



ARBITRARY ADJOURNMENTS

Sahar Saqib

Adjournments are a tool used by both lawyers and judges to postpone the present judicial proceeding for a temporary or fixed time. As a device, however, it is most tragically misused in Pakistan's court cases by judges and lawyers alike. It has come to the point where an extraneous adjournment may be had in a case on the day of the hearing, often without prior notice to the parties in attendance, and routinely not reported by the lawyer to their client. Without the implementation of compensatory measures or the pressing need for the adjourning party to provide a substantial reason for the delay, superfluous stays have become a common occurrence in our courtrooms, and a persistent miscarriage of justice.

Frivolous adjournments incur a significant cost, and are a gross misappropriation of the already limited court funds and facilities. The cost of a court to be in session, the salaries of all parties involved and maintenance of the courtroom are just a few of the expenditures and facilities which are not being utilised every time there is an adjournment granted on dubious grounds. It is also an unjust and inexcusable charge on the litigant's pocket. Many parties to the suit suffer great losses in the form of travel costs, opportunity costs, and daily wages. In order to make it to one court appearance, persons

travelling from more remote areas have had to sell chattel, foregoing any chance at earning for the day, and have had to bear the cost of the journey to the courthouse, only to be informed that the case has been adjourned. An unseen but deeply felt social and psychological cost is also borne by litigating parties, particularly in seemingly unending multi-generational cases further delayed due to extraneous adjournments.

Vexatious adjournments also waste valuable time. According to a senior Rawalpindi Bar Council member, a District or Sessions Court Judge will hear a multitude of cases during the roughly eight hours they observe in their court, as opposed to a High Court Judge who deliberates for only four hours a day. Such adjournments squander away a chunk of the already limited time and resources available to the courts. When we consider the interrelated concerns of case pendency and how overburdened judges already are with their current dockets, frivolous adjournments are a substantial cause of these problems. The courts' time would be better utilised by disallowing unnecessary and avoidable adjournments and instead employing case management systems and addressing the steadily growing case pendency rates, to a tune of over two million cases and rising.¹

Lack of an incentive to curb harmful postponements leads to adjournments not being taken as a serious misconduct. The Law and Justice Commission of Pakistan in their Expediting Trial Proceedings Report² had highlighted the need to curtail excessive adjournments, while in their Law Reform Bill 2005³ they suggested a compensatory fee for parties who exceeded two adjournments per case, to be awarded to the aggrieved and awaiting party. There was no recommended fee or challan in the Bill to be imposed on lawyers or judges who abuse this device, and they would still receive remuneration for their court appearance albeit adjourned. Imposing a compensatory fee or some form of repercussion on the consistently adjourning party would also address the nefarious efforts of litigious-minded personalities whose employment of delay tactics cause a disruption in the proceedings, deterring the course of justice in order to deny another party of their rights, or inexcusably continue the exploitation of their own. More recently, the Cost of Litigation Act 2017 imposes a fine of Rs. 5000 on the party perpetuating vexatious and frivolous adjournments, but this Act is only applicable to the Federal Capital. Such legislation needs to be enacted for every jurisdiction in Pakistan and steadfastly implemented in order to curtail the misuse of adjournments and decrease time lags. Cases could be decided more expeditiously if a cap on adjournments could be observed, with particular care given to civil cases that should be adjudicated most swiftly. It would also prove to be a needful step forward in the effort to curb case pendency.

The Supreme Court of Pakistan has addressed these issues and condoned extraneous adjournments on multiple occasions and in several cases that have come before it. When a matter was fixed and to be attended in front of a court in session, the Supreme Court held that undefined personal reasons were not to be the grounds for attaining an adjournment.⁴ It was also pointedly observed in this case that a lawyer's primary duty is towards their court work and secondarily to attend to their personal work. In another case before our highest court, the request for an adjournment made by one council on the grounds that they were unwell, after two successive adjournments, was denied, as no medical certificate was provided.⁵ In certain high profile cases, the Supreme Court noted that an astonishing number of extraneous adjournments are granted, in some cases up to an alarming total of eighty adjournments for a single dispute.⁶

The Supreme Court also addressed the practice in trial courts to award multiple adjournments on superfluous grounds, which would then cause delays during trials. Such adjournments, it noted, would have the effect of prolonging proceedings barring any valid or legitimate grounds.⁷ It disapproved of the trend that had been established in the trial courts of granting Akhri Mouqa, Qatai Akhri Mouqa, and then Qatai Qatai Akhri Mouqa, and observed that this made a mockery of the already established provisions of law and those whose responsibility it was to interpret and implement those provisions. The Supreme Court further provided that if the last instance to present evidence had already been

granted and the concerned party had been warned of the consequences, the court must enforce its order and in doing so maintain the litigant's trust. Such an enforcement would also put the system back on track with regards to case pendency concerns, and halt frivolous adjournments.⁸ These concerns were mirrored and iterated by the Sindh High Court as well.⁹

The grounds for granting adjournments should be legitimate respites supplemented by appropriate justifications, such as, for instance, attending to a medical condition requiring urgent care (and providing a supporting medical certificate), lawyers and/or judges being overburdened by their current caseload and thereby necessitating a break, the unavailability of key witnesses, the occurrence of unforeseen or natural disasters, force majeure (an act of God), and extraordinarily extenuating circumstances. Establishing certain grounds would help reduce frivolous and vexatious adjournments taken without just cause. Additionally, every adjournment should be announced online in due time on the Case Status webpage of the respective court, to alert all the parties due to appear in court that day beforehand. Automatic digital alerts and reporting of superfluous adjournments should be made to the coinciding and concerned Judicial and Bar Councils so as to maintain a digital record of the number of adjournments, and to facilitate in holding repeat offenders accountable. It is equally not justiciable for harm-intending parties to prolong an already cumbersome and costly ordeal for civilians enmeshed in litigation by employing delay tactics such as stays and adjournments. The efforts of such repeat offenders should be quashed and they should bear the costs for their ill-founded efforts.

Arbitrary adjournments have become a constant feature of the litigating process, internalised and accepted as an inevitability, like a pesky courtroom bug that routinely rears its unsightly head. It is now not only a regrettable and foreseeable menace for prospective and currently litigating parties, but a repetitive hindrance to justice for anyone exercising their constitutional right to a fair trial, which in its spirit includes timely and judicious resolutions to cases.

Justice delayed is justice denied, after all.

The author is a Research Fellow at the Pakistan Institute of Development Economics (PIDE), Islamabad.

¹Ishaq Tanoli (2022-07-13) "Over two million cases pending in courts across country," Dawn.com

Accessed on November 21st 2023.

Available at: <https://www.dawn.com/news/1699337>

²Law and Justice Commission Expediting Trial Proceedings Report No. 60 (PKLJC 60)

³Law and Justice Commission Law Reform Bill 2005 (PKLJC 69)

⁴Niamatullah Khan Advocate vs. Federation of Pakistan (2022 SCMR 133)

⁵Crescent Textile Mills Ltd, Haripur vs. Government of Khyber Pakhtunkhwa (2022 PLD 247)

⁶Imran Khan vs. Shahbaz Sharif (C.P. 3436-L/2022 and C.P. 3437-L/2022)

⁷Moon Enterpriser CNG Station, Rawalpindi vs. Sui Northern Gas (2020 SCMR 300)

⁸Ibid

⁹Muhammad Saleem vs. Haresh Kumar (2021 PLD 381)