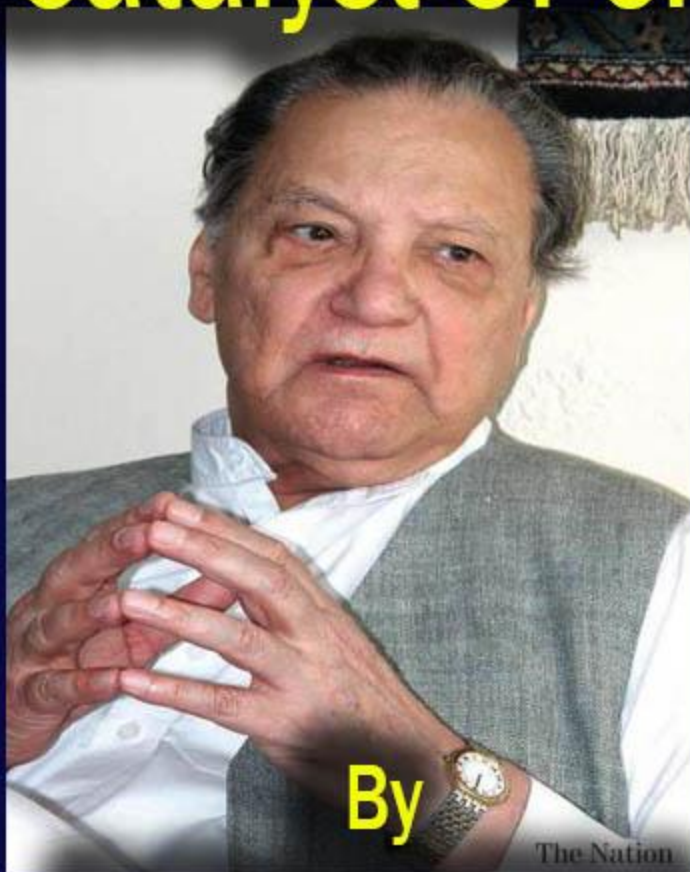


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The Role of The Judiciary As A Catalyst Of Change



Justice Javed Iqbal



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THE ROLE OF THE JUDICIARY AS A CATALYST OF CHANGE

Justice Javed Iqbal

The topic "Challenge of Delayed Justice" is not a new one but has remained a subject of discussion and deliberation for eminent Jurists, Scholars and various Law Commissions/Committees constituted by the Government in order to evolve ways and means to meet the challenge of delayed justice. However, the desired results could not be achieved. Since 1956, successive governments have come up with a large number of Commissions and Committees on judicial reforms, the details of which are as follows:-

- Commission on Marriage and Family Laws, 1956;
- Law Reform Commission, 1958;
- Law Reform Commission, 1967;
- High Powered Law Reform Committee, 1974;
- Law Committee for Recommending Measures for Speedy Disposal of Civil Litigation, 1978;
- Secretaries' Committee set up by the President to Examine the Recommendations of the Law Committee set up for Recommending Measures for Speedy Disposal of Civil Litigation, 1979; and
- Committee to Formulate Concrete Proposals for Simplifying the Present Legal Procedure

In 1981, the government set up a permanent Pakistan Law Commission (PLC). The Pakistan Law Commission has been recording and publishing judicial statistics and the Pakistan Law Digest (PLD), but it has not been very effective in changing the nature of dispensation of justice. Some of the recommendations of these commissions relating to the Family Laws Ordinance, the establishment of the Federal Judicial Academy, the Pakistan Law Commission and separation of the executive from the judiciary have been implemented after a considerable delay. Substantive issues concerning day-to-day dispensation of justice, such as those concerning court facilities, buildings, salaries of the judges, changes in process serving, production of witnesses, improvements in investigation and prosecution of criminal cases, implementation of rules and codes to cut down on delay and prolonged inaction and prison reforms have not been implemented despite their repeated articulation in reports.

Members of civil society have also come up with ideas for judicial reform. One such idea was to revamp the judiciary through improvements in incentives, institutions, infrastructure and information. The analysis points out that the government's political will to reform needs to be directed in a manner that will lead to motivation of judicial officials through better incentives and appointing a Federal Public Service Commission, better internal and external accountability and monitoring by introducing measures such as the trial by jury system and appointment of a parliamentary protection of citizen's rights, changing infrastructural parameters such as provision of professional court clerks, computation facilities, law interns, libraries and the facilitation of a better quality of decision-making through proper legal education and training for judges which would require improvements in law colleges' curricula. *1

There is no doubt that delay in justice is not only a challenge but poses a serious threat to the civil and criminal justice system in Pakistan. I am conscious of the fact that delay is a universal phenomenon but in Pakistan, the position has become alarming. The Pakistan Law Commission has taken cognizance of the issue and observed that "the civil and criminal justice system in Pakistan is confronted today with serious crises of abnormal delays. Delay in litigation of civil and criminal cases has become chronic and proverbial. The phenomenon is not restricted to Pakistan; it is rather historical and universal. It is inherent in every judicial system which meticulously guards against any injustice being done to an individual, in a civil dispute or a criminal prosecution. A paramount principle of the criminal justice system is that an accused is punished only after his guilt is proved beyond reasonable doubt. Similarly, justice demands that in the trial of a civil case, the dispute must be decided strictly in accordance with law and on the principles of equity, justice and fair play. Such universally recognized and time-tested principles are in accordance with the injunctions of Islam as the Holy Quran ordains that Muslims must eschew injustice, coercion, and suppression".

In our country, one serious drawback of the administration of justice is, delay. Delays invariably occur in the disposal of civil and criminal cases. It is normal for an ordinary civil suit to linger on for as long as two decades, and on the completion of the trial, perhaps another half a decade passes by in the execution of the decree. In criminal cases also, the situation is quite dismal. Unusual delays occur in the disposal of

cases by the courts. An example of unusual delays is manifested by the fact that, according to a rough figure, currently more than two-thirds of the jail inmates comprise of under-trial prisoners. Such phenomenon erodes the trust of the people and their confidence in the administration of justice. Delays in the settlement of civil disputes, besides causing frustration to the litigant public, also hamper the socio-economic development of the society. It serves as a disincentive to foreign investment in our economy and affects our trade relations with foreign governments/multi-national companies.

The causes of backlog and delays are diverse and profound, arising due to factors both inside and outside courts, and legal/procedural gaps/lacunae. Justice delayed is, undoubtedly, justice denied. Consequently, it has always been the primary concern of civilized societies to address the issue of delayed justice with a view to find ways and means of removing defect/deficiencies in the administration of justice. It would be wrong to assume that the problem of backlog/delays has been totally neglected in the past. It has received government attention from time to time. Various Law Reform Commissions and Committees were constituted with a view to examine/analyze the causes of delay as well as to suggest appropriate measures for reform. Such Commissions/Committees carried out an exhaustive examination of the procedural laws and rules and suggested appropriate measures for reform thereof. Some such recommendations were accepted by the Government and implemented through amendments in laws/rules. The Supreme Court and High Courts have always been reviewing their respective rules of procedure so as to ensure quick and inexpensive disposal of civil and criminal cases. From time to time, the High Courts have issued administrative instructions to the subordinate courts for expeditious disposal of cases.

The reform of procedural law, however, has been a constant and continuous process. Laws need to be reviewed and reformed in keeping with the changing times so as to cope with the emerging realities. The expeditious disposal of cases is undoubtedly a laudable objective. However, it is not an end in itself; it is merely a means to an end., that end being the provision of prompt and inexpensive justice. It is indeed not delay per se which is objectionable but an unreasonable and unjustifiable delay which needs to be checked. The requirements of justice demand that sufficient time and adequate opportunities should be made available to the litigant parties and accused persons to state

their cases and put across their defence before the court of law. In the process delays may occur, but it should be tolerated and condoned if it is in the interest of a just and fair disposal of the case. On the contrary, the tendency to hasten disposal of cases must be checked if it is likely to result in an unjust, unfair or arbitrary order or decision. 2*

The question of delayed justice has been examined by various Commissions and Committees and recommendations were made at different points of time but no radical change was recommended in the existing judicial system. These recommendations can be summarized as follows:-

- i) Appropriate amendment in the relevant laws.
- ii) Increase in the number of Judicial Officers.
- iii) Provisions of adequate number of court-rooms and proper accommodation to Judicial Officers.
- iv) Improvement into the working of investigation and prosecution agencies.
- v) Training facilities to Judicial Officers.
- vi) Improvement in Process Serving Agency.
- vii) Enhancement in the retirement age of Judges.
- viii) Submission of *Challan* in time, the investigation Branch of the Police should be strengthened, the number of Forensic Science Laboratories be increased and the Court should take serious notice of negligence or undue delay/default in the time of submission of *Challan*.
- ix) Frequent adjournment of cases should be avoided.
- x) Bifurcation of the civil and criminal functions at the level of District and Sessions Judges.
- xi) Methodical arrangements of supervisions and control by the High Court over the functioning of subordinate courts. The cases of corruption, inefficiency and in-proficiency must be taken notice of and appropriate punishments awarded.

Delays in the dispensation of justice have resulted in a parallel system of justice. There is no cavil to the proposition that to place judicial power in the hands of private individuals no matter what the pretext is not only unconstitutional but that it also encourages misguided vigilantes to take the law in their own hands. This system of rough justice is not new and definitely not restricted to FATA alone. In Punjab, a *punchayat*

sanctioned the gang rape of a woman as a punishment for a crime allegedly committed by her brother while in Sui a female doctor who reported being raped was herself declared a *Kari* by her in-laws and hence liable to be killed. Such repressive and barbaric systems of adjudication are found most commonly in the rural hinterland where people often need the protective arm of the law and assurance of justice, both of which are non-existent. A high level of illiteracy, a backward and feudal mindset and the prevalence of misogynistic views among a large section of the people further compound the problem. Besides providing education and enforcing respect for the law, the government has to ensure that the justice system reaches rural areas so that those who live there are not left at the mercy of *panchayats*, *jirgas* or 'peace committees'. Also, instead of acting as an accomplice in such misdeeds, it would be better if official authorities discourage all form of arbitrary and summary justice anywhere in the country.

While discussing the question of delayed justice the pivotal question arises qua rottenness of the police system in place and its total inability to respond to crimes involving factors such as tribal and feudal pressures and oppression of the socially and economically weaker sections of society, which include women. A woman subjected by a tribal court to gang-rape or a couple murdered as *karo-kari* or a cultivator forcibly uprooted from his land by a powerful landlord or a government agency have the odds stacked against them from the beginning. The *patwari-police-feudal lords* axis continues to be a crippling feature of rural life. In many cases, it may be impossible for a victim to venture out of his or her house to lodge a report with the police. Where access is possible, the victim comes up against the wall of police indifference and venality. The force has been so corrupted and intimidated by constant pressure from the state machinery, from politically important persons and from local tribal groups to circumvent the law that it has largely forgotten its responsibility to the citizens. It is unfortunate that the magistracy and the lower judiciary are susceptible to the same pressures. It is worth recalling that it was a *suo motu* Supreme Court notice that resulted in the registration of a report in the Mukhtaran Mai case. In this milieu, how the law is to be interpreted in a social context presents a major dilemma. Should a Judge strictly adhere to points of legal technicalities, as he is expected to do, or look at the entire circumstances surrounding an incident? This is a recurring dilemma that has faced the judiciary in every country down the ages. It has been easier to resolve in countries where the rule of law, constitutional

procedures and respect for democracy have been firmly established; also where feudalism and the feudal mentality have been laid to rest. Unfortunately, in our country, even the legislature is dominated by feudal elements. There can be little hope of social justice unless the entire system is democratized. The state itself has to become more caring and less oppressive. Justice, like any other function of state, cannot operate in a vacuum. Meanwhile, the people will continue to look to the judiciary to introduce an element of social justice in the system, and to act as a force for reform and progress.

Another factor contributing to delayed justice is that sufficient number of Judges are not available at various levels to cope with the countless number of cases before the Courts. This needs to be seriously tackled. For years the issue has been treated as merely a talking point with no serious steps taken to address the problem. 3* However, it must not be forgotten that while this may be partly correct to my mind neither is the situation ripe for it, nor can we find the suitable Judges to yield the coveted results. You do not appoint just a Judge but establish a Court and it is neither an inexpensive exercise nor so simple to do. A Court to work efficiently, needs efficient and experienced staff and also combines a number of other factors, failing which it will prove counter-productive. Unfortunately, the idea of addition of more Judges to the present strength has been emphasised so much and so often by so many eminent people that now, it is being considered as the only cure of the malady irrespective of the difficult factors involved. The rule to be followed in such a situation, in my humble view, should be that before adding to it, it must be seen if the present capacity is being fully utilized and if not, can its productivity be increased? If inefficiency is added to inefficiency, it will not bring efficiency: it will instead simply multiply it. It may not be out of place to mention here that the backlog is not much affected but corruption has increased proportionately, or much more, and the quality and efficiency have decreased likewise. *4

There are legal aspects too that need to be reviewed and where possible, certain law reforms initiated to ease the problem of delays. The prosecution and defence lawyers too, need to play their roles more responsibly and ensure that their clients' cases are decided in time, with no room for incessant delays in hearings that prolong a defendant's agony. The number of under-trial prisoners is not only indicative of just how sloppy a trial can be, but it also poses problems for jail authorities who cannot cope with the swelling number of under-trial prisoners.

History is replete with examples of cases that have either never been decided or where the government has failed to implement the court's decisions. These factors have all contributed to the public's poor perception of the system and also explain why so many turn to *jirgas* and *panchayats* to solve disputes, despite bans on these institutions. The government has to work in collaboration with Judges and lawyers to strengthen the judiciary so that it is seen as an independent body that delivers justice speedily. The ADB sponsored "Access to Justice" programme, which began in 1999, and was publicized as a method to ensure speedy justice, does not seem to have met with much success. It has been difficult to ascertain what, if any, of its proposals were put in place and what were the results of those implemented. If implemented in letter and spirit, the programme could indeed make the dispensation of justice expeditious. *5

In my humble view, the desired results cannot be achieved without making drastic changes and reforms in the legislative, judicial and police departments to make the dispensation of justice expeditious. This is the only way which can restore the confidence of people in the judicial system which confidence has been eroding over the years for a number of reasons. An affordable, easily accessible and efficient judicial system will discourage many from resorting to the parallel justice system, prevalent especially in the rural area in the form of *Jirga* or *Panchayat*, which in many cases have been instruments of miscarriage of justice. The new Police Act and the Local Bodies Act also needs improvement and the impression that everything is well at the grass root level is not correct. Besides that, high remuneration, better working and living conditions for the police and the lower judiciary needs to be implemented. The physical look and feel of the police stations and courts also need to be improved. These are the areas which must be dealt with on a priority basis if expeditious and inexpensive justice is to be made available to the people. The judicial reform programme must be an ongoing exercise across the country and financial resources should not be a hindrance in this regard.

The race for money coupled with the easy chances of getting interim orders from the Courts on the basis of misrepresentation of facts and false urgencies and the known delay in disposal of cases, has tempted a sizable portion of the public to take up litigation as a profession and benefit from the rights and properties of others. The result is that the number of cases is piling up every year, adding to the previous unbearable delay in their disposal. The present backlog of the cases and

the continuous addition to it is thus a direct result of not genuine litigation but of false and fraudulent litigation. The encouragement for such litigation is the delay in disposal of cases. The process is thus, not only depriving the genuine aggrieved persons from enjoying their properties or getting their cases disposed of promptly but is sapping the moral vitality of the people. In other words, the prevailing situation is not only encouraging but multiplying what Islam wants to eradicate. Islam insists on justice. The strong who is a usurper or a bully must be dealt with in such a manner that he is compelled to abandon his ways. The weak must feel strong so that no one dare usurp his rights. In practice the bully, the usurper and the unscrupulous are not only flourishing but the saddest part of it is that they are doing so with the help of law and the legal process, just because the cases take so long to be finally decided. The strangest aspect of this situation is that there is in this country, not even a single person who would openly permit this sad state of affairs to go on but still it is flourishing. In any event, the important question is how to get rid of it and introduce prompt and pure justice?

It is undoubtedly, an extremely odd and complex problem but, as noted above, the failure for any reason to grapple with the problem and to overcome it, is providing further temptations for more unscrupulous people to enter the field and reap attractive harvests. One of the remedies being very loudly suggested now all around, particularly, by the members of judiciary and the legal profession, is to increase the number of Judges.

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Our criminal laws have the following drawbacks due to which the desired respect for law and expeditious dispensation of justice can not be achieved:-

- (i) absence of politico-religious sanction of the penal, local and special laws as well as lack of their mass understanding by people;
- (ii) "Justice delayed is justice denied" is a cardinal principle of Islamic jurisprudence. It is yet to be realized in Pakistan. We lag behind under colonial system. Quicker, cheaper, popular and better-administered justice is the demand of the people of Pakistan;
- (iii) lack of specificity of multi-dimensional laws according to our local needs on rational lines by objective and parallel

provisions of many laws operated by parallel justice forums also confuses people;

- (iv) non-adaptation of much needed unification and simplification of laws for popular understanding and non-availability of criminal codes in legal Urdu is another hurdle; and
- (v) irrational penal sanctions as against set patterns of Islamic penology also confuses people.

The criminal justice system existing in Pakistan was transplanted by the British during their colonial rule in the last century and a half which is now the main cause of neglect in redress of public grievances. There is a dire need of improvement of the lot of our judiciary to make it more independent with better service conditions to provide justice to the masses according to the universal principles of cheaper and speedy adjudication of victim's grievances. The prosecution wing also needs immediate reinforcement after its separation from the Police with much more strengthened staff, better regulated management of tasks, proper offices and housing-cum-transport facilities. The community based justice, which has a history of thousands of years of our better existence in this sub-continent, needs rethinking and the system of conciliation courts needs strengthening. The speedy disposal of cases with certainty of fair justice, appropriate punishments to real culprits and community response for perfect social defence should be our national priority to build-up a crimeless Islamic state in Pakistan.

Crime impairs the overall development of nations, undermines people's spiritual and material well-being, compromises human dignity and creates a climate of fear and violence that erodes the quality of life. Therefore, all crime prevention policies should be co-ordinated with strategies for social, economic, political and cultural development of a nation. Criminal justice systems in many countries are seriously lagging behind increasingly more sophisticated and more efficient ways of committing crimes, evolved by criminals as a result of technological developments and modernization. Rapid advances in communications, travel, trade, and technology have spurred the growth and internationalization of crimes. Piecemeal approaches are insufficient to deal with the full scope of the problem. Furthermore, criminal justice processes often suffer from obsolescence and are not sufficiently flexible to cope with the new forms and over-widening dimensions of crime. The ability of many criminal justice systems to effectively respond to the new

challenges, brought about by changing conditions, is seriously inhibited by a lack of funds, non-availability of trained personnel and uncoordinated policies. No longer is attention centred primarily on “traditional crimes,” such as the theft and violence in local communities, but now every nation must focus on combating crime committed on the national and international levels, such as illicit trafficking of drugs and weapons, economic crimes, computer crimes, bribery and corruption, terrorism, hijacking, kidnapping, abuse of power, violations of human rights; such as mass killings and torture, and other detrimental practices which may severely damage an economy or cause widespread social disruption. Such crimes often victimize large segments of the population and create a climate of fear and insecurity which impairs the quality of life, impedes harmonious development and diminishes the possibility of increasingly interdependent nations, living together in peace. Comprehensive and collaborated strategies are needed at the national, regional and international levels to deal with the problem and to prevent its further intensification. Therefore, these serious and special crimes must draw the special attention of each nation to make special efforts for prevention and concerted efforts for treatment of offenders. Another contributory factor in delayed justice is that a new wave of political crimes has erupted in the world affecting our country as well. The following are a few examples of such crimes:-

- (a) Foreign planted terrorism against the state and public tranquility.
- (b) Subversion against the legally inducted government bodies, VIPS and political personages and extortionate abductions.
- (c) Sabotage against government functionaries, personalities, properties, installations, vulnerable points etc.
- (d) Violence, gherao-jalaos, and agitations creating tension and tense atmosphere in the country.
- (e) Explosions in government offices or at public places.
- (f) Public harassment by bomb blasts with serious threat to life and property.
- (g) Separatism, movements for national disintegration and disunity.
- (h) Political commotions and public rioting.
- (i) High treason and conspiracies against the state.
- (j) Public arsons, lootings, mob killings, street duals, factionalism, sectarianism, religious tussels and ethnic fights etc.

Special measures have to be adopted for expeditious disposal of such cases and to deter them in the future.

The idea that separate courts for women should be established is commendable but it should not be confined only to the matrimonial matters. Female criminality in Pakistan does not receive special official notice as a separate category of crime. In the past two decades, women criminality has always alarmed masses. We have separate mention of crime against women in different laws to protect their chastity, modesty and respect but crime by women receives no special treatment. Women's delinquencies include the socially castigated crime of prostitution, culturally negated offence of illicit sexual intercourse, infanticide, homicide, involvement in murders, illicit relations, marriage offences and female abductions. Trafficking of narcotics by woman, murders, sexual corruption, female abductions, alcoholism, prostitution, fornication, alcoholism and rape through female agents are the immediate and urgent most concerns of all the nations to control the growing feminine criminality. Anyhow woman criminality has been a subject of limited academic attention through-out the world, though feminine criminality is on the serious rise.

Many laws are in operation in Pakistan to control crimes and to maintain the official conduct of citizens. These are implemented by heterogeneous organs of state functioning parallel to each other at Federal and provincial levels. All these laws can be codified in Urdu into one simplified penal code. It will make it easy for the man in the street to know the law of his land. "Ignorance of law is no excuse" was a colonial concept to curb the subjects in a law and order state. It must be changed to guide people to understand their laws to prove their good citizenship. A uniform code will lead to a popular crime control system respected by all as well as to expeditious disposal of justice. A uniform code should be available to everyone in Urdu on low cost for personal guidance. It will help individuals to be masters of their own deeds rather a pawn in the hands of others.

"Justice delayed is justice denied" is a universal truth. Most of the people of Pakistan have by now the bitter experience of running around lower Courts for years in cases of original jurisdiction and then in higher Courts for many more years, in appeal and counter-appeals. Offenders sentenced to death await for seven to ten years in agony to reach their end. The process of litigation involves the expense of hundreds of

thousands of rupees in Courts to get justice after the loss of countless man-hours of most talented people engaged in such litigation. “Justice hurried is justice buried.” It is against the principles of Islam. Islam prescribes the best solution to every human problem because the middle path is the best way *7 but the delay which is incidental to the proceedings, and which allows the parties to settle the issues and to collect the evidence, cannot amount to improper delay. The time consumed in such matters will not amount to a denial of justice. The lawyers are not responsible for improper delay in the process of justice. The working of the court, case load, the complexity of the litigation and quantum of evidence is the relevant material for speedy justice and the decision of cases cannot be equated with treatment of a patient. Thus without providing full opportunity for the production of evidence to the opposite party, the decision of a suit in hurried and haphazard manner will amount to denial of justice and the real purposes of administration of justice may be flouted by speedy disposal which amount to a burial of justice. *8 Therefore, we need a genuinely speedy justice system which imparts judicious decisions with less cost in money and less loss of the human energies of the best minds of the nation in such adjudication. *9

Delay, bribery, extortion, exploitation of the weak party, insults at every step, physical torture by police, calculated absenteeism from court appearance, replacement of Judges, frivolous litigation – these are the characteristics of the current state of our judicial system. Thus we can hardly blame a poor and weak citizen for his/her lack of confidence in the judicial system. This paper not only profiles the abysmal situation of access and dispensation of justice in Pakistan, but also sheds light on the way forward through comprehensive reforms in the judicial system. In the absence of justice, societies cannot flourish or survive for long. The rule of law is as indispensable to a nation-state as oxygen is to human beings. Yet the *thana-kutcheri* problems top the list of issues confronting people in Pakistan. Such everyday problems are a manifestation of the state’s insensitivity towards the people, and they tend to perpetuate the prevalent power dynamics. “Rule of law” is intrinsically linked to the concept and functioning of the modern nation-state, as it epitomizes the notion of a “social contract” between citizens and the state. However, the justice system in Pakistan is in a state of disarray. Although Article 25(1) of the Constitution promises equality before law, the gap between this pledge and its actual dispensation is far too wide. Justice is a basic social service that the state is obliged to

deliver to its citizens, and is closely linked to issues of poverty, social justice and economic growth.

There is also a need to review the role of lawyers and determine how their perceived role can be transformed, from being only interested in fleecing litigants into legal experts who give advice to courts in an independent manner. It will also contribute to the process of Judges taking more control over proceedings rather than allowing the cases to drag on the behest of the litigants and lawyers. In order to do so, legal education and physical and human resources of the court need to be improved.

The overall analysis of the judicial system in Pakistan reveals that except for Balochistan, delays in courts and the accompanying expense and loss of time are the major problems. Balochistan is relatively efficient due to the widespread prevalence of the informal *Sardari* system and a lower case-load. The influential use the courts to settle scores and the police and courts oblige them, and seemingly collude with them to harass the poor. Delays occur in civil cases due to various reasons, including:

- faulty process-serving mechanism;
- non-service of summons;
- non-adherence to the High Courts rules pertaining to the presence of local revenue and other officials in court;
- inability of Judges to take *ex parte* action against uninterested litigants;
- gross bureaucratic neglect;
- allowing an undue number of miscellaneous applications, temporary injunctions and interim relief; and,
- lack of witnesses and frivolous litigation.

Delay in criminal cases occurs due to:

- poor and ineffective prosecution services;
- inability among Judges to separate the case of the accused present in the court from those absconding;
- delay in recording evidence; and
- inability of jail administration to send the under-trial prisoners to attend hearings.

Oath issues that cause delays include:

- transfer of Judges;

- transfer of a case from one Judge to another;
- non-judicial or administrative duties of Judges; and
- inadequate court facilities (physical as well as human), common to civil, criminal and family cases.

Besides improving the quality of law education and Bar facilities, there is a need to consider whether an independent legal services system can replace the present system. In such a system, lawyers will not argue on behalf of any party. Rather, they will assist the court on points of law. Such a system will also enhance judicial control over case proceedings.

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It is high time that we overhaul, reengineer and restructure our justice processes and court administration as well as put in place a new culture, a value set and a strategic framework to ensure that the process of renewal is continual and sustainable.

The subordinate courts form an integral part of our judicial system; in some ways they even play the more important part. Although their jurisdiction is limited by statute, it is in these subordinate courts that the public comes into direct contact with the processes of law. Therefore, special attention should be paid to their efficiency and output.

The success of any organization depends very much on the quality and management of its human resources. Judicial officers should be provided professional training opportunities in the form of in-house education workshops as well as overseas courses and seminars. Their training should not be limited to legal topics but it should be extended to field trips to expose them to current events taking place around them so that they are not insulated from the real world. Subordinate courts must review and entrench their core competencies and their strategic adjudication architecture. Competency traps must be avoided. The subordinate courts must enhance their value-based management and learning environment. In addition they must install effective control and feedback systems for monitoring judicial administration. The subordinate courts must see to it that all barriers to access to justice are removed. Access to justice must be affordable and efficient. The training should also include court management for making cohesive use of the judicial branch and its management. This is essentially a new field of knowledge and is called court management, and concerns itself with case-flow, personnel, finance, records and organizational approaches to

management; and addresses itself to policy issues in three key areas: speedy trials, the right to counsel, and equal opportunity. Criticisms have, therefore, been leveled frequently about the delays and backlog of case work. The grievance is genuine as the norms associated with the adversary system have so many safeguards and protections whose compliance are themselves a source of delay that to overcome this problem it is necessary to invigorate the judiciary by means of special training. *11

The effectiveness of the justice system depends very much upon public respect and confidence. One way to achieve this is to have efficient court organizational structures and trial processes by which the public can obtain prompt and just resolution of their disputes or conflicts. In addition, the integrity of Judges, as well as all the others who are intimately involved in the administration of justice, is equally important. In many western countries as well as in Pakistan, there appears to be a general decline in respect for institutions and authority. Judges no longer enjoy the status and respect which their predecessors enjoyed. We must not allow this to happen in our country. There must be integrity in terms of lawfulness of the court's procedures, its decisions and the consequences of those decisions. Integrity also extends to the effectiveness of court orders and decisions. This integrity will be severely diminished if court orders are routinely ignored.

The challenge of delayed justice can be faced by adopting the concept of mediation. The distinguishing feature of mediation is that the parties themselves decide the outcome of their dispute. This is on terms acceptable to the both of them, as opposed to the zero-sum outcome of the adjudication process, which is premised on an adversarial model in which the "winner takes all". In the context of most Asian societies, this is particularly important as it ensures that no one walks away with the feeling that he has lost face. The third party intervenor does not impose a decision but uses the structured process to assist the parties. Since mediation emphasizes co-operation or what is termed as "win-win" solutions, it is useful in civil disputes, especially so in matrimonial disputes involving the division of matrimonial assets and the custody of children, because it avoids costly trials and possibly even more costly appeals thereafter. Of course, mediation exists in many forms. But our own experience has shown that, once litigation has begun in the first heat of dispute, the possibility of early settlement is often precluded. This is because neither party is willing to offer to talk, lest this be thought by

the other party to be a sign of weakness. An initiative by the court gets over this primary difficulty. As such, settlement conferences should be arranged at the earliest possible stage of the proceedings so as to minimize costs.

The length and expense of civil litigation does not only affect the litigants, but also has an indirect adverse impact on the overall economy as the efficiency and responsiveness of the judicial and legal system are influential factors governing business decisions. Justice must function efficiently. Some critics may argue that fairness suffers on the way to speedy disposal of cases. It may even result in a miscarriage of justice. The value of a judgment is greatly diminished when it is obtained after much delay and expense. In some cases it may even be a pyrrhic victory of little value to the successful litigant. The entire civil justice process needs to be re-examined. As a start, the role of the Judge in the civil litigation process should go beyond that of a mere silent and passive adjudicator. He has to exercise effective judicial leadership by taking on additional responsibilities, such as overseeing the pace and length of proceedings and supervising the effective and efficient use of trial time, instead of leaving it to the parties to the disputes and presumably their legal advisers. To do this, Judges must play a more managerial role in the litigation process. This means exercising a tight control on the length of trial, setting timetables for the completion of all pre-trial matters, fixing time limits on lawyers' arguments and on the use of cross-examination. The Judge's duty then, is to ensure that the litigation is brought to a definite conclusion expeditiously. This change in judicial attitude has led in recent years to the adoption of the concept of caseflow management. It may be of interest to note that, even in England where the adversarial system is deeply rooted, caseflow management techniques are fast gaining acceptance.

New technologies especially in communication and information technology, are revolutionizing the way in which we live and work. While this brings immense benefits to consumers and businesses, it is not without its problems. Criminals armed with equally sophisticated technology will not be slow to exploit them. We have already witnessed the cloning of mobile cellular telephones by crime syndicates. In no time, other new forms of crimes will appear. The internet will also bring with it a whole new set of problems; crime may no longer be committed within territorial boundaries; it may take place in what is now commonly referred to as cyberspace. When the use of electronic forms of money

such as E-cash become widespread on a global scale, offences such as cheating, theft and even money laundering will appear in a new form. The law and the courts will have to respond quickly and decisively to the situations brought about by these new technologies. Even the nature of civil disputes will become increasingly complex, with rapid scientific advancements such as those in the bio-technological held of genetic engineering. To prepare for these new challenges, the legal education of Judges and lawyers may well have to be broader and multi-disciplinary in order for them to understand and deal with the ever changing profile and complexity of cases. We should also keep abreast of trends and developments in information technology and explore new and better technologies to assist us in our work. Already, we are witnessing the rapid evolution of an electronic marketplace in which commercial transactions between consumers and businesses are done electronically and globally, via a network of computers. This same technology can be applied to the justice system. For example, the Singapore judiciary is using electronic data interchange, workflow and imaging technologies to develop a system by which lawyers will be able to file, serve and obtain extracts of court documents electronically from their offices. This will also allow the courts to save on time and storage space as the filed documents are stored in optical disks which have immense capacity, and allow almost instantaneous retrieval. This can also be tried in Pakistan. Still on the subject of technology, whilst it is important that the Judges and courts do not turn a blind eye to the application of technology in the justice system, they must not forget that technology alone does not improve the system. It is people, assisted by technology, who make the justice system work. We can, and should, always experiment with new technologies. But we must be careful not to allow the substitution of technology where a human presence is more helpful. What is technologically feasible may not always be desirable.

We must be conscious of the need to enhance access to the courts for those who desire to and are required to use them. Those who need to resort to the courts must be able to resolve their disputes without undue hardship, cost, inconvenience or delay. Affording access to justice alone is of course not enough. This brings me to the three goals. The first is that cases or disputes should also be decided or resolved justly. Proceedings should be conducted in an expeditious and fair manner with equal application of the law to all. Next, there has to be an effective administration, adequately resourced and organized to give effect to the objectives. In this regard, courts must be administered in accordance

with sound management practices which foster the efficient use of public resources and enhances the effective delivery of court services. The third goal is to preserve public trust and confidence. The justice system lies at the heart of a democracy. It serves as the primary protector of the rights and liberties guaranteed by the Constitution. It sustains the rule of law. It is in the courts where our people feel the keen cutting edge of the rule of law. In order to fulfill this role, the subordinate courts must maintain the trust and confidence of the public. They must be better understood and made more accountable and responsible to the concerns of the people.

History teaches us that the future is always uncertain; discontinuities cannot be foreseen. We must therefore inculcate and internalize a court culture that endures and welcomes continuous change. We must anticipate change; we must plan for the unexpected. We must execute change skillfully. We must drive the change process; we cannot wait for change to knock at our doors. With the growing complexity of global issues and the number of people involved in the decision-making process, institutions like the judiciary face a challenge in finding new approaches to management, decision-making and judicial redresses. * 12 However, such new approaches are the only way to meet the challenge of delayed justice.*12

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