DELAY REDUCTION PLAN

Further proposals for reduction of delay in disposal of cases

By

Ch. Muhammad Ikram Zahid, Advocate, Faisalabad

"------I have the opportunity to go through the dissertation written by Mr. Muhammad Zeb Khan, Additional District and Sessions Judge-II, Mardan and having been published at page No.79 of Journal part of PLD 2006 (August, 2006). I will add some very important steps which could reduce the delay in disposal of cases.

The party interested to delay the case normally resorts to file different applications. One of which is an application under Order VII, Rule 11 of C.P.C. In many of the cases, this application is filed without filing the written statement and the purpose behind is that the case may be delayed as far as possible. This mala fide act of the defendant party is preliminarily meant to delay the case. In such a case, the Civil Courts shall not entertain such an application unless the written statement is filed within 30 days of filing of the suits.

The other way to delay the case is that the plaintiff omits to implead the proper/necessary party intentionally so as to delay the disposal of cases. Now the process to prolong the case starts and finally the omitted persons apply for impleadment of parties and finally they arc impleaded as parties. This application takes months to decide. This process can be quickened and shortened by imposing cost at the rate of Rs.2,000 per party on the plaintiff if and when any party is ordered to be impleaded.

While framing the issues, the parties shall be ordered to take note of the issues on the same date and shall prepare themselves accordingly. The parties must know that no further opportunity will be given to file list of witnesses within 7 days.

It is known to everybody that the main reasons of delay in the suits is caused by making the parties to go through the long process of proving the documents. This process can be shortened by directing the parties on the date of framing of issues to file documents, additional or otherwise, within 7 days of framing of the issues. The parties shall also be ordered to pass on these documents to the rival party under the letter of respective Advocates and the said letter of Advocate shall be ordered to be placed on Court file.

The Courts shall give 7 days for filing the reply as to if both the parties admit the documents. The question whether the documents are photocopies of the documents shall not arise, in case, these documents are admitted.

When these documents are admitted, even the photocopies of the documents shall not be objected at any stage even at the stage of the Honourable Supreme Court.

If the documents are objected to and the documents are later proved to be correct, the party who objected the documents shall be burdened with the cost of Rs.2,000 per document.

If any party omits to admit the documents and omits to file reply in this respect, it shall be presumed that the documents have been admitted. Thereafter, no objection shall be entertained.

So far the Government and Revenue Record is concerned, the Courts itself shall direct the concerned Department to submit attested documents before the Court within given time and the Departments shall be bound to submit these documents within given time. The communication cost shall be borne by the Plaintiff.

The date for evidence shall be fixed and every next date after two dates shall be given at the cost of respective party.

These all steps will quicken the process of disposal of cases and in my opinion, it will not require any amendment in C.P.C. However, the Honourable High Courts may circulate these instructions as part of High Court Rules."

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DELAY REDUCTION PLAN

By

Muhammad Zeb Khan, Additional District and Sessions Judge-II, Mardan

During the last decade the maxim, "Delay Defeats Justice" has remained the hot buzz phrase throughout judicial circles; rather it has become a clamour that the District Courts throughout Pakistan are aloof of the idea of expeditious disposal. While appreciating the gravity of this problem many strategies were devised to counter this menace, which was turning into a stigma of District Judiciary. These methodologies include the Preparation of annual work plan, Unit policy and Time bound delay reduction plan. No doubt it had served its utility as cases pending since long were given particular attention leading to an enhanced disposal ratio as well as a downward trend in the backlog of old cases.

Nevertheless it is a fact undeniable that in the endeavour to achieve the desired targets at times it was also observed that cursory disposal was carried out in a rush which on appeal got remanded to that very Court; leading to further aggravation of the delay phenomenon and enhanced agony for the litigant public. What is to be seen; is whether the strategies so adopted led to public satisfaction on the working of District Courts. If such satisfaction does not ensue the expeditious disposal, then the whole exercise was futile. Being motivated with this impulse I have attempted to devise a strategy to curtail delay in disposal of cases but with special emphasis on quality and not quantity disposal leading to public satisfaction.

The corner stone of my strategy would be based upon the realization that any policy devised for combating the menace of protracted trial alien to the Civil Procedure Code or Criminal Procedure Code would never bear fruit. The solution lies within the two Codes and not extraneous thereto. With this view of the matter my proposed strategy to curtail this impending delay in conclusion of trials is based upon a diametrical shift from the Diary system to Calendar system of fixation of cases. At the District Courts the Diary System is in vogue; where the Court for each case fix a date of hearing and adjourns it to another date of hearing; while in the Calendar system at the start of the year; cases are earmarked for disposal; thus at the start of each month the Presiding Officer knows the cases to be decided.

In my view both C.P.C. and Cr.P.C. work on the Calendar system. For instance, the Civil Procedure Code speaks of three types of summons. Summons for attendance of parties, summons for settling of issues and summons for attendance of witnesses. These types of summonses should be kept in foresight while viewing Order XVII, Rule 1, C.P.C.; which provides that a case once fixed for evidence the proceeding therein should be conducted day to day unless for reasons to be recorded the Presiding Officer adjourns it otherwise. From this it can be visualized that the Code provides a procedure whereby once a civil suit is instituted the Presiding Officer shall advert itself to the contents of the plaint and the appended documents in compliance of Order XIII, Rule 1, C.P.C. and thereafter issue notices of attendance to the defendants. On their date of appearance and submission of written statement the Court shall look into the matter with a view to determine; whether the parties are at issue or otherwise within the meaning of Order XV, Rule 1, C.P.C. and if the Court comes to the conclusion that in fact they are at issue; the matter should then be kept in waiting till the time sufficient gap is available to the Trial Court to fix the case in settlement of issues as henceforth while recording the statement of witnesses day to day hearing is to be conducted in compliance of Order XVII, Rule 1, C.P.C.

By adopting this procedure the exalted benefit would be that the Judge shall be in a position to retain and remember the demeanour of the witness and other observations made at the time of recording of evidence. This Court observation is of paramount importance for correct and judicious appreciation of evidence.

Likewise on the criminal side and with special reference to murder cases the august superior Courts in plethora of rulings had directed the expeditious trials. In the same manner, Criminal Procedure Code at Chapter XXII-A. pertaining to Sessions Trials has laid considerable emphasis on expeditious disposal of such cases. In this context the point of differentiation between the trial before the Magistrate and that before the Court of Session can properly be appreciated by highlighting the subtle distinction between sections 241A and 265-C, Cr.P.C.; as under section 241A a minimum of seven days ought to expire between the date on which the copies are delivered and the date of framing of charge. Conversely before the Court of Session section 265-C, Cr.P.C. speaks of at the maximum of seven days between such procedural matters. Likewise section 265-F, Cr.P.C. provides that at the first hearing the Court shall appraise itself of the prosecution witnesses by the Public Prosecutor or the complainant and in case it comes to the conclusion that some of those witnesses have been included with the intent of vexation, it may dispense with the attendance of those witnesses. The only reason for having this methodology is to facilitate the Judge in retaining and remembering the demeanour of witnesses while appreciating the evidence. The august Supreme Court of Pakistan being cognizant of the

significance of that matter in report published under the title Roshan and four others v. The State (PLD 1977 SC 557) had formulated the following illustrious precedent:--

"To my mind, the primary consideration in appraising the evidence given by a witness is to determine, firstly, why has he offered to testify? Has he seen the occurrence? If so, has the witness a motive to implicate a person who was not among the culprits or to exaggerate the part played by any .of them? If a witness satisfies these two tests, then the Court should watch the general demeanour of the witness in order to judge the quality of his perception and his faculty to recall the past incidents. A witness may make contradictory statements on some of the details of the` incident in respect of which he is deposing in Court. The variation may be due to mere lapse of memory or the confusion caused in his mind by a relentless cross-examiner. Very often a witness gives an incorrect statement because he must answer every question regardless of the fact whether he knows the answer to it or not. It is not uncommon that the cross-examination puts words in the mouth of witnesses and the presiding officer is not vigilant enough to check it. It is also common experience that, without any particular intent, even educated people exaggerate when describing an event. Some witnesses may be prone to it more than others. Mere contradictions, therefore, do not lead to the result that whatever all necessary requirements for its expeditious disposal should be ensured and it is only then that the matter can be disposed off swiftly. At this juncture it is worth to mention that during the days of the erstwhile Executive Magistrates and prior to the Law Reforms Ordinance, 1972; there was a procedure for committing the cases to the Court of Session. It was during the stage of committing the case that the Magistrate was to ensure the availability of all the witnesses and only then when the date of hearing was fixed before the Court of Session all those witnesses were in attendance. Now that such committal proceedings do not exist we have to devise an innovative strategy to conduct Pre-trial preparation of cases. In this regard the most suitable way of doing would be that for each set of three Courts a Judicial Officer not below the grade of Civil Judge/Judicial Magistrate on rotation should conduct the job of Pre-trial preparation of cases. He should be duty bound to maintain the roster of cases so assigned to him; to ensure the attendance of the parties and the witnesses as well as their counsel prior to the date on which the case is fixed before the Court. He in this regard should take from the learned members of the bar a certificate to the effect that on the date proposed to be fixed for hearing before the Court there is no other case on their diary. In this way indirectly the delays caused by the learned member of the bar in expeditious disposal of the cases shall also be curtailed. As during the pre-trial preparation the Officer Incharge shall summon the accused and be directed to engage a counsel and once a counsel appears before that officer; through mutual consultation in presence of accused a date shall be fixed on which the learned counsel would have no case fixed in any other Court. It would thus be up to the sweet will of the accused languishing behind the bar or a litigant having the anxiety of his case to be decided at the earliest point in time to see for himself as to who is responsible for having a long date to be fixed for hearing in his case and it would thus be at the discretion of the accused or the litigant to replace his counsel with a one whose diary can accommodate a nearer date of hearing to be fixed in the matter. In criminal cases it should be at the discretion of the defence counsel and not the complainant counsel that a date of hearing should be fixed as the accused is the most favourite child of law. In the like manner the officer incharge for conducting pre-trial preparation will ensure that on a proposed date of hearing so fixed all the witnesses are duly served with notices and in case of any suspected absentees he should there and then bound down those witnesses under section 171 read with 173(5), Cr.P.C. In the like manner amongst the Revenue

_Officer including the patwari halqa who in most of the cases does not appear before the Courts much frequently; should be summoned earlier and a bond should be taken from him for his appearance before the Court. In my humble opinion the adamancies and reluctance on part of the patwari halqa to appear before the Civil Court is mostly attributed to the non-compliance of Order XIII, Rule 1, C.P.0 as if in compliance the witness has said on the salient features of the case and which conforms to the other evidence on the record, is to be thrown overboard."

It is not perceivable as to how a Presiding Officer is able to appreciate properly and to remember all the necessary details that came to his notice at the time of recording of evidence, which was recorded some six months before the date of arguments. In nutshell it is concluded that the in vogue Diary system would never work for the proper appreciation of evidence in the mode and manner enunciated by the honourable superior Courts.

Having reached to this conclusion, I now advert to the objection advanced by the adversaries to this hypothesis. According to. them, owing to the gigantic pendency it is not only impracticable but also impossible to follow such principles; according to them these rules have become obsolete. I am afraid this justification is the solution simpliciter of the imbroglio.

To my mind, if a murder trial is concluded within four days then during a month a Presiding Officer can dispose of at least six contested trials, which is far more than what is achieved at present of trial that lost at the minimum of two years. Similarly in the like manner six contested civil suits can also be decided during a month by a Civil Judge and on this ratio the problem of back log can be combated in the most efficient manner.

Coming next to the action plan for implementation of this strategy. No doubt numerous complicated impediments are in its way. For instance, how to ensure attendance of witnesses on the date and time on which the trial is to be conducted, to ensure the attendance of the Advocates, most of whom by accepting unscrupulous number of briefs have overburdened themselves to such an extent that it is very difficult for them to conduct a trial with ease. These are some of the most realistic hurdles towards the execution of the so devised strategy. In my humble understanding no policy can be successfully implemented if the other components of the system are not consulted. In civil cases those components include the official from the Revenue department besides other Governmental officials as well as the learned Advocates practising Civil law. In criminal cases these include the police witnesses, the medical experts/doctors and the learned members of the bar practising criminal law.

To resolve this complicated issue I would further emphasise on' pre-trial preparation. In fact the present daily diary system of fixation of cases is indifferent to pre-trial preparation of cases. By pre-trial preparation it is meant that before a case is fixed for hearing in. a Court, of this rule in a suit pertaining to revenue record all the documents are brought on record at the first date of presentation of the plaint, the patwari halqa would not be that much overburdened at the time of recording his statement and would have the ready copies thereof available, leading to his prompt appearance while recording his statement.

In nutshell I am of the humble opinion that no solution alien to C.P.C. and Cr.P.C. would serve the purpose of delay reduction and quality disposal; the only way that this can be achieved is to

implement the two Codes in letter & spirit and to have intensive pre-trial preparation by having a shift from the Diary system to the Calendar system.

Based upon this methodology, I intend to prepare the proposed draft of amendments to be brought in C.P.C., Cr.P.C., High Court Rules and Orders (Civil & Criminal) and other connected laws.

DELAY IN DISPOSAL OF CRIMINAL CASES*

By

Mr. Justice Rahmat Hussain Jafferi,
Judge, High Court of Sindh

My Lord Mr. Justice Ghulam Rabani, My Lord Mr. Justice S.Ali Aslam Jafri, Mr. Saleem Tariq Lon R.P.O Sukkur, Mr. Imdad Ali Awan President High Court Bar Association Sukkur and my dear under-paid, overworked and backbone of the judiciary.

*Above is the test of the speech made be Mr. Justice Rahunai Hussian Jafferi. Judge, High Court of Sindh in the workshop. on the topic of "DELAY REDUCTION AND JUDICIAL ETHICS", sponsored by the Canadian and International Development Agency CIDA I. organized at Sukkur, in collaboration with the High Court of Sindli. Sukkur Bench; the Commonwealth Judicial Education Institute Halifax-Canada and Federal Judicial Academy Islamabad, held on December1/8. 2004 at Hotel Forum Inn, Sukkur. The participants were Sessions Judges. Additional Sessions Judges. Assistant Sessions Judges, and Judicial Magistrate a of Districts Sukkur. Khairpur, Ghotki. Noushahro Feroz. Shikarpur, Jacababd and. Larkana.

On today's topic "Delay Reduction", I have been asked to speak on "DELAY IN DISPOSAL OF CRIMINAL CASES". It is not a new topic, but it is agitating in the mind of the concerned quarters since very long. The topic, under discussion was, is, and will be the subject matter of discussion, because, it is a continuous process as the causes of delay varies from time to time. The Topic was discussed before commissions, in Workshops, Seminars, Articles, Print media, Television Debates and Radio discussions. The topic is also under discussion by public at various places, even at the smallest places like barbershops, restaurants hotels and cabins, etc. Thus, the topic has acquired a status of problem.

We received this problem by inheritance when our-country was created. This problem varies from time to time as grounds for delay in disposal of cases are being changed due to various circumstances, conditions and new developments. When Pakistan was created, at that time the problem was before the lower judiciary, particularly before the Magisterial Courts. From the discussions, two causes were made, mainly responsible for the delay in disposal of the cases: (i) committal proceedings, (ii) the then executive magistrates.

Previously there were committal proceedings, which were being conducted by the Magisterial Courts. The said proceedings used to continue for about two or three years and then the cases used to be committed to Sessions Court for trial. It was agitated that delay in disposal of the cases was due to the jurisdiction of trial of cases given to the Executive Magistrates. Previously all the Magistrates, whether judicial or executive were subordinate to the then District Magistrate. He had the jurisdiction to distribute the business of trial of cases to the Magistrates. The District Magistrate used to assign the jurisdiction of the committal cases to the Civil Judges, F.C.M (hereinafter referred to as the Judicial Magistrates), and the remaining jurisdiction of trial of the cases was given to Executive Magistrates. The complaints were that the Executive Magistrates were busy in executive duties; therefore, very little time was left with them to sit in the Courts to try the cases. The problem became so serious that the people started campaign for separation of judiciary from Executive.

This problem is not faced by Pakistan only but a large number of the countries around the world faces it, as such, it is a global problem which is being tackled with by each country according to its own resources and conditions prevailing in that country.

Our country also faced with the same situation; therefore, the Governments at the time took several steps to coup up with this menace but were unable to do so as no serious efforts were made to rectify the problem for various factors including the opposition from bureaucrats. At last, the problem was tackled by the parliament while framing the Constitution of 1973. A provision was made in it under Article 175 to separate the judiciary from the executive in a required time but the time was extended from time to time, which went to beyond fourteen years. Ultimately, the said time also expired. However, the judiciary was not separated from the executive.

Before the Constitution, the then Government had established a commission to examine the above question. The commission was headed by the then Mr. Justice Hamood-ur-Rahman, who submitted his report, which is known as "Hamood-ur-Rahman Report. In that report, the Hon'ble Judge recommended that the judiciary should be separated from the executive and certain measures were required to be taken, but the report was kept in the files of the Government. Ultimately, for the first time, in the year 1972, the then Government, took up the matter in hand and implemented the said decision by promulgating an Ordinance known as "The Law Reforms Ordinance, 1972". Under which the committal proceedings were abolished. The work of Judicial Magistrates was separated from the Executive Magistrates. In that, way the judiciary was required to be separated from the Executive. Through that scheme, the powers of Judicial and Executive Magistrates were demarcated. The Executive Magistrates were given the powers of preventive measures to curb the commission of offences, whereas the Judicial Magistrates were given powers of trial of cases. The demarcating line between the Judicial and Executive Magistrates was commission of offence. The circumstances existing before the commission of offence were to be dealt with by the Executive Magistrates and the circumstances prevailing after the commission of offence were to be dealt with by the Judicial Magistrates.

However, the then Government implemented some of the provisions of Law Reforms Ordinance under which the committal proceedings were abolished and some other provisions

of Cr.P.C were amended. The remaining provisions of Law Reforms Ordinance were required to be implemented by the provincial Governments on the date to be notified by them. After the abolition of committal proceedings, all the cases pending before the Magistrates under the then committal proceedings were sent up to the Courts of Session with the result that a large number of cases were brought on the files of the Courts of Session.

Previously, the Court of Session used to fix a case in the court for trial, that case used to be proceeded with on day-to-day basis, and the same used to be completed within three days depending upon the number of witnesses. The people were getting inexpensive and expeditious disposal of the cases from the Courts of Session. This was possible, because the police officials used to bring all the witnesses and all the required material before the Court of Session for trial of the case and a senior police officer used to be present before the Court for any further compliance of the Court's order, in case, any eventually emerged. Further there was no conception of adjourning the sessions cases because once a sessions case was fixed for trial it was proceeded with on all costs. The advocates also used to give preference to the sessions cases than to other cases including the matters of appellate Courts. When the number of cases was increased, the judges were not able to coup up with the said work. The preliminaries, which used to be completed by the Court of Magistrate, were required to be completed by the Court of Session that resulted frequent adjournments of the cases for the compliance of the formal requirements. The situation has aggravated to such an extent that presently we are in a state of limbo and fresh efforts are being made to coup up with the situation. I am of the view that if at that time adequate and emergent steps would have been taken for dealing with the large number of cases and completion of formalities then a situation presently available would not have occurred. However, we have received, the said cases with the above difficulties; therefore, some steps are required to be taken to overcome the said problem. Still it is not too late; if we take some adequate and positive efforts then the said difficulties can be eliminated.

After the experience of the trial of the cases before the Courts of Session, it was found that the causes of delay, which were prevailing before the Law Reform Ordinance, were the apparent causes of delay. The real and genuine causes were camouflaged under the above two causes. The root causes of the delay of the cases were quite different from those apparent causes. It was further noticed that the some of the root causes were: inadequate number of judges, non -cooperation of police, delaying tactics adopted by the accused and advocates, seeking adjournments on valid or artificial grounds, non production of prisoners from jail and so on and so forth. As such, a fresh waive of discussion started in various seminars, workshops, commissions, print media, T.V., Radio discussions and by public at all places.

The parliament also took cognizance of the above problem and made a provision in the Constitution in its Part II under the heading "Principle of Policy". Under Article 29, it has been directed that the State, its organs and its officers should perform their functions in accordance with the Principle of Policy. Certain ditties and obligations have been imposed upon them to achieve the objectives of the Principles of Policy. One of the principle of policies is mentioned under Article 37(d) of the Constitution under which it has been provided that it should be ensured that inexpensive and expeditious justice should be provided to the citizens. Thus, the Constitution makers were also conscious that people were

not getting expeditions disposal of cases because the cases were being delayed for various reasons in the Courts, therefore, they directed the State to take steps for providing inexpensive and expeditious justice.

No doubt, the principle of policy mentioned in the Part-II of the Constitution cannot be enforced through the writ of the High Court, but the State, its organs and their officers are morally obliged to implement the said policy, therefore, the judiciary and its offices should also ensure that inexpensive and expeditious justice should be provided to the parties.

Taking the above problem as aground for creating new courts, the Government tried to create new courts with a view to take away the powers of trial of cases from the judiciary. For that purpose, special courts were created to deal with a separate class of cases but the problem remained there. Even, the civilian Government created Military Courts to try a class of cases. The said courts started functioning. The cases were tried, the accused were convicted and executed. Efforts were also made to associate some outsiders to sit with the judges to try the cases. These steps were direct attack on the Judiciary. However, with the timely intervention of the Hon'ble Supreme Court of Pakistan in a case of Liakat Hussain v. State, PLD 1999 SC 504 decided by nine honorable Judges, the said efforts were frustrated. The Military Courts were declared unlawful. The Government implemented the said decision therefore the said courts were abolished. The outsiders were not allowed to sit with the Judges to try the cases as all concerned objected the same therefore the Government had to take back the amendments made by them in the relevant law. Thus, all the cases again started being tried by the Courts headed by judicial officers.

In recent past another and new attack has been made on the judiciary. This time not from the Government's side but it is from the side of feudal lords of few districts of the province as they started deciding the cases by themselves through Jirgas. Previously the feudal lords were deciding the cases secretly and discreetly at their Places. The newspapers noticed the above actions of the feudal lords. Because of the freedom of the press, the newspapers highlighted this problem by publishing news items and photographs showing feudal lords deciding the cases that were pending in the courts of' law. They also showed the pictures where the supporters of the parties duly armed with licensed or unlicensed weapons were shown to be present outside the said places. Under these aggressive circumstances, the feudal lords were deciding the cases through Jirgas. The matter was so aggravated that the people had to approach the High court of Sukkur Bench to challenge the validity of Jirgas. The High Court of Sindh Sukkur Bench headed by me took up the matter in a case of Mst. Shazia v. Station House Officer 2004 PCr.LJ 1523 and held the Jirgas as unlawful and unconstitutional. When the press contacted the feudal lords, they supported the holding of Jirgas by arguing that they were providing. inexpensive and expeditious justice by deciding the cases quickly as the people have lost faith in the judicial system of the country because their cases are not being decided expeditiously by the courts.

It is pointed out that under the Principle of Policy and Article 37 [d] of the Constitution the State, its organs and its officers have been directed to provide inexpensive and expeditious justice. Such direction has not been given to any private individual. As such, the feudal lords are clearly violating the above Principle of Policy of the constitution.

It is not out of place to mention here that previously the Sardars of their tribes were deciding the cases under System of Sardari. The Parliament took notice of it and abolished the said system by enacting a law known as "System of Sardari (Abolition) Act, 1976 (Act XL of 1976)". The preamble of the Act which is essence of any Act reads, "Whereas, the system of Sardari, prevalent in certain parts of Pakistan, is the worst remnant of the oppressive feudal and tribal system which, being derogatory to human dignity and freedom, is repugnant to the sprit of democracy and equality as enunciated by Islam and enshrined in the Constitution of the Islamic Republic of Pakistan and opposed to the economic development of the people;". Under this law, the practice of deciding case, which can be done through Judicial powers, has been made an offence, which is punishable up to three years. In view of above Act, in the year 1976 the Govt. of Pakistan, before the decision of the High court in the case of Shazia (supra) has already banned the Sardars from exercising judicial powers, violation of which has been made an offence punishable up to 3 years.

The scheme of the lawmakers through substantive and adjective laws is that no offence should go unchecked and no offender should go unpunished. Therefore, the Magistrates have been given powers to take cognizance of an offence on a police report, on a private complaint, and on his personal information received from any source. It is one of the duties of the Magistrate to implement the will of the Parliament and scheme of the law. Thus, the Magistrates are required to take appropriate action within their powers to achieve the scheme of the law. If any offence is reported to the police but the police do not take any action, then the complainant has been given right to file a direct complainant before the Magistrate. If neither the police nor the private person reports the matter to -the Magistrate then the Magistrate can take action on the information received by him through any source or through press and prosecute the person who committed the offence so that the offence should not go unchecked and punish the offender who has committed the offence so that the offender should not go unpunished. This is the requirement of a civilized society, which should be adopted by the Courts.

When the law gives such wide powers to the Magistrates then the Magistrates should perform their duties in accordance with law so that the scheme of the law should be implemented. It is wrong to say that the Magistrates can perform their duties during their Court hours only. However, if the Criminal Procedure Code, Police Rules and the present powers given to them through the separation of judiciary are examined then the Magistrate is a Magistrate for 24 hours. He is responsible for curbing the offences within his territorial jurisdiction because he has to perform dual functions by taking steps to prevent the commission of offences and then trial of cases. The Magistrates should look into their files and see as to how many cases were initiated on their personal knowledge received from any source including Press reports. I am sure if such situation is looked into the files and registers of the court then no case can be round which is initiated on the own information of the Magistrate. Apparently, it shows the lack of supervision of the Magistrates within their territorial jurisdiction. The Magistrates should play their due role to perform their functions in accordance with law. In this view of the situation, it is now being propagated that the judiciary is not playing its due role. A new slogan has emerged that the executive should be separated from the judiciary.

For creating the special courts and holding Jirgas, one of the grounds was taken that the people are loosing faith in judicial system. The ground appears to be unfounded, as it will be noticed that thousands of people are attending the Courts daily. They are pursuing their civil/criminal cases in the Courts of law. It will not be out of place to mention here that through Qisas & Diyat Ordinance, the Pakistan Penal Code has been amended and several offences have been made compoundable including the murder cases. In spite of that, very few cases are being ended through such mode. It will be further noticed that very few cases of only few districts of the province are being referred to outdated, unlawful and unconstitutional Jirgas, which clearly demonstrates that even very large number of people prefer their cases to be decided by the Courts of law knowing fully well that some delay might be caused in decision of their cases. It further shows that people have not lost faith in the judicial system. However, they want improvement in the system so that their cases should be disposed of expeditiously. Thus, the problem requires adequate attention so that positive steps may be taken to overcome the delay in disposal of the cases and eliminate the so-called above impression.

The present government has taken a very bold step of completely separating the Judiciary from the Executive as drastic amendments have been made "in the Cr.P.C under which the post of Executive Magistrate has been abolished and the judicial officers have been made responsible to take action to prevent the commission of offences and to try all the cases. In these circumstances, heavy responsibility lies upon the judicial officers to, take adequate steps to curb this menace. Under the present circumstances, the Judicial Magistrates are not only performing the judicial functions but also doing the executive work as both the powers, which were used to be exercised by the Executive Magistrates, have been assigned to the judicial Magistrates. Nevertheless, it is being propagated, that the subordinate judiciary is not playing its due role. Because in the present scenario, no adequate steps are being taken by the judicial officers to deal with the cases of minor offences, as apparently the Judicial Magistrates are not considering them as offences with the result that such offences are going unchecked and the offenders are going unpunished, that is against the scheme and sprit of the law. As such, some emergent steps' are required to be taken to remove the said impression.

As the situation and circumstances have changed, therefore, the grounds of delay in the disposal of cases have also changed. Some of the people are of the view that the Courts are solely responsible for this delay. Some sections of the people advocate that the prosecution is causing the delay and some people are holding the police responsible for such delay and so on and so forth.

A large number of the people are making the courts solely responsible for the delay in the disposal of the cases. In fact, in the circumstances, their apprehension might be correct as apparently when the accused is challaned the case remains on the file of the court till its disposal, therefore, they are holding the Court sole responsible for the said delay. If it is examined minutely then the situation is otherwise because, the function of the Court is to decide the cases on the evidence of the witnesses produced by the parties. The parties are required to produce all the evidence and other relevant material before the Court in support of their- respective cases. Then the Court is required to give its decision. When an offence is

committed, it is committed against the society; therefore, the State is the main party in the criminal cases as such it is responsible for the prosecution of the cases.

It has been noticed that after submission of police report or challan by the police, the police forget about the case, though they are required to produce all the material and complete the formalities of the case so that the case may reach at the stage of trial. After submission of challan, the Court is being made responsible for procuring the police papers. Even the Public Prosecutors complain that the police are, not sending the police papers to them. The court is indulged in calling for police papers though it is the responsibility of the prosecution and police to place all the material before the Court. The police do not produce the case property, chemical analyzer and ballistic reports before the Court, which are essential steps for reaching the case at the stage of trial, but again the Court is being involved in this regard The Court issues process for calling the property, chemical analyzer and ballistic reports, therefore, sufficient time is being spent in completing these formalities. Even, when the case reaches at the stage of final hearing, the process is being issued to produce the witnesses. Even then, the police do not care to serve the process upon the witnesses, with the result that the cases are being delayed for want of witnesses. If the witnesses are produced and the Court does not examine them then the Court can be held responsible for such lapse. But it has been noticed that all the functions which were required to be performed by the prosecution and police to complete the case, the Court has been involved in them to do the functions of the prosecution and the police resulting in delay in disposal of case. Thus, it is the prosecution and the police who are, to some extent responsible for such delay but for the responsibility of the prosecution and police the court is being blamed. The fault of the court is that it is helping the prosecution and the police in performance of their duties. For that, the court is paying a very heavy price. Therefore, the Courts cannot be held sole responsible for such delay. The impression carries by the public in this regard appears to be unfounded. Efforts should be made to eliminate the said impression from the public.

However, one should not defend himself blindly but to examine the real causes of delay in disposal of cases. Ii it is found that, the court is also a contributory factor in that direction then the court must admit its fault and steps should uc taken to redress the said deficiency. After examining the entire scenario of the criminal cases, I am of the view that no single factor is responsible for causing the delay, but it is a combination of several factors and the acts of several authorities, which are causing the delay. Apart from other causes, in my view, there are seven main causes, which arc contributory factors in causing the delay. The said causes are is under:

(1) Courts: such as large number of pending cases, less number of judicial officers, in adequate infrastructures and staff, unfavorable working conditions, non-examination of witnesses, liberal grant of adjournments, inadequate knowledge of procedural and other laws, time and case management, etc.

(2) Accused: such as their abscondence, non-engagement of advocates, pressure to the complainant party for compromise etc., arrangement with jail personnel for not producing them

in Court, so that statutory period expires and case should be delayed, giving direction to their advocates not to appear before the court when witnesses appear, etc.

(3) Advocates: such as taking large number of cases, not preparing the cases for various reasons, engagement in other cases or superior Courts, seeking frequent adjournments, etc.

(4) Prosecution: such as inadequate number of prosecutors, their staff, no liaison between them and police, non. co-operation of police with them, inadequate knowledge of procedural and other laws particularly Qamm-e-Shahadat Order, etc.

(5) Police: such as non-execution of process of the Courts, non production of property, chemical analyzer and ballistic reports in courts, non-cooperation with Courts, taking no interest after submission of challans in Courts, no follow-up of cases, non attendance in Courts, etc.

(6) Jail authorities: such as, less number of vans_ for transporting the prisoners, non availability of police personnel for transporting the prisoners, transfer of prisoners from one jail to another, non-production of prisoners in Courts for various reasons, genuine and artificial, etc.

(7) Government: such as non sanctioning of sufficient number of posts of judicial officers, insufficient budget to the Courts and other departments involved in the administration of justice, etc.

The superior courts have also discussed this problem in various judgments pointing out various causes for the delay in the disposal of the cases. Very recently, the High Court of Sindh has also taken up this problem in a case Hussain Ahmed v. State, 2004 PCr.LJ 669. In the said 'judgment, which was authored by me, above-mentioned seven causes of delay have been emphasized. When a decision is reported in a Journal then it means that it has been brought to the notice of all concerned. Therefore, all the officers of the organs of the State are required and obliged to perform their functions so as to achieve the objectives of the Principle of Policy of providing inexpensive and expeditious justice to the citizens mentioned in the Constitution. It appears that no due attention has been given to the said judgment or other judgments of the Superior Courts to remove the causes of delay in the disposal of the cases. I request to all concerned to take emergent and adequate steps to implement the will of the constitution.

In the end, I will simply say that the delayed justice is denied justice. In my view, the worst form or denied justice is delayed Justice.

Thank you and God bless you.

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WHETHER JUSTICE DELAYED IS JUSTICE DENIED

By

Syed Muhammad Kaleem Ahmad Khurshid,

President, Lahore High Court Bar Association

One must learn from the past and refrain from repeating the mistakes. There is a general tendency that the judiciary as well as the lawyers are being criticised and said to be responsible for the delay in the process of justice. The developed societies and overcrowded countries have highly complexed laws, thus, causing delay in the disposal of the cases even then this aspect of the matter has never been held to be the main hurdle in the process of justice. Even in civilized societies the Court system is provided by the States to its citizens for resolving their disputes and in our society the dispute resolving apparatus which the State provides and which we as lawyers serve produces the result which is just proper and if we take the view that justice delayed is justice denied then this view will affect the society and may cause hardships without appreciation of the real matter.

2. In my opinion the time that passes between the arising of claim and disposal of it by a final judgment, can be divided into following periods, namely the arising of the claim, commencement of the proceedings of Court, service of opposite-party, the trial period, the period between the trial and judgment and disposal of the final appeal. Improper delay may occur in this process as such the reasons for the delay in such circumstances and the remedies for it are different at different stages and the main problem is that delay in not synonymous with the passage of time rather improper delay affects the society and such improper delay amounts to the denial of justice.

3. Lawyers generally take time to process claim and for the drafting of the petitions, suits and complaints, notice to the opposite-party. Courts allow time for needs which are incidental to the main proceedings, issues are formulated in order to avoid surprises, evidence is collected and complexity of the matter may determine the quantum of evidence and these are sufficient reasons in taking considerable time, as such the time consumed in processing the claim cannot be said to be improper delay. It is the duty of the lawyers to see that the disputes are resolved quickly and this vital service to the society by the lawyers is their paramount consideration.

4. The recent publicity in respect of undue delay in the process of justice is highlighted by the executive but it reflects a long standing failure by the lawyers to inform the public of its judicial purpose, skill and services provided by the legal profession to, the litigants for resolving their disputes.

5. Unless and until the delay is not appreciated in its true perspective we cannot say that the justice delayed is justice denied. Generally delay is caused by the Courts due to overwork because the cases are fixed before the benches after many years in such circumstances the executive is responsible for such delay but the delay which is incidental to the proceedings, in order to enable the parties to settle the issue to collect the evidence, cannot amount to improper delay and the time consumed in such matters will not amount to "justice delayed is justice denied". The lawyers are not responsible for improper delay in the process of justice. The working of the Courts, case load, the complexity of the litigation and quantum of evidence is the relevant material for the speedy justice and the decision of cases cannot be equated with treatment of a patient. Thus, without providing full opportunity for the production of evidence to the opposite-party, the decision of suit in hurry and haphazard manner will amount to denial of justice and the real purposes of administration of justice may be flouted by speedy disposal which amounts to "justice hurried is justice buried". Reliance is placed on PLD'1996 Lah. 210 where concept of hearing has been highlighted.

6. The improper delay can be avoided by simplifying the present procedural laws and legislation can be said to be responsible for improper delay because there are different types of Courts, different types of legislation for different subjects thus resulting in delaying the justice. It will not be out of place to mention here that certain suggestions are given by the Courts to simplify the procedure but the same are not incorporated by the Legislature, thus, causing hardships for the litigants. At this juncture I will refer to PLD 1973 Supreme Court page 619 wherein it was observed by the Supreme Court of Pakistan that the definition of cheating under section 415 requires amendment but the said definition of "cheating." was amended in 1980. There are many other examples in this behalf and the same was amended in such circumstances it can easily be said that when the cases are being decided on hypertechnical issues by the Courts then this may amount to "justice delayed is justice denied". The lawyers are not responsible for such inordinate delay and the legislation and executive can be held responsible for inordinate delay. It is the duty of an Advocate and he is under obligation to assist the Courts in the litigation entrusted to him. The lawyers always took interest that the matter should be settled without undue delay but some instances of delay do not amount to improper delay in such extreme cases. Deliberate delay in the process of litigation may amount to the abuse of the process of the Court but this undue delay can be avoided when the time limit should be fixed within which case of a particular kind may be dealt with and disposed of and the superior Courts should seek explanation from the lower Courts for such delay. The Court must adopt administrative structure and machinery to ensure that litigation is concluded within the stipulated period. The Courts must adopt a structure

appropriate to the speedy disposal of the litigation so that the delay should not amount to the denial of justice. In order to achieve this object the number of claims can be fixed being dealt with by an advocate by the Bar Council. Overcrowded professional engagements of an advocate may be one cause of delay in the process of justice. The number of Courts should be increased so that the overworking of the Courts should not be responsible for delay which amounts to denial of justice. Lastly, statutes and the rules made thereunder should be simplified by the legislation and complexity of the statutes is the main reason for process of delay.

7. In order to get rid of this situation that justice delayed is justice denied some proposals are given below:--

(i) Before the framing of issues, the counsel for the parties should be required to submit a summary of the early neutral evaluation and there should be a specific provision for referring the matter to the arbitrator and if this offer is accepted and parties have referred the matter to the arbitrators the parties may be exempted from the payment of court-fee. This process is more conciliatory, less-formal and more flexible. The pre-trial proceedings can be introduced in the civil suits.

(ii) That if the parties are not at variance on facts, question of law should be formulated and reference can be sent to the High Court under section 113, C.P.C. The aforesaid section 113, C.P.C. may be amended and reference may be laid at rest within one month.

(iii) The provision in respect of interrogatories and admission of documents, admissions of facts, discovery, inspection; production, impounding and returning of documents shall be laid at rest before the formulation of issues in order to avoid delays.

(iv) The Constitutional Courts can avoid undue remands if there is uniformity of judgments, thus, delays can be avoided.

(v) Delays can also be avoided when substituted service is adopted simultaneously.

(vi) Written arguments should be asked to be produced and still the party insists to make oral submissions specified time should be allocated for oral arguments in the interim order.

(vii) Parallel judicial system by the Government are creating hurdles in the administration of justice and the time tested present judicial system is fully appreciated by the people and approved by them. The said system also enjoys the confidence of the people, thus, parallel judicial system should be abolished.

(viii)Exemplary costs should be imposed in order to avoid frivolous litigation.

(ix) The number of Forensic Science Laboratories should be increased and serious action should be taken against the persons responsible for undue delays.

(x) Time should be fixed for hearing of the case and frequent adjournments should be avoided.

(xi) Supervisory jurisdiction may be exercised tinder Article 203 of the Constitution of Islamic Republic of Pakistan if the ruling of the Constitutional Courts are not followed by the subordinate Courts then disciplinary actions should be taken and rules should also be framed in this respect.

(xii) Ineffective Supreme Judicial Council is also a hurdle in the administration of justice.

(xiii) The time limit should be fixed within which cases of a particular kind may be dealt with and disposed of by the lower Courts and the superior Courts should seek explanation from the lower Courts for such delay and disciplinary action may be taken against the Courts responsible for such delay.

(xiv) The High Court must adopt a structure appropriate to the speedy disposal of the litigation and the liability of the delay must be fixed.

(xv) The number 'of claims should be fixed by the Bar Councils. Overcrowded professional engagements of a professional are also a cause for the delay in the process of justice.

(xvi) The number of Courts should be increased and necessary funds should be provided by the executive for the disposal of matters within a reasonable time.

(xvii) The complexed procedural laws should be simplified by the legislation and the suggestions by the superior Courts should become part of legislation and if the same are not incorporated in the statutes within six months due to oversight of the Legislature the public should not think that justice delayed amounts to denial of justice.

(xviii) That it is a duty of the Appellate Court to resolve that the decision by the Court or Tribunal is incorrect, mala fide, or based on incorrect assumption of facts and the Appellate Court should be authorised to pass an order to direct the lower Court to pay the costs to the aggrieved persons.

(xix) That unapproved reporting in the Law Journals is also a cause of delay in the process of justice and it creates hardships for the public. Thus, unapproved reporting in the Law Journals is another cause of the delay, thus, undue delay occurring due to the reckless reporting can be avoided.

(xx) The rule-making-powers are not being exercised by the High Court otherwise the confusion can be resolved by exercising these powers and interpretation of the rules may result in the speedy disposal of cases.

(xxi) The Bar Councils should be authorised to propose amendments in the Procedural Laws and if the proposed amendments are not incorporated in the statutes by Legislature within six months then the same may be presumed to be the part of rules. Thus, undue hardship to the litigants can also be avoided and nobody can say that justice delayed is justice denied.

(xxii) That evidence in civil case should be recorded through local commission in order to avoid delays in recording of evidence.

(xxiii) Article 163 of the Qanun-e-Shahadat may please be amended to this effect that if the plaintiff states on oath that his claim is true and the defendant refuses to make a statement on oath then the suit should be decreed. On the contrary, if the defendant makes a statement on oath and the plaintiff fails to rebut the same on oath the suit shall be dismissed.

(xxiv) That if the denial in the written statement or evidence in this respect is false then the person should be prosecuted for perjury.

In my humble opinion the time consumed for processing the claim and recording of evidence will not amount to improper delay and the same will not amount to "justice delayed is justice denied" rather if the justice is hurried that will amount, to injustice and will cause hardship and it can be said that if the justice is, rushed then the justice is crushed.