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A STUDY ON IDENTIFYING MAJOR BOTTLENECKS IN PENDENCY OF CIVIL CASES AND SUGGESTING MEASURES FOR IMPROVEMENT WITH SPECIAL REFERENCE OF DISTRICT UDHAMPUR AND BUDGAM OF STATE (NOW UNION TERRITORY) OF JAMMU AND KASHMIR

Submitted to

सत्यमेव जयते

Department of Justice
Ministry of Law & Justice
Government of India

Submitted by

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Table of Contents

ACKNOWLEDGEMENT

Grant from the Department of Justice, Ministry of Justice, a support of the Hon'ble Judges of the High Court and District Courts, Officers of the Court Registry, advocates and subordinate staff of the courts of district Udhampur and Budgam has made it possible to complete this study.

I express my sincere thanks and gratitude to the Department of Justice, Ministry of Law & Justice, Government of India, for giving J&K Judicial Academy an opportunity to conduct the study titled "Physical Verification of Case Files of two Districts, Udhampur and Budgam of Jammu and Kashmir with the data on pendency available on National Judicial Data Grid (NJDG) to identify causes for pendency and map a way forward to reduce delay and introduce effective data collection mechanism". I take this opportunity to express my gratitude to Mr C.K. Reejonia, Deputy Secretary, Department of Justice for his regular follow-ups and guidance on our way to complete the project.

I express my heartfelt gratitude to Hon'ble Judges of High Court and two District Courts, Budgam and Udhampur who despite of their busy schedule met the Research Team and provided their valuable inputs that gave valuable insight while preparing this report. In fact their attitude towards the whole research team had been very encouraging, inspiring and stimulating throughout the course of this study. I sincerely thank advocates and subordinate staff of the Courts of district Udhampur and Budgam who actively facilitated completion of this research by providing us with all possible help, inputs and assistance.

I take pleasure in expressing my gratitude to the members of the two research teams, for their efforts in data-collection and analysis, and preparing the project report. I also thank all the persons involved in the process of this study.

Rajeev Gupta
Director

PREFACE

There has been a constant struggle by the stakeholders to find some solution to the malaise of long drawn legal battles. All these efforts have not been able to give any final solution in that regard. The object of the present Research is to conduct the physical verification of case files and to identify the bottlenecks relating to delay and arrears and suggest measures and way forward to overcome the delay. Long delay has the effect of defeating justice but we have to guard against undue speed and haste while suggesting improvements in the system. Though many attempts have been made in the past to analyse data on pendency, institution and disposal of cases but in absence of accurate primary data, there has always been a confidence deficit in making the recommendations.

The object behind the present study was:-

a) to identify the bottlenecks responsible for causing delay in disposal of civil cases in the courts and possible policy and procedural changes necessary for reduction of pendency and a study on court management techniques for improving and enhancing efficiency of subordinate courts and also to suggest measures needed to remove such bottlenecks;
b) to identify the nature and extent of reasons that commonly contribute to delay in disposal of cases;
c) to know the inefficiencies which cover court, counsel and litigant side;
d) to examine the subject wise classification of the cases; and
e) the last but not the least, to suggest measures and way forward by relying upon the accurate primary data collected in the present study.

In order to achieve the aforesaid laid down research objectives, the Ministry of law and Justice had approved two research teams, one each for districts Udhampur and Budgam. The teams for both the districts comprised of:

1) Director, Jammu and Kashmir State Judicial Academy, High Court of Jammu and Kashmir as Research Director .
2) Professor from Department of Management Studies/Business School of University of Kashmir and University of Jammu as consultant.
3) Retired Judicial Officer of the rank of District and Sessions Judge each for District Udhampur and Budgam.

4) Junior Research fellows from the field of Law, management and Sociology, three for District Budgam and three for District Udhampur.

There has been long pending systemic problem of delays. Delay is primarily the product of too much of court business but too few Judges. But increase in the number of judges may not be the only solution. The inefficiencies on the court side, counsel side, litigant side and on the side of all other stake-holders is major contributor to delay in disposal of cases, and such factors of inefficiency are also required to be identified.

Actual case files taken up for research, and the study of the primary data provides actual guidance to deliberate upon the proper solutions and way forward. The classification and categorization of cases according to their nature gives a true picture of the causes of delays and once the causes are identified by updating the accurate data, the solutions can be suggested.

The Judicial Academies are in an advantageous position to have access to the data/case files to derive the actionable points and performace indicators to improve the pendency and delays in disposal of the cases, inturn to improve the justice delivery system and access to justice for all. Further, the Judicial Academies can bring all the stake-holders in the justice delivery system on a common platform, for free and frank discussions. During the course of this study, the J&K Judicial Academy was able to triggre healthy discussion on the causes of delay and the suggested measures to reduce the time taken in rendering justice. These discussions were productive in the sense that the stake-holders in the justice delivery system were able to understand each others' perspective.

In fact the present study is based on independent research carried out by two teams, aforementioned, in District Udhampur of Jammu Province and District Budgam of Kashmir Province. By and large, both the research teams have identified common causes of delay and bottlenecks in expeditious disposal of cases, and the major suggestive measures are on the same lines. Each research report is presented here as independent study, therefore this study consists of two research reports. Limit of the study has also been expressed by the research teams. Therefore, this study is important from the point of view making further study on practicle implementation of each

actionable point in the light of resources; financial and infrastructural made available to the judicial institution.

When this study was undertaken Geo-Polilitical situation was different from the present position. Earstwhile State of Jammu and Kashmir has now been converted into two Union Territories viz. Jammu and Kashmir; and Ladakh. Of course there remains the common High Court for both the Union Territories. Special Constitutional position of the earstwhile State has been changed and now the two Union Territories enjoy the same status as other federal constituents of India. References in the research reports to the State of Jammu and Kashmir or State, may be construed as reference to the Union Territories of Jammu and Kashmir; and Ladakh, as the case may be. Implementation of Central Laws extended to the two Union Territories and repeal of some State Laws would also bring in new challenge for the Judicial Institution. There is likely obstruction in flow of the court processes in the transition period, impact of which would also call for a separate study. In any case the Judicial Institutions in the Union Territory of Jammu and Kashmir; and Union Territory of Ladakh are geared up to face the new challenge posed by changed politico-legal situation.

I am hopeful that the project report shall prove beneficial in taking the discussions further on timely disposal of cases.

IDENTIFYING MAJOR BOTTLENECKS IN PENDENCY OF CIVIL CASES AND SUGGESTING MEASURES FOR IMPROVEMENT WITH SPECIAL REFERENCE OF DISTRICT BUDGAM OF JAMMU AND KASHMIR

Research Project Report

of

RESEARCH TEAM BUDGAM DISTRICT

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Table of contents

PREFACE

The Government of India, Ministry of Law and Justice has approved the proposal under the subject entitled " Proposal under scheme for Action research and Studies on Judicial Reforms" with special emphasis on identifying major bottlenecks in pendency of Civil Cases and suggesting measures needed to remove such hurdles. In this direction, The Government of India Ministry of Law and Justice has approved the proposal titled "Physical Verification of Case Files of two Districts, Udhampur and Budgam of Jammu and Kashmir with the data on pendency available on National Judicial Data Grid (NJDG) to identify causes for pendency and map a way forward to reduce delay and introduce effective data collection mechanism". The rationale behind the need for present study was:-

a) to a identify the bottlenecks responsible for causing delay in disposal of civil cases in the courts and possible policy and procedural changes necessary for reduction of pendency and a study on court management techniques for improving and enhancing efficiency of subordinate courts and also to suggest measures needed to remove such bottlenecks;

b) to identify the nature and extent of reasons that commonly contribute to delay in disposal of cases;

c) to know the inefficiencies which covers court counsel and litigant side;

d) to examine the subject wise classification of the cases; and

e) the last but not the least, to suggest measures and way forward by relying upon the accurate primary data collected in the present study.

In order to achieve the aforesaid laid down research objectives, the Ministry of law and Justice has approved two research teams, one each for districts Udhampur and Budgam respectively. The teams for both the districts comprised:

1) Director, Jammu and Kashmir State Judicial Academy, High Court of Jammu and Kashmir as Research Director

2) Professor Department of Management Studies/Business School of University of Kashmir and University of Jammu as consultant.

3) Retd. Judicial Officer of the rank of District and Sessions Judge each for District Udhampur and Budgam respectively.

4) Jr. Research fellows from the field of Law, management and Sociology, three for District Budgam and three for District Udhampur respectively.

It is in this backdrop, a series of meetings and brainstorming sessions were held right from the inception i.e. July 2018 between the team members constituted for District Budgam, including Mr. Abdul Rasheed Malik. the then Director Jammu &Kashmir State Judicial Academy 2) Mr. Mohamad Shafi Khan (Rtd.) District and Session Judge 3) Dr. S. Mufeed

Ahmad, Professor, Deptt. of Management Studies and Dean School of Business Studies, University of Kashmir and three Research fellows, namely, Mr. Ashfaq Hamid Dar, Mr. Liyaqat Ahmad Bhat and Mr. Junaid Majeed Kakaw from three different backgrounds/disciplines i.e, Law, Sociology and management respectively. After series of sessions, meetings and sittings of the above team members a well-designed research approach and methodology was adopted with the objective to accomplish the above said research laid down objectives. The various problems regarding the reasons that largely contribute to delay in disposal of cases were comprehensively dealt with and expert opinion of the Honourable Judges, advocates and subordinate staff of all the judgeships of district Budgam were sought.

We are really grateful to Mr. Rajeev Gupta, Director Jammu and Kashmir State Judicial Academy for his untiring efforts for bringing this research project to its logical end. Without whose administrative and academic support, this work would not have been possible. In fact his attitude towards the whole research team had been very encouraging, inspiring and stimulating throughout the course of this study.

We would be failing in our duty if we do not express our gratitude for the cooperation and help we received form Mr. Abdul Rasheed Malik the (Former Director of J & K State Judicial Academy) for his inputs in the beginning and inception of the project. We are thankful for his invaluable feedback and support.

The report benefited from the constructive inputs of various resource persons from judiciary. We are thankful to Mrs. Tabassum Qadir Parray Judicial Magistrate First Class Budgam, Mr. Aadil Mushtaq Judicial Magistrate First Class Magam, Mr. Imran Hanief Munsif Beerwah and Mr. Zahoor Ahmad Ganai Munsiff Chrari Sharief for their help and support.

We would be failing in our duty if we do not express our gratitude to the young and dynamic team members namely, Mr. Ashfaq Hamid Dar, Mr. Liyaqat Ahmad and Mr. Junaid Majeed Kakaw. Indeed the study of this kind would not have been possible without the efforts put in by the above said research investigators.

Special thanks are also due to the honourable Judges, Advocates and subordinate staff of all the Judgeships in District Budgam and concerned respondents for providing us with all possible help, inputs and assistance whenever needed.

Mr. Mohammad Shafi Khan
(Retd.) District & Session Judge

Dr. S. Mufeed Ahmad
Professor,
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CHAPTER-I
INTRODUCTION

The institution of justice delivery system as we now see has a long history of its own not only in India but also across the globe wherever the civil society has engineered itself to prudence as well as rule of law. During the past several decades, this institution has seen changes as per the change in the behaviour of the population and steered in many directions either by the legislative endeavours or judicial activism with the ultimate goal of achieving peerless character. But with changing times and growth of population in an unprecedented manner, these tools have over the years weakened and the burden started to prove too heavy on the very spine of the system. If at all we have to evaluate the two most phenomenal and course changing moments of the Indian judicial system we can safely say that one has already been achieved to a great extent i.e. the separation of powers on the strength of which judiciary attained a separate character and could exercise functions without influence. Second is to make this system free from cumbersome situations and to deal with ever growing pendency in efficient and balanced manner so that the essence of justice is not strangled in the clutches of bottlenecks and pendency of litigation in its various forms. Although much has been said and done in this regard but the day a fool proof mechanism is put in place to address this issue burning for years now, the second landmark will be achieved. This is important to truly achieve the cherished goal of independence of judiciary.

It would be very essential to mention that the concept of speedy trial and disposing the pending litigation might have been a subject of debate a decade ago, but as the population grew so did the population of the litigation in the courts to this extent that the judicial minds started to have a serious thought about those tools and mechanisms on the strength of which the huge rush of litigation and its pendency would be countered, that too not at the cost of injustice but with such mediums that could make a balance between lessoning the burden of litigation and its disposing of in a legal manner.

In this regard alternate dispute dissolution (Section 89 CPC), has been perceived as a remarkable tool of a case management and great stress has been laid on referring the cases for mediation, conciliation, arbitration and Lok-Adalats, so that normal course of procedure is somewhat eased and parties are given a chance to resolve their legal matters in an environment free from regular procedural shackles. However it must be kept in mind that all those critical matters of justice and issues cognate to it cannot be referred to such alternate mediums, thus a great caution must be exercised while referring the cases with this view that

the exercise is not futile or having every chance of being returned back to be adjudicated by the normal courts. It has been seen that in many cases the matters are sent for these ADR's because of the fact that the court wants to lessen its burden temporarily which in itself is not the essence of why these ADR's were constituted.

What must be held paramount is the fact that the procedural rigors must not be allowed to stamped upon the rights and liberties of the litigants which in itself gives us a room to devise those tools which can help reduce pendency not only the Supreme Court and High Courts, but it is the duty of every court established to guarantee the protection of constitutional rights of every individual, either who comes before it or those people who look up-to with eyes of hope it and on the strength of which they feel secure in the social order filled with malicious and unscrupulous elements as has been rightly put forth by Justice Markandey Katjoo (pg 685 -techniques and tools for enhancing timely justice- National Judicial Academy under the heading 'Access to Justice with Special Reference to Socio-Economic Rights) while dealing with the meaning of justice, he says that justice means providing for basic, economic, social and cultural needs of the people. He further says that in a country like India judiciary has an important role to play as it is the primary institute to up hold the constitution in its true spirit and given teeth and content to its provisions. We may also submit what has been said in a most lucid manner by Justice V.R. Krishna Ayer (The Judicial System- Has it a functional future in our constitutional order – (1979)3 SCC 1 (jour)) while saying that the conscience of constitution of set out in its very preamble and says that justice seeks to humanize slums and inhabited pavements. Justice as per the constitution in his words is liberalization from socio economic subjections and consists in the actualization of the goal of full and free development. Every individual, in his words he says must, "Modernize or perish, socialize or sink". The mid nature road block in the developments and enhancement of judicial frame work as indeed in these past years being the delay of disposal of the cases and thus the tools that have to be employed must constantly modernize so as to meet the demands of eradication of the ever growing backlogs. In this regard we may also submit the following points which in essence can help the courts to attend this ever growing problem:-

1. The blockades to the access to justice should inevitably be identified and tools be found to eliminate the same,
2. The modern tools of management should be put in place and those strategies employed in which the litigation can be best attended with and disposed off in the most justifiable and time managed manner,

3. A great amount of attention must be given to the infrastructural needs of the judiciary and they should be facilitated with human resources as well as electronic gadgets which are user friendly and readily available with them at their behest and choosing so that the monster of backlogs is over- shadowed with the angels of smooth disposal,
4. That the administrative matters which also sometimes clog the minds of judicial officers must be so channelized that it does not hamper the judicial work of the officers, which is their primary duty. It has been seen that the administrative matters many a times engross the minds of the officers in such a manner that it takes away their attention from their normal adjudication of matters towards the administrative affairs and office management,
5. It is very important to identify and understand certain terms in judicial mechanism, which are commonly used by a large section of the society in addition to the legal fraternity, so that the means to attend them become achievable. Some of them are pendency, arrears, delay, court congestion etc. as has been mentioned before as well, there is a difference between pendency and arrears; while pendency denotes total number of cases in the court which keep on rising due to increase in the disputes in a growing socio-economic order, the arrears means the excess of institution of new cases upon disposal of cases which slows down the system and contributes to the delay. Delay in itself should be define as the period by which the disposal of the cases exceeds without reasonable cause and breaches the ideal or normal time within which it should have been disposed off. All these matters equally contribute to the phenomena called as 'the court congestion' and thus the cases and its load for a judge increases many fold and in a country like India there is an evident shortage of judicial officers, thus the key objective for strengthen the judicial system undoubtedly is the elimination of arrears. The first requirement in tackling delay is to establish a standard of time lines. If the cases are disposed off in a more stream line manner giving time to each of its stages, the matters could be disposed off in a more understandable and justifiable manner which in turn would ease the pendency and also those judicial minds who attend to it. It must be borne in mind that the procedural matters are not understood by the litigants and they only expect a speedy disposal of their cases and in a more time bound manner. Sluggishness is indeed a great problem in some type of the cases but then judge must resort to those mechanisms which can propel the litigation in a fruitful and precise direction, thus targeted approach is needed to eliminate court congestion without which these arrears and delays cannot be eliminated. In this regard the Judges have to be guided to use various skills and rather

a combination of them for example modernization of court processes, vesting of greater authority and responsibility to them so that the cases are disposed of in a more time fixed manner, improving the judicial infrastructure by use of greater technology, enhancement of transparency, revamping of the process serving department, selective and targeted increase of Judges which in-fact is the back bone of how to attend the ever growing cases and lastly constitution and re-constitution of specialized courts so that the burden upon the Judges is eased and shared appropriately.

In this regard also the mechanisms used by the management professionals can also be employed and the Judges have to be encouraged and trained to use the same without any hesitation. It must be an endeavour without exception for a judicial officer to make a list while highlighting the matters to be prioritized and at the same time make a list of works which have to be done simultaneously or subsequently. As happens in the corporate entities where deadlines are met with most intense approach, the presiding officers can also be invited to right down their tasks, either judicial or administrative, and break them down into smaller components so that each component in collaboration with another is attended to and ultimately a broader picture is drawn so that the pendency and court congestion are attended to in a more elementary but legal manner. While scheduling these skills the officers must be invited to make themselves ready to understand what they want to achieve in a realistic manner, plan for such achievements in furtherance of the delivery of justice, prioritize as mentioned above these tasks and to handle the rush of litigants in their courts in a more harmonious manner which in fact minimizes the stress they take while disposing of the cases.

It would be in place to mention that one of a great legal mind of Indian Judicial System, Justice Krishna Ayer in his research based document named Judicial Power – A Management Mess (in OFF THE BENCH-2000) has submitted, that the Judiciary being a fiduciary, its power, as democratic instrument must be tested, turned and transformed to redeem its tryst with the people to deliver justice, law being the means and the constitution setting the operational parameters. Management of judicial power like management of any other business must suffer reforms even like a wagon hitched to the star of the preamble…….. Unfortunately judicial management courses do not exist in India as part are legal or special professional course and Judges when elevated, bungle, stumbled or royally sweep their desire way through avoiding criticism using contempt of court as sword, scaring away even informed juristic from speaking the truth. He further goes on to say that in view of the fact that the subject is likely to be novel and therefore heretical in India, the American

study in this regard must be taken into consideration while managing the litigation like expediting the disposition of the cases in a manner consistent with fairness to all parties, enhancement of quality of litigation, assurance of equal excess to the litigants, minimizing uncertainties associates with processing cases. Then he goes on to say that the case flow managements is a goal oriented process regulating the smooth flow from institution to disposition. Towing the same line Justice S.B. Sinha in his: Judicial Reforms in Justice Delivery System (published in the document under the name JUDICIAL WORKSHOP ON TECHNIQUES AND TOOLS FOR ENHANCING TIMELY JUSTICE by National Judicial Academy-2008), says that while engaging ourselves in the exercise of judicial reforms, we have to bear in mind that it has two equally important aspects, namely, quality of justice and speedy justice and our country needs a marked improvement in respect of both…… The fundamental question i.e. how do we design and structure a legal system which can render justice to a billion people. The possibility of a justice delivery mechanism in the Indian context and the impediments for dispensing justice in India thus requires examination. I would like to address this topic at structural and operational level. At the structural level one is challenging the very frame work itself and examining the viability of the alternative frame work for dispensing justice and at the operational level, one is working with the frame work trying to identify the various ways to improve the effectiveness of legal system…… In this very transcription he holds that the effectiveness of the justice dispensation machinery ultimately depends upon the way we conceptualize justice while referring to the idea of measures to be taken in structural level and then reproduces a paragraph from the World Bank report titled 'Comprehensive Legal & Judicial Development', which says that elements of well-functioning judicial system ultimately depends on the cultural context in which it operates – justice is defined by the society which it serves".

Then Justice Sinha then mentions certain points with regard to the structural level which are:

A) Shift from a conflict resolution to justice dispensation under which he says that Indian Courts are attuned to resolving conflicts between the parties based on pleadings presented by them. The higher Judiciary particularly the Supreme Court while exercising its jurisdiction has devised several instruments for dispensing justice and several innovative legal approaches have been used which can serve as catalysts for legal reforms and this is evident from creation and development of PIL Jurisdiction. Similarly there needs to be a decentralization of justice oriented judicial activism right down to the lowest court of the Country.

B) Justice for poor: Judicial Enforcement of Socio Economic Rights, the core of socio-economic rights must be clearly identified which may progressively be based on flexibility having due regard to the changing needs of the community. An obligation must be imposed on the state to take all reasonable measures to enforce the basic rights, these obligations of the State can be made judicially enforceable, it will also serve as an immediately enforceable negative right and regression should be constitutionally unacceptable.

As far as the concept of operational level is concerned, Justice Sinha (reference supra) mentions that at the operational level one is working within the frame work with the objective of fine tuning it so that it can achieve its objectives. At this level we have to look several factors which effects the efficaciously and effectiveness of the judicial dispensation machinery. Operational reforms can be carried out by internal efforts as also through external inputs. The question of judicial arrears has engaged the attention of successive governments and law commissions. Various proposals have also been put in place like establishing specialize tribunals increasing manpower of judiciary and number of courts, simplifying procedures, cutting down appeals were ever possible and such measures have indeed been an employed but the problem has not been eradicated as one would have expected, failure to solve this problem raises the question whether we are bereft of innovative ideas or lacking the will. In this regard he also devises certain points which can be employed herein to attend to the problem.

01. Introducing management practices,
02. Employing emerging technologies,
03. Increasing judicial infrastructure,
04. Intensive use of ADR (which he terms as privatization of dispute resolution)
05. Streamlining justice system

Lastly in his documents, he mentions the role of lawyers in this regard. He goes on to say that there must be some reform in education system so that the young minds at the very beginning are well versed with those techniques that can help eradicating the pendency, secondly he says that there is paucity of research paper on various aspects of law and thus the students and freshly enrolled lawyers should be encouraged to study the prevailing system, point out the flaws and suggest remedies, and third he says that interactive sessions should be conducted by senior lawyers who should reach out to the younger lot At the conclusion of his document he says that failure of judiciary to deliver justice within a time frame has brought about a sense of frustration among lawyers and litigants. The over flowing dockets of the courts are not a sign of failure of the system but

a sign of faith in the administration of justice. Public resort to court to suppress public mischief is a tribute to the justice delivery system. The problem of delay in disposal of cases, however is a real problem.

It is also to be noted what role is played by those who have grievances, real as well as frivolous, against government and how pendency swells up by the litigation against the government which also is a huge factor in the courts of the state. It has been observed by experience that private parties may at one point of time opt for the amicable resolution of the disputes but when it comes to state being one of the parties, years pass by without any settlement. This can possibly be attributed to the red-tapism, bureaucratic holds and an attitude of carelessness on part of the government agencies to engage actively in the resolution process pending adjudication in the courts. The regular change of standing counsels too has immensely contributed to this handicap. Thus the scenario is grim on many fronts. But having said that, there have been silver linings seen on the basis of performance shown which suggests that the problem howsoever monstrous is not undefeatable. According to a survey, lower courts in Kerala, Punjab, Himachal Pradesh, Haryana, and Chandigarh have disposed of almost all cases that had been pending for a decade or more is a welcome as it is surprising. Today, there are only a total of 11,000 cases pending for over 10 years in these four states and the Union Territory of Chandigarh. Similar endeavors have been demonstrated by the subordinate judicial officers of our state as well but the problem is dynamic and has no quick solution. The mechanism has to be pressed into service in a persistent manner so that in the course of time fresh cases do not attain the status of an old pending case. The Hon'ble High Court of Punjab and Haryana which has jurisdiction over the lower courts of Punjab, Haryana and Chandigarh, almost a decade ago, it set up a case management system—i.e. a mechanism to monitor every case from filing to disposal. It also began to categorize writ petitions based on their urgency. In addition, it set annual targets and action plans for judicial officers to dispose of old cases, and began a quarterly performance review to ensure that cases were not disposed of with undue haste. All these measures ushered in a degree of transparency and accountability in the system, the results of which are now apparent. 'Judicial case management' in its varied techniques and schemes has thus shown up to be one of the important measures to counter the problem. Here, the court sets a timetable for the case and the judge actively monitors progress. This marks a fundamental shift in the management of cases—the responsibility for which moves from the litigants and their lawyers to the court.

On part of the government, as it won't be out of place to mention here, to study the efficient functioning of the judicial system was undertaken by the civil justice committee in

1924, which came to be known as Rankin Committee Report. It contained a passage on the causes of the delay in the civil courts citing various reasons. A committee was also constituted in 1955 to undertake the task of reviewing the system of judicial administration in all aspects. Then came the High Court arrears committee in 1972 under Justice J C Shah, Malimath Committee report 1990 and so on but despite providing a unanimous call for existence of mounting litigation and its factors and various plausible remedies, the practical aspect remained the same. As has been authored in the report "the problems of court congestion: evidence from lower courts" by Arnab Hazara and Maja B Micevska, they have concluded with a very thoughtful note. They say that the main focus of the government reports has been on the supply side solutions to the problem of court congestion. However since recently increasing attention has been paid to the need to tackle the problem from the demand side by looking at the areas wherein litigation is at its maximum, and then devising methods to curtail frivolous litigation. They further hold that the reports in Justice Satish Chandra committee and the Malimath Committee are dealing exclusively with the reforms that can lead to decline in litigation rates. Both the reports have identified a host of demand related reasons for the congestion problem in Indian courts…..In summary, the government reports have mainly pointed out the infrastructural bottlenecks associated with the dispute resolution as the main culprit. Thus what they mean by supply side is increase in the available infrastructure for dispute resolution so that the rate of disposal of certain cases increases. Supply side reforms include measures like temporary hiring of additional judges to resolve backlogged cases, use of alternate dispute resolution systems, applying case management techniques, purging inactive cases from the files etc. Then the documents as prepared by them ponders into procedural and substantive law reforms and reflect that demand side of the situation also needs to be taken care of, particularly the solutions leading to eradication of unnecessary and frivolous litigation. If the procedural law is insufficient and time consuming, no matter how good substantive law is, the legal system will lack credibility. The procedural delays occur at four stages: a) before the actual commencement of the trial, b) during the trial, c) appellate stage and d) execution proceedings. The delays in the first part are due to delays in the service of summons, delay in filing of the written statement (a matter addressed lately by the amendments), delay in the framing of issues, furnishing list of witnesses and filing of documents which in all cases slows down the entire process in the most adverse manner. Then again when the trial actually begins the same is plagued by non-attendance of witness, non-appearance of lawyers and pleas for undue adjournments, lengthy oral arguments, and finally delayed judgments. The execution applications suffer the same fate too. The law Commission of India in its 230th report has offered a long list of measures to deal with the

pendency of cases. These include providing strict guidelines for the grant of adjournments, curtailing vacation time in the higher judiciary, reducing the time for oral arguments unless the case involves a complicated question of law, and framing clear and decisive judgments to avoid further litigation. In addition, the courts should also seriously consider incorporating technology into the system. Digitizing court records has been a good start in this context but a lot more can be done. Quick access to the e-books, user friendly writing software and personalized stenographers could be of immense help as well.

Then according to "Analysis of Causes for Pendency in High Courts and Subordinate Courts in Maharashtra" which was submitted to Department Of Justice Government Of India by Dushyant Mahadik (Administrative staff college-2018), the case pendency are at an alarming rate. According to the document titled "Subordinate Courts of India: A Report on Access to Justice 2016" by Centre for Research & Planning, Supreme Court of India New Delhi says under the heading 'State of Infrastructure' that:-

The subordinate judiciary works under severe deficiency of 5,018 court rooms. The existing 15,540 Court Halls are insufficient to cater to the sanctioned strength of 20,558 Judicial Officers as on 31.12.2015, resulting in the judicial officers having to work under undesirable conditions. A similar picture emerges in terms of the residential accommodation for the subordinate judiciary - here the shortage is of 8,538 quarters, or above 40% of sanctioned strength of judicial officers. The staff position for Subordinate Courts is also not encouraging, 41,775 such positions are lying vacant, thus further hindering in the functioning of the courts. These indicators have adverse consequences on the effectiveness of courts. A judge trying cases for days without end, in makeshift rooms cannot be expected to turnout optimal result; equally, shortage of secretarial and support staff tells on the availability of court services, so vital to ensure timeliness. Thus by graphically demonstrating the same the report supra says that as against the total sanctioned strength of 20,558 judicial officers, 15,540 court rooms are available i.e. publicly owned as on 31.12.2015. The shortfall in infrastructure is 5,018 or 24.41%. As against the total sanctioned strength of staff employees and officials (not judges) in courts, 1,72,641 staff members were available as on 31.12.2015. The shortfall in manpower is 41,775 or 19.48%. As against the total sanctioned strength of 20,558 judicial officers residence for 12,020 were available (publicly owned) as on 31.12.2015. The shortfall in residential accommodation is 8,538 or 41.53%. (Obviously the statistics must have changed in past 4 years and so has the number of litigations increased). The report further says that the number of hearings and the time period taken to dispose of cases across the system suggest that there is a serious problem of cases management in

procedure law in India. One possible explanation for the numbers discussed above is that adjournments are granted too easily and freely, and in the absence of a fixed time table to dispose of cases leads to delays in disposing the case. The report further reiterates that the issue of delay and arrears has been in prominence since 1958. In 1958, the 14th Report of the Law Commission of India dealt with the issue of delay and arrears and identified the root cause of the problem as inadequate judge strength. For dealing with the issue pertaining to delay and arrears, different approaches have been suggested by the Law Commission and other expert bodies. These include the following methods:

a. Demographic,

b. Rate of Disposal,

c. The National Court Management System based unit system,

The 230th Law Commission Report (REFORMS IN THE JUDICIARY – SOME SUGGESTIONS Submitted to the Union Minister of Law and Justice, Ministry of Law and Justice, Government of India by Dr. Justice A.R. Lakshmanan, Chairman, Law Commission of India, on the 5th day of August, 2009) quotes Justice Ganguly from his article titled "Judicial Reforms" published in Halsbury's Law Monthly of November 2008. The reforms suggested must be followed by lawyers and judges, in order to liquidate the huge backlog.

The suggestions are quoted below:

[1] There must be full utilization of the court working hours. The judges must be punctual and lawyers must not be asking for adjournments, unless it is absolutely necessary. Grant of adjournment must be guided strictly by the provisions of Order 17 of the Civil Procedure Code.

[2] Many cases are filed on similar points and one judgment can decide a large number of cases. Such cases should be clubbed with the help of technology and used to dispose other such cases on a priority basis; this will substantially reduce the arrears. Similarly, old cases, many of which have become in fructuous, can be separated and listed for hearing and their disposal normally will not take much time. Same is true for many interlocutory applications filed even after the main cases are disposed of. Such cases can be traced with the help of technology and disposed of very quickly.

[3] Judges must deliver judgments within a reasonable time and in that matter, the guidelines given by the apex court in the case of Anil Rai v. State of Bihar, (2001) 7 SCC 318 must be scrupulously observed, both in civil and criminal cases.

[4] Considering the staggering arrears, vacations in the higher judiciary must be curtailed by at least 10 to 15 days and the court working hours should be extended by at least half-an hour.

[5] Lawyers must curtail prolix and repetitive arguments and should supplement it by written notes. The length of the oral argument in any case should not exceed one hour and thirty minutes, unless the case involves complicated questions of law or interpretation of Constitution.

[6] Judgments must be clear and decisive and free from ambiguity, and should not generate further litigation. We must remember Lord Macaulay's statement made about 150 years ago. "Our principle is simply this – Uniformity when you can have it, Diversity when you must have it, In all cases, Certainty"

[7] Lawyers must not resort to strike under any circumstances and must follow the decision of the Constitution Bench of the Supreme Court in the case of Harish Uppal (Ex-Capt.) v. Union of India reported in (2003) 2 SCC 45.

Thus Law Commission of India made these 7 recommendations to reduce arrears in the areas of adjournments, clubbing cases, curtailing vacations and strikes, clarity and conciseness of both arguments and judgments. An article in the First Post Magazine (accessible at https://www.firstpost.com/long-reads/indias-criminal-justice-system-an-example-of-justice-delayed-justice-denied-3475630.html) suggests that various solutions have been proposed to reduce the problem of delays. This extends from increasing the strength of judges, reducing judicial vacancies, diverting cases from the courts to alternate dispute resolution forums (such as mediation and Lok Adalats) and specialized tribunals. In the criminal justice sphere, the introduction of "fast-track" courts, jail-adalats ("prison courts"), and plea-bargaining were introduced with much fanfare, although their success is yet to be demonstrated. However, even assuming that such methods succeed in reducing the pendency of cases, we have to be careful not to lose focus on the quality of substantive justice rendered. Both jail adalats and plea bargaining, reduce the backlog in courts, by encouraging accused in certain cases to plead guilty in exchange for a reduced sentence, although the taint of a conviction remains. However, serious questions have been raised about the class-bias that operates in these systems. The vision statement of The National Mission for Delivery of Justice and Legal Reforms presented to the then Hon'ble Chief Justice of India Justice K.G. Balakrishnan by the then Union minister of law and justice at the NATIONAL

CONSULTATION FOR STRENGTHENING THE JUDICIARY TOWARDS REDUCING PENDENCY AND DELAY on October 2009, aims to undertake the following:-

1. Immediate measures for implementation which further discusses creation of national arrears grid/identification of arrears, identification of bottle necks in crisis areas, tackling the bottle necks, adoption of innovative measures for expeditious case disposal, focus on selection, training and performance assessment of judicial personnel and court management executives, efficient utilization of judicial system and existing infrastructure through effective manning, effective planning, and timely management by increasing the use of technology and management methods, removing the dead weeds and preventing their re-growth, procedural changes and management and administrative changes,
2. Filling up of vacancies in the judiciary,
3. Computerization and e-courts,
4. Tackling the criminal justice system,
5. Creation of special purpose vehicles(SPV) to recruit competent hardware/software personnel who will be attached to each high court and will undertake certification/installation/teaching procedures at the district and the subordinate courts levels,
6. Role of bar councils and lawyers.

Furthermore following measures can also be taken (i) Policy and Legislative changes such as All India Judicial Service, Litigation Policy, Judicial Impact Assessment, Judicial Accountability Bill, Amendment in Negotiable Instruments Act and Arbitration & Conciliation Act, Legal Education Reforms and Retirement age of HC Judges. (ii) Re-engineering procedures and alternate methods of Dispute Resolution such as identification of bottlenecks, procedural changes in court processes, statutory amendments to reduce and disincentivize delays, Fast tracking of procedures, appointment of court managers and Alternate Dispute Resolution.(iii) Focus on Human Resource Development such as filling up of vacancy positions in all courts of judges and court staff, strengthening State Judicial Academies, Training of Public Prosecutors and ICT enablement of public prosecutors offices, strengthening National Judicial Academy and Training of mediators. (iv) Leveraging ICT for better justice delivery such as implementation of E-courts project, integration of ICT in the judiciary and use in criminal justice delivery and creation of National Arrears Grid. (v) Improving Infrastructure such as improving physical infrastructure of the District and

subordinate courts and creation of special / additional courts like Morning / Evening Courts, Family Courts and Gram Nyayalayas. National Mission for Delivery of Justice and Legal Reforms has recognized the problem of arrears and proposed a campaign mode to reduce pendency through Pendency Reduction Campaign in second half of calendar year 2011. As a result of collective efforts across the judicial system, an increased number of cases are being disposed. However, with increasing economic activity and increased access to justice, a record number of cases are also being admitted every year. In April 2015, during Joint Conference of Chief Ministers of States and Chief Justices of High Courts, the issue of pendency and arrears was deliberated. It was resolved to form arrears committees at high courts. Such committees have been formed and plan for clearing backlog of cases pending for more than 5 years is being prepared. Then in April 2016, a resolution aimed at prioritization of disposal of cases through mission mode was passed. With regard to the strength o the judges upon the population it will be worthwhile to mention the following observation made in the matter of "All India Judges Association v. Union of India" [2002 (4) SCC 247]:-

"An independent and efficient judicial system is one of the basic structures of our Constitution. If sufficient number of Judges is not appointed, justice would not be available to the people, thereby undermining the basic structure. It is well known that justice delayed is justice denied. Time and again the inadequacy in the number of Judges has adversely been commented upon. Not only have the Law Commission and the standing committee of Parliament made observations in this regard, but even the head of the judiciary, namely, the Chief Justice of India has had more occasions than once to make observations in regard thereto. Under the circumstances, we feel it is our constitutional obligation to ensure that the backlog of the cases is decreased and efforts are made to increase the disposal of cases. Apart from the steps which may be necessary for increasing the efficiency of the judicial officers, we are of the opinion that time has now come for protecting one of the pillars of the Constitution, namely, the judicial system, by directing increase, in the first instance, in the Judge strength from the existing ratio of 10.5 or 13 per 10 lakhs people to 50 Judges for 10 lakh people. We are conscious of the fact that overnight these vacancies cannot be filled. In order to have Additional Judges, not only the post will have to be created but infrastructure required in the form of Additional Court rooms, buildings, staff, etc., would also have to be made available. We are also aware of the fact that a large number of vacancies as of today from amongst the sanctioned strength remain to be filled. We, therefore, first direct that the existing vacancies in the subordinate Court at all levels should 43 be filled, if possible, latest by 31st March, 2003, in all the States. The increase in the Judge strength to 50 Judges per 10

lakh people should be effected and implemented with the filling up of the posts in phased manner to be determined and directed by the Union Ministry of Law, but this process should be completed and the increased vacancies and posts filled within a period of five years from today. Perhaps increasing the Judge strength by 10 per 10 lakh people every year could be one of the methods which may be adopted thereby completing the first stage within five years before embarking on further increase if necessary."

The above observations of Hon'ble Supreme Court of India made on 21.03.2002 still require attention and Judge-Population ratio requires to be narrowed down. Sufficient Court Rooms, Buildings and staff are yet to be made available. States are required to act in this regard.

In judgment over Criminal Appeal No 509 of 2017, the Supreme Court of India has issued timelines for criminal trials and appeals. The judgment also directs High Courts to plan and monitor the speed of trials by subordinate courts and to include timelines in annual confidential reports on performance of judges. Many of the above initiatives look at the court process from the perspective of judiciary. However, delays in the legal system are caused not only because of a shortage of judges, but also because of a shortage of police officers (who have to investigate cases and then come to court on a regular basis), prosecutors (who are often underpaid and over-worked), inadequate judicial infrastructure (overcrowded courtrooms or inadequate support staff such as stenographers). Thus, any holistic solution will have to be cognizant of the variety of factors that cause delays, with a strong focus on empirics to understand the cause for delays. A start has been made in this direction, but there is a long way to go before timely justice becomes a reality.

CHAPTER - II

Research Approach and Methodology

The previous chapter focused on the conceptual background to carry out the present research. The present research will explain the methodology of the current study. Particularly, the objectives of the research, scales through which the data was collected and sources are also discussed. Furthermore, through pilot testing the present chapter examines the validity and reliability of the research instrument used in the study. To identify the bottlenecks responsible for causing delay in disposal of civil cases, a questionnaire survey was conducted.

Introduction

Research methodology is a procedure used to analyze the information. The methodology allows to critically evaluate a study's overall reliability and validity. The present chapter explains in detail the various aspects of the research methodology used in the current study. The current chapter deals with the objectives of the study, sample size and design and administration of research instrument.

Objectives of the study

The following objectives have been set for the present study:

- To identify the nature and extent of reasons that commonly contributes to delay in disposal of cases,
- Subject wise classification of cases
- To identify the inefficiencies including court side, counsel side and litigant side and
- To suggest measures and way forward by relying upon the accurate primary data collected during research.

Physical verification of cases:

Verified Cases

Table 2.1: depicting the total number of civil cases in Principal

District and sessions court Budgam

Name of the Court	Total Pendency		Pending Cases	
			Age in years	Frequency
Principal District and Sessions Judge	122	Civil side only	2-5	89
			5-10	26
			10-15	5
			15-20	2
			Total	122

In the above table above we may conclude that cases falling between the age-group of 10-15 and 15-20 years respectively are less in number as compared to cases falling between age group of 2-5 and 5-10 years respectively. Although the number is less but if not controlled in time it can become grave concern. One of the chronic cases pertaining to land dispute in which compensation is claimed was instituted on 29/09/2008, M*is no. 31/N is pending because of non appearance of defendant*. Exparte proceeding had been instituted in this case 3 times, in 2009, 2017 & 2018 respectively. In this case expartee proceedings have been set aside after 9 years. Another such type of case under *Mis no.* 6/execution (Ijrayi) instituted on 02/07/2004 is stagnated on proforma defendant (fareeki torni). One more case *Mis no. 18/N under the subject matter of suit for perpetual injunction titled as Abdul Khaliq Dar v. Ghulam Hassan instituted on* 01-10-2001 is pending from 17 years and currently is on argument stage since 7 years.

Table 2.2: depicting the total number of cases in Sub-Judge district Court Budgam

Name of the Court	Total Pendency	Pending Cases	
		Age in years	Frequency
Sub-Judge court Budgam	102	2-5	12
		5-10	83
		10-15	6
		15-20	1
		Total	102

From the above table it is understandable that a single case is pending in the time span of 15 to 20 years while as 83 cases are pending in the time span if 10 to 15 years. Ahmed Pandit v. Qasim Khanday in the matter of *suit for permanent injunction* is pending from last 17 years & is stalled at the stage of framing of issues.

Another case *Malik Zarina Batul v. Chief Secy. Jammu and Kashmir* is pending from 13 years and is still at argument stage. The defendants in this case have resorted to the *Section 5 of the Indian Limitation Act, 1963 (Act 36 of 1963,* the application for the same has been entertained by the honourable court.

Table 2.3: Depicting the total number of cases in Special Mobile Magistrate Court Budgam

Name of the Court	Total Pendency	Pending Cases	
		Age in years	Frequency
Special Mobile Magistrate Court Budgam	48	2-5	39
		5-10	9
		10-15	0
		15-20	0
		Total	48

Although the functions of Special Mobile Magistrate in District Court Budgam are temporarily assigned to another judge yet the frequency of cases falling in large time span is very low. There are only 9 cases falling between age group of 5-10 years while as only 39 cases fall between the age group of 2-5 years. Thus we can conclude that there is almost negligible pendency.

Table 2.4: Total number of cases pending before the Munsiff Court Budgam

Name of the Court	Total Pendency	Pending Cases	
		Age in years	Frequency
Munsiff Court Budgam	55	2-5	24
		5-10	22
		10-15	9
		15-20	0
		Total	55

The data depicted in the above table clearly indicates comparatively very less number of cases is pending before the Honourable Munsiff Court Budgam falling in the time span of 2-5 years and 5-10 years. Some of the cases falling under large time span include:

1. Mst. Raja v. Mst. Khurshi, Mis no. 44/N (suit for permanent Injunction) was instituted 9-7-2004 and is stagnated at witness stage since 5 years.
2. Ghulam Mohiuddin Shiekh v. Habibullah Kuchay, Mis no. 105/N(Suit for permanent Injunction) was instituted on 7-9-2005 and is pending for 13 years.
3. Samad Hajam v. Abdul Aziz Hajam, Mis no. 88/N (suit for Perpetual Injunction) was instituted on 26-8-2006 and is waiting for Defendant.

Table 2.5: Depicting the total number of cases in Munsiff Court Beerwah

Name of the Court	Total Pendency	Pending Cases	
		Age in years	Frequency
Munsiff Court Beerwah	92	2-5	90
		5-10	1
		10-15	0
		15-20	1
		Total	92

From the above table it is clear that minimal number of cases are pending in the above judgeship. One of the chronic cases is pending, which is titled as *Khaliq Ganie v. Mohideen pandith, Misil no36/N*. The chronological details of the case are herein below enunciated which will amply actuate the delay and the reasons thereof.

The said case was instituted on 11-04-1997 in the matter of suit for declaration to which written statement was filed on 07-08-1997 and preliminary statement was recorded on 26-02-1997. After a long gap of more than 9 years, the case was listed for arguments, till the time plaintiff died on 16-05-2011 without the matter being heard. Thereafter the time was taken to bring legal heirs on record. The legal heirs failed to appear before the Honourable Court due to which the case was dismissed 0n 02-04-2012. The plaintiff had submitted application for the restoration of suit. Due to the territorial adjustment and establishment of new Courts, the Munsiff Court Beerwah was established in 2014 accordingly file was transferred to the said court. Without any regular presiding officer, on 03-12-2014 the suit was again dismissed for the reason of being not maintainable. The same order was appealed before Principal District Judge Budgam and is still pending.

Another case titled as Ali Mir v. Mohd. Mir Mis. No. 52/N instituted on 23-06-2010 (Suit for declaration and Partition). The said case was delayed due to non-availability of regular presiding officer and non-appearance of defendant.

Table 2.6: Depicting the total number of cases in Munsiff Court Magam

Name of the Court	Total Pendency	Pending Cases	
		Age in years	Frequency
Munsiff Court Magam	98	2-5	78
		5-10	20
		10-15	0
		15-20	0
		Total	98

The data in the table reveals that there are 78 cases pending between age group of 2-5 years and 20 cases pending between age group of 5-10 years. The case titled as Mst. Sada v. State and others Mis. no. 103/N (suit for Permanent and Mandatory Injunction). The said case was instituted on 5-08-201. From 03-03-2012 to 07-09-2013 documents were filed, from 03-04-2014 to 05-11-2015 issues were framed, and from 18-03-2016 to 15-11-2018 examination of witnesses was completed. Till now the case is awaiting Judgement.

Another case titled as Abdul Khaliq sheikh v. Mst. Ayesha Mis. no. 96/N (suit for Permanent Injunction) was instituted on 22-11-2014. The case has been lingering on service of summon stage for 2 years. Further in this case expartee proceedings had been initiated against the defendants.

Table 2.7: Depicting the total number of cases in Munsiff Court Chadoora

Name of the Court	Total Pendency	Pending Cases	
		Age in years	Frequency
Munsiff Court Chadoora.	22	2-5	31
		5-10	2
		10-15	0
		15-20	0
		Total	33

The above mentioned table suggests that there are very less no of pendency in the above mentioned judgeship. The chronic case *Mohd Yousuf Shah v. Mohd Akbar Ganie, Mis no. 185/N* is pending since 2006.

Table 2.8: Depicting the total number of cases in Court of Sub-Judge Chadoora

Name of the Court	Total Pendency	Pending Cases	
		Age in years	Frequency
Court of Sub-Judge Chadoora	60	2-5	49
		5-10	29
		10-15	6
		15-20	2
		Total	86

The above mentioned table reveals that a good number of cases are pending before the honourable court. There are cases like *Mohammad Sofi v. Ahmad Sofi, Mohammad Yousuf Najar v. Mohammad Subhan Nath, mis no 19/N, Haroon Rashid v. Raja, mis no 98/N, Mst raja v. Akbar wagay 08/N, Sulla rather v. Mohd Asan, mis no47/N which are still awaiting for witnesses, arguments & for appellate order respectively.*

Table 2.9: Depicting the total number of cases in Judicial Magistrate First Class Chrari Sharief

Name of the Court	Total Pendency	Pending Cases	
		Age in years	Frequency
Court of Munsiff Chrari Sharief	8	2-5	5
		5-10	2
		10-15	1
		15-20	0
		Total	8

The data depicted in above table reveals that minimal pendency is recorded in the above mentioned judgeship, only one case *Mohd Rather v. Shahzada Bano, Mis no17/N* is pending for 13 years. The said case was instituted on 21-04-2006 and was delayed due to late document submission, frequent adjournments, non-appearance of defendants.

SAMPLE FEATURES AND SELECTION PROCEDURE

The sample

The current study was carried out in major courts of district Budgam. The study pertains to following courts of Budgam District:

1. Principle District and Sessions Court Budgam
2. Court of Munsiff Magam
3. Court of Munsiff Beerwah
4. Court of Munsiff Chadoora
5. Court of Munsiff Chrari Sharief
6. Court of Sub-Judge Chadoora
7. Court of Sub-Judge Budgam
8. Court of Special Mobile Magistrate Budgam

In order to select the sample from different courts expert opinion was sought. Accordingly, advocates and Judges of all the courts in district Budgam were approached. From the records of Bar Associations of the courts the entire population of advocates was found to be 106. The total number of Judges in all the courts was 8.

SELECTION OF SAMPLE

The entire population of respondents was approached for data collection. However only 61 responded which comprises of 57 advocates and 4 Judges. Hence, the total sample for the present study was counted as 61.

Exhibit 2.1: Depicting the number of samples.

S.NO SAMPLE	Courts	Judges	Advocates	TOTAL
1.	Budgam	3	45	48
2.	Magam and Beerwah	2	25	27
3.	Chadoora	2	22	24
4.	Chrari Sharief	1	14	15
5	Total	8	106	114

Exhibit 2.2: Showing courts under study

Courts
Budgam
Beerwah and Magam
Chadoora
Chrari Sharief

Exhibit 2.3: Schematic view of sample Respondents across courts

Name of the court	Judge strength	Advocate strength	Total strength	Sample Respondents	Response rate (%)
Budgam	3	45	48	25	52.08
Beerwah and Magam	2	25	27	20	74.07
Chadoora	2	22	24	7	29.16
Chrari Sharief	1	14	15	9	60
Total	8	106	114	61	53.50

The Schematic view of Respondents across courts was- 3 Judges and45 advocates in Principal District and SessionsCourt Budgam, 2 Judges and 25 Advocates from Judicial Magistrate First Class Magamand Beerwah, 2 Judges and 22 Advocates from Court of Sub Judge and Judicial Magistrate First Class, Chadoora and 1 Judge and 14 Advocates from Judicial Magistrate First Class, Chrari Sharief. However, from Budgam, only 1 Judge and 24 Advocates returned the filled questionnaire, with a response rate of 52.08%. In Beerwah and Magam, out of 27, 2 Judges and 18 Advocates returned the questionnaire with a response rate of 74.07%. In Chadoora none of the Judges returned questionnaire and only 7 advocates out of 22 responded with a response rate of 29.16%. In Chrari Sharief 1 Judge and 8 Advocates responded with a response rate of 60%.The overall response rate is 53.50% (61 questionnaires out of 114).

QUESTIONNAIRE DESIGN AND DEVELOPMENT

A well-structured and well-designed questionnaire was prepared and administered to the advocates and Judges of the selected courts to get the primary information regarding the opinion with regard to the objectives of the study. The questionnaire was developed after the physical verification of the cases. The main reasons found for delay in most cases formed the

entire set of questions. Both the open ended and closed ended questions were framed. The questionnaire was a four point liker scale, which varies from 1 to 4 as;

1. Strongly inclined to agree.
2. Partly inclined to agree.
3. Partly inclined to disagree.
4. Strongly inclined to disagree.

Scale Validation

It was very important to test the validity and reliability. Without testing it was difficult to know whether the scale measured the same as they were supposed to. The validity is explained as;

Face and content validity

Face validity of the scale is done by taking into consideration that the items are reasonably related to the perceived purpose of the measure. Content validity is stated as it provides sufficient information about the conceptual domain that it is designed to cover.

The experts in this field ensured both face and content validity of the instrument before and during the pilot study. The constructs and items are critically evaluated by the experts for the clarity. The feedback was taken and some new items were developed and others were modified or eliminated.

The Reliability test

The statistical test that was used to find out whether the data can be used for factor analysis was: Cronbach alpha

To measure the degree of internal consistency, that is, how closely related a set of items are as a group. It is considered to be a measure of scale reliability. In the present study the Cronbach alpha of the 18 statements is 0.750.

Exhibit 2.4: Showing Cronbach Alpha

Reliability Statistics

Cronbach's Alpha	No. of Items
.750	18

CHAPTER - III

Data analysis and Interpretation

In the earlier chapter, the introduction and research methodology and design have been discussed that form the base of this study. The present chapter examines the data and provides results.

Accordingly, in this chapter the descriptive statistics are discussed first (mean score, percentage mean score, standard deviation), then the difference.

The chapter focuses towards analysing the data for research evidence, to identify the bottlenecks in delivering justice, on the sample selected 1) Principal District and Sessions Court Budgam 2) Court of Sub Judge Chadoora 3)Court of Munsiff Magam 4) Court of Munsiff Beerwah 5) Court of Munsiff Chrari Sharief 5) Court of Special Mobile Magistrate Budgam. Table 4.1, reveals that total mean for the four courts is (M.S= 3.11, 77.75%).

STATEMENT WISE COMPARISON OF SAMPLE STUDY COURTS

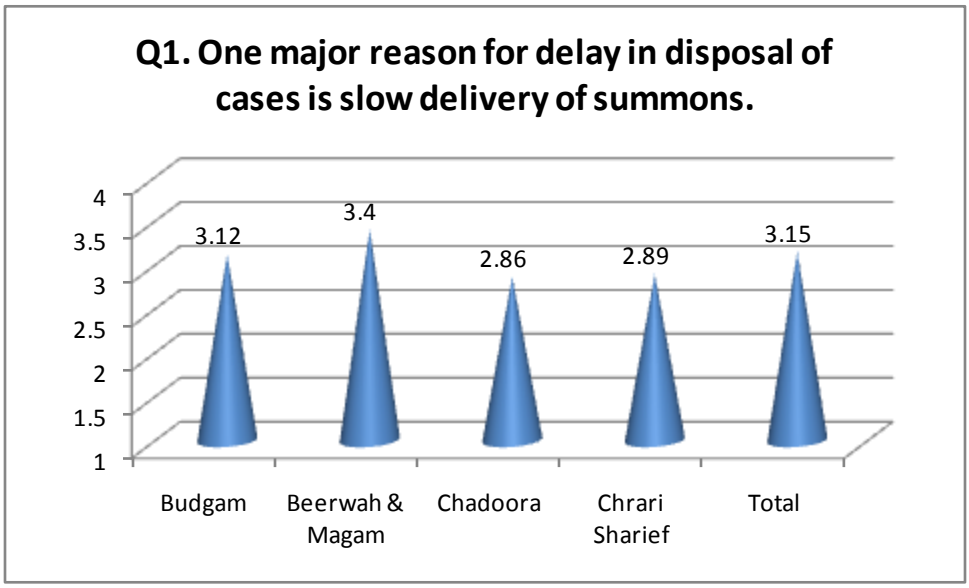
Table 3.1: Statement wise comparison of sample study courts (N=61)

S. No.	Statements	Name of the courts			
		Budgam	Beerwah & Magam	Chadoora	Chrari Sharief
		M.S S.D	M.S S.D	M.S S.D	M.S S.D
1.	One major reason for delay in disposal of cases is slow delivery of Summons.	3.12 0.78	3.4 0.6	2.86 0.37	2.89 1.16
2.	Carelessness and indolence of Process Servers contributes to delay.	3.52 0.65	3.30 0.57	2.71 0.95	3.44 0.72
3.	Should there be bonafide supervision of Process Servers.	3.72 0.54	3.8 0.62	4.00 0.00	3.77 0.44
4.	There is always delay in filing Written Statement.	2.76 0.88	2.95 1.05	2.57 0.78	3.66 0.70
5.	Non-appearance of Parties contributes to delay.	2.8 0.76	3.00 0.97	3.28 0.95	3.22 0.83
6.	Adjournments are granted to the Advocates in routine course.	3.16 1.06	3.00 1.02	3.14 0.9	3.55 1.01
8.	Examination of witnesses consumes much of courts time.	3.44 0.65	2.7 1.21	2.71 1.38	3.22 1.09
9.	Witnesses often remain absent or avoid	3.52	3.4	3.42	3.44

	their presence in the court.	0.59	0.94	0.78	0.88
10.	Granting Injunction/Stay orders is another reason for delay. It seems that courts are too liberal in granting them.	2.64 1.22	2.15 1.13	2.57 1.27	2.88 1.05
11.	Ex-parte proceedings are also a major reason for delay in disposal of cases.	2.56 0.96	2.00 1.02	2.85 1.46	2.11 1.27
12.	There is undue elongation of cases by means of appeals.	2.96 0.93	2.80 0.89	3.14 1.21	3.00 1.32
13.	Frivolous applications during trial contribute to delay.	3.52 0.58	3.25 0.85	3.57 0.78	3.33 0.86
14.	Do we have dearth of sub-ordinate staff in the courts? If yes, do you agree that it contributes to delay in disposal of cases?	3.64 0.57	3.4 0.88	3.42 1.13	2.33 1.11
15.	Amalgamation of various functions in judges affects their disposal rate.	3.76 0.6	3.35 0.81	3.42 0.78	3.55 0.88
16.	Transfer of judges during trail contributes to delay.	2.64 1.07	3.1 1.07	3.85 0.37	3.11 1.05
17.	Advocates also contribute to delay.	3.40 0.86	2.75 1.01	2.85 1.06	3.00 1.22
18.	There is delay from litigant side as well.	3.28 0.61	2.95 1.05	3.28 0.95	2.66 0.86
Total		3.19 79.75*	2.98 74.5	3.15 78.75	3.15 78.75
		3.11			

M.S = Mean score, S.D = Standard Deviation, * percentage to mean score

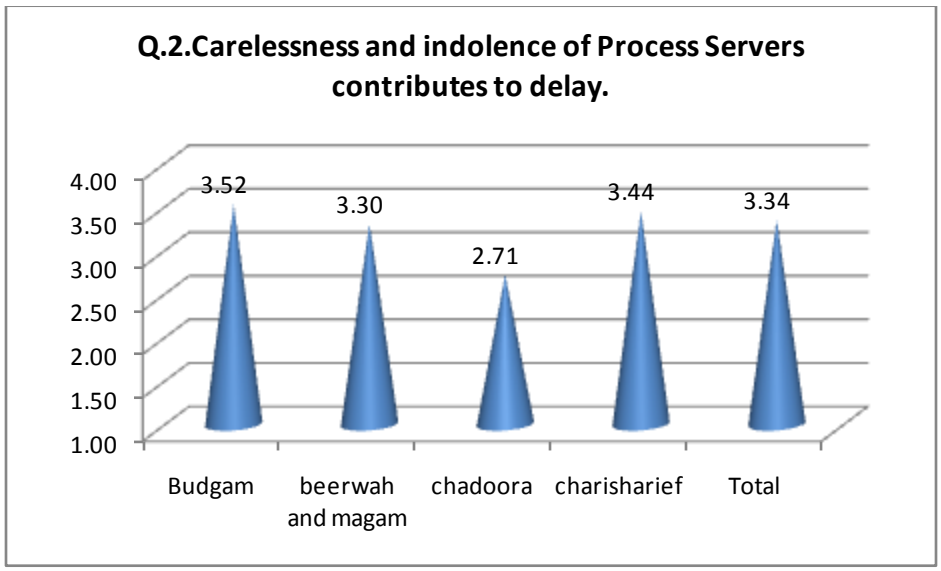
Charts depicting perception of Respondents (Judges and Advocates) regarding the statements included in the questionnaire



	Budgam	Beerwah & Magam	Chadoora	Chrari Sharief

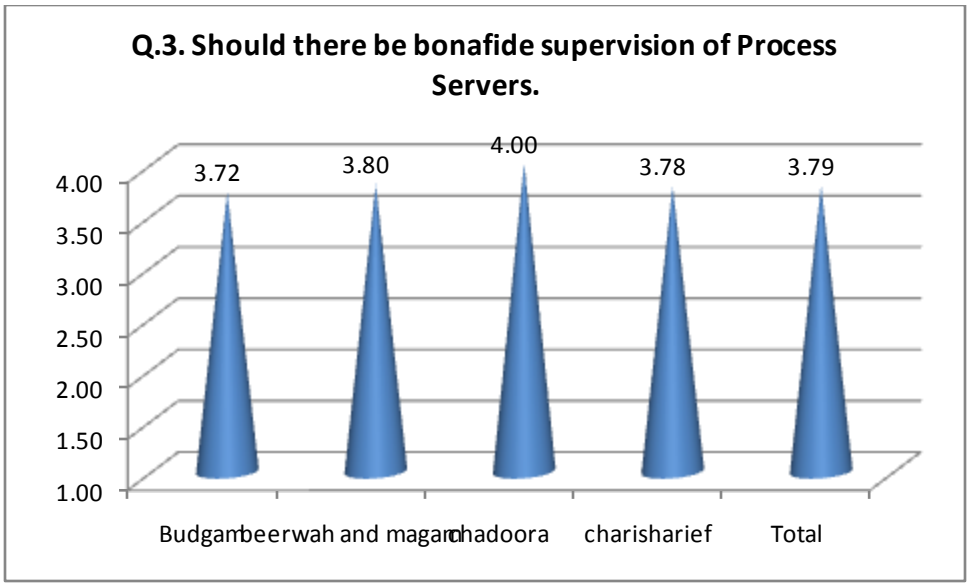
Mean	3.12	3.4	2.86	2.89
Standard Deviation	0.78	0.6	0.37	1.16

From above it is evident that opinion regarding slow delivery of summons is lowest in case of Chadoora with mean score of 2.86 and highest is in Beerwah and Magam Munsif court at 3.4. In totality, mean score comes out to be 3.16. Budgam district Court respondents also agree with this statement to a great extent with a mean score of 3.12.



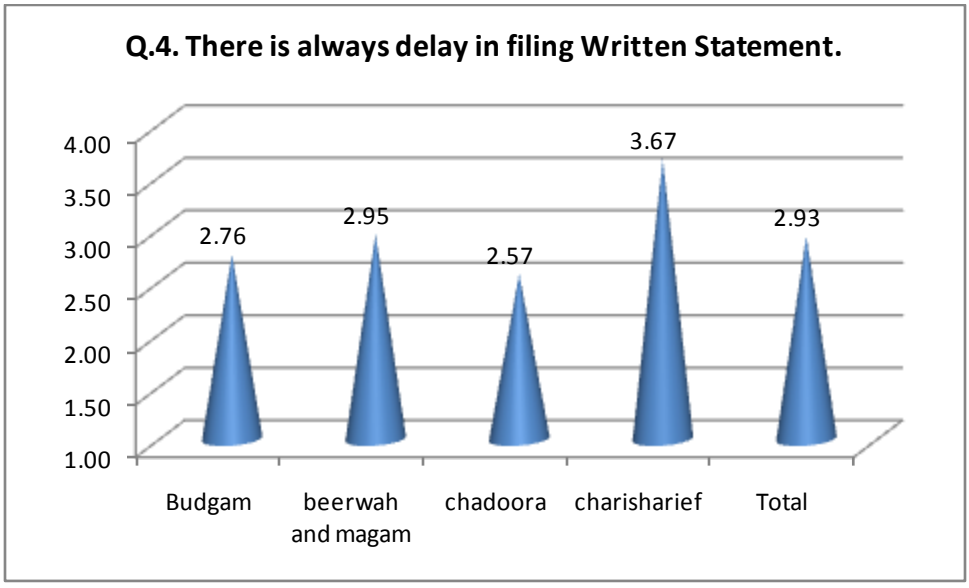
	Budgam	**Beerwah & Magam**	**Chadoora**	**Chrari Sharief**
Mean	3.52	3.30	2.71	3.44
Standard Deviation	0.65	0.57	0.95	0.72

As far as carelessness of process servers is considered, respondents in district court Budgam have a strong opinion about it with a mean score of 3.52 while in Chadoora they have least with a mean score of 2.71. It may be because of the fact there is less pendency as compared to other courts. All other courts have common notion for process servers having mean score more than 3.30.



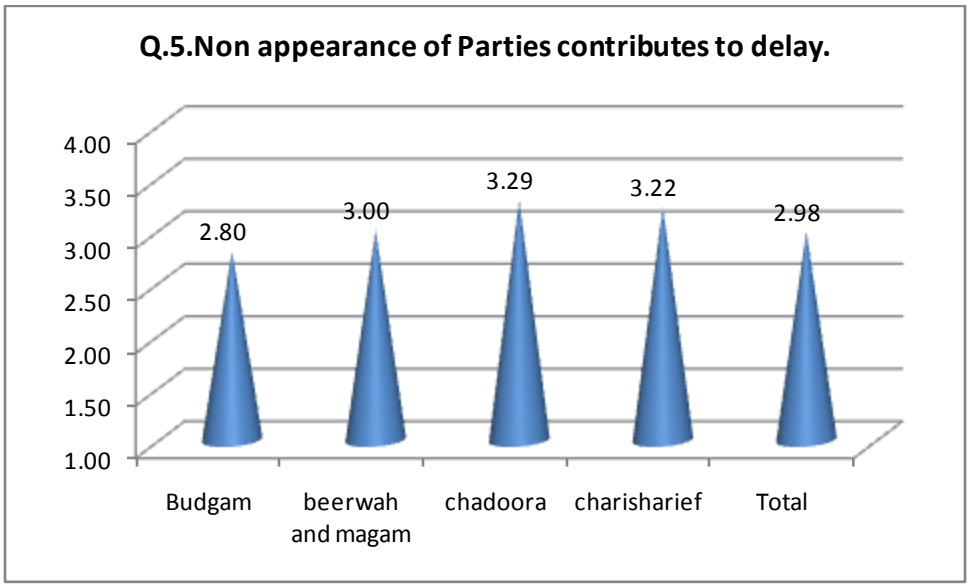
	Budgam	Beerwah & Magam	Chadoora	Chrari Sharief
Mean	3.72	3.8	4.00	3.77
Standard Deviation	0.54	0.62	0.00	0.44

In continuation to previous statement all the respondents agree that there should be bona fide supervision of process servers. The mean score in this regard is highest in Chadoora 4.00. Total mean score of all the courts is 3.79. It can be said that process servers should be under regular supervision for smooth and swift deliverance of justice.



	Budgam	Beerwah & Magam	Chadoora	Chrari Sharief
Mean	2.76	2.95	2.57	3.66
Standard Deviation	0.88	1.05	0.78	0.70

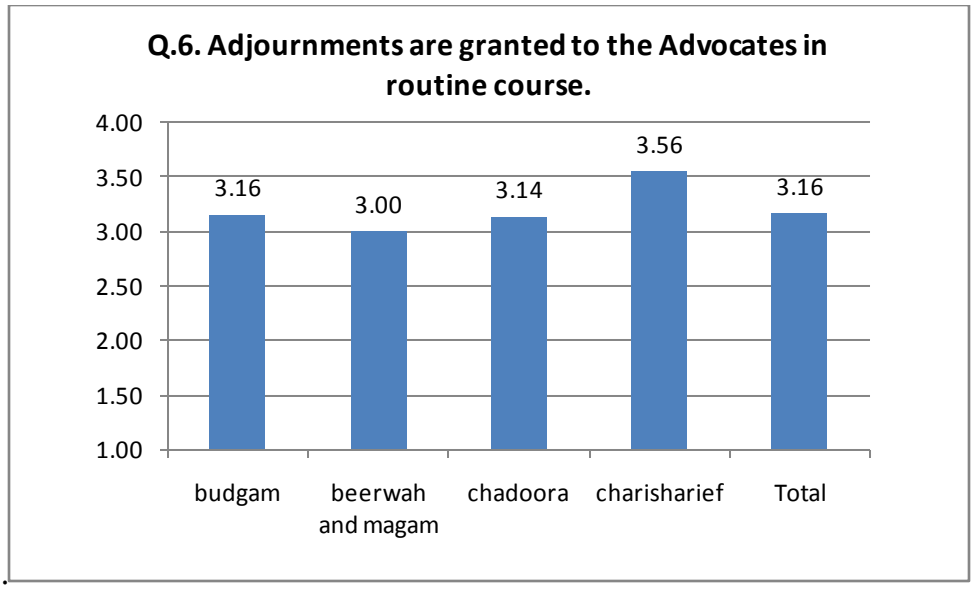
The stipulated time for the filing of written statement is to the extent of 90 days. There is an above average response from respondents as far as delay is considered. The total mean score in all the four sample courts is 2.93 on a scale of 4.00.



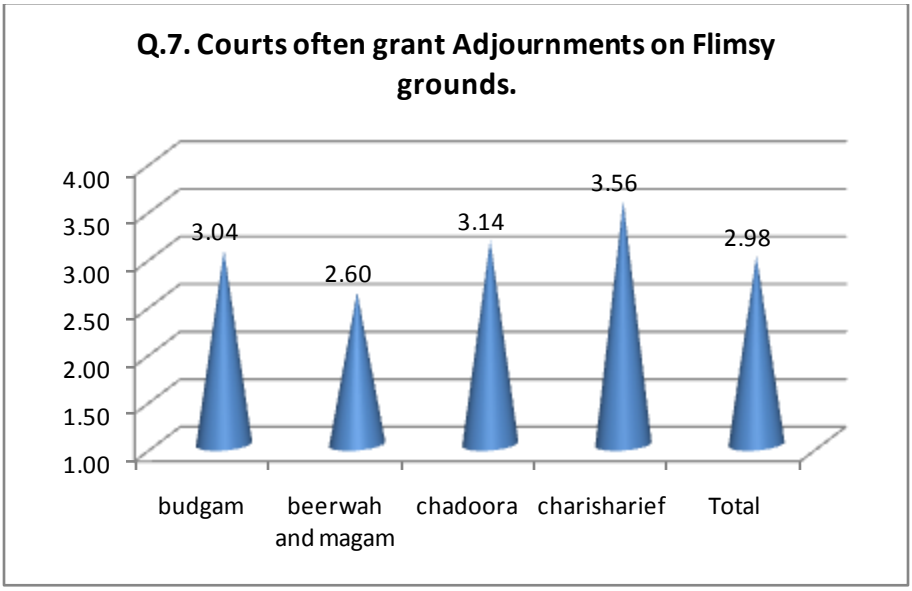
	Budgam	Beerwah & Magam	Chadoora	Chrari Sharief
Mean	2.8	3.00	3.28	3.22
Standard Deviation	0.76	0.97	0.95	0.83

Most of the respondents are of the opinion that parties don't show up on the day of hearing which contributes to delay. Considering this statement, respondents in Chadoora have strongly agreed with this with a mean score of 3.28 while as respondents in Budgam have partly agreed with it having a mean score of 2.8.

All the courts collectively have a strong opinion with this statement with a mean score of 2.98.

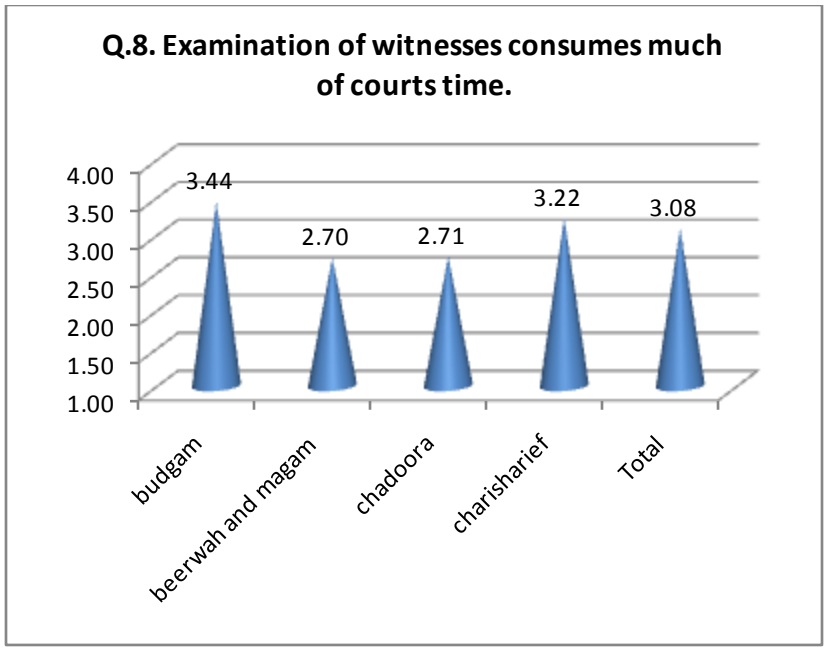


	Budgam	Beerwah & Magam	Chadoora	Chrari Sharief
Mean	3.16	3.00	3.14	3.55
Standard Deviation	1.06	1.02	0.9	1.01

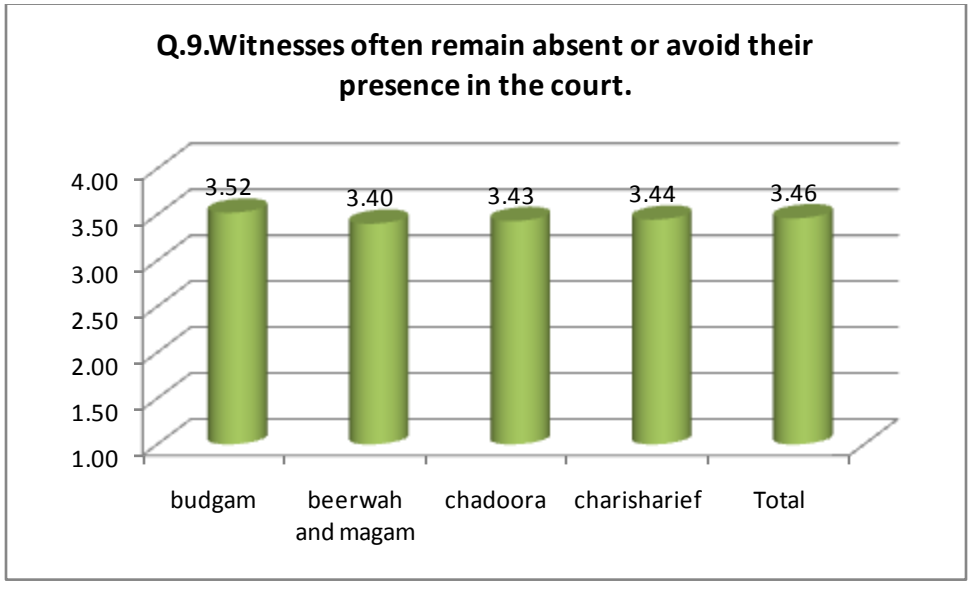


	Budgam	Beerwah & Magam	Chadoora	Chrari Sharief
Mean	3.04	2.6	3.14	3.55
Standard Deviation	0.97	1.18	1.06	0.52

Adjournments in routine course on flimsy grounds were also found to be a major bottleneck during physical verification affecting disposal of cases. After analysing the data the overall mean score of adjournments is 3.16, the Chrari Sharief court is placed highest with a mean score of 3.55 compared to Beerwah and Magam which reveals lowest mean score of 2.6.

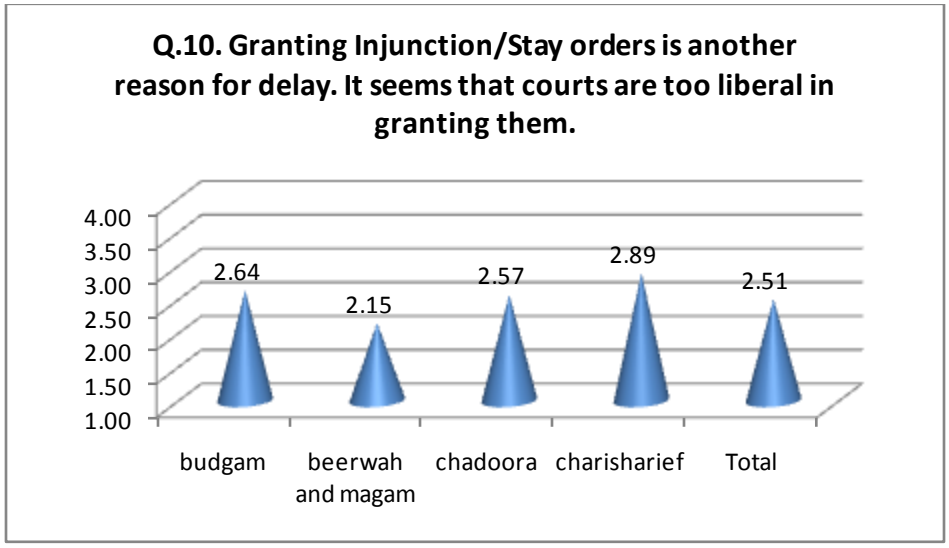


	Budgam	Beerwah & Magam	Chadoora	Chrari Sharief
Mean	3.44	2.7	2.71	3.22
Standard Deviation	0.65	1.21	1.38	1.09



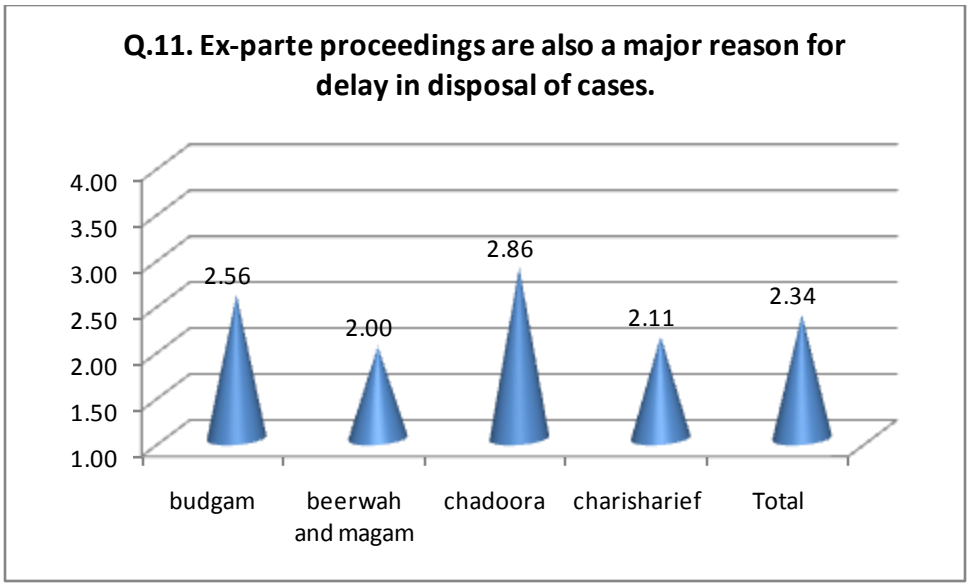
	Budgam	Beerwah & Magam	Chadoora	Chrari Sharief
Mean	3.52	3.4	3.42	3.44
Standard Deviation	0.59	0.94	0.78	0.88

Statements 8 and 9 pertain to delay from witness side. From the above table it is revealed that all the respondents pertaining to different courts agree with the fact that witnesses remain absent with a mean score of 3.46. Budgam district court has the highest mean score of 3.52 compared to Beerwah and Magam with a lowest mean score of 3.4. There is very little standard deviation pertaining to witnesses coming to court. It is clear that witnesses do hesitate to get involved in court system.



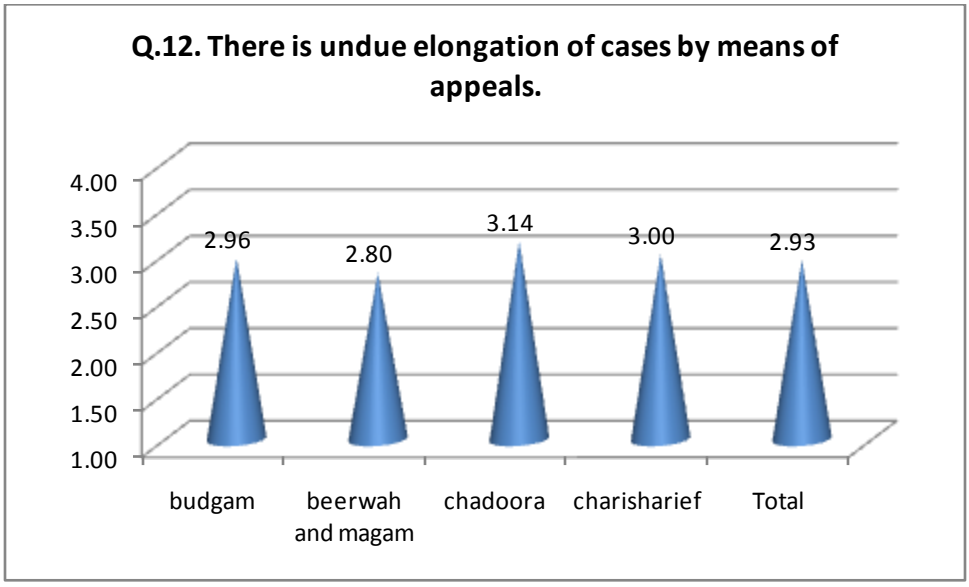
	Budgam	Beerwah & Magam	Chadoora	Chrari Sharief
Mean	2.64	2.15	2.57	2.88
Standard Deviation	1.22	1.13	1.27	1.05

Injunctions also contribute to delay as is revealed by the total mean score of 2.51. Chrari Sharief reveals the highest score with regard to injunctions with a mean score of 2.88 as compared to Beerwah and Magam which is lowest with a mean score of 2.15. All the means have standard deviation more than one. Considering mean score of 2.88 and a standard deviation of 1.05. We can say responses vary from 1.83 to 3.93. We cannot strongly recommend this to be the major reason for delay.



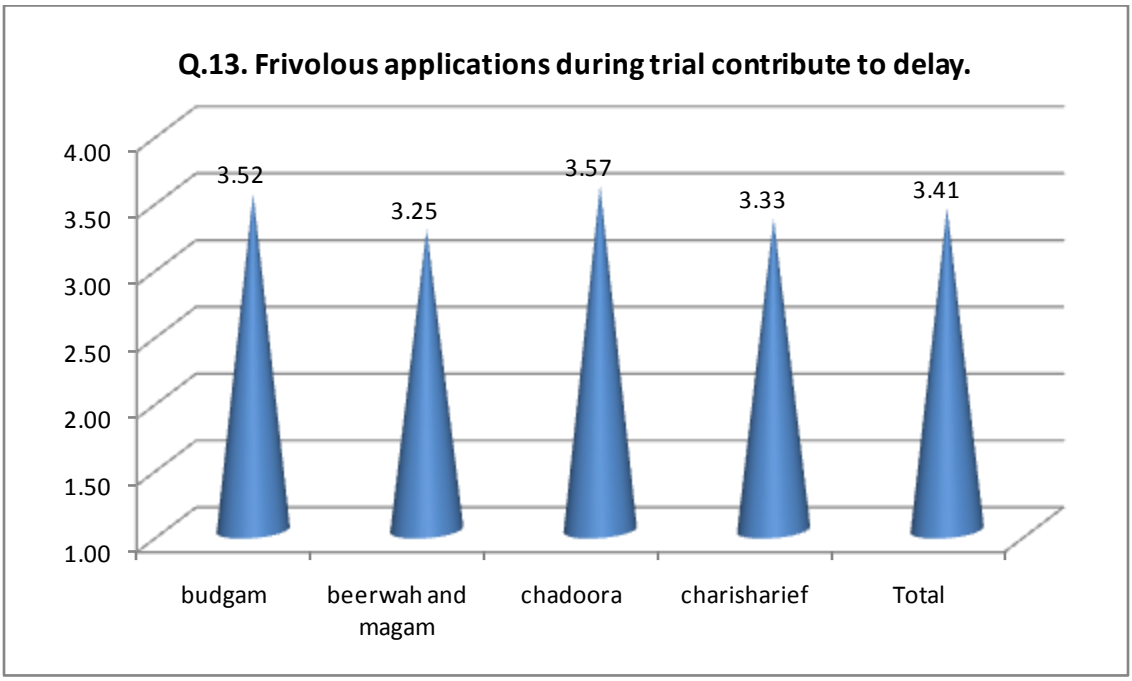
	Budgam	Beerwah & Magam	Chadoora	Chrari Sharief
Mean	2.56	2.00	2.85	2.11
Standard Deviation	0.96	1.02	1.46	1.27

From the above table it is revealed from the mean score ex-parte proceedings also contribute to delay with a total mean score of 2.34, however the sample court Chadoora has a highest mean score of 2.85 with a standard deviation of 1.46 having too much standard deviation is itself the indicator that respondents have varied opinions as far as ex-parte proceedings are concerned. It cannot be taken as a main reason of delay with such a huge deviation.



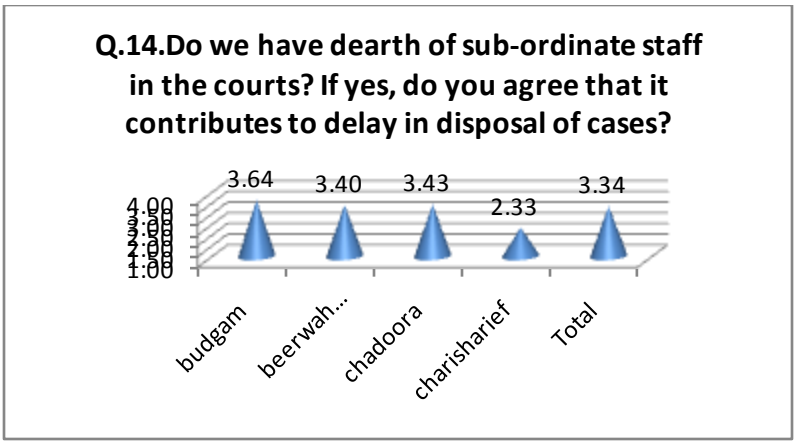
	Budgam	Beerwah &	Chadoora	Chrari Sharief

		Magam		
Mean	2.96	2.80	3.14	3.00
Standard Deviation	0.93	0.89	1.21	1.32



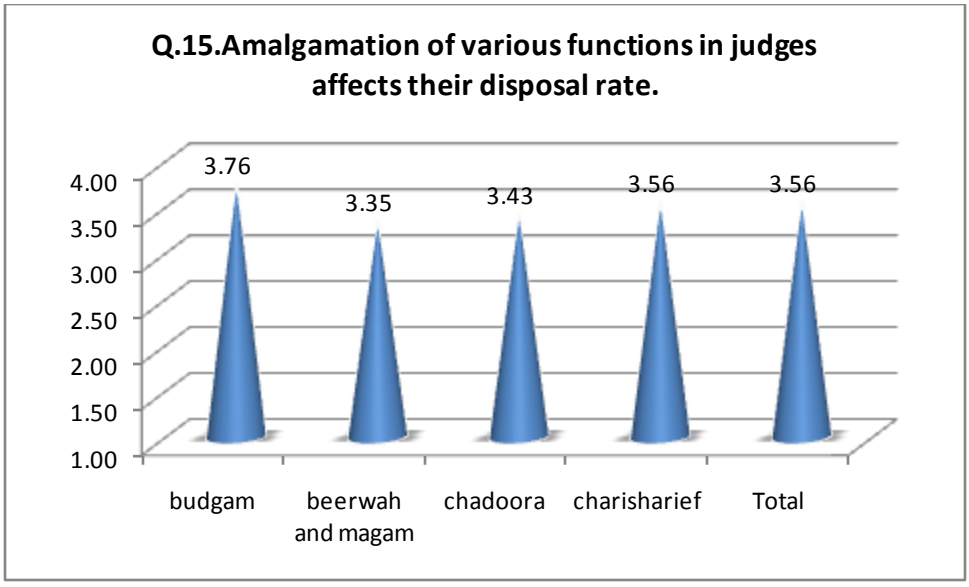
	Budgam	Beerwah & Magam	Chadoora	Chrari Sharief
Mean	3.52	3.25	3.57	3.33
Standard Deviation	0.58	0.85	0.78	0.86

Appeals/ applications during trials with no strong grounds lead to delay in most cases. The respondents have strongly agreed with this statement leading to a mean score of 3.41 in totality. Chadoora revealed highest mean score of 3.57. Even the lowest mean score for this question is 3.25 in case of Beerwah and Magam which clearly reveals that respondents are very much agreeing with this.



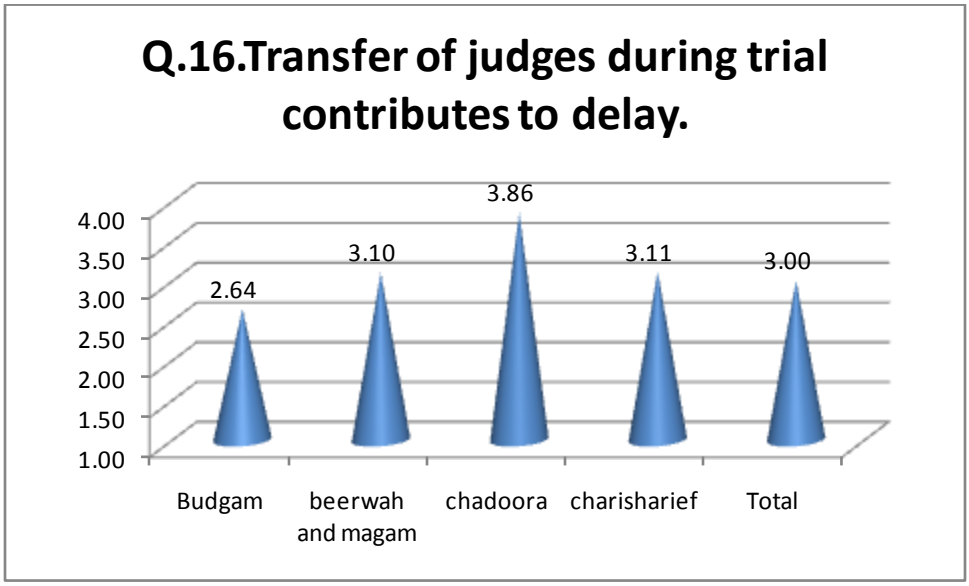
	Budgam	Beerwah & Magam	Chadoora	Chrari Sharief
Mean	3.64	3.4	3.42	2.33
Standard Deviation	0.57	0.88	1.13	1.11

Not only subordinate staff is lacking, court managers are also needed to help the existing staff manage the operations efficiently. Lack of staff has received strong responses with a mean score of 3.34. Budgam has the highest mean score of 3.64 with a slight standard deviation of 0.57 while as Chrari Sharief has the lowest mean score of 2.33 with a standard deviation of 1.11. Considering the high standard deviation in Chrari Sharief it can be said that respondents do agree with this statement.



	Budgam	Beerwah & Magam	Chadoora	Chrari Sharief
Mean	3.76	3.35	3.42	3.55
Standard Deviation	0.6	0.81	0.78	0.88

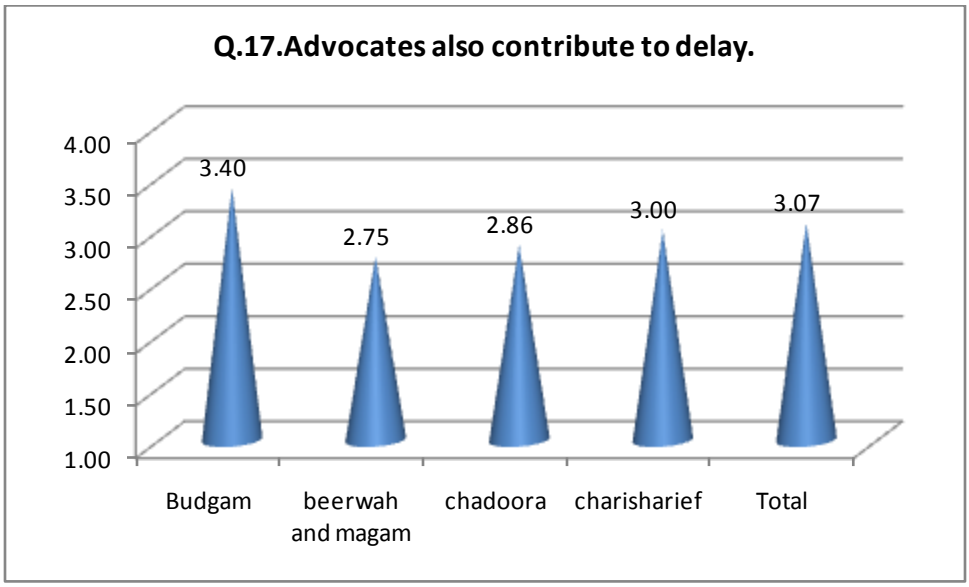
While interacting with Judges they revealed that overload of work and multiplicity of tasks was a major reason affecting their disposal rate. The additional charges drastically affect their performance. The respondents also seem to be having the same perception. Here the mean score is 3.56, Budgam has the highest mean score of 3.76 while Chadoora has the lowest of 3.42.



	Budgam	Beerwah & Magam	Chadoora	Chrari Sharief
Mean	2.64	3.1	3.85	3.11
Standard Deviation	1.07	1.07	0.37	1.05

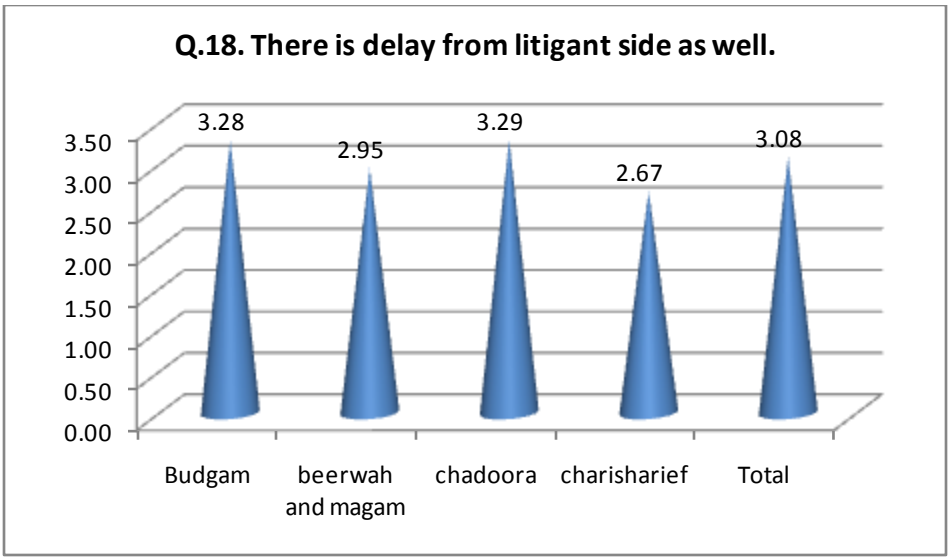
Again Judges often get transferred without being given time to adjust to the new work place, this is also one of the reasons contributing to delay. Respondents across the courts have varied opinions with this statement. The highest mean score of 3.85 is in Chadoora and lowest in District court Budgam 2.64. Budgam's standard deviation is high as compared to

Chadoora. We can rely on findings of Chadoora where responses agree that transfer of Judges also contribute to delay.



	Budgam	Beerwah & Magam	Chadoora	Chrari Sharief
Mean	3.40	2.75	2.85	3.00
Standard Deviation	0.86	1.01	1.06	1.22

There is a strong belief that advocates are the main parties that contribute to delay in justice system. All the sample courts and respondents also agree with the same, though most of the respondents are advocates. Regarding this, the mean score is highest in Budgam as 3.4 and lowest in Beerwah and Magam as 2.75 with a standard deviation of 0.86 and 1.01 respectively.



	Budgam	Beerwah & Magam	Chadoora	Chrari Sharief
Mean	3.28	2.95	3.28	2.66
Standard Deviation	0.61	1.05	0.95	0.86

Litigants also contribute to delay. Delay tactics are used by the litigants particularly defendants in order to prolong the case. In light of this statement mean score of Budgam district court is highest as 3.28 compared to Chrari Sharief with the lowest mean score of 2.66. Overall response is strongly favouring this statement with a mean score of 3.08.

CHAPTER – IV
CONCLUSION AND SUGGESTION

The idea of justice as ideology and achievable objective has much wider and deeper implications than law itself. Justice is imbued inside human instinct and hence accomplishing justice in its most profound significance and fullest degree is the desire of any human society. A society is made of individuals and reflects aggregate belief systems. Society likewise goes for a reasonable circulation of assets among its individuals through its official overseeing body. It additionally gives a few rights on its natives in this procedure. The Preamble of the Constitution of India also talks about Justice in the entirety of its structures i.e., Social, Economic and Political. Guaranteeing equivalent access to justice is a sacred command under Fundamental rights as well as an order guideline under Part IV of the Constitution. Speedy trial, cherished impliedly under Article 21 of the Indian Constitution, is one of the components of access to justice. Real access to justice cannot be ensured unless cases are disposed off promptly. Justice that is rendered late has no significance. Consequently, one of the most important tasks of welfare state is to provide a dispute resolution system in which all citizens have equal access to enforce their rights. People who have suffered physically, rationally or monetarily swing to courts with incredible want to look for Justice. There is a commitment on part of Justice Delivery System to guarantee quick and reasonable justice without settling on its quality and in the meantime sticking to principles of reasonableness, certainty and fairness.

The current study has clearly revealed that the problem of arrears is not alien to the judicial system in State of Jammu and Kashmir particularly district Budgam, though comparatively it is on lower side. The research team on the basis of physical verification also identified various bottlenecks that contribute to delay. Delay at Summons stage, witness stage, frequent adjournments, carelessness and slothfulness of process servers, non-appearance of parties play their part in delaying a case which are corroborated by the findings revealed during analysis of the data obtained by administering questionnaire to different stake holders.

Delay in service of summons in most cases is due to carelessness of process servers, lack of training, shortage of process servers, limitations of jurisdiction and more often because of the daunting task of dealing with those who avoid the service.

Frequent adjournments not only cause delay but also contribute to many hardships, inconvenience and expense to the parties and the witnesses. One of the major reasons for frequent adjournments would seemingly be attributed to the lackadaisical approach of the lawyers on both sides of aisle compounded by work related stresses. A part from this, hartals (strikes) and disturbances in Kashmir are also a major reason for frequent adjournments.

The team also came across cases where written statement was not filed within the statutory period and the permissible extension time thereof as provided under Order VIII of Civil Procedure Code. The counsel for defendants tends to stretch the filing of written statement thereby resulting in pendency of cases.

Attendance of the witnesses for the purpose of examination also contributes to delay. Research team found that witnesses appeared before the court according to their convenience which would stretch to several months thereby prolonging the case.

The team also found that Subordinate Judiciary in district Budgam is having shortage of man power, be it stenos, data entry operators and other subordinate staff. This definitely has an impact on disposal rate of a particular judgeship.

The practice of filing frivolous and mala fide miscellaneous applications during trial is another considerable reason for pendency. Such applications relate to granting of temporary injunction, appointment of receivers, directing the defendants to furnish securities, issue of commissions, amendment of pleadings, addition of parties, summoning of witnesses for examination, cross-examination, re-examination etc. Accordingly hearing and simultaneous disposal of such application takes much of courts time.

Perhaps one of the most important reasons for large number of pendency of civil cases in state of Jammu and Kashmir is the amalgamation of various functions in judicial officers. At Munsiff level the judicial officer has to do multitasking be it Criminal cases, recording statements under Section 164A of CrPC, Registration work, Attestation of affidavits, Remands, Bail applications, Release applications, Traffic violation matters, applications under Section 156(3) of CrPC. In addition to this a judicial officer has to hold administrative control of its staff and deal with financial matters of the court as well. This definitely hampers their working efficiency and also contributes to delay in disposal of cases.

In addition to above reasons, there is also delay attributable to advocates as well. Advocates often seek adjournments from the courts in order to manage their case load. Unpreparedness of lawyers also prompts them to seek adjournments.

Accordingly, on the basis of above conclusions we propose following recommendations:

1. Establishment of District Co-ordinate Centres to co-ordinate and supervise the service of summons within and outside the District Jurisdiction.
2. Bonafide supervision of process servers by presiding officers as well as increasing their strength in each court.
3. Explore alternative methods of service of summons. Although rule 9 of Order V provides for service of summons through email or fax, this however should be made a routine affair. Modern communication modes should be freely permitted to serve the processes of the court.
4. The civil and criminal functions should be vested in two separate judicial officers at a station.
5. Separate judicial officers should be posted for Registration and Attestation work. Such work should not be assigned to the regular courts.
6. There should be orientation and training programmes for judicial officers as well as subordinate staff associated with courts. Training needs to be imparted in the areas of Court and case management and writing judgments etc.
7. Right to appeal against interlocutory and interim orders should be curtailed. It should only be allowed to make summary appeals.
8. Existing strength of judges as well as number of courts should be increased. There is dire need to overhaul the existing infrastructure of courts. Possibility of setting up of morning and evening courts in state of Jammu and Kashmir should also be explored.
9. We strongly recommend amending Order VIII Civil Procedure Code wherein the maximum limit of 30 days for filing written statement has been enhanced to 90 days. It should either be done away with or there must be a pre requisite that the defendant must strictly satisfy the court regarding the delay of each passing day accompanied with exemplary costs.
10. Practice of granting unnecessary adjournments should be avoided. Judicial officers should abide by the statutory limitation imposed on granting adjournments in strictest terms.
11. We also recommend appointment of Research Assistants for lower judiciary who will assist judges in performing their judicial and administrative duties.
12. Judicial officers at a station should put into practice the techniques of court management and case management.

13. Dispute resolution through Alternative Dispute Resolution methods especially through Mediation and Lok Adalats should be encouraged.
14. Periodic evaluation of performance of judicial officers and simultaneous appreciation of their good performances should be carried out so as to boost their moral.

Besides the above, it is imperative to mention that the team has found that following five areas need immediate attention by the policy makers for making the system more viable and result oriented

1. Development of a nimble system for data analysis: Rich database from e-Courts project can be exploited through a system that allows working on the data. This would help governance by making it easy to monitor various parameters including pendency. Analysis of data would also help better distribution of cases, by case types and by time (dates).

2. Curbing the gaming behavior of litigants: A successful system must be two steps ahead of its constituents. In the context of justice system, scientific use of data from NJDG should help the judiciary in framing strategies to counter the tactics used by litigants and accused. A task force at High Court level or other suitable body may provide a plan of action for lower judiciary. Such a plan could be an effective tool, for instance, against absenteeism and adjournments that take away three-fifths of available time.

3. Creation of a temporary capacity: The objective of this step would be to bring down pendency within a short time of two years. This could be achieved by appointing fixed term judges either from pool of retired judges, or pool of senior lawyers, or from among other professionals and citizens. Such capacity and precedence would also act as buffer during any future spurts of excessive pendency.

4. Process Re-engineering: A system that has largely evolved during pen and paper based record keeping requires a reign to eliminate activities and exceptions that do not add value in the age of computerization. Availability of online case level data across hundreds of case types makes it possible to undertake this exercise with minimal efforts.

Limitation of the study

The foregoing study undertaken has a limitation that it was confined only to district Budgam in Kashmir division and district Udhampur in Jammu division of the State of Jammu and Kashmir. Besides the study was only confined to civil cases. Accordingly, there is further

scope to extend this study to criminal cases as well and also to other districts of state of Jammu and Kashmir so as to get a clearer picture of bottlenecks affecting disposal of civil and criminal cases and also to provide for a way forward in reducing the pendency of the cases.

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ANNEXURE

QUESTIONNAIRE FOR THE STUDY ON IDENTIFYING THE BOTTLENECKS RESPONSIBLE FOR CAUSING DELAY IN DISPOSAL OF CIVIL CASES IN COURTS

Objectives of the study:

- to identify the nature and extent of reasons that commonly contributes to delay in disposal of cases,
- to identify the inefficiencies including court side, counsel side and litigant side and
- to suggest measures and way forward by relying upon the accurate primary data collected during research.

Dear sir/madam,

In this connection we solicit your cooperation by way of filing up the following questionnaire. The information whatever be provided by you will be used for the above said laid down objectives. It is requested to share your responses against the following questions on the basis of your perception and experiences and also give your valuable inputs and suggestions for further improvement of justice delivery system.

Note: Please tick the appropriate box given below

1. One major reason for delay in disposal of cases is slow delivery of Summons.

a) Strongly inclined to agree ☐ b) Partly inclined to agree ☐

c) Partly inclined to disagree ☐ d) Strongly inclined to disagree ☐

2. Carelessness and indolence of Process Servers contributes to delay.

a) Strongly inclined to agree ☐ b) Partly inclined to agree ☐

c) Partly inclined to disagree ☐ d) Strongly inclined to disagree ☐

3. Should there be bonafide supervision of Process Servers.

a) Strongly inclined to agree ☐ b) Partly inclined to agree ☐

c) Partly inclined to disagree ☐ d) Strongly inclined to disagree ☐

4. There is always delay in filing Written Statement.

a) Strongly inclined to agree ☐ b) Partly inclined to agree ☐

c) Partly inclined to disagree ☐ d) Strongly inclined to disagree ☐

5. Non appearance of Parties contributes to delay.

a) Strongly inclined to agree ☐ b) Partly inclined to agree ☐

c) Partly inclined to disagree ☐ d) Strongly inclined to disagree ☐

6. Adjournments are granted to the Advocates in routine course.

a) Strongly inclined to agree ☐ b) Partly inclined to agree ☐

c) Partly inclined to disagree ☐ d) Strongly inclined to disagree ☐

7. Courts often grant Adjournments on Flimsy grounds.

a) Strongly inclined to agree ☐ b) Partly inclined to agree ☐

c) Partly inclined to disagree ☐ d) Strongly inclined to disagree ☐

8. Examination of witnesses consumes much of courts time.

a) Strongly inclined to agree ☐ b) Partly inclined to agree ☐

c) Partly inclined to disagree ☐ d) Strongly inclined to disagree ☐

9. Witnesses often remain absent or avoid their presence in the court.

a) Strongly inclined to agree ☐ b) Partly inclined to agree ☐

c) Partly inclined to disagree ☐ d) Strongly inclined to disagree ☐

10. Granting Injunction/Stay orders is another reason for delay. It seems that courts are too liberal in granting them.

a) Strongly inclined to agree ☐ b) Partly inclined to agree ☐

c) Partly inclined to disagree ☐ d) Strongly inclined to disagree ☐

11. Ex-parte proceedings are also a major reason for delay in disposal of cases.

a) Strongly inclined to agree ☐ b) Partly inclined to agree ☐

c) Partly inclined to disagree ☐ d) Strongly inclined to disagree ☐

12. There is undue elongation of cases by means of appeals.

a) Strongly inclined to agree ☐ b) Partly inclined to agree ☐

c) Partly inclined to disagree ☐ d) Strongly inclined to disagree ☐

13. Frivolous applications during trial contribute to delay.

a) Strongly inclined to agree ☐ b) Partly inclined to agree ☐

c) Partly inclined to disagree ☐ d) Strongly inclined to disagree ☐

14. Do we have dearth of sub-ordinate staff in the courts? If yes, do you agree that it contributes to delay in disposal of cases?

a) Strongly inclined to agree ☐ b) Partly inclined to agree ☐

c) Partly inclined to disagree ☐ d) Strongly inclined to disagree ☐

15. Amalgamation of various functions in judges affects their disposal rate.

a) Strongly inclined to agree ☐ b) Partly inclined to agree ☐

c) Partly inclined to disagree ☐ d) Strongly inclined to disagree ☐

16. Transfer of judges during trail contributes to delay.

a) Strongly inclined to agree ☐ b) Partly inclined to agree ☐

c) Partly inclined to disagree ☐ d) Strongly inclined to disagree ☐

17. Advocates also contribute to delay.

a) Strongly inclined to agree ☐ b) Partly inclined to agree ☐

c) Partly inclined to disagree ☐ d) Strongly inclined to disagree ☐

18. There is delay from litigant side as well.

a) Strongly inclined to agree ☐ b) Partly inclined to agree ☐

c) Partly inclined to disagree ☐ d) Strongly inclined to disagree ☐

19. What measures (if any) in your opinion can be taken to improve delivery of Summons?

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20. What in your opinion is the reason for frequent adjournments?

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21. Your suggestions /recommendations for improvement in disposal of cases?

_____
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_____

_____.

Note: If need arises you can use additional pages also

Background

Name: **Designation:**

Place: **Years of experience:**

Note: In case of any query, please feel free to contact on the following:

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IDENTIFYING MAJOR BOTTLENECKS IN PENDENCY OF CIVIL CASES AND SUGGESTING MEASURES FOR IMPROVEMENT WITH SPECIAL REFERENCE OF DISTRICT BUDGAM OF JAMMU AND KASHMIR

Research Project Report

of

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Table of contents

Lists of Reports and Cases mentioned
Mr. M.C. Setalavad, in its 14th Report made in 1958
27th Report of the Law Commission
41st report deals with the Code of Criminal Procedure.
54th Report of the Law Commission
77th report on Delay and Arrears in Trial Courts
Commission of India 14th Report 1958, vol. I pp. 252-63 , vol. II PP.776-88,
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'Delayed Justice', which was delivered by Shri Y K Sabharwal, the then Chief Justice of India on July, 25th'2006,
The Law Commission of India, in its 120th report on 'Manpower Planning in Judiciary - A Blue Print'
All India Judges Association Case, reported as AIR 1992 SC 165
Rankin Committee Report 1924
A High Court Arrears Committee 1949 Report
(High Court Arrears Committee Report, 1972).
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Hussainara Khatoon v. State of Bihar
Kartar Singh v. State of Punjab
Francis Coralie v. Union Territory of Delhi[2],
Abdul Rehman Antulay v. R.S.Nayak[3],
In R.L. Gupta vs. Union of India
Salem Advocates Bar Association's case
N G Dastane vs. Srikant Shivde (2001 [6] SCC 135) case
Kishore Mandyam, Harish Narasappa, Ramya Tirumalai and Kavya Murthy (2016),
Harish Uppal v. Union of India

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EXECUTIVE SUMMARY

1. The study seeks to undertake an action research to identify the major causes of pendency in the court of district Udhampur of Jammu and Kashmir so as to pave a way forward for setting up of efficient judicial resolution mechanisms. It also aims to address changes in procedural laws affecting expeditious conclusion of civil trials and measures needed to remove such bottlenecks.

The study has been conducted in two stages.

Firstly, the data collection by empirical method, which involved the following steps:

I. Physical verification of case files from all the courts in Udhampur District courts namely Principal District and Sessions Court, Additional Distt. and Sessions Court, Chief Judicial Magistrate, Sub Judge Special Mobile Magistrate, Additional Special Mobile Magistrate, Munsiff DJMM (T) Udhampur, Munsiff JMIC from Udhampur along with Sub Judge JMIC Ramnagar, Munsiff Chenani and Munsiff Majalta.

II. To find out the cause of delay three different Questionnaires have been designed and filled from the main functionaries of the civil justice System i.e., the presiding judges of different civil courts, the advocates and the litigants.

III. Studying the life cycle of all pending civil cases in district of Udhampur, J&K.

Secondly, personal interaction with the stakeholders through the organisation of seminars at both Udhampur & Jammu to add to the body of knowledge about the true functioning of the trial courts along with the analysis of the above data to present and interpret findings keeping in view the provisions mentioned in Civil Procedure Code and related legislative frameworks. The data so collected pointed out the stages of most delays in the settlement of a civil matter. These analysis and findings were then compared with the existing procedural laws to suggest practical recommendations.

2. The **First Chapter** i.e. The Introduction, definitions of pendency and delay and the key causes for the delay in administration of justice have been discussed. It also explains the impact of speedy trials on the fundamental rights of the constitution and the scope of the study. In this chapter recommendations of various committees and Law Commissions to solve the problem of delay in disposing of the cases have also been discussed. This will give a better idea of the problem under study.

3. The **Second Chapter** explains the methodology used for identifying the bottlenecks responsible for causing delay in disposal of civil cases in courts and the policy

and procedural changes necessary for the reduction of pendency. It also focuses on 'Court Management techniques for improving the efficiency of subordinate courts. Both quantitative and qualitative research was used to execute the action research study. It further includes details about the objectives of study, scope of the study and tools used for analysis**.**

4. A detailed analysis of secondary data shows that around 6372 cases are pending in the courts of Udhampur of which 3154 are of civil nature. About 1025 civil cases were pending at the stage of appearance, 427 were held up at the stage of compliance, 1186 were delayed at evidence stage and 162 were at the issues/ pleadings and charge. The analysis of data also reveals that the increased in number of cases at the stage of evidence was mainly due to the delay in interim hearing of application and bail hearing.

5. The preliminary conclusion of analysis inputs received through questionnaires from the functionaries such as judges, advocates and litigants point at the delays in the servicing of summon and furnishing evidence as some of the most prominent stages of delay in settlement of civil cases. This points out the need to set up a proper mechanism for reducing controllable delays. Other reasons such as deliberate delay on the behalf of party counsels, frequent adjournments and non- appearance of parties were also noted as significant.

6. Based on the findings, finally the report offers recommendations to map a way forward for both reduced delay in settlement of cases without compromising of the quality of justice delivered. Thus, the suggestions incorporated both procedural and operational improvement in the trails of civil cases. While the procedural changes focused on certain basis for preliminary evaluation, improving efficiencies of the process servers and routine follow- ups, the operational recommendations highlighted the need for better court management techniques in the day to day functioning of the courts.

CHAPTER-1

INTRODUCTION

The administration of justice, of which the judiciary is one of important mechanisms, now a day no more remains a means for maintenance of peace and order today. In modem era its meaning has totally changed. In older days, state used physical force to maintain peace and tranquility in the society and that was taken to be the sole objective and responsibility of the state. In a modem democratic set up, we come across various manifestations, ramifications and wide-ranging corollaries and upshots of justice. However, the administration of justice now finds itself standing on cross-roads as it has also taken the responsibility to do justice, maintain equality by determining criteria for class preferences and the like. It is also acting as a watchdog of human rights in the society of which the state, its authorities and the rich are main violators.

'Justice delayed is justice denied' and another maxim 'Justice hurried is justice buried' are frequently and deliberately used by the people of our country. In the ordinary course of law, justice is not hurried in India but practically it is true that, with a few exceptions, justice is usually delayed and thereby often seen to be denied. 'Delay' in justice refers the time consumed in the disposal of cases, in excess of the time within which a case can be reasonably expected to be decided by the Court. The Supreme Court observed that "An independent and efficient judicial system is one of the basic structures of our constitution. It is our constitutional obligation to ensure that the backlog of cases is decreased and efforts are made to increase the disposal of cases".

Dean Roscoe Pound, an eminent American jurist, while delivering a lecture in 1906 about the American legal system to the American Bar Association specified below given causes for the dissatisfaction prevalent in the administration of justice in the United States of America[4] :

(a) legal administration is archaic.

(b) procedure is behind all times.

(c) laws are crude.

(d) a lot of time is taken over mere points of etiquette which are of no importance.

(e) putting judges in arena of politics has robbed the courts of traditional respect which people had for them.

[4]Lecture by Dean Roscoe Pound delivered in 1906 at American Bar Association

The above broad categories of reasons for delay in dispensation of justice as stated by Roscoe Pound are not foreign to Indian judicial system but are some of the important reasons behind the problem which need to be rectified. Though the right to speedy trial is not an expressly guaranteed constitutional right in India but it can be implicated in Article 21 of Indian constitution which reads asunder "Protection of life and personal liberty. No person shall be deprived of his life or personal liberty except according to procedure established by law". The Supreme Court in *Hussainara Khatoon v. State of Bihar*[5], held that, "speedy trial is of essence to criminal justice and there can be no doubt that the delay in trial by itself constitutes denial of justice". In *Kartar Singh v. State of Punjab*[6], Supreme Court of India has further observed that, the concept of speedy trial is read in to Article-21 as an essential part of fundamental right to life and liberty preserved under the Constitution. Justice Bhagwati, in *Francis Coralie v. Union Territory of Delhi*[7], with respect to spirit and intent of Article 21 spoke as under "We think that right to life includes right to live with human dignity and all that goes along with it, namely, the bare minimum necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself fin diverse forms, freely moving about and mixing and comingling with fellow human beings." [8]The court conceded that the magnitude and content of the components of this right would depend upon the extent of economic development of the country, of course. Speedy trial is the essence of criminal justice and delay in trial by itself constitutes denial of justice. "Pendency for long periods operates as an engine of oppression," said the Supreme Court in a 1996 decision and issued directions to criminal courts to protect and effectuate the right to life and liberty of the citizen (1996) MLJ (Cri) P549.

From earlier times, this problem of delay and arrears was given a conservative treatment by various committees and commissions suggesting only orthodox treatment and remedies, but not an operation. Starting from Rankin Committee 1924, our judicial system was sought to be reformed by Justice S R Das Committee in 1949, Wanchoo Committee in 1950, Law Commission headed by late Shree M C Setalavad in 1954-55 and Sikri-Shah Committee in 1969-72. Comprehensive reviews of State judicial system were also commissioned by States of West Bengal and Uttar Pradesh during the period 1949-51. More recently, the problem has received the attention of Supreme Court, the Central Government and Law Commission. Some of the reports of Commission of India viz.,14th Report 1958,

[5] AIR 1979 SC 1369.
[6] AIR 1994 SCC (3)569.
[7] 1981 SCC 608.
[8] Justice Bhagwati, in Francis Coralie v. Union Territory of Delhi, {1981)1 SCC 608.

vol. I pp. 252-63, vol. II PP.776-88, 54th Report 1978, chapter-14,[9]79th Report 78-79(1979),7 have been written to solve the problem of delay, but the problem remains as serious as it was. The increase in the bulk of undisposed cases can partly be attributed to the defective and dilatory procedure prescribed to deal with civil and criminal cases and partly, to human hands involved in the process. The Law Commission of India in its 14th report has also stressed the need for speedy trial and observed: "In an organized society, it is in the interest of the citizens as well as the state that the disputes which go to law courts for adjudication, be decided within a reasonable time, so as to give certainty and definiteness to rights and obligations. If the course of a trial is inordinately long, the chances of miscarriage of justice and the expenses of litigation increased alike. Expressing his concern for delay in disposal of criminal cases the then Chief Justice of India Dr. A.S Anand in his address at a seminar organized by Supreme Advocates on Record Association observed, inter alia, "Failure of judiciary to deliver justice within a time-frame has brought about a sense of frustration among the litigants. Human hope has its limits and waiting for too long in the current life style is not possible. Some feel that judicial system has appearance of cracks and fatigue but I am an optimist and do not share the view that judicial system has collapsed or is fast collapsing."[10] Accused interest of speedy trial is also affirmed in our constitution. It is also in public interest that cases are tried speedily. In a criminal case, the accused is presumed innocent till the charge is proved. There to maintain the dignity of rule of law, in our country, speedy trial and speedy justice is utmost necessity. By speedy justice, the effective law and order can be maintained. Quality of justice not only promotes peace and harmony in society but also strengthens internal security of the country. Delay in disposal of cases helps and encourages out-law rather than the law abider. Due to delay in justice honest are bound to suffer and dishonest stand to gain unscrupulously. But the state of affairs at present in our country are very shocking. Large numbers of under-trials are languishing in jails waiting for decision of their cases. There are persons who have been refused bail; their life and liberty has also been curtailed. There are a number of female prisoners who are also waiting outcome of their trials. Consequently, their dependent children are also confined in jails because they are too young to be parted with their mothers. An important authority on the delay in justice, discussing its extent in Indian context in depth, is Subhag Mai Memorial Lecture on 'Delayed Justice', delivered by Shri Y K Sabharwal, the then Chief Justice of India on July, 25th 2006,

[9] Commission of India 14th Report 1958, vol. I pp. 252-63, vol. II PP.776-88, 54th Report l978, chapter-14, 79th Report 78-79(1979).
[10] The then Chief Justice of India Dr A S Anand in his address at a seminar organized by Supreme Court Advocates on Record Association

where he discussed the problem in the following manner: "Constitution of India reflects the quest and aspiration of mankind for justice when its preamble speaks of justice in all its forms: social, economic, and political. Those who have suffered physically, mentally or economically, approach the court with great hope, for redressal of their grievances. They refrain from taking law into their own hands, as they believe that one day or the other, they would get justice from the courts. Justice delivery system, therefore, is, under an obligation to deliver prompt and inexpensive justice to its consumers, without in any manner, compromising on the quality of justice or the elements of fairness, equality and impartiality. The success of Indian judiciary on the constitutional front is unparalleled. Its contribution in enlarging and enforcing human rights is widely appreciated. Its handling of Public Interest Litigation has brought its institutions closer to oppressed and weaker sections of the society. Indian courts are held in high esteem not only by developing but by developed countries as well. However, there is growing criticism, sometimes from uninformed and ill-informed quarters about the inability of our courts to effectively deal with and wipe out the huge backlog of cases. Delay in disposal of cases not only creates disillusionment among the litigants but also undermines the very capability of the system to impart justice in an efficient and effective manner. Long delay has also the effect of defeating justice in quite a number of cases. As a result of such delay, the possibility cannot be ruled out of loss of important evidence, because of fading of memory or death of witnesses. The consequences, thus would be that a party with even a strong case may lose it, not because of any fault of its own, but because of the tardy judicial process, entailing disillusionment to all those who at one time, set high hopes in courts. The delay in disposal of cases has affected not only the ordinary type of cases but also those which by their very nature, call for early relief. There are volumes of Law Commission Recommendations, Expert Committee Reports and Opinions of Jurists highlighting the problem and suggesting ways and means and yet the system has not been able to bridge the gap between institution and disposal and has not been able to cause any dent in the mountain of arrears of cases."

The above views of the then Chief Justice Y K Sabharwal are quite suggestive of the fact that speedy trial of criminal cases in India remained a distant reality for the masses of this country but still the poor citizens of this country never lost its faith (due to delayed justice) in judicial system of the country. The recommendations of the various committees such as The Arrears Committees of 1949, 1969, 1990 and 1993 and various reports of Law Commissions of India, which suggested ways and means for speedy trials, were pending with Government but no firm action has been taken so far. The Law Commission of India, in its

120th report on 'Manpower Planning in Judiciary - A Blue Print' has observed that country should ultimately aim at the ratio of 107 Judges per million, of population by the year 2000. The report disclosed that the present strength of judges i.e. 7,675 in the country is highly inadequate, and it recommended an immediate increase in strength of judges in the country from 10.5 per million to 50 judges per million population. Thus, the commission recommended five-fold hike in judges' strength on the basis of the growth of the population and litigation rate. The commission further observed that the country would need a minimum increase in judges' strength from the present 7,675 to 40,357. Recently the Supreme Court in its decision in the case of *All India Judges Association Case*, reported as AIR 1992 SC 165, had an opportunity to deal with the problem wherein it directed the central government to immediately appoint judicial officers against all vacancies and thereafter to increase the strength of judiciary five-folds in a phased manner within five years. The recent figures of estimated judges' ratio of about 10.5 judges per million population is rated to be one of lowest in the world. A committee was appointed quite far back in the year 1924 under the chairmanship of Mr. Justice Rankin of Calcutta High Court, popularly known as Rankin Committee to deal with the question of delay in disposal of civil cases both in the High Courts as well as in subordinate courts. The committee was asked—"to enquire into the operation and effects of the substantive and adjective law, whether enacted or otherwise, followed by courts in India in the disposal of civil suits, appeals, applications for revision and other civil litigation (including the execution of decrees and orders), with a view to ascertaining and reporting whether any and what changes and improvements should be made so as to provide for the more speedy, economical and satisfactory dispatch of the business transacted in the courts and for the more speedy, economical and satisfactory execution of the process issued by the courts". After a thorough and careful enquiry into various aspects, the Committee prepared an exhaustive report in the year 1925. A High Court Arrears Committee was also set up by the Government of India in the year 1949 under the Chairmanship of Mr. Justice S.R. Das, for enquiring into and reporting as to the advisability of curtailing the right of appeal and revision, the extent of such curtailment, the method by which such curtailment should be effected and the measures which should be adopted to reduce the accumulation of arrears. A number of 'suggestions were then made by the Committee. At the end of the year 1969, the government of India constituted a committee presided over by Mr. Justice Hidayattullah, the then Chief Justice, to go into the problem of arrears in all its aspects and to suggest remedial measures. Upon the retirement of Mr. Justice Hidayatullah, Mr. Justice Shah was appointed the Chairman of that Committee (High Court Arrears Committee Report,

1972). In addition to the above committees, which worked at all-India level, committees were also appointed in different states to look into the problem of delay. One such committee was constituted in West Bengal in the year 1949 under the chairmanship of Sir Trevor Harries, the then Chief Justice of Calcutta High Court. One other committee under the Chairmanship of Mr. Justice K.N. Wanchoo was also constituted in Uttar Pradesh in 1950. Besides the above committees, the Law Commission of India presided over by Mr. M.C. Setalavad, in its 14th Report made in 1958, went into all aspects relating to "Reform of judicial administration", including the question of delay in the matter of disposal of cases in different courts and it exhaustively dealt with the matter. Successive Law Commissions have also addressed themselves, while making their recommendations for revision of the procedural codes, inter alia, to the need for reducing delay at all stages of the trial, both in civil and criminal cases. The 27th Report and 54th Report of the Law Commission of India deal with the Code of Civil Procedure and the 41st report deals with the Code of Criminal Procedure. When the Law Commission of India reviewed the structure and jurisdiction of the higher judiciary (in 58th Report), it took note of the imperative need to reduce arrears in the higher Courts.

Law Commission of India in its *77th Report on Delay and Arrears in Trial Courts* submitted in Nov 1978 in CH-1 highlighted the importance and place the courts have in the minds of people and masses in a country to the following effect, "A State consists of three organs, the legislature, the executive and the judiciary. The judiciary it has been said, is the weakest of all the three organs. It has neither the power of the purse nor the power of sword, neither money nor patronage nor even the physical force to enforce its decisions. Despite that, the courts have, by and large, enjoyed high prestige amongst, and commanded great respect of, the people. This is because of the moral authority of the courts and the confidence the people have in the role of courts to do justice between the rich and the poor, the mighty and the weak, the State and the citizen, without fear or favor". Above observations of Law Commission of India suggest a big responsibility the judiciary and its courts have upon its shoulders towards socio-economic fabric of the country. Today, we are obsessed and preoccupied with matrimonial causes, causes of children, atrocities on women, interests of old aged parents, senior citizens, scheduled castes and backward classes.

In a judgment with profound implication, the apex court has positively reiterated that just and reasonable procedure implicit in *Article 21* of the Constitution creates a right in the accused to be tried speedily. The right to speedy trial is not expressly guaranteed constitutional right in India. Article21 of Indian constitution reads as under "Protection of life and personal liberty. No person shall be deprived of his life or personal liberty except

according to procedure established by law." It is quite evident from above article that right to a speedy trial is nowhere directly talked about in. The apex court and high courts inferred from time to time, from the language of the article, that a right to speedy trial of an offence is inherent in Article 21. But another important thing needs attention that in case of civil remedies to the citizens, for vindication of their civil rights, no law guarantees a right to speedy civil justice to the people and citizens. Right to have timely and speedy decision of property rights has no less importance than right to speedy criminal trial. The proposition of justice as enshrined in Article 21 was though initially confined to personal liberty related matters with respect to persons accused of offences and trials but it was later on interpreted by the Supreme Court so as to apply to protect personal dignity and health etc. In the United States speedy trial is one of the constitutionally guaranteed rights i.e. a statutory right while it is not so in India, it has not perhaps been made so knowingly by the framers of constitution because unless a right can be enforced to every citizen, taking it to the list of fundamental rights would be a futile exercise because ultimately it is for the subordinate and district level judiciary that criminal trials and civil litigation suits and petitions are to be disposed of. There is a plethora of cases which are pending before Supreme Court and different High Courts and other courts in India for a number of years.

In recent years the problem of delay and rising arrears of cases in Indian law courts has created a serious problem in our judicial administration. The judiciary is also facing a crisis of credibility because of mounting arrears of cases and inordinate delay in disposal of cases. There can be so many reasons and justifications for the arrears of cases and for the delay in their disposal. The litigant who is a consumer of justice is not interested in any justification or excuse. A litigant is always interested in quick decisions instead of any valid excuse for delay. The object of rule of law in a society is to provide justice. But it must be provided within a reasonable time. It is totally unfair if a person waits for a number of years and is found innocent in a criminal trial after such long time. Similarly, in a civil suit a court may give its verdict after a plaintiff has already died. If a person does not get speedy relief in courts, his faith in judicial system stands eroded.

Effective access to justice is one of the fundamental conditions for the establishment of the rule of law in a society. 'Justice' and access to Justice are two different things. Sometimes 'Justice is said to be the goal and access to Justice is the means to that goal. If the existing litigation process takes unnecessary long time and there are too much procedural hurdles to obtain justice, these delay and procedural complexities themselves create another form of injustice for litigants.

A. Definition of Pendency and Delay

Pendency has been defined by the Black's law dictionary as "Suspense; the state of being pendent or undecided; the state of an action, etc. after it has been begun, and before the final disposition of it." As per the Merriam-Webster dictionary the legal definition of pendency is, "the quality, state, or period of being pendent." The synonyms abeyance, adjournment, break, cessation, continuance, hiatus, interim, interlude, intermediate time, postponement, recess, respite, suspense, suspension and temporary stop are often used in place of the word pendency.

The Law Commission remarked about pendency and other related terms. "There is no single or clear understanding of when a case should be counted as delayed. Often, terms like 'delay,' 'pendency,' 'arrears,' and 'backlog' are used interchangeably. This leads to confusion. To avoid this confusion and for the sake of clarity, these terms may be understood as follows:

a. Pendency: All cases instituted but not disposed of, regardless of when the case was instituted.
b. Delay: A case that has been in the Court/Judicial System for longer than the normal time that it should take for a case of that type to be disposed of.
c. Arrears: Some delayed cases might be in the system for longer than the normal time, for valid reasons. Those cases that show unwarranted delay will be referred to as arrears.
d. Backlog: When the institution of new cases in any given time period is higher than the disposal of cases in that time period, the difference between institution and disposal is the backlog.

Therefore, as is evident, defining terms like delay and arrears require computing 'normal case processing time standards which can be calculated using various statistical and other techniques." A report by Daksh interprets the differentiation between these terms. 'Pendency' therefore consists of the universal set of cases which have been filed and not been disposed of, 'backlog' refers to the difference between filing and disposal of cases in a given time period, 'delay' being a subset of 'pendency' where a case has taken longer than the 'normal time' that it should take for disposal of such a case, and 'arrears' being a further subset of 'delay' where the case has taken a longer time and no 'valid reasons' explain the same.

According to *Article 14(3) of the International Covenant on Civil & Political Rights, 1966*, 'everyone shall be entitled to be tried without undue delay'. According to the *Law*

Commission of India Report No. 245, delay is defined as 'A case that has been in the Court/Judicial system for longer than the normal time that it should take for a case of that type to be disposed of'. Unnecessary delays are considered to be recurring source of inefficiency and are symptomatic of miscarriage of justice. Hence, defining the 'normal time' for a criminal trial becomes essential step in conducting a research on 'identifications of reasons for delay in criminal justice administration'.

According to *Art.11 of the Canadian Charter of Rights and Freedoms*, 'any person charged with an offence has the right: (b) to be tried within a reasonable time. *Article 6(1) of the European Convention on Human Rights* provides that, 'criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.'

The Law Commission of India in its 77th Report on 'Delays and Arrears in Trial courts' (para 1.9), raised the question, 'what should be the criterion to determine as to when a judicial case can be treated as an old case in the trial court?' As a response to the question, the Commission observed that the average life span of a criminal case is mentioned to be four to six months. While dealing with the method of computation of delay, the commission opined that 'the time would be calculated from the date of filing of charge sheet or complaint till the date of pronouncement of final judgment. In case of session trials, above period should also include the time during which proceedings remained pending before the committing magistrate'. (Para 1.10)

In 2012, National Court Management Systems (NCMS) introduced by Hon'ble Supreme Court of India, for enhancing timely justice, dwelt upon the 'five plus free' policy i.e., free of cases more than five years old. The urgent need to shorten the average life cycle of all cases, not only time spent within each court, but also total time in the judicial system as a whole, to bring the average to no more than about one year in each court. Malimath Committee recommended the use of a two-year time frame as the norm by which delay and

arrears in the system should be measured. (para 13.3, Report of the Committee on Reforms of the Criminal Justice System)

As per the current practice in Indian courts, the cases pending for more than 10 years are considered to be the old cases, 5-10 years' life span of a case is considered to be unacceptable delay, below 5 years is the acceptable delay and below 2 years is the ideal life span of a criminal case.

In *Abdul Rehman Antulay vs. R.S.Nayak*[11], the Apex Court held that it is sufficient to say that constitutional guarantee of speedy trial emanating from Art.21 is properly reflected in the provisions of the Criminal Procedure Code, but the relative question for consideration is 'how long a delay is too long?' After considering the various cases for delay, the Court held "it is neither advisable nor feasible to draw or prescribe any outer time-limit for conclusion of all criminal proceedings".

The Apex Court further observed that, 'It is neither advisable nor practicable to fix any time limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit in effectuates the guarantee of right to speedy trial'.

B. IMPACT OF DELAY

Delay in judicial proceedings and delay in providing justice to the masses, in every democratic system, always have grave repercussions, enduring ramifications and long-lasting implications in the society. Some of such important consequences

1. Hate, Frustrations, Scant Respect for Law

When litigation and cases are decided by the courts after too much delay, it gives rise to a feeling of hatred and repulsion in the society towards all the democratic governmental institutions as well as towards the law of the land. People have less respect for the law, law

[11] AIR 1992 SC 1701.

and order. They gain a feeling of frustration and disappointment and resort to unlawful means for settling scores. All this gives rise to a problem of frequent violations of laws because the people think that violations of law always go unpunished. At the same time, those obeying the laws go at back-foot and they too start growing a feeling of disrespect towards laws. All this is very dangerous for existence of a peaceful society.

2. Class-Divisions

People inculcate and instill a feeling that penal laws are made for the poor and that the rich, who violate law in the open always go scot free. When decisions of cases wherein the rich, influential and political persons are involved are delayed for years or if after such a long period such persons are acquitted, the poor victims feel dissociated, discriminated and singled out in the system. They feel let down deceived which gives rise to permanent class divisions.

3. Preference to Persecution Over Prosecution

Weaknesses in investigation agencies coupled with discriminatory and delayed investigations and long delays in judicial processes give rise to a sense of preference of persecution over prosecution. The police personnel and the paramilitary forces dealing with law and order and the offenders and terrorists strike a feeling of fake encounters wherein the offenders are killed in broad day light and sometimes at secluded places without authority of law which is inhuman act which cannot be justified by any society. They feel that the long judicial process is unable to convict such offenders as most of their cases result in acquittals after long trials.

4. Shaken confidence of the public in the system

No doubt a large number of people in our country are illiterate or are not acquainted with education but they very well understand what early decisions and early justice is meant to them. The public confidence and respect for law in the minds of people, and the masses of a country are the backbone of administration of justice of a country.

5. Overcrowding in Prisons

It is well known fact that prisons in India are full to the brim and rather they are overburdened by the inmates staying therein which include not only the prisoners but also under trials who face various charges before courts of law. Same jails do also house in them

the persons who are arrested and then have to be confined even in bail-able offences merely because of poverty as they are unable to manage for a surety as they belong to poor and neglected sections of the society. Be as that may, our prisons in most part of India are overcrowded.

6. Impediment in Preparing Defense

A person, and under-trial or other, who is in jail, he may not be able to prepare his case at right time, on correct lines and without the help of a right and competent advocate because of his very confinement of his person in jail or in a lock-up, and in many cases due to his poverty. On the other hand, the prosecutor-state which is pitted against him to fight and compete, has at its disposal a well-organized investigation and police machinery and a full-fledged prosecution department at every level of the administration i.e. district, sub-division and state level.

Due to his confinement, an accused may not be able to collect evidence in his defense in order to prove his innocence. He may not be able to contact his witnesses, to properly engage a lawyer of his choice and to properly brief his lawyer. A person accused of an offence before a criminal court or against whom proceedings are instituted under Code of Criminal Procedure has the right to be defended by a lawyer

7. Loss of National Income and Wealth

Due to delayed decisions and judicial proceedings in courts it is not only the citizens who are the sufferers but state is also the biggest sufferer of income and health. In R.L. Gupta vs. Union of India, Justice E.S. Venkataramiah pointed out a hidden aspect of the national loss of this nature as: "We must also observe that the Government should not consider finance as a constraint because by not appointing sufficient number of Judges the government is suffering more financially. The government itself being a big litigant is subjected to several orders of stay, prohibitory injunctions etc. leading to delay in completions of several projects and works. The indirect effects of frustrations amongst the people lead to a greater financial loss. It was further observed that peace and tranquillity that will result from quick disposal of cases is much more valuable than the economic goods produced by factories. Delay in disposal of cases affects the Gross National Product adversely. In fact, peace and tranquillity will help in greater production of economic goods. Quick disposal of cases will also save millions of man-hours which are now being wasted near the Courts in India." It is common knowledge these days that courts at every level i.e.

sub-divisional, district and High court and Supreme Court level are faced with numerous state litigation of every nature which is faced by an ordinary citizen. Litigation relating to important matters like pollution, mining, big-projects undertaken by the state, constructions of big roads having involving huge money, land acquisition by the state and its authorities for numerous state and welfare activities, lacs of service-matters of government officials, important matters relating to critical and technical educational institutions, matters of national and international interest, etc. are often found against state in courts. Thus, huge state finances are always involved and suffer if result in cases is delayed substantially.

At present a total of 30,936,000 cases are pending in Indian Courts out of which 8,685,871 are the civil cases and 22,250,129 are the criminal cases pending in different courts in India. In civil cases out of total pendency; 10 % civil cases are pending over 10 years, 13.91% civil cases are pending 5-10 years; 15.54% civil cases are pending between 3- 5 years; 28.82% civil cases are pending 1-3 years and 34.84% civil cases are pending upto 1year. In the state of Jammu and Kashmir a total of 168,056 cases are pending out of which 71,668 are civil cases and 96,388 are criminal cases. The area of this study is Udhampur District where total cases pending are 6,357 out of which civil cases pending are 3,153 and criminal cases pending are 3,204 (According to National Judicial Data Grid, as on date April 12, 2019). Statistical analysis has its own limitations and while dealing particularly in human affairs it cannot portray the pangs and pains a litigant has to suffer in the tortuously long process of adjudication. Statistical analysis is however internationally accepted tool of empirical studies to get a trend, a pattern on which objective findings can be based.

The Ministry of Law & Justice in its efforts to find the root cause for huge backlog of cases has sponsored the present research project on the topic, ‘Action Research and Studies on Judicial Reforms. The present research aims to address delays in civil trial from procedural perspective. Human and material resource can be one factor, but dilatory procedures can equally be a causative factor for delays in criminal adjudication. Unless the procedural bottlenecks are identified and cleared, merely augmenting the human and material resources cannot usher in the constitutional vision of speedy justice. Hence, the research focused on identification of major procedural bottlenecks affecting the speedy trial of the civil cases. In order to achieve the said objective, the searchlight therefore in this research project is turned on to the identification of major procedural stages in the life of a civil case, which is hindering the progress of a civil trial towards its conclusion.

Scope of the study

In order to complete the study within a limited time and with limited resources, the study was designed with a specific scope of courts in Udhampur district of Jammu province. Within the district, there were nine courts and the same are chosen for a detailed study involving visits to courts. These courts were the courts of Principal district and session court, Additional District and Sessions Court Udhampur, Chief Judicial Magistrate Udhampur, Sub Judge-special Mobile Magistrate, Sub Judge JMC Ramnagar, Munsiff DJMMT Udhampur, Munsiff JMIC Udhampur, Munsiff Majalta, Addl. Special Mobile Magistrate Udhampur.

After obtaining necessary permissions from the Courts, visits were scheduled in various courts of district Udhampur and multiple courtrooms. The chief aim of this exercise was that the finding of study should be purely based on actual state of affairs as prevailing at the operational level of the procedural laws at the trial stage. The conclusions of the report are therefore based on what the results of statistical analysis, and what the principal functionaries of the civil justice system have said.

CHAPTER-2
METHODOLOGY

2.1 Introduction

The study is descriptive and analytical in nature. An attempt in the study is made to identify the causes for pendency and map a way forward to reduce delay. Study further focus on identifying the bottlenecks responsible for causing delay in disposal of civil cases in courts and possible policy and procedural changes necessary for the reduction of pendency and a study on 'Court Management techniques for improving the efficiency of subordinate courts.' The chapter discuss about the methodology used to execute the action research study. The chapter covers the sections on Objectives of Study, Scope of the study, Methodology followed and Tools for Analysis**.**

2.2 Research Approach

Two types of research approach have been used in the present study – Qualitative and Quantitative. Qualitative Research is defined as collecting data through personal interaction (interviews), either from an individual or group. Sometimes, it also involves a detailed case study or through carefully designed observational studies (Goodwin, 2009; Bartunek, & Seo, 2002). Thus, in qualitative research results cannot be presented in numbers and no statistical analysis is applicable (Duffy & Chenail, 2008).

Whereas, Quantitative Research is defined as quantifying the observation and information based on measurement data suitable for applying statistical analysis (Teo, 2014). In quantitative research, researcher collects, compiles and analyze data obtained from a sample to draw inferences about the target population from which the sample is drawn (Kidd, Ostlund, Rowa-Dewar, & Wengstrom, 2011; Allwood, 2012)

2.1 Objectives of Study

- Improving data collection and management by collecting and recording accurate data to overcome the gasp by moving beyond pendency and disposal statistic, giving the true picture of trail court functioning and the adjournments granted and organizing the data in a scientific way.
- To identify the nature and extent of reasons that commonly contributes to delay in disposal of cases.
- Addressing inefficiencies including court side, counsel side and litigant side.
- Subject-wise classification of the cases.

- Suggesting measures and way forward by relying upon the accurate primary data collected during the research.

2.2 Scope of the Study

In order to complete the study within a limited time and with limited resources, the study was designed with a specific scope of courts in Udhampur district of Jammu province. Within the district, there were nine courts and the same are chosen for a detailed study involving visits to courts. These courts were the courts of Principal District and sessions court Udhampur, Additional District and Sessions Court Udhampur, Chief Judicial Magistrate Udhampur, Sub Judge-special Mobile Magistrate, Sub Judge JMC Ramnagar, Munsiff DJMMT Udhampur, Munsiff JMIC Udhampur, Munsiff Majalta, Addl. Special Mobile Magistrate Udhampur.

After obtaining necessary permissions from the Courts, visits were scheduled in various courts of district Udhampur and visited multiple courtrooms. The chief aim of this exercise was that the finding of study should be purely based on actual state of affairs as prevailing at the operational level of the procedural laws at the trial stage. The conclusions of the report are therefore based on what the results of statistical analysis, and what the principal functionaries of the civil justice system have said. The study involved comparison of statistics with other jurisdictions within the country that have performed well on reducing pendency, namely, Haryana, Himachal Pradesh, Kerala and Punjab.

2.3 Research Methodology

The methodology of the study involved Field Investigation, Process study, Physical verification of the case files of district Udhampur of Jammu province, interaction with key stakeholders, namely judges, court officers, lawyers and litigants. Semi-structured interview was conducted with the help of questionnaires designed for judges, lawyers and litigants to get first hand regarding possible causes of delays in disposal of cases.

This primary data was collected through the questionnaires and direct interviews with the judges, court officers, lawyers and litigants. In addition, secondary data was collected from various databases, most notably the National Judicial Data Grid, Physical verification of case files and other similar studies in the literature.

To understand the opinions of judges on the matter of pendency, 9judges from the study area i.e Principal District and sessions court Udhampur, Additional District and

Sessions Court Udhampur, Chief Judicial Magistrate Udhampur, Sub Judge-special Mobile Magistrate, Sub Judge JMC Ramnagar, Munsiff DJMMT Udhampur, Munsiff JMIC Udhampur, Munsiff Majalta, Addl. Special Mobile Magistrate Udhampur were interviewed. A seminar held as part of the study allowed interaction with advocates from major courts of the state. This helped to gain in-depth insights regarding the issues of pendency. On litigant side, 32 respondents were interviewed.

In all, the survey collected opinions of nearly 200 stakeholders from the State. A balanced research team of five members was used for this study. The profile of the team is provided as:

1. Mr. Harbans Lal (Retd.)
   District & Sessions Judge
2. Dr. Sameer Gupta Professor,
   The Business School, University of Jammu
3. Ms. Meenakshi Nargotra,
   Senior Research Fellow,
   The Business School, University of Jammu
4. Ms. Avantika Bakshi
   Research Fellow,
   The Business School, University of Jammu
5. Ms. Divya Gupta
   Ph.D from Jammu University.

2.4 Tools for Analysis

The primary objective of the present study was to identify causes for delay in courts of Udhampur district which include Principal District and sessions court Udhampur, Additional District and Sessions Court Udhampur, Chief Judicial Magistrate Udhampur, Sub Judge-special Mobile Magistrate, Sub Judge JMC Ramnagar, Munsiff DJMMT Udhampur, Munsiff JMIC Udhampur, Munsiff Majalta, Addl. Special Mobile Magistrate Udhampur. Accordingly, data from court was used to understand the most likely causes for delay in cases. This data was compared with the opinions of stakeholders regarding possible causes for delay. Subsequently, these reasons will be analyzed to draw implementable recommendations. This analysis makes use of tools like mean score value, percentages, graphs and tables.

2.5 Sample Size

Total of 34 civil cases of different nature has been selected for the physical verification from the ten different courts of district Udhampur in the Jammu province with a

limitation that the average life span of the case should be above five years so that the delay can be better studied.

Simple Random sampling method is applied for selecting the cases. Number of cases has been decided according to Percentage formula, twenty five percent (25%) of total cases has been selected for the physical verification.

Number of cases decided = 25% of Total no. of cases

Further, twenty five percent (25%) of cases has been selected from the each court.

Age wise categorization of cases selection has been shown in the Table 1

Table 1: Sample taken for civil cases

				Cases taken from each period for sample			
S. No.	Name of the court	Civil Cases	No of cases taken	5-7 years	7-10 years	10-15 years	Above 15 years
1.	Pr. Distt & Sessions court Udhampur	48	12	4	4	2	
2.	Addl. Distt &Sessions Court Udhampur	11	3	1	1		
3.	Chief Judicial Magistrate Udhampur	14	3	0	1	1	1
4.	Sub Judge special mobile magistrate Udhampur	10	2	0	0	1	1
5.	Sub Judge JMIC Ramnagar	2	1	1			
6.	Munsiff DJMM(T) Udhampur	26	7	5	3	2	
7.	Addl. Special Mobile magistrate Udhampur	10	2	1	1		
8.	Munsiff JMIC Udhampur	9	2	0	1	1	
9.	Munsiff Chenani	6	1	1			
10.	Munsiff Majalta	2	1	1			
	Total	138	34	14	11	7	2

2.6 Questionnaire Design

In order to consider the views and opinions of the main functionaries, questionnaires were prepared and circulated on the basis of the preliminary finding. A separate questionnaire has been designed to collect data regarding the major reasons for the delay in the disposal of cases at various stages for the Judges, court officers, Advocates and litigants. Questionnaire has been divided into two sections. Section –A includes fourteen statements regarding possible causes of delays and Section-B includes thirteen statements regarding reforms in the Judiciary system. Questionnaire contains multiple choice questions as well as open end questions. Questionnaire has been developed on the basis of key parameters such as:

- Stages of case which takes the maximum time for completion
- Time taken for delivery of summons and issue of summons
- Time taken for filing written statement
- Time take for time of framing of issues
- Time taken in examination of cases
- Deliberate absence of witness
- Issuing of interim orders
- Time taken in examination of witness
- Frequent adjournment
- Time taken in execution of decree

2.6 Structure of the Report

Report has been divided into five chapters namely Introduction, Methodology, Data Analysis, Major findings and Recommendations and Suggestions.

Chapter I: Introduction

The first chapter deals with the introduction of the research. Chapter gives an overview of the pendency of Cases in India. Further chapter talk about the pendency of cases in the state of J&K. Chapter then discussed the pendency of cases in the district Udhampur in Jammu Province .Furthermore, the chapter put light on the different definitions of "delay" so to make proper understanding of the whole research. Chapter then bring forth the impacts of delay at different stages of disposal of the case. Moreover chapter discusses the Judicial

Reforms in India as well as in the state of J&K. At last need of the study has been discussed in detail.

Chapter II: Methodology

Chapter 2 discussed about the research approach used by the researcher in the present study, research objectives and the purpose of the study, scope of the study .Chapter further discusses the research methodology used and research tools used to analyze and interpret the data collected through various sources. Sample size, method of identification of sample size, method of collection of data has been then discussed.

Chapter III: Data analysis and interpretation

Chapter discusses the analysis of primary as well as the secondary data. Chapter presents the categorization of the pending cases on the basis of nature, age and stage in India, in J&K as well as in different courts of District Udhampur. Chapter further presents the analysis of the data collected through the physical verification of the civil cases which stands delay in the various courts District Udhampur

Chapter IV: Findings Recommendations and Suggestions

In chapter VI, an attempt has been made to present an overall assessment in the form of findings. The chapter summaries the recommendations and suggestions generated on the basis of secondary data which has been mined from National Judicial Data Grid (NJDG) and primary data which has been collected from various sources like Field Investigation, Physical verification of the case files of district Udhampur of Jammu province, interaction with key stakeholders, namely judges, court officers, lawyers and litigants.

CHAPTER-3
DATA ANALYSIS AND INTERPRETATION

1.1 PENDENCY IN INDIA

According to National Judicial Data Grid, at present a total of 30,936,000 cases are pending in Indian Courts out of which 8,685,871 are the civil cases and 22,250,129 are the criminal cases which are pending in different courts in India. In civil cases out of total pendency, 10 % civil cases are pending over 10 years, 13.91% civil cases are pending for 5-10 years; 15.54% civil cases are pending between 3- 5 years; 28.82% civil cases are pending for 1-3 years and 34.84% civil cases are pending up to 1 year.

Table 3.1: Nature wise break up of total pending cases in India as on April 2019

Particulars	Civil	Criminal	Total
No. of pending cases	8,685,871	22,250,129	30,936,000
Percentage of pending cases (%)	28.07%	71.92%	100%

Source: National Judicial Data Grid

Figure 3.1: Nature-wise Break-up of Pending Cases as on April 2019

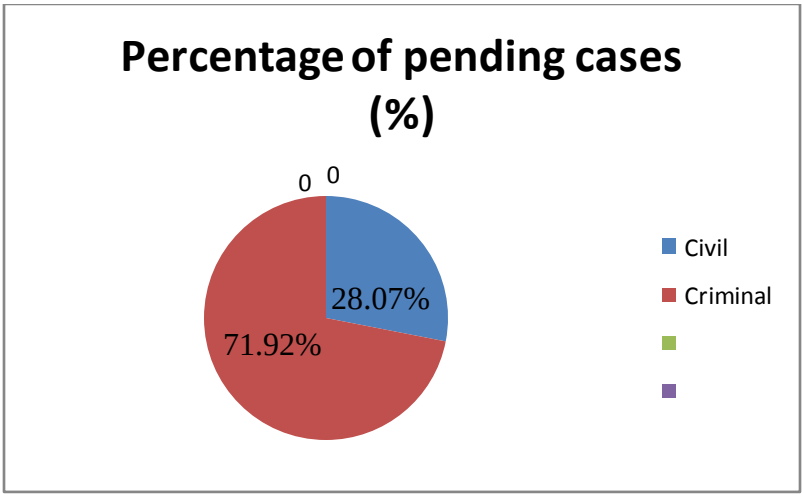


Figure 3.1 indicates the nature wise splitting up of total pending cases in India. It shows that out of total 30,936,000 pending cases in India, 28.07 % of cases are civil in nature which represents 8,685,871 cases and remaining 71.92% are criminal cases which constitute 22,250,129. The data indicated that the pendency rate of criminal cases is more as compare to the civil cases.

Table 3.2: - Age wise Break-up of total Pending Civil Cases in India as on April 2019

Age	Pending Cases	Percentage of Pending Cases
0 - 1 years	3,168,146	36.48%
1 - 3 years	2,432,555	28.01%
3 - 5 years	1,314,924	15.14%
5 - 10 years	1,182,618	13.59%
10 - 20 years	452,254	5.21%
20 - 30 years	102,492	1.18%
30 years above	32,882	0.38%
Total	**8,685,871**	**100%**

Source: National Judicial Data Grid

Figure 3.2: Age wise Break-up of total Pending Civil Cases in India

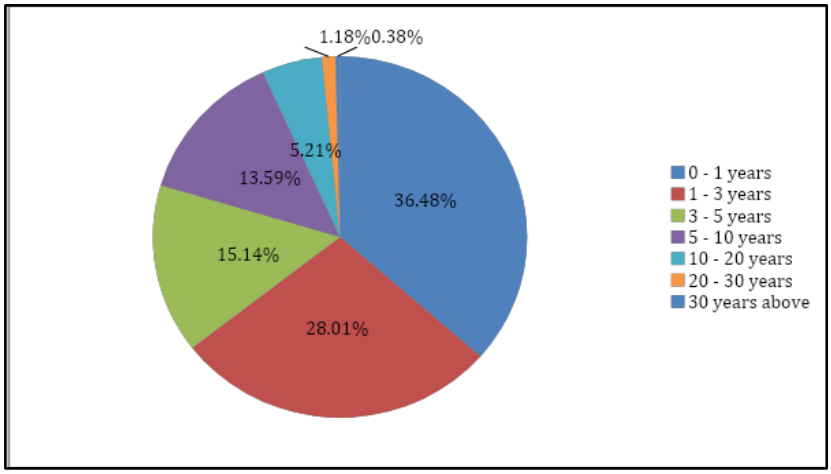


Table 3.2 reflects the age wise break-up of total civil cases which pending in India. Table 3.2 indicates that according to National Judicial Data Grid (NJDG) on April 2019 across the country, 28% of pending cases lies between 1 to 3 years, 15.14% of cases are pending for 3 to 5 years, 13.59% of cases are delayed for 5 to 10 years, 5.21% of cases are pending for 10 to 20 years, 1.18% of cases are lying between 20 - 30 years and 0.38% of cases are pending more than 30 years. Figure 3.2 shows that just about twenty percent of pending cases are more than 5 years whereas eighty percent of civil cases are resolved within five years and out of them 64.5 percent of cases are decided within 3 years and 70 percent within 5 years thus making the average time for the settlement of cases longer than 3 years. The number of cases pending in India over a period of 1 year forms around 71.6% of the total

cases of civil nature and 72.87% (16148314) of criminal nature which is evident of the fact that the most of the cases are commonly disposed off in periods longer than one year.

Further, as per National Judicial Data Grid, life cycle of the case has been divided into four stages i.e. Appearance/Service Related, Compliance/Steps/stay, Evidence/ Argument/ Judgement, Pleadings /Issues/ Charge. The purpose of a trial is to provide just and speedy resolution of the parties. Table 3.3 indicates the stage wise case pendency in India. Data indicate that 45.48% of cases are delayed at Evidence stage followed by the cases at Appearance stage i.e. 24.42% and 17.93% at Compliance stage. This delay at the stage of evidence may be attributed to some procedural and operational gaps on the part of the parties and efforts should be made to narrow down the delays that are within the control of the system.

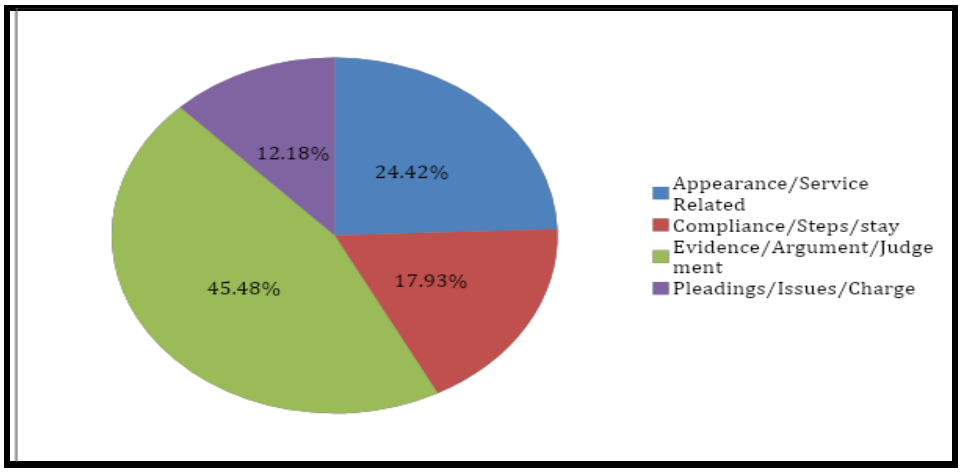
Table 3.3: - Stage wise case pendency in India

Stages	Total pending cases	Percentage of cases
Appearance/Service Related	2,015,183	24.42%
Compliance/Steps/stay	1,479,608	17.93%
Evidence/Argument/Judgement	3,753,483	45.48%
Pleadings/Issues/Charge	1,005,575	12.18%

Source: National Judicial Data Grid

Furthermore, it has been found that commonly identified reasons for delay include intentional avoidance of summons by parties, negligence on the parts of process servers, delay of filing of written statements, non-appearance of parties on the fixed day of hearing etc.

Figure 3.3: - Stage wise case pendency in India



If unreasonable delays occur in the justice delivery systems, it points out at the inefficiencies and defeats the whole purpose of the trials.

1.2 PENDENCY IN JAMMU & KASHMIR

The High Court of Jammu and Kashmir was established in the year 1928. The seat of the High Court shifts between summer capital and winter capital of Srinagar and Jammu respectively. According to the Department of Law, Justice and Parliamentary affairs of J&K, the court has sanctioned strength of 14 judges with 9 permanent and 5 additional judges. From the year 1985 to 2018, a total of 813 lawyers have been rolled with the State Bar Council. (J&K High Court Database)

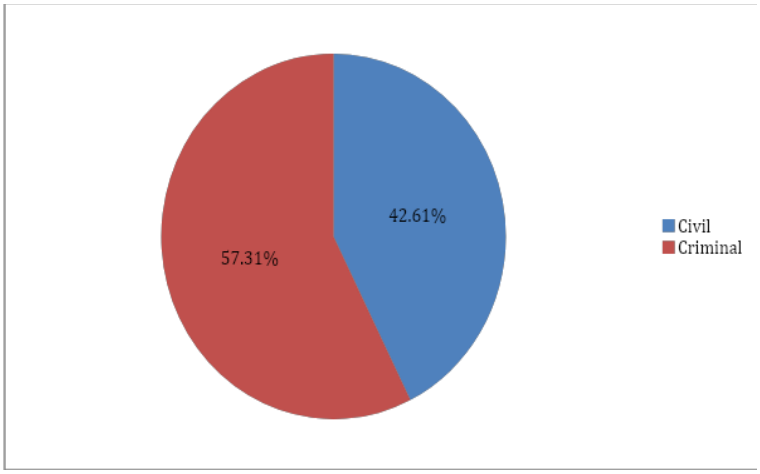
At present there are one hundred seventy four (174) subordinate courts in the state consisting of forty five (45) courts of District judges, fifty (50) Sub-judges courts and seventy nine (79) courts of Munsiff. In total there are around fifty nine (59) district judges, sixty (60) Sub Judges and fifty six (56) Munsiff. In 2008, an addition of twelve (12) more courts of district and sessions judges along with the supporting court staff was made by the government. Two courts of Chief Judicial magistrate were also added in the districts of Ganderbal and Bandipora respectively. In the state of Jammu and Kashmir a total of 168,904 cases are pending out of which 71,984 are civil cases and 96,920 are criminal cases. The area of this study is Udhampur District where total cases pending are 6,357 out of which civil cases pending are 3,153 and criminal cases pending are 3,204 (According to National Judicial Data Grid, as on date April 12, 2019). Statistical analysis has its own limitations and while dealing particularly in human affairs it cannot portray the pangs and pains a litigant has to suffer in the tortuously long process of adjudication. Statistical analysis is however internationally accepted tool of empirical studies to get a trend, a pattern on which objective findings can be based.

Table 3.4: Nature wise break up of total pending cases in J&K

Particulars	Civil	Criminal	Total
No. of pending cases	71,984	96,920	**168,904**
Percentage (%) of pending cases	42.61%	57.31%	**100%**

Source: National Judicial Data Grid

Table 3.4: Nature wise break up of total pending cases in J&K



According to National Judicial Data Grid, the state of Jammu and Kashmir has a total pendency of 168904 cases which include 96,920 cases of criminal nature and 71,984 cases of civil nature. The civil cases amount to around 42.61% of the total pending cases. Rest 57.31% of cases are criminal in nature thus indicating a greater percentage of cases of criminal category.

Furthermore, from Table 3.1 and Table 3.4 it has been found pendency of cases in J&K constitute approximately 0.54% of total pendency in India. It is also evident that pending cases of civil nature in J&K amount to approximately 8.28% of civil pending cases in India and criminal cases in J&K is approximately 0.43% of pending criminal cases in India. It can be concluded that pendency rate is not much alarming in the State of J&K as compare to the overall pendency rate in India. But again the pendency in the civil case is more than that of the criminal cases.

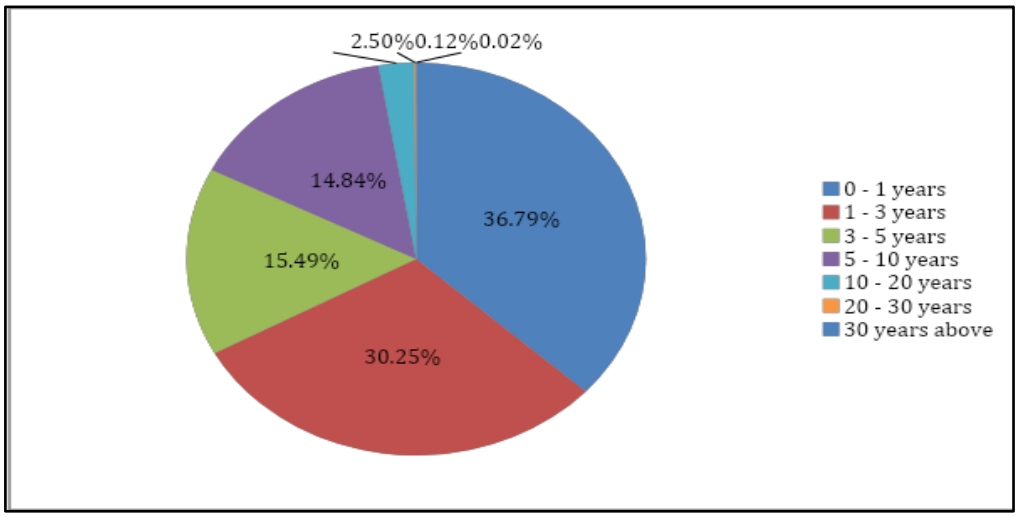
Table 3.5: Age-wise Break-up of total Pending Cases in J&K

Particulars	Total cases	Percentages
0 - 1 years	62,145	36.79
1 - 3 years	51,090	30.25
3 - 5 years	26,161	15.49
5 - 10 years	25,059	14.84
10 - 20 years	4,219	2.5
20 - 30 years	196	0.12
30 years above	34	0.02
Total	**168,904**	**100.00**

Source: National Judicial Data Grid

Though, a significant number of cases are settled in a period of 1 year. A tabulation of year wise pending civil cases is presented in Table 3.5. The corresponding pie chart (Fig 3.5) shows that 62145 of cases are pending for less than one year which forms 36.79% of total pending cases in the state. 51,090 cases fall in the category of 1 to 3 years which constitute 30.25% followed by the cases which are pending for 3 to 5 Years i.e. 15.49% (26161). Further, 14.84% of cases are in the awaiting for the judgement for 5 to 10 Years and 2.6% of cases are pending for more than ten years.

Figure 3.5: Age-wise Break-up of total Pending Cases in J&K



It has been found that 32.95% of the cases are pending between 5 years and above which has been consider as the actual delay. Further, it is clear from the Figure 3.5 that there are certain civil cases which are still pending for 30 years which constitutes 0.02% of the total pending cases in the state of J&K.

Table 3.6: Age-wise Break-up of Pending Criminal Cases in J&K

Particulars	No. of Criminal cases	Total percentage
0 - 1 years	33,035	34.08
1 - 3 years	29,456	30.39
3 - 5 years	16,261	16.78
5 - 10 years	16,016	16.52
10 - 20 years	2,109	2.18
20 - 30 years	38	0.12
30 years above	5	0.01
Total	**96,920**	**100.00**

Source: The National Judicial Data Grid

Figure 3.6: Age wise of pending criminal cases in J&K

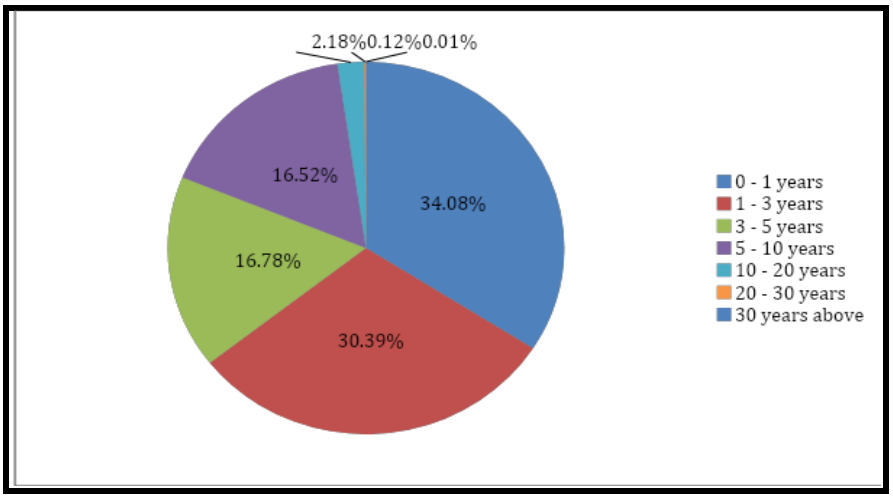


Table 3.6 indicate the age-wise division of pending cases of criminal nature in J&K. A total of 96920 criminal cases are pending in J&K state. Further categorization indicates that 34.08% of criminal cases are pending for less than one year in the state. 29,456 cases fall in the category of 1 to 3 years which constitute 30.39% followed by the cases which are pending for 3 to 5 Years i.e. 16.78% (16261). Further 16.52% of cases are in the pending for the judgement for 5 to 10 Years and 2.18 % of cases are delayed for 10 - 20 years, 0.12% of cases are pending for 20 to 30 years and 0.01% of cases are delayed for more 30 years. Hence, it is clear that maximum numbers of cases are pending for less than one year followed by the case in time period of 1 to 3 year, 3 - 5 years, 5 - 10 years and 10 - 20 years. 35.52% of cases are actually delayed as they are pending from more than five years.

Table 3.7: Age-wise Break-up of Pending Civil Cases in J&K

Particulars	**No. of Civil cases**	**Total Percentage**
0 - 1 years	29,110	40.44
1 - 3 years	21,634	30.05
3 - 5 years	9,900	13.75
5 - 10 years	9,043	12.56
10 - 20 years	2,110	2.93
20 - 30 years	158	0.12
30 years above	29	0.04
Total	**71,984**	**100.00**

Figure 3.7: Age-wise Break-up of Pending Civil Cases in J&K

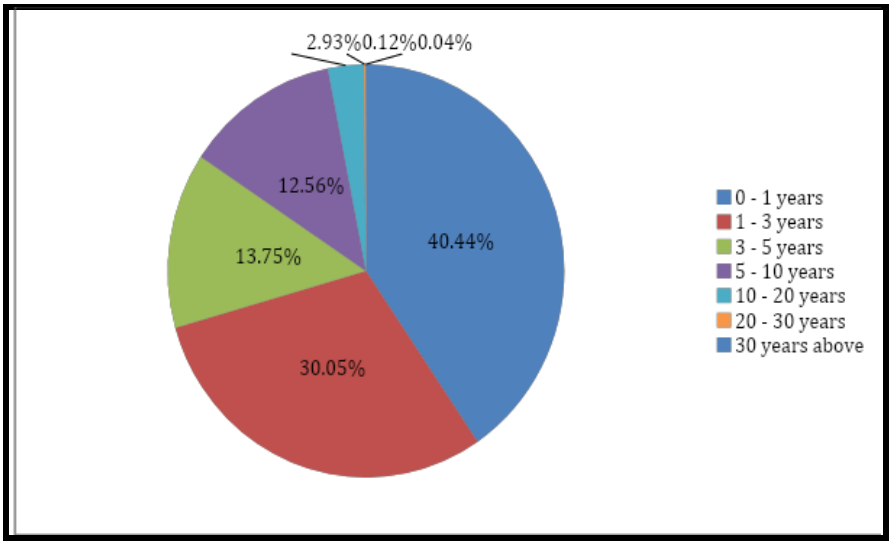
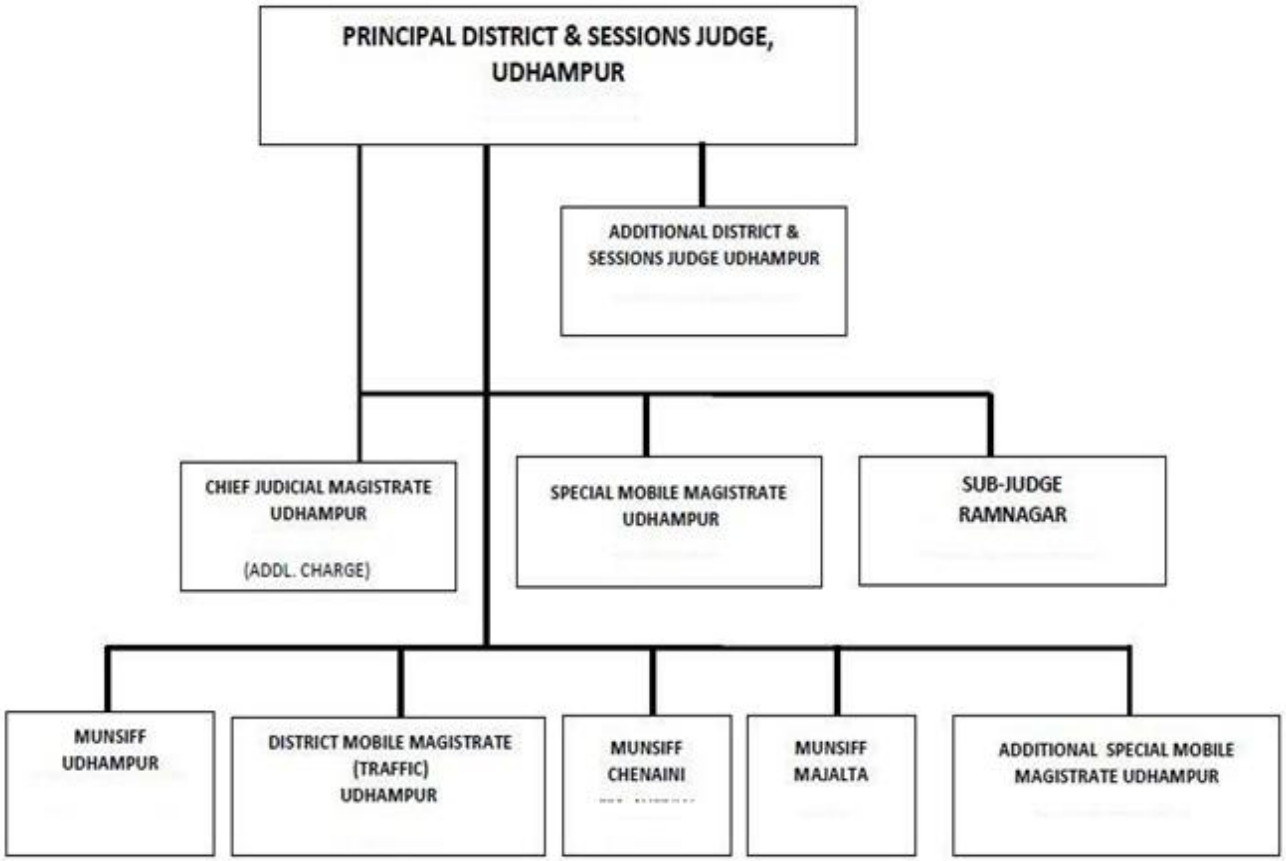


Table 3.7 indicate the age-wise division of civil pending cases in the state of J&K. Further 40.44% of total civil cases in J&K are pending for less than one year. 30.05% of cases pending for less than 1 to 3 Years followed by the cases which are pending for 3 to 5 Years i.e. 13.75% (9900) which is comparatively less than the pendency in criminal cases in the same age group. Further 12.56% of cases are pending before the court for 5 to 10 years which is marginally exceed the pendency in criminal cases. Further, 2.93% of cases are delayed for 10 to 20 years, 0.12% of cases are pending for 20 to 30 years which constitutes 158 cases and 0.04% of cases which counts for 29 cases are delayed for judgement for more than 30 years.

1.3 PENDENCY IN UDHAMPUR DISTRICT

Udhampur city forms a part of the Municipal district of Udhampur and is the second largest city of Jammu region and fourth largest city of the state with a population of 59,236 (Census, 2011)Udhampur consists of four administrative tehsils: Udhampur city, Ramnagar, Chenani and Majalta. The organisation chart of the district of Udhampur is given in the figure.

Organisational chart of District Udhampur District



Source: www.jkhighcourt.nic.in

The District Court complex of Udhampur with the courts of districts and sessions judge started functioning in the year 1964 and one of the courts of Sub Judge CJM is known to be in existence from the pre independence time. Later on, in 2008 the court of additional district and session judge was created. Lately, it has two district & session court & 5 magistrate courts with a total of 9 judge incharge of all courts of Udhampur, along with court complexes of Chenani, Majalta and Ramnagar. The court has staff strength of 139 at all levels including process servers, stenographers, legal assistants and orderlies.

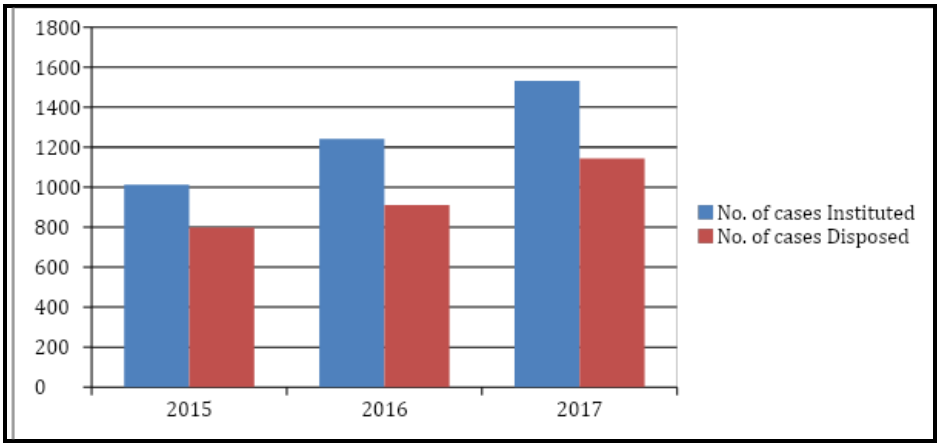
Table 3.8: No. of cases Instituted and Disposed in District Udhampur

Year	No. of cases Instituted	No. of cases Disposed
2015	1,013	798
2016	1,242	910
2017	1,532	1,144

Table 3.8 shows the total number of cases instituted and number of cases disposed in the courts of district Udhampur in three consecutive years i.e. year 2015, 2016 and 2017. It

can be seen from the table that in the year 2015 total number cases instituted were 1,013 and cases disposed were 798. Thus, the disposal rate in year 2015 was 78.7%. In the year 2016 number of cases instituted has increased to 1,242 and number cases disposed have also increased to 910, making a percentage of 73.2%. Again in the year 2017, both the number of cases instituted and disposed has increased and disposal rate was 74.6%.

Figure 3.8: No. of cases Instituted and Disposed in District Udhampur

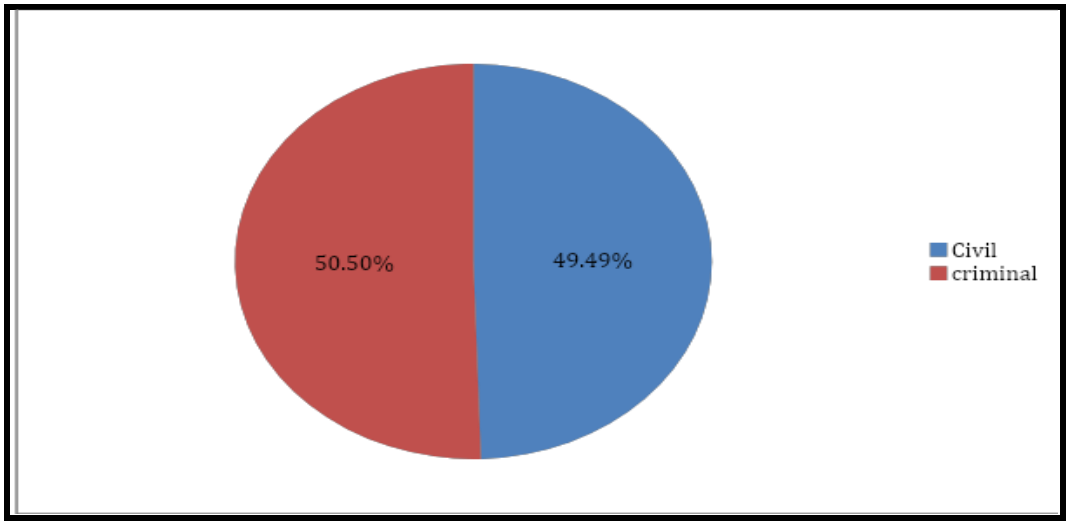


It can clearly be seen from the Figure 3.8 that number of cases instituted and number of case disposed have increased in three consecutive years. But, the disposal rate in the year 2016 has decreased as compared to the year 2015 from 78.7% to 73.2%. And in the year 2017 disposal rate has been increased by 1.4% as compared to year 2017.

Table 3.9: Nature wise break up of total pending cases in District Udhampur

Particulars	Civil	Criminal	Total
No. of Pending Cases	3,154	3,218	**6,372**
Percentage of Pending Cases	49.49	50.50	**100.00**

Figure 3.9: Nature wise break up of total pending cases in District Udhampur



According to National Judicial Data Grid **District Udhampur** has a total pendency of **6,372** cases which include 3154 civil cases and 3218 criminal cases. The civil cases amount to around 49.49% of the total pending cases. Rest 50.50% of cases are criminal in nature. Further data from Table 3.4 and Table 3.9 reflect that total pending cases in District Udhampur constitute approximately 3.77 % of total pending cases in state of J&K which indicates that the pendency rate in courts of District Udhampur is very small as compare to the pendency rate in J&K.

Table 3.10: -Age wise Break-up of total Pending Cases in Udhampur

Age	No. of cases	Percentage
0 - 1 Years	2,940	46.14
1 - 3 Years	2,033	31.91
3 - 5 Years	850	13.34
5 - 10 Years	500	7.85
10 - 20 years	49	0.77
20 - 30 years	0	0
30 years above	0	0
Total	**6,372**	**100.00**

Figure 3.10: Age wise Break-up of total Pending Cases in Udhampur

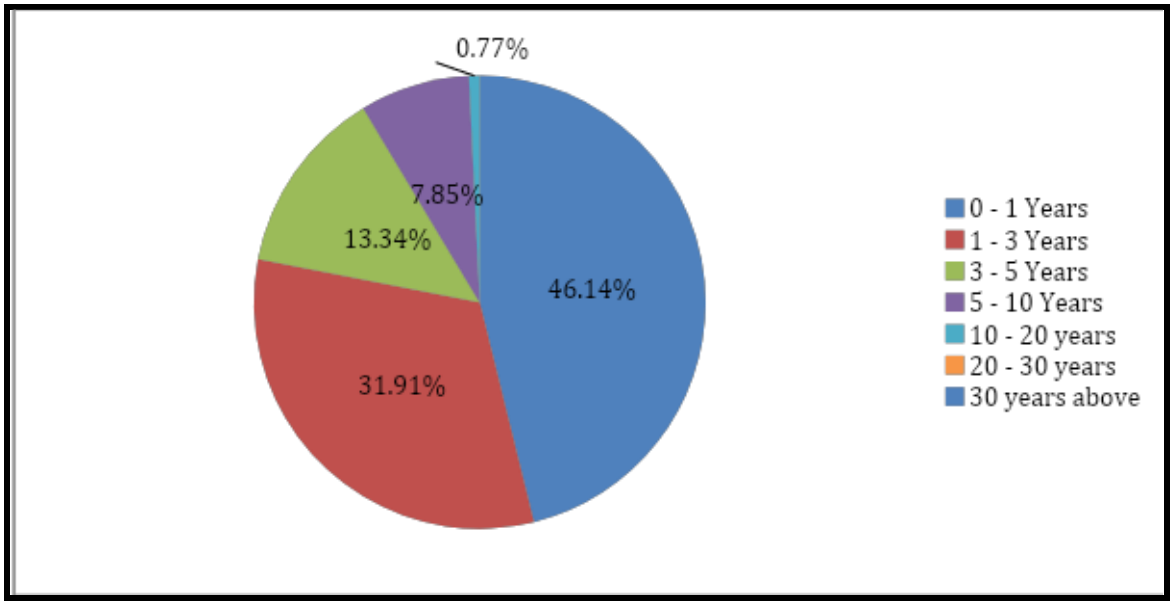


Table 3.10 reflects the Age wise break-up of total pending cases in Udhampur district. Table indicates that a total of 6,372 cases are pending in the courts of Udhampur district. Data further shows that 46.14% of the total cases are pending for less than one year which

count for 2940 cases out of total pending cases in district Udhampur followed by 31.91% (2033) of cases which are awaiting for 1 to 3 years for the judgment. Further the cases which are pending before the court for 3 to 5 years count for 850 which constitute 13.34%. There are 500 (7.85%) cases which pending for 5 to 10 years and 49 (0.77%) cases are pending for 10 to 20 years. Further no case has been found pending for more than 20 years.

Table 3.11: Age wise Break-up of Civil Pending Cases in Udhampur

Age	No. of civil cases	Percentage
0 - 1 Years	1,435	45.50
1 - 3 Years	988	31.33
3 - 5 Years	403	12.78
5 - 10 Years	291	9.23
10 - 20 Years	37	1.17
Total	**3,154**	**100.00**

Figure 3.11: Age wise Break-up of Civil Pending Cases in Udhampur

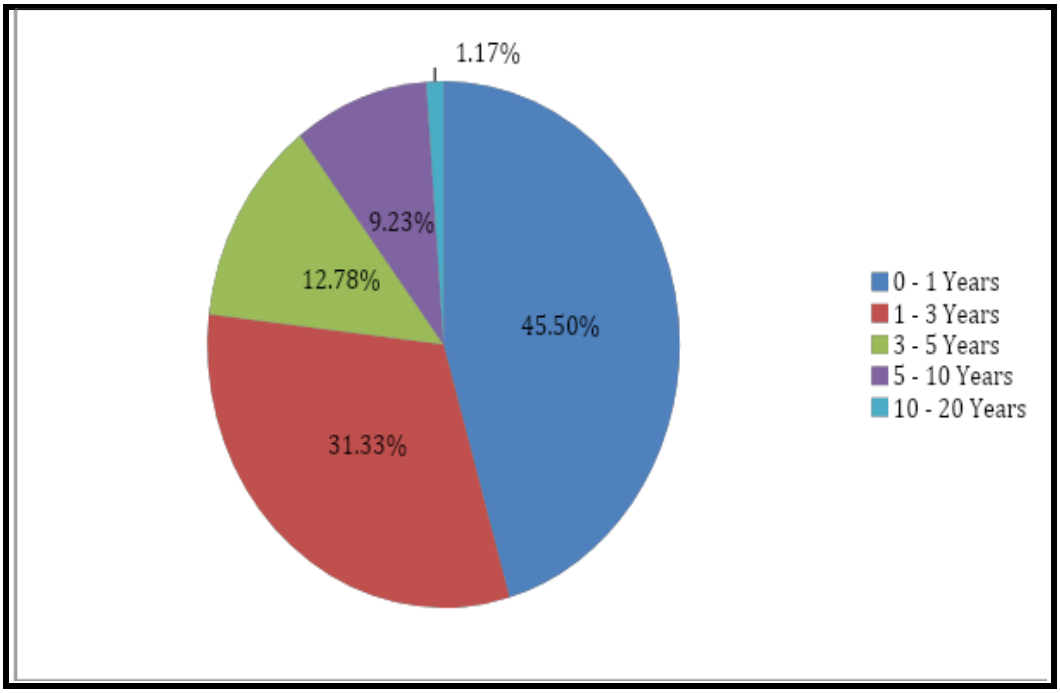


Table 3.11 shows the Age wise break-up of total civil cases pending in the courts of Udhampur district. Data further shows that a total of 3154 civil cases are pending in the various courts of Udhampur district. It has been shown that 45.5% of the total civil cases are pending for less than one year which constitutes 1435 cases followed by 31.33% (988) cases

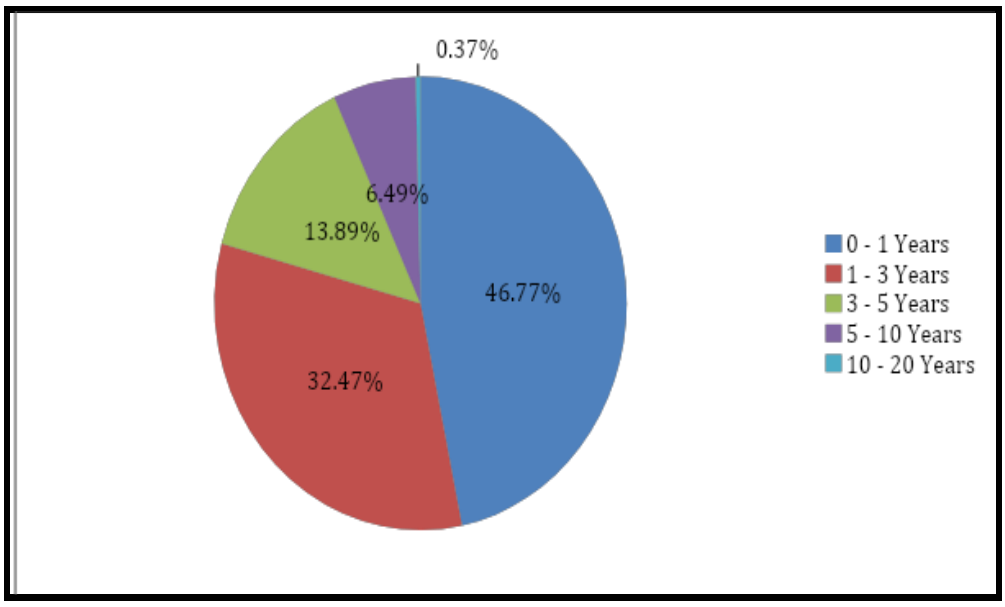
which are pending for less than 3 years in various courts of district Udhampur. Further the cases which are pending before the court for 3 to 5 years count for 12.78% which constitute 403. There are 291 (9.23%) cases which pending for 5 to 10 years and 37 (1.17%) cases are pending for 10 to 20 years. From Table 3.4 and Table 3.10, it has been found that total civil pending cases in District Udhampur constitute approximately 4.38 % of civil pending cases in state of J&K.

Table 3.12: -Age wise Break-up of Criminal Pending Cases in Udhampur

Age	No. of Criminal	Percentage
0 - 1 Years	1,505	46.77
1 - 3 Years	1,045	32.47
3 - 5 Years	447	13.10
5 - 10 Years	209	6.49
10 - 20 Years	12	0.37
Total	**3,218**	**100.00**

Table 3.12 indicate in district Udhampur 3218 number of criminal cases. Data further shows that highest number of pending cases falls in the category of less than one year which is 1505 (46.77%). Further, 1045 cases are in anticipation of the judgment for 1 to 3 years which constitute 32.47% followed by the cases which are in age group 3 - 5 Years i.e. 13.109% (447). Moreover, 6.49% (209) of pending cases are in age limit of 5 - 10 Years. 0.37% (12) of cases are pending for more than 10 Years.

Figure 3.12: -Age wise Break-up of Criminal Pending Cases in Udhampur



From Table 3.4 and Table 3.10, it has been found that total criminal pending cases in District Udhampur constitute approximately 3.32 % of criminal pending cases in state of J&K.

Further, Table 3.13 indicates the stage wise break-up of pending cases of criminal in Udhampur indicate. Total of 5431 criminal cases are struck off at different stages.

Table 3.13: -Stage wise Break-up of Criminal Pending Cases in Udhampur

Matter	Total
Appearance/Service Related	1,826
Compliance/Steps/stay	571
Evidence/Argument/Judgement	2,837
Pleadings/Issues/Charge	197

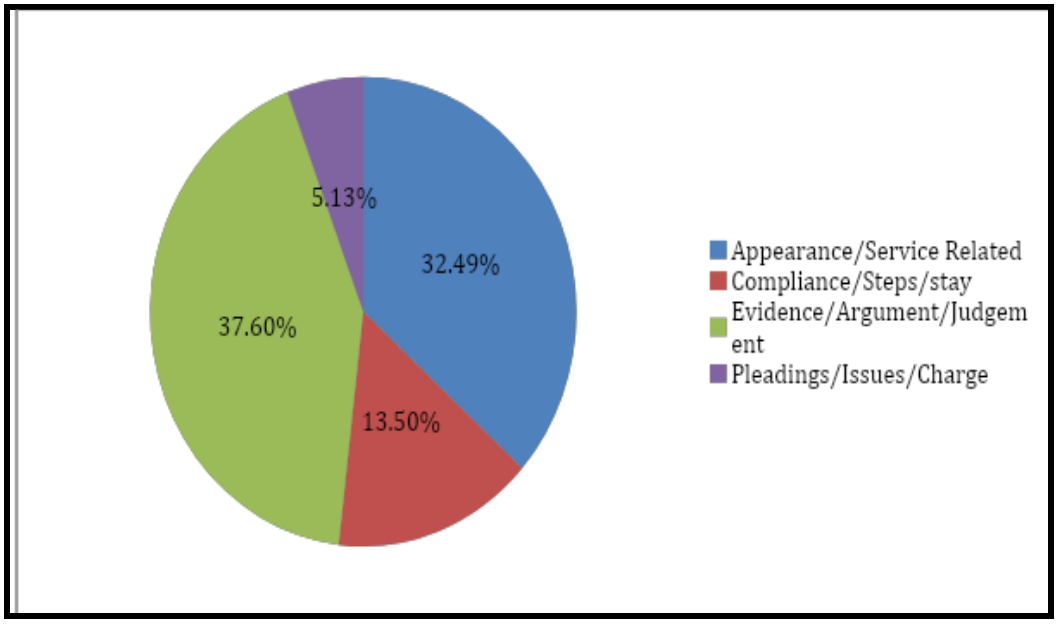
Maximum numbers of cases are deferred at the stage of Evidence i.e. 2837 followed by cases at appearance stage i.e. 1826 and comparatively less number of cases are pending at pleading stage.

In respect of civil cases, Table 3.14 shows the stage wise break-up of Pending Cases of criminal in Udhampur indicate. 3154 number of civil cases are found to be delayed at different stages.

Table 3.14: -Stage wise Break-up of Civil Pending Cases in Udhampur

Stage wise Break-up	Civil Pending Cases	Percentage
Appearance/Service Related	1,025	32.49
Compliance/Steps/stay	427	13.50
Evidence/Argument/Judgement	1,186	37.60
Pleadings/Issues/Charge	162	5.13
Total	**3,154**	**100.00**

Figure 3.14: -Stage wise Break-up of Civil Pending Cases in Udhampur



Data further shows that the highest numbers of criminal cases are delayed at the stage of Evidence i.e. 1186. Followed by cases at appearance stage i.e. 1025 and comparatively less number of cases are pending at pleading stage.

Table 3.15: - Break-up of civil Pending Cases under Appearance stage in Udhampur

Stage	No. of cases	Percentage
Cognizance issue process	945	92.20
Appearance	59	5.76
Await service summon	15	1.46
Await service NBW	3	0.29
others	3	0.30
Total	**1,025**	**100.00**

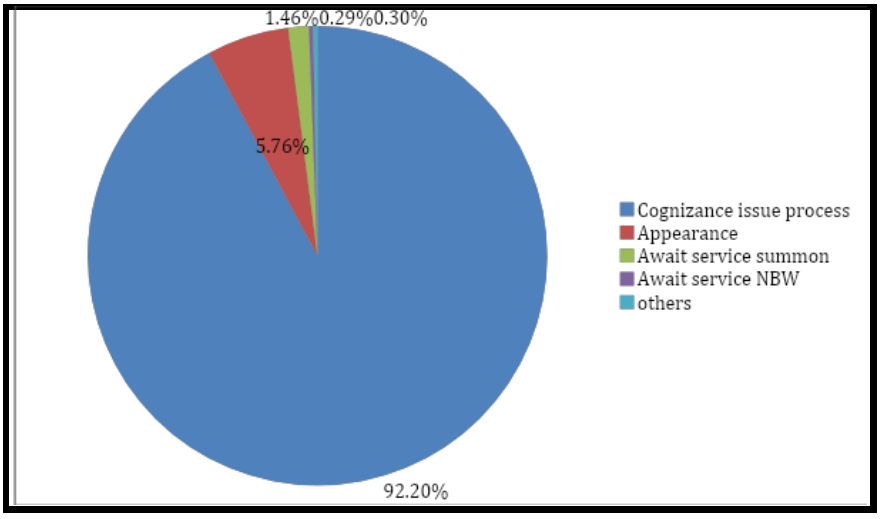


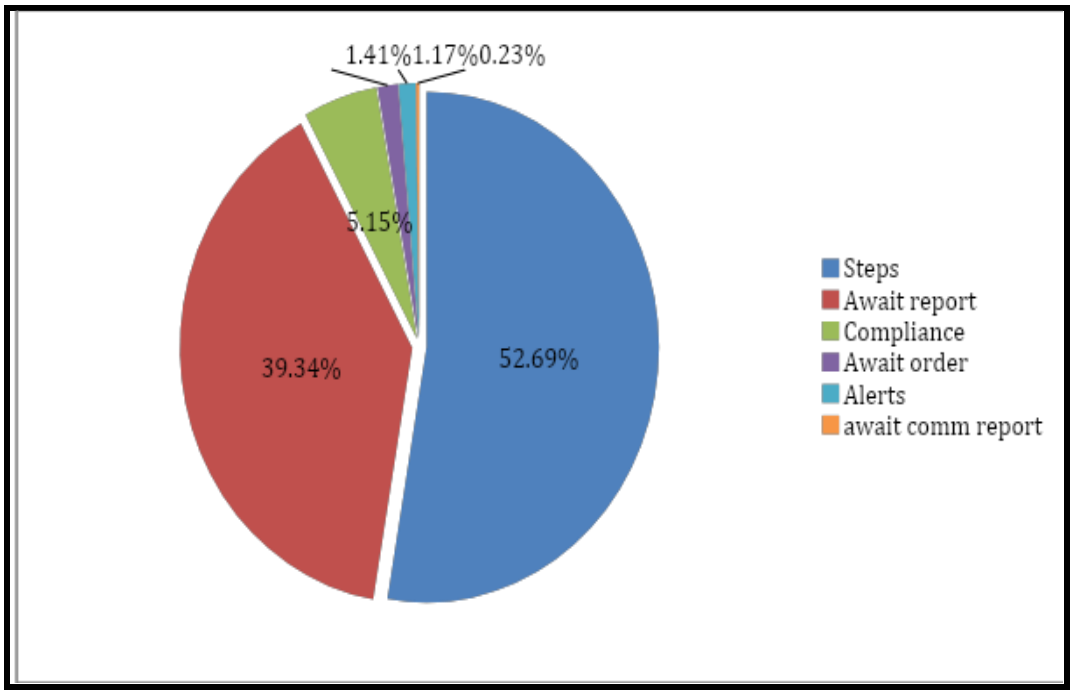
Figure 3.15: - Break-up of civil Pending Cases under Appearance stage in Udhampur

From the table 3.15 it is observed that majority of the cases (around 92.2%) in the appearance stage are pending at the step of cognizance issue which involves the issue of process/ service or cognizance. It also involves the issue of warrants. Of the total number of cases of 1025, 15 are held up for awaiting service summon. Around 59 cases of the total 1025 are held up due to the appearance of parties and advocates in the court.

Table 3.16: -Break-up of civil Pending Cases under Compliance stage in Udhampur

Stage	No. of cases	Percentage
Steps	225	52.69%
Await report	168	39.34 %
Compliance	22	5.15%
Await order	6	1.41%
Alerts	5	1.17%
await comm report	1	0.23%
Total	427	100 %

Figure 3.16: - Break-up of civil Pending Cases under Compliance stage in Udhampur



From the table 3.16 it is clear that out of the total number of cases pending at the stage of Compliance in Udhampur, the largest percentage is delayed at the time for steps, (52.69%) followed by cases awaiting reports (around 39.34%) . The least number of cases are currently pending due to the commission report.

Table 3.17: -Break-up of civil Pending Cases under Evidence stage in Udhampur

Stage	No. of cases	Percentage
Hearing	489	41.23%
Evidence	377	31.79%
Arguments	187	15.77%
Pre trial	96	8.09%
Orders	25	2.11%
313 exam	11	0.93%
Judgement	1	0.08%
Total	1186	100%

Figure 3.17: -Break-up of civil Pending Cases under Evidence stage in Udhampur

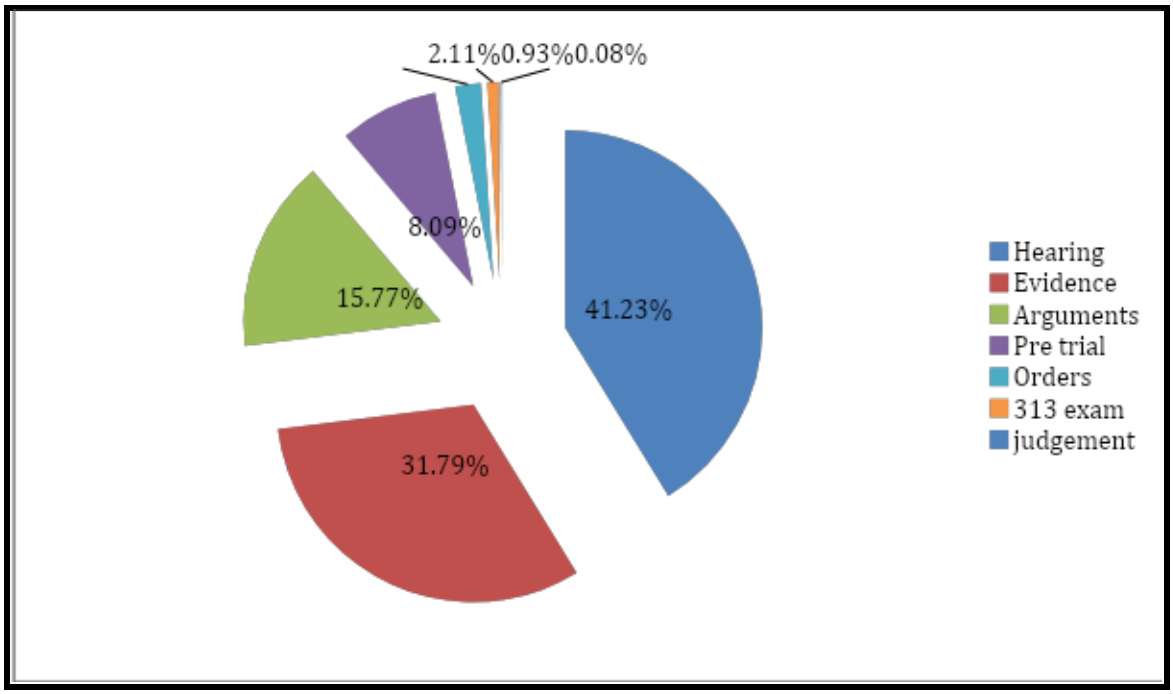
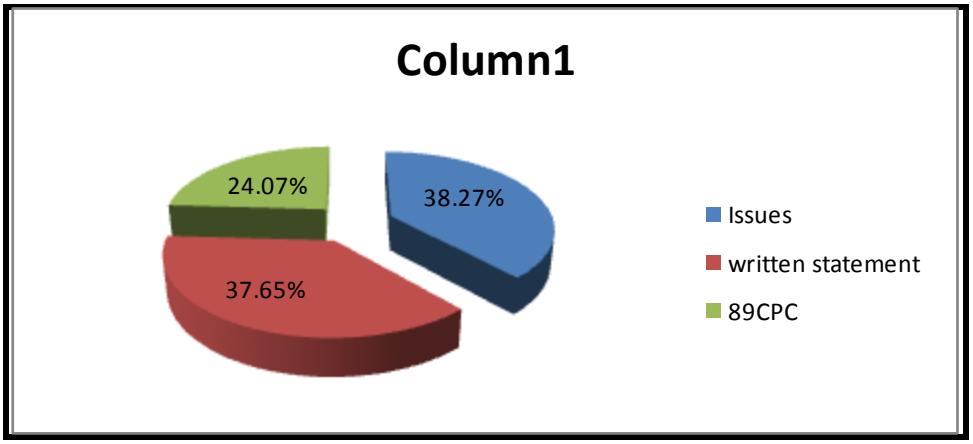


Table 3.17 shows that under the stage of evidence, the highest number of cases are pending at the course of interim hearing or application and bail hearing. This forms roughly 41.23% of the total cases pending at the stage of Evidence in Udhampur. This is followed by the cases awaiting the examination of witnesses (31.79%) and pre trial evidence for recording pre trial statements **respectively (8.09%).**

Table 3.18: -Break-up of civil Pending Cases under pleading stage in Udhampur

Stage	No. of cases	Percentage
Issues	62	38.27%
written statement	61	37.65%
89CPC	39	24.07%
Total	162	100%

Figure 3.18: -Break-up of civil Pending Cases under pleading stage in Udhampur



As given in table 3.18, a total of 162 cases have been pending at the pleading stage. Out of them, around 62 cases that form roughly 38.27% of the total are held for issues, and 61 cases are pending in the filing of written statement. A significant number of cases are pending for counselling and alternate dispute redressal under Section 89 of the CPC. This forms 24% of the total number.

CHAPTER-4

RECOMMENDATIONS

The purpose of the present study was to identify the reasons for delays in the dispensation of justice. The study was confined to subordinate judiciary and only civil cases were taken up for the study. The study was detailed in its approach as it included not only the physical verification of the files of civil cases in district of Udhampur but also interviews with the presiding officers and other staff of the court. The elaborate responses brought to the fore the fact that the main stages in the process of a civil proceeding were marred by the most delay. Ultimately, these responses served as basis for drafting of questionnaire to identify the major bottlenecks in speedy disposal of cases.

These inefficiencies call out for a need to introduce better management of court affairs. Today, court management holds immense importance in all other countries of the world because it can successfully reduce backlogs of cases. Furthermore, the docket control can focus on redressal of grievances at both the micro and macro levels.

The introduction of Court management dates back to 1972 with its origin in America. The rising pendency in the courts is a cause of worry that requires both procedural reforms as well as proper management techniques. This court management can help in case flow and time management that would also help in ensuring equitable justice to all in the long run. A proper strategy put in place for court management can effectively reduce the burden of the judge's leading to greater efficiency of their operations and quicker disposal of cases.

The Indian legal system is one of the oldest legal systems in the world that stands as an epitome for fair and just grievance resolution in both civil and criminal cases. However, despite its unparalleled stature, it is found to be struggling with unreasonable delays in disposal of cases. This has not only increased the pendency of cases but also added to the burden of both the judiciary and litigating parties in terms of cost and efficiency. A comparative study of the Indian judicial system with other countries shows that we have lagged behind in securing an efficient and speedy redressal mechanism.

In India, it takes somewhere around 1420 days to get an order for a case filed, and even enforcing business contracts the time takes approximately 4 years thus ranking low in enforcing contracts as well. (Ecquiris securities, 2017, measuring business regulations by World Bank). With a huge judicial expenditure in India (one of the highest in the world), and very poor judicial processes, the civil justice system of Netherlands scores the most in the World Justice projects (WJP) Rule of law index. It holds accessibility, affordability, equal opportunity and absence of discrimination as most important criterion. It was followed by

Germany and Singapore. India ranks 68 out of 126 countries in the WJP Rule of Law index 2019, falling three positions from 2018. India also ranks 97 out of 126 globally in civil justice and 3rd out of 6 nations in South Asia comprising Afghanistan, Bangladesh, India, Sri Lanka, Pakistan, Nepal. Surprisingly. Nepal and Sri Lanka score more than India on this index comprising 8 indicators of criteria, of which civil and criminal justice is one. Most of the Asian and African countries fall in the same line as they are not very successful in holding up the civil rights of the citizens as compared to other countries. Scandinavian countries which score very high of the rule of law index have some unique features that have been discussed below briefly:

- ***Netherlands***: On an average, Netherlands takes 87 days to complete a trial and has around 14 judges per 100000 residents.
- ***Sweden:*** Imprisonment in Sweden is often considered more about rehabilitation than a punishment. This positive outlook is often looked up by other countries.
- ***Finland:*** Inclusion of its citizens in the judicial system through a 'consensus democracy is a peculiar feature of the country. In this, all the stakeholders who may be affected by the decision are consulted. This inclusion leads to trust.
- ***Norway*****:** Free legal counsel access to everyone for civil cases.

Case study: Singapore

A Case Study of Court management in South East Asian Country of Singapore can throw light on efficient court management practices. The judicial system of Singapore calls for a pre-trial conference at the start or during the trial of all civil cases. This increases the chances of reaching an amicable solution between the parties in the presence of the judicial officers which can have a positive effect on the mounting number of cases. In a developing country like India, with a significant wealth disparity, a similar step may be debated to have an impact on the accessibility of legal services and hamper 'Docket inclusion', but maintaining income level thresholds for this can help in reducing the abuse by the privileged.

Fee: The cost of fees for legal services in Singapore is comparatively high. In order to ensure a strict adherence to time limits, the first day of the trial remains free, after which the fee rises with subsequent days. The judicial officers have the authority to press charges over the parties and the advocates for wastage of court time & resources. This can increase the accountability of all the parties involved leading to reduced laxities. Proper implementation

of case management has led to a consistent decrease in all related metrics such a pendency rate, disposal rate.

Human Resource Management/ Hierarchy of structures: Most of the work related to court management is handled by the court staff and clerks. This is coupled with the increase in court working times, division of time slots and proper allocation of those slots to the parties. A nonappearance of the party in that time slot calls for a penalty.

Electronic courts: The courts of Singapore are already using the digital technologies for conducting trial formalities like examination of witnesses through video conferencing, electronic filing of cases, etc. This saves time and money and increases the efficiency of the court.

The above study shows that India can adopt similar/modified practices to reduce the pendency of the cases. This report gives recommendations based both on the primary as well as secondary data for the improvement in functioning of the legal systems and procedures in Civil cases. These will be premised on the belief that unreasonable delays in settlement of cases can be significantly lowered through better court management and technological integration. The following recommendations were made to bring about changes in civil procedures for addressing to the unreasonable delays:

I. Procedural Improvements in Trial of Civil Cases

a) **Preliminary Examination**: One of the foremost reasons of the rising arrears of civil cases is the irregularity in filing of cases that do not fall within the court jurisdiction or are backed by a *malafide* intent. The Order X Rule 2 of Code of Civil Procedure directs the court to examine the parties appearing either in person or present in court so as to clarify the matter in controversy in the suit. It is observed that this mandatory provision is not observed by courts and no thorough examinations are done. A preliminary examination on the part of the litigating officer to oversee the maintainability of cases, prior to the issue of notice can help grant discretionary relief to the opposite party. It can also help in saving the time and resources of the legal institutions and litigants without affecting the quality of judgements. A preliminary hearing can also lead to better preparedness on the part of the judges whilst verifying the veracity of cases at the initial stage of filing itself. The court should, therefore, always mandate the following of Order X rule 2.

b) **Filing of Written Statement**: It has been observed during physical verification of case files that in number of cases there has been delay at the stage of filling of written statement by the defendant. The provision in the Order VIII, Rule 1 of code of criminal procedure requires the written statement to be filed within 30 days from the date of service of summons by the defendant and the maximum extension should not go beyond 90 days from the date of service of summons. Therefore maximum period that can be given for filling written is 90 days .Though this provision is mandatory but in practice it is not followed. It has been observed in number of case written statement was allowed beyond the period of limitation. Therefore it is recommended that this statutory period of 90 days for filling written statement should be strictly followed in courts. Moreover, the defaulting party or the party responsible for delaying the matter should be penalized and costs must be imposed on it. The additional burden of the costs will discourage the party from lingering the matter. The costs should include the cost of time spent by the victorious party, transportation and lodging cost, etc. and the High Court should immediately make rules and regulations or to give practical directions so as to provide suitable guidelines for subordinate courts in this regard, as instructed by the Supreme Court in Salem Advocates Bar case.

c) Discovery and Inspection

Even though the provisions of Order XI of Code of Civil Procedure provide for the discovery by interrogation, production and inspection of documents, in reality they are not used frequently. The proper application of these provisions will curtail useless evidence and hence expedite the trial.

d) Framing of Issues

During physical verification of cases it has also been observed that the majority of cases are delayed at the stage of framing of issues. Order XIV, Rule 2 provides that the court shall at the first hearing of suit determine the whether the parties are at issue and if parties are at issue whether it is a question of fact or question of law. The suit can be disposed of immediately if it is an issue purely of law. But this provision is not observed in its true spirit as a result in many case issues of law are not decided at preliminary stage in consequence of which there has been unnecessary delay at this stage. Therefore, this provision should be observed in its true spirit.

e) Evidence on affidavits

It has been found that the entire pleadings of the parties are almost reproduced in the affidavits of witnesses. The court should carefully inspect the affidavits before serving

copy on the opposite party and wherever it is found that scope of affidavit has been needlessly enlarged by mentioning to the facts not to be proved by the witness or by the referring to legal propositions in the affidavit, such affidavit should be rejected with heavy costs.

f) **Ex-parte Injunctions**

Order XXXIX, Rule 3 of the Code of Civil Procedure states that the courts should not grant ex-parte injunction unless the very reason of granting injunction would be defeated by delay. The court is necessarily required to record reasons for granting ex-parte injunction. If the legal provisions are strictly followed, many vexatious and malicious suits will not be pursued. On granting of the ex-parte injunction, the Court must adhere to the provisions of Rule 3A of Order XXXIX of the Code of Civil Procedure b and dispose of the injunction application within 30 days from the date on which injunction was granted. If it fails to do so, the reasons for such failure should be recorded in writing. However, it is found that the provisions of Rule 3 are observed more in breach than in compliance. Every attempt should be made by the court to dispose of the injunction application within 30 days, where the court has granted an ex-parte injunction and honor the legislative direction.

g) **Improvements in delivering of summons**: The instrument issued by the courts to proceed with a civil action against a party is known as summons. After the institution of the suit, the process server (officer) acts as the mediatory for communicating to the person named about the commencement of action against him.

Even though two additional provisions for expediting this process which allows for direct filing of the written statement on date of appearance along with issuing of summons and substituted service is provided for, yet delays at this stage are prominent. The strict adherence to Order 5 Rule 2 of the Civil Procedure Court should be made obligatory on the part of the court and the process serving agency to see that copy of the plaint and other documents appended thereto are properly served to save time. It is seen that in most cases only copy of the summons is served upon the defendant without the copy of plaint and the documents and is a cause for the adjournment which results in delay.

These laxities can be reduced by:

i. ***Recruitment***: - The recruitment of the staff in the processing agency should be done in a specialized manner with preferences be given to more experienced officers.

ii. ***Training:*** Proper and frequent training of the officers to be directed with the process of servicing the summons is important. The staff should be trained to work using digital mediums and be held accountable for false report of service using technology.

iii. ***Dual mode service:*** In the light of modern technological advancements, where communication has become cheap, easy and instantaneous, the courts should adopt dual mode of service of summons through electronic mode (E-mails, Whatsapp, fax and SMS) as well as physical delivery. Email addresses of the witnesses should be taken at the filing of suit. Order-5 Rule 19-Acalls for simultaneous issue of summons for service by post in addition to personal service and read with Section 27 of the General clause act which provides that where the summon are properly addressed and duly signed by registered post with acknowledgement is presumed to be a served notice. The delivering of summons through post as well as emails, especially in case of corporate and government parties can reduce delay in delivery. However, precautions need to be maintained to keep the deliverance free from error and false report of service.

iv. ***Constant Monitoring and Feedback***: Deliberate delay practices on the part of process serving agencies are an identified bottle neck. Proper check on the process servers be done to prevent corruption. Furthermore, compliance report be sought from process server regularly.

h) **Strictness in granting of Adjournments:** Order 17 Rule 1 provision envisages that a court shall not grant adjournment more than 3 times to a party during hearing of the suit. It is important that this provision be strictly adhered to by the presiding officer and the adjournments are not granted to the party as a matter of routine. They should only be granted in genuine cases where enough cause can be shown to the court. This problem was taken into view by the Supreme Court in N G Dastane vs. Srikant Shivde (2001 [6] SCC 135) case wherein unwarranted adjournments sought by the advocates in the presence on witnesses without any arrangements for proper examinations is considered as a delinquency and misconduct on his part. It thus becomes the responsibility of the Bar to ensure that adjournments are only taken when they are unavoidable.

The rightful reasons for granting frequent adjournments are many such as the desire to protract the litigation to harass the other party and to persuade the party to enter into compromise. It is thus submitted that adjournments be granted as exceptions and not as a rule. Courts shouldn't agree to unusual request for adjournment of cases made at the instance of juniors of counsel representing the party. No request made by Counsel who has not signed the pleadings be entertained. Judges must pass over the cases where the Counsel for any reason fails to appear at first call, instead of posting the matter for next date of hearing. The next date should not be far off. Adjournment if at all required must be subject to imposing of adequate amount of cost to be deposited first before the matter is heard on and adjournment date. The court should make use of penalties for noncompliance of deadlines. Increasing the strength of judicial officers: The District of Udhampur is a fairly large district with eight tehsils spanning over an area of 4,550 sq.m. and a population of 6,57,687. However, it has only nine presiding officers at present. The essential purpose of justice cannot be met out if we do not have required judges to decide the case. This is a serious shortcoming which needs to be addressed by enhancing and filling up the vacancies. Establishment of more courts is necessary and the Central Government must give sufficient budgetary funds at the disposal of High Courts so as to generate the infrastructure in the Courts. Article 247 of the Constitution of India enables the Central Government to establish additional courts for better administration of law. Ad hoc judges can also appointed under Article 224-A of the Constitution of India to clear the backlog of cases. The services of retired judicial officers who are physically fit and mentally alert can be availed for the disposal of arrears of cases and the court can function in two shifts. Such scheme has already been started in Gujrat where the 60 evening courts functioning from November, 2006 disposed of 57,422 cases till 31-03-2007.

i) **Levying of Costs**: If costs imposed upon the defaulting party or the party responsible or the party responsible for delaying the matter is realistic, he or she will be discouraged from prolonging the case as there won't be much incentive left for causing the delay in trial. The costs have to be actual reasonable costs including cost of time spent by successful party, cost of transportation and lodging, if any other incidental costs besides court fee, lawyers fee, typing charges, high courts should immediately make rules and regulations or to give practical directions so as to provide appropriate guidelines for subordinate courts in this regard, as mandated by the

supreme court in Salem Advocates case, wherever this has already not been done. This has been provided in the amendment to Section 35 of the Code of Civil Procedure wherein substitution of the following section namely-

"35. Costs.-(1) In relation to any dispute, the court, notwithstanding anything contained in any other law for the time being in force or rule, has the discretion to determine:

a) whether costs are payable by one party to another;

b) the quantum of those costs; and

c) when they are to be paid.

(2) If the court decides to make an order for payment of costs, the general rule is that the unsuccessful party shall be ordered to pay the costs to the successful party: Provided that the court may make an order deviating from the general rule for reasons to be recorded in writing.

(3) In making an order for the payment of costs, the court shall have regard to the following circumstances including –

(a) the conduct of the parties;

(b) whether a party has succeeded on part of its case, even if that party has not been wholly successful;

(c)Whether the party had made a frivolous counter claim leading to delay in disposable of case;

(d) whether any reasonable offer to settle is made by a party and unreasonable refused by the other party; and

(e) whether the party has made a frivolous claim and instituted a vexatious proceeding wasting the time of the court.

(4) he orders which the court may make under this provision include an order that party must pay-

(a) a proportion of another party's costs;

(b) a stated amount in respect of another party's cost;

(c) costs from or until a certain date;

(d) costs incurred before proceedings have begun;

(e) costs relating to particular steps taken in the proceedings;

(f) costs relating to a distinct party of the proceedings; and

(g) interest on costs from or until a certain date.

II. Operational Recommendations

1. **Cause List of Subordinate Courts**: it has been observed that in subordinate courts a practice has developed to fix many more cases than the court can possibly hear on a day. Court spends a lot of time every day in calling cases only to adjourn them to a future date. The time spent for this purpose can hardly be considered to have been put to any constructive use. It is recommended that the daily list be prepared with due consultation from the lawyers and presiding officer. An attempt should be made to estimate the time a particular case will take to hear and the cause list should be prepared accordingly. The question as to how many cases of various categories should be fixed on a day calls for a judicial appraisal of the capacity of a judge to deal with the number of cases, he can handle with the limited court time available to him. The need for proper categorization of cases is also given by Mandyam[25] and others as a prerequisite for better case analysis and management. Notifying a limited number of cases will ensure that the cases so notified shall be heard for sure and no adjournments will be granted. Cases of similar nature should be grouped and decided on the similar day. Effective organization of the cases will increase specialisation of the judges and ensure speedy disposal. It will also make it easier for the judge to manage the schedule and will also reduce burden on lawyers, who are to attend a large number of such cases which are not to be tried on that day.
2. **Increasing the strength of judicial officers**: The District of Udhampur is a fairly large district with eight tehsils spanning over an area of 4,550 sq.m. and a population of 6,57,687. However, it has only seven presiding officers at present. The essential purpose of justice cannot be met out if we do not have required judges to decide the case. This is a serious shortcoming which needs to be addressed by enhancing and filling up the vacancies. Establishment of more courts is necessary and the Central Government must give sufficient budgetary funds at the disposal of High Courts so as to generate the infrastructure in the Courts. Article 247 of the Constitution of India enables the Central Government to establish additional courts for better administration of law. Ad-hoc judges can also appointed under Article 224-A of the Constitution of India to clear the backlog of cases. The services of retired judicial officers who are physically fit and mentally

alert can be availed for the disposal of arrears of cases and the court can function in two shifts. Such scheme has already been started in Gujarat where the 60 evening courts functioning from November, 2006 disposed off 57,422 cases till 31-03-2007.

As per table 4.1 published by Vidhi Research (Live Mint) , the total number of judges required to clear all pending cases as on 1 Jan 2016 is 24839, while the exact number of judges as per CJI/ Law commission is expected to be around 60476 . From the table it is also clear that a grave shortage is prevalent in the courts of various states. The current strength of judges of the court in the state of Jammu & Kashmir were estimated to be around 220 as on 1st Jan 2016. A significant difference in the no. required and the number forecasted by CJI Law commission

State/UT	Current strength as on 1 January 2016	Judges required to clear all pending cases	As per CJI Law commissions
Bihar	1067	3581	5190
Uttar Pradesh	1825	2936	9964
Maharashtra	1917	2531	5619
Gujarat	1170	1795	3019
Madhya Pradesh	1215	1622	3630
West Bengal & Andaman Nicobar	868	1493	4567
Andhra Pradesh & Telengana	786	1253	4234
Rajasthan	985	1094	3431
Tamil Nadu	969	1041	3607
Karnataka	820	1095	3057
Odisa	598	1093	2097
Jharkhand	466	810	1648
Delhi	490	1019	838
Haryana	474	577	1268
Punjab	490	552	1385
Kerela	442	575	1669

Chattisgarh	341	446	1277
Assam	319	340	1558
Jammu Kashmir	220	233	627
Uttarakhand	206	224	506
Himachal Pradesh	134	150	343
Tripura	68	393	184
Goa	48	63	73
Mizoram	30	37	55
Manipur	34	34	136
Meghalaya	30	32	148
Nagaland	25	32	99
Chandigarh	30	24	53
Arunachal Pradesh	15	24	69
Puducherry	14	15	62
Sikkim	14	14	30
Daman diu	6	8	29
Lakshadweep	3	4	3

3. **Digital and e-courts**: A digital court is a platform where the trial of cases is done electronically and includes all types of cases under fresh registration or pending list. The facilities to promote digital courts will include- computer hardware, local area network and standard application software. These courts are being connected to National Judicial Data Grid that generated case management reports and gives boost to the transparency of the judiciary in the country. Real-time tracking of cases and transcription of evidence has become much easier through it. With the advent of information and communication technology, steps to digitize the legal functioning and setting up of e-courts has already been undertaken in some spheres even though the pace is slow. In order to remove the deficiencies of manual documenting, the judiciary should take advantage of the technological revolution and completely digitize the functioning of the court. The internet can help in improving inter and intra communication between the courts that will not only save time but also reduce wastage of resources. Most important use of these tools lies in the ability to club

together cases of similar nature (requiring the same questions of law) This division of activities into smaller tasks and further grouping can lead to better organizing of the affairs of the legal systems as cases of similar nature can be allocated to a single court. This can speed up the disposal of cases without compromising on the quality of judgments due to more specialized approach. Day-to -day management of t all levels can be simplified and improved through use of technology including availability of case law and administrative requirements.

The digital courts are connected to the It is time to shift to the era of paper less courts to promote transparency and better management of cases. Day-to -day management of courts at all levels can be simplified and improved through use of technology including availability of case law and administrative requirements. The judiciary should take advantage of the technological revolution and completely digitize the functioning of the court. A digital court since NIC took up computerization in Supreme Court in 1990, many applications have been computerized which have impact on masses i.e. litigants. Even though steps have been taken for setting up of data bases for information and knowledge management in the judicial system, a greater need for a uniform implementation is still identified.

4. **Training of staff at all levels:** Training that is targeted at improving their understanding of the case facts and decision making should be emphasized. In addition to the adjudicatory training, capacity building workshops that include court and hearing management methods to conduct the affairs of the court in a systematic manner should be taken up. For this purpose either a national level judicial management body may be set up or alternatively, MOU's and tie ups with Business schools for conduction of **MDP or Management / Executive development programs** should be taken up on a regular basis

The increasing burden on the judicial system has led to the introduction of several new types of courts and mechanisms such as the Alternate Disputes Resolution methods & e-courts that require the expertise of judges. Thus, most of the higher officers are expected to take up different roles in their terms of service that require varies skills and competencies. A prior training to deal with such additional charges can ensure better performance.

At the time of fresh recruitment: there is a need to build the capacity of the newly recruited judges. This can be done by appointing dedicated and qualified faculty from related disciplines. Use of teaching aids that are not limited to the old methods of teaching but integrate technology in its approach. Methods such as case study and Role playing which form an important part of the management curriculum can also be utilized for improving their decision making and analytical skills. Modules and study material provided should also be regularly updated and futuristic.

Several review committee and commissions have from time to time stressed on the importance of training of the judicial officers and staff at all the stages employment. However currently, most of it is restricted to the stage of recruitment and selection only. One of the commissions, namely the National Judicial Pay commission in its chapter 13 of the report highlighted to need of training on a continuing basis. This should be supported by all external authorities through funding and knowledge sharing.

The success of judicial system depends equally on the court staff and Court personnel who handle the day-to-day affairs. In most areas of a developing country like India this work is carried out the traditional way without the integration of communication technology while new programs to integrate affairs using a digital perspective are being undertaken yet most of the employees lack basic knowledge on how to use them. This affects their motivation level and adds to their burden of work thus increasing monotony. Regular training that is aimed at improving their organizing skills and allocation of tasks can simplify matters on ground. All the work from the categorization and grouping of cases to preparation of cause list, maintenance of old records and data feeding are to be carried out by the court staff and thus optimum training can reduce time wastage. This will also promote greater transparency as all the material information and process timelines would be maintained properly leaving lesser room for corrupt or dubious practices. Justice deliver system would be more affective. Thus, it should include:

a) Training for Judicial Staff: Training and orientation is necessary for upgrading the skills and knowledge of the Managing officers in all spheres and the legal system is no exception. Furthermore, it is required not only at the top level but at all the other levels of operation as to reach maximum efficiency, reduce information gaps and laxities wherever possible to ensure a redressal that is of high quality. This will also

bring down the number of appeals and revisions that are often observed to delay the administration of justice.

b) Mandatory Internships of Fresh Advocates & Law students: The students enrolled in law schools are the future of the Indian judicial system. In order to promote holistic learning and deeper knowledge of the practical scenarios, all law schools and institutions should include internships and projects in their curriculum. While this is already prescribed for the students enrolled in top schools of the country, the schools in the state should make these mandatory for the awarding of degree.

c) *Refresher programs for Judicial officers*: The regular training and refresher programs for Judicial officer can enhance their competencies by keeping them up to date with the new provisions and directives .This will save time and costs of both the litigating parties and the courts as they will be able to hear and give judgments in a more informed manner after clearly understanding the complicated legal issues.

5. <u>Alternative Dispute Resolution Agency to be more active</u>

In a large number of countries, the process of civil dispute starts with negotiation and mediation with the other party instead of directly filing the case in the court of law. This is a great contrast to India where unscrupulous practices are followed by the lawyers who do not support the parties for mediation. There is also an absence of highly trained mediators and arbitrators and conciliators in the country which is a matter of great concerns these practices can reduce the pendency in the courts.

From the litigant's part of point of view there is a lack of awareness regarding these methods of solving disputes. There may also be difficulties in settling disputes due to arbitration psychological barriers and ego constraints. Countries such as USA and Australia have already tackled this problem by involving counselors specifically in cases of divorce and family law to change the attitude of the parties and ensure pre-trial settlement.

The overburden of the existing judicial officers should also be reduced by involving senior or retired judges and training them appropriately for handling the mediation and conciliation.

Section 89 of the Civil Procedure Court provides that if the concerned court is of the opinion that settlement is possible between the parties, the court may refer the same for arbitration, conciliation, Lok Adalat and mediation. It is the need of the hour to reduce the adverse adjudicatory litigation and at the same time to provide

substantial justice. By adopting the said scheme, large number of cases could be settled.

The ADR's comprising of Mediation and Conciliation are advisable because they take into consideration the emotions of the parties thus better identifying the causes underlying the disputes. These mechanisms can go a long way in not only a speedy redressal, but also a quality judgment. Better conflict management, ie the ability to identify and handle conflicts in a fair and efficient manner is the need of the hour in Indian judicial system for successful ADR mechanisms.

It also requires the development of supporting infrastructure involving both physical and human resources**.** With tact and skill that can better supplement the mediation process. This was also provided in Salem Bar Advocates Case [2005 (6) SCC 344 wherein suggestion that the government was to bear the expenditures of compulsory conciliation and mediation given in Sec 89 of CPC was appreciated so that more parties resort to it. More often the involvement of the government in ADR's with its officers leads to greater faith in these systems.

Lok Adalat is another alternative to the traditional judicial system. It has found statutory recognition in the Legal Services Authorities Act and is a cheap, speedy and effective way of delivering justice to the common man. The award made by Lok Adalat is deemed to be decree of Civil Court which is final and binding on all the parties without providing for any appeal. While Lok Adalats have already become a reality, yet there is a need that they should be held periodically so that the disputes which can be resolved amicably are so decided without being allowed to be dragged on through appeals to Tehsil and District Courts, High Court and Supreme Court disputes like those relating to title to properties, boundaries of fields, irrigation facilities, easement rights, cooperative loans, buying and selling transactions, rights concerning women and similar other disputes typical to the village community, including their family disputes, are most suitable for being handled in Lok Adalat's, where they can they can be resolved by consensus without disturbing atmosphere of peace and cooperation in village communities. The cases which seem easy for compromise can be sent to Lok Adalats.

6. <u>Fast track Courts</u>

The total of 30074503 cases are pending in Indian Courts out of which 859852 are the civil cases and 21475976 are the criminal cases pending in different courts in India .Out of these a significant portion of civil cases 28% of pending cases lies

between 1 to 3 years, 15.14% of cases are pending between 3 to 5 years, 13.59% of cases are pending for 5 to 10 years, 5.21% of cases are pending for 10 to 20 years, 1.18% of cases are lying between 20 - 30 years and 0.38% of cases are pending more than 30 years. All this, along with a high rate of institution of cases is making it difficult for the judiciary to reduce the growing pendency of cases that have been going on for a number of years. This prolonged period of trial adds to the misery of the litigants as well as reduces the faith in the judicial system. Adversely it can also give rise to a parallel institution that may lead to further exploitation. These arrears need the setting up of special fast track courts that only deal with old cases with pendency greater than justified time which can range from 3 to 5 years initially.

7. Separation of Registration Courts

There should be a bifurcation of Civil and criminal courts. A separate establishment be created for registration work in district court complexes with adequate staff. The digital signature of sub registrar should be fixed for saving time of judges who are burdened with civil and criminal cases or in the alternative, registration time of deeds and documents be kept in the last hour of court timing.

8. Control on Strikes by Lawyers

The functioning of the courts in India is often hampered by unnecessary strikes and suspension of work. This not only goes against the principles of the profession is primarily self-oriented , but also cause unnecessary distress to the innocent parties such as the litigants due to their dependency on the legal system for grievance redressal. The need to keep a strict control on these strikes is necessary and it should be the responsibility of the Bar councils and associations to avoid just measures at all costs. Alternatively, regular meetings & follow-ups should be held with the representatives of these groups to move towards a collaborative effort that is in the interests of all stake holders. The Supreme Court has also held in some cases like the *Harish Uppal v. Union of India (AIR 2003 SC 739)* that lawyers do not have the right to strike or boycott the activities, as any such abstinence has an adverse effect on the innocent litigants and damage to system.

9. Appointment of a Professional Management Consultant

Appointment of professional management consultants would be of great help to the courts. Such consultants should be appointed at district headquarters even and should work under the over all guidance and control of the concerned District and

Sessions Judge. It is important to mention here that various courts of the country have already appointed court managers to better manage the affairs of the court. Presently, the eligibility to apply for the position of court managers is a degree in M.B.A. or equivalent with Human Resources/Personnel Management as the optional or as one of the Principal subjects, awarded by a recognized university or an institution recognized by U.G.C./AICTE with experience of at least two years within an age group of 28 to 40 years. However, the studies[12] have shown that a generic MBA degree is of little use in the management of court affairs as corporate structure is vastly different from the courts. As previous studies have already pointed out, the management of court affairs can be made more efficient if the hiring mechanism is made more efficient. It is recommended that an MBA in Court Management should be made compulsory where in candidates with a fundamental understanding of Court structure, its cadres, its working etc. is already known to the applying candidates. The same must be verified during a written examination and subsequent panel interviews. An alternative to this can also be introducing the subject of court management in the five year and three-year law courses so that the law students have an essential understanding of it from the get go. A one-year executive program in court management could also be introduced which will impart all the necessary training including the skills related to information technology to those who are interested in learning them. Needless to say, there needs to be the creation of a permanent position and cadre to attract and retain efficient staff.

10. **Organisation & Regulation of Bar councils/Associations in the state**:

The Bar council is a body that is responsible for regulation of the profession and setting standards for legal education. It is also the body that helps in promoting and supporting judicial reforms. Participation of these bodies in all important decisions should be encouraged to create a healthy legal environment in the state.

Other Recommendations

The 13th finance commission has recommended and given a grant of 5000 crores in total and 300 crore specifically for employing Court managers and integrating them in the day-to-day functions of the court to speed up the justice delivery system.

12

Through better knowledge of Management functions and techniques they can significantly reduce the burden of judges. Thus, they can help in

Planning function: planning in management is deciding in advance what is to be done or other setting up of objectives that are to be achieved. It also involves formulation of plans, deciding of procedures, and laying down of policies for better direction & efficiency. Thus, it may involve:

1. Setting of SMART goals/ standards that are both specific and time bound for the courts.

2. Followings participatory approach involving all stakeholders and parties including judicial officers, clerical staff and judges as well as advocates for deciding the schedule of cases, use of suitable redressal mechanisms and data base creation.

3. Minimizing cost & maximizing efficiency through Case Management, responsiveness management, HR management, quality management and core systems management and IT management.

4. Fostering a Legal Culture: The commissions and committees set up from time to time aim to expedite the legal machinery through introduction of reforms. This process of reformation should begin by bringing about a change in the existing legal culture. The 'Legal culture' of a nation is commonly seen as a part of the broader domain. It includes elements ranging from but not limited to the number of stakeholders, way of appointment to behaviour of all related parties as well as ideas, aspirations, values etc. (Nelken, D., 2004).This knowledge of the existing legal culture and the ways of bringing about changes can drastically help in reducing bottlenecks in reform process. Singapore displays a unique legal culture wherein strict time limits that all parties are required to adhere to are prescribed and the absence of it can incur greater costs and penalties.

Thus even though steps towards planning and management of the judicial system is being undertaken through the creation of a national judicial infrastructure plan, judicial education strategy and a mediation plan, a proper implementation of these plans in an integrated manner at all levels is the necessity for a speedy and just judicial system.

Hon'ble Supreme Court in a case titled **Ramrameshwari Devi and Ors. v. Nirmala Devi and Ors., (2011) 8 SCC 249: 2011 AIR(SCW) 4000**, has dealt with the aspect of delay in trial of civil cases, and has suggested some effective steps to be taken for expediting the trial. Following observations shall be worthwhile to take notice of:

"52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed?

In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.

A. Pleadings are foundation of the claims of parties. Civil litigation is largely based on documents. It is the bounden duty and obligation of the trial judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties. This must be done immediately after civil suits are filed.

B. The Court should resort to discovery and production of documents and interrogatories at the earliest according to the object of the Act. If this exercise is carefully carried out, it would focus the controversies involved in the case and help the court in arriving at truth of the matter and doing substantial justice.

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

D. The Court must adopt realistic and pragmatic approach in granting mesne profits. The Court must carefully keep in view the ground realities while granting mesne profits.

E. The courts should be extremely careful and cautious in granting ex-parte ad interim injunctions or stay orders. Ordinarily short notice should be issued to the defendants or respondents and only after hearing concerned parties appropriate orders should be passed.

F. Litigants who obtained ex-parte ad interim injunction on the strength of false pleadings and forged documents should be adequately punished. No one should be allowed to abuse the process of the court.

G. The principle of restitution be fully applied in a pragmatic manner in order to do real and substantial justice.

H. Every case emanates from a human or a commercial problem and the Court must make serious endeavour to resolve the problem within the framework of law and in accordance with the well settled principles of law and justice.

I. If in a given case, ex parte injunction is granted, then the said application for grant of injunction should be disposed of on merits, after hearing both sides as expeditiously as may be possible on a priority basis and undue adjournments should be avoided.

J. At the time of filing of the plaint, the trial court should prepare complete schedule and fix dates for all the stages of the suit, right from filing of the written statement till pronouncement of judgment and the courts should strictly adhere to the said dates and the said time table as far as possible. If any interlocutory application is filed then the same be disposed of in between the said dates of hearings fixed in the said suit itself so that the date fixed for the main suit may not be disturbed.

53. According to us, these aforementioned steps may help the courts to drastically improve the existing system of administration of civil litigation in our Courts. No doubt, it would take some time for the courts, litigants and the advocates to follow the aforesaid steps, but once it is observed across the country, then prevailing system of adjudication of civil courts is bound to improve."

If these guidelines suggested by the Supreme Court are followed, it shall be helpful in expediting the trial.

In the Jammu & Kashmir Code of Civil Procedure, Svt. 1977, some amendments were carried out by way of Jammu and Kashmir Civil Procedure (Amendment) Act, 2018, to put in place among others things the mechanism of Case Management. It would be useful to refer to the amended provisions, as under:

"**Order XV-A**

1. First Case Management Hearing. - The court shall hold the first Case Management Hearing, not later than four week's from the date of filing of affidavit of admission or denial of documents by all parties to the suit.

2. Orders to be passed in a Case Management Hearing. - In a Case Management Hearing, after hearing the parties, and once it finds that there are issues of fact and law which require to be tried, the court may pass an order -

(a) framing the issues between the parties in accordance with Order XIV of the Code of Civil Procedure, Samvat 1977 after examining pleadings, documents and documents produced before it, and on examination conducted by the court under Rule 2 of Order X, if required ;

(b) listing witnesses to be examined by the parties ;

(c) fixing the date by which affidavit of evidence to be filed by parties ;

(d) fixing the date on which evidence of the witnesses of the parties to be recorded ;

(e) fixing the date by which written arguments are to be filed before the court by the parties ;

(f) fixing the date on which oral arguments are to be heard by the court ; and

(g) setting time limits for parties and their advocates to address oral arguments.

3. Time limit for the completion of a trial. - In fixing dates or setting time limits for the purposes of Rule 2 of this order, the court shall ensure that the arguments are closed not later than six months from the date of the first Case Management Hearing.

4. Recording of oral evidence on a day-to-day basis. - The court shall, as far as possible, ensure that the record of evidence shall be carried on, on a day-to-day basis until the cross examination of all the witnesses is complete.

5. Case Management hearings during trial. - The court may, if necessary, also hold Case Management Hearings anytime during the trial to issue appropriate orders so as to ensure adherence by the parties to the dates fixed under Rule 2 and facilitate speedy disposal of the suit.

6. Powers of the court in a Case Management Hearing. - (1) In any Case Management Hearing held under this order, the court shall have the power to -

(a) prior to the framing of issues, hear and decide any pending application filed by the parties under Order XIII-A ;

(b) direct parties to file compilations of documents or pleadings relevant and necessary for framing issues ;

(c) extend or shorten the time for compliance with any practice, direction or court order if it finds sufficient reason to do so ;

(d) adjourn or bring forward a hearing if it finds sufficient reason to do so ;

(e) direct a party to attend the court for the purposes of examination under Rule 2 of Order X ;

(f) consolidate proceedings ;

(g) strike off the name of any witness or evidence that it deems irrelevant to the issues framed ;

(h) direct a separate trial of any issue ;

(i) decide the order in which issues are to be tried ;

(j) exclude an issue from consideration ;

(k) dismiss or give judgment on a claim after a decision on a preliminary issue ;

(l) direct that evidence be recorded by a Commission where necessary in accordance with Order XXVI ;

(m) reject any affidavit of evidence filed by the parties for containing irrelevant, inadmissible or argumentative material ;

(n) strike off any parts of the affidavit of evidence filed by the parties containing irrelevant, inadmissible or argumentative material ;

(o) delegate the recording of evidence to such authority appointed by the court for this purpose;

(p) pass any order relating to the monitoring of recording the evidence by a commission or any other authority ;

(q) order any party to file land exchange a costs budget ;

(r) issue directions or pass any order for the purpose of managing the case and furthering the overriding objective of ensuring the efficient disposal of the suit.

(2) When the court passes an order in exercise of its powers under this order, it may -

(a) make it subject to conditions, including a condition to pay a sum of money into court ; and

(b) specify the consequence of failure to comply with the order or a condition.

(3) While fixing the date for a Case Management Hearing, the court may direct that the parties also be present for such Case Management Hearing, if it is of the view that there is a possibility of settlement between the parties.

7. Adjournment of Case Management Hearing. - (1) The Court shall not adjourn the Case Management Hearing for the sole reason that the advocate appearing on behalf of a party is not present :

Provided that an adjournment of the hearing is sought in advance by moving an application, the court may adjourn the hearing to another date upon the payment of such costs as the court deems fit, by the party moving such application.

(2) Notwithstanding anything contained in this rule, if the court is satisfied that there is a justified reason for the absence of the advocate, it may adjourn the hearing to another date upon such terms and conditions it deems fit.

8. Consequences of non-compliance with orders. - Where any party fails to comply with the order of the court passed in a Case Management Hearing, the court shall have the power to -

(a) condone such non-compliance by payment of costs to the court ;

(b) foreclose the non-compliant party's right to file affidavits, conduct cross-examination of witnesses, file written submissions, address oral arguments or make further arguments in the trial, as the case may be, or

(c) dismiss the plaint or allow the suit where such non-compliance is wilful, repeated and the imposition of costs is not adequate to ensure compliance."

From the scheme of Case Management Hearing, it is apparent that it is an important tool for case management and planning in the direction of trial of civil cases. Effective implementation of the procedure so provided can be productive for timely outcome of a civil trial. It ensures certainty of time lines at every stage of trial. This also makes the parties involved and their counsel accountable and actively associated with the progress of trial. This scheme also takes care of the suggestion of Hon'ble Supreme Court in Para 52(J) of Ramrameshwari Devi (Supra).

This case management tool can be considered to be included in the Civil Procedure Code, 1908, by State Amendments.

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Date : 28-05-2021

Subject:- Supplementary Report regarding proposal under Scheme for Action Research and Studies on Judicial Reforms.

Sir,

In the 'Presentation of Final Reports through Video Conferencing' on 20th February 2021, reports prepared by our two teams were appreciated and the efforts put in by the teams were duly recognized by the Department of Justice.

However, it was pointed out that as per the title of the project viz. "Physical Verification of Case Files of two Districts, Udhampur and Budgam of Jammu and Kashmir to Identify the bottlenecks responsible for causing delay in disposal of civil cases in courts and possible policy and procedural changes necessary for reduction of pendency and a study on Court Management techniques for improving the efficiency of subordinate courts and map a way forward to reduce delay and introduce effective data collection mechanism" one aspect was not touched in the report i.e., "introduction of effective data collection mechanism". In this regard both the teams were intimated and requested to work on the area identified above and submit supplementary reports as soon as possible.

The supplementary reports have been received by J&K Judicial Academy and the same are being submitted for your kind perusal.

Yours faithfully,

Sanjay Parihar
Director

Smt. Premlata Kaushik,
Deputy Secretary,
Department of Justice,
Ministry of Law and Justice,
Jaisalmer House,
New Delhi-110011

Supplementary Report of Budgam Team

Project Title: *"Physical Verification of Case Files of District Budgam of Jammu and Kashmir with the data available on National Judicial Data Grid (NJDG) to identify the bottlenecks responsible for causing delay in disposal of civil cases in courts and possible policy and procedural changes necessary for reduction of pendency and a study on Court Management techniques for improving the efficiency of subordinate courts and map a way forward to reduce delay and introduce effective data collection mechanisms"*

The previous report submitted dealt exclusively with the data collected through physical verification of case files pertaining to all the courts in district Budgam of Jammu and Kashmir and also data obtained through interview of judicial officers and other stakeholders of the district. The data was thoroughly analysed and relevant recommendations were included in the report. The study clearly demonstrates that the problem of arrears is not foreign to the judicial system in Jammu and Kashmir, especially district Budgam, although on the lower side. Based on physical verification, the research team identified a variety of bottlenecks that cause delays. Cases are delayed due to delays at the Summons stage, the witness stage, frequent adjournments, the carelessness and slothfulness of process servers, and the non-appearance of parties. Accordingly, the study recommended establishment of District Co-ordinate Centres to co-ordinate and supervise the service of summons within and outside the District Jurisdiction, bonafide supervision of process servers by presiding officers, exploring alternative methods of service of summons, segregation of civil and criminal functions vested in judicial officers, orientation and training programmes for judicial officers as well as subordinate staff associated with courts, right to appeal against interlocutory and interim orders to be restrained, enhancing existing strength of judges, amending Order VIII of Civil Procedure Code wherein the maximum limit of 90 days for filing written statement to be done away with, practice of granting unnecessary adjournments to be stopped, appointing of research assistants for lower judiciary, use of alternative dispute resolution methods to be encouraged etc.

However, one of aspect has not been addressed in the previous report i.e "introduction of effective data collection mechanism". Hence, the research team in this supplementary report has given a detailed analysis and relevant suggestions to improve the data collection mechanism.

But before the report is submitted it would be imperative to give an overview of the data collection mechanism. Experts say that data collection is the process of gathering and

measuring information on targeted variables in an established system, which then enables one to answer relevant questions and evaluate outcomes, which in the present case is also applicable to the judicial norms and functioning systems prevalent. Data collection is a research component in all study fields from which judiciary has and will have to benefit to its optimum. The goal for all data collection is to capture quality evidence that allows analysis to lead to the formulation of convincing and credible answers to the questions that have been posed in order to resolve a problem or a cluster of problems. When the data is collected, it automatically provides a logistic support which is foundational for the anomalies to be addressed and to progressively ponder upon the entire matter and to introduce methods of eradication of the impediments. The known benefits of this can be counted as it helps us to learn more and in profound manner about targeted problem, it helps to discover trends in the way society is changing and their opinion and behaviour towards judiciary, over time or in different circumstances, it lets you strategise the situation and group them accordingly by which individual attention is given to each problem and a possible solution, it facilitates decision making and improves the quality of decisions made thereon.

In our endeavour to deliver what was required from us while this project was entrusted to us, we have employed both the known forms of data collection i.e primary data collection as well as the secondary. While as the former includes data collected first-hand directly from the source, the latter comprises of information that has already been collected, structured, and analyzed by similarly studies which are relevant. **Data Collection System: E- Courts**

The Indian Judicial System's current data collection system is based on e-Courts project. This initiative began in 2005 under the auspices of the "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT)," and was a watershed moment in the administrative institutionalisation of ICT. It was established with the goal of providing ICT-enabled administrations to all main partners while also enhancing legal collaboration. The e-Courts project includes the National Judicial Data Grid (NJDG), which is a subset of the e-Courts project. The project's aim is to offer specific resources to litigants, lawyers and the judiciary by ensuring that all district and subordinate courts in the country are computerised, as well as improving the justice system's ICT capabilities.[1] It has the potential to be a significant breakthrough if all pending cases from all subordinate courts are entered and updated on the NJDG servers on a daily and real-time basis.

[1] Available at: https://doj.gov.in/sites/default/files/Brief-on-eCourts-Project-(Phase-I-%26-Phase-II)-30.09.2015.pdf.

National Judicial Data Grid

The introduction of the National Judicial Data Grid marked a significant step forward in providing free access to judicial information. Anyone can see the status of cases that are still pending as well as records from previous hearings in all of the country's courts. It also makes case management and case control easier, resulting in more effective case disposition and less delays and arrears in the system. Lawyers and litigants can now access case status details using NJDG. The site also contains information on court registration, cause lists, regular orders, and final judgments. This is a crucial method for identifying, managing, and reducing case pendency. In addition to this, a feature for displaying the reason for the delay in the disposal of the cases has also been added. The Open Application Programming Interface (API) has been given to the Central and State Governments in accordance with the Government of India's National Data Sharing and Accessibility Policy (NDSAP) to enable easy access to the NJDG data using a departmental ID and access key through which institutional litigants would be able to access the NJDG data for the purposes of assessment and monitoring. The National Justice Data Group (NJDG) compiles statistics on cases filed, disposed of, and pending in all courts throughout the country. The courts update these figures on a daily basis. The website displays the number of lawsuits that have been filed as well as those that are still pending.

Limitations

The prudent use of e courts including NJDG in Kashmir and district Budgam in particular is hampered by regular internet outages which render disseminating case level information to attorneys, litigants, and researchers very difficult. The data cannot even be used to research substantive aspects of law since the name of the substantive law regulating a dispute is often not quoted. The lack of definitive orders/judgments for the majority of cases often means that one cannot research the finer points of litigation, such as the claims raised by each side or the court's rationale in reaching its decision.

It would be worth to mention an article, as recent as Dec 2020, from the Indian Express which quotes Justice D Y Chandrachud, in the bail matter of journalist Arnab Goswami, lamented the high pendency in Indian courts and observed that National Judicial Data Grid (NJDG) statistics are a valuable resource “to monitor the pendency and disposal of cases” and

directed the Chief Justices of every high court to utilise ICT tools and ensure access to justice. The article further goes on to say that 'NJDG is a subset of the eCourts project, a scheme launched in 2007 by the Ministry of Law and Justice. The project aims to integrate technology with the judicial system. However, a recent study by the National Institute of Public Finance and Policy (NIPFP) found that eCourts data lacks in several aspects, which may make the recent Supreme Court directions difficult to achieve. This is not a new issue, and the Law Commission of India has also faced challenges while depending on judicial data to calculate the caseload across various courts.In particular, the problems in the data arise due to three reasons: Inconsistencies in what is reported, missing data and restricted access. It further mentions a very relevant example. 'As an example, the NJDG records only 24 case types. This is the form in which the final data is presented to judges, litigants and researchers. However, district courts often record up to 100 case types. This means that data has to be retrofitted into the 24 types, which leads to inconsistencies. This is exacerbated by the fact that courts often don't tag cases under the law in which they are filed. They only mention procedural laws like the Evidence Act and the Code of Criminal Procedure (CrPC), which renders the information unusable. For example, while abetting suicide is governed by the Indian Penal Code, the CrPC governs the procedure for prosecution. However, the CrPC governs the procedure for all criminal disputes (theft, assault, etc.) and when a case is only tagged under the CrPC (as it often is), it is impossible to identify what is the nature/subject of the dispute. This prevents high courts from accurately assessing the type of cases that subordinate courts hear and how long it takes to dispose of them. Perhaps, more importantly, there is also missing data in the fields that are reported. The NIPFP study found that final orders were missing for more than 70 per cent cases. Thus, litigants may not be able to access the decision in their case — a hallmark of any sound judicial system. The data also lacks information across other data fields, such as when and how many times the court heard a case. If this were the case, it could be used to understand how long cases take to be listed before a court after filing. One could also analyse which cases are prioritised during the listing process by measuring the time between filing and hearing. Lately, the judiciary has

faced questions of how to efficiently list cases and ensure that cases which need to be heard urgently are not delayed. Knowing how cases are currently prioritised can be crucial in addressing these concerns.

Besides content, ease of access also restricts how the data is used. Even if the data were standardised and made error-free, the current design of the system limits its usability. Information can only be procured for individual cases because the system is designed to provide information to litigants and advocates. If high courts are to use ICT tools and ensure access to justice, they will require bulk data. Apart from the judiciary, researchers and civil society organisations can also benefit from such access. They can give insights regarding the performances of judges and assessing which laws lead to more disputes. An empirical analysis could help corroborate their findings. Countries such as the United States and the UK are not averse to sharing bulk data and even have dedicated bodies tasked with the research and improvement of the judiciary'.

Suggestions for introduction of effective data collection mechanism

1. As a pre condition, e courts require a minimum degree of digital literacy. In India, digital literacy varies widely by age, race, and geography. This digital gap must be bridged in order for the e-courts initiative to be successful.

2. Over the course of the analysis, it was discovered that there is a lack of clarity in data uploading. Many cases have only procedural laws attached to them. As a result, we can't reliably identify disputes based on the statute's name. Hence, it is necessary that every court must have a committee in charge of overseeing data uploading.

3. The framework for dispersal of information must be viewed as an integral part of the court's data-management system, rather than as a separate system. The data for dispersal should be produced as part of the normal operation of the court, rather than being entered independently. Simultaneously, information quality checks would be needed to make information usable.

4. There are problems with human resource at the court when it comes to data entry. It is either done by judges or by people who are unfamiliar with the process. This issue can be resolved by establishing a separate cadre in the courts to deal with e governance.

5. In terms of the lack of definitive orders/judgments, they should be made available on the portal. Other related issues that should be addressed and made accessible on databases include documenting the reasons for granting the injunction, keeping track of the adjournments issued in the case, time taken in disposal of case etc.

6. Regular data quality audits should be done by external agencies. This practice will significantly improve the data quality.

7. All data entry personnel need consistent, on-demand training. Education should be given to all individuals who enter data. For courts that use e-filing, where lawyers or their staff members enter case details directly, attorneys should be given formal instruction, preferably along with continuing legal education.

8. e-Judiciary should explore the option of coordination with the Ministry of Communication and Information Technology and thus optimize the management of data.

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Supplementary Report of Udhampur Team

Project Title: *"Physical Verification of Case Files of District Udhampur of Jammu and Kashmir with the data available on National Judicial Data Grid (NJDG) to identify the bottlenecks responsible for causing delay in disposal of civil cases in courts and possible policy and procedural changes necessary for reduction of pendency and a study on Court Management techniques for improving the efficiency of subordinate courts and map a way forward to reduce delay and introduce effective data collection mechanisms"*

The previous submitted report indicated that the study has been conducted in two stages. In the first phase of the study data has been collected by empirical method, which involved the physical verification of case files from all the courts under study namely Principal District and Session Court, Additional District and Sessions Court, Chief Judicial Magistrate, Sub Judge (Special Mobile Magistrate), Additional Special Mobile Magistrate, Munsiff DJMM (T) Udhampur, Munsiff/JMIC from Udhampur along with Sub Judge/JMIC Ramnagar, Munsiff Chenani and Munsiff Majalta and inviting the inputs through questionnaire from the main functionaries of the civil justice System i.e., the presiding judges of different civil courts, the advocates and the litigants, studying the life cycle of all pending civil cases in district of Udhampur, J&K.

The data and the findings so collected pointed out the stages of most delays in the settlement of a civil matter. These analysis and findings were then compared with the existing procedural laws to suggest practical recommendations. The public hue and cry regarding mounting pendency of court cases, in light of operational and administrative fallacies has necessitated the need for this action research. As is clear from several study reports and whitepapers, this long ailing problem has repercussions on justice delivery first and economy later. In the long run, it also acts as a deterrent to the faith of common masses in the judiciary as a custodian of their rights. Nevertheless, the journey of a litigant is not as easy as it commonly seems due to certain barriers prevalent at both pre-trial and trial stages. A true success of a justice delivery system can be accessed on the parameters of accessibility, availability, affordability and quick relief. There are indications that a very high caseload in courts is putting off litigants from filing legitimate cases. Whether it may be the acute shortage of judges and technical staff at the different levels or relentless adjournments, it is clear that the solution involves a multifaceted problem solving approach. This may range from expansion of administrative capacities, for

starters and include other dimensional changes such as technological robustness and upgrading the training capacities. As is evident from the reports, there is acute shortfall of Judicial Officers in District and Subordinate Courts as their actual working strength is quite less than the sanctioned strength. Notwithstanding this, the geographical and socio-economic differences are also equally responsible. Keeping in mind the tendency of formulating 'one size-fit all' quick fixes for all causes, a customised solution needs to be brought to the forefront. As a large number of decisions are being taken at the executive and legislative levels, access to swift justice is a prerequisite.

The purpose of the study was to identify the reasons for delays in the dispensation of justice in the area of subordinate judiciary and civil cases only. The study was detailed in its approach as it included not only the physical verification of the files of civil cases in district of Udhampur but also interviews with the presiding officers and other staff of the court. A simultaneous analysis of the data available at the National Judicial Data Grid (NJDG) was also undertaken. The elaborate responses brought to the fore the fact that the main stages in the process of a civil proceeding were marred by the most delay. The inefficiencies called out for a need to introduce better management of court affairs through techno-centric interventions, process-reengineering and human resource development. Furthermore, the docket control required focus on redressal of grievances at both the micro and macro levels.

The submitted report acknowledges the need to invest in legal pendency data collection, analysis and research. Through the secondary data sources available on the national repositories, the National Judicial Data Grid and primary data collection through physical verification, it is evident that creation of effective and quality data collection mechanisms is a prerequisite for effective functioning. It is also a rich source of government policy formulation and strategy making to address the various challenges facing India's legal system. Interestingly, it may also help substantiate the perceptual data collected through surveys.

The uniformity in judicial data and statistics was promoted at the Conference of Chief Justices held in April 2015, and it was resolved for counting of main cases only towards pendency and arrears for statistical purposes. Applications were to be continued to be numbered separately in original proceedings before the High Court exercising original jurisdiction. This was done to enhance data driven decision making through data base and knowledge management and allow for the working of raw data for drawing objective inferences.

The benefits of data management in the techno-centric era of today are manifold. A transparent and quality data collection will contribute both to e-governance initiatives and improve the health of the democracy. In most cases it is assumed that the data collected through legislative authorities is generally replete, relevant and direct. However, a major prerequisite of effective data capturing is its easy convertibility to required statistical outputs. Regular auditing and cross checking of the data can also prevent the redundancy and misrepresentation of information in pivotal sources. In the Indian scenario, this was pointed by a report drafted by the National Institute of Public Finance and Policy (NIPFP). It was found that the e-courts data in the country lacks in key features due to reasons of inconsistencies in action and reporting, missing data and restricted access (Indian Express, 2020).

Thus, the study recommends the procedural as well as operational improvements in trial of civil cases which involves scrutiny of cases before institution so as to ensure that whether summons are to be serviced to the necessary parties or not, institution of case should be done by a qualified personnel, proper training should be given to professionals, multiple copies of the documents should be digitized and converted into pdf files, online filing and registration of cases, extraction of records from other agencies, officer and reference of cases, limiting the number of adjournments, data base management of cases, identification of minimum capacity or threshold limit on both institutional part as well as personal level capacity, steps to be taken by bar bodies such as bar councils to maintain standards, provisions for continuous training and education or refresher programs for lawyers, control on the term of license validity of the lawyers based on conduct, such as instead of issuing the license for life time period, be issued on time basis, separation of courts into civil and criminal in the State, grouping of the cases of similar nature and organisation of them for better redressal as well as increased specialisation of the disposal authority, identification of cases and preliminary evaluation of cases suitable for several heads of Alternate Dispute Redressal Mechanisms (Sec 89, 2009) like Mediation, Conciliation, Lok Adalat etc. beforehand.

Backdrop of Supplementary Report

In this project - "Physical Verification of Case Files of two Districts, Udhampur and Budgam of Jammu and Kashmir with the data available on National Judiciary Data Grid (NJDG) to identify the bottlenecks responsible for causing delay in disposal of civil cases in courts and possible policy and procedural changes necessary for reduction of pendency and a study on Court Management techniques for improving the efficiency of subordinate courts and map a

way forward to reduce delay and introduce effective data collection mechanisms", one of aspect has not been briefly dealt in the previous report i.e "introduction of effective data collection mechanism". Therefore, the study group in its supplementary report has given a detailed analysis and suggestions to improve the data collection mechanism.

Existing Data Collection System

Existing data collection system and sources in the Indian Judicial System at present is based on e-Courts and the major component of it includes National Judicial Data Grid (NJDG). NJDG has got five major components; out of which four are dashboards – Drill Down, Pending Dashboard, Disposed Cases Dashboard and Alerts; and Information Management. NJDG has an elaborate and comprehensive database and report generation system.

e-Courts System in India

India has long identified the need for digitalization in administrative data management. Scholarly evidence delineates the role of digital India in reducing paperwork whilst increasing GDP of the economy. The E-court project started in Indian judiciary in 2005, under the aegis of "**National Policy and Action Plan for implementation of Information and Communication Technology (ICT)**" had been a transformational step in administrative institutionalisation of ICT. The National Judicial Data Grid (NJDG) is a subset of the e-Courts project. The phase wise implementation of the project had incorporated quintessential elements of infrastructural installation (Hardware, Software and Case Information Software or CIS, server rooms) in both court rooms and complexes, Technical training of District administrators and court staffs and application of e-tools such as Short Messaging Services (SMS), Mobile phones and emails along with e-payment gateways to name a few. A step in this direction has been taken in the form of online- real time access to complete pendency data and statistics through the NJDG. version 2. It can serve as an important breakthrough provided the data entry of pending cases from all subordinate courts has been completed and updated on the NJDG servers on a regular and real time basis. Inconsistencies in recording of pendency statistics could create ambiguities and lead to difficulties for subsequent analysis.

National Judicial Data Grid

The computerisation and interconnectivity of courts under the e-courts mission mode project has led to a robust framework to facilitate an open access to large bundles of information captured by Indian courts. Yet, in the absence of an overarching open data policy, this

information, collected by the judiciary, remains scattered and haphazard. A prime example of publishing judicial statistics is the National Judicial Data Grid (NJDG), an online dashboard that updates pendency numbers across all district and High Courts in India, in real time. It is subset of e-Courts project and works as a device to monitor, identify, administer & reduce pendency of cases. Therefore, it is a storage space for case records across the country. The portal gives access to the data regarding pending cases and disposed cases in all the courts throughout the country. It also facilitates case management process and monitoring of cases so as to ensure the efficient disposal of cases, reduce delay and arrears in the system. Thus, aiding in better monitoring of court performance and systemic bottlenecks, and, ensuring better resource management through timely inputs assistance for making policy decisions.

The portal has uploaded the data under various subheads like Year-wise, State-wise, Month-wise disposal of cases across institutions, Reasons for delay and category of cases**.** Moreover, NJDG shows the statistics of number of cases instituted, disposed and the pending cases in all the courts across the country. The data is updated on daily basis by respective courts. Thus it is flexible doorway for public to access the pendency data at the district, state and national levels. Recently a feature for showing the reason for delay in disposal of the case has been added.

In consonance with the **National Data Sharing and Accessibility Policy (NDSAP)** announced by the Government of India, Open Application Programming Interface (API) has been provided to the Central & State Government to allow easy access to the NJDG data using a departmental ID and access key. This will allow the institutional litigants to access the NJDG data for their evaluation and monitoring purposes. Case Information Software (CIS) which forms the basis for the e-court services is based on customized Free and OpenSource Software (FOSS) which has been developed by NIC. Currently CIS National Core Version 3.2 is being implemented in District Courts and the CIS National Core Version 1.0 is being implemented for the High Courts. Every single case has been provided a Unique Identification Code which is called **CNR Number (Case Number Record)** and QR (Quick Response) Code. This has led to the development of National Judicial Data Grid (NJDG) as a new communication pipeline for judicial data transmission. The government initiative for promoting data supported decision making is praiseworthy and contemporary.

Limitations in Existing Data Collection and Management System

It is pertinent to note that the culmination of both change management and process re-engineering exercises for enhancing legal resilience requires a uniform platform. It also

requires equal and unhindered accessibility to internet connectivity and feedback related assessment on routine basis. In instances of unequal internet and Technology access, digital or Mobile access to data capturing be made available at the first level to provide a level playing field. In the instance of the study area, i.e. Udhampur District of Jammu and Kashmir, internet connectivity is still a major issue in several villages and districts more particularly in J&K, which renders disseminating case level information in real-time a challenge. Moreover, the conversion of offline records into online ones has been marred with language and legibility related issues in several cases.

Suggestions for Introduction of Effective Data Collection Mechanism

Keeping in view the above-mentioned limitations prevailing in Udhampur District in particular and most of the areas in India in general, the Study Group has given suggestions to bring improvement in data collection mechanism which should be incorporated at all levels of functioning, right from institution of case by the lawyers and the court staff to submission of documents by the litigants. Some of the major suggestions which would help in more accurately collection of real-time data within the limitation of existing manpower constraints ultimately leading to Court Management techniques for improving the efficiency of subordinate courts are as under:

a) Setting first point of contact: Revamping the capacity of registry in courts is an important step to expedite the judicial process. Introduction of integrated mobility platform or SMART platforms, to help clerical staff register and store litigant and lawyer information can be useful. These platforms can also be used by litigants, to find lawyers, gain or upload legal or documentary information and solve non-essential and quick redressal matters through online modes or Alternative Dispute redressal mechanisms. For better case load management, 'Tap and Pay cards or real time token can be issued to lawyers, litigants and judges asked on Near Field Communication (NFC) to save the precious time of the court. For villages with inaccessible to smart phones, booths can be set up booths outside the court rooms to access records, and book appointments. The information made available through these registrations can help in better prioritisation of the courts' time.

b) Standardisation of Goals.

Standards are an agreed way of doing something. The subordinate courts need to establish the performance standards applicable to the court in terms of key factors such as- timeliness,

efficiency; infrastructure; and human resources; access to justice; as well as systems for court management and case management and carry out an evaluation of the compliance of the court with such performance standards on a regular basis. Goal setting, measurement and open publication is desirable for various measures such as sanctioned positions, actual strength, adjournment per case, average adjournments sought by counsel, time spent on oral arguments, time taken for cases under a certain act, unheard cases from cause list, days of lost business due to foreseeable/ unforeseeable circumstances, days of unavailability of presiding officer, etc. This will help keep things in order and maintain general and specific organisation processes.

c) Standardisation of software: Development of a nimble system for data analysis is essential prerequisite for effective data management. Since ICT can act as a potent facilitator of access to justice, particularly in terms of improving justice delivery systems, Software standardisation should be undertaken. This would involve offering additional features, ubiquity and fewer limitations like complexity. This is an important step in court management since it becomes easier to monitor various parameters including pendency. Data can be more effectively presented based on better distribution of cases, by case types and their timeline. Introducing both quality and design related interventions in e-courts are a major necessity. Introduction of docket control software and conflict management software Preliminary formalities to be conducted through video calling like examination of witness, allow for e-filing of written statements by defendants and offering an option to upload the documents for inspection of a case.

d) Standardisation or Templates of recording case data: The template used for recording the day to day case list or case diary by the clerks is often non uniform. Moreover, language differences also add to the differences. Such ambiguities lead to confusion about the exact cause for lack of business on a particular day. There is a need to compile a handy list of most common business for a given case type, while also leaving scope for entering unusual events. Apart from ambiguity in language, it was observed that the practice of recording relevant Act and Section numbers was different, creating difficulty in subsequent analysis.

Unambiguous recording of case information will help improve the accuracy of NJDG database. The current system of numbering and coding cases has evolved during a period of paper based record keeping. However today's age of digital record-keeping, filing, and databases; a new taxonomy needs to be evolved for classifying cases. Complexity due to hundreds of case types

that are practiced today, causes inefficiency in logistics. A hierarchical system of case types needs to be developed and implemented for all new cases. As the case records are now searchable in CIS using Code, Act or Section numbers; the case type should be based on nature of case whether it is by way of appeal or application and not necessarily based on the Act or law in question. A common mode of coding needs to be introduced at the clerical level so as to add to the perpetuity of the records. As anecdotal evidence from several reports state that a mismatch exists between the daily cases recorded in a given day and the actual cases heard, it is important to undertake time management activities. Several reasons can lead to this wastage like absenteeism, adjournment, transfer of case, unavailability of presiding officer, generation of improper cause list and case load, uncontrollable matters etc. Maintaining data on reasons of non hearing of cases on day by day basis, in different courts, can help bring into notice the unnecessary and controllable reasons for delay. Remedial action can be taken through sanctions or penalties to discourage gaming behaviours and save the precious time of the judiciary. Since predictability improves productivity, it is imperative that along with court protocols, such as automated listing of cases at Supreme Court of India, 'practical guidelines' would help in better coordination among relevant stakeholders. By bringing desired predictability in cause lists and other processes in case flow management, the protocols would improve productivity. To minimize genuine conflict of dates with other courts, scheduling of cases may be done after checking for appearances in other courts electronically.

A suitable unique identifier for individuals, lawyers and legal persons (institutions) may be used commonly by all courts, similar to Aadhar Card, PAN, society registration number, etc. Scheduling right number of cases and giving advance notice, where possible, about the unavailability could minimize the unproductive visits by the parties.

e) Sensitisation of Judicial officers and court managers: Judicial officers, legal researchers and interns should be sensitised regarding the effective use of NJDG database. This will help in management of court affairs. High Courts could deploy task forces or committees aided by data analysts to look into the pattern of delays in altogether similar cases, and suggest strategies to prevent the delays in their respective jurisdictions.

f) Taxonomy and Classification of cases: Increasing the classification of cases which are currently restricted to twenty-four case types only. While District Court records more than hundred case types, this leads to sub classification into twenty-four categories. Courts don't classify cases under the law in which filed, only mention the procedural laws like evidence act, Code of Criminal Procedure (CrPC), and making information unusable. Thus, requiring proper

tagging of cases. As discussed earlier, lack of standardization in categorizing cases creates a big hindrance to analyzing cases. A report decoding delay in the Indian Judiciary through analysis of court data mentions 2500 types of cases across the country. In our experience, over 500 types of cases are seen in Maharashtra. In the type of cases that usually get delayed, there was no pattern in civil cases according to the respondents. All civil cases were equally likely to get delayed. Arguments with supporting evidence also made that matters with government as a party, matters involving immovable property and partition cases were slightly more prone to delays than others. Categorising of petitions on the basis of urgency is also an important element of this mechanism. However, a confirmation in this regard will require detailed and uniformly classified data. Though, clubbing together of similar cases is practiced in Indian courts, it is not as common as some of the other jurisdictions. Classification of cases on the basis of priority (for example,tenant eviction cases, matrimonial cases, accident cases, child custody cases) need immediate attention as any delays can be detrimental. Further, grouping of cases of similar nature and their allocation to single code can reduce pendency.

g) Presentation of Complete and Comprehensive Data: It is observed through verification as well as secondary analysis that completeness of information on the portals and electronic case files is still absent in several cases. At the time of conducting of study, information regarding court orders was in the process of being uploaded. However, missing final orders were found in seventy percent of cases in Maharashtra. Further, large amount of court time is taken up by absenteeism and adjournments. Surprisingly, the data regarding the reason for adjournment is not available in NJDG. Adding information regarding the number of times courts heard the case, parties, judges or lawyers absentism, number of system and technical experts present in a court complex, number of court managers available, time taken in filing and first hearing in court, availability of results of first hearing as information vide Order XIV rule 2 which provides that the court in first hearing should determine whether parties are at issue and whether issue is a question of fact or law. Other pertinent issues that should be covered and made available on databases involves recording reasons for granting injunction, recording account of adjournments granted in case and reasons after third adjournment, Recording information regarding alternative dispute resolution mechanism, Recording the time taken for institution of case according to its type can also help in dealing with controllable factors.

h) Supporting Bulk Data availability: The available data on pendency and disposal helps understand the general picture regarding the causes and portion of pendency. However,

supplementing in-depth and case specific information can aid the researchers and think tanks in understanding the underlying problems better. While disclosures of personal data involve issues of privacy and secrecy, identification of case types that do not warrant such secrecy can take the data richness to a different level. Moreover, setting of dedicated bodies for providing, handling and data capturing for R&D purposes as in the UK and US can add multidisciplinary expertise. By assigning Data management activities right from entering to publication to the same body, uniformity will also be attained.

i) Recruitment of manpower to handle technology related tasks and or Increased Automation:

In the case of the study area of Udhampur, only two system specialists have been assigned to handle backend operations and sophisticated IT integrations. This may lead to delay in data capturing as it may be seen as an additional burden on the already scarce human resources and weaken the implementation capacity. An increase in the number of data entry operators, and system specialists can not only help speed up the process of digitisation of records, but also aid in adding more comprehensive case related information to the judicial repositories, that too without adding to the workload of court clerks.

However, a reduction in non-standardized data and reduction in human-to-human interaction and increasing human to system interaction through automatic interfaces rather than those being typed by individual operators.

The high level of pendency and arrears is an opportunity to bring about process changes that do not depend on human intervention, particularly in non-judicial aspects. There is a need for embracing automation wherever possible. Introduction of machines and use of available institutions or markets would efficiently carry out mundane work of humans, such as providing Ready Certified Copy. Eliminating non-essential human interface from workplaces would minimize accompanying inefficiencies, corruption, nepotism, etc.

The present report lays down some suggestions of improving the effectiveness of data collection mechanisms. While data, today is the undisputed king, its effective use is a question of both superior analytical skills and interpretative mechanisms. Robust and comprehensive information that is not tainted with missing or erroneous facts can act as a saving grace for the legal stakeholders. It will also support a more paperless legal mechanism and development of multidisciplinary skill sets of legal interns. In future, creation of platform ecosystems and seeking help from volunteers who are legal interns and other law graduates for providing

regular auditing by manual and automatic processors: set annual targets and action plans for judicial officers to dispose of old cases, and began a quarterly performance review to ensure that cases were not disposed of with undue haste. It will also help in reducing ambiguity in judgements and doing away with the need for unnecessary appeals. Seeking help from volunteers who are legal interns or law graduates for handling and delivering quality service can also serve the interests of the stakeholders positively.

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