

## PROCEDURAL PRECISION AND SUBSTANTIVE JUSTICE: AN OVERVIEW OF THE ENDURING SIGNIFICANCE OF WRITTEN PLEADINGS IN CIVIL COURTS OF PAKISTAN

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### Abstract

Pleadings are the bedrock of almost every civil litigation, hence, providing the formal mechanism through which parties present their claims and defenses before the honorable court. This paper examines the enduring importance of pleadings in the civil justice system of Pakistan, tracing the historical evolution from uttered pleadings in ancient and medieval times to the codified written pleadings specifically in Pakistan, regulated by the Code of Civil Procedure, 1908 (CPC). It highlights the substantive and procedural functions of pleadings not only in framing issues in dispute but also in ensuring fair notice and facilitating judicial efficiency. The paper critically pinpoints the disadvantages of verbal pleadings, the legislative framework and patterns, governing pleadings in Pakistan, and judicial pronouncements emphasizing their worth and importance. Finally, it offers recommendations to balance procedural complexities with access to justice, re-emphasizing pleadings as documents of procedural brevity and precision as well as substantive transparency in the civil courts of Pakistan.

### 1. INTRODUCTION

The law of pleadings forms the procedural foundation of civil litigation, structuring how disputes are presented and adjudicated. In Pakistan, the Code of Civil Procedure, 1908 (CPC) governs pleadings, mandating statements to be in writing, that properly define the claims and defenses of the parties to the dispute. Pleadings serve multiple critical functions as on one hand, they frame the issues for judicial determination, and on the other hand, they provide fair notice to adversaries, hence, promote judicial efficiency and fairness.

Historically, pleadings evolved from verbal presentations of grievances in early courts, where parties personally used to make appearances and state their claims and defenses-to this modern system

of written pleadings codified under the statutory provisions of CPC. This evolution was though quite slow but it was driven by the need to overcome the inherent limitations and built in issues of verbal pleadings, such as lack of clarity and precision, absence of a permanent and fixed record, and procedural inefficiency.

This paper explores the historical development of pleadings in Pakistan, the drawbacks and issues of verbal pleadings, the legal framework regulating pleadings, and the contemporary significance of pleadings in ensuring procedural comprehension and substantive justice. This paper relied purely on secondary data where data was collected from relevant statutes, judicial decisions, and scholarly

analysis to underscore the key role of pleadings in the civil justice system of Pakistan.

2. **Historical Evolution of Pleadings: From Verbal to Written Script**

2.1 **Pleadings in Ancient and Medieval Times**

The concept of pleadings can be traced in ancient judicial systems, where disputes were often resolved by verbal statements before kings or tribal elders respectively. Specially, in the subcontinent, during the times of various dynasties like the Mauryas and Mughals, the judicial processes involved unwritten pleadings where parties had to present their cases verbally before royal courts. The cases used to get initiated all of a sudden with the plea of the aggrieved party and the party being summoned right away, used to be taken by surprise, hence having no time to make up his mind to prepare proper defences. One of the main reasons was, people by that time were illiterate so did not have an option to express their issues in writing by themselves in a particular manner. These courts used to rely heavily on the memory and discretion of concerned officials and judges with quite a little formal record-keeping (Drishti Judiciary, n.d.). With the passage of time, it was noticed that one could not fully rely on the verbal statement, whatever and howsoever, and to what extent given. So then an addition was made in the system, in which the king used to have an official, who was supposed to write on the board one by one, whatever was narrated by one and then the other party, in order to avoid any kind of fabrication and keep the record straight and not to let anyone then to retract from whatever had been narrated and confirmed thereafter from him (Mason, 1895).

During the medieval period, under the rule of Muslim sultans and later the Mughal Empire, judicial proceedings continued to rely on oral pleadings. The parties or their representatives would orally state their claims and defenses before the respective Qazis or judges, who would then deliver judgments based on these verbal presentations and customary practices (Drishti Judiciary, n.d.; PLJ Law Site, 2018).

The disadvantages of this system were evident: the absence of written pleadings led to ambiguities, confusion, forgetfulness of certain facts, fabrication of facts, unprepared case of the other party who

could not prepare case properly planned because of shortage of time and no first hand information of the facts to be narrated or issue to be raised by the other party, difficulties in issue framing, and challenges in appellate review. Judges had to rely on recollections or notes, increasing the risk of errors and unfairness.

2.2 **Shift from Verbal to Written Pleadings under British Colonial Rule**

The British colonial administration with the passage of time, introduced formal legal institutions and codified laws, including the adoption of the **Code of Civil Procedure, 1882**, which laid the base for modern civil procedure in the subcontinent. This code mandated written pleadings, while replacing the earlier oral system with an intent to ensure clarity, coherence, and procedural fairness (PLJ Law Site, 2018). This used to be mother law dealing with all the civil procedural issues.

When Pakistan got independence, it carried with it the **Code of Civil Procedure, 1908**, which remains in force in Pakistan, consolidated and amended all the earlier laws, formalizing the requirement of written pleadings in all types of civil litigation (Code of Civil Procedure, 1908, §§ Order VI, VII, VIII). This shift was indeed instrumental in improving the judicial administration by enabling the framing of issues in a dispute, avoiding unnecessary details, providing permanent records, and facilitating appellate review.

3 **Verbal Pleadings and its Impact**

Despite their historical prevalence, verbal pleadings have significant disadvantages that justifies the transition from oral to written pleadings:

3.1 **Lack of Clarity and Brevity:**

Oral pleadings are always prone to ambiguity, making it difficult for a person to identify the substantive rather the main issues in dispute. This lack of precision often ends up in prolonged litigation hence, burdens courts (Marcus, 1998).

3.2 **Inadequate Notice to the Opposite party:**

Without statements in writing, the parties may remain unaware of the claims or defenses they would meet, hence are taken with surprise, for what allegation they may face, hence,

undermining the principle of fair notice essential to due process of law (University of Baltimore, 2011).

**3.3 Absence of a Fixed Documented Record:** Verbal pleadings do not create a reliable material record, thereby, complicating appeals upon the decided cases and judicial coherence (Britannica, 1998).

**3.4 Procedural Inefficacy:** Oral pleadings can lead to repeated explanations and justifications and disputes over what was already said, again causing delays and increasing litigation costs on the parties (CORE, 2018).

**3.5 Limited Access to Legal Representation:** In medieval times, this used to be the case, where the parties had to plead personally, because they were the ones, who were well acquaint with the facts of their case, and had to respond on the spot on reply to the other party's allegations. Not represented by a legal expert affects the case, hence had an impact on access to justice (Marcus, 1998).

**4 Legal Framework Governing Pleadings under the Code of Civil Procedure, 1908**

**4.1 Definition and Forms of Pleadings**

Under Order VI, Rule 1 of the CPC 1908, pleadings are defined as the plaint (by the plaintiff) or the written statement (by the defendant) (Code of Civil Procedure, 1908). These documents must contain precise statement of the material facts on which the party relies and builds up his case but exclude evidence (Order VI, Rule 2).

**4.2 Requirements for Pleadings**

- Pleadings must be clear, concise, properly numbered and divided into numbered paragraphs (Order VI, Rule 2).
- Pleading must contain facts and not law as this is the job of the Court to decide and apply law based on the facts narrated.
- They must state material facts, neither immaterial facts nor evidence (Order VI, Rule 2(1)).
- The plaint must consist of particulars such as the name of the court in which case has been filed, details of the parties, the cause of action, jurisdiction, court fee, relief claimed,

and valuation of the suit (Order VII, Rule 1) (Code of Civil Procedure, 1908).

- The written statement must contain the defendant's defenses and any counterclaims , on which the defendant relies for his case including set off(Order VIII).

**4.3 Amendments and Supplementary Pleadings**

The CPC 1908 allows parties to amend pleadings with the court's permission to ensure justice is done and to avoid multiplicity of suits. This amendment is termed as voluntary amendment. This can be applied for by either of the parties, who needs to bring some changes in his own submitted draft (Order VI, Rule 17). Courts exercise discretion to permit amendments liberally, balancing procedural discipline with substantive justice.

However,courts are empowered even to ask either of the parties,on its own or at the application of the other party,to amend his pleading against the consent of the respective party,if there is something scandalous or statement which tends to prejudice or delay the fair trial. This amendment is termed as compulsory amendment. It is a kind of check on the parties to draft their pleadings cautiously, otherwise the court may end up exercising this power in its own (Civil Procedure Code 1898)

**5 Significance of Pleadings in Ensuring Procedural Precision and delivery of Justice**

**5.1 Framing the Issues for Trial**

Pleadings defines and limits the scope of the dispute, enabling courts to focus on relevant issues and avoid unnecessary litigation, by framing issues right after the submission of pleadings by both the parties (Drishti Judiciary, n.d.). This framing is necessary for judicial efficiency and fair adjudication.

**5.2 Fair Notice to the Opponent**

Written pleadings ensure that parties receive proper notice of claims and defenses against them, thus allowing them to prepare their cases effectively beforehand (American Bar Association, n.d.). This notice is vital for procedural fairness and due process.

**5.3 Facilitating Judicial Case Management**

Clear pleadings assist courts in managing and maintaining cases by guiding discovery, scheduling hearings, and organizing trials accordingly (Judicial

Commission of NSW, n.d.). This reduces procedural disputes and unnecessary delays.

#### 5.4 Judicial Emphasis on Pleadings in Pakistan

The courts have repeatedly underscored the importance of pleadings. This is why, the Supreme Court of Pakistan in *Mst. Hussan Banu v. Mst. Asia Khatoon* (2020) emphasized strict adherence to pleadings to maintain judicial boundaries and prevent overreach (Peshawar High Court, 2020). This has become a customary practice, where courts accept pleadings even if they are not in conformity with the Order 6,7 and 8 of CPC 1908, hence encouraging like minded fraternity to overlook the principles at the time of drafting, hence diluting the very purpose of pleadings.

### 6 Challenges and Recommendations

While pleadings are crucial, challenges remain:

- 6.1 Strict pleading rules can be difficult for self-represented litigants, unless guided by the legal expert, making it difficult for a common man to plead the case himself.
- 6.2 Courts are supposed to balance procedural discipline with the need to ensure access to justice. It is the duty of the court to make sure that rules prescribed by statutes have been duly observed. A lawyer should not be encouraged, if his draft is not in accordance with the prescribed principles and essentials, rather Courts must not entertain the same unless properly made. The purpose should be to keep the purpose of pleading alive, s\which says the draft must be precise. So courts instead of entertaining lengthy pleadings, should ask the parties to narrow down the issue by omitting unnecessary details, the evidences on the basis of which facts have to be proven and law, of which Courts can by themselves take judicial notice of, under Qanoon e Shahadat Order1984 (Government of Pakistan, 1984).
- 6.3 There is a need to enhance legal literacy and training for litigants and lawyers, to improve pleading quality. Awareness campaigns and training programs are the need of time.
- 6.4 There is a need to lessen the procedural complexities as where and to submit the draft, which form to be used for what purpose, to

make access to justice easy and reachable for a lay man.

### 7 Conclusion

The evolution from verbal to written pleadings marks a remarkable advancement in the civil procedure, addressing the shortcomings and issues of oral pleadings. The Code of Civil Procedure, 1908, does provide a comprehensive framework for pleadings, ensuring procedural clarity and substantive justice. Pleadings helps framing disputes in chronological order rather than confused and unclear version. It provides a fair notice, thereby facilitating the courts in presenting the cases black and white, for expeditious disposal of cases. Continued reforms and judicial vigilance are vital to retain this balance and enhance due access to justice.

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