

**LEGAL ANTHROPOLOGY OF THE PUNJAB COMMERCIAL COURTS
ORDINANCE, 2021**
Ahmad Zia Chaudhry¹

Is it apposite for a judge to articulate his legal opinion in a law journal, or should he just remain confined to deciding the disputes before him? My stand is straightforward; there is nothing inappropriate if a judge publicly expresses his views through articles, as the judges are the vanguards of the justice system and thus the most relevant persons to have a say on legal matters. But my opinion, without substantiation, is of little worth. Justice Fazal Karim unequivocally concurs that publications by the judges can be of value to the profession and can further the administration of justice². His stance is premised on the English Case *Locabail Limited v. Bayfield Properties*³ where an objection of unintentional bias was leveled against the recorder (judge) whose articles seemed to carry a tilt in favor of the insurance claimants and against the insurers. The appellate court however did not accept the objection but cautioned that a judge has to be careful against giving an impression that his views on the subject are very firm and therefore it is beyond him to adjudicate the case with an open mind. I in this write up only intend to examine the Punjab Commercial Courts Ordinance, 2021 (the Ordinance) through the judicial lens, and desire to portray the significance Lahore High Court attaches to facilitate the businessmen by improving the system of commercial dispute resolution.

“The winds and waters of commerce carry opportunities that help nations grow and bring citizens of the world closer together. Put simply, increased trade spells more jobs, higher earnings, better products, less inflation, and cooperation over confrontation”. President Ronald Reagan made these remarks during his radio address to promote free trade. We can also conveniently use these words to highlight the importance of domestic trade and commerce. The events of the twentieth century have settled that only the economic status of a country will determine its overall strength. The easiest way for a state to boost its economic might is creating a congenial atmosphere for the businessmen. For long, Pakistan has been trying to win the trust of entrepreneurs by making the start-up and operation of business enterprises easier. The Ordinance is one of the reforms introduced by the Punjab government in that direction. It will be a travesty of facts if the efforts of Hon’ble Mr. Justice Shahid Karim and Hon’ble Mr. Justice

¹ Civil Judge/Research Officer LHCRC

² Judicial Review of Public Actions (Vol II, 2nd Edition) p 1247

³ (2000) 1 All ER 65

Jawad Hassan, who translated the vision of the incumbent chief justice of Punjab into reality by spearheading the committee responsible for the drafting of this Ordinance, are not acknowledged.

Under the leadership of its Chief Justice, Hon'ble Justice Qasim Ali Khan, Lahore High Court is very committed to the reforms in the dispute resolution system relating to merchants, investors and business people. Be it its actions like assisting the government in the drafting the Ordinance and the establishment of commercial courts in Punjab, its judicial verdicts or the public discussion by its judges, one could perceive a sense of urgency for refining the dispute resolution system relating to commercial enterprises and the necessity for encouraging the economic activities in the province. The decision by Lahore High Court in Hangzhou Hikvision Company Case⁴ is a prime example where the Court explicitly held that commercial cases are required to be decided at the earliest. The rationale behind the establishment of specialized courts for the resolution of commercial cases and its implication for improving the ease of doing business standing of Pakistan was felicitously epitomized by Hon'ble Justice Shahid Waheed during his address at the inauguration ceremony of commercial courts. He observed, "Given faster and more nuance settling of commercial disputes is a pressing requirement for improving Pakistan's showing on the ease of doing business front, the development of commercial courts' legal landscape is a welcome development. The establishment of commercial courts is a milestone towards achieving the ease of doing business objectives. This step will definitely help the government to attract foreign direct investment and to build the image of Pakistan amongst the nations of the world⁵". At that ceremony Hon'ble Justice Shahid Karim also highlighted the importance of trade and commerce for a country and elaborated on the thinking behind establishment of a separate mechanism for commercial dispute resolution, "In all developed Jurisdictions commercial cases are treated as a category apart. The reason is simple; commerce and trade is the lifeblood of peoples' wellbeing. It must be secure and protected⁶". In the Pizza Hut Case⁷ Hon'ble Justice Jawad Hassan shared his views on the role of commerce and industry in the economic prosperity of a country. He remarked, "With each passing day, the world is becoming more global and more inter-connected, particularly in

⁴ Ms Digital Links Pvt Limited etc v. Ms Hangzhou Hikvision Digital Technology Company Limited (2020 CLC 2108)

⁵ address at the Inaugural ceremony of commercial courts on 11 Sep 2020

⁶ ibid

⁷ M.C.R. (Pvt) Ltd, franchisee of Pizza Hut v. MDA https://opc.lhc.gov.pk/pdf/PIZZA_HUTT_CASE.pdf

the affairs of trade and commerce. The volume of foreign investment and number of such business initiatives are taken as one of the determining traits for measuring economic growth of a country and it has also a direct bearing upon the financial prosperity of the citizens of a country”.

Unnecessary delay in the redressal of commercial disputes has been a *bête noire* of the business community. The *raison d'être* of this Ordinance is to cut the delay in settlement of such matters, and provide an effective legal regime for timely enforcement of commercial contracts. Before further ado, let's have a quick peek into the important provisions of this Ordinance and see what changes this Ordinance has brought to the conventional civil trial.

According to the Ordinance, the commercial disputes are to be heard by specialized courts called ‘Commercial Courts⁸, which shall be presided over by district or additional district judges⁹. It is axiomatic that this is an era of specialization. By no stretch of optimism, a realistic person can expect an ordinary civil court, dealing with all kinds of litigation from issuance of succession certificates to the complex propositions of declaration and partition, to have a command over intricate mercantile jargons. The global tilt towards specialization in a particular field stems from the realization that no one can be the jack of all trades. Better trained and more equipped specialized courts, managed by senior judges, could shatter the status quo by ensuring expeditious disposal of commercial cases. It will be the task of the Commercial Courts’ Secretariat to ensure that the judges are regularly trained and continuously educated¹⁰.

It is a common word around that one needs to have the life of Khidr and the patience of Ayyub (PBUH) to bear fruit of a civil litigation. Not anymore. This Ordinance enjoins that every commercial case shall be decided in 180 days from the day of its institution¹¹. The appellate tribunals will decide the appeal within 120 days¹² and the executing court will dispose of the claims and the objection petitions summarily within 30 days¹³. These provisions will cut the overall life span of a commercial dispute by years. It is a common sight to find a civil suit stuck at arguments on miscellaneous applications like application for grant of temporary injunction or rejection of plaint etc., without the written statement being filed. After the Ordinance, it has not remained possible for a defendant to cause such a delay as he, within 30

⁸ Sec 3(5)

⁹ Sec 3(3)

¹⁰ Sec 4(2)

¹¹ Sec 11(1)

¹² Sec 16 (3)

¹³ Sec 13(2)

days of his first service¹⁴, is bound to seek leave by submitting his written statement to defend the case¹⁵. Any default by the defendant in that regard will amount to an admission of allegations of facts mentioned in the plaint and the Commercial Court will have the discretion to pass a decree or seek other material from the plaintiff¹⁶. If leave to defend is rejected or the defendant fails to fulfill any condition attached to the leave granting order, the Commercial Court shall straight away decree the suit¹⁷. The parties are to submit not only their documentary evidence but also the affidavits containing a gist of the statements of their witnesses along with their pleadings¹⁸. To ensure early disposal of cases, the Commercial Courts are given *carte blanche* to adopt any procedure as the circumstances of the case may warrant¹⁹.

E-filing of suits is another important feature of this Ordinance²⁰. It will, however, take a while before this facility sees the light of the day as the Government is required to frame rules to run the system. The Ordinance has been given a retrospective effect and the entire pending commercial litigation is required to be transferred to the Commercial Courts or the appellate tribunals²¹. Humans have made all the progress around us through the process of trial, error and reappraisal. In this Ordinance, some room is reserved for continuous assessment of the performance of Commercial Courts by a high powered committee comprising judges of High Court and provincial secretaries²². This committee is also empowered to recommend amendments in the Ordinance²³ to overcome its shortcomings (if any). Alternate Dispute Resolution (ADR) is a quick and cost effective way of settling disputes. In the US, the UK and Europe, majority of the litigation is settled through ADR and only a small percentage of cases get to the formal trials. This Ordinance encourages amicable settlement of issues as the Commercial Courts/Tribunals would send every case for ADR where leave to defend is accepted²⁴. Commercial courts' wider power to fix cost of litigation on any party²⁵ will also serve as a stimulus to make parties prefer ADR over the conventional trial.

¹⁴ Sec 8(2)

¹⁵ Sec 8(3)

¹⁶ Sec 8(1)

¹⁷ Sec 8(10)

¹⁸ Sec 7(3)

¹⁹ Sec 6(2)

²⁰ Sec 9(1)

²¹ Sec 14

²² Sec 21(2)

²³ Sec 21(3)

²⁴ Sec 17

A new beginning is always the hardest part of a journey. Only those who make a start succeed in getting to their destination. This Ordinance is a new beginning. Indubitably, one should not expect it to be perfect from the word go. Minor shortcomings in the Ordinance will hopefully be removed before it becomes an Act of the Parliament. I conclude by sharing these optimistic comments, “I wish to see Pakistani commercial courts to work in such a way that people from other countries follow our mechanism. I am sure soon the dreams of mine and those of every Pakistani to see his country high will come true at the earliest²⁶”.

²⁵ Sec 12

²⁶ address By Hon’ble Justice Shahid Waheed at the Inaugural ceremony of Commercial Courts on 11 Sep 2020