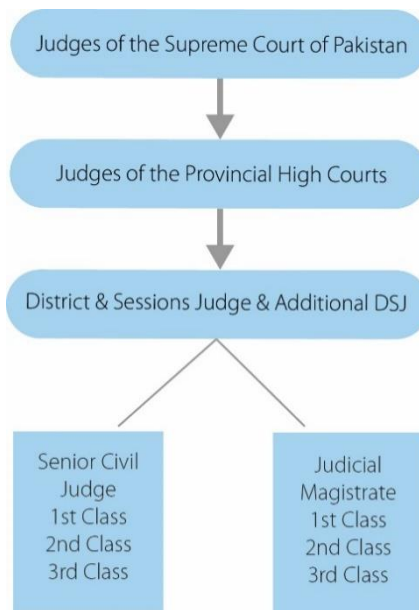
The first two judicial districts are urban districts chosen from the city of Karachi as the city has the highest population, which implies that the numbers of disputes in Court would also be high and diverse in nature. It is noteworthy to mention that the two districts are varied as the Central District is an older district whereas the District of Malir, introduced in 1994¹⁰, is comparatively new. The other two judicial districts of Sukkur and Larkana¹¹ are semi-urban districts in the north of the province and were chosen due to the diversity they would offer to the overall sample in terms of courts established in peri-urban areas with relatively larger populations. They were also specifically chosen for facilitation purposes as the presence of LAS district offices in these locations made the process of data collection easier and ensured that the limited resources allocated for this study were efficiently utilized. Another reason for selecting two urban and two peri-urban districts was that the judgments from these districts would be more reliable in that they would be closer to being a more representative sample of the entire pool of cases and the population of Sindh, as opposed to limiting the analysis to one judicial district. It is also important to note that the data collected for this paper from individual case files is confidential and no reference has been made either to the party names or the title/number of any individual case.

The Target Districts under study comprise of the Courts of District and Sessions Judge; Additional District and Sessions Judges; Senior Civil Judges and Judicial Magistrates as depicted in the flow chart below:

¹⁰ http://www.districtcourtsindh.gos.pk/district/malir/index_malir.php, accessed 16.03.2017.

¹¹ Larkana was also created into a separate district in 1994.

FLOW CHART A: HIERARCHY OF JUDICIAL STRUCTURE



The bifurcation of courts into classes, as indicated in the flow chart above, is based on their pecuniary jurisdiction under law. These financial limits are different across other provinces of the country and there is no uniform policy regulating the same.

The term ‘civil cases’ in the CFMS-S comprises of a large category of civil disputes, including suits, appeals, revisions, executions, applications etc. For the purposes of this study and to make better sense of the category and for data collection and analysis, these have been referred to as ‘civil matters’ and have been divided along the following four sub-categories as detailed in the table below:

TABLE A: CATEGORIZATION OF CIVIL MATTERS

Cases	Appellate Cases	Applications	Executions
Civil Suit	Civil Appeal	Civil Miscellaneous Application	Civil Execution
Civil Summary Suit	Civil Miscellaneous Appeal	Civil Miscellaneous Application (in a Case)	Rent Execution
Rent Case	First Rental Appeal	Civil Transfer Application	
Trust Case	Civil Revision	Transfer Suit	
Election Petition		Miscellaneous Rent Case	
Defamation Suit			
Insolvency Petition			

In the Target Districts during the Target Month, disposal along the category of cases identified above, the highest disposal was in civil suits which were 429 in number, while rent cases disposed of totaled 56. These two types of cases within this sub-category represent the largest disposal across the Target Districts amongst others. The second sub-category of Appellate cases consisted of 36 Civil Appeals, 17 Civil Revisions, and 20 First Rental Appeals, amongst others. The third sub-category of Applications accounted for 8 Civil Misc. Applications, 15 Civil Misc. Applications in a Case, 22 Civil Transfer Applications, amongst others. The final sub-category of Executions consisted of 21 Civil Executions and 43 Rent Executions.¹²

3.2 Data Collection

3.2.1 Case Files

The primary research involved studying hard copies of case files. The data collection and analysis was conducted by research teams during the months of December 2016 to February 2017 – Karachi (Central) files were studied in December 2016, Karachi (Malir) in January 2017 and Larkana and Sukkur in February 2017.¹³ After a preliminary training session highlighting the aspects of the data that were important for this study, a detailed research tool was designed and provided to the research teams. This tool is attached as Annexure A. Each case file studied was allocated one form in which details relating to the case were filled so that data could be collected, collated and analyzed. The CFMS-S was used subsequent to the manual research component so as to clarify the findings and provide for external validation. However, the starting point for data collection was the manual case file.

The focus of the case files research was to understand the nature and reasons for delays either from the perspective of adherence to the CPC or with regards to institutional challenges. Therefore, the findings from the former comprises of the average lengths of time taken for completing in comparison to the stages as identified in the CPC and is dealt with in Section 6.1. The latter findings focus on causes that are more institutional in nature such as judicial strength, absenteeism on part of counsel, strikes etc. These are discussed in Section 6.2.

The type of disposal of each case along the civil matters was also varied because of the nature of claims in individual cases. Therefore, disposal types – which included ‘disposed of’, ‘dismissed’, ‘allowed’, ‘decreed’, ‘rejected’, ‘dismissed in non-prosecution’, ‘withdrawn’, and compromise’ were just some of the ways in which a civil matter reached its conclusion. These had to be re-categorized so that the data produced could be meaningful. Accordingly, the following three categories of disposal were developed: (i) disposal on merit; (ii) disposal in default and (iii) withdrawn/compromised.¹⁴ The importance of these categories is to determine how many disputes were decided based on the merits of the case or those that had been compromised or withdrawn by the litigating parties, and these have a direct impact on the disposal rates for the month.

Based on these variables, basic quantitative analysis was conducted to determine the nature and causes of delay. A study of the disposal of matters reveals the nature of each dispute, whether the timelines laid out

¹² This data is derived from the Monthly Disposal Report of October 2016 in the Target Districts.

¹³ In Karachi the Teams consisted of LLB students from the L’ecole Law School. In Sukkur and Larkana, advocates working in the District Courts at the Legal Aid Office and the Legal Aid Society were part of Research Team.

¹⁴ Ahmed, S., Interview March 2017.

by the CPC were followed and the role of various parties in causing delays in the process of justice delivery. These provide a real-time window into the time a civil matter takes in Court and identifies specific stages at which cases get stuck so that any reform proposed is effective and delivery of justice can be made more efficient.

3.2.2 Case Flow Management System - Software

The IT Department of the SHC commenced the process of computerization of case files by introducing the CFMS-S in the province as far back as 1997. In an interview with Mr. Rashid Maher, Director IT Department of the SHC, stated that this occurred under the direction of Mr. Justice Zafar Ahmed Sherwani, with the aim of adopting technology to facilitate the dispensation of justice. The CFMS-S provides a real-time window into the pendency and disposal rates of cases, documenting the actions of each party in the justice system, from judges, to judicial staff, to lawyers, litigants, and even the police. In addition, the CFMS-S provides litigants information about their pending cases including date of hearings and orders passed by the Court. The CFMS-S is a technological revolution, especially with regards to the regulation of the provincial district judiciary. Judicial officers' performance is judged according to a ranking framework which was developed in January 1999 called the Unit System. This system determines the performance of individual judges of the District Judiciary by setting targets for them, with high priority placed on disposal of cases as the relevant performance indicator. The details of the Unit System are as follows:

TABLE B: THE UNIT SYSTEM

Disposal by Merit by Judgment/ Order	Units
Cases up to 5 years old	6
Cases over 5 years old	9
Cases over 10 years old	12
Civil Appeal, CMA, Civil Revision & Transfer Applications	2
Compromise/Withdrawn/Ex-parte Judgment	2

A District Judge must earn a total of 65 units per month while the other Judicial Officers have a monthly requirement of 75 units. If a Judge is unable to work, e.g. due to health reasons, they earn an average of 3 units/day of work which is deducted from their monthly quota. The Director IT Department further stated that while the judges of the superior courts are thus far exempt from the Unit System, it has made a big difference in the performance of the District Court Judiciary. However, despite its benefits, the Unit System suffers from implementation issues - one shortcoming identified by the Director is with regard to self-serving interests this Unit System encourages - judicial officers may choose to focus only on those cases that may result in higher units to raise their performance levels.¹⁵

¹⁵ Maher R., Interview, Director Information Technology Department, Sindh High Court, March 2017.

Though the CFMS-S is applicable throughout the province, the process of digitization/computerization is still underway in many rural and semi-rural districts where the number of computers and printers provided are limited and many orders are still typed out using a typewriter. This was discovered during the primary research of case files in the Target Districts. Court documents in Sukkur (including Rohri and Pano Aqil) and Larkana (including Rato Dero and Dokri) were partly digitized. Unfortunately, this gap decreases the efficiency and effectiveness of the judicial staff and has a significant impact on the rate of delivery of justice by the judicial system as a whole.

Data available on the CFMS-S was accessed in the following manner:

Category-wise Monthly Reports for the Target Month for each Court in each of the Target Districts were collected. Civil matters disposed of were separated from these Monthly Reports. These were tabulated according to the Court in the hierarchy (District and Session Judge (DSJ), Additional District and Session Judge (ADJ), Senior Civil Judge (SCJ), and Judicial Magistrate (JM)) and divided along the 4 sub-categories of civil matters discussed earlier. Following this, average times were calculated for each sub-category to determine the average length of time within each. The perspective provided includes the total average time in days for each sub-category in each of the Target Districts as well as average time in days excluding the outliers which would skew the averages.

Further, the nature of disposal of each matter was also considered to understand how many were dismissed on procedural grounds and how many were disposed on merit (these were divided along the three sub-categories of disposal identified earlier). Based on these variables, basic quantitative analysis was conducted to determine the averages of variables and shed light on the research questions.

Like all technological initiatives, the CFMS-S is a work in progress - glitches, difficulty in accessing data and a relatively un-friendly user interface play a role in limiting a more effective use of this system. Data is available in the form of daily/monthly reports which are available for download as Microsoft Excel documents – however, once downloaded, many of these reports lack an identified marker of the jurisdiction of the case, or even the Court or Judge who managed the case, making the research process unnecessarily confusing and complicated. Furthermore, the reports are not organized in a manner to provide clear information regarding the category of the case or the nature of disposal of the matter. This results in a loss of information and limits the scope for deeper analysis. The categories of civil matters and disposals created for this research could be an important building block in improving the stratification of data available in the CFMS-S. Despite these issues in terms of categorization etc., the CFMS-S is a commendable step in the right direction as it has made digitized data available as far back as 2008. The calculation of rates of disposal of cases across sub categories was made easier through this form of documentation on Microsoft Excel.

3.2.3 Surveys

A survey tool was developed through consultation to determine the views from lawyers who work in civil litigation in the Target Districts to further inform the study (Survey). This exercise was aimed to capture anecdotal evidence and perspectives of lawyers, specifically with regard to delays. A total of 70 lawyers from the Target Districts participated in this Survey and the results are discussed throughout the paper to highlight the perceptions of the civil practitioners in this area. The Survey is attached as Annexure B. Basic

quantitative analysis was conducted to determine the frequency of variables and determine causes for delay within the civil justice system. The sample of lawyers was based on convenience sampling owing to budgetary and time constraints.

3.2.4 Key Informant Interviews

The key informant interviews conducted were semi-structured and aimed to build on the data collected through other methods. The sample was determined through convenience sampling with the aim of conducting interviews with those who would be knowledgeable about the subject. The aim was to inform the research by considering the perspectives of the various stakeholders in the Civil Justice System and the selection criteria for this was based on a minimum length of service of 10 years in the Bar of the District Judiciary in addition to other convenience sampling considerations. The interview process started in December 2016 and was completed in March 2017. Thematic analysis was then conducted to respond to the research questions. Members of the Judiciary were also interviewed, especially retired Judges to add value to the research by recording their views on the state of delivery of justice.

Members and office-bearers of the different Bar Associations were also part of the interview stage particularly since strikes and suspension of work in Court also impacts the rate of delivery of justice. Court staff were also part of the interview sample since they are the ones who manage the process of litigation and are an essential link between the judges and the litigants and their advocates. Interviews with mediators were also conducted to determine what kind of cases can be resolved through ADR - the world over ADR is being encouraged through Court annexed mediation, and otherwise, to help resolve issues related to backlog and general case pendency levels. The aim was to explore whether this could be a possible solution to the over-burdened Judicial System.

3.3 Literature Review

There are few studies of this nature conducted on the Judicial System of Pakistan and most papers have studied the system as a whole with limited reference to empirical data. Two studies from Punjab are notable exceptions, the first is by the Supreme Court ("SC") titled, 'Statistical Study of the Life Cycle of Civil Cases in Trial Courts' while the second, a more detailed one is a European Union- Punjab Access to Justice Project funded study titled, 'Case flow Management in Courts in Punjab: Frameworks, Practices and Reform Measures' The latter study is inclusive of both civil and criminal cases while the former is limited to a study of civil cases. A third study, commissioned by the LAS under the EDACE program in 2015, titled "Delay in Trial: Empirical Evidence from the Magistrates' Courts in Karachi"¹⁶ maps the reasons for adjournments in criminal cases and focuses on the district of Karachi. The studies mentioned above were used as starting points in designing this study.

3.4 Limitations

This study has certain methodological limitations which must be accepted. There is a lack of prior research on this topic in the province which results in a lack of a theoretical or methodological basis for understanding the research question. It is hoped that further research will be conducted on this subject to

¹⁶ Mirza, A., Delay in Trial – Empirical Evidence from the Magistrate's Court in Karachi, Legal Aid Society, 2016

fill in the gaps in literature and understanding. Due to time limitations and budgetary constraints, extensive quantitative data analysis was not conducted. Although this would have been beneficial in understanding relationships between variables, it was not possible given the timeframe of this study.

One of the main limitations observed was in terms of access to the case files. Despite the fact that only disposed of cases were being studied, not all the files were available in hard copy format in the courts record rooms as had been expected. There were several reasons for this:

1. Cases that were disposed of, e.g. dismissed in non-prosecution had pending restoration applications and therefore were not accessible;
2. Applications for certified copies were filed in disposed of cases and therefore access to the file was not possible;
3. Some matters that appeared to be disposed of cases were actually Civil Miscellaneous Applications filed in pending cases; the scope of this study is limited to study civil cases and therefore these disposals did not count for the purposes of the study;¹⁷
4. Case files had been sent to the record room/court room and could not be accessed - Court staff assisted where they could but also were busy in their own court work and inspections; and
5. In some cases, even though access was provided, the Orders were almost illegible - either due to the handwriting itself, or fading of ink, or because of the general condition of the file.

To account for the shortfalls of the physical examination of the case files, attempts were made to verify the same with the data available on the CFMS-S. This led to the second main limitation - the way data is presented in the CFMS-S. Information regarding disposal is detailed in the Monthly Report of each Court from each Target District and is divided into three main categories – criminal, civil, and family, which is unsatisfactory for a meaningful analysis. The focus of this Study is on civil matters which were divided earlier into four sub-categories for this paper: civil cases, appellate cases, applications and executions. Distributing the data in this manner made it easier to determine a more accurate length of time a type of civil dispute takes in Court – e.g. generally speaking, cases should take longer for resolution than applications and to eliminate any skewing of data averages, these sub-categories were introduced.¹⁸

The third limitation relates to the difference in disposal numbers for civil matters. When data collected from the Monthly Reports of individual Courts in the Target Districts was compared to the category-wise civil disposal Monthly Report, some variation was discovered in the actual numbers of disposal. The variations for Karachi (Malir), Sukkur and Larkana were slight but the variations in disposal numbers for Karachi (Central) were significant. The Monthly Report of Category-wise Disposal stated that the total civil disposal for the District was 248 while the total numbers generated from the Monthly Reports of individual Courts stood at 360. A representative of this District who works in the IT Department explained that this

¹⁷ A civil case filed could be a Plaintiff in which separate Applications under the Civil Procedure Code can be filed. These Applications rather than appearing as part of an individual case, also appear separately in the disposal rates and therefore the disposal numbers are higher than actual cases disposed of.

¹⁸ An attempt has been made by the IT Department to resolve this inclusion of variety of civil cases to distinguish the same according to the law. Thus, a new criterion was added which provides for the Section of the law under which an individual case was filed. Though this is helpful in research based on criteria of sections but does not solve the problem of the general categorization of civil cases.

difference occurs because though the case may have been disposed of, the Judge may not have had the time to upload the Judgment on the CFMS-S and this would account for the discrepancy in the numbers. This aspect is dealt with in greater detail later in the paper.

Lastly, it is recognized that this study is not generalizable to the rest of the province or the country. It aims to be a starting point in understanding delays in civil litigation in certain districts within Sindh, and seeks to provide a basis for further research.

4 Case Pendency in the District Judiciary

The province of Sindh is divided into a total of twenty-seven districts. The following table provides a comparative analysis of the case load of the Courts across all types of cases in the Target Month and in February 2017.

TABLE C: CASE LOAD OF DISTRICT JUDICIARY: A COMPARISON OF OCTOBER 2016 WITH FEBRUARY 2017.

Detail of Case Load	October 2016	February 2017
Total Number of Cases Instituted	19,628	18,507
Total for Disposal ¹⁹	153,231	141,625
Total Disposed	22,535	22,497
Disposal by Mediation	20	7
Disposal by Compromise	533	475
Remaining Balance	119,841	112,887

Source: Case Flow Management System – Software, Monthly Reports.

Table C above indicates that the number of new cases filed each month remain high ranging between 18,000 - 20,000/month while disposal also remains relatively constant at about 22,000 on a monthly basis. This implies that the Judiciary is able to just break-even in terms of the numbers of cases filed and those concluded within the time frames discussed, while the problem of the existing backlog continues. Mediation allowed for disposal of a mere 20 cases in the Target Month in Sindh and these were mostly in the jurisdiction of Kamber-Shahadatkot, while in February 2017, 7 cases were mediated, out of which 3 were in Sanghar.²⁰ These figures for mediation are very low and account for less than 0.1% of the cases disposed. Disposal of cases by way of compromise is much higher and stands at 533 in the Target Month of October 2016, and 475 in February 2017 - these numbers imply that disputing parties were able to resolve their disputes peacefully and submit their resolution in Court. This may reveal the potential power of dispute resolution by way of mediation because a mutual intent to resolve the dispute is necessary both in mediation and compromise. The fact that mediation figures are so low may mean that this form of resolution is not popular or common at the moment, but through investment of times and resources, mediation could be the solution to our over-burdened judicial system. Advocate Rajput proposed

¹⁹ The expression “Total for Disposal” means Pending Cases.

²⁰ Case Flow Management System – Software, District-wise Monthly Reports for Kambar Shahdatkot and Sanghar.

compromise decrees as a way “to control delays since the same is final and not appealable, and mediation must be tried as a possible solution” to our current backlog of civil cases.²¹

The balance of 112,887 cases (and new cases being instituted) has to be disposed of by the existing judiciary whose current strength in District Courts stands at 617 judges.²² The total number of Judges is determined by the census under the Constitution of Pakistan 1973, because it indicates the numbers of dependents upon the Justice System for dispute resolution - the total population of Sindh at the time of the last census (conducted in 1998) stood at 30,439,893 which accounted for almost 23% of the population of Pakistan.²³ The unfortunate failure of the Government to conduct a timely census in 2008 has resulted in only estimation of the current numbers of population. As a result, an accurate judge-to-population ratio is impossible to calculate. The population of Karachi, as per the 1998 census, was a mere 9,856,318 and right now it is estimated to stand at population of nearly 24,000,000²⁴. There are a total of 232 judges in the District Judiciary of Karachi, across its 5 districts, who serve these multiplying numbers of the city’s population. It is estimated that almost 1 million people migrate to this metropolis every three years; in fact, the United Nations has ranked Karachi as the 5th largest growing city in the world.²⁵ Therefore, if the ratio is calculated as per estimated population of this large metropolis, it is a mere 1: 103,448 and the load on the Karachi’s District Judiciary is significant because the numbers of judges remain low in comparison. It is only after March/April 2017 that the new census shall determine the current picture of population levels and needs, especially those related to better or improved access to justice.

The Table D provides details of the total population of each of the Target Districts and the judges serving the same, to calculate the judge-to-population ratio.

TABLE D: JUDGE: POPULATION RATIO OF TARGET DISTRICTS AS PER THE 1998 CENSUS

District	No. of Judges	1998 Census Population	Ratio
Karachi (Central)	38	2,277,931	1:59,945
Karachi (Malir)	23	981,412	1:42,670
Sukkur	20	908,373	1:45,418
Larkana	24	1,927,066	1:80,294

Source: Pakistan Bureau of Statistics²⁶

²¹ Advocate Rajput, Interview Sukkur, February 2017.

²² Source for this figure is the CFMS-S showing strength of District Judiciary in the month of October.

²³ Census 1998.

²⁴ <https://tribune.com.pk/story/614409/population-explosion-put-an-embargo-on-industrialisation-in-karachi/>, accessed 27.03.2017.

²⁵ <https://tribune.com.pk/story/658394/the-population-of-karachi-has-doubled-in-15-years/>, accessed 27.03.2017.

²⁶ http://www.pbs.gov.pk/sites/default/files/other/pocket_book2006/2.pdf, accessed 24.03.2017.

The estimated population of Sukkur is almost 2 Million ²⁷ and a mere 20 judges serve this district, making the judge-to-population ratio as low as 1: 100,000. Larkana’s ratio was the lowest of all the Target Districts with 1 judge serving at least 80,294 people based on the 1998 census.²⁸ It is obvious therefore that there is a very pressing need to increase the number of judges. Not only is an increase necessary to effectively deal with the backlog, the decreased pressure of backlog may also help improve the quality of judgments and resultantly decrease the rate of successful appeals.

5 Key Findings

This section identifies the key findings from this study. These detail, firstly, the way the cases were divided according to the Target Districts, nature of claims filed, nature of disposals and average times from institution to disposal of a case, amongst others. Secondly, a district-wise list of findings and their analysis has also been conducted to paint as clear a picture on the state of justice delivery in civil matters as was possible within the scope and parameters of the data collected.

5.1 Across Target Districts

Table E below provides statistics on disposal of civil matters in the Target Districts during the Target Month and the strength of the Judiciary as well as the case pendency before courts.

TABLE E: TARGET DISTRICTS IN THE TARGET MONTH – DISPOSAL, PENDENCY, BALANCE AND JUDICIAL STRENGTH

District	No. of Judges	Balance	Total Pendency	Civil Matters Disposed ²⁹	Files Studied
Karachi (Central)	38	2496	2740	248	213
Karachi (Malir)	23	1444	1568	151	105
Larkana	24	669	803	103	84
Sukkur	20	1541	1667	83	72
Total	105	6150	6778	585	474

Source: CFMS-S, Monthly Disposal Report

A total of 105 judges in the Target Districts disposed of 585 civil matters as recorded in the Category-wise Civil Disposal Monthly Report during the Target Month. Of this total number, 474 case files were studied and analyzed by the research teams as part of the primary research phase in the Target Districts. The

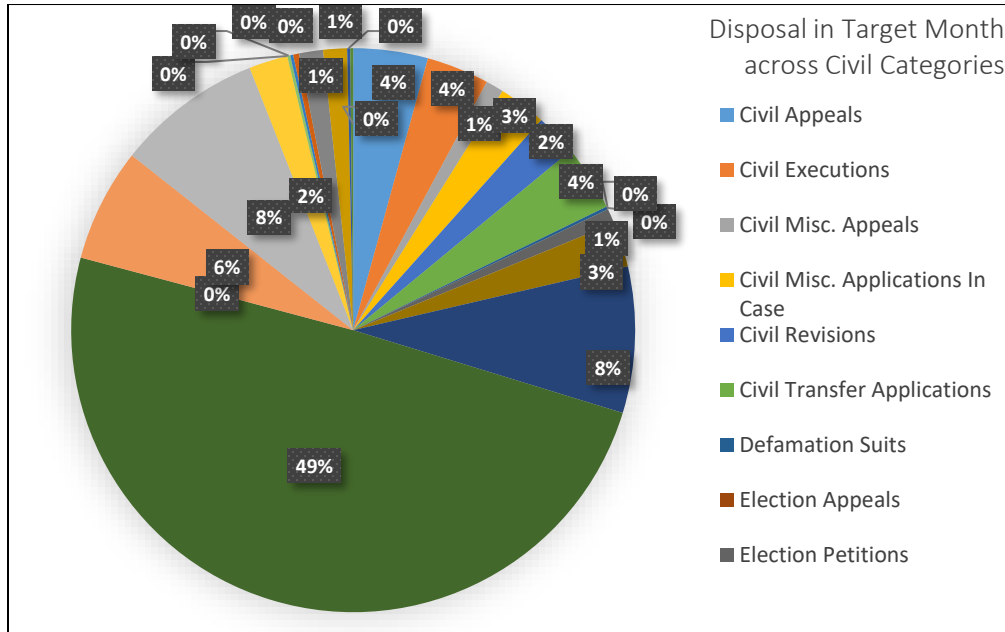
²⁷ https://infogalactic.com/info/Sukkur_District, accessed 24.03.2017.

²⁸ Estimate current population figures for Larkana were not available and therefore a current judge: population ratio could not be proposed.

²⁹ The detailed study of Monthly Reports revealed that the actual disposal for Karachi (Central) District is 360 but only 248 judgments were uploaded within the time frame and therefore the number of civil disposal is less. For the other three Target Districts, the variation in numbers was only by a couple of matters which could be explained by the restoration of the case in the docket or otherwise.

following pie chart provides a window into the various categories that these civil disposals account for in the manner in which they are organized by the IT Department so far:

PIE CHART I: CIVIL CATEGORY-WISE DISPOSAL IN TARGET MONTHS



As can be discerned from Pie Chart I above, almost half of all civil disputes in Court are in the nature of a 1st Class Civil Suits while 3rd Class Civil Suits are the next large percentage of 8%. Another 8% accounts for Rent Executions while another 6% are Rent Cases. The remaining 29% is divided along several other categories as detailed in the legend on the side. Therefore, a majority of disputes comprised generally of money related disputes/claims, with prayers for declaration or injunctive relief - these were cases for recovery of money, damages, mesne profits, etc., while others were related to property matters either in the form of rent cases, declaration of ownership, partition of property or simply possession of property through specific performance of contract. To make better sense of these different types of civil matters, the four sub-categories discussed earlier were developed.

The disposal and the nature of civil matters is also as varied as the categorization stated and demonstrated above; the next pie chart provides a crucial perspective on the different ways in which a case, execution or an application reaches its end within the justice system.³⁰ Once an application is filed it meets either of two fates – it may be ‘Allowed’ or ‘Dismissed/Disposed of, and the same is true of executions. A civil case, on the other hand, can reach the following conclusions:

1. Decreed/ Judgment – this means that the judgment has been passed;
2. Compromise – this means that the parties reached a compromise and submitted it in Court and the case was disposed of accordingly;
3. Non-prosecution – this means that a case is dismissed because the party who filed the case failed to appear in Court;

³⁰ As stated earlier, applications are filed under the CPC in individual cases.

4. Rejected – A case can be rejected because it failed to prove maintainability before the Court e.g. for want of jurisdiction;
5. Returned – a case can be sent back to the earlier Court e.g. for want of jurisdiction or for re-hearing based on new evidence; and
6. Withdrawn – the party who filed the case withdraws the same because it refuses to pursue litigation for resolution of dispute.³¹

The following Pie Chart II details the different ways that disposals are recorded in the Diary Sheets of the Court files that were studied in the Target Month. The purpose is to demonstrate how disposal is a much more nuanced, complicated category than depicted in the CFMS-S. In order for the data on disposal of cases to make better sense with regards to the nature of disposal, it is recommended that this should be re-categorized into the three sub-categories mentioned earlier: Decision on merits; Decision on default; Decision based on compromise or withdrawal of the claim. Of the total 696 civil matters based on data collected from individual Courts of each District’s Monthly Reports, the Table F provides a glimpse of the kinds of disposal along the four main Categories used for this paper.

PIE CHART II: CASE DISPOSAL IN TARGET MONTH

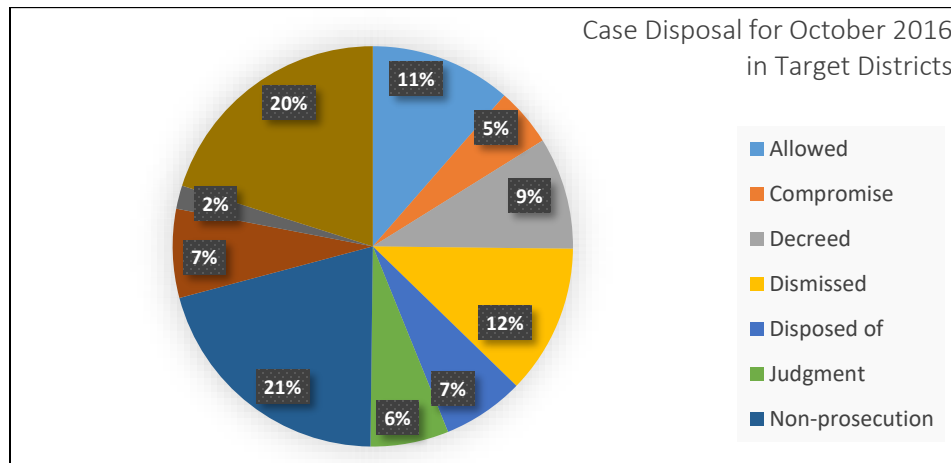


TABLE F: DETAILS OF DISPOSAL ON MERIT, DEFAULT OR WITHDRAWAL/COMPROMISE

S. No.	Civil Matters	Disposal on Merit	Disposal in Default	Withdrawn/Compromised
1.	Civil Cases	54.0%	26%	19.9%
2.	Appellate Cases	64.5%	21.5%	13.9%
3.	Executions	81.2%	13.0%	5.8%
4.	Applications	91.2%	1.9%	7.0%

³¹ There needs to be consistency in terms of the categories of the nature of disposal of cases – e.g. rather than declaring a case to be ‘decreed’ or ‘judgment’ pronounced which means the same thing. A list of accepted expressions for nature of disposal needs to be developed to ensure that there is uniformity in the Justice System.

Civil cases consisted predominantly of civil suits and rent cases while appellate cases included all the cases that were at appellate stage like civil appeals, revisions etc. Applications included civil miscellaneous applications³², civil transfer applications³³ etc. Executions were also studied and these contained two main types - civil and rent.³⁴

As is seen in Table F above, of the four categories, executions and applications received the highest percentage for being decided on merits while the other two types of disposal categories scored fairly low. The civil and appellate cases on the other hand saw higher numbers of disposal along default and withdrawal/compromise. Nearly half of all cases were disposed of on these grounds while just 54% were decided on merits. Appeals saw a slightly better disposal figure on merits – 64% were decided on merits while 26% were dismissed in default and almost 14% were withdrawn/compromised.

Withdrawal and compromise numbers provide the most interesting percentages to study – this is because it is not necessarily due to the efficiency of the justice system as a whole that nearly 40% of cases are disposed of in this manner. Rather it is possibly due to external reasons, including the conduct of the parties themselves, or their lawyers that such disposals are recorded. Dismissal in non-prosecution is due to the failure of the party who files the case (or their counsel) to appear in Court on the appointed day, and the dismissal is a kind of punishment that such irresponsible conduct warrants. The next part focuses on disposal across the Target Districts calculating average times from date of institution to disposal and analysing the effect disposal on basis of merit has on those averages.

A. Average Time from Start of Case to the End

The average time from the date of institution of a case to the date of disposal across the Target Districts is detailed in the Table G.

TABLE G: AVERAGE TIME TAKEN WITHIN THE TARGET DISTRICTS

	Civil Cases	Appellate Cases	Executions	Application
Karachi (Central)	245.97 Days	298.85 Days	312.7 Days	14.9 Days
Karachi (Malir)	353.97 Days	255.69 Days	456 Days	4 Days
Larkana	247.75 Days	189.71 Days	716.3 Days	26.9 Days
Sukkur	522.20 Days	448 Days	135.7 Days	Inconclusive Data ³⁵

Since one of the purposes of this study was to determine the extent of delays in the delivery of justice in civil cases, this aspect was observed more closely across the Target Districts. Therefore, the disposal of cases by way of merit was focused on because these are the cases which reach conclusion either by being

³² Applications filed under the CPC.

³³ Requests for transfer of a case from one Court to another.

³⁴ Once a Court has passed the judgment or decree, then the litigant has to be filed for execution of the same in Court.

³⁵ There were 3 CMAs disposed of during the Target Month where 1 CMA took 1152 days while the others took 131 and 135 days respectively. All three were disposed of on procedural grounds – two were withdrawn while one was dismissed in non-prosecution.

decreed or through orders/judgments which are passed on the basis of merits. These in Karachi (Central) take on average 244.80 days. After removal of outliers, especially those that skew the data narrative, since they are disposed of faster due to the nature of the claim – e.g. cases for the correction/rectification of name – the average increased to 296.62 days. In Karachi (Malir), civil cases which were disposed on merits took the average time of 372.53 days. After removal of the outliers which consisted of 6 cases (2 each from the years 2011, 2012, and 2013) the average time taken for disposal on merit decreased to 249.91 days. In Larkana, disposal of civil cases on merits took 336.35 days which after removal of 1 outlier which took 132 days for disposal. Disposal of civil cases on merit in Sukkur took an average of 501.05 days and after removal of 1 outlier, which was a 2010 case, the average time was driven down to 420.38 days.

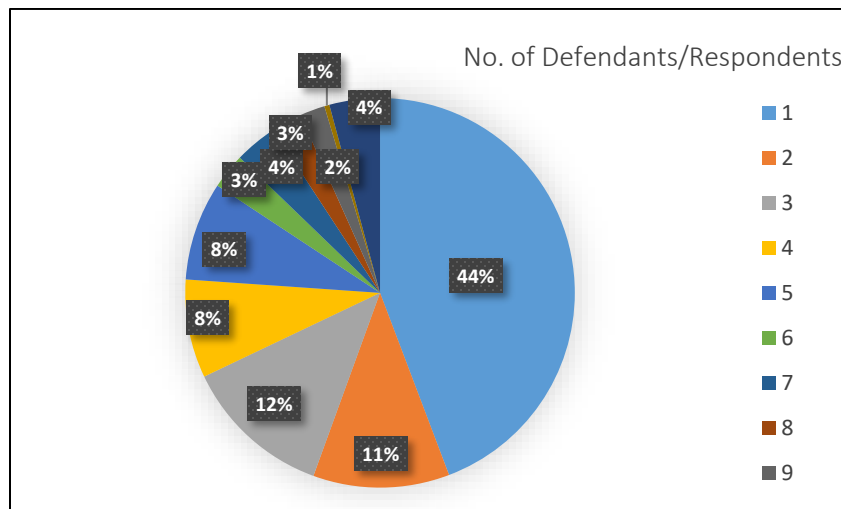
The same data analysis was done with appellate cases as well on a district-wise basis. Though the average for Karachi (Central) across this category stood at 298.85, when observed in detail it was noted that disposal of appellate cases on merit resulted in a slightly higher average of 307.03 days. The district of Karachi (Malir) only had 13 cases in this category and when average days were calculated based on disposal on merits, the average number of days actually decreased to 199.33. In Larkana District there were only 3 cases that were disposed of on merits and their average stood higher than the total average stated in the Table above – 228.33 days on average. For Sukkur, the disposal on merit cases stood at 7 and this took an average of 552.57 days.

B. Numbers of Defendants/Respondents

The number of parties against whom a case is filed also influences the time the case spends in Court, with the most significant impact being on the notice for summons stage. The higher the number of parties, the greater amount of time required for successful service. Case file research reveals that some of the common causes of failure to successfully deliver a notice for service were non-provision of correct postal address of the parties against whom the case is filed, non-payment of fees, etc. which results in repeat notices being issued.

The next Pie Chart III shows the number of Defendants/Respondents in the cases studied for the Target District in the Target Month:

PIE CHART III: NUMBER OF DEFENDANTS/RESPONDENTS IMPLEADED



Pie Chart III shows that in 44% of the cases studied, the Plaintiffs filed against single Defendants/Respondents while the rate is 11% for 2 Defendants/Respondents; 12% for 3 Defendants/Respondents; 8% for 4 Defendants/Respondents amongst others. The primary data collection stage identified a June 2016 matter filed for Injunction and Declaration in the Courts at Larkana, boasting a total of 64 Defendant/Respondents; service was severely delayed. However, this case is recognised as an exception and outlier. In many cases it was observed that when the notice was “returned unserved”, repeat notices were issued in the “interest of justice” – it is important to note that reasons for the failure of successful service are not always recorded, thus restricting further analysis for this study.

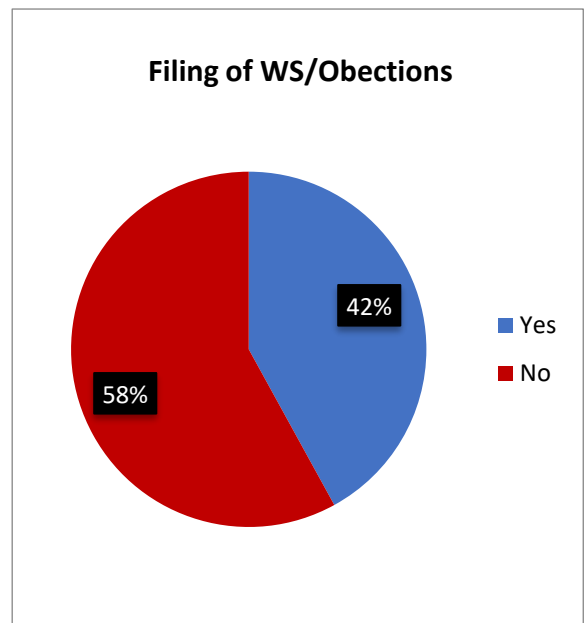
C. Written Statement (WS)/Objections

WS is “the statement filed by the Defendant in answer to the Plaint and constitutes his defence.”³⁶ The filing of a WS is covered under Order VIII of the CPC, where Rule 1 provides for a period of 30 days to submit a response and not more than 2 adjournments should be taken by the party to submit the same.³⁷ Failure to submit the WS is covered by Rule 10 of the same Order which states that the Court has the power to pronounce judgment against the Defendant, or make an order as he deems fit.³⁸

The following Pie Chart IV provides a percentage-wise view of the filing of WS/Objections by the Defendants/Respondents.

In 42% of the case files studied a WS/Objections were filed while the prevailing majority of 58% documented no response on the part of the Defendants/Respondents. It is important to note that in matters where there are more than 1 Defendants/Respondents, the Court can proceed *ex parte* against those who do not appear in Court and the matter continues to proceed against them. Further, the Court has the power to bar a Defendant/Respondent from filing a WS/Objections when opportunities given by the Court have been ignored repeatedly. In the cases where a WS/Objections were successfully filed, the average number of days taken to file these across the Target Districts from the time of institution is 173.482 days which comes to about 5.78 months in contravention to the 30-day timeline imposed by law.

PIE CHART IV: FILING OF WS/OBJECTIONS



5.2 District-Wise Findings

This section deals with key findings from both the CFMS-S and primary data collection from case file research. It is divided along the Target Districts identifying 7

³⁶ Faqir Rehman v. Jaffar Khan, 2006 CLC 129.

³⁷ Muhammad Ali v. Additional Sessions Judge Jaranwala, 2006 CLC 566.

³⁸ Order VIII, rule 10: *Procedure when party fails to present written statement called for by Court – where any party from whom a written statement is so required fails present the same within the time fixed by the Court, the Court may pronounce judgment against him, or make such an order in relation to the suit as it thinks fit.*

key components that directly affect the length of life of a civil case – the first is data derived from the CFMS-S while the remaining are from the case file research:

1. Disposals along civil suits; rent cases; and rent executions;
2. Number of hearings for notice/summons;
3. Number of times a case is fixed in Court;
4. Number of times that the Presiding Officer (PO) was not available due to leave/training³⁹;
5. Number of applications filed in individual cases⁴⁰;
6. Average time for filing of WS/Objections; and
7. Number of times there is a strike/suspension of work by the Bar Council(s). District-wise data was collected along these six identified stages and this part of the paper will list the key findings based on the average length of time taken ensuring that outliers are discounted against.

5.2.1 Karachi (Central)

The following are key findings about civil matters disposed of in Karachi (Central):

- **Disposal along the civil suits; rent cases and rent executions**

Central	Disposal on Merit	Disposal in Default	Withdrawn/Compromise
Civil Suits	57%	27.5%	15.4%
Rent Cases	51.1%	21.3%	27.6%
Rent Executions	81.4%	14%	4.6%

- **Average number of hearings for service of notices/summons v. maximum number/case**
In the cases in which notices were served to the other side, at least 4 notices are served on average in each matter and the maximum number of times hearings were scheduled for the service of notices/summons in an individual matter is 22.
- **Average number of times a case is fixed in Court v. maximum number/case**
The average number of times a matter was fixed in Court is at least 23 but the highest number in an individual case from 2012 stands as high as 110. This was a case for an injunction in which issues were framed as late as 2016, and was heard by 3 different judges until it was eventually withdrawn in the Target Month. Since 2012, this case continued to be fixed in Court utilizing already scarce resources of the Judiciary, only to be withdrawn 4 years after institution.
- **Average number of times the Presiding Officer was on leave v. maximum number/case**
In the cases where absence/non-availability of the PO was recorded, the average number of times this held true in the data sample was 3, while the maximum number of times the PO was not available in

³⁹ The expression “Presiding Officer” refers to the Judge before whom the case is fixed. These Officers are at times not available either because they are on leave, on training or transfer etc. Regardless of the reasons, once the PO is not available, another date is provided to the litigating parties.

⁴⁰ This data is unfortunately not reliable since in many cases the disposed of list in the Target Month included Applications filed in individual cases.

an individual case stood at 24 in an almost 5-year period. This 2012 case was heard before a total of 3 judges during the 4+ years that this case was pending in the courts.

- **Average number of applications filed v. maximum number/case**
At least 3 Applications were filed in an individual matter, while the maximum number stands at 35 Applications in a 2015 case that was filed for injunction and most of the Applications which were filed were for the extension of status quo. The Judge pronounced the judgment in the Target Month on an *ex parte* basis.
- **Average time for filing of WS/Objections v. maximum number of hearings/case**
The average number of days taken to file a WS/Objections in Karachi (Central) from the time of institution is 201.039 days which comes to about 6.7 months. The WS in a 2012 case before the Rent Controller was filed in 2016, four years after the date of institution and 57 dates were taken by the Defendants for the filing of the same. The Judge in the Court continued to give time for filing of the same rather than exercising his power over barring its filing.
- **Average number of strikes/suspension of work v. maximum number of strikes/case**
Average number of strikes/suspension of work stands at less than 1 but the maximum number recorded in this District in an individual case is 4. This data is unfortunately not very accurate since it generates an average of the numbers of strikes and even though there may be more than 1 strike during a year only an average of less than 1 is generated. Further, this figure only generates the probability of a strike occurring in an average case – further analysis of the data on strikes is dealt with in Section 6.

5.2.2 Karachi (Malir)

- **Disposal along the civil suits; rent cases and rent executions**

Malir	Disposal on Merit	Disposal in Default	Withdrawn/Compromise
Civil Suits	48.7%	36.3%	15.0%
Rent Cases	50%	25%	25%
Rent Executions	100%	0	0

- **Average number of hearings for service of notices/summons v. maximum number/case**
An average of 7 hearings for service of notices/summons were held/issued, while in an individual case a maximum number of 48 hearings was allotted to service of summons.
- **Average number of times a case is fixed in Court v. maximum number/case**
The average number of times a case is fixed in Court is almost 28, while the maximum number of hearings in an individual matter were 67 in a 2012 matter.
- **Average number of times the Presiding Officer was on leave v. maximum number/case**
In cases where the PO was not available, it was observed that an average of 3 hearings were rescheduled due to non-availability of the PO. While the maximum number of times the same was true in an individual matter stood as high as 14 hearings in a civil case filed in 2012 – that is over the four years the case was pending in Court.

- **Average number of applications filed v. maximum number/case**
A minimum of 3 applications were filed on average, while the maximum number of applications stood at 17 in a 2015 case.
- **Average time for filing of WS/Objections v. maximum number of hearings/case**
The average number of days taken to file a WS/Objections in Karachi (Malir) from the time of institution of case is 204.056 days which comes to about 6.8 months. The maximum number of hearings scheduled for filing of WS/Objections was noted to be 45 hearings in a 2013 property case.
- **Average number of strikes/suspension of work v. maximum number of strikes/case**
The number of strikes on average stands at less than 1 but the maximum number of times a case was adjourned due to the issuance of call to strike/suspension of work is 7 times in a 2015 matter.

5.2.3 Sukkur

- **Disposal along the civil suits; rent cases and rent executions**

Sukkur	Disposal on Merit	Disposal in Default	Withdrawn/Compromise
Civil suits	42.9%	17.9%	39.3%
Rent cases	100%	0	0
Rent exec.	100%	0	0

- **Average number of hearings for service of notices/summons v. maximum number/case**
At least 7 hearings on average are scheduled for the service of notices/summons, while in an individual case 32 hearings were scheduled in a case originally filed in 2002 and disposed of in the Target Month.
- **Average number of times a case is fixed in Court v. maximum number/case**
Each case is fixed in Court on an average of about 24 times, while one case from 2011 was fixed a total of 155 times before it was resolved.
- **Average number of times the Presiding Officer was on leave v. maximum number/case**
In the cases where the absence of the PO was recorded it is deduced that on average he/she is unavailable in Court at least 3 times, while in an individual matter instituted in 2011 this number stands at 13 which was eventually dismissed for non-prosecution in the Target Month.
- **Average number of applications filed v. maximum number/case**
More than 3 Applications are filed on average in each of the matters studied in the Target District. A total of 76 Applications were filed in an individual case originally instituted in 2005 of which 45 were by the Plaintiff for adjournment while 25 were filed by the Defendant for the same reason.
- **Average time for filing of WS/Objections v. maximum number of hearings/case**
The average number of days taken to file a WS/Objections in Sukkur from the time of institution is 150.303 days which comes to about 5 months. A maximum of 13 hearings were requested for the filing of the WS in a 2015 case praying for declaration and injunctive relief.

- **Average number of strikes/suspension of work v. maximum number of strikes/case**
Average number of strikes in this District were less than 1 but in an individual case this figure goes up to 10 in a 2011 matter.

5.2.4 Larkana

- **Disposal along the civil suits; rent cases and rent executions**

Larkana	Disposal on Merit	Disposal in Default	Withdrawn/Compromise
Civil suits	64%	13.2%	22.6%
Rent cases	50%	0	50%
Rent exec.	0	0	0

- **Average number of hearings for service of notices/summons v. maximum number/case**
On average at least 7 hearings are assigned to the issuance of summons/notices while in an individual case this figure goes up to 20 in a case instituted in 2013.
- **Average number of times a case is fixed in court v. maximum number/case**
The average number of times a case was fixed in Court is 24 while the maximum number of hearings per case stood as high as 168 in 2013 matter.
- **Average number of times the Presiding Officer was on leave v. maximum number/case**
The average number of times the PO was not available was 3, while the highest number of times the same was true in an individual case was 24 over the 3-year period (2013 – 2016) the case was pending in Court.
- **Average number of applications filed v. maximum number/case**
The average number of applications filed in any one case stood at 3 in this District and the number went as high as 41 in a 2013 matter disposed of in the Target Month.
- **Average time for filing of WS/Objections v. maximum number of hearings/case**
The average number of days taken to file a WS/Objections in Larkana from the time of institution is 118.867 days which comes to about 4 months. The maximum number of dates taken is 17 for filing of WS in a 2015 case. This case however was originally filed in 2010 and was returned under Order VII rule 10 and re-numbered in 2015.
- **Average number of strikes/suspension of work v. maximum number of strikes/case**
In this District, an average of less than 1 strikes/suspension of work was observed but the highest numbers of strikes/suspension of work was observed in a 2013 case which was 10.

6 Reasons for Delays

This section deals with the specific reasons for delays in delivery of justice identified in the earlier sections and provides a procedural context to understand the same in terms of the CPC timelines. The results of the primary data collection from case files was the source of much of the information discussed and analyzed in this Section. As mentioned earlier, timely delivery of justice in these civil matters is collective in nature – the burden is shared by all parties that are involved in the process of delivery of justice. Rather than

apportioning blame, the focus must lie on the nature of the problem in order to determine the cause and propose appropriate and necessary reform. The first part of this Section deals with delays caused due to a failure to follow CPC timelines while the second deals with institutional delays.

6.1 Civil Procedure Code Delays

The CPC prescribes certain timelines for the completion of different stages in the procedure and the responsibility of following the same falls collectively between the different stakeholders. The Survey carried out for this study revealed that almost 34% of all lawyers believe that delays are caused by all the parties involved in some manner or form, while 38% attributed delays to judges. Just over 13% admit that much of the delay is caused by the lawyers and a mere 4.3% admitted to rarely following the timelines as prescribed by the CPC. Though a majority of 48.6% also believe that they follow the CPC timelines '*most of the time*', case file research revealed various stages where these were not followed. Perusal of the Diary Sheets of the case files resulted in the identification of the following 5 stages where timelines were most often disregarded - service of summons/notice; filing of WS/Objections; failure of parties to appear; issues and recording of evidence. This part of the Paper will analyze the information obtained from the case file research, supported by interviews and provisions of the CPC.

6.1.1 Service of Summons

All civil matters filed in Court are regulated by the CPC which lays down details of the procedure of the law with regard to each stage during the life of a case. Order V of the CPC details the issuance and service of summons which is the sending of a notice to the party/parties against whom a claim has been filed, so that they have an opportunity to defend themselves. The issuance of these summons/notices does not have a specific timeline however, Order V, Rule 6 states that a "*day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons.*" The day decided by the court is based on the expectation that the defendant is allowed "*sufficient time to enable him to appear and answer on such day*" – therefore, regulation of this stage is under the discretion of the Court.

The first mode of delivering Summons is through registered post. Failure to respond to this mode results in other methods of delivery like physical identification of the location, pasting of the notice on the physical address or even publishing of the summons in the local newspaper.⁴¹ Delivery and mode of service of summons is also specified in Order V, Rules 9, 10 and 10A and states that the service of summons is the responsibility of the officer in charge, who, under direction of the Court shall "cause the service of summons and return into the Court within fifteen days of issue of summons." The cost of issuing of summons falls on the Plaintiff - failure to pay the cost can be grounds for dismissal of the suit under Order IX, Rule 2.⁴²

⁴¹ It is noted however, that the Diary Sheets do not always record the exact mode of the delivery of Summons so data could unfortunately not be collected along this basis.

⁴² "Order IX, r.2. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs. Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, the Court may make an order that the suit be dismissed:

Furthermore, if the summon returns unserved, the Plaintiff has a period of three months to apply for fresh summons, failure to abide with which could also result in a dismissal of the suit by the Court under Order IX, Rule 5.⁴³

The cases studied in the Target Districts showed that the service of summons stage causes significant delays - the matter continues to be fixed in Court and Orders for repeat notices continue to be passed. It must be noted that after perusal of the Diary Sheets in case files, certain limitations in the recording of notices and the manner in which they are served were noted – Firstly, there is not always a clear indication of the mode of service of summons issued making it difficult to determine whether it was served via publication in a newspaper, or pasting of the notice was ordered on the gates or entrance of the address, or even the number of times the same was ordered. Secondly, the reasons for failure of delivery of summons are not always recorded and repeat notices are issued instead.

In a 2013 property case in Larkana, according to the information available on file, summons were posted to the Defendant’s address twice and newspaper publishing was ordered twice but detailed information regarding the same was not available. At the summons stage, delays were also caused by the Plaintiff due to failure to pay the required fees/cost of serving the summons – and in this sample 2013 case the same resulted in a total of 5 hearings being wasted for this purpose. This case could have been dismissed under Order IX, Rule 2 when costs were not paid rather than being withdrawn in the Target Month. Table H below provides a glimpse into the nature of delays in this case:

TABLE H: SAMPLE CASE LARKANA

District Larkana	
No of Plaintiff	1
No of Defendants	49
Date of Institution	2013
No. of Notices issued	20
Ex parte	Yes

Provided that no such order shall be made although the summons has not been served upon the defendant, if on the day fixed for him to appear and answer he attends in person or by agent when he is allowed to appear by agent.

⁴³ **5. Dismissal of suit where plaintiff, after summons returned unserved, fails for three months to apply for fresh summons.** (1) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of three months from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that –

- a) he has failed after using his best endeavours to discover the residence of the defendant who has not been served, or
- b) such defendant is avoiding service of process, or
- c) there is any other sufficient cause for extending the time, in which case the Court may extend the time for making such application for such period as it thinks fit.

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.”

District Larkana	
Evidence recorded	No
No. of Judges	3
Total no. of times case was fixed in Court	78
No. of strikes	10
No. of Public Holidays	2
Adjournments by Plaintiff	4
Adjournments by	3
PO not available	13
No. of times Plaintiff's advocate was absent	10
No. of times Defendant's advocate was absent	30

A 2014 Civil Revision case from the Karachi (Malir) District came up 48 times for the issuance of summons to four Respondents and was fixed a total of 53 times until it was dismissed in non-prosecution in the Target Month - information on whether an application for restoration was filed was not available at the time. The Diary Sheet recorded that the delay in service was due to the non-payment of fees and also the absence of the counsel for the Plaintiff – of the 53 times the case was fixed in Court, counsel for the Plaintiff was not present for 20 hearings (i.e. 37% of the time the case was fixed) and absence of the counsel for the Respondent stood at 30 hearings (i.e. 56.6% of the time). Since 2014, this case has remained pending, consuming extremely scarce judicial resources - over 90% of the time the case was primarily fixed for issuance of notice/summons as depicted in the Table I:

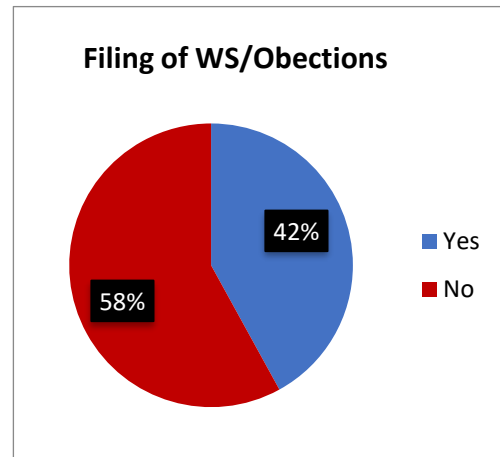
TABLE I: SAMPLE CASE – KARACHI (MALIR)

Civil Revision – Karachi (Malir)	Number	Percentage
Total Number of Times Matter is fixed in Court	53	N/A
Number of times Matter fixed for issuance of Notice for Summons	48	90.5%
Number of times counsel for the Applicant was absent	20	37.7%
Number of times counsel for the Respondent was absent	30	56.6%
Number of strikes/suspension of Work	6	11.3%
Number of Public Holidays	1	1.8%
Presiding Officer was not available	10	18.8%

6.1.2 Filing of Written Statement/Objections

The CPC provides for the filing of a WS under Order VIII, Rule 1 which states that the “Defendant may, if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.”⁴⁴ The proviso for this rule states that ordinarily a period of thirty days is allowed to the Defendant and if the Defendant fails to provide the same within time, rule 10 states that “the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.” This generally means that the Judge has the power to bar the Defendant from filing a WS and proceed with the case of the Plaintiff based on the claims made therein.

PIE CHART IV: FILING OF WS/OBJECTIONS



Filing of the Written Statement/Objections is another stage which results in delays. Not only are matters adjourned for the filing of the same many chances are given for filing of the same. For example, in a 2012 case from Karachi Central, the WS/Objections were filed as late as 2016.

In the cases in which the WS/Objections were successfully filed, the average number of days taken from the time of institution is 173.482 days which comes to about 5.78 months. This accounts for almost 6 months for the filing of the WS/Objections which is about 6 times the length of time allowed by the CPC – a quicker response rate in this regard or stricter penalties may help reduce this delay.

In the cases studied, only 42% documented the recording of a WS/Objections filed while the prevailing majority of 58% documented no response on the part of the Defendants/Respondents. This data is limited by the fact that if the numbers of Defendants/Respondents in an individual case is high and only some file a WS/Objections then the case proceeds without their response and the Court can proceed ex parte against those who fail to appear in Court, while those who have filed their replies are excluded from the ex parte proceedings. Further, the Court can bar a Defendant/Respondent from filing a WS/Objections when opportunities given by the Court have been repeatedly ignored.

6.1.3 Failure of Parties to Appear

The Appearance / Non-Appearance of parties in Court is regulated by Order IX of the CPC - Rule 3 of this Order provides that where neither party appears, the suit may be dismissed by the Court due to non-prosecution.⁴⁵ This means that if the party filing the suit fails to appear at the scheduled day in Court, the Judge may exercise his discretion and dismiss the case for non-prosecution. Following such a dismissal, the Plaintiff has the option of restoring the suit through an application, or filing afresh under rule 4. However,

⁴⁴ **1. Written statement.** The defendant shall at or before the first hearing or within such time as the Court may permit, present a written statement of his defence:

Provided that the period allowed for filing the written statement shall not ordinarily exceed [thirty] days.

Provided further that not more than two adjournments shall be granted for presenting the written statement.”

⁴⁵ **3. Where neither party appears, suit to be dismissed.** Where neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed.”

both these remedies are dependent on the Plaintiff satisfying the Court that there was “*sufficient cause*” for his failure to pay due fees, or non-appearance when the case was called in Court.

Failure of the Defendant to appear despite the serving of summons duly served allows the Court to proceed against the Defendant *ex parte* and pass a decree without the recording of the Defendant’s evidence. The Defendant has the right to apply for the setting aside of an *ex parte* decree if he satisfies the Court that he was prevented from responding due to sufficient cause under Order IX, Rule 13.⁴⁶

21.9% of the Target Cases were dismissed in non-prosecution in the Target Month – details from across the Target Districts is provided in the Pie Chart II referenced earlier. This means that almost 22 of 100 cases filed are dismissed due to failure of the parties to appear; this indicates some of the trouble that litigants face when their case is not a priority for their lawyer. Hasan, a litigant who had a property dispute pending in the Malir Courts, states that “*many times when my case used to be fixed it would be a strike or the Judge would not be available, and even when the case was fixed at times the lawyer would not show up. The Bar should regulate the lawyers better – is that not their mandate?*”⁴⁷ The Survey recording the perception of lawyers revealed that a majority of 52.9% of litigants complain of delays ‘*all the time*’ while 40% chose the option ‘*most of the time*’. Therefore, it is clear that not only are the litigants suffering delays in the delivery of justice but the lawyers are cognizant of the same.

Cases may also be filed with malicious intent to vex the other party, or to apply unlawful legal pressure.⁴⁸ Though it is rare that the Court observes this in their Orders but a study of cases at times provides a window into the intent behind filing, especially if the Plaintiff’s advocate is repeatedly absent from the proceedings, indicating a lack of interest in the litigation. For example, a case filed in Sukkur in 2010 was appealed against in 2012, and was fixed in Court 117 times only to be dismissed in non-prosecution in the Target Month - this case is indicative of the loss of interest by the appellants in their Appeal, with their advocate being absent without intimation to the Court a total of 53 times and 3 applications for adjournment which were allowed. Another example is of a case filed in Larkana for Declaration and Injunction in 2016 which was fixed in Court a total of 7 times only to be dismissed in non-prosecution in the Target Month. It was evident in this case that once filed the Plaintiff lost interest considering that the advocate never appeared before

⁴⁶ “**13. Setting aside decree ex-parte against defendant.** (1) In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

Provided further that no decree passed ex parte shall be set aside merely on the ground of any irregularity in the service of summons, if the Court is satisfied, for reason to be recorded, that the defendant had knowledge of the date of hearing in sufficient time to appear on that date and answer the claim.

The provisions of section 5 of the Limitation Act, 1908 (IX of 1908), shall apply to applications under sub-rule (1).”

⁴⁷ Hasan, Q. Interview Karachi, February 2017.

⁴⁸ Advocate Bhatti from Sukkur states that the longest case in his experience has been a property dispute between father and son filed in 1966 was finally disposed of in 2016.

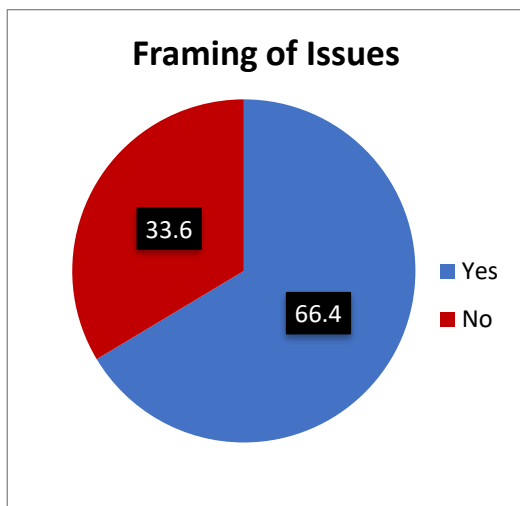
the Court on any of the hearings. Regardless of the intent of parties, it is painful to observe that cases which have been pending in Court for a long time rather than reaching their just end are dismissed in non-prosecution.⁴⁹

6.1.4 Issues and the Recording of Evidence

The settlement of issues is regulated by Order XIV of the CPC. Rule 1 states that the issues in dispute between the parties can be framed by the Court on the first date of hearing of the suit, as long as the Defendant has provided his defence. This implies that as soon as the defence is submitted, issues can be framed. Where issues are concerned with both questions of law and fact, the Court under rule 2 is empowered to decide those concerning the law first if the Court believes that they have the potential of resolving the case and the questions of fact afterwards, as necessary.

Issues were determined in only about 27% of the cases under study within the Target Districts.⁵⁰ Once the issues are framed, the summoning and attendance of witnesses should be ordered under Order XVI, wherein pursuant to Rule 1 the parties are required to present to the Court a certificate of readiness to produce evidence, along with a list of witnesses. This must be completed no later than seven days after the settlement of issues. The time frame for the service of summons to the witnesses under this Order is stated under Rule 9 to be “reasonable time for preparation and traveling to the place at which his attendance is required.”

PIE CHART V: FRAMING OF ISSUES



Pie Chart V identifies those cases in which evidence for the Plaintiff was recorded after issues were framed.

In the cases where issues were framed, it was calculated that across the Target Districts this process took an average of 278 days. This comes to a little over 9 months. The issues stage is one of the most important stages during the life of the case where the veracity of the claims and questions of law, or of fact, are determined. In the cases in which issues were framed, the average number of hearings scheduled for the recording of evidence of the Plaintiff stood at more than four hearings, while that for the Defendant more than 3 hearings. Once issues were framed, the recording of the evidence of the Defendants/Respondents occurred in all the cases.

However, it is shocking to learn that only in 13.2% of cases was the evidence for both sides recorded. In an

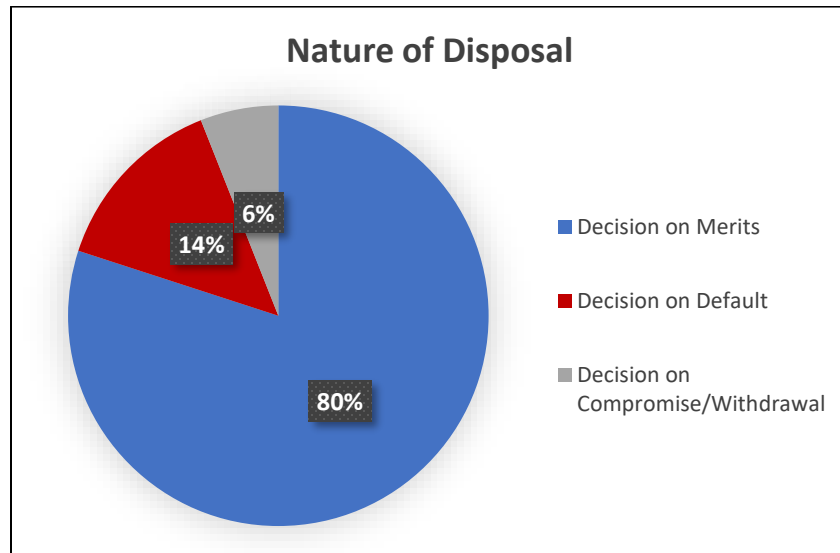
⁴⁹ It is assumed, albeit inaccurately, that if counsel for any of the parties is absent without informing the Court, it is the parties who have lost interest in the case. This may not always be the case especially since lawyers are the ones who know when the case is fixed in Court and if they fail to inform their clients it is their client who suffers. The CFMS-S allows litigants to check the dates of their cases but awareness of this function of the CFMS-S is very low. Awareness drives need to be undertaken so that members of society have access to information.

⁵⁰ Point to note is that issues are not framed in applications filed under the CPC.

interview, Advocate Kumar⁵¹ stated that once issues are framed, applications for amendment of the same are filed and that takes another 5-6 months before the recording of evidence can commence. It is the evidence stage, in his experience, that causes the most delay – on average about 3 years can be spent here.

Pie chart VI below provides a view into the nature of disposal in cases in which evidence for both sides was recorded:

PIE CHART VI: NATURE OF DISPOSAL



In the Target Cases studied, once the evidence for both sides was recorded, decisions based on merit were passed in 80% of the cases and only 14% of the cases were dismissed in non-prosecution. This percentage for dismissal due to non-prosecution is important to note because even though these cases have passed most of the milestones in civil procedure they are still unable to reach final completion on merits. In these cases, Judges should pass judgment on the basis of information available on file, rather than dismiss in non-prosecution because if a restoration application is filed and allowed then the case shall continue as before. Advocate Mustafa from Larkana stated that an Order passed on dismissal in non-prosecution, or on grounds of technicality, results in lawyers either filing restoration applications or filing the suit afresh, which also results in delays.⁵² Finally 6% of such cases saw resolution of disputes by way of compromise.

6.2 Institutional Delays

This part of the study deals with the delays on the part of the various stakeholders within the justice system. The first section deals with the judicial strength in Sindh and in the Target Districts and details their disposal and pendency in the Target Month; the second section discusses the culture of filing applications in individual cases rather than arguing on the merits of the case concerned while the third section deals specifically with delays caused by the advocates in individual cases due to absenteeism. The fourth section

⁵¹ Kumar P., Interview Sukkur February 2017.

⁵² Mustafa R, Interview Larkana, February 2017.

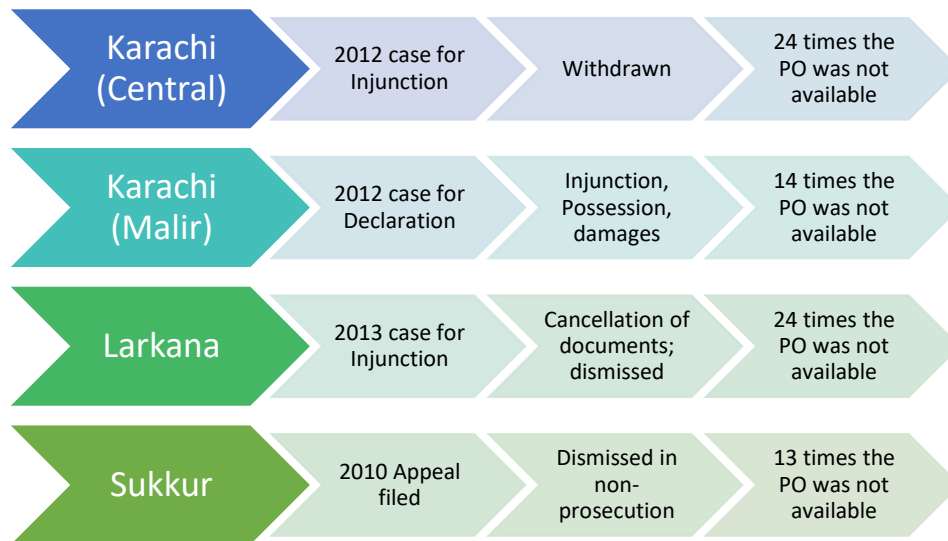
is concerned with strikes and suspension of work called by the different Bar Associations. And the final section is concerned with other institutional matters which have an impact on the delays studied.

6.2.1 Judicial Strength in Sindh – District-Wise

Many lawyers interviewed across the Target Districts were of the opinion that one of the main causes for delay in the delivery of justice is the inadequate number of judges who are to adjudicate upon disputes for an ever-increasing population. Noting this, as has been discussed in the Key Findings Section of this study, data regarding availability and non-availability of judicial officers was also collected in the Target Districts. This non-availability can be attributed to a number of reasons - transfers, trainings, leave, etc. As a result, the Court is colloquially declared ‘vacant’ until vacancies are filled, or Judges return to their posting. However, cases continue to be fixed and in the absence of a PO on a date of hearing, parties approach the ministerial officer of the Court authorized and receive a written date for the next hearing in accordance with Order XVI, Rule 5 of the CPC.⁵³

In cases where the PO was not available, an average of 3.39 was observed which means that in cases where non-availability was documented the PO was likely to not be present in Court for around just over 3 hearings. The highest number of absences of the PO on a district-wise basis were noted as follows:

FLOW CHART B: HIGHEST NUMBER OF ABSENCES OF THE PO ON A DISTRICT-WISE BASIS



The tragic failure of the Government to conduct a timely census in 2008 has resulted in only estimation of the current numbers of population as discussed earlier. Internationally, the judge to population ratio preferred is depicted in the following table across countries, and Pakistan’s judge to population ratio is near the ratio in India while elsewhere the ratio is much higher in comparison:

⁵³ “5. Time, place and purpose of attendance to be specified in summons. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.”

TABLE J: INTERNATIONAL JUDGE-TO-POPULATION RATIO

S. No.	Country	Ratio
1.	India	1:55,991 ⁵⁴
2.	England and Wales	1:27,778
3.	Netherlands	1:6,579
4.	Germany	1:4,115
5.	Czech Republic	1:3,436
6.	France	1:9,346 ⁵⁵

The Table J above shows a comparative view of the judge-to-population ratios in other countries. The only way that this ratio for Pakistan, in view of the international perspective, can improve is if the number of judges increase in proportion to the population. The Survey with lawyers revealed that a majority of 83.8% of them recognized the numbers of judges need to increase for justice to be done in a timely manner. Of the total judges in the province, 617 are working in the District Judiciary and 105 of these were in the districts under study. The following Table identifies this on a district-wise basis as well as jurisdiction of each Judge in the Target Month⁵⁶:

TABLE K: JUDICIAL STRENGTH IN SINDH

S. No.	District	District & Sessions Judges	Additional District/Sessions Judges	Senior Civil Judges/Assistant Sessions Judges	Civil Judges & Judicial Magistrates	Total
1.	Karachi (Central)	1	7	12	18	38
2.	Karachi (Malir)	1	5	4	13	23
3.	Karachi (South)	1	12	15	27	55
4.	Karachi (West)	1	12	17	25	55
5.	Karachi (East)	1	14	13	33	61
6.	Sukkur	1	6	5	8	20
7.	Khairpur	1	6	5	18	30
8.	Ghotki	1	7	3	8	19
9.	Nausheroferoze	1	5	6	11	23
10.	Hyderabad	1	9	8	13	31
11.	Dadu	1	6	5	10	22
12.	Thatta	1	3	2	9	15
13.	Badin	1	3	3	7	14
14.	Matari	1	2	2	7	12
15.	Jamshoro	1	3	3	7	14

⁵⁴ <http://www.deccanherald.com/content/562827/judge-population-ratio-stands-1810.html>

⁵⁵ Ratios for England and Wales; Netherlands; Germany; Czech Republic and France have been derived from information available online - http://www.aji.ie/judiciary/who_are_the_judiciary, accessed 09.03.2017

⁵⁶ This data was deduced from the October Monthly Reports of District Judiciary available on the CFMS-S.

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DELAYS IN THE DELIVERY OF JUSTICE IN CIVIL CASES

S. No.	District	District & Sessions Judges	Additional District/Sessions Judges	Senior Civil Judges/Assistant Sessions Judges	Civil Judges & Judicial Magistrates	Total
16.	Tando Muhammad Khan	1	2	2	5	10
17.	Tando Allah Yaar	1	2	2	6	11
18.	Mirpurkhas	1	2	4	8	15
19.	Sanghar	1	6	5	9	21
20.	Umerkot	1	2	2	7	12
21.	Tharparkar	1	2	2	6	11
22.	Larkana	1	8	5	10	24
23.	Shikarpur	1	5	2	12	20
24.	Jacobabad	1	2	2	5	10
25.	Kashmore	1	3	2	6	12
26.	Kambar Shahdat Kot	1	4	3	9	17
27.	Shaheed Benazirabad	1	6	3	12	22
					Total Judges	617

In order to understand this from a holistic perspective, the vacancies of Courts were recorded during the Target Month and the following four parts of this section provide an overview of the same as well as the case disposal/pendency in the Target Districts.

Larkana

There are a total of 24 sanctioned courts – 4 in Rato Dero; 2 in Dokri and the rest in Larkana. The total pendency for the Target Month stands at 2,242 for a total strength of 24 judges where currently 5 Courts are vacant.⁵⁷

TABLE L: JUDICIAL STRENGTH IN LARKANA IN TARGET MONTH

S. No.	Court Name	Location	Status	Disposal in October 2016	Pendency in October 2016
1.	DJ	Larkana	Occupied	201	185
2.	ADJ I	Larkana	Vacant	0	5
3.	ADJ II	Larkana	Vacant	0	4
4.	ADJ III	Larkana	Occupied	47	254
5.	ADJ IV	Larkana	Vacant	0	3
6.	ADJ V	Larkana	Occupied	23	271
7.	ADJ VI	Larkana	Occupied	45	243
8.	ADJ VII	Larkana	Vacant	0	6
9.	ADJ	Rato Dero	Occupied	28	198
10.	SCJ/ASJ I	Larkana	Vacant	0	1
11.	SCJ/ASJ II	Larkana	Occupied	38	242
12.	SCJ/ASJ III	Larkana	Occupied	22	113

⁵⁷ This data was deduced from the October Monthly Reports of District Judiciary available on the CFMS-S.

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Delays in the Delivery of Justice in Civil Cases

S. No.	Court Name	Location	Status	Disposal in October 2016	Pendency in October 2016
13.	SCJ/ASJ IV	Larkana	Occupied	15	168
14.	SCJ/ASJ I	Rato Dero	Occupied	0	0
15.	CJ JM I	Larkana	Occupied	10	14
16.	CJ JM II	Larkana	Occupied	27	54
17.	CJ JM III	Larkana	Occupied	21	58
18.	CJ JM IV	Larkana	Occupied	5	13
19.	CJ JM V	Larkana	Occupied	30	62
20.	CJ JM (Family Court)	Larkana	Occupied	51	179
21.	CJ JM I	Rato Dero	Occupied	10	54
22.	CJ JM II	Rato Dero	Occupied	20	63
23.	CJ JM I	Dokri	Occupied	11	41
24.	CJ JM II	Dokri	Occupied	10	11
	Total disposal across all types of cases			614	2,242

Sukkur

There are a total of 20 sanctioned courts – 4 in Pano Aqil; 3 in Rohri and the rest in Sukkur. The total pendency stands at 5,541 for a total strength of 20 judges where 1 Court was vacant in the Target Month.⁵⁸

TABLE M: JUDICIAL STRENGTH IN SUKKUR IN TARGET MONTH

S. No.	Court Name	Location	Status	Disposal in October 2016	Pendency in October 2016
1.	DJ	Sukkur	Occupied	121	552
2.	ADJ I	Sukkur	Occupied	44	603
3.	ADJ II	Sukkur	Occupied	49	629
4.	ADJ III	Sukkur	Occupied	31	425
5.	ADJ IV	Sukkur Hudood	Occupied	96	221
6.	ADJ V	Sukkur	Occupied	101	402
7.	ADJ 1	Pano Aqil	Occupied	68	513
8.	SCJ/ASJ I	Sukkur	Occupied	43	786
9.	SCJ/ASJ I	Rohri	Vacant	0	0
10.	SCJ/ASJ II	Sukkur	Occupied	28	448
11.	SCJ/ASJ III	Sukkur	Occupied	0	0
12.	SCJ/ASJ I	Pano Aqil	Occupied	0	0
13.	CJ JM I	Sukkur	Occupied	27	249
14.	CJ JM II	Sukkur	Occupied	46	76
15.	CJ JM III	Sukkur	Occupied	38	70
16.	CJ JM I	Rohri	Occupied	13	75

⁵⁸ This data was deduced from the October Reports of District Judiciary available on the CFMS-S.

Legal Aid Society

DELAYS IN THE DELIVERY OF JUSTICE IN CIVIL CASES

S. No.	Court Name	Location	Status	Disposal in October 2016	Pendency in October 2016
17.	CJ JM II	Rohri	Occupied	22	156
18.	CJ JM (Family Court)	Sukkur	Occupied	30	91
19.	CJ JM I	Pano Aqil	Occupied	25	55
20.	CJ JM II	Pano Aqil	Occupied	25	90
	Total Disposal across all types of cases			807	5541

Karachi (Central)

There are a total of 38 sanctioned Courts out of which only two were vacant in the Target Month, where the total pendency stands at 10,885.

TABLE N: JUDICIAL STRENGTH IN KARACHI (CENTRAL) IN TARGET MONTH

S. No.	Court Name	Location	Status	Disposal in October 2016	Pendency in October 2016
1.	DJ	Karachi	Vacant	71	252
2.	ADJ I	Karachi	Occupied	65	640
3.	ADJ II	Karachi	Occupied	56	444
4.	ADJ III	Karachi	Occupied	61	505
5.	ADJ IV	Karachi	Occupied	56	315
6.	ADJ V	Karachi	Occupied	76	505
7.	ADJ VI	Karachi	Occupied	82	314
8.	ADJ VII	Karachi	Occupied	62	346
9.	SCJ/ASJ I	Karachi	Occupied	16	382
10.	SCJ/ASJ II	Karachi	Occupied	56	348
11.	SCJ/ASJ III	Karachi	Occupied	48	401
12.	SCJ/ASJ IV	Karachi	Occupied	12	355
13.	SCJ/ASJ V	Karachi	Occupied	31	430
14.	SCJ/ASJ VI	Karachi	Occupied	21	192
15.	SCJ/ASJ VII	Karachi	Occupied	20	280
16.	SCJ/ASJ VIII	Karachi	Occupied	23	268
17.	SCJ/ASJ IX	Karachi	Occupied	14	221
18.	SCJ/ASJ X	Karachi	Occupied	23	287
19.	SCJ/ASJ XI	Karachi	Occupied	4	275
20.	SCJ/ASJ XII	Karachi	Occupied	25	213
21.	CJ JM I	Karachi	Occupied	53	215
22.	CJ JM II	Karachi	Occupied	42	245
23.	CJ JM III	Karachi	Occupied	43	240
24.	CJ JM IV	Karachi	Occupied	29	237
25.	CJ JM V	Karachi	Occupied	1	4
26.	CJ JM VI	Karachi	Occupied	29	208

S. No.	Court Name	Location	Status	Disposal in October 2016	Pendency in October 2016
27.	CJ JM VII	Karachi	Occupied	76	226
28.	CJ JM VIII	Karachi	Occupied	23	224
29.	CJ JM IX	Karachi	Occupied	33	234
30.	CJ JM X	Karachi	Occupied	35	216
31.	CJ JM XI	Karachi	Vacant	19	227
32.	CJ JM XII	Karachi	Occupied	35	215
33.	CJ JM XIII	Karachi	Occupied	17	187
34.	CJ JM XIV	Karachi	Occupied	63	349
35.	CJ JM XV	Karachi	Occupied	4	225
36.	CJ JM XVI	Karachi	Occupied	9	238
37.	CJ JM XVII	Karachi	Occupied	12	206
38.	CJ JM XVIII	Karachi	Occupied	8	216
	Total disposal across all types of cases			1353	10885

Karachi (Malir)

There are a total of 23 sanctioned Courts of which only one was vacant during the Target Month, and total pendency stood at 6,071. It is important to note that the Malir Court is a relatively new Court and this District was introduced in 1994.

TABLE O: JUDICIAL STRENGTH IN KARACHI (MALIR) IN TARGET MONTH

S. No.	Court Name	Location	Status	Disposal in October 2016	Pendency in October 2016
1.	DJ	Karachi Malir	Occupied	221	309
2.	ADJ I	Karachi Malir	Occupied	79	342
3.	ADJ II	Karachi Malir	Occupied	81	374
4.	ADJ III	Karachi Malir	Occupied	64	330
5.	ADJ IV	Karachi Malir	Occupied	85	398
6.	ADJ V	Karachi Malir	Occupied	72	373
7.	SCJ/ASJ I	Karachi Malir	Occupied	63	745
8.	SCJ/ASJ II	Karachi Malir	Occupied	52	495
9.	SCJ/ASJ III	Karachi Malir	Occupied	0	0
10.	SCJ/ASJ IV	Karachi Malir	Vacant	0	0
11.	CJ JM I	Karachi Malir	Occupied	46	245
12.	CJ JM II	Karachi Malir	Occupied	49	199
13.	CJ JM III	Karachi Malir	Occupied	24	167
14.	CJ JM IV	Karachi Malir	Occupied	18	221
15.	CJ JM V	Karachi Malir	Occupied	34	204
16.	CJ JM VI	Karachi Malir	Occupied	17	221
17.	CJ JM VII	Karachi Malir	Occupied	46	176
18.	CJ JM VIII	Karachi Malir	Occupied	52	171
19.	CJ JM IX	Karachi Malir	Occupied	35	199

S. No.	Court Name	Location	Status	Disposal in October 2016	Pendency in October 2016
20.	CJ JM X	Karachi Malir	Occupied	25	155
21.	CJ JM XI	Karachi Malir	Occupied	13	202
22.	CJ JM XII	Karachi Malir	Occupied	11	171
23.	CJ JM (Family Court)	Karachi Malir	Occupied	48	374
	Total disposal across all types of cases			1135	6071

6.2.2 Applications

The CPC has a total of 50 Orders under which various Applications can be filed. These Orders provide guidance on all aspects of a civil matter, from the parties to a suit, to the service of summons, to requirements of a Complaint, Written Statement, Appearance and lack thereof of the Parties to the Suit, Issues, Evidence Recording, Adjournments, Judgment and Decrees, Execution, Withdrawal of Suit, Appeals, etc. However, some Orders and Rules are used more frequently in civil suits, such as an application for injunction under Order XXXIX, Rules. 1 & 2; a rejection of Complaint under Order VII, Rule. 11; Order I, Rule 10 for inclusion of necessary and proper party; and finally, applications for adjournment under Order XVII, Rule. 11. Though these applications are filed by the counsel on behalf of the litigants, responsibility of allowing or rejecting the same falls on the shoulders of the Judges.

The CPC is a treasure trove of different types of applications, and this arsenal is often misused by lawyers who file several unnecessary applications just to get more time for their clients. Advocate Kumar, a lawyer with over 10 years of experience, said the filing of applications also depends on the strength of the case – if the case is weak, a large number of applications are filed to deliberately delay the proceedings. He also said that on average a single application can take up to 6 months to be heard and decided and therefore a culture of delay continues to develop.⁵⁹ This position was further fortified by Advocate Rajput who has over 20 years of experience – *“the most time is wasted on interlocutory applications, weak parties file more applications for orders, revisions are filed and cases transferred from one Court to another.”*⁶⁰ Advocate Bhatti also explained that arguments in the case filed are not a priority, rather, the focus in Courts is on the applications filed.⁶¹ An Advocate from Larkana, Francis stated that in his experience an average of 20 applications are filed in each case. He further added that once arguments on maintainability of a case are made under Order 7 rule 11 are made, the Order is challenged in the High Court which means that the case in District Court is delayed. The High Court can take up to 2 years to decide the review/revision because of the burden of cases, which means that though the case may be fixed but it is rarely heard.⁶²

Adjournment applications are regulated by Order XVI of the CPC which allows the Court discretion to allow the same if *“sufficient cause”* is shown under Rule 1. Order XVI also allows the Court the power to impose costs on the parties if it thinks fit. A common cause of failure of lawyers to appear in the District Court for

⁵⁹ Kumar P., Sukkur, February 2017.

⁶⁰ Rajput, S. R., Interview Sukkur, February 2017.

⁶¹ Bhatti A. A., Sukkur, Interview February 2017.

⁶² Francis A. B., Interview Larkana February 2017.

a hearing is because he/she has a case pending in the High Court – Khoso, an advocate with over 17 years of experience states that this is one of the reasons that he only takes District Court cases, if he had 1 case scheduled in the High Court then many of his District Court cases would have to be adjourned.⁶³ Advocate Kumar also argued that “*only those adjournment applications should be allowed which are based on reasonable grounds*” because in most cases the litigant does not want his/her case to be adjourned. Advocate Bhatti proposed that “*Judges should proceed with the matter before them and accommodate the lawyers less. Also, limits should also be placed on the number of adjournments sought by advocates, like in Punjab which allows only 2.*” With reference to the NJP 2009, Advocate Francis stated that PO’s are now less inclined to allow adjournments in comparison to before.⁶⁴ It is important to note that though adjournments are recorded in the Court Diary, the reasons for these adjournments are not always documented and therefore the same cannot be analyzed in much detail.

For example, in a First Class Civil Suit for Damages filed before an SCJ in Sukkur, the counsel for the applicant filed 45 Applications for adjournment while the counsel for the Defendant filed 25 such applications, and the matter had also been stayed by the High Court until disposal of the Civil Revision. It came up in Court a total of 155 times from 2011 until it was finally disposed of in October 2016. However, during the time the case was pending in Court no evidence was recorded, the case came up before at least 3 judges, it was delayed in account of 7 strikes, 2 public holidays and once because the Court was declared to be vacant.

In a case from 2010 in Sukkur, even though Advocates of the Respondents were informed of the pending appeal there was no submission of objections or appearance of the parties. The appeal was instituted in 2012 and for four years it was fixed regularly even though the only activity that took place was the grant of adjournment applications and recording of absences of counsel – the case was adjourned 19 times “*in the interest of justice*” when the counsel failed to appear. Finally, in the Target Month the matter was dismissed in non-prosecution. Further, since 2010, the case was transferred four times to different Courts - from ADJ V to ADJ III on 13.7.2011; from ADJ III to ADJ I on 13.12.2011; from ADJ 1 to ADJ III again. 24 Court motion notices were served and Advocates for Respondents informed accordingly.

The recording of evidence is regulated by clause (2) of Rule 1 of Order XVI which states that once the recording of evidence has begun, it must continue daily unless the Court finds that adjournment of the hearing to another day is necessary. In such cases the reasons must be recorded. However, this is not often the case – Advocate Kumar stated that in reality even if the issues are framed, an attempt to delay the process would follow with an application being filed to amend the issues, thereby automatically increasing the length of the case in Court. Rule 2 of the same Order empowers the Court to dismiss the suit if the parties fail to appear on the date fixed by the Court following the request for the adjournment.

Interviews with Court Staff in Larkana further informed the research in this study. In their experience, property cases take the longest to reach resolution. This is because once the judgment has been passed, applications are filed to include other “*necessary and proper*” parties under Order X, Rule 1. In many cases, these necessary and proper parties are the heirs of the original parties who have since expired. The

⁶³ Khoso S. H., Interview Sukkur, February 2017.

⁶⁴ Francis A. B., Interview Larkana February 2017.

interview gave the example of a 1986 case property case that has recently been re-opened due to a failure to include all necessary and proper parties. A reform suggestion was proposed to place a time on the cases for their re-opening.

6.2.3 Absenteeism on the Part of Counsel

During assessment of the data collected from the case files in Karachi (Central), it was noted that absences of counsel were recorded in the Diary Sheets – these appeared to be different from the applications for adjournment which count as an intimation to the Court that a counsel will not appear at the appointed day. Therefore, the case file research in the remaining three Target Districts was adapted to include this absenteeism.

In the three districts where this aspect of the data was collected and in which the counsel was not present in Court a high average of 6 hearings was recorded for the counsel for the Plaintiff/Applicant/Appellant, while the same for the Defendant/Respondents is at least 7.7 times. So, assuming that a case comes up on the roster at least once a month, then each case has the opportunity of being heard at least 12 times a year, of which counsels are not present for both sides for at least half of the scheduled hearings.

Advocate Solangi, a Sukkur based legal practitioner with over 12 years of experience stated that the system can only be improved if the lawyers are “forced to proceed with their cases” and this power lies with the Judge. It is unfortunate that the state of legal ethics is this low – rather than the counsel wanting to proceed with the case and help attain justice for the litigant (as well as to the fees charged), lawyers consider this responsibility to fall within the domain of the Judiciary.

In a 2012 case in the Karachi Malir Court, the counsel for the Defendant was absent 34 times, while the Plaintiff was absent only once. The case was fixed a total of 67 times in Court. In a 2011 matter in Sukkur, of the 117 times that the case was fixed in Court, the Counsel for the Respondent was absent 59 times while that for the Appellant was absent 53 times. Perusal of the file for a case filed in Larkana in 2013 for declaration, possession, recovery of money and mesne profits showed that a revision application was instituted in the Court of the 2nd Sr.CJ on 19.8.2016 which was withdrawn approximately two months later. In this case, counsel for the Plaintiff was absent for 33 hearings during the lifetime of the case which consisted of a total of 76 hearings.

In another Larkana matter filed in 2013, the case came up for hearing 103 times without the recording of evidence. During the life of this case there were 8 strikes, the PO was not available 20 times and the case was subsequently withdrawn by the parties. Further, the counsel for the Plaintiff was not present 30 times and counsel for the Defendant was absent 43 times. There were 8 Defendants out of which three were issued notices 11 times. During the three and a half years that this case was pending, the Plaintiff changed 4 lawyers with a failed attempt to have the case transferred to the High Court in November 2015. The problem with filing an application for the transfer of a suit to the High Court is that the case keeps getting fixed in the District Court as well and is an attempt to extend the life of a weak case.

6.2.4 Strikes and Suspension of Work

The culture of strikes and suspension of work is reported by a Karachi Bar Association (“KBA”) member Advocate Khalid Marwat⁶⁵ to be a phenomenon which developed in the last ten years from the time of the Lawyers Movement in 2007.⁶⁶ Lawyers interviewed from the different Target Districts also re-affirmed this view. The general reasons for such strike or suspension of works can be categorized in the following manner:

1. the natural or untimely deaths of lawyers or judges/former judges;
2. national and international political reasons/events; and
3. kidnapping or attack on a legal community.

However, research revealed that surprisingly there is no central record of the numbers of strikes and suspension of work and the reasons for the same on a provincial or district level. All members of Bar Associations that were interviewed indicated that there were some official notifications, however, the exact number of times the Courts were not allowed to work by the Bars is only an estimation.⁶⁷ Access to the KBA records by Advocate Marwat revealed that a strike/suspension of work was called 9 times during the year 2016 and the Table below details the strikes dates with reasons:

TABLE P: STRIKES IN 2016

S. No.	Date	Reason		
1.	21.01.2016	Condemnation of murderous attack on innocent students and Professors at the Bacha Khan University Charsadda	All day suspension	KBA
2.	03.02.2016	Oath Taking Ceremony of newly elected body of KBA	All day suspension	KBA
3.	22.02.2016	Death of Senior Advocate	All day suspension	SBC ⁶⁸
4.	25.03.2016	Death of Senior Advocate	All day suspension	KBA
5.	27.06.2016	Kidnapping of CJ son	All day suspension	PBC
6.	10.08.2016 & 11.08.2016	Target killing of President Bar Association Balochistan and other advocate at bomb blast at Civil Hospital, Quetta	2 days suspension	PBC
7.	26.10.2016	Misbehaviour of judges, pendency of cases in Supreme Judicial Council, missing persons, etc. etc.	All day suspension	SBC
8.	03.11.2016	Black Day against illegal actions taken by Pervez Musharraf on 03.11.2007	All day suspension	
9.	15.12.2016	Against lodging of false FIR against and arrest of Reader if the SHC	All day suspension	SBC

⁶⁵ Marwat K., General Secretary Karachi Bar, Interview February 2017.

⁶⁶ This movement began after the unceremonious and unconstitutional dismissal of the then Chief Justice of Pakistan Mr. Muhammad Iftikhar Chaudhry by the Military Government in 2007. Protests against this dismissal rang as a rallying cry for lawyers as well and law students in various Universities across the country. One of the forms of protest was suspension of all Court work until Mr. Chaudhry was reinstated.

⁶⁷ It was suggested by a KBA member that one should add 3-4 strikes above the official numbers to get an idea of the number of times work was suspended.

⁶⁸ Sindh Bar Council

It is interesting to note that through these strike resolutions, the Bar Associations request the District Judge to suspend all judicial work and not pass any “*adverse orders against the parties*” and also request the District Judge to direct the subordinate Courts to follow suit. Therefore, the Bar Associations act as a pressure group. This was also observed in the 2015 Study of Punjab and reform initiatives must be introduced across the country to regulate this injustice.

There have been reports of lawyers assaulting judges and the judges declared a strike in protest on 26 October, 2016; the question is whether strikes are the answer to the problems faced by lawyers, judges and litigants? However, the efficacy and fairness of this form of protest needs to be assessed because one day of suspended work in the Courts affects millions of citizens. The effect of these strikes needs to be explored in much greater detail but fall outside the scope of this study. Advocate Rajput claimed that in 2016 about 14-16 strikes were observed in Sukkur – this implies that at least 3 weeks of Court time was spent with work suspended. An earlier report by the Legal Aid Society studied reasons for adjournments in criminal trials in Magistrate’s Courts in four districts of Karachi. Data collected between May 2013 and March 2016 indicated that on any given date of hearing, there was a 58% chance that the matter would be adjourned, and of this number, 12% of the time, the cause for an adjournment was a strike by a bar association.⁶⁹

TABLE Q: STRIKES IN 2016 (2)

S. No.	Strike Date	Reason	Bar
1.	07.01.2016	Unrecorded	Sukkur Bar
2.	16.01.2016	Unrecorded	Sukkur Bar
3.	09.05.2016	Unrecorded	Sukkur Bar
4.	12.05.2016	Unrecorded	SBC
5.	25.06.2016	Unrecorded	PBC
6.	11.08.2016	Unrecorded	PBC
7.	23.08.2016	Unrecorded	PBC
8.	03.09.2016	PBC against Mardan attack	PBC
9.	16.10.2016	Unrecorded	PBC
10.	26.10.2016	PBC against Quetta	PBC

Source: Case file research

There does not appear to be any specific criteria or analysis in determining whether a cause is worth suspension of work and it may be necessary to change the nature of this protest. Rather than suspending Court work, more effective ways of protesting a particular issue could be explored and adopted by the Bars.

⁶⁹ Mirza, A. A., Delay in Trial – Empirical Evidence from the Magistrate’s Court in Karachi, Legal Aid Society, 2016, p.22.

The highest number of strikes/suspension of works were found in case file research in two cases in which they were equaling 10 in each. The first case is a 2011 matter for injunction, possession and pre-emption in Sukkur while the second is a 2013 Larkana case which was for declaration, partition, mesne profits and cancellation of documents.

Advocate Khalid stated that due to automation, the Bar Councils send a message informing all advocates of the District that work is to be suspended on the following day.⁷⁰ The research team for the instant study was already recording the total numbers of strikes but in Sukkur District they began recording the dates on which work was suspended when it was discovered that there was no central official database doing so. Court Staff interviewed stated that they record the suspension of work and strikes in Court Diaries but there was no central record where they document strikes and the reasons for the same.

Secondary data i.e. the newspaper reports reveal that there have already been 6 strikes in the first three months of this year.

S. No.	Strike Date	Reason
1.	08.01.2017	Death of Senior Advocate Mr. Abdul Hafeez Lakho work was suspended in Court
2.	16.02.2017	Peshawar Attack
3.	21.02.2017	Terrorist Attack on Charsaddah Courts
4.	27.02.2017	Prosecutors strike in Karachi District Courts for non-payment of pay, allowances and promotions etc. It is further reported that a 2 hour per day strike had also been observed for the previous 11 days
5.	12.03.2017	2 days hunger strike and Court boycott for increase in pay, allowances and benefits etc. in Law Department of Sindh
6.	16.03.2017	Death of serving Judge, Mr. J. Saeed-ud-Deen Nasir resulted in suspension of work

Case file research identified one case in each Target District where strikes and suspension of works were documented and the following Table provides a window into the other aspects of delays.

TABLE R: DELAYS IN SAMPLE CASES IN TARGET DISTRICTS

Facts Indicating Delays	2011 Case Sukkur	2013 Case Larkana	2012 Case Karachi (Central)	2013 Case Karachi (Malir)
Strikes/Suspension of work	10	10	4	2
Total times case fixed in court	93	78	110	46
Court vacant	5	0	0	0
Case end	Dismissed	Withdrawn	Withdrawn	DNP
Public holiday	1	2	0	2
Adjournments by Plaintiff	9	4	0	0
Adjournments by defendant	14	3	0	1
PO on leave	6	13	24	8

⁷⁰ Khalid, S. Karachi Interview, February 2017.

Facts Indicating Delays	2011 Case Sukkur	2013 Case Larkana	2012 Case Karachi (Central)	2013 Case Karachi (Malir)
Total applications filed	24	23	5	3
Total notices ordered	14	20	8	17
No. Plaintiffs	1	1	1	1
No. Defendant	8	49	2	2
Ex parte	No	Yes	No	No

A litigant from Karachi in a property case before the Malir Courts (which lasted about 5 years, including the Appellate forum) expressed her frustration with the system during an interview and questioned these strikes/suspension of works - *“why should my case be adjourned if a judge died of natural causes last night? How can the wheels of justice be suspended due to such concerns?”*⁷¹ Though a valid point, many members of the legal community interviewed believe that it is imperative that work be suspended so that they can attend the namaz-e-janaza, and most importantly, to pay respect to those departed. Funeral rites are the prerogative of the family of the deceased, suspension of Court work materially impacts the rights of the millions of litigants in the province.

Advocate Marwat, with much pride, shared the new strategy of the Karachi Bar Association KBA and the Sindh High Court Bar Association (“SHCBA”) which attempts to limit this suspension of work.⁷² The parameters to determine whether a strike or suspension of work must be called were clarified and limited to national emergencies or target killing/attacks on lawyers through a Resolution passed on January 9th, 2017. The office bearers of the Sindh High Court Bar Association resolved the following:

1. In the event of the natural demise of a Judge, retired Judge, or an advocate, Courts in the province will continue without a break till 12 pm, after which the Bar and Bench “shall collectively” offer Fateha/Dua for the deceased;
2. In the case of a murder/target killing of a Judge/Advocate, or a terrorist attack, or a major national calamity, work shall be suspended for the whole day;
3. References for deceased judges/advocates shall be help “expeditiously and on a regular basis so that proper acknowledgment of recognition and due respect can be paid...”⁷³

Advocate Marwat stated that the aim of this Resolution is not only to ensure that the litigants get their time in court but also to protect the interests of the lawyers who do not receive their due fees because the litigants refuse to pay when their cases fail to proceed.⁷⁴ Barrister Salahuddin says that *“this Resolution, though a positive step, has already been relaxed and work suspended for the whole day. For this to be truly effective, both the judiciary (in cases of a demise of a Judge) and the Bars (in case of demise of an advocate) need to be prepared to enforce it without any exceptions.”*

⁷¹ Hasan Q., –(Litigant of a property case that lasted 7 years from Court of first instance to the first Appellate forum spanning 2010-2017) Interview Karachi February 2017.

⁷² Marwat K., KBA General Secretary Interview, February 2017.

⁷³ Resolution passed by the SHBCA January 9th, 2017.

⁷⁴ Marwat K., General Secretary KBA, February 2017.

Therefore, it is important that once a resolution like the one above is passed, it must be implemented strictly. Until April 2017, work was suspended or a strike was called during the year 2017 approximately 6 times out of the total number of 297 working days of the year taking public holidays and Sundays into account.⁷⁵ It is important to remember that it is the litigant who suffers at the end of the day, when his/her trial continues to be prolonged unnecessarily causing him/her emotional distress and trauma, and it is a collective responsibility to work together to make access to justice easier and more effective.

6.2.5 Other Causes for Delays

Apart from the delays due to failure to strictly follow the CPC or the institutional perspective, other observations have been made of the set-up of the system and interviews with members of the respective legal communities provide some perspective on the struggle for timely dispensation of justice. Firstly, lack of access to constant electric power – due to load-shedding and power distribution can disrupt Court work which can be suspended for as much as 2 hours every 4 hours during the course of the day. This causes significant delays especially in the recording of evidence. Secondly, the availability of adequate numbers of stenographers also causes delays- on average a judge has 1 stenographer which delays the finalization of Orders passed by the Judge.⁷⁶ Thirdly, with regard to payment of fees for the appointing of an advocate, Advocate Francis commented that litigants pay in small installments rather than collectively and if they fail to make a payment then the advocate fails to appear – this result in litigants being present in Court without their advocate on file and the case is adjourned.⁷⁷ Fourthly, when a civil case reaches the High Court level it is also a significant factor of delay in the proceedings pending in the District Court which are automatically adjourned due to the filing of an application to the High Court. Advocate Francis stated that this is due to the fact that Judges at the High Court (especially those in Larkana) are well-versed in criminal law rather than civil law, which is why civil cases remain pending for longer periods of time. He was of the view that a special Bench should be created at the High Court level to resolve such cases.⁷⁸

Finally, the adequacy of the Court rooms was also highlighted by Advocate Khalid who stated that Judges are working in a difficult environment, especially in Karachi where the chambers of judges are carved out from already limited space and the same is true of some Court rooms as well. Advocate Marwat from the KBA spoke of plans for the creation of a separate judicial complex where the Karachi District Courts – barring Malir – are going to be transferred. This is expected to save time and costs for all parties concerned – however this will make it difficult for Advocates to commute from the High Court to the new judicial complex for the District Judiciary.⁷⁹

In conclusion, it is stated that these are some of the main reasons why delays have been recorded or documented in the cases studied in the Target Districts. These delays are caused by all the stakeholders of the justice system and it is only when each party responsible for the delay it causes takes ownership of the

⁷⁵ Notification dated 6th February 2017 documenting official public holidays issued by the Registrar of the Sindh High Court

⁷⁶ Advocate Rajput S. R, Interview Sukkur February 2017.

⁷⁷ Francis A.B., Interview Larkana February 2017.

⁷⁸ Mustafa R., Interview Larkana February 2017.

⁷⁹ Marwat K., Interview KBA General Secretary, January 2017.

same can any meaningful work be done to correct them. The next section will look at some of the efforts undertaken by the Judiciary in controlling these delays and the effectiveness of these measures.

7 Judicial Reforms

This section documents and examines the different reforms that have been introduced to make the judicial system function more efficiently. The National Judicial Policy, 2009 (“NJP 2009”) was introduced during the tenure of former Chief Justice of the Supreme Court of Pakistan, Mr. Iftikhar Muhammad Chaudhry, in an attempt to increase access to justice at the grass root level. This was a time when public confidence in the judiciary had increased following the Lawyer’s Movement - to ensure that the same continued the twin problems of backlog and delays in the delivery of justice had to be addressed. Therefore, the NJP 2009 was introduced and some of the important aspects related to this study are stated below;

1. Rent cases were to be concluded within a period of 4 months;
2. Civil Judges should decide review applications within 30 days of institution;
3. Focus on Small Claims and Minor Offences Courts Ordinance 2002 should be applied and the High Court should designate civil judges cum Magistrates to try cases under this law. They must also be provided training for ADR;
4. District Judges should adopt such measures to handle the backlog with a recommendation that the Courts should use Section 89-A of CPC to resolve disputes under ADR;
5. Courts should impose costs on parties that cause deliberate delays; and
6. Costs should also be imposed under Section 35-A of the CPC to keep a check on the filing of frivolous and false cases

An attempt was made to study the effectiveness of the NJP 2009 but so far there has been no focused study to assess whether the Courts are acting within its framework. Of the lawyers interviewed, Advocate Kumar⁸⁰ stated that the NJP 2009 is not followed and there needs to be a policy with strict and specific time limits after which the burden shifts onto the judge. Advocate Khoso⁸¹ from Sukkur called the NJP 2009 “*a murder of justice*” since it does not account for lawyers who have more than one case in Court on a single day and was unnecessarily unfair on those lawyers who have a flourishing practice. He elaborated that if a case is dismissed and a revision has to be filed, the same can take anywhere between 6-12 months - this is not speedy justice. Advocate Mustafa argued that though disposal under the NJP 2009 has improved, that does not necessarily mean that justice is done since the Court is more focused on disposal now rather than administering justice.⁸²

It was suggested that the NJP 2009 should also account for the conduct of lawyers and their role in the Civil Justice System. Advocate Khoso from Sukkur stated that he only takes on District Court cases rather than also appearing before the High Court because when one case is fixed in the High Court, many are adjourned in the District Courts.⁸³ Therefore, for him the price of injustice to his clients in District Court is much higher.

⁸⁰ Kumar P., Sukkur Interview, February 2017.

⁸¹ Khoso S. H., Sukkur Interview, February 2017.

⁸² Mustafa R., Larkana Interview, February 2017.

⁸³ Khoso S. H., Sukkur Interview, February 2017.

Advocate Bhatti maintained that only about 30% of adjournment applications are genuine while the rest are merely delaying tactics adopted by the lawyer and the NJP 2009 should account for this as well.⁸⁴

The scope of Section 35-A CPC⁸⁵ was researched and Barrister Ahmed stated that the provision needs to be better worded – rather than providing for the granting of adjournment only if there is sufficient cause for the same, and reasons recorded, and application of costs of up to R.s. 5,000 (or as the Court deems appropriate), it seems to read that the court must (shall) grant adjournment subject only to condition of payment of Rs.5000 costs. Further, it places a ceiling of costs at R.s. 25,000 which in his view was insufficient.⁸⁶ A 1990 SC judgment passed by a Division Bench of the Supreme Court⁸⁷ elaborated Section 35-A clarifying that the costs under this provision are compensatory in nature and not intended to be awarded as a penalty against the unsuccessful party. Further, a 2003 SC judgment⁸⁸ by a Full Bench disallowed appeal and upheld an Order passed under this section which imposed a cost for frivolous litigation. A 1997 judgment⁸⁹ of the Supreme Court passed by a Full Bench states that the High Court has the power to order appropriate compensation when it has reached a definite conclusion that the proceedings initiated against the Respondent were malafide, coram-non-judice and the Petitioner had no reasonable ground to prosecute the same. However, there is very limited case law under this section so far – it appears that costs are not imposed as frequently as are to be expected considering the delays which

⁸⁴ Bhatti A. A., Sukkur Interview February 2017.

⁸⁵ “35A. **Compensatory costs in respect of false or vexatious claims or defences.**__ (1) If in any suit or other proceeding, 2[(including an execution proceeding)], not being an appeal, any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, if the objection has been taken at the earliest opportunity and if it is satisfied of the justice thereof, may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector by the party by whom such claim or defence has been put forward, of costs by way of compensation.

(2) No Court shall make any such order for the payment of an amount exceeding 1[twenty five thousand] rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less:

Provided that where the pecuniary limits of the Jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 (IX of 1882), and not being a Court constituted under that Act, are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees:

Provided, further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this section.

(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.”

⁸⁶ Salahuddin A., Interview Karachi April 2017.

⁸⁷ Muhammad Akram v. Farhan Bi, PLD 1990 SC 28.

⁸⁸ Abdul Majeed v. Additional District Judge Lahore, 2003 SCMR 936.

⁸⁹ Inayatullah v. Sh. Muhammad Yousuf, 1997 SCMR 1020

are caused. The Judges, though having a useful tool at their disposal, appear to be hesitant to apply it or may not be aware of their power under this provision.

In this background, an amendment has been proposed in 2016 to Section 35 of the CPC under the Costs of Litigation Bill, 2016 ("Bill 2016") which has been passed by the Senate on February 1st, 2017. The Bill 2016 makes amendments to Section 35-A, and introduces Section 35-B⁹⁰ to the CPC; these are attempts at the introduction of transparency in the litigation process. Through Section 35, the actual costs of litigation are to be declared which include the professional fees paid to the counsel when awarding costs in a case. Section 35-A is clearly a recognition of the role adjournments play in the life of a case – counsel for both parties, as discussed in detail earlier, manage the litigation process by introducing/filing a number of applications under the CPC, which often are for adjournment. This new section is an attempt to control the numbers of adjournments sought in an individual case by the imposition of a cost of Rs. 5,000 on the party who had been given enough opportunity/notice of hearing but still seeks an adjournment.

The proposed Section 35-B covers special costs. Thus, in the course of a hearing where it is revealed that an assertion made by a counsel was "*false or vexatious*", the Court will impose special costs on that party

⁹⁰ "35. Costs.-

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, (i) a party to any proceedings shall, before the announcement of final order, judgment or decree, file in the prescribed form, details of actual costs of litigation, including but not limited to court fee, stamp fee, fee paid to counsel and all other ancillary or incidental expenses thereto;

(ii) the Court shall award the actual costs of litigation under clause (i) to the successful party with markup not exceeding the prescribed limit per annum, as notified by the State Bank of Pakistan, at the time of passing the order, judgment or decree; (iii) the costs other than those mentioned in clause (i) shall be in the discretion of the Court; and (iv) the Court shall have full power to determine out of what property such costs are to be paid and recovered and to give all necessary directions for the purposes aforesaid. (2) The fact that the Court has no jurisdiction in respect of the proceedings shall be no bar to the exercise of such powers under this section;

35A. Adjournment costs.-

If, on the date fixed for hearing in any proceedings, a party to the proceedings or any other person, despite service of notice, fails to appear or comply with any order of the Court or mandatory provision of the Code or any other law for the time being in force, seeks an adjournment for such purpose, the Court shall, for sufficient cause and reasons to be recorded, grant such adjournment on the condition that such party or person shall pay to the other party, costs of adjournment which shall not be less than five thousand Rupees per adjournment or such higher amount as may be prescribed from time to time."; and

35B Special costs.-

(1) If in any proceedings, the Court finds that any averment made by any party is false or vexatious to the knowledge of such party, the Court shall award special costs to the opposite party against whom such averment has been made.

(2) The amount of any special costs awarded under sub-section (1) shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.

35C General provisions as to costs.-

The Government shall not be liable to costs under sections 35, 35A and 35B.

Explanation. - In sections 35, 35A and 35B, the expression "proceedings" includes suit, appeal, review, revision, execution or any other proceedings and any matter incidental thereto."

to deter such behavior. The proposed amended Section 35-C completely removes the liability of the Government to pay costs even if it is guilty of causing delays/delaying tactics.

The proviso to Section 35 which states that the costs cannot be imposed on the Government places an assumption that when the Government is the Defendant/Respondent there are no delays on their part. This is not necessarily an accurate depiction of reality – the basis on which this limitation has been introduced needs to be investigated.

8 Alternate Dispute Resolution

ADR mechanisms provide an effective way for the timely resolution of disputes through more informal means in comparison to Court. A variety of options are available in ADR and this study looks at mediation as a potential forum for alternate dispute resolution. This is a method which allows for resolving disputes and it is proposed that those disputes that are filed in Court which are resolved through compromise between the parties could have been mediated.

The cases studied from the Target Districts that ended in a compromise were less than 1% but each case took an average of almost 32 hearings per case. Most of them were property related disputes, either rent cases or declaration of ownership of property. One case from Sukkur, originally filed in 2009, was fixed in Court a total of 133 times before being resolved by way of compromise in the Target Month. During the life of the case in the justice system, there were a total of 8 strikes since its institution and the PO was on leave 9 times.

Mediation expert and President of Pakistan Mediators Association, Advocate Anwar Kashif stated that potentially all cases can be mediated unless one party objects – common intention towards peaceful resolution of disputes is necessary for this to work.⁹¹ Another expert, Advocate Navin Merchant stated more specifically, that the best suited cases are those related to “civil, matrimonial, rent, commercial, and compoundable criminal cases.”⁹² With regard to the obstacles, Advocate Kashif identified four: “firstly, there are currently no law, rules and procedure; secondly, lack of awareness and accessibility towards mediation; thirdly, the lawyers and members of the Judiciary are not as receptive as is required; and lastly, there should be provisions for mediation in all agreements and contracts.”⁹³ Advocate Merchant also identified four obstacles out of which one was similar to Advocate Kashif’s related to lack of awareness, the others were as follows: “litigants do not want to pay over and above the lawyer’s fees that they have already paid; the lawyer feel threatened; and Judges do not want to give away powers to a mediator.”⁹⁴

The best way to overcome these is to focus on awareness about mediation and other forms of ADR amongst all segments of society – Advocate Kashif proposed the creation of mediation desks in all the district courts and police stations of the country, conduct mediation training workshops for lawyers and judges to encourage the shift from formal dispute resolution mechanism to less formal ones under ADR.⁹⁵ Further,

⁹¹ Kashif A., Karachi Interview March 2017.

⁹² Merchant N., Karachi Interview March 2017.

⁹³ Reference Kashif A., Karachi Interview March 2017.

⁹⁴ Merchant N., Karachi Interview March 2017.

⁹⁵ Kashif A., Karachi Interview March 2017.

Advocate Merchant added that mediation centers should also provide free mediations to disputing parties. Advocate Merchant was of the opinion that to address these major obstacles a comprehensive approach is required – awareness raising; training of mediators; advocacy training for lawyers, bringing the Judiciary on board; enacting specific laws on mediation; amending the High Court Rules/Sindh Chief Court Rules by incorporating ADR Chapters and also most importantly including mediation and ADR as a separate topic in law school curriculum.⁹⁶ Advocate Kashif further stressed that “mediation is flourishing all around the world – it can only be made possible in Pakistan if Court’s start to refer cases to mediation and there needs to be a mediation report attached to each case at institution. If the Plaintiff loses the cases in Court, he should be penalized for wasting Court time.”⁹⁷

The responses of lawyers on mediation as a viable solution for disposal of cases also provides insight into the practicality of any mediation reform. Advocate Khoso from Sukkur states that “mediation is only possible when the intention of the parties in the dispute are pure – if a litigant knows his case is weak and he will suffer then he would not go into mediation and prefers the case to remain pending in Court for years – hence the delaying tactics.”⁹⁸ Advocate Bhatti believes that Section 89-A⁹⁹ of the CPC is crucial for ADR especially in the pre-trial stage – it is at the stage of institution of case that its viability in a mediated forum must be analyzed. But he added a caveat stating that it is only the lawyers who should argue cases in mediation, since they are the ones who know the law and procedure.¹⁰⁰ Speaking on the hesitation on the part of parties to go into mediation to resolve dispute, Advocate Kumar argues that the problem is with execution of the decision, since the same is not binding much is left to the goodwill and intentions of the parties involved in the dispute.¹⁰¹

In the view of Advocate Mustafa, a lawyer with over 10 years of litigation experience, mediation is a better option in criminal cases rather than civil, since at least 60% of such matters are decided on the basis of a compromise. But he stressed the judge’s role in encouraging mediation as a form of dispute resolution – “Judges could encourage mediation, but they are the ones who are trained and empowered to decide disputes, therefore promotion of mediation may be perceived as a refusal to dispense justice. However, keeping the current backlog of cases into account mediation should be encouraged.”¹⁰²

9 Recommendations and Reform Proposals

This final part is concerned with proposals that are based on both primary and secondary data collected during the course of this study. The objective of this study was to identify the stages of delay in civil cases in selected districts of the District Judiciary and review earlier reform initiatives to arrive at an informed

⁹⁶ Merchant N., Karachi Interview March 2017.

⁹⁷ Kashif A., Karachi Interview March 2017.

⁹⁸ Khoso S. H., Sukkur Interview February 2017

⁹⁹ “Section 89-A. Alternate dispute resolution. The Court may, where it considers necessary, having regard to the facts and circumstances of the case, with the object of securing expeditious disposal of a case, in or in relation to a suit, adopt with the consent of the parties alternate dispute resolution method, including mediation and conciliation.”

¹⁰⁰ Bhatti A. A., Interview Sukkur February 2017.

¹⁰¹ Kumar P., Interview Sukkur February 2017.

¹⁰² Mustafa R., Interview Larkana February 2017.

understanding of the current scenario with regard to said delays. The following is a list of proposals that are suggested as providing starting intervention points for reform:

A. *Human Resource Component of the Judiciary:*

1. Improvement is required in the judge-to-population ratio;
2. Provide associates and support to judges for assistance with research and judgment writing etc.;
3. Increase number of IT Staff in all the Districts in Sindh to complete the digitization process of court records and data and ensure it is updated;
4. There should be a court stenographer or research officer appointed whose job should be to ensure that all data and comments relating to each proceeding are captured and recorded adequately;

B. *Performance Measurement Standards:*

1. The focus needs to be towards re-orienting evaluation by keeping the focus on the end-users i.e. the litigant in mind in ensuring delivery of justice;
2. The measurement metric should have dimensions in addition to quantitative ones on disposals alone;
3. In Appellate forums, the Judge should more readily exercise the wide powers conferred upon it under Order XLI, Rule 33 (for example) and decide the case itself rather than remanding it so that remand orders should be an exception rather than the rule and should only be resorted to where the Appellate Court determines that a retrial is necessary.
4. The system must include in its measurement metrics the diversion of cases out of court towards ADR such as court annexed mediation schemes.
5. The superior judiciary should also be included in the Unit System applicable on the District Judiciary.

C. *Procedural Framework:*

1. Re-draft CPC such that judges are more actively engaged in managing a case, which includes pre-action protocols of encouraging parties to explore ADR options;
2. Amend the CPC to reform the service process by prescribing all modes be utilized on 1st date after filing;
3. CPC timeline should be followed e.g. for filing of Written Statement - Once service is declared to be good, it becomes the responsibility of the defendant to be diligent in his defense. The principle of natural justice is premised on giving each party a reasonable and fair opportunity to respond and be heard, it should not be extended so much as to allow the defendant to hold the system as a hostage to his convenience;
4. Ex-parte order should be recalled only on payment of minimum statutory costs, which should be such as to be an effective deterrent;
5. Proposed issues should be filed along with WS - Given that upon filing of the WS, the essential pleadings are complete, the Defendant be required to submit a proposal as to issues required for determination. Once that is done, the Plaintiff be allowed a statutory period of fifteen days to respond by proposing any amendments to the proposal of the defendant so as to minimize the time that is generally wasted at the stage of settlement of issues;
6. CPC to be followed by dismissal of suit for absence of Plaintiff on the date of hearing after filing of WS - Once the WS is filed, the defendant has laid his defense, it is the Plaintiff's duty to diligently pursue

- his cause, and as required by the CPC, the suit should be dismissed for non-prosecution for absence of the Plaintiff - restoration only on payment of costs that should be sufficiently high to be a deterrent.
7. Award of costs of litigation should be liberally drawn up with actual invoices filed. Reform may be legislated requiring clients to file copies of payments made to lawyers being filed in court along with withholding tax challans to substantiate payments. Reforms should be made such that payment of actual costs of litigation to the winner is a rule of thumb. Hence the successful litigant was right all along but he had to prove the same at an expense for which he should be compensated for in full and as a matter of right; and
 8. Some of the necessary reforms as identified by the 2015 Study should be promulgated including: "...more extensive pre-trial checklists; utilization of multiple tracks – Small Claims, Fast-Tracks and Multi-tracks for appropriate cases; determination of a trial timetable and time estimates...and additional types of case specific Case flow Management directions and protocols to better control, streamline and make predictable the eventual progress of a case/trial..."¹⁰³

D. *Lawyers and the Bar and their Increased Monitoring:*

1. Limit the number of adjournments sought by counsel and the number of times counsels are absent;
2. Maintain centralized documentation of the number of strikes/suspension of work carried out by the Bar;
3. Apply costs to the counsel for failure to follow specific procedural requirements without cause; and
4. Develop a policy of costs for circulation of the rates at which the costs shall be applied with a notice of the same being served to the litigants.

E. *CFMS-S:*

1. Improve CFMS-S to make it more user friendly, efficient and comprehensive to capture all aspects and nuances of court cases;
2. Organize data collection into categories for better understanding;
3. Increase awareness of the CFMS-S amongst stakeholders;
4. Create filters between different categories of matters disposed of alongwith disposal categories;
5. Scanned copies of the case files should also be uploaded so that dependence on data in electronic form is increased and the record rooms have more space;
6. In the download options for disposal by each Court, the Excel Sheet should be titled to identify the jurisdiction of each Court to avoid confusion;
7. Account for the conduct of lawyers within the system with possibly details of each advocate's history with individual cases;
8. Manage the number of cases that an individual can take on since it was noted that there is no count of the same – so lawyers with cases scheduled in the District Courts file adjournments because they have cases fixed in the SHC;
9. Conduct a qualitative analysis on an annual basis of the court's and judge's performance based on the CFMS-S data with specified indicators developed and included in the CFMS-S framework for this purpose.

¹⁰³ Siddique O., Caseflow Management in Courts in Punjab: Frameworks, Practices and Reform Measures, p. xviii

F. Recording of Evidence:

1. Evidence recording should run parallel to hearings on applications so as to save time in the long run. This could be done in Court via web camera recordings and transcribed later;
2. The questions asked and the responses to the same must be recorded – many times only the responses are recorded and not the questions;
3. Language limitations, etc. must be accounted for in the recording of evidence. Rather than translating during the hearing, the same should be recorded in the language of the witness' choice and interpreted into English at a later point so that any inconsistency or confusion can be clarified with reference to the original transcript;
4. The number of stenographers must be increased for each courtroom with special training; and
5. Reform should require that a trial week be decided as per calendar of the Judge where the witnesses are mandatorily summoned to attend and evidence is recorded on a day to day basis in that trial week(s). Apart from the delay factor – material essence of a trial is lost when the focus is on transcribing the trial as opposed to the judge listening to the evidence on a day to day basis.

G. Other Stakeholders of the Civil Justice System:

1. Any informal/under the table dealings which affect the number of times a case is fixed in Court, or any other intent which unlawfully causes delays in a particular case should be penalized; and
2. A special helpline should be fixed to report cases in which the required ethical conduct is not followed.

H. ADR:

1. All parties engaged in the Civil Justice System should be provided with trainings on ADR methods;
2. Courts should be required to ask parties in each case to explore the option of ADR;
3. Within the Court premises there should be a separate office for ADR/court annexed mediation with trained personnel to assist in this regard; and
4. A proper framework for ADR systems must be put in place including ensuring standards, quality, rules, processes and procedures.

The right to access to justice is a fundamental right of every citizen and is also a crucial part of natural justice. Any efforts to improve this right need to be premised on empirical research so that any reform proposed has a strong foundation in reality and not just a perceived reality which is why this study also included the physical examination and perusal of the case files from the Target District in the Target Month. The true story of delays lies in the case files and therefore access to the same was crucial for the effectiveness of the reform proposed. The data identified and analyzed in this paper sought to provide a step by step analysis of the civil litigation process to identify specific interventions for improvement of the system. The data and conclusions presented aim to propel the State and Judiciary towards relevant reform, ownership and implementation. This study is the first step towards documenting empirical data to base reform proposals upon but more exercises of this nature need to be conducted across the province to make reform more effective and increase access to justice on the whole.

Appendix A Research Tool for Case Files

Name of Researcher
Form No.

Case No	Court	No. of Plaintiffs	No. of Defendants	Holidays Number? Strikes Number?
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Date of Filing of case	Nature of Claim <ul style="list-style-type: none"> • Declaration • Specific performance • Injunction • Possession • Recovery of money • Ejectment Petition • Other civil case (specify): 	When was the first date in Court?	When was service completed to Defendants?	Why was there a delay in service?	When was the statement (WS) filed? How many dates were taken for filing of WS?	What date were the issues framed?	When was evidence recorded of Plaintiff? Date:	When was evidence recorded of Defendant? Date:
			How many notices sent?	Was is an ex parte proceeding? Yes ? Date? No?			How many hearings?	How many hearings?

How many witnesses did the Plaintiff have?	How many witnesses did the Defendant have?	Was there any rebuttal evidence? How long?	How many dates were fixed for final arguments?	When was the judgment/decree passed?	How many judges was the case heard before?	How many times was the case fixed in Court?	How many times were adjournments asked for? Plaintiff: Defendant: Both:	How many times was the PO on leave? How many times Court vacant?	Total time from start to end?
--------------------------------------------	--------------------------------------------	--------------------------------------------	------------------------------------------------	--------------------------------------	--------------------------------------------	---------------------------------------------	-------------------------------------------------------------------------	------------------------------------------------------------------	-------------------------------

Name of Researcher
Form No.

APPLICATIONS

Application under / for?	Date of filing of application?	Date of disposal	Number of hearings fixed at this stage?	Was the Application successful?
Application under / for?	Date of filing of application?	Date of disposal	Number of hearings fixed at this stage?	Was the Application successful?
Application under / for?	Date of filing of application?	Date of disposal	Number of hearings fixed at this stage?	Was the Application successful?

Appendix B Research Tool for Lawyer's Perception Survey

Delays in Civil Cases - Reviews

This form records responses of lawyers working in the district court in the sample districts

How many years work experience do you have in civil litigation?

- 0-5 years
- 5-10 years
- 10-15 years
- 15 years and above

District?

- Karachi (Central)
- Karachi (malir)
- Sukkur
- Larkana

What is the longest civil case that you have worked on? and how long did it last?

Your answer _____

Do you follow the timelines as prescribed by the CPC?

- Yes, all the time
- Most of the time
- Some of the time
- Rarely

Do litigants complain of delays in delivery of justice in civil cases ?

- Yes, all the time
- Most of the time
- Some of the time
- Rarely

Who is the party most responsible for the delays caused?

- The Judges
- The Lawyers
- The Litigants
- The Court Staff
- All of the above

Should the number of judges increase?

- Yes
- No

How can delays in civil cases be reduced? Tick as many as apply.

- Mandatory ADR measures
- Follow the CPC timelines strictly
- Applying costs on party causing the delay
- Reduction in the volume of cases
- Other: _____

How can the Civil Justice System be improved?

Your answer _____

SUBMIT

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DELAYS IN THE DELIVERY OF JUSTICE IN CIVIL CASES
Empirical Evidence from Four Judicial Districts in Sindh



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