



CASE MANAGEMENT TRAINING

19-20 June 2018

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Acronyms

CPC Civil Procedure Code

CrPC Criminal Procedure Code

PPC Pakistan Penal Code

UK United Kingdom

USA United States of America

About the Manual

The two-day training recognises that with the introduction of case management rules come new responsibilities for ensuring effective case and trial management. These training must be imparted to judges who are not yet familiar with the concept or need to refurbish or strengthen their understanding of the concept. The Manual also envisages imparting skill development training in how to negotiate the resistance from the Bar to the new concept. This must be done by judges who have successfully adopted the methodology in their current practice. Joint trainings with the Bar could also be arranged so that the concept becomes familiar to all.

Course Objectives:

The principle course objectives should be to provide judges with the tools to:

- ✚ Recognise the key ingredients of a modern and successful case management strategy;
- ✚ Demonstrate judicial independence and integrity through effective case handling;
- ✚ Influence the behaviour of others by the appropriate use of case management directions;
- ✚ Conduct a pre-trial review hearing and proactively monitor the progress of a case;
- ✚ Use technology to support case management;
- ✚ Set appropriate and challenging performance targets and monitor a team's performance;
- ✚ Make use of special measures for witnesses

Teaching Methods:

The methods will include a power point presentation and discussion followed by evaluation exercises. It may include a mock trial. It would be useful to also consider the following:

- ✚ Case studies looking at examples of good and bad case management practice with a discussion of, for example, the deficiencies in the process and what alternative orders a judge could make;
- ✚ Role-play. This might include presenting case scenarios and asking judges to play the part of judge (and counsel) with all participants critiquing the process. Getting judges to practice case management in a supportive environment will give them the confidence to apply those techniques in the courtroom.

Monitoring and review:

- ✚ Monitoring and review not only of the participants but also the resource persons must be done periodically, and an impact study must be launched to assess the field impact of the course by measuring the time taken to resolve executions after a baseline study has been conducted.
- ✚ Please use the following tools for the monitoring and evaluation of the workshop:
 - Annex-A: Pre and Post Assessment Form
 - Workshop Evaluation Form

Module 1: Understanding and Conceptualizing Case Management in General



INTRODUCTION:

Case Management is not simply a question of setting time frames. Experience has shown that such timeframes are seldom met. The judges usually blame the lawyers for not being prepared and seeking adjournments. The lawyers in turn blame the non-availability of witnesses and the rigid attitude of the judges.

Case Management is the effective control of the cases by the courts: When a case is filed in court the judges do not familiarise themselves with the case, with the assumption that it will lead to a trial and the resolution of the dispute will be the end result of this trial. Hence all the procedural requirements that precede a trial are ignored. In short, they do not take *ownership* of the case. Effective case management corrects this shortcoming.

Once the court takes ownership of the case, examines parties, understands the issues, it will be in a better position to resolve the controversy. This process essentially takes place prior to calling witnesses or commencement of *trial* thus making the regime pre-trial centric. Due to the involvement of the judge in this pre-trial activity it shall also ensure the counsel also become involved and take responsibility. Such approaches could be adopted to resolve both civil and criminal cases. In this module we would like to give an introductory overview of why this should be done leaving the 'how' to subsequent modules that specify these approaches.



OBJECTIVES:

Introduce and understand case management.

- ✚ Effective Case Management ensures:
- ✚ Expeditious dispute resolution.
- ✚ Curtails costs.
- ✚ Simplifies procedures thereby
- ✚ Restores public confidence in the court processes



LEARNING OUTCOMES:

On successful completion of the Module, the participants will be able to:

- ✚ Understand the difference between case management and case tracking
- ✚ Understand the difference between effective diary or docket management and case management.
- ✚ Avoid wasteful pre-trial activities.
- ✚ Explore avenues of non-trial centric adjudication.
- ✚ Improve record or file maintenance.
- ✚ Understand the difference in case management and Alternate Dispute Resolution.



COURSE CONTENT:

- ✚ Familiarize the course participant with the historical background leading to the amendments in the CPC. Explain the events leading to the introduction of Rule 16 A in the USA, the wolf Reforms of the UK and its theme and the events in the other Common Law countries.
- ✚ The theme of the reforms must be explained. The attempts in the country to follow this theme must be identified.
- ✚ A general overview of how this will be applied in the country must be explained.

- ✚ A comparison and differentiation must be made between what is being introduced here and what was done in other countries.
- ✚ A summary of what has been explained above be made for comprehension purposes.
- ✚ Evaluate the course participants in comprehension of the core values of case management.



REFERENCE MATERIAL:

The civil procedure rules of:

- ✚ England, New Zealand, South Africa and Malaysia.
- ✚ Woolf reforms of 1999
- ✚ Rule 16, Rules of Civil Procedure, USA

Module 2: Case Management: Civil (Pre-Trial)



INTRODUCTION:

This module discusses the provisions governing & significance of the pre-trial civil proceedings: starting from accrual of cause of action or filing of a plaint to the commencement of trial. It inter alia focuses on the role of a judge in supervising and scrutinizing the pleadings, and judge based investigations. The importance of settlement conference, managing and scheduling petitions, and significance of the summary adjudication.



OBJECTIVES:

- ✚ To know the need and significance of pre-trial proceedings
- ✚ To learn skills for effective management of the pre-trial work
- ✚ To revive neglected provisions of CPC pertaining to judge based investigation
- ✚ To learn techniques for curbing the delay



LEARNING OUTCOMES:

On completion of this course, the trainees shall be able to-

- ✚ Apply the relevant provisions properly
- ✚ Invoke inquisitorial provisions of the CPC
- ✚ Manage and schedule the proceedings effectively
- ✚ Decide appropriate cases summarily
- ✚ Pass orders promptly and appropriately
- ✚ Scrutinize cases worth trial



COURSE CONTENT:

1) Scheme of adjudication

- i) **Pleadings**- order I to IX (adversarial)
- ii) **Court's power to investigate and summary adjudication** Order IX-A to XV & XV-A. (Inquisitorial)
- iii) **Trials** (order XVI to XXIX (adversarial)

The new order IX-A: Relate each new rule to those existing in the orders X to XV

What is the purpose of a case management and scheduling conference:

- Understanding the claim of the plaintiff. (Order X)
- Crystallising for the plaintiff of what he seeks. (Order X)
- Establishing whether the claim is provable or frivolous. (Order X)
- Draft a statement of controversy. (Distinguish the statement of controversy from the framing of issues. Aids order XI to XIII and section 30 CPC).
- Establishing whether the dispute is resolvable through a summary judgment. (Order XV- A)
- Decide the admissibility of evidence available prior to recording of evidence. (XI to XIII)
- Decide all interlocutory applications as a pre-trial exercise. (Order X to XIII)
- Decide preliminary issues at this stage. (Order XIV)
- Decide whether, despite the above, the controversy needs to be resolved through a trial. (Order XIV)

2) Pre-trial conferencing

- a) Examination of parties
- b) Exchange of Interrogatories

- c) Negotiated settlement leading to summary judgment.
- 3) Production of documents
 - a) Admissibility
 - b) Objections and exhibitions
 - c) Affidavits
 - d) Certified/ public documents
- 4) Summary adjudication
- 5) Petition Management
 - a) Injunctions
 - b) Amendments
 - c) Adding/ striking parties
 - d) Jurisdiction and Rejection
 - e) Res-Judicata
 - f) Commissions
 - g) Consolidation of suits
 - h) Withdrawals
 - i) Other interlocutory orders



REFERENCE MATERIAL:

- ✚ Code of Civil Procedure, 1908
- ✚ Qanun-e-Shahdat Order, 1984
- ✚ Report and Recommendations on National One Day Seminar on Case Management & Summary Judgment Rules (Amendment in CPC), available at www.kpja.edu.pk
- ✚ USA's Federal Rules of Civil Procedure, 1938
- ✚ UK's Civil Procedure Rules in 1999

Module 3: Case Management: Civil (Trial)



INTRODUCTION:

The CPC does not provide a clear time frame for overall disposal of a civil case. However, it provides time frames for certain kinds of proceedings during the trial. The fact remains that comprehensive formal case management techniques, not confined to mere speedy disposal, have now been formulated so as to ensure timely adjudication of disputes. The creation of training opportunities in this core area is felt with concern. This module seeks to address that concern.

The module focuses on timely disposal of a civil trial through effective and efficacious management. A judge besides having command on the procedural law must know the techniques on how to be in control of the proceedings. Without compromising on due process of law, he has to curb the delay, ensure fairness, quality and timely adjudication of a case.



OBJECTIVES:

- ✚ To realize the effects of irregularities and illegalities during trial
- ✚ To be mindful of the rights of the parties in general.
- ✚ To learn curing of irregularities
- ✚ Effective management for ensuring delay reduction
- ✚ To manage workload
- ✚ To procure attendance of witnesses
- ✚ to sensitize the trainees about importance of trial
- ✚ Transparency and fairness
- ✚ highlighting common mistakes committed during the course of trial

Scheme of activity will be to highlight practical problems, make the trainees learn skills and techniques for coping with scenarios and situations.



LEARNING OUTCOMES:

On completion of this course, the trainees shall be able to:

- ✚ Conduct the trial properly
- ✚ Avoid irregularities and illegalities
- ✚ Cure irregularities
- ✚ Apply the relevant provisions accurately
- ✚ Learn trial scheduling
- ✚ Learn techniques of effective management
- ✚ Exercise discretion judiciously
- ✚ Timely satisfaction of the decrees



COURSE CONTENT:

1) Scheduling Trial

- a) Time frame: when the time frame is being settled the court should keep in mind the fact that the new rules envisage a continuous (de die in diem) trial. Hence the number of witnesses and what they are to depose is to be kept in mind so that an accurate number of days will be earmarked for the trial.
- b) **Consultation process with advocates:** The above activity will automatically lead to the instant one. The schedule will thus have to be discussed with the advocates. Once the time frame for the trial is fixed, the next step will be to see the diary of the court along with the diary of the counsel to earmark the date of the trial. The law has prescribed a time schedule of one year to do the trial. The whole scheme of the law does not ordinarily envisage a trial prolonging for more than a few days. So the court will have ample time to fix the trial and may even schedule it to

happen several months after the pre-trial proceedings have been completed.

- c) **Effects of trial Scheduling:** Delay reduction, cost reduction, certainty of trial conduction and results. The law now envisages that once the trial is scheduled to begin on a certain date, till then the parties and the counsel are free from court proceedings. The urgency in scheduling an early trial will depend on the circumstances. The cases in which an injunction has been issued must be fast tracked. The parties will ensure that all the witnesses are present when the trial is scheduled to commence. This may necessitate liaison with the parties and their counsel a few days before the commencement of the trial to ensure the presence of all the witnesses.
- d) **Adjournment plan / counter strategy:** Rule 6 of the newly inserted Order IX-A provides the consequences of not adhering to the schedule. This Rule is envisaged as a deterrence to seeking adjournments once the trial is scheduled and it is not envisaged that the rule is invoked often as it will disturb the diary of the court. The court when scheduling the trial must emphasise this rule and obtain affidavits that the trial shall commence on schedule.

2) Settlement of issues:

The new Law Amendments have made it mandatory that a statement of controversy is made in the pre-trial phase. This statement of controversy is for all concerned to basically understand the controversy and realise the weaknesses and strengths of each party. This may lead to summary disposals. Although strictly speaking the framing of issues is a pre-trial exercise, it will come into play only when the court decides that a trial is inevitable. It is also envisaged that most of the preliminary issue are decided in limine, the exercise of framing issues gains even more importance.

- a) **Onus placing:** This is the most difficult and complicated exercise, yet the most crucial. Requires a clear understanding of the facts of the case and how the law will be applied to them. Omnibus issues must not be framed, and the

understanding developed at the stage of the “statement of controversy” will come in handy in making specific issues which will further clarify the duties of the parties at the trial stage.

- b) **Material** brought on file thus far is to be considered when framing the issue or issues and it is strongly recommended that this may be done through a consultative process.
- c) **Legal issues:** Legal issues are purely legal, and therefore to be decided as preliminary issues. These could, at times, be addressed in the pre-trial regime. The case management procedures envisage the elimination of raising of thoughtless preliminary legal objections when none are required. Where some evidence is required and can be addressed at the pre-trial stage by exhibition of a public document, this is to be decided as a purely legal issue.

3) **List of witnesses:**

- a) Description of the role of witness is not usually given or is too vague to fulfil the purpose for which the witness is being produced. In the new regime this has gained vital importance. The list of witnesses must therefore contain the gist of what the evidence shall be. The court can then determine the relevance of the testimony and the necessity of calling of such a witness.
- b) Certified copies of public documents need not be proved. If the opposite party challenges the veracity of such a document, it must do so on affidavit and on the non proof of the challenge must be proceeded against. This again is envisaged to be a preventive exercise rather than a punitive one. The courts must therefore handle it as such.

4) **Evidence:**

- a) Determination of Right to begin depends on whom the onus probandi lays. This is usually not given the importance which it deserves. In the new amendments this takes an even more important role. Since now by this stage the issues shall be crystallised into only one or two, the exercise must be conducted with due diligence. There is another aspect of Order XVIII that is

often ignored. This is the mandatory nature of “arguments” that are usually given at the conclusion of the case. Such arguments are to be addressed to the court both before beginning and at the conclusion under rule 2 of the Order. This is to ensure that the counsel knows what he is trying to prove at the beginning and what he has proved at the end.

- b) Order of examination is alluded to in Section 133 Qanun-e-shahadat. Essentially it leaves it to the discretion of the court. This now has to be determined judiciously and with serious application of mind in the scheduling conference.
- c) Handling objections as to admissibility. Although again an exercise of the pre-trial proceedings, this will have vital impact upon the trial. Once the evidence that is to be brought is to be decided with caution and care the admissibility and relevance of the evidence will have to be decided here. Wrong decisions as to admissibility may vitiate the trial and the courts will have to begin afresh. It is something that we are essentially trying to avoid as it will result in a spate of remands and de-novo trials.
- d) Supervising examination. Once the above regime is fully established and the judge is fully focused upon the trial, the issue of supervising the examination, giving the dictation himself will also become equally important. The courts may also think of preserving the exact words of the witnesses (transcripts) by audio or video recording of the trial for the appellate court to review where needed. Badgering of witnesses, fishing expeditions in cross examinations, asking questions as to the contents of exhibited documents could all be controlled by this.
- e) Court witnesses. It is usually noticed that a host of names and witnesses are cited by the counsel to be summoned as court witnesses or on their behalf. This usually happens when witnesses are unwilling or delay is the desire of the party so applying. Such applications must be decided with care and it must not be forgotten that in civil litigations it is the primary duty of the parties to gather and bring their own evidence. Similarly,

application for expert evidence, commissions etc. is also too be decided at the earliest and with due care and caution.

- f) Exhibition procedure: Public documents and the like need not be awaited to be exhibited through a witness at the trial stage but can be exhibited at the pre-trial phase.

5) Arguments.

- a) Notes: do take notes, how is a matter of personal choice.
- b) Ask questions. Do not comment. When any law or fact is being ignored or wrongly put, formulate a question. If answer is unsatisfactory, and you require help, formulate the proposition in a question and write it in the order to be addressed by the counsel on a future date or time.
- c) Issue wise: After pre- trial activities have been completed, this should not be a problem. A lot of emphasis has been given in the law for giving issue wise findings. This becomes problematic when mechanical or senseless issues are framed without examining parties from the objections raised in the written statements. The pre-trial exercise now will ensure framing of concise and relevant issues on which findings will not only become natural but will generally enhance the quality of the judgments.
- d) Handling case law. A lot of trouble is encountered by the courts when irrelevant rulings are cited at the bar. How to distinguish rulings from the facts of your case and applicability must be clarified. Explain with clarity when and why rulings attain a binding nature. Per incuriam and sub silentio rulings must be distinguished. What is obiter dicta must be explained.

6) Judgment

- a) Summary of facts is to be given by operation of the law. It does not mean the translation of the pleadings. It includes only the claim of the plaintiff, the defence set up. This may also include undisputed and admitted facts necessary for understanding the issues involved. Relevance

is a key ingredient. Speaking orders and judgments have nothing to do with the length of a judgment. Making sense by itself is the key ingredient.

- b) Appreciation of evidence: A clear understanding of the onus probandi is necessary. The issue, and how and from what evidence it stands proved or disproved. The concept of shifting burdens has to be grasped.
- c) Incorporate arguments: The arguments of the counsel need to be understood and incorporated. Techniques for understanding these at the time of hearing are to be explained. All propositions placed before the court are to be distinguished and enumerated. What is not discussed at the arguments stage should be avoided to be put in the judgment. Consistency of views is necessary.
- d) Distinguishing case law. Case law cited at the Bar must be mentioned. If reliance is placed upon a ruling it should be explained why. If not, the case law cited must be distinguished by facts of the case, non citing of contrary rulings (per incuriam), a new argument (sub silentio), obiter dicta and ratio divedendi are to be kept in mind and understood.
- e) Recording findings on issues. Must be decisive.
- f) Clarity in relief. Relief must be executable.



REFERENCE MATERIAL:

- + Code of Civil Procedure, 1908
- + Qanun-e-Shahdat Order, 1984
- + Report and Recommendations on National One Day Seminar on Case Management & Summary Judgment Rules (Amendment in CPC), available at www.kpja.edu.pk
- + USA's Federal Rules of Civil Procedure, 1938
- + UK's Civil Procedure Rules in 1999
- + Precedents, Munir

Module 4: For Executions



INTRODUCTION:

It has been said by no less than the Supreme Court of Pakistan that the agonies of the litigant do not end with obtaining a final decree from the court in a long drawn out case but begin with it. They were alluding to the difficulties of getting these decrees executed by the court. The basic problem that is being faced is that order XXI of the Civil Procedure Code enshrines the rules to be followed by the courts while executing decrees. These rules have been designed inter-alia to ensure that the rights of third parties are not affected by the essentially coercive dealings of the court with the judgment debtors. These safeguards are often misused and abused by the judgment debtors to delay interminably the results and fruits of winning a case. The purpose of managing these executions by the court is to ensure, without disturbing the scheme of Order XXI CPC, the prompt delivery of services to the litigant by executing the decree.





If the court in the first instance familiarizes itself with the essential issues of the problem at this stage, it will become better equipped to deal with it. Taking cue from the recent amendments proposed in the Civil Procedure Code, regarding case management, the execution petitions are also to be treated as separate cases and an initial management conference has been proposed in the case. It is in this conference that the court will decide whether the judgment debtor has the means to meet his obligations. Say, whether he has enough liquidity to pay the judgment debtor, whether it will have to be met through disposal of his assets, whether he is in possession of the property decreed. This may entail a visit to the property by the court itself or through a local commission; investigation of other means of satisfaction

of the decrees etc. the court has been empowered to do so by the addition of rule 104 in the code. This may be read with rule 111 *ibid*.

The second phase of such determinations is covered in the new rule 105 of Order XXI. Once an objection petition is received, a conference may be reconvened, this time with the objector present. In this conference the validity of the objection will be determined. Since the court would already have familiarized itself with the execution petition (say as to who exactly is in possession of the land, whether demarcations have been made etc. Rule 112 *ibid*. refers) it will be in a position to decide the objection petition summarily. If the objection is discovered to be valid or requires some evidence to establish its validity, a schedule will be issued to do so on the same principles as envisaged in Order IX-A CPC. (Rules 105 to 108 of Order XXI). Rule 109 gives the coercive tool to the court of which the parties may be informed initially. Rule 110 is aimed at the appellate court which shall make all efforts to decide the matter at hand so as to ensure that the schedule of the executing court is not disturbed. The crucial nature of this must be emphasized as a disturbed schedule could waste the precious time of the court which will find itself of having no work for the days of the schedule. Rule 110 envisages the situation where cases of possession of land against adjoining owners are brought without proper demarcations or acknowledging the fact that the land of which possession is sought is in actual fact a case of determining encroachment. This rule presumes that such matters will be decided in the pre-trial phase under the Case Management Rules (Order IX-A). The rest of the new rules are enabling provisions that could be utilized in effective execution management.



OBJECTIVES:

-  To promptly execute decrees
-  Ensure that rights of the third party are not affected
-  The scheme of Order XXI CPC is not disturbed
-  Understand the management scheme of the newly inserted rules in Order XXI CPC



LEARNING OUTCOMES:

At the end of the course the trainees shall be:

- ✚ Able to understand the problems that lead to delay in executions both in general terms and some specific difficulties
- ✚ Overcome these problems
- ✚ Recognise where the delay is deliberate and deal with it
- ✚ Recognise when an objector is a planted one and deal with it.
- ✚ Equip the participant with the tools to execute the decrees promptly.



COURSE CONTENT:

- ✚ Familiarize the course participant with Order XXI CPC and its scheme. Recognise that the rules while giving ample coercive powers to the court have safeguards enshrined to protect the rights of extraneous parties. Lists and labels could be attached to the various rules for categorization purposes.
- ✚ The theme of the Order is to be emphasized. Coercive methods could be used in executing of Decrees. Examples include seeking direct help of the police, forced delivery of possession, attachment of accounts, salaries and blockage of identity cards etc.
- ✚ Once the court familiarizes itself with the issues involved in the execution by calling for a management conference and framing issues it will be in a better position to decide the issues. Framing of the issues is not at the behest of the parties but to recognize for the court itself what the crux of the problem is or to realize that any objections being raised are frivolous and can be dealt with promptly.
- ✚ At this stage an analyses could be made of how things work out in practice. Examples could be used of the ways in which delays are attempted and in contrast how the courts could or should deal with this. Case analyses could be done.

- ✚ Best practices of the courts could be looked at and problem solving could be done to avoid mistakes that cause delay rather than reduce them.
- ✚ **Evaluation:** Actual problems gleaned from case analyses could be given to the course participants and their solutions could be evaluated to assess the participants.



REFERENCE MATERIAL:

- ✚ Order XXI CPC

Annexure

Annex-A: Agenda

Time	Activity	Lead
Day 1- June 19, 2018		
10:00- 10:15	Arrival of guests and Recitation of Holy Quran	TBD
10:15- 10:30	Introductions and working tea	Qaisar Raza
10:30- 10:45	Overview & overall objectives of training	Masood Khan
10:45- 11:00	Case study: Experience of Malaysia	Adam Stapleton
11:00- 13:00	Substantive session 1- Conceptualizing Case Management	Malcolm/ Masood
13:00- 14:00	Lunch Break	
14:00- 16:00	Substantive session 2- Case Management, Pre-trial	Malcolm/ Masood
16:00- 16:15	Wrap up day 1 and Plans for day 2	Malcolm/ Masood
Day 2- June 20, 2018		
09:00- 09:15	Overview of Day 1	Masood Khan
09:15- 11:15	Substantive session 3- Case Management, Trial	Malcolm/ Masood
11:15- 11:30	Tea Break	
11:30- 13:00	Substantive session 4- Case Management, Execution	Malcolm/ Masood
13:00- 14:00	Lunch Break	
14:00- 15:00	Session on delivery of trainings (Skills)	TBD
15:00- 15:30	Closing and certificates distribution	All team

Annex-B: Pre and Post Assessment Form

Training Workshop on Case Management Training

Name: _____ Job Title: _____

District: _____

Stage of Assessment: _____ Pre-assessment _____ Post-assessment

S.No.	Topic	Level of Knowledge/Skills				
		Nothing	Little	Satisfactory	Sufficient	Expert
1.	Difference between case management and case tracking					
2.	Difference between effective diary/docket management and case management					
3.	Wasteful pre-trial activities					
4.	Avenues of non-trial centric adjudication					
5.	Recordkeeping or file maintenance					
6.	Difference in case management and Alternate Dispute Resolution					
7.	Inquisitorial provisions of the CPC					
8.	Managing and scheduling the proceedings effectively					
9.	Scrutinizing cases worth trial					
10.	Avoiding irregularities and illegalities					
11.	Curing irregularities					
12.	Techniques of effective management					
13.	Exercise discretion judiciously					
14.	Rights of the third party					
15.	management scheme of the newly inserted rules in Order XXI CPC					

Annex-C: Workshop Evaluation From

TRAINING WORKSHOP ON CASE MANAGEMENT TRAINING

Name: _____ Job Title: _____

District: _____

	Disagree	Agree	Strongly Agree
Training is relevant to my need			
Content were well organized			
Material, Exercises & Case Studies Provided were helpful			
Understanding of the subject improved or increased as a result of the training			
Trainer(s) knowledge of subject and preparation was effective			
Venue of the training was good for participants			
The refreshments and food provided were satisfactory.			
Pace of training and session length well organized			
Training met my expectation			
I'm glad I came – I again knowledge and/or skills			
I will be able to apply the knowledge learned			

1. What did you like about the course?

2. Outline 3 things that you will take with you/have learnt in this session

Attachments

Attachment-A: Reference Material for Module 1

When the Academy completed its deliberations upon the proposed insertions and amendments in the Civil Procedure Code and submitted its report to honorable the Chief Justice, he immediately suggested that we begin work on similar lines on the Criminal Procedure Code.

It may be clarified that the exercise emanated from the proposals of Mr. Kamran Basharat, Additional District & Sessions Judge, West, Islamabad, who had based them on the Woolf Reforms in England and Wales, and also the procedures under constant review in the US. It must be pointed out that instead of reinventing the wheel we have gone back to the Woolf report, and the subsequent Criminal Procedure Rules of England and Wales and the recommendations of Lord Justice Auld Review of the Criminal Courts of England and Wales^[1].

In the Pakistani jurisdiction Criminal law is covered comprehensively by the Criminal Procedure Code 1898. In exact juxtaposition of the Civil Procedure Code, its examination shows that little significant amendment is required to this code but an adjunct body of rules may explain and add to the existing procedures that should give the control of the cases to the courts who must then exercise these controlling powers efficiently in a manner to promote the purposes of these rules.

We quote from “The objectives and content of the first Criminal Procedure Rules statement dated March 2005”, which should establish our goals and purposes with more clarity and then the reader may be better able to understand and comprehend the draft rules which could be issued by the Government under the relevant provisions of law without the need for any enactment from the Parliament. If a rule committee on similar lines as suggested below from the quote is established under the Home Department a constant review and evolution of the law could be ensured.

“Fairness, efficiency and effectiveness of the criminal justice system demand that its procedures should be simple.

What is needed is not a consolidation of all relevant current provisions but a concise and simply expressed statement of the current statutory and common law procedural rules and the product of the present overlay of practice directions, codes of guidance and the like. It should be in a single instrument and laid out in such a form that it, the Code, can be readily amended without constant recourse to primary legislation and without changing the ‘geography’ or the familiar paragraph and section numbers governing each topic.

The instrument should begin with a clear statement of purpose and general rules of application and interpretation, as successfully pioneered in the civil justice rules flowing from Lord Woolf’s reforms of the civil law.

It should be capable of ready and orderly amendment, by secondary legislation along the lines of that enabling the Lord Chancellor to amend the Civil Procedure Rules.

In proposing and formulating provisions of the Code and, subsequently, their amendment would have to be consigned to a separate, standing body specially constituted for the purpose, such as a statutory rules committee. It should be closer in form and function to the Civil Procedure Rule Committee the function of which is to make rules subject to the Lord Chancellor allowing them.

I suggest that the body entrusted with this important task should be statutory and have a status similar to that of the Civil Procedure Rule Committee. It should be called the Criminal Procedure Rules Committee. In my view it should be chaired by the Lord Chief Justice and should include judges from each level of the criminal court...together with an appropriate number of District Judges, magistrates and justices’ clerks. It should also contain a number of experienced criminal practitioners from both branches of the profession, and at least one academic specializing in the field, together with appropriate representatives of voluntary organizations with a direct interest in the work of the criminal courts.

They make explicit and particular the powers and duties of judicial case management.

The divisions are general matters, preliminary proceedings, custody and bail, disclosure, evidence, trial, sentencing, confiscation and related proceedings, appeal and costs.

Part 1 of the new Rules contains the overriding objective to which all participants and the courts themselves are subject. It is this objective that is at the heart of the culture change that the Rules promote. The presumption of innocence and a robust adversarial process are essential features of English legal tradition and of the defendant's right to a fair trial.

It is no part of a fair trial that questions of guilt and innocence should be determined by procedural maneuvers. On the contrary, fairness is best served when the issues between the parties are identified as early and as clearly as possible. Lord Justice Auld made this point in his Review. The right to silence does not justify a refusal to provide the court with such information as is necessary for the effective management of the case.

To the extent that the prosecution may legitimately wish to fill possible holes in its case once issues have been identified..., I can understand why, as a matter of tactics, a defendant might prefer to keep his case close to his chest. But that is not a valid reason for preventing a full and fair hearing on the issues canvassed at the trial. A criminal trial is not a game under which a guilty defendant should be provided with a sporting chance. It is a search for truth in accordance with the twin principles that the prosecution must prove its case and that a defendant is not obliged to inculcate himself, the object being to convict the guilty and acquit the innocent. Requiring a defendant to indicate in advance what he disputes about the prosecution case offends neither of those principles.

The source of authority for the procedure rules will change, and the overriding objective and the rules on case management will give courts at once power to manage all cases actively, but other procedures (and time limits, and forms) will remain the same."

In accomplishing the task, we examined the code of Criminal Procedure of several countries having common law background including England, New Zealand, South Africa and Malaysia. The concept of sentence indication, Pre-trial conference, trial management and charge negotiations etc are well embodied in the criminal justice systems of these countries.

[\[1\]](#) *In his review of efficiency in criminal procedure published on 23 January 2015, Sir Brian Leveson, the president of the Queen's Bench Division of the High Court, at paragraph 33 to 34 recommended that "The Criminal Procedure Rules should place a duty of district engagement between identified representatives who have case ownership responsibility. The Criminal Procedural Rules need to make clear that the parties are under a duty to engage at the first available opportunity"*