

National Judicial Policy

2009

₹ year for focus on Justice at the Grassroot Level

National Judicial (Policy Making) Committee

Published by:
Secretariat, Law & Justice Commission of Pakistan,
Supreme Court Building, Islamabad
www.ljcp.gov.pk



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Justice at the Grassroot Level

The Chief Justice of Pakistan/Chairman, National Judicial (Policy Making) Committee (NJPMC) in his introductory speeches and remarks during the 4-day meeting (18–19 April & 16–17 May 2009) of the NJPMC, made important observations, the substance of which follows:

“The Meeting of the NJPMC has been convened at a critical moment of our national history. There has occurred a gradual deterioration in the law and order situation and parts of the country are experiencing militancy and violence, causing the displacement of hundreds of thousands of innocent people - men, women, children and elderly. These are difficult times. We face existential threats. But I do not think that the difficulties are insurmountable. We are a tenacious nation, have demonstrated, more than once, our strength and ability to face challenges. The lawyers' movement for restoration of independent-minded judges and supremacy of law/Constitution is a case in point. The movement for a grand cause was thronged by enthusiastic groups including civil society organisations, professional groups, political parties and students, etc. In the evening of 15 March 2009, the movement transformed itself into a mini-revolution. It demonstrated the agility and determination of the masses to stand by the Constitution and dispensation of power under this supreme law. It emboldened me to say today, that together we could face challenges and convert them into opportunities. I have full faith in the ability of the people to rise to the occasion and chalk out a future course of action, based on democratic values and constitutional principles.

The restoration of 3 November (2007) judiciary has ushered in a new era: an era of hope that political dispensation in the country and

governance shall be in accordance with the constitutional principles. The people of Pakistan have reposed great confidence in the ability of the judiciary to redress their grievances and grant them relief. They have very high expectations of the courts to settle their disputes, restore their rights/entitlements and maintain peace in society by sending the guilty behind bars. I thank the people for believing on us! We must strive to meet their expectations. This is time to repay our debt to the nation. We could do so by addressing the perennial twin-problems of “backlog” and “delays” in the system of administration of justice. To achieve the objective, we need to formulate new judicial policy. I had asked the Secretariat of the NJPMC to prepare a framework of action for clearing the backlog and expeditious disposal of cases. The draft is before you. Let us examine it and evolve a strategy for the purpose. I want the active participation of all stakeholders of the justice sector, essentially the members of the bench and the bar and also related agencies viz police/prison department and prosecution branch. The Policy that we ultimately approve would be one that has broad ownership. That is why extensive consultations have been carried out to get the viewpoint of judges, lawyers, litigants and others.

The Policy seeks to achieve its objectives, by efficient utilisation of existing resources. We have to operate by remaining within the given legal/procedural framework. The laws are indeed time-tested. Given earnest effort by the bench and the bar, I am confident of achieving positive results. However, keeping in view the gigantic effort new resources would be needed. We would be very economical in the utilization of the needed resources. I am confident that the Government will provide the requisite funds, as our effort is to strengthen the administration and improve governance. It is necessary for peace and security, thereby spurring trade/commercial activities and foreign/local investment in the economy. This is how, the industrialised countries progressed. This is

how, we can move forward. We could achieve the results by establishing a society based on the supremacy of Constitution and rule of law. Our aim is to provide Justice for All. I thank the members of NJPMC for endorsing my proposal to celebrate 2009, as the year for Justice at the Grassroot Level.

The key features of the National Judicial Policy are strengthening the independence of the judiciary by its separation from the executive and ridding the courts of the menace of corruption, thereby presenting a clean and positive image of judiciary. In the Policy, we have set high goals for ourselves. The goals are to initially reduce, and ultimately eliminate, backlog at the level of superior as well as subordinate courts, and further, to fix time frame for disposal of civil and criminal cases. The criminal cases will get priority on account of the sub-human conditions in which under-trial prisoners are kept in jails. Writs for protection of fundamental rights i.e. right to life, liberty, equality, property and freedom of thought, conscience, association, etc will also be maintained on fast track. Furthermore, financial/rent matters and family/juveniles cases will also receive preference, which is crucial for economic development and protection of family values.

In the ultimate analysis, the new Policy seeks to ensure that the constitutional principles of equality before law and equal protection of law are strictly adhered to. Adherence to law/Constitution leads to nation building. It is a sure recipe for economic growth and social progress. Law protects the rights/interests of poor/downtrodden segments of society. It helps to break shackles of cruelty/injustice. It puts an end to exploitation of the underdog by the rich/influential. Let us strive to achieve the noble goals, set in the Policy. Let us infuse confidence in the minds of our people that the system of administration of justice is capable of meeting the challenges of time and emerging realities. Let us make the judicial organ of the state as a sheet anchor at the time of serious challenges. I have no doubt that

my brother Judges in the superior courts and judicial officers would help and support us in our drive to steer the ship of the nation through troubled waters. I am equally confident of the help and support of the members of the bar. We have carried out very wide consultations with them as well as other stakeholders. Their valuable suggestions have been incorporated in the Policy. The Policy will be launched effective from 1 June 2009 and will be actively monitored by the NJPMC. I should continue to meet judges and bar members for its smooth implementation”.

Justice Iftikhar Muhammad Chaudhry
Chief Justice of Pakistan

Executive Summary

The National Judicial Policy Making Committee (NJPMC) in 2 marathon sessions lasting over 4 days considered and approved a uniform National Judicial Policy. The Policy is an attempt to streamline the judicial system in the country and make it responsive to the present-day requirements of society. The objective is to clear the huge backlog that has accumulated over the years at all level of judicial hierarchy. The current pendency of cases is as follows:

Superior judiciary

Subordinate judiciary

i.	Supreme Court of Pakistan	19055	i.	Punjab	1225879
ii.	Federal Shariat Court	2092	ii.	Sindh	144942
iii.	Lahore High Court	84704	iii.	NWFP	187441
iv.	High Court of Sindh	18571	iv.	Balochistan	<u>7664</u>
v.	Peshawar High Court	10363		Total	1565926
vi.	High Court of Balochistan	<u>4160</u>			
	Total	138945			

As is obvious from the above table, there is huge backlog of cases pending before courts, at all levels of judicial hierarchy. The figure does not include the pendency before the special courts / administrative tribunals, which is equally high. The backlog has accumulated due to various reasons/factors but essentially it is due to inadequate budgetary allocation. The gradual increase in population as well as litigation has never been addressed through appropriate development plans for expansion in infrastructure and increase in strength and capacity of courts. Courts have continuously suffered on account of shortage of funds. As is manifest from the table below, budgetary allocation to judiciary is negligible. Not even 1% of Federal/Provincial budget is allocated for the third pillar of the State. No wonder then, the judges are overburdened. To quote an example, in the Province of Punjab, an average, the judicial officer has to deal with a cause list of 1668 cases per day, which is humanly not possible. The problem of shortage of funds, to some extent was addressed by the Access to Justice

Programme of the Government of Pakistan but more needs to be done. The Government must therefore address the problem of shortage of funds to enable the judiciary to cope with the twin-problems of “backlog” and “delays”.

Statement Showing Budgetary Allocation and Strength of Judiciary in Pakistan

Sr. No	Name of Court	Sanctioned Strength	Working Strength	Staff			Federal/ Provincial Budget (In Rs.)	Allocation for Judiciary (In Rs.)	Percentage of Total Rev. / Exp for the Year 2008-09
				BPS 1 to 16	BPS 17 & above	Total			
1	Supreme Court of Pakistan	CJ + 29	CJ + 27	606	145	751	4,630,292,869,000	354,500,000	0.00765%
2	Federal Shariat Court	CJ + 7	CJ + 4	190	64	254	4,630,292,869,000	82,408,000	0.001779%
3	Lahore High Court	CJ + 59	CJ + 53	1249	349	1598	256,948,656,000	2,201,867,000	0.86%
4	Subordinate Judiciary:	36	36	10631	-	10631			
	i. Distt. & Sessions Judge								
	ii. Addl. Distt & Sessions Judge	290	261						
	iii. Senior Civil Judge	37	37						
	iv. Civil Judge / Judicial Magistrate	754	617						
5	High Court of Sindh	CJ + 39	CJ + 36	790	279	1069	180,987,200,000	1,234,504,000	0.68%
6	Subordinate Judiciary:	62	24	4242	-	4242			
	i. Distt. & Sessions Judge								
	ii. Addl. Distt & Sessions Judge	90	78						
	iii. Senior Civil Judge	98	85						
	iv. Civil Judge / Judicial Magistrate	200	193						
7	Peshawar High Court	CJ + 19	CJ + 12	321	68	389	170,558,000,000.873	613,203,000	0.17%
8	Subordinate Judiciary:	24	20	3566	-	3566			
	i. Distt. & Sessions Judge								
	ii. Addl. Distt & Sessions Judge	97	87						
	iii. Senior Civil Judge	24	20						
	iv. Civil Judge / Judicial Magistrate	201	183						
9	High Court of Balochistan	CJ + 10	CJ + 4	356	58	414	65,943,525,270	470,679,870	0.36%
10	Subordinate Judiciary:	24	17	1773	-	1773			
	i. Distt. & Sessions Judge								
	ii. Addl. Distt & Sessions Judge	27	19						
	iii. Senior Civil Judge	12	8						
	iv. Civil Judge/Jud. Magis./Family Judges	124	69						
	v. Qazi/Member, Majlis-e-Shoora	42	35						

The historical movement for restoration of independent-minded judges, supremacy of the Constitution and rule of law, ultimately triumphed. It led to heightened expectations of the public that the judicial organ would promptly respond to their agonies and dispense justice to all and sundry. Conscious of the public expectations/aspirations, the Chief Justice of Pakistan decided to initiate the process of formulating a new judicial policy for expediting trial proceedings. He assigned the task to the Secretariat of NJPMC to devise an appropriate strategy and work plan for action.

The NJPMC is a statutory body the nation's apex judicial forum. It is headed by the Chief Justice of Pakistan and comprises Chief Justice, Federal Shariat Court and 4 Chief Justices of High Courts, as members. The Secretary, Law and Justice Commission of Pakistan is designated as the Secretary to the Committee. The Committee is required, inter alia, to prepare and implement judicial policy for all courts, tribunals and qasi-judicial institutions. The functions of the Committee are:

1. Improving the capacity and performance of the administration of justice;
2. Setting performance standards for judicial officers and persons associated with performance of judicial and qasi-judicial functions;
3. Improvement in the terms and conditions of service of judicial officers and court staff, to ensure skilled and efficient judiciary; and
4. Publication of the annual or periodic reports of the Supreme Court, Federal Shariat Court, High Courts, courts subordinate to High Courts, Administrative Courts and Tribunals.

The Chief Justice of Pakistan/Chairman NJPMC convened a 2-day session of the Committee on 18-19 April 2009 to consider a draft providing for steps to strengthen judicial independence, check corrupt practices in the judicial system and prioritize certain

categories of cases for expeditious disposal. The meeting lasted for 2-days; in one session, the representatives of the bar including Vice Chairman, Pakistan Bar Council, Vice Chairmen, 4 Provincial Bar Councils, President, Supreme Court Bar Association and Presidents, all High Court Bar Associations were also invited. After thorough deliberations, a draft report was approved. It was decided that the approved draft will be circulated to all the relevant stakeholders of the justice sector for getting their input. Accordingly, the draft policy was forwarded to all judges of the Supreme Court, High Courts and Subordinate Courts. Copies of the draft were also forwarded to the President, Supreme Court Bar Association, all High Courts Bar Associations, all District Bar Associations and all Tehsil Bar Associations. Copies were also forwarded to Attorney General for Pakistan, all Advocates General, all Prosecutors General, Secretary, Law and Justice Division, Secretaries of 4 provincial Law Departments, all Inspectors General of Police, all Inspectors General of Prisons, members of the Law and Justice Commission of Pakistan, etc. The Secretary, NJPMC also gave a press briefing to share the draft report with the media and general public. The draft was also placed on the LJCP website for input.

The draft National Judicial Policy was subjected to thorough analysis at various fora. The members of the bar held in-house sessions to discuss the report. The District & Sessions Judges convened meetings of district judiciary alongwith representatives of the District/Tehsil Bar and forwarded their recommendations to the respective High Court. The Chief Justices of High Court held consultations with the judges of the High Court, District & Sessions Judges and representative of the High Court Bar Associations. Similarly, consultations took place in the office of Attorney General for Pakistan, Advocates General, Secretary, Law and Justice Division and Law Departments, etc. The output of such deliberations was forwarded to the Secretary, NJPMC. Many judges of superior courts, members of the bar also contributed input (list of institutions/individuals from whom replies received is at Annexure).

The input/recommendations received from various fora/individual members were examined and a comprehensive draft prepared. The draft was initially discussed in a meeting, chaired by the Registrar, Supreme Court/Secretary, NJPMC and attended by the Registrar of the Federal Shariat Court and 4 High Courts. The Committee of Registrars compiled a uniform policy draft for consideration. The NJPMC considered the draft in its meeting on 16-17 May 2009. After exhaustive deliberations lasting for 2 days, the Committee finally approved the National Judicial Policy. The Committee decided that the respective High Court would make strategies and prepare plans for effective implementations of the Policy. The Policy will be released on 30th May 2009 in a press briefing by the Registrar, Supreme Court/Secretary NJPMC and come into force on 1st June 2009.

The thrust of the National Judicial Policy is to consolidate and strengthen the independence of judiciary, thereby enabling the Judicial Organ to exercise institutional and administrative independence and judges to have decisional independence to decide cases fairly and impartially. In this regard, important decisions have been made including the determination of the Chief Justices of High Courts to decline appointments as acting Governor of the province and recall of all judges working in executive departments of the Federal/Provincial governments. The Policy also lays stress on proper conduct and judicial propriety, on the part of judges, to maintain a clean image of the judiciary. Following the repeated assertions of the Chief Justice of Pakistan to show “Zero-tolerance for corruption in judiciary”, the new Policy provides several steps/measures to nab and punish corrupt judicial officers and court staff. Greater vigilance will be exercised by the respective Chief Justices in eradicating corruption in all its forms and manifestations.

The Policy provides strategy and plans for the clearance of backlog, expeditious resolution of disputes and quick dispensation of justice. Particular attention is given to timely disposal of criminal cases

especially the cases of under-trial prisoners, languishing in jails. Urgency has been accorded to cases involving violation of fundamental rights and restraint on liberty/freedom of individual. Therefore, bail matters will be quickly decided. Certain categories of cases, having close nexus with economic development and good governance, have been prioritized. It includes disputes pertaining to trade, commerce, investment, taxes, duties etc. The family cases, juvenile offences, rent matters, drugs/terrorism cases will also be kept on fast track for quick disposal. The plan of action provides for disposal of all pending cases within one year. Newly instituted cases in the Supreme Court and High Courts will also be decided in one year period from date of filing. The High Court and Subordinate Courts in the province of Balochistan will be able to decide all pending cases within six months and all fresh cases in six months time from the date of institution. This is indeed a tall claim and difficult goal but equally strong is the determination of the NJPMC to honour its commitment to the nation. It would require gigantic efforts and hard work but every effort will be made to achieve the desired goals by full and effective utilization of existing resources. However, where new resources are required, the government will be approached for allocation of necessary funds for the purpose.

Dr. Faqir Hussain
Secretary

National Judicial Policy

A. INDEPENDENCE OF JUDICIARY

- 1) **In future no chief justice or a judge of the superior court shall accept appointment as acting Governor of a Province.**
- 2) **No retired judge of the superior court shall accept an appointment which is lower to his status or dignity including appointment as presiding officer of Banking Court, Customs Court, Administrative Tribunal, etc.**

The Committee asked the retired judges of the superior judiciary to maintain the highest standards of decorum and voluntarily relinquish the charge of such posts which are lower to their status to earn respect in public and uphold the principle of the independence of judiciary.

The Committee asked the Secretary, National Judicial (Policy Making) Committee to write letters to the Secretary, Establishment Division and Provincial Chief Secretaries to relieve all such judges and may not make such appointments in future.

- 3) **Instead of appointing retired judges/judicial officers as presiding officers of the special court/tribunal, qualified serving judges be appointed against these posts, in consultation with the Chief Justice of the High Court.**
- 4) **Posting of serving judges against executive posts in Federal and Provincial Government Departments on deputation be discontinued. All such judges should be repatriated to the respective High Courts, where their services are needed most for expeditious disposal of pending cases.**

- 5) **All special courts/tribunals under the administrative control of Executive must be placed under the control and supervision of the judiciary, their appointments/postings should be made on the recommendation of the Chief Justice of concerned High Court.**

- 6) **In future the judiciary would avoid its involvement in the conduct of elections, as it distracts the judicial officers from professional duty and complaints of corrupt practices tarnish the image of judiciary.**

The reputation of judiciary is at stake during election due to involvement of vested interests groups, etc in corrupt practices. On the other hand, it also adversely affects the judicial functions of the courts. Even otherwise, the Conduct of General Elections Order 2002, Representation of the People Act, 1976 and Local Government Ordinance 2001 do not contain any provision which requires that the elections are to be held under the supervision of the Judiciary. Therefore, in future, the Judiciary should remain aloof from the process of election to focus on disposal of cases. However, in case of request from the Government, the NJPMC would decide the extent to which and form of help to be extended to Government in the conduct of elections. The judiciary will continue to extend support and cooperation in adjudication of election related disputes/complaints as provided under the law.

B. MISCONDUCT

The Judges of the superior courts should follow the Code of Conduct prescribed for judges. They should take all steps necessary to decide cases within the shortest possible time. As provided by Article X of the Code of Conduct: “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 endeavor to minimize suffering of litigants by deciding cases expeditiously through proper written judgments. A judge who is unmindful or indifferent towards this aspect of his duty is not faithful to his work, which is a grave fault”. Hence, the Chief Justice of concerned High Court may report cases of violation of Code of Conduct including incidents of unusual delays/inefficient performance to the Chairman, Supreme Judicial Council for action.

The prime duty of a judge is to present before the public a clean image of judiciary. The oath of a judge implies complete submission to the Constitution and under the Constitution to the law. Subject to these governing obligations, his function of interpretation and application of the Constitution and the law is to be discharged for the maintenance of rule of law. To be a living embodiment of these powers, functions and obligations call for possession of the highest qualities of intellect and character. Equally, it imposes patterns of behavior, which are the hallmark of distinction of a judge among his fellow-men. Therefore, the Committee asked the Chief Justices to report the violations of Code of Conduct to the Supreme Judicial Council for appropriate action.

C. ERADICATION OF CORRUPTION

- 1) The code of conduct for subordinate judiciary, framed by the Peshawar High Court and adopted by the Lahore High Court should be considered for adoption by the High Courts of Sindh and Balochistan.**
- 2) The present mechanism for initiation of disciplinary action against corrupt and inefficient judicial officers/court staff be improved. In each High Court a Cell to be called “Cell for Eradication of Corruption from Judiciary” may be established in the office of Registrar, under the supervision of Chief Justice of High Court to entertain complaints with credible evidence. Copies of such complaints may also be forwarded to the Registrar, Supreme Court of Pakistan. As regards the officers/staff of the Supreme Court, a Judge shall be the Incharge of such Cell.**
- 3) Action should be initiated against those judicial officers/staff that carry persistent reputation of being corrupt or have their life style beyond ostensible means of income.**
- 4) To guard against the evil of nepotism, favoritism, corrupt means, etc, the MITs in High Courts may examine the judgments of the judicial officers to detect incidents of corruption/improper conduct. All the judicial officers of the subordinate judiciary may be asked to send copies of the judgments including bail/stay orders for scrutiny to MITs.**
- 5) Surprise inspections be carried out by the Chief Justices/judges of the High Courts to monitor the working of subordinate judiciary. In this regard, Judges of the High Courts be designated for each division/district on rotation basis.**
- 6) The District and Sessions Judges should also report about the corruption/misconduct of their subordinate judges.**

- 7) **The judge should himself write order sheets, interlocutory orders and register petitions.**
- 8) **Appropriate criminal cases under the relevant provisions of law may also be registered against the judicial officers/court staff involved in corruption.**
- 9) **The corrupt judicial officers be made OSDs and kept against their post for the purpose of drawing salary only and disciplinary proceedings should be quickly finalized.**
- 10) **No judicial officer/official should be posted in home district and those remained posted in a particular district beyond 3 years should be transferred to other district.**
- 11) **Naib Courts having completed 3 months attachment with a court should be sent back to their parent department instead of transferring them to other court by rotation.**
- 12) **The complaints of corrupt practices and professional misconduct against lawyers addressed to the Chief Justice of High Court should be forwarded to the Bar Council for action. The Council should take immediate action on such complaints under intimation to Registrars of the concerned High Court.**
- 13) **Incentives should be given to the honest, efficient and hard working judicial officers including advance increments and posting at stations of choice etc.**

D. EXPEDITIOUS DISPOSAL OF CASES

SHORT TERM MEASURES

I. CRIMINAL CASES

- 1) In bailable cases, grant of bail is a statutory right of the accused; therefore, the court before which the accused appears or is brought may immediately release him on bail, subject to furnishing of sureties as provided under section 496 Cr.P.C.**
- 2) Bail application under section 497 Cr.P.C. with photocopy of the FIR, duly authenticated by the Counsel, should be accepted and the court shall call for record of the case on its own through Naib Court.**
- 3) In bail matters, notice to State for production of record shall not exceed beyond 3 days and all the Provincial Police Officers/Inspectors General of Police shall issue standing instructions to the concerned officers to ensure production of record without delay.**
- 4) Bail applications under section 497 of Cr.P.C. shall be decided not beyond a period of 3 days by the Magistrate, 5 days by Court of Sessions and 7 days by the High Court.**

To overcome the problem of congestion in Jails, the court should exercise powers under section 497 Cr.P.C. keeping in view the principles of grant of bail including the principle that if the offence does not fall under the purview of prohibitory clause, grant of bail is a rule and refusal is an exception.

In case bail is rejected, the court should take all possible measures for disposal of the case to reduce the chances of

filing of bail petitions before the higher courts. However, where the accused desires to move the higher court, the trial court should provide attested copies of all the relevant documents to avoid the chance of requisitioning of original record from the trial court which hinders the disposal of case.

- 5) Applications for cancellation of bail under Sub-section (5) of section 497 Cr.P.C. should be decided within 15 days by the courts including High Court.**

Grant of bail or otherwise is the discretion of a court and should be exercised diligently and once a bail is granted it should not be withdrawn unless an opportunity is given to the accused.

- 6) In Criminal Cases it is the duty of the police/investigating agency to submit Challan (Police Report) within a period of 14 days as contemplated in section 173 Cr.P.C. In case of non-completion of investigation, an interim report shall be submitted and in such cases, the court shall not grant remand beyond 15 days period.**

- 7) Non-completion of investigation and non-submission of Challans in statutory period is a major cause of delays in disposal of cases. Since, Police plays crucial role in administration of justice, therefore, the District Police Officers may be asked to ensure that the police should conclude investigation and submit Challans within the prescribed period of 14 days. They may be asked that the SHOs who fail to comply with this statutory provision should be treated as inefficient officer under the Police Order and the court may also lodge complaint under section 166 PPC against him. The DPOs should also submit list of cases in which Challans are still pending for want of investigation for inspection and passing appropriate orders by the District and Sessions Judge.**

- 8) **No judge should grant remand in the absence of accused and while granting remand should strictly adhere to the relevant provisions of the Code of Criminal Procedure and principles laid down in the Hakeem Mumtaz case (PLD 2002 SC 590)**
- 9) **All criminal cases punishable with imprisonment for upto 7 years registered after 1st January 2009 be kept on fast track for disposal within 6 months.**

For disposal of freshly instituted cases within the stipulated period and to avoid piling of cases, there may be practical difficulties but the same can be overcome by extending court timings depending upon the workload. The extended time could be utilized for writing judgments, framing of charge and other miscellaneous work.

- 10) **All criminal cases punishable with imprisonment from 7 years and above including death cases shall be decided within a period of 1 year.**

Chapter XX and XXII-A of the Code of Criminal Procedure 1898 prescribe detailed procedure for trial of cases by Magistrate and the Court of Sessions to ensure fair trial for the accused. Since this procedure takes longer time, therefore to finalize the proceedings, the following measures should be adopted to cut short the delays:

- a) On receipt of Challan, the court shall immediately fix the case and issue production warrants/notice.
- b) When the accused is brought or appears before the court he should be provided with copies of statements and relevant documents as provided under section 241C and 265C Cr.P.C and be directed to ensure presence of his Counsel on the next date of hearing enabling the court to commence the trial.

- c) Under section 173 Cr.P.C, it is the duty of the concerned SHO/ Investigating Officer to produce witnesses and case property before the court during trial. Therefore, the court shall take all necessary measures to bind the SHO/IOs to procure evidence on the fixed date.
- d) All efforts should be made to produce witnesses and the case property on the first date of hearing.
- E) If no case is made out or there is no probability of accused being convicted, the accused should be acquitted of the charge under Section 249-A or 265-K CrPC, as the case may be.
- f) The court shall not grant unnecessary adjournments and if possible should proceed with the case on day-to-day basis.
- g) The court shall take care that only relevant and admissible evidence is recorded.
- h) The District and Sessions Judges should hold meetings with the jail authorities to ensue the production of UTPs on the date of hearing to avoid delays on account of non-production of prisoners.
- i) The court should take strict action against the parties or witnesses causing deliberate delays in proceedings.
- j) The judgments should be based on well founded reasons and acumen so that it not only resolve the disputes but also lessen the prospects of future litigation.

- k) Delay in disposal of criminal cases is mostly due to the non-cooperation of relevant stakeholders of justice sector namely, lawyers, police and prison authorities; therefore, the court should ensure that they may fulfill their legal obligations to minimize delays and expedite trials.
- 11) Cases relating to preventive detention under section 107 read with section 151 Cr.P.C. should be decided as early as possible by following the procedure as envisaged under section 112, 117 and 118 Cr.P.C.**
- 12) Production before court for remand/trial is a statutory right of every prisoner; therefore, the District and Sessions Judges should ask the jail authorities to ensure that the prisoners must be produced before the court. The District and Sessions Judges should also monitor that while granting remand all requisite procedural formalities are complied with.**

Sub section (3) of section 167 Cr.P.C. requires that while granting police remand reasons should be recorded for doing so after scrutiny of record and under no circumstances accused should be remanded to police custody unless it is made clear that his presence is actually needed for some specific purpose connected with the completion of investigation. Moreover, sub section (4) of section 167 Cr.P.C. requires the Magistrate to forward a copy of remand order with reasons for making it to the Sessions Judge. Strict compliance of this provision would help the Sessions Judges to supervise the action of Magistrates working under them.

Section 344 Cr.P.C. empowers the Court to postpone/adjourn the proceedings and remand the accused person to judicial custody upto 15 days; however,

grant of judicial remand in routine on “Robkars” in absence of accused person amounts to violation of law. Therefore, it is recommended that adjournments should not be granted unless necessitated in the interest of justice and for the reasons beyond control.

- 13) In criminal cases, non-representation of accused by Counsel is also a source of delay in trial, therefore, the Chief Justices of High Courts, in consultation with the Chairman of the Legal Aid Committee of the Provincial Bar Councils or Pakistan Bar Council, may appoint lawyer in such cases to avoid delay. In this regard a list of the advocates should be maintained in each district so that they can be appointed for provision of legal aid to accused person who cannot afford to hire the services of Counsels. However, prior to appointing any Counsel option of selection from that list should be given to the accused in the interest of justice.**
- 14) To check the tendency of filing false and frivolous cases, the court should take penal action against the party by imposing fines under section 250 Cr.P.C. or filing complaints under section 182 and 211 of the PPC.**

In cases triable by a Magistrate, if the court discharges or acquits all or any of the accused and is of the opinion that the accusation against them or any of them was false or frivolous, the court may acquit or discharge the accused and may call upon the complainant/informant to show cause as to why he should not pay compensation to the accused. After considering the facts and circumstances of the case the Magistrate may direct the complainant / informant to pay to the accused a compensation not exceeding rupees twenty five thousand. The compensation payable under section 250 is recoverable as arrears of land revenue.

If this provision of the law is enforced in its true sense, it would certainly help to reduce the number of groundless and frivolous complaints/ cases .However, in fixing the amount of compensation, the court should carefully consider the status of accused as well as that of the complainant and the nature of accusation.

Besides, if it appears to a court that forgery or perjury has been committed in relation to any proceeding before it then the court can proceed against the defaulter under section 476 Cr P.C. to vanish the impression that anyone can abuse the process of law by falsehood or fabrication and that too without any risk of prosecution. Before prosecuting the accused it is essential for the court to consider whether there is a reasonable probability for the conviction and is it expedient in the interest of justice or not?.

Under section 476 of the Cr.P.C. the court may itself take cognizance of the offence and try it in accordance with the procedure prescribed for summary trials in Chapter XXII of the Code. However, if the court considers that the accused should not be tried summarily under section 476, it may after recording the facts constituting the offence and statement of the accused forward the case to a court competent for trial.

- 15) Under the Police Order 2002, the Police Complaints Authorities and District Public Safety Commissions are setup at various levels for enquiring into complaints against police regarding misuse of authority, dishonest investigation, negligence and inefficiency. Therefore, it is needed that in appropriate cases the Presiding Officers should make references to concerned authorities for initiation of proceedings against the delinquent police officers/officials.**

- 16) **Transfer applications under section 526 & 528 Cr.P.C, miscellaneous applications like Supardari of vehicle and disposal of property under chapter XLIII of the Code and other applications arising out of interim orders should be decided within 7 days.**
- 17) **In murder references under section 374 Cr.P.C, the practice of printing paper books be discontinued and photocopied books may be accepted so as to avoid unnecessary delay in disposal of appeals for want of printing of paper book**
- 18) **To address the issue of convicts including women languishing in jails for want of payment of Diyat, Arsh & Daman even after serving their entire period of sentence of imprisonment, the Federal Government has already framed Rules, called the Diyat, Arsh and Daman Fund Rules 2007. However, despite lapse of considerable time the benefits of this legislation have not trickled down to the deserving convicts. Therefore, the Provincial Chief Secretaries may be asked to consider the cases of such convicts and make necessary arrangements for payment on first come first-serve basis.**

The provincial government may also explore possibilities for creating other funds through Bait-ul-Maal, provincial charitable endowment, if any, and donations. Such funds shall be maintained under proper accounting/auditing mechanism.

- 19) **The Courts/Government should make use of the Probation of Offender Ordinance 1960 as well as the Good Conduct Prisoners Probation Release Act 1926 to extend benefits of the said laws by releasing the deserving convicts on parole/probation in accordance with law.**

For effective use of these legislations the Committee recommended that:

- a) The Probation and Parole Officers should be activated and be asked to visit jails frequently for conducting inquiry and submission of reports to facilitate the courts and provincial governments to consider the cases of deserving convicts.
 - b) The Provincial Home Departments should ensure the presence of Probation and Parole Officers in jails during the visits of the Sessions judges and judges of the High Court.
 - c) The Registrar, Supreme Court/Secretary, NJPMC may convene regular meetings of the Registrars of the High Courts and Home Secretaries to evolve strategies for effective enforcement of the aforesaid laws.
 - D) In proper cases the Sessions judges should exercise powers under Probation of Offender Ordinance 1960 or make recommendations to concerned government to extend favour to the convicts /UTP under Good Conduct Prisoners Probation Release Act 1926, as the case may be.
- 20) The Registrars of High Courts should approach the Law and Justice Division to know about the pending mercy petitions and copy of the list shall be submitted to the Registrar, Supreme Court, who shall take-up the matter with the competent authority in consultation with the Chief Justice Pakistan on priority basis. In case of rejection of mercy petition, the Provincial Home Secretaries should ensure completion of the process without unnecessary delay to maintain the deterrent**

effect of the sentence.

- 21) Emphasis should be given on quick disposal of Narcotics and Anti Terrorism cases, cases of women and Juvenile offenders etc.**

For early disposal of ATA cases, the Committee recommended that the judges of the High Courts and Supreme Court be designated to monitor and ensure compliance of guidelines laid down in case of Liaquat Hussain vs. Federation of Pakistan (PLD 1999 SC 504).

- 22) To clear the backlog under different categories, special benches should be constituted at Principal seat and Branch Registries of Supreme Court and High Court to decide current/old cases by placing the prioritized ones on fast track.**

II. CIVIL CASES

- 1) **Writ petitions under Article 199 of the Constitution should be fixed for 'Katchi Peshi' on the next day of institution and be disposed of as quickly as possible.**
- 2) **Writ petitions of the following categories if competent under the law, should be decided within 60 days:**
 - I. **Pertaining to service disputes including promotion, transfer and such other matters,**
 - II. **Relating to admission of students in professional colleges and allied matters,**
- 3) **Stay matter under Order 39 rule 1&2 should be decided within 15 days of grant of interim injunction and in case of delay, the judicial officer should report reasons to the concerned Chief Justice of the High Court through Registrar.**

The Committee considered the issue of frequent grant of temporary injunctions by the courts without realizing the consequences and recommended that the following instructions should be complied with strictly:

- a) All Courts shall examine such applications critically and ensure that the interlocutory injunctions should be granted ex-parte only in very exceptional circumstances, unless the plaintiff can convince the Court that by no reasonable diligence could he have avoided the necessity of applying for unilateral order.
- b) Such injunctions should be limited to a minimum time within which a defendant can come effectively before the Court.

- c) It should be noted that under Rule 2-A of Order 39, Code of Civil Procedure, an interim injunction passed in the absence of the defendant shall not ordinarily exceed 15 days, provided that such injunction may be extended for failure of its service on the defendant when such failure is not attributable to the plaintiff or when the defendant seeks time for defence.
 - d) The Court should take greatest care to state exactly what acts are restrained instead of copying the application, and if only one or some of the acts are sought to be restrained, the injunction should be confined to that and should not hold on other acts to which the defendant can possibly object.
 - e) When the defendant appears or files his reply/affidavit then the court should immediately dispose of the matter without any adjournment and if it is not possible the court should take an undertaking from the defendant to be restrained from doing any act complained about.
 - f) The Court should not allow the abuse of injunction by common tactics such as non-service of process or lingering on the period by seeking adjournments etc.
 - g) An order of Injunction made under Rule 1 or 2 of Order 39 after hearing the parties or after notice to the defendant shall cease to have effect on the expiration of six months unless extended by the Court after hearing the parties again and for reasons to be recorded for such extension and a report of such extension should be submitted to the High Court.
- 4) The rent cases should be decided speedily within a period of 4 months.**

It is noticed that the provisions of rent laws are not properly understood, appreciated and applied in proceedings by the Rent Controllers, therefore, the Committee asked for strict compliance of guidelines given by the Supreme Court of Pakistan in case reported in SCMR 2000 at page 556, which are as under:-

- a) Affidavits of not more than two witnesses in support of the ejectment application shall be filed in the Court in addition to the affidavit of the petitioner himself in support of the contents of ejectment petition.
- b) While replying to the ejectment application the respondent shall be similarly required to submit his own affidavit and affidavits of two other witnesses in support of his affidavit on the date fixed in the notice served upon him.
- c) The parties shall be bound to produce their witnesses for purpose of their respective cross-examination on the day fixed by the Court.
- d) A party obtaining the affidavits of the witnesses in support of his petition / reply would be bound to produce them in the Court for cross-examination and in case of its failure to do so their evidence shall be excluded from consideration.
- e) Appeals against the interim orders of the Rent Controller and resort to Constitutional jurisdiction, against orders at intermediate stages arising out of the ejectment proceedings, should be discouraged.
- f) The Court should take serious view of the situation when witnesses for cross-examination in support of their affidavits deliberately avoid / evade appearance in Court.

- g) Adjourment of ejectment petition should not be allowed except under unavoidable circumstances on an application moved by a party supported by affidavit. In such cases also adjourment should not be made for a period exceeding three days. Following the above procedure in ejectment matters appears to be necessary to achieve the goal of expeditious disposal of a case within a period of three months particularly in respect of residential tenements.
- 5) **Appeals, Writ Petitions and other miscellaneous petitions pertaining to rent matters should be decided in 60 days.**
 - 6) **Revision petitions under CPC arising out of interlocutory orders i.e. interim stay orders, misjoinder and non-joinder of necessary parties, appointment of local commissioners and non-payment of court fee should be decided within 3 months subject to the maintainability of such petition.**
 - 7) **Family cases should be decided within 3-6 months.**
 - 8) **Civil appeals arising out of family cases, custody of minors, guardianship cases, succession and insolvency cases, if competent, shall be decided within 30 days and for any delay, reasons should be furnished to the High Court.**
 - 9) **Banking, tax, duty, levy and cess cases should be decided within 6 months.**
 - 10) **Civil Judges should decide review applications within 30 days and the trial of new cases (instituted after 1st January 2009) should be completed within 6 months.**
 - 11) **Negotiable Instrument cases which are decided through summary procedure as provided under Order XXXVII of the Code of Civil Procedure 1908 should be decided in 90 days.**

- 12) **Priority should be given to women and juvenile cases for quick disposal.**
- 13) **The Small Claims and Minor Offences Courts Ordinance 2002 should be applied in earnest. The High Courts should designate civil judges cum magistrates to try exclusively cases under said law. Such judicial officers be imparted training in ADR. For this purpose a Committee of judges of the High Courts headed by a judge of the Supreme Court would arrange training in ADR for master trainers who would later on train the remaining judges in provinces.**

The Small Claims and Minor Offences Courts Ordinance 2002 has been promulgated for providing exclusive forum for facilitating the resolution of small disputes. This law also provides for ADR mechanism for facilitating the resolution and settlement of disputes outside the court system. This could be transformed into an excellent forum for addressing backlog of cases, therefore, the High Courts should approach respective provincial governments for establishment of more such courts to deal with the cases under the provisions of Small Claims and Minor Offence Courts Ordinance 2002 exclusively.

- 14) **In the Supreme Court and High Courts, priority should be given to dispose off old cases, except cases in which special orders were passed by court for fixation of the cases on specified dates.**
- 15) **To clear the backlog under different categories, special benches should be constituted for each category on the Principal seat and Branch Registry of the Supreme Court and High Court. There should be a commitment of judges to decide the old civil/criminal cases (filed upto 31 December 2008) within one year.**
- 16) **Priority should be given to the disposal of trade, commercial and investment cases. Such cases should be managed on fast**

track through establishment of designated courts and by constituting special benches by High Courts and Supreme Court.

- 17) Late issuance of cause lists by the High Courts creates problems for lawyer/litigant and parties to appear in court on short notice, which results in adjournments. Therefore, to provide reasonable time to the parties to adjust their schedule, the Supreme Court and High Courts should issue their cause lists one month in advance
- 18) The District Judges should adopt such measures which ensure handling of 50% of cases from backlog (filed up to 31 December 2008) and 50% from new cases (filed on 1st January, 2009 and onward).

For early disposal of cases, the courts should adopt the following measures:

- a) To cope with the problem of increasing litigation, it is necessary that the courts shall carefully scrutinize the pleadings, record and dismiss/reject false, fictitious and frivolous cases as provided under Code of Civil Procedure 1908.
- b) The provision of Order 11 of the C.P.C. regarding discovery and inspection should be applied properly to narrow down the controversies as well as issues leading to recording of statement of fewer and relevant witnesses.
- c) The parties denying documents that may be proved later should be burdened with costs incurred for proving that document as well as incidental costs.
- d) The courts should make use of section 89A C.P.C. to resolve disputes through Alternate Dispute Resolution

(ADR) including conciliation, mediation and arbitration or any such other appropriate mode.

- e) The plaintiff should be obligated to provide the defendant's mailing address and telephone/ fax number.
- f) The present strength of process serving agencies is inadequate and should be appropriately increased and alternate methods of service including courier service be used as ordinary mode of effecting service.
- g) The courts should take strict action against parties or witnesses who cause deliberate delay, through imposition of costs.
- h) Execution proceedings should be completed quickly for satisfying the decree.
- i) The court should discourage frequent interlocutory applications for concentration on disposal of cases as a whole.

19) To check filing of false and frivolous cases the courts should impose compensatory costs under section 35-A of the C.P.C. Similarly on the patron of High Court of Sindh, the other High Courts may also amend the relevant rules for incorporation of a provision to impose a cost upto rupees one lac for false, frivolous and vexatious litigation.

20) Civil and criminal functions of the court should be bifurcated so that the judicial Officers can try criminal and civil cases exclusively. For fuller comprehension of civil/criminal law and experience, such judicial officers be rotated annually.

LONG TERM MEASURES

- 1) **The judges of High Courts should carryout inspections of prisons periodically for ensuring compliance of Prison Rules and giving on the spot remedy/relief to the deserving prisoners in accordance with law.**
- 2) **The High Courts should frame an equitable, consistent and coherent policy for sending the Judges to the permanent and circuit benches so that every judge gets equal opportunity to serve at the principal seat and benches. A Judge may not be transferred just for hearing a particular case and thereafter transferring him to other station, as this practice is against the principle of independence of judiciary.**
- 3) **Necessary funds be provided by Government for infrastructure support like construction of courtrooms, amenities for lawyers/litigants parties. The strength of judicial officers and administrative staff should be increased to cope with rising trend of litigation in the country. Adequate staff, library facilities and accessory equipment like computers should also be made available to courts.**

The Committee recommended the following:

- a) **The vacant posts in the subordinate courts should be immediately filled and funds for creation of new additional posts of Civil Judges cum Judicial Magistrates may be acquired from respective governments.**
- b) **Presently, judicial officers are appointed through respective Provincial Public Service Commissions which takes time. Keeping in view the emergent need of judges to clear backlog, the High Courts should consider making appointments on adhoc basis.**

- c) The High Courts should utilize the Provincial Judicial Development Fund (PJDF) to make available the 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.
 - d) The respective Provincial Governments may be approached for grant of supplementary funds for the construction of courtrooms, bar rooms, waiting rooms for litigant parties and witnesses and residential accommodation of judicial officers/court staff.
 - e) Upgrading and activation of judicial academies to arrange pre and in-service training of the judicial officers and staff.
 - f) Seminars and workshop should be organized for judges to have regular interaction and experience sharing with other judges at provincial and national level.
- 4) Scattered courts are also one of the major causes of non-appearance of lawyers as it takes hours to reach from one court to another. Therefore, in the cities court complexes should be constructed to accommodate all courts in one premises.**
- 5) Presently, some judges of the High Courts are performing additional functions like Chairman, Environmental Protection Tribunals, Labour Appellate Tribunals etc which affects the working of the High Courts as a whole, therefore, it is decided that the concerned Government may be asked to appoint suitable persons against these positions instead of giving additional charge to the High Court Judges.**

- 6) **The Government of Sindh in exercise of powers conferred under section 59 of the Prisons Act 1894 has brought an amendment in the Prisons Rules where-under the condemned prisoners are not kept in death cells till final decision on their appeals. Keeping in view the agonies of the condemned prisoners detained in death cells, the Committee directed that the Provincial Governments of Punjab, Balochistan and NWFP should consider making similar arrangements for taking out the condemned prisoners from death cells and keeping them in barracks with adequate security arrangements.**
- 7) **The Provincial Governments should realize the difficulties of under resource and over congested jails and establish new jails at district level or enhance the capacity of existing jails by constructing new barracks duly equipped with necessary amenities.**
- 8) **Non-production of prisoners before the Courts for trial due to shortage of resources and cramped judicial lockups is a major cause of delay in quick disposal of cases, therefore, the Provincial Governments should equip the prison department with necessary resources and increase the capacity of judicial lockups by constructing additional rooms with necessary facilities and security so that prisoners who are brought from other Districts should be kept there to face their trial.**
- 9) **To address the problem of medical facilities to the inmates of various jails, the Committee recommended that the Chief Justices of the High Courts should hold meetings with the Chief Secretaries and Finance/ Health Secretaries of the provinces to chalk out policy for providing adequate medical treatment facilities to the ailing prisoners.**
- 10) **The capacity and functioning of process serving agencies be improved and for this purpose, the provincial governments may be approached for funds.**

- 11) Computerization and networking should be introduced at all levels of judicial hierarchy. By introducing specifically designed software, the effectiveness of computers could be enhanced to check and monitor the case flow and measuring the qualitative and quantitative output of judicial officers. Therefore, all the computers of a province should be connected through web based networking so that data transferring to MIT branch, High Court becomes easy.
- 12) Installation of Video Conferencing facility between the courts and jails will also help the courts in early disposal of cases. Therefore, High Courts should take initiatives for introducing modern techniques and automation in the courts.
- 13) In the province of Punjab, the judicial officers of the subordinate Judiciary are drawing additional judicial allowances equal to three times of their salaries, therefore, it is desirable that the judicial officers of all the provinces be treated alike and disparity in their salaries and allowances be removed.
- 14) The salary/allowances of court staff should also be suitably increased.

Drafted by:

-Sd-

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Approved by:

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(Justice Iftikhar Muhammad Chaudhry)
Chief Justice of Pakistan/Chairman, NJPMC

Institutions/Individuals from whom input received

1. Supreme Court of Pakistan.
2. Federal Shariat Court.
3. Lahore High Court.
4. High Court of Sindh.
5. Peshawar High Court.
6. High Court of Balochistan.
7. All District and Sessions Courts.
8. Mr. Justice Mian Shakir-ullah-Jan, Judge, Supreme Court of Pakistan.
9. Mr. Justice Ijaz ul Hassan, Judge, Supreme Court.
10. Mr. Justice M Qaim Jan Khan, Judge, Supreme Court.
11. M r. Justice Zia Perwaiz, Judge, Supreme Court.
12. Mr. Justice Ghulam Rabbani, Judge, Supreme Court.
13. Mr. Justice Rashid Ahmed Jhalandari, Judge, Supreme Court.
14. Mr. Justice (R) Rana Bhagwandas. Member, LJCP.
15. Professor Jawad S. Khawaja. Member, LJCP.
16. Ms. Anis Haroon, Chairperson, National Commission on the Status of Women/Member, LJCP.
17. Attorney General for Pakistan.
18. Ministry of Law & Justice, Govt. of Pakistan.
19. Law Department, Govt. of the Punjab.
20. Law Department, Govt. of Sindh.

21. Law Department, Govt. of NWFP.
22. Law Department, Govt. of Balochistan.
23. Prosecutor General, Punjab.
24. Prosecutor General, Sindh.
25. Prosecutor General, N.W.F.P.
26. Advocate General, Punjab.
27. Advocate General, Sindh.
28. Advocate General, Balochistan.
29. Inspector General of Police, Punjab.
30. Inspector General of Police, Sindh.
31. Inspector General of Police, N.W.F.P.
32. Inspector General of Police, Balochistan.
33. Inspector General of Police, Islamabad.
34. Inspector General of Prisons, Punjab.
35. Inspector General of Prisons, Sindh.
36. Inspector General of Prisons, N.W.F.P.
37. Inspector General of Prisons, Balochistan.
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52. Professor M.Wali khan, Organizational Reform Expert, High Court of Sindh.
53. Syed Asghar Ali Shah, ADSJ, NWFP.
54. Mian Fiyaz Rabbani, SCJ, Mirwah, District Khairpur.
55. Rana Muhammad Nawaz Khan, Civil Servant/Executive Officer, Home Office, UK.
56. Mr. Javid Mian, District Attorney, Lahore.
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