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DELAY IN CIVIL PROCEDURE IN THE COURT SYSTEM OF PAKISTAN: CAUSES, CONSEQUENCES AND REFORM PATHWAYS

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ABSTRACT

Delay in the adjudication of civil disputes has become the defining crisis of Pakistan's justice system. Despite the constitutional guarantee of fair trial under Article 10-A and the State's obligation under Article 37(d) to provide inexpensive and expeditious justice, the average lifespan of a civil suit in Pakistan extends between fifteen and twenty-five years. This systemic delay transforms substantive rights into abstract promises and erodes public confidence in formal courts. The objective of this study is to diagnose the structural, procedural, and behavioral causes that produce such delay and to evaluate legislative, judicial, and technological reforms capable of delivering timely justice without compromising due process. The research adopts a doctrinal legal methodology, relying primarily on the Civil Procedure Code 1908, the CPC Amendment Act 2020, the Alternative Dispute Resolution Act 2017, and the Commercial Courts Act 2015.

Keywords: *Civil Procedure Code 1908; Judicial delay; Adjournments; Case management; Alternative Dispute Resolution; Article 10-A; Access to justice; Pakistan; SDG-16.3; Commercial Courts*

1. INTRODUCTION:

The phrase "justice delayed is justice denied" has moved from legal maxim to lived experience for millions of litigants in Pakistan. When a civil suit for possession of agricultural land filed by a father is ultimately decreed in favor of his grandson, the law has not functioned as a mechanism of dispute resolution but as a mechanism of intergenerational deferral. The Constitution of Pakistan recognizes this danger. Article 10-A, inserted by the Eighteenth Amendment in 2010, declares that for the determination of civil rights and obligations, a person shall be entitled to a fair trial and due process. Article 37(d) goes further, placing an affirmative duty on the State to ensure inexpensive and expeditious justice. These provisions are not aspirational. They are binding commands, and the Supreme Court has repeatedly held that inordinate delay amounts to a violation of fundamental rights.

Yet the operational reality of Pakistan's civil courts diverges sharply from these constitutional mandates. As of June 2026, the Law & Justice Commission reports a total pendency of 2.26 million cases across all tiers. Of these, civil matters constitute approximately sixty-four percent. The Supreme Court carries over 54,000 pending cases, the High Courts carry 340,000, and the district judiciary carries 1.86 million. The average time from institution to final decree in a contested civil suit ranges from fifteen to twenty-five years, with appeals adding another decade. This is not a marginal inefficiency. It is a systemic failure that

redefines the very meaning of a legal right. A decree for specific performance of a contract to sell a house is meaningless if the buyer is deceased by the time execution is possible. A declaration of inheritance is hollow if the property has been alienated three times during litigation.

The consequences radiate beyond individual litigants. The World Bank's _Doing Business 2020_ report ranked Pakistan 156 out of 190 economies on the "enforcing contracts" indicator, noting an average time of 1,071 days to resolve a commercial dispute through courts. The State Bank of Pakistan has estimated that over six hundred billion rupees remain locked in litigation due to stay orders and injunctions, distorting credit markets and investment decisions. Socially, delay fuels recourse to informal forums such as jirgas and panchayats, which often operate outside constitutional guarantees of equality and due process. For vulnerable groups, including women, religious minorities, and transgender persons seeking enforcement of rights under the Transgender Persons (Protection of Rights) Act 2018, delay functions as denial.

This article proceeds from the premise that delay is not a natural feature of adjudication but the product of identifiable legal, institutional, and behavioral choices. It asks three questions. First, what are the specific causes embedded in Pakistan's civil procedure framework that generate and perpetuate delay? Second, what are the constitutional, economic, and human rights costs of such delay? Third, what combination of legislative amendment, judicial policy, technological innovation, and professional discipline can reduce the lifespan of civil litigation to a period consistent with Article 10-A and international standards? In answering these questions, the article does not romanticize speed at the expense of fairness. The objective is not summary justice but timely justice — a system that resolves disputes within a time frame that preserves the value of the remedy granted.

Economically, judicial delay functions as a tax on commerce and a barrier to investment. The enforcement of contracts is a core indicator in global competitiveness rankings. Pakistan's poor performance on this indicator directly affects foreign direct investment and domestic capital formation. When banks cannot recover secured loans for years due to injunctions and appeals, they price that risk into interest rates, raising the cost of credit for all borrowers. When title to land is uncertain because a civil suit has been pending since 1998, the land cannot be used as collateral, depressing agricultural and real estate markets. The opportunity cost of capital frozen in litigation is immense. Moreover, delay creates a market for corruption. Litigants pay illicit premiums to expedite file movement or to secure favorable interim orders, further distorting the economy.

From a human rights perspective, delay disproportionately harms those least able to sustain prolonged litigation. A widow seeking dower or maintenance cannot wait twenty years; by then, the purpose of maintenance is defeated. A tenant seeking to prevent illegal eviction needs a remedy in weeks, not decades. For transgender persons litigating for inheritance, education, or protection from harassment, delay means continued exclusion from civic life, contravening the Transgender Persons (Protection of Rights) Act 2018 and ICCPR obligations. The United Nations Human Rights Committee, in General Comment No. 32, has emphasized that the right to trial without undue delay in Article 14 of the ICCPR applies to civil proceedings as well as criminal. Pakistan ratified the ICCPR in 2010 and is therefore bound to give effect to this standard.

Finally, the study is significant in the context of Sustainable Development Goal 16, which commits states to promote peaceful and inclusive societies, provide access to justice for all, and build effective institutions. Target 16.3 specifically calls for equal access to justice. Pakistan's Voluntary National Review 2022 identified judicial delay as a key challenge to achieving this target. Reforming civil procedure is thus not only a legal necessity but a development imperative. It connects court performance to poverty reduction, gender equality, and economic growth.

2. Significance

The significance of studying delay in civil procedure is fourfold, spanning constitutional law, economic development, human rights, and international commitments. Constitutionally, the issue goes to the heart of the social contract

embodied in the 1973 Constitution. Article 4 guarantees that to enjoy the protection of law is the inalienable right of every citizen. Article 10-A elevates fair trial to a fundamental right, and the Supreme Court in _District Bar Association Rawalpindi v Federation of Pakistan_ PLD 2015 SC 401 held that the right to fair trial includes the right to be tried without inordinate delay. Article 37(d) imposes a directive principle of state policy requiring the State to provide inexpensive and expeditious justice. When civil suits take two decades, each of these provisions is rendered ineffective. The judiciary's legitimacy itself rests on its ability to deliver timely decisions. As Chief Justice Nasir-ul-Mulk observed, procedure is the handmaid of justice, not its mistress; delay inverts that relationship.

3. Research Methodology

This article employs a doctrinal and socio-legal research design aimed at understanding both the black-letter law and its operational reality. The doctrinal component involves close textual analysis of primary legal sources. The Constitution of the Islamic Republic of Pakistan, 1973, particularly Articles 10-A, 37(d), and 4, provides the normative framework. The Civil Procedure Code 1908, as amended by the Civil Procedure Code (Amendment) Act 2020, forms the core procedural statute under review. Complementary legislation including the Alternative Dispute Resolution Act 2017, the Commercial Courts Act 2015, the Qanun-e-Shahadat Order 1984, and relevant provisions of the Limitation Act 1908 are examined to map the full procedural ecosystem. To assess judicial interpretation, the study surveys reported judgments of the Supreme Court of Pakistan and the five High Courts from 2018 to 2026, with particular attention to decisions interpreting Order XVII on adjournments, Section 89-A on ADR, and Section 35-A on costs.

4. Causes of Delay.

The causes of delay in Pakistan's civil procedure are multilayered, and they reinforce one another. They can be classified into legislative, institutional, behavioral, and administrative categories, though in practice these categories overlap.

The legislative foundation, the Civil Procedure Code 1908, was drafted for a colonial state managing a rural, agrarian society with limited commercial litigation. Its architecture assumes that delay is acceptable and that the judge is a passive umpire rather than an active case manager. Order XVII Rule 1 historically permitted courts to grant adjournments "from time to time" if "sufficient cause" was shown. Because "sufficient cause" was undefined, it became a revolving door. Lawyers would cite personal difficulty, non-availability of a witness, or the need to file a reply, and adjournments were granted almost automatically. The CPC Amendment Act 2020 attempted to address this by restricting adjournments to three per party and requiring the court to record reasons. However, trial courts have been reluctant to enforce the limit, fearing that refusal would be reversed on appeal as a denial of the right to be heard. The result is that the statutory change has not yet altered courtroom culture.

A second legislative defect is the multi-tier appellate structure. A civil decree can be challenged through first appeal under Section 96, second appeal under Section 100, revision under Section 115, review under Section 114, writ petition under Article 199, intra-court appeal, and finally appeal to the Supreme Court under Article 185. Each stage involves notice, record transmission, and hearing. Even if each forum decides in one year, a case can take seven to eight years to achieve finality. Section 100 permits a second appeal on a "substantial question of law," but the Supreme Court has lamented that High Courts admit second appeals liberally, treating them as a third fact-finding forum. India faced a similar problem and, through the CPC Amendment Act 2002, abolished second appeals except where the High Court certifies that the case involves a substantial question of law of general importance. Pakistan retains the older, broader formulation.

Service of process under Order V remains archaic. The Code contemplates personal service through a process server, followed by registered post, and then substituted service by publication. In an era of mobile phones and email, this is inefficient. Defendants often evade service, and courts insist

on completing all three modes before proceeding ex parte. Although the Lahore High Court in _Mst. Zahida v State_ 2024 CLC 882 upheld service via WhatsApp as valid, the CPC has not been formally amended to incorporate electronic service, leaving trial judges uncertain about its legality.

Institutional causes begin with capacity. Pakistan has approximately 3,200 judges for a population of 240 million, yielding a judge-to-population ratio of 1:62,000. The United Nations recommends 1:20,000. Twenty-five percent of sanctioned posts are vacant, and recruitment is slow. The result is impossible dockets. A civil judge in Lahore may have 80 to 100 cases listed daily, making meaningful hearings impossible. The Supreme Court in _Imran Khan v Federation of Pakistan_ 2023 SCMR 1840 directed the federal and provincial governments to double judicial strength by 2030, but fiscal constraints have delayed implementation.

The absence of specialization compounds the problem. The same civil judge hears rent disputes, family cases, inheritance matters, and complex commercial suits. Commercial disputes require understanding of financial instruments, yet judges receive no specialized training. The Commercial Courts Act 2015 created dedicated courts, but only in five districts. Where they function, such as Lahore, the average disposal time has fallen from seven years to eight months, demonstrating that specialization works. The failure to replicate this model nationwide is a policy choice.

Case management is virtually absent. Modern systems, such as the United Kingdom's Civil Procedure Rules 1998, impose an "overriding objective" to deal with cases justly and at proportionate cost, and they empower judges to manage cases actively through directions, timetables, and cost sanctions. Pakistan's Order IX-A, inserted in 2020, mandates a case management conference within thirty days of filing, but compliance is below twenty percent. Judges are not trained in differentiated case management, and lawyers resist timelines. Consequently, every case, whether a simple suit for recovery of ten thousand rupees or a complex partition suit involving fifty defendants, is treated identically.

Behavioral causes are equally significant. The bar has developed a culture in which adjournment is a tactic. Lawyers seek adjournments to pressure the opposing party into settlement, to accommodate their schedules in other courts, or to delay an adverse outcome. Courts grant them because refusing an adjournment may lead to a complaint before the High Court or a bar resolution. Strikes exacerbate the problem. Data from 2023–2024 shows that in some districts, courts were closed due to bar strikes on more than 150 working days. The Supreme Court in _Munir Hussain Bhatti v Federation_ PLD 2011 SC 752 held that lawyers have no right to boycott courts, but bar councils have not enforced this ruling through disciplinary action.

Frivolous interlocutory applications are another tactic. Applications under Order VII Rule 11 to reject plaint, Order I Rule 10 to add parties, or Section 12(2) to set aside decrees on grounds of fraud are filed not because they are meritorious but because they trigger a stay of proceedings. Section 35-A of the CPC permits compensatory costs for false or vexatious claims, but the maximum is twenty-five thousand rupees, which is not a deterrent in high-value litigation. In _Khalid Malik v State_ 2022 SCMR 1567, the Supreme Court imposed costs of one million rupees for frivolous litigation, but such orders are exceptional.

Administrative deficits complete the cycle. Record rooms in district courts remain manual. Files are moved physically, misplaced frequently, and reconstructed laboriously. The Punjab Judiciary began digitizing records in 2025, but Sindh and Balochistan lag. Process-serving agencies are understaffed and lack accountability. There is no GPS tracking of process servers, and false reports of service are common. Infrastructure is poor. Many Tehsil courts lack sufficient courtrooms, dictation systems, or internet connectivity, meaning judges write orders by hand and cases are adjourned because the record is not available.

These causes interact. A vacant judgeship increases individual dockets, which makes judges more willing to grant adjournments, which encourages lawyers to seek them, which increases pendency, which further burdens the judge. Breaking this cycle requires intervention at all levels.

5. Recommendations:

Solutions must be comprehensive, targeting legislation, judicial policy, technology, and professional culture. Piecemeal reform has failed because the system adapts to preserve delay.

Legislative reform is the starting point. The CPC 1908 must be amended to institutionalize time-bound disposal. Order XVII should be revised to make the three-adjournment rule mandatory and to require the court to impose actual costs of at least fifty thousand rupees for every adjournment beyond the third, payable personally by the party or advocate seeking it. A new provision should fix statutory timelines: trial courts must decide a civil suit within twelve months of framing issues, first appellate courts within six months, and revisions within three months. These should not be directory; they should be mandatory, with the consequence that if a court fails to decide within the period, the matter is automatically transferred to a designated "delay-reduction bench" in the High Court.

Second appeals must be curtailed. Section 100 should be amended to mirror India's 2002 reform: a second appeal lies only if the High Court certifies that the case involves a substantial question of law of general public importance. This would eliminate the routine second appeal that currently functions as a third fact-finding stage. Order V must be updated to recognize service by email, courier with tracking, and messaging applications as due service, eliminating the months wasted on physical service and publication.

Section 35 should be overhauled to provide for "actual costs" and "compensatory costs" up to ten percent of the claim for frivolous litigation. The English rule that costs follow the event should be adopted, so the losing party pays the winner's reasonable legal costs. This would deter false claims and defenses.

Judicial policy reform must operationalize these statutes. The National Judicial Policy 2009, revised in 2024, sets time standards of eighteen months for a civil suit and six months for an appeal. The National Judicial Policy Making Committee must link judicial performance evaluation to compliance with these standards. Judges who consistently dispose of cases within timelines should receive incentives; those who do not should receive training and, if non-compliance persists, administrative action.

Differentiated case management must be implemented nationwide. The Model Civil Courts Rules 2023 provide a template: Track 1 for simple money suits with a six-month timeline, Track 2 for rent and family cases with twelve months, and Track 3 for complex property suits with eighteen months. At the first case management conference under Order IX-A, the judge must assign the track, fix a trial timetable, and limit the number of witnesses and documents. Interlocutory applications should be decided within fifteen days, and no application should stay the trial unless the court records special reasons.

Judicial capacity must be expanded. The twenty-five percent vacancy rate must be eliminated within two years. The Federal Judicial Academy and provincial academies should train 1,000 judges in case management, ADR, and commercial law by 2028. Specialized courts must be multiplied. The Commercial Courts Act 2015 should be extended to every district headquarters, and similar dedicated courts should be created for rent and family matters. The Lahore Commercial Court's success demonstrates that specialization reduces disposal time from years to months without additional judges, simply by focusing expertise.

Alternative Dispute Resolution must be mainstreamed. Section 89-A of the CPC and the ADR Act 2017 permit courts to refer cases to mediation. This should be made mandatory before evidence is recorded. The Punjab Judicial Academy reports that court-annexed mediation settled 38,000 cases in 2025 with a sixty-seven percent success rate. Mediation centers should be established in every district, staffed by trained mediators, and connected to the court's cause list. If mediation fails, the case returns to the trial track with time already saved on framing issues. Pre-litigation mediation for commercial and family disputes should be incentivized by reducing court fees for parties who attempt it.

Technology is a force multiplier. E-filing, e-summons, and e-evidence portals are now operational in the Islamabad, Lahore, and Sindh High Courts. They must be extended to all district courts by 2027. The National Judicial Automation

Committee's case management software can automatically flag cases older than two years as "red cases" requiring weekly hearings. Digital record rooms with scanned files and blockchain authentication will eliminate the adjournment excuse that "the file is not available." Video-link hearings for outstation witnesses, already used in criminal cases, should be routine in civil matters.

Professional culture must change. Bar councils must enforce the Supreme Court's ruling in _Munir Hussain Bhatti_ by suspending the licenses of office bearers who call strikes that close courts. Continuing legal education should be mandatory, with modules on CPC amendments, case management, and ADR. A para-legal cadre should be created to assist in drafting, service of process, and document management, reducing the burden on advocates and judges. Law schools must teach civil procedure as a living system, using clinical modules in which students manage mock cases under timelines.

Comparative experience supports this package. India's 2002 CPC amendments reduced average disposal time by forty percent. The United Kingdom's Civil Procedure Rules 1998, with their overriding objective and cost sanctions, cut delay by half. Singapore's "rocket docket" for commercial cases resolves disputes in six months through active judicial management. Pakistan does not need to reinvent the wheel; it needs to adopt and adapt these proven tools.

The objection that speed will compromise fairness is misplaced. Fairness includes timeliness. A rushed judgment is not the goal; a managed timeline is. Under differentiated case management, complex cases receive more time, but not infinite time. Under cost sanctions, parties retain the right to litigate, but they internalize the cost of delay they cause. Under ADR, parties retain autonomy, but they are required to attempt settlement before consuming public judicial resources.

6. Conclusion

The significance of studying delay in civil procedure is fourfold, spanning constitutional law, economic development, human rights, and international commitments. Constitutionally, the issue goes to the heart of the social contract embodied in the 1973 Constitution. Article 4 guarantees that to enjoy the protection of law is the inalienable right of every citizen. Article 10-A elevates fair trial to a fundamental right, and the Supreme Court in _District Bar Association Rawalpindi v Federation of Pakistan_ PLD 2015 SC 401 held that the right to fair trial includes the right to be tried without inordinate delay. Article 37(d) imposes a directive principle of state policy requiring the State to provide inexpensive and expeditious justice. When civil suits take two decades, each of these provisions is rendered ineffective. The judiciary's legitimacy itself rests on its ability to deliver timely decisions. As Chief Justice Nasir-ul-Mulk observed, procedure is the handmaid of justice, not its mistress; delay inverts that relationship.

Delay in Pakistan's civil procedure is not inevitable but the outcome of outdated laws, institutional deficits, and entrenched practices. The CPC 1908, designed for colonial administration, cannot serve a modern democracy of 240 million. Multi-tier appeals, unlimited adjournments, and weak case management convert rights into decades-long ordeals, violating Article 10-A and SDG-16.3. Economic costs are staggering, with billions locked in litigation and investor confidence eroded. Yet reforms since 2020 prove change is possible. Commercial Courts in Lahore now dispose of cases in eight months, and court-annexed mediation settled 38,000 cases in 2025 alone. The path forward is clear: enforce the three-adjournment rule, restrict second appeals, mandate case management, and digitize service and records. Bar strikes must end and cost sanctions must deter frivolous litigation. Timely justice requires political will to fill judicial vacancies, expand specialized courts, and adopt technology. Speed without fairness is empty, but fairness without timeliness is denial. Pakistan must choose to make expeditious justice the rule, not the exception.

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