

# Improving the Judicial System of Pakistan: A Probe

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**Abstract**— Judicial system plays a crucial role in creating peace and harmony in the society. The history of legal system of Pakistan can be traced back in subcontinent from different episodes of Hindus, Muslim and English periods. Justice is a fundamental right of every citizen. Articles 10 A & 25(1) of the Constitution of the Islamic Republic of Pakistan, 1973 speaks about the 'right to fair trial' and 'equality of citizens'. 5th and 14th amendment of the U.S. Constitution has settled rules regarding 'due process of law' which throws lights on judicial system. Article 175(1) is about the establishment of higher judiciary as well as other lower courts constituted by law. Insurmountable backlogs of cases have enormous obstructions in the way of access to swift justice. Moreover these injustices and appalling issues contributed to inadequacy, inaccessibility and inefficiency of our justice system which have irreparable damages on the society. Islam is the leading religion of the world which provides various solutions to the justice system by means of its higher laws; the Holy Quran and the Sunnah of the Holy Prophet (PBUH). The aim of my paper is to identify the core issues, causes and their remedies to improve the judicial system which will make the justice accessible, affordable and equitable to all and sundry at their door steps. Without them, we cannot compete with new challenges faced by judiciary. We cannot rule out the role of judicial officers in adjudicating justice in the society. We can improve our legal system by means of new developments and recommendations of law commissions and judiciary.

**Index Terms**— Judicial System, insurmountable backlogs, obstructions, swift justice, equitable, peace and harmony

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## 1 INTRODUCTION

Islam is a religion of nature. It gives equal rights to every individual and justice is one of them. Justice is the basic right of human beings. Islam gives the rights to both parties in the shape of 'Adl wal Ehsan'. In the Holy Quran, synonym of Justice is 'Adl wal Ehsan' which means 'justice and maintain the balance'. On various places in the Holy Quran, Allah Almighty says regarding the justice in this way, " Verily! Allah commands that you should render back the trusts to those to whom they are due; and that when you judge among men, you judge with justice. Verily, how excellent is the teaching which He (Allah) gives you! Truly, Allah is ever All-Hearer, All-Seer."<sup>1</sup>

Another place Allah says about justice and kindness, "Lo! Allah enjoineeth (commands) justice and kindness (Ehsan)."<sup>2</sup> Allah says, do the justice and give evidence whether it is against you and your close relative. Allah says, "O you who believe! Stand out firmly for justice, as witness to Allah; even though it is against yourselves, or your parents, or your kith and kin, are the rich or poor, Allah is a Better Protector to both (than you). So follow not the lusts (of your hearts), lest you avoid justice; and if you distort your witness or refuse to give it, verily, Allah is ever well-acquainted with what you do."<sup>3</sup> Allah says about the witnesses and their belief in this verse of the Holy Quran, " O ye who believe ! stand out firmly for

Allah, as witnesses, to fair dealing (Qist) and let not the hated of others to you make you swerve to wrong or depart from justice (Adl). Be just that is next to piety (Taqwa) and fear of Allah.<sup>4</sup>

Justice is the quality of being just, impartial or fair; it is not the province of the court to decide upon the justice or injustice of these laws.<sup>5</sup> The administration of justice especially means the establishment or determination of rights according to law or equity, justice, fair, just, or important legal process of courts or tribunals for the administration of justice. Judicial or legal system consists of Criminal and Civil justice system which are dependent on civil and criminal procedure codes, Penal codes, evidences, courts, lawyers, judges and other acts etc.<sup>6</sup>

Law is a set of rules that guides the behaviour of a society. It is something that must be obeyed. When those rules are broken, rule breakers are punished with penalties. On the other hand, a legal system is an organization of social and government control that creates and regulates order in society through laws. It is this organization that regulates the system of rules and regulations designed to encourage good behaviour and to deter negative conduct. A legal system also includes rule making bodies (such as legislation) that makes laws and tribunals (such as courts) that review and decide legal disputes. These rule making bodies are a part of a

<sup>1</sup> Al-Qura, 4 : 58  
<sup>2</sup> Al-Quran, 16 : 90  
<sup>3</sup> Al-Quran, 4 : 135

<sup>4</sup> Al-Quran, 5 : 8

<sup>5</sup> Scott v. Sanford, 60 U.S. 393 (1857)

<sup>6</sup> S.P. Verma, Indian Judicial System, (2004) (Need & Direction of Reforms) p-xi

government, which is responsible for defining laws and regulating its legal system.<sup>7</sup>

Before discussing judicial system, we must throw light on criminal law and civil law. "The criminal law covers three main areas: offences against the state, against the person, and against property. Thus, offences against the state would include treason and espionage, and are covered by such statutes as the Official Secrets Act, 1989 and the Treason Acts of 1351 and 1848. Offences against the person include murder, grievous and actual bodily harm and sexual assault. There are a range of legislative measures to deal with such matters (e.g. Offences against the Person Act, 1861; Sexual Offences Act, 2003), but some offences are covered by the common law (of which more later). Offences against property include criminal damage, theft and fraud, and are covered by such laws as the Theft Act, 1968. Admittedly, this is a very simplified account of the types of action available in the criminal courts, and some offences (e.g terrorism) could be said to fit into all three of these categories. Nevertheless, it remains helpful in the majority of cases to demarcate offences into one of these three broad headings.<sup>8</sup>

The civil law, however, is less obliging, for the varieties of action are much more extensive. Thus, the list includes Contract law, Property law, Family law, and Company law. This list is by no means exhaustive, but there is one type of action that will recur frequently as this book progresses: that of Tort, meaning civil wrong (or delict, as it is known in Scots law). Within tort, there are a number of sub-categories of action, including Defamation (i.e. libel or slander), Nuisance, Trespass (to land, person, or goods), and False Imprisonment. Again, this list is not exhaustive, but the most important tort for our purposes is that of negligence which is established in the case of *Donoghue v. Stevenson*<sup>9</sup>, which recognized the principle of negligence 'duty to take care'.<sup>10</sup>

In administration of justice, judiciary plays a vital role which is second to none. In fact, by virtue of its very task of sitting on judgment on the actions of the other two constituents Legislature and Executive enjoying the privilege of interpreting the significant constitutional provisions, the judiciary assumes a significance and special importance. Position of courts and judiciary is fortified by higher pay and perquisites and the very power provision of contempt as deterrence, a unique feature applicable only to the judiciary.<sup>11</sup>

The root causes of prolonging the cases or suits are based on the maxim 'justice delayed is justice denied' which is good weapon to delay the court proceeding. Delays occur in civil cases due to various reasons, including:

<sup>7</sup> Konnie G. Kustron, *Introduction to the American Legal System, 1st Edition* (2013), PP-11/12.

<sup>8</sup> *The English Legal System* by 01\_Avery\_CH-01.indd 2 [1932] A.C. 562

<sup>10</sup> See *Supra* note 8 above.

<sup>11</sup> *Supra* note 6 above

- i) "Faulty process-serving mechanism;
- ii) Non-service of summons;
- iii) Non-adherence to the High Court rules pertaining to the presence of local revenue and other officials in court;
- iv) Inability of Judges to take ex-parte action against uninterested litigants;
- v) Gross bureaucratic neglect;
- vi) Allowing an undue number of miscellaneous applications, temporary injunctions and interim relief; and also
- vii) Lack of witnesses and frivolous litigation."<sup>12</sup>

Delay in criminal cases occurs due to:

- i) "Poor and ineffective prosecution services;
- ii) Inability among Judges to separate the case of the accused present in the court from those absconding;
- iii) Delay in recording evidence; and
- iv) Inability of jail administration to send the under-trial prisoners to attend hearings."<sup>13</sup>

Other issues that cause delays include:

- i) "Transfer of Judges;
- ii) Transfer of a case from one Judge to another;
- iii) Non-judicial or administrative duties of Judges; and
- iv) Inadequate court facilities (physical as well as human), common to civil, criminal and family cases."<sup>14</sup>

## 2 HISTORICAL BACKGROUND

The expansion of history of legal and judicial system in prehistoric India can be divided into three sections which later paved the way for development of judicial system in Pakistan. The histories of those eras are mentioned in succeeding lines

### 2.1 Hindu Era (1500 BC to 1500 AD)

The history of Hindu period could be traced back during 1500 BC to 1500 AD. The judicial system of Hindu period has been composed of unknown sources such as prejudices, superstitions and primitive books like 'Dharamshastra, Smiritis and Arthashastra'.<sup>15</sup> These sources construct a well-defined system of administration of justice during the Hindu dynasties. The ancient King was very powerful and the fountain of justice who also discharged trichotomy function including judicial function. In this task, judges as well as his courtiers assisted him in administration of justice. He was the final judicial authority and court of

<sup>12</sup> Justice Javed Iqbal, *The Role of the Judiciary As a Catalyst of Change, P-14;* <http://www.google.com>. last seen on 29Oct,2016 at 1630hrs

<sup>13</sup> *Ibid*

<sup>14</sup> *Id*

<sup>15</sup> *Historical Evolution of Indian Legal System unit-3, P-134* ;[www.XI\\_U3\\_Legal\\_Studies.pdf](http://www.XI_U3_Legal_Studies.pdf)

ultimate appeal. At the Capital, besides the King's Court, the Court of Chief Justice existed. This Court, in hierarchy, was next to the King's Court and appeal against its decisions lay to the King's Court. The judges were appointed on the basis of their qualifications and scholarship but the choice was mostly restricted to upper caste i.e. Brahmins.

At the village level, tribunals dispensed justice, which consisted of the assembly of the village, or the caste or the family. The village Headman acted as Judge/Magistrate for the community. Decisions by such tribunals were usually through conciliation. The decisions of village/town courts/tribunals were appealable in the higher courts and final appeal lay before the King's Court. Besides adjudication, the system of arbitration was also in vogue. As regards the procedure followed in the courts/tribunals, no formal rules existed, as the law applicable was not statutory but customary or moral. The determination of truth and punishment of the wrong-doer was regarded as a religious duty. Civil proceedings commenced with the filing of a claim which was replied by the opposite party. Both parties were allowed to produce witnesses so as to prove their respective claims. On the conclusion of the trial, decision was pronounced which was duly enforced. It appears thus, that the system of administration of justice, as it operated in ancient India, was not substantially different from what it is in the modern times. In a sense, the current system seems to be a continuation of the former practices and procedures.<sup>16</sup>

## 2.2 Muslim Era (700 to 1857AD)

The first Muslim settlers arrived in India in the early 7th century AD. Then, the Arab merchants came to the Malabar Coast in the South India. And in the 12th century AD, the Turkish invasion also brought Islam to India. Later, with the advent of the Mughal Empire in the mid-16th century AD, the Mughal judicial and administrative systems were introduced in India. The Mughal court system was later replaced by the English legal system starting from 1772, when the British adopted rules for administration of justice in Bengal.<sup>17</sup> The Mughal Dynasty lasted until the middle of 19th century. During the period of Muslim rulers, the Islamic law remained the law of the land in settling civil and criminal disputes. However, common customs and traditions were also invoked in settling secular matters. These rulers were not particularly keen on applying the Islamic laws to each and every sphere of life, and let the indigenous customs and institutions continue side by side with Islamic laws and institutions.

During this period, different courts were established and functioned at the central, provincial, District and Tehsil (Pargana) level. These courts had defined jurisdiction in Civil, Criminal and Revenue matters and operated under the authority of the King. On the top of judicial hierarchy was the

King's Court, presided over by the King himself, exercising original as well as appellate jurisdiction. The King was the head of judicial administration and he made all appointments to judicial posts. Persons of recognized scholarship, known competence and high integrity were appointed to such posts. The judges held offices during the pleasure of the King. The Mughals improved upon the previous experience and created an organized system of administration of justice, all over the country. Courts were created at each and every unit of the administrative division. At the village level, the Hindu system of Panchayats (Council of Elders) was retained, which decided petty disputes of civil and criminal nature, using conciliation and mediation as means of settling disputes. At the town level, there existed courts, presided over by Qazi-e-Parganah. Similarly, at the district (Sarkar) and provincial (Subah) level, courts of Qazis were established. The highest court at the provincial level was that of Adalat Nazim-e-Subah. Similarly, for revenue cases, officers known as Ameen were appointed at the town level. At the district level, revenue cases were dealt with by Amalguzar and at the provincial level by Diwan. The Supreme Revenue Court was called, the Imperial Diwan. Side by side, with Civil and Revenue Courts, Criminal Courts, presided over by Faujdar, Kotwal, Shiqdar and Subedar. The highest court of the land was the Emperor's Court, exercising original and appellate jurisdiction. Although these courts generally exercised exclusive jurisdiction in different categories of cases, however, sometimes their jurisdiction was inter-mixed, in as much as, officers dealing with criminal cases were also required to act as Revenue Courts. Furthermore, whereas territorially, these courts formed a concentric organization, their jurisdiction was not always exclusive on the basis of territorial limits. Thus, a plaintiff may choose to file his suit in a town or a district or a province. The pecuniary jurisdiction of the courts was also not defined; hence, a case of higher value may be filed in a court of small town. Similarly, appellate jurisdiction existed but was not well defined. Thus, a plaintiff or a complainant, not satisfied with a decision, may file a second suit/complaint in another court. Such later court would decide the matter afresh, without indeed taking into consideration the earlier finding of the court.

The procedure followed in civil cases was not much different from the procedure, which is applicable today. On a suit being filed, the court summoned the opposite party to admit or deny the claim. Issues were framed in the presence of both the parties who were then required to produce evidence in support of their respective claims. Simple cases were decided, based on such evidence, however, in complicated cases, the judge may launch his own investigation into the matter. Maximum effort was made to find the truth. On the conclusion of the proceedings, judgment was pronounced and duly executed. Litigants were allowed to present their cases either personally or through agents. Such agents were not exactly lawyers (in the modern sense of the term) but were fully conversant with the judicial procedure. An officer of the

<sup>16</sup> Dr. Faqir Hussain, *Judicial System of Pakistan*, (2015), P-1

<sup>17</sup> See *Ibid* note 15 above, P-136

court called Mufti, attached to the court for interpreting the law.<sup>18</sup>

### 2.3 Emergence of English Courts in the Subcontinent (1601-1947AD)

“The East India Company was authorized by the Charter of 1623 to decide the cases of its English employees. The Company, therefore, established its own courts. The President and Council of the Company decided all cases of civil or criminal nature. The subsequent charters further expanded such powers. Thus, the Charter of 1661 authorized the Governor and Council to decide not only the cases of the Company employees but also of persons residing in the settlements. In deciding such cases, the Governor and the Council applied the English laws. As the character of the Company changed from one of a trading concern into a territorial power, newer and additional courts were established for deciding cases and settling disputes of its employees and subjects.” “The First British Courts established in India were the Mayor’s Courts in the three presidency towns of Calcutta, Madras and Bombay. These Courts were established in the eighteenth century, and the charters which established them required them ‘to give judgment and sentence according to justice and right’. The expression “justice, equality and good conscience” was interpreted by the Privy Council to mean ‘the rules of English Law if found applicable to Indian Society and circumstances’.”<sup>19</sup>

In view of the huge distances between these Towns and the peculiar conditions prevailing there, the administration of justice, which developed in these Towns, was not uniform. There were established two sets of courts, one for the Presidency Towns and the other for the Mufussil. The principal courts for the town were known as the Supreme Courts and Records Courts. These courts consisted of English judges and applied English laws. The English people, residing in such towns alone, were subject to their jurisdiction. The native inhabitants, who were mostly living in the Mufussil, were governed under separate courts called Sadar Dewani Adalat and Sadar Nizamat Adalat, dealing with civil and criminal cases respectively. Such courts applied the local laws and regulations.

The Supreme Courts which were established sometimes later in those three towns Calcutta, Madras and Bombay which replaced the Mayor’s Courts were modeled on the English pattern and had such jurisdiction and authority as the courts of King’s Bench had in England by the common law

of England. The Supreme Court of Calcutta was established under the Regulating Act, 1773. The Court consisted of a Chief Justice and other judges, exercising both civil and criminal jurisdiction. The Court could also issue certain prerogative writs. The law as stated above is also the law to be administered by each of the High Courts in India in the exercise of its appellate jurisdiction. The Supreme Courts were superseded by High Courts in those three towns, but the jurisdiction to administer the English common law was continued. These new courts had indeed the same composition, jurisdiction and powers as exercised by the Supreme Court of Calcutta. The High Court of Judicature Act, 1861 abolished the Supreme Courts as well as the Sadar Adalats, and in their place, constituted the High Court of Judicature for each Presidency Town. This Court consisted of a Chief Justice and such other number of judges, not exceeding 15. The Act prescribed professional qualifications for such judges together with the mode of their appointment. Thus, it was provided that 1/3rd of the judges should be appointed from amongst the barristers with 5 years standing and 1/3rd from amongst the civil servants, having 3 years experience as a District Judge. The remaining 1/3rd seats were filled from amongst the pleaders and members of Subordinate Judiciary, having 5 years experience. The judges were appointed by the Crown and held office during his pleasure. The High Court exercised original as well as appellate jurisdiction in civil and criminal matters and were also required to supervise the functioning of the Subordinate Courts in their respective domain. Besides the Presidency Towns, High Courts were also established in Allahabad in 1866, Patna in 1919, Lahore in 1919 and Rangoon in 1936. The Sindh Chief Court was established under the Sindh Courts Act, 1926. Similarly, under the NWFP Courts Regulation, 1931 and the British Balochistan Courts Regulation, 1939, the Court of Judicial Commissioner was created in each such area. It has also been held that section 9 of the Code of Civil Procedure, 1908 which enables a Civil Court to try all suits of civil nature.<sup>20</sup> The Code of Civil Procedure, 1908 created principal civil courts, namely, the Court of District Judge, the Court of Additional District Judge, the Court of Civil Judge and the Court of Munsif. Their territorial and pecuniary jurisdictions were also defined.

The Government of India Act, 1935 retained the High Courts and also provided for the creation of a Federal Court in 1937. Its judges were appointed by the Crown and held office till completing the age of 65 years. The qualifications prescribed were, 5 years experience as a judge of a High Court or 10 years experience as a barrister or 10 years experience as a pleader in a High Court. The Act further provided that the judges of the Federal Court and High Courts should hold office during good health and behaviour, meaning, they may not be removed except on the grounds of infirmity of mind or body or misbehaviour, only when on a reference made by the Crown, the Judicial Committee of Privy Council so

<sup>18</sup> *Supra* note 16 above P-2

<sup>19</sup> Ratan Lal & Dhirajlal, *The Law of Torts*, Justice G.P. Singh, 25th ed

(2009)P-1

<sup>20</sup> *Ibid*, P-2

recommends. The Federal Court exercised original, appellate and advisory jurisdiction.<sup>21</sup>

## 2.4 Evolution of Legal System in Pakistan (1947- 2016)

Rationale behind creation of Pakistan was that Muslims should be able to live their lives according to their religion. The country was created with the partition of India in the year 1947 by the British through Indian Independence Act, 1947. At its creation for the time being it was governed by the Government of India Act, 1935.<sup>22</sup> As a consequence, the legal and judicial system of the British period continued, of course, with due adaptations and modifications, where necessary, to suit the requirements of the new Republic. This way, there occurred no vacuum or breakdown, and the operation of the legal system continued uninterrupted. The judicial structure also remained the same. The Lahore High Court continued to function and so did the Sindh Chief Court and the Courts of Judicial Commissioner in NWFP and Baluchistan. A new High Court was set up at Dacca. Similarly, a new Federal Court for Pakistan was also established. The powers, authority and jurisdiction of the Federal Court and High Courts, as prescribed in the Government of India Act, 1935, remained intact.

Presently the Judicial system of the country according to this Constitution is being regulated under Article 175 of the Constitution of the Islamic Republic of Pakistan, 1973 which provides for the establishment of a Supreme Court and High Courts in each of the four provinces, i.e. Punjab, Sindh, Baluchistan and Khyber Pakhtunkhwa. Recently through an amendment, a High Court for Islamabad capital territory has also been established. This Article also provides for the establishment of other courts through law and accordingly Civil Courts and Criminal Courts stood established respectively under Civil Courts Ordinance, 1962 and Code of Criminal Procedure, 1898.<sup>23</sup> As for as criminal court is concerned, they were constituted under the umbrella of the Code of Criminal Procedure, 1898, namely, Courts of Sessions Judges, Additional Session Judges, Courts of Magistrates, I, II & III Class and Justice of Peace. Article 227 of the Constitution of the Islamic Republic of Pakistan has also established Federal Shariat Court. This Article speaks that "all existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah of Prophet (P.B.U.H), in this part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions".<sup>24</sup>

In short, the Judicial System of Pakistan broadly may be divided into three classes, i.e. trichotomy of Judicial System of Pakistan is mentioned in the following lines:

(a) Superior judiciary comprising of Supreme Court, Federal Shariat Court and High Courts;

(b) District judiciary comprising of Civil Courts and Criminal Courts created by acts working under the supervision and control of the respective High Courts under Article 203 of the Constitution;

(c) The Administrative Courts, Tribunal and Special Courts created under different laws.<sup>25</sup>

## 3 LEGAL SYSTEMS OF DIFFERENT NATIONS OF THE WORLD

### 3.1 Legal System of United States of America

Article III of the U.S. Constitution authorizes that judicial power shall be "vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." The United States has two main court systems, namely, a federal court system and a state court system. Each state court system has its own structure. The Federal Courts in United States are hierarchical like Trial Courts, District Court, Appellate Courts and then Supreme Courts.<sup>26</sup> The State Courts, which try 98% of litigation, may have different names and organization; trial courts may be called "Courts of Common Plea", appellate courts "superior courts" or "commonwealth courts". The judicial system, whether state or federal, begins with a court of first instance, is appealed to an appellate court, and then ends at the court of last resort.<sup>27</sup> Federal Courts and State Courts each have their own specific process set forth in the Court rules. Federal and State Courts also have different laws and rules for civil and criminal cases as like the Federal Rules of Civil Procedures, the Federal Rules of Criminal Procedures and Federal Rules of Evidence, and states have different rules of procedures in Criminal and Civil cases. In a civil case, the plaintiff has the burden of proof to establish the elements of the case. The standard in a civil case is to prove the case by preponderance of the evidence, which is a somewhat subjective standard. A preponderance of evidence means that, more likely than not, the plaintiff has proved its case. This standard is in contrast to the criminal standard beyond a reasonable doubt, which is the highest legal standard found in a court of law.<sup>28</sup>

The Bill of Rights, as interpreted by the Supreme Court of United States of America, forms the foundation of 'due process of law' for the criminal law process. Under the Federal Constitution, there are certain due process protections that must be provided to all individuals. They begin with the principle that a person is presumed innocent by the government until proven guilty. Additionally, there are specific procedural guarantees provided under the 4th,

<sup>21</sup> Dr. Faqir Hussain, *Judicial system of Pakistan*, (2011), P-6

<sup>22</sup> Justice (R) Tanveer Ahmed Khan (DG Punjab Judicial Academy), *Judicial System of Pakistan*, P-1

<sup>23</sup> *Ibid*

<sup>24</sup> Art-227 of *The Constitution of the Islamic Republic of Pakistan*, 1973

<sup>25</sup> See *Ibid* note 20, P-2

<sup>26</sup> Konnie G. Kustron, *Intruduction to the American Legal System*, 1st Edition (2013), P-34

<sup>27</sup> <http://www.wikipedia>, last seen on 10 Sep. 2016 at 2210 hrs

<sup>28</sup> *Ibid* note 26 above, P-70

5th,6th,8th and 14th amendments of the constitution of U.S.A.<sup>29</sup>

### 3.2 The Justice System of UK

The people of United Kingdom are rightly proud of the traditions of their justice system. It is admired across the world and is the foundation of many other countries' justice systems. It is a cornerstone of a just, fair and safe society: a service on which victims and the public rely every day to protect them from harm and ensure that those who have offended against them face the consequences of their actions. We should not, however, be blind to its shortcomings. It is time for an honest reappraisal of its effectiveness and agreement of a shared ambition for the criminal justice system which is swift, sure, efficient, transparent and accountable. The criminal justice system in England and Wales is complex, involving many different agencies, including police forces, the Crown Prosecution Service, the criminal courts, legal aid to fund legal defenses, prisons, probation and youth offending teams. Too often, these organizations have worked in silos rather than working together: a fragmented system rather than a coherent service. This has been exacerbated by a target culture, which replaced professional discretion to do what was right. Agencies were encouraged to pursue individual targets: a focus on volumes rather than outcomes; quantity over quality.

### 3.3 Legal System of Uganda

In Uganda, the criminal justice system is an adversary one based on the English law. The accused is presumed to be innocent until proven guilty. The burden is on the prosecution to prove the guilt of the accused beyond a reasonable doubt. The accused has no duty to prove his/her innocence. Because of our rules of evidence, courts tend to require the production of original documents in evidence during trial. This makes matters difficult for the prosecution, where the accused may have caused disappearance of important documents.<sup>30</sup>

## 4 LAWS PASSED BY THE PARLIAMENT OF PAKISTAN

Parliament of Pakistan passed many laws for improving the performance of judiciary and justice in Pakistan which are mentioned in the following lines:

- i) "The Guardians and Wards Act, 1890;
- ii) The Foreign Marriages Act, 1903;
- iii) The Child Marriage Restraint Act, 1929;
- iv) The Dissolution of Muslim Marriages Act, 1939;
- v) The Muslim Family Laws Ordinance, 1961;

- vi) The West Pakistan Rules Under The Muslim Family Laws Ordinance, 1961;
- vii) The West Pakistan Family Court Act, 1964;
- viii) The West Pakistan Family Court Rules, 1965;
- ix) Dowry and Bridal Gifts (Restriction) Act, 1976;
- x) The Hudood Ordinances, 1979;
- xi) Qanun-e-Shahadat Order, 1984 (Law of Evidence);
- xii) The Companies Ordinance,1984;
- xiii) The Pakistan Citizenship Act, 1951, partially amended in 2001;
- xiv) Amendments in Family Courts Act for Khula etc. in 2002;
- xv) The Criminal Law (Amendment) Act, 2004 (on 'Honour' crimes);
- xvi) Protection of Women (Criminal Laws Amendment) Act, 2006;
- xvii) Criminal Law (Amendment) Act, 2010 (on Sexual Harassment);
- xviii) The Protection against Harassment of Women at the Workplace Act, 2010;
- xix) Prevention of Anti-Women Practices (Criminal Law Amendment) Act, 2011;
- xx) The Acid Control and Acid Crime Prevention Act, 2010;
- xxi) The Women in Distress and Detention Fund (Amendment) Act, 2011;
- xxii) Women Protection Act, 2016.<sup>31</sup>

### 4.1 Remedies / Suggestions

As mention earlier, the issue of backlogs and delays in civil and criminal administration of justice has been addressed in the past for this purpose various commission/committees were constituted which formulated comprehensive recommendations for reforming the judicial system of Pakistan which are given in the following lines:

1. Rather than creating a parallel judicial system the Government should strengthen the existing system of administration of justice which is time-tested and enjoys the confidence of the people. Given due facilities, this system has the capacity and strength to ensure the expeditious disposal of cases;
2. With a view to resolve the problem of backlog and ensure quick disposal of cases, the Government should increase the number of judges and judicial offices;
3. The problem of delays may also be tackled through enhancing the retirement age of judges. The Government may, therefore, also consider this option;
4. The Government should provide necessary funds for construction of proper court rooms, provision of adequate ministerial staff, computers and stationary, etc to courts;

<sup>29</sup> *Ibid*, P-84

<sup>30</sup> Vincent Wagona, *Present situation, Problems and Solution in the Legal system related to Corruption Control in Uganda*; No 71\_22PA\_Wagona.Pdf

<sup>31</sup> <http://www.google.com> last visited on 17th Oct, 2016 at 2130 hrs

5. Arrangement should be made for the pre and in-service training of judicial officers. Libraries should be established and adequate books and other material made available to judges;
6. With a view to attract capable, competent and qualified persons as judges and judicial officers, their terms and conditions of service should be improved. In particular, the problems of accommodation and transport should be resolved;
7. The system of process servicing should be improved. The task of process serving in criminal justice system should be assigned to a separate agency under the control of High Courts and District Courts. Such agency should be utilized for process serving both in civil and criminal cases. The court should make full use of the system of "substituted service";
8. For timely submission of Challan, the investigating branch of the police should be strengthened, the number of forensic science laboratories should be increased and the courts should take serious notice of negligence or undue delay/default in the timely submission of Challan;
9. Better seating arrangements should be made for litigants and witnesses, and amount payable to witnesses as travelling allowance and diet money should be rationalized. Witnesses and litigants should also be given due protection. The courts should take serious view of situations when witnesses deliberately avoid appearance in courts. Arrangement should be made for transporting under-trial prisoners to courts. The High Courts should issue instructions to courts to conduct hearing on day-to-day basis;
10. With a view to overcome the problems of congestion in jails, and so as to liberalize the law relating to bail, section 497 of Cr. PC, 1898 to be amended, creating therein three categories of bail; firstly, when offence is punishable for a period not exceeding 3 years and accused detained for a period exceeding 6 months but trial has not yet concluded; secondly, when offence is punishable with death and accused is detained for a period exceeding one year but trial has not yet concluded; and thirdly, when offence is punishable with death and accused detained for a period exceeding 2 years but trial has not yet concluded;
11. Frequent adjournment of cases should not be allowed. In cases of adjournment at the request of the counsel due to appearance in higher courts, it should be allowed only on an application along with a copy of the cause list;
12. With view to achieve the goal of expeditious trial, the High Courts should examine the possibility of bifurcating the civil and criminal functions of District & Sessions Judge so that they are assigned responsibilities exclusively for the trial of civil and criminal cases;
13. There is a need for organized and methodical arrangements of supervision and control by the High

Court over the functioning of subordinate courts. The cases of corruption, inefficiency and in-proficiency must be taken notice of appropriate punishments awarded. Strict control must be exercised by District Magistrate over the functioning of executive magistrates under his control. There should also be a system of reward and incentives in the shape of giving special increment, preference in promotion or choice of posting for judges / magistrates whose performance is exemplary;"<sup>32</sup>

14. Evening courts and holiday courts should be established to lessen the burden of backlogging of cases in higher and sub ordinate judiciary;
15. The courts should manage such system to minimize the unnecessary delay of witnesses, plaintiffs, defendants, offenders and lawyers. Recording of evidence, examination, re-examination of witnesses and all the proceeding if necessary on new technologies like CCTV cameras and Skype on line etc;
16. Bar Associations should not go on strikes on petty issues. If necessary, they should wear black bands and take out processions, rallies and hold meetings after court timings. So that, hurdles in the way of justice can be mitigated easily.

## 5 CONCLUSION

Judicial system is foundation of a country and good governance depends on it. 'Judiciary is heart of freedom and independence judiciary represents the difference between civilization and savagery. If the judiciary of a country is stripped of its power, the country would cease to exist as a free nation.'<sup>33</sup> A country without it is on the verge of destruction. Justice is part and parcel of every society and it has fore-reaching effects on common man. The role of courts in Pakistan is adversarial but If there is matter of violation of fundamental rights then Supreme Court should use its Inquisitorial role under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973, that "Supreme Court is entitled to take cognizance of any matter which involve a question of public importance with reference to the enforcement of any of the fundamental rights conferred by Chapter 1, Part II, of the Constitution even Suo motu action, without having any formal petition."<sup>34</sup>

As the 4th Caliph of Islam Hazrat Ali (R.A) said, "System of cruelty and barbarity can continue but system of injustice cannot maintain." During the World War II, Winston Churchill<sup>35</sup>, the Prime Minister of UK, said, if courts of

<sup>32</sup> <http://www.google.pk.com> last visited on 12 Sep, 2016 at about 2150 Hrs.

<sup>33</sup> M. Mahmood, *The Constitution Of Islamic Republic of Pakistan, 1973, 10th Edit*(2011), P-610; 2000 SCMR 751

<sup>34</sup> PLD 2006 S.C.697

<sup>35</sup> (1874-1965), was Prime minister of UK (1940-1945&1951-1955). *Statesman*

country is working and administrating the justice properly then there is no danger to the government. As a result, he assumed the Premiership of U.K again in 1951.

Now-a-days judiciary is full of all evils. In the case of Mazhar , ' who is unlawfully put behind the bar in a murder trial for 19 years. Superior Court gave its decision and declared him innocent after two years of his death. This is a mammoth question on the performance and efficiency of judiciary, investigating officer and police (law enforcement agencies).If we want to make the judiciary transparent then we have to follow the path to do the justice swiftly, surely and efficiently. We must adhere to the doctrine of separation of power which is essential of judicial system U.S. And such executive powers which are under S 22-A &22-B Cr P.C are being used by Sessions Judges should be transformed into judicial powers. The applicants who applied for such remedy under S 22-A &22-B Cr P.C and illegally used this remedy then after investigation his stance proved false, he must be punished rigorously.

If our judicial system and independence judiciary will be systematic and up-to-date then "the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the world and make their full contribution towards international peace and progress and happiness of humanity."<sup>36</sup> This is not the end of efforts to improve the justice but a beacon of hope for the people to adjudicate justice. We can remove these lacunae in justice system, like false evidence, false witnesses, delaying tactics and wrong charge sheets which are cogent reasons of increase in backlog of case/suits. We can improve the old laws and introducing new strict laws and awarding punitive damages on the wrong doers, false witnesses and post ponders of the cases. It is a grave menace for the offenders and their accomplices.

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<sup>36</sup> Please see Preamble of The Constitution of The Islamic Republic of Pakistan, 1973 for reference



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