

## A STUDY OF LEGAL AID ACCESSIBILITY AND ENGLISH LANGUAGE IN PAKISTAN

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### Abstract

*English as the official language dominates the domain of legal services and its functions in Pakistan. Keeping a prevalent lack of English language proficiency in mind, access to justice becomes a major problem for those who are not proficient in the English language. This paper analyses the role of the English language in facilitating access to justice for the key participants i.e. litigants and lawyers etc. The analysis of the questionnaire and interview-based data confirms the entrenched position of the English language in the domain that discriminates against the less proficient users. The participants belonging to marginalized social, economic, and political strata, therefore, face hindrance in accessing justice due to lack of English language proficiency as compared to the mainstream elite social, economic, and political strata. The dominance of the English language in the domain of legal services thus associates with the formation and perpetuation of class differences in Pakistan. The paper proposes remedial steps including investment in the capacity building of judiciary to provide translation services to litigants, lawyers, and public. Further, it is proposed that substantive steps should be taken to incorporate the local and national languages in the functions of the judiciary.*

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### **Keywords**

Language Policy and Planning, Access to Justice, Language-Based Barriers, National Language, Official Language, Regional Languages, Local Languages

### **Introduction and Literature Review**

English was passed to Pakistan as a colonial legacy in 1947. Since then, it is medium of instruction in education and the official language in all major domains such as executive, judiciary, and legislative. Despite the passage of 70 years since its inception and heavy investment in the improvement of English language proficiency, the Pakistani population (those who claim to know the English language) has low-level proficiency. Education First, an international organization, in its report, “*English Proficiency Index*” of 2018, has placed Pakistan at number 50 and considers Pakistani English language speakers to be in the “low” category that is one level above the worst in four categories of “very high, high, low, very low” while the average proficiency of India and Indonesia is placed “high” (Education First, 2018). Rahman (1998, 2004) considers the discriminatory barriers in the learning of the English language to be a key cause of low proficiency in Pakistan. Pakistan is a multilingual state that, in theory recognizes the equality of all its citizens without discrimination because, Pakistan as a signatory of the international covenants has undertaken to ensure equality of human rights. The domain of legal services of Pakistan is a classic example of British colonial legacies in Pakistan. This makes English the favored language of recording statements, records, litigation, cross-examination, and the announcement of verdicts.

Existing scholarship on language barriers in developed states generally highlights the legal hardships of migrants due to lack of understanding of the language in the host country. The scope of such studies in developed states is limited to asylum cases and the use of health facilities. The studies by the United Nations also focus on problems that migrants face when they are charged in criminal cases.

The perspective of multilingual states where marginalization persist due to language barriers in accessing legal services is normally glossed in the studies conducted in applied and sociolinguistics. The review of literature begins with the elaboration of domain-specific language planning. Studies exploring language-based barriers to various domains are reviewed for persistent patterns of language planning. Finally, the literature that focuses on the language-based barriers in the domain of legal services is evaluated for identifying the nature of domain-specific language planning.

A report by United Nation states that only 32% of all member states provide legal aid to persons whose first language is different from the official language, and this assistance was available in only 11% of member states (United Nation Office on Drugs and Crime, 2016, p. 112).

Assuring the right to a fair trial. All major international laws such as, International Covenant on Civil and Political Rights, Arab Charter on Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedom requires the laws of member states to include the right of an accused to a fair trial which include giving information in a language that the person understands (UNODC, 2014). In the case of Siera Leone where English is the official language and the language of the court, only 5 percent used it as their second language, and the same is the case with India where 80% were not literate (UNODC, 2014, p. 18).

The legal aid workers need to coordinate with the relevant authorities in ensuring that the person understands the language in which the legal information is available (UNODC, 2014, p. 96).

United Nations, in the supplementary Country Profile of the Global Report finds that in Pakistan Code of Civil Procedure, 1908, and Code of Criminal Procedure 1898 provides aid to poor persons but, the rights to translation for persons whose first language differs from official

language (Urdu and English) of Pakistan are not mentioned in this report (UNDP, 2016).

Section 137 of the Code of Civil Procedure, 1908 stipulates English as the language of proceedings and the cost of translation on request of a party is borne by the applicant party (CCP, 1908). Code of Criminal Procedure, 1898 in chapter XIX entitled “Of the Charges” in section 221 subsection 6 states that the default language of the charge shall be English or the one determined by the court. In section 265 of the same code, it is stated that the language of records shall be English (CCP, 1898).

In Pakistan, most of the legal documents are available only in the English language and some in Urdu, while in other languages they are translated on request while the cost is fixed on the party demanding translation (Asensio, 2014). Botero (2002) argues that language remains a major barrier in access to justice in Pakistan and this makes the experience of justice system horrible for those who have to deal with it, especially women. Pakistan Annual Law Digest Office (1979) cites cases in which the counsel was unable to plead the case effectively due to a lack of command of English language.

In the United States of America, the provision of legal services in the language of US citizen’s language is mandatory. When such services are not provided, it amounts to *National Origin Discrimination* (Law Help, 2018)

Australian Justice Department in New South Wales (NSW) identified the following problems for people identified as *Culturally and Linguistically Diverse* (CALD):

- Hardships in reaching and availing the interpreter services and informal material translation
- Legal services especially the huge amount of translations are normally very expensive

- The existing funding has normally too much stipulations to provide services to all in need of translation from CALD background
- They cannot read the legal information online as they are illiterate and the information are very formal and happen to be in a language that is not their first language (Scetzer & Henderson, August 2003, p. xv)

### **Research Methodology**

This study is a description of the role of language in determining access to the domain of legal services as it utilizes a mix of the qualitative and quantitative descriptions. Along with the quantitative aspect (attained through a questionnaire) the research also explored the issue at hand through the qualitative analysis of focused group discussion. In this study, researchers point out the nature and mechanism of selective access to the domain of legal services because of language barriers. To ascertain the nature and mechanism of this selective access to the domain of legal services, the following questions were answered:

1. What are the effects of the language-based barriers on stakeholders to the domain of legal services in Pakistan?
2. What are the available remedies to ease the language-based barriers to the domain of legal services in Pakistan?

### **Data Collection and Analysis**

The collection of data was divided into two converging prongs: questionnaire and focus group discussion. A 12 point mixed-method close-ended questionnaire was developed with the help of earlier works such as Ahmad (2016), limiting and modifying the questions to the scope of the above-stated questions (see Appendix A for questionnaire). The data was collected from 150 participants randomly collected among the litigants/defendants from the District and Sessions Court Mardan. The participants were further stratified on the bases of their command of languages, location, income, and gender. The Focus

Group Discussion (FGD) included nine participants of whom four were educated citizens of Pakistan experienced in litigation, four were lawyers and one was a lower court magistrate. The identity of FGD is masked as they demanded and ethical concerns of the study also stipulated. The participants of the Focus Group had the experience of witnessing/participating in High Court and Supreme Court proceedings. Before the commencement of the Focus Group discussion a moderator guide was formed with the help of earlier studies on legal access especially that of the United Nations in Global Study on Legal Aid (UNDP, 2016) and that by Ngo-Metzger et al. (2003 Jan). Based on these works, the study moved from general to specific with open-ended cues/probes and thereby tried to have sufficient discussion on the above-mentioned questions of the study. The Focus Group Discussions lasted one session of approximately one-hour. The discussion was recorded and then transcribed and translated into English. Further, procedural details are provided in Appendix B of this paper.

The relevant contents were organized in such a way that the set questions were adequately addressed. The analysis of Focus Group Discussion's Contents (see appendix B for FGD outline) was supplemented with the analysis of questionnaire-based data. As mentioned earlier in this section, the questionnaire included open-ended items (see Appendix A for the questionnaire used). Responses to these items were grouped into contents and analyzed for answers to the given questions. Close-ended contents were also included that were statistically quantified with the help of Statistical Package for Social Science version 20. The five-point Likert Scale generated values whose mean and standard deviations were studied with some cross-tabulation of the gender, locality, and income with the reported access to the domain of legal services.

A division of the sample on the basis of gender, locality, and 3 is given in tables 1 and 2 and 3 respectively. This division indicates symmetry of males and females in table 1 (50% each), and the predominance of

urban population (64.7%) which increases the projection of the study for the urban population. The stratification in table 3, shows majority of the sample belonging to the middle class (i.e. between the rich i.e. income greater than 20\$ a day and the poor with income less than 1\$ a day). The study therefore is projecting the middle class of the sampled population.

**Table 1. Gender**

		Frequency	Percent	Valid Percent	Cumulative Percent
<b>Valid</b>	<b>Female</b>	75	50.0	50.0	50.0
	<b>Male</b>	75	50.0	50.0	100.0
	<b>Total</b>	150	100.0	100.0	

While the gender strata were symmetrical in this study, asymmetry existed in the strata of rural and urban origin of the respondents

**Table 2. Rural and Urban Residence**

		Frequency	Percent	Valid Percent	Cumulative Percent
<b>Valid</b>	<b>Rural</b>	53	35.3	35.3	35.3
	<b>Urban</b>	97	64.7	64.7	100.0
	<b>Total</b>	150	100.0	100.0	

There were three categories in income the poor who earned less than a dollar a day and the middle class who earned between one and 20 dollars and the rich who earned more than 20 dollars a day

**Table 3. Income Level**

		<b>Frequency</b>	<b>Percent</b>	<b>Valid Percent</b>	<b>Cumulative Percent</b>
<b>Valid</b>	less than a dollar a day- poor	82	54.7	54.7	54.7
	1-20 dollar a day income	43	28.7	28.7	83.3
	more than 20 dollar a day - rich	25	16.7	16.7	100.0
	<b>Total</b>	150	100.0	100.0	

The study has some limitations which should be kept in mind while generalizing its result to understand the language-based access to the whole domain of legal services in Pakistan. First, the sample size and location are very specific, so a larger sample taken from all over Pakistan would be a better representation of the domain of legal services. Further, the set questions do not engage lawmakers and senior judges and lawyers, therefore, future studied would be needed to fill in the missing pieces in this research and improve its findings.

**Analysis and Discussion**

The questionnaire and Focus Group Discussion based data is analyzed in this part. First, the seven items of the questionnaire are analyzed. The interpretation of questionnaire-based data is triangulated with the findings of Focus Group Discussion. The analyses aim to describe language-based barriers, those who are benefitted/affected by English/Urdu use, and the effects of such barriers on stakeholders. Possible solutions to the language-based barriers to the domain of legal services are also discussed in this section.

**Table 4. Proficiency in the English language Helps in Gaining Access to Legal Services in Pakistan**

		Frequency	Percent	Valid Percent	Cumulative Percent
<b>Valid</b>	Fairly Agree	33	22.0	22.0	22.0
	Strongly Agree	117	78.0	78.0	100.0
	<b>Total</b>	150	100.0	100.0	

Table 4 describes responses to the first prompt in the questionnaire, “Proficiency in the English language helps in gaining access to legal services in Pakistan”. The majority of respondents (78%) agreed that proficiency in the English language helps in gaining access to legal services. The results conform to the prevalent belief and practice that confers on users, the privileged position to influence and benefit from the court functions ranging from litigation to gaining insight into legal nuances of Pakistani judiciary. Like other domains of power, the reliance on legal services on the English language gives the proficient user of English confidence and skills manipulate the legal system effectively for desired effects. One participant of Focus Group Discussion described the situation, “If you know the English language you can read and understand what is in the law and where the law favors you and where you are at risk. This language is used by the English to make their law- the English law- that is still used in Pakistani courts.”

**Table 5. Proficiency in the Urdu Language Helps in Gaining Access to Legal Services in Pakistan**

		Frequency	Percent	Valid Percent	Cumulative Percent
<b>Valid</b>	Fairly Disagree	13	8.7	8.7	8.7
	Undecided	23	15.3	15.3	24.0
	Fairly Agree	93	62.0	62.0	86.0
	Strongly Agree	21	14.0	14.0	100.0
	<b>Total</b>	150	100.0	100.0	

Table 5 describes responses to the second prompt of the questionnaire, “Proficiency in the Urdu language helps in gaining access to legal service in Pakistan”. As 76 % of respondents agree with the statement, the results confirm that Urdu is a good candidate to replace the English language in courts. The participants of Focus Group Discussion explained the advantage of using the Urdu language in courts accrue from the widespread use of Urdu as working language when the judges, lawyers, and litigants find it hard to communicate in the English language. The use of Urdu, though at times a disadvantage for the users, especially when someone starts using the English language, then all in the court are forced to follow suit. One contributor in the Focus Group Discussion explained the situation in these words, “Urdu is easier to use for all in court and it is also used during proceedings normally. As a language of all Pakistanis, it helps you when you are involved in a court in a different part of the country. Everybody in court.... the lower courts especially, find it comfortable to talk in courts in this language. The use of Urdu becomes a problem in higher courts where judges and lawyers often use the English language and refer to cases that are in the English language. There English language proves that it is more powerful than Urdu.”

**Table 6. Proficiency in the Pashto Language Helps in Gaining Access to Legal Services in Pakistan**

		Frequency	Percent	Valid Percent	Cumulative Percent
<b>Valid</b>	Strongly Disagree	150	100.0	100.0	100.0

Table 6 describes responses to the third prompt of the questionnaire, “Proficiency in the Pashto language helps in gaining access to legal services in Pakistan”. The cent percent agreement with the concept that Pashto language does not help in courts conform to the prevalent practice where even courts in Pashto speaking areas often use Urdu, rather than Pashto. The use of Pashto language becomes a problem in courts as often the litigants, counsels, and judges speak different languages and dialects. It is very rare when all of them are Pashto speakers and they informally engage in conversation especially in out of court settlements. However, no one writes agreements in Pashto and seldom depositions in Pashto before a non-local court help.

**Table 7. English is Suitable as the Language of Courts**

		Frequency	Percent	Valid Percent	Cumulative Percent
<b>Valid</b>	Strongly Disagree	80	53.3	53.3	53.3
	Fairly Disagree	16	10.7	10.7	64.0
	Undecided	32	21.3	21.3	85.3
	Fairly Agree	15	10.0	10.0	95.3
	Strongly Agree	7	4.7	4.7	100.0
	<b>Total</b>	150	100.0	100.0	

Table 7 describes responses to the fourth prompt of the questionnaire, “English is suitable as the language of courts”. Only 22% of respondents agreed that English is a suitable language for courts in Pakistan. The argument for opposing English comes from those who consider English to be a language that very few in Pakistan understand. So, the use of English in court creates a barrier when seeking justice. The poor people do not know the English language and when they are confronted by courts forms and records in the English language they become alienated and lose hope of getting justice. Hiring a lawyer with a high profile who uses English effectively (often such lawyers charge a higher fee and they practice in senior courts) is out of the reach of the majority of Pakistanis who are poor and illiterate.

**Table 8: Urdu is Suitable as the Language of Courts**

		Frequency	Percent	Valid Percent	Cumulative Percent
<b>Valid</b>	Strongly Disagree	5	3.3	3.3	3.3
	Undecided	19	12.7	12.7	16.0
	Fairly Agree	97	64.7	64.7	80.7
	Strongly Agree	29	19.3	19.3	100.0
	<b>Total</b>	150	100.0	100.0	

Table 8 describes responses to the fifth prompt, “Urdu is suitable as the language of courts”. As compared to predominant opposition to the idea of English language suitability, the idea of using Urdu as the language of courts 83% found it an appealing idea.

**Table 9. Translation Services Solve the Problem of Language-Based Barriers to Legal Services**

		Frequency	Percent	Valid Percent	Cumulative Percent
<b>Valid</b>	Fairly Disagree	9	6.0	6.0	6.0
	Undecided	47	31.3	31.3	37.3
	Fairly Agree	13	8.7	8.7	46.0
	Strongly Agree	81	54.0	54.0	100.0
	<b>Total</b>	150	100.0	100.0	

Table 9 describes responses to the seventh prompt of the questionnaire, “Translation services solve the problem of language-based barriers to legal services”. The 61 % agreement and 31% of respondents remaining undecided about translation services in Pakistan are understandable as Pakistan is unlike developed states where translation services are considered an effective solution in the provision of language-based access to legal services. Translation services in Pakistan are of poor quality and in case they are often unavailable in Pakistan.

The means and standard deviation of the seven Likert scale items, whose frequencies are described above are given in Table 12.

**Table 10. Statistics of Mean and Standard Deviations**

		English Language helps in gaining access to legal services in Pakistan	Proficiency in the Urdu Language helps in gaining access to legal services in Pakistan	Pashto Language helps in gaining access to legal services in Pakistan	Urdu is suitable as the language of courts	English is suitable as the language of courts	solve the problem of language-based barriers to legal services	Pashto is suitable as the language of courts
<b>N</b>	<b>Valid</b>	150	150	150	150	150	150	150
	<b>Missing</b>	0	0	0	0	0	0	0
<b>Mean</b>		4.78	3.81	1.00	3.97	2.02	4.11	4.17
<b>Std. Deviation</b>		.416	.781	.000	.789	1.256	1.044	1.110

Table 10 summarizes all responses to prompts in the questionnaire. When data was coded for SPSS, Strongly disagree was given the value of 1, Disagree 2, undecided 3, Agree 4, and Strongly Agree was given value of 5. Therefore, a mean value of 3 was expected to mean the overall response to be undecided and responses whose mean occurred above 3 were in the region of agreement with the highest value of 5 while Strong Disagreement was to be lower than 3 with the lowest value of 1. The mean of 4.78 shows Strong Agreement to the first prompt. The mean of 3.81 is in the upper region of Agree for the second prompt. The mean of 1 for the third prompt shows strong disagreement with the contents. The mean of 3.97 for the fourth prompt falls in the upper region of Agreement. The mean of 2.02 for the fifth prompt shows a borderline area between Strong Disagreement and Disagreeing. The mean of 4.11 for sixth and mean of 4.17 falls in the lower part of Strongly Disagree. The results of the standard deviation mean the degree of fluctuation in the range of answers. The lowest fluctuation was recorded for the third prompt where a unanimous response came that Pashto does not help in gaining access to legal services in Pakistan. Two prompts regarding the Urdu language

produced an equal deviation of 0.789. The first one sought a response to suggestion whether proficiency in the Urdu language helps in gaining access to legal services and second suggested suitability of Urdu language for use in courts. Such deviation brings forth the suggestion that the responses at worst were bordering on being undecided to the upper margin of agreeing. However, the greatest variation in responses was observed in the standard deviation of 1.256 for the suggestion that English is suitable as the language of courts. This makes the opinion range between undecided and mid-level Strong Agreement. The suggestion that Pashto is suitable as the language of courts which brings it closer to undecided in worst and Strong Agreement in best case scenario.

The questionnaire-based study compared Urdu, English, and Pashto in terms of its suitability for access to legal services and which language being more facilitating in access to the legal domain.

### **Focus Group Discussion**

The effects of language-based barriers on stakeholders were explored in the Focus Group Discussion. The discussion pointed to the following effects:

1. The English language supports a small educated, urban and wealth elite
2. The English language disadvantages the uneducated, poor and rural population
3. The English language predispose the elite to unfairly manipulate the legal services to their advantage
4. Urdu language though widely used become fairly difficult for the illiterate segment of the population
5. Pashto though a regional language in Khyber Pakhtunkhwa (Pakistan), lacks standardization to be used effectively in courts.
6. Translation services are in poor form and ineffective in the courts.

The discussion resulted in the following proposals for easing language-based barriers to the domain of legal services:

1. Making the English language more accessible to litigants especially the uneducated through state-sponsored translation services
2. A gradual transition from English to the Urdu language in the long term and allowing regional languages use in courts through translation services to all citizens
3. Making legal terminologies, documents and proceedings more accessible by making the presence of translation services compulsory part of all courts
4. Discouraging the practice of giving more prestige to the English language at the cost of Urdu and other regional languages.
5. Promotion of all Pakistani languages in education so they can be used later in the domains of power especially courts by the learners. The current teaching of literature only is ill-suited to the development of technical expertise required in the domain of legal services. Designing technical writing skills courses for schools, colleges, and university students.

The promotion of local languages in local courts can facilitate in access to justice at the local levels. Appointment of local judges and the establishment of courts in more localities will help in using the local languages in local courts.

## **Conclusion**

The paper explored the nature and effects of language-based barriers in accessing the domain of legal services. Pakistan is a multilingual state acquired the English language as the official language from the colonial past. The legal system over the last seventy years instead of promoting local languages always delayed the transit from English to Urdu and local languages. Constitution of Pakistan declares Urdu as the national language but legal machinery has failed to transit from English to Urdu. The language of jurisprudence remains

the English language. The study found Urdu to be more acceptable choice for implementation in the domain of legal services in Pakistan. The study also noted that in lower courts, where the majority of litigation happens, can benefit from promoting the use of the local languages. The study, therefore, recommended that more local courts with a judge familiar with local languages may be appointed. Translation services being non-existent, constitute an integral part of developed states where language-based access is ensured as the right of every person. The establishment of extensive and superior translation services will help in solving the problem of language-based barriers to legal services in Pakistan.

## References

- Ahmad, A. (2016). *Role of English in Afghan Language Policy Planning with its Impact on National Integration (2001-2010)*. (Ph.D.), University of Peshawar, Peshawar.
- Asensio, R. M. (2014). *Translating Official Documents*. New York, NY: Routledge.
- Botero, J. C. (2002). The Delivery of Justice in Middle-Income Countries. In R. Peerenboom & T. Ginsburg (Eds.), *Law and Development of Middle Income Countries: Avoiding the Middle-Income Trap* (pp. 195-221). Cambridge, UK: Cambridge University Press.
- Code of Criminal Procedure, 1898 (1898).
- Code of Civil Procedure, 1908 (1908).
- Education First. (2018). English Proficiency Index. Netherland: Education First.
- Law Help. (2018). Getting Legal Assistance in Your language: Language Access Rights at Legal Aid Offices. Retrieved November 18, 2018, from <https://www.lawhelp.org/resource/getting-legal-assistance-in-your-language-lan>
- Ngo-Metzger, Q., Clarridge, B. R., Iezzoni, L. I., Massagli, M. P., Manocchia, M., Davis, R. B., & Phillips, R. S. (2003 Jan). Linguistic and Cultural Barriers to Care: Perspective of Chinese and Vietnamese Immigrants. *Journal of General Internal Medicine*, 18(1), 44-52.
- Pakistan Annual Law Digest Office. (1979). *Pakistan Annual Law Digest*. Lahore: KPL Publications.

- Rahman, T. (1998). *Language and Politics in Pakistan*. Karachi: Oxford University Press.
- Rahman, T. (2004). *Language and Education: Selected Documents (1780-2003)*. Islamabad, Pakistan: National Institute of Pakistan Studies.
- Scetzer, L., & Henderson, J. (August 2003). Access to Justice and Legag Needs: A Project to Identify legal needs, pathways and barriers for disadvantaged People in NSW (pp. 1-385). Sydney: Law and Justice Foundation of New South Wales.
- UNDP. (2016). *Global Study on Legal Aid*. New York, NY: United Nation Development Programme and United Nation Office on Drugs and Crime.
- United Nation Office on Drugs and Crime. (2016). *Global Study on Legal Aid: Global Report*. New York, NY: United Nation Development Programme.
- UNODC. (2014). *Early Access to Legal Aid in Criminal Justice Process: A Handbook for Policymakers and Practitioners Criminal Justice Handbook Series*. New York, NY: United Nations Office on Drugs and Crime, United Nations Development Programme.