



**SOCIOLOGY OF THE DISPENSATION OF JUSTICE AT THE
LOCAL LEVEL**

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Structure of presentation

- Introduction
- Conceptual issues
- Research methodology
- Qualitative findings
- Quantitative analysis
- Analysis of case record material
- Findings from the litigant follow-up survey
- Conclusion and recommendations



Objectives

- Establishing benchmarks for the state of service delivery in rural Pakistan
- Review the establishment of the judicial (service delivery) institutional structure by the devolution plan



Research details

- Time of fieldwork: March- May 2002
- Locations: 26 sampled villages of Toba Tek Singh (Punjab), Haripur (the N.W.F.P), Sibi (Balochistan), and Larkana (Sindh) in the most advanced rural districts of the Punjab, the NWFP, Sindh and Balochistan
- Research tools: 193 in-depth and 109 control interviews, review of 202 case files and a follow-up survey



Conceptual issues

- Devolution needed to be accompanied with other reforms including that of the police, judiciary, and administration
- Structural basis of power needs to be understood. Power structures impede service delivery to the poor
- The predominant approach in the judicial reform literature is management –oriented rather than power based
- Nelson (2001)'s preferences approach
- Cohn's (1987) research on law and change in North India in the early 1950s



Particular research issues

- Judicial institutional innovations of the devolution of power plan, 2000 present at the village level
- The nature of disputes at the village level, and how they affect the poor and women in particular
- Dispute-resolution mechanisms people prefer to use and how they vary by income group and village prosperity



Research design and methodology

- Difficulties with the semi-structured questionnaire based on the Report Card instrument
- Quasi-anthropological research methods were adopted
- The most advanced rural districts as a benchmark
- Purposive selection of the **most advanced district in each province**
- Random selection of 10% of *tehsils*, 10% of **union councils** of the selected *tehsils*, 10% of **villages** of the selected union councils



Research tools

- Village socio-economic profile
- Village dispute map
- In-depth interviews
- Control interviews
- Stake-holder interviews
- Case record analysis: one additional, one sessions, and one civil judge were covered



Findings from qualitative data

- The new institutional innovations: *musalihat anjuman* and *insaf* committee. Very limited presence in the Punjab and the NWFP and no presence in Sindh and Balochistan
- Small window of opportunity: few energetic individuals belonging to lower socio-economic strata
- The poor avoided involving the police, since it often resulted in harassment



Findings from qualitative data

- The poor were least likely to engage in litigation due to prohibitive costs. Likely to be receptive to the institutional innovations like the *musalihat anjuman*
- Rich households refrain from getting into litigation to avoid the costs
- The middle income or richer households only approach the *panchayat* or *jirga* if they are able to influence it
- Mediation was often done by a *wadero* (landed influential)



Findings from qualitative data

- Litigants prefer to approach the police or the court first in the case of criminal dispute i.e. physical fight or murder
- *Panchayat* is used as a secondary institution to reach a compromise due to the delay in the court.
- *Panchayat* is often used as the primary institution in land and family disputes and, if not resolved, then the disputers engage the formal justice system.
- In reality, both the formal and informal justice system complement each other.



Findings from qualitative data

- The violation of *izzat* (honour, prestige, face saving) underlay many disputes
- Women found it difficult to access the formal system: honour killings as part of local economic exchange, pledge of a woman from the *kari* family, obstruction or denial of Islamic inheritance
- Village factions got involved, and the courts become an instrument for playing out factional rivalry



Findings from qualitative data

- Great variety across local disputes across the country. Some parallels in the situation in Larkana and Sibi. In both districts, *karo-kari*, robbery, kidnappings, and theft were the main crimes
- The tribal *sardars* resolved disputes. Speedy and did not entail the costs of the formal court system. However, it was also coercive, authoritarian and subjective



Findings from the quantitative data

- The courts represented a problem for most respondents because of delays, repeat visits, and the expense
- Over two-thirds indicated that they only went to the courts when no alternative was available
- Placed over twice the confidence on justice dispensed by the community/informal institutions than the courts
- Three-fifths and four-fifths tried to secure the assistance of some influential to help resolve their problem



Main disputes experienced by rural households by gender

Percentage responses

| Dispute type | Male | Female |
|-------------------|------|---------------|
| Property / civil | 43.8 | 34.6 |
| Criminal | 43.4 | 57.7 |
| Family | 2.1 | 7.7 |
| With state agency | 3.2 | - |

Preferred institutions for dispute resolution (Percentages)

| Institution | Respondents | Control group |
|-----------------------------|-------------|---------------|
| Family or community | 12.9 | 11.7 |
| <i>Panchayat</i> | 33.4 | 37.8 |
| New local body institutions | 9.9 | 11.7 |
| Police | 18.0 | 19.8 |
| Rural bureaucracy | 2.8 | 2.7 |
| Court | 22.3 | 16.2 |
| Responses | 395 | 111 |



Dispensation of justice: case record analysis

- Sampled 202 case files: 29.6 percent civil cases, 12.8 percent family cases, and 57.6 percent criminal cases
- Delays in the courts were the major problem
- The influential used the courts to settle scores
- Delay in the registration of the FIR (First Investigation Report) and a long delay before the trial proceedings got underway
- Most of the cases (98 percent) in our Larkhana sample were criminal. Many of these cases pertained to theft



Dispensation of justice: case record analysis

- Honor killings were not reported
- Massive court delays often resulted from absconding accused or delays in the presentation in prosecution evidence
- Police harassment seemed even more of an issue in Larkana than in Toba Tek Singh and Haripur.
- Various laws such as *Ehteram-e-Ramadan* (sanctity of fast), price control, gun laws, and drug abuse, were (ab)used by the police as a method to shakedown the less influential in Toba Tek Singh, Haripur, and Larkhana.



Dispensation of justice: case record analysis

- If the plaintiff did not pursue the case, the judges would terminate it because of a revealed lack of interest
- In the more complex cases, the judges would separate the cases rather than delay them if some of the parties were absconding
- Another commonality in these three districts was that the courts could move expeditiously when they wanted to
- There were much less delay in Sibi, Balochistan compared to other districts because of the smaller size of population and low case load



Findings from the litigant follow-up survey and legal expert data

- Inordinate delays in civil and criminal cases decomposed by the various stages
- Only two fifths of all cases reached some resolution
- Almost half the average expense incurred for the litigation was in the form of an illegal fee or bribe

Decomposition of delays in civil cases

| Stages of the case | Months (averages) |
|------------------------------------|-------------------|
| Service and completion of pleading | 15.6 (36.1) |
| Framing of issues | 4.5 (10.5) |
| Plaintiff's evidence | 9.7 (35.8) |
| Defendant's evidence | 4.6 (13.5) |
| Arguments | 5.3 (16.7) |
| Judgment | 22.9 (56.6) |

Decomposition of delays in criminal cases

| Stages of the case | Months (averages) |
|-------------------------|-------------------|
| Occurrence | 0.9 (5.0) |
| Filing of police report | 6.7 (13.0) |
| Commencement of trial | 6.7 (17.5) |
| Prosecution's evidence | 11.8 (51.1) |
| Defendant's evidence | 2.2 (5.5) |
| Argument | 0.8 (3.5) |
| Judgment | 6.9 (20.9) |



Recommendations

- Honour killings as a non-pardonable offence
- Separation of parties rather than delaying case due to absconding accused in criminal cases
- FIR registration needs to be streamlined
- Acts such as *Ehtaram-e-Ramzan*, price control, gun laws, and drug abuse that have been seen to openly be abused by the police need to be looked into
- The evidence stage of cases also needs to be streamlined to check extraordinary delay



Recommendations

- Land reforms and other assists redistribution need to be carried out
- The institutionalisation of informal dispute resolution mechanism provides the bridge between “custom” and the formal police and court system
- Access to justice, particularly the formal justice provides a space to people. We saw that the poor both in terms of socio-economic status and gender (i.e. women in this case) do not have an un-hindered access to it. Hence, the formal justice system needs to be strengthened to provide a window of opportunity to people, particularly the poor