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IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

C.M.A No. 1934 /2018
In

Constitution Petition No. 05/2018

Umer Ijaz GillainPetitioner

Vs

Law & Justice Commission of Pakistan through its Secretary etc ...Respondents

REPORT ON BEHALF OF LAW AND JUSTICE DIVISION

Respectfully Sheweth:-

1. That this Honorable Court vide its order dated 08-11-2018 has directed that final report of Committee must be presented before the next date of hearing.
2. That it is humbly submitted that draft bill on Code of Civil Procedure (Amendment) Act, 2018 has been prepared by the core team on Civil Law Reforms and the legislative process has begun.
3. That it is pertinent to mention here that since civil procedure does not fall within any of the entries of Part I of Federal Legislative List of the Constitution, the said draft amendment bill is for Islamabad Capital Territory only.
4. That other provinces will be consulted as well so similar amendments may be brought about by legislatures of Punjab, KPK, Baluchistan and Sindh.
5. That the salient features of the draft Code of Civil Procedure (Amendment) Act, 2018 is as follows:

A. Introduction of Two Tier System

- (i). Major cause of delay in our civil litigation system is that when a party files a suit accompanied with an injunction/stay application, the main suit does not proceed. The Court only focuses on the stay application which takes many years to decide the stay/injunction, The main suit remains in a state of inertia.
- (ii). Under the proposed amendment, a new concept of a two-tier system has been introduced where two different judges will hear the entire suit. In the first tier, the main case would be heard by one Judge and not going to be interrupted till finalisation of the proceedings. If there are miscellaneous applications, in particular stay/injunction application, these are going to be heard in second tier where a separate file is going to be opened and going to be adjudicated by a different judge without interfering with the main case adjudicated in first tier.

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Supreme Court
Islamabad
Pakistan

(iii). The proposed change is a radical evolutionary step in our civil litigation system, completely unique and different from other jurisdictions such as India, Bangladesh, United Kingdom etc. one that will ameliorate the civil litigation practice and will become a precedence for others to follow. It is safe to say that such a change will reduce 30/40 years period of civil litigation to maximum of two years or a little more including appeals.

B. Process of Summons To Be Simultaneous and Use of Modern Devices

- (i). There are different stages/steps in effecting service of notices and summons which causes inordinate delays. The bailiffs are also instrumental in hampering judicial process by intentionally effecting service of notice/summons on wrong person or sometimes deliberately not causing the service at all while generating false reports and also by delaying the matters by causing service on the last day.
- (ii). The proposed amendment gets rids of all steps of service so that all modes of service such as personal service, service by post, electronic service through mobile or any other electronic medium, affixture and newspapers are done in one go.
- (iii). The proposed amendment also binds the process server or bailiff to record factum of service by taking photographs of defendant, any person receiving on defendant's behalf and the place at which summons/notices are delivered. CDR may be used for such purpose.

C. Defence to be filed within 30 days

- (i). Currently there are no strict timelines for filing reply to a claim and the defendant deliberately avoids filing response to a claim by seeking adjournments based on lame excuses. The proposed amendment binds the defendant to file response not later than 30 days from date of service of notice/summons failing which they will be sanctioned with costs or in worst case scenario lose right of defence.

D. Recording of Evidence through Commission

- (i). Under the current Code of Civil Procedure, the evidence/statement of a witness is mainly recorded orally who in many cases being overburdened with backlog of litigation either avoids to engage in recording of evidence and prioritising other cases, or in many cases witnesses tend not to appear for many years which hampers the judicial process. At the same time, since there is no other medium of making record of evidence/statement such as audio or video, there are allegations and objections by parties that evidence/statement recorded is not same as was given by the witness which again results in excessive delays.

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- (ii). Under the proposed regime of Civil Procedure Code, evidence/statement is going to be recorded on Commission comprising advocates/retired judges who will complete the process not later than ninety days.
 - (iii). Also under the new regime, it shall be compulsory to record evidence and proceedings electronically through audio and video.
 - (iv). This would not only reduce burden on the Courts as they would be able to focus on other proceedings, at the same time it would also curb allegations of fraud and fabrication of statement by parties. Also the demeanour of witnesses will become part of the record to be assessed by any judge who is adjudicating the case later in time.
 - (v). The Commission will also engage and employ many lawyers.

E. Costs

- (i). Over the years the Courts have taken very lenient view of imposing costs even in cases of extreme and deliberate violations by parties. This has caused excessive delays as parties openly flout orders of court. At the same time, Courts reticence to impose costs has resulted in large scale frivolous litigation causing huge backlog resulting in excessive delays. This is due to the fact that current regime of Civil Procedure Code provides a complete discretion to the Court, whether to impose costs or not.
- (ii). The proposed amendment revolutionizes the concept of costs, taking into account the prevalent legislations on the point and improving them. According to a new concept '*losing sides shall pay winning side cost of litigation*' along with compulsory "*Adjournment Costs*" of Rs.5000 for seeking adjournment as well as "*Special Costs*" if any party is found of abusing the process of the court through frivolous litigation or by relying on false averments.

F. Spot Checks

- (i). In civil litigation, especially in matters relating to land, property and revenue disputes the decisions are based on inspections including physical demarcations effected by Patwaris, Mukhtiakars, lower grade revenue officers who often manipulate or give false reports which results in appeals and applications by aggrieved parties being stuck in litigation for years.
- (ii). A new concept of spot checks has been proposed where the judge conducting the trial would be able to conduct spot inspections for a just adjudication of the case. This would not only reduce corruption but also render a more accurate judgment, since nothing beats personal first-hand knowledge of the judge.
- (iii). At the same time this will not only lessen unnecessary and protracted litigation but it shall enhance accuracy and be destructive of delays.

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G. Abolition of Multiple Tiers of Appeals and Revision

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- (i). Presently the Civil Procedure Code contains two appeals and a Revision up to the High Court after which there is an appeal to Supreme Court, which is a major cause of excessive and inordinate delays for conclusion of proceedings. The proposed amendment gets rid of multiple tiers of appeal along with Revision and provides for one appeal to High Court and final Civil Petition to the Supreme Court. This change alone will cut down the delays by three to five years.

Abdul Shakoor Paracha

Mr. Justice (Retd)
Abdul Shakoor Paracha
Secretary
Ministry of Law & Justice
Government of Pakistan
Islamabad.

(Abdul Shakoor Paracha)
Justice (R)
Secretary
Ministry of Law & Justice
Government of Pakistan
Islamabad
051-9202712

Dated: 28.11.2018

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Supreme Court of Pakistan
Islamabad**