

NATIONAL ASSEMBLY SECRETARIAT

REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE ON THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 2019

I, the Chairman of Standing Committee on Law and Justice, have the honour to present this report on the Bill further to amend the Code of Civil Procedure, 1908 (Act V of 1908) [The Code of Civil Procedure (Amendment) Bill, 2019] (Government Bill) referred to the Committee on 2nd May, 2019.

2. The Committee comprises the following:-

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| 1. Mr. Riaz Fatyana | Chairman |
| 2. Mr. Atta Ullah | Member |
| 3. Mr. Lal Chand | Member |
| 4. Mr. Muhammad Farooq Azam Malik | Member |
| 5. Ms. Kishwer Zehra | Member |
| 6. Ms. Maleeka Ali Bokhari | Member |
| 7. Mr. Muhammad Sana Ullah Khan Masti Khel | Member |
| 8. Malik Muhammad Ehsan Ullah Tiwana | Member |
| 9. Agha Hassan Baloch | Member |
| 10. Mr. Sher Ali Arbab | Member |
| 11. Ms. Shunila Ruth | Member |
| 12. Mr. Saad Waseem | Member |
| 13. Rana Sana Ullah Khan | Member |
| 14. Ch. Mehmood Bashir Virk | Member |
| 15. Mr. Usman Ibrahim | Member |
| 16. Khawaja Saad Rafique | Member |
| 17. Syed Hussain Tariq | Member |
| 18. Syed Naveed Qamar | Member |
| 19. Dr. Nafisa Shah | Member |
| 20. Ms. Aliya Kamran | Member |
| 21. Barrister Dr. Muhammad Farogh Naseem Minister for Law and Justice | Ex-officio Member |

3. The Committee considered the Bill as introduced in the National Assembly placed at Annex-A, in its meetings held on 03rd July, 2019 and 21st August, 2019. The Committee recommends that the Bill as introduced may be passed by the National Assembly. However, the note of Dissent of Ms. Aliya Kamran and Ms. Naféesa Shah MNA's are placed as Annex-B and Annex-C respectively.

Sd/-
TAHIR HUSSAIN
Secretary
Islamabad, the 28th August, 2019

Sd/-
(Riaz Fatyana)
Chairman

[AS REPORTED BY THE STANDING COMMITTEE]

A

Bill

further to amend the Code of Civil Procedure, 1908

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1908 (Act V of 1908) for bringing procedural reforms in order to provide inexpensive and expeditious justice;

It is hereby enacted as follows:-

1. Short title, commencement and extent.—(1) This Act may be called the Code of Civil Procedure (Amendment) Act, 2019.

(2) It shall come into force at once.

(3) It shall extend to the Islamabad Capital Territory.

2. Amendment of section 1, Act V of 1908.— In the Code of Civil Procedure, 1908 (Act V of 1908), hereinafter referred to as the said Act, in section 1, after sub-section (3), the following new sub-section shall be inserted, namely:-

“(4) The primary objective of this Code is to enable the Courts to-

- (a) deal with the cases justly and fairly;
- (b) encourage parties to alternate dispute resolution procedure if it considers appropriate;
- (c) save expense and time both of courts and litigants; and
- (d) enforce compliance with provisions of this Code.”.

3. Substitution of section 3, Act V of 1908.— In the said Act, for section 3, the following shall be substituted, namely:-

“**3. Subordination of Courts.**—For the purposes of this Code, the hierarchy and subordination of Civil Courts shall be the same as prescribed

in the West Pakistan Civil Courts Ordinance, 1962 (W.P. Ordinance No. II of 1962).”.

4. **Substitution of section 6, Act V of 1908.-** In the said Act, for section 6, the following shall be substituted, namely:-

“6. **Pecuniary jurisdiction.**— Save in so far as is provided for the Islamabad High Court exercising original civil jurisdiction at Islamabad, all civil suits shall be filed in the following manner, namely:—

- (a) where the amount or value of the subject matter of the suit is below rupees fifty million, the suit shall be filed in the court of Civil Judge, as may be prescribed by the High Court; and
- (b) where the amount or value of the subject matter of the suit is above rupees fifty million the suit shall be filed in the court of District Judge, as may be prescribed by the High Court.”.

5. **Omission of section 7, Act V of 1908.-** In the said Act, section 7 shall be omitted.

6. **Substitution of section 26, Act V of 1908.-** In the said Act, for section 26, the following shall be substituted, namely:-

“26. **Institution of suits through plaint or otherwise.-** (1) Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

(2) On presentation of the plaint, it shall be the duty of the Court to *prima facie*, satisfy itself of jurisdiction, cause of action and limitation:

Provided that if Court does not satisfy itself, it shall be bound to record reasons for doing so.

(3) The plaintiff shall, at the time, file as many copies of the plaint and accompanying documents as there are defendants to the suit to be sent along with the summons and two extra copies of the entire set.

(4) It shall be duty of the Court to maintain electronic records of proceedings in suits as may be prescribed.

Explanation.- For the purposes of this sub-section suits includes any proceedings in applications, appeals, review, revision or anything incidental thereto.

26A. Written statement and proposed issues by the defendant.-(1) The defendant shall file written statement not later than thirty days from the date of service to the plaintiff:

Provided that if the defendant fails to file written statement on the date fixed, the Court may grant an opportunity to file the same not later than fifteen days subject to payment of adjournment costs:

Provided further that if the defendant fails to file after the opportunity given under the first proviso, a final opportunity may be given by the Court to file the written statement not later than fifteen days subject to payment of adjournment costs after which the defendant shall lose the right of defence and the Court shall close the right to defend the case:

Provided also that the written statement may be allowed to be filed by the Court upon payment of costs to be determined by it, if the defendant through an application supported by an affidavit, satisfies the Court that he had just and sufficient cause and the Court record reasons for it.

(2) The defendant shall file proposed issues along with the written statement:

Provided that if no issues are proposed by the defendant, the Court shall permit the defendant to file proposed issues not later than seven days upon payment of cost to be determined by the Court.

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(3) The defendant shall provide additional copies of written statement and of the documents annexed therewith for each of the parties and the Court.

26B. Proposed issues by the plaintiff.- The plaintiff shall file proposed issues not later than seven days from the date of receiving the written statement:

Provided that in case the plaintiff fails to file the proposed issues, the Court shall permit the plaintiff to file proposed issues not later than seven days upon payment of cost to be determined by the Court.

26C. Framing issues and filing of list of witnesses and recording of evidence.- (1) Not later than ninety days of the institution of a suit the Court after considering the pleadings and issues proposed by parties, shall determine the material propositions of fact and laws which the parties are at variance and frame issues.

(2) For the purposes of sub-section (1), the Court in its discretion as it may deem fit may proceed to frame issues without hearing.

(3) In case issues are framed without hearing, any party, not later than seven days of the framing of issues, may file an application seeking modification of the issues, which application shall be decided within fifteen days.

(4) After framing the issues, the Court shall order parties to file list of witnesses, not later than fifteen days.

(5) If any party fails to comply with the orders of Court in sub-section (4), a final opportunity may be given by the Court to file list of witnesses not later fifteen days subject to payment of adjournment costs.

(6) Immediately upon framing of issues and filing of the list of witnesses, the Court shall direct the recording of evidence through Commission in the prescribed manner.

(7) For the purposes of sub-section (6) of this section, the Court shall appoint a Commission from a list of approved panel of such Commission, comprising advocates and retired judges maintained by the Court in the prescribed manner, on such fee and terms and conditions as determined by the Court.

(8) The parties shall file affidavits as evidence of their respective witnesses, before the Commission which shall be construed to be examination-in-chief.

(9) On the affidavits in evidence, the witnesses shall be subjected to cross examination and if necessary, just and expedient, shall be subjected to re-examination followed by cross-examination or re-examination.

(10) The Commission shall record the evidence and proceedings thereof in written and audio and video recording.

(11) Not later than ninety days of the order under sub-section (6), the Commission shall finalize the recording of the evidence and submit a report in this regard to the Court along with the complete written, audio and video record of the proceedings under sub-section (10).

(12) The High Court shall frame rules for the purposes of recording of evidence through Commission, *inter alia*, empowering the Commission to regulate the Commission's proceedings including but not limited to allowing or disallowing questions, documents, choosing sides, extension of Commission and passing such ancillary or other orders which are necessary to carry out the functions of the Commission.

26D.Hearing of final arguments.-(1) The Court after submission or closing of evidence, as the case may be shall fix a date not later than fifteen days, for hearing of final arguments by parties.

(2) The Court may require the parties to file their written arguments in addition to oral arguments.”.

7. Amendment of section 27, Act V of 1908.- In the said Act,-

- (a) in section 27, after the word “claim”, the words “not later than fifteen days” shall be inserted; and
- (b) after section 27, as amended hereinabove, the following new section shall be inserted, namely:-

“27A.Process of summons to be simultaneous (1) Summons shall be sent simultaneously unless otherwise ordered by the Court, to the defendant, by registered post acknowledgment due and another copy of the summons by courier service signed and sealed in the manner prescribed, or as the court may determine, by urgent mail service of Pakistan Post, at the cost of plaintiff.

(2) The acknowledgement, purported to be signed by the defendant, of the receipt of the registered communication or an endorsement by a courier messenger or postal employee that the defendant refused to take delivery of the summons shall be deemed by the Court issuing the summons to be *prima facie* proof of the service of summons.

(3) Simultaneously, the Court shall order service by-

- (a) affixing a copy of the summons at some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain;
- (b) any modern device including electronic device of communication which may include mobile, telephone, telegram, phonogram, telex, fax, radio, television etc. in a prescribed manner;
- (c) urgent mail service or public courier services;
- (d) beat of drum in the locality where the defendant resides;

(e) announcement through, mosque, temple, community centre etc.;

(f) publication in the press in the prescribed manner; or

(g) any other manner or mode as it may think fit:

Provided that the Court may order the use of all or any of the aforesaid manners and modes of service simultaneously.

(4) If the defendant fails to appear, the Court may direct service again by any of the modes mentioned in sub-section (3) to appear on a date not later than seven days.

(5) Location of bailiff or process-server serving the summons shall be monitored by modern devices, in a manner prescribed, and a photograph shall be taken of the defendant or the premises or the person accepting summons on behalf of defendant and be made part of the record as a proof of delivery.”.

8. **Amendment of section 33, Act V of 1908.-** In the said Act, in section 33, after the word “judgment”, the words “within ninety days of the final hearing” shall be inserted.

9. **Insertion of new section 75A, Act V of 1908.-** In the said Act, after section 75, the following new section shall be inserted, namely:-

“75A. **Spot checks.**-(1) In order to further the primary objective mentioned in sub-section (4) of section 1, in any proceedings in a suit, the Presiding Officer of the Court in its discretion may, on his own or at the application of any of the parties, at any stage may carry out spot checks including inspection of documents and premises in order to ascertain issues of partition, demarcation, possession, state of construction and anything incidental and ancillary thereto.

Explanation I .-For the purposes of this sub-section, spot checks may be carried out after passing of decree to ensure Court orders are implemented as decreed.

Explanation II .- For the purpose of this sub-section a spot check conducted by Presiding Officer of a Court should not be construed to be an inspection through the appointment of Commission.

(2) The Court may call for the evidence of any person or documents at the spot.

Explanation .- For the purpose of this sub-section, person includes parties to the suit, individuals present at the spot or any individual Court may deem proper to give evidence in the matter in issue.

(3) After conducting spot checks an interim order recording the findings of the spot inspection shall be prepared and signed by the Presiding Officer of the Court:

Provided that the interim order shall state the date, time, purpose of visit, evidence recorded and interim findings.

(4) The Presiding Officer, in his discretion shall be entitled to pass an order or judgment upon the basis of interim order mentioned in sub-section (3) of this section provided the same is confronted to all the parties, who are given a reasonable opportunity to file objections to the same.”.

10. Substitution of section 96, Act V of 1908.- In the said Act, for section 96, the following shall be substituted, namely:-

“96. **Appeal from final judgment or decree.**— Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court not later than thirty days from every final judgment passed by any Court exercising original jurisdiction on any question of law or fact erroneously determined by the original court and the High Court shall decide the appeal within ninety days.”.

11. **Omission of sections, Act V of 1908.-** In the said Act sections 100, 101, 102 and 103 shall be omitted.

12. **Amendment of section 106, Act V of 1908.-** In the said Act, for section 106, the following shall be substituted, namely:-

“106. **What Courts to hear appeals.-** Appeals against order passed under this Code shall lie to the Court, directly from its subordinate court exercising original jurisdiction adjudicating the suit, in the manner prescribed.”.

13. **Amendment of section 111, Act V of 1908.-** In the said Act, in section 111, clause (b) shall be omitted.

14. **Amendment of section 114, Act V of 1908.-** In the said Act, in section 114,-

- (a) in clause (b), the word “or”, at the end, shall be omitted; and
- (b) for clause (c) the following shall be substituted, namely:-

“may apply for a review of judgment to the Court which passed the decree or mad the order, and the Court may make such order thereon as it think fit.”.

15. **Substitution of section 115, Act V of 1908.-** In the said Act, for section 115, the following shall be substituted, namely:-

“115. **Revision.—** Any party aggrieved by an order under section 104, passed by the Court of District Judge or Additional District Judge in an appeal against an interlocutory order passed by a Civil Judge or Senior Civil Judge, as the case maybe, may within thirty days of the said order may file a revision to the High Court on an obvious misapprehension of law or in respect of a defect in jurisdiction.”.

16. **Amendment of section 128, Act V of 1908.-** In the said Act, in section 128, after sub-section (2) the following new sub-section (3) shall be inserted, namely:-

“(3) The High Court shall make rules, not inconsistent with the provisions of this Code, for case management and scheduling conferences binding the parties to follow the schedules and timelines prescribed therein.”.

17. **Substitution of section 141, Act V of 1908.-** In the said Act, for section 141, the following shall be substituted, namely:-

“141. Proceedings regarding application for injunctions and other miscellaneous application and issues.- (1) The procedure provided in this Code with regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

(2) All suits, in which interlocutory applications have been filed, shall have duplicate sets, one of which shall be placed in the court hearing the main suit and other shall be placed in the court hearing interlocutory applications.

(3) At all material times, the respective offices of the two courts mentioned in sub-section (1) of this section, shall keep both the files in the two courts updated and tallied with each other in duplicate and identically including the respective orders and diary sheets.

(4) Both the courts hearing the main case and the interlocutory applications respectively shall proceed collaterally according to the timelines prescribed in this Code and rules or by any order of the Court.

Explanation.— It is clarified that the pendency of any interlocutory application shall be no ground to stay or delay the proceedings before the Court hearing the main case.

(5) All applications for addition, deletion and substitution of parties, amendments to pleadings, modification or alteration of issues, rejection of plaints, and stay of suits shall be heard and adjudicated by the Court

hearing the main case, while all other applications shall be construed to be interlocutory applications warranting to be filed and decided by the Court hearing the interlocutory applications.

(6) The filing of any application including an application for the rejection of the plaint or a dismissal of suit shall be no ground to dispense with or waive the requirement of filing a written statement within the timelines prescribed in this Code.

(7) This section shall have effect notwithstanding any other provision in this Code or any other law for time being in forced.”.

18. Amendment of section 151, Act V of 1908.- In the said Act, in section 151, after word “Court” occurring for the first time, the words “to be exercised after recording reasons” shall be inserted.

19. Insertion of new section, Act No. V of 1908.- In the said Act, after section 158, the following new section shall be inserted, namely:-

“159. Savings of proceedings.- All proceedings instituted prior to enactment of the Code of Civil Procedure (Amendment) Act, 2019 shall be deemed to proceed and dealt in accordance with the provisions of Code of Civil Procedure which existed prior to the said amendment Act.

Explanation.— In this section the expression “proceedings” includes suit, appeal, review, revision, execution applications or any other proceedings and any matter incidental thereto.”.

STATEMENT OF OBJECTS AND REASONS

Delay defeats justice. It is especially true in the context of disputes pending adjudication before civil courts as it takes many years or even decades to get cases decided by civil courts. This, in civil litigation practice, normally occurs when a party files a suit accompanied with an injunction/stay application, the main suit does not proceed. The court only focuses on the stay application and it takes many years to decide the stay/injunction. The main suit remains in a state of inertia. In order to curb delays, a new concept of a two-tier system has been introduced where two different judges will hear the entire suit. In the first tier, the main case would be heard by one judge and not going to be interrupted till finalisation of the proceedings. If there are miscellaneous applications, in particular stay/injunction application, these are going to be heard in second tier where a separate file is going to be opened and adjudicated by a different judge without interfering with the main case being adjudicated in first tier. In addition reforms are proposed with regard filing of plaint, service of summons, filing of written statement, case management system, commission for recording of evidence, appeals, introduction of spot checks by Presiding Officer and limiting unnecessary discretion of courts and restriction in granting of adjournments and subjecting the parties at fault with heavy penalties in the shape of costs. The proposed amendment in the existing Code of Civil Procedure is aimed towards expeditious disposal of cases without compromising the fundamental right to fair trial.

2. The Bill is designed to achieve the aforesaid objects.

Minister-in-Charge

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Dissenting Note

In principle we support any effort that is towards a speedier justice system. However the present law will neither achieve a speedy court not an effective or transparent system as it creates duplication, both in proceedings and in evidence collecting system thereby making the system confusing and costly for the litigants. Our reasons for opposing this law are as follows-

Two courts one case

This law proposes that one court – the main court – hear all matters related to pleadings, addition/deletion of parties, modification etc – but a second Court hear matters related to interlocutory applications. In most jurisdictions, interlocutory applications involve certain injunctions and temporary restraining orders.

At the outset a two-tier system aims to ensure that the main case remains unhindered and stay proceedings are heard separately. The second court will hear the interlocutory applications. This in effect to make sure court hearing the main case focus on merits and not reasons for staying the proceedings.

In the US, UK and across the world, interlocutory applications are made to the same court hearing the main case. It is hard for us to understand how/why sending a interlocutory application to a different court is either better or more efficient.

On the contrary involving two courts in one case is likely to create a duality and a conflict within the judiciary which will defeat the very purpose of the law to make the system speedy litigants will have to appear in more than one court, incurring expenses and losing time.

In the other jurisdictions, the policy and legislative reform thrust has gone in the opposite direction. For instance to prevent the same family from going to several courts and to ensure that several judges are not burdened with claims arising from essentially same or similar issues, the New York Court has created Integrated Domestic Violence Courts that have jurisdiction over matrimonial and criminal matters so that the same judge can hear everything.

It is unclear why Pakistan's proposed law is going in the opposite direction. Conventional legal and policy wisdom favors consolidation of claims related to the same matter at the same level, not fragmentation.

Evidence commission

Our second objection is related to the Evidence Commission. Section 26 of the bill is new and provides for a Evidence Commission composed of advocates and retired judges. This Commission will record all evidence in written and audio recording. Cross examination of witnesses will take place before this Commission, among other things. The Commission will provide a report on evidence along with all written and video recordings to the Court.

There are no exact parallels to this in any jurisdiction in the world. There were instances in colonial era courts would sometimes commission a person to record evidence from witnesses in the colonies (presumably where travel would be hard). So this was a provision suited to the British Empire. Our courts already have similar powers under the existing Civil Procedure Code (Sections 75 and 76). Mainly,

they may (i) issue commissions to examine any person or (ii) issue commission for examination of a person to another Court in a different province, etc.

There also exist fact finding commissions and inquiry commissions. But those are tasked with finding specific facts or conducting specific inquiries. They are not used for all cases.

This Evidence Commission is a new legal creation and will likely serve the core functions of a trial court because a trial court normally is responsible for cross examining witnesses and establishing facts.

It is not clear why an evidence commission be cheaper, faster, better, or more effective than existing courts? Wouldn't appointing more judges, additional judicial officers, adopting modern technology etc better serve that purpose?

We therefore see potential for duplication of resources and waste of money and also if compromising data security in the case of transferring audio recordings etc. . if audio recordings are needed, why not just do them in court as opposed to doing them before the commission and then transferring to the court?

Considering duplication of resources, why pay for an extra commission that records all evidence and presents the record and report to judges? Isn't it resource efficient for that evidence to be presented once in the form of the court record and court order/judgement? Who is going to pay for the commission? Why should either taxpayers or litigants bear additional costs for a service courts are already supposed to offer?

We must also consider evidentiary issues. Judges, especially trial court judges, are expected to be experts in evidence law. Whenever a lawyer overreaches in cross questioning, engages in hearsay, harasses witnesses or otherwise violates rules of evidence, legal systems train and expect judges – as neutral arbiters – to stop evidence law violations and determine what constitutes evidence law violations on an ongoing basis. This system is time-tested across common law jurisdictions. It enjoys both legitimacy and coherence. Even in the Islamic law evidentiary principles require recording and presentation of evidence before the qazi.

Far from preventing resource duplication and making litigation easier, it makes life harder for litigants and witnesses who may have to appear before Commissions masking as courts.

Service of Summons

The provision of service of summons in the new Section 27 departs from existing law and allows service of summons to be announced through the beating of drums, TV, radio, announcement through a mosque/temple/community center, press publication or other means. This seems to be clashing with privacy rights. Attaching a notice to one's house/place of business is not the same as beating a drum in the neighborhood. Companies, businesses and individuals face reputational costs associated with litigation. They often try to resolve matters through ADR mechanisms for that reason. This measure may inappropriately burden business owners who may suffer business losses once the local TV stations announce that they stand accused of violating contract terms etc. More generally, individuals' privacy may be unduly invaded and reputation harmed, especially since many in Pakistan treat accusations or court proceedings as affirmative evidence of being in the wrong.

Spot Checks

These checks are new and invasive of privacy with no equivalents anywhere.. In the policy not its noted that this provision would empower judges to check on corrupt patwaris and land or revenue officials. But it was misleading on both counts: The draft law allows Presiding officers of courts – not judges - to conduct these checks. Moreover, these checks do not just apply to land or revenue officials. They extend to anyone at the spot at the time. The law does not define the spot. What prevents the presiding officer from unduly invading the privacy of a private establishment or home without a search warrant, without probable cause? Such searches are not allowed in developed countries even for criminal matters. Why are we allowing them here for civil matters? Conducting checks on government establishments and offices is one thing, invading the privacy of homes or private establishments is a different matter. If such checks must be done, then they ought to be done with warrants based on probable or reasonable grounds for suspicion.

From the policy standpoint, why should Presiding officers have the authority to issue interim orders and, subsequently, orders and judgments based on spot checks? Shouldn't that authority be left to judges whose job is to understand, interpret, and apply the law through their judgments?

As the above provisions are vague, and besides will create duplication and confusion in the law, we would propose a redraft of the law keeping in view the issues we have raised above. In addition a thorough consultation with the bar associations and the judicial community should follow before reintroducing these amendments.

Nafisa Shah / 21st Aug 2019.
Dr Nafisa Shah

Note of decent

The concept of "two" being enshrined in the proposed bill is such an experiment which will further undermine Pakistani Judicial system i.e. you are going to introduce such a system under which the same case will be under hearing at two different places i.e. two separate Judges will try the same case, making justices further more expensive. One Lawyer will charge fee for two different Courts. Now two judges will apply their own minds causing the contradiction in their opinion. Apparently the government intends to dispose of cases in possible minimum time through this bill. The same may be possible by one Court at lesser cost. Time frame for disposal of applications can be settled in the same Court. Appeal/record cause to be asked for cannot be entertained against temporary order on the application as the condition is already there to annex record for the order/decision the same may be further hardened stay may not be allowed on temporary order. Appeals against temporary orders may also be restricted up to thirty days. If the Government anyhow, thinks that the Judicial system would be changed by the proposed amendments in the provisions or the same may be improved, then it is its crude idea and time will prove that this practice would not bring substantial change in the system of law.

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Aliya Kamran