

Expediting Trial Proceedings

Report No.60

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1.	With a view to coping with the problem of increasing litigation in the society and rising graph of crimes, it is essential that the courts should make an effort as the pre-trial hearing to dismiss/reject false, fictitious and frivolous claims.		Recomm
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3. The Government should provide necessary funds for gradual increase in the number of judicial officers and court staff through a phased programme.
4. Revisional courts should finally and substantially decide cases placed before them rather than remanding them to lower courts in routine.
5. Necessary amendments be made in the procedural laws with a view to reduce, number of appeals, revisions, especially against interlocutory orders.
6. The judicial officers may also make full and effective utilization of the ministerial staff at their disposal for dealing with administrative matters, so that the judicial officers may concentrate on trial/judicial matters.
7. The courts should make use of existing provisions in the C.P.C. providing for resolution of disputes through use of alternative methods of dispute resolution (ADR) including conciliation, mediation and arbitration or any such other appropriate mode. Amicable settlement of disputes is recommended under the injunctions of Islam and is embedded in our culture. The ADR in small causes and minor offences is successfully working in several advanced jurisdictions. We should also attempt to introduce and use this method in civil/criminal cases, in particular resolution of minor cases and petty disputes, thereby seeking to resolve conflicts/disputes with the consent of the parties, and thereby reducing confrontation/tension. The courts should make full use of newly added Section 89A to the CPC, providing for amicable settlement of disputes. Further, the Government should create/designate Small Claims and Minor Offences Courts Ordinance 2002, for settling disputes through mediation/conciliation/arbitration.
8. To ensure speedy disposal of cases, it is necessary that judges are given only so much work as they could conveniently handle. For this purpose, it is recommended that judge - case ratio be fixed and maintained. Several earlier law reforms commissions' reports have recommended such ratio to be 500 cases to a Civil Judge and 450 cases to District & Sessions Judge. Similarly, a Judicial Magistrate be given maximum 500 cases. The Government should give effect appropriate increase in the strength of judicial officers in keeping with the prescribed judge - case ratio.
9. The judicial officers of the subordinate judiciary should be offered better terms and conditions of service to induct more qualified persons into judicial service. Women, in particular, should be encouraged to join the judicial service in larger number by granting them certain incentives such as additional financial benefits, priority in allotment of residential accommodation and loan for acquiring transport, etc.

10. There should be uniform minimum/maximum age limits for recruitment of judicial officers at the initial stage i.e. Civil Judge-cum-Judicial Magistrate. Such limit should be fixed at minimum 22 years and maximum 30 years. The recruitment should be through competitive examination conducted by the Public Service Commission in co-ordination with respective High Court. The High Court should have a role in preparing the syllabus for the competitive examination and its nominees should be on the boards conducting viva voce tests. The Public Service Commission should endeavour to finalize the process of recruitment in the shortest possible time, so that posts do not remain vacant for long period of time.
11. The present salary package of judges of subordinate courts is inadequate. It does not cater to the genuine requirement of the family. The National Judicial (Policy Making) Committee therefore in a recent meeting recommended that judicial allowance @ Rs.5000/- p.m. to District & Sessions Judges, Additional District & Sessions Judges and Senior Civil Judges and Rs.4000/- p.m. to Civil Judges and Judicial Magistrates should be given in addition to the existing judicial allowance. In addition, allowance equivalent to 10% of the basic pay as utility charges be given to judicial officers and court staff of the subordinate judiciary. Furthermore, residential accommodation and pool of transport should also be made available to judicial officers to resolve their transportation problem.
12. Judicial officers and court staff must be imparted pre-service and in-service training and the process of their learning law and modern techniques of court management/case flow should be ensured through continuing education and periodic training.
13. The infrastructure of subordinate courts is fairly old in a dilapidated state. The Access to Justice Programme is, addressing this issue. The Federal Government may supplement the provincial allocations for the construction of court rooms, bar rooms, waiting rooms for litigant parties and witnesses and residential accommodation of judicial officers/court staff. Funds should also be made available for essential paraphernalia such as provision of furniture, law books, typewriters and creating an integrating computer network for access to information and material, effective supervision/monitoring of the performance of the subordinate courts by the respective High Court. The availability of an electronic database will be of considerable assistance to the courts and the profession. The decisions of the Superior Courts including the statutes may also be computerized.
14. Legislation be enacted to curtail the court's power/discretion to grant frequent adjournments. The tendency of granting adjournments in routine be checked. Adjournments be granted only in exceptional circumstances

and subject to imposition of reasonable costs. No adjournment should be granted on the plea that the counsel is not available. The counsel must either personally be present or make some other arrangements for presentation of the case.

15. The present strength of process serving agencies is inadequate and should be appropriately increased and necessary transport be provided to the agency for effecting processes. Furthermore, efforts should be made as that the personnel of said agency do not perform domestic chores at the residences of judicial officers and are exclusively used for carrying out official functions. Alternatively, the system of franchising such service to an outside agencies, subject to control by court, be examined. In Britain, service on a respondent is affected by the Master and the claim is subject to effecting service on the other party. The introduction of the franchise system in Pakistan may be given serious consideration.
16. The plaintiff should be obligated to provide the defendant's mail address and telephone/fax number. Courier service be used as ordinary mode of effecting service. A one-time process fee be introduced to avoid delays in process serving.
17. With a view to improving the performance of investigating branch, it may be separated from the regular police and exclusively assigned the functions of carrying out investigation. Challans must invariably be submitted within the stipulated period of 14 days and only in rare cases may extension be granted. The investigating branch must have trained personnel preferably Law Graduates and given appropriate training to keep them abreast of modern techniques of investigation.
18. The police should be obligated to effect services of witnesses in criminal cases and should be made responsible for their production in the courts.
19. Further, with a view to empowering the courts to ensure the attendance of official witnesses and production of report/record, appropriate amendment be made in the Code of Criminal Procedure, 1908 for the purpose of bringing Section 195(1) (a) within the scope of Section 476(1).
20. The number of forensic science/chemical laboratories should be increased and preferably one such laboratory be established at the divisional headquarters, in each province. The personnel of such laboratories should possess the requisite academic qualifications and experience and be imparted periodic training for enhancing their abilities. Furthermore, mobile forensic laboratories and chemical analysis laboratories be also established. The services of other reputed laboratories in the sine qua non e.g. Armed Forces, Agha Khan Hospital, Shaukat Khanam Hospital and

private should also be recognized and utilized beside, government established laboratories.

21. Delays in concluding criminal trials are also effected due to non-production of accused persons lodged in jail. This happens due to non-availability of sufficient number of police personnel or transport for carrying them to courts. These issues must be addressed and arrangements be made to produce accused persons in courts.
22. Where possible, courtrooms should be established inside the prisons or in its vicinity, ensuring free and open access to all persons, with a view to ensuring the production of under trial prisoners.
23. There is a need for regular and periodic supervision of the performance of judicial officers by the respective High Courts.
24. The office of Member Inspection Team should also be further strengthened to monitor and supervise the judicial officers.
25. Furthermore, cases of inefficiency and corruption must be taken serious notice of, and promptly dealt with to eradicate all forms of corruption in the courts.
26. Rather than writing lengthy judgments, the judicial officers should be trained to write concise and terse but well reasoned judgments. The Federal Judicial Academy may design appropriate training for the purpose.
27. The High Courts should take steps to ensure that judicial officers do not concentrate only on disposal of criminal work, which causes the piling up of civil cases and consequential delays in disposal of suits.
28. The High Courts may also consider to bifurcate the civil and criminal functions of judicial officers so that the judges may attain expertise in the relevant field. The civil and criminal work should be done by rotation so that the judges develop a broader perspective and wider experience of both civil and criminal work.
29. The courts should take strict action against parties or witnesses who cause deliberate delay, through imposition of costs in civil cases and by taking penal action against defaulters who deliberately attempt to flout orders or cause delays in court process.
30. The Access to Justice Development Fund should be used for improving the infrastructure facilities and meeting the other needs of courts.

31. Case management committees be established at each District Headquarter and be entrusted with the responsibility to prepare category-wise prioritization of cases on the basis of their importance.
32. Heavy costs under section 35-A CPC should be imposed in cases where the suit is dismissed being false/frivolous or is withdrawn on being judged as such. Similarly, adjournment during disposal of miscellaneous application should not be granted in routine. In very exceptional cases and for sound reason, adjournment may be allowed subject to heavy cost.
33. Attendance of witness in the court should be ensured through following the existing provision of law. However, they may not be unnecessarily called and be ensured protection of their lives. Proper and respectable seating arrangement in the court room be provided to them.
34. Judicial system should be strengthened by gradual increasing the number of judges. The possibility of establishing the evening shifts to clear backlog be considered.
35. Judicial competence should be improved by providing atmosphere conducive to efficient working and through in-service and post service training and continuing refreshers courses etc. Judges should also be provided up-to-date law books and Gazettes etc.
36. Legal education should be improved by imparting standard education and revising examination system.
37. The District Judges should constitute Bench and Bar Committees to promote working relations between the Bench and Bar.
38. The legal system and procedural laws/rules should be kept under regular review with a view to removing defects therein and expediting trial proceedings.
39. The following amendments made by the Lahore High Court in various provisions of the CPC may be considered for adoption by the other High Courts:
 - (1) In Rule 10-A of Order V of the Code, another mode of service, "through courier messenger" has been added beside the existing mode of sending summons through post. The courier service in present days is the most effective, speedy and reliable mechanism of transmitting message from one place to another. This amendment may help in curtailing court delays, normally caused due to ineffective mode of service.

- (2) Order VIII of the Code deals with submission of written statement and set off which generally is abused, causing delay. The provision has been amended by adding a further proviso after the existing one as under:-

“Provided further that not more than two adjournments shall be granted for presenting the written statement”.

- (3) Order IX of the Code, dealing with appearance of parties and consequence of non-appearance is commonly abused which unnecessarily prolong litigation i.e. where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an Order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his not paying the court fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the court shall make an Order setting aside the dismissal and shall appoint a day for proceeding with the suit.

To avoid fresh suit on the same cause of action a new sub rule (2) after rule 4 of Order IX of the Code is added as under:-

“(2) The provision of section 5 of the limitation Act, 1908 (IX of 1908) shall apply to applications under Sub-rule (1)”.

This amendment has saved the parties from bringing fresh suit on the same cause of action.

- (4) By addition of Order IX-A in the Code a new and very important concept of case management has been introduced which is generally followed in developed countries to check belated complication of suits and to rectify faults at initial stage of hearing as under:-

“Fixation of Intermediate dates.- After the close of the pleadings, the Court shall fix:-

- (a) a day by which parties shall apply for orders of the Court with regard to any of the following matters, namely:-

Pleadings, further and better particulars, admissions, discoveries, inspection of documents or of movable or immovable property and the mode by which particular facts may be proved;

- (b) another day by which parties may reply such applications;
and
 - (c) a third day on which, unless the hearing is adjourned, the applications shall be disposed of".
- (5) Applications regarding pleadings, etc., their replies and disposal.-

"No opportunity shall be given to any party for making any such application as aforesaid or for submitting a reply thereto after the expiry of the day fixed for that purpose, unless the time is enlarged under the provisions of this Code; but nothing herein shall affect the right of the parties to make such applications before the closing of the pleadings" .

- (6) The addition of new Rule 4-A in Order XII of the Code has increased the power of Court to call any party without being asked by the plaintiff/defendant. The amendment is as under:

"4-A. Power of Court to record admission of documents and facts.- Notwithstanding that no notice to admit documents or facts has been given under Rules 2 and 4 respectively, the Court may, at any stage of the proceedings before it, of its own motion, call upon any party to admit any document or fact and shall in such a case, record whether the party admits or refuses or neglects to admit such document or fact".

The new addition has given suo moto jurisdiction to the courts to record admission of documents and facts. In fact the provision of Rule 4 was aimed at to resolve the facts based on documents to save courts precious time, but is seldom applied by the parties primarily on account of their vested interests. Now, the courts may invoke this jurisdiction, hopefully giving required results.

- (7) Summoning of witness and presenting a witness in the court is yet another cause often abused to prolong a case. The forum of summoning a witness has further been improved by amending rule (I) of Order XVI of the Code as under:-"

"Summons to attend to give evidence or produce document:
(1) Not later than seven days after the settlement of issues, the parties shall present in court a certificate of readiness to produce evidence, alongwith a list of witness whom they propose to call either to give evidence or to produce documents".

(2).....

(3)

These amendments has far reaching effect for speedy disposal of cases and to eliminate delays on technical grounds.

These amendments if followed by the High Court of Balochistan, Sindh and NWFP may help in quick processing and expeditious dispensation of justice.

Introduction

A civilized system of governance requires that the State makes available to its citizens appropriate means of just redress of grievances and settlement of disputes. The means provided are the legal system and judicial administration. The courts must be accessible and dispense justice freely, fairly, impartially and expeditiously.

Procedures are means to provide justice and the State is obliged to see that its legal system should not leave scope for practices or processes, likely to hinder or defeat justice. Therefore, procedures should always be on anvil of reforms. Sometime back Lord Kilbrandon observed:

“The ship is well designed, fundamentally sound, and is for most of time on a correct course; what is wanted is an overhaul and modernization of the navigational instruments, so that she is more easily kept on that courseⁱ.”

Our procedural laws both Civil and Criminal are no doubt well designed and are also fundamentally sound; they however need to be reviewed to make them attuned to present-day developments. The effective enforcement of law and procedure is also required. A former Chief Justice of High Court observed:

“The more we study the Code the more we realize what admirable piece of legislation it is, the great need today is not too much amendments in law as the proper and effective implementation of lawⁱⁱ.”

Presently there are two well-known systems of judicial procedures to resolve disputes; they are, adversarial and inquisitorial. Our courts follow the adversarial procedure as laid down in various procedural statutes i.e. the Code of Criminal Procedure 1898 and the Code of Civil Procedure 1908.

The systems is confronted with serious crisis of abnormal delay in adjudication regarding which the Chief Justices Committee in its meeting held on 26th February 2000 observed:

Backlog and delays in quick dispensation of justice is a serious threat to the existing judicial system in the country. Concentrated efforts are required by the learned judges at all levels, lawyers, litigant public, witnesses, prosecuting agencies, public leader, media and the executive to combat the menace by strengthening the system of administration of justice. In his judicial work, a judge shall take all steps to decide cases within the shortest time, controlling effectively efforts made to prevent early disposal of cases and make every endeavour to minimize sufferings of litigants by deciding cases expeditiously through proper written judgments.

The delay in settlement of civil disputes, beside causing frustration to the litigant public also hamper the socio-economic development of society, whereas delay in criminal justice negates several fundamental rights including the right to freedom of movement and dignity of man. The problems of delays are neither new nor unique in the context of Pakistan only, even most advanced countries lament of heavy arrears. It is an old and chronic problem of global dimension caused partly by cumbersome and technical provisions of procedure and partly because of non-observance of provisions. It was observed:

“Delay haunts the administration of justice. It postpones the rectification of wrong and the vindication of the unjustly accused. It crowds the dockets of the courts, increasing the costs for all litigants, pressuring judges to take short cuts, interfering with the prompt and deliberate disposition of those causes in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility. But even these are not the worst of what delay does. The most erratic gear in the justice machinery is at the place of fact finding and possibilities for error multiply rapidly as time elapses between the original fact and its judicial determination. If the facts are not fully and accurately determined, then the wisest judge cannot distinguish between merits and demerits. If we do not get the facts right, there is little chance for the judgment to be rightⁱⁱⁱ.”

The acuteness of the problem prevailing in our neighbouring country can also be assessed from the following observations by the Supreme Court of India:

“At long last, the unfortunate and heroic saga of this litigation is coming to an end. It has witnessed a silver jubilee, thanks to our system of administration of justice and our callousness and indifference to any drastic reform in it. Cases like this, which are not infrequent, should be sufficient to shock our social as well as judicial conscience and advise us to move swiftly in the direction of overhauling and restructuring the entire legal and judicial system. The Indian people are very patient, but despite their infinite patience, they cannot afford to wait for twenty-five years to get justice. There is a limit of tolerance beyond which it would be disastrous to push our people. This case and many other like it strongly emphasize the urgency of the need for legal and judicial reforms^{iv}.”

The observation of the Supreme Court of Pakistan in the case of Liaquat Hussain v Federation of Pakistan^v also laments the accumulation of backlog in courts at all level of judicial hierarchy. The Court warned that unless the requisite legal/judicial remedial measures are timely adopted, the situation will further deteriorate. The Court further referred to certain reports of the Pakistan Law Commission on reform of procedural law, namely, Report on Criminal Justice System and Report on Reform of Juvenile Justice System and bemoaned their non-implementation.

While reforming the procedural law, the objectives of the system should not be lost sight of. Procedure is only a mean to an end, the end being dispensation of justice. Procedure must therefore be geared towards obtaining and establishing justice. The aim of this Report thus is two-fold:

- (i) to consider the need for such major changes as could reduce delay in and cost of litigation; and
- (ii) to consider the need for such changes as are desirable to implement through directives.

The emphasis accordingly would be to:

- (i) minimize cost of litigation;
- (ii) avoid delays in litigation;
- (iii) adopt means of alternate dispute resolution; and
- (iv) improve trial procedure through administrative directives.

Before proceeding further, however, a brief history of past law reforms efforts needs to be mentioned.

Brief History of Law Reform Reports.

Ever since the creation of Pakistan, the need to reform the administration of justice always remained on top of agenda of the successive Governments. There was constantly search for new and alternative ways and means to overcome the problem of delays and to remove hurdles and obstacles in way of speedy and fair dispensation of justice. Soon after independence, these problems attracted the attention of the Government of Pakistan and a Law Reform Commission, headed by Mr Justice S. A. Rahman, then a Judge of the Supreme Court of Pakistan, was constituted in the year 1958, to examine the causes of delay in the disposal of cases by the courts and to suggest remedies for the better and more speedy disposal of both civil and criminal cases. This Commission made several recommendations out of which only a few were accepted. Thereafter, another Law Reform Commission was established in 1967, under the Chairmanship of Mr Justice Hamoodur Rehman, the then Chief Justice of Pakistan, to ascertain the causes of delay and to recommend efficacious remedies for the removal of such causes and suggest measures to simplify the court proceedings. The Commission submitted an exhaustive report in 1970, recommending legislative as well as administrative reforms to eradicate inordinate delays in disposal of cases. Some of the very important recommendations were:

1. the Government should appoint a permanent Law Commission to review all laws both substantive and procedural;
2. there should be a uniform law throughout the country;
3. the conciliation courts should be strengthened;
4. a Judicial Service Academy should be set up for the training of judicial officers;
5. in all complaint cases, the complainant should be given the right of appeal against an order of acquittal;
6. cause of delays both inside/outside the court be removed by strengthening the judiciary, recruitment to judicial posts, revision of pay scales, construction of court rooms/buildings including provision of infrastructure facilities etc;
7. amendments in Code of Civil Procedure 1908, Criminal Procedure Code 1898, Evidence Act, 1872 and reforms in Arbitration Act, 1940 recommending compulsory arbitration in domestic/family disputes.

Fortunately most of the recommendations were implemented with exceptions of only a few.

To continue the process of law reform, in 1974 a High-Powered Law Reform Committee was set up by the Federal Government to consider problems of delays in disposal of cases, causing accumulation of arrears in the law courts at different levels. The Committee submitted its report in January 1975 recommending *inter alia*:

1. increase in the number of judges;
2. provision of adequate number of court rooms and proper accommodation to judicial officers, and
3. improvement in the working of investigation and prosecution agencies.

Again, in 1978, a Committee was set up under the Chairmanship of the Chief Justice of Pakistan, with the Attorney General, the Chief Justices of High Courts as members. The Committee submitted its report suggesting appropriate measures in the light of recommendations already made by the preceding law reform commissions. Its recommendations requiring legislative action were accepted and implemented through an Ordinance in 1980.

In the year 1993, a special Commission on Reform of Civil Law was constituted, headed by the Chief Justice of Pakistan and the Chief Justices of the provincial High Courts as its members. The terms of the reference of the Commission were:

1. review the average time-span between initiation of a case and final disposal at the appeal/revision level;
2. the possibility of introducing a system of continuous hearing;
3. review number of admissible appeals and revisions;
4. stay orders, and that their impact on timely disposal of cases;
5. accountability of arbitrary orders; and
6. feasibility of Pakistan Judicial Service.

The Commission submitted its report, recommending certain amendments in the Code of Civil Procedure, 1908, the Civil Court Ordinance, 1962 and in the Small Causes Courts Act, 1887. Almost all the recommendations were enforced through an amendment Act in 1994.

Reforms in the Criminal Justice System.

The efforts of all previous law reforms were mainly focused on civil law reforms and the field of criminal justice system was however, not given due attention. There was a dire need to give special attention to reform the criminal justice system. Consequently, in 1997, the Law and Justice Commission on its own motion took an exhaustive study to propose reforms in the criminal justice system. The report prepared by the Secretariat was placed before the Commission in its meeting held in 1997. The Commission after thorough discussion and deliberations unanimously approved the proposals, recommending *inter alia*:

- (1) strengthening the judicial system;
- (2) increases in number of judicial officers;
- (3) provision of court rooms and allied facilities;
- (4) restructuring the service condition of judicial officers;
- (5) timely submission of challans;
- (6) taking effective measures to ensure attendance of witnesses;
- (7) liberalizing the provisions of bail;
- (8) to check and control frequent adjournments;
- (9) separation of the functions of civil and criminal courts; and
- (10) strict supervision on court management.

Alas, the recommendations were not given due effect and were generally ignored. The Supreme Court in Liaquat Hussain's case took serious note of it and observed that the system of administration of justice in the country is confronted with caseload, at all levels of judicial hierarchy. The Court further observed that unless the requisite legal/judicial remedial measures are timely adopted, the situation will further deteriorate. The Court went on to mention certain reports of the Pakistan Law Commission, namely, Report on Criminal Justice System, and Report on Reform of Juvenile Justice System, and bemoaned their non-implementation.^{vi}

Report of the Committee for Improvement of the Administration of Justice.

In 2000, the Chief Executive on the reference from the Chief Justice of Pakistan, constituted a Committee comprising the Secretary, Law, Justice and Human Rights Division as Chairman and Secretaries, Finance and Interior Divisions, Registrars of the Supreme Court and High Courts, Provincial Chief Secretaries or their nominees, as members and Secretary, Law and Justice Commission as Secretary of the Committee. The Committee was asked to suggest viable steps for reform of the judicial system. The Committee deliberated upon the Terms of Reference, assigned to it, in several sessions and finalized its Report in June 2001, listing recommendations for reform and improvement of the system of administration of justice in the country. The report is fairly detailed and comprehensive. It gives suggestions for legislative/policy reform and administrative measures. It has not yet been implemented. The Report is reproduced as Annexure-A, its summary of recommendations however is given below:

1.
 - i. With a view to cope with the problem of ever-increasing litigation in the society and the crimes situation, it is essential that the courts at the pre-trial hearing carefully scrutinize the pleadings/records and dismiss/reject false, fictitious and frivolous claims/complaints.
 - ii. The police should expeditiously conclude investigation and submit the Challan within the prescribed period of 14 days.
 - iii. The Government should provide necessary funds for gradual increase in the number of judicial officers and court staff through a phased programme.
 - iv. Revisional courts should finally and substantially decide cases placed before them rather than remanding them to lower courts for determination.
 - v. Necessary amendments be made in procedural laws with a view to reducing the number of appeals, revisions in cases and especially against interlocutory orders.

- vi. The judicial officers should make full and effective utilization of the ministerial staff at their disposal for dealing with administrative matters, so that they may concentrate on trial/judicial matters.
 - vii. The courts should make use of existing provisions in the C.P.C. providing for resolution of disputes through use of alternative methods of dispute resolution (ADR) including conciliation, mediation and arbitration or any such other appropriate mode. Amicable settlement of disputes is recommended under the injunctions of Islam and is embedded in our culture. The ADR is successfully working in several advanced jurisdictions. We should also attempt to introduce and use this method in civil/criminal cases, in particular, resolution of minor cases and petty disputes, so as to resolve conflicts/disputes with the consent of the parties, peacefully and amicably thereby reducing confrontation/tension in society.
 - viii. To ensure speedy disposal of cases, it is necessary that judges be given only so much work as they could conveniently handle. For this purpose, it is recommended that judge – case ratio be fixed and maintained. Several earlier law reforms commissions' reports have recommended such ratio to be 500 cases to a Civil Judge and 450 cases to District & Sessions Judge. Similarly, a Judicial Magistrate be given maximum 500 cases. The Government should effect appropriate increase in the strength of judicial officers, in keeping with the prescribed judge – case ratio.
2.
 - i). The vacant posts in the subordinate courts should be promptly filled and in the recruitment process the respective High Courts should also be closely associated.
 - ii) Judicial officers and court staff must be imparted preservice and in-service and the process of their learning law and modern techniques of court management/case flow should be ensured through continuing education and periodic training.
 3. The infrastructure of subordinate courts is fairly old and in dilapidated state. The Federal Government through grant may supplement the provincial allocations for the construction of court rooms, bar rooms, waiting rooms for litigant parties and witnesses and residential accommodation of judicial officers/court staff. Funds should also be made available for essential paraphernalia such as provision of furniture, law books, typewriters and creating an integrating computer network for access to information and material and effective supervision/monitoring of the performance of the

subordinate courts by the respective High Court. The availability of an electronic database will be of considerable assistance to the courts and members of the legal profession. The decisions of the superior courts including the statutes may also be computerized.

4. Legislation be enacted to curtail the court power/discretion of granting frequent adjournments. The tendency of granting adjournments in routine be checked. Adjournments be granted only in exceptional circumstances and subject to imposition of reasonable costs. No adjournment should be granted on the plea that the counsel is not available. The counsel must either personally be present or make some other arrangements for presentation of the case.
5.
 - i. The present strength of process serving agencies is inadequate and should be appropriately increased and necessary transport be provided to the agency for effecting service on defendants.
 - ii. Efforts should be made so that the personnel of the said agency do not perform domestic chores at the residences of judicial officers and are exclusively used for carrying out official functions.
 - iii. The plaintiff, as far as possible, should be obligated to provide the defendant's mail address and telephone/fax number.
 - iv. Courier service be used as ordinary mode of effecting service.
 - v. A one-time process fee be introduced to avoid delays in process serving.
6.
 - i. With a view to improving the performance of investigating branch, it may be separated from the regular police and exclusively assigned the functions of carrying out investigation. Challans must invariably be submitted within the stipulated period of 14 days and only in rare cases, may extension be granted. The investigating branch must have trained personnel preferably law graduates and given appropriate training to keep them abreast of modern techniques of investigation.
 - ii. The police should be obligated to effect services of witnesses in criminal cases and should be made responsible for their production in the courts.
 - iii. With a view to empowering the courts to ensure the attendance of official witnesses, appropriate amendment be made in the Code of Criminal Procedure, 1908 for the purpose of bringing section 195(1)

(a) within the scope of Section 476(1) in relation to proceedings in criminal courts.

7. The number of forensic science laboratories should be increased. Such laboratories be established at appropriate places, in each province. The personnel of such laboratories should possess the requisite academic qualification and experience and be imparted periodic training. Furthermore, mobile forensic laboratories and chemical analysis laboratories be also established.
8.
 - i. Delays in concluding criminal trials are also effected due to non-production of accused persons lodged in jail. This happens due to non-availability of sufficient number of police personnel or transport for carrying them to courts. These issues must be addressed and arrangements be made to produce accused persons in courts.
 - ii. Court rooms should be established inside the prisons or in its vicinity, ensuring free and open access to all persons, with a view to ensuring the production of under- trial prisoners.
9.
 - i. There is a need for regular and periodic supervision of the performance of judicial officers by the respective High Courts.
 - ii. The office of Member Inspection Team should also be further strengthened to monitor and supervise the judicial officers.
 - iii. Furthermore, cases of inefficiency or corruption must be taken serious notice of, and promptly dealt with, to eradicate the culture of corruption in the katchery.
10. Rather than writing lengthy judgments, the judicial officers be trained to write concise and terse but well reasoned judgments. The Federal Judicial Academy may design appropriate training for the purpose.
11.
 - i. The salary structure and fringe benefits admissible to judicial officers and court staff be improved and discrepancies/anomalies and allowances among judicial officers, serving in various provinces, should be removed.
 - ii. The service structure of judges be improved and their transport needs and problems of residential accommodation should be addressed and resolved.
12.
 - i. The High Courts should take steps to ensure that judicial officers do not concentrate only on disposal of criminal work, which causes the piling up of civil cases and consequential delays in disposal of suits.

- ii. The High Courts may also consider to bifurcate the civil and criminal functions of judicial officers, so that the judges may attain expertise in the relevant field. The civil and criminal work should be done by rotation so that the judges develop a broader perspective and wider experience of both civil and criminal work.
- 13.
 - i. The courts should take strict action against parties or witnesses who cause deliberate delay, through imposition of costs in civil cases and by taking penal action against defaulters who deliberately attempt to flout orders or cause delays in criminal proceedings.
 - ii. The Government should consider creating a Judicial Development Fund under the control of respective High Courts for establishing/improving infrastructure facilities and meeting the other needs of courts. Such fund may be created through appropriate legislative amendments with proper system of accounting/ auditing.
- 14. The legal system and procedural laws/rules should be kept under regular review, with a view to removing defects therein and expediting trial proceedings.

The Report of the Committee for Improvement of the Administration of Justice contains some specific and workable proposals for remedying the defects in trial proceedings to clear the backlog and expedite the process of dispensation of justice.

It requires serious and urgent consideration by the Government.

Report on Improvement in the Working of Subordinate Judiciary.

The Lahore High Court convened a Conference of the District and Sessions Judges in the Province of Punjab in September 2002 to consider inter alia measures for clearance of backlog and quick dispensation of justice. The Conference ultimately adopted a Report, a copy of which was forwarded to the Secretary, Law and Justice Commission of Pakistan for consideration. The Report contains useful and practical reform proposals, it being formulated by professionals experts such as senior judicial officers, having vast experience of judicial administration. The Director General, Federal Judicial Academy also prepared a paper on Delay Reduction, suggesting measures for effective court management and eliminating hurdles in the smooth process of trial proceedings. The Secretariat of the Law and Justice Commission has been regularly studying the judgments of superior courts, especially these containing references/observations on law/procedure reform. Further, from time to time, suggestions for reform of law/procedure are invited from judges and practicing lawyers. In formulating the present Report, the Secretariat of the Law and Justice

Commission thoroughly examined the above-mentioned reports and other material and borrowed from their contents.

Causes of Delay.

It may be pointed out that the causes of delay in litigation are not mere technical or procedural flaws in the system. There are other elements, equally responsible for the same. The Bench, Bar and litigant parties, though essential components of the system, at times constitute a triangle of delays. The Bench, partly because they are over burdened, they have to dispose of maximum number of cases in the shortest possible time; the Bar, because they are also over burdened, busy members of the Bar have little time to attend to each and every case accepted; and the unscrupulous and some professional litigants, because they have a weak case and want to prolong the trial to continue to enjoy the usufruct of the suit property in their possession/control.

We may briefly identify the causes and factors responsible for the delays in trial of civil and criminal cases. These include lack of proper supervision of courts, unsatisfactory service of processes, lack of proper working conditions in the court, lack of transport facility for process serving staff, lack of court/residential accommodation for judicial staff, lack of libraries, lack of record rooms in the courts, shortage of ministerial staff and necessary equipments in the courts, non-observance of the provisions of procedural laws, shortage of judicial officers, shortage of stationery and furniture, delay on the part of investigating agencies, non-attendance of witnesses, delay in writing and delivering judgments, frequent adjournments, dilatory tactics by the lawyers and the parties, frequent transfer of judicial officers and transfer of cases from one court to another, interlocutory orders and stay of proceedings and un-attractive service conditions of subordinate judicial officers, etc.

Reform of Procedure.

As earlier stated, the courts have to follow procedural laws i.e. the Code of Criminal Procedure, 1898 and the Code of Civil Procedure, 1908. Both the laws are more than hundred years old and time-tested, yet need to be reformed to meet the present-day requirements. It may also be pertinent to mention that our neighbouring country (India) has exhaustively revised both these laws. The time is ripe to thoroughly revise our procedural laws in order to bring them in conformity with modern needs. This exercise though time consuming will produce positive and far-reaching results in eradicating courts delays, both in civil and criminal justice system. There is also a need to improve judicial system through administrative measures for eliminating defects that exist in the system.

It is therefore proposed that the process of law reforms be carried through:

- (i) introducing legislative reforms through amendments;

- (ii) administrative reforms; and
- (iii) introducing means of alternate dispute resolution.

Measures to Curtail Delay in Trial:

The following measures are proposed to curtail delay in criminal and civil justice system.

1. Non-submission of Challans in Time.

Non-submission of Challan in time is one of the main cause of delay in disposal of criminal cases. Delay in investigation are stated to be on account of inefficiency and lack of integrity on the part of the investigating staff. Other causes of delays are inadequate number of investigating officers, delay in obtaining expert opinion, lack of proper supervision by the superior police officers and lack of public co-operation. These issues should be properly addressed and appropriate remedies be adopted to overcome the problems. The investigation branch should be strengthened. Number of forensic science laboratories should be increased. The courts should not hesitate to make use of Section 167 of PPC which provides for the punishment of a public servant who deliberately frames or prepares an incorrect document or statement.

The completion of investigation and submission of Challans beyond the statutory period is a matter of grave concern which should be treated as inefficiency on the part of Station House Officer. This can be cured by a separate and strong investigating branch of Police, as envisaged in the new Police Order 2002. It is also needed to appoint an officer who should be a Law Graduate fully trained and well conversant with latest methods of investigation. Such staff should be given periodic specialised training to keep them abreast of modern techniques of investigation and of the changes/developments made in the law relevant to their functions.

2. Non-attendance of Witnesses.

The non-attendance of witnesses, both in Criminal and Civil litigation also cause delay in the disposal of cases. Witnesses generally tend to avoid attending the court. This is due to factors such as the distress of waiting for long hours outside the court, non-provision of adequate traveling allowance and diet money, absence of proper arrangements for their seating, lack of courtesy being shown to them and non-availability of security for them. It is an immense problem for the witnesses to attend the court repeatedly as a result of frequent adjournments. These problems can be avoided by providing proper seating arrangements in court premises for witnesses and litigants. The scales of daily allowance and traveling allowance should be enhanced, in keeping with the prevailing costs, and this should be promptly paid by the respective presiding

officers. The parties to the trial and witnesses must be assured protection so as to be able to make appearance before the court and state the truth. In respect of the Government servants, neglecting summons, the court should communicate the fact to the head of the department for appropriate disciplinary action.

A separate police force be created for effecting service on witnesses in criminal cases and should be responsible for production of witnesses in courts and any failure of the officer be taken serious note of. Section 476(1) of the Code of Criminal Procedure, 1898 be amended so as to empower a court to take cognisance of an offence mentioned in Section 495(1)(a) of the Code. A District Investigator in each District with senior investigators and junior investigators under him be appointed who should work under the supervision of Superintendent Police at Divisional/Regional level and a designated Deputy Inspector General, Police (Investigation) at the provincial level.

3. Delayed Submission of Expert Forensic/Chemical Reports.

There are shortage of forensic science laboratories. The present number cannot cope with the bulk of work for the entire Province. The numbers of such laboratories should be reasonably increased. Such laboratories be established at appropriate places in each province, preferably at each divisional headquarter. The experts and technicians in these laboratories should possess good academic qualifications and experience. The need of establishing mobile forensic science laboratories and chemical analysis laboratories is also emphasised. The services of others reputed laboratories in the public/private sectors e.g. Armed Forces, Agha Khan Hospital, Shaukat Khanam Hospital and private laboratories may also help in expediting trial proceedings. Their services may also be utilized for the purpose.

4. Non-production of Under-trial Prisoners in Courts

Non-production of under-trial prisoners in the court on the plea of the non-availability of police escort or vehicles is also a cause of delay, which could be avoided by establishing courts adjacent to jails. This will also help to produce the under-trial prisoners regularly and without delay.

5. Writing Lengthy Judgments

It is suggested that a 'good judgment' should be defined. Judicial officers may be trained so that they know how to write terse and well-reasoned judgments. Instructions and guidelines may be issued for writing of judgments which are not lengthy. The model judgments and an outline for the judgments can be provided for the guidance of judicial officers.

6. Case Management System.

There is dire need for measures to eliminate delays due to frequent adjournments. It can only be possible if the presiding officer refuses to grant unjustified adjournments. It has often been observed that in the courts where the presiding officer has to cope with a daily cause list of 120

to 150 cases, the adjournments are not voluntary but a situational imperative. The problems can be tackled by establishing case management committees at each district headquarters headed by the District and Sessions Judge, a Senior Civil Judge, representatives of stakeholders and their counsel as members. The committees may be entrusted with the category-wise prioritization of cases, on the basis of their importance e.g. (i) the nature of cases, (ii) dates of institution, (iii) location and value of the property in dispute, (iv) civil rights involved, (v) the parties, (vi) impact of the ultimate decision, (vii) the number of persons affected by the decision of the court, (viii) involvement of public interest, (ix) the nature of questions involved for determination, (x) whether any temporary injunction has been granted in favour of either of the parties, and (xi) other relevant considerations.

After the process of prioritization is completed, the presiding officer may put 500 cases, in order of priority, on active calendar for trial and final disposal. Then, at the end of the month, as many cases as disposed off may be brought on active calendar in order of priority from the inactive calendar. As an important ingredient of the plan, the presiding officer must fix a target in terms of number of cases to be disposed off in a month and ensure that the disposal must exceed the institution by at least 5 to 10 cases in every month.

7. Granting Frequent Adjournments.

The courts' discretion in regard to granting of adjournments should be curtailed. There should be only one adjournment and that too in very exceptional circumstances and subject to payment of heavy costs and for valid reasons to be recorded by the court. The Courts should avoid to adjourn the cases at the stage of arguments and in case of non-availability of counsel, the court should pronounce its judgments and pass orders on the day fixed if the absence is not on good cause. Adjournments on plea of a counsel being busy in some other court should not be granted in routine. Counsel should be compelled to appear on the appointed dates or to make alternative arrangements for the purpose. Any adjournment granted on miscellaneous application should be only on sound reasons and subject to cost.

8. Alternative Dispute Resolution

Alternative Dispute Resolution mechanism is an appropriate method for resolving disputes in appropriate civil and criminal matters. The system may be encouraged so that each and every case should not come to court for adjudication and only justifiable disputes, appropriate to be decided by courts, be instituted. For this purpose, alternate dispute resolution (ADR) centers may be established and be annexed to the courts, where skilled ADR staff may be allowed to establish their offices to provide mediation/pre-trial counseling. This

method can curtail pendency of large number of cases with great speed and will cut down the institution of fresh cases. These centers can also be useful in addressing the problem of frivolous litigation. It is proposed that simple and small claims should be attempted to resolve through this means. For this purpose, the provision of section 89-A of the CPC may help in resolving disputes through amicable settlement. The government on the recommendations of the Law and Justice Commission through an amendment in 2002, added a new section 89-A to the CPC empowering the courts to refer any matter of petty nature to be resolved through means of amicable settlement. Similarly, a new statute called Small Claims and Minor Offences Courts Ordinances 2001, has also been enacted on the recommendation of the Commission, which prescribes detailed procedure of amicable settlement for settling minor offences and petty claims/disputes. Such courts should be designated/created at the earliest.

9. Judicial Competence

Judicial competence can be improved by providing atmosphere conducive to efficient working including properly furnished courtrooms with temperature controlling devices like Air-conditioners and heaters etc. In-service training for judicial officer is essential to improve competence and for this purpose special programmes be designed. The Federal Judicial Academy is imparting this training to newly appointed judicial officers which has increased their efficiency, yet the need to revise their service conditions, special benefits including out of turn promotion's on the basis of qualitative and quantitative judgments may further improved their competence.

The Lahore High Court observed in a case (PCJ 2002 Lah p 10) that a judge must have laws in his sleeve, because he is supposed to have upto date legal knowledge. Judges require update law books, journals, Gazettes etc to keep them abreast of latest developments in law and practical skills for disposition of cases. They may also be given certain summary powers to dispose of cases of minor nature, without recording detailed evidence and cross examination. In such cases, only a summary of evidence be kept to arrive at the decision. In appealable cases, instead of detailed orders, the judicial officers be allowed to pass orders only in the form of conclusion arrived at.

10. Involvement of the Bar

It is possible to achieve the ultimate goal of delay reduction and fair, speedy, effective, administration of justice, with positive association and cooperation of the bar. The District Judges may be asked to constitute Bench and Bar Committees to promote working relations between the Bench and the Bar and explore ways and means to eliminate court delays.

11. Excellence in Legal Education

In the past fifty years, we have seen a decline rather than strengthening of professional standards and academic excellence in legal education. The quality and output of legal education today is very poor which need to be improved for producing competent and trustworthy lawyers, judges, legal scholars, government legal officials and other law-trained personnel to meet the legal requirements. The strategic causes of decline and weakness in legal education include lack of strong, implementable processes for institutional quality in legal education, outmoded curricula and teaching methods, the virtual absence of legal research and a research environment, outmoded and sometimes corrupt examination systems and deficiency of language skills among students.

12. Imposition of Compensatory Costs

Sub-section (I) of section 35-A of the Code of Civil Procedure 1908 provides that if in any suit or other proceeding, including an execution proceeding, not being an appeal, any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward and if thereafter, against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the court, if the objection has been taken at the earliest opportunity and if it is satisfied of the justice thereof, may after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector by the party by whom such claim or defence has been put forward, of costs by way of compensation. One of the main causes of proliferation of litigation in the courts is that the losing party is not obliged to pay cost to winning party. It has also been observed that remission on payment of court fee on the valuation of suit to the extent of rupees 25,000 has increased false and frivolous litigation. These unnecessary litigations may be controlled by awarding exemplary compensatory costs and parties should not be left to bear their own cost.

13. Professionalisation

After the separation of judiciary, there is a need to separate the civil and criminal functions of courts, so that civil and criminal work be handled separately. In order to train the judicial officers in both field, the work may be assigned alternatively so that they may become experienced Judges. Similarly, at the level of Additional District and Sessions Judges, Sessions Division and District Courts should also be separated and assigned separate civil/criminal work.

14. Strengthening the Judicial System.

In order to ensure reduction in the caseload, fair and speedy trial, there should be gradual increase in the number of judges. The possibility of establishing the

evening shift to clear backlog may also be considered. A special package of increased emoluments and fringe benefits will give birth to a new judicial culture.

15. Reforms in CPC.

The Lahore High Court in the year 2001, approved certain amendments in Orders V, VIII, IX-A, XVI of the First Schedule of the Code of Civil Procedure, 1908 which were promulgated through Notification No. 300 Rules/XI-Y-26 dated 2.10.2001 to ease effective service of courts summons, check frequent adjournments for submission of written statements, fixation of intermediate dates for amendments of pleadings, and to take other necessary steps to avoid interference in courts' proceedings. The amendments are:

1. In Rule 10-A of Order V of the Code, another mode of service, "through courier messenger" has been added beside the existing mode of sending summons through post. The courier service in present days is the most effective, speedy and reliable mechanism of transmitting message from one place to another. This amendment may help in curtailing court delays normally caused due to ineffective mode of service.
2. Order VIII of the Code deals with submission of written statement and set off which generally is abused causing delay. The provision has been amended by adding a further proviso after the existing one as under:-

Provided further that not more than two adjournments shall be granted for presenting the written statement.

3. Order IX of the Code, dealing with appearance of parties and consequence of non-appearance is commonly abused which unnecessarily prolongs litigation ie. where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an Order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his not paying the court fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the court shall make an Order setting aside the dismissal and shall appoint a day for proceeding with the suit.

To avoid fresh suit on the same cause of action a new sub rule (2) after rule 4 of Order IX of the Code is added as under:-

- (2) The provision of section 5 of the limitation Act, 1908 (IX of 1908) shall apply to applications under sub-rule (1).

This amendment has saved the parties from bringing fresh suit on the same cause of action.

4. By addition of Order IX-A in the Code a new and very important concept of case management has been introduced which is generally followed in developed countries to check belated complication of suits and to rectify faults at initial stage of hearing as under:-

Intermediate Dates

1. Fixation of Intermediate dates.- After the close of the pleadings, the Court shall fix:-
 - (a) a day by which parties shall apply for orders of the Court with regard to any of the following matters, namely.-

Pleadings, further and better particulars, admissions, discoveries, inspection of documents or of movable or immovable property and the mode by which particular facts may be proved;
 - (b) another day by which parties may reply such applications; and
 - (c) a third day on which, unless the hearing is adjourned, the applications shall be disposed of.
2. Applications regarding pleadings, etc., their replies and disposal.- “No opportunity shall be given to any party for making any such application as aforesaid or for submitting a reply thereto after the expiry of the day fixed for that purpose, unless the time is enlarged under the provisions of this Code; but nothing herein shall affect the right of the parties to make such applications before the closing of the pleadings”.
5. The addition of new Rule 4-A in Order XII of the Code has increased the power of Court to call any party without being asked by the plaintiff/ defendant. The amendment is as under:

“4-A. Power of Court to record admission of documents and facts.- Notwithstanding that no notice to admit documents or facts has been given under Rules 2 and 4 respectively, the Court may, at any stage of the proceedings before it, of its

own motion, call upon any party to admit any document or fact and shall in such a case, record whether the party admits or refuses or neglects to admit such document or fact”.

The new addition has given suo moto jurisdiction to the courts to record admission of documents and facts. In fact the provision of Rule 4 was aimed at to resolve the facts based on documents to save courts precious time, but is seldom applied by the parties primarily on account of their vested interests. Now, the courts may invoke this jurisdiction, hopefully giving required results.

6. Summoning of witness and presenting a witness in the court is yet another cause often abused to prolong a case. The forum of summoning a witness has further been improved by amending rule (I) of Order XVI of the Code as under:-

“Summons to attend to give evidence or produce document:
(1) Not later than seven days after the settlement of issues, the parties shall present in court a certificate of readiness to produce evidence, alongwith a list of witness whom they propose to call either to give evidence or to produce documents”.

(2).....

(3).....

These amendments has far reaching effect for speedy disposal of cases and to eliminate delays on technical grounds.

These amendments may be considered for adoption by the High Court of Balochistan, Sindh and Peshawar, as they would help in quick processing and expeditious dispensation of justice.

16. Reforms Through Administrative Measures.

- (1) A system of pre-trial hearing be introduced wherein at the preliminary stage of trial, small claims and minor disputes, subject to consent of the parties, be referred for resolution through mediation, conciliation, arbitration or any other appropriate mode of alternative dispute resolution.
- (2) Miscellaneous proceedings i.e. filing of written statement, reply, entry of attendance of parties be entrusted to the Reader of the court and the presiding officer should deal with recording of evidence, hearing of arguments and writing of judgments. The Reader must be fully qualified and trained. In the existing system where a judge has large cause list, his time is consumed for attending to the miscellaneous work. A judge should however keep

a hawk eye on working of his Reader to avoid any possibility of delay or miscarriage of justice.

- (3) Every court should have its own copying facility so that delay in obtaining judgments/decree for appeal/execution is avoided.
- (4) Order V rules 10, 10-A and 20 of the Code of Civil Procedure 1908 provide different modes of service including service by registered post, acknowledgement due, through electronic device of communication, telegram, telephone, phonogram, telex, urgent mail service, public courier service etc. Sometime back the process serving agency was manned by non-official persons receiving their remuneration from out of process fee. The task of process serving can again be franchised on the pattern of Britain where service on a respondent is effected by the Master and a claim is treated to be filled only after service on the respondent.
- (5) In case an appeal is partly accepted, the same should not be remanded back to trial court, rather the point in issue be decided by the court of appeal.
- (6) At the first date of hearing, pleading of parties must be carefully examined to remove any legal defect in pleadings and persuade the parties to agree on an appropriate alternative mode of dispute resolution.
- (7) A one time process fee should be fixed so that delay in trial, due to dismissal of suit for non-payment of process fee is avoided.
- (8) Atmosphere conducive to efficient working may be provided. This will include provision of properly furnished courtrooms with temperature controlling devices like Air-conditioners and Heaters.
- (9) A whole time public prosecutor should be provided to each court.
- (10) Session Court may have powers to fix adequate fee for payment to state counsel, appointed by them in Sessions cases. For this purpose, necessary funds be made available to District and Sessions Courts.
- (11) Litigant public should not be unnecessarily summoned for court proceedings and should be respected by the court staff. They may be provided with public utilities in the court premises including proper sitting arrangements.

- (12) District and Session Judges may be given relaxation in output of judicial work because of administrative and other workload, which they have to bear.
- (13) Computer network in the District linked with the High Court may be established.
- (14) A working library may be provided to each court.
- (15) Arrangements may be made for supply of Federal and Provincial gazettes to the courts.

NJPMC's Observations:

A letter was received from the Prime Minister Secretariat regarding to the Prime Minister's address to the Nation on 11 March 2003. The letter contained a policy statement of the Prime Minister on the administration of justice and solicited suggestions of the Chief Justice of Pakistan for strengthening the capacity of the judicial system. Accordingly, the Secretariat of Law & Justice Commission of Pakistan prepared a draft Report and placed it before the National Judicial Policy Making Committee in its meeting held on 27 September 2003 at Islamabad for consideration. The meeting deliberated upon the draft Report and had it approved with the following observations (extract from the Minutes of Meeting):-

Item No.2

- (i) **Prime Minister's Address to the Nation on 11 March 2003 Measures for Strengthening the Capacity of Courts to Resolve the Problem of Delays in Litigation.**
- (ii) **Report on Expediting Trial Proceedings**

The Secretariat informed the meeting of the communication received from the PM Secretariat containing the policy statement of the Prime Minister given in his address to the nation on 11 March 2003, stating, inter alia, that he would welcome suggestions from the Chief Justice of Pakistan as to ways and means of strengthening the capacity of courts to reduce delays and bring about substantial improvement in the judicial administration. The Secretary further informed that in this regard a comprehensive Report titled Expediting Trial Proceedings has been prepared for the consideration and approval of the NJPMC. This Report contains various measures for improvement of the administration of justice in the country. It also borrows recommendations, earlier made by the Law & Justice Commission in its earlier reports but not yet implemented. After deliberations, it was resolved that the Report be brought for consideration of the Law & Justice Commission in its next meeting, and thereafter, would be forwarded to the Prime Minister Secretariat for further necessary

action. The Chairman however stated that all such causes and factors which hinder/hamper the smooth process of trial proceedings including problems of delayed submission of Challan, undertrial prisoners and witnesses not being produced in courts, frequent adjournments sought and given on trial grounds, inadequate staffing and poor infrastructure facilities, etc should also be added to the report.

The meeting noted the tendency of new legislation in the country thereby adding to the load of the overburdened courts, without consultation with the judicial branch. The members also expressed dissatisfaction over the procedure for grant of remissions to prisoners, hereby letting the prisoners out without completing the requisite quantum of substantive sentence. The meeting further noted the problem of delays being caused in trial on account of the legal requirements in certain laws such as Hudood Ordinances that trials should be conducted at sub-divisional headquarters. This, the members pointed out leads to delays due to frequent adjournment on account of failure of lawyers to turn up, inability of administration to produce undertrial prisoners, who often have to be brought up from prisons from long distances. The members also expressed sentiments against the trend of creating special courts. They were of the view that the overall capacity of the courts need be appropriately enhanced to deal with all civil and criminal cases, and if need be, priority could be given to special/urgent cases. They stated that such issues be brought on the agenda of Law & Justice Commission after preparation of appropriate working papers on the subject by the Secretariat.

Commission's Observations:

Thereafter, the Report was placed before the Law & Justice Commission of Pakistan in its meeting held on 11.10.2003 at Islamabad for consideration. The commission examined the draft Report and approved the same. The Commission's observations are as follows (extract from Minutes of Meeting):

Item No.15

Report on Expediting Trial Proceedings:

The Secretariat informed the members that the draft report has already been approved by the National Judicial Policy Making Committee in its meeting held on 27 September 2003. The members approved the draft with observations that all problems/factors responsible for delay in trial proceedings should be addressed and appropriate remedies suggested to ensure the prompt disposal of cases. Attention was invited to the persistent problems of non-availability of judicial lockups in certain districts/sub-divisions, where trial courts have been established. It was pointed out certain provisions in law providing for trial at the

sub-divisional level, where facilities like judicial lockups are missing, are causing delays in the trial. It was further pointed out that sometime there are frequent changes of investigating officers, which causes delays in the submission of Challan. It was also mentioned that the implementation of Qisas and Diyat law has also led to difficulties. The Commission wanted further thoughts on the amount fixed as Diyat, to prevent the abuse of this provision by vested interests. The commission asked the Secretary to obtain information/material from the countries in the region and the U.K. as to how the initial hiccups in investigation/inquiry as well as during trial may be overcome and trial proceedings expedited in the interest of quick dispensation of Justice.

Term & Conditions of Service of Subordinate Judiciary:

The Secretariat received a proposal from the Ministry of Law & Justice (PMU Wing) containing suggestions for improvement in the terms and conditions of subordinate judiciary including enhancement of emoluments. The PMU's proposals and subsequent correspondence of this Secretariat on the subject is at Annex-B.

The proposal was also considered by the NJPMC in its meeting held on 27 September 2003 at Islamabad, and after threadbare deliberations, partially approved. The observations of the NJPMC are as follows (extract from the Minutes of Meeting):

Item No.3

Ministry of Law (PMU Wing's) Proposal for Incentives to Women in Judicial Service and Improvement in the Terms and Conditions of Subordinate Judiciary.

The meeting considered the draft proposal submitted by the PMU, Ministry of Law & Justice, providing for improved terms and conditions of subordinate judiciary, special incentives to women and increasing the emoluments of judicial officers and court staff. Discussing the various suggested options, the meeting resolved that incentives for women like relaxation in age limit, etc do not appear to be in consonance with the broad principles of Constitution, providing for equality and non-discrimination. However, the members favoured the granting of some incentives such as additional financial benefits, priority in allotment of residential accommodation and loans for transport etc, to encourage women to join the judiciary in large number. The meeting agreed to fix the minimum age of 22 years and maximum 30 years for induction into the judiciary, with 2 years practice, after obtaining LL.B. and that such recruitment should be through

competitive examination conducted by the Public Service Commission in coordination with the respective High Court. The High Courts should have a role in the preparing the syllabus of the competitive examination and its nominees should sit in the viva voce test. The meeting also suggested that in appropriate cases, especially for service personnel, relaxation in age may be given by the respective High Court. The meeting further suggested that the time consumed for finalizing the recruitment process by the Public Service Commission should be reduced so that the posts do not remain vacant for long period of time. The meeting however expressed satisfaction over the prevalent procedure/method of constituting administrative committees and selection boards of the High Courts and felt no pressing need to alter the same.

The meeting also considered the proposal of granting improved emoluments to judges of the subordinate courts. It was noted that the present salary package of the judges of the subordinate courts is low, in as much as, it does not cater to the genuine requirements of the family. It therefore recommended the provision of judicial allowance @ Rs 5000/- per month to District & Sessions Judges, Additional District & Session Judges and Senior Civil Judges and Rs 4000/- per month to Civil Judges and Judicial Magistrates, in addition to the existing judicial allowance equivalent to 10% of the basic pay as the utility charges to judges of the subordinate courts and the court staff. The meeting also recommended the provision of residential accommodation and pool of transport to solve the transportation problem of judges.

Thus, the Report is being forwarded to the Government for implementation.

**Report of the Committee for
Improvements of the Administration of Justice**

Introduction

The problem of delays in civil/criminal trial is neither new nor unique in the context of Pakistan. It is an old and chronic problem of global dimension. It is not just the developing countries that are afflicted by this plague; indeed, the advanced countries too are feeling the pinch of ever-increasing litigation, and consequently, expanding dockets. Realising the magnitude of the problem, some such states have devised strategies and formulated mechanisms for reforming their judicial systems. They have put in place measures aimed at discouraging frivolous cases, encouraging alternative methods of dispute resolution and quickening the trial proceedings.

Since the creation of Pakistan, successive governments attempted to reform the system of administration of justice, with the objective to providing access to justice, ensuring fast redress of grievance and expeditious settlement of claims and disputes. For this purposes, several commission/committees were set up to suggest reform of the laws/procedure and the system of judicial administration, and fairly comprehensive reports were compiled, some of which were partially implemented, while most ignored. Unfortunately, the most crucial problems viz. chronic shortage of judicial officers and support staff, inadequate infrastructure facilities, pathetic low wages and unfavorable terms and conditions of service of judicial officers and staff, were almost always ignored. Sufficient attention was not paid to the requirement of periodic and systematic law reform to bring the legal system in accord with changing times and emerging realities. Law reform recommendations made by the Pakistan Law Commission and other bodies did not receive due attention.

The need for reform and modernization of the legal/ judicial system in the country, expressed in the successive law commission's reports was emphasized upon in the Supreme Court judgment, Liaquat Hussain vs Federation of Pakistan (PLD 1999 SC 504), wherein, Mr. Justice Irshad Hassan Khan, (present Chief Justice of Pakistan) observed that the system of administration of justice in the country is confronted with caseload, at all level of judicial hierarchy, and that unless the requisite legal/judicial remedial measures are timely adopted, the situation will further deteriorate. He referred to certain reports of the Pakistan Law Commission, namely, Report No.21 on Criminal Justice System and Report No 30 on Reform of Juvenile Justice System and bemoaned their non-implementation. Soon after assuming office, the Chief Justice of Pakistan convened a meeting of the Chief Justice' Committee, which in its meeting on 26 February 2000 adopted a 21-point Programme of Action for the clearance of backlog and expeditious disposal of cases by the subordinate courts.

Committee for Improvement of the Administration of Justice

On a Reference from the Chief Justice of Pakistan, the Chief executive constituted a Committee for Improvement of Administration of Justice, comprising the Secretary, Law, Justice & Human Rights Division as Chairman and Secretaries, Finance & Interior Division, Registrars of the Supreme Court and High Courts, provincial Chief Secretaries or their nominees, as members and Secretary, Pakistan Law Commission as Secretary of the Committee, for suggesting practical steps to give effect to the recommendations of the Chief Justice' Committee and reports of the Pakistan Law Commission.

The first Meeting of the Committee was held on 4 May 2000 at Islamabad. The Committee resolved that before proceeding further in the matter, a Sub-committee comprising, the Registrar, High Court and Secretary, Law Department of the concerned province, be constituted to prepare and submit, a detailed report in respect of the problems/issue confronted by the system of administration of justice in their respective province, stating also their peculiar needs/requirements to strengthen the judicial system and improve its performance. For the guidance of the provincial sub-committees, the Secretary formulated certain guidelines (Annex 1) which were discussed and approved by the Committee. The provincial sub-committees were asked to examine such guidelines, which formulating their respective reports.

Sub-committee constituted

The Sub-committees submitted the reports, which were examined by the Committee in its Meetings on 16 September 2000 at Islamabad. The Committee resolved that a detailed review/examination of such reports is required and for this purpose, it constituted a Sub-committee with a mandate to scrutinize the provincial governments' reports and synchronise their contents, with a view to preparing a uniform set of recommendations. The Sub-committee comprised the following members:

1. Dr. Faqir Hussain, Secretary, Pakistan Law Commission (Convener).
2. Mr. Fakhar Hayat, Registrar, Lahore High Court.
3. Mr. Shahid Rashid, Secretary, S&GAD, Government of the Punjab.
4. Mr. Imtiaz Hussain, Law Secretary, Government of Balochistan.
5. Mr. Salim Khan, Law Secretary, Government of the N.W.F.P.
6. Mr. Zafar Ahmed Sherwani, Registrar, High Court of Sindh.
7. Mr. Abdul Raud Chaudhry, Joint Secretary, Ministry of Interior.
8. Mr. Pervez Saleem, Joint Secretary, Ministry of Finance.

The Sub-Committee held its meeting on 19 January 2001 at Islamabad. All members attended except Secretary, S&GAD, Government of the Punjab, who was represented by Secretary, Information and Secretary, Law Department,

Government of the NWFP, being represented by Additional Secretary of the said Department. The Sub-committee scrutinized the provincial reports and agreed on a set of recommendations to form part of the final report to be placed before the committee. The observations of the Sub-committee (Annex II) were duly incorporated in the draft report presented to the Committee on Improvement in Administration of Justice. The Committee in its meeting on 9 June 2001, examined the draft report and approved the same subject to certain amendments/improvements thereto. The Report follows:

Report

1. Gradual increase in institution of civil suits and criminal complaints

All the High Courts and provincial Governments are unanimous that the institution of civil suits and criminal cases have substantially enhanced thereby increasing the workload of courts and resulted in consequential backlog. They agree that the number of judges should be increased to reduce the workload and ensure fair and speedy trials; and to achieve this purpose, there should be gradual increase in the number of judges in the subordinate courts through a phased programme. The Government of Sindh and the Peshawar High Court are of the view that the increase in institution of civil suits and criminal complaints may be curtailed, if the courts at initial stage of hearing, carefully scrutinize the plaints and complaints by using the procedure of admission or denial to expedite the disposal of the matter. The Sindh High Court took the view that for the purpose of reducing delays in disposal, appeal and revisions against interlocutory orders in civil matters must be restricted. On the other hand, the Government of NWFP takes the view that the appellate and revisional courts should finally and substantially decide the cases instead of remanding them to lower courts. The Peshawar High Court suggests that the presiding officer may be allowed to seek maximum possible help from the senior staff of his court at pre-trial proceedings of suits. The Court has further proposed to examine the possibility of the establishment of night courts to clear the backlog.

2. Delays in filling vacancies in courts

The High Court of Sindh observed that the service laws relating to appointment of judicial officers be amended so as to make the High Court its appointing authority, as is the practice at Lahore High Court, which is the appointing authority of Civil Judges-cum-Judicial Magistrates. However, delay in filling vacancies and non-creation of required number of posts of judicial officers was attributed to the Government. The respective High Court be closely associated in the recruitment process. The syllabi and paper setters/examiners should be taken from judges of the High Court. An effort should be made to further strengthen the Public Service Commissions and the delay in completing the recruitment process be curtailed.

3. Infrastructure Facilities

The Lahore High Court points out the acute shortage of court rooms as well as residential accommodation of judicial officer in the Province of the Punjab. It purposes that state land and necessary funds be made available to the High Court for construction of courtrooms and residential premises. A similar demand is advanced by the Government of the NWFP and the High Court of Sindh, requesting the Federal Government to provide sufficient budget for the construction of such buildings and renovation of existing structures. In addition, separate grant is demanded for the purchase of computers, typewriters and law books, etc. the provincial governments are also requested for such grants-in-aid for providing better facilities to litigants and witnesses in a judicial complex. The Lahore High Court further proposes the computerization of court proceedings and record, for which integrated computer network may play effective role in quick and expeditious disposal of cases. It is suggested that the proposal may be implemented in a phased manner, and in the first phase, the facility may be provided to one or two cities, preferably Lahore and Islamabad. The High Courts of Sindh, NWFP and Baluchistan express a similar view. The Federal Government may provide sufficient funds to cope with these requirements. The availability of an electronic database will be of considerable assistance to the courts and the profession. The decisions of the Superior Courts including the statutes may also be computerized. This will necessitate the provision of computers to judges.

4. Granting frequent adjournments without sufficient cause to parties and / or counsels

The Lahore High Court takes the view that the courts' discretion in regard to granting of adjournments should be curtailed. There should be only one adjournment and that too in very exceptional circumstances and subject to payment of reasonable costs and for valid reasons to be recorded by the court. The Court is of the view that there should be no adjournment at all at the stage of arguments and the court should pronounce its judgments and pass orders after hearing the case on the day fixed. The High Court of Sindh and Government of NWFP express the view that the court should not be slave of the procedure, but should be inspired to do justice; that adjournments should not be given in a routine and mechanical fashion, rather the court should exercise due care to expedite proceedings.

5. Deficient strength of process servers

In the opinion of the Lahore High Court, the process serving agencies are not adequately manned, its strength should be increased and process servers be given motorcycles for transportation. The Government of Sindh agrees with the Lahore High Court that the process serving agencies may be made effective by increasing their strength and further proposes that TA/DA should also be paid to

them. In the opinion of the Government of NWFP, an organized processed serving agency, both for criminal and civil cases, should be under the control of the Senior Civil Judge / District and Sessions Judge.

For effective service on parties, the plaintiff should be asked to provide, as far as possible, defendant's telephone / fax number, e-mail address and office / work place addresses; and service by courier agencies is proposed as an ordinary mode of service instead of substituted service. Deposit of one time process fee is also proposed. It has also been suggested that measures should be taken to ensure that service of process is affected within the shortest possible time. The Lahore High Court further proposes that administrative matters relating to process serving agencies, control of Nizarat and non-judicial work in the office of District and Sessions Judge/Senior Civil Judge should be supervised by a Court Administrator, assisted by supporting staff and fully automated office which may be designated as Registrar of District Court.

6. Submission of incomplete / deficient challans

The Lahore High Court expressed its concern over non/delayed submission of Challans and proposes that completion of investigation and submission of Challans beyond the statutory period should be treated as inefficiency of the Station House Officer. It further suggests that a separate and strong investigating branch of Police be created and the officer who records the FIR or Investigates the cause ought to be a Law Graduate, fully trained and well conversant with latest methods of investigation. Such staff should be given periodic specialized training to keep them abreast of modern techniques of investigation and of the changes/ developments made in the law relevant to their functions.

The Government of Sindh is of the view that a separate police force be created for effecting service on witnesses in criminal cases and should be responsible for production of witnesses in courts and any failure of the officer be taken serious note of. The High Court of Sindh states that Section 476 (1) of the Code of Criminal Procedure be amended so as to empower a court to take cognizance of an offence mentioned in Section 495(1) (a) of the Code.

The Government of the NWFP and Baluchistan propose that the recommendations of the Justice Hamood-ur-Rehman Law Reform Commission's Report (1967-70), be implemented through amendments in the existing procedural laws. The Government of NWFP suggests a District Investigator in each District with senior investigators and junior investigators under him who should work under the supervision of Superintendent Police at Division / Regional level, a specially appointed Deputy Inspector General Police (Investigation) and Inspector General Police as Investigator General of the Province.

The High Court of Sindh takes the view that a criminal court should not take cognizance of an offence when the accused has absconded. It should remain the

primary duty of the prosecution to produce the accused and the witnesses as well. In case of default, a criminal court should exercise similar powers as a civil court exercise in a situation where the plaintiff is in default. It is of the view that the delays in trial may be attributed to the prosecution branch as it is their duty to produce witnesses in courts. In their opinion, the prosecution should be made responsible for these duties and the court should remain an impartial arbiter.

7. Delayed submission of expert forensic reports

The Lahore High Court observes that only one Forensic Science Laboratory in Lahore cannot cope with the bulk of work for the entire Province of the Punjab. It proposes that the number of such laboratories should be increased. Such laboratories be established at appropriate places in each province. The Government of NWFP expresses a similar view. The Lahore High Court further proposes that the experts and technicians in these laboratories should possess good academic qualifications and experience. The need of establishing mobile forensic science laboratories and chemical analysis laboratories is also emphasized.

8. Non-production of under-trial prisoners in courts

The Lahore High Court and the Government of Sindh attributed the cause of non-production of under-trial prisoners to the non-availability of police escort and vehicles. The Court proposes increase of vehicles and the Government states that it is considering a proposal to establish courts adjacent to jails, which shall help to produce the under-trial prisoners regularly and without delay. Other provincial governments may also examine the proposed scheme for expediting trial proceedings.

9. Slack supervision over the performance of the subordinate courts and increasing complaints of inefficiency /corruption/ misconduct of judicial officers / court staff

The Lahore High Court is of the view that slack supervision over the courts subordinate to it, is misconceived. The Court claims that its action against complaints of inefficiency, corruption and misconduct is immediate and stern. In the opinion of the Government of Sindh, the High Court being the controlling authority, can take steps for efficient performance of judicial officers. The Peshawar High Court also examined the point and states that the inspecting judges may scrutinize procedural lapses, if any, and other causes of delays, and suggest remedial measures for improvement. The Government of NWFP stresses the need for strengthening the officer of Member Inspection Team in the High Court and further suggests detailed and periodical inspection of courts by the judges of the High Court. Such inspections should become a regular feature. The High Court of Baluchistan and Government of Baluchistan underline the setting up of a system for eradication of corruption, inefficiency and in-proficiency

in the judiciary. The District and Sessions Judge with the assistance of the local Bar can effectively discharge this function.

10. Writing lengthy judgments

The High Court of Sindh suggests that a 'good judgment' should be defined. Judicial officers may be trained so that they know how to write terse and well-reasoned judgments. The Lahore High Court however makes a mention of the existing legal framework and hopes that instructions and guidelines may be issued for writing of judgments, which are not lengthy. The model judgments and an outline for the judgments can be provided for the guidance.

11. Discrepancies/anomalies in promotion prospect/fringe benefits of judicial officers serving in various Provinces

The Lahore High Court points to the frustration felt by the judicial officers at their promotional prospects. It was observed that their promotion as Additional District & Sessions Judge takes very long time in comparison to direct recruitment from the bar. This further undermines their prospects of promotion to higher grades and appointment as District and Sessions Judge. The Court thus suggests a remedy in the form of allowing civil judges with 10 years experience to compete with lawyers for the post of Addl. District & Sessions Judge.

The Government of NWFP proposes the re-organization of the salary structure of the judicial officers. According to them, 50% of the Senior Civil Judges/Civil Judges should be given BS-18 (Selection Grade) whereas 50% of District and Sessions Judges should be in BS-21. A special judicial allowance of Rs. 4000/- and Rs. 5000/- is proposed for Senior Civil Judges/Civil Judges and Additional District and Sessions Judges/District and Sessions Judges, respectively. A reference was made to the allowance given to the judges posted in FATA and NWFP. The provision of a loan in the sum of Rs. 3,00,000/- for the purchase of a vehicle was proposed for judicial officer who is not provided with an official transport. Maintenance of the vehicle and provision of petrol charges at the government expense, besides an official driver, is also suggested.

12. Compliance with CPC provisions regarding preliminary hearing to weed out fictitious claims and determine material issues.

The Lahore High Court urges the observance and application of the provisions of the Code of Civil Procedure by the subordinate courts. The Government of Sindh emphasises that the courts should invoke the provisions of C.P.C. and award compensatory costs, in appropriate cases, to discourage in particular the frequent adjournments. The Peshawar High Court points out that the courts should adopt case management techniques and conduct pre-trial conferences. At these conferences, parties should be called to enter their appearances. For this purpose, cooperation from the bar should be sought. The Peshawar High Court

observes that the court should consider the imposition of compensatory costs in appropriate cases in order to discourage frivolous and vexatious litigation.

13. Use of alternative dispute resolution mechanism.

The Lahore High Court has commissioned pilot projects, providing for conciliation between the spouses in family cases at the Divisional Headquarters. It has proposed that simple and small claims should be attempted to resolve through amicable settlement, before filed in the Court for judicial determination. Suitable amendments in the law relating to conciliation courts are proposed. The Peshawar High Court observes that no judicial system in the world can afford to adjudicate upon all the disputes coming before it, therefore, it has to provide for mediation, conciliation, arbitration and other means of alternative disputes resolution. The Government of Sindh proposed that a provision should be made in CPC for empowering the courts to make efforts for amicable settlement of disputes between parties. The Government of NWFP suggests that the present adversarial system should be replaced by amicus curiae system. A reference is made to the promulgation of an enactment to establish courts following this system in the Malakand Division and Kohistan District of NWFP.

In this connection one may quote with advantage and extract from the Law Commission of India Report (Page 319 – Vol.I):

“Conciliation proceedings are intended to settle cases through the intervention of the Court. We have considered whether it would be desirable to have a conciliation proceedings on the date fixed for hearing at which the judge may try to induce the parties to come to an amicable settlement. The Code of Civil Procedure does not contemplate such proceedings but such a Procedure exists in Japan, France and Norway. In Japan it is the duty of the court either on the application of the parties or suo moto to send all civil proceedings either to a body consisting of two laymen and a judge or to judicial commissioners for a negotiated settlement. If the conciliation court succeeds in persuading the parties to arrive at a settlement, its terms are recorded by the court and the order becomes binding as a judgment. In the event of a failure, the proceeding is dealt with in the ordinary manner. In France, all cases go to a Cantonal Court presided over by a layman for conciliation and an agreed settlement. Failing a settlement, the case goes for disposal to the court. In Norway, such proceedings are an essential preliminary to a proceeding in a civil court. The proceedings first go before a conciliation council, composed of three mediators, designated by the local authority. The council can record an agreement. If any of the parties fail to appear, the council can in petty cases settle the proceedings. If the conciliation proceedings fail, the parties may approach the court for the redress of their grievances”

Islam also lays great emphasis on compromise and forgiveness. Apart from the teachings of our religion, our social set up and family system can be helpful in settling the disputes (both civil and criminal)

14. Delays caused by technicalities/complications in procedure.

The Lahore High Court mentions the rulings by the superior courts that technicalities should not be allowed to defeat the ends of justice. The Court proposes that directions issued to the subordinate courts to enforce the spirit of the law rather than compliance with its letter and form. The High Court of Sindh observes that it is only through the strength of character of a judicial officer, coupled with a sensible administration, which may overcome these problems and cure technicalities and complications of procedural law.

15. Concentration by judicial officers on disposal of criminal work which results in piling up of civil suits.

The Lahore High Court in one of its judgments observes causes of delay in Criminal matters that primarily relates to the acute shortage of judicial officers, which may be removed by increasing their number and strength. The Peshawar High Court proposes to bifurcate the judicial work by assigning civil cases to one set of officers and criminal cases to another at a particular station. The Government of NWFP takes the same view but adds that the judges should be sufficiently trained for other types of cases so that they may become experienced judges. The High Court of Sindh proposed that Sessions Divisions and District Courts should be separated and also the civil courts and magistrate courts.

16. Not Penalizing persons/ parties evading/ avoiding court service/notice

The Lahore High Court states that as for the parties to suits/ appeals, the courts already make resort to the present provisions of law by proceeding with the ex parte. As for witnesses, too, relevant provisions are made use of. The Peshawar High Court states that the courts should not hesitate to take penal action against the parties and witnesses whom evade/avoid court process.

17. Non-availability of separate Judicial development fund.

The Lahore High Court states that adequate funds should be placed at its disposal for construction of court rooms and residences for judges of the subordinate courts. Similarly, the High Court of Sindh also proposes a Committee on the pattern of Article 87 of the Constitution.

Keeping in view the financial constraints, judicial reforms may be carried out in phases providing for building infrastructure facilities, increase in strength of judicial officers and court staff and carrying out law reforms.

18. Administrative Measures

- (1) A system of pre-trial hearing be introduced wherein at the preliminary stage of trial, small claims and minor disputes, subject to consent of the parties, be referred for resolution through mediation, conciliation, arbitration or any other recognized mode of alternative dispute resolution;
- (2) Miscellaneous proceedings i.e. filing of written statement, reply, entry of attendance of parties be entrusted to the Reader of the court and the presiding officer should deal with recording of evidence, hearing of arguments and writing of judgments. In the existing system where a judge has large cause list, his time is consumed for attending to the miscellaneous work. A judge should however keep a hawk eye on working of his Reader to avoid any possibility of delay or miscarriage of justice;
- (3) Adjournments on pleas of a counsel being busy in some other court should not be granted in routine. Counsels should be compelled to appear on the appointed date or to make other arrangements for the purpose;
- (4) Every court should have its own process server, answerable to it, and copying facility so that delay in obtaining judgments/decrees for appeal/execution is avoided;
- (5) In case an appeal is partly accepted, the same should not be remanded back to trial court, rather the point in issue be decided by the court of appeal;
- (6) At the first date of hearing, pleadings of parties must be carefully examined to remove any legal defect in pleadings and persuade the parties to agree on an appropriate alternative mode of dispute resolution;
- (7) A one time process fee should be fixed so that delay in trial, due to dismissal of suit for non-payment of process fee is avoided;
- (8) Every presiding officer should have his own working library so that he may not wait for the counsel to provide law books cited in the case;

- (9) Pecuniary jurisdiction of the subordinate judiciary be increased to relieve burden from superior appellate courts;
- (10) After the separation of judiciary, there is a need to separate the civil and criminal functions of courts, so that civil work is handled by a civil judge and criminal work by a judicial magistrate for effective and expeditious disposal of cases.

For effective implementation of these suggestions provisions are already available in law, which may be invoked either by the presiding officer himself or through directives by the respective High Court.

19. Improving the procedural law

The purpose of procedural law is to ensure substantive justice and prevent miscarriage of justice but unfortunately interested parties, for their vested interest, abuse the process. The Code of Civil Procedure and/ or Code of Criminal Procedure provide the procedure applicable in courts. Both are old time-tested statutes. With the passage of time periodic reform of these statutes is required to meet the needs of changed circumstances and modern developments.

In civil matters, delay is caused at different stages and for different reasons, including process serving, grant of adjournments, non-appearance of witnesses and lengthy procedure for execution of decrees, etc. Similarly, criminal cases are delayed due to late/ incomplete submission of Challans, non-production of witnesses and/ or accused persons lodged in prison, etc. These obstacles need to be addressed and removed for effective and prompt administration of justice. In civil matters, the procedure of amicable settlement of disputes may be resorted to through amendment in the Code of Civil Procedure and making the existing sketchy provisions fully operative. Similarly, timely submission of Challans, production of private and official witnesses must be ensured and where necessary, the existing procedural law be appropriately reformed. When an accused is sent on judicial remand it means that the police has completed the preliminary investigation and the accused is no more required. In such like a situation, there is no justification to further withhold the submission of complete Challan in the court.

The objective of speedy dispensation of justice cannot be achieved without separation of investigating agency, so that it may exclusively deal with investigation. Trained Law Graduates be appointed as investigating officers. On receipt of Challan, the judicial officer should start proceeding forthwith, and in

case of unjustified delay, punitive action may be taken against the person responsible.

20. Fixing Judge-case ratio

In view of increasing tendency to litigation, the strength of judicial offices must be augmented. In order to ensure speedy disposal of cases, a judge-case ratio be fixed and implemented, so as to effectively handle the pending cases. In earlier reports such ratio is 500 cases to a Civil Judge and 450 cases to District & Sessions Judge. Similarly, a Judicial Magistrate should also be not given cases exceeding 500 at a time. It is, therefore, proposed that as per current pendency of cases in various provinces, appropriate increase in strength of judicial officers and court staff be sanctioned.

21. Inadequate infrastructure

Currently, the subordinate judiciary has hopelessly inadequate infrastructure facilities e.g. court rooms, offices, public waiting rooms and lack proper support staff and essential equipment.

All judicial officers should be provided official accommodation nearer the court premises. It is proposed that a phased programme for construction of new court rooms and residential accommodation be initiated and for this purpose appropriate funds be provided.

22. Computerisation of court record and proceedings

Modern equipment and newer techniques will improve efficiency and ensure timely disposal of cases. All courts must be equipped with computers and its networking be established to provide access to information including statutes and case law.

Summary of Recommendations

1.
 - i. With a view to cope with the problem of ever-increasing litigation in the society and the crimes situation, it is essential that the courts at the pre-trial hearing carefully scrutinize the pleadings/ record and dismiss/reject false, fictitious and frivolous claims/ complaints.
 - ii. The police should expeditiously conclude investigation and submit the Challan within the prescribed period of 14 days.
 - iii. The Government should provide necessary funds for gradual increase in the number of judicial officers and court staff through a phased programme.

- iv. Revisional courts should finally and substantially decide cases placed before them, rather than remanding these to lower courts for determination.
 - v. Necessary amendments be made in procedural laws with a view to reduce the number of appeals, revisions in cases and especially against interlocutory orders.
 - vi. The judicial officers may also make full and effective utilization of the ministerial staff at their disposal for dealing with administrative matters, so that they may concentrate on trial/ judicial matters.
 - vii. The courts should make use of existing provisions in the C.P.C. providing for resolution of disputes through use of alternative methods of dispute resolution (ADR) including conciliation, mediation and arbitration or any such other appropriate mode. Amicable settlement of disputes is recommended under the injunctions of Islam and is embedded in our culture. The ADR is successfully working in several advanced jurisdictions. We should also attempt to introduce and use this method in civil/ criminal cases, in particular, resolution of minor cases and petty disputes, so as to resolve conflicts/ disputes with the consent of the parties, peacefully and amicably, thereby reducing confrontation/tension in society.
 - viii. To ensure speedy disposal of cases, it is necessary that judges be given only so much work as they could conveniently handle. For this purpose, it is recommended that judge – case ratio be fixed and maintained. Several earlier law reform commission's reports have recommended such ratio to be 500 cases for a Civil Judge and 450 cases for District & Sessions Judge. Similarly, a Judicial Magistrate may be given maximum 500 cases. The Government should affect appropriate increase in the strength of judicial officers, in keeping with the prescribed judge – case ratio
2.
 - i. The vacant posts in the subordinate courts should be promptly filled and in the recruitment process the respective High Court should also be closely associated.
 - ii. Furthermore, judicial officers and court staff must be imparted pre-service and in-service training and the process of their learning law and modern techniques of court management, case flow should be ensured through continuing education and periodic training.
 3. The infrastructure of subordinate courts is fairly old and in dilapidated state. The Federal Government through grant may supplement the provincial allocations for the construction of courtrooms, bar rooms, waiting rooms for litigant parties and witnesses and residential

accommodation of judicial officers/court staff. Funds should also be made available for essential paraphernalia such as provision of furniture, law books, typewriters and creating an integrating computer network for access to information and material and effective supervision/monitoring of the performance of the subordinate courts by the respective High Court. The availability of an electronic database will be of considerable assistance to the courts and members of the legal profession. The decisions of the superior courts including the statutes may also be computerized.

4. Legislation be enacted to curtail the court power/discretion to grant frequent adjournments. The tendency of granting adjournments in routine be checked. Adjournments be granted only in exceptional circumstances and subject to imposition of reasonable costs. No adjournment should be granted on the plea that the counsel is not available. The counsel must either personally be present or make some other arrangements by associating another lawyer for presentation of the case.
5.
 - i. The present strength of process serving agencies is inadequate and should be appropriately increased and necessary transport be provided to the agency for effecting service on defendants.
 - ii. Efforts should be made so that the personnel of the said agency do not perform domestic chores at the residences of judicial officers and are exclusively used for carrying out official functions.
 - iii. The plaintiff, as far as possible, should be obligated to provide the defendant's mail address and telephone/ fax number.
 - iv. Courier service be used as ordinary mode of effecting service.
 - v. A one-time process fee be introduced to avoid delays in process serving
6.
 - i. With a view to improving the performance of investigating branch, it may be separated from the regular police and exclusively assigned the functions of carrying out investigation. Challans must invariably be submitted within the stipulated period of 14 days and only in rare cases may extension be granted. The investigating branch must have trained personnel preferably law graduates and given appropriate training to keep them abreast of modern techniques of investigation.
 - ii. The police should be obligated to effect services on parties/witnesses in criminal cases and should be made responsible for their production in the courts.
 - iii. Further, with a view to empowering the courts to ensure the attendance of official witnesses, appropriate amendment be made in the Code of Criminal Procedure 1898 for the purpose of bringing

section 195(1) within the scope of Section 476(1) in relation to proceedings in criminal court.

7. The number of forensic science laboratories should be increased. Such laboratories be established at appropriate places, in each province. The personnel of such laboratories should possess the requisite academic qualifications and experience and be imparted periodic training. Furthermore, mobile forensic laboratories and chemical analysis laboratories be also established.
8.
 - i. Delays in concluding criminal trials are also caused due to non-production of accused persons lodged in jail. This happens due to non-availability of sufficient number of police personnel or transport for carrying them to courts. These issues must be addressed and arrangements be made to produce accused persons in courts.
 - ii. Furthermore, courtrooms should be established inside the prisons or in its vicinity, ensuring free and open access to all persons, with a view to ensuring the production of under-trial prisoner.
9.
 - i. There is a need for regular and periodic supervision of the performance of judicial officers by the respective High Courts.
 - ii. The office of the Member Inspection Team should also be further strengthened to monitor and supervise the judicial officers.
 - iii. Furthermore, cases of inefficiency or corruption must be taken serious notice of, and promptly dealt with, to eradicate the culture of corruption in the katchery.
10. Rather than writing lengthy judgments, the judicial officers be trained to write concise and terse but well-reasoned judgments. The Federal Judicial Academy should arrange appropriate training for this purpose.
11.
 - i. The salary structure and fringe benefits admissible to judicial officers and court staffs be improved and discrepancies/ anomalies in allowances among judicial officers, serving in various provinces, should be removed.
 - ii. The service structure of judges be improved and their transport needs and problems of residential accommodation should be addressed and resolved.
12.
 - i. The High Court should take steps to ensure that judicial officers do not concentrate only on disposal of criminal work, which causes the piling up of civil cases and consequential delays in disposal of suits.

- ii. Further, the High Courts may also consider bifurcating the civil and criminal functions of judicial officers, so that the judges may attain expertise in the relevant field. Judges, in rotation, should do the civil and criminal work, so they may develop a broader perspective and acquire wider experience in both civil and criminal fields.
- 13.
 - i. The courts should take strict action against parties or witnesses who cause deliberate delay, through imposition of costs in civil cases and by taking penal action against defaulters or who deliberately flout orders or cause unreasonable delays in criminal proceedings.
 - ii. The Government should consider creating a Judicial Development Fund under the control of respective High Courts for establishing/improving infrastructure facilities and meeting the other needs of courts. Such Fund may be created through appropriate legislative amendments with proper system of accounting/auditing.
- 14. The legal system and procedural laws/rules should be kept under regular review, with a view to removing defects therein and expediting trial proceedings.

Guidelines for Sub-Committees

(Points to be addressed in provincial governments reports)

1. gradual increase in institution of civil suits and commission of criminal offences;
2. delays in filling vacancies in courts;
3. inadequate infrastructure (court rooms, bar rooms, public waiting rooms, accommodation, etc.) shortage of judges and support staff, lack of essential equipments (computers, typewriters, etc.), inadequate training arrangements for judges and court staff, non-availability of library and inadequate transport facilities;
4. granting frequent adjournments without sufficient cause to parties and/or their counsels;
5. deficient strength of process servers and their engagement in domestic chores of judicial officers;
6. delays caused by the investigating agencies;
7. submission of incomplete/deficient challans;
8. delayed submission of expert- forensic reports;
9. non-production of under-trial prisoners in courts;
10. slack supervision over the performance of the subordinate courts and increasing complaints of inefficiency/corruption/misconduct of judicial officers/court staff;
11. writing lengthy judgments;
12. discrepancies/anomalies in promotion prospect/fringe benefits of judicial officers serving in various Provinces;
13. non-application by courts of the C.P.C. provisions as to awarding costs/compensatory costs;
14. non-compliance with C.P.C. provisions regarding preliminary hearing to weed out fictitious claims and determine material issues;
15. non-use of alternative disputes resolution mechanism;

16. delays caused by technicalities/complications in procedure;
17. concentration by judicial officers on disposal of criminal work which results in piling up of civil suits;
18. not penalizing persons/parties evading/avoiding court service/notice;
19. non-availability of separate judicial development fund; and
20. any other reason(s) not listed above but which may be raised by the Sub-Committee.

Dr Faqir Hussain
Secretary

Minutes of the Meeting of the Sub-Committee

A meeting of the Sub-Committee of the Committee for Improvement of Administration of Justice was held at Islamabad on 19 January 2001 to scrutinize and synchronize the reports received from the provincial governments on reform/improvement in the system of Administration of Justice. The following attended:

Dr Faqir Hussain, Secretary, Pakistan Law Commission
Mr. Zafar Ahmed Khan Sherwani, Registrar, High Court of Sindh
Mr. Fakhar Hayat, Registrar, Lahore High Court
Mr. Pervez Saleem, Joint Secretary, Finance Division
Mr. Abdul Rauf Chaudhry, Joint Secretary, Interior Division
Mr. Tehmur Azmat Usman, Secretary Information, Government of the Punjab (representing Secretary, S&GAD)
Mr. Imtiaz Hussain, Law Secretary, Government of Baluchistan
Mr. Abdul Jabbar, Additional Law Secretary, Government of the NWFP (representing Secretary, Law Department)

The Sub-committee, having scrutinized the reports, expressed the view that over the years the workload of courts has considerably increased, hence there is a pressing need for proportionate increase in the strength of judicial officers to cope with the problem of mounting pendency and consequential delays in disposal. It was stated that for prompt disposal of cases, it is necessary that judges are assigned only as much work as they can conveniently handle; and for this purpose, a reasonable judge-case ratio be determined and followed. The Committee therefore, desired that the respective High Courts might state the requisite number of additional judges/court staff, with proper justification. The Committee was not inclined to accede to the proposal of establishing night courts, due to logistic and social problems and instead suggested that for enhancing efficiency and ensuring prompt disposal, appropriate incentives should be offered to judicial officers, who show exemplary performance. The Committee was further of the view that proper scrutiny of pleadings would greatly diminish the prospects of filing frivolous claims/suits. It was further suggested that rather than remanding cases in routine, these be decided by higher courts.

The Committee expressed the view that all vacant posts in courts be filled without delay and that High Courts be actively involved in the recruitment process. Furthermore, to attract qualified/ experienced persons to judicial service, attractive terms and conditions of service and salary package should be offered to judicial officers/court staff.

The Committee expressed the view that adequate infrastructure facilities in the shape of courtrooms, residences and court libraries, etc. should be made

available and proper training be imparted to judicial officers and court staff. It was further observed that the process of computerization of case law by various High Courts and the Supreme Court would greatly enhance the capacity of courts and improve the performance of judges and would be also beneficial to judges of the subordinate courts, and that for this purpose computers may be made available to judges of the subordinate courts.

The Committee further expressed the view that the salary and terms and conditions of service of the personnel of process serving agency should be improved and they be provided motorcycles so as to effect efficiency in the servicing of summon and quicken the pace/speed of trial proceedings. It was further proposed that to facilitate the quick disposal of cases of under-trial prisoners, courts should be established in the vicinity of prisons, but ensuring that such courts are freely accessible to public as well as parties/lawyers. Furthermore, appropriate measures should be taken so as to check the tendency of frequent adjournments being sought/given and only in exceptional cases and for unavoidable reasons, may a case be adjourned, and that too, subject to cost. Moreover, the present provisions dealing with cost need to be reviewed to rationalize and enhance the sums payable as cost/compensatory cost.

The Committee took the view that one way of expediting the trial would be to collect a one-time process fee from the plaintiff so as to avoid the possibility of delay in process servicing. Discussing the issue of delays in submission of Challans and/or receipt of forensic report, the Committee expressed the view that there is need for complete separation of investigating agency and qualified people should be engaged to carry out investigation. It was further agreed that there is need for augmenting the forensic laboratories in the country. The idea of setting up mobile forensic laboratories also deserve serious consideration, as it will be useful in emergencies and facilitate in early submission of reports.

The Committee also discussed the issue of anomalies that have crept into the judicial services of various provinces, in particular, in the promotion policy and allowances payable to judicial officers. The judicial allowance, presently paid to judges in the provinces of the Punjab and Sindh should also be paid to the judges of the remaining provinces. As regards promotion policy, the respective High Court may consider reviewing the quota reserved for judicial officers in appointment to posts of Additional District & Sessions Judges by either suitably enhancing the quota for serving judicial officers or allowing them to partake in the examination/test for such posts.

The Committee, having examined the issue of writing lengthy judgments, opined that it entails consuming valuable time of the court. One way of saving time would be not to repeat/reproduce pleadings in the judgment, as it is already part of record, and instead the presiding officer should commence writing from the stage when issues are framed. For this purpose, the Federal Judicial Academy may devise a model and arrange training courses for judicial officers.

The Committee further emphasised upon the need for careful scrutiny of the pleadings at the initial stage of proceedings so as to dispose off false/frivolous Claims/suits and also make an earnest/serious effort of persuading the parties to agree to an out-of-court, amicable settlement of their claims/disputes. It was also stated that with a view to expedite trial proceedings, it is necessary that cases are assigned to judges who have expertise in the matter, and for this purpose, the High Courts may consider bifurcating the civil and criminal work/functions of judicial officers so that they may gain experience of the relevant laws/procedure and be effective in achieving the objectives of expeditious trial. Regular inspection of the courts by the judges of High Courts and proper supervision by senior judicial officers over the work of their subordinates, would also facilitate the timely removal of bottlenecks in the system, if any, and ensure prompt disposal of cases. The Registrar, High Court of Sindh placed on record a copy of judgment of the High Court of Sindh (Cr. Bail No.1292 of 2000), prescribing guidelines for trial of cases where one/several of the accused persons are absconding. Para 19 of the said judgment is produced:

“In the interest of justice, and to avoid unnecessary delay in trial, Criminal Courts in the Province may be advised to start trial against the accused produced before the court, by:

- (i) ignoring mention of alleged absconders in the police report where there parentage and addresses are not known; and
- (ii) ordering separation of trial against the alleged absconders where their father’s name and address is mentioned in the police report.

In the end, the Sub-committee resolved that subject to its observations, the reports of provincial governments may be scrutinized by the Secretary and a uniform and comprehensive report be prepared for presentation to the Committee for Improvement of the Administration of Justice.

Dr Faqir Hussain
Secretary

Annexure-B

No.F.29(5)/2002-AJP
GOVERNMENT OF PAKISTAN
MINISTRY OF LAW, JUSTICE AND HUMAN RIGHTS

Islamabad 28th May 2003.

Zakir Muhammad Jauhar
Senior Joint Secretary
Tele:9208830

Subject:**Terms & Conditions of Subordinate Judiciary**

My dear Dr. Faqir Hussain,

One of the policy actions agreed by the Government of Pakistan for release of second tranche funds of Access to Justice Program (AJP), by the Asian Development Bank (ADB), pertains to improvement in the terms and conditions of service of the subordinate judiciary of the country.

In this regard, a detailed study was completed under the joint auspices of the Asian Development Bank & the Ministry of Law in 1999. This study made a total of thirty-nine recommendations to improve the working of subordinate courts and their public image. Implementation of all these recommendations is desirable but it is a long-term task. In addition, their scope extends beyond the immediate requirements of the policy action. Subsequently, some work in the same area was carried out under TA 3433 PK.

As desired by the Honourable Chief Justice of Pakistan/Chairman NJPMC(UC Letter No.F15(12)/2003/NJPMC/ AJDR dated 4 April, 2003), I am pleased to submit a draft proposal to comply with the requirements of the policy action on the aforementioned subject. This proposal builds upon recommendations of the earlier works and their underlying principles including strengthening of judicial independence, merit-based and transparent recruitment procedure, dignified working conditions, adequate compensation, professional training and accountability.

The National Judicial Policy Making Committee (NJPMC) has been given the mandate to formulate judicial policy for the entire country. Since improvement in terms and conditions of service of judiciary is a matter of national concern, this draft proposal has been prepared for NJPMC's consideration and approval.

Subsequent implementation of this policy action will entail appropriate action by all the High Courts, which are the competent authority to improve the

terms and conditions of service of the courts working under their control, in consultation with their respective provincial Governments.

I shall be grateful if this policy paper is placed before the NJPMC for approval at the earliest possible.

With regards,

Yours sincerely,

(Zakir Muhammad Jauhar)
Senior Joint Secretary

Dr. Faqir Hussain
Secretary,
Law & Justice Commission,
Islamabad.

No. F.1/1/02/NJPMC
LAW AND JUSTICE COMMISSION OF PAKISTAN
SUPREME COURT BUILDING
CONSTITUTION AVENUE, ISLAMABAD

14 June 2003

Dr. Faqir Hussain
Secretary

Subject: **Terms & Conditions of Subordinate Judiciary**

Dear Sir,

Kindly refer to the Ministry of Law, Justice & Human Rights letter No.F.29(5)/2002-AJP dated 28 May 2003 on the above subject. The PMU have forwarded a Policy Paper to the undersigned for consideration by the NJPMC (copy enclosed). The Paper covers two issues: one, terms and conditions of service of judicial officers, entailing amendments in the appointment/promotion rules and two, enhanced emoluments for judicial officers/court staff with two suggested options i.e, new special pay scales or in alternative, new judicial allowances and other perquisite.

The Policy Paper has been discussed with the Hon. Chief Justice of Pakistan/Chairman, National Judicial (Policy Making) Committee (NJPMC) who decided that it be placed on Agenda of the NJPMC in its next meeting for consideration (copy enclosed).

Regards,

Yours sincerely,

(Dr Faqir Hussain)

All Members, NJPMC

Copy to:

Mr. Zakir Muhammad Jauhar, Sr, Joint Secretary, Ministry of Law, Justice & Human Rights, Islamabad for information and request to ask the Consultant/Writer of the Policy Paper to see me for clarifying, certain concepts and further improving the Paper for consideration of NJPMC.

**Terms & Condition of Service of Subordinate Judiciary:
Proposals for Improvement**

I. Background

1. Judiciary has a pivotal position amongst the state institutions. It is entrusted with the responsibility to uphold the rule of law and safeguard

people's right and freedoms. The discharge of this onerous responsibility requires strong commitment to the Ideals of justice from the Judicial functionaries; It also presupposes corresponding support from the state in the shape of an enabling legal and financial framework to strengthen the judicial organization. Unfortunately, this support has not been forthcoming. The needs of judiciary have been grossly neglected since independence.

2. The subordinate judiciary, which is the backbone of the judicial system of the country, continues to face a plethora of problems. These include unattractive terms and conditions of service, poor working conditions, paucity of financial resources, dearth of judicial officers and professional support, absence of training and many others. These issues demoralize those who are in the profession, and also those who desire to join it. The collective impact of these failures has frequently crystallized in miscarriage of justice and denial of the rule of law. The sufferers have been the ordinary citizens, who have been denied access to justice, because the state has not provided due support to the judicial system.
3. In the context of ongoing process of institutional reforms in the country, the role of district judiciary has become even more important and demanding. The subordinate courts have been entrusted with many additional powers including those conferred under various new laws, made during the last two years, and those transferred from the executive magistracy. The District & Sessions Judge (DSJ) has a pivotal role in supervising the functioning of the district criminal justice system under the new Local Government Ordinance.
4. It is therefore, imperative to reform terms and conditions of service of the subordinate judiciary to do away with the prevalent feeling of despondency amongst the judicial professionals and attract the best talent capable of meeting the new challenges of judicial governance and administration of justice in Pakistan.
5. One of the Policy actions agreed by the Government of Pakistan for release of second tranche funds of Access to Justice Program (AJP), by the Asian Development Bank (ADB), pertains to improvement in the terms and conditions of service of the subordinate judiciary of the country¹. Implementation of this policy action will entail appropriate action by all the High Courts, who are the competent authority to reform the terms and conditions of service of the courts working under their control, in consultation with their respective provincial Governments.
6. A detailed study to reform and strengthen the subordinate judiciary of Pakistan was completed under the joint auspices of the Asian Development Bank & the Ministry of Law in 1999. This study made a total

¹ The deadline agreed for implementation of this action is 30 June 2003.

of thirty-nine recommendations to improve the working of subordinate courts and their public image. Implementation of all these recommendations is desirable but it is a long-term task. In addition, their scope extends beyond the immediate requirements of the policy action. This proposal builds upon these earlier recommendation and their underlying principles including strengthening of judicial independence, merit-based and transparent recruitment procedures, dignified working conditions, adequate compensation, professional training and accountability. It has been prepared with the specific objective to comply with the requirements of the relevant policy action.

7. The National Judicial Policy Making committee (NJPMC) has been given the mandate to formulate judicial policy for the entire country. Since improvement in terms and conditions of service of judiciary is a matter of national concern and the issue can be best handled by the NJPMC by ensuring uniformity of policies across the four provinces, this draft proposal has been prepared for NJPMC's consideration and approval.

II. Outline

8. In the light of requirements laid down by the policy action, this proposal is divided into two parts. The first part proposes amendments to the current judicial service rules to bring about uniformity and improvement in appointment, promotion and transfer procedures of the subordinate judiciary². The second part deals with revision of judicial emoluments. It makes practical recommendations for provision of immediate relief, and proposes long term arrangements to institutionalize pay revisions in accordance with changing value of money and socio-economic circumstances.

III. Service Rules

9. The Provincial Civil Servants Act and the Judicial Service Rules (the Rules) framed there under provide the legal framework for the governance of the subordinate judiciary. These laws/rules are largely identical in all the four provinces. There is however, scope for improvement in some cases as well as the need for affirmative action to promote women's access to the judicial profession. The following proposals identify areas within Judicial Service Rules, where in scope for improvement exists. The

²These recommendations are largely based on a study carried out under ADB funded A3433-Strengthening of Institutional capacity for Legal & Judicial Reforms in Pakistan. They have been modified in places in consultation with Justice (retd.) Shafiur Rehman. The original study is available in the "Collected Works" of the TA.

recommendations for their amendment have been listed in the *italicized* font.

Proposal 1

Rule 2 of the Judicial Service Rules of Sindh, N.W.F.P. and Punjab deals with the definition of the word “Service”. It defines service as “Judicial Service”.

In Balochistan Rules, Rule 2³ define the “term” only in respect of service of “Civil Judges and Judicial Magistrate”. Whereas, Rule 3⁴ describe “constitution of the services” and deals with the posts of District & Session Judges & Additional District Judges.

In order to bring about uniformity, it is proposed that in all the provinces the term “Judicial Service” should mean and include Judicial Magistrates, Civil Judges, Senior Civil Judges, Additional District & Sessions Judges and District & Session Judges.

Proposal 2

Rule 2(e) in Sindh Rules defines:

“Provincial Selection Board means the Administrative Committee of the High Court or a Committee comprising of not less than three High Court Judges, constituted specially for the purpose of these rules by the full Court”.

This Board deals with the initial appointments of the Judicial Officers as well as the departmental promotions.

In Punjab Rules, similar Board known as “Provincial Judicial Selection Board” is to be appointed by the Administrative Committee.

Rule 2(f) of the Punjab Rules provides constitution of “Departmental Promotion Committee” of two Judges nominated by the Administrative Committee.

In NWFP Rules, Provincial Judicial Selection Board consists of, the Administration Committee or such number of judges as nominated by it.

³Balochistan Civil Judges/Judicial Magistrates Service Rules, 2002

⁴ Balochistan Additional District & Sessions Judges and District and Sessions Judges Service rules, 2002

It is proposed that a Provincial Selection Board of the High Court in all the Provinces should be appointed by the full court or at least 12 senior most judges to minimize political appointments, personal prejudices and ensure broader support.

The proposed Rule is as follows:

“Provincial Selection Board means the Administrative Committee of the High Court or a Committee of not less than three senior High Court Judges specially constituted by the Full Court or at least 12 senior most judges for the purposes of these Rules.

Proposal 3

Rule 2(d) in Punjab rules defines initial appointment”. Rule 5 provides that initial appointments to the posts of Civil Judge/Judicial Magistrate will be made through Public Service Commission based on the competitive examination conducted by it and/or with association of the Chief Justice. The appointing authority is the “High Court”.

In Sindh Rules, Rule 2(d) defines “initial appointment as appointments made otherwise than by promotion or transfer” and Rule 4 provides that such appointments in service are to be made by the Government (Provincial) on the recommendation of the Provincial Selection Board.

In NWFP rules, Rule 5(e) provides that initial appointments to the post of Civil Judge cum Judicial Magistrate will be made through Public service Commission based on the competitive examination, provided that the High court may make appointment by initial recruitment on contract basis on the recommendation of the Provincial Judicial Selection Board.

In order to ensure independence of judiciary, it is proposed that all initial appointments i.e. Civil Judge/Judicial Magistrate, Senior civil Judge, Additional District & Sessions Judge to judicial service must be made by the High Court through the provincial Public Service Commission. The subjects for the written examinations should be agreed by the High Court with the Public service Commission, and for viva voce interviews, one of the judges nominated by the High Court, should be a member of the interviewing panel of the public service commissions.

Unlike those inducted into the executive through federal and provincial public service examinations, the judicial officers do not undergo a rigorous training program spread over almost two years to prepare them for their professional work. Judicial administration is not merely about dispute resolution. It involves management of the courts in a professional manner regulation of criminal justice system and various other functions. It is

therefore, recommended that rigorous training program(s) should be instituted for training fresh entrants to the judiciary at the national (FJA) or Provincial levels along the same lines as done for the new entrants to the executive services,

The proposed Rules to be substituted/added are as under:

“All initial appointments to Judicial Services shall be made by the High Court as provided in the Rules”.

“Where required to be made by initial recruitment, appointments to the post of Civil Judges, Judicial Magistrates and Additional District and Sessions Judges shall be made on the basis of the competitive tests conducted by the Provincial/Public Service Commission in the subjects as mutually decided by the High Court and the Commission. In this regard the High Court shall annually decide the number of posts to be filled in and intimate the requisite requirement to the Public Service Commission in advance.

The written test will be conducted by the Commission in accordance with the rules. However for viva voce test a nominee judge of the Provincial Selection Board shall also be the member of the Commission.

The High Court will impart professional training to the selection candidates at the formative stage at least for a period of one year.

Proposal 4

(a) Age: The age limit in Provinces for initial appointments of lower grade Judicial Officers i.e. Judicial Magistrate and Civil Judge is 21 years (Punjab, Sindh & Balochistan)/23 years (NWFP), and maximum age limit is 30 years in three Provinces and 32 years in NWFP.

Similarly in case of initial appointments of Additional and District and Sessions Judges the lower age limit is not less than 30 years and upper limit is not more than forty years (Sindh), and forty five years (Balochistan). In case of Punjab & NWFP, these limits are 35 years and 45 years.

It is proposed that all provinces should adopt uniform age parameters and to give more access to women in the judicial services in all grades, the age criteria should be relaxed for the female candidates to the extent of 5 years in the upper limit.

The proposed Rule to be substituted/added be read as:

“(1) No person shall be appointed to the Service by initial appointment if,

- (i) In case of appointment to a post in the lower grade of Service viz. Judicial Magistrate or Civil Judges he/she is less than twenty-one years and more than thirty years of age:*

Provided in cases of female candidates the upper age limit may be increased from 30 to 35 on the basis of merit-cum-fitness.

- (ii) In case of appointment to a post in the upper grade of Service, he is less than thirty years and more than forty years of age.*

Provided in case of female candidates the upper age limit may be increased from 40 years to 45 years on the basis of merit-cum-fitness.”

(b) Qualification: Under the existing Rules in all provinces, the required minimum qualification for initial appointment to the post of Judicial Magistrate & Civil Judges is a degree in law from a recognized university. However, in Punjab the additional requirement is to have practiced as a lawyer for at least two years.

In order to improve quality of intake, it is proposed that all the Provinces should adopt the additional requirement of legal practice of at least two years for recruitment to the post of Civil Judge/Judicial Magistrate.

In Sindh, the minimum period of practice prescribed for initial appointment of Additional & District Judges is six years; while it is eight years in NWFP and ten years in Punjab.

Under Rule 8 of the Sindh Judicial Service Rules any person practicing the profession of law is eligible to be appointed to a post in the lower grade of the service (Civil Judge/ Judicial Magistrate). However, once so appointed he/she becomes eligible to be appointed as an additional District Judge (BS-19) only after minimum of 12 years of service in BS-17 and above in accordance with rules applicable to civil servants. However, a lawyer who does not join the judicial service, or is not selected, becomes eligible for direct appointment to the post of Additional District Judge upon completion of six years of practice in the High Court or even the subordinate courts. The aforesaid Rule 8(d) therefore causes unfair discrimination against competent and honest Judicial Officers in their upward mobility to high positions in the service. In this context, the following factors also merit consideration:

- a) *On average, a whole time Judicial Officer acquires more professional experience than an Advocate in the initial years of his/her practice. Moreover, the selection authority has greater access to his personal and professional reputation.*
- b) When the Constitution treats then (10) years of holding a judicial office at par with ten(10) years practice as an Advocate of the High Court, for eligibility to be appointed a High Court Judge under clauses (a) & (c) of Article 193 (2), there is no rational basis for treating judicial service of less than twelve years as a disqualification for appointment as ADSJ.
- c) To attract better talent at the initial stages of judicial service it is necessary to provide incentives for upward mobility to those who distinguish themselves in the earlier stages of their career or prove their worth in open competition.

It is therefore proposed that the minimum period of practice should be fixed at ten years in all provinces for appointment as Additional District & sessions Judge.

Proposal 5

Although judicial officers are appointed under the relevant provincial judicial service rules by their respective High Courts, in cases of departmental promotions they are treated as civil servants and are Governed under the relevant rules framed under the Provincial Civil Servants Act. This dualism is against the idea of judicial independence and at times, hampers upward mobility of the judicial officers causing frustration and despondency.

It is proposed that all judicial officers at the subordinate level should be governed by their respective Judicial Service Rules in cases of initial appointment as well as of promotion to the higher posts, through Provincial Selection Boards of the respective High Court.

IV. Judicial Emoluments

10. Most governments pay their judges a generous salary. In effect, governments use financial incentives in order to place judges, as the final arbiters of law and justice, “beyond temptation.” Unfortunately, this is not so in the case of Pakistan’s judiciary and the situation is particularly bad in the case of subordinate judiciary. Financially speaking, district-level judges are extremely insecure. Indeed, they often complain that their salaries place them well within the bounds of “fear” and “favor.”

11. All those involved in the administration of justice including the policy makers, lawyers and litigants are mindful of the fact that improvements in the district-level courts will depend on strengthening the position of district-level judges, in fact, leading members of the bar regularly explain that district-level judges give in to local pressure, not because they wish to undermine the cause of justice, but rather, “because their salaries are so low.” Yet little has been done to achieve this. Even where efforts have been made, they have not been successful.
12. A number of arguments are put forward to obstruct enhancement of judicial salaries. These generally focus on application of uniform pay scales to judiciary and executive as per rules, paucity of resources and so on⁵. Given the complexity of the issue as well as the urgency of the need to provide relief to the subordinate judiciary to achieve the objectives of Access to Justice Program, two sets of options are being proposed for the consideration of the NJPMC.

Option 1

The following actions are proposed:

(a) NJPMC should recommend severance of judicial pay scales from executive pay scales and adoption of new pay scales for the judiciary. A model proposal to this effect was formulated for the NWFP judiciary (BPS 17 & above) UNDER TA 3433: strengthening of Institutional Capacity for Legal & Judicial Reform in Pakistan. It proposes alternative (enhanced) pay slabs for the judicial officers, while keeping intact the overall structure of pay scales. The detailed eight-step proposal for enhancement of salaries of judicial officers is contained in Annexure 1⁶ and a comparison of their current package on the middle of pay scale 2001 and on the middle of the proposed new scales is given below:

PROPOSED	EXISTING	
<i>Judicial Officers Grade 1 (BS 17)</i>	<i>Rs. 15048</i>	<i>Rs. 27088</i>
<i>Judicial Officers Grade 2 (BS 18)</i>	<i>Rs. 18816</i>	<i>Rs. 33866</i>
<i>Judicial Officers Grade 3 (BS 19)</i>	<i>Rs. 24803</i>	<i>Rs. 44643</i>
<i>Judicial Officers Grade 4 (BS 20)</i>	<i>Rs. 31283</i>	<i>Rs. 48797</i>

⁵ The issue of employments of the subordinate court judges was discussed in detail by Indian Supreme Court in two of its judgments, reported in AIR 1992 Supreme Court 165 and AIR 1993 Supreme Court 2493 respectively

Based on the assumption that all judicial officers of NWFP are drawing salary at the middle of current pay scale and will adjusted accordingly.

6. The proposal is also available in the "Collected Works" of TA 3433.

At the middle of new pay scales, the total annual salary bill of judicial officers will increase by 65% i.e. from Rs. 88823640/- to Rs. 136060918/- The fresh entrants to Grade 1 & Grade 3 of service will receive Rs. 15045/- and Rs. 24803/- as their monthly salary at the minimum of scale as against the current package of Rs. 10398/- & Rs. 18653/- respectively.

The pay scales of judicial staff (BPS 1 to BPS 16) should also be worked out in accordance with guidelines provided in Annexure I along the same lines as of judicial officers. The NJPMC may however, recommend to the Governments(s) to enforce new pay scales for judicial officers and staff in two different phases to reduce the immediate financial impact. In case the NJPMC decides not to adopt the proposed new pay scales as they are, it may set up a National Judicial Pay Rationalization Committee to review terms and conditions of service of the subordinate judiciary within three months and send its recommendations to the government for implementation. Thereafter, a Standing Committee should be established to review judicial emoluments after every three years⁷.

(b) The NJPMC should recommend provision of appropriate transport and housing facilities for all judicial officers in the country within two years.

Option 2

The NJPMC may like to recommend implementation of option 2 to the Government in case Option 1 does not appear suitable. Option 2 recommendations don't entail any significant departure from the existing system and are being proposed as measures to provide immediate relief to the judiciary.

(a) Judicial allowance, which is being given to judicial officers, should be increased and fixed at a flat rate of Rs. 5000 per' month for all judicial officers in the provinces. This will increase the amount already being paid to judicial officers by almost two and a half time.

(b) A new library allowance to buy law books required by the judicial officers to discharge their official responsibilities, while working at home, should be paid at the flat rate of Rs. 1000 per month.

⁷ The Indian Supreme Court issued direction to the Ministry of Law, Justice & Company Affairs to set up a judicial pay Commission in the two judgment referred to in the proceeding footnote. The Commission submitted its report in November 1999.

(c) All judicial officers should be provided housing facilities in accordance with their entitlement. Where such facilities are not available, houses should be requisitioned by the High Courts and allotted to judicial officers in lieu of the house rent built in to their official salaries.

**Minutes of the Meeting of Sub-Committee of
NJPMC held on 7-8-2003**

The meeting of the Sub-Committee was held in Committee Room of the Secretariat under the Chairmanship of Secretary, Law & Justice Commission, on 7-8-2003 at 10 A.M. to consider 2 point agenda of (1) Change in Nomenclatures of Subordinate Judicial Officers, and (2) Improvement in the term and condition of Service of Judicial Officers. The meeting was attended by the following:

- | | | |
|----|---|----------|
| 1. | Dr. Faqir Hussain, Secretary,
Law & Justice Commission | Chairman |
| 2. | Mr. Abdual Ghafoor Memon,
Registrar, High Court of Sindh | Member |
| 3. | Mr. Muhammad Saleem Khan Miankhel ,
Registrar, Peshawar High Court | Member |
| 4. | Mr. Shukat Ali Zaidi , District & Session
Judge (Legislation,
Planning & Development),
Lahore High Court | Member |
| 5. | Malik Muhammad Iqbal ,
Joint Secretary, Law & Justice Commission | |

Agenda item-1

The registrar High Court Balochistan has forwarded views of the High Court in writing as he could not attend the meeting due to some other important engagement.

The Commission consider the proposal of change of existing classification of Civil Judge 1st Class, Civil Judge 2nd Class and Civil judge 3rd Class with some

Other suitable classification / designation as the existing nomenclature / classification of Civil 2nd Class and 3rd Class seems derogatory in public perception as well as amongst the civil judges when they are equal in status with the Civil Judge 1st Class in their grade/pay scale and the classification merely refer to their pecuniary jurisdiction under Section 9 of the Civil Court Ordinance 1962.

The Registrar, High Court of Sindh stated that a proposal is before the High Court of Sindh to consider 2 classes of Civil Judges-one the Senior Civil Judge and the other, Civil Judge and there will arise no anomaly with regard to their pecuniary jurisdiction as senior Civil Judge will exercise unlimited pecuniary jurisdiction and the Civil Judge exercises a limited jurisdiction. The representative of other High Courts favoured 3 classes of civil judges in respect of pecuniary limits, which may be raised with passage time on gaining experience to hear the cases of higher value. The registrar, Peshawar High Court, in case of change in the existing nomenclature of civil judges , suggested the following 3 classes of civil judges.-

1. Civil Judge
2. Additional Civil Judge
3. Assistant Civil Judge

The representative of Lahore High Court suggested change in nomenclature of existing classes of civil judges by their replacement as (1) Civil judge, (2) Deputy Civil Judge and (3) Assistant Civil Judge. However, on an observation that this proposal creates a hierarchy of the civil judges and does not seem appropriate classification which would also look derogatory in public perception, the Representative of Lahore High Court agreed that an element of hierarchy was involved and was of the view that in case consideration of an alternative was necessary, the proposed nomenclature of 3 classes of civil judges may be as follow:-

1. Civil Judge Unlimited Pecuniary Jurisdiction'
2. Civil Judge Higher Pecuniary Jurisdiction
3. Civil Judge Basic Pecuniary Jurisdiction

The views of High Court of Balochistan were read as follows:

"The proposal regarding changing in nomenclature of Civil Judge First Class, Second Class and Third Class have been thoroughly examined and it is not appropriate to redesignate the nomenclature as Judge, Junior Judge or Sub-Judge because it denoted a Judge of the High Court, therefore it is proposed that the nomenclature of the Civil Judge may not be changed because the said Judicial officer will be dealing with the civil litigation as such , it is proposed that the said posts may be designated as Civil Judge having pecuniary jurisdiction of First Class, naming as Court No.1, Court No.2 and so on, Additional Civil Judge having pecuniary

jurisdiction of second class and Civil judge (Small causes) having pecuniary jurisdiction of third class.”

As the proposal could not gain consensus therefore, it was agreed that view of all the provincial High Court may placed before the NJPMC for consideration. The Chair requested the Registrar to further evaluate and refine the proposal and forward their views to the Secretariat, of Law & Justice Commission of Pakistan.

Agenda item-2

The Sub-Committee considers the proposal of PMU, Ministry of Law and Justice with regard to improvement in term and condition of service of judicial officers and change in their respective service rules.

Proposal No.1 The definition of ‘judicial service’ under the NWFP, Punjab and Sindh Judicial Service Rules is identical but in Balochistan Judicial Service Rules there are two separate judicial services –one for the Civil Judges and Magistrates and the other for the District and Additional District and Session Judges. However, the Balochistan High Court, in its comments in writing have agreed to a the combined judicial services for Civil Judges and District and Session Judges including Qazi and Majlis-e-Shoora under the Dastoor-ul-Amal Dewani Kalat 1952, and Balochistan Civil Dispute (Shariat Application) Regulation 1976. Various High Courts have already drafted their Judicial service rules. There was consensus that the proposal be adopted. The Registrar Peshawar High Court proposed the definition of judicial service of NWFP rules may include ‘Illaga Qazi, A’lal Illaqa Qazi, Izafi Zilla Qazi and Zila Qazi’ performing judicial functions under Shari Nizam-e-Adl Ord. 1999.

Proposal No.2 The representative of the Provincial High Courts stated that there are constituted Selection Boards under the rules. The Representative of Lahore High Court stated that no change was required in the Punjab Service Rules. In Punjab the Administrative Committee of High Court consisting of 7 judges, from time to time, constitutes Selection Board and number of its members is fixed according to the need/requirement at that time. In Sindh, a 3- Members Selection Board has been constituted by Full Court. In NWFP, a 4- Members Administrative Committee of High Court constitutes a 3- Members Selection Board.

Both the representative of Punjab and NWFP High Courts and the High Court of Balochistan in its views in writing did

not support the proposal constituting the Selection Board by the Full Court for by 12 senior judges of the High Court. The Balochistan High Court proposed that selection board may consists of not less than 2 judges nominated by the Chief Justice or Administrative Committee for the purpose of Balochistan Judicial Service Rules. The representative of Peshawar and Lahore High Courts supported the constitution of Selection Board by their respective Administra-tive Committee while the representative of High Court of Sindh supported its constitution by the Full Court, as is the practice in that Court. The proposal was therefore, not agreed upon.

Proposal No.3.

As to the proposal of recruitment of Civil Judges and Additional District and Sessions Judges thoroughly test/interview, conducted through the Provincial Public Service Commission, the representative of High Court of Sindh stated that in 1996 - 97 the Sindh Public Service Commission expressed its inability to conduct the competitive examination for the Civil Judges, therefore, the High Court conducts the tests by itself. The representative of the Lahore High Court stated that the High Court has moved the Government to empower it to recruit Civil Judges- cum-Judicial Magistrates without recourse to the Public Service Commission. In Punjab, such examination/test is still being conducted by Public Service Commission for recruitment to the post of Civil Judges cum Judicial Magistrate, however, for appointment of Additional & District Judge, the High Court conducts the test by itself. The Peshawar High Court makes recruitment, through Public Service Commission. However, it can make ad-hoc/contract appointment of the Civil Judges cum Judicial Magistrate. The Peshawar High Court also appoints the Additional district and Session Judges. The High Court of Balochistan also conducts tests for appointment of Civil Judges and Additional Civil Judges by itself.

The representative of High Court expressed the view that because of separation of judiciary from executive, and conducting tests for appointment to the post of Additional District Judges since long, the High Courts, instead of the Public Service Commission, may conduct test/interviews for the appointment of Civil judges cum Judicial magistrate and Additional District and Session Judges.

So far as the proposal of training of Civil Judges/Additional Session Judges on their recruitment is concerned, the Registrar High Court of Sindh intimated that new appointees in the lower judiciary undergo a 3 months training in the Provincial Judicial Academy Sindh, and he supported the proposal that training period may be enhanced to one year. The appointees of other 3 provinces undergo a 3 weeks training in the Federal Judicial Academy. The Representative of Lahore High Court suggested a 3 weeks sitting with senior judges in courts and it being an administrative arrangement, may not be included in the rules. He further expressed the view that in view of condition of experience/ legal practice, there is require no training however, he informed that recently the Lahore High Court has also abolished the condition of 2 year legal practice for

recruitment to the post of civil judges. He further observed that in view of proposed additional benefits for the civil judges, it is thought appropriate that experienced persons may be inducted in the judiciary and support the proposal of training and revival of condition of 3 years experience in practice. The Registrar, Peshawar High Court expressed that duration of training should not be mentioned in the rules and it should be left to the discretion of the High Court. The Balochistan High Court in its views also proposed one training at initial stage.

Proposal No.4.

As regard the proposal of fixation of female quota and relaxation in their age limit for induction in lower judiciary, none of the four High Courts supported the proposal. "The Representative of the Lahore High Court stated the proposal regarding female judicial officers could not be supported because judicial posts involve transfer of the incumbents within the province. The female judicial officers face difficulties and inconvenience on being transferred. In the Punjab the problem being faced is that the majority of female judicial officers are clustered at Lahore and whenever any one of them on completion of her tenure is transferred out of Lahore there is representation against the transfer on the basis of family hardship. The Bar is not comfortable with the clustering of a large number of female judicial officers at Lahore." As to proposal of fixing the minimum and maximum age and experience as practicing lawyer for appointment as additional District Judge, the requirements in various High Courts are as follows:

Province	Age	Practice
Sindh	30 to 40 years	6 years
NWFP	35-45 years	8 years
Punjab	35-40	10 years
Balochistan	30-40	10 years

The representative expressed the view that the condition of minimum service of 12 years for promotion of Senior Civil Judge as Additional District Judge has been abolished. Therefore, the requirement for practice for appointment as additional District Judge from the Bar can be suitably reviewed. "The representative of Lahore High Court stated that presently in the Punjab 40% posts of Additional District and Sessions Judges are reserved for appointment through initial recruitment from lawyers with minimum 10 years practice at the Bar. Remaining 60% posts are to be filled by

promotion of Senior Civil Judges. Practically by the time the promotion of Senior Civil Judge as Additional District and Session Judge becomes due he is more than 40 years of age, which is the maximum age for the induction of lawyer candidates. Resultantly the lawyer candidates block the promotion Additional District and Session Judge from the service as District and Sessions Judges. To rectify the situation, age limit for lawyer candidates be fixed as 40 years minimum and 50 years maximum. In this way, average age limit of a lawyer candidates and a Senior Judge from the service at the time of induction as Additional District and Session Judge would almost be equal . This will also help in ensuring the induction of competent lawyers as Additional District and Session Judges.”

Proposal No.5. The proposal No.5 regarding increase in emoluments of the Civil Judge and District Judges the Representative of Lahore High Court agreed to option No.1 and in addition 45% accommodation allowance at all stations in the province. He further stated that the proposed pay includes existing allowances which reduced the benefit therefore, a judicial allowance of Rs.1,000/- to Grade-I, Rs.1500 to Grade-II , Rs. 2000 to Grade-III and Rs. 2500/- to Grade-IV judicial officer may be also allowed.

He further suggested that transport facilities including Driver, POL and maintenance may be provided to all judicial officers instead of pool transport facility and the following vehicles may be provided as per entitlement:

Grade-I	800 CC Car
Grade-II	1000 CC Car
Grade-III & IV	1300 CC Car

The representative of Peshawar High Court supported option No.1. The views of Registrar High Court of Sindh were also follows:-

- “(a) Option No.1 plus all the existing benefits and allowances, and house rent recently allowed by the Government and
- (b) present pay scale, plus Rs. 10,000/- for grade-17 Judicial Officers, Rs. 15000/-, for grade-18 Rs. 20,000/- for grade-19 and Rs. 25,000/- for grade-20 Judicial Officers as judicial allowance, free accommodation or house rent recently fixed by Federal Government , free electricity and 50% concession in Railway and P.I.A along with all the existing benefits and allowances.”

The views of the High Court of Balochistan read as follows:-

Option No.1

- (a) A National Judicial Pay Rationalization Committee be established to review terms and conditions of services of subordinate judiciary within three months and forward its recommendation to the Government for implementation on the basis of the enhanced pay and other perks, as is being given to other Corporate Sector Institutions and Autonomous bodies such as Banks, PIA,CAA, Sui Southern, PTCL, OGDC etc. However, in principal, the revised pay scales worked out by the Peshawar High Court, seems to be adequate, while certain facilities have not been incorporated in the said scheme, such as Medical, Housing, Transport/POL, Telephone and Utility charges emoluments after every three years, keeping in view the rise in price of commodities and rate of inflation.
- (b) The National Judicial (Policy Making) Committee may recommend provisions of appropriate transport and housing facilities for all Judicial Offices in the country within two years.

The Chairman enquired the Registrar to also consider and suggest ways and means as to how may the enhanced emoluments/salary be linked with efficiency and performance.

The meeting was ended with vote of thanks to the Chairman.

References:

- 1 . Lord Kilbrandon, other People's Law (1966) p-3 & 4
- 2 . Providing Speedy And Inexpensive Justice by Mr. Justice ® Mian Mehboob Ahmed, Chief Justice, Lahore High Court.
- 3 . Southern Pac-Transport. co. v Stoot, 530 S.W. 2nd 930, 931 (Jex 1975)
- 4 . AIR 1976 SC 1734
- 5 . PLD 1999 SC 504
- 6 . Ibid

Material consulted

1. Access to Justice in Pakistan by Justice ® Fazal Karim.
2. Final Report on Law Delays by Malik Hakim Khan former Secretary Pakistan Law Commission.
3. Report of the Conference of District and Sessions Judges in the Punjab.

4. Delay reduction with Effective Court Management by Director General Federal Judicial Academy.
 5. Improvement in the working subordinate judiciary by Dost Muhammad Malik District and Sessions Judge Dera Ghazi Khan.
 6. Proposals for Law Reforms by the District Judge Haripur.
 7. Report No. 23 of the Law and Justice Commission on Criminal Justice System.
 8. Report of the Committee for Improvement of the Administration of Justice 2000.
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