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Curbing Delays in Civil Cases: A Case for the Four-Opportunity Rule in Recording Evidence

Mudassir Maqsood[1], Sana Younas[2], Aftab Ahmad Rana[3]

Abstract

This paper examines the effectiveness of the "double warning system" experimented in a Civil Court of Punjab, Pakistan with an aim to curb excessive adjournments and expedite resolution in civil cases. By analyzing empirical data and comparing it to a traditional "last warning" approach, the study reveals that the double warning system, despite potentially leading to a higher volume of appeals, significantly reduces adjournments and expedites case resolution. The research further uncovers strategic dynamics within the appeals process, where respondents, anticipating stricter enforcement under the double warning system, choose to concede early to minimize the litigation time and costs. However, the study emphasizes that case merit remains a crucial determinant in whole process. Finally, the paper argues that the double warning system, by providing clearer consequences for delaying tactics and incentivizing timely evidence presentation,

[1] Civil Judge Ist Class-cum-Judicial Magistrate Section-30, District Judiciary, Lahore High Court, Lahore; Punjab, Pakistan; 16-Digit ORCID https://orcid.org/0000-0003-0660-2398; Ph # +923457860986 Email: dr.m.malik@live.com.
[2] PhD scholar, Government College University, Faisalabad 38000, Punjab, Pakistan; 16-Digit ORCID https://orcid.org/0000-0001-8087-9956, Email: sanimalik.5@gmail.com.
[3] Civil Judge Ist Class-cum-Judicial Magistrate Section-30, District Judiciary, Lahore High Court, Lahore; Punjab, Pakistan, Email: aftabranalhc@gmail.com

contributes to a more efficient and trustworthy legal system. The findings hold significant implications for a broader civil litigation reform, suggesting that implementing similar mechanisms, such as the four-opportunity rule, could effectively address the pervasive issue of excessive adjournments and promote timely justice in Pakistan's legal system.

Keywords: Adjournments, four-opportunity rule, last opportunity, civil litigation, and judicial efficiency.

1. Introduction

Judicial interventions to curb excessive adjournments in the civil trials have become increasingly important in Pakistani civil courts. Recent studies have highlighted the detrimental effects of adjournments on case backlogs, timely justice, and public trust in the legal system.[4] Thus, understanding the impact of specific judicial interventions is crucial for developing effective strategies to address this challenge.[5] This study contributes to this growing body of knowledge by examining the effectiveness of the Supreme Court of Pakistan's (SC) rulings aimed at limiting adjournments for evidence production in civil cases. While the Code of Civil Procedure, 1908 (CPC), does not specify a maximum number of opportunities for the recording of evidence, leaving it to the discretion of a court, this ambiguity in the law creates inconsistencies in practice and potentially enables dilatory tactics hindering the timely resolution of civil disputes. For instance, despite the SC's ruling in *Rana Tanveer Khan Case* that four opportunities for concluding the plaintiff's evidence by a trial court

[4] Javed, S., Iqbal, M A., & Saleem, H A R. (2023, June 29). A Critical Analysis on Causes and Effects of Baseless Adjournments in Pakistan. Pakistan Journal of Humanities and Social Sciences, 11(2), 2293-2298. http://doi.org/10.52131/pjhss.2023.1102.0528.

[5] Imran, M., Idrees, R. Q., & Saeed, M. A. (2024). Pendency of Cases in Pakistan: Causes and Consequences. Current Trends in Law and Society, 4(1), 52-61. https://doi.org/10.52131/ctls.2024.0401.0031.

was sufficient, the trial courts continued granting adjournments without substantial justification.[6] While recognizing the need for stricter enforcement, the SC, in *Moon Enterprises CNG Station case*, of 2020, emphasized the importance of clear warnings about the consequences of failing to present evidence within a specified timeframe set by a court, such as the automatic closure of evidence.[7]

This judicial intervention is crucial because the issue of delays and adjournments in civil trials not only adds to the backlog of cases but also undermines the efficiency and effectiveness of the justice system.[8] The timely resolution of civil disputes is a fundamental aspect of an efficient judicial system.[9] Excessive adjournments, where courts repeatedly postpone hearings, have been identified as a significant contributor to the delay in justice.[10] The consequences of excessive adjournments in civil trials include an increased financial and emotional burden on litigants, the erosion of confidence in the judiciary, and delays in the delivery of justice.[11] The challenge of maintaining judicial efficiency in the face of excessive adjournments is multifaceted. It involves addressing procedural issues, ensuring access to justice, and considering the impact on the overall administration of justice [12]

This study aims to investigate the effectiveness of the judicial interventions in curbing the prevalence of excessive adjournments

[6] Rana Tanveer Khan v. Naseer-ud-din, 2015 SCMR 1401.
[7] Moon Enterprises CNG Station, Rawalpindi v. Sui Northern Gas Pipelines Limited, 2020 SCMR 300.
[8] Javed et al.
[9] Hossain, M. M. (2019). Backlog of cases-civil and criminal justice: a comparative study, Bangladesh perspective. International Journal of Human Rights and Constitutional Studies, 6(3), 214-226. https://doi.org/10.1504/ijhrcs.2019.097967.
[10] Ghosh, Y. (2018). Indian judiciary: an analysis of the cyclic syndrome of delay, arrears and pendency. Asian Journal of Legal Education, 5(1), 21-39. https://doi.org/10.1177/2322005817733566.
[11] Javed et al.
[12] Bilal, M., & Khokhar, F. (2021). Justice delayed or denied: The myth of justice in Pakistan. Journal of Law & Social Studies (JLSS), 3(2), 124-132 https://doi.org/10.52279/jlss.03.02.124132.

in Pakistani civil trials. The scope of the research will encompass an analysis of the existing legal framework, judicial decisions, and the practical implications of judicial interventions aimed at enhancing the efficiency of the civil justice system. To establish the effectiveness of the judicial interventions in curbing excessive adjournments in civil trials, this research will employ quantitative method of research. It will involve analyzing the data related to 171 decided civil cases in a specified civil court in Punjab, before and after specific judicial interventions, such as the provision of four clear opportunities for recording the evidence of a party to a civil suit and strictly enforcing the deadlines for evidence production after a final warning.

2. Literature Review

This literature review examines the legal framework governing adjournments in Pakistani civil trials, highlighting the tension between granting adjournments and ensuring expeditious proceedings. It emphasizes the court's discretion and the need for "sufficient cause," though the term itself remains undefined. Order XVII CPC, particularly Rules 1, 2, and 3, outlines the court's power to adjourn, the potential for imposing costs on unjustified requests of adjournments, and the encouragement for day-to-day hearings once evidence recording begins. Furthermore, Section 148[13] CPC empowers the court to grant adjournments specifically for filing documents or producing evidence, even if the original deadline has passed, subject to any conditions the court deems fit. Section 151 CPC also grants inherent powers to the court, which can be utilized for adjournments in exceptional circumstances. The starting point of this framework is the discretionary power vested in the civil courts. As a general rule, the grant or refusal of an adjournment during the

[13] 148. Enlargement of time. Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to, enlarge such period, even though the period originally fixed or granted may have expired.

trial of a civil matter is the sole discretion of the court.[14] This discretion, however, is not absolute and must be exercised judiciously, considering the facts and circumstances of each case.[15] But exercise of such discretion should be for a valid and justified reason and such reason must be duly established before court and recorded in writing.[16] The principles of natural justice, enshrined in Article 10-A of the Constitution of Pakistan, 1973, mandate that no party should be condemned unheard.[17] Adjournments, therefore, play a crucial role in ensuring that litigants have adequate opportunity to present their cases. However, the pursuit of fairness should not be at the expense of efficiency.

Mrs. Sadia Israr Case reflects a growing judicial consciousness of delays in litigation.[18] It highlights a developing trend towards limiting adjournments, particularly in rent and family cases. The SC has recognized the need to curb excessive and frivolous adjournments. The landmark Rana Tanveer Khan case[19] emphasized the importance of concluding trials expeditiously. The SC, in this case, stressed that courts should grant only "reasonable adjournments" and actively discouraged the delaying tactics employed by litigants. The SC refused to give further opportunity to produce evidence, and in this case, the plaintiff availed only four opportunities, with two warnings. This emphasis on efficiency is further echoed in Moon Enterprises CNG Station case, where the SC underscored the courts' duty to ensure timely justice. The Court held that adjournments should not be granted lightly and emphasized the need for proactive case management by judges.

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[14] Jamil v. Govt. of Sindh 1991 MLD 291 Sindh, Zainab Bibi v. Khuda Buksh, 1986 CLC 1076 LHC.

[15] Zahoor v. Election Tribunal Vehari, 2008 SCMR 322.

[16] Mrs. Sadia Israr v. Mrs. Afzal Yousaf, 2017 CLC Note 182 LHC.

[17] 10A. Right to fair trial. For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

[18] Ibid 16.

[19] Ibid 6.

2.1 Judicial Discretion in Granting Adjournments

While the CPC grants judges the authority to grant adjournments,[20] this power is not absolute and is tempered by the need for efficient and timely resolution of disputes. This delicate balance is reflected in the concept of "sufficient cause" and the interpretation of the phrase "proceed to decide the suit forthwith"[21] both of which underscore the court's active role in managing cases.

2.1.1 "Sufficient Cause" - A Fluid Concept

Rai Muhammad Riaz Case[22] point out that the CPC itself doesn't define "sufficient cause". It grants Judges Discretion but also necessitates a case-by-case determination based on specific facts.[23] *Mian Abdul Karim Case* offers a helpful clarification, defining "sufficient cause" as reasons beyond a party's control, excluding negligence or carelessness. The party's diligence in pursuing the case is also considered.[24] *National High Way Authority Case* emphasizes that if a party seeking an adjournment fails to demonstrate "sufficient cause," the court should proceed without granting the request. This underscores the court's commitment to timely proceedings.[25]

2.1.2 Clarifying "Proceed to Decide the Suit Forthwith"

NIB Bank Limited Case provides that word "forthwith" means without any further adjournment yet it cannot be equated with the words "at once pronounce the judgment".[26] *Muhammad Aslam Case*

[20] Order XVII, Rule 1 and Section 148 of CPC.
[21] Order XVII, Rule 1(3) and Rule 3 of CPC.
[22] Rai Muhammad Riaz v. Ejaz Ahmad, PLD 2021 SC 761.
[23] Muhammad Arshad Naeem v. The State, PLD 2021 SC 927.
[24] Mian Abdul Karim v. Province of Punjab through District Officer (Revenue) Lodhran, PLD 2014 LHC 158.
[25] National High Way Authority through General Manager Motorway v. Haji Shah Ahmad Khan, PLD 2013 LHC 313.
[26] NIB Bank Limited v. Messrs. Pasban Agro Chemicals Company and others, 2023 C L D 1131 LHC.

also clarifies that common misconception and held that "Proceed to decide the suit forthwith" doesn't mandate an immediate judgment. Instead, it empowers the court to move the case forward without further adjournments.[27] *Fiaz Trading Corporation Case* distinguishes between the court's duty to "decide" under Order XVII, Rule 3, and "proceed" under Order XVII, Rule 1. This distinction highlights the court's discretion in choosing the appropriate course of action, which may involve steps other than immediate judgment.[28] This distinction underscores the court's authority to manage the case actively and progress towards resolution, even in the face of a party's default. The SC, in *Hasham Khan Case*, held that while a trial court can dismiss a suit for failure to produce evidence, it should first allow the plaintiff to record their statement and offer the defendant an opportunity to present rebuttal evidence, as per Rule 3 of Order XVII of the C.P.C.[29]

2.2 When Adjournment Should Be Allowed

The adjournment can only be allowed in the aid of justice and not to abuse the process of law.[30] *Sheikh Khurshid Mehboob Alam case* clarifies a crucial point: if a case is adjourned without a specific request from the plaintiff or defendant, their right to adduce evidence cannot be revoked. This protects parties from being penalized for adjournments they didn't seek.[31] *Muhammad Jamil Case* reinforces the principle that if the previous adjournment wasn't granted at the request of the party failing to produce evidence, their right to present evidence isn't automatically forfeited.[32] *Mubashir Khan Case also* provides an interesting nuance. If a "last opportunity" adjournment, even if conditional on costs, is granted without objection from the opposing party, it's treated as a regular

[27] Muhammad Aslam v. Nazir Ahmad, 2008 SCMR 942.
[28] Fiaz Trading Corporation v. WAPDA, 1995 CLC 483 LHC.
[29] Hasham Khan & others v. Haroon ur Rasheed & Others, 2022 SCMR 1793.
[30] Bashir Ahmad and others v. Malik Jehangir Khan, Member (Consolidation), Board of Revenue and others, 1992 MLD 1566 LHC.
[31] Sheikh Khurshid Mehboob Alam v. Mirza Hashim Baig, 2012 SCMR 361.
[32] Muhammad Jamil v. Mst. Inayat Begum, 2012 YLR 2658 LHC.

adjournment, and Order XVII, Rule 3, doesn't apply.[33] But *Mian Abdul Karim Case* provides that if a party has frequently sought adjournments for evidence production and fails to provide a valid reason for yet another delay, the court should proceed with the case. This reinforces the principle that Order XVII, Rule 3, can be applied even if the defaulting party doesn't explicitly request the final adjournment. The court can determine that excessive delays have occurred, regardless of who requested the specific adjournment in question. It is also because that O.XVII R.3 CPC contains no condition that the request for adjournment must have been made by the defaulting party, on last date.[34]

Messrs Mukhtar Brothers Case illustrates the courts' disapproval of improper adjournment request. Counsel's absence for supposed "compromise talks" without proper notification was deemed unacceptable. This underscores the need for genuine reasons and proper procedure.[35] *Inamur Rehman Gillani Case* acknowledges the validity of adjournments due to counsel's simultaneous engagement in a higher court, but, such requests should be made in good faith. A pattern of adjournments or attempts to obstruct justice can lead to refusal.[36] *Muhammad Aslam Case* highlights a crucial exception to dismissal. If the plaintiff is present but hasn't produced evidence, the court should offer him a chance to testify personally under Order XVII, Rule 2, preventing automatic dismissal.[37] Law also protects the plaintiff from penalties if the previous adjournment wasn't due to their actions. If the presiding officer was unavailable, the plaintiff's right to present evidence is preserved. It is because that such preceding adjournment cannot be attributed to any party.[38]

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[33] Mubashir Khan v. Javed Kamran alias Javed Iqbal, 2007 MLD 1072 LHC.
[34] Mian Abdul Karim v. Province of Punjab, PLD 2014 LHC 158.
[35] Messrs Mukhtar Brothers v. Mst. Hawa Bai Admani and 9 others, 1992 MLD 1045 Sindh.
[36] Inamur Rehman Gillani v. Jalal Din and another, 1992 SCMR 1895.
[37] Muhammad Aslam v. Nazir Ahmed, 2008 SCMR 942.
[38] Shaheen, Saleem, Rao Zohaib, Mirza Rizwan Baig, Abdullah Khan, Hafiz Ijaz, Rana Bilal, Zeeshan AbuBaker, and Muhammad Amin. 2021. "Premier Law Journal".

2.3 When Adjournment Should Be Refused

Gull Hussain Case establishes a clear principle: if a party consistently fails to produce evidence despite being granted multiple adjournments, further delays are unacceptable, potentially leading to dismissal.[39] *Inayat Begum Case* highlights that when a party's actions hinder the court's ability to proceed; invoking Order XVII, Rule 1 for dismissal is justified. This emphasizes that parties have a duty to facilitate, not obstruct, the judicial process.[40] *Umer Zeeshan Case* emphasizes that a party's deliberate or negligent disregard for court proceedings, even after being granted time, empowers the court to proceed with the suit, potentially leading to dismissal. This underscores the courts' intolerance for deliberate delays.[41] *National High Way Authority Case* presents a scenario where a party, despite their lawyer's presence being recorded, fails to produce evidence. This is deemed willful non-compliance, leaving the court no choice but to refuse further adjournments and potentially dismiss the suit.[42] Adjournment should not be granted to a party using dilatory tactics. The courts recognize that the behavior of parties and their lawyers is relevant when considering adjournments. *Tariq Manzoor Case* highlights the SC's emphasis on this factor, suggesting that a history of dilatory tactics could influence the court's decision.[43] *Settlement Authority Case* establishes that adjournments sought by proxy counsel when neither the party nor their primary lawyer is present are generally disfavored. This reinforces the importance of the parties' active involvement in the proceedings.[44] *Muhammad Hussain Case* provides a noteworthy exception. If the court itself schedules the hearing, adjournments should be refused, and the court should proceed under Order XVII, Rule 3, rather than dismissing the suit. This prevents parties from being penalized for

[39] Gul Hussain v. Muhammad Ayub, 1986 SCMR 1349.
[40] Inayat Begum v. Shah Muhammad, 2014 YLR 1797 LHC.
[41] Umer Zeeshan v. Additional District Judge, 2018 MLD 1658 LHC.
[42] National High Way Authority v. Shah Ahmad Khan, PLD 2013 LHC 313.
[43] Tariq Manzoor v. Abdul Aziz, 1986 SCMR 1688.
[44] Settlement Authority and another v. Mst. Akhtar Sultana, 1976 SCMR 401.

the court's scheduling decisions.[45] SC has discouraged the adjournment of cases on the basis of 'personal reason' alleged by the counsel of party seeking adjournment by holding that the first duty of an Advocate is to attend the court work and after doing so he may attend to his personal work.[46] Adjournment of case on the ground of illness of counsel of party can also not be allowed unless the application for adjournment is coupled with medical certificate, showing the present ailment of counsel.[47]

2.4 Adjournments During Presiding Officer's Leave

In view of Rule 5 of Order XVII, CPC, the Reader of the Court can adjourn the case and fix a date to enable the Court to fix another date for further conduct of proceedings, in absence of the Presiding Officer of the Court.[48] *Qamar Sultan*[49] *and Kamran Co. Cases*[50] emphasize the reader's duty to provide written slips to parties indicating the next hearing date. This approach ensures transparency and prevents disputes arising from miscommunication. If such requirements are fulfilled, the date fixed by the Reader shall become the date fixed for proceeding with the suit or proceedings. However, if a party was absent without a valid reason, the lack of a slip might not prejudice them.[51] SC clarifies that while the reader can adjourn, they cannot issue orders with penal consequences like dismissal under Order XVII, Rule 3. This power remains solely with the presiding officer. If the reader fails to follow proper procedure, the adjournment might be deemed invalid.[52]

[45] Muhammad Hussain v. Abdul Hameed, PLD 2019 Quetta 106.
[46] Niamatullah Khan Advocate v. Federation of Pakistan, 2022 SCMR 133.
[47] Crescent Textile Mills Limited, Haripur v. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar, PLD 2022 SC 247.
[48] Nowsheri Khan V. Said Ahmad Shah, 1983 SCMR 1092.
[49] Qamar Sultan V. Murtaza alias Dhakee Shah, 1985 CLC 2984 LHC.
[50] Kamran Co. V. Modern Motors, PLD 1990 SC 713.
[51] Ehsan-ul-Haq v. Zulfiqar Khan, 2001 MLD 890 LHR.
[52] Muhammad Ramzan v. Khadim Hussain, 2007 SCMR 1269.

2.5 Bridging the Gap: Codifying Adjournment Rules in the CPC

Despite judicial pronouncements emphasizing efficiency, a noticeable gap exists within the CPC, which, while providing for adjournments, lacks a codified rule akin to the judicially established "four opportunity rule". This rule, limiting adjournments for evidence recording to four, exemplifies the SC's power under Article 189 of the Constitution of Pakistan to shape legal rules through precedent, particularly in areas where legislation, like the CPC, is silent. However, this power is to be exercised judiciously, recognizing the legislature's primacy in lawmaking. As cases like *Muhammad Nawaz Sharif vs. President of Pakistan*[53] and *State vs. Zia-ur-Rehman*[54] highlight, the judiciary focuses on interpreting, not creating laws, respecting the separation of powers. While the "four opportunity rule," developed through precedent, streamlines judicial processes, the legislature retains the authority to codify or amend it, maintaining the balance between judicial innovation and legislative supremacy.

This gap necessitates legislative intervention to incorporate a clear and unambiguous provision for a time-bound framework for adjournments, similar to the four-opportunity rule. Codifying this rule within the CPC would ensure its uniform application, enhance transparency, and contribute significantly to reducing delays in civil litigation. However, a valid concern arises regarding the potential ineffectiveness of relying solely on codification, as the 30 days codified rule for filing written statement is being ignored in practice. Therefore, a multi-pronged approach is necessary, going beyond mere codification to ensure the effectiveness of a time-bound framework for adjournments. This approach should include the training programs of judges to be conducted to emphasize the importance of adhering to codified rules for adjournments. Furthermore, leveraging technology like e-filing and case

[53] PLD 1993 SC 473.
[54] PLD 1973 SC 49.

management systems with automated reminders and notifications can minimize delays.[55] Finally, consistent advocacy for increased allocation of resources to the judiciary, including the appointment of more judges and court staff, is crucial to handle caseloads effectively.[56] This combined approach, addressing legal mechanisms and practical challenges, aims to create a more efficient and timely justice system in Pakistan.

3. Research Methodology

After extensive literature review of precedents and statutory law, the empirical part of this study examines the impact of a key procedural interpretation of Order XVII rule III of CPC, aimed at addressing this issue: the principle of not adjourning the case even on fourth opportunity for recording of evidence and treating the maximum of four clear opportunities for evidence recording in civil suits more than enough. This principle was established in *Rana Tanveer Khan Case* which was dismissed by trial court just one month and 26 days after start of trial.[57] It represents a significant step towards curbing excessive delays and promoting a more efficient and timely justice system. By empirically evaluating the effectiveness of this procedural intervention, this study aims to contribute valuable insights into potential solutions for a challenge faced by judicial systems globally: balancing the right to a fair hearing with the need for expeditious proceedings.

This study analyzed case outcomes in the Civil Court of Ahmad Pur Sial, District Jhang, Punjab, Pakistan, comparing cases where the "four-opportunity rule" was strictly applied with those where it was not. By examining the frequency of adjournments, the reasons for delays, and the overall time taken to dispose of cases, this study aims

[55] Abbasi, M. Z., & Khan, M. U.. Pakistan's e-court system: A leap towards a modern judicial system. *Journal of Law and Technology*, *7*, 123-145.
[56] "Improving Case Flow Management in the High Court: A Guide for Judges" by the Federal Judicial Academy, 2021.
[57] Rana Tanveer Khan v. Naseer-ud-din, 2015 SCMR 1401.

to assess the effectiveness of the four-opportunity rule in promoting efficient litigation and ensuring timely access to justice.

3.1 Research Design and Data Collection

This study employs an empirical design using primary data collected from 171 decided civil cases between January 2021 and October 2023, instituted from 2009 to 2023. The dataset comprises cases where:

The four-opportunity principle was applied: This principle, implemented in cases where issues were framed between January 2021 and October 2023, involves a double warning system. Initially, upon directing the plaintiff to present their evidence, the court categorically warned that a maximum of four clear opportunities will be granted for this purpose. Subsequently, if the plaintiff fails to conclude their evidence within the first three opportunities, a final and binding "last opportunity" warning was issued, emphasizing the strict deadline.

The four-opportunity principle was not applied: This study also incorporates cases filed since 2009 where issues had already been framed before January 2021, representing a period predating the implementation of the four-opportunity rule. In these cases, no initial warning regarding a fixed number of opportunities for evidence production was given at the commencement of the trial. Instead, courts relied on issuing a single "last opportunity" warning, often guided by the precedent set in the Moon Enterprises case.

The data collection process involved a thorough review of case files, court registers, and order sheets to extract information on the number of adjournments granted, the reasons for delays, and the overall time taken to dispose of the cases. Data was not available electronically. It was collected systematically using a standardized form to ensure consistency. Data includes Applications under Section 12(2) CPC, Applications under Arbitration Act, 1940, Disobedience Petition, Objection Petitions, Restoration Petition,

and Suits for Cancellation of Documents, Recovery of Damages, Declaration, Partition, Permanent Injunction, Recovery of Possession, Recovery of Money, Rendition of Account and Specific Performance.

3.2 Data Analysis Plan

The collected data will be analyzed using descriptive statistics and comparative analysis. The study will compare case outcomes, dismissal for non-production of evidence (DNPE), conclusion within four opportunities, between cases where the four-opportunity rule was strictly applied and those where it was not. This comparative analysis will help determine the effectiveness of the rule in reducing adjournments and promoting timely case disposal. Additionally, the analysis will explore the relationship between the number of warnings issued, evidence conclusion, case dismissals, and appeal outcomes to gain a comprehensive understanding of the principle's impact on civil litigation.

3.3 Background and Context

The issue of excessive adjournments in Pakistani courts presents a significant obstacle to the efficient administration of justice, often stemming from a confluence of factors such as procedural loopholes, dilatory litigation tactics, and inconsistent judicial enforcement of timelines.[58] A 2017 report by the International Commission of Jurists highlighted that adjournments are among the leading causes of delays in Pakistan's judicial system, impacting the right to a fair and expeditious trial. The report cited a lack of clear guidelines and accountability mechanisms as contributing factors to this problem.[59] Addressing this challenge is paramount to upholding

[58] Ullah, F. (2022, June 30). Multiple Frames of Reference: Causes of Delay in Civil Suits in Swat, Khyber Pakhtunkhwa. , 6(II). https://doi.org/10.35484/pssr.2022(6-ii)77.

[59] International Commission of Jurists.. *Pakistan: Justice delayed is justice denied - The way forward for criminal justice reform*. Retrieved from

the right to a fair and expeditious trial, a fundamental right enshrined in Article 10A of the Constitution of Pakistan and echoed in international instruments like Article 14 of the International Covenant on Civil and Political Rights. The Code of Civil Procedure, 1908 provides a legal framework for adjournments under Order XVII, which governs the procedures for granting adjournments and recording evidence. While the CPC emphasizes that adjournments should only be granted for "sufficient cause" and to promote the ends of justice, the broad discretion afforded to judges has, in practice, resulted in varied interpretations and applications of these principles, as noted Dr. Muhammad Tahir Mansoori in his 2019 article "Adjournments and Delays in Civil Litigation in Pakistan: A Critical Analysis" published in the Pakistan Law Journal.[60]

The SC has consistently recognized the detrimental impact of excessive adjournments on timely justice. In Moon Enterprises Case, the SC strongly denounced the practice of granting repeated "last opportunities" for evidence production.[61] This landmark case highlighted that such practices not only undermine the finality of court orders but also foster dilatory tactics, thereby impeding the efficient resolution of disputes. The Court underscored the importance of enforcing orders granting a final opportunity for evidence production with a clear warning of automatic closure if disregarded. Building on this precedent, the SC in *Rana Tanveer Khan Case* further crystallized the principle of not providing more than four clear opportunities for evidence recording in civil cases.[62] This "four-opportunity rule" aimed to curb the excessive granting of adjournments and ensure that parties diligently pursue their cases. This approach aligns with international best practices, as highlighted

https://www.icj.org/wp-content/uploads/2017/11/Pakistan-Justice-system-Advocacy-Analysis-Brief-November-2017-Eng.pdf.

[60] Mansoori, M. T., Adjournments and delays in civil litigation in Pakistan: A critical analysis. *Pakistan Law Journal, 50*.

[61] Moon Enterprises CNG Station, Rawalpindi v. Sui Northern Gas Pipelines Limited, 2020 SCMR 300.

[62] Rana Tanveer Khan v. Naseer-ud-din, 2015 SCMR 1401.

in the 2018 report "Efficiency and Fairness: A Global Review of Case Management Practices" by the Hague Institute for the Internationalization of Law, which emphasizes the importance of clear and enforceable timelines in civil proceedings.[63]

In line with the principles established in Moon Enterprises, the Lahore High Court took a proactive step in 2022 to ensure greater uniformity and efficiency in trial proceedings. Through a directive (Letter No. 4654/DDJ/MNT/Dy.137/22 dated 30.04.2024), the LHC mandated that all district courts under its jurisdiction implement "Moon Enterprises CNG Station Case." This rule limits the number of opportunities provided to parties for recording evidence in civil suits to a maximum of four, with the last opportunity being final and binding. The Civil Court of Ahmad Pur Sial, which serves as the focal point of this study, implemented this directive, offering a valuable opportunity to empirically assess its impact on case management and disposal of civil cases. This initiative by the LHC reflects a growing awareness within Pakistan's judiciary of the need for proactive measures to address the issue of adjournments and aligns with recommendations made by organizations like the United Nations Office on Drugs and Crime in their 2020 publication "Handbook on Case Management: A Best Practices Tool for Judicial Administrators," which advocates for clear rules and judicial training on case management techniques.[64]

Following is the year wise institution Summary of decided civil cases / Research Data. All the cases mentioned in Table 1 were

[63] Hague Institute for the Internationalisation of Law. *Efficiency and fairness: A global review of case management practices*. Retrieved from https://www.hiil.org/publication/efficiency-and-fairness-a-global-review-of-case-management-practices/.

[64] United Nations Office on Drugs and Crime. *Handbook on case. management: A best practices tool for judicial administrators*. Retrieved from https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Handbook_on_Case_Management.pdf.

decided from January 2021 to October 2023 and encompasses both contested cases and those dismissed for non-production of evidence.

Table 1

Year wise Institution Summary of Research Data														
Institution Year	**2009**	**2010**	**2011**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**
Decided Contested. Cases	1	1	5	5	5	3	7	6	10	6	4	10	9	3
Decided DNPE Cases	0	0	0	1	0	1	4	2	5	22	14	34	13	0

4. Results and Discussion [Findings of the Study]

Table 2 provides a comprehensive analysis of 15 types of civil cases, which reveals a strong trend favoring the “double warning system” in expediting case resolution. The data, encompassing 171 cases, provides a nuanced view of the four-opportunity rule's application and its impact on litigation behavior in different case categories. While the overall numbers show that in 103 out of 171 cases, the four-opportunity warning was issued, with evidence concluding within those four instances in only 11 cases; a closer examination of individual case types reveals varying trends. For instance, "Declaration" cases, forming the largest category with 70 cases, saw the four-opportunity warning issued in 49 cases, suggesting a stricter approach in these potentially complex disputes. However, this strictness didn't necessarily translate to quicker evidence conclusion, as only 11 "Declaration" cases concluded within four opportunities, but reduced the shelf life of cases from average six-years ten-months to one-year nine-months, as discussed in Table 4.

Table 2

Sr. No.	*Nature of Case*	*Cases*	*Warning*		*Evidence concluded*		*DNPE on 4th*	*DNPE on >4th*	*Cont*	*Opportunities*		*Appeal*		*Remand*		*Appeal dismissed*	*Pending*
			Single	**Double**	**4≤**	**≥4**				**Plaintiff**	**Defendant**	**Yes**	**No**	**Statement**	**Merit**		
1	**Application 12(2)**	**8**	**7**	1	-	4	-	4	4	287	110	2	2	-	2	-	-
2	**Arbitration**	**5**	**0**	5	-	-	2	3	-	37	-	1	4	1	-	-	-
3	**Cancellation of Document**	**3**	**2**	1	-	2	-	1	2	52	24	-	1	-	-	-	-
4	**disobedience Petition**	**1**	**1**	-	-	1	-	-	1	30	5	-	-	-	-	-	-
5	**Recovery of Damages**	**3**	**3**	-	-	3	-	-	3	103	50	-	-	-	-	-	-
6	**Declaration**	**70**	**21**	49	11	23	17	19	34	1096	417	9	27	4	-	2	3
7	**Objection Petition**	**1**	**1**	-	-	1	-	-	1	13	9	-	-	-	-	-	-
8	**Partition Suit**	**4**	**1**	3	-	1	1	2	1	27	15	-	3	-	-	-	-
9	**Permanent Injunction**	**15**	**3**	12	-	2	9	4	2	33	17	2	11	2	-	-	-
10	**Recovery of Possession**	**4**	**2**	2	-	3	-	1	3	29	80	-	1	-	-	-	-
11	**Recovery Suits**	**9**	**4**	5	-	5	2	2	5	137	80	-	4	-	-	-	-
12	**Rendition of Accounts**	**3**	**2**	1	-	-	2	1	-	25	-	-	3	-	-	-	-
13	**Restoration Petition**	**1**	-	1	-	-	-	1	-	7	-	-	1	-	-	-	-
14	**Specific Performance**	**44**	**21**	23	-	19	14	11	19	911	431	10	15	5	-	3	2
15	**Total**	**171**	**68**	**103**	**11**	**64**	**47**	**49**	**75**	**2787**	**1238**	**24**	**72**	**12**	**2**	**5**	**5**

Examining DNPE cases, we see that "Declaration" cases again top the list with 36 DNPE cases on and after the 4th opportunity, indicating potential difficulty in obtaining evidence within the stipulated timeframe for this case type. Interestingly, despite a significant number of DNPE cases across categories, the overall appeal rate remains relatively low, with only 24 out of 96 DNPE cases being appealed. This could point to a perception of the DNPE as a justified outcome when issued after multiple opportunities or reluctance to engage in further litigation due to costs and time constraints. Out of 24 appeals, 12 were accepted on the basis of the statement of respondent expressing no objection on the acceptance of appeal, reasons of which are discussed under Table 8. Next Table illustrates the average age of both Contested and DNPE cases across different institutions from 2009 to 2023.

Table 3

Institution wise average age of cases				
Year	**Cont**	**Shelf Life of Cont Cases**	**DNPE**	**Shelf life of DNPE Cases**
2009	1	12-Years 11-Months	0	0
2010	1	13-Years	0	0
2011	5	11-Years 2-Months	0	0
2013	5	8-Years 11-Months	1	9-Years 5-Months
2014	5	7-Years 11-Months	0	0
2015	3	7-Years 3-Months	1	6-Years 4-Months
2016	7	5-Years 6-Months	4	5-Years 3-Months
2017	6	4-Years-8-Months	2	4-Years 7-Months
2018	10	3-Years 11-Months	5	3-Years 3-Months
2019	6	3-Years 6-Months	22	3-Years 3-Months

2020	4	2-Years 5-Months	14	1-Years 11-Months
2021	10	1-Year 3-Months	34	1-Year 7-Months
2022	9	00-Years 8-Months	13	1-Year 00-Month
2023	3	00-Years 7-Months	0	0

Table 3 reveals a compelling narrative about case duration and the impact of DNPE cases over the years. A striking trend is the significant decrease in the average age of both contested cases and DNPE cases from 2009 to 2023. A contested case instituted in 2009, took 13 years to resolve, while by 2023, this duration plummeted to a mere 7 months. Similarly, DNPE cases saw their shelf life shrink from 9 years and 5 months for a case instituted in 2013 (the first year with recorded DNPE data) to a mere one year in 2022. This drastic reduction suggests a positive shift towards quicker case resolution, potentially driven by double warning principle.

Another notable observation is the surge in the number of DNPE cases from 2019 onwards. While only a handful of DNPE cases were recorded annually before 2019, the number skyrocketed to 22 in 2019 and continued to rise in subsequent years. This increase was due to stricter application of the "last warning" in pending old cases, wherein the "four opportunity warning" was not given. This surge coincides with the decreasing shelf life of cases, indicating a potential link between the two types of warning. It is plausible that the increased DNPE cases, has contributed to faster contested case resolutions. While the shrinking case durations signify a positive development, the increased DNPE cases raises crucial questions, which are answered in later part of this study.

Table 4

Single Warning Vs. Double Warning								
	Contested Cases					**DNPEs Cases**		
	Cases	**Av. Age of Suit**	**Av. Age of Trial**	**Av. Adj (P)**	**Av. Adj (D)**	**Cases**	**Av. Age of Suit**	**Av. Adj**
Single Warning	42	6.10	5.30	29.16	15.23	26	3.10	16.57
Double Warning	33	1.90	1.30	6.15	3.97	70	2.30	6.59
Total	75	4.00	3.30	17.66	9.60	96	2.70	11.58

Av. = Average, Adj = Adjournment, P = Plaintiff, D = Defendant

The results comparing single and double warning systems in contested and DNPEs cases shown in Table.4 reveal a compelling narrative about their impact on case durations and court proceedings.

The analysis of contested cases reveals a stark contrast in litigation timelines between the single and double warning systems. Cases under the single warning system endured an average lifespan of 6.1 years from institution to decision, with trials themselves averaging 5.3 years. This protracted timeline is accompanied by a high frequency of adjournments, with plaintiffs averaging 29 adjournments and defendants averaging 15. In contrast, the double warning system demonstrates remarkable efficiency, achieving an average case lifespan of 1.9 years and trial duration of 1.3 years. This acceleration is mirrored in the significantly lower average adjournments, with plaintiffs utilizing 6 and defendants utilizing 4.

Examining cases dismissed for non-production of evidence reveals a similar, though less pronounced, trend. While the average age of

DNPE cases under both systems is relatively close (3.1 years for single warning and 2.3 years for double warning), the average number of adjournments granted diverges significantly. Single warning DNPE cases averaged 16.5 adjournments, while double warning cases averaged 6.5, suggesting that even in instances of eventual dismissal, the double warning system exerts greater pressure to expedite proceedings. The data strongly suggests that the double warning system contributes to a more efficient and timely resolution of cases, particularly for contested cases. This underscores the potential of stricter enforcement mechanisms in curbing delays and promoting a more efficient justice system.

Table 5

Appeals Against DNPEs Cases				
	DNPEs	Appeal	No Appeal	%age
Single Warning	26	7	19	26.92
Double Warning	70	17	53	24.28
Total	96	24	72	25

Table.5 provides the analysis of appeals against DNPEs, which reveals a noteworthy trend: despite a significantly larger number of DNPEs under the double warning system (70 vs. 26), the appeal rate is notably lower (24.28%) compared to the single warning system (26.92%). This suggests that the double warning system, while leading to more DNPEs, might also be associated with a higher likelihood of those decisions being accepted by litigants, potentially due to a perceived fairness in the process or a clearer understanding of the consequences for non-compliance.

Table 6

Fate of Appeals against DNPEs Cases				
	Appeals	Accepted	Dismissed	Pending
Single Warning	7	2	3	2
Double Warning	17	12	2	3
Total	24	14	5	5

Table.6 reveals intriguing trends in the fate of appeals against DNPEs cases when comparing the single warning system to the double warning system. Firstly, the double warning system appears to result in a significantly higher number of appeals. Out of 24 total appeals, 17 originated from cases decided under the double warning system, compared to only 7 from the single warning system. Secondly, despite the higher volume of appeals, the double warning system demonstrates a greater likelihood of those appeals being accepted. 71% (12 out of 17) of appeals under the double warning system were accepted, compared to only 29% (2 out of 7) under the single warning system. This suggests that appellate courts may be more inclined to overturn DNPEs, but analysis of grounds for appeal acceptance under Table.8 reflect that the acceptance of appeals also favor the double warning rule.

Table 7

Appeals Against DNPEs on 4th and >4th						
	DNPEs	Appeal	No Appeal	Accepted	Dismissed	Pending
4th	47	7	42	4	3	0
>4th	49	17	32	10	2	5

While the disparity in appeal rates for DNPEs issued on the 4th opportunity versus those issued later might seem to suggest a prevalence of false and frivolous decrees, a closer look reveals a different perspective. See Table 7. The low appeal rate for 4th opportunity DNPEs (15%) could indicate the effectiveness of the four-opportunity system itself. By the 4th opportunity, parties have received ample warnings and chances to present their evidence. Those facing a DNPE at this stage likely recognize their weak position and choose not to appeal, understanding the court's justification. Furthermore, the higher appeal rate for post-4th opportunity DNPEs (35%) does not necessarily imply unfair decrees but rather a strategic decision by parties to exhaust all possible avenues, even when their grounds for appeal might be weaker. This persistence could stem from a belief that court was more lenient after multiple adjournments, even if that leniency does not always translate to successful appeals. Therefore, the data might not necessarily point to a flawed system but rather a system that, while not perfect, encourages timely presentation of evidence and offers multiple opportunities for redress.

Table 8

Reason of acceptance and dismissal of Appeals				
	Appeals	Accepted		Dismissed
		Statement	Merit	Merit
Single Warning	2	0	2	3
Double Warning	12	12	0	2
Total	14	12	2	5

The data of Table 8 reveals that a substantial portion of accepted appeals (12 out of 14) under the double warning system are uncontested. On the other hand, the consistent dismissal of appeals based on "merit" across both systems emphasizes that even with procedural variations; the inherent strength of the case remains a pivotal factor in appellate outcomes. The prevalence of "statement" based appeal acceptances under the double warning system, where respondents voice no objection but with the caveat of "heavy cost" to the appellant, reveals a strategic dynamic within the appeals process. Respondents, likely anticipating the Trial court's early decision due to the stricter enforcement under the double warning system, opt to minimize their own litigation costs by conceding early. This strategy allows them to avoid further legal expenses while potentially securing cost awards from the appellant. Essentially, respondents are choosing to strategically lose the battle (the appeal) while positioning themselves to win the war (cost recovery and early decision of lis). This trend highlights a potential unintended consequence of the double warning system, where it’s very strictness might incentivize a calculated response from respondents seeking to mitigate their losses rather than contesting the appeal on its merits. Despite this procedural maneuvering, the

consistent dismissal of appeals based on "merit" across both systems underscores that the underlying strength of a case remains a critical factor in appellate outcomes, even when strategic concessions come into play. Ultimately, the double warning system benefits in expediting justice and deterring delaying tactics.

It is important to note that while the double warning system might appear to lead to a higher volume of appeals against DNPE cases, a closer examination reveals a more nuanced picture. All remanded cases (12) returned with a directive for the plaintiff to receive another opportunity to present evidence. Notably, upon receiving the case file, plaintiffs in these instances successfully concluded their evidence on the very first date. This highlights that even in cases where appeals led to remands, the core objective of the four-opportunity rule – ensuring expeditious evidence presentation and trial conclusion– was ultimately fulfilled.

4.1 Advantages of the Double Warning System

i. The system demonstrably decreased the number of adjournments sought and granted in civil cases, leading to faster progression towards resolution.
ii. By curbing excessive adjournments, the double warning system contributed to a significant reduction in overall case duration, promoting judicial efficiency.
iii. The stricter consequences associated with non-compliance under the double warning system act as a deterrent against parties employing delaying tactics for strategic advantage.
iv. The system helps level the playing field between parties, particularly when one side benefits from prolonging the litigation at the expense of the other's rights. The double warning system, with its stricter consequences for non-compliance, effectively curtails the maneuvering of parties who might misuse adjournments to maintain an advantageous status quo, be it the possession of property or the enforcement

of a specific right. By imposing a clear structure and limiting adjournments, the system prevents undue prolongation of proceedings, ensuring a more equitable playing field and a faster path towards a just resolution for the party whose rights are being infringed upon.

v. The four-opportunity rule inherent in the double warning system incentivizes parties to be prepared and present their evidence efficiently within the given timeframe.
vi. Even with stricter enforcement, the system ensures that both parties have ample and clearly defined opportunities to present their case, maintaining fairness in the process.
vii. By emphasizing the importance of adhering to schedules and deadlines, the double warning system fosters a greater respect for the court's time and resources.
viii. A more efficient and just legal system, achieved through measures like the double warning system, can contribute to greater public trust and confidence in the judiciary.
ix. By streamlining cases and minimizing unnecessary delays, the double warning system alleviates the burden on court dockets, allowing judges to allocate their time and resources more effectively to other pending cases.
x. While the double warning system may initially lead to some strategic concessions to avoid penalties, the overall faster resolution can potentially translate into reduced legal fees and expenses for both parties in the long run.
xi. By promoting timely justice and discouraging procedural manipulation, the double warning system contributes to upholding the rule of law and ensuring that legal processes are fair, efficient, and serve their intended purpose.

5. Recommendations for Legal Reforms

To ensure that judicial pronouncements aimed at curbing delays translate into consistent and effective practice, legislative reform is

essential. Specifically, amending the Code of Civil Procedure to include a clear and unambiguous provision for a time-bound framework for adjournments, akin to the four-opportunity rule, is recommended.

This codified rule should limit the number of adjournments. A maximum number of adjournments for specific purposes, such as evidence recording, should be stipulated, similar to the four-opportunity rule. It should clearly define acceptable grounds for seeking adjournments, moving away from vague justifications like "personal reasons." It should bind the judges to record reasons for granting adjournments in writing, promoting transparency and accountability. Codifying the four-opportunity rule, along with other measures to streamline adjournment procedures, would be a significant step towards a more efficient, transparent, and fair civil justice system in Pakistan.

5.1 Interim Procedural Framework

While legislative amendment of the CPC is the most effective long-term solution, immediate steps can be taken to implement the principles of time-bound adjournments within the existing framework. Drawing upon the precedent set by the SC in the Tanvir Khan case, wherein SC refused to grant further opportunity (after four opportunities) and which underscores the judiciary's authority to limit adjournments for efficient case management, the following procedural framework is recommended for immediate implementation.

5.1.1. Defining an "Opportunity": An "opportunity" refers to a single scheduled hearing date designated for a specific stage of evidence presentation (e.g., examination-in-chief of a witness, presentation of documentary evidence).

5.1.2. Initial Order and Notice

- At the commencement of trial or after framing of issues, the Court shall issue a written order outlining the four-opportunity framework for each party. This order will be served on both parties, ensuring clear notice.
- The order will direct both parties to present their evidence, specifying the first scheduled hearing date as their first opportunity.
- The order will include a clear warning that, except for justifiable reasons as per the CPC, failure to present all evidence within the allotted four opportunities may lead to the Court proceeding under Order XVII, Rule-3 of CPC, including pronouncing judgment based on available evidence.

5.1.3. Subsequent Hearing Dates and Warnings

- On each subsequent hearing date designated for evidence presentation, the Court shall verbally remind the party of the number of opportunities they have availed and the number remaining. This reminder will be recorded in the court's order sheet.
- If a party fails to conclude their evidence presentation within the first three opportunities, the Court shall issue a second and final written warning when granting the fourth and final opportunity. This warning will reiterate the potential consequences of non-compliance, including but not limited to adverse orders under Order XVII, Rule-3 of the CPC.
- The same four-opportunity framework and warning mechanism shall apply to the defendant following the conclusion of the plaintiff's evidence presentation.
- In case of failure of the plaintiff or the defendant to conclude his evidence on fourth clear opportunity, the Court will

proceed under Order XVII, Rule-3 of CPC, including pronouncing judgment based on available evidence.

5.1.4. Justifiable Adjournments and Record-Keeping

- The Court retains the discretion to grant adjournments beyond the four opportunities in exceptional circumstances, strictly adhering to the principles of Order XVII of the CPC.
- Acceptable grounds for exceeding the four opportunities include, but are not limited to illness of a party or counsel, supported by medical documentation, unavoidable absence of a witness, supported by a proper application and documentation, compelling reasons (e.g., death in the family, sudden illness), force majeure events or unforeseen circumstances beyond the control of the parties, such as natural disasters or unforeseen government actions, that directly prevent court proceedings. Crucially, when granting any adjournment, the Court shall meticulously record the reasons in writing on the order sheet, ensuring transparency and accountability.

By adopting this structured and transparent approach, the Pakistani judicial system can take significant strides towards a more efficient and timely resolution of civil disputes, upholding the constitutional right to a fair and expeditious trial for all citizens.

6. Conclusion

Based on the analysis and findings presented, the “double warning system” demonstrates a significant impact on the efficiency and timeliness of case resolution in civil cases. The data indicates that this system encourages more expeditious case handling, leading to fewer adjournments and potentially a higher volume of decisions. Furthermore, the analysis reveals strategic dynamics within the appeals process. Respondents facing the double warning system

may be more likely to concede early, potentially to minimize litigation costs. However, this tactical behavior does not diminish the importance of case merit, but ensured the recording of the plaintiff's evidence on the day of receiving remanded file. Overall, the "double warning system" shows promise in curbing delays, promoting efficiency, and deterring delaying tactics in civil cases. While further research and observation are needed to assess its long-term effects and potential broader application, the empirical evidence, coupled with the principles enshrined in Order XVII of the CPC, suggests that implementing systems like the four-opportunity rule in civil litigation could contribute to a more efficient and trustworthy legal system. Such reforms hold the potential to expedite dispute resolution, reduce the burden on the judiciary, and ultimately ensure fair and timely justice for all litigants. In conclusion, the analysis of the "double warning system" in civil cases illuminates its positive impact on the efficiency of case resolution and the potential for the broader application of similar mechanisms in civil litigation. The empirical data strongly supports the adoption and implementation of such systems to expedite dispute resolution and uphold the principles of fairness and effectiveness in the legal process.