DELAY REDUCTION WITH EFFECTIVE COURT MANAGEMENT

Chaudhry Hasan Nawaz

INTRODUCTION

Delay haunts the administration of justice. It postpones the rectification of wrong and the vindication of the unjustly accused. It crowds the dockets of the courts, increasing the costs for all litigants, pressurize judges to take short cuts, interfering with the prompt and deliberate disposition of those causes in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility. But even these are not the worst of what delay does. The most erratic gear in the justice machinery is at the place of fact finding and possibilities for error multiply rapidly as time elapses between the original fact and its judicial determination. If the facts are not fully and accurately determined, then even the wisest judge cannot distinguish between merit and demerit. If we do not get the facts right, there is little chance for the judgment to be right.[1]

2. As far back as in the sixteenth century, William Shakespeare's Hamlet cited "law's delay" as a reason for preferring suicide to continuing life. Then, in the nineteenth century William E. Gladstone said that "Justice delayed is justice denied". In 1958, Chief Justice Earl Warren of the United States observed that "Interminable and unjustifiable delays in our Courts are today compromising the basic legal rights of countless thousands of Americans and, imperceptibly, corroding the very foundations of constitutional Government in the United States".

3. The acuteness of the problem prevailing in our neighbouring India can be assessed from the following observations made by its Supreme Court in a case decided in 1976, after twenty five years of long litigation:

"At long last, the unfortunate and heroic saga of this litigation is coming to an end. It has witnessed a silver jubilee, thanks to our system of administration of justice and our callousness and indifference to any drastic reforms in it. Cases like this, which are not infrequent, should be sufficient to shock our social as well as judicial conscience and activise us to move swiftly in the direction of overhauling and restructuring the entire legal and judicial system. The Indian people are very patient, but despite their infinite patience, they cannot afford to wait for twenty-five years to get justice. There is a limit of tolerance beyond which it would be disastrous to push our people. This case and many other like it strongly emphasize the urgency of the need for legal and judicial reforms". (AIR 1976 S.C. 1734).

4. Even the British rulers of this sub-continent were quite conscious of the seriousness of this problem. They set up a Civil Justice Committee, headed by Sir George Clause Rankin, one of the most eminent Judges of the country, as early as 1923, to inquire into the causes of delays in the disposal of civil litigation and suggest remedies. After an elaborate examination of the problem, the Committee made its report in 1925. We can do no better in this respect than repeat what was said by the Rankin Committee as far back as 1925. The position since then, if anything, has aggravated out of all proportion. The Committee observed:

"Improvement in methods is of vital importance. We can suggest improvements, but we are convinced that, where the arrears are unmanageable, improvement in methods can only palliate. It cannot cure. It is patent that, when a court has pending work which will occupy it for something between one year and two years or even more, new-comers have faint hopes. When there is enough work pending at the end of 1924 to occupy a subordinate judge till the end of 1926, difficult contested suits instituted in 1925 have no chance of being decided before 1927. Whatever be the improvement in methods alone cannot be expected in such circumstances to produce a satisfactory result even in a decade."

> "Until this burden is removed or appreciably lightened, the prospect is gloomy. The existence of such arrears presents further a serious obstacle to improvement in methods. It may well be asked - is there much tangible advantage gained by effecting an improvement in process serving, pleadings, handling of issues and expediting to the stage when parties are in a position to call their evidence when it is a certainty that, as soon as that stage is reached, the hearing must be adjourned to a date eighteen months ahead or later, to take its place, in its turn, for evidence arguments and decision? Unless a court can start with a reasonably clean slate, improvement of methods is likely to tantalise only. The existence of a mass of arrears takes the heart out of a presiding officer. He can hardly be expected to take a strong interest in preliminaries, when he knows that the hearing of the evidence and the decision will not be by him but by his successor after his transfer. So long as such arrears exist, there is a temptation to which may presiding officers succumb, to hold back the heavier contested suits and devote attention to the lighter ones. The turnout of decisions in contested suits is thus maintained somewhere near the figure of the institutions, while the really difficult work is pushed further into the background."

5. This is suggestive of the surmise that the problem is fairly old and being faced by many other countries with similar conditions and system of justice. But the fact of its being old and all embracing by no means derogates anything from its gravity in terms of far reaching adverse effects on the civil society. Despite this aspect, however, it must be confessed that no genuine effort seems to have been made to eradicate this evil and, whichever the place, people are still suffering from this malaise. Where sincere efforts have been made with commitment and dedication, like in Singapore, the pendency is well under control.

6. In Pakistan, the problem of delays in disposal of cases is as old as its inception and it has taken serious social dimensions with the passage of each day. It has grown in magnitude to an extent that it is not only a cause of serious concern but a problem which, it may be said without exaggeration, is eroding the very system of administration of justice. It has undercut the public confidence in the judiciary and must be dealt with on top priority basis with all systems go kind of approach.

LAW REFORM COMMISSIONS

7. After independence, this problem engaged the attention of the Government of Pakistan and a Law Reform Commission, headed by Mr. Justice S.A. Rahman, a Judge of the Supreme Court of Pakistan, was constituted in the year 1958, to suggest remedies for the better and more speedy disposal of both civil and criminal cases. This Commission made its recommendations

within one year, but laws' delays have continued to persist. Another Law Reform Commission was established in 1967, under the Chairmanship of Mr. Justice Hamoodur Rahman, a former Chief Justice of Pakistan, to ascertain the causes of delay in the disposal of the judicial cases and to recommend efficacious remedies for the removal of such causes and suggest measures to simplify the court proceedings. This Commission submitted an exhaustive report in February, 1970.

LAW REFORM COMMITTEES

8. In 1974, a High Powered Law Reform Committee was set up by the Federal Government under the Chairmanship of the then Law Minister, to consider the problem of delays in the disposal of judicial cases and accumulation of arrears in the law courts at different levels. The Committee submitted its report in January, 1975. Yet another Committee to achieve the same objective was set up in 1978 under the Chairmanship of a former Chief Justice of Pakistan. This Committee submitted its report in October, 1978, suggesting appropriate measures in the light of recommendations made by the preceding Law Reform Commissions and the High Powered Law Reform Committee for eliminating delays.

CAUSES OF DELAY

9. These are causes of delay pointed out by these Commissions and Committees:

(i) Lack of proper supervision; (ii) unsatisfactory service of processes; (iii) lack of proper working conditions in the courts; (iv) lack of transport facility for process serving staff; (v) lack of court/residential accommodation; (vi) lack of libraries; (vii) lack of record rooms in the courts; (viii) lack of training facilities for judicial officers; (ix) shortage of ministerial staff and necessary equipments in the courts; (x) non-observance of the provisions of procedural laws; (xi) shortage of judicial officers; (xii) shortage of stationery and furniture; (xiii) delay on the part of investigating agencies; (xiv) non-attendance of witnesses; (xv) delay in writing and delivering judgments; (xvi) frequent adjournments; (xvii) dilatory tactics by the lawyers and the parties; (xviii) frequent transfer of judicial officers and transfer of cases from one court to another; (xix)interlocutory orders and stay of proceedings; and (xx) Un-attractive service conditions of subordinate judicial officers.

THE CHIEF JUSTICES COMMITTEE

10. This delay had also recently been engaging serious attention of the then Chief Justice of Pakistan and that it had become a chronic malady of serious concern was acknowledged by the Chief Justices' Committee in its meeting held on 26th February, 2000 with the following observations:

"Backlog and delays in quick dispensation of justice is a serious threat to the existing judicial system in the country. Concerted efforts are required by learned Judges at all levels, lawyers, litigant public, witnesses, prosecuting agencies, public leaders, media and the Executive to combat the menace by strengthening the system of administration of justice. In his judicial work, a Judge shall take all steps to decide cases within the shortest time, controlling effectively efforts

made to prevent early disposal of cases and make every endeavour to minimize suffering of litigants by deciding cases expeditiously through proper written judgements".

11. A study of the reports of the Civil Justice Committee and Law Reforms Commission of 1958, the Law Reform Commission of 1967-70, and the subsequent Law Reform and Chief Justices Committees reveal that the said Commissions and the Committees had, after thorough study and examination of the Laws of the country, reached the conclusion that all laws, both procedural and substantive were, by and large, neither responsible for any delay in the disposal of judicial cases nor for accumulation of huge arrears in the law courts. They were of the view that procedural laws are frequently abused and it is mainly human factor which is responsible for the failure of the laws, and the consequent delay in the litigation. They are, however, not averse to changes to suit the situations that have become apparent in the course of working of the procedure.

RECOMMENDATIONS

12. In the Policy Paper submitted by the Asia Development to the Government of Pakistan in December 1999, on Legal and Judicial Reform in Pakistan, the following ten main recommendations were outlined:

(i) Pass or reinforce good governance measures that contribute to the enabling environment for improved legal and judicial performance.

(ii) Amend the Law Commission Act in order to create a National Policy making Authority for Judicial Administration.

(iii) Pass legislation to create a provincial Judicial Ombudsman.

(iv) Rationalize the Incentives so that they reward good Judicial Performance.

(v) Amend the Civil Courts Ordinance of 1962 with provincial effect to require an Annual Conference of District and Sessions Court judges and the publication of an Annual Report on the State of the Judiciary.

(vi) Pass a new Arbitration Act and establish Commercial Divisions in the High Courts of the Punjab and Sindh.

(vii) Create an Alternative Dispute Resolution Center annexed to the courts.

(viii) Create Centers of Excellence in Legal Education and a Fund for Innovations in Legal Education.

(ix) Build support for the judicial reform program by establishing pilot courts in the National Capital Region and the provincial capitals; build ten or twenty new courthouses in districts without a court currently on the ground.

(x) Pass legislation to provide for a Judicial Development Fund.

13. The importance of these recommendations was explained in the paper in these words: "These recommendations are not intended to be "wisdom frozen in time". On the contrary, they represent a deliberate effort, first, to make strategic choices about reform activities, and second, to structure credible institutions that are able to carry the reform process forward. But these recommendations will need to be adapted during implementation: no legal and judicial reform plan can "out-think" deep historical patterns of behaviour through the sheer force of elaborate design and planning. So the recommendations should be considered "thoughtfully indicative" rather than "insistently directive".

14. It further said: "In this spirit, these recommendations were developed with energy and with hope. They were generated in consultation with experts both inside and outside Pakistan who are renowned for their understanding and personal integrity. They are informed by cross-national comparison with legal and judicial reforms in a number of countries, and by academic studies. They reflect the cutting edge insights of multilateral development agencies, whose lending to legal reform efforts has increased dramatically in the past five years. And they are offered with the recognition that their implementation will require the creativity, courage, and cunning of Pakistan's leaders".

CUTTING EDGE INSIGHT

15. In spite of this high quality, diligent and efficient examination of the matter by the Law Reform Commissions and Committees resulting in very useful and proficient recommendations to eradicate this chronic malady, we are still facing the problem, rather larger in gravity and dimensions. This is because the recommendations have never been seriously taken and implemented. We are thus as far from the destination as fifty years ago and the achievement of avowed goal is still not in sight. The question arises why the much needed results have not been produced. The only answer is that this has been so for lack of the judicial and political will to accomplish the task and no serious effort seems to have been made for implementation of the recommendations.

16. As gathered from the reports of the Law Reform Commissions/Committees and those resulting from the Asian Development Bank's study, the crux of the problem is unpredictable increase in the volume of litigation with the passage of each day and failure to make proportionate increase in the number of judges to deal with these cases to keep pace with ever increasing pending file. The result is that at most of the places, pending file requiring the services of five judicial officers has been entrusted to one judicial officer. And this is because our priorities are topsy turvy. I do not think we will ever be able to solve this problem of delay, so long as it does not achieve its due place in the priority list.

CALENDAR CONTROL SYSTEM

17. Meticulous and closer application to the entire gamut of the problem and due consideration of the relevant factors will bring us to the conclusion that we are in dire need of an environment where the delay is made to appear relatable either to frequent adjournments or to

any of the above mentioned causes. It can be there, only if we first bring about a situation where the presiding officer has the option to refuse adjournment. I believe, on the basis of my personal experience as also that of others in judicial business, that in the courts where the presiding officer has to cope with a daily cause list of 120 to 150 cases, the adjournments are not voluntary but a situational imperative. It seems to me that a presiding officer with that kind of cause list and the people milling around, thus bring about unenviable working conditions, will have every justification for accommodating a counsel on the ground that he is engaged with another case called earlier for hearing in another court, rather than adjourning the matter at the fag end of the day on the ground that the court time is over.

18. And I have heard people saying why the presiding officer should at all have had a list of 120 to 150 cases for one working day and that why he could not manage to fix cases in such a manner that the daily cause list did not exceed 20 to 30 cases. Although an explanation can easily be found, I am constrained to say that try as you might, it is not possible to visualize what exactly happens in the court to force the presiding officer to embellish the daily list to an unmanageable extent. Left to myself for an answer, it would be enough to say that you have to be a presiding officer of a court, with a pendency of 1500 to 2500 cases, to realize what happens when dates are fixed for hearing. There are large number of cases where people clamour, and rightly so, for shorter adjournments.

PROPOSALS

19. In the backdrop of these circumstances and the conditions obtaining in the District Courts, the following proposals are submitted for consideration of the Law and Justice Commission:

(a) In the districts, Case Management Committees or Prioritization Committees, howsoever you may call them, may be constituted by the District & Sessions Judges for each court functioning under their jurisdictions, with the presiding officer of the court concerned as Chairman, reader of court, representatives of the stake holders and their counsel as members. The committees may be entrusted with the category-wise prioritization of cases, on the basis of their importance, which will be determined with reference to and on the basis of:

(i) the nature of cases, (ii) dates of institution, (iii) location and value of the property in dispute, (iv) civil rights involved, (v) the parties, (vi) impact of the ultimate decision, (vii) the number of persons affected by the decision of the court, (viii) involvement of public interest, (ix) the nature of questions involved for determination, (x) whether any temporary injunction has been granted in favour of either of the parties, and (xi) other relevant considerations.

(b) In criminal cases, priority can be determined on the basis of:

(i) dates of institution of proceedings, (ii) nature and gravity of the offence, (iii) the number of persons affected, (iv) public interest in the outcome, (v) the impact

of judgement to be passed in the case, and (vi) maximum punishment provided for a particular offence.

(c) These Committees will function under the direct control and supervision of the District & Sessions Judges

(d) After the process of prioritization is completed; the presiding officer may put 500 cases, in order of priority, on active calendar for trial and final disposal. Then, at the end of the month, as many cases as disposed of may be brought on active calendar in order of priority from the inactive calendar.

(e) As an important ingredient of the plan, the presiding officer must fix a target in terms of number of cases to be disposed of in a month, in a manner as would ensure that the disposal exceeds the institution by at least 5 to 10 cases in every month, so that the pending file is gradually reduced.

20. This, I would say will be the best local arrangement for case flow management which, as they say, is the central theme and conceptual heart of court management in general. If put in practice, the unproductive time wasted by a presiding officer with a daily cause list of 120 to 150 case and dealing with preliminaries in at least 100 cases, will be utilized by him in disposal oriented hearing of 25 to 30 cases. He will thus be in full control of the calendar and by virtue of that circumstance in that of the court as an organization. If the number of judges is bound to remain inadequate and we fail to make proportionate increase in the present strength of the judiciary to cope with the ever increasing pending file, this arrangement is the only way to address problems of delay and backlogs, for pulling the chestnut out of the fire.

21. We might examine the proposals from another point of view. It must be conceded that the causes of delay enumerated above do play a substantial part in aggravation of the problem and that they must be eliminated to produce results. But what I respectfully maintain is that other causes of delay, such as lack of proper supervision, unsatisfactory service of processes, delay in submission of challans, 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. As for instance if the ahlmad fails to issue process well in time or the process server is negligent in effecting service, the presiding officer should have the time to inquire into the matter and bring them to book; and this can be humanly possible only if he does not have more than 25 to 30 cases on his daily cause list.

SUPPLEMENTARY MEASURES PROFESSIONALISATION

22. In his book "Educating Judges" Livingston Armytage said: "The process of professionalization describes the response of professions to recent and continuing public criticism generally, and to increasingly vociferous demands for accountability. For the judiciary, this criticism centred, for the most part, not on ignorance of the law, technical deficiency, ethical misconduct or individual behaviour, but on the performance of the judicial system at large and on a perceived failure of the judiciary to reflect the society over which it was seen to preside".

23. I would propose that the civil judges-cum-judicial magistrates should be made to function only in one capacity at a time, so that we may have separate civil and criminal courts. However, a Civil Judge exclusively in-charge of civil work may be made to function at his next posting as judicial magistrate to gain experience both in civil and criminal work. I am of the view that segregation of civil and criminal work will facilitate the process of professionalization.

JUDICIAL COMPETENCE

24. Judicial competence can be seen as the mastery of the knowledge, practical skills and disposition of judging. Competence is the ability to perform a range of tasks through the application of knowledge and skills to the resolution of particular problems according to certain standards, within a framework of rules of conduct and ethics of the judicial profession.It hardly requires an emphasis that judicial competence can be achieved only by continuing judicial education. I would recommend that the High Courts should amend the relevant rules so as to make adequate judicial training as condition precedent for promotion of the judicial officers at various levels.

ALTERNATIVE DISPUTE RESOLUTION

25. Alternative dispute resolution mechanisms are appropriate for cases that require some facilitation by a dispute resolution system. I would propose that alternative dispute resolution (ADR) centres may be established and annexed to the courts, to serve as a significant alternative to the traditional, conflicting legal culture of Pakistan. Skilled ADR staff or "neutrals", can privately resolve, through mediation and pre-trial counselling, large number of cases with greater speed to cut down the institution of fresh cases. These centres can also be useful in addressing frivolous litigation. They may require capacity building, such as efforts to reach out to the bench, the bar and law students through seminars, role playing experiences, literature reviews, talks and workshops. Improvement in the arbitration system may also be favourably considered by effecting necessary amendments in the Arbitration Act.

INVOLVEMENT OF THE BAR

26. It is not possible to achieve the ultimate goal of delay reduction and fair, speedy, effective, administration of justice, without positive association and cooperation of the bar. The District Judges may be asked constitute Bench Bar Committees to facilitate this cooperation.

EXCELLENCE IN LEGAL EDUCATION

27. On this aspect of the matter, I may quote, with advantage, from the Policy Paper of the Asian Development Bank:

> "In Pakistan, the past fifty years have seen a decline rather than a strengthening of professional standards and academic excellence in legal education. The quality and output of legal education today -- whether viewed in professional or academic terms-is very poor. The result of this process is clear: legal education in Pakistan is not producing lawyers, judges, legal scholars, government legal officials and other law-trained

personnel Pakistan needs to meet the legal, economic, governance, social and cultural challenges of poverty, civil conflict, social stratification, abuse of rights that Pakistan faces."

"The strategic causes of decline and weakness in Pakistani legal education include lack of strong, implementable processes for institutional quality in legal education; significant under-resourcing of legal education; lack of transparency, accountability and faculty control within legal education, along with significant politicization at certain times; outmoded curricula and teaching; the virtual absence of legal research and a research environment; significant under-staffing of full-time faculty; poor infrastructure, libraries and faculty resources; inequitable access and outmoded, some times corrupt admissions procedures; outmoded, sometimes corrupt examination systems; poor earlier education and language skills among students; among other issues."
"This study, then, recommends the formation of a National Council for Legal Education (NCLE) as a strong, national, independent body with power to set standards for legal education throughout Pakistan and to support reform measures, and establishing centers of excellence in legal education."

PASSION FOR WORK

28. It may be added, by way of another supplementary measure, that these proposals, if accepted and implemented will certainly play a vital role in reducing the backlog, but would not still be enough to achieve the objective, unless we approach the work with passion, commitment and dedication. As recommended by the Chief Justices Committee, the Chief Justices of the High Courts may convene annual provincial conferences with the participation of all the District Judges, for contriving judicial leadership and to infuse the officers of District Judiciary with the kind of passion which is required to meet the challenge of progressive accumulation of cases.

NEW JUDICIAL CULTURE

29. These recommendations, if carried into effect will, go a long way in creating an environment, ultimately favourable for the development of a new judicial culture, where the Ahlmad will be well aware of the fact that the processes have to be issued in time. The process server will keep it in mind that failure to serve the process will entail punitive action and the counsel for the parties shall know that adjournments are not to be requested. Everybody else concerned with the disposal of a matter, either civil or criminal, will be sure of the fact that the presiding officer is bound to go by the calendar. This new judicial culture will result in materialization of the concept that quicker dispatch of judicial business and the elimination of delays are sine qua non of a progressive civil society and the over all national development which comes in its wake.

NOW THE ROOT CAUSE

30. Last but by no means the least, it may be mentioned, again for consideration as a supplementary measure, that we have had so many proposals and recommendations of the Law

Reform Commissions and High Powered Committees who made thorough and highly meticulous examination of the problem for elimination of delay. They identified the causes of delay and made extremely valuable recommendations. It would be not an exaggeration to say that they in fact left nothing to be desired. It is, however, unfortunate that they have not been implemented, obviously for want of political and judicial will.

31. Therefore, in the context of what has been said above, what we do need is religious implementation of the recommendations made by the Commissions and the Chief Justices Committee with total commitment to change and acceptance of judicial responsibility, necessary to restore public confidence in the judiciary as one of the organs of the State. The proposals made in this paper may also be considered, after necessary dovetailing and modifications, for acceptance and implementation, in the light of the previous reports and recommendations.

[1] Southern Pac. Transport. Co.v. Stoot, 530 S.W.2d 930, 931 (Tex.1975).