

The Small Claims and Minor Offences
Courts Ordinance 2001

Report No. 32

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Introduction

The colonial Government of British India promulgated the Provincial Small Cause Courts Act 1887. This law was enacted in the aftermath of suppression in 1857, of the indigenous resistance movement to the East India Company rule. Mr. Gubbins, writing about causes of the said uprising, maintains that the mutiny was an expression of great dissatisfaction that the people of India felt under the then administration of justice in the country. He states that one great source of weakness in the civil executive was to be found in the cumbrous and unsuitable mass of law with which the Indian officers were shackled and numerous appeals to which their orders were subject. Speedy and cheap justice, Gubbins maintains, was what was wanted in India. The response of the colonial power was the promulgation of Small Cause Court Act, which was generally appreciated. In a speech, the Hon'ble Mr. Scoble commended the role of Small Cause of Courts in the following words:

They are Courts which I believe are very much appreciated in the country, and their working has, I believe, been highly conducive to the good of the people, who have thereby been able to obtain speedy and substantial justice.

Similarly, the Hon'ble Sir W. W. Hubter also appreciated the concept of Small Cause Courts as under:

I well remember the apprehension which was felt when these tribunals began to be generally introduced into the rural districts of Bengal. To most judicial officers, and to a large section of the public, it seemed a perilous experiment to dot the districts with Courts from whose decision there was in the majority of cases no appeal. The system might work well enough in large towns, it was said, under the safeguard of a vigilant public opinion, but it was a dangerous one for remote country places. These apprehensions have now been completely falsified; and I think that no class of officers have during the past quarter of a century done so much to render legal redress easy, speedy and cheap in the ordinary transactions between man and man, as the Judges of Small Cause Courts.

The reason as to why the idea of Small Cause Courts was appreciated was because these courts could and did deliver speedy justice in small claims and petty disputes. After independence though, unfortunately, the law was not implemented in earnest. The Small Cause Courts Act 1887 was not fully applied, nor was it amended and reformed, in keeping with the needs and requirements of time. Again, the structure of the courts and designation of court staff was incongruous with the way/manner the judicial system has evolved in the country. No such Courts were specially created. Consequently, the general public remained largely unaware of the existence of such Courts. As a result, the statute became more or less redundant law.

The state of neglect can be gauged from the fact, that currently, there are only two Small Cause Courts operational, in entire country, one is at Lahore, which is headed by

a Senior Civil Judge and the other at Karachi, headed by District Judge. Very few litigants approach these courts for resolution of their disputes. The pace of disposal remains very slow because of the fact that these are courts of general civil/criminal jurisdiction entertaining ordinary cases, and are also conferred upon the additional jurisdiction of Small Cause Courts. The following table indicates the places where the Small Cause Courts are created, the level of judicial officers who preside over such courts, the monthly institution/disposal and pendency:

Small Cause Courts

Sr.No.	Name of Province	No. of Courts	Places where Established	Presiding Officer	Monthly Institution	Monthly Disposal	Total Pendency (on 1.8.2000)
1.	Punjab	One	Lahore	Senior Civil Judge	10 Cases	5 Cases	87
2.	Sindh	One	Karachi	District Judge	21 Cases	2 Cases	299
3.	N.W.F.P.	Nil					
4.	Balochistan	Nil					

With only 2 courts in existence and negligible number of cases instituted and disposed off by such courts, their performance can hardly be called satisfactory. This is on account of variety of factors e.g. lack of awareness among the public of their existence, the courts have to follow the general procedure provided by the Code of Civil Procedure, the courts have no exclusive jurisdiction, etc. Their pecuniary jurisdiction was initially fixed as rupees five hundred but later increased in 1962 to rupees one

thousand, in 1972 to rupees two thousand and in 1994 to rupees five thousand. Under the 1994 amendment, the High Courts may empower a Small Cause Court to entertain civil suits upto the value of rupees twenty five thousand.

The time has come when the Pakistan Law Commission need to examine the utility and beneficence of the Small Cause Courts, as they exist and function under the 1887 Act. Perusal of the said Statute would reveal that it is very old law, adopted more than a century ago, as per the needs and requirements of that particular time. The structure of the court prescribed in the said law is different from the present structure of courts in the country. The statute also does not prescribe any special or summary procedure for resolution of petty disputes; it rather obliges the Court to follow the Code of Civil Procedure. Furthermore, appeal and revision against its orders and decrees are also permissible. The Small Cause Courts Act in its present form does not meet the requirements of present time, hence rather than been amended perhaps may be substituted by a new, modern law to deal with small civil cases and minor criminal offences.

The Secretariat of the Commission, accordingly, prepared a draft titled "The Small Causes and Minor Offences Courts Bill 2000" which envisages the establishment of these Courts at the sub-divisional level. The draft proposed that the Court is to be presided over by Civil Judge cum Judicial Magistrate and shall resolve both civil cases and criminal complaints. The Court may also persuade the parties to try and reach an amicable settlement of their disputes through mediation, conciliation, etc, and if a

compromise is reached to enforce the same as a decree or order, and no appeal shall lie against it. The Court will follow summary procedure for resolution of minor civil disputes but to meet the ends of justice may also follow the general principles of procedural law. The pecuniary jurisdiction of the Court was prescribed for up to rupees fifty thousand. Similarly, the said Court shall also dispose of minor offences, under Pakistan Penal Code 1860, where punishment does not exceed imprisonment for up to two years. In civil cases, no appeal be permissible against decree of the value up to rupees ten thousand.

Commission's Deliberations

The Commission in its meeting held on 9 September 2000 considered the draft Bill and after due deliberations approved it in principle. The Commission further resolved that the Bill, together with other drafts namely Family Courts (Amendment) Ordinance 2000 and the Code of Criminal Procedure (Amendment) Ordinance 2000, should be published for eliciting public comments/suggestions.

Accordingly, on 6 – 7 October 2000, the media was briefed as to the background to and salient features of the proposed drafts. The drafts were also made available on the Commission's Website. Furthermore, copies were forwarded to the relevant public/private institutions and individuals for eliciting their reaction to and comments on the subject. Copies were also circulated to the members of the Pakistan Law Commission, the Attorney General for Pakistan and 4 Advocates General, Ministers and Secretaries of the Interior, Finance, Information, Women Development, Secretaries of

the Law Department and Home Departments of provincial Governments, some serving and retired judges of the superior judiciary as well as subordinate courts, President and members of the Pakistan Bar Council, Presidents of Provincial Bar Councils/Associations and prominent lawyers.

A 60-day time period was given for submission of comments/suggestions. The response from the general public was fairly enthusiastic. Many sent written submissions suggesting further improvement to the drafts. Some visited the Secretariat and made personal presentations on the subject. Others responded through the Internet. All in all, 85 written responses were received from various agencies/individuals including government departments, NGOs, Pakistan Bar Council, provincial bar councils/associations, serving and retired judges, law professors, lawyers and the general public. In the light of the comments/suggestions received, the drafts were revised and examined again by serving/retired judges of superior and subordinate courts. Thereafter, they were submitted to the members of the Commission for perusal/approval (composition of the Commission at the time is at Annexure I). The Commission approved the draft with consensus.

Meanwhile, on expiry of tenure of non-official members of the Commission, the Government reconstituted the Commission and the draft was again placed before the reconstituted Commission in its meeting on 17 March 2001. After due deliberations, the Commission unanimously approved the draft Bill.

In the meeting, the Chairman, in his introductory remarks stated that the draft primarily aims at reducing delay in the dispensation of justice and is also meant to make justice easily accessible at the community level. He reiterated the view that in order to cope with the ever-increasing trend of litigation in the country, appropriate increase in the strength of judges and court staff must be affected and so should necessary infrastructure facilities and equipments be provided to courts. He went on to elaborate that it required systematic planning and practical steps to achieve the desired goals. He suggested that, keeping in view the financial constraints the proposed courts be established through a phased programme within a period of 3 years. To start with, pilot courts can be established, say one in Islamabad and 5 - 20 in a province, in keeping with the population ratio and number of cases pending in each province. He went on to state that the performance of such courts be monitored and remedial measures, where required, put in place by the respective Chief Justices of High Courts. He expressed the confidence that with will and dedication, the task can be successfully accomplished. (Annexure II contains tentative expenditure to be incurred on establishment of the proposed 274 Small Claims and Minor Offences Courts at Tehsil level in Pakistan). The salient features of the approved draft are as follows:

Salient Features

1. The Government, in consultation with the High Court, shall establish the small claims and minor offences courts at the district/tehsil level. A civil judge-cum-judicial magistrate to be designated by the respective High Court shall man these courts.

2. The Court shall try the following specified civil suits of the value of one hundred thousand rupees or less, which value can be appropriately varied by the respective High Court, in keeping with the objective conditions of a particular district/tehsil:
3. The Court shall also have jurisdiction to decide offences under the Pakistan Penal Code 1860, where punishment prescribed does not exceed imprisonment for upto 3 years or fine or both.
4. A simple, more specific and expeditious procedure for process serving has been prescribed in order to finalise the case for trial.
5. In appropriate cases, the Court shall persuade the parties to reach an amicable, out-of-court settlement, of their dispute, and in case any such settlement is arrived, the same shall be enforced as a decree or order of the Court.
6. For ADR, each Court shall maintain a panel of arbitrators, mediators and conciliators, prepared by the respective High Court in consultation with the District Judge and President of the local bar association.

7. In the event of failure of ADR proceedings, the Court shall proceed to determine the suit through prescribed summary procedure, ordinarily to be decided within 60 days.
8. In criminal cases, however, the Court shall conduct regular trial and follow the procedure prescribed in the Code of Criminal Procedure 1898 and Qanoon-e-Shahadat Order 1984.
9. With a view to expedite the proceedings, the Court shall have power to enforce the attendance of any person, compel the production or discovery of any document, carry out local inspection and issue commissions for examination of witnesses or documents.
10. The parties shall be required to appear before the Court on specified date and time and also ensure the attendance of their witnesses. In case of deliberate default on the part of plaintiff, the Court may dismiss the claim/suit. Similarly, in case of deliberate default on the part of defendant, the Court may proceed ex parte. Any such order of the Court may be set aside subject to good and valid cause shown.
11. On the conclusion of the trial, the Court shall execute the decree through simplified procedure.

12. Appeal against the decree/order shall lie to the District & Sessions Judge.
Provided that there shall be no right of appeal against a consent decree.

13. The High Court is empowered to amend the Schedule, thereby adding to or deleting from any matter to the Schedule. Furthermore, the High Court may, from time to time, make rules for regulating the procedure of the Court.

The draft approved by the Commission follows:

The Small Claims and Minor Offences Courts Ordinance 2001

Whereas it is expedient and necessary to consolidate and enact the law relating to small claims and minor offences and matters incidental thereto or connected therewith for providing inexpensive and expeditious resolution of such claims and offences;

And whereas the National Assembly and the Senate stand suspended in pursuance of the Proclamation of the fourteenth day of October 1999, and the Provisional Constitution Order No.1, as amended;

And whereas the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now, therefore, in pursuance of Proclamation of the fourteenth day of October 1999, and Provisional Constitution Order as well as Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance.

1. **Short title, extent and commencement.**- (1) This Ordinance may be called the Small Claims and Minor Offences Courts Ordinance, 2001.
 - (2) It extends to the whole of Pakistan; and
 - (3) shall come into force in such area or areas and on such date or dates as the Government may, by notification in the official Gazette specify.

2. Definitions. - In this Ordinance, unless there is anything repugnant in the subject or context.-

- (a) “amicable settlement” includes settlement through arbitration, other than arbitration under the Arbitration Act 1940 (X of 1940), mediation, conciliation or any other lawful means mutually agreed upon by the parties;
- (b) “award” means findings of a Salis;
- (c) “Court” means the Court established under section 4;
- (d) “Government” means the Provincial Government;
- (e) “prescribed” means prescribed by rules;
- (f) “rules” means rules made under section 42 of this Ordinance;
- (g) “Salis” means the person acting as conciliator, mediator or arbitrator.

(2) Any expression not specifically mentioned or defined in this Ordinance shall have the same meaning as defined in the Code of Civil Procedure, 1908 (Act V of 1908) and shall have effect accordingly.

3. Ordinance to override other laws. - The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.

4. Establishment of Courts. - (1) The Government, in consultation with the High Court, may establish one or more Small Claims and Minor Offences Courts in each district or at such other place or places as it may deem necessary.

(2) The Court shall be presided over by a Civil Judge-cum-Judicial Magistrate.

(3) The local limits of jurisdiction of the Court shall be such as the High Court may, through notification in the official gazette, determine and define from time to time.

5. Jurisdiction.- (1) The Court shall have exclusive jurisdiction to:

(a) try all suits and claims arising therefrom, specified in Part 1 of the Schedule, the subject matter of which does not exceed one hundred thousand rupees in value for the purposes of jurisdiction.

Provided that the High Court may vary such value from time to time.

(b) try offences specified in Part 2 of the Schedule to this Ordinance.

6. Procedure in civil trials.- Proceedings under this Ordinance relating to claims or suits shall be conducted in the manner hereinafter provided.

(1) Every claim or suit before the Court shall be instituted by presentation of a plaint duly verified on oath or solemn affirmation.

(2) The plaint shall contain all material facts relating to the claim or dispute, a schedule giving the number of witnesses intended to be produced in support of the plaint, the names and addresses of witnesses and a brief summary of the facts to which they would depose.

(3) Where a plaintiff sues or relies upon a document in his possession or power, he shall produce it in the Court either in original or copy thereof alongwith the plaint.

(4) Where a plaintiff relies on any other document, not in his possession or power as evidence in support of his claim, he shall enter such document in a list to be appended to the plaint, giving reasons of relevancy to the claim in the plaint.

(5) The plaint shall be accompanied by as many copies thereof including the schedule and the lists of documents referred to in subsection (4) as there are defendants in the suit, for service upon the defendants.

(6) The plaint shall be accompanied by one time process fee of twenty five rupees.

7. Rejection of Plaint.- (1) The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law.

(2) Where a plaint is rejected, the judge shall record an order to that effect with reasons for such order.

(3) The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

8. Process Fee: The plaintiff shall, alongwith the plaint, pay one time process fee of twenty five rupees for service of summons upon the defendant and postal stamps of the value of registered post acknowledgement due and where the Court orders for substituted service, deposit the charges of such substituted service, within three days of making such order failing which the suit may be dismissed.

9. Summons.- (1) The Court shall within two days of the presentation of the plaint, send to the defendant summons for final determination of the suit, through process server and by registered post, acknowledgment due, together with the copies of the plaint, schedule of witnesses, documents or list of documents relied upon.

(2) Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family of the defendant who is residing with him.

- (3) Every summons and its accompaniments under sub-section (1) shall be served within fifteen days.
- (4) Where the Court has reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order for service of summons by—
- (a) affixing a copy of the summons at some conspicuous part of the house, if any, in which the defendant resides or is known to have last resided or carries or is known to have carried on business or personally works or is known to have worked for gain; or
 - (b) any electronic device of communication which may include telegram, phonogram, telex, fax and e-mail; or
 - (c) urgent mail service or public courier services; or
 - (d) beat of drum in the locality where the defendant resides; or
 - (e) publication in press; or
 - (f) any other manner or mode as it may think fit.

Provided that the Court may order the use of all or any of the aforesaid manners and modes of service simultaneously.

- (5) Substituted service by order of the Court shall be as effectual as if it had been made on the defendant personally.
- (6) In case of substituted service, the Court shall fix such time for the appearance of the defendant, as the case may require, which shall not exceed fifteen days.

(7) The summons sent under sub-section (1) shall contain direction to the effect that the defendant on his appearance on the date fixed shall file his written statement as provided by sub-section (1) of section 11 of the Ordinance.

10. Appearance through advocate or recognised agent.- (1) No advocate shall act for any person in the Court unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognised agent or by some other person authorised by or under a power of attorney to make such appointment.

(2) Any appearance, application or action in or to the Court, required or authorised by law to be made or done by a party may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person or by his recognised agent or by an advocate on his behalf.

(3) Any process served on the recognised agent of a party or an advocate shall be as effectual as if the same has been served on the party in person, unless the Court otherwise directs.

(4) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognised agent.

11. Appearance of parties and effect of non-appearance, etc.- (1) Where on the day fixed for the defendant to file written statement, it is found that the summons

have been served but the defendant has failed to file written statement without sufficient cause, the Court may proceed ex parte and pass decree.

Provided that if the Court is satisfied that the defendant was prevented by any sufficient cause, it may set aside the decree subject to and upon such terms as to costs, payment into Court or otherwise as it thinks fit.

Provided further that no order shall be made under this sub-section unless notice of the application has been served on the opposite party.

(2) Where the Court has adjourned hearing of the suit ex parte, and the defendant on or before such hearing, appears and assigns good cause for his previous non-appearance, the Court may, upon such terms as it directs as to costs or otherwise, hear him in answer to the suit as if he had appeared on the day fixed for appearance.

(3) Where neither party appears when the suit is called for hearing, the Court may make an order that the suit be dismissed.

(4) Where the defendant appears and the plaintiff does not appear when the suit is called for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

12. Written statement.- (1) The defendant shall on the date fixed appear before the Court and file his written statement duly verified on oath or solemn

affirmation, and attach therewith a list of his witnesses as also a summary of the evidence that each witness is expected to give.

Provided that the Court may, on sufficient cause being shown, permit to file written statement which shall not exceed fifteen days.

(2) Where a defendant relies upon a document in his possession or power, he shall produce it in original or a copy thereof in the Court alongwith the written statement.

(3) When the defendant relies on any other document, not in his possession or power, as evidence in support of his written statement, he shall enter such documents in a list to be appended to the written statement, giving reasons of relevancy to the defence in the written statement.

(4) Copy of the written statement together with schedule of witnesses, documents and list of documents relied upon shall be given to the plaintiff, his agent or advocate present in the Court.

(5) Where any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

13. Final disposal of suit. - (1) Where it appears at the first hearing of the suit that the parties are not at variance on any question of law or fact or that the dispute is of trivial nature, the Court may, after recording brief statements of the parties or their counsels, dispose of the suit forthwith.

(2) If the suit is not disposed of under sub section (1), the Court shall ascertain upon which material propositions of fact or law, the parties are at variance, and shall proceed to dispose of the case in the manner provided hereafter.

- 14. Amicable settlement.-** (1) Where at any stage of the Proceedings, it appears to the Court either on application of any party or otherwise, that there exists a possibility of amicable settlement between the parties, the Court may, subject to consent of parties, through Salis or any other person, conciliate, arbitrate, mediate or resolve through any other means, the claim or offence, as the case may be.

Provided that the Court, for reasons to be recorded in writing, shall not proceed for amicable settlement of offence where it considers such settlement to be either against the public policy or interest of the State.

- (2) If a settlement is reached between the parties to the claim or suit, a statement of compromise shall be prepared and the Court shall pass a decree accordingly.
- (3) If a settlement is reached between the parties to the offence, the offence shall be deemed to have been compounded in terms of the compromise and the Court shall pass order accordingly.

- 15. List of persons for amicable settlement.-** (1) The Chief Justice of High Court shall, in consultation with the District Judge, the President, Bar Association of the District or Sub-division concerned, prepare a list of persons to act as Salis for effecting amicable settlement, which shall be maintained in the Court.

- (2) The list of persons under sub-section (1) may include retired judges and lawyers.
- (3) The parties may also nominate Salis other than the persons in the list maintained by the Court, and the Court may refer the suit or complaint to such person.

16. Appearance of parties for settlement.- (1) On receipt of reference, the Salis shall make efforts for amicable settlement of dispute or complaint and submit his report within the time fixed by the Court.

(2) The Salis shall call the parties through registered post, telegram, fax, telephone or any other appropriate mode to a venue and on a day and time specified by him.

(3) The parties shall appear in person or through their representatives before the Salis and shall state their claim or defence in writing, supply copies of their pleadings or complaint and all other necessary documents as required by the Salis.

17. Responsibilities of the (Salis).- The Salis may -

(a) before proceeding in the matter, disclose to the Court any circumstance that may likely create an impression of a bias or which may prevent him from acting promptly, whereupon the Court shall direct the parties to nominate another Salis;

(b) facilitate negotiations between the parties and steer the direction of discussion with the aim of finding a mutually acceptable solution; and

(c) assist the parties in reaching an agreement.

18. Settlement of suit or complaint. - (1) If a settlement of a suit or complaint is reached between the parties, the Salis shall prepare a deed of settlement containing terms of such settlement, signed by the parties and submit it to the Court on the day fixed by the Court together with a certificate that the settlement between the parties was voluntary.

(2) The Salis shall make an award and submit it in the Court on or before the date fixed.

19. Objections on award. - (1) The Court shall, before passing a decree based on award, call objections of the parties to it within fifteen days of the receipt of award and settle such objections within fifteen days thereof.

(2) No separate proceedings shall lie in any other Court to challenge the validity of the award on the plea of fraud, misrepresentation or involuntary nature of the settlement or any other ground whatsoever.

(3) Where a person challenges the validity of the decree on the plea of fraud, misrepresentation or want of jurisdiction, he shall make an application to the Court within thirty days of passing the decree and no separate suit shall lie for it.

20. **Payment of fees.** -The Court shall determine the amount of fees, if any, to be paid by the party or parties to Salis, against a valid receipt.
21. **Non-commencement of settlement proceedings.** - If the parties fail to appear before the Salis or pay fees, as determined by the Court, the Salis may not proceed for settlement and inform the Court accordingly.
22. **Failure of Settlement:** If no settlement is reached between the parties, the Salis shall record the statement of the fact, signed by the parties and submit it to the Court on or before the date fixed.
23. **Prohibition of appearing in proceedings or as witness.** - The Salis conducting proceedings for amicable settlement shall not act in any capacity for any of the parties in connection with the matter in the suit or complaint in other proceedings nor shall he be called as a witness.
24. **Prohibition of making record.-** Any information, statement, document and anything disclosed to the Salis during settlement proceedings shall be kept as confidential and no document including any transcript, formal record or audio-visual recording shall be made of the proceedings, except with the approval of the Salis and consent of the parties.

- 25. Prohibition of using information.-** No communication made in the settlement proceedings including information disclosed and views expressed shall be used in any other proceedings, whatsoever.
- 26. Commencement of trial in suit or claim. –** If the dispute or claim is not referred for settlement or no settlement is reached under sub-section (1) of Section 14 within forty-five days of the reference or such extended time as may be granted by the Court, on showing good cause, the Court shall proceed to record evidence.
- 27. Evidence.-** (1) The production of witnesses shall be the responsibility of the parties, except official witness whose appearance shall be determined by the Court in the interest of justice.
- Provided that on the application of any party, the Court may also summon a witness.
- (2) The evidence of the witness in attendance shall be taken orally in open Court by the Judge.
- (3) The Court may—
- (a) record a concise statement of evidence of a witness where no appeal lies; and
 - (b) record the evidence of a witness where an appeal lies in the case or the Court deems it necessary in the interest of justice, which shall be read over to the witness and signed by him.

- 28. Power to order any point to be proved by affidavit.-** (1) The Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

- 29. Power to order attendance of deponent for cross-examination.-** (1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

- 30. Matters to which affidavits shall be confined.-** (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted: provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matter of hearsay or argumentative nature, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

31. Examination or re-examination of witness.- (1) The Court may, at any stage of the proceedings and under exceptional circumstances, call a witness for examination or re-examine a witness already examined, if so required in aid of justice.

(2) The Court may refuse to summon a witness or enforce the summons already issued against the witness when in the opinion of the Court the attendance of the witness cannot be procured without such delay, expense or inconvenience as in the circumstances would be unreasonable, or such application is moved in bad faith to protract the proceedings or to fill up any lacuna in the case of either party.

32. Conclusion of trial.- (1) The Court shall conclude the trial within sixty days by taking day-to-day hearing, unless prevented by good cause in which case, the case shall be disposed of within the next thirty days.

(2) On completion of evidence, the Court shall fix a date not exceeding seven days for hearing of arguments of parties.

(3) The Court shall, after the case has been heard, pronounce judgment in open Court within three days.

(4) The Court shall deliver to the parties, copies of judgment and decree on the day of pronouncement of judgment.

(5) Where a party is not present on the day for pronouncement of judgment, a copy of judgment and decree shall be sent to the party under registered post,

acknowledgement due, which shall be conclusive proof of the knowledge of judgment.

- 33. Costs.-** If in any suit or claim, the Court while pronouncing judgment comes to the conclusion that the claim or defence is false or vexatious, it may make an order for payment of costs as determined by the Court, not exceeding a tenth of the value of subject matter of the suit.
- 34. Procedure in criminal trial.-** (1) In criminal proceedings, the Court shall follow the procedure prescribed in the Code of Criminal Procedure, 1898 (Act V of 1898) and Qanun-e-Shahadat Order, 1984 (President's Order 10 of 1984).
- (2) The Court shall have and exercise the power of a Judicial Magistrate First Class under the Code of Criminal Procedure, 1898 (Act V of 1898).
- 35. Execution of decree. –** (1) A decree passed by the Court shall be executed by the Court itself or by another Court upon transfer, for reasons to be recorded by the Court passing the decree, and the transferee Court shall execute it as if passed by itself.
- (2) All objections against execution of decree shall be determined by the Court executing the decree.
- (3) The decree shall be executed as part of proceedings in the suit and no separate application shall lie for it.

(4) The Court shall continue the execution proceedings, except when stayed by the appellate Court.

(5) The cost in execution of decree shall be determined and paid as directed by the Court.

36. Inherent powers of Court.- Nothing in this Ordinance shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court in respect of resolving disputes mentioned in Part 1 of the Schedule.

37. Power of the Court.- Subject to this Ordinance, the Court shall, for the purpose of any case under this Ordinance, have powers of a civil court under the Code of Civil Procedure, 1908 (Act V of 1908) in respect of the matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) compelling production or discovery of documents;
- (c) local inspection; and
- (d) issuing commission for examination of witnesses or documents.

38. Appeal in suits.- (1) An appeal shall lie to the Court of District Judge within thirty days of the passing of decree or final order.

(2) No appeal shall lie against the decree of the Court based on award, except on one or more of the following grounds, namely:

- (a) that the Salis has misconducted himself or the proceedings;
 - (b) that an award has been made after the issue of an order by the Court superseding the Salis or after the proceedings of award have become invalid by the order of the Court; and
 - (c) that a decree based on award has been illegally procured.
- (3) No appeal shall lie from a decree passed by the Court with consent of the parties.
- (4). No second appeal shall lie against decree, judgment or order made under this Ordinance.

39. Appeal in criminal proceedings.- An appeal shall lie to the Court of Sessions within thirty days of conviction.

Provided that an appeal against acquittal shall lie in accordance with the procedure prescribed under the Code of Criminal Procedure, 1898 (Act V 1898).

40. Savings. - Nothing in this Ordinance shall be construed to affect any proceedings pending before any court instituted before the commencement of this Ordinance and all suits, applications and proceedings connected with those proceedings or arising therefrom shall continue to be heard and disposed of by the Court where these are pending immediately before the commencement of this Ordinance.

- 41. Amendment in the Schedule.-** The High Court may amend the provisions of the Schedule, from time to time, in the interest of justice.
- 42. Power to make rules.-** The High Court may, from time to time, after previous publication, make rules regulating the procedure of the Court.
- 43. Repeal. -** The Provincial Small Cause Courts Act, 1887 (IX of 1887) is hereby repealed.

Schedule (See Section 5)**Part I**

1. Suit for recovery of money due on contract in writing, receipt or any other documents.
2. Claim for damages on account of contract in writing.
3. Suit for the specific performance or rescission of a contract in writing.
4. Suit for recovery of movable property or value thereof.
5. Suit for separate possession of joint immovable property through partition or otherwise.
6. Suit for compensation.
7. Suit for redemption of mortgage property.
8. Suit for enforcement of easement rights.
9. Suit for rendition of accounts of joint property.
10. Suit to restrain waste and remove nuisance.
11. Disputes under the Canal and Drainage Laws.
12. Mesne profits of property.
13. Suit for compensation for wrongful taking or damaging movable or immovable property;
14. Suit for damages by Cattle trespass;
15. Suit for damages and compensation arising out of traffic accidents;
16. Any other relief not falling under the Schedule but agreed to by the parties to be settled under this Ordinance.

Part 2

All offences in the Pakistan Penal Code 1860 punishable with imprisonment not exceeding three years or with fine or with both.

Statement of Objects and Reasons

This recommendation of the Pakistan Law Commission seeks to enact a new law for expeditious resolution of small claims and minor offences at Tehsil level, through specially designated courts, by employing alternative methods of dispute resolution as well as following the prescribed procedure.

Annex-I**Previous Commission's Composition**

Mr. Justice Irshad Hasan Khan, Chief Justice of Pakistan	Chairman
Mr. Justice Fazal Ilahi Khan, Chief Justice, Federal Shariat Court	Member
Mr. Justice (Retd) Mian Burhanuddin Khan	Member
Mr. Justice (Retd) Shafi-ur-Rehman	Member
Mr Justice Saiyed Saeed Ashhad, Chief Justice, High Court of Sindh	Member
Mr Justice Sardar Mohammd Raza Khan, Chief Justice, Peshawar High Court	Member
Mr. Justice Raja Fayyaz Ahmed, Chief Justice, High Court of Baluchistan	Member
Mr. Justice Falak Sher, Chief Justice, Lahore High Court	Member
Dr. S.M. Zaman, Chairman, Council of Islamic Ideology	Member
Mr. Justice Faqir Mohammad Khokhar, Secretary, Law & Justice Division	Member
Mr. Abdul Hafeez Pirzada, Senior Advocate, Supreme Court	Member
Mr. Basharatullah, Senior Advocate, Supreme Court	Member

Annex II

**Expenditure for Establishment of Small Claims and Minor Offences Courts
at Tehsil Level**

<u>Province</u>	<u>Districts</u>	<u>Tehsil/Subdivision</u>
Province of the Punjab	35	83
Province of Sindh	22	80
Province of the N.W.F.P	22	50
Province of Baluchistan	26	61
Total	105	274

**First year Establishment Expenditure of 274 Courts in the Four Provinces
(including court rooms, residences for judges and staff salary)**

Province of the Punjab		
	Rs. 18,11,492 X 83 =	Rs. 150353836/-
Province of Sindh		
	Rs. 18,11,492 X 80 =	Rs. 144919360
Province of the N.W.F.P.		
	Rs. 18,11,492 X 50 =	Rs. 90574600/-
Province of Baluchistan		
	Rs. 18,11,492 X 61 =	Rs. 110501012/-
G. Total		Rs.496348808/-

**Subsequent Yearly Expenditure of 274 Courts in the
Four Provinces
(Salaries + Maintenance)**

Punjab	Rs. 4,91,492 X 83 =	Rs. 4,07,93836/-
Sindh	Rs. 4,91,492 X 80 =	Rs. 3,93,19360/-
N.W.F.P.	Rs. 4,91,492 X 50 =	Rs. 2,4574600/-
Baluchistan	Rs. 4,91,492 X 61=	Rs. 2,99,81012/-
Total		Rs.13,46,68,808/-

First time total expenditure per Court (per unit)

I. Cost of Construction of Court Room & Office

Covered area 1100 Sqf

Cost @ Rs. 400/- per sqf. Rs. 4,40,000/-

(Site Plan at Annex 'A')

Furniture for Court Room

I.	Court Table	Rs. 10,000/-
II.	Chair Judge	Rs. 5,000/-
III.	Rostrum	Rs. 3,000/-
IV.	Wooden bench for litigants	Rs. 15,000/-
V.	Chairs for advocates 10@ 2000/-	Rs. 20,000/-

Furniture for Retiring Room of Judge

I.	Office Cable	Rs. 5000/-
II.	Revolving Chair	Rs. 3000/-
III.	Sofa Set 5 pieces	Rs. 8000/-
IV.	1 Steel Almarah	Rs. 5000/-
V.	2 Book shelves	Rs. 1000/-
IV.	Books for Library of Judge	Rs. 20,000/-

Furniture for Office

I.	3 tables for officials @ Rs. 2000/- per table	Rs. 6000/-
II.	Official Chairs @ Rs. 1000/- per chair	Rs. 3000/-
III.	6 Visitor Chairs @ Rs. 1000/- per chair	Rs. 6000/-
IV.	3 Steel Almarah for record Keeping @ Rs. 5000/-	Rs. 15000/-
V.	Photocopier	Rs. 1,00,000/-
VI.	Typewriter	Rs. 20,000/-
VII.	M/Cycle for Process server	Rs. 75,000/-
	Total: -	Rs. 7,60,000/-

Expenditure for Residence of Judge

Cost of construction for Residence of Judge

2 Bed Room, D/Dinning

Kitchen, 2 Bath.

Total covered area 1250 sqf.

Cost of @ Rs. 400/- per sqf

Rs. 5,00,000/-

(Site Plan at Annex 'B')

II. Electric Meter, Sui Gas Meter,
Cocking Range, Electric Motor
(for water supply), Electric Fans @ Heaters,
Geysers and other related equipments

Rs. 60,000/-

Total: -

Rs. 5,60,000/-

Grand Total: -

Rs. 13,20,000/-

Salary/Allowances of Judge & Ministerial Staff

First Year Establishment Expenditures (per unit)

I. Salary of Judge & Staff

Rs. 4,26,492/-

II. Stationery,
Petrol & Maintenance
of Motor Cycle

Rs. 50,000/-

III. Miscellaneous Expenditures

Rs. 15,000/-

Total: -

Rs. 4,91,492/-

Detail of Salary of Court Judge & Staff (per unit)

S No	Name & Official	Pay	A.R	H.R.A	C.A.	C.L.A	S.A.A	M.A	W.A	D.A	Total Salary Per Month	Total Salary Per Year
1.	Civil Judge B-17	3880	-	1292	193	272	776	90	-	-	6413	76956
2.	Court Reader B-11	1725	400	574	96	121	431	90	-	-	3437	41244
3.	Stenotypist B-9	1605	400	533	96	112	401	90	-	-	3237	38844
4.	Record Keeper B-7	1480	400	493	96	104	370	90	-	-	3035	36420
5.	Clerk (Civil) B-5	1400	400	466	96	98	350	90	-	-	2900	34800
6.	Clerk (Criminal) B-5	1400	400	466	96	98	350	90	-	-	2900	34800
7.	Process Server B-3	1320	400	439	96	92	330	90	-	-	2767	33204
8.	N/Q for Court B-1	1245	400	414	96	87	311	90	30	40	2713	32556
9.	N/Q for Office B-1	1245	400	414	96	87	311	90	30	40	2713	32556
10.	Chowkidar B-1	1245	400	414	96	87	311	90	30	40	2713	32556
11.	Sweeper B-1	1245	400	414	96	87	311	90	30	40	2713	32556
	Total										35541	426492

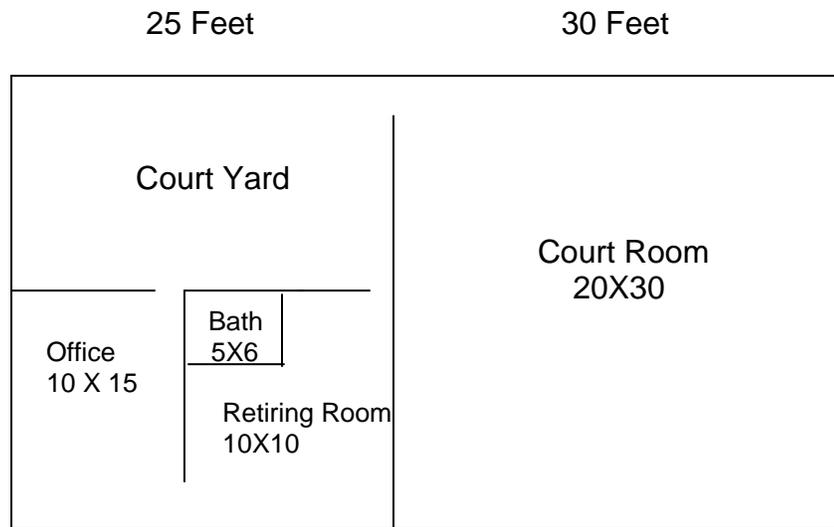
List of Stationery Items for Court (per unit)

1. Photostat
2. Duplicating Papers
3. Typing Papers
4. Carbon Papers
5. Ink
6. Toner
7. Lead pencils
8. Stapler Machine
9. Table Set
10. File Cover & Binders
11. Sharpeners
12. Ball Point (Blue & Red)
13. Ribbon (Typewriters)
14. Fluid
15. Tag
16. Stencils
17. Envelopes
18. Diary Register
19. Registers
20. Despatch Register
21. S.H. Books
22. Paper Pins
23. Pin Cushion
24. Pencil Trays
25. Gum Bottles
26. Note Sheet Pads

Approximately Price of stationery items Rs.25000/-

Patrol and maintenance of Motor Cycle
Per year expenditure Rs.25000/-

Total Rs.50000/-

Annex 'A'**Site Plan of Court Room and Office**

Total Covered Area $20 \times 55 = 1100$ SqF

Cost of Construction @ Rs. 400/- Per Sqf

Total Cost Rs. 4,40,000/- (Rupees four lakh and forty thousand)

Site Plan for Residence of Judges

