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pk/Resources/Legislations/PDF/16-8-2011-20-52-57-275-Judicial%20system%20in%20pakistan. pdf6 < 1% match (publications)" Law reform", Commonwealth Law Bulletin, 01/1998 paper text: CHAPTE NO. 4 ROLE OF GOVERNMENT IN INEXPENSIVEAND SPEEDY JUSTICE The Pakistani criminal justice system and civil rightsadministration of justice has given many reasons for the delay and also placedblame for the delayed trials due to higher crime ratio and shortage ofofficials as a reason also for delayed trials both in civil and criminal cases. Resultantly, the accused or suspect has to suffer the consequence of beingincarcerated for lengthy and uncertain periods and the normal litigant eitherplaintiff or defendant spends much time in courts and usually becomes courtbird in our existing system of law. The problem of delay in cases 1it has been under discussion for many times by severalauthorities, exchange of ideas also great efforts of law experts, lawyers and differentbodies made on behalf of state for finding   solutions foravoiding the challenges in delay of cases.

Hence, the objectives remained in vain.  From the year 1956, successive governmentsconstituted a large number of Commissions and Committees for this solution inform of changesin court system, some of the points includes:-• Commission on Marriage and FamilyLaws, 1956; • Law Reform Commission, 1958; • Law Reform Commission, 1967; •High Powered Law Reform Committee, 1974; • Law Committee for RecommendingMeasures for Speedy Disposal of Civil Litigation, 1978; • Secretaries’Committee set up by the President to Examine the Recommendations of the LawCommittee set up for Recommending Measures for Speedy Disposal of CivilLitigation, 1979; and • Committee to Formulate Concrete Proposals forSimplifying the Present Legal Procedure In 1981. The government set up apermanent Pakistan Law Commission (PLC). The Pakistan Law Commissionalso recorded, published court factsfigure in LawJournal of Pakistan (PLD), and its impactnot  brought any radical change in 3thenature of administration ofjustice. Few ofthe suggestions and recommendationsof these commissions pertaining tothe Family Laws Ordinance, the constitution and establishmentof the Federal Judicial Academy, the Pakistan Law Commission and separation ofthe executive from the judiciary were implemented bythe Government aftersome delay. Substantiveand main issues concerning day-to-dayadministration of justice, such as thosepertaining to facilitiesprovided to thecourt staff, buildings and infrastructure, salaries and other facilities to 4 judicial officers, up gradationand improvement in court staffprocess agency, bringing and procurement of witnesses, facilitation in the  use of modern devices 1of interrogationproceedings and proceedings in the administrationof criminal justice till final adjudication, the application in law, procedure, regulations to reduce the problems of delayas well as betterment in under trial and convicted prisonerssuggested time by time have not been executed despite several attempts weremade 1in suggestions offered in results of research. The peopleof Pakistan  took interestand has come with new strategy of court reforms. The best plan was to increase in the salaries of judges, and other facilities including, case flow management, as well as otherimprovements regarding current ideas.

The research shows  the government and its effort in  bringing reforms requires the guidance to  motivate the judges in the form of better incentives, other necessary facilities andappointment through therecruitment  of Federal Public ServiceCommission, in an excellent way the proper and through better way the command and controlsystem and also audit by introducing thenew procedure as well as themembers of jury procedure as well  the referencewith regard to the protection of rights secured by parliamentary commissionand liabilities, and also reforms in the conventional system regarding themechanism of court staff, calculation ofcase numbers, the facility of legal  books and other facilities that are helpful inthe process of adjudication and as well as the skills are also developed inwriting the judgments for the judicial officers the facilitation of andrefresher courses, training forjudges which would also needs improvement in the syllabus that istaught to the students of law in the law colleges . There should be nohesitation in saying 1the reality of delay in the cases also causes a seriousproblem and a hindrance that also , reflects the main problem in the way of justice and also in delivering thecomplete justice to the people of Pakistan, who are the main stake holders inthe justice system of Pakistan. Wealso know the reality that the problem of delay is suffered by theInternational community but, in our state, the situation is very worst. The Pakistan, Law Commission observed and concluded thatthe problem of delay in the cases both the civil rights cases and as well ascriminal cases is causing much problem in Pakistan and the courts are also notdelivering justice timely to the people of Pakistan and there is also a usualdelay in the trial of cases and it also takes much time including the severalyears up to the Supreme Court of Pakistan.  .

The usual delay in litigation of both civil and criminal cases has becomemuch chronic anddangerous proverbial. Theserious threat is not tothe extent of Pakistan; it isalso historical andinternational problem. It isfound in every judicial system ofthe world whichnecessarily protects against anyunjust proceedings beingdealt by any individualagainst him, either in a civilcase or in criminal proceedings.

A universally admitted principle of the criminaladministration of justice system isthat an accused person is granted conviction when his case is proved beyond any shadow of reasonable doubt. On the other side, itis also a golden principle of civil administration of justice pertaining tocivil cases; the dispute are adjudicated keeping in view the laws of land andalso on the basis of golden principles that have been settled by the HonourableSuperior Courts of Pakistan and as well as keeping in view the goldenprinciples of Islam. Theses universally admitted principles are found in the 6injunctions of Islam as in the Holy Quran it has been saidthat Muslims should not do injustice, unjust, coercion, nepotism andsuppression”. In Pakistan, one serious problem of the justice system is, delay.

A delay usually occurs in the decision of cases both the civil and criminal casesand also in the trial of both these cases and cases of also other categories. Now, it has become a routine for a civil case to be proceeded for   one decade, the other fact is also very sad that in the execution process, almostthe maximum time is spent in the process of executing the decree and the decreeholder also faces much problem and the maximum hindrance is created by thejudgment debtor in the way of executing the decree of court of law. In the adjudication of process of criminal cases, thesituation is faced same as in the process of civil cases. Delay without any plausible cause and undefined usually occurs and mainlywithout any sufficient reasons inthe trial of cases by the courts of law. An illustration of delay is shown from the statically figureand   calculation, currently, there is a huge number of including 2/3, majority ofthe under trial prisoners in the jails, who are waiting for their trial.

Suchfact lacks the trust of the general public in the justice system. Unusual delayin civil cases, other than 1arebecoming the main reason of  frustration among thegeneral public, and as wellreduces the economic well being of the peopleof Pakistan and the other stake holders who become part of the litigationprocess . It also causes a serious loss to the companies and other corporationswho participate in the  foreign country based investment inPakistan, as well  also cast a negative impact on our businesssystem and as well with foreign countries/ and international companies. Thereare different reasons of delay, some of them are inside and others are outsidethe courts, and there are also legal/procedural gaps/lacunae. It is also afamous saying that 1The Justicedelivery  delayed is justice also denied.

Resultantly, it is now and in fact has become thedemand of modern civilsociety to get rid from theproblem of delayed justice and also suggesting the ways for its solution. Itwould not be pertinent to say that the problem of delay in the cases has beenneglected by the government in the past. Every Government also tried its bestto solve the problem. Various Law Reform committees and commissions were madeto examine and investigate on scientific basis the causes and reasons of delayand to suggest best measures for better reforms. These committees andcommissions examined deeply the procedural and codel laws and rules andapproved various reforms. Some of the recommendations were accepted by theGovernment and were made part of different laws.

The Apex courts of Pakistanalso reviewed their rules for the purpose of quick and inexpensive justice in thelight of the guidelines and suggestions given by the commission and committees. In different times, the High Court’s also issues directions and guidelines totheir subordinate’s courts for the inexpensive and speedy justice. Theprocedural law always has been a main subject of reforms continuously with thepassage of time. Laws always need to be changed and reformed keeping in viewthe changing circumstances, facts and realities of the time.

The quick disposalof the cases no doubt, always is and has been the main objective of everywelfare state. But, it is also a fact that the cases should be decidedaccording to law and after giving proper opportunities to the partiesrespecting the production of their evidence. It is also a fact that usuallynormal delay that is beyond the control of human being occurs in a case, and instricto senso it does not matter so much, but it should not be an improbableand unjustified delay, and this kind of delay needs to be checked and properlysupervised.

While adjudicating a case, usually delay occurs, but it is a goodtest of good judicial officer that it should be managed with proper toleranceand without being biased and it should be normally ignored for the largerinterest of justice. On the other side also, the ratio of quick deciding caseswithout proper application of mind should be strictly checked as it is graveunjust, arbitrary, unfair and against the golden canons of justice. The problemof delay in cases was examined by various committees and commissions formulatedby the Government from different points but, no radical changes were brought inform of solutions in the existing judicial system of Pakistan, some of thesuggestions are given briefly that were requested to be implemented by theGovernment:- i) ii) iii) Amendment in the concerned Laws. The number ofJudicial Officers be increased.

There should be proper court rooms for thejudicial officers and their residence problems should be solved. iv)Investigation should be based on scientific basis and prosecution agency shouldperform active role in the criminal administration of justice process. v) vi)The Judicial Officers should be given proper training facilities. The role ofthe Process Serving Agency should be active and strict supervision should bemade upon their duty. vii) viii) The retirement age of the judges should beenhanced. The police reports/ Challan should be submitted in time by the policeand investigation wing ought to be independent and powerful and the adequatefacilities must be given to them and their other problems must be solved and  Forensic ScienceAgencies, their role, facilities and also the number must be maximum increased throughout the Punjab and the judicial system mustbe be vigilant regarding the late submission of police reports. ix)x) The court should not allow usual adjournments in the process of trial.

Thecivil and criminal cases should be bifurcated among the judges at Districtlevel. xi) The High Court should keep a proper control and supervision 1uponthe control and working of the District courts and their should be a propersystem to keep the check and balance among the courts, and regarding the complaint of  corruption, negligence, not sufficient work, aproper punishment should be awarded by the High Court to its subordinatejudicial officers. It is also a fact that unusual delay in cases builds 1an equal and on same footing the system of  justice that has the bad pressure upon thesociety and government, and usually it seems no hesitationto say   that in such situation, the people take thelaw in their own hands rather to let the court to decide their cases inaccordance with law. The system of taking the law in hand is not onlyrestricted to FATA, but, in Punjab also, there are number of cases that werereported, wherein the people took the law in their hands, a prominent case ofMukhtiaran Mai is also in the mind of our people, where people decided the caseaccording to their own wishes. The main reasons are of high level of illiteracyand unawareness, a feudal mindset and not deciding of the cases in time by thecourts of law. The Government should, in addition to providing health andeducation facilities to them, also ensure the justice system in the rural areasand they should be not left on the discretion and sweet will of the differentcommittees constituted by the loacal bodies of different types. Itis  very important that theofficial authorities should discourage the justice system that is based on thediscretion and sweet will of the people locally managed by differentorganizationsand pressure of feudal mindset andtribal sardars should be decreased upon the police officials while dischargingtheir duty in accordance with law and the rights of the women should also beprotected. Another important factor for the delay in the cases is that there isshortage of number of judges that are required in deciding the cases and thismatter should be tackled seriously but it is also very important that noserious step was taken in this regard by the Government except a talking point.

The review of the existing laws is also very mandatory that have been suggestedin the reforms that opined by the committee. It is also the duty of thestate counsel and the counsel who represents the accused to perform duty more vigilantly and they should leave no room for the delayin the case and they should ensure that their client’s case should be adjudicatedin time. It is also a very important factor that the number of under trialprisoners is increasing day by day and this factor is adding the problems ofjail authorities. History reflects that due to these reasons, the peopledevelop their poor perception about the system of law and they are restrainedto contact to the Jirga system or panchayat system that is clearly forbidden bylaw. It is also the prime duty of the Government to work with the judiciary andlawyers for the betterment of the judicial system, so that the judiciary mayappear as an independent body that delivers the justice in time and accordingto law. It is also pertinent to mention here that the ADB launched a programmenamed “ Access to Justice” that was started in 1999, and was known a tool tohelp speedy justice, but, it does not apparently seems to be much helpful doesnot seem to have much helpful. It is also not clear that to what extent itsproposals were implemented and what were its results and to what extent theproposed results were achieved. It is also a fact that the required resultscould not be achieved without bringing any substantial, drastic amendments andreforms in the legislation, judiciary and police organization to decide thecases expeditiously.

This is the last way that may help us in the restorationof confidence and trust of the republic of Pakistan in our existing judicialsystem and that confidence and trust, which has been eroded for the last manyyears due to various reasons. It shall also be suitable to say that a new, andeasily approachable, efficient, not much time consuming system shall discouragethe prevailing parallel judicial system particularly in the rural areas that isexisting in the form of Jirga and Panchayat. The ongoing judicial reformsprocess should be continued and shortage of resources pertaining to financeshould be reduced and substantial steps should be taken by the State to providethe justice to the people of Pakistan.

. The other main reason for delay and as well in the increase ofcases is the institution of fictitious and without cause of action cases andthis practice is motivated for the lust of money by the lawyers that is easilyattainable the matters regarding the getting of interim injunctions should bedealt keeping in view the overall case of the parties and the facts andcircumstances are not put before the court accurately and on the basis of bogusand fictitious urgencies and  on accountof these reasons, these cases a considerable number of general public indulgethemselves in such cases through the process of litigation as professionallitigant. The result of such like cases that have been instituted withoutproper cause of action 1is enhancement of pendencyand large number of suitsare increasing with the rapid passage of time, and in addition to it, the delay is being caused in the adjudication of cases. The existing backlog and pendency of cases and continuous addition of such likecases an outcome of non genuine cases but it is manifest of fictitious andfraudulent cases. The justification and encouragement of such like cases isalso the main reason for the delay in the adjudication process.

This kind ofpractice is not only depriving the genuine litigants from their casespertaining to enjoyment of their properties or their rights of adjudication ofcases timely but is also decreasing the moral values of the Republic ofPakistan. In simple words, we can say that the existing situation not onlyenhancing the courage but also negating the golden principles of Islamicidentity. The principles of Islamic system are that it insists for justice anda person who is stronger must be dealt in accordance with law and he should becompelled to change his ways. On the other side these are also the Islamicprinciples that a person who is weak, he should consider himself strong and noone get courage to deprive him from his rights. But, on practical side, in ourexisting system, a person who is stronger is not only flourishing but is alsodepriving the poor persons with the help of legal process and law, and itssimple reason is that the cases take too much time in decision and they takesupport and help from this weakness of law or judicial system.

The powerfulpoint of this discussion is that in such state of affairs facing our societythere is no one  that shall support suchcurrent state of affairs but, very surprisingly it is flourishing. The very crucialpoint for determination of this issue and question is how this problem can besolved and the society is enabled to get quick and inexpensive justice withoutany difficulty and hindrance. No doubt, it is a very complex problem, and incase of failure for any reason, then it shall benefit to those people who haveinstituted false cases. One of the best remedy that has been suggested by thejudges and advocates is that, the number of judicial officers should beincreased.