



The
PESHAWAR HIGH COURT
Peshawar

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Exch: 9210149-58
Off: 9210135
Fax: 9210170

www.peshawarhighcourt.gov.pk
info@peshawarhighcourt.gov.pk
phcpsh@gmail.com

No. 629-741 /Confdl:

Dated. 09-10-2023

To,

**The District & Sessions Judges/Zilla Qazis,
Throughout Khyber Pakhtunkhwa.**

Subject: **INSPECTIONS ADVISORY.**

Dear Sir/Madam,

I have the honor to enclose herewith the Inspections Advisory compiled at the end of Annual Inspections.

Submitted for necessary action at your end, please.

Sincerely yours,

(MOHAMMAD ZEB KHAN)
MEMBER INSPECTION TEAM

06.10.2023

Inspection Note

By

Mohammad Zeb Khan
Member Inspection Team
Peshawar High Court

1. Annual Inspections of Additional District & Sessions Judges, Senior Civil Judges, Civil Judges, Judicial Magistrates, and Family Courts posted throughout District Judiciary Khyber Pakhtunkhwa excluding District Kurram for 2022 were carried out by the following officers: -

S#	<u>Name of the Officer.</u>	<u>District/ Courts assigned for Inspections.</u>
1.	Mr. Mohammad Zeb Khan, MIT.	Peshawar, Malakand, Nowshera, Swabi, Charsadda, Mardan.
2.	Mr. Asghar Shah Khilji, AMIT.	Abbottabad, Haripur, Buner, Dir Lower, Mohmand, Bajour, Khyber, Mansehra, Battagram, Lower Kohistan Upper Kohistan, Shangla & Swat.
3.	Mr. Abdul Jabbar Khan, Director Inspection.	Karak, D.I.Khan, South Waziristan, Hangu, Orakzai, Dir Upper, Chitral lower & Upper.
4.	Mr. Zaeem Ahmad, Director Human Resource and Welfare.	Peshawar, Khyber, Mardan
5.	Mr. Ahmad Ihsanullah Qureshi, Director Regulation.	Mansehra, Charsadda, Battagram, Bannu, North Waziristan.

Because of the precarious law and order situation prevailing at District Kurram, the inspections were deferred. The approved pro forma (**Flag – A**) guided me while holding inspections. My findings are thus recorded in the inspection pro forma (**Flag – B**). I have also added a consolidated statement of my findings (**Flag – C**).

3. The scheme set out in the inspection pro forma bifurcates the inspection work into two broad categories: -

- a. To check the due compliance of the Rules of procedures in maintaining records.

b. To inspect the files of pending and decided cases for ascertaining the following: -

- i. Whether due and meaningful scrutiny is carried out at the time of institution / put in court?
- ii. Whether Case Management Rules are followed?
- iii. Whether the issues/charge are framed in the prescribed manner?
- iv. Whether the evidence is recorded in the prescribed manner?
- v. Whether the judgment/order is passed timely and by following the procedure prescribed?
- vi. Whether the decree sheet etc is timely prepared and consignment to record room is promptly made?
- vii. Whether CFMIS generated cause list and chronological exists?

4. For ascertaining the matters cited in Para 3b *ibid*, I have left it to the Judicial Officers to provide records as per his/ her preference. The Judicial Officers were not made to sit with me, as there exists a possibility of noncompliance to procedural matters that may embarrass him/her in the presence of staff. Such an eventuality would be counterproductive to the real purpose of inspections, being reformatory and corrective.

5. Speaking for my team, we intend to ensure due compliance with the prescribed rules and regulations and not to disparage the stature of the Hon'ble judges.

6. My observations are broadly categorized under the following heads: -

6.1. Registers:

6.1.1. By and large, the prescribed printed form of registers is followed except for some courts, where the plain registers were improvised.

6.1.2. The entries in these registers are incomplete. The orders of the Appellate and Revisional Courts are not incorporated, which may cause grave hardship in case reconstruction of the file is required.

6.1.3. The entries in the execution petitions' registers (/10) are perhaps the most terse, as it is left incomplete.

6.1.4. I have found that the staff is very much responsive and willing to understand the intended contents of the registers that they have left blank.

Thus, I'll suggest that the Judicial Officers educate their staff on the mode and manner of incorporating entries in the registers.

6.1.5. In Districts having Case Flow Management Information System (CFMIS), the hand-written maintenance of records is inflicting hardships on the staff. Last year an attempt was made to solicit the views of the District & Sessions Judges of the Districts where CFMIS is installed in respect of the intended transformation to CFMIS based registers, but owing to the fact that the computer application was not fully functional therefore the matter was deferred.

6.1.6. In most of the Stock registers the entries as to the condition of the items are missing. The stock register serves as guiding data for the preparation of the budget estimate. Thus, the condition of the assets needs to be recorded, in this way, these assets requiring replacement could be easily traced and budget allocation can be equitably made.

6.1.7. It was noticed that in some courts the registers are continued until there is no space left to write. On the contrary, good practices demand that at the end of the calendar year, the registers be consigned to the record room.

6.2. **Case Management Rules:** Case Management Rules are mostly not followed. In a few Courts, although the order sheets do provide a reference to case management and scheduling conferences, these do not serve the purpose but rather further delay the trials. Perhaps a degree of skill needs to be developed for the meaningful application of the case management rules and procedures.

The following areas require attention: -

6.2.1. Check List requires revisions and be brought in line with the recent amendments to the Civil Procedure Code, 1908 etc.

6.2.2. The Check List devised for Criminal Trials is misunderstood, as I have observed that some Judges sign these check lists during trial. The purpose of the Criminal Trial Check List is to ensure that the Judge near the conclusion of criminal trial attend to the matters cited therein.

6.2.3. In most courts except for very few the initial scrutiny is not carried out. During my inspections, I noticed that at the appeal stage, very few readers carry out scrutiny of the case file. To the contrary, the Reader in the first instance shall check the appeal file to ascertain that the cited documents or their copies are enclosed, the requisite court fees furnished, and the appeal or revision is within time. On the contrary, there is a perfunctory scrutiny of record especially of the civil suits. Thus, important documents such as the notice sent



to the respondents in appeal brought order XLIII CPC and similarly, the list of prospective legal heirs are seldom provided, this in turn delays the conclusion of the trials.

6.2.4. We need to focus on the mechanical manner of granting adjournments. I have come across order sheets which shows lack of interest and effort on part of the court to hold meaningful proceedings. The most common order sheet that lends support to my conclusion of mechanical adjournment is as under: -

“Presence as before. Ld Counsel for Plaintiff/Appellant seeks adjournment. Granted. To come up for proceedings as per previous order sheet.”

6.2.5. I am surprise to see that in matter fixed in evidence, in case the plaintiff or defendant do not turn up, fresh notices are issued and the matter is fixed for attendance. Similarly, a fallacious view exists in respect of ex parte proceedings. I believe that some Trial Judges believe that once a party is proceeded in ex parte, he/she cannot take part in the further proceedings except for an order of court whereby the ex parte proceedings are set aside.

6.2.5. During my inspections, I inspected a civil trial, fixed for well over 6 months in preliminary hearing as to the maintainability of the suit and ultimately the suit was found maintainable. Similarly, in an appeal the court had strived for months to coerce the appellant to submit correct parentage of the respondent, while the Civil Procedure Code cast a duty to furnish parentage and address of the respondent to the extent known to the plaintiff/appellant.

6.2.6. The indecisiveness on the part of the Judges in taking penal steps such as under Order XVII rule 2 or 3 or Order IX rule 2 etc CPC to my mind can be redressed, in case the matters fixed for hearing are read in advance, with further a refresher of the different relevant provisions of law.

6.2.7. I earnestly believe that in case the order sheets are not left to the staff, these and many more shortcomings can be avoided. If we for any reason leave the trials to the staff, we would invariably face awkward situations, such as in a family court case for determination of the custody of the minors, whose parents have since long divorced, the matter was fixed for preliminary reconciliations. Likewise, in ex parte proceeded trials the matter is fixed for reply and arguments on the applications. Some 45% of the civil matters fixed before the District Judiciary are in attendance, it is owing to the fact, that some process servers in a mechanical manner return the process with the report that the respondent refused to take the notice of the summonses. The Trial Court ought to educate the process servers to have proceeded by pasting the notice and not simply returning it with this report.



I have also noted that the Courts without considering the nature of the report made thereupon reissue the process as per previous order sheet. The warrants of arrest are entrusted and executed by the DFCs, which is a clear violation of the Police Rules, yet these are as such not reflected in the orders or taken notice of. In some Districts the evidence in civil matters is recorded by the counsel for the parties. The active supervision and superintendence of the Judge is not possible as the parties are seated at some distance from the place of sitting of the Judge. This adversely reflects upon the quality of adjudication.

6.2.8. The correspondence file, commonly called, "English File" is not maintained in a uniform pattern. I believe explicit instructions needs to be provided to the District Judiciary for maintaining the correspondence record.

6.2.9. In most of the Courts, cases were not prioritized. The Presiding Officers were, therefore, directed to make categories of cases in the chronological list and to prioritize the old and oldest cases for their early disposal.

6.3.0. There was no confidential branch in the District Courts for keeping personal files/ACRS of the officials safe from any tempering therefore, it is suggested that a confidential branch may be established in the District Courts for such purpose.

6.3.1. Some of the staff members when confronted with incomplete entries in the registers were of the view that the same were to be carried out by their predecessors in office. It is clarified that the staff members on taking the charge of a post are supposed to make proper handing & taking over of the record where after the successor is responsible for any shortcoming left by his predecessor employee.

6.3.2. The UTP cases, family court cases, bail petitions and miscellaneous stay applications lying in backlog needs disposal on fast track.

6.3.3. The annual inspection report 2020 available on the website of the Peshawar High Court needs to be downloaded by every Judicial Officer in order to know the prescribed format of registers, decree sheets, quarterly inspections; etc.

6.3.4. Costs on frivolous lis needs to be imposed.

Leaving aside these few instances, the great majority of the Judges are cognizant of their responsibility, they actively proceed with the trial, take all necessary steps to ensure expeditious disposal and to do justice in accordance with law. The dedication and devotion towards this noble profession is applaudable.

