Causes for Delay in Civil Justice in Lower Courts of Pakistan: A Review

Raza Ullah Shah, Shadi Ullah Khan & Sumera Farid

Abstract

Delay in civil justice is a chronic and ubiquitous problem; the situation is particularly alarming in developing countries like Pakistan. The backlog of civil cases is piling up every month, especially in the lower courts of the country. Different commissions have periodically been appointed to investigate into the reasons for this delay. Current work reviews this phenomenon in the light of studies conducted so far nationally and globally. Delay is a product of different factors interlinked in a complex manner. Ideally judges, lawyers and administrative staff should work in collaboration to achieve the single goal of dispensation of justice at reasonable speed. However lawyers in a bid to earn more money would always seek adjournments to increase their number of appearance in court. Judges on the other hand are overburdened and would grant adjournments to manage their workload. There are technical intricacies in the procedure & corruption in the administrative & clerical staff is wide spread. These and other factor related to the role of judges, lawyers, fallacious procedures and insufficient budget are taken up in this review in detail.

Keywords

Civil Justice, Court System, Pakistan, Delay

Introduction

Justice means to specify basic rights and duties and to determine the appropriate distributive shares (Rawls, 1971). Within the context of the rule of law, the notion of justice presumes an egalitarian society. An egalitarian society can mean to each the same, or to each according to some distinctive particularities (Perelman, 1963). Justice is as necessary to a nation-state as oxygen is to human beings, and in its absence societies cannot thrive or stay alive for long (Iqbal, 2006). A state may not be called a state in its true sense, if it has failed to discharge its functions concerning the administration of justice (Chaudhry, 2012). Justice is necessary for the maintenance of public harmony and conflict resolution, sustained peace and safety, ensure development and good governance, and enable enforcement of rights(Armytage, 2012). It is considered a very sacred duty of the state in Islam, which will perform it in consonance with the injunctions of Allah in most sincere and resolute way. Allah Almighty has ordained in the Holy Quran: "O ye who believe! Stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to make you swerve to wrong and depart from justice. But Just: that is next to piety: and fear Allah, for Allah is well acquainted with all that ye do." (Chapter 5, Verse 8).

Despite of all the importance justice system is still confronted with many problems all over the world. Overcrowded dockets, legal costs, and delays are the problems lamented almost all over the world (Hazra & Micevska, 2004). One of the grey areas, where our justice delivery system has failed to come up to the people's expectations is that the judiciary has failed to deliver justice expeditiously (Krishnan & Kumar, 2011). Which is the most horrible and repeatedly complained about and the same is considered the main reason for the prevalent dissatisfaction with the legal system (Adler, Felstiner, Hensler, & Peterson, 1982).

It is worth mentioning that a law suit cannot be decided overnight and needs an adequate span of time in between the first presentation of the case to a court and obtaining a final judgment (Council of European, 2006). For the disposal of a case in order to conduct inquiries, to collect evidence, to clarify all the questions of law, and to establish the relationship between the parties and thus for the courts to conclude a reasonable decision (Anderson & Gray, 2006)That is why we need to define delay; so that to distinguish undue or unreasonable delay and the delay necessary for procedural observance, also to establish its existence, depict its prevalence and to discover its causes, because in the absence of a definition; delay is a matter of individual perception (Martin, Prescott, Hudson, & Courts, 1981). What is conceived as quick and efficient by a court or a party may be wrong to the other side (Adler, et al., 1982). Delay in justice refers to the time spent in the disposition of case, extra to the time within which the decision of the court was reasonably expected (Balakrishnan, 2007).

Although the problem of delay is a universally present but in Pakistan the position has worsened to such an alarming extent which is eroding the very system of administration of justice. It has undercut the public confidence in the judiciary (Iqbal, 2006). Secondly it is more prevailing in civil justice than the criminal justice(Law & Justice Commission of Pakistan, 2003). The gravity of the situation can be determined from the pendency of around 2.5 million of cases in the courts of Pakistan which are estimated to take approximately 15 years to be cleared even if new cases were not registered (Akhtar, Alam, Shafiq, & Detho, 2008). Normally an ordinary civil suit is decided in twenty years and another five years are required for the execution of the decree (International Crisis Group, 2008). The situation is particularly threatening at the lower courts level where the litigants come in the first instance to get justice. Delay in the dispensation of justice has caused distress and anxiety all over the world for decades, but the causes for delay are still little known and solutions presented for them are not up to the mark (DiVita, 2010).

International instruments for Disposition of Cases in Reasonable Time

The right to be tried within a reasonable time is well established at an international level and many international instruments have made it binding on their member countries by providing legal provisions against it. Some of these instruments are given below.

i. American Convention on Human Rights adopted at November 22, 1969, Article 8§ 1

ii. European Convention on Human Rights (ECHR)1950,Article 6 § 1

iii. European Union Charter of Fundamental Rights2000, Article 47

iv. The International Covenant on Civil and Political Rights (ICCPR), December 16, 1966, article 14 § 3 (c)

v. the African [Banjul] Charter on Human and Peoples' Rights June 27, 1981, Article 7 §1

vi. The Convention on the Rights of the Child Article 40(2) (b) (iii)

vii. Fourth Geneva Convention (1950),

viii. The Bangalore principles of judicial conduct (2002)

ix. Latimer House guidelines (1998)

Causes of Delayed Justice

After thorough investigations into court delay for decades, researchers came to the conclusion that the problem of delay is complicated, and multiple factors contribute to the time taken by court proceedings. Delay is a blanket term covering a host of different problems caused by various factors, all requiring different responses (Feeley, 1983).

1. Judicial Causes of Delay

1.1 Corruption and Punctuality of Judges

The legal system in Pakistan is riddled with corruption particularly at the subordinate judiciary level where the court staff will have to be bribed at every step in order to move forward or halt one's case (NAB, 2002).There are some cases regarding the corrupt practices of judges as in Ghulam Mustafa Shehzad*v.* Lahore High Court (2007) the petitioner was dismissed from his post for having a corrupt reputation and accepting illegal gratification; while in Asif Ali Zardari and another v. The State (2001) the case was set aside because of the judge being found biased against the appellant. Judges Sometimes after receiving bribes from the parties and their practitioners either grant un-needed

adjournments or withhold their judgments etc. in order to frustrate the opposite party (United Nations office on drugs and crimes, 2004). The huge backlog of cases provides opportunities for corruption within the subordinate judiciary, as many judges seek bribes to fix an early hearing (Abbas, 2011).

The problem of punctuality of judicial officers in subordinate judiciary is also a matter of concern in Pakistan. Complaints are voiced by the members of bar that judges do not sit in court on time. Unless judges sit in court punctually and for at least five hours on every working day, it is not possible to obtain the maximum turnover in the matter of disposal (Sherwani, 2006). Courts should "begin with the end in mind" (Wallis, 2009).

1.2 Transfer of Judges and Cases

Delays occur in civil cases due to transfer of Judges from one station to another (Iqbal, 2006) Rotation and transfer of the judges, often meaning that the same judge who heard testimony may not decide the dispute, taking away thereby much of his incentive to push forward the proceedings to judgement and seriously impeding the process of continuous trial; the new judge may have to repeat some of the procedural requirements already fulfilled (Alam, 2010). The survey conducted by Khan and Khan (2003) revealed that the judges were often transferred without being replaced.

1.3 Judges Grant Unnecessary Adjournments

All the researchers agree that unnecessary adjournments are the main cause of delay in the disposition of cases (Ghazi, 2006; Sherwani, 2006).Order XVII Rule 1 of the CPC gives a discretionary power to the court to grant an adjournment to the parties if sufficient cause is shown. But judges are least perturbed in granting adjournments and prefer to give “blanket” approval to adjournments rather than make the effort in every case to distinguish between legitimate and “concocted” reasons for adjournments (Feeley, 1992). Although it is impossible to totally eliminate the adjournments; there must be some cases which do not follow the anticipated course and the adjournments are unavoidable however the number of adjournments can be reduced by giving one when it is really required (Whittaker, Mackie, Lewis, & Ponikiewski, 1997).According to Siddique (2010) the general tendency of lawyers to take adjournments on frivolous grounds was a major cause of delay.Our judicial system fall prey to manipulations especially by veteran lawyers well adept at the art of getting adjournments not only for their clients but also for management of their own case load (Heise, 2000).It is required that the court, not the lawyers or the litigants, control the pace of litigation however(American Bar Association, 1986). When a court having the control of

the case proceeding puts pressure on lawyers to prepare their cases extremely quickly, they will do everything as rapidly as possible, because they know that they have only one shot at winning (Adler, et al., 1982).

1.4 Relaxation Provided by Judges to Non-attending Parties and Process Servers

The presence of both the parties is necessary to start court proceedings, unless one of the parties is declared an ex-parte by the court. This decision is usually made by the judges on the basis of indifferent attitude of one of the parties towards court proceedings (Khan & Khan, 2003). The issue of ex-parte decision is taken up by Superior Courts differently in different instances. In some cases the Supreme Court justified the orders passed by the courts ex-parte (M. Idress*v.* ShamimAkhtar, 1980; Rehmat Ali *v.*Javed Ur Rehman, 1985) while in other they were set aside on grounds that the party was not given proper opportunity of hearing and technicalities have to be avoided for substantial justice (AshiqHussain Shah v. Province of Punjab, 2003; Nouroz Khan *v.* Haji Qadoor, 2005). The Civil Procedure Code is quite clear about this issue in its Order IX Rule 6 wherein it has declared that a court may proceed ex-partein a case where the judge has found that summons are properly and timely served on the defendant. If it is proved that judges in lower courts have followed protocols correctly while giving an ex-parte decision; the decision should be acceptable to the superior courts. Judges however are over cautious about being accused of denial of justice and prefer grant of adjournments over resolving the case expeditiously. This inability of Judges to take ex-parte action against uninterested litigants leads to further delays (Macnair, 2004).

In civil cases when the plaintiff files a case, the respondent party is summoned to the court through the process-serving mechanism (Khan, 2004). But cases are often adjourned on the dates of hearing for want of service of summons to the parties by the process serving agencies (Peshawar High Court, 2011). Complaints are made against the process servers of getting mixed up with one of the parties to the case and on that account not getting service affected. It is stated, that the process server makes an incorrect report of his being not available (Law commission of India, 1978). If the process is not issued well in time or the process server is negligent in effecting service, it is the presiding officer who has to inquire into the matter and bring them to book (Nawaz, 2004).One possible reason for this irresponsible behavior on behalf of the process servers might be because of the lack of transport facilities and adequate amount of TA/DA paid to them (Law & Justice Commission of Pakistan, 2003). Alternative service in the form of fax message and electronic mail (E-mail and SMS) can make the process serving mechanism efficient (Law commission of Bangladesh, 2010).

1.5 Mismanagement of the Evidence Stage of a Case

The recording of evidence takes, on average, almost twice as long as the rest of the steps in the case combined (Asian Foundation,1999). Because the witnesses disobey the summons by not coming to court, and the court despite having power to ensure that the summons are obeyed will grant adjournment (Law Reform Commission of Tanzania, 1986).Secondlythe principle of continuous hearing at the evidence stage of the suit is always not followed, consequently it becomes impossible for all the stakeholders of the case to remember what the witnesses have said, and to recall it the manuscript of witnesses testimony prepared by the court clerk is used (Sato, 2001). Delay thus follows from the manner in which trials are conducted, in a series of segments, with each witness being heard weeks and perhaps months apart (Asian development Bank, 2003). Another important reason behind the longer evidence stage is that the law of evidence is silent about the maximum number of witnesses a party can summon which is always abused by the parties to prolong a weak case (Vos, 2004). It is also paradoxical that procedure requires comparatively less important matters like interlocutory orders to be either handwritten by the judicial offices themselves or typed by the stenographers under their dictation while evidence is left at the mercy of inexperienced counsels (Gondal, 2011).

1.6 Local Legal Culture a Cause of Delay

Presently the focus of the research has shifted to the shared expectations, practices and informal rules of behavior of judges and lawyers named "local legal culture" or socio-legal culture (Dakolias, 1999; Steelman & Fabri, 2008). The concept of "local legal culture" is not only useful in practically improving times of processing but also helps theoretically in understanding different factors influencing court performance (Coolsen, 2008; Gallas, 2005). Delay is most often perpetuated because the judges and lawyers accept it as the norm, and to change a norm requires modifying the expectations and behavior of those who are governed by it (American Bar Association, 1986). To acquire changes in the pace of case processing, it is necessary to change the attitudes of all members of a legal community (Buscaglia & Dakolias, 1996).

2. Procedural Causes of Delay

1.1 Case Management

The basic idea of case flow management is that the court controls the pace of litigation by establishing meaningful events, setting scheduled dates and time frame for pre-trial events and trials (Steelman & Fabri, 2008). It is the process

of managing individual cases as well as the entire case flow. It consists of time standard management and case load management; it analyzes court work load for improving planning and monitoring actions (Velicogna, 2007).

Good court management ensures the expeditious case resolution (Hoffman, 2005). It is the only cure for the wrong trial setting policies consistently resulting in many more cases set for trial than can possibly be heard, thereby precipitating vicious cycles of adjournments, which perpetually churn aged cases (Armytage, 2004). Better case management by the judge will prevent the wasted time and money often caused by overzealous or dilatory lawyers (Burger, 1982).The weak institutional structure of the judicial system has hampered the effective case management. Unlike the developed countries' courts like sec. 479(c)(1)-(3) of the Civil Justice Reform Act, 1990 (28.U.S.SC) of United States, here we have little statutes or any other kind of rules to regulate case and case flow management (http://lawcommissionofindia .nic.in;Shah, 2005). Along with case flow management, alternative dispute resolution (ADR) also proved very successful in minimizing delay in justice which is always not applied; notwithstanding the statutory provision of 89A of CPC. There are more than one reasons for this. Firstly, institutional support is totally lacking. Secondly, not much has been done for training and capacity building of the judges and thirdly the amendments in CPC were not followed by amendments in the rules for procedural details to invoke ADR techniques (Jillani, 2006).Lastly without a sufficient and balanced level of resources and a manageable case-load effective case management is impossible (Coolsen, 2008).

2.2 Complexity of Procedure

Procedural simplification is of prime importance for the redressel of the grievances (World Bank, 2002). As higher levels of procedural complexity lengthens the disposition time of cases (Djankov, Porta, Lopez-de-Silanes, & Shleifer, 2003). Technicalities in a case always play a step-mother role and at times are fatal for the case from either contesting party (Nahaki, 2011). Those technicalities of legal procedure can be exploited and a case could continue almost indefinitely if so desired (Lone, 2011). Our procedural laws are complicated and cumbersome and date back to colonial time. They preserve excessively complex and tortuous procedural paths for cases through the courts, which are mostly misused to prolong the litigations (Ghazi, 2006). The complex procedure makes corrupt behavior easy to occur when lawyers desire to move their cases faster or slower or even influence the outcome (Blue, et al., 2008). So much time is wasted on the arguments of jurisdiction, cause of action, sufficiency of notice, amendments of plaint and other procedural

matters. Moreover, the words or terms used in the Bare Acts are highly technical and difficult and hence beyond the comprehensions of a common man (Aggarwal, 1978).

2.3 False and Frivolous litigation

There is comparatively a very small portion of genuine litigants in our courts while the rest of them go to the courts not to seek justice but to perpetrate and perpetuate injustice and treachery (Khan, 1988).Frivolous cases either consist of entirely fabricated cases or an original claim along with baseless supplementary claims filed by a party for the harassment of the other party (Shah, 2005).It is argued that civil litigation does not attempt to peacefully resolve the disputes; rather it presents an opportunity to pursue and prolong local rivalries (Khan, 2004; Khan & Khan, 2003) Nelson in his unpublished PhD thesis said that the root cause of delay in courts is the litigants' interest in delaying rather than expediting the case.A case can be successfully impeded by making any false claim, hiding any fact, raising any plea, producing any false document, and by denying any original document; which will consequently delay the case infinitely (Mohan, 2009). Frivolous cases are filed to harass their opponent, to enhance their honour in the society, to affect the evidence of the opposite party, to reduce value of an award of damages(Khan & Khan, 2003; Adler, et al., 1982; Rehn et al., 2010). Unfortunately there is no law in Pakistan to effectively discourage unnecessary and frivolous litigation (Azad, 2012).

2.4 Defective cost assessment system

Rules become powerless if effective sanctions are lacking or if sanctions are lacking proper imposition (Uzelac, 2004).Imposition of higher costs on the losing party is indispensable for the curtailment of the false and fraudulent litigation (Khan, 1988). Under Section 35 of CPC, the court is empowered to award actual costs in order to reimburse the expenses undergone by the successful litigant (Muhammad Akram vs. Mst. Farman, 1990).However in practice, the courts rarely award costs contrary to all other common law countries that have made it necessary for the losing side to pay the expenses not only of herself but also of the winning side (Uzair, 2011). While imposing costs according to Khurshid Ahmed NazAfridi v. Bashir Ahmed (1993) the order of granting costs should be based on well recognized principle of justice and equity and this power of granting costs should not be interfered in appeal unless these principles are violated.

2.5 Miscellaneous Applications and Orders

In a weak case frivolous interlocutory applications are made under various enactments; which have the capacity to put a halt on the original proceedings of

a case and can substantially change it into a different case with a result that the line of action and original structure of the suit goes changed for some time which causes delay in justice (Qureshi, 1998). Secondly the rights of appeal against interim and interlocutory orders are generally misused to delay a case to an unknown time (Marrijuddin, 1996). Consequently the Sindh High Court suggested restriction of appeal and revisions against interlocutory orders in civil matters to reduce delay in case disposal (Law & Justice Commission of Pakistan, 2003).

Order VI rule 17 of CPC; authorizes the court to allow a party amendment of pleadings at any stage of the proceedings in such manner and on such terms as may be just (Qureshi, 1998). This room for frequent amendments of the plaints and written statements at any stage of the trial has become one of the main causes of delay in civil justice (Alam, 2010). Eighty percent of the applications filed for the amendment of pleadings are made for the solitary purpose of delaying the case, fifteen percent of the remaining twenty percent are made because of the lackadaisical approach and only five percent applications are genuine (Mohan, 2009).

3. Budgetary Insufficiency a Cause of Delay

The National Judicial Policy (2009) necessitates the government to provide necessary funds to support infrastructure, to increase the strength of judicial officers and administrative staff and other facilities in courts and thus to cope with rising trend of litigation in the country. But the government has allocated very nominal amount on money for the judiciary (Muhammad, 2011).

3.1 Insufficient number of judges

The root cause of the delay problem is an imbalance between the demand for court services and the court's ability to supply those services (Kakalik, et al., 1990). In simplest terms, delay is conceived a problem of too many cases chasing too few judges (Hamid, 2007). A human being, howsoever intelligent, has a limited capacity to work, so do the judges (Blue, et al., 2008).How can the court system be expected to deliver justice to the ordinary citizen when the individual judge at all levels of the judicial hierarchy is stretched beyond capacity (Sattar, 2012)? The judges would be comfortable in granting adjournments, as it would give them a siege of relief in the present tense workload situation in the courts (Aggarwal, 1978).

This heavy caseload per judge is also serious obstacle to improvement in methods. Other causes of delay, such as lack of proper supervision, unsatisfactory service of processes, non-attendance of witnesses and frequent adjournments are only collateral and they can be relevant only if the presiding officers will have time to address to these matters (Nawaz, 2004).

3.2 Training and Education of Judges and Lawyers

For decades, researchers and court analysts have touted adding judges as a solution to delay in the courts, yet delay persists. Hence, the idea of adding more judges is an "old" solution that hasn't worked; what is really needed is more efficiency in litigation (Kakalik, et al., 1990). Appointment of a new judge is like establishing a court, which is both expensive and complicated, having no substantial effect on the time of litigation if the judges are incompetent (Iqbal, 2006; Hunter, 1975). The concept of competence includes mastery of theoretical knowledge, developing problem-solving capacity, cultivating collegiate identity, relating to allied professionals, conceptualizing the judicial mission, maintaining an ethical practice and self-enhancement (Armytage, 2004).

To increase the efficiency of the judiciary there is a pressing need to train the judges and the ministerial staff of the court in modern ways(Rehn, et al., 2010). Along side this we also need to train the judges in Islamic perspective and thus to enable them to interpret all our laws in the light of the holy Quran and Sunnah as required by the constitution of Pakistan(Mughal, 2013). Notwithstanding the rhetoric about judicial training, here in Pakistan despite the establishment of Federal Judicial Academy (FJA) in 1988 the commentators have, noted that substantive training needs both pre-service and on job are yet to be addressed (Armytage, 2004) neither the quality of training meted out by the federal and provincial judicial academies has changed nor has performance during training programs been made a prominent consideration for professional advancement within district judiciary (Sattar, 2012).Lack of training facilities impedes the adoption of modern tools and techniques like case flow management, and computer technology (Shah, 2005).

The concept of continuous training is not limited to judges alone it is also considered necessary for lawyers all over the world, but here in Pakistan it is practically non-existing (Adhi, 2010). It will develop proficiencies necessary to maintain quality performance, and to keep abreast of new developments are all regarded as very important reasons (). And according to Warraich (2013) the bar councils are the best option to impart this training. What we need is to do a critical survey of training needs assessments conducted by the federal and provincial judicial academies to find the gaps in the trainings conducted and actual requirements of a training program (Munir, 2013). To increase the judicial competence we need to facilitate our judges by providing them quick and easy access to judicial training particularly through video games and virtual reality via internet and electronic media (Munir, 2014).

3.3 Deficient Strength of Ministerial Staff and Process Servers in the Courts

A great deal of preliminary work for getting cases ready for disposal is done by the ministerial staff (Law commission of India, 1958). They can cause delays through the fixation of case, transfer of case from one court to another, relocating files for restoration and giving incorrect information (Nahaki, 2011). There is a chronic and pervasive shortage of ministerial staff in the courts, and they are paid nominal amount of salaries and TA/DA (Law & Justice Commission of Pakistan, 1997). The staff at lower level is an easy prey to temptation owing to their fragile financial position and lack of adequate training. They are grossly underpaid and depend on small bribes to feed and educate their families (Irshad, 2011). Changing dates by paying off the staff of judges is a routine practice in the lower courts (Siddique, 2011).Process servers are also overworked, insufficiently paid, rank as the lowest grade of government official, have insufficient logistical support, receive little or no training, poorly monitored, their number is inadequate comparative to the workload (Tariq, 2005).

3.4 Use of Modern Technology

The judicial system is lagging behind in the adaptation of IT, which is believed to be an important tool for delay reduction and the elimination of huge backlog of cases (Chaudhry, 2011). This is considered an important element of delay reduction by judges in Latin America (Asian Foundation, 1999).The computers efficiently speed up the court proceedings. Data processing is one of the foremost uses to which computers are put in an attempt to ease case backlogs and increase court efficiency (Law Commission of India, 1988).A study of courts in Argentina and Venezuela found that the use of computerized word processing is strongly correlated with faster disposition(Buscaglia & Ulen, 1997). The Indian Supreme Court disposed of approximately twice the rate of the previous year after the computerization of the court registry (Khan, Pushpa, & Aparna, 1997). Lack of information technology facilities hinders the adoption of modern case flow management techniques (Shah, 2005). While in the absence of computerized record keeping, it is easy to get the date extended by the ministerial staff without coming into the judge's notice (Siddique, 2011).

3.5 Defective Land Registration System

From fifty to seventy five percent of cases brought before lower level civil courts and the high courts are land-related disputes. Countrywide over a million pending land cases are estimated. Most of these land disputes are because of inaccurate or fraudulent land records, inaccurate boundary

allocation creating parallel claims, and multiple registrations to the same land by different parties. It is almost impossible to find out a reliable evidence of the land rights (Nasir & Ali, 2010). There is no denial of the fact that In most of the civil cases the cause of action relates to wrong entries in the Record of Rights; If revenue record is computerized, everyone will be aware about the entries in the revenue record, and the litigation regarding land dispute will be decreased considerably (Law & Justice Commission of Pakistan, 2010).

4. Lawyers' Contributions in the Problem of Delay in Justice

4.1 Lawyers Always Keep on Strikes from the Courts

Attending court proceedings for the protection of the rights of their clients is the prime responsibility of lawyers; on the contrary they always find some excuse to keep on strikes from courts (Kakar, 2011). The reasons for these strikes could be any ranging from misbehavior with their colleague both inside court and outside the court to implementation of some enactment (Aggarwal, 1978). These lawyers strikes have brought the sub-ordinate judiciary in between devil and the deep sea because on one side the High Courts are pressing them hard to meet the targets viz a viz expeditious disposal while on the other side lawyers are not co-operating with them (Gondal, 2011).

4.2 Busy Schedule of Lawyers

In civil and criminal matters some leading lawyers are so popular that before the trial courts in almost every third case one pair of leading popular lawyers are engaged by parties (Nahaki, 2011). Lawyers as a group are never sure whether they are going to have another case or not, make them take more and more cases until they are so spread out they cannot possibly devote significant energy to anything except a trial (Adler, et al., 1982). In order to maintain their own caseload these lawyers always seek frequent adjournments for one reason or the other (Lone, 2011).Due to their busy schedule lawyers' are often poorly prepared for defending their cases appropriately, by presentation of clear and well documented cases (Crook, 2004). The outcome of this unpreparedness on lawyers' part is clogging our court system, wasting valuable court time and public funds in listing and re-listing of cases without purposeful conclusion (Sattar, 2012).

4.3 Lawyers Fighting for their Clients

Presently lawyers along with judges perceive the case as a battle instead of a peaceful dispute resolution process; wherein the problems are solved through mutual co-operation between the parties (Asser, 2004). These lawyers in the name of zealous representation of their clients may cause delay in the dispute resolution process (American Bar Association, 1986). They always take

adjournments from court proceedings on different pretexts to enable their clients and their supporters to intimidate the witnesses (Krishnan & Kumar, 2011). The propensity of unnecessary long debates over the case' facts by the lawyers at oral arguments stage is also one of the most important reasons of delay, wherein lawyers are even reported for quoting Shakespeare and Ghalib while arguing out tax related matters in detail (Khan, 2000). They are even quite actively involved in bribing the economically deprived court employees in order to ensure the determination of case in their favor (Irshad, 2011).

4.4 Lawyers Resorting to Technicalities of Procedure

Research has shown that in each court there is always a group of lawyers notorious for being specialists in delaying cases (Krishnan, 2006). They will prolong a case by taking procedural points to wear his opponent down; and can keep a case continue in court almost indefinitely(Iruoma, 2005). It must have to be realized that lawyers live in a competitive world in which law and legal skills are for sale; they will sometime even feel obliged to do everything to use and abuse the procedure rules in order to win the case (Asser, 2004).

Tamm (2004) discussing the problem of delays in justice in Denmark blamed lawyers for worsening the problem after they had been involved in the dispute resolution process in eighteenth century. To be cautious one must at least agree with Uzelac(2004) who mentioned, that lawyers involvement in the justice system has no significant effect on the speed and quality of case disposal.

Conclusion and Recommendations

The following suggestions can help us improve our judicial system and avoid unnecessary delays in disposition of justice. Adding more judges to the system will reduce the work load on existing judges but this might not be a solution to the problem. Emphasis on increasing efficiency of the existing system through introducing case management by judges and decreasing corruption in judiciary will be more helpful. Blanket approval of adjournments should be stopped and applications for adjournments or interlocutory orders should be thoroughly reviewed. Judges should not hesitate to give an *ex-parte* decision against non-attending parties. Introduction of effective system of costs on litigants and empowerment of judges to impose severe sanctions on lawyers for filing frivolous cases will be helpful in imposing curb on frivolous litigation. Adequate ministerial staff and process servers should be recruited and pushed to work hard for timely disposition of cases. The antiquated, intricate procedure should be updated and simplified to expedite the court processing. Ministerial staff should be adequately trained and modern information technology should be fully exploited to streamline easy access to quick justice.

Refrences

Abbas, H. (2011). *Pakistan 2020 a vision for building a better future*. Washington, DC: Asia Society Pakistan Study Group.

Adhi, Z. (2010). Continuing legal education in Pakistan.*Pakistan's premier corporate law magazine*.

Adler, J. W., Felstiner, W. F., Hensler, D. R., & Peterson, M. A. (1982). *The pace of litigation.* Paper presented at the The pace of litigation, Santa Monica.

Aggarwal, C. L. (1978). Laws' Delay and Acccumlation of arrears in the High Courts. *The Journal of Bar Council of India 7*(1), 41.

Akhtar, S., Alam, M., Shafiq, M. S., & Detho, I. A. (2008). Study of informal justice system in Pakistan: Evaluation report. Karachi: Sindh Judicial academy & UNICEF.

Alam, M. S. (2010). Problems of delay and backlog cases, *The Daily Star*.

American Bar Association. (1986). Defeating delay : developing and implementing a court delay reduction program : based upon the American Bar Association's court delay reduction standards. Chicago, Ill.: The Task Force.

Anderson, J. H., & Gray, C. W. (2006). Anticorruption in transition 3 who is succeeding-- and why? Washington, DC: World Bank.

Armytage, L. (2004). Pakistan's law and justice sector reform experience: some lessons. *Law, social justice and global development, 2*(6), 2-10.

Armytage, L. (2012). *Reforming Justice: A Journey to Fairness in Pakistan*. Paper presented at the International Judicial Conference, Islamabad.

Ashiq Hussain Shah *v.* Province of Punjab. (2003). SCMR. 1840.

Asian development Bank. (2003). Annual report 2003. Singapore: Asian development bank.

Asian Development Bank. (2009). Pakistan access to justice program: completion report. Islamabad, Pakistan: Asian development Bank.

Asian Foundation. (1999). Pakistan legal and judicial refrom project: Integrated final report. Islamabad: The Asian foundation Pakistan.

Asif Ali Zardari and another v.The State.(2001). PLD (SC). 568.

Asser, W. D. H. (2004). Within a reasonable time a joint responsibility. In C. H. V. Rhee (Ed.), *The law's delay: essays on undue delay in civil litigation*. Antwerp: Intersentia

Azad, M. Y. (2012). *The Role of Judiciary in the Promotion of a Culture of Tolerance.* Paper presented at the International Judicial Conference 2012, Islamabad.

Balakrishnan, K. G. (2007). Delay in disposal of cases. China.

Blue, R., Richard, H., & Berg, L. A. (2008). Pakistan rule of law assessment final report. [Washington, D.C.]: United States Agency for International Development (USAID).

Burger, W. E. (1982). Isn't there a better way? *American Bar association journal, 68*, 274-275.

Buscaglia, E., & Dakolias, M. (1996). *Judicial reform in Latin American courts : the experience in Argentina and Ecuador*. Washington, D.C.: World Bank.

Buscaglia, E., & Ulen, T. (1997). A Quantitative Assessment of the Efficiency of the Judicial Sector in Latin America. *International Review of Law and Economics, 17*(2), 273-295.

Chaudhry, I. M. (2011). *Concluding speech.* Paper presented at the National judicial conference 2011, Islamabad.

Chaudhry, I. M. (2012). *Keynote Address.* Paper presented at the International Judicial Conference, Islamabad.

Coolsen, J. P. (2008). Case Management Innovation in a Large, Urban Trial Court: the Critical Importance of Legal Stakeholder Attitudes. *The Justice system journal., 30*(1), 70-90.

Council of Europe. (2006). European Commission for the Efficiency of Justice (CEPEJ). Strasbourg: Council of Europe.

Crook, R. C. (2004). Access to justice and land disputes in Ghana's state courts : the litigants' perspective. *Journal of legal pluralism and unofficial law Journal of Legal Pluralism and Unofficial Law, 50*(1), 1-28.

Dakolias, M. (1999). Court performance around the world a comparative perspective. Washington, D.C.: World Bank.

DiVita, G. (2010). Production of laws and delays in court decisions. *International Review of Law and Economics, 30*(3), 276-281.

Djankov, S., Porta, R. L., Lopez-de-Silanes, F., & Shleifer, A. (2003). courts. *Quarterly journal of economics, 118*(2), 453-517.

Feeley, M. (1983). *Court reform on trial : why simple solutions fail*. New York: Basic Books.

Feeley, M. M. (1992). *The process is the punishment: handling cases in a lower criminal court*. New York, US: Sage publishers.

Gallas, G. (2005). Local legal culture more than court culture. *Court Manager, 20*(4), 23-28.

Ghazi, M. A. (2006). *The role of judiciary in the promotion of a culture of tolerance*. Paper presented at the International Judicial conference, Islamabad.

Ghulam Mustafa Shehzad*v.* Lahore High Court.(2007). SCMR. 1786.

Gondal, M. A. K. (2011). *National Judicial Policy: Suggestions for Reformation*. Paper presented at the National judicial conference 2011, Islamabad.

Hamid, S. (2007). An overview of the judicial system of Pakistan and how far has it succeeded in providing justice and establishing rule of law: Report (Justice, accountability and international experience. Islamabad: Pakistan institute of legislative development and transparency PILDT.

Hazra, A. K., & Micevska, M. B. (2004). *The Problem of court congestion: evidence from the indian lower courts*. Paper presented at the Royal Economic Society Annual Conference 2004 Swansea.

Heise, M. (2000). Justice delayed?: AN Empirical Analysis Of Civil Case Disposition Time. . *Case Western Reserve Law Review, 50*(4), 813-849.

Hoffman, R. (2005). *Case and case flow management*. Paper presented at the Law and policy reform at the Asian development bank: Challenges in implementing access to justice reforms, Michigan, United States.

Hunter, D. R. (1975). Riding to the circuits: Indiana probes delay. *Judicature, 59*(1), 19-21.

Hussain, F. (2007). The judicial system of Pakistan. Islamabad: Supreme court of Pakistan.

International Crisis Group. (2008). Reforming the judiciary in Pakistan *Asia Report N°160* Islamabad; Brussels: International Crisis Group.

Iqbal, J. (2006). *The Role of the judiciary as a catalyst of Change*. Paper presented at the International judicial conference, Islamabad.

Irshad, S. M. (2011). *Eradication of corruption: Initiatives and strategies*. Paper presented at the National Judicial conference, Islamabad.

Iruoma, O. O. (2005). *Eradicating delay in the administration of justice in African Courts: A comparative analysis of South African and Nigerian Courts.* LLM, University of Western Cape, Cape Town.

Jillani, T. H. (2006). Delayed justice and the role of ADR. International judicial conference. Islamabad.

Kakalik, J. S., Selvin, M., & Pace, N. M. (1990). Averting gridlock : strategies for reducing civil delay in the Los Angeles Superior Court. Santa Monica, CA: The Institute of Civil Justice Rand.

Kakar, M. A. (2011). *National judicial policy: suggestions for reformation*. Paper presented at the National judicial conference 2011, Islamabad.

Khan, A. U. (2000). Delays, costs and glorious uncertainty - how judicial procedure hurts the poor. In S. Gangopadhyay (Ed.), *Economic reforms for the poor* (pp. 298-343). New Delhi: Konark Publishers.

Khan, A. U., Pushpa, S., & Aparna, R. (1997). *Identification of bottlenecks in judicial procedures : a case study on land acquisition and labour related laws*. New Delhi: Allied Publishers.

Khan, F. S. (2004). *Quest for justice : Judicial system in Pakistan*. Islamabad: The Network Publications.

Khan, F. S., & Khan, S. R. (2003). A Benchmark study on law-and-order and the dispensation of justice in the context of power devolution. Islamabad: Sustainable Development Policy Institute.

Khan, G. M. (1988). Speedy justice- how? . *Pakistan Legal Decision, XL*, 228.

Khurshid Ahmed NazAfridi v. Bashir Ahmed.(1993). SCMR. 639.

Krishnan, J. K. (2006). Lawyering for a Cause and Experiences from Abroad. *California law review, 94*(2), 575-615.

Krishnan, J. K., & Kumar, C. R. (2011). Delay in process, denial of justice:the jurisprudence and empirics of speedy trials in comparative perspective. *Georgetown Journal of International Law, 42*(4), 747-784.

Law Commission of Bangladesh. (2010). Recommendations for Expediting Civil Proceedings. Government of Bangladesh.

Law & Justice Commission of Pakistan. (1997). criminal justice system *report no 20*. Islamabad: Law and justice system of Pakistan.

Law & Justice Commission of Pakistan. (2003). Expediting trial proceedings *Report no 60*. islamabad.

Law & Justice Commission of Pakistan. (2010). Annual report 2010. Islamabad: Law and justice commission of Pakistan.

Law commission of India. (1958). Reforms of judicial administration *Report No 14*. New Delhi: Law commission of India.

Law commission of India. (1964). The code of civil procedure (1908) *Report no 27*. New Delhi: Law Commission of India.

Law commission of India. (1978). Delay and arrears in trial courts *77*. New Delhi: Law commission of India

Law Commission of India. (1988). Resource allocation infrastructural services in judicial administration (a continuum of the report on manpower's planning in judiciary: a blueprint) *127*. New Delhi: Law commission of India.

Law Reform Commission of Tanzania. (1986). *Delays in the disposal of civil suits*. [Dar es Salaam, Tanzania]: The Commission.

Lone, A. A. (2011). *Responsibility of the bench and bar in dispensation of justice*. Paper presented at the National judicial conference, Islamabad.

Macnair, M. (2004). Lord King and Lord Talbot: an eightennth century attempt to reduce delay in chancery and its general lessons. In C. H. V. Rhee (Ed.), *The Law's Delay: Essays on undue delay in civil litigation* (pp. 181-195). Antwerp: Intersentia.

Marrijuddin, Q. M. (1996). Delay in administration of justice an assessment. *Central India Law Quarterly, 9*(1), 5-19.

Martin, J. A., Prescott, E. A., Hudson, M. J., & Courts, N. C. f. S. (1981). *Appellate court delay: structural responses to the problems of volume and delay*: National Center for State Courts.

Mohan, A. (2009). *Justice, courts and delays*. New Delhi; India: Universal Law Publishing Co.

Muhammad Akram vs. Mst Farman. (1990). PLD (SC). 28.

Muhammad Idress *v.* Shamim Akhtar. (1980). *SCMR*. 787.

Mughal, M. A. (2013). Judicial education and training and its importance in Islam. Ssrn.com.

Munir, M. A. (2013). Issues and Challenges in Training Needs Assessment (TNA): Judicial Education in a Rule of Law Perspective. www.ssrn.com

Munir, M. A. (2014). Judicial education and training at digital platform. Ssrn.com.

Muhammad, R. F. (2011). *The role of costs in achieving the aims of the National judicial Policy*. Paper presented at the National judicial conference 2011, Islamabad.

NAB. (2002). National Anti-corruption strategy. Islamabad. Pakistan.

Nahaki, A. A. K. (2011). *Responsibility of the Bench and Bar in Dispensation of Justice*. Paper presented at the national judicial conference Islamabad

Nasir, A., & Ali, Z. (2010). *Land administration system in Pakistan: current situation and stakeholders' perception*. Paper presented at the FIG congress 2010, facing the challenges- building the capacity, Sydney, Australia.

National Judicial Policy. (2009). National judicial policy making committee.

Nawaz, C. H. (2004). delay reduction with effective court management. *PLD*.

Nelson, M. J., Property Rights, Preference Formation, and Path Dependence: Land, Law, and the Logic of Local Politics in the Punjab, 1849-1999, Columbia University, Ph. D thesis, unpublished.

Nouroz Khan *v.* Haji Qadoor. (2005). *SCMR*. 1877.

Perelman, C. (1963). *The idea of justice and the problem of argument*. New York: Humanities Press.

Peshawar High Court. (2011). Judicial Estacode: Instructions issued by the High Court Section 7: letter no. 2947-3034 dated 2nd June, 1990 circular letter: Instructions regarding speedy disposal of cases filing of documents. Non observance of High Court rules and orders. Peshawar Peshawar High Court.

Qureshi, A. H. (1998). Civil trial delayed. *Pakistan Legal Decision (PLD), Journal*, 39.

Rawls, J. (1971). *A theory of justice*. Cambridge, MA: Belknap Press of Harvard University Press.

Rehmat Ali *v.* Javed ur Rehman. (1985). *SCMR*. 698.

Rehn, N., Naik, A., Jain, D., Singh, A., Robinson, N., So, W. W., . . . Kanwar, V. (2010). Justice Without Delay: Recommendations for Legal and Institutional Reforms in the Indian Courts. *Jindal Global Law Review, Vol. 2*(1).

Sato, Y. (2001). *Commercial dispute processing and Japan*. The Hague; New York: Kluwer Law International.

Sattar, B. (2012). *The Role of Judiciary in Good Governance*. Paper presented at the International judicial conference, Islamabad.

Shah, M. S. (2005). *Peshawar solutions to case flow management*. Paper presented at the the Law and policy reform at the Asian development bank: Challenges in implementing access to justice reforms, Michigan, United States.

Sherwani, Z. A. K. (2006). *Case flow management system and court automation*. Paper presented at the International judicial conference, Islamabad.

Siddique, O. (2011). *Pakistan's experience with formal law: an alien justice*: Cambridge university press.

Siddique, O. (2010). Law in practice: The Lahore district courts litigants survey (2010-2011). Development policy research center working paper.

Steelman, D., & Fabri, M. (2008). Can an Italian Court use the American approach to delay reduction? *The Justice system journal., 29*(1), 1-23.

Tamm, D. (2004). Delay in Danish civil procedure. In C. H. V. Rhee (Ed.), *The law's delay: Essays on undue delay in civil litigation* (pp. 275-282). Antwerp: Intersentia

Tariq, M. (2005). *Challenges to improving court registries and process service: the peshawar context*. Paper presented at the Law and policy reform at the Asian development bank: challenges in implementing access to justice reforms, Michigan, United States.

United Nations office on drugs and crimes. (2004). Assessment of justice system integrity and capacity in three Nigerian states: Global programme against corruption, United nations office on drug and crime and Nigerian Institute of advanced legal studies Nigeria.

Uzair, A. (2011). Can award of costs be used as a tool to administer justice? *The Counsel Magazine, Karachi.*

Uzelac, A. (2004). Accelerating civil proceedings in Croatia- A history of attempt to improve the efficiency of civil litigation. In C. H. V. Rhee (Ed.), *The Law's Delay: Essays on undue delay in civil litigation* (pp. 283- 315). Antwerp: Intersentia

Velicogna, M. (2007). Justice systems and ICT: what can be learned from Europe. *Utrecht Law Review, 3*(1), 129-147.

Vos, W. D. (2004). Delay in South African civil procedure. In C. H. V. Rhee (Ed.), *The Law's Delay: Essays on undue delay in civil litigation* (pp. 335-342). Antwerp: Intersentia

Wallis, J. D. (2009). A Critical Evaluation of Delay in an Ohio Criminal Trial Court *Court Executive Development Program 2008-2009 Phase III Project*. Illinois: Institute for Court Management.

Warraich, A. N. (2013). The legal framework to inculcate CPD in Pakistan. Paper presented at the First national conference on CPD in law.

Whittaker, C., Mackie, A., Lewis, R., & Ponikiewski, N. (1997). *Managing Courts Effectively: The Reasons for Adjournments in Magistrates' Courts*. London, United Kingdom: Great Britain Home Office Research Development Statistics Directorate.

World Bank. (2002). World Development Report 2002. Washington: World Bank Publications.
http://lawcommissionofindia.nic.in/adr_conf/Mayo%20Rao%20case%20mngt%203.pdf

The author Mr. Raza Ullah Shah is a Lecturer at the Department of Public Administration, Gomal University DI Khan, Pakistan. He can be reached at Email : razaullahphd@gmail.com or Cell phone:+92 331 506 7529.

The Author Mr. Shadi Ullah Khan is a Lecturer at the Department of Public Administration, Gomal University DI Khan, Pakistan. He can be reached at Email : profdrshadiullahkhan@gmail.com

The author Ms. Sumera Farid is a Lecturer at the Department of Social Work, University of Peshawar. She can be reached at Email : sumerafarid@upesh.edu.pk