COMBAT DELAYED JUSTICE

Proposal for Reform in the Judicial System in Pakistan

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I. INTRODUCTION

The Civil and Criminal Justice System in Pakistan is confronted today with serious crises of abnormal delays. There are countless and innumerable arrears in Lower courts, High courts and Supreme Court pending disposal. It is beyond dispute that credibility in courts to administer justice is almost shaken. The impending causes of the backlog of cases are inbuilt, arising out of wastage of time at several stages of the legal procedure at different levels of the hierarchal system. Delay in litigation of Civil and Criminal Cases has become chronic and proverbial. The phenomenon is not restricted to Pakistan; it is rather historical and universal. It is inherent in every judicial system, which meticulously guards against any injustice being done to an individual, in a civil dispute or criminal prosecution. A paramount principle of the Criminal Justice System is that an accused is punished only after his guilt is proved beyond a shadow of doubt. Similarly, justice demands that in the trial of a Civil Case, the dispute must be decided strictly in accordance with the law and on the principal of equity, justice and fair play. Such universally recognized and time-tested principles are in accordance with the injunctions of Islam as Holy Quran ordains that Muslims must eschew injustice, coercion, and suppression.

Walter Savage Landor said: "Delay in justice is injustice" and the aim of this paper is to make suggestions and effective measures for the disposal of pending cases to speed up dispute resolution and improve the quality of justice.

The efficient working of the Courts and speedy and inexpensive administration of justice requires improvement in the following sectors:-

- Tightening of supervision and control by the superior Courts over the subordinate Courts;
- Training and education/orientation of judicial officers;
- Amendment in procedures & laws;
- Setting up of judicial police and a separate process serving agency for criminal trials.
- Improvement of the working conditions in the Courts and their offices;

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II. TIGHTENING OF SUPERVISION AND CONTROL

Under Article 203 [2]of the Constitution of Islamic Republic of Pakistan, 1973, supervision and control of the subordinate Courts vests in the High Court. However, the High Court has to depend, to a large extent on the District and Sessions Judges of the Districts for the effective exercise of their powers. Thus practically it is the supervision and control of the District and Session Judges over their subordinate Courts which helps the High Court to extend this Constitutional mandate over the Subordinate Judiciary.

Effective control requires that:-

(i) Only a reasonable number of Judicial Officers should be placed under the control of a District and Sessions Judge who should be able to monitor their activities in and outside the Court.
(ii) District and Sessions Judge should have sufficient free time to keep a watchful eye on the activities of their subordinates.
(iii) The Senior Civil Judges should be allowed sufficient time to check and control the *Nazarat* under their control and to ensure proper service of summons and execution of warrants.

1. PROPOSAL

(i) Instead of continuing with the traditional Judicial set up in District, a new set up based on smaller judicial units, one each for an electoral unit/constituency may be introduced. Each judicial unit shall consist of a District and Sessions Judge 2/3 Additional District and Sessions Judges, one Senior Civil Judge and 4/6 Civil Judges-cum-Judicial Magistrates (an ideal ratio being District and Sessions Judge one; Additional District and Sessions Judges three; Senior Civil Judge one; and Civil Judges-cum-Judicial Magistrates six).

(ii) The District and Sessions Judges and Senior Civil Judges may be exempted from judicial work except the following:

(a) DISTRICT AND SESSIONS JUDGE

(1) Cases transferred to his Court by the High Court.

(b) SENIOR CIVIL JUDGE

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[2] Article **203. High Court to superintend subordinate Courts.** -Each High Court shall supervise and control all Courts subordinate to it.

(1) Succession Certificates.

(2) Cases transferred to his Court by the High Court or the District and Sessions Judge.

If this scheme is adopted the District and Sessions Judges and the Senior Civil Judges will have sufficient time at their disposal for supervision and monitoring the activities of the Judicial Officers and the staff under their control.

As an interim measure, major districts (with large population) may be divided into more than one Sessions Divisions. Thus Karachi and Lahore may be divided into 4, and Peshawar, Quetta, Hyderabad, Abbottabad, Faisalabad and Multan into 2 Sessions Divisions. However, the Courts will be held at the same/existing complexes-only the areas and Judges will be allocated to each Sessions Division.

III. RECRUITMENT AND TRAINING OF THE JUDICIAL OFFICERS

As explained in later on in this paper, a case-to-Judge ratio needs to be maintained to ensure a proper and speedy hearing of a case. This would require appointment of more Judicial Officers at all levels. It is accordingly proposed that sufficiently large groups of trainee Judicial Officers may be recruited for a purposeful, job-oriented pre-service training comprising long term and short term courses, arranged on the lines of the Armed Services Academies, Civil Services Academy, NIPA and Administrative Staff College: The training, amongst others, should include the following:

(a) Instructions in basic laws (both substantive and procedural) with special emphasis on laws, which are commonly used in Courts.

(b) Subject-wise comprehensive study of case-law.

(c) A general introduction of Halsbury's Laws of England[3], Corpus Juris Scundum,[4] Encyclopedia of American Constitution, Indian Commentaries on Constitution and various laws.

(d) Making legal research using internet from legal sites like Pakistan Law Site[5], Indlaw.com[6] LexisNexis[7]

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[3] ***Halsbury's Laws of England*** is a uniquely comprehensive and authoritative encyclopedia of law, and provides the only complete narrative statement of law in England and Wales. It has an alphabetized title scheme covering all areas of law, drawing on authorities including Acts of the United Kingdom, Measures of the Welsh Assembly, UK case law and European law. It is written by or in consultation with experts in the relevant field.

[4] **Corpus Juris Secundum** (C.J.S.) is an encyclopedia of U.S. law. Its full title is Corpus Juris Secundum: Complete Restatement Of The Entire American Law As Developed By All Reported Cases (1936-) It contains an alphabetical arrangement of legal topics as developed by U.S. federal and state cases.

(e) Training on Case Management & ADR Mechanisms.

(f) Training on careful examination of plaint on its filing in terms of Order VII Rule 11, section 151, CPC and instructions contained in High Courts Orders & Rules**.**

(g) Lectures on recording and appraisal of evidence.

(h) Judgment-writing.

(i) Maintenance of files.

(j) Dealing with the members of the Bar and litigants.

The appointment and retention in service of the judicial officers and their promotions should depend on the successful completion of their training. Grant of selection grades/move-over etc. should also be linked with the completion of training.

IV. AMENDMENTS/ALTERATIONS IN PROCEDURES & LAWS

1. **PROPOSALS**

CIVIL CASES

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[5] **Pakistan Law Site**-This resource ensembles the idea of LAWONLINE. This is one stop resource site for Statutes, Rules and Cases relating to Pakistan. This site is one of its kind and houses all the federal and provincial statutes and cases related to these statutes. Taxation, Service, Copyright, State planning, Labour and all kinds of Fiscal statutes are covered in this site. Moreover there are more than 1200 Essays and writing and other legal documents available here. It also houses all the Journals of PLD Publishers that are PLD, SCMR, CLC, PCrLJ, PTD, PLC CLD and YLR.

[6] **Indlaw.com** offers an online legal database with an extensive coverage of full text judgments starting from the year 1836 of all Indian and English courts like Supreme Court of India, All High Courts, Tribunals, Privy Council, House of Lords, Family Division etc.

[7] **LexisNexis**® is a leading global provider of content-enabled workflow solutions designed specifically for professionals in the legal, risk management, corporate, government, law enforcement, accounting, and academic markets. More than legal research, the LexisNexis® Total Research System provides you online access to state and federal case law; codes and statutes; court documents and extensive secondary materials such as treatises and law journal articles. It has over 3.5 billion public records; business news, legal news, and regional news; expert commentary on the law; Shepard's® Citations Service; and so much more.

2. AMENDMENTS IN CIVIL PROCEDURE CODE,1908

(a) (i) **Pre-trial procedure** —The Judges of the subordinate Courts may be spared of such work which is merely preparatory to actual judicial proceedings and which can be conveniently handled by the officers of the Courts. Proceedings in a civil case up to the stage of appearance of the second party and filing of written statement/reply by the defendant or the respondent may be handled by the officers of the Court. After the service of the opposite party the written statement shall be placed before the Court for striking of issues. No adjournment shall be given for striking of issues and the case shall be fixed for evidence on the same day. Appropriate amendments in Order III & V may be made.

(ii) **Service of Process---**For expeditious disposal of cases and to prevent abuse of the process the courts be empowered to adopt any fair procedure not inconsistent with the provisions of the Civil Procedure Code. The procedure for summons in all type of civil courts and appeals should be simplified and made effective by adopting all the possible modes available for the service of the parties through modern devices at the first instance. The Order V should be amended as under:-

(i) in rule 2, after the word "statement" the words "along with the copies of all documents which have been produced by the plaintiff" shall be inserted;

(ii) in rule 10-A, for sub-rule (1), the following shall be substituted, namely:--

"(1) Service by post, etc.—simultaneously with the issue of summons under rule 9, there shall be sent, unless otherwise ordered by the Court, another copy of summons signed and sealed in the manner provided in rule 10 to the defendant by—

(a) affixing a copy of the summons at some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain;

(b) any electronic device of communication which may include telegram, phonogram telex, fax radio and television;

(c) urgent mail service or public courier services;

(d) registered post, acknowledgement due;

(e) beat of drum in the locality where the defendant resides;

(f) publication in newspaper having wide circulation in area where service is to be effected; and

(g) any other manner or mode as it may deem fit.";

(iii) after sub-rule (2), the following new sub-rule shall be inserted, namely:--

"(3) Service of summons in the manner provided in sub-rule (1) shall be as effectual as if it had been made on the defendant personally."; and

(iv) rule 20 shall be omitted.

(ii) **Service of Process**—Pre-institution notice should be sent to the second party by the counsel intending to file the suit. The duration of this notice may vary from case to case depending on the urgency of the cause. Order V may be suitably amended.

(b) **One time process-fee (*Talbana)***—One time *Talbana* should be deposited along with the filing of the suit/proceedings should be deposited along with the filing of the suit/proceedings. Rates of *Talbana* may be revised accordingly. This will obviate the chances of adjournment on account of non-payment of *Talbana* fee. Suitable amendments may be made in the High Court Rules & Orders.

(c) The Code of Civil Procedure should be so constructed as to secure substantial, inexpensive and expeditious justice. The following amendment should be made in section 1.

In section, 1, after sub-section (3), the following new sub-sections should be added, namely:--

"(4) *The Code shall be so construed as to secure substantial, inexpensive and expeditious justice.*

(5) the court may, in the interest of expeditious disposal of a case and to prevent abuse of the process of law, adopt any fair procedure not inconsistent with the provisions of this Code.";

(d) Please add after **Sub-Section 2 of Section 12 CPC** the following words: ***"But the proceedings would be of summary nature."***

In section 12, after sub-section (2), the following new sub-section should be added, namely:--

"(3) For the decision of an application under sub-section (2), the court may in the interest of expeditious disposal apply such fair procedure as the circumstances of the case warrant, and shall, unless for reasons to be recorded in writing it directs otherwise, order any fact to be proved or disproved by affidavit, and such affidavit shall be read as evidence.";

(e) In section 30, in clause (c) after the word ***"proved"*** the words ***"or disapproved"*** should be inserted.

(f) In order to curb the false and vexatious claims an amendment is proposed to award compensatory costs as a mandatory requirement and the maximum limit of the costs should also be enhanced from twenty-five thousand to one hundred thousand. Following amendment should be made in section 35,--

(i) in sub-section (1), for the words ***"to all suits shall be in discretion of the Court"*** the words ***"to all suits and other proceedings in the suit including an execution proceedings, shall follow the event, unless for reasons to be stated in writing the court directs that any costs shall not follow the event"*** should be inserted; and

(ii) for sub-section (2), the following should be substituted, namely:--

"(2) Each party shall, within seven days of the completion of evidence, file in the court a statement of the actual costs incurred by it, and to which it claims to be entitled. The statement shall include the fees paid to the counsel. If a party fails to file such a statement within the specified time or within the extended time granted by the court, it shall not whatever the result of the suit, be entitled the costs:

Provided that notwithstanding the failure of the party to comply with this provision, the court may allow such costs as are ascertainable from the record"; and

(iii) after sub-section (3) the following new sub-section should be added, namely:--

"(4) Nothing in this section and in the principle that costs shall follow the event shall be construed to prevent the court at any stage of the suit or a proceeding in the suit form assessing the costs, and ordering their payment forthwith and from specifying the manner in which such costs shall be recoverable.";

(g) In Section 35-A,--

for sub-section (1), the following should be substituted, namely:-

"(1) If in any suit or a proceeding in a suit, including an execution proceeding, it appears to the court that the claim or defence, or any part of it, is false or vexatious or there was no probable or reasonable ground for making it, and such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the court may, after hearing the parties and for reasons to the recorded, make an order for the payment of such proportionate costs by way of compensation as warranted by the facts of the case. The court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purpose, including a direction that the costs shall be payable forthwith and recoverable in such manner as the court may specify." and

In sub-section (2), for the words ***"twenty-five thousand"*** the words **"one hundred thousand"** shall be substituted";

(h) In section 83, in sub-section (1), for the words ***"the Provinces"*** the word "Pakistan" shall be substituted;

(i) In section 84, in sub-section (1), for the words ***"the Provinces"*** the word ***"Pakistan"*** shall be substituted;

(j) To encourage settlement of cases outside the court with the help of alternate dispute resolution mechanisms (ADR) in suits for partition and

rendition of accounts and in any order case in which the court finds that there is a possibility of settlement the court should require the party to have resort to ADR methods and for that matter the court may use the good offices of retired Judges, advocates, technocrats Insaf Committee or Musalihat Committee or Ombudsman under a Local Government Ordinance, 2001. For section 89A, the following should be substituted, namely:-

"89A. Alternate dispute resolution.—*(1) In suits for partition or rendition of accounts or in a dispute in any other suit in which it appears to the Court that there is reasonable possibility of an amicable settlement between the parties, the Court shall, with a view to encouraging such a settlement, require the parties to have resort to one of the alternative dispute resolution methods, such as mediation, conciliation or arbitration.*

(2) For the purposes of sub-section (1), the Court may refer the matter to retired Judges of Superior Courts or of subordinate Courts, technocrats heaving experience in the relevant field, or an eminent lawyer or any other person acceptable to both the parties, an Insaf Committee or a Musalihat Committee constituted under a Local Government Ordinance 2001, or the Ombudsman appointed under the said Ordinance.

(3) A matter to a mediator, conciliator or an arbitrator, as the case may be, shall be disposed off by him within a period of ninety days, extendable for sufficient cause for another period of sixty days.

(4) The Court shall pronounce judgment in terms of decision made as a result of mediation, conciliation or arbitration and upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except on the ground of misconduct.

(5) On receipt of decision of a mediator, conciliator or arbitrator, as the case may be, the Court may on its own or on the application of either party examine the propriety or legality of the decision and may pass such order as it deems fit without recording any fresh evidence.

(6) The Arbitration Act, 1940 (X of 1940) shall not apply to arbitration under this section.

(7) Section 28 of the Contract Act, 1872 (IX of 1872), shall not apply to an agreement for the resolution of disputes by one of the alternative dispute resolution methods under this section";

(k) It is proposed that where any party to the suit obtains an order of temporary injunction or attachment before judgment on insufficient grounds the court may grant punitive compensatory costs. For section 95, the following should be substituted, namely:--

" 95. Compensation, for obtaining arrest, attachment or injunction on in sufficient grounds.*—(1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section, it appears to the court that such arrest, attachment or injunction was applied for insufficient grounds or that there was no reasonable or probable ground for making the application, the court may, on its own motion or on the application of the aggrieved party, award against the party at fault such punitive compensation as it deems reasonable to the aggrieved party for the expense and injury caused to him.*

(2) In addition to the compensation awardable under sub-section (1), the Court may also make an order directing the party at fault to pay such amount as penalty payable into Court for wasting public time and for abusing the process of the law, as the Court deems just.

(3) An order under this section shall bar any suit for compensation in respect of such arrest, attachment or injunction";

(l) It is proposed that no revision shall lie against any order passed by the District Judge under Section 104. In section 115, after sub-section (4), the following new sub-section should be added, namely:--

"(5) No proceedings in revision shall be entertained by the High Court against an order passed by the District court under section 104.";

(m) In section 151, after the word ***"Court"***, occurring for the first time, the commas and words ***",to be exercised after recording reasons,"*** should be inserted;

(n) To give relief to the people at the door steps the District Judges should be empowered to issue directions to the concerned functionaries of the Local

Government or other officials of the District Government, the Provincial or the Federal Government to refrain doing unlawful acts and to perform the duties as required by law. Following new Section 151A CPC should be be inserted, namely:--

> *"151A.* ***Powers of District Judge to issue directions.****— Without prejudice to any other law for the time being in force, the District Judge if satisfied that no other adequate remedy is provided by law, on an application by an aggrieved person or on his own motion, may direct any holder of public office within the District to refrain from doing anything which is not permitted by law or to do anything or perform his duty in accordance with law to provide relief and remedies to the citizens at local level.*
>
> ***Explanation.—****For the purpose of this section, the expression 'holder or public office' means,--*
>
> *(i) all functionaries and officials of the District Government, a city District Government, a Zila Council, Tehsil Municipal Administration, Tehsil Council, Town Municipal Administration and Town Council; and*
>
> *(ii) official of the Federal Government, Provincial Government and statutory bodies owned or controlled by any such Government, who by virtue of their duties are performing functions within the district.";*
>
> *(2) The revision would lie to the High Court against an order passed by the District Judge under sub-section (1) and no appeal shall lie against such order.";*

(o) The Order VI rule17 should be amended and words ***"before framing the issues"*** be mentioned in place of '***at any stage"***.

(p) Sometimes the cases are filed in courts which do not have the territorial jurisdiction and the plaints are returned. It is been proposed that in such situation appropriate costs should be imposed on refilling the suits. In Order VII, in rule 10, after sub-rule (2), the following new sub-rule should be added, namely:--

> *"(3) If the plaint is returned after the appearance of the defendant, the Court shall make an order, as to the appropriate costs to be paid*

by the plaintiff, for presenting the plaint in wrong forum, to such defendant on filing of the fresh suit.";

(q) In Order VIII, in rule 1, in the proviso the word ***"ordinarily"*** should be omitted;

(r) To further to curtail delays it is proposed that the defendant in all the cases shall file written statement within thirty days in all cases. In Order VIII, in sub-rule 3, for the word ***"may",*** occurring for the first time, the word **"shall",** should be substituted.

In rule 13 of Order VIII the following Sub-Section 4 should be added.

"In case of failure to comply with Rule 13-A and 8, the defense shall be struck off."

Order VIII should be amended and if the denial of the defendant is false he should be prosecuted for the perjury and in case of false denial special costs should also be imposed upon the defendants.

(s) Before striking issues, better statements of the parties should be recorded and Court should put questions to them to reduce the points of controversy to the minimum. The parties must be asked to produce all the documentary evidence at this stage.

Following the pleading it is proposed that party shall file list of proposed issues within seven days which would reduce delay. In Order XIV, in rule 1, after sub-rule (4), the following new sub-rule should be added, namely:--

"*(4a) After the filing of written statement both the parties shall, within seven days, file proposed issues which are based on material proposition of fact and law.";*

(t) At present a lot of time is spent in recording the evidence. In order to curtail the delay it is proposed that after framing the issues within seven days the parties shall produce affidavit of their witnesses containing their evidence which shall be treated as Examination-in-Chief. In Order XVI, for sub-rule (1), the following should be substituted, namely:--

"*(1) Not later than seven days after the settlement of issues the parties shall present in Court a list of witnesses along with affidavit of witnesses, containing their evidence, so far as it is applicable";*

(u) Adjournments.—The Court's discretion regarding granting of adjournments for the filing of written statements, statement of parties, compromises and for recording of evidence of the parties may be curtailed. In particular no

adjournment should be granted on the grounds of preoccupation of a lawyer in another Court, non-availability of documents, non-preparation of the case by the counsel and the like. Order III may be suitably amended to provide for engaging of a junior counsel along with a senior counsel. Other amendments in the Code of Civil Procedure may be made to achieve this objective. Unnecessary adjournments by the officers should be considered a serious misconduct on their part.

In order to discourage adjournments and to check the delays it is proposed that the court shall not adjourn the case for more than twice and any adjournment so granted shall be subject to payment of costs occasioned by such adjournment. In Order XVII, for rule 1, the following should be substituted, namely:--

"1. *Court may grant time and adjourn hearings.*—(1) The Court may, if sufficient cause is shown, at any stage of the suit, grant time to the parties or any of them:

Provided that the Court shall not grant more than two adjournments to the parties or any of them and except on payment of costs occasioned by such adjournment.

(2) *Where sufficient cause is not shown for the grant of an adjournment under sub-rule (1) the Court shall proceed with the suit forthwith.";*

(ii) after rule 1, substituted as aforesaid, the following new rule, shall be inserted, namely:--

"Day-to-day hearing of evidence.—1A. The hearing of evidence shall be continued from day to day until the completion of evidence in the suit, unless the Court finds the adjournment beyond the following day to be necessary adjourn such hearing for reasons to be recorded."; and

(iii) for rule 3, the following shall be substituted, namely:--

"3. Where any party to a suit fails to produce his evidence, or to cause the attendance of his Witnesses, or to perform any other act necessary to the further progress of the suit, the Court not notwithstanding such failure, proceed to decide the suit forthwith.";

(v) In Order XVIII, for rule 4, the following should be substituted, namely:-

"4. Where to be examined.—The affidavits of the witnesses having been filed by the parties shall be taken to be the examination-in-chief and the witnesses in attendance shall be cross-examined in open Court in the presence and under the personal direction and superintendence of the Judge.";

(w) In Order XIX, in rule 1,--

(i) after the word ***"proved"*** the words ***"or disproved"*** shall be inserted; and

(ii) in the proviso, for the words ***"and order shall not be made authorizing the evidence of such witness to be given by affidavit"***, the words ***"the Court may order the attendance for cross-examination of the deponent"*** shall be substituted.

(x) Arguments in cases are generally heard on the conclusion of the evidence and a number of opportunities are given. It is proposed that the court shall provide only a single opportunity for the purpose. In Order XX, in rule 1, in sub-rule (1), for the words ***"fix a date"*** the words ***"provide a single opportunity"*** should be substituted;

Written Arguments.—Counsel for the parties may be required to file synopsis of their arguments at the end of the case. Detailed and lengthy written arguments should be discouraged/disallowed. The Court may be required to announce decision of the case within seven days after the date fixed for hearing of final arguments.

Judgment and its copies—the two common complaints are that judgments so pronounced were not written or that the file is not sent to the Copying Branch promptly after pronouncement of the judgment so that a party can obtain a copy thereof in time. The second complaint is that the Court Staff allows *tips/baksheesh*. To rid off these two problems, copies of the judgments should be supplied to the parties in the Court at the time of announcement of the judgment as is done in appealable criminal cases. (The parties may be required to pay fee for the same). Similarly unattested/Photostat copies of record of pending or decided cases may be allowed on payment of fee. Order XX may be amended accordingly.

(y) In order to further curtail delay, in cases of partition and rendition of accounts, the examination of witnesses should be recorded through commission and in order cases keeping in view the facts and circumstances of the case. In Order XXVI, in rule 1 following amendment should be made,--

(i) for the marginal heading, the following shall be substituted, namely:--

"***Examination of witnesses through commission";*** and

(ii) for the ***full stop*** at the end ***a colon*** shall be substituted and thereafter the following proviso should be added, namely:--

"Provided that in a suit for partition and rendition of accounts the Court shall issue the commission for examination of witnesses"; and

(z) **Interim Orders:** For interim relief, the Judge should hear interim orders on the very next day following the filing of the application in order to allow reading and preparation. Judges working under single assignments should allocate a reasonable amount of time separately in the morning session to handle interim order applications and courts working under general assignments may wish to organize their rosters to allow for temporary specialization in interim order applications. A security posted as bond in application for interim orders should be mandatory, leaving to the judge's discretion the amount of such security in light of the potential harm to defendant and the plaintiff's ability to pay. Proof of prior notice on defendant prior to the seeking of exparte interim relief should be made mandatory, unless the plaintiff can effectively show cause why notice could not be affected. Applications and oppositions should require the filing of a simple form that provides summary information in less than two (2) pages relating to" the nature of the suit (such as in trademark), the right to enjoin (prima facie case); the threat posed by defendant (apprehension of act or omission; the harm if the injunction is not granted (irreversible prejudice); and the balance of convenience and of hardships. additionally, the form should include attachments of affidavits, relevant documents, and legal authorities. The hearing of arguments should be restricted to a limited period, the norm set at ten minutes, with ten minutes allocated to exceptionally complex cases. The orders granted exparte should automatically expire after thirty (30) days, unless the defendant has had a hearing before the court.

An amendment is proposed to discourage issuance of baseless Temporary Injunctions (stay orders). A stay Order should not be granted without notice to other party (except in cases of demolition, dispossession and alienation). In Order XXXIX, in rule 3--

(i) after the word ***"party"*** the words ***"and any injunction granted without notice shall be of no legal effect"*** shall be inserted; and

(ii) in the first proviso, after word ***"demolition"*** the words ***"or dispossession or alienation"*** shall be inserted and for the word ***"premises"*** the word ***"property"*** shall be substituted.

(aa) **Filing of appeals**—A common cause of delay in the processing of an appeal is that the record of the lower Court is not forwarded to the Appellate Court in time and the respondent avoids service to delay the hearing of the appeal. It is, therefore, proposed that all appeals may be filed through the Court, which had decided the case. The record of the trial Court shall be retained by that Court till the expiry of limitation of appeal or till the receipt of appeal, whichever is earlier. The trial Court shall forward the record and the appeal to the Appellate Court within 24 hours of its receipt. Order XLVII be amended accordingly.

(bb) **Interlocutory appeals-** Broad and expansive rights to interlocutory appeals are a large source of unnecessary litigation, estimates indicate that over fifty per cent of interim orders are appealed under Order XLIII or other similar authority and such appeals have the practical effect of a stay of the primary suit proceedings in a large percentage of those cases. In order to limit partially these rights of appeal, it has that, whereas the grant of an interim order should give rise to an appeal as of right, the dismissal of an interim applicable should be appealable only if it presents a substantial issue of fact and/or law. An additional recommendation is to place a greater burden on any moving party by requiring a security bond for the filing of an interlocutory appeal against an interim order (or a pre deposit, as appropriate in a money suit).

Petty/small causes involving recovery up to Rs.50,000/- should be made non-appeal able unless jurisdictional defect is found which has led to miscarriage of justice.

Cases involving recovery up to Rs.50,000/- should be made exclusively try able by Conciliation Courts.

(cc) **Power of Attorney**—One common device used by the lawyers to obtain an adjournment in a case, particularly when the witnesses of the opposite party are present in the Court, is to file a fresh power of attorney and request the Court for an adjournment so that he could prepare the brief. Similarly, once a case is decided, the lawyers from either side are generally reluctant to accept service of notices on the pretext that their clients have not issued any instructions. To ward off this problem, power of attorney filed by a lawyer shall be valid for all stages of the proceedings and before all Courts until properly revoked by the party or his lawyer. Where a lawyer of a party intends to revoke a power of attorney, both of them shall appear before the Court in which the case is pending and make

a statement to the same effect. In no case a lawyer shall be allowed to unilaterally withdraw his power of attorney in a case.

(dd) Separate Judges for various categories of cases.—The Judges may be assigned judicial work according to their attitude, expertise and specialization. As a general rule civil commercial cases may be assigned to senior judicial officers while rent and injunction cases may be entrusted to comparatively junior judges. Family cases should always be entrusted to senior most Judges and may preferably be heard in the chambers without lengthy evidence of witnesses should be discontinued. The Presiding Officers may only be required to make a notice of the evidence produced from either side. The emphasis of these proceedings should be on reconciliation and not a decision. Ladies Judges can also be appointed for the Family Court Bench for the hearing of such cases. Benches of Judges may be constituted to hear important cases, which may be categorized.

(ee) **Execution** in all cases should be carried out immediately after decision of the courts of the first instance and in money decrees by arrest of the judgment-debtor and simultaneously by attaching his property unless he produces a reasonable security for payment of the decretal amount. A mention shall be made in the Memo of Appeal of his having furnished the security; otherwise no appeal shall be competent.

(ff) **The duty roster** of the court should be fixed and the time for recording of evidence in the case must be specified in the cause list as well as lawyers should also be intimated in this behalf.

(gg) **Taking of Evidence In-Court.** The court should be provided with a mechanized reporting system for court reporters to record verbatim reproduction of oral testimony in written form. [8]

(hh) We must have a specific law for Mediation in Pakistan. All High Courts should amend the rules to give effect to Section 89-A of the Civil Procedure Code. We should make a National Action Plan for promoting and instituting the ADR. Amendments should be made in Financial Institutions (Recovery of Finances) Ordinance, 2001, Companies Ordinance, 1984, Modaraba Companies and Modaraba (Flotation and

[8] A **transcript** is a written record of spoken language. In court proceedings, a transcript is usually a record of all decisions of the judge, and the spoken arguments by the litigants' lawyers. The transcript is expected to be an exact and unedited record of every spoken word, with each speaker indicated. Such a record was originally made by court stenographers who used a form of shorthand abbreviation to write as quickly as people spoke. Today most court reporters use a specialized machine with a phonetic key system, typing a key or key combination for every sound a person utters). http://en.wikipedia.org/wiki/Transcript_(law)

Control) Ordinance,1980, HBFC Act, 1952, Industrial Relations Ordinance, 2002, Punjab Consumers Protection Act, 2005, Drugs Act, 1976, Income Tax Ordinance, 2001, Sales Tax Act, 1990, Customs Act, 1969,Copy Rights Ordinance, 1962, Registered Designs Ordinance, 2000, Patents Ordinance 2000, Registered Layout-Designs of Integrated Circuits Ordinance, 2000, Pakistan Environmental Protection Act, 1997, Insurance Ordinance, 2000, Privatization Commission Ordinance, 2000, The Electronic Transitions Ordinance, 2002, Imports and Exports (Control) Act, 1950, Oil and Gas Regulatory Authority Ordinance and Rent Restriction Laws for the resolution of disputes through ADR.

(ii) There are flaws in Arbitration Act 1940, namely: No interim power in the arbitrator, too many grounds for judicial intervention at all stages (pre-arbitral, during arbitration & post award), as a result it defeats the whole object of speedy and cost effective dispute resolution. A new Arbitration Act should be passed to implement the UNCITRAL Model Law on International Commercial Arbitration (the Model Law)[9] into Pakistan. This will constitute a further step forward in the efforts of the Government of Pakistan to build a framework for investor-friendly Dispute Resolution.

3. AMENDMENTS IN SPECIFIC RELIEF ACT, 1877

To further safe guard the rights of a person who has been wrongfully dispossessed, it is suggested that section 9 of the Specific Relief Act, 1877 (I of 1877) be amended in the following terms so that the court may through interlocutory order restore the possession to such party during pendency of the suit.

Section 9 should be re-numbered as sub-section (1) of that section; and--

(i) before the first paragraph, the following new paragraph shall be inserted, namely :--

"If it appears to the Court that any party has within two months next before the date of filing of suit is shown to be wrongfully disposed, the court may through an interlocutory order restore the possession to such party during the pendency of the case."; and

(ii) after sub-section (1) re-numbered as aforesaid, the following new sub-section shall be added, namely :--

[9] For the text and explanatory materials on the UNCITRAL Model on International Commercial Arbitration, United Nations Document A/40/17, annex I (as adopted by the United Nations Commission on International Trade Law on 21 June 1985 http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/06-54671_Ebook.pdf .[the "ICCA"]

(2) The court shall decide the suit within six months and where it decrees the suit it shall grant such compensation as it deems fit having regard to the loss suffered by the plaintiff."; and

4. AMENDMENTS IN POWERS OF ATTORNEY ACT, 1882

The powers of attorney are also often misused. To meet such a situation the power of attorney shall be renewable after every three years. In the Power of Attorney Act, 1882 (VII of 1882), after section 3 of the following new sections should be inserted, namely:--

***"3A. Name of donee to be specified**.—In the instrument creating the power of attorney authorizing the grantee to make gift of immovable property, there shall be specified the name of the donee in the instrument of power of attorney.*

***"3B. Period to be specified.**—The instrument of creating power of attorney shall be valid for three years from the date of its execution and shall be renewable after ever three years."*.

AMENDMENT IN REGISTRATION ACT, 1908

A large number of civil cases involve the dispute regarding execution of an agreement to sell by the seller executed prior to entering into another sale transaction subsequently. Most of these cases involve a forged and fictitious agreement to sell prepared backdated to defeat the rights of the subsequent buyer. This is due to the fact that the agreement to sell is not one of those documents which are compulsorily registrable under section 17 of the Registration Act, 1908. An amendment should be made in the aforesaid section to make the agreement to sell compulsorily registrable, this will avoid fling of a large number of frivolous civil cases.

5. CRIMINAL LAWS

6. AMENDMENTS IN THE PAKISTAN PENAL CODE, 1860

The following further amendments are proposed to be made in The Pakistan Penal Code (Act XLV 1860:--

a) A provision is proposed providing punishment for dishonest investigation by the Police which would help in curbing the evil of dishonest investigation resulting in redressing the grievances of the aggrieved persons. Following new namely Section 167A PPC shall be inserted.

*"**167A. Punishment for dishonest investigation.** – Whoever being a police officer conducts the investigation dishonestly in breach of his*

duties, shall be punished with imprisonment which may extend to three years, or with fine, or with both.",

b) In section 182, for the words "six months" the words "five years" and for the words "three thousand" the words "fifty thousand" shall be substituted";

c) Illegal confinement by police officer especially by the Police Officials should be made an offence punishable with imprisonment upto seven years and the offender shall also be liable to fine. Following new namely Section 344A PPC shall be inserted.

"344A. Punishment for wrongful confinement by a police officer or official.- *Whoever being a police officer or official wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.";*

d) In Section 379 (theft) punishment should be enhanced from ***three years*** to ***five years***.

e) A new offence for cattle theft should be provided which is punishable upto seven years with fine payable to the owner as compensation. This offence is quite common in some part of our country and as a result of proposed amendment the cases of cattle theft would come down. Following new namely Section 381B PPC shall be inserted.

"381B. Theft of cattle.- *Whoever commits theft of a cattle shall be punished with imprisonment of either description for a term which may extend to seven years and with fine which shall not be less than twice the value of the stolen cattle payable to the owner or his heirs, as the case may be, as compensation.";*

f) The punishment of fraud and forgery should be enhanced to curtail the cases of frequent fraud and forgery in particular involving immovable property (Section 420, 468 PPC).

In section 420, for the word ***"seven"*** the word ***"ten"*** shall be substituted;

g) The punishment of trespass by dispossessing any person from immovable property should be punishable upto ten years which would have a deterrent effect on Qabza Groups. The Section 441 and 447 PPC should be amended in following terms:

a) In section 441, after the word ***"annoy"*** occurring twice, the words ***"or dispossess"*** shall be inserted;

b) In section 447, after the word ***"punished"*** the commas and words ***",except in case of dispossession,"*** shall be inserted and after the word **"both"**, occurring at the end, the words ***"and in case of dispossession the offender shall be punished with imprisonment which may extend to ten years and shall also be liable to fine."***

c) In section 468, for the word ***"seven"*** the word ***"ten"*** shall be substituted and after the word ***"years"*** the words ***"and if such offence has been committed in relation to immovable property the imprisonment shall not be less than seven years"*** shall be inserted.

7. CODE OF CRIMINAL PROCEDURE, 1898

The following further amendments are proposed to be made in the Code of Criminal Procedure, 1898 (Act V of 1898):--

a) Wide powers of police u/s Section 54 Cr.P.C to arrest should be curtailed in order to save the general public from abuse of the power by the police. This section should be amended as under:

In section 54, in sub-section (1)--

(a) in clause first, for the ***semi-colon***, a ***colon*** shall be substituted and thereafter the following proviso shall be inserted, namely:--

"Provided that where a person is arrested on the basis reasonable of suspicious, such arrest shall be reported to the incharge of the police station concerned immediately for verification and if officer incharge of the Police-Station is satisfied of the grounds of arrest he shall record the same in writing";

(b) clause secondly shall be omitted; and

(c) in clause fourthly, after the word *"**thing"*** at the end, the comma and words ***" in respect of which credible information has been received"*** shall be added;

2. A police officer failing to record FIR in cognizable offence should be made liable to prosecution under Article 155 of Police Order, 2002. Section 154 should be re-numbered as sub-section (1) of that section and after sub-section (1) re-numbered as aforesaid the following new sub-section should be added, namely:--

"(2) Where an officer incharge of a police-station refuses to record information relating to the commission of a cognizable offence he shall be liable to prosecution under Article 155 of the Police Order, 2002.";

b) The courts should be empowered to direct investigation by the police in non-cognizable cases on receipt of information which would put the police in motion immediately resulting in redressal of grievances of the common man by amending Section 155 of Cr.P.C. In section 155, after sub-section (2), the following new sub-section should be added, namely:--

> *"(2a) Where any person furnishes information to a Magistrate of the first or second class of the commission of a non-cognizable offence having power to try such offence such Magistrate may direct the investigation to be conducted by police whether information under sub-section (1) has been given or not.";*

c) In case the challan is not submitted within the prescribed period, the court shall pass an order directing that entry of negligence may be made in service record of the police officer concerned. The Section 173 Cr.P.C. should be amended accordingly.

In section 173, in sub-section (1), in the proviso, after the word ***"commence"*** occurring at the end, the words and *if report is not submitted within the aforesaid period, the Court within next seven days shall pass an order directing that an entry of negligence and carelessness be made in the service record of the officer concerned";*

d) In order to reduce the court delays due to non-attendance of the witnesses and non-production of documents in criminal cases an amendment is proposed empowering the trial court to take action against the delinquent. The Section 195 Cr.P.C and consequential amendment in Section 476 empowering the court for mandatory prosecution should be brought.

In section 195,--

a) in clause (a), for the figures and word ***"172 to 188"*** the words, commas and figures ***"172, 173, 176 to 181, 183 to 188"*** shall be substituted; and

b) in clause (b), after the word ***"sections"*** the figures, letter, comma and word **"167A, 174 and 175"** shall be inserted;

e) The condemned prisoners should not be shifted to death cells without confirmation of sentence by the High Court. In section 374 the following amendment should be made;

After the word ***"Court"*** at the end, the words ***"and the convict shall not be treated as condemned prisoner till confirmation of sentence and till such confirmation is made he shall not be confined in death cell but may be kept in high security section earmarked for this purpose in a jail";***

f) In section 476, in sub-section (1), for the word ***"may"*** the word ***"shall"*** shall be substituted;

g) Another reason of delay of the cases is the absconscion of the accused after having been granted bail and the sureties get themselves absolved by paying some percentage of the amount of the surety. The law in this respect is should be amended curtailing the power of the court to give remission in the amount of the surety. In Section 514 Cr.P.C.in section 514, sub-section (5) shall be omitted;

h) In Schedule II,--

(i) after section 167 in column 1 and entries relating thereto in columns 2—8, the following new section and entries relating thereto shall be inserted namely:--

1	2	3	4	5	6	7	8
167 A	Punishment for dishonest investigation	Ditto	Ditto	Ditto	Ditto	Imprisonment for three years, or fine, or both	Magistrate of the first class

(ii) in the entry relating to section 182 in column 1, in column 7, for the figure and word "6 months" the words "five years" shall be substituted;

(iii) after section 344 in column 1 and entries relating thereto in columns 2 to 8, the following new section and the entries relating thereto shall be inserted namely:--

"1	2	3	4	5	6	7	8
344A	Punishment for wrongful confinement by police	Ditto	Without warrant	Not bailable	Ditto	Imprisonment for seven years and fine	Court of Session or Magistrate of the first class.";

(iv) in the entry relating to section 345 in column 1, in column 4, for the word "Ditto" the word "Summons" shall be substituted, in column 5 for the word "Ditto" the word "Bailable" shall be substituted and in column 8 for the word " Ditto" the words "Magistrate of the first or second class" shall be substituted;

(v) in the entry relating to section 379 in column 1, in column 7, for the figure "3" the figure "5" shall be substituted;

(vi) after the entries relating to section 381A in columns 1 to 8, the following new section and the entries relating thereto shall inserted, namely:--

"1	2	3	4	5	6	7	8
381B	Theft of cattle	Ditto	Ditto	Ditto	Ditto	Imprisonment of Either description for seven years and fine	Ditto"

(vii) in the entry relating to section 420 in column 1, in column 5, for the word "bailable" the word "Not bailable" shall be substituted in column 7 for the figure "7" the figure "10" shall be substituted;

(vii) in the entry relating to section 447 in column 1,--

(a) in column 4, after the word "Summons" the words "and Warrant if the offence has been committed to dispossess any person" shall be added, in column 5 after the word "bailable" the words "and Not bailable if the offence has been committed to dispossess any person" shall be added;

(b) in column 7, after the word "both" the words " and ten years and fine if the offence has been committed to dispossess any person" shall be added;

(c) in column 8 "for the words "any Magistrate" the words "Court of Session or the Magistrate of the first or second class" shall be substituted; and

(viii) in the entry relating to section 468 in column 1, in column 7, for the figure "7" the figure "10" shall be substituted.

8. OFFENCE OF ZINA (ENFORCEMENT OF HUDOOD) ORDINANCE, 1979

The offences under sub-section (2) of Section 10 (Zina liable to tazir) and Section 13 and 14 of the offence of Zina (Enforcement of Hudood) Ordinance, 1979, should be made non-cognizable to protect, in particular the women, from abuse of power and harassment at the hands of the Police. In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979), in section 20, after sub-section (3), the following new sub-section should be inserted, namely:--

"(3A) The offences under sub-section (2) of section 10 and sections 13 and 14 shall be non-cognizable."

V. SETTING UP OF JUDICIAL POLICE

Presently the civil Courts have their own Process Serving Agency which works under the supervision and control of the respective Senior Civil Judges. However, the service of Processes and investigation in criminal cases is effected through police. The police is already over burdened with its regular duties and one of the major reasons for delays in the service of notice etc. in criminal cases is preoccupation of police in other work. It is high time that a separate police force for investigation of criminal cases. This Agency should working co-ordination with the Prosecuting Branch of the Government.

VI. IMPROVEMENT OF WORKING CONDITIONS

(a) Service structure, pay, training etc.

Article 3 of our Constitution of the Islamic Republic of Pakistan, 1973 [10] provides a guide-line for compensating a person according to his ability and work.

The appointment of District and Sessions Judges, Additional District and Sessions Judges and Senior Judges/Civil Judges are Governed by the West Pakistan Civil Courts Ordinance, 1962 read with the Punjab Civil Servants Act, 1974. Under the former enactment they constitute a specialized cadre recruited for the disposal of civil cases only. The Government has found it convenient to confer on these Judges from time to time powers under various laws to perform functions for which new or additional judges ought to have been recruited, thus gradually adding to the work of the subordinate Judges. The conferment of powers of Family Judges, Rent Controllers and Judicial Magistrates on the Civil Judges is an additional burden which ought to have been shared by new judges recruited or appointed in proportion to the number of such case. It is pertinent to note that for these additional jobs/duties, no compensation is offered to the subordinate judiciary.

On an average, Civil Judge takes up around 100 cases per day and District and Sessions Judges/Additional District and Sessions Judges deal with 70 cases per day. The average pendency in the Court of a Civil Judge is from 1500 to 2000 cases and in the Court of District & Sessions Judge/Additional District & Sessions Judge 600 to 700 cases. According to the instructions issued by the High Court around 500 cases may be entrusted to a Civil Judge for decision over a four months period. Similarly, 450 units are required to be decided by an Additional District & Sessions Judge over the same period

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[10] **Article 3. Elimination of exploitation.** The State shall ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from each according to his ability to each according to his work.

of time. In practice, however, these Courts are required to deal with almost four times the number of cases which have been specified for entrustment to each Court.

It is, therefore, proposed that (i) the number of cases in each Court should not exceed a reasonable number 500 cases per Court (450 units in case of District & Sessions Judges and Additional District & Sessions Judges) and (ii) the judges should be adequately compensated for the additional work, they are required to perform in different capacities. (It may be mentioned that additional charge allowance is allowed to a Government servant who is required to perform the duties of another office/post. The same principle should be applied in the case of Judicial Officers entitling them to adequate compensation for performing duties in addition to their basic responsibility as civil Court).

(b) Residential Facilities

Power of allotment of official accommodation rests with the Commissioner at the Divisional Headquarters and the Deputy Commissioner at the District Headquarters. Only at a few stations house have been built for the officers of the subordinate judiciary or have been earmarked for their residence. In Lahore for example, expect for District & Sessions Judges, one Additional District and Sessions Judge and one Guardian Judge no official residence has been allotted to any member of the Subordinate Judiciary. In sub division the situation is more troublesome as rented houses are also not easily available. It is, accordingly proposed that as a short term measure Government may be asked to place at the disposal of the High Court sufficient number of houses for the residence of the judicial officers. As a permanent measure residential colonies may be the major cities apartments and rest houses may also be constructed for the judicial officers.

(c) Court Room

The subordinate judiciary is also facing acute shortage of Court rooms. In sub divisions this problem is more serious. Immediately steps need to be taken for the construction of Court rooms be supervised by a person or committee conversant with the needs of officers, its staff, litigants press and public at large. Planning should be made for at least next hundred years. Special emphasis should be on security and convenience of the public attending the Courts. For instance Court rooms should be so planned that there is a separate gallery for press, public and visitors. Only lawyers and litigants should be allowed inside the Court-room. Courts; buildings may be multistoried with minimum points of entrance and exit-properly guarded by scanning gates. Provision should be made for installation of all moderns gadgets.

(d) Computerization of Court Proceedings and Record

In the 21st century no system can function effectively and properly without computerization of the judicial proceedings and judicial record. We should have an integrated computer network, which will on the one hand facilitate monitoring of proceedings in all the Courts throughout the Punjab by the Hon’ble Chief Justice of

subordinate supervisory judicial officers; and on the other hand eliminate the necessity of keeping unnecessary record and files. The officers and staff should also be imparted purpose full training in handling this apparatus.

(e) Introduction of Jury System

To bring our Judicial System at par with other developed and civilized judicial systems of the world, it is imperative that serious trials particularly those of heinous nature should be tried with the help of honest, impartial and educated Juries. The system may be introduced on experimental basis at one or two stations with strict monitoring and utmost

care should be taken in the selection of Jurors. This will eliminate corruption amongst the subordinate Judges as their authority would be shared by the Jury.

(e) Bench System in the Subordinate Courts

To combat corruption and other mal-practices, the subordinate Courts should also sit in Benches of two or three in such class of cases as determined by the High Court. This will also afford an opportunity to the junior Judges to receive on the job training from their senior colleagues.

VII. CONCLUSION

The system of dispensing justice in Pakistan has come under great stress for several reasons mainly because of the huge pendency of cases in courts. In Pakistan, the number of cases filed in the courts has shown a tremendous increase in recent years resulting in pendency and delays underlining the need for alternative dispute resolution methods. Under the existing British adversarial system regime of civil suits in Pakistan is governed by the Code of Civil Procedure (CPC) enacted in 1908. Since then little change has taken place. The causes of backlog and delay in our country are systemic and profound. The legal system's failure to impose the necessary discipline at different stages of trial of cases allows dilatory practice to protract the case life. The reasons for delays in our civil justice system are both systemic and subjective. The Common law oriented adversarial or accusatorial character of the civil process as against inquisitorial as practiced in continental Europe, meaning that the litigation is party-controlled which provides wide maneuvering power to the lawyers, and presupposes lesser initiative and relative passivity of the judges.

When a civil case is instituted in a court of competent jurisdiction, the scenario usually is, that a long time is taken to serve the process because of inefficiency of the serving agency, the slow process of service of the summons which can be further slowed down by the intentions of the parties concerned, indicating a poor state of court administration, the defendants beat the law and submit their written statement/s after a long delay beyond the permissible statutory period of thirty days by seeking a number of adjournments, lawyers and judges do not take any interest in screening out a false and frivolous case at the first hearing of the case under Order X CPC (in fact no such first hearing takes place),

they seldom try to shorten the disputed questions of fact and law by application of Orders XI and XII of the CPC and mostly ignore the elaborate procedure of discovery, interrogatories, notice to produce etc. contained in those Orders, the proper issues of a case are seldom framed following the CPC, often the vagueness in the terms and wordings of the plaint and written statement results in charging on the court time to clarify the issues, but the judges fail to impose costs for frivolous suits and pleadings, the case takes several years roll by to reach a date for recording evidence and on the date of positive hearing two dozen or more ready cases are fixed for hearing, resulting in the hearing of none, frequent adjournments of the trial are caused by the insistence of the lawyers, the parties fail to present the witnesses sometimes due to genuine reasons and sometimes deliberately, the judges are reluctant to limit these adjournments is another cause of delay, such reluctance on the part of lawyers and judges being explained partly by heavy case-load and partly by their unpreparedness to continue and complete the process, there is also element of vested interest of some lawyers for lingering and delaying the process, for they are often paid by their appearances in the court, this is also because of absence of lawyer-client accountability giving the lawyer monopoly to conduct the case the way he considers best suited to his own interest, there is scope for frequent amendments of the plaints and written statements at any stage of the trial, the commonly made interlocutory orders and appeals which fracture the case into many parts and effectively stay the trial, reluctance of the judges accentuated by their statutory non-compulsion to use pre-existing rules and orders to expedite the trial or to sanction the parties for failing to follow the procedural requirements is another cause of delay, meaning that the judges do not take initiative to employ procedural power already within their reach, nor do they make use of their rule making power to achieve procedural effectiveness. In the meantime years roll by presiding judge of a single case is transferred a number of times, witnesses of a single case may be heard and evidence recorded by more than one presiding judge, arguments are listened to may be by another presiding judge and judgment may be delivered by a presiding judge who had had no connection with the case ever before, rotation and transfer of judges often meaning that the same judge who heard testimony may not decide the dispute, taking away thereby much of his incentive to push forward the proceedings to judgment and seriously impeding the process of continuous trial; the new judge may have to repeat some of the procedural requirements already fulfilled, administrative and logistic support system is inadequate, work-load of the judges is enormous, salaries and working conditions are poor, all having negative impact on the initiative and efficiency of the judges, internal discipline and accountability is insufficient.

Our legal system has thus been rendered uncaring, non-accountable and formalistic. It delivers formal justice and it is oblivious of the sufferings and woos of litigants, of their waste of money, time and energy and of their engagement in unproductive activities, sometimes for decades. When they win a case the result is much worse than winning it. When they lose a case they lose not only the subject matter of the dispute, but also a good part of their fortune. In addition to this, if interlocutory matters are dragged up to the appellate or revisional courts, their discouragements know no bounds and their agonies are prolonged for an indefinite period. Appeals from trial court decrees may reach unto the Supreme Court by which time the parties are thoroughly drenched in misery. When a

decree is thus obtained after protracted litigation, it does not end there, because the miseries of a litigant start when a judgment is passed in his favour, execution of a judgment is hell of a job. Execution proceedings in most of the cases then re-starts a fresh litigation between the parties or even their successors which may take years or decades to come to a conclusion and which may end up with no real or positive benefit to the decree-holder plaintiff. This is the experience of a common litigant in Pakistan. Added to this inherent and in-built delay and expenses, corruption and often terrorism at almost each stage of litigation is eating into the vitals of the justice delivery system.

Our legal system may very well be theoretically described as admirable but at the same time slow and costly which entails an immense sacrifice of time, money and talent. The judicial system in our country may be distinguished by its laissez fare emphasis on party controlled litigation process, emphasis on procedural justice and limitations on available legal remedies, confined to win or lose legal outcomes. Litigation in our country being the primary means of resolving disputes, our civil justice process has failed to administer justice in a timely manner to a larger, more diverse, faster paced, technologically and economically changing society. Law is more than norms; it is reflection of the aspiration through which a nation passes. With the changing needs of society its legal system, changes. If it does not it slowly becomes a dead and useless system. The legal system we have inherited had been formulated in the context of aspirations available then. Therefore, our legal system is not only logic but also the experience, situations and circumstances, many of which do not exist anymore; as a result it has become antiquated and overburdened by its in built inability to recognise new problems. In other words our legal system does not know how to deal with modern day problems like backlog of cases. Whereas the vigorous legal systems of the world have by creative experiments found solutions to their problems.

Given the gamut of problems faced by the courts in our country, especially in civil justice system and the apparent inability of the existing legal system to resolve them, initiative was taken by Mr. Iftikhar Muhammad Chauhdhry, the Chief Justice of Pakistan to commence reforms in our legal system, through “National Judicial Policy, 2009” which appears significant to reduce the burden of millions of cases pending with the courts. Amendments to several laws have been made and some more are on their way to facilitate to institute mediation, conciliation, arbitration and other alternative dispute resolution systems, as the result of the efforts was `tremendously encouraging.

What is lacking is not only awareness of this opportunity but also the proficiency/expertise necessary to implement. In view of the National Judicial Policy 2009 and with these objectives in mind, the present seminar by with the institutional support of Supreme Court of Pakistan is a timely effort. I have suggested in this paper some new legislation, amendments in the existing laws and procedures as well as some policy decisions to combat delayed justice. While legislation can be done by the Parliament, the High Courts under Article 202 of the Islamic Republic of Pakistan are empowered to make their own rules. The Section 122 Civil Procedure Code empowers High Courts to make rules regulating their own procedure and the procedure of the civil

courts. Rule Committee constituted by the Chief Justice and the rules so made shall be subject to the previous approval of the Provincial Government.