

## CRITICAL APPRAISAL OF LEGAL-INSTITUTIONAL STRUCTURE OF REVENUE COURTS IN PAKISTAN: MINIMIZING SLUDGE IN AGRICULTURAL PROPERTY CASES

*Saad S. Khan, Ambreen Ashfaq, Mahrukh Imtiaz and Isra Imtiaz*

*(This document is unedited author's version submitted to RASTA)*

### INTRODUCTION

This study was undertaken to analyse the revenue court system of Pakistan which is arguably a neglected segment of the country's justice system. As opposed to the civil courts, which deal with civil disputes involving (mostly urban) property; the revenue court has been defined as “[a] Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes.” These courts and their procedures are governed by the West Pakistan Land Revenue Act, 1967 having exclusive jurisdiction on matters of mutation, partition, inheritance and those pertaining to produce of agricultural land. These courts are presided upon by civil servants from administrative service; starting from Tehsildar to Assistant Commissioner, the route in a revenue court goes up to the Commissioner and then to the Board of Revenue (BoR) which is the final authority in each province.

Land is the most expensive—and probably the most important too—asset for the people, especially in the rural areas, of Pakistan. This is depicted by the fact that not only 60%-70% of the civil litigation in the country pertains to landed property but also 40%-50% of criminal litigation is invariably due to land related matters. These agricultural land and irrigation water related cases ordinarily take decades to get a final ruling. This delay is caused, among other things, by what the famous economist Sunstein calls “sludge”.

“Sludge” is basically any excessive friction that makes it harder for the people to do what they want to do. In economic terms, Sludge costs were calculated by way of measuring avoidable costs that the litigants had to endure such as the direct expenses like court fees, indirect costs such as traveling, and finally, the psychological costs on him due to stress and strain of prolonged litigation. On the macro level, the collective costs of the sludge in revenue courts were calculated to ascertain how much of a drag it is on the Gross Domestic Product (GDP).

The study found out that if a person gets involved in a litigation related to agricultural property, it may cost up to four fifths of his annual income in litigation-related costs at least in the year the case was instituted. More often than not, both parties might not be able to use their land to productive use due to it being a subject of litigation. This might inhibit productivity thereby resulting in a loss of economic growth (hence, lower GDP) for the country. The value of disputed land held up in litigation comes to nearly one sixth of the rural GDP in Pakistan. Much of this sludge is avoidable through smart governance such as digitization initiatives as we shall discuss in the findings section below.

### METHODOLOGY

In this study, a three-tier approach was formulated that entailed (i) conducting a sludge audit of the revenue courts of Pakistan through surveys of the litigants; (ii) conducting specific interviews of Revenue Officers regarding the functioning of the Revenue Courts, and (iii) proposing fresh legal

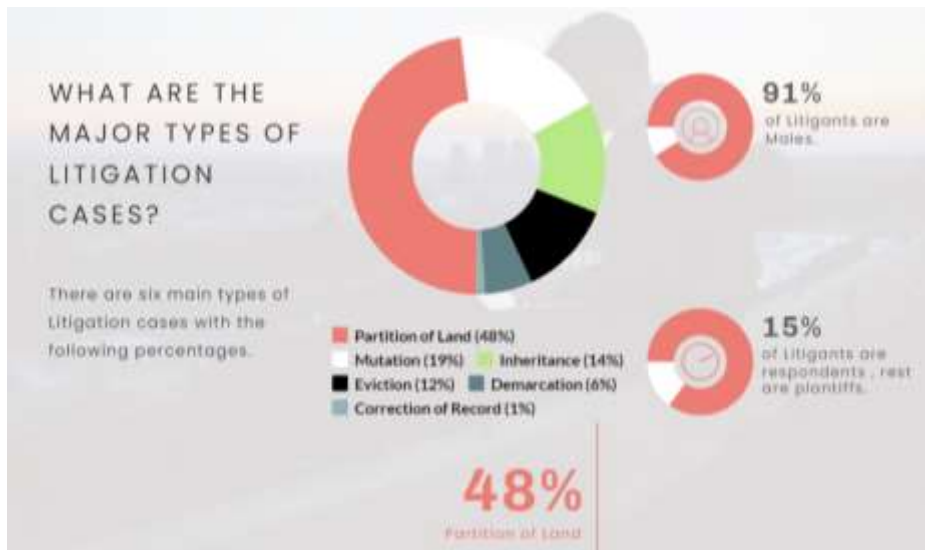
reforms or supporting existing ones to help simplify the procedures.

Based on their proximity with the provincial capitals and the quantum of revenue cases pending in their courts, the study identified four districts, namely, Kasur and Toba Tek Singh in Punjab, and Mardan and Dera Ismail Khan in Khyber Pakhtunkhwa, for conducting field research. Prior to the full survey, a pilot survey for around two months was undertaken in Lahore, that helped refined questionnaires administered via app called SurveyCTO in Punjab and the manual (paper-based) surveys in KPK.

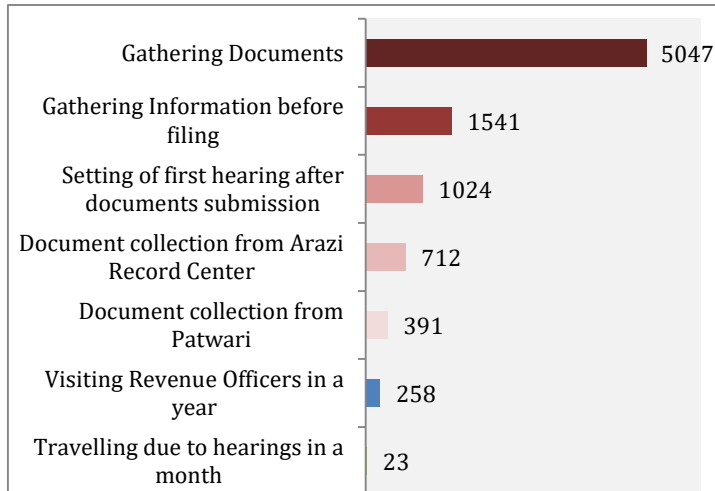
Relying on mixed method approach, both quantitative and qualitative data was collected, collated, and analysed. The questions asked from the litigants included the nature of their cases in revenue courts, the duration since the case was first instituted, the direct and indirect costs they had to incur etc. In our analysis, all issues that makes it difficult for litigants to achieve their desired outcomes of an early adjudication and secure property rights were quantified. Finally, in view of the enormous literature available around to show that secure property rights and efficient judicial systems are significant contributing factors to higher economic growth, the drag on the GDP due to judicial inefficiencies, was calculated.

## FINDINGS AND CONCLUSIONS

There are many important conclusions to be drawn from this study about the slow delivery of justice and the economic fallout arising therefrom. Fundamentally, there is a serious crisis regarding the security of property titles in Pakistan. The prolonged litigation on property matters enhances this insecurity.

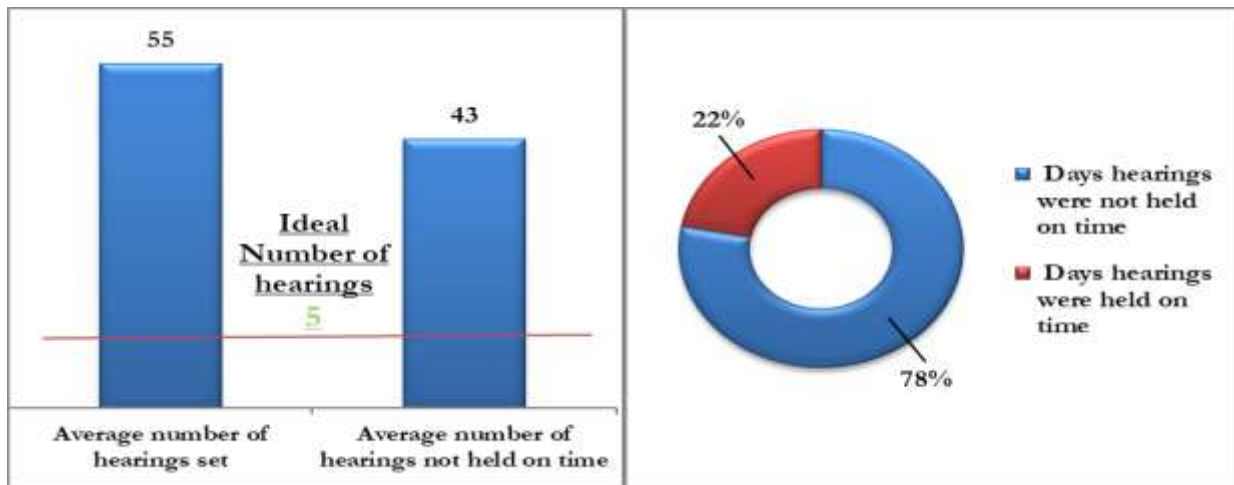


One of the first steps a litigant goes through in their revenue court case is that of **gathering information** which, on average, wastes 2.38 months. Then, a litigant spends 08 months on average in **collecting documents**. The average *sludge* in terms of rupees for document collection, comes out to be around Rs. 44,581. Unlike document collection which is a singular task, **court hearings** can happen all year round, therefore, we calculated a yearly figure for sludge due to hearings at Rs. 71,195. Hearings set for the entire case are 50 on average, much above our ideal figure of 5. Out of these 50 hearings, cases are heard about 7 times on the date they were set; rest get adjourned due to various causes such as judge being on leave or lawyers' strikes etc.



Ideally, a litigant would only have to **meet a Revenue Officer** once but people end up meeting RO's at least 16 times a year with average waiting time in the office for these meetings comes out to be 2.86 hours. This coupled with 6-hours travel time per visit means a sludge figure for total time wasted on RO meetings at 258 hours (equivalent Rs. 58,000 at monetized value) in the past year. And finally, a litigant can incur another Rs. 144,000 in *Sludge* in what we categorize as "**other expenses**" like money spent on lawyers, revenue court staff (speed money) and food etc. These expenses are

over and above the government fees and stamp duties which are *not counted* in the sludge category,



As part of our research, we also wanted to make a distinction between document collection from the Patwari versus document collection from the digitized "Arazi Record Centres" (ARC's). When asked which was more accessible; 62% of litigants thought the ARC was more accessible as against only 11.6% who said the same about *Patwari* office. There is also a sizable difference in the amount of money being spent on average: Rs. 20,124 for *Patwari* versus Rs. 5,463 for ARC. There is, therefore, merit to the idea of phasing out the role of the *Patwari* by making whole land records digitally accessible.

On a per year basis, the **total sludge cost** of all the afore-mentioned steps is about Rs. 250,487 for Punjab and Rs. 306,834 in KPk. We also looked at sludge as a percentage of people's income and it turns out that if a person has to go through all steps in a year, it takes up about 84% of their income in Punjab and about 79% of their income in KPk, which is clearly untenable. The cases may last twenty years or more, and can be carried on by the next generation. In some cases, the total costs to the parties involved over the lifetime of a case, exceeds the value of disputed property.

Lastly, we calculated **sludge as a percentage of rural GDP** that comes out to be **0.741%**. We also look at the **value of the disputed territory as a percentage of GDP** in a similar manner was found to be **15.68%**, or nearly one-sixth, of Punjab's rural (i.e. agricultural GDP). We also see that disputed territory's value as a **percentage of real estate GDP** for Punjab is **33.85%** which is quite high. These

are the avoidable costs that should not have occurred in the first place, had the land management system in the country were efficient.

The present paper also highlights that it is not all doom and gloom in Pakistan's land revenue administration. To the contrary, many outstanding civil servants have made meaningful contribution to the reform and improvement of rural land administration. The imperative need is to have a political will to stand behind those laudable initiatives.

## **POLICY RECOMMENDATIONS**

This study proves that it makes strong moral, legal and economic sense for a state to ensure that (a) property titles are secure; (b) any disputes arising out of land are settled expeditiously; and (c) proper legal and technical infrastructure is in place to achieve the preceding two ends. The obvious first step would be "sludge reduction". It can be through changes in policy design or simplification of procedures or any change at implementation level. He explicitly states that worst kind of sludge might not be paperwork at all. Hence, following recommendations flow out of our analysis:

1. Punjab has digitized 91% of rural land records. Digitization of 100% land records all across Pakistan with a time bound target for completion of digitization by 2030 is imperative.
2. The position of *Patwari* and manual record offices may be eliminated within the above timeframe. All documents may be made downloadable on smartphones through available apps and be accessible through ATM-like machines in Banks and municipality offices.
3. All land and agricultural taxes may be assessable and payable through above digital interventions.
4. Given the general lack of awareness about the available digital services on land records, there is need to give them wide publicity through sustained electronic, print and social media campaigns.
5. At least a year-long pre service training for lower judiciary (civil judges) and then regular in-service trainings at each level of career progression is required coupled with a strong reward-and-punishment system against interfering in the jurisdiction of another stream of courts.
6. The career progression (PER's) of the administrative officers should be benchmarked based on timely disposal of cases pending with them in their judicial jurisdiction.
7. Every Commissioner must ensure that a certain number of Addl. DC's/AC's in his Division are spared full time from administrative work, to concentrate on court work only.
8. Based on Korean KLIS model, security of titles should be ensured by linking land ownership with each citizen's identity and tax profile.