

An Analysis of The Causes of Delay in the Judicial System of Islamic Republic of Pakistan

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Abstract

For maintaining peaceful environment, the judicial system acts as a back bone. The judicial system in the Islamic republic of Pakistan is providing justice to the subjects in accordance with law for the time being enforced. The main demerit of the system is delay in the dispensation of justice. The decision of particularly civil takes decats. As a result the due role of judiciary is weakened and becomes ineffective. There are countless factors responsible for causing of delay and prolongment of the legal process undergoing in the courts. In the present paper, the author has tried to find out that what factors are responsible for the delay. Some Suggestions are also given at the end to avoid delay.

Key Words: Causes of Delay , Judicial System ,Islamic Republic of Pakistan

Introduction

In order to provide complete justice to the citizens, complex judicial system is recognized by the law enforced in Pakistan. Like the other modern judicial systems, the courts in Pakistan are bound to decide the cases on the basis of law. The citizens of Pakistan are almost completely seems satisfied from the existing judicial system except delay. In most of the cases, the grandfather filed a suit and its fruit are taking by their grandsons. That's why in most of the cases, the litigants are not filing suits for the acquisition of their rights. Following are the factors responsible for causing delay.

1. Heavy burden on courts

The courts in Pakistan are overburdened. One trail court/civil judge has to decide almost 700 cases according to recent survey conducted. Daily cause list of each court is above 50 per day. It is difficult for a judge to write even normal routine order sheet in every case. How attention is to be given to each

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and every case? Similarly, courts of Additional district judges are deciding several appeal/revision in addition to exercise of its original jurisdiction in criminal cases. High court is responsible to decide appeals/revision against the orders/ decrees of the whole judiciary in the province. Besides that high court is also responsible to entertain writ petitions instituted from time to time under art 199 of the constitution of Pakistan. The number of judges of High Court are limited. Therefore, the courts of Pakistan are heavily overburdened. And one adjournment may took time more than one month.

2. Delay tactics by lawyers.

The major stakeholder responsible for causing delay is counsel for the parties. They are legally sound and they know the fate of the case very well. When they realize that their case is weak, then they are going to start delay tactics. Sometime they have not received their complete fee from their clients. So they are conducting the proceedings slowly in order to secure their complete fee. On one date, application is submitted, on second date copy is obtained on third date reply is submitted and requested for time again and again for arguments. Then arguments and order is announced. Similarly they are requesting times for submission of written statements.

The Senior Lawyers are always overburdened. They are taking more and more cases without looking to its consequences of disposal. In every station there are few lawyers who are entrusted with burden of cases while rest of the juniors lawyers have cases limited in number. The senior lawyers are always busy. They have cases on their diaries beyond their control and they can only proceed a few cases per day. The rest cases are adjourned on their request without proceedings. They are always giving priority to cases of their interest like bail applications, *superdaries* and other criminal cases while old civil cases of evidence and arguments are adjourned.

The senior lawyers are often busy in High court, they are producing cause lists of High court. When a counsel for one party is not available the case shall obviously be adjourned.

In most of the cases the number of parties are more than hundred and they are divided into different sets like in inheritance cases, the original defendants/ legal hiers are one set and purchaser from the defendants are made parties are second set¹. Some time defendants are divided into different set more than five or six, like one set of defendants purchased property from one legal heirs while rest of them purchased from the rest of legal heirs and each of the set hire

different lawyers and in every date of proceedings, the presence of all lawyers is necessary which is always not possible. If any of the lawyers is missing, the case is adjourned.

The lawyers are sometimes available in the premises of the court but they are busy in other cases with the Court of Session or rest of civil courts and they send their clerks for adjournments.

Sometimes the lawyers appeared and request for adjournment due to non preparation of the casefile. In all these situations the cases are adjourned to next date and the cases are delayed for almost 30 days. On next date the situations is most of the time the same.

3. Delay in recording of evidence.

The major delay is caused in the recording of evidence. After framing of issues the parties are usually filing application for submission of list of witnesses to which they are under obligation to file with their pleadings. The counsel for the other party is always contesting such application instead of no objection upon the said application. As the lawyers communities are completely aware that opportunities of evidence shall be given to both the parties completely under the principles of natural justice but by contesting this type of applications they are intentionally causing delay.

Sometimes the party's produce partial witnesses and their evidence are not complete. Some time the counsel for the opposite party has not prepared his cross examination and he is seeking adjournment.

Sometime a witness is ill or unable to attend the court, one party is filing application for issuance of commission against him. The other party is also aware that the witness is unable to attend the court even after that the other party is contesting the application. And when the application is accepted it takes a lot of time to record evidence.

Then arguments are taking a considerable time as some times lawyers are absent.

4. Inheritance etc cases.

In the cases related to inheritance, the defendant's party is always causing delay. In the area of Malakand Division, sisters/female were not given their shares, later, after the cessation of the status of princely states, the females share holders have started filing suits for the acquisition of their shares. Obviously, they are entitled legally to obtain their shares in inheritance. The defendants can do nothing except they are causing delay in the disposal of

suits. A suit² is pending in the court of under signed in which 17 years delay is caused and the case is fixed for arguments on application for impalement of purchaser as defendants sold the property during the pendency of the suit. On acceptance of application, the case shall again start from the beginning. Sometime forged gift deeds are produced in order to show that the property was gifted to male shareholder.

5. Role of litigants

Sometimes the litigants are requesting for long adjournments. They belong to poor family and they are working on daily basis. For the purpose of earning, they are unable to attend the court on daily basis. Even it is difficult for them to attend the court on weekly basis. An execution³ was pending before this court in which the judgment debtor was residing in Gujrat and decree holder was not willing to transfer execution to the civil court of Gujrat. 07 adjournments were requested and warrants etc were not executed. Similarly, in another case⁴ 16 adjournments were obtained merely because the plaintiff failed to produce their evidence. He filed an application for the purpose to summon their witnesses officially.

6. Complex procedure.

The legal procedure of the court is the major factor responsible for causing delay. There are certain technicalities which must be followed. If the procedure is not followed, the whole proceedings of the case are considered as illegal. There are different stages of civil trail which must be followed. No option is available to the judge under the law to depart from the legal procedure already fixed. When a suit is filed summons are issued to defendants. Its took a lot of time to secure attendance of the defendants. Defendant are summoned through ordinary mode of service, then by affixation and then by publication if any of defendant is not appearing before the court.

In most of the cases the defendants are residing abroad. The court is directing the plaintiff to submit his addresses when his correct addresses is submitted then the court is issuing summon against them though register AD and the court is waiting for return of AD card. When summon is served, sometime the defendant is requesting for submission of special power of attorney and submission of special power of attorney from abroad took a lot of the time as it is always submitted after fulfillment of legal formalities/ requirements. In most of the cases, they are beyond the local limits. Then they are summoned through registered service. Sometime the addresses of

defendants are wrong. Then directions are given to plaintiffs to submit their correct addresses and later they are summoned. Sometimes a person/party dies during the pendency of suit. Then the court is directing the plaintiff to submit list of his legal heirs. They are summoned after submission. So the completion of attendance took a lot of time.

After completion of attendance, the case is fixed for submission of written statement. Then counsel for defendants requesting for time again and again for submission of their written statement. It took almost three adjournments normally.

After submission of written statement, the case is fixed for schedule conferencing⁵. Learned counsels for both parties are required to fix complete schedule for the case. From the date of evidence till the final disposal of the case. If the parties are willing to decide the case through alternative dispute resolution, then conciliators shall be appointed and if they are not willing then the case shall be decided by court by applying the rules of CPC. The court will also require the counsel for the parties to submit their entire applications. If the parties are not willing to decide the case on alternative mechanism, the court is framing issues and directs the plaintiff to produce evidence. In most of the cases a heavy list of official witnesses is given. Then the court is issuing summons against the official witnesses. Sometime the official witness appeared with incomplete record. Sometime the witness appeared but a counsel for the parties absent. In most of the cases the witness names are given to be summoned through court but that witness is residing in foreign countries etc which cannot be summoned through ordinary mode of service. Their service is almost impossible.

When the plaintiff evidence is completed, then defendant's evidence is taken in the same order. And the case is fixed for final arguments. Final arguments also took 3 or 4 time adjournments. After final arguments the case is decided.

7. Appeal/revision on application.

The rights of the parties are finally determined but the way of appeal/revision is opened to the aggrieved party. Therefore appeal is filed before the District judge then high court and then Supreme Court of Pakistan. A lengthy chain of appellate forum is available to the aggrieved parties. Sometime a case is remanded from high court and Supreme Court after more than 20 years with direction to record more evidence. Then the case is again started from the beginning.

Similarly, some times application for impleadment of a single defendant is filed. **Application is accepted.** Single defendant is impleaded and plaintiff is directed to file fresh amended plaint as per law⁶. The plaintiff is filing amended plaint and the proceeding is again initiated from the start. The court is under obligation to issue sommon to defendant whose name is impleaded. If the impleaded defendant appeared before the court he will file his written statement. Then the rest of procedure will be followed, issues, evidence, cross examionations, arguments and judgment. If he raised some new grounds, then the plaintiff is again filing applications for challenging that new ground or document in his plaint. If such application is accepted then the case is again started from the beginning. When application is not accepted the the failure party is filing appeal/ revision etc and the case delayed in both situations.

When the person whose name is impleaded in the plaint by application does not appear before the court after issuance of process against him. He is proceeding exparte and rest of the procedure is followed for disposal of the case. But sometime when the impleaded person is proceeded exparte after issuance of process against him , then the plaintiff is relying upon his evidence while the defendant insist on cross examination of the plaintiffs evidence already crossed by him before impleadment on the justification that the case is again initiated from the beginning. The defendant has relied on his previous written statement. The plaintiff relied on his examination in chief but the defendant in not relying on his cross examination and the defendant is entitled to cross examination according to law. Here the same situation arises, when the application is accepted and the stance of defendant is agreed then he is cross examining the entire witnesses of plaintiff already examined by him and when his stance is not agreed and the application is rejected then he is filing appeal/ revision and the case is again delayed for years in both situations. It is the inherent powers of the court that the court will see that if the cross examination is not necessary like in inheritance cases where the claims are the same and no new ground is there. The court may disallow cross examination⁷.

Revision /appeals are filed before District and session judges or Additioal District and Session Judges from an order passed by civil Judges. When appeal is filed, the appellate court is requisitioning record from the civil court nad after that the civil court is not able to work nin the case and the proceedings of civuil court is stopped till the decision of appeal. The appellate courts takes too much time in deciding appeal. The appellate court shall have

to procure attendance which took a lot of time. Sometimes it happened that temporary injunction is granted by lower court for a period of six months, appeal is filed before additional district and session judge, appeal is pending and six months is expired. Appeal becomes anfractuous and the case file is again resend to civil court without any decision on appeal.

In certain circumstances, when appeal is filed, the appellate court suspends the proceedings of lower court and the lower court conducts its proceedings only on the basis of *Fert*. It is clear principles of law that judicial proceedings shall not be stayed in normal circumstances⁸.

8. Execution/ objection petition/ application u/s 12(2).

Execution is filed. A third person is filing objection petition on the ground that the attached property belong to the third person. It's not clear sometime therefore, the objection is fixed for evidence and it again took the time of the suit. The similar procedure is adopted in case of 12(2) CPC application.

Similarly, in execution, sometimes the decree holder is not submitting correct addresses and when the judgment debtor is beyond the jurisdiction, decree holder is not willing to transfer execution as besides that there is no other way to compel the judgment debtor. So it tooks a long time. The similar situation was in execution titled Shaker Ullah vs Mubarak zeb⁹ and Muhammad diyar vs Mubarak zeb¹⁰.

Attendance of defendants

When a suit is filed, the first stage is for attendance of defendants. Plaintiff is required to submit correct address of defendants. In most of the cases the plaintiff is not submitting correct addrees and the court is compelled to issue publication against the defendants. Then when the defendant fails to appear, then he is proceeded exparte and the suit is decreed against him exparte. After passing of a long period of time when the defendant appears he is filing application for setting aside exparte. When application is accepted, the suit is restarted. The similar case was the case of sher zamin vs Abdul Hamid¹¹, in which the suit was decreed in 2015 and application for setting aside exparte was accepted in Jan 2019 and the original case is restored and fixed for submission of written statement.

9. Unnecessary applications.

Counsel for the parties are filing frivolous application for the purpose to cause delay. When a case is not fit for order 7 rule 11 cpc. They are filing the

same application. and when a case is fit for rejection, then they are not filing the application. When application is filed, the whole proceeding is suspended and the application is fixed for reply and arguments and when the application is not finally decided, the main proceedings are suspended.

10. Remand culture

Cases are decided by the trial court. Appeal/ revisions are filed before the appellate courts. The appellate court took ten to 15 years and then the case is remanded to the trial court for submission of written statements, impleading of necessary parties or recording of evidence etc. sometime the case is remanded for the end of justice while sometime the case is remanded merely to shift the burden on lower court. Like for example, if a case is remanded on the ground of impleading, it is valid one but if a case is remanded to lower court with direction to pass speaking order is injustice. And it is always a cause for delay.

11. No revenue record in certain districts

In certain districts, record of rights is not available. No settlement is affected due to which parties are filing their complaints on the basis of boundaries which are not certain. Then it's very difficult for the court to determine the actual property. The ownership is determined only on the basis of oral evidence.

12. Unnecessary strikes of the bar

Sometimes the bar announces strikes on petty matters, so the cases for arguments and evidence are adjourned without proceedings. In Application titled Farman Ali Nisar ul Haq¹² under section 12(2) CPC several adjournments were granted due to engagement of the counsel of the petitioner in examination of Additional session judges announced by Peshawar High court Peshawar. The last date was adjourned on the diaries of the counsel for the parties but the Bar announced strike on Sahiwal situation. In which CTD police killed 4 people in a car on the ground that they were terrorist.

13. Burden of cases on lawyers.

The senior lawyers are always overburdened. Their diaries are heavy. They are taking more and more cases and after that they are unable to manage these cases. Therefore, they are always requesting for adjournment because when one evidence or final argument is fixed. Then the rest of cases must be automatically adjourned. The same practice is continuous.

Suggestions

1. Fixation of time for each suit. Schedule conferencing (Recent amendments in CPC)

The recent amendments in the rules of CPC¹³ is the best tool for curbing delay. The lawyers are not prepared to follow the rules but the same are very much effective weapon because when a schedule is fixed for disposal of a case that case would be disposed of on that particular time. Similarly, the counsels for the parties would not be able to cause delay. As a case¹⁴ before this court is delayed for more than two years and after that when the plaintiff was strictly directed to produce evidence, he filed an application for amendment in pleadings.

2. Evidence on the basis of pleadings only

In most of the cases, the lawyer tries to prove the admitted facts. They are producing evidence on the basis of those facts. Like in case¹⁵ of sale transactions in inheritance, the transaction is most of the times admitted by both of the parties and even after that the purchaser is producing evidence. Therefore, the counsel may be compelled to abstain from producing irrelevant evidence.

3. Co operation among the counsel, litigants and court.

The dispensation of justice is impossible without cooperation of the three stakeholders. The court, the lawyers and the litigants. If courts are working together with counsels and litigants and these three are running together, the delay may be curbed to some extent. In most of the case where one date is changed on the request of one party, the other date is changed on the request of the other basically for retaliation of the date previously changed by his opponent.

4. Discouragement of frivolous litigations.

Recently the honorable Peshawar High court Peshawar issued a notification wherein directions are issued to judicial officers to discourage frivolous litigation by imposition of heavy costs. This is a best step taken by the August Peshawar High Court Peshawar.

5. Accountability of counsels on time

There is no mechanism in the law to make the counsel accountable for judicial work. If high court may compel the lawyer's community to submit regular monthly report to the high court and bar council and disposal rate is

fixed for counsel, the objectives of speedy disposal may meet. The maximum limit of cases is fixed with senior counsels. Then they would be able to maintain their dairies properly.

6. Increase the posts of Judges/ judicial officers.

As discussed earlier, the courts are over burden. Therefore, if the number of judicial officers is increased according to the number of cases pending, the judicial officer would be able to give full attention to each case. If maximum 200 cases are given to each trial court then the objective would meet. Similarly, most of the cases are pending for a long time before the appellate court. Similarly, the High court itself is over burden. The number of judges in the high court are less and has to hear all appeal of the whole province. Besides that a number of writs filed in the high court daily.

7. Compelling the counsels for the parties legally.

If powers are given to the session judges to cancel the licenses of each lawyer, who is causing delay in the disposal of suits, with no appeal. Then the lawyers would be accountable and they will appear before the court on time.

8. Imposition of penalties and costs etc.

The courts must impose cost on the parties causing delay. The courts may also strictly imposed other penalties prescribed by law.

Once a person appeared as defendant in family suit. There was a practice that the defendant was used to appear for a few dates and then he was used to disappear. The defendant disappeared for sufficient period of time after submission of written statement, he was proceeded ex parte. Ex parte evidence were recorded and the case was fixed for ex parte judgment. In the mean while that person appeared and submitted an application for setting aside ex parte against him. Application was decided in his favour but with heavy cost of Rs 10000/-¹⁶ basically for the purpose to discourage that practice.

9. Appearance Schedule from the Lawyers:

Schedule for appearance from the lawyers could be taken by mutual consultation of the Bar members and courts. The lawyers shall select different days for appearing in different courts. The days shall be given/ selected for appearance in the high court. Like if there are two civil courts, two days shall be given to each courts and the rest two days shall be given to high court. Then that counsel must take dates according to the days selected by him.

Conclusions

Overall, it is concluded that the judicial system in Pakistan is excellent if delay is avoided. In the present days, judges are free and independent in the administration of justice. Due to technical procedure and the above mentioned reasons, the system is facing delay. The August Peshawar High court Peshawar has started efforts for the purpose to provide speedy justice to the subjects. In this regard Unit policy is recently recognized for the performance of judicial officers. Besides that the rules of CPC are amended basically for the purpose to provide speedy justice to the citizen. The measures suggested by the author if followed strictly may help in reducing delay to great extent.

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