



JUSTONOMICS = JUSTICE + ECONOMICS

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In any society, individuals rely on one another for their daily chores. What sets humans apart is their ability to evaluate actions based on morals and ethics. Yet, determining what is moral can be tricky. That's where a system of checks and balances comes in.

Firstly, there needs to be an authority that establishes rules, allowing behaviors to be judged accordingly. This is where legislation plays a crucial role. However, when disputes arise between members of society, we need another layer - a detective mechanism. This calls for a judiciary to arbitrate, determining who adhered to the rules and who did not. Once a verdict is reached, it falls upon the enforcement authority, such as the police, to ensure that the judgment is carried out. Given the propensity for conflicts to arise among individuals, every member of society deserves access to justice. This access is essential for resolving disputes and eliminating uncertainty, crucial for future interactions.

In the marketplace of justice, the affluent script their own endings, relegating the downtrodden to mere bystanders

That's why across the globe, access to justice is considered a fundamental human right, vital for the functioning of developed societies.

The Pakistani Constitution, much like others, guarantees access to justice for all residents without discrimination. Two key articles, Article 4 and Article 10-A, outline this provision in detail, emphasising the importance of ensuring justice for every individual. However, the reality of Pakistan's judicial system often diverges from these constitutional ideals.

Despite the constitutional mandate for affordable and swift justice, the institutional mechanisms and organisational structure of the judicial system impose numerous formalities and costs on litigants. From lawyers' fees to court expenses and documentation costs, accessing justice in Pakistan often comes with a hefty price tag.

This discrepancy echoes the principles of the neo-classical school of thought in economics, which views justice as a commodity, subject to the laws of supply and demand. In this framework, price plays a pivotal role, with those able/willing to pay higher prices dominating the market.

In a perfectly competitive market, equilibrium is reached where consumers willing to pay more receive the goods, while suppliers with lower willingness to accept are excluded. This optimal outcome ensures that goods flow to those who need them most and are willing to pay a competitive price. However, this equilibrium also results in a surplus for suppliers, benefiting those who were willing to pay higher prices but ultimately paid less, while suppliers received more than their initial willingness to accept.

The justice market operates much like a conventional market, with two key players: the demand side, comprised of litigants seeking justice and willing to pay for it, and the supply side, represented by lawyers offering their services at a price. This dynamic results in an equilibrium where only those who can afford the specific price can access justice, leaving others in the demand pool unable to afford it.

However, this scenario assumes perfect competition, which is rarely the case in the justice market due to information asymmetry regarding the due process of justice. Lawyers often exploit this information gap, creating a quasi-monopoly situation that further restricts access to justice.

In some instances, the justice market resembles a tourist model as well, where litigants consult one lawyer and then refrain from seeking further advice due to the associated transaction costs and lack of information. This advantageous position empowers lawyers to demand higher prices, exacerbating exclusion from justice for those unable to meet the equilibrium price. In Pakistan, the unchecked inclusion of lawyers in the justice system poses a significant barrier to accessibility for the demand side. In any dispute, there are typically two parties seeking justice, but the current system's imbalance favours those with financial means, perpetuating injustice for those unable to afford the steep costs.

Thus, technically, those in dispute require a neutral third party to facilitate resolution without personal involvement. Ideally, these third-party facilitators, such as lawyers in Pakistan, should not be motivated by monetary gain linked to the case. However, here, the monetary incentives tied to case proceedings pose a significant barrier to access to justice. The longer a case drags on, the more lucrative it becomes for lawyers. Additionally, cases of greater severity command higher fees, leveraging the demand for justice against those in

need. This imbalance in the justice market, fueled by the constraints faced by the common person, ultimately drives up the cost of accessing justice.

In this context, recent research on Islamabad, conducted by the author with the Pakistan Institute of Development Economics (PIDE) reveals that the average litigant spends nearly 04 years resolving a case in civil or magisterial courts.

During this time, they may need to appear before the court approximately 40 times for hearings. It's noteworthy that out of these 40 hearings, on average, 15 are rescheduled, further prolonging the process. Even after this extensive wait, the litigants may face an additional three-year wait for the thorough disposal of the case. Throughout this ordeal, they must bear the burden of legal fees, totaling around Rs. 65,000. When factoring in other expenses like conveyance, accommodation, and meals, the true cost of justice far exceeds initial estimates.

According to the Household Integrated Economic Survey (HIES 2018-19) data, the average annual income of a Pakistani citizen is Rs. 427,944. However, household expenses average around Rs. 390,936 per annum. So on average, Pakistani citizens allocate around 90 per cent of their income to expenses. Consequently, the average annual savings amount to Rs. 37,008. Given these financial constraints, an ordinary Pakistani would struggle to afford legal fees, particularly if faced with a legal matter in civil court, where lawyer fees alone can reach Rs. 65,000. The fees for litigation in higher courts are even higher, placing them entirely out of reach for the average citizen.

When comparing costs, income, expenditure, and savings, the outlook appears grim. The average cost of a case in the lowest court stands at Rs. 117,000, while the annual savings are just Rs. 37,008. Clearly, when juxtaposed with the cost of accessing justice, the gap is insurmountable. Although the government nominally provides a prosecutor for such cases, implementation remains chaotic. Moreover, there's little incentive for lawyers to fully engage with the case, as monetary benefit here is way lower than the lawyer's expectation.

Summing it up, accessing justice in civil courts proves immensely challenging, if not outright impossible, for the average Pakistani citizen. It's a stark reality that often forces ordinary citizens to resort to borrowing or selling their assets to pursue legal matters. It's worth noting that these calculations assume only one legal issue per household per year, without considering any unforeseen emergencies like health crises. One can only imagine the added strain in such situations. Should this ring alarm bells? Well, it must.

The author is an institutional economist and political analyst, currently serving as Assistant Chief (Policy) at the Pakistan Institute of Development Economics (PIDE), Islamabad.

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