

INVESTIGATING PROCEDURAL, INSTITUTIONAL & CIRCUMSTANTIAL IMPEDIMENTS LEADING TO DELAY IN DISPENSATION OF JUSTICE

Ahsan Jamal Pirzada, Sabeeka Zafar, Tanees Fatima and Muhammad Adil

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

INTRODUCTION

The judicial system in Pakistan is facing mounting judicial backlog and delays for decades with around 2 million cases in pendency, this problem is particularly acute in lower judiciary. The issue is mainly attributed to the archaic and outdated Code of Civil Procedure 1908 (CPC) and the haphazard amendments made to it. The research paper investigates the procedural, circumstantial and institutional impediments that cause delay in administration of Justice, by conducting a comprehensive review of problematic provisions of CPC and has then identified the bottlenecks and gaps that enables delays during the life span of a civil trial. In addition, the research explores the overwhelming burden on Pakistan's civil justice system by examining the cases that illustrate excessive workload of civil judges and challenges faced throughout the legal proceedings. Moreover, a review of causes lists and order sheets from different jurisdictions was also undertaken to determine the common reasons that cause delays. Furthermore, the research conducted key informant interviews with members of legal and judicial fraternity, and after carefully examining the suggestions given, developed a model procedure that addresses the issue of prolonged litigation in civil suits. The proposed model procedure, if adopted, can substantially reduce the backlog and streamline the procedural framework that governs different stages of a civil trial.

METHODOLOGY

The research undertaken conducted a thorough review of three authoritative commentaries regarding the Civil Procedure Code 1908 authored by Chitley, M. Mahmood and Amir Raza. Additionally, a comprehensive analysis of 330 civil cases was conducted in order to have an in-depth understanding of the provisions of CPC. The main objective of this analysis was to identify any procedural hindrance embedded in the code. Moreover, 'The White Book', a compilation outlining the civil procedures rules in United Kingdom, was carefully examined to draw comparisons and optimal solutions. The research further studied legal procedures of various jurisdiction including United Kingdom, Australia, Canada and United States to incorporate the best practices into our findings.

Furthermore, to gather empirical data, Court's Cause Lists from 10 distinct districts from all over Pakistan were procured and reviewed to analyze the case load of a civil judge. In addition, Order Sheets of 120 different categories of civil cases were procured and meticulously reviewed to determine the main causes and reasons of prolong litigation in Pakistan. For historical and

institutional insight, visits were made to the National Archives and Law & Justice Commission of Pakistan. Further, visits were made to various courts situated in Punjab, Islamabad, Peshawar and these visits were pertinent in identifying the circumstantial impediments in the judicial processes. Moreover, the research conducted key informant interviews and group discussions from 21 professionals belonging to legal, judicial and academic field with an aim to identify challenges of the judicial sector and proposed solution to it.

The findings from these diverse sources of research paved the way to develop a model procedure that can potentially address the existing impediments, streamline procedures and set in place a more effective and efficient judicial process.

FINDINGS AND CONCLUSIONS

The research conducted a comprehensive review of CPC, cause lists and order sheets of 120 civil cases. The findings of the research are:

Problematic CPC Provisions

The research has identified that the summoning process in CPC is archaic and there is no provision that makes it mandatory for Courts to simultaneously utilize all resources available at disposal to issue summons. The court follows the usual procedure starting with personal services, if unsuccessful, then summons are affixed to the property and at a very last resort a substituted service is opted for. These steps result in time wastage and needless adjournments. In addition, provisions regarding pleadings (plaint and written statement) in Order VI, VII & VIII are frequently abused and contribute to delays and frivolous application. For instance, as per Order VI Rule 17, pleadings can be amended at any stage. In review of order sheets, it was observed that in many cases, application of amendment of pleadings was accepted even after several years of a trial. Similarly, there used to be a prescribed time limit for filing written statements. However, recent amendment in 2023, applicable in Islamabad, has struck down the time limit and this will further cause unnecessary delays. Furthermore, there is no bar on the number of witnesses which can be called in a case hence, this is one of the causes of lengthy evidence phases in a civil trial.

Review of Cause Lists

Cause lists are lists of cases scheduled for adjudication on a given day, including both civil and criminal cases. The data collection focused on four major provinces of Pakistan: Punjab, Khyber Pakhtunkhwa, Balochistan, Sindh and Islamabad Capital Territory. Disparities were observed in caseloads between different courts within the same locality and across districts. Caseload distribution raised concerns about the potential under-prioritization of certain types of cases, improper work distribution and the need for better case flow management.

Order Sheets

Order sheets containing details of civil case proceedings were analyzed for various categories of cases: Khula (divorce), Rent, Recovery, and Specific Performance. The study revealed variations in

case durations and the number of hearings required for different case types across districts. Notable differences were observed between Khula and Rent cases compared to Recovery and Specific Performance cases. Challenges were encountered in collecting order sheet data, highlighting the need for digitization and improved record-keeping systems. A review of reasons for adjournments in court proceedings was also conducted. The most common causes of adjournment which were due to judge-related factors includes leaves, transfers, and training, which were often overlooked in discussions about judicial backlogs. In addition, major reasons for adjournment because of lawyers includes strike and busy schedule of lawyers.

Hence, our findings conclude that there are eminent disparities in caseloads and case durations. Further, the provisions of CPC are abused, and it is pertinent to mention that judges and lawyers are equally responsible for adjournments as evident from the data collected through order sheets. The findings emphasized the need for better case flow management, reducing judicial discretion, and addressing factors contributing to delays in court proceedings.

KEY POLICY RECOMMENDATIONS

The research study carefully examined all the impediments that cause pendency in the judicial sector and after due deliberation on each and every aspect proposed following recommendations:

E-Portal

The research recommends the establishment of E-portal for judges and lawyers. The primary goal of this portal would be to have digitized diaries of lawyers which would pave way for judges to set timeline of a trial in accordance with the availability of a lawyer. This would reduce the unnecessary adjournments and will further provide lawyers with an opportunity to initiate legal proceedings on behalf of their client.

Pre-Action Protocols

The research recommends establishments of pre-action protocols which consists of certain steps Court expects parties to take prior to commencement of proceedings, to promote consistency in pre-action correspondence and investigation as well as promoting the settlement of issues without further need to litigate. Alternate Dispute Resolution “**ADR**” falls under the ambit of pre-action protocols and it is already present in Pakistan but it the problem is that it lacks implementation. Hence, it is further recommended that there is a need to create more mediation centers all over Pakistan so that more people opt for ADR.

Integration of Judicial Data with NADRA Database

In many civil suits ‘summoning’ of defendants and witnesses is one of the major reasons that cause delays because party to a suit do not have updated residential addresses of them. Therefore, the research recommends integration of judicial data with NADRA Database for effective summoning. It is pertinent to mention here that this proposition is not difficult to implement as passport offices are also linked with the NADRA Database hence, the same can be replicated with the judicial system.

Admin Wing

The research recommends that a separate administrative judicial wing should be constituted. This wing will act in the capacity of the court for the purposes of disposing of all preliminary matters pertaining to a suit that does not include substantive adjudication. The department will be run by separate judicial officers who will be specifically trained in active case management.

Imposition of Costs & Penalties

The provisions regarding costs in CPC are under-utilized therefore we see a lot of unmeritorious and vexatious cases. Hence, the research recommends that costs should be adopted as a standard practice of courts and penalties should be imposed on everyone who abuse the court procedures.

Cap on Adjournments

In review of order sheets, it was observed that in some instances Judges grant adjournment without recording any reason and in some cases, matter was adjourned time and again to give one party opportunity to provide evidence. Hence, the research recommends that there should be a definite cap on the number of adjournments for a particular case.

Independent Body of Observers

Currently, there is no independent body for the purpose of monitoring and evaluation of judges hence, it is essential that there is independent body of observers for the purpose of making qualitative and quantitative analysis reports on all judges. Therefore, the research recommends an establishment of office of 'Administrative Oversight' an independent body that will monitor and evaluate performance of judges and also issue licenses to lawyers.

Increase in Number of Judges

One of the key recommendations this research study proposes is that there is a dire need to increase the number and strength of judges in district judiciary. The proposed model procedure and active case management can only be adopted in letter and spirit when there are more judges in the district judiciary and there is no disparity regarding the case load.

Training Sessions

The research recommends that training of judges and lawyers on pre-action protocols, active case management and scheduling conference is essential. There are provisions regarding case management and ADR in the CPC, but they lack enforceability. Hence, it is suggested that there should be proper training sessions for legal and judicial fraternities where they are made aware of the benefits of these provisions and encouraged to adopt these practices.

Overhaul of CPC

The piecemeal amendments in CPC with vague and discretionary language did not serve a useful purpose. Hence, the research recommends a complete overhaul of CPC provided that it is done by considering propositions of all the stakeholders involved in the judicial process.