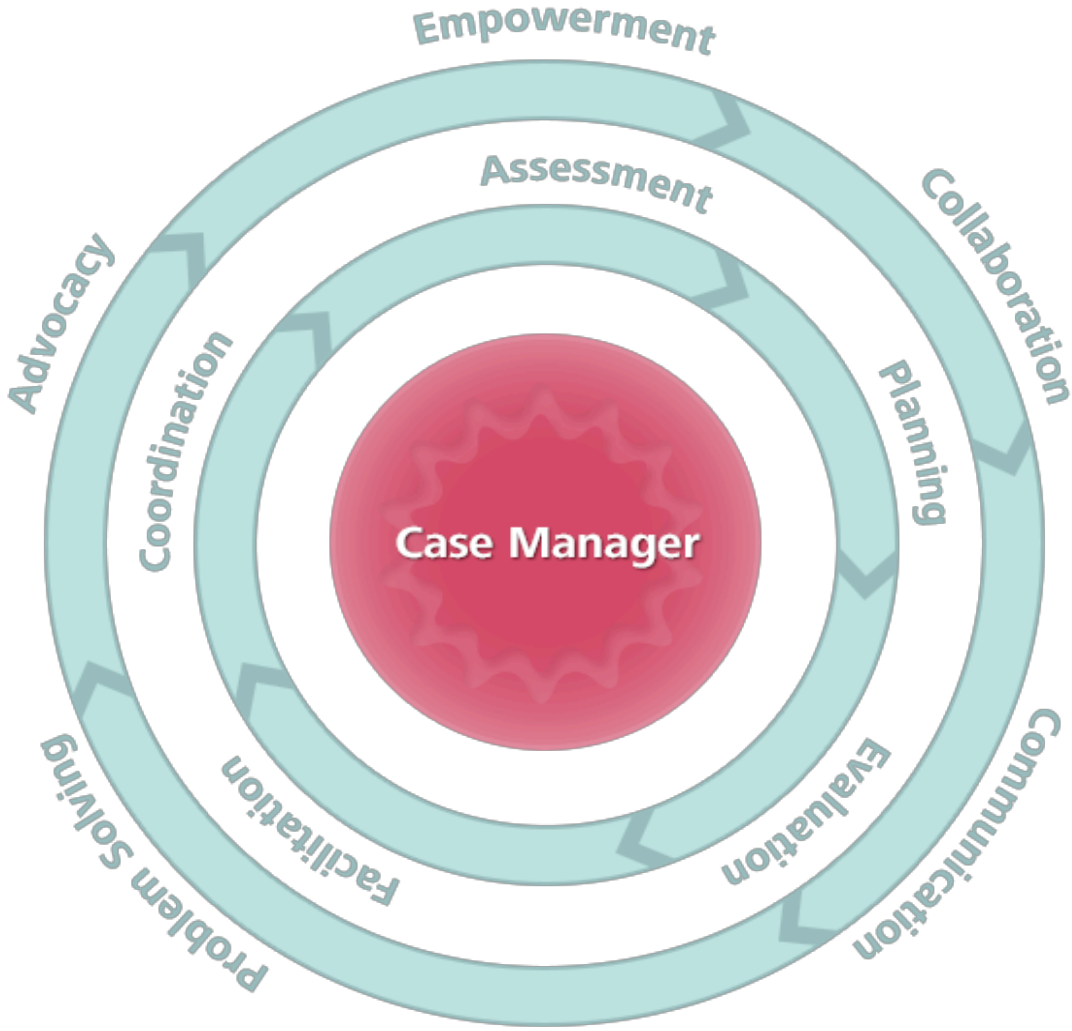
MANAGE THE JUSTICE SYSTEM THROUGH CASE MANAGEMENT AND COURT ADMINISTRATION

Zafar Iqbal Kalanauri[i]



It is enshrined in the preamble of the Constitution of Islamic Republic of Pakistan, 1973 that Justice, social, economic and political is the spirit and vision of the Constitution. The state is mandated under Article 10.A as under:

10A. Right to fair trial. − For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

A civilized system of governance requires that the State makes available to its citizens' appropriate means of just redress of grievances and settlement of disputes. The means provided are the legal system and judicial administration. The courts must be accessible and dispense justice freely, fairly, impartially and expeditiously. Procedures are means to provide justice and the State is obliged to see that its legal system should not leave scope for practices or processes, likely to hinder or defeat justice. Therefore, procedures should always be on anvil of reforms. Sometime back Lord Kilbrandon observed:

"The ship is well designed, fundamentally sound, and is for most of time on a correct course; what is wanted is an overhaul and modernization of the navigational instruments, so that she is more easily kept on that course[1]*"*

Our procedural laws both Civil and Criminal are no doubt well designed and are also fundamentally sound; they however need to be reviewed to make them attuned to present-

[1] Lord Kilbrandon, other People's Law (1966) p-3 & 4

day developments. The effective enforcement of law and procedure is also required. A former Chief Justice of High Court observed:

"The more we study the Code the more we realize what admirable piece of legislation it is, the great need today is not too much amendments in law as the proper and effective implementation of law[2]."

Presently there are two well-known systems of judicial procedures to resolve disputes; they are, adversarial and inquisitorial. Our courts follow the adversarial procedure as laid down in various procedural statutes i.e. the Code of Criminal Procedure 1898 and the Code of Civil Procedure 1908.

The system is confronted with serious crisis of abnormal delay in adjudication. Backlog and delays in quick dispensation of justice is a serious threat to the existing judicial system in the country. Concentrated efforts are required by the learned judges at all levels, lawyers, litigant public, witnesses, prosecuting agencies, public leader, 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 endeavor to minimize sufferings of litigants by deciding cases expeditiously through proper written judgments.

The delay in settlement of civil disputes, beside causing frustration to the litigant public also hamper the socio-economic development of society, whereas delay in criminal justice negates several fundamental rights including the right to freedom of movement and dignity of man. The problems of delays are neither new nor unique in the context of Pakistan only, even most advanced countries lament of heavy arrears. It is an old and chronic problem of global dimension caused partly by cumbersome and technical provisions of procedure and partly because of non-observance of provisions. It was observed:

"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, pressuring 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 the wisest judge cannot distinguish between merits and demerits. If we do not get the facts right, there is little chance for the judgment to be right[3]."

The acuteness of the problem prevailing in our neighbouring country can also be assessed from the following observations by the Supreme Court of India:

"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 reform in it. Cases like this, which are not infrequent, should be sufficient to shock our social as well as judicial conscience and advise 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

[2] Providing Speedy and Inexpensive Justice by Mr. Justice ® Mian Mehboob Ahmed, Chief Justice, Lahore High Court.

[3] Southern Pac-Transport. co. v Stoot, 50 S.W. 2nd 930, 931 (Tex 1975)

strongly emphasize the urgency of the need for legal and judicial reforms[4]*"*

The observation of the Supreme Court of Pakistan in the case of ***Liaquat Hussain v Federation of Pakistan*** [5]also laments the accumulation of backlog in courts at all level of judicial hierarchy. The Court warned that unless the requisite legal/judicial remedial measures are timely adopted, the situation will further deteriorate. The Court further referred to certain reports of the Pakistan Law Commission on reform of procedural law, namely, Report on Criminal Justice System and Report on Reform of Juvenile Justice System and bemoaned their non-implementation.

While reforming the procedural law, the objectives of the system should not be lost sight of. Procedure is only a mean to an end, the end being dispensation of justice. Procedure must therefore be geared towards obtaining and establishing justice. The aim of this Report thus is two-fold:

(i) to consider the need for such major changes as could reduce delay in and cost of litigation; and

(ii) to consider the need for such changes as are desirable to implement through directives. The emphasis accordingly would be to:

(i) minimize cost of litigation;

(ii) avoid delays in litigation;

(iii) adopt means of alternate dispute resolution; and

(iv) improve trial procedure through administrative directives.

It is the duty of the state to secure a social order in which the legal system of the nation promotes justice, on basis of equal opportunity and shall, in particular ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Access to quick and quality justice is one of the aspects of rule of law and justice delivery mechanism which involves judges, lawyers, litigants and court staff. Management of court and case is helpful to reduce the dependability on the manpower and traditional resources. It creates impartiality and develops the integrity and propriety.

Involvement of judiciary, cooperation from lawyers, rigorous monitoring and supervision of case progress are key points in reducing the pendency in courts and providing timely justice to the people of India, who are waiting in the process of justice. The cost of delayed process is not only borne by the litigants but it is also burden on the government. This cost is measured in both monetary and work hour terms of judges, lawyers and litigants. Huge backlog of cases in the courts is one of the prominent problems that India is facing today.

The introduction of management practices in the judiciary has been a topic of discussion for quite some time now. During this period, many ideas have been mooted to tackle the enormous backlog of pending cases. While some of these ideas were implemented, others did not cross the stage of discussion and debate.

Consequently, today, when we talk of the pendency of cases, we refer to figures running into several crores. So much so that it has been said that at the current rate of disposal, it would take more than 300 years to clear the backlog, provided no fresh cases are instituted during this period. While this assessment needs no comment, the fact remains that even on a conservative estimate, it may take decades to achieve a stage of zero pendency.

---

[4] AIR 1976 SC 1734

[5] PLD 1999 SC 504

Survey on Pendency of Cases Pending in Pakistan.

Small Survey on Pendency of cases in Pakistan :-

3 Questions asked in the Survey

1. Whether there should be time bound disposal of cases ?

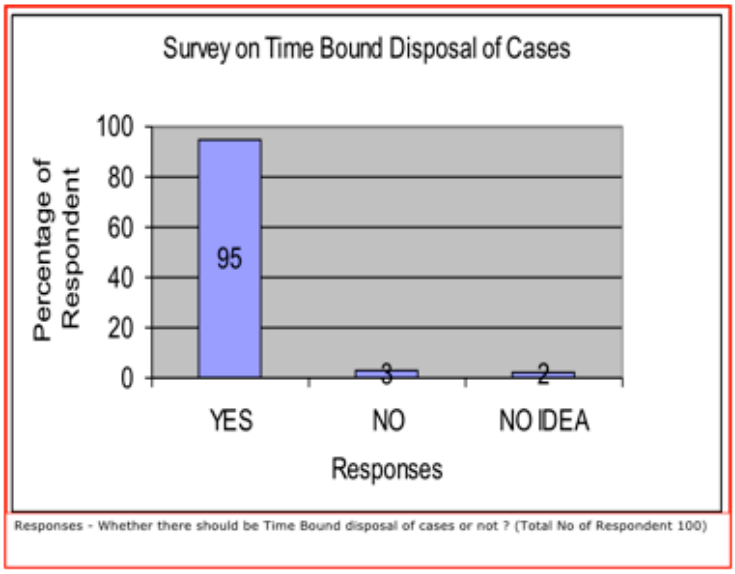
   Objective question. Yes or No

2. What are the reasons of delay in disposal of cases ?

   (Open ended question)

3. What are the solutions to handle the delay in disposal of cases ?

   (Open ended question)



Responses - Whether there should be Time Bound disposal of cases or not ? (Total No of Respondent 100)

Reasons for delay in disposal of cases :-

Reasons for delay in disposal of cases	*Responses (%)*
Corruption in Judiciary	15%
Shortage of judges	15%
More Adjournments	25 %
Shortage of courts	20 %
Others reason like inefficient staff, lengthy procedure, delay in investigation, lack of proper monitoring of case proceedings, lack of training, Differential treatment of cases, No control on judges and advocates, lack of coordination between advocates and judges, shortage of talented judges etc.	25% 1%

Past Attempts

It is not as if there has been any lack of effort to speed up the justice delivery system. Unfortunately, the attempts that have been made have yielded limited results. For example, the Criminal Procedure Code has been overhauled and yet the pendency of criminal cases remains very high. Over the years, several Tribunals have been set up ostensibly to provide quick, informal and inexpensive remedies to the litigants apart from providing for a uniformity of approach, predictability of decisions and specialist justice.

However, not all Tribunals functioning in the country have inspired confidence in the public mind. The reasons include lack of competence, objectivity and a judicial approach. The constitution, power and method of appointment of personnel thereto and the actual composition of the Tribunals are also said to be contributory factors. An intensive and extensive study needs to be undertaken by the Law Commission in regard to the constitution of tribunals under various statutes with a view to ensuring their independence so that the public confidence in such tribunals may increase and the quality of their performance may improve. I strongly recommend to the Law Commission of Pakistan to undertake such an exercise on priority basis."

Cases are pending in the courts from Supreme Court to Subordinate Courts. Chief Justice of Pakistan and High Courts have noted their concerns on these issues and the government and judiciary are coming up with projects and measures to reduce the pendency in courts. The large amount of backlog of cases and delays affect both fairness and effectiveness of the judicial system. It then affects on democracy, rule of law and the ability to enforce human rights. Backlog in court is a result of court delay and it becomes a further cause for the delaying the justice delivery mechanism. These delayed cases and deficiencies in the courts led to the growth of pending cases in such a large number that new cases cannot be dealt with as promptly as they could and should be. These cases get delayed and further culminate into the new pendency and backlog in the court which retards the process.

Backlog, therefore, emerge as a major impediment to the court reform as it directly affects the court performance. The figures show that the number of cases pending in the Supreme Court, High Courts and Subordinate Courts are more or less same over the last five years. Although reduction in pendency is observed in the Subordinate Courts in the year 2015 and 2016, yet the trend is not same in Supreme Court and High Courts. It signifies the immediate steps have to be taken on warfront to reduce the pendency in the

court and to provide access to justice to people which is guaranteed in our constitution.

Present Efforts

For the last about a decade or so, the emphasis seems to have shifted from tribunalizing justice to reducing the adversarial role that litigants play. It is for this reason that greater interest has been shown in alternative dispute resolution (ADR) systems. There is no doubt that newly established Mediation Centres which are settling disputes through "Judicial Mediation" have done a considerable amount of good work in expeditious disposal of cases. Supreme Court and Lahore High Courts have taken several steps to address the problem of pendency in court. Specially under the leadership of present revolutionary Chief Justice of Lahore High Court Mr. Justice Syed Mansoor Ali Shah. Establishment of Legal Reforms, Formation of Court Management Committees, Model Courts and E-court, Automation project are some of the example. The post of court managers is created in each Judicial District of Punjab to assist District and Session judge and posts are created for Lahore High Court Principal seat and each Bench of High Court. The court managers with will support the judges to perform their administrative duties, thereby enabling the judges to devote more time to their judicial function. Court and case management and use of ADR mechanisms are tools which are used for expediting justice and reducing cost of litigation. The purpose of it is to improve the quality of the administration of justice. Today, dimensions of Justice are not confined to hear the case and deliver the judgment. It has become a judicial process which provides effective, efficient and purposeful judicial management of a case so as to achieve a timely and qualitative resolution of a dispute. It assists in early identification of disputed issues of facts and law, establishment of procedural calendar for the life of the case and exploration of a possibility of a resolution of disputes through methods other than trial court.

The issue of case management was discussed in Canada, where in the Lord Woolf's interim report it has been stated that the 'case management is a comprehensive system of management of time and events in law suit as it proceeds through the justice system, from initiation to resolution.

It has two essential components

(i) the setting of a time table for determined events and

ii) suspension of the progress of the law suit through its time-table'.

In India, case management was firstly raised by the Supreme Court in ***Salem Advocates Bar Association Vs. Union of India, 2005 (6) SCC*** where the Hon'ble Supreme Court suggested that the case management should be an effective litigation management and cost- and delay-reduction.

Case management involves sorting of cases, scheduling of the cases according to the stages, setting of time table, follow up the time table, reduce the time lag and promotion for amicable settlement.

Case management is nothing but the managerial attitude towards the cases or briefs in court. It requires judicial commitment and leadership, timely and qualitative disposal of dispute, identification of disputed issue of facts and law, exploration of other methods of disposal of disputes other than trial and control of adjournment and total workload of the court.

Monthly appraisal and evaluation of performance of the court system and procedure in a standard format is necessary to judge the implementation of the system. It needs to develop new strategies to expedite the justice delivery process. This will reduce the cost of litigation and will improve the quality of administration of justice.

Case management and court management have following advantages:
1) It monitors the each and every case history and its stages.
2) It finds out the issues which are affecting the case in disposal process at early stage.
3) It enhances court's ability to manage the litigation and adjudication process.
4) It reduces time required for trial through setting of time table.
5) It helps court to allow adjournment only if essential and court can impose heavy or exemplary cost on erring party.
6) It facilitates amicable settlement with the use of alternative dispute resolution mechanism.
7) It reduces criticism of the justice system by ensuring fairness between the parties.

In production management, it is always important to maintain the quality. Assurance of quality and its maintenance can be achieved by many techniques.

'Kaizen' and 'Six-sigma' are two techniques, if used in the process of court and case management many positive and sustainable results can be observed.

Kaizen

Kaizen is the quality control technique in the company to maintain the quality of the product and to assure the growth of business.
The word Kaizen means "continuous improvement". It comes from the Japanese words 'kai' which means 'change' or 'to correct' and 'zen' which means 'good'.
Kaizen is a daily activity whose purpose is to do small improvements to make our system flawless. This activity goes beyond improvement that when done correctly humanizes the workplace, eliminates hard work (both mental and physical), teaches people how to do rapid experiments using the scientific method, and how to learn to see and eliminate waste in business processes.
Kaizen is a system that involves every employee - from upper management to the cleaning crew. Everyone is encouraged to come up with small improvement suggestions on a regular basis.
Kaizen motivates people to set standards and then continually improving those standards. It also involves providing the training, materials and supervision that is needed for employees to achieve the higher standards and maintain their ability to meet those standards on an on-going basis.

Six-sigma

'Six-sigma' refers to a statistically derived performance target of operation with only 3.4 defects for every million activities or opportunities. This is a highly technical approach to improving business strategies but its actual goal is to provide greater customer satisfaction. Six-Sigma is a process towards perfection with fewer defects. It measures quality that strives for near perfection. It is a disciplined, data-driven approach and methodology for eliminating defects. It involves a comprehensive and flexible system for achieving, sustaining and maximizing business success. Six-Sigma is uniquely driven by close understanding of customer needs, disciplined use of facts, data, and statistical analysis, and diligent attention to managing, improving, and reinventing business processes.
Both these methods are aiming towards continuous improvement in the system. Though Justice delivery is not a business and production oriented, it is a process in which stake holders like judges, court staff and infrastructure and lawyer are working to provide justice to the customers i.e. litigants and their satisfaction. Continuous improvement and reduction in the defects or defective mechanism by improving the system is the basic key

of these methods. Now the time has come to act intelligently and think differently. Justice must not merely be done but it must also be seen as done.

Case and court management is new way to look towards the justice delivery mechanism to make our system more users friendly so as to provide quality justice with less time by effective utilization of the available resources and manpower. Lord Woolf's Interim Report on 'Access to Justice'[6] and to the final Report of Lord Woolf[7] and the Report of the Australian Law Reform Commission on 'Judicial and Case Management'(1996)[8].

In the United States of America, sec. 479(c)(1) -(3) of the Civil Justice Reform Act, 1990 (28.U.S.SC) which required 'case management' systems be introduced, was adopted in response to strong and persistent demand for reform of the civil litigation process to reduce cost and delay. In enacting it, Congress stated:

"Evidence suggests that an effective litigation management and cost- and-delay-reduction program should incorporate several interrelated principles – including –

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pre- trial process.[9]"

In the United States, where now case-management systems are firmly established, the Federal Judicial Centre, Washington D.C. has referred to the 'active role' of the Judge:

"to anticipate problems before they arise rather than waiting passively for matters to be presented by consul. Because the attorneys may be immersed in the details of the case, innovation and creativity in formulating any litigation plan may frequently depend on the court."

The courts' substantive role consists of the 'Judge's involvement' not merely limited to procedural matters but refers to his becoming familiar, at an early stage, with the substantive issues in order to make informal rulings on issues, dispositions, and narrowing, and on related matters such as scheduling, bifurcation and consideration and discovery control'. The Judge periodically 'monitors' the progress of the litigation to see that schedules are being followed and to consider necessary modifications in the litigation plan. The Judge may call for interim reports between scheduled conferences. But, at the same time, time-limits and the controls and requirements are not imposed arbitrarily or without considering the views of counsel, and are subject to revision when warranted by the circumstances. Once having established a program, however, the Judge expects schedules to be met and when necessary impose appropriate sanctions for dereliction and dilatory tactics[10].

In Canada, according to the Ministry of Attorney General Ontario, Canada, 1993 as quoted in Lord Woolf's Interim Report, Chapter 5, Para 18, it is stated as follows:

"*Case management is a comprehensive system of management of time and events in a law-suit as it proceeds through the justice system, from initiation to resolution. The*

---

[6] (http://www.lcd.gov.uk/civil/interim/chap5.htm)

[7] (http://www.lcd.gov.uk/civil/final/contents.htm)

[8] (http://www.austlii.edu.au/au/other/alrc/ publications/bp/3/management.html).

[9] (See Manual for Litigation Management and Cost and Delay Reduction, Federal Judicial Centre, 1992, Washington DC)

[10] (Manual of Complex Litigation, 3rd, 1994, Federal Judicial Centre, Washington D.C., quoted in Lord Woolf's Interim Report, Chapter 5, para 20).

two essential components of case-management system are the setting of a time table for pre-determined events and suspension of the progress of the law-suit through its time-table".

In Australia, Prof. Sallman of the Australian Institute of Judicial Administration (quoted in Lord Woolf's interim report, Chapter 5, para 9) stated as follows:

"The Revolution has involved a dramatic shift from a laissez faire approach in conducting court- business to an acceptance by courts of the philosophical principle that it is their responsibility to take interest in cases from a much earlier stage in the process and manage them through a series of milestones to check-posts. Most courts have now acted upon this philosophy and introduced a variety of schemes, the common denominator of which is substantially increased court supervision and, in some instances, control. The essence of it is the adoption by courts of a systematic, managerial approach to dealing with case loads."

(UK) Lord Woolf's Reports on 'Case Management':

Lord Woolf's 'case management' recommendations, to the extent relevant for us, are as follows:

(1) There should be a fundamental transfer in the responsibility for the management of civil litigation from litigants and their legal advisors to the courts;

(2) The management should be provided by a three tier system:

(i) an increase in small claim jurisdiction;

(ii) a new fast track for cases in the lower end of the scale; and

(iii) a new multi-track for the remaining cases

(3) The court shall have an enlarged jurisdiction to give summary judgment on the application of the claimant or defendant or on courts' own initiation, on the ground that a case (or past of a case) has no realistic prospect of success.

(4) All cases where a defence is received will be examined by a 'procedural judge' who will allocate the case to the appropriate track.

(5) In the large court centres, Judges engaged on the management and trial of civil proceedings, should work in turns and normally a case should be handled only by members of the same team.

(6) The fast-track, which is primarily for cases where the value does not exceed 10,000 pounds, will have a set time-table of 20-30 weeks, limited discovery, a trial confined to not more than 3 hours and no oral evidence from experts; and would also have fixed costs.

(7) On the multi-track, case-management will usually be provided by at least two interlocutory management hearings; the first will usually be a 'case-management conference' shortly after the defence is received (usually conducted by the procedural Judge) and the second will be a pre-trial review (monthly conducted by the trial Judge).

(8) The multi-track cases will proceed according to the fixed time-table and initially to an approximate date of trial and subsequently to a fixed date of trial.

These recommendations were finalized in a very elaborate final report by Lord Woolf.

Objections to 'Case Management' and Answers thereto:

In as much as it appears to us that the same objections are likely from the Bar and the Bench in Pakistan as in UK, I shall refer to them as raised in UK[11]:

(a) The first objection was that the proposals will undermine the adversarial nature of the civil justice system;

(b) Judges are not well-equipped to manage;

(c) Reading the papers of the case, conducting conferences and pre-trial reviews, will add significantly to the burden of hard-pressed Masters and District Judges;

[11] (see Section II, Chapter I of Lord Woolf's final Report)

(d) It would also mean increase in the number of interlocutory hearings;
(e) More staff and sources will be necessary;

In reply to the above objectives, Lord Woolf pointed out that:
(a) the adversarial role will continue but will function in an environment which will focus on the key issues rather than allowing every issue to be pursued regardless of expense and time, as at present;
(b) there functions will not be performed by all Judges but only by procedural Judges (i.e. Masters and District Judge), although in complex cases, Civil Judges and High Court Judges perform the tasks;
(c) Some steps indicated by the procedural Judges may be altered by trial Judges;
(d) All cases need not go through the system but cases will be selected for the purpose; (e) There is need for training both Judges and staff;
(f) The proposals do add additional burden but the idea is to persuade parties to take to ADR systems in most cases, leaving complex cases alone for the courts;
(g) In several cases, the issues can be identified at an early stage and at the pre-trial review, and courts will try to minimize the time and expense;
(h) Case management hearings will then replace rather than add to the present system of interlocutory hearings;
(i) As agreed by the Bar Council and Law Society, additional staff and funds will be necessary;
(j) Counsel shall have to file statements as to submissions;
(k) Existing available resources have to be prioritized;
(l) Law clerks must be employed to help the Judge in these tasks;
(m) Increased use of information technology will help to release some staff for the other additional work.
Simple cases should be allocated to 'fast track' and complex cases to 'multi-track'. However, some cases have to be excluded from 'fast-track'. Lord Woolf in his final Report recommended exclusion of the following cases from the 'fast-track', namely, suits:

(a) which raise issues of public importance; or
(b) which are test cases; or
(c) where oral evidence of experts is necessary; or
(d) which require lengthy oral arguments or significant oral evidence which cannot be accommodated within the fast track hearing time; or
(e) which involve substantial documentary evidence.

Transfer from 'fast-track' to 'multi-track', is also be permissible in appropriate cases.

The Australian Law Reform Commission (1997)
The Australian Law Reform Commission in a background paper called "Judicial and Case Management" (1999) has elaborately considered this subject.
It defines 'Judicial Management 'as a term used to describe all aspects of judicial involvement in the administration and management of courts and the cases before them. It includes procedural activism by judges in pre-trial and trial process and in 'case management'. At its broadest, it also encompasses questions of court governance and court administration.

'Case management' is defined as referring to process involving the control of movement of cases through a court or tribunal (case flow management) or the control of the total workload of a court or tribunal. Case management in courts is often, but not always, performed by Judges. When it is performed by Judges, it is referred to as 'judicial case management'.
'Case management' means that the 'progress of cases' before the courts must be

'managed, in one sense, its direction from traditional adversarial case management which had left the pace of litigation primarily in the hands of the legal practitioners. The courts' role was simply to respond to processes initiated by practitioner But, the objectives of new 'case management' include:
a) early resolution of disputes;
(b) reduction of trial time;
(c) more effective use of judicial resources;
(d) the establishment of trial standards;
(e) monitoring of case loads;
(f) development of information technology support;
(g) increasing accessibility to the courts;
(h) facilitating planning for the future;
(i) enhanced public accountability;
(j) the reduction of criticism of the justice system by reason of perceived inefficiency;[12]

M. Soloman & D. Somesflot in their 'Case Flow Management to the Trial Court' (American Bar Association,1997) have identified the following aspects:
(a) judicial commitment and leadership;
(b) court consultation with the legal profession;
(c) court supervision of case progress;
(d) the case of standards and goals;
(e) a monitoring information system;
(f) listing for credible dates;
(g) strict control of adjournments.

It has been stated in the Report of the Commission that case flow management has helped bring about substantial procedural, operational and cultural changes in the judicial systems of Australia.
In our country, we have not had any specific rules of case-management where Judges monitor the movement of cases throughout its career in the Court or any system of different tracks. We have ad hoc systems improvised by each High Court but not a uniform system.
One of the main items which involve considerable waste of the judicial time of every trial Judge is the system of calling out all the listed cases which are not yet ripe for final disposal to find out whether;
(a) notices are served,
(b) whether defects are cured,
(c) whether affidavits, reply or rejoinder affidavits are filed,
(d) whether notices in applications for bringing legal representatives or record are served,
(e) whether parties have taken various steps necessary to be taken at various stages of the case. This part of the work, in several trial Courts, takes more than an hour of the Judge's time. By the time regular work is taken up, the Judge loses the freshness of the morning and is already tired. We must dispense with this system and innovate a system in lieu thereof whereby this work is delegated to a senior ministerial officer or a court manager or another judicial officer who can take up this work on a Saturday in regard to the matters to be listed in the ensuing week before all the Judges in the particular Court. One or more judicial officers may do this work on behalf of all other judicial officers in regard to the lists of all of them. May be, some other alternative can also be found. In case, default order has to be passed, the matters can be listed before Court.

[12] Wood, 'The Changing Face of the Case Management: The New South Wales Experience, Paper, Aug.1994.

Next, let us examine the manner in which Judges in our Courts deal with the cases every day in the trial Courts. They first take up urgent interlocutory matters on the civil side and then take up the regular matters which are ready for final disposal. So far as the matters which are taken up for final disposal are concerned, they are normally listed according to the year in which the case was filed and numbered, the older cases being listed above the latter cases.

There is normally no distinction made in our Courts between simple cases, and medium or more complex cases. All of them are put in one basket and taken up according to their year and number. In this process, simpler cases which would not have taken much time get mixed up with every other type of case and linger on in the Courts for number of years.

There is no reason why simpler cases should not be put on fast track as in other countries. Those cases which are not that simple can be put in a middle track and more complex cases can be put in the normal track.

The above exercise if done at an early stage of the filing of a case, the Judge and the lawyer can easily distinguish a case which is in one track from those in other tracks. Fast track cases which are simpler can be taken up on specified dates in a week or during a fortnight/month and disposed of early rather than being kept waiting according to their year of institution and number.

In the last two decades, fortunately we have followed the procedure of clubbing cases which raise same issues. This has resulted in grouping cases which are similar or connected and helped in their disposal in a block. This process must be continued with vigour. It would help if, when cases are filed in the Court, they are assigned a particular number or identity according to the subject and statute involved and straightaway grouped by the computer. In fact, further sub-grouping is also possible. Formats must be devised which lawyers have to fill up at the time of filing of cases, so that it will be easy for the registry to group the cases. Government pleaders' offices can also be compelled to store information in their registers or computers, stating under which statute each case falls or as to the point it raises and the Government lawyers can be frequently asked to come out with the list of cases which belong to the same category. Cases raising the same point, when they start in any Court, must be first listed for early hearing and disposed of before the flood actually invades the Court. The tendency to allow such batch-cases to accumulate into hundreds should be deprecated.

Every High Court could have a small department of experienced officers who can be asked to

(1) take up the old cases and find out why they are not ripe, what defects have to be cured, or why parties are not served with notices or why legal representatives are not brought on record or why paper books have not been filed by the counsel;

(2) club cases into groups and sub-groups containing identical issues;

(3) prepare a brief resume of the facts and the issues raised.

It is time counsel are required to file written submissions before making their oral submissions. With increase in number and inadequate Court strength, this system has been introduced in several countries to save time. If both sides are required to file their written submissions in advance, it will first compel the counsel to read the facts and case law thoroughly at home before the oral submissions are made, and it will enable them to focus on the real issues arising. The Judges can read these submissions before the oral arguments are heard and this helps in shortening the time for oral arguments. The argument that with written submissions being filed, advocacy as an art will die is not acceptable. Even after written submissions are filed, the lawyer need not read it. He can still argue to explain the submissions given in writing. In fact, greater skills are required to put the points in a

nutshell. Those who are accustomed to diffused arguments will now be required to practice the art of brevity and clarity.

Case Management systems are many and can be innovated by every Court or by every Judge. But at least some of them can be and have to be standardized so that they are invariably followed. In several countries, the rules of Court or practice directions limit even the time for oral arguments. We have not gone that far. For the present, if written submissions are filed before oral submissions are made, there can be substantial saving of time. As of today, counsel try to develop the case in Court after hearing the opposite side and after hearing the reaction of the Judge. In view of the heavy pendency of the cases, it is necessary to make suitable changes in this behalf.

Yet another important aspect which is now very important is the one relating to 'costs'. In our country, the Courts do not award costs to the successful party in most cases. Every Judge says that "in the circumstances of the cases, the parties shall bear their own costs". In fact, no circumstances are ever mentioned. Time has come when the Court must make a positive order on the principle that costs follow the event and where costs are not awarded, the Court must assign valid reasons. The tendency of the Courts not to award costs has encouraged several litigants to abuse the legal process and delay the disposal of cases. In fact, whenever a party is found to have deliberately delayed the legal process he must be asked to pay compensatory cost or exemplary costs. In several countries, heavy costs are awarded against the unsuccessful party and such a procedure has been a serious deterrent against the institution of unreasonable and frivolous cases or raising such defences. It is time, the Courts start imposing heavy costs in deserving cases.

Court management has various aspects some with which we are familiar and are implementing, some with which we are familiar but not implementing and some with which we are not familiar. Case management and allocating cases to different tracks and deciding simpler cases early is one which we have not yet started practicing. If Case Management is introduced by appropriate rules, it can surely become a very efficient tool for the proper and timely disposal of simpler cases and also for the purpose of allocating more time to complex cases.

What is the answer to the growing malaise? The Supreme Court of India explains in L. Chandra Kumar that,

"However, to draw an inference that their [the Tribunal's] unsatisfactory performance points to their being founded on a fundamentally unsound principle would not be correct."

Some Basic Assumptions

Given the optimism of and an understanding of the milestones of the recent past, some basic assumptions can be made and kept in mind.

First and foremost, we need to get our facts and figures straight. Effective planning and management is not possible unless we know what we are up against. Experimentation is good up to a point, but when it does not yield any result, it becomes a drag. In any case, management of the judicial system is too serious a business to be experimented with.

Secondly, while there have been 'intensive and extensive' studies of some of the problems faced in the judicial system, no effective grassroots solution has come about. This is because attempts at managing the judicial system have tended to be isolated and sporadic, without looking at the overall picture. Consequently, legislative changes have only a cosmetic effect and do not become a part of the solution. What is required is a CAT-scan to find a unified and cohesive solution, which takes into account the hard realities of litigation at various levels, including *mofussil* and rural level litigation.

Thirdly, changes that may have to be brought about should come from within the system and not be superimposed by some outside agency. For example, it has been repeatedly said that there is an acute shortage of judges. The 'manpower shortage' (a little anachronistic in a country of a huge population) has remained so for many years and will continue to so remain. Is increasing the number of judges the only available solution?

Finally, changes have inevitably taken place with the passage of time. There is a need to identify these changes and capitalize on them to our advantage, to the extent permitted by our limited resources. For example, there has been a revolution in information technology. Surely, we can capitalize on this with by others.

In this context, it bears mention that as a management exercise, an experiment with a judge's clerk has been initiated in the Supreme Court of Pakistan. A judge's clerk is expected to assist a judge in effectively managing his administrative and judicial duties. He is either a fresh law graduate (enthusiasm) or a freshly recruited judicial officer (experience). The role of a judge's clerk in case management has been identified and it includes preparing a brief of the cases for the judge, highlighting the issues involved in a case and generally assisting a judge in his research for the purposes of writing a judgment.

Role of Lawyers and Litigant

If time is precious for a judge, it is equally precious for a lawyer or a litigant. None of these stakeholders would like to spend more time than is necessary on routine administrative matters, some of which are not within their control.

Apart from certainty in the decision-making process and quick disposal of cases, lawyers and litigants are concerned with two key areas of Court administration. These are:

1. Availability of information.
2. Preparation of documents.

Good Court management practice requires that information pertaining to a case must be readily available to a lawyer or litigant. For example, it is essential for them to know whether service has been affected on all concerned or whether any document filed by them suffers from some filing defect or is placed under some objection raised by the Registry. It does not help anybody's cause if the lawyer or litigant is told at the last minute that his case will, in all probability, be adjourned because of some technical snag, which could have been rectified at the appropriate time if the information was available earlier.

Litigants usually complain about the non-availability of documents. The most common grievance relates to a certified copy of an order or the decree sheet not being ready. A simple and routine task like this results in a colossal waste of time and effort for lawyers and litigants. With the use of computer systems and photocopying machines, it is possible to firstly, make ready any Court order almost immediately and to certify it with the use of digital signatures. Secondly, if for some reason, a copy of an order or decree is not available, information in that respect can be disseminated through the Internet or an Interactive Voice Response (IVR) mechanism. Unfortunately, the present system requires that for limitation purposes, a litigant or a lawyer should physically present himself for checking up whether a certified copy is ready or not. Surely, any efficient management practice can remedy this situation.

Court Registry as a Participant

Court management cannot succeed without the unstinted support of the Court staff and its Registry. They are the backbone of the system and the administrative burden really falls on them. All papers pertaining to a case, from the stage of filing a case to the supply of a certified copy of the judgment passes through their hands. They are responsible not only for all the documentation but also giving effect to miscellaneous orders passed by the Court. The efficiency of a Court depends upon them, much more than anyone would care to admit.

While there may be complaints of 'manpower shortage' in so far as judges are concerned, no one has yet complained about a shortage of Court staff. Is it not possible to utilize their expertise, if not their sheer numbers, to improve the working of the Court administration?

Other procedural tasks, which are not strictly administrative, but are related to judicial functions, can be be delegated to the Court staff by investing them with limited judicial

functions. Subordinate judicial officers can perform miscellaneous tasks, including identification of issues, attempting to limit disputes arising out of the pleadings and actively participating in alternative dispute resolution systems. If nothing else, this makes them participative functionaries in the overall process of dispensing quick justice, and recognizes their status as one of the stakeholders in the judicial system.

Use of Technology

Recent technological developments need to be harnessed and full utilization should be made of modern gadgets, which are now easily accessible and at an affordable price.

A few experiments that have been conducted in the Lahore High Court have yielded mixed results, mixed partly due a lack of effective monitoring and supervision. Eventually, it is for each Court to plan out how best it can utilize the available gadgetry. A few areas where changes can be brought about for the better are illustrated below.

A filing pro forma, to be filled up when a case is filed. The form contains essential data ready for scanning. A case-by-case database is built up, which can be drawn upon for planning effective Court management procedures.

Categorization of cases so that cases raising similar issues can be dealt with in one group. This is particularly helpful in mass litigation such as land acquisition cases or repetitive litigation such as income tax cases.

Creation of a website, enabling those having access to Internet to obtain necessary information anytime.

Online availability of essential judicial orders so that time is not spent in inspecting a file for obtaining a copy of an order. With the help of a digital signature, it is now possible to provide a certified copy of any judicial order.

Daily generation of information through computers indicating report of service, documents under objections in the filing counter etc.

Setting up a Facilitation Centre to function as a Reception and Information Counter. An IVR system can function from this centre.

Video linkages, initially between the jail and the Court for routine matters. This is estimated to annually save crores of rupees in Lahore alone. This facility can be broad-based later on for recording testimony.

Proper use of technology cannot hurt anybody. On the contrary, it can only improve the efficiency of the system and bring about greater transparency in its functioning. Coupled with better Court management practices, the problems presently faced by all the stakeholders can be limited if not eliminated.

Expediting Trial Proceedings Summary of Recommendations

1. With a view to coping with the problem of increasing litigation in the society and rising graph of crimes, it is essential that the courts should make an effort as the pre-trail hearing to dismiss/reject false, fictitious and frivolous claims.
2. The police should expeditiously conclude investigation and submit the Challans within the prescribed period of 14 days.
3. The Government should provide necessary funds for gradual increase in the number of judicial officers and court staff through a phased program.
4. Revisional courts should finally and substantially decide cases placed before them rather than remanding them to lower courts in routine.
5. Necessary amendments be made in the procedural laws with a view to reduce, number of appeals, revisions, especially against interlocutory orders.
6. The judicial officers may also make full and effective utilization of the ministerial staff at their disposal for dealing with administrative matters, so that the judicial officers may concentrate on trial/judicial matters.
7. The courts should make use of existing provisions in the C.P.C. providing for resolution of disputes through use of alternative methods of dispute resolution (ADR) including

conciliation, mediation and arbitration or any such other appropriate mode. Amicable settlement of disputes is recommended under the injunctions of Islam and is embedded in our culture. The ADR in small causes and minor offences is successfully working in several advanced jurisdictions. We should also attempt to introduce and use this method in civil/criminal cases, in particular resolution of minor cases and petty disputes, thereby seeking to resolve conflicts/disputes with the consent of the parties, and thereby reducing confrontation/tension. The courts should make full use of newly added Section 89A to the CPC, providing for amicable settlement of disputes. Further, the Government should create/designate Small Claims and Minor Offences Courts Ordinance 2002, for settling disputes through mediation/conciliation/arbitration.

8. To ensure speedy disposal of cases, it is necessary that judges are given only so much work as they could conveniently handle. For this purpose, it is recommended that judge - case ratio be fixed and maintained. Several earlier law reforms commissions' reports have recommended such ratio to be 500 cases to a Civil Judge and 450 cases to District & Sessions Judge. Similarly, a Judicial Magistrate be given maximum 500 cases. The Government should give effect appropriate increase in the strength of judicial officers in keeping with the prescribed judge - case ratio.

9. The judicial officers of the subordinate judiciary should be offered better terms and conditions of service to induct more qualified persons into judicial service. Women, in particular, should be encouraged to join the judicial service in larger number by granting them certain incentives such as additional financial benefits, priority in allotment of residential accommodation and loan for acquiring transport, etc.

10. There should be uniform minimum/maximum age limits for recruitment of judicial officers at the initial stage i.e. Civil Judge-cum-Judicial Magistrate. Such limit should be fixed at minimum 22 years and maximum 30 years. The recruitment should be through competitive examination conducted by the Public Service Commission in co-ordination with respective High Court. The High Court should have a role in preparing the syllabus for the competitive examination and its nominees should be on the boards conducting viva voce tests. The Public Service Commission should endeavour to finalize the process of recruitment in the shortest possible time, so that posts do not remain vacant for long period of time.

11. The present salary package of judges of subordinate courts is inadequate. It does not cater to the genuine requirement of the family. The Law and justice Commission of Pakistan therefore in a recent meeting recommended that judicial allowance @ Rs.50000/- p.m. to District & Sessions Judges, Additional District & Sessions Judges and Senior Civil Judges and Rs.40000/- p.m. to Civil Judges and Judicial Magistrates should be given in addition to the existing judicial allowance. In addition, allowance equivalent to 10% of the basic pay as utility charges be given to judicial officers and court staff of the subordinate judiciary. Furthermore, residential accommodation and pool of transport should also be made available to judicial officers to resolve their transportation problem.

12. Judicial officers and court staff must be imparted pre-service and in-service training and the process of their learning law and modern techniques of court management/case flow should be ensured through continuing education and periodic training.

13. The infrastructure of subordinate courts is fairly old in a dilapidated state. The Access to Justice Program is, addressing this issue. The Federal Government may supplement the provincial allocations for the construction of court rooms, bar rooms, waiting rooms for litigant parties and witnesses and residential accommodation of judicial officers'/court staff. Funds should also be made available for essential paraphernalia such as provision of furniture, law books, typewriters and creating an integrating computer network for access to information and material, effective supervision/monitoring of the performance of the subordinate courts by the respective High Court. The availability of an electronic database will be of considerable assistance to the courts and the profession. The decisions of the Superior Courts including the statutes may also be computerized.

14. Legislation be enacted to curtail the court's power/discretion to grant frequent adjournments. The tendency of granting adjournments in routine be checked. Adjournments be granted only in exceptional circumstances and subject to imposition of reasonable costs. No adjournment should be granted on the plea that the counsel is not available. The counsel must either personally be present or make some other arrangements for presentation of the case.

15. The present strength of process serving agencies is inadequate and should be appropriately increased and necessary transport be provided to the agency for effecting processes. Furthermore, efforts should be made as that the personnel of said agency do not perform domestic chores at the residences of judicial officers and are exclusively used for carrying out official functions. Alternatively, the system of franchising such service to an outside agency, subject to control by court, be examined. In Britain, service on a respondent is affected by the Master and the claim is subject to effecting service on the other party. The introduction of the franchise system in Pakistan may be given serious consideration.

16.The plaintiff should be obligated to provide the defendant's mail address and telephone/fax number. Courier service be used as ordinary mode of effecting service. A one-time process fee be introduced to avoid delays in process serving.

17.With a view to improving the performance of investigating branch, it may be separated from the regular police and exclusively assigned the functions of carrying out investigation. Challans must invariably be submitted within the stipulated period of 14 days and only in rare cases may extension be granted. The investigating branch must have trained personnel preferably Law Graduates and given appropriate training to keep them abreast of modern techniques of investigation.

18. The police should be obligated to effect services of witnesses in criminal cases and should be made responsible for their production in the courts.

19. Further, with a view to empowering the courts to ensure the attendance of official witnesses and production of report/record, appropriate amendment be made in the Code of Criminal Procedure, 1908 for the purpose of bringing Section 195(1) (a) within the scope of Section 476(1).

20. The number of forensic science/chemical laboratories should be increased and preferably one such laboratory be established at the divisional headquarters, in each province. The personnel of such laboratories should possess the requisite academic qualifications and experience and be imparted periodic training for enhancing their abilities. Furthermore, mobile forensic laboratories and chemical analysis laboratories be also established. The services of other reputed laboratories in the sine qua non e.g. Armed Forces, Agha Khan Hospital, Shaukat Khanam Hospital and private should also be recognized and utilized beside, government established laboratories.

21. Delays in concluding criminal trials are also effected due to non-production of accused persons lodged in jail. This happens due to non-availability of sufficient number of police personnel or transport for carrying them to courts. These issues must be addressed and arrangements be made to produce accused persons in courts.

22. Where possible, courtrooms should be established inside the prisons or in its vicinity, ensuring free and open access to all persons, with a view to ensuring the production of under trial prisoners.

23. There is a need for regular and periodic supervision of the performance of judicial officers by the respective High Courts.

24. The office of Member Inspection Team should also be further strengthened to monitor and supervise the judicial officers.

25. Furthermore, cases of inefficiency and corruption must be taken serious notice of, and promptly dealt with to eradicate all forms of corruption in the courts.

26. Rather than writing lengthy judgments, the judicial officers should be trained to write concise and terse but well reasoned judgments. The Federal Judicial Academy may design

appropriate training for the purpose.

27. The High Courts should take steps to ensure that judicial officers do not concentrate only on disposal of criminal work, which causes the piling up of civil cases and consequential delays in disposal of suits.

28. The High Courts may also consider to bifurcate the civil and criminal functions of judicial officers so that the judges may attain expertise in the relevant field. The civil and criminal work should be done by rotation so that the judges develop a broader perspective and wider experience of both civil and criminal work.

29. The courts should take strict action against parties or witnesses who cause deliberate delay, through imposition of costs in civil cases and by taking penal action against defaulters who deliberately attempt to flout orders or cause delays in court process.

30. The Access to Justice Development Fund should be used for improving the infrastructure facilities and meeting the other needs of courts.

31. Case management committees be established at each District Headquarter and be entrusted with the responsibility to prepare category-wise prioritization of cases on the basis of their importance.

32. Heavy costs under section 35-A CPC should be imposed in cases where the suit is dismissed being false/frivolous or is withdrawn on being judged as such. Similarly, adjournment during disposal of miscellaneous application should not be granted in routine. In very exceptional cases and for sound reason, adjournment may be allowed subject to heavy cost.

33. Attendance of witness in the court should be ensured through following the existing provision of law. However, they may not be unnecessarily called and be ensured protection of their lives. Proper and respectable seating arrangement in the court room be provided to them.

34. Judicial system should be strengthened by gradual increasing the number of judges. The possibility of establishing the evening shifts to clear backlog be considered.

35. Judicial competence should be improved by providing atmosphere conducive to efficient working and through in-service and post service training and continuing refreshers courses etc. Judges should also be provided up-to-date law books and Gazettes etc.

36. Legal education should be improved by imparting standard education and revising examination system.

37. The District Judges should constitute Bench and Bar Committees to promote working relations between the Bench and Bar.

38. The legal system and procedural laws/rules should be kept under regular review with a view to removing defects therein and expediting trial proceedings.

39. The following amendments made by the Lahore High Court in various provisions of the CPC may be considered for adoption by the other High Courts:

(1) In Rule 10-A of Order V of the Code, another mode of service, “through courier messenger" has been added beside the existing mode of sending summons through post. The courier service in present days is the most effective, speedy and reliable mechanism of transmitting message from one place to another. This amendment may help in curtailing court delays, normally caused due to ineffective mode of service.

(2) Order VIII of the Code deals with submission of written statement and set off which generally is abused, causing delay. The provision has been amended by adding a further proviso after the existing one as under:- “Provided further that not more than two adjournments shall be granted for presenting the written statement”.

(3) Order IX of the Code, dealing with appearance of parties and consequence of non-appearance is commonly abused which unnecessarily prolong litigation i.e. where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an Order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his not paying the court fee and postal charges (if any) required within the time fixed before the issue of the summons, or

for his non-appearance, as the case may be, the court shall make an Order setting aside the dismissal and shall appoint a day for proceeding with the suit.

To avoid fresh suit on the same cause of action a new sub rule (2) after rule 4 of Order IX of the Code is added as under: -

"(2) The provision of section 5 of the limitation Act, 1908 (IX of 1908) shall apply to applications under Sub-rule (1)".

This amendment has saved the parties from bringing fresh suit on the same cause of action.

(4) By addition of Order IX-A in the Code a new and very important concept of case management has been introduced which is generally followed in developed countries to check belated complication of suits and to rectify faults at initial stage of hearing as under: -

"Fixation of Intermediate dates. - After the close of the pleadings, the Court shall fix:-

(a) a day by which parties shall apply for orders of the Court with regard to any of the following matters, namely:

Pleadings, further and better particulars, admissions, discoveries, inspection of documents or of movable or immovable property and the mode by which particular facts may be proved;

(b) another day by which parties may reply such applications;

and

(c) a third day on which, unless the hearing is adjourned, the applications shall be disposed of.

(5) Applications regarding pleadings, etc., their replies and disposal. –

"No opportunity shall be given to any party for making any such application as aforesaid or for submitting a reply thereto after the expiry of the day fixed for that purpose, unless the time is enlarged under the provisions of this Code; but nothing herein shall affect the right of the parties to make such applications before the closing of the pleadings".

(6) The addition of new Rule 4-A in Order XII of the Code has increased the power of Court to call any party without being asked by the plaintiff/defendant. The amendment is as under "4-A. Power of Court to record admission of documents and facts.- Notwithstanding that no notice to admit documents or facts has been given under Rules 2 and 4 respectively, the Court may, at any stage of the proceedings before it, of its own motion, call upon any party to admit any document or fact and shall in such a case, record whether the party admits or refuses or neglects to admit such document or fact".

The new addition has given suo moto jurisdiction to the courts to record admission of documents and facts. In fact the provision of Rule 4 was aimed at to resolve the facts based on documents to save courts precious time, but is seldom applied by the parties primarily on account of their vested interests. Now, the courts may invoke this jurisdiction, hopefully giving required results. (7) Summoning of witness and presenting a witness in the court is yet another cause often abused to prolong a case. The forum of summoning a witness has further been improved by amending rule (I) of Order XVI of the Code as under: -"

"Summons to attend to give evidence or produce document: (1) Not later than seven days after the settlement of issues, the parties shall present in court a certificate of readiness to produce evidence, along with a list of witness whom they propose to call either to give evidence or to produce documents".

(2).....

(3) ……

These amendments have far reaching effect for speedy disposal of cases and to eliminate delays on technical grounds. These amendments may help in quick processing and expeditious dispensation of justice.

[i] Zafar Iqbal Kalanauri, Mediator & Advocate Supreme Court of Pakistan, Adjunct Faculty of Law at SAHSOL, Lahore University of Management Sciences (LUMS), SAF Centre, #3 3rd Floor, 8-Fane Road Lahore 54000, Pakistan.
Cell: (92) 300- 4511823 & 314-4224411 e-mail: kalanauri@gmail.com
Web http://www.zklawassociates.com