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EXPEDITIOUS DISPOSAL OF CASES BY EMPLOYING THE TECHNIQUES OF CASE MANAGEMENT, PRE-TRIAL REVIEW AND ADR

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ABSTRACT
Every institution is important for the functioning of a democracy, but the judiciary's role is even more vital as it bears the onerous responsibility of dispensing justice across society. However, owing to public inclination towards litigation, the need for judicial attention will always outweigh the availability of its time. Delay in disposal of cases is widespread in most of the states and Pakistan is no exception. However, procedures are being developed to draw maximum benefit out of the available judicial time. Most of these procedures apply case management techniques to fairly distribute judicial time to different kinds of cases depending on their specific requirements. Obviously, not all cases or stages within those cases require equal amount of judicial attention, case management techniques require us to prioritize cases in order of their complexity, so that each category may be assigned the amount of time and attention it deserves from a judge. Delay in disposal of cases is the result of several variables that are intricately interconnected. In an ideal world, justice should be administered swiftly, but in practice, there can be hurdles in the way of this outwardly simple goal. Aa an example, attorneys would constantly ask for adjournments on one pretext or the other. Judges, on their part, would happily grant their requests to ease their workload. Likewise, never-ending cross examinations and lengthy arguments make it even harder to dispose of a case, not to speak of time spent by judges on writing judgments and coming to terms with miscellaneous applications and administrative work. While there is nothing much that can be done concerning dilatory tactics of lawyers, a lot can, however, be done about efficient management of judicial time. The three most frequently employed techniques are Pre-Trial Review, Differentiated Case Management (DCM) and Alternate Dispute Resolution (ADR). According to UNODC's Best Practices Guide, by adopting these, time spent on disposal of a case can be brought down to one third. It is reassuring to note that case management techniques are being put to practice in Pakistan by introducing legislation, such as the Punjab Alternate Dispute Resolution Act, 2019. However, the public is still inclined towards litigation. Perhaps, one of the reasons is court driven rather than the community centric nature of our case management techniques.

Keywords: Justice, ADR, ex-parte, administrative meetings, adjournments, litigation.

INTRODUCTION
Case management can be defined as 'the full range of steps that a court takes to oversee and manage the development of a case from its inception to post-disposition court work, ensuring that justice is served efficiently and without delay (Steelman, 2008).' In simple words, it is a process to seek a quick resolution of the disputes between the parties by adopting judicial management of a case in a structured and well thought out manner. It involves techniques for moving cases through court processes, such as organizing a series of pre-trial conferences or setting up deadlines for discovery and inspection. Judges are primarily responsible for case management which enjoins them to develop multiple strategies for

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disposal of different types of cases in the least amount of time. On the other hand, lawyers, clerks of courts and paralegals provide essential support to implement the strategy identified for a particular case (Kluwer 2022).

Historical Context of Case Management

Judging changed about half a century ago. No longer does a judge sit back & let the lawyers manage pace of the proceedings. Instead, judges now take active control of the process right from the beginning. For this reason, it was held in AON Risk Services Australia V. Australian National Universities (2009): The days when parties were left at the leisure to pursue private litigation in the way that they thought best suited their purpose have long gone. Courts have an overriding obligation to see that those using their facilities are proceeding in the best way calculated to bring litigation to an end at the earliest possible moment. Keeping this in mind, the US Congress purposely decided that active case management had the best chance of accomplishing the twin objective of cost and delay reduction in the disposal of court cases (Gensler , 2010) Thus, in 2006, it was observed in the Federal Judicial Conference of the US that a judge can save a lot of time for subsequent events by putting extra efforts earlier on in active case management.

Similarly, in India, the practicality of amendments in the Civil Procedure aimed at facilitating expeditious disposal of cases was challenged in the Supreme Court. The Supreme court upheld the amendments, in Tamil Nadu Vs. Union of India (2006), by pronouncing that the amendments were indispensable for speedy justice and effective functioning of judiciary. In this light, it can be argued that the days of parties pursuing private litigation in the manner that best suited their interest are long gone. Courts now have an overarching duty to make sure that the individuals using their resources are acting in a manner best fitted to the goal of bringing an end to litigation (Bufford, 1996).

WHY DO WE NEED CASE MANAGEMENT?

Impact of Delay

Delay in disposal of cases may damage the reputation of a justice system beyond repair, and as a corollary of the state having such system. The stakeholders begin to believe that the system does not have the capacity to deliver, consequently such a state is left behind in the comity of nations. For example, if credible international agencies like World Justice Project (WJP) rank a state poorly on Rule of Law Index, a foreign investor would think twice before putting his money into it. Apart from that, delay in disposal of cases may give rise to following major problems:

1. It prolongs the righting of wrongs and defending the innocent against false accusations, confirming the apprehensions of the citizens about dysfunctionality of the justice system (Ross,2011).
2. It leads to overcrowding of court dockets, pressuring judges to make decisions in haste, often on technical grounds. As a result, these decisions are routinely reversed in appeals, taking twice the amount of time that would have been spent, had the case been decided on merits (Flanders, 1978).
3. Even if the parties are genuinely desirous of settling their dispute at the earliest, court delay will obstruct the realization of this goal. Due to absence, transfer and pre- occupation of the judicial officers or infinite procedural formalities, a witness begins to feel irritated and ultimately absent himself to free up time for personal business (Church, 1982).
4. Because human memory tends to fade, the possibility of a fair judgment is lowered if the facts are only partially remembered by the witnesses owing to lapse of time between the occurrence and its judicial determination (Bell, 2009).

Causes Of Delay Identified by Pakistan Law & Justice Commission (PLJC).

According to Pakistan Law and Justice Commission (PLCJ), all players of the justice system are to some extent responsible for delay in disposal of court cases. In the eyes of the commission, following dilatory tactics are typically adopted by advocates, process servers, investigators and even by judges to prolong the cases:

Unsatisfactory Service of The Process.

When a suit is filed, summons is issued to the defendant to enter onto his defense. The summons is delivered through state appointed process servers at the expense of the plaintiff. (Order V R.9 Cpc (1908). In civil litigation, it is standard practice that the plaintiffs, to delay the service of process would either bribe the process servers to not to serve or give inaccurate address of the defendant(s). Because of non-service of summons, the defendant fails to attend the court resulting in ex-parte proceedings and

ultimately to ex-parte decree. When the defendant comes to know of it, he forthwith appears in court. If he provides a valid reason for his nonappearance, the court is bound to set aside the proceedings and the litigation starts afresh. However, the time spent on previous rounds of litigation goes to waste. There is a dire need to improve the service of the process to address the problem of delay in civil cases. The absence of transportation facilities for process servers and non-payment of regular Traveling Allowance/ Dining Allowance may be contributing factors to their non-serious and reckless behavior (Shah, 2014).

Delay in the Submission of Challan

A criminal trial begins with framing of the charge against the accused and the same cannot be done unless the investigation report is submitted in the court called 'chalan.' Under Sec. 173 of Cr.pc. (1989) Chalan is thought to be the single most important document upon which fate of the case hangs as it contains statements of the witnesses immediately after the occurrence, recovery memo, day to day progress of the investigation, site plan, injury report, medico-legal report, postmortem report and opinion of the investigating officer with reference to guilt of the accused. As per law, it should be submitted within 14 plus 3 days after registration of crime report or First Information Report (FIR). However, it has been observed, in PLJ 1995 Cr.c.Kar 420, that the submission of Chalan is delayed for months on one pretext or the other. Apparently, the situation has somewhat improved as the courts have been able to enforce the submission of incomplete or interim Chalan within an extra 3 days allowed by law beyond the regular period of 14 days. Still, it is thought to be one of the foremost hurdles in conclusion of criminal trials on time.

Delay in Writing and Delivering Judgments

Courts have a limited amount of time each day to deal with different types of cases and diverse stages within those cases. To illustrate, typically a court in Pakistan begins its day by engaging with urgent matters like interim injunctions, bails and remand applications. Next, the court will spend time disposing of miscellaneous applications, including execution petitions. Thereafter, the court will involve itself in framing issues, recording evidence and listening to final arguments. Besides this, judges are occasionally required to attend administrative meetings, update mandatory registers and supply records asked for by the superior courts. In this flurry of activity, the most important task of a judge i.e., judgment writing goes on the back burner (Zafeer, 2020). According to order 20 Rule 1 of CPC, a judge is bound to deliver the judgments within 30 days from the date on which hearing of the case was concluded. To meet this target, many judges take recourse to writing judgements at home, which naturally interferes with their work-life balance (Casaleiro, 2021). As of today, two serious proposals have been made to solve this problem. First, to introduce evening courts, and second to increase the number of judges. Whereas the former idea seems impracticable because of human limitations, the latter is being experimented these days without any favorable results so far.

Frequent Transfers of Judicial Officers

According to Nawaz, another central reason for delay in disposal of cases is frequent transfers/ postings of judicial officers across Pakistan. It is commonplace that judges are transferred from one station to another before the expiry of usual tenure of their service. Each individual Judge may have a diverse range of techniques for dealing with different types of cases. From this perspective, it would be a pity if a judge who knocked himself out to ripe a case from summoning stage to final arguments suddenly finds himself transferred to a new station before delivering judgment (Shah, 2014). Even prior to this, the judge must have gone to great lengths in disposing of miscellaneous applications, ordering inspection and discovery, deciding interim injunctions and recording evidence. Naturally, it does not appeal to reason that after all this strenuous work, the case should be tried by a new judge.

It has been emphasized in National Judicial Policy 2009 as amended in 2012 that a Judge should not be transferred from one station to another until he/she has completed three years' tenure. However, sometimes early transfer is requested by the judicial officers themselves as they are posted far away from their hometowns where they do not have suitable accommodation to live with their family. In other instances, their premature transfer may result because of friction between the judge and the local bar on top of their questionable reputation. Both these situations call attention to measurers required to be taken to facilitate judicial officers in their place of posting, establishing cordial relations between bar and the bench and imparting professional ethics through continual professional training of both sides (Shah, 2014).

Dilatory Tactics by Lawyers & Parties

In every litigation, one party is on a weak footing, or putting it plainly, lacks sufficient proof to back up its claim. It is often the case that such a party will try to drag the case to exhaust its opponent, leaving him with no choice but to come to a settlement. In civil litigation, this can be done by filing miscellaneous applications on every step of the trial, and in criminal by bribing the prosecutor to delay the recording of prosecution evidence. Furthermore, where a case is being handled by a seasoned attorney, he or she may genuinely not have time to represent a client in a routine case when more urgent and newsworthy cases are awaiting his presence, on the same day (RSS, 2017).

Where a lawyer is overworked because of prior commitments, he or she should delegate the new cases to his associates. However, what practically happens is that they allow their associates to pursue a case as long as it is on summon/ notice stage. The moment it goes beyond this point, the seasoned lawyer would jump in to appease the client or to win over his confidence. The lead attorney may designate the case to any other attorney, as is stated in every wakalatnama/power of attorney. However, rarely is this power exercised. In practice, it is only employed for requesting adjournments through proxy counsel or so long as the case is on summoning stage. To prevent choking of the justice system through suchlike practices, it is imperative that Bar Councils should place a limit on the number of cases a lawyer can take up at a time. Otherwise, due to overcrowding, the profession may lose its charm for the best and the brilliant (Hicks, 2013).

Budgetary Shortfall as A Reason for Delay

To deal with nation's rising tendency of litigation, the government of Pakistan approached the Asian Development Bank (ADB) in 2002 to provide financial support to implement justice sector reforms. The reforms were requisitioned by the National Judicial (Policy making) Committee and incorporated proposals, such as increasing the strength of judicial officers/ administrative staff and building infrastructure to ease access to justice. The request was acted upon, and a substantial amount of funds was made available to be utilized in three phases (Livingston, 2012). The funds were allocated to judiciary to increase the number of judges, multiply their salaries, quadruple their pensions, build new court rooms, construct new accommodations, provide them with personal transport, cellular phones, laptops and install every modern device ranging from LED screens to air conditioners in their chambers. Sometimes later, a review of the initiative was carried out, pursuant to which Mr. Livingston, a coach/ trainer of judicial officers expressed his dismay in these words:

> 'Pakistan, as elsewhere, is littered with infrastructure developments subsiding into ruin owing to the lack of maintenance programs or trained staff in testament to this reality. The "input" is only one contributing variable and, on the scale of things, a small one...' [He concluded] 'there was lack of structuring and communicating visible benefits in terms of strengthening human rights, improved legal aid and community legal literacy as being practical tools for improving access to justice.'

In short, despite providing enormous funds to simplify access to justice and fast track disposal of cases, the attainment of the coveted objectives remains elusive (Livingston, 2012). In this context, it can be argued that the number of judges was not the real problem to begin with, it was lack of commitment and resolve on the part of judicial officers caused by lack of institutional support to discourage frivolous litigation by imposing exemplary costs. However, lately, the Supreme Court of Pakistan, in National Highway Authority Vs. M/s Sambu (2020), has endorsed the practice of imposing exemplary costs on bogus claims to discourage false and vexatious litigation.

Frequent Adjournments

Adjournment means to suspend or postpone the hearing of a case until a future time or till the next available date. In Pakistan, the practice of granting adjournments is widespread. Frequent adjournments, which are typically requested on tenuous grounds, add to the sufferings of the litigants (Shah, 2014). Notably, witnesses accompanying a party take leave from work and put off their other activities to visit the court to prove the version of the party calling them. If cases are to be postponed every now and then, without their statements being recorded, they are bound to feel irritated and displeased. Furthermore, obliging them to appear on every date of hearing until evidence is closed gives the rival party the opportunity to intimidate the witnesses or even to win them over. Apart from that, human memory tends to fade with time, frequent adjournments obstruct recording of the testimony when events are still fresh in the minds of witnesses. Two primary causes of adjournments are discussed below:

a. **Lawyers strikes**

Incessant strikes on the part of the bar are among the foremost reasons for adjournments. The formal role of a lawyer is to assist judges in examining facts and applying proper law. However, over the past two decades, new trends have emerged in our justice system, such as the attorneys turning to strikes to enforce their demands. During the strike, no court work can take place, and everything comes to a standstill, including the recording of witness testimony (Tariq, 2018).

b. **Judges Freely granting adjournments due to excessive workload**

There is no denying that a judge's work is pivotal to ensure prompt administration of justice. We are all aware of how overworked and understaffed the courts are. They have long- drawn cause lists, often with more than 100 cases to deal with every day. Due to the magnitude of their work, they find it daunting to set realistic deadlines for disposal of cases. Often, they are not even able to give sufficient time to the parties to present and plead their cases. Perhaps because of this, they freely grant lawyers' requests for adjournments. While they can't do much about lawyers' strikes, a lot can be done regarding workload management.

DELAY REDUCTION THROUGH CASE MANAGEMENT

As suggested above, the idea of judging changed about half a century ago when it was realized that case management can remarkably shorten the life span of a case (Gensler,2010). It was acknowledged that a case may linger on forever if the judges would let them. For example, the well-known trial of OJ Simpson took nine months to conclude (Bufford, 1996). Therefore, the concept of active case management was introduced to cope with cost and delay problems (Wolf, 1997). Originally, the technique was evolved to deal with complex and long drawn trials, then, it was made applicable to all cases. Basically, what it entails is that judges should not sit back and let the lawyers manage their cases, rather judges should assume active control of their cases from the beginning.

The process of case management begins with a judge issuing an order that sets a complete timeline of events to follow based on specific needs of the case. As the case moves forward, the judge can continue to exercise control by closely monitoring different stages of a case. Some of the most frequently employed methods of case management are discussed below:

Differentiated Case Management

The traditional method of controlling court cases is based on a single procedural track model. No matter how difficult a case is or how much judicial attention it requires, judges will use the same tools and procedures for processing it (Sorabji,2018).

Lately, a new strategy has developed according to which multiple procedural tracks should be used to deal with different types of cases. A track should be allocated to a case depending on the level of its complexity and the amount of judicial attention it requires (UNODC,2011). As a result, a differentiated procedural tracks model, namely differentiated case management (DCM) was introduced. Keeping in mind the variety of case processing techniques, each track is structured according to specific actions/ tasks and timespan (Bala, 2010). A simple claim and a more complex civil suit thus follow separate procedures appropriate to their level of complexity. A typical differentiated case management (DCM) model comprises of three sub-tracks, that is, Small Claims Track, Fast Track and Complex or Multi-Track.

Each case is categorized and allocated to a track predicated on its complexity, i.e., the amount of attention it requires from judges and attorneys, the value of the subject matter of the case, the specificities of the procedure, and the legal difficulties involved (UNODC, 2011). Pursuant to this approach, straightforward cases of small claims may be allocated to the small claims track so that these can be disposed of swiftly with minimal judicial oversight. In the same way, cases of urgent nature with simplified or predefined procedure, such as suits relating to family matters and rent disputes may be allocated to fast track. Finally, complicated cases involving multiple legal issues, compound factual situations, and several contestants can be earmarked for complex track, where they will receive topmost judicial attention. The procedure prescribed for lawsuits based on negotiable instruments under Order XXXVII Rule III of CPC 1908 provides a good example of differentiated case management (DCM) in practice. According to this rule, the defendant may only be allowed to defend if the court grants him permission; otherwise, the plaintiff will be entitled to decree as per the instrument, and the allegation in the plaint will be presumed to be true.

In line with good practices in case management, the parties should be included in the screening criteria, allocation should be based on clearly set out norms, and each case should be judiciously assigned to the compatible track. By employing this technique, judicial workload and calendar can be managed more proficiently. As each case will be processed differently in proportion to the time and attention it deserves, judicial time will not go to waste. Another advantage is that judges will gain access to important information about the cases earlier on in the litigation process, which should make it a lot easier to direct the subsequent proceedings.

Pre-Trial Review

Pre-trail review is a conference of the parties arranged just before the beginning of the trial(UNODC, 2011). The purpose of the conference is to ensure that the parties are ready for the trial. If a party is not prepared for the trial, the court may issue directions to such party regarding the steps needed to be taken to establish its readiness (Pickering, 1958). At this stage the court may perform the following functions:

i. Checking compliance with previous court orders.

ii. Approve the timetable indicating that:

a. Issues are to be heard in a pre-defined order.

b. Whether the evidence produced by the parties is admissible under the rules of evidence.

c. Does any of the parties need to use technology to record evidence.

iii. Passing case management directions, in particular:

a. Making sure that witnesses and experts will be available when required.

b. Extending time for the parties to rectify delays in meeting previous deadlines.

d. Fixing the time and date for the trial (S.C.L.Rev.(1974).

In addition to ensuring that parties are ready for trial, another objective of pre-trail review is to do the following:

a. Disposing of as much of the case as possible before setting specific trial date.

b. Reducing length of the proceedings after filing of written statement.

The measures taken to achieve these ends are discussed at length below:

First Direction Hearings:

This step is taken after the filing of written statement when the judge has first opportunity to examine all the issues. In the first place, the judge would like to explore if there exists a possibility of compromise between the parties. Next, the judge may want to investigate the issues regarding which compromise cannot be reached. Moreover, he would like to know, can the length of the proceedings be shortened with respect to these issues?

Examples Of First Direction Hearings Under the Laws of Pakistan

First Directions Hearing is a central event in case management and its application can be observed in the following special laws of Pakistan.

Muslim Family Courts Act, 1964

Article 10 of the 1964 Act obliges the court to fix a date for pre-trial hearing soon after the filing of a written statement. On this date, the court shall examine the plaint and written statement. Furthermore, it shall take an overview of evidence and documents submitted so far and may also hear the parties or their counsel. Thereupon, the court shall identify the points of controversy between the parties and attempt to reach a compromise (Ref. Sec.10 Family Court Act (1964).

Discovery & Interrogatories

In some situations, one party may have crucial documents in its possession which can prove the claim or defense of the opponent. As specified by Order XI, a party may, through the order of the court, require production or inspection of such documents or admission of its existence under oath; this proceeding is called discovery. Similarly, pursuant to Order XI, CPC, a party may by the order of the court require its opponent to admit certain facts or deny them, to strengthen its claim or to destroy the claim of the opponent. This proceeding is called interrogatories. Both these methodologies are the linchpin of case management as they have the potential to dispose of a case before the start of a trial. However, it is regrettable to note that these are seldom used hence they are often referred to as sleeping provisions of CPC Nawaz.

Power Of the Court to Record Admissions of Its Own Motion.

Order XII of CPC provides a powerful mechanism for a court to require the parties in a proceeding before it or on its own motion to admit or deny the truth of a document or a fact. Again, the purpose of

this order is to save the precious time of the court. Pursuant to rule I, the court shall inquire from a party whether it admits the truth of the whole or part of the case of its opponent as set out in the pleadings. Rule II stipulates that the court shall require the parties to admit or deny any document annexed with the plaint or written statement. If the party denies a document which is subsequently proved in the trial the court may burden such a party with heavy fine.

ALTERNATE DISPUTE RESOLUTION (ADR)

It may not be wrong to suggest that ADR is the most widely used technique of delay reduction through case management. It is defined as any method of resolving conflicts without going to court with the consent of the parties. Under section 2 of the Punjab Alternate Dispute Resolution Act 2019, 'Alternate Dispute Resolution (ADR)" means a process in which parties' resort to resolving a dispute, other than through adjudication by courts, and includes, but is not limited to, mediation, conciliation and evaluation. 'It comprises of a group of strategies and tactics designed to settle conflicts without physical confrontation (Robert, 1998). The essential features of ADR which distinguish it from litigation include its aim to seek a win-win situation for each contesting party, achieve a settlement outside the court room ordinarily through the intervention of a third party, confidentiality of proceedings and finally flexibility in rules of procedure and evidence. A typical ADR model consists of the following methodologies.

Negotiation

Negotiations are voluntary, the parties themselves have a responsibility to settle their dispute directly without the intervention of a neutral third party. The process of negotiations is informal and there is no preset procedure for presenting argument or evidence because the goal is to achieve a mutually agreed settlement agreement, enforceable as a contract. The process is private and is not open to the public(Robert, 1998).

Mediation/ Conciliation

Mediation refers to informal negotiations between the contesting parties with the assistance of a neutral third party, called mediator. The role of a mediator is to identify points of controversy between the parties, reflect on various solutions and bring the parties to minimum acceptable terms. So far, mediation has been the most successful ADR technique and requires the involvement of a trained facilitator of discussion. This methodology is being successfully used in several countries to resolve commercial and family disputes (Wall, 2001).

The Lahore High Court (LHC) has taken practical measures to encourage 'court annexed mediation', whereby cases are referred by judges with the consent of the parties to approved mediators. The mediation is carried out in centers built within the court premises. As stated by the then Chief Justice of the Lahore High Court, Justice Syed Mansoor Ali shah, an ADR center should be visualized as a 'a comfortable lounge where the mediator is often seen to offer tea and biscuits to litigants (Hussain, 2019).'

The expressions mediation and conciliation are used interchangeably in some jurisdictions. In conciliation, the neutral third party will give advice to help the parties reach a settlement, whereas in mediation, a mediator will just facilitate the conversation between the parties for them to arrive at a mutually agreed understanding by themselves. Mediation aims to reach an agreement which is enforceable at a court of law while conciliation targets a settlement executable as a decree of a civil court.

Arbitration

It is a procedure by which a dispute is submitted by agreement of the parties to one or more neutral arbitrators who can make a binding decision on the dispute. If an agreement contains an arbitration clause, the jurisdiction of the courts will be barred from entertaining the matter until the final award is made. Notwithstanding arbitration agreement, if a party opts to go to court, the opposite party can apply to the court to stay the proceedings. Arbitration is a technique of Alternate Dispute Resolution which is closest to litigation because the parties have no control over the proceedings or their outcome, although rules of procedure and evidence would be relaxed (Stipanowich, 2010).

Ombudsman schemes

An ombudsman is an independent public official appointed by the government to make decisions in disputes between individuals and companies through an informal and friendly process rather than a formal adversarial procedure. In the past, ombudsman's role was confined to entertaining grievances of citizens against government departments (Beqiraj, 2018). However, a global shift from state-controlled

corporations to private enterprises and growing consumer base encouraged the governments worldwide to launch a new scheme of industry specific ombudsman (Beqiraj, 2018). In Pakistan, the first industry to launch ombudsman was Banking industry. So, Banking ombudsman was created u/s 82-D of Banking Companies Ordinance 1962. Following this example, Pakistan created Insurance ombudsman under the Insurance Ordinance 2000 & Federal Tax Ombudsman under the Establishment of office of Federal Tax Ombudsman Ordinance 2000. Once again, the purpose of this scheme is to create a win-win situation for the parties and resolution of the dispute through consensus.

Early neutral evaluation

In pursuance of this proceeding, independent expert opinion is sought concerning the soundness of a case before the trial begins. The plaintiff is then asked if he still wishes to proceed with the trial? The process involves assessment of the case by an experienced lawyer or a retired judge having expertise in the field. The neutral may inform the parties of his prediction as to the outcome of the case, if they choose to go to trial (Brazil, 1986). In some cases, a neutral expert is jointly asked by the parties to comment on technical issues only. Clearly, if the plaintiff has no chance to succeed, he could save himself time and resources by getting it evaluated by an expert. Contrarily, if the case is good enough to go to trial, the evaluation may help him feel confident about the outcome of the trial in his favor.

ADR ENABLING LAWS OF PAKISTAN

Even though traditional system of Panchayat was in vogue in the Subcontinent before coming into existence of Pakistan, an overwhelming majority of its people chose to resolve their disputes through litigation. ADR made its way into the justice system through piecemeal legislative initiatives in sectors, such as Small Claims, Consumer Protection and Customs Act. However, in early 21st century, ADR was imported in the regular Civil procedure of Pakistan and finally, a full fledge ADR Act was promulgated in 2017.Moreover, resorting to ADR is now a mandatory requirement under many special laws before taking a case to the trial stage. Some of the examples of the laws requiring ADR are given below:

Code of Civil Procedure 1908

As per section 89-A of CPC, the court may, in the light of facts and circumstances of the case and keeping in view speedy resolution of civil suits, adopt any method of Alternate Dispute Resolution, including Mediation and Conciliation. The section has been inserted to bring about quick resolution of disputes between parties, minimize cost and reduce the burden of the court. Considering the growing importance of section 89-A CPC, the government of Pakistan is about to table a Bill in the parliament to lay down its rules of procedure. As per the proposed Bill, Arbitration has been included as another method of speedy disposal of disputes alongside Mediation and Conciliation. Furthermore, it has been stated that in addition to civil cases, ADR may also be used in resolution of commercial cases.

According to the proposed Bill, any of the parties may apply to the court at a pre-trial stage to resolve the dispute through ADR. If the offer is not accepted by the opposite party, it will have to bear the cost of litigation where the matter is decided against it. If the offer is accepted, the court may refer the matter to specially trained conciliators, mediators or arbitrators as recognized by the High Court concerned. The conciliators and mediators shall settle the dispute within 60 days. Also, the Bill carries a list of matters, such as Pre-emption, Small Claims and Sale of Goods in which resort to ADR is mandatory before trial. Finally, the Bill provides that no appeal or revision shall lie on a decree passed with consent of the parties through ADR.

Family Courts Act 1964

Conciliation

Section 10 of the 1964 Act requires the court to determine the points of controversy between the parties and try to reach a compromise. If there is no possibility of a compromise or reconciliation, the court shall fix a date for recording the evidence. Pursuant to section 12, once the evidence has been recorded from both sides, the court shall make a second attempt at reaching a compromise, within fifteen days of recording the evidence. As per rule 11 of the Family Court Rules 1965, if the agreement is entered between the parties, the court shall pronounce the judgment and issue the decree in terms of the compromise.

Punjab Consumer Protection Act 2005

According to Section 29 of the Punjab Consumer Protection Act 2005, any party to a dispute may at pre-trial stage, that is, before framing of the issues, make a written offer of settlement, stating precisely the amount offered for settlement. If the offer is accepted by the opposite party, the court shall pass an order in terms of the settlement. Where such settlement is refused, and the final order of the court is passed against the refusing party, such party shall bear the cost of litigation. Another example of the ADR application in the 2005 Act is the requirement of the plaintiff to file a Genuine Steps Statement. Thus, in pursuance of section 28, the plaintiff is required to file a statement along with the plaint that he has taken all possible steps to resolve the dispute with the defendant before bringing the matter to court. A consumer court will not consider a claim unless the customer has notified the manufacturer that the product is defective and that the company should either fix the issue or pay damages.

The Small Claims & Minor Offences Courts Ordinance 2001

Section 14 of the 2001 Ordinance provides that in civil cases worth less than Rs. 100,000, the court shall attempt to achieve an out-of-court settlement and, if successful, it shall execute the settlement as a decision or order of the court. If ADR is not successful, the court shall decide the matter using the prescribed summary procedure.

Custom Act 1969

Section 195-C of the Customs Act prescribes that any party which is aggrieved in connection with a dispute involving payment of custom duty, refunds/ rebates or seizure of goods etc. which is pending before a court or appellate authority may apply to the Board to constitute a Committee for resolution of the dispute in appeal. The Committee so constituted shall conduct an inquiry, may seek expert opinion or require a custom officer to conduct an audit. The Board may pass such order on the report of the Committee as it deems necessary. The aggrieved person may thereupon pay duty, taxes or fine as the case may be upon the orders of the Board passed on the recommendation of the Committee. Where the order has been passed by the Board in a case pending before any court or tribunal, the Board shall present the agreement arrived at with the aggrieved person in the light of the Committee's report for approval of the court or tribunal as the case may be.

The Punjab Alternate Dispute Resolution Act 2019

According to section 3 of the Act, a court shall refer a case mentioned in schedule-I of the Act to ADR within 30 days of filing of the written statement. Prior to referring, the court shall ask the opinion of the parties as to referral. In the event the parties agree, the court shall provide a timetable for completion of ADR proceedings within 60 days, extendable up to 120 days with the parties' consent. The trial shall be postponed till completion of ADR Proceedings. The parties shall with mutual consent select the ADR person, if they cannot agree, the court shall make a reference to an accredited service provider or an accredited ADR center. The ADR service provider shall retain a copy of the award, settlement, agreement or any correspondence in writing, and the parties as well as the service provider shall keep all matters confidential. When a meaningful offer is made by a party and rejected by the other party, the party which rejects the offer shall not be entitled to cost. The ADR may be carried out by parties themselves, counsels of the parties, accredited ADR service providers and accredited ADR centers registered under the Companies Act 2017. Where the court finds that the matter has been fully or partially settled in ADR, it shall pronounce judgement and pass a decree in terms of the settlement. No appeal lies from a decree or order under the Act. In criminal matters, only compoundable cases may be referred to ADR with the consent of complainant or the prosecutor.

CONCLUSION

Knowing that delay in disposal of cases undermines the confidence of the public in rule of law, there is a pressing need to introduce new techniques to handle cases in a manner compatible with the aim of bringing the litigation to an end. As of now, pre-trial review, cases management and alternate dispute resolution represent the most suitable means to address the problem of delay in disposal of cases. Pakistan has already experimented with the idea of increasing the number of judges to reduce pendency, however, the endeavor has not borne fruit. Besides that, perks and salaries of judicial officer were increased manifold to motivate them to do more, nonetheless, this effort likewise proved inconsequential (Livingston, 2004).

Some judges are of the view that delay is attributable to lawyers and their clients who drag the cases purposely to serve their vested interests. For example, the party whose case is weak would naturally

want to gain time by seeking adjournments until its rival agrees to come to a settlement. In the same way, there is no limit to the number of cases a lawyer can accept. When several of these cases are fixed for a hearing on a single day, it becomes impossible for the lawyer to appear in all these together. Consequently, he or she would seek adjournment, thereby extending the lifespan of cases.

A judicial officer cannot do much about these problems. Obviously, a party seeking adjournment will have a plethora of excuses at its disposal, such as its lawyer having been busy in a superior court, or one of its witnesses not being able to make it to the court due to unforeseen circumstances. Likewise, a judge is not empowered to limit the number of cases a lawyer should take up, the matter being within the exclusive domain of the Bar Council.

On the other hand, there are certain measures within the competence of a judge which can be taken to respond effectively to the issue of delay. To illustrate, it is commonly observed that judicial officers freely grant adjournments as they find themselves hard pressed to get to grips with the endless cause lists made up of wide-ranging cases. Here, the mechanisms of differentiated case management, pre-trial review and alternate dispute resolution can come to their aid to avoid disorder and inconvenience.

Leaving that aside, another core issue contributing to delay is the adversarial nature of our justice system. As per this system, two or more parties will present their claims before an impartial tribunal of judge(s) following prescribed rules of procedure and evidence. In the end, the tribunal will discover the truth by declaring one party as victorious on the strength of evidence. As opposed to this, we have an inquisitorial model according to which the court or a part of it is actively involved in investigating the facts of the cases. It is characterized by extensive pre-trial investigation and interrogations with the objective of avoiding bringing an innocent person to trial (Adele, 2017). The inquisitorial process can be described as an official inquiry to ascertain the truth, whereas the adversarial system uses a competitive process between prosecution and defense to determine the facts. Since the adversarial system tends to favor the privileged and the resourceful, it has been suggested that the same should be replaced with inquisitorial system. However, it is highly improbable that our lawyers and judges will accept the substitute system because their bread and butter rely on complexities of the adversarial model of which they have become experts. Having said this, they can at least take advantage of the techniques available to finetune the adversarial model. For example, pre-trial review as a method of case management can be used to determine the truth or falsehood of a claim before the commencement of trial. Thus, in Zaheer Ahmad v. Judge Special Court, the Lahore High Court (LHC) held that the law does not prevent a court from using an inquisitorial approach within an adversarial proceeding. A preliminary inquiry conducted by the court before admitting a complaint provides a useful example of inquisitorial proceeding within an adversarial trial.

At present, our courts are operating on the principle that every procedure is disallowed, save it is provided for by the law. To overcome the problem of delay in disposal of cases, they will have to act on the rule that every procedure is permissible unless it is expressly prohibited by law. Prohibition cannot be presumed as a rule. In the words of Justice Mahmood of Allahabad High Court:

> 'Courts are not to act upon the principle that every procedure is to be taken to be prohibited unless it is expressly provided for by the code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by law. As a matter of general principle, prohibition cannot be presumed.'

With that in mind, it is heartening to note that our legislature and judiciary has taken some commendable initiatives to promote ADR in Pakistan. These include promulgation of Islamabad's ADR Act, 2017 and the Punjab Alternate Dispute Resolution Act, 2019. Furthermore, a Bill has been presented in the parliament for making rules to enforce section 89-A of CPC 1908. It must be acknowledged that Lahore High court has taken the lead in raising awareness about ADR by way of its strategic roadmap, vision 2017 (Hussain,2019). Additionally, it has undertaken join capacity building initiatives with the active assistance of Asia Foundation for training of judges and lawyers. Regrettably, our public seems still more inclined towards litigation. One key reason for this could be the lack of participation of the local community in our ADR system.

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