Abstract Proceedings

न्याय विभाग
DEPARTMENT OF JUSTICE

Gujarat National Law University

National Conference on Backlog of Cases & Court Management

February 22, 2019

Organized by
Gujarat National Law University, Gandhinagar

Under the aegis of
Department of Justice, Ministry of Law, Govt. of India

ABSTRACT PROCEEDINGS

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at

Gujarat National Law University
Gandhinagar 382 426, Gujarat, India
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February 22, 2019

Vijay Rupani

Chief Minister, Gujarat State

Apro/Ug/2019/01/02/dt

Dt. 02/01/2019

Snehi Shree Bimalbhai,

Saprem Namaskar.

I am in receipt of your letter inviting me to attend the one day Conference on **Backlog of Cases & Court Management** being organized by the **Gujarat National Law University**. Thank you.

It is unfortunate but a bitter truth that the backlog has always been an issue demanding attention and reform in our judiciary system. The Central Government being led by the Hon'ble the Prime Minister Shri Narendrabhai is visionary and bold in taking novel initiatives. The appointment of Court Managers and finding newer solutions to the issues like pendency of cases in Courts at all level is one of them.

I am much pleased to learn that **Gujarat National Law University (GNLU)** is organizing the one day Conference with a special focus on **Backlog of Cases & Court Management** jointly with the **Ministry of Law and Justice, Govt. of India** on **22nd February 2019** at **GNLU, Gandhinagar.** I extend my heartiest best wishes to the organizers and all the participants for all the ponderings and fruitful outcomes.

(Vijay Rupani)

To,
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Prof. (Dr.) Bimal N. Patel
Director, Gujarat National Law University, Gandhinagar
Member, National Security Advisory Board

Dear Friends,

I am extremely honoured to be a part of this National Conference on Backlog of Cases and Court Management organised by our very own University under the aegis of the Department of Justice, Ministry of Law, Government of India. As the host and one of the leading National Law Universities in India, we believe in our duty towards making positive contributions to the society via measures such as justice, equality and promoting the spirit of fraternity.

Despite several efforts taken such as overhauling procedural laws, setting up of tribunals, promoting alternative dispute resolution methods from legislature as well as from judiciary to curb the menace of judicial pendency, the crisis still persists with a striking three crore cases still awaiting fair judgments to prevail. Reasons for this existing condition being heavy workload on the judges, insufficient strength of judges, insufficient human resource and infrastructure in courts, lengthy and cumbersome procedures which do not necessarily require judicial mind. Moreover, the fundamental right of speedy trial and speedy justice is also violated if the decision is pronounced after many years of hearing.

To eradicate the pendency of cases to a great extent, the setting up of an efficient court management system in judiciary must come into existence by means of various techniques and technologies alongside skilled and efficient staff. Therefore, via themes in relation to backlog of cases and court management, the primary focus of this conference would be to deal with the unexplored, unattended, unaddressed reasons behind the backlog of cases and to find out the positive changes that can be undertaken in court management techniques thereby addressing the menace of judicial backlog.

I would like to extend my sincere gratitude to the Department of Justice, Ministry of Law & Justice, Government of India for their valuable support and guidance as well as members of Research Cadre at GNLU for organising this first of its kind conference in India. Last but not the least, I would like to thank all the participants and paper presenters who have come to GNLU to embark on a journey of sharing knowledge.

I wish them a pleasant stay in GNLU!

Prof. (Dr.) Bimal N. Patel

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ABOUT GUJARAT NATIONAL LAW UNIVERSITY

Gujarat National Law University (GNLU) is the statutory university established by the Govt. of Gujarat under the Gujarat National Law University Act, 2003. The University is recognized by the Bar Council of India (BCI) and the University Grants Commission (UGC) (2f & 12B). The University is also a member of the Association of Indian Universities (AIU), United Nations Academic Impact (UNAI), International Association of Law Schools (IALS), Asian Law Institute (ASLI) and Shastri Indo-Canadian Institute.

The Objectives of the University

The GNLU Act 2003 proclaims that GNLU, "shall be to advance and disseminate learning and knowledge of law and legal processes and their role in national development: to develop in the students and the research scholars sense of responsibility to serve society in the field of law by developing skills in regard to advocacy, legal services, legislation, parliamentary practice, law reforms and such other matters; to make law and legal processes efficient instruments of social development; and to promote inter-disciplinary study of law in relation to management, technology, international cooperation and development."

The ethos of imparting education in Gujarat National Law University comprises a mutual endeavour of the Faculty and the students who become part of our august family after clearing the hurdle of a rigorous and strenuous selection procedure, since only the cream of the country finds a place amidst us. The University has been in the process of striving for academic and professional excellence in the field of legal studies in the country. The University became functional from the year, 2004. Our teaching methodology and the student response to it can be safely summarized as being par excellence. Our student fraternity has won us laurels in the various spheres of national and international moot court competitions, paper presentations and various cultural activities. We strive for an all round and inter-disciplinary academic excellence in sync with the other National Law Schools of the country.

Since its inception, the University has been holding regular in-house Moot Court competitions, after which meritorious students are sent abroad for participating in Moot Court jamborees. The hub of activity be credited to our Moot Court Committee and the Legal Aid Clinic, which have developed a workable and efficient interface with the industry and the Judiciary to the satisfaction of all. As we persist in our academic endeavours, it won't be an overstatement to say that our University will become a leader in the sphere of legal education in the country. Our founding motto too objectifies the ideal of, "Let all good and noble thoughts come to us from all directions", which is a hymn from the Rig Veda. We, the fraternity of Gujarat National Law University aim at homogenization of all trends and civilization patterns by inculcating in our students, an appreciation of other cultures and regions of the country in all its homogeneity.

ABOUT THE CONFERENCE

Judicial pendency has always been an area of discussion since India got freedom and even after seven decades from independence, this evil is not diminishing. At present, total 2,91,31,931(About three crores) cases (civil and criminal) are pending in Indian courts[1].

No doubt, there has been positive efforts like overhauling procedural laws, setting up of tribunals, promoting alternative dispute resolution methods from legislature as well as from judiciary to curb this menace but the results are not very motivating. The main reasons behind the pendency are- heavy workload on the judges, insufficient strength of judges, insufficient human resource and infrastructure in courts, lengthy and cumbersome procedures which do not necessarily require judicial mind etc.

There is a very old proverb of justice that *"Justice should not only be done, it must also seem to be done"* but when a litigant is made to wait for years and then he gets the judgment in his favour than justice is only done and in no manner it can be said that justice is seemed to be done. Moreover the Fundamental right of speedy trial and speedy justice[2] is also violated if the decision is pronounced after many years of hearing.

An important area, which can surely decrease the pendency in significant way, is efficient Court Management System in Judiciary. Courts are being managed by same individuals and in routine manner. Time has come when new techniques and technologies must be adopted by the judiciary for the court management staff and more qualified and efficient staff must be appointed. Looking at this 13th Finance Commission allocated Rs. 300 Cr. for appointment of Court Managers across country. [3] In last five years states have started appointing court managers in their respective courts. But there are some states which have been lagging behind in implementing the said policy. In a recent case also[4], the Supreme Court has directed the Government to appoint professionally qualified court managers (Preferably with an MBA degree) in all Principal District and Sessions Courts for better court administration.

This conference will focus on the unexplored, unattended, unaddressed reasons behind the backlog of cases and will try to find out what are the positive changes that can be done in court management techniques thereby addressing the menace of judicial backlog.

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[1] As per the records of National Judicial Data Grid available at https://njdg.ecourts.gov.in/njdgnew/index.php accessed on 06th December 2018.
[2] As declared by the Supreme Court in the case of *Hussainara Khatoon v State of Bihar (AIR 1979 SC 1369).*
[3] http://doj.gov.in/sites/default/files/Annexure_A-Part-I.pdf
[4] An interlocutory application was filed in the case of *All India Judges Association & Ors. V Union of India & Ors.* (WRIT PETITION (CIVIL) NO. 1022 OF 1989) in which the Supreme Court on 02nd August 2018 directed as above.

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Paper-1

A STUDY OF CASE-FLOW MANAGEMENT SYSTEM FOR COURTS IN INDIA

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BACKGROUND

The problem of delay continues to plague the Indian judiciary. With mounting backlog and high pendency of cases in the court, solutions that aim at reducing the accumulation of cases in courts need to be highlighted and studied. In this regard several measures such as increasing judges' strength and improving infrastructure of courts are constantly brought up. However, the need to introduce a Case Flow Management (CFM) system has not garnered attention.

CFM system aims at streamlining the judicial process by introducing rules and procedures that would ensure timely disposal of cases. Regulating adjournments and finishing cases within stipulated time frames are some of the features of CFM system. Therefore, an efficient CFM is essential to address various determinants of delay and bring certainty into the system. The paper focusses on the overall concept of the CFM system and the need to seriously implement these rules at the ground level.

OBSERVATIONS

While most High Courts have CFM rules in place, the same have not been implemented. As a consequence, poor listing practices and adjournments continue to be rampant. This has adverse consequences on rule of law in the country. The CFM rules adopted by various states have two important aspects. Firstly the rules divide cases into different tracks based on the nature of the case. Each case has an upper limit within which cases need to be disposed. Secondly, rules also state that procedural stages such as issuing of summons, filing of written statement etc. must be carried out by the court registrar while the substantive stages such as framing of issues, recording of evidence etc. must be dealt by the judge. To understand the working of the CFM system in the country eight districts in different parts of the country would be chosen to carry out the analysis. The objective of the analysis would be to understand the extent to which the timelines and processes provided under the rules differ when compared to the actual practices in the court.

SUGGESTIONS

Based on the insights that will be drawn from the analysis, the paper would further provide recommendations that can be implemented by the court. The various recommendations will be devised keeping in mind the ground reality and ensuring that such measures are practical and implementable.

Paper-2

A SCIENTIFIC METHOD TO CALCULATE JUDGE STRENGTH IN INDIA

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BACKGROUND

Adequate judge strength is essential for the rule of law in a country. With cases constantly being filed in all tiers of the judiciary, it is important that the requisite judicial strength be available to tackle the caseload. While dealing with the basic question of 'how many judges do we need?' several countries have devised methods to determine the optimal strength of the judiciary. Taking an empirical approach and developing a scientific method to calculate judge strength is important. For a long time, policy makers in India have depended on the judge to population ratio method as the proper formula to determine the number of judges required. However, in 2012 the Law Commission of India suggested an alternate method as an approach to reduce backlogs and delays in the system, thus opening the debate of using various models to assess judges' strength in the country. The Supreme Court in the case of *Imtiyaz Ahmad* v. *State of U.P.*, (*hereinafter* referred to as *Imtiyaz Ahmad*) emphasized that scientific methods should be used to calculate judges' strength.

OBSERVATIONS

This paper highlights the limitations that inherently exist in each of the models that have been proposed in the past, and proposes a time-based weighted caseload model as the best approach towards judge strength calculation.

SUGGESTIONS

The weighted caseload model is in use in many countries. Several countries in Europe and the United States of America (USA) have modeled the weighted caseload method as per their needs. However, applying the method without contextualizing it to the Indian scenario will not fetch the right results. We must take into account case related and judge related aspects existing in the Indian scenario. One of the key aspects of the time-based weighted caseload model proposed in this paper is a time and motion study required to assess the workload of the courts. Empirical studies that aim at gathering granular details resulting in better analysis of the workload of courts, needs to be carried out in Indian courts.

Paper-3

AN ANALYSIS OF THE FUNCTIONING OF THE SUPREME COURT OF INDIA

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BACKGROUND

The implementation of the National Judicial Data Grid for the subordinate courts and High Courts in India has helped spark a dialogue on the functioning of these courts and understanding the pendency and disposal of cases in these courts. However, there is currently no such system in place whereby we can understand how cases progress in the Supreme Court of India. Therefore, questions such as how long do cases take to be resolved, whether the nature of the case plays a role in the time taken to resolve the case, and whether the nature of disposal of a case determines the duration of a case, are areas yet to be explored in detail.

OBSERVATIONS

The aim of this paper would be to understand the functioning of the Supreme Court of India through an analysis of cases disposed by the Court in the years 2016, 2017, and 2018. The paper will draw on findings from a data set of cases created based on judgments pronounced in this time period and seeks to understand the nature of cases decided, how long these cases took to be disposed, the nature of disposal of cases, and the distribution of cases based on their subject matter and manner of disposal. The paper also aims to explore if court vacations play any role in the disposal of cases by the Supreme Court, and lastly, the paper seeks to analyses a sample set of matters that were dismissed by the Supreme Court, understand how long the court took to dismiss the cases, and the reasons for it. Through this, the paper seeks to shed light on the functioning of the Supreme Court of India and how it processes cases in its docket.

SUGGESTIONS

The paper will also look to provide suggestions on how the Court can improve the processing of cases in its docket through monitoring the progress of cases based on their age and stage, scientifically listing cases for hearing, and targeting long pending cases to dispose them.

Paper-4

MANAGING THE CASE LOAD

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BACKGROUND

As per the reports in 2018, the current backlog in courts is touching 3.3 crore cases. While 2.84 crore cases are pending in the subordinate courts, the backlog clogging the High Courts and Supreme Court (SC) is 43 lakh and 57,987 cases, respectively.

The present paper addresses three important issues related with Criminal Justice System:

I. Registration of FIR
II. Investigation of cases
III. Prosecution of the criminal cases.

Many solutions proposed in the paper have already been implemented at Commissionerate level and have potential of replication at National Level. The paper proposes following reforms in the police working to the following categories:

I. Administrative instructions issued by the state DGP
II. Amendments in the police manuals
III. Amendments in the Cr.P.C
IV. Govt. orders and financial support for certain systems.

Registration of FIR – Observations and Recommendations

It has been a decades old problem that even today a common man finds it difficult to register an FIR in the police station. Implementation of Article 14 of the Constitution that envisages "Equality before Law", in letter and spirit, is directly related with free registration of FIR's.

Suggestions to ensure free and accurate registration of crime

I. Declare all district/zonal PCRs (police control rooms) also as Police stations u/s 2(s) Cr PC for issue of FIR so that citizens get an alternative avenue to lodge complaints.
II. A large number of complaints do not require straightaway issue of FIRs. It is therefore required to amend the state police manuals to permit preliminary enquiry in a certain class

of offences (as permitted by the Apex Court in the Lalita Kumari case). The paper discusses categories of cases in which preliminary enquiry may be made. Paper proposes the procedure to be followed when preliminary enquiries are made.

Investigation of Cases: Observations and Recommendations

This paper proposes a revolutionary idea of **Pre-Litigation Counseling forum (PCLF).** Police spend a huge amount of time in investigating criminal cases that finally do not get tried in court, but are compounded off in Lok Adalats. As per NCRB data, more than half of IPC crime is compoundable u/s 320 Cr.P.C. with theft, rash driving, marital cruelty, trespass/burglary, cheating, grievous hurt and criminal breach of trust amounting to 46.7% of overall IPC.

It is important that the full machinery of police investigation be invoked in only those cases that require it. The paper proposes in detail the steps to be taken in implementing this idea for cases compoundable by the complainant, for cases compoundable with the permission of the trial court and for cases triable summarily.

The project of **Pre-Litigation Counseling forum (PCLF)** was implemented in Vijayawada of Andhra Pradesh in 2004. It involved representatives from office of Commissioner of Police, District Collector, Municipal Commissioner and that of Panchayati Raj Department. This multi-disciplinary team was formed by invoking Arbitration and Conciliation Act, 1996 and Legal Services Authorities Act, 1987. This forum divided all the complaints in broad categories as family disputes, disputes with neighbours, money disputes, landlord/tenant disputes, disputes related to nuisance, land disputes. This forum could also listen to compoundable cases.

This forum had heard 5711 petitions till 3.2.2018 of which about 46% were successfully dealt with either by compromise or registration of criminal cases in a few instances and some cases were referred to the concerned revenue officers and the Municipal Corporations. The paper has explained in details the steps taken in implementation of this project in Vijayawada.

If the workload of the police stations is reduced by way of implementing PCLF, it will lead to use of available resources in better investigation of other cases and hence improve the quality of investigation.

Efficient & effective prosecution – Observations and Recommendations

The usual problems associated with prosecution of criminal cases are non-execution of process, non-attendance of witnesses and investigating officers and delay in prosecution. The paper proposes a time tested court monitoring system that is running successfully in Vijayawada since 2004 for better prosecution of the cases.

In every police station, all the court-related work is traditionally assigned to one or more personnel (depending on the workload), designated as Court Constable(s)/Court Head Constable(s). The work consists largely of constant liaison with court personnel and is, therefore, assigned on permanent or long-term basis to specific individuals amongst the police station staff. This leads to some kind of monopolistic control of those individual staff members over court related work. The SHO being already hard pressed for time due to other never-ending preoccupations is not able to exercise proper control over smooth proceeding of the court work relating to his police station. Instances have not been wanting in which the efficiency and efficacy of court work has suffered on account of whims and fancies of those personnel, if not sheer lethargy in say, collecting the

summons / warrants from the court in good time, or ensuring attendance of witnesses or the investigating or prosecuting officer. The system has also been prone to abuse for extraneous considerations on the part of court staff of the police stations.

The dissipated system of record maintenance of court proceedings also renders the monitoring and supervision of court work of their police stations by senior police officers cumbersome and difficult, even as the dwindling rate of conviction in criminal cases as well as the disposal of pending trial cases has increasingly become a matter of concern.

In this background, Court Monitoring System (CMS) was introduced. CMS is based on two basic principles. The first is the fundamental concept in e-governance of distancing the case worker from the point of contact. The second is to substitute the police station-based management of court work by a court-oriented management of the same. Thus, with the advent of CMS, all the cases of several police stations being dealt with by a single court are pooled together and dealt with by a single court officer (of the rank of ASI or HC), assisted by a PC, where necessary due to heavier workload. This has made the court of the police more transparent and resistant to abuse. Transparency has also improved because the CMS allows the case status to be known online.

After the introduction of the system, there was a quantum jump in the quality of police performance in the courts which resulted in overall improvement in the **conviction percentage from 24% to nearly 58%** within 6 months and is continued since then.

Paper-5

THE EMPTY COURT: A QUANTITATIVE ANALYSIS OF VACANCIES IN THE SUPREME COURT OF INDIA

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BACKGROUND

The issue of judicial pendency is one of the most crippling problems that the Indian legal system faces today. Many have come to the conclusion that a major reason for continued pendency is, inter alia, that judicial vacancies are not filled expeditiously.[1] With seats on the bench lying vacant, courts are not able to utilise their full capacity to hear and dispose of cases. The Supreme Court has, recognising this link, come down heavily on the authorities for not-filling the vacancies in the subordinate judiciary.[2]

In this paper, using appointment and retirement data from the Supreme Court, I show that in the past few years, on average, the Supreme Court itself has had more vacancies than any other comparable period in history. Further, using published minutes of collegium meetings as well as department of justice appointment orders, I show that the Supreme Court itself is partly to blame for the delay in judicial appointments. Based on these, I argue that the current "collegium system" of judicial appointments is flawed and suggest reforms to expedite the appointment process, which in turn would lead to increased judicial capacity to deal with case arrears.

[1] See for example Law Commission of India (1987): One Hundred and Twenty First Report on A New Forum for Judicial Appointments, http://lawcommissionofindia.nic.in/101-169/Report121.pdf. Law Commission of India (1988): One Hundred and Twenty Fifth Report on The Supreme Court – A Fresh Look, http://lawcommissionofindia.nic.in/101-169/Report125.pdf. (1988): One Hundred and Twenty First Report on Resource allocation for infrastructural services in judicial administration, http://lawcommissionofindia.nic.in/101-169/Report127.pdf. Law Commission of India (2009): Reforms in the Judiciary – Some Suggestions Report No.230, http://lawcommissionofindia.nic.in/reports/report230.pdf.

[2] Thakur, P. Vacancies in lower courts at all-time high. The Times of India. 1st January, 2018. https://timesofindia.indiatimes.com/india/vacancies-in-lower-courts-at-all-time-high/articleshow/62320296.cms

OBSERVATIONS

Throughout its history, the SC has rarely worked at full strength. In fact, the SC has functioned on full capacity for only 17.5% of its existence, with only 209 days of these coming in the post-collegium period. There is an obvious lag in filling vacancies after an increase in sanctioned strength. This was the case in both 1977 and 1986, when the newly created vacancies remained unfilled for more than a year. Barring the vacancies brought about due to an increase in sanctioned strength, where there is this lag, the SC functions with, on average, 2.2 vacancies and at 87% of its sanctioned strength.

The average number of vacancies has been steadily increasing and has been particularly high in recent years. Vacancies in the period after the controversial NJAC case have been particularly high in both absolute as well as percentage terms. If we exclude vacancies created due to increase in sanctioned strength, 2014-18 has the highest number of average vacancies compared to any other five-year period in history. Chief Justice Mishra, the former Chief Justice of India, whose tenure coincides with the period after the NJAC judgement, has the worst record amongst CJIs. Chief Justice Mishra tenure on average had 6.6 vacancies, the highest number after the sanctioned strength was increased. In fact, Chief Justice Mishra oversaw the highest number of average vacancies amongst any Chief Justice in history, if we ignore vacancies created by increases in sanctioned strength.

The collegium process itself is partly responsible for these vacancies. Collegium meetings can only take place when the Chief Justice of India and four senior-most puisne Judges of SC are available and willing. This may not always be possible. For example, in 2016 Justice Chelameswar refused to attend the collegium meetings until its proceedings were made public.[3] There are also instances when the collegium cannot meet because a change is being contemplated in the appointment process, such as when the case concerning the constitutionality of NJAC was being heard. Since October 2017, when the collegium minutes started being published on the website, the Collegium has met only seven times to discuss appointments to the SC. Three of these dealt with the reiteration of Justice KM Joseph's name. In each of the other three, the collegium acknowledged the high number of vacancies, but recommended names to fill only a few of them.

The collegium also seems to meet too long after any given SC vacancy arises. Barring death and resignation of a Judge, which are rare events in the SC's history, all SC vacancies are foreseeable. The collegium should thus ideally plan for vacancies such that a new judge can take oath as soon as the old judge retires. Despite this, since 1977 no judge of the SC has been appointed immediately after the vacancy arose. The meeting to recommend Justice Indu Malhotra and Justice KM Joseph to the SC, for example, was held more than a year after the vacancies they were being nominated to fill arose.

As one would expect, there is a high positive correlation between the disposal rate of the court and the average number of judges the court in any given year.[4] With each missing judge, the court loses part of its capacity to deal with its incoming cases, and adds to its already unsustainable pendency load. The 121st Law Commission report, which looked at judicial appointments, posited

[3] Rajagopal, K. Justice Chelameswar opts out of collegium. The Hindu. 2nd September, 2016. https://www.thehindu.com/news/national/Justice-Chelameswar-opts-out-of-collegium/article14621813.ece. Justice Chelameswar continued to give his opinion on potential nominees "by circulation".

[4] Applying Pearson's correlation, the value of R is 0.8902. This indicates a strong positive correlation. The value of R^2, the coefficient of determination, is 0.7925. In the years that the Supreme Court has lesser number of Judges, it inevitably has a lesser number of disposals.

that if vacancies in the SC from 1965 to 1986 had been filled immediately, the court could have cleared 67% of its pendency docket.[5] The exact number of cases that each judge disposes in a year is difficult to predict due to the large number of variables affecting this number. The 121st report Law Commission of India, based on inputs by two Chief Justices, assumed this number to be 650 "regular" cases per year per vacancy. By this account, the SC in 2018, lost the capacity to hear 4115 cases due to vacancies.

SUGGESTIONS

There are many possible suggestions to improve the current system of judicial appointments and to fill vacancies in the SC more efficiently. Firstly, the collegium should meet with some regularity, perhaps once a month, to exclusively discuss SC nominations. Secondly, apart from non-planned vacancies due to death or resignation, the collegium should consider the proposal for appointments before the vacancy arises, so that a new SC Judge can be appointed immediately after the old one retires. There is also no permanent administrative assistance available to the collegium which is an informal body at best. Many have thus suggested that permanent Supreme Court Secretariat must be built, to help the judges with evaluating possible candidates, and to reduce any time spent in administrative or logistical activity by the collegium.[6] Finally, the MOP must be amended to remedy the structural flaws inherent in it. It must mention strict time limits for the government, both for the consideration of appointments as well as for appointing a judge whose nomination has been accepted.

[5] Supra, Law Commission of India (1987), 64.
[6] Ashok, K.M. Improving Collegium; K.K Venugopal advocates Permanent Secretariat. LiveLaw. 4th November, 2015. https://www.livelaw.in/improving-collegium-k-k-venugopal-advocates-permanent-secretariat/.

Paper-6

PLEA BARGAINING IN INDIA & USA: A COMPARATIVE ANALYSIS

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"The greatest drawback of the administration of justice in India today is because of delay of cases..... The law may or may not be an ass, but in India, it is certainly a snail and our cases proceed at a pace which would be regarded as unduly slow in the community of snails. Justice has to be blind but I see no reason why it should be lame. Here it just hobbles along, barely able to work."

….. NANI PALKHIWALA

Till the midst of 20th Century, most of the courts and scholars, all over the world, tended to ignore the importance of plea bargaining, and when discussions of the practice occurred, it usually was critical. A strong criticism against it was that plea bargaining is a lazy form of prosecution that resulted in undue leniency for offenders. However in later part, the significance of plea bargaining has improved to a larger extent and it became integral part of the criminal justice system in large number of countries, like USA where almost 90% of the matters are settled through Plea bargaining.

Hailed as the panacea for our overburdened criminal justice system, plea bargaining was introduced as a shortcut aimed at quickly reducing the number of under-trial prisoners and increasing the number of convictions, with or without justice. It was also a concept introduced to handle huge pendency of cases, severe shortage of judges and inordinate delay in trial and conclusion of the same. However, the concept of plea bargaining in India has failed to take off as NCRB data for 2015 shows that there were 1050225 cases under IPC disposed by the courts in 2015 and that plea bargaining took place only in 4816 cases. This is **mere 0.45% of total cases under the Indian Penal Code (IPC)**, putting forth a big question mark on plea bargaining as an effective tool for a speedy criminal justice.

This paper is an attempt to have a comparative analysis of the plea bargaining in USA vis-a-vis India and dwell upon the factors affecting the success of plea bargaining in India and suggest remedial measures thereof.

Paper-7

AN EMPIRICAL STUDY ON USE OF ARTIFICIAL INTELLIGENCE IN COURT CASE MANAGEMENT

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BACKGROUND

"Injustice anywhere is a threat to justice everywhere"
-Martin Luther King

Pendency of court cases are becoming threat to the justice day by day. The Judiciary system of India is like all judiciaries of the world and still is motivated for efficiency. The efficiency of an organization depends on the inclination of its stakeholders to support efforts that are intended to bring about improvement. Experience, however, has shown that change is not always easy to drive and sustain. It requires a great deal of determination and commitment. That determination and commitment must cut across the organization and must even be more visible in the top management which also drives it.

OBSERVATIONS

The maxim "ubi jus ibi remedium" guarantees an aggrieved party to take legal action against the other party who violated his right but in actual sense when the person enters the court for litigation than the story of long and unnecessary delay is sometimes faced by them because of the lacking in the court case management. Case management is becoming indispensable with large number of cases being introduced and a significant number of the vacant judicial posts in all the courts across the country. The objective of case management should not only be to accelerate the delivery of justice but also to improve the efficiency in decision making in the courts.

SUGGESTIONS

This paper focuses on the use of court case management with the use of artificial intelligence. Since, many developed counties have already focused on such technologies. Litigant should not be made wait so long for the justice that the justice delayed starts looking as the justice denied. Artificial intelligence should be used more in the court case management for the speedy disposal.

Paper-8

LIMITATIONS OF JUDICIAL SYSTEM IN INDIA

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BACKGROUND

The limitations of judicial system in India refers to the concern of courts to find out a suitable remedy to the loop wholes/ gaps which are being observed by the citizens towards the system. The above statement can be further explained as- under the Constitution of India, the three branches of the government, namely the legislative, executive and the judiciary, have been assigned their own separate roles and duties. It is when the judiciary steps into the shoes of the executive or the legislature and get on the work of lawmaking rather than interpreting the law, it can be deemed to be judicial advocacy. This research paper, also deals with how to improve and fasten Indian judiciary. The research paper also explains the basic problems why the judicial system of India is lacking and making a space between the system and the trust of people on the entire system and what are the major problems faced in providing proper decision and concluding towards building a proper law system in India. There are several issues in the India judicial system like transparency in providing information, proper communication between the authorities and the citizens and also some of the important rules and regulations framed by Supreme Court seated in the center and all other courts under it making a legal framework in the country. The paper also emphasizes on management and introduction of fast track courts in the India and also the management of keeping the court open throughout the year and also some of the changes to be done in modernization of the courts of India.

OBSERVATIONS

It is being observed that the judicial system of India is having several loop holes. Though India is having a strong and power law and system, there are some limitations which are stated as under:

I. Pendency of cases
II. Corruption
III. Lack of transparency
IV. Under trial accused
V. Lack of information among people and court
VI. Lack of awareness of law

SUGGESTIONS

Indian judicial system is one of the most powerful systems in the world and it can be still improved based on some of the suggestions provided as under:

I. The management of the cases should be made section wise. The system needs to take action on some of the cases which require maximum attention and the priority has to be set.
II. Corruption should be removed from the system and one such suggestion is that the entire system can be shifted online under the supervision of Supreme Court.
III. Supreme Court must take the cases into public and should declare the information to the general public. The information should be spread across the country and also the results of the pending cases and related matters should be communicated.

There are many more suggestions which can be discussed in the detailed paper.

Paper-9

COURT CASE MANAGEMENT: A STUDY OF DELAY AND PENDENCY OF CASES IN A TRIAL COURT

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BACKGROUND

Indian justice system is marred by the delay and pendency of the cases and delay in the adjudication of the cases. This is one of the major reasons for justice not reaching to the people. Delays in the justice system have been a matter of concern across the globe for decades, but the causes of delays are still inadequately understood, and solutions have not managed to pace up with the growth of the problem. Delay and pendency of cases in the courts is creating problem for dispensation of speedier and smoother justice. People want justice, pure, unpolluted, quick and inexpensive and they have every right to receive the same. But in reality, there are long delays in the dispensation of justice, the need for the speedy justice cannot be gained because as said, "if justice is not executed speedily men persuade themselves that there is no such thing as justice".

This study aims to explore the various means as how the pendency of the cases in the courts could be reduced which the major reason of justice is not reaching to the people especially to the poor and marginalized section as majority of the trial and pending cases are from this section. This study also tries to understand the possible reasons, like attitude and behavior of judicial officers, job satisfaction and infrastructure facilities, budgetary problems of trial courts etc. since this is a persisting problem and not much work has been done on this. Therefore, researchers aim to study and explore in-depth reality of the working of the trial courts and understand and find out the existing reasons behind that.

OBJECTIVES OF THE STUDY

I. To understand the reasons of delay of cases in trial court.
II. To analyse facts relating to the pendency of cases in trial court and viewpoints of stakeholders.

OBSERVATIONS/KEY FINDINGS

Major findings and analysis of the research has resulted into three things- first is the causes for the delay and pendency, second is the impact of the delay and pendency on the stakeholders and third is, what are the possible solutions for reducing the delay and pendency of cases in the courts.

Reasons for the delay and pendency

After analyzing all the possible reasons which are responsible for the delay and pendency various factors have come out for the same like -weak investigation, financial crunch, human resource crunch, unnecessary adjournments, corruption, Procedural flaws, Paucity of judges and courts and Political interference.

Impact of delay and pendency

I. Marginalized people are the most affected.
II. Justice delayed is justice denied.

Solutions for delay and pendency

I. Pea-bargaining.
II. Proper allotment of cases.
III. Strict control on adjournments.

CONCLUSION/RECOMMENDATIONS

Owing to the delayed trials, the individuals involved suffers in many ways. It also exacerbates the anxiety of the accused as well. The impact of delays also extends to the dependents of the accused and victims and some of may be exposed to the undue sufferings. In totality, the delay in disposal of criminal cases amounts to indifference to human values and rights as much as to the law.

Some recommendations on dealing with this delay, pendency and backlog include:

I. Progress of each and every step of the case must be made available online at all levels.
II. Time bound investigation must be made mandatory as per the nature of the crime barring certain exceptions.
III. Number of judges must be increased at all level of the courts.
IV. Proper training and up gradation of the judges must be done at all level of the court.
V. Courts could be run in two shifts that is one in morning and other in the evening.
VI. Advocates and prosecutors must provide a justiciable reason to get adjournments.
VII. Judges should also grant adjournments after due diligence.
VIII. There should criteria for allotting cases to the judges at a certain level.
IX. There should be a fixed time line for meeting the requirements of the case.
X. There should be proper execution of warrants by the police.

Paper-10

WHY YOUNG LAW INTERNS MAY NOT TAKE UP LITIGATIONS SERIOUSLY: A CRITICAL ANALYSIS OF IMPACT OF COURTROOM AMBIENCE ON FUTURE LAWYERS

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BACKGROUND

Every year thousands of law interns from the law schools join different courts in India to learn law practically. The students are exposed to different hierarchies of court systems, stages of prosecutions, trials, passing of sentences etc. However, this is not a dream –come-true experience for many young law interns who may have joined law schools equipped with grand infrastructures like smart classrooms, extremely rich smart libraries, model moot court rooms, well equipped legal aid cell rooms, students recreation rooms, gyms etc. In the law schools students are told that law is a noble profession.

According to modern jurisprudential schools like Therapeutic Jurisprudence, courts are increasingly becoming problem solving courts.[7]Such courts are offering therapeutic touch for different kinds of litigants and beneficiaries including women[8] and children.[9] Several researchers all over the world have urged that law schools should not impart legal education only in the classrooms, but should expose the students to the real court rooms.[10] This would help young law students and interns to learn the art of lawyering properly. But in reality, in India, the court

[7] For example, see King, Michael S., Should Problem Solving Courts be Solution-Focused Courts? (December 13, 2010). Revista Juridica Universidad de Puerto Rico, Forthcoming; Monash University Faculty of Law Legal Studies Research Paper No. 2010/15. Retrieved on 12.01.2019 at https://ssrn.com/abstract=1725022.

[8] The lead author had elaborately discussed about how courts and legal aid centers can be used for the benefit of women in her forthcoming book chapter Halder, D. (in print), Free Legal Aid for women and Therapeutic Jurisprudence: A critical examination of the Indian model. In Stobbs Nigel, Bartel Lorana & Vols. M (eds.), Methodology and Practice of Therapeutic Jurisprudence Research. USA: Carolina Academy Press.

[9] For more see Halder D., (July 2018). Child Sexual Abuse and Protection Laws in India. New Delhi: SAGE. ISBN: 9789352806843. https://in.sagepub.com/en-in/sas/child-sexual-abuse-and-protection-laws-in-india/book263196.

[10]See Frank, Jerome N., "A Plea for Lawyer-Schools" (1947). Faculty Scholarship Series. Paper 4096. Retrieved on 12.01.2019 at http://digitalcommons.law.yale.edu/fss_papers/4096.

ambiences may not encourage young law interns and lawyers to continue to serve as *'therapeutic agents of Law'*[11].

This paper argues that young law students, interns and juniors may not be encouraged to continue to be litigating lawyers due to several factors including the poor maintenance of court rooms including the dull and depressing color, stains on the wall, broken furniture of the court rooms etc. These issues may have a long term impact on the mental as well as physical health of the litigants and lawyers. Ill maintained court rooms may discourage young bright law students from considering career as litigation lawyers. The courts form the *Judiciary*, the third pillar of administration in our country. While sitting arrangement of the judges, listing of the cases, management of the case status updates, delivery of the order copies to the stakeholders etc. may be looked after by the court managers, this paper argues that the issue of court room management especially for lower courts has remained as a challenge.

METHODOLOGY

This paper argues that courts, especially lower court buildings and court rooms in Ahmedabad and Gandhinagar area in Gujarat are not maintained properly. The researchers have conducted an empirical study with 119 male and female students of 1st, 2nd and 3rd year of Unitedworld School of Law, who are studying 5 years integrated BBA-LLB. These students went for internship in 2018 to different courts including Consumer Court, District Court, High court of Gujarat, Legislative Assembly, Family court, Labor Court and Industrial Tribunal in Ahmedabad. Out of 119 students, who answered the questionnaire, 75 students were males (63%) and 44 were females (37%). The questionnaire included questions on colour of the wall, ventilation in the rooms, types of electric lights that were being used in the court rooms during day times, gloominess in the rooms, types of furniture that were being used in the courts, sitting arrangement for the lawyers, law interns and litigants in the court rooms and in the corridors, existence of fans/ACs in the court rooms, cleanliness in the rooms, building and corridors, cleanliness in the toilets, drinking water facilities, existence of medical facilities in the court buildings, usage of mobile phones by advocates while the court proceedings were on etc. The questionnaire also included question as to facilities available for nursing mothers. The questionnaire provided three options for the respondents, namely Yes/No/Do not want to answer. The answers were analyzed using methods including Pie chart methods.

CONCLUSION

This paper suggests that the court room ambiences and the facilities within the court buildings must be improved not only for the benefit of the litigants, but also for lawyers including junior lawyers and law interns.

[11] For more understanding, see Wexler David. Two Decades of Therapeutic Jurisprudence Touro Law Review: Vol. 24: No. 1, Article 4. Retrieved on 12.12.2018 at http://digitalcommons.tourolaw.edu/lawreview/vol24/iss1/4.

Paper-11

ROLE OF LOK ADALATS IN RESOLVING MOTOR VEHICLE ACCIDENT CASES IN AHMEDABAD DISTRICT: A CRITICAL ASSSMENT

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BACKGROUND

With the rising number of litigations in the courts, it becomes extremely difficult for litigants to get proper justice in due time. The lower courts in India are overburdened with huge numbers of cases. There are different reasons for such over burdening: preference of litigants to file cases in the courts in matters including petty matters, rise in crimes and criminal offences, lack of judicial officers and over all lack of awareness and also unwillingness (in cases where litigants may be aware of the Alternative dispute resolution mechanisms) to resolve the matters in through Alternative dispute resolution (ADR) mechanism.

One of the unique features of the Indian constitution lies in its social welfare outlook. This feature is evident in Articles 14 (which guarantees equal treatment in the eyes of the law), 21 (right to life) and 39A (which speaks about equal justice and free legal aid). The framework of the constitution acknowledges that not all members of the Indian society may afford to avail paid legal services and justice in due time due to socio-economic-political conditions.

During and post emergency period (approximately 1975-77), India witnessed the growth of human right violations and arbitrary arrests and detentions.[12] This caused long pendency of trials and slow justice delivery system. During this time Justices Krishna Iyer and P.N. Bhagwati started executing the concept of judicial execution by way of encouraging public interest lawyering. Their primary aim was to materialize the goal of distributive justice especially for socio-economically backward

[12] See Baxi, Upendra (1985) "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India," Third World Legal Studies: Vol. 4, Article 6. Retrieved on 10.11.2018 at http://scholar.valpo.edu/twls/vol4/iss1/6.

community including women and children.[13] Quite at the same time, the Supreme Court also extended the scope of right to life to include speedy trials in the case of *Hussainara Khatoon vs. State of Bihar*.[14] In this case the courts ascertained that speedy trial fell within the right of the accused who may not be able to afford paid legal services. However, soon the courts also started feeling that concept of speedy trial and speedy process of justice must be enlarged to be applied in the civil cases as well. The goal of distributive justice and making justice accessible to all was finally materialized with the introduction of Legal Services Act, 1987.

This provision has a three phased objective, namely,

I. To constitute legal services authorities to provide free and competent legal services to the weaker sections of the society
II. To ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and
III. To organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

As the third objective suggests, Legal services Act also emphasized on the alternative dispute resolution in a hazzle-free and speedy way by way of Lok Adalats. The concept of Lok Adalat is finely explained in the website of the National legal services Authorities, which states that "Lok Adalat is one of the alternative dispute redressal mechanisms, it is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably.

Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987. Under the said Act, the award (decision) made by the Lok Adalats is deemed to be a decree of a civil court and is final and binding on all parties and no appeal against such an award lies before any court of law. If the parties are not satisfied with the award of the Lok Adalat though there is no provision for an appeal against such an award, but they are free to initiate litigation by approaching the court of appropriate jurisdiction by filing a case by following the required procedure, in exercise of their right to litigate..."[15]

As such, Lok Adalats have proved to be excellent ways to resolve issues much faster than the traditional courts. It has now become mandatory for every State legal services authorities to conduct Lok Adalats periodically and Gujarat state legal services authority is no exception. The statistics provided by the Gujarat state legal services authority shows a tremendous growth in the activities of Lok Adalat in settling disputes of various nature including motor vehicle accident claims.

PURPOSE OF THE PROPOSED RESEARCH

This proposed research aims to map the success of the Lok Adalat in handling and resolving cases including motor accident claim cases. Motor vehicle accidents may cause harm including grievous harm and also loss of life. Such accidents may be caused due to human errors, mechanical faults and also poor road infrastructure.[16] Often it has been noted that wealthy drivers or motor vehicle

[13] Halder, D. (in print), Free Legal Aid for women and Therapeutic Jurisprudence: A critical examination of the Indian model. In Stobbs Nigel, Bartel Lorana & Vols.M (eds.), Methodology and Practice of Therapeutic Jurisprudence Research. USA: Carolina Academy Press.
[14] Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar ,1979 AIR 1369, 1979 SCR (3) 532
[15] For more information , see https://nalsa.gov.in/lok-adalat accessed on 16-11-2018
[16] JP Research India Pvt. Ltd. (2015), Ahmedabad and Gandhinagar Road Accident Study. Retrieved on 12.11.2018 at http://www.jpresearchindia.com/pdf/Ahmedabad%20Urban%20Accident%20Study%20report%202015.pdf.

owners may either escape the clutches of law by paying bribes or may continue to defend their rights against paying compensations to the victims and drag the matter for a longer time which may escalate the health hazard of the victims.[17] This proposed research will aim to analyze the therapeutic role of Lok Adalat organized by District & Sessions Court (rural) Ahmedabad in resolving such cases and helping the victims of motor vehicle accident cases to get due justice.

This proposed research will aim to answer the following research questions:

I. How many Lok Adalats had been organized by the District & Sessions Court (rural) Ahmedabad in the period of 2017-18 to resolve cases concerning Motor vehicle accident cases?
II. What is the number of cases that were referred to such Lok adalats in pre litigation stages and during the pendency of the case before the courts?
III. What is the number of beneficiaries of these Lok Adalats (specifically for the purpose of Motor vehicles Accident cases) in the year 2017-18?
IV. Average time taken for resolving the cases concerning motor vehicle accidents in Lok Adalats organized by District & Sessions Court (rural) Ahmedabad?
V. What sort of mediation is offered in such cases?
VI. The role of pro bono lawyers in such cases.

METHODOLOGY TO BE ADOPTED FOR THE PROPOSED RESEARCH

The proposed research would be following a mixed methodology. The researchers would be conducting a doctrinal research to understand why Alternative dispute resolution forums including Lok Adalats are essential to resolve cases, especially motor vehicle accident cases. The researchers would also conduct doctrinal method byway of analyzing the records, statistics/data of the Lok Adalats organized by District & Sessions Court (rural) Ahmedabad. The researchers will also conduct field studies which would include interview methods for interviewing the litigants including the petitioners, victims, families of the victims, defendants and lawyers.

CONCLUSION

The findings of the research would be useful to create awareness among general public regarding the role Lok Adalats in resolving disputes related to motor accident claims. It may also be used to show how such cases may be resolved faster and the impact of the same on the victims' health, coping with financial issues by the victims especially when the victim may have become physically or mental disabled and may have suffered job loss or may have suffered in continuing education etc. This research may also prove fruitful to measure the benefits of the families of the deceased victims.

[17] See for example, Halder, Debarati and Shetty, Amol, Regulating Road Traffic Violation by Youth in India: A Therapeutic Jurisprudential Approach. Paper accepted for publication in Wong, D.S.W and Gavrielides, T. (2019). Restorative Justice in Educational Settings and Policies: Bridging the East and West, London: RJ All Publications. ISBN 978-1-911634-07-2. http://dx.doi.org/10.2139/ssrn.3230604.

Paper-12

SIGNIFICANCE OF JUDICIAL ABILITY AND PROFICIENCY OF JUDGES IN PLUMMETING BACKLOG

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BACKGROUND

Efficiency of any system depends upon the efficiency of each and every part of the system. The efficiency of an individual judge has direct influence on the number of pending cases in his own court as well as of the appellate court. Judicial ability is amalgamation of various skills such as analytical, communication, writing, time management, assertion, etc. A judicial officer is supposed to exercise control over the flow of the cases and it could be achieved through his court time management skill which is an essential element of judicial ability.

OBSERVATIONS

Apart from various reasons for this backlog, inefficiency and incompetency of the judicial officers are quite significant. Lack of ability for performing judicial function adversely affects the judicial delivery system. Judicial officer is supposed to discharge the duty with utmost integrity as well as professionalism. Such professionalism can be achieved through developing judicial ability and proficiency in exercising the legitimate discretionary power. Being a pivotal in the court, the performance of the court largely depends upon the judicial ability, efficiency and proficiency of the judicial officers. This in turn influences the quality and quantity of the judicial output of the court. Essential aspects of judicial ability are judicial meticulousness, reasonable promptness in making decision, precision in work, diligence in hearing, etc. A matrix developed on these parameter shall provide the better appraisal of the performance of the judicial officers.

SUGGESTIONS/RECOMMENDATIONS

It is quite essential to develop rigorous framework to test and ensure such ability and proficiency of judicial officers. Judicial officers need to be trained in management skills including the time management at the focus. A scientific matrix method for the competency mapping of the judges should be developed. Service conditions of the judicial officers may be integrated with the competency mapping of individual.

Paper-13

INDIAN INCOME TAX LAW & PROTRACTED LITIGATION – A STUDY

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BACKGROUND

The Income Tax Act, 1961 received the assent of the President on 13.09.1961 and became a law with effective from 01.04.1962 along with the Income Tax Rules, 1962. The current Act replaced the 'Indian Income Tax Act, 1922' which was in force for almost 40 years. One of the major salient features of the erstwhile Act was adopting a new way of fixing tax rates vide Finance Acts, annually, which is even continuing in the current regime. During 1961 to 1994, substantial changes have been made to the 1961 Act to meet the changing scenario. Almost all Finance Acts brought one or the other changes to the Act and the Rules. In 1991, the Government set up one more "Tax Reforms Committee" under the Chairmanship of Raja J. Chelliah to examine the then tax structure and suggest changes therein. The committee has made several recommendations such as lowering the tax rates, avoiding double taxation, differentiate corporate tax between domestic and foreign companies, among others. In 1997, another 'expert group' was appointed to submit a report on simplification of Income Tax Law. The committee had also submitted its report however the Bill never became law due to the dissolution of the Parliament. Thereafter, acceptance of recommendations made by "Kelkar Committee Report, 2003" impacted the current tax regime to a certain extent

While presenting the Union Budget for 2007-08, the then Finance Minister said a comprehensive review is under consideration. The Central Government has introduced a new 'Direct Taxes Code' in the Parliament during the same year. Again, after two years i.e. in August 2009, the Central Government released draft Direct Tax Code along with a discussion paper for public comments. Following, on 27.08.2010, the Direct Tax Code 2010 was introduced in Lok Sabha. However, the Code has been referred to a Parliamentary Standing Committee. The committee submitted its report with certain recommendations during March 2012. It was decided to implement the Code with effective from 01.04.2011 and thereafter postponed to 01.04.2012, however, both deadlines were missed.

The previous Government again put a revised Direct Tax Code on the public domain for stakeholders' comments. Thus, Direct Tax Code stretched over 2007 to 2014. The final draft cleared all ministries but lapsed due to the dissolution of the 15th Lok Sabha in 2014. The new government, instead of reconsidering the Code, adopted few provisions such as general anti-avoidance rule (GAAR), transfer pricing guidelines among others. In its latest attempt, the Central Government is again revisiting the Code. Accordingly, to review and draft a new Direct Tax Law in consonance with the economic needs of the country, the Central Government constituted the

task force. In that direction, the Task Force, on 21.03.2018, sought feedback and suggestions from stakeholders and the general public in the form of a questionnaire. The task force will submit its initial 'Draft Report' by 28th February, 2019.

OBSERVATIONS

The Appellate mechanism consist total four stages, they are Commissioner of Income Tax (Appeals), Income Tax Appellate Tribunal, High Court, and Supreme Court and in case of International Tax Disputes, the parties may approach the International Arbitration Chair at Hague. According to Economic Survey – 2018, (*Economic Survey – 2019 is expected to be tabled on 27th or 28th January, 2019 or just before Interim Budget, hence latest details will be covered in full paper*) the country's biggest litigator is the Tax Department…!! Which unambiguously losses 65 percent of ….!! The Survey reports that the total number of direct tax cases pending at Income Tax Appellate Tribunals, High Courts at 83 percent and the Supreme Court at 88 percent. The petition rate at the Supreme Court is 87 percent, while the success rate is only 27 percent. Similarly, at High Courts, the petition rate is 83 percent and the success rate is merely 13 percent as far as concerned Direct Taxes concerned.

Certain Contentious Issues which Lead to Court of Law

After detailed 'Studying' of income tax department's notices, assessments orders, orders of commissioner of income tax (Appeals), appellate tribunals, High Courts and Supreme Court, certain contentious issues which lead to protracted litigation at various levels of Judiciary. They are

I. Deemed dividend
II. Exemption under certain special provisions
III. Expenditure incurred in relation to income not included in total income
IV. Deduction of interest expenses
V. Disallowance on account of non-deduction of tax deduct at source
VI. Non-deductible expenses or payments
VII. Capital gains on income from sale of agricultural land
VIII. Accommodation entries
IX. Cash credits in the books of account
X. Minimum alternate tax
XI. Rejection of books of accounts
XII. Re-opening of assessment
XIII. Additions on account of low gross profit
XIV. Deduction in respect of profits and gains from industrial undertakings
XV. International taxation with respect to transfer pricing

SUGGESTIONS/RECOMMENDATIONS

Simple language

Mark Twain, an American writer, in one of his letter to a twelve-year- old boy, 'I notice you use plain, simple language, short words and brief sentences. That is the way to write English – it is the modern way and the best way, stick to it, don't let it fluff and flowers and verbosity creep in'. Law Reform Commission of Victoria righty said "The language of the law has been a source of concern to the community". The Central Government shall give a try to draft the proposed law on simple language which will save cost and valuable time of the Courts.

Retrospective Amendments

The Act, religiously, changes every year with additions and deletions brought through Finance Acts and Taxation Law (Amendment) Acts. As on 31.03.2017, the 1961 Act has been amended one hundred and eighteen (118) times. In addition to amendments, the Act also overloaded to accommodate court ruling, notifications, circulars which turned the Act into one of the most complex statutes on the Earth and difficult to interpret and understand. Recently, the Central Government has adopted even more fictitious practice of bringing 'Retrospective Amendments' to the Act. The Government has brought a number of retrospective amendments w.e.f. 01.04.1961 and this makes interpreting the tax law even more difficult and affected the foreign investors' confidence and much needed foreign direct investments.

General Suggestions

I. Proactive measures to income tax assesses to avoid possible litigation.
II. Restrictions to adjournments at various levels.
III. Income Tax Appellate Tribunal - Less leaves and longer working hours.
IV. Increase in Appellate Tribunal Benches and reach out to tier 2 and 3 cities.
V. Incentivizing the advance ruling mechanism.
VI. Adoption of best international practices prevailing in the UK, the USA and other developed economies among others.

Paper-14

CREATING HEALTHY COMPETITIVE ENVIRONMENT AMONG THE IMPORTANT STAKEHOLDERS OF JUDICIARY WITH THE USAGE OF MANAGEMNET INFORMATION SYSTEM

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BACKGROUND

Most of the Indian and multi-national companies are creating healthy competitive environment among the employees as well as with peer companies by using Management Information System (M.I.S.). The importance and significance of management information system is –

I. It can be used for decision making and for the coordination, control, analysis, and visualization of information in an organization, especially in the companies.
II. Management information system also plays a very imperative role in performance measurement and proper management of an organization.
III. The ultimate objective of usage of management information system is to increase the value and profits of the business.
IV. Management information systems can be used by any and every level of management.

Therefore, judicial system in India may also take huge advantage by this process. By the implementation of e-courts project, National Judicial Data Grid (N.J.D.G) and other relevant statistical data regarding pendency arrear, institution, disposal of cases, judicial system of India is getting very significant help to track and monitor the status of pendency, disposal, and institution.

Similarly State Court Management System (**S.C.M.S**) under National Court Management System (**N.C.M.S.**) may also come out with publishing of M.I.S. on the disposal, pendency, institution or filing of cases data on monthly and quarterly basis among the important stakeholders of judicial system in India in form of report or book or journal.

OBSERVATIONS

In Implementation of State Court Management System under National Court Management System (N.C.M.S.), each State of India under the guidance of Hon'ble High Courts may initiate to publish monthly disposal-pendency-institution or filing of cases data with graphical presentation for broader circulation among all the important stakeholders of district judiciary.

District administration, police administration and district bar members association(s) are utmost important in justice delivery system as well as in speedy disposal of cases. More and more participation, association and collaboration with district judiciary by these important stakeholders will result more and more speedy disposal of cases.

These 3 important stakeholders along with general public, litigants use to get all such type of information regarding pendency, disposal, institution etc. (Year wise, Month wise etc.) from the below mentioned technological system of Indian judiciary –

I. National Judicial Data Grid
II. E-court Mobile App
III. Kiosk machines installed in all district courts
IV. Case Information System (C.I.S.)
V. On the official website of each district court

If the stakeholders of each district judiciary get the below mentioned information in comprehensive and with special presentation in the form of report/ book/ Journal on monthly basis, then the stakeholders will get a handy information which will impact significantly in creating healthy competitive environment among the district. The report/ book/ journal may consist of the following information of each district.

I. Total number of evidences appeared and examined per month against pendency of cases
II. Evidences examined through video conferencing facility
III. Total number of charge sheets submitted per month in the courts against pendency of cases
IV. Total number of injury report or medical report submitted per month against pendency of cases
V. Monthly pendency disposal data with graphical representation
VI. Monthly institution and disposal data with graphical presentation
VII. Monthly category wise institution and disposal of cases
VIII. Adjournment of cases for unavailability of witnesses and advocates
IX. 5 Years and 10 Years old pending cases district wise

GENERAL ADVANTAGE OF HEALTHY COMPETITIVE ENVIRONMENT

Innovation: Competition leads to innovation. Healthy competition encourages change which will distinguish the company from others through technology, product alterations or by improving the customer experience.
Better Customer Service: Competition creates more customer oriented environment.
Understanding Core Market: Competition forces the companies to focus on their core audience.
Education: Different practices of an institution provide the other institution with valuable insight into the state of the market, and help what works and what does not.

SUGGESTIONS/RECOMMENDATIONS

Justice Delivery System will get better efficiency in speedy disposal of pending cases in association with District Administration, Police Administration and District Bar Members Association(s). Creating Healthy competitive environment by the use of Management Information System among important stakeholders will make the district judiciary more efficient in justice delivery system.

Paper-15

REDUCING THE PENDENCY IS THE NEED OF THE HOUR: A PRAGMATIC APPROACH IN SOLVING THE PROBLEM IN TODAY'S TIME WITH SPECIAL REFERENCE TO THE BIHAR

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BACKGROUND

"Justice Delayed is Justice Denied"

The Courts not only in India but globally are considered as a temple of justice and judicial officers are considered as a God of that temple. Today the burning problem is pendency which is increasing day by day. While addressing in the Conference on "National Initiative to Reduce Pendency and Delay in Judicial System", former Chief Justice of India Shri Deepak Mishra identified that "the concept of docket explosion is also a sign which signifies that the Indian citizenry reposes faith in the judicial system of the country and are approaching the courts in their quest for justice." According to Justice Mishra, it is only those cases which are not disposed of within the stipulated period of time or within their case life that ultimately turn into an arrear.

OBSERVATIONS

As on date in Bihar the total cases pendency is 25,32,228 (Twenty Five Lakhs Thirty Two Thousand Two hundred twenty eight) out of which 21,48,192 are Criminal Cases and 384036 are civil cases while total pendency in India is 29567540. (Two Crore ninety five Lakhs sixty seven thousand five hundred forty.) So the Pendency in Bihar is 8.57% of total pendency of the Country.

Table-1 Total Pendency Data as on 17th January 2019 in Bihar as per NJDG

Pending Cases	Civil	Criminal	Total
0 to 1 Years	77363	445311	522674
1 to 3 Years	102535	522908	625443
3 to 5 Years	69424	337653	407077
5 to 10 Years	78907	505471	584378
10 to 20 Years	40058	292861	332919
20 to 30 Years	11905	39221	51126
Above 30 Years	3844	4767	8611
Total	**384036**	**2148192**	**2532228**

After carefully scrutinizing the Table- 1, the fact which may surprise that the no. of civil cases pendency above 30 Years is 3844 and in criminal cases it is 4767. Now the question is after passing of 30 years who will be interested in getting the justice? 30 years is a quite long span of time whether it is a property dispute or it is a murder case. But here possibilities are also that the cases pending for want of some practical default which can be solved by careful scrutiny.

SUGGESTIONS/RECOMMENDATIONS

This research paper is an attempt to identify the various reasons of docket explosion in India and also to find out the practical solutions of the problem. The paper would also address how court managers can be helpful in reducing the pendency? The research paper would also be an attempt to handle Bihar (Case Flow Management in Subordinate Court) Rule 2008.

Paper-16

COURT MANAGERS IN INDIA – HOW FAR THEY HELPING THE INDIAN JUDICIAL SYSTEM?

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BACKGROUND

The purpose of this paper is to engage our attention to what is perhaps the most critical of necessary changes – that of enhancing the managerial competence of our judicial system. Krishna Iyer, J. with regard to reforms in judicial administration stated:

It is significant that while business management has invaded for the better of all institutions which mean business, only the judiciary, the legislature and government administration have shied away from modern management techniques. Judicial business management, like other management skills, must be developed if our backward methods and archaic practices, which currently inflict enormous inconveniences, waste of time and money, delay and discontent and unscientific techniques are to quit us. Indeed, a good deal of expeditious handling is easily possible if we run out justice system like any other sophisticated, socially responsible business. Now we drift, drag and dawdle. The Judiciary must try to live in the nineties of the twentieth century!

OBSERVATIONS

There is an old saying that, "actions speak louder than words" therefore observation can best be done by understanding the role of court managers in implementing the court management system in Indian judiciary.

I. The roles of court managers are diverse, but the core lies in improving the operation of courts by freeing judges from non-judicial duties and providing them with competent managerial infrastructures.
II. In consultation with the stakeholders of a court (including the Bar, ministerial staff, prosecutors, police, process serving agencies and court users), a court manager prepares and updates annually a 5-year court-wise Court Development Plan (CDP).
III. The court manager monitors the implementation of the CDP and report to superior authorities on progress statistics.
IV. The court manager ensure that statistics on all aspects of the functioning of the court are compiled and reported accurately and promptly in accordance with systems established by the Hon'ble High Court.
V. The court manager must ensure that court staff remain engaged, motivated and committed to the work.

VI. Judges use their own criteria to monitor, evaluate, and motivate courtroom and other staff. They have wide discretion in how they manage, and organize their courtroom and support staff. It is well known fact that judges have to maintain psychological distance between them and other internal and external agencies. In such circumstances the court manager can be effectively used for manifestation and conversion of thoughts into reality and thereby the judges can get the desired change even without getting directly involved into the affairs.

VII. The court managers must ensure that processes and procedures of the court (including for filing, scheduling, conduct of adjudication, access to information and documents and grievance redressal) are fully complied with the policies and standards established by the Hon'ble High Court for court management and that they safeguard quality, ensure efficiency and timeliness, and minimize costs to litigants and to the State and this in turn will also enhance the efficiency of the system.

VIII. The court managers need to ensure that the IT systems of the court comply with standards established by the Hon'ble High Court and are fully functional. Feed the proposed national arrears grid to be set up to monitor the disposal of cases in all the Courts, as and when it is set up.

IX. The court managers need to create mechanisms for ensuring that processes and procedures of the court are complied with the relevant statutes and the policies established by the Hon'ble High Court for case management.

X. The court managers need to ensure that the court meets standards established by the Hon'ble High Court on access to justice, legal aid and user friendliness.

XI. The court managers need to advice on effective document management, utilities management, infrastructure management and financial systems management in the Court.

XII. The court managers need to assist courts to establish the performance standards and create modalities for evaluation of compliance with standards and identify deficiencies.

SUGGESTIONS/RECOMMENDATIONS

Judges are ultimately responsible for effective court management. However, the complexity of the modern court requires the delegation of administration functions and responsibilities to the court managers subject to the supervision and direction of the presiding judge. Unless judge acknowledges the role of the court manager in enhancing judicial operation, the court manager will continue to face tremendous dis- affection from the court staff members. The administrative officers in the district courts being unsure about what will happen to them if they lose the trappings of the office to the court manager, will continue to escalate differences and conflicts between them and the court manager. At the end I also take the opportunity to suggest for high end court management programs so as to enhance the efficiency of the court managers in the core competencies of court administration as that of case flow management, strategic planning, resources budgeting & finance, human resource management and information technology management.

Paper-17

COURT ADMINISTRATION TO COURT MANAGEMENT: A PARADIGM SHIFT

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BACKGROUND

The foundation of Indian democracy is deep and robust, and much of the credit goes to the Indian judiciary which has assiduously defended, protected and enriched the fundamental- democratic principles and ethos as enshrined in the Indian Constitution. But paradoxically weakening of other democratic and societal institutions has put immense pressure and challenge to the judiciary in terms of piling of cases and snail pace of disposal, thereby inviting criticism and call for reforms.

The courts, especially the lower judiciary at the bottom of hierarchy pyramids is plagued with other critical issues of inefficiency, favoritism mismanagement and nepotism. The Thirteenth Finance Commission in its report suggested the creation of the posts of Court Managers to infuse professionalism in court administration - It's in fact a dichotomy of Court Management vis-a-vis Court Administration.

OBSERVATIONS

Judiciary has a pivotal role in imparting justice and the lower judiciary being at the bottom most comes across as the first interface of people with the judicial organ. The lower judiciary suffers from what may be called "Judicial Lag" This lag is not just of piling of undecided cases but also of infrastructure, facilities, human resource, institutional mechanisms, technology and also of temperament and outlook towards the concept of 'welfare state'.

Civil Court administration has very limited financial resources at its disposal to carry out developmental initiatives or projects at the local level. Most of the initiatives are being carried out centrally through the High Court or the State Government. In a way its good that centralized control are helpful in uniformity of developmental projects but this has also brought in lackadaisical approach towards reform at the local level. It has enough physical assets but for lack of professional management, those assets are lying unutilized or under-utilized.

Human Resource is the most important asset for any organization. Achievements or failures largely depend upon them, the way their knowledge, skills and experiences capitalized for the betterment of organization. One of the biggest impairment in the lower judiciary is of usual incompatibility between job skills requirements with the respective caliber of employees who are placed to carryout responsibility of that job. Court administration suffers from under-staffing; fewer people carrying

out the ever increasing works and assignments. Judicial officers are much less than the sanctioned strength, not to mention the ministerial staffs who are not only fewer in numbers but also lack modern job skills good enough for professional work. For ushering professionalism and reform, human resource development is the most crucial aspects. Capacity building of employees in tune with the changing time is indispensable. Job classification, positioning and performance appraisal is required.

Courts are recently being computerized; the e-court mission has largely being successful in ushering new beginning towards expeditious judicial work and transparency. But this project is also too centralized to any local flexibility to be accommodated in the project design.

Courts functioning are more procedure driven; unlike any other organization, in judiciary the laws, procedures, rulings and guidelines are dominant, paramount and vital.

SUGGESTIONS/ RECOMMENDATIONS

I. Judicial works have changed considerably in terms of scale, range and nature. So its functioning must also be tuned accordingly. It must reorient itself to embrace the tenets of management for the larger good of the people.
II. Court manager must be given responsibility and liberty to help district judge in redesigning the office/ administrative structure in tune with the progressive requirement. Court manager must get conducive atmosphere to put forth his/ her ideas into reality. Court manager should personify fairness, clarity, expeditiousness and professionalism. He should lead by example.
III. The present establishment rules and procedures in civil court place too much consideration to seniority as against meritocracy. This must change; job accomplishment with good performance must be rewarded with higher rank and pay-scale. Employee motivation, involvement and their empowerment ultimately benefits organization.
IV. With the advent of information technology and diversification of role and responsibilities, court administrative structure in terms of departments and sections and the hierarchical structure and nomenclature should adapt to the new environment. Some departments should recast into new departments with more meaningful nomenclatures.
V. The court management should try to strive for excellence in all spheres of work and should help create model court or model office for others to imitate and improve upon. Total quality management (TQM) concept is needed to be inculcated and work culture should be changed accordingly.
VI. In so far as judicial works are concerned, mandatory laid out procedures are inescapable, but what can be made more flexible within the ambit of law should be explored, assessed and implemented.
VII. The erstwhile court administration with its traditional structural formation has a new beginning in the form of court management with modern, participative and creative outlook.

Paper-18

INCLUSION OF TELE-CALLER IN THE JUDICIAL SYSTEM OF INDIA

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BACKGROUND

Business Process Outsourcing (BPO) and Knowledge Process Outsourcing (KPO) are contributing tremendously in business expansion, development, products & services information of many Government & Public Ltd. companies by using of tele-callers. This BPO industries' contribution to the economy of developing countries is very significant and important.

Banking, financial, information & technology, insurance, telecom, aviation, hospitality sectors, etc. all are using tele-caller for obtaining information, conveying information, products & services promoting, selling etc.

The concept, inclusion of tele-caller in the judicial system of India with proper usage of advanced information and communication technology will probably change and improve the general process of issuing summons and notices. This tele-caller may connect to all the parties/officials/non-officials associated directly/indirectly for appearance in the court for witness examination processes, which play a very significant role in justice delivery system.

In this innovative and technological world it would not be very tough to implement the concept of tele-caller in the judicial system of India with the help of advanced information and communication technology.

OBSERVATIONS

All courts of a district judiciary issue summons and notices to the witnesses to appear in courts for examination of witness.

The general process of issuing summons and notices is – process server engaged in all the district courts use to visit the address mentioned in the summons and notices to deliver to the parties. Accordingly parties use to come and appear in the courts for witness examination. But most of the times due to non-presence of witnesses on the scheduled dates of cases, courts are unable to proceed and as a result adjournment occurs in the scheduled cases on day to day basis.

Some data of the district judiciary – Cachar, Silchar, Assam is as follow:

Sl. No.	Details of Issuing Summons/Notices	Numbers (in Average)
1	Total no. of summons generated per day in the all the courts	150
2	Total no. of existing process server in district court	15
3	Total no. of summons sent for serve per day	100
4	Total no. of summons issued per day-per person	6-7
5	Served summons per day	70-80
6	Un-served summons per day	30-20
7	Total summons served in each National Lok Adalat	3000-4000
8	Total number of pending cases in this district	19825

Therefore, by analyzing the above data in comparison with total pendency of cases in this district judiciary, tele-caller will probably play very significant role by connecting all the parties and other direct/indirect stakeholders on day to day basis for appearance in the courts and in National Lok Adalat. This will probably increase the appearance rate per day in the courts by the witnesses which will definitely improve the efficiency in disposal of cases.

Bar members and all Govt. advocates play a very significant role in disposal of cases. They used to be very busy in their day to day activities and it is necessary to connect with them by tele-callers, just to remind (which will be very helpful for them to remember the scheduled cases) with a request to appear along with the witnesses.

Police officers, medical officers, other government, semi government, company officials etc. are also very significant in disposal of pending cases. Their witness examination process also plays very important role. The tele-callers may connect them through telephonic calls or through mail regarding their schedule dates of appearance in courts. This tele-caller may also give information regarding the video conferencing facilities to examine the witnesses.

SUGGESTIONS/RECOMMENDATIONS

Tele-caller in judiciary may function as below:

Obtaining and conveying the information regarding the summons/notices for attending the courts and to attend the National Lok Adalat for witness examination processes or for disposal via compromise is very important part of justice delivery system. Tele-caller will probably improve the efficiency of the general process of serving the summons/notices.

I. Initially as a pilot project the concept of tele-caller may be implemented centrally for each state. After that it may rolled out district wise.
II. For pre-information (at the time of generation of the summons and notices) and for post information (after the issuing of summons and notices)
III. With the help of advanced information and communication technology summons and notices may be served through mail, messaging in addition to normal process to all possible official and non-official witness parties.
IV. By outbound call each tele-caller may convey the following information to all the official and non-official witnesses

a. About the summons and notices issued
b. Whether they received or will be receiving within a specific time/period.
c. You are (all) requested to attend the court on scheduled date.
d. Alternate contact, mail id collection for future reference
e. Awareness about video conferencing facilities for witness examination
f. Connecting with all the government advocates about the scheduled cases
g. During National Lok Adalat large numbers of cases are taken up for disposal. At that time, if the tele-caller initiates mega push to connect all the parties, it will probably result in large number of appearances by the parties on National Lok Adalat.
h. Most importantly if all the district judiciary connects with the renowned NGOs and civil societies for regular awareness program on speedy disposal of cases by the Fast Track Courts and through Alternate Dispute Resolution Centre, National Lok Adalat etc. by installing canopy in their offices, this tele-caller may assist in connecting with the NGOs and civil societies.

Paper-19

BACKLOG OF CASES AND THE TRIAL PROCEDURE THROUGH PRIVATE PROSECUTION IN CRIMINAL CASES

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BACKGROUND

One of the main discussions on contemporary legal issues related to criminology in India is the right of a victim to carry out private prosecution. Since our constitution was made, we always talked about rights of accused as means of fair trial. But the victim who plays the key role in ensuring criminal justice is forgotten and neglected. Though the public prosecutor is entrusted with the duty of carrying out the prosecution for the victim, but often it is seen that the public prosecutors are not able to give justice to each and every case due to a variety of reasons. Sometimes the victims do appoint other private advocates "with prosecution", but their role in the criminal justice system is very limited as he is not allowed to participate in the trial beyond a certain point.

Crime is an act harmful not only to some individual or individuals but also to a community, society or the state ("a public wrong"). Such acts are forbidden and punishable by law. According to the common law jurist Blackstone, whenever a crime happens there are two victims: the actual person who is harmed or suffers a loss and the state whose law is violated. Yet, until three decades ago the victim was largely ignored, even forgotten some say. The victim was saddled with enforcement and prosecutorial responsibilities for a process that did not address their needs or their losses. The absence of a precise role for the victim, other than as a prosecution witness, is however inconsistent with the victim's actual importance to the criminal justice system.

OBSERVATIONS

In India, since our constitution was made, we always talked about rights of accused as means of fair trial. But the victim who plays the key role in ensuring criminal justice is forgotten and neglected. The victim's role has been reduced largely to one of reporting offences and giving evidence if so requested.

Under English law, private prosecution by victims of crime is allowed if sufficient evidence is available. In US, some of its states have permitted it subject to certain restrictions. In India also, private prosecution is permissible by the magistrate under Section 302 of Cr.P.C. but is restricted to courts of judicial magistrates only. The written law is silent as to the circumstances in which such an extraordinary power could be exercised by the Magistrate. The public prosecutors are not so accountable to the victims. Likewise in petty offences like theft, it is the victim himself who can more efficiently ensure his interest by using private investigation, if needed.

SUGGESTIONS

So, private prosecution of criminal cases by victims should be allowed in totality for increasing the rate of justice. Most of steps taken for a change in the judicial approach have a positive as well as a negative impact. The same holds true if this change is implemented in the criminal justice system of India. The positive change will definitely be that a large number of victims who, in the current scenario, are not able to get justice because of some loopholes, they will be able to try themselves to seek justice without having to worry about the financial and psychological pressures. The negative impact may be that there is a danger of the legal profession getting slightly hijacked by the common people. However, it does not appear that all of a sudden the importance of the advocate will be vanished. The criminal trial system of India needs to be reformed in this aspect to increase the faith of people in the judiciary in the long run. Also, this legislation should not aim at taking away the rights of the advocates in any manner. On the contrary, the object of this legislation should be the betterment of the position of the victims when compared to the present scenario.

Thus, if the positives and negatives of this step are weighed on a weighing scale, the positives largely outweigh the negatives. There is a tremendous potential of this step being a bit of a game changer in the history to the criminal justice system of India.

Paper-20

THE INTRODUCTION OF ALTERNATIVE DISPUTE RESOLUTION IN CRIMINAL JUSTICE SYSTEM OF INDIA.

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BACKGROUND

It is true to say that Indian criminal justice system is static and the laws which judicial system is handling are dynamic in nature. With growth of human civilization, the judicial system of each country has developed in their own ways. It is the time for Indian judicial system to incorporate new and dynamic ways to provide speedy justice to its citizen.

The development of each country can be seen by the development of socio-economic status of people and the development of judicial system of the country. With the state-based approach police and courts form fundamental structure which provide justice to common man, but despite so many efforts, these structures fail to provide justice in timely manner which leads delay and backlog of cases in Indian judiciary. The introduction of Alternative Dispute Resolution (ADR) in criminal justice system will introduce restorative justice which means the parties decide about specific offence and how to deal with that offence and implication in the future. United Nations has marked that the restorative justice will focus on offence and redressing the victim and engaging the community in resolution of the conflict.

The initial aim of criminal justice system and the interest of society lies in punishment of guilty but it has been changed in recent times and it now has new objective and aim which gives the importance to the rights of accused and victim. With this change, speedy justice has become the essence of criminal justice system. The nature and causes of delay in justice can range from absence of counsel, adjournments, absence of witness, delay in cross examination and delay of judgment.

The rapid increase in the law suits is because of many reasons. First reason can be increase in awareness of rights; second can be remedy which is provided by constitution and other statutes. The third reason is that there is no sufficient courts and judges. The aim of this paper is to introduce alternative dispute resolution in criminal justice system of India which ultimately can help in early disposal of cases in the existing conditions.

OBSERVATIONS

The aim of introduction of ADR technique to the criminal justice system is not to ouster the jurisdiction of court but to assist the court in reducing backlog. The benefits of using ADR technique in the system can be manifold like it can divert offenders (particularly young offenders)

away from court proceedings; allow community to actively participate; allow victim to actively participate.

This paper is an attempt to understand the ADR technique which can be used to help the criminal justice system by using examples of other countries which are using this technique and how it contributes in clearing the backlog of cases.

Paper-21

COURTS AND BACKLOG OF JUSTICE IN INDIA

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BACKGROUND

The Constitution of India provides for justice-social, economic and political. The judicial set up guarantees equality of law and equal protections of law. Ensuring equal access to justice a constitutional mandate not just in terms of a fundamental right, making access to justice a reality is one of the most essential features that our forefathers has embodied in the Constitution in the form of directive principles of state policy. The courts often indicate normative principles which institutions are bound by because the courts are not only to adjudicate disputes between parties. Denial of 'timely justice' amounts to denial of 'justice' itself. Two are integral to each other. Timely disposal of cases is essential for maintaining the rule of law and providing access to justice, which is a guaranteed fundamental right.

OBSERVATIONS

The total backlog touching 3.3 crore cases, as of Jan 01, 2019, 2.94 crore cases are pending in the subordinate courts, the pendency in the High Courts and Supreme Court (SC) is 43 lakh and 57,346 cases, respectively. There is no single or clear understanding of when a case should be counted as delayed. 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. This figure represents the accumulation of cases in the system due to the system's inability to dispose of as many cases as are being filed. Pendency can be defined as all cases instituted but not disposed of, regardless of when the case was instituted.

As per the data available on National Judicial Data Grid, 8515584 civil cases and 20974787 criminal cases are pending. In the civil cases pendency, hearing/argument wise pendency is 33.73%, appearance/service wise pendency is 24.2%, compliance/steps/stay wise pendency is 17.90% and pleading/issues/charges wise pendency is 12.13% while other factors wise pendency counts only 12.04%. In the criminal cases pendency, appearance/service wise pendency is 47.6%, evidence wise pendency is 25.94%, cognizance-issue process wise pendency is 10.22%, compliance/steps/stay wise pendency is 8.36% and pleading/issues/charges wise pendency is 7.67%.

In 2018, 12898071 cases were disposed of by subordinate judiciary; however, the case institution rate is much higher as 14325509 new cases were instituted in the year 2018. Thus, resulting in backlog of 142748 cases. As per the data available, 45.92% cases are pending due to 'presence' i.e. parties not brought on record or one or more accused not attending/absconding or record of the

case is sent to other court or missing or destroyed - full or in part. While, delay due to 'complex litigation or parties are taking more time to complete evidence' is only 23.14%. Delay due to 'awaiting records' is only 5.41%.

The higher judiciary is disposing of fewer cases than are being instituted. On the other hand, in the subordinate judicial service, the disposal rate is higher than the institution, implying that the backlog is being reduced.

The data available shows that the reason for delays are litigation explosion; accumulation of first appeal; inadequacy of staff attached to the higher and subordinate judiciary; inordinate concentration of work in the hands of some members of the Bar; lack of punctuality among judges and advocates; granting unnecessary adjournments; indiscriminate closure of courts and call of strikes by Bar; inadequacy of classification and granting of cases; inordinate delay in the supply of certified copies of documents due to lack of staff. Nevertheless, state of infrastructure is also responsible for backlog of cases. The subordinate judiciary works under severe deficiency of 5,018 court rooms, resulting in the judicial officers having to work under undesirable conditions. 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. Another factor is the judge-population ratio, based on the 2011 census and sanctioned strength of judges of the Supreme Court, the high Courts and numerous subordinate courts, the ratio stands at 19.66 judges per million (10 lakh) people. India needs a five-fold increase in judge strength in the country immediately and India should achieve a judge-population ratio which the U.S. commanded in 1981 i.e., 107 Judges per million.

RECOMMENDATIONS

The judicial system is severely backlogged, and is not being able to keep pace with current filings, thus exacerbating the problem of backlogs. The data indicates the need for taking urgent measures for five-fold increase in judges' strength in order to ensure timely justice. Special morning and evening courts be set up for dealing with specific type of cases. Judiciary needs adequate staff and infrastructure for the effective administration of justice. There is need of separate court administration department for every district court, whose primary task shall be the administration of courts; judges shall only be responsible for judicial functions while administrative department shall be responsible for other tasks which would reduce the burden on judges. A systemic perspective, encompassing all levels of the judicial hierarchy is needed for meaningful judicial reform. Money is the lever of everything, India should adopt the Chinese framework as China has a time bound program in each court. There is a target settlement percentage fixed and courts must follow the program to achieve the target. Like USA, we shall also establish court of appeals, which decides appeals from the district courts. In addition to recruiting new judges and efficient deployment of the additional judicial resources, raise the age of retirement of subordinate judges to 62 in order to meet the need for a large number of adequately trained judicial officers.

Paper-22

PENDENCY PATTERNS OF POCSO CASES: A STRATEGIC APPROACH FOR SPEEDY DISPOSAL

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BACKGROUND

Towering case files have been threatening the judicial conscience since time immemorial. This fright comes right when the 'Moral Epidemic', as the Indian nobel laureate and child activist Kailash Satyarthi coins, 'Child sexual abuse' cases, gets involved. The United Nations Convention on Rights of Child (CRC),The Dead Sea Declaration, The World Convention on Human Rights(Vienna Convention) to which India is a party wants the State to protect its children below the age of 18 from sexual abuse and exploitation. Articles 34, 36 and 37 of CRC assert this, and demands the respective governments to take adequate measures as per their existing national laws for speedy disposal of cases.

The need for an empirical study arises from the background of the recent passage of The Criminal (Amendment) Bill, 2018 in the Lok Sabha where sections 4, 5 and 6 of the Protection of Children against Sexual Offences Act (POCSO), 2012 is to be amended. Death penalty has been unanimously instituted against life imprisonment for offences of aggravated sexual assault committed by police officers, civil servants, officials in armed forces on a child making it gender neutral. This enthusiasm shown by the executive fails to get reflected from the judiciary which has a staggering figure of over 90,000 cases of alleged child sexual abuse pending before its courts at both the lower and higher hierarchies as on December 31st 2016 as per the report tabulated by the National Crime Records Bureau. This figure has seen a significant rise .The Union Ministry of Law estimates the requirement of 1023 new special fast track courts to dispose of the cases in 2018.

This brings into picture several queries where the whole procedure of investigation is questioned. Section 35 of POCSO Act demands the judiciary to clear off cases within a time span of 1year. Despite this mandate the 74.6% of the child sexual abuse cases await trial, as per the data available in 2017. It is in this position wherein the Criminal Law (Amendment) Act of 2018 further suggests the reduction of time, specifying 2 months for investigation and 2 months for trial, a seemingly utopian idea for speedy disposal of cases, which further burdens the judiciary which struggled to dispose of the cases within the 1 year timeframe.

The delay in court procedures is one among the main reasons for increasing the chances of victims turning hostile as it grants the accused enough time to coerce and further blackmail and pressurize the victim. The statements taken from the victims in compliance with section 174 of CrPc are changed while giving their recording statements/testimony in the magistrate court. This is one

among the main reasons for acquittal of the accused, especially if it is family member or relative. Such pressures mostly work in a large majority of cases as they arise from victims whose families are from the lower economic strata. The rate of acquittal in statistics would amount to 81.35% as of in 2015.

Court rules and procedures mainly focus on providing fullest protection to one's individual rights, hence the case proceedings may exceed the fixed time frame. But it is to be kept in mind that unlike cases of other nature, the trauma that a child abuse case brings in to the victim and society can only be subsided through the speediest disposal or else the delayed justice will turn out to be the most unjust treatment meted out.

QUOTABLE OBSERVATIONS

I. POCSO Act, 2012 Chapter VII mandates the setup of special courts for the trial and disposal of Child Sexual Abuse cases in each district. This mandate made in a specific provision as important as POCSO has not been abided by the states. For e.g. The State of Kerala has just 3 POCSO courts in its 3 districts Trivandrum, Kozhikode and Ernakulam.
II. Paucity of judges also have grave effects.
III. The reluctance of Governments to finance court construction due to lack of 'election benefits' hinders smooth disposal of cases.
IV. A remarkable observation made by a working advocate concerns the aloofness of newly appointed law officers, fresh graduates, who lack experience in the field and thereby prolong the judicial process.
V. Lack of efficient research assistance for the judges thereby slowing down the justice delivery.

Thus from the essence of the above said the research necessitates conducting an empirical study. A minimum of 50 cases will be studied and critically analyzed to draw the pendency patterns i.e., the time delay involved in each step like for filing an FIR, framing charge sheet, evidence, conviction. The adjournment patterns and the consequences of such delay, the actions taken, responsibility and accountability, the effectiveness of Case Flow Management System in speedy disposal of POCSO cases will be analyzed in detail. A diagrammatic representation of the same will be made for simple understanding.

Due to authenticity concerns the recommendations will be made after practically analyzing and critically evaluating the data collected through the case studies so that the conclusion drawn is informative and valid.

Paper-23

ALTERNATIVE DISPUTE RESOLUTION: AN EFFECTIVE TOOL FOR SPEEDY TRIAL

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It is well said in the Constitution of India that the state has to secure social, economic and political justice for all its citizens, making the constitutional mandate for speedy justice inescapable. Furthermore, on various occasions, the Supreme Court of India has made it clear that speedy trial is of the essence to criminal justice and there can be no doubt that the delay in the trial itself is the denial of justice. Moreover, to ensure the rule of law and justice certain basic steps are to be taken by the state such as the Alternative Dispute Resolution mechanism i.e., ADR mechanism which is a dire need of time to tackle the pendency of cases in criminal justice and even civil cases.

It is pertinent to note that the term ADR encompasses various practices which are not considered part of traditional criminal justice system such as mediation for victim or offender, family group conferencing, victim offender-panels, assistance programs for victims, community crime prevention programs, sentencing circles, ex-offender assistance, community service etc. The mechanism in itself is so flexible that it can take the shape of the specialist courts such as Drug Courts. Also, it is pertinent to note that the practices such as mediation in criminal cases are no longer a vague concept which uses a neutral third-party to bring about a voluntary resolution, and settlement. Further, it has been observed that the ADR mechanism is very much effective and if implemented properly it can support court reform, improve access to justice, and increase disputant's satisfaction with outcomes.

The purpose of this Research Paper is to analyze the effectiveness of ADR in the criminal justice system. Further, it will also argue that the speedy trial which is the essence of the criminal justice system and how ADR mechanism will help in resolving the pendency of cases in India. It will also comparatively analyze the International scenario vis-à-vis Indian scenario. Lastly, the paper will analyze the role of the judiciary and how the inclusion of additional Sections like S. 138, Negotiable Instruments Act and S. 498A in the Indian Penal Code and the other legislations requires new law mandating case management of criminal cases which will ensure the right to speedy trial under Article 21.

Paper-24

LEGAL JUSTICE EDUCATION: AN EFFICIENT TOOL TO FIGHT BACKLOG

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"The greatest drawback of the administration of justice in India today is delay… I am not aware of any country in the world where litigation goes on for as long a period as India" -**Nani Palkhiwala**

BACKGROUND

India is facing a serious backlog crisis in its judicial structure. Hon'ble Justice Madan Lokur, Former Judge, Supreme Court of India had once commented that evaluating pendency of cases would be an impolite stun. He went ahead to express that with crores of cases effectively pending transfer, it would take over 300 years to clear the excess and that as well if no new cases are enrolled amid that time.

As per the data available on the National Judicial Data Grid, a monitoring tool to identify, manage and reduce pendency of cases, the backlog reached alarming levels, touching 33 million currently. Of these 33 million cases, 27.8 million cases were pending in the subordinate courts. The backlog in 24 high courts across the country stood at 4.3 million. The Supreme Court had a pendency of over 57,000 cases. Of all the pending cases, 60% are more than two years old, while 40% are more than five year old.

These data present an alarming status of the current judicial system of our country. Backlog denies individual the right to speedy trial which is a facet of person's right to life and personal liberty as enshrined under article 21 of the Constitution. This shows a picture of mass fundamental rights violations which are often neglected.

OBSERVATIONS

Backlog of cases and court management is not a new topic in a public policy arena. Law reform is a vast and complex topic. It has been discussed, debated and decided on many occasions and at many platforms. There is a plethora of recommendations and reports gathering dust. The 85th report of the Parliamentary Standing Committee on Home Affairs on "Law's Delays; Arrears in courts" states some alarming figures. It came out with number of recommendations broadly on the issues like procedural deformities, vacancies, lack of infrastructure, case management system, alternate dispute resolution mechanism and reformation of substantive law. The Law Commission of India in its 154th Report made a number of recommendations for speedy disposal of criminal cases and Malimath Committee Report pretty much elaborated those recommendations. National

Commission to Review the Working of the Constitution (NCRWC) gave suggestion for better court management of court work, computerization of court system and increased settlement by Lok Adalats etc.

All these recommendations/reports can said to be broadly limited to procedural, substantive, ADR and Court Management aspects and what runs common among these reports is their ignorance to see the role of legal education and more importantly law schools as an option to help in reducing backlog of cases. The rich and diverse culture of law schools coupled with its wide range of activities in the field of mooting, research works, mediation, negotiation, counselling and legal aid clinics can serve as an efficient tool to drive home the said objectives envisaged by the aforementioned reports. A systematic framework of law schools (especially National Law Universities) can serve as a helping hand rather than being just another learning institution. This is precisely what we meant by when we talk about "Legal Justice Education". In this paper we will be exploring these new routes and analyzing the role of National Law Universities and other Law schools in reducing pendency.

SUGGESTIONS

In this paper we will be dealing with the role of law schools, law students and law graduates in reducing the pendency of cases by contributing at different strata of the judicial structure. In this paper we shall be broadly working on these three suggestions –

I. Nationalization of National Law Universities and increasing investment in legal education thereby providing a better and improved infrastructure for legal justice education. This should also include court management as a separate subject and establishment of research centres for the same.
II. Utilizing the structure of judicial training institutes not only as a tool for training of new legal officers but also in capacity building and enhancing skills of in-service judicial officers.
III. Training and appointing law students professionally as an intermediary, linking the 'higher law" enacted and emanating through the upper reaches (top) of the system with the law as applied at the local (bottom) level.

Paper-25

SUPPORT OF COURT MANAGERS IN THE INDIAN JUDICIAL FRAMEWORK

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BACKGROUND

This paper seeks to provide a high-level overview of the recent developments in law that has come up with the view of introducing court managers in the limelight. History has witnessed an inflation in the pendency of cases in courts which has urged the law makers to take this significant step of introducing the concept of court managers. There have been various reasons given by the Ministry of Law and Justice for the existing pendency. One of the main reasons is the shortage of judges which coupled with other subsidiary issues like, poor court management systems, strikes by lawyers, recurring adjournments and lack of knowledge about alternative methods of resolving disputes act as a catapult to the prevalent scenario.

After analyzing the situation, the Supreme Court of India found it imperative to hire professional court managers who ideally had an MBA degree to their credentials. Their main function being providing assistance to the courts. A bench consisting the then Chief Justice of India Dipak Mishra along with Justices A M Khanwilkar and D Y Chandrachud ordered that in every judicial district, there must be a Court Manager who would aid Principal District and Session Judges.

Before the said order, it had been observed that the judicial officers were over burdened with not just judicial proceedings but also other administrative work. And for them to be able to perform the judicial functions properly, it was desperately required that a separate administrate cadre be formed which would relax them in their administrative, managerial and financial capacities so that they have the time and opportunity to discharge their judicial duties.

OBSERVATIONS

To further implement the same in actuality the 13th Finance commission had set aside a huge amount of 300 crore rupees for the commissioning of Court managers for the span of 5 years, that is from 2010-2015. This was done to assist the judges in performing their administrative duties. However out of the money earmarked, only one third was released, out of which only one seventh has been utilized so far. The 13th Finance commission also defined a court manager as an officer who would be commissioned on a contractual basis.

The selection of such officers was to be made by the constitution of a committee by the Chief Justice which shall consist of one or more than one Judge(s) of the High Court, as it may deem fit.

National Court Management Systems (NCMS) has come up with a policy & action plan which had been released by the Chief Justice of India and was further prepared by "National Court Management Systems Committee" in Consultation with 'Advisory Committee'. It states that the recruitment policy must be molded in order to yield better results. According to this, there is an ardent need to establish 'Human Resource Department' at the High Courts. This specifically includes the need for court managers in the present scenario wherein the professional working of registries has been kept on the highest pedestal. This plan has put forth that it would help in identifying the weaknesses in the court management systems and recommend appropriate steps for correcting it.

The role of court managers in Gujarat High Court has been on the forefront. An eligible candidate must be acquainted with the use of vernacular language which in this case, would be Gujarati. Many responsibilities revolve around a court manager. Maintaining professional secrecy, identifying deficiencies and deviations, maintaining evaluation on a current basis of the compliances of the courts are a few responsibilities which can be listed. The selection process also consists of a preliminary examination and a viva-voce test.

Falling on similar lines, High Court of Himachal Pradesh and Allahabad also have set some guidelines in order to recruit court managers. The parent legislation to be followed is 'Court Manager (Appointment & Service Conditions) Rules, 2010' which most of the states have adopted. The responsibilities include to establish the standards applicable to the court and always improving the efficiency. The headquarters of the court managers as has been listed by the rules must be the High Court or the District Court.

RECOMMENDATIONS

The loopholes in the area of recruiting court managers is that low payroll and demand of high experience ranging many a year in the profile. For effectively enrolling applications in the High Courts and District Courts, some changes need to be introduced, so as to accustom the applicants in a healthy environment to work in. As has been discussed in the recruitment process of Allahabad, Gujrat and Punjab and Haryana High Courts, the payroll is comparatively less according to the experience demanded by the authorities. The current problem of low number of applications can be solved through this process and hence, high number of applications can be expected in the future. The role of court managers is indeed a crucial one in terms of unburdening the judicial officers from administrative work. The applicants have a lot to offer and hence, decent amount of facilities should be provided to them to cater to the same. One of the most innovative introductions to the schemes of Indian judiciary has been the introduction of court managers. Another suggestion in the recruitment of CM is that, it is advisable to assess the efficiency from the perspective of court managers as well as from their supervisors i.e. from the district judges. Dyadic nature of research would always be preferred in an ideal case. Such recommendations can yield better outcomes in the healthy functioning of the Indian judiciary.

Paper-26

EFFECTIVENESS OF ADR IN REDUCING PENDENCY

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There are many principles and beliefs which are not codified but are still followed in the judicial system of every country. One such principle is – **Justice Delayed is Justice Denied**. This principle is very important because it shows us how important a speedy justice system is for the citizens of a country. For example – A suit valued at Rs. 1 Cr. is filed. The dispute is related to a piece of land of a farmer. So if the suit is filed and a stay is ordered at any form of activity on that land then here only the farmer is at a loss not because his land is at stake but because his source of livelihood itself is at stake.

Our Constitution provides for an independent and efficient justice delivery system. Delay in disposal of cases, not only creates disillusionment amongst the litigants, but also undermines the capability of the system to impart justice in an efficient and effective manner. On account of such deficiencies in the system, huge arrears of cases have piled up in courts at all levels, and ways and means are required to be found out urgently, to bring them to a manageable limit, so as to sustain the faith of common man[18].

It is well conceded fact that the litigation system has often been criticized for delivering justice because of the shadow casted upon it by pendency of legal cases. Generally speaking, a lot of profit is made by the lawyers by deferring the process of justice, while the ones who need to seek justice do not seem to appreciate the hustle which consumes several of years and considerable amount of their income and it is no big surprise that many people still cannot afford the cost of litigation till the time justice is delivered.

Often, due to these reasons along with pendency of cases, litigation turns into a subject of disparagement. There is no transparent understanding of when a legal case should be counted as delayed. However, some reports have thrown light into the issue of arrear of cases and it is additional been proposed to introduce Alternative Dispute Resolution [Henceforth referred to as ADR] mechanisms which would help in adapting up to overdue debts in judicial system[19] ADR was seen as a very effective solution for two main reasons. Not only ADR provided speedy trial without the actual participation of courts but also it provided solutions which were acceptable to both the parties because they themselves would have agreed to it. These two reasons quickly promoted ADR to be one of the most effective measures in clearing the backlog of cases while delivering speedy justice. ADR consists of methods like negotiation, mediation, arbitration and conciliation all of which can be used to reach to/achieve an out-of-court settlement.

[18] http://www.supremecourtcases.com/index2.php?option=com_content&itemid=1&do_pdf=1&id=7008
[19] Report of Law Commission, Delays and Arrears in Trial Courts (Law Com No 77, 1978) paras 9.13-9.15

Hon'ble Shri Justice Kurian Joseph, Judge, Supreme Court of India, Chaired a session in a conference held for The National Initiative to Reduce Pendency and Delay in Judicial System. He flagged the issue of pendency through statistics and informed that there were 2.75 crore cases pending in various courts and 3.5 lakh cases pending in the tribunals which need immediate attention. He also mentioned that there are around 7 lakh matters pertaining to family courts that are pending. Among those, 50% of the cases are from the States of Kerala and Uttar Pradesh. He admitted that there is pendency in the High Courts. They are, on an average, working with the strength of 61% of Judges. With this background, he asserted the need for effective use of ADR mechanism. This proceeding of the conference gives us an insight in relation to the need and importance of ADR mechanism.

Of course, India is not the only country which is heavily burdened with pendency of cases but there are many developed countries which are still buffeted by arrears of court cases but the only option which was there to rescue from such imminent problem was introduction of ADR mechanisms which helped people negotiate their disputes in a more civilian way. ADR mechanisms for tackling the disputes has also been perceived by proficient personalities in judiciary too; Justice F.M. Ibrahim Kalifulla addressed his general concern towards backlog of cases and encouraged the judges and other personalities in judiciary field to adopt mediation and identify the potential issues at the threshold to avoid the hassle of litigation[20].

The techniques used in ADR are extra judicial in character and almost all sorts of matters can be resolved which have the capability of resolving my mutual agreement between the parties and over the years they have been showing very encouraging results in civil and family disputes[21]. It is a private, voluntary, informal non-binding and cost effective process, which provides an environment for constructive communication. The process provides the parties with an opportunity to negotiate, converse and explore options aided by a neutral third party, the mediator, to exhaustively determine if a settlement is possible. As a whole in mediation, the disputes are getting dissolved rather than getting resolved and focus on past and future relations between the parties.

ADR can be used at any time, even when the case is pending in the court of law and the solution reached with the help of ADR can put the parties at better place as compared to conventional way of solving disputes in the courts. Also, ADR programmes are flexible and not rigid and promote creative and realistic business resolution.

But it is also to be kept in mind that ADR cannot eradicate the conventional traditional ways of dispute resolution, still constitutional and criminal issues cannot be substituted by ADR mechanisms. So the need for better and more effective ADR systems in our countries are the need of the hour. We can also learn from other countries like Singapore and Austria to further our own developments.

[20] Mr. Justice F.M Ibrahim Kalifulla, "An Endeavour: Mandatory Application of Mediation by Civil Courts in Pending Litigation" (2013) 2 LW (JS) 37, 37-38.
[21] P. V. Rao Book on Alternative Dispute Resolution Volume 12, Page 25.

Paper-27

INTRODUCTION OF ALTERNATE DISPUTE RESOLUTION MECHANISM IN CRIMINAL CASES

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BACKGROUND

The concepts of reformative justice, restorative justice, plea bargaining and ADR mechanisms together pose a probable solution to the increasing number of cases in the account of backlog, which comes coupled with a lot of problems, all at the same time. It has been recently highlighted in the report of the NITI Aayog that the present status of backlog of cases in India across all courts sums up to the number of 2.7 crore in number and that it will take an approximate time period of 324 years to clear the present backlog, negating the continuous flow of cases. Even the numerous cases before the Supreme Court and numerous High Courts, have not failed to mention the hampering of the right to access of justice of the common people, which is one of the fundamental rights guaranteed by the Constitution.

The condition is specifically worse in the instance of criminal matters, where the non-bailable offences are being held and delayed by the concerned court for a period of years, thereby hampering the natural procedure of justice delivering. There have been numerous suggestions to propose the inclusion of ADR mechanism in this process of criminal proceedings, even so by the Law Commission of India in its 120th Report, which in turn led to the Criminal Law (Amendment) Act, 2005, to include the provision of plea bargaining. But the problem lies in the reluctance of the prosecutor to switch to such lenient mechanisms of criminal proceedings. The inclusion of the provision of mediation in criminal law is also being on the list of consideration lately, however, the same calls for a rather defined mechanism to support the said structure for the government and the institution of lawyers to rely on.

OBSERVATIONS

The study moves with a survey of the all available jurisdictions, which consider ADR for Criminal cases, or which has taken a possible initiative towards the same. Mediation and arbitration for criminal proceedings are increasingly being recognized in restorative justice jurisprudence. However, the study in this case has been able to reveal both the pros and cons of such a step to be taken by any country, may it be a common law country like India. On a broad basis, it can be concluded from the study conducted that the popularity of the ADR process is quite less especially in terms of criminal offences in common law jurisdictions. Only in selected nations like Nigeria, Canada, Australia, New Zealand, and United States of America has endorsed the concept of ADR being included in the criminal justice system.

The inclusion of such a step in criminal justice administration, especially in common law countries, is a rather difficult task, when they consider a criminal offence to be commotted against the society. Also it is hard to consider the same in accusatorial systems, where the victims have a marginal role to follow. In such a scenario, it is quite difficult to bring the offenders and victims to a singular table of moderation, especially in heinous crimes, where the victims more often get outrageous and emotionally stricken to not carry a normal conversation. All of these factors, has led to the marginalization of this process only to the extent of minor offences.

However, in spite of the problems, it needs to be considered that more than often, there exists a rough childhood or a want of daily necessities that bring common people to the position of criminals as rather avengers to the society, avenging the wrong that society has committed against them. However, the same consideration with respect to a psychological perspective cannot be hold true for more heinous crimes like terrorism, rapes, murders.

All of this coupled with the reluctance of lawyers to refer criminal cases to ADR mechanisms, because at times of their vested interests which in turn end up burdening the work load of the courts. The work load can quite efficiently reduced in terms of reducing the number of minor offences being referred to ADR mechanisms. Some of the benefits of this change can be summarized as follows:

I. The offender gets to know the real gravity of the offence he/she has committed by hearing the story of suffering from the victim, which can be detrimental in changing his/her thought process.
II. The offender can be taught about the moral developments required on his part, which in turn cannot be expected in a court of law. This happens over the course of discussion where the arbitrator has the freedom to fulfil his/her moral duty to mould the thought process of the criminal.
III. It is more likely that the offenders will view their punishment as justifiable because there is a scope of making the offender realize the wrong he/she has committed, which is not at all possible in the strict procedural setting of the court.

SUGGESTIONS/RECOMMENDATIONS

The recommendations can be summarized as follows:

I. A special form of ADR mechanism including mediation-arbitration can be adopted for acquiring the benefits of both the formal and informal procedures.
II. The cases to be referred should not be restricted to bailable petty offences, but should also extend to other forms of crimes, keeping the procedures for punishment intact.
III. The arbitrators are to be specially trained with psychological training for such methods.
IV. Monthly workshops to be conducted in lower criminal courts to encourage lawyers and judges to opt for this process.
V. A set of guidelines to be drawn up for this special 'arb-med' method in criminal cases, which can be merged with the present provision for plea bargaining but updated accordingly.

Paper-28

USE OF TECHNOLOGY IN COMBATING JUDICIAL PENDENCY

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Technology, more specifically information technology, has been a great enabler in almost every aspect of our lives today. It has completely changed the way we do and perceive things, the way we interact and communicate with the world. From cab service to food delivery, from banking to entertainment, information technology has revolutionized the way services are delivered across the world and India has been at the forefront of this technology revolution. The ambitious Digital India Programme of Government of India which aims to usher the "next generation of economic growth" by adoption of digital technologies has led to rapid digitization of plethora of government services resulting in increased efficiency in service delivery and consumer satisfaction. India's judicial system on the other hand is known for its slow pace and has been labelled as "notoriously inefficient" by World Bank. Huge backlog of the cases at all levels bears testimony to this fact. While adoption of information and communication technology (ICT) in other various state organs including judiciary started around the turn of the century, the impact of such measures in judicial system has been eclipsed by the huge backlog of cases. The measures such as eCourts project and National Judicial Data Grid have been remarkable efforts under the eCommittee of Supreme Court of India. Although such measures provide the visibility of pendency at macro level, the present paper explores the areas of implementation in the current set of ICT tools and court practices which could be instrumental in identifying the causes of the delay in cases at a finer level and consequently helping the policy makers in reducing such backlog. The paper is divided into three sections. First section traces evolutions of ICT implementation in the judiciary. The second section identifies some known factors such as procedural delays, reviews some processes and analyses their impact on backlog. The third section concludes by making some suggestions to gain more insights and quantifiable parameters for decision making on such factors and to streamline some of the processes.

Paper-29

REFORMS IN THE INDIAN JUDICIARY: ANALYSING AND REDUCING THE BACKLOG OF CASES

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BACKGROUND

Judiciary is one of the most significant pillar of a society, without which it would be almost impossible to consider a sustainable society. The Indian judiciary is perceived to play a massive role, as it holds the duty to serve the second largest populous nation of the world. As a matter of fact and in normal circumstances, population is directly proportional to the number of cases a court may have to adjudicate. The fact has been true for our nation because of the fact that people still believe in the Indian judiciary and hold utmost faith in it.

However, the Indian judiciary faces innumerable challenges in disposing of cases, causing enormous difficulty to the society. One of the greatest problems in this regard is the backlog of cases and the certain fact that the judiciary has not been able to tackle this crisis in the best possible manner. This is a crisis situation for every person in India, even those not in any way connected with the judiciary as it presents a potential risk to their rights and liabilities. The issue is not new and has posed a difficulty for the Indian society since decades. It is intricate to comprehend the genesis of such backlog but it dates back to the advent of judicial machinery in the nation, since then it has tend to rise. Although, attempts have been made, time and again, resulting in failure to a large extent.

OBSERVATIONS

It often comes as a jolt united with disbelief when the judiciary is observed in terms of numbers. They are superlatively high and at first instance look out to be exaggerated but indeed they are the true picture of the present state. District courts in India account for a voluminous pendency of 2,51,16,683 with a strength of 16,726 judges.[22] The High Courts have 42,45,775 cases pending

[22] National Judicial Data Grid. Retrieved on 29.01.2019 at https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard.

before them with the strength of 673 judges.[23] The Apex Court has the lowest number, 57,346 cases before it with a sanctioned strength of 31 and actual strength of 28.[24] This leads us to the conclusion that 2,94,19,804 as a whole, are pending in the courts of our nation.

The objective of the paper is to comprehend the situation of Indian Judiciary, in the present context. It attempts to study the backlog of cases (statistically) with illustrations, analyses them and discuss the causes of the same. The paper further focuses on Reduction of this backlog and the imminent measures which need to be adopted to do the same. If the same is not undertaken, undoubtedly the society shall continue to suffer. The paper concludes on a positive note on what should be done by the stakeholders so as to improve the present situation.

SUGGESTIONS

The paper upon analyzing all the factors that lead to the pendency and upon delving into the current statistics and illustrations focuses on the suggestions that shall be incorporated so as to reduce this crisis of pendency and backlog, as its elimination is unfeasible.

The paper discusses the fact that the focus shall be on increasing the strengths (numbers) of judges by incorporating various measures. The recommendation has been supported by the instant numbers. It as well concentrates on the need of commencement of a national central level examination for the induction of judicial officers rather than the present mode of selections.

The paper then recommends for the inception of night courts which pose a feasibility in our nation. Although it may look out to be a far stretched and a not so possible suggestion, however there remains room for the commencement of the same, especially looking at the current situation. It has as well been suggested to raise the current working hours of the judicial officers as 5 hours a day would not serve the purpose in any manner.

The paper then delves into the imminent need to cut down or shorten the vacation period of the courts, specially the higher ones. There have been a few petitions in the apex court to cut down the vacation period, however, the court has dismissed the same with not so sustainable arguments. If at all these arguments hold good, in such a case similar vacations shall as well be provided to all the government offices. Further, the paper discusses the need to have branches of the apex court so as to make it convenient for the people. It is certainly not feasible for them to come all the way to Supreme Court, if they reside in some other part of the nation. The paper has also looked into the current practices of condolences.

An in depth analysis of the above mentioned theme has been presented along with an organizational conclusion of the subject matter. The paper has sought to resort to different reliable sources, both online and offline and the Research is primarily based on various Law Commission reports, Government of India reports, surveys, cases, internet sources and the like. The paper is very unique in its field due to the suggestion of exclusive imminent measures which are barely ever discussed.

[23] National Judicial Data Grid. Retrieved on 30.01.2019 at http://njdg.ecourts.gov.in/hcnjdg_public/main.php.
[24] Supreme Court of India. Retrieved on 29.01.2019 at https://www.sci.gov.in/statistics.

Paper-30

MEDIATION IN MATRIMONIAL DISPUTES: REDUCING THE BURDEN ON THE JUDICIARY ALONG WITH HARMONISING SOCIETY

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BACKGROUND

For the purpose of this conference, it becomes pertinent to establish that mediation is gaining importance in the dispute-settlement process from the apex level of country's judicial system. Quite recently on 21.03.2017, the then Hon'ble Chief Justice of India had pointed the highly-complex and decades-old *Ram-janma-bhoomi* dispute for mediation.[25] Interestingly, at that point of time, the Hon'ble Supreme Court also offered to mediate between the parties to the dispute.

While this picture showed the willingness and activity on the part of the apex court of the country, there also exists a different side of the scenario. About 15 months ago, the then Chief Justice of India broke down before the Hon'ble Prime Minister at a joint conference of Chief Ministers and Chief Justices of High Courts. He was lamenting the dearth of judges in the country by their sheer ratio to the population.[26]

OBSERVATIONS

So, while the judiciary is not able to solve the pending cases and new disputes and complaints are knocking its door every day, it is now highly desirable that a more efficient system of alternative dispute resolution should be developed. More so, it is required to be implemented in the realm of criminal justice where prisons remain over-crowded and under-trials languish there, waiting for

[25] TNN, 'Supreme Court to Soon List Appeals Related to Babri Masjid-Ramjanambhoomi Land Dispute - Times of India'. The Times of India, 21 July 2017. Retrieved on 31.01.2019 at http://timesofindia.indiatimes.com/india/supreme-court-to-soon-list-appeals-related-to-babri-masjid-ramjanambhoomi-land-dispute/articleshow/59695173.cms.

[26] TNN & Agencies, 'An Overworked Chief Justice TS Thakur Breaks down in Front of PM Modi - Times of India' The Times of India, 24 April 2016. Retrieved on 31.01.2019 at http://timesofindia.indiatimes.com/india/An-overworked-Chief-Justice-TS-Thakur-breaks-down-in-front-of-PM-Modi/articleshow/51964732.cms.

their breath of 'freedom'. It is the personal opinion of researchers that if mediation is systematically introduced to the criminal justice system, it will lead to creation of jobs, reduction in judicial burden and burden of police authorities, monetary compensation or beneficial entitlement to the victim and most importantly, quick and durable justice. Most importantly, the ends of restorative justice may get better served.

At this juncture, it is important to note that provisions related to 'Plea Bargaining' were introduced into the Indian criminal justice system through an amendment to the Code of Criminal Procedure, 1973 in the year 2005. The researchers appreciate the evolution and applicability of these provisions keeping in mind the rehabilitative approach of modern criminal justice systems across the globe.

The concept of 'Plea Bargaining', that allows the accused to accept his guilt in exchange of a reduced punishment after taking the consent of the victim, was borrowed by the Indian criminal justice system from the US legal system. This was after 3 Law Commission of India reports, namely, 142nd Report on Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any Bargaining, 154th Report on The Code of Criminal Procedure, 1973 (Act No. 2 of 1974) (Vol. I) and 177th Report on Law Relating to Arrest as well as the Report of the Committee on Reforms of the Criminal Justice System, 2003, more commonly known as the Malimath Committee Report, recommended its introduction in the criminal procedure of the country. High pendency of cases and a motive to alleviate the suffering of under-trials were supposed to be the primary causes of suggestions made[27]. Chapter XXI-A of the Code of Criminal Procedure, 1973 contains provisions related to plea bargaining after the Criminal Law (Amendment) Act, 2005 was enacted.

Mediation is an alternative dispute resolution method which is usually informal in nature. It involves the parties to the dispute and a neutral party called the mediator. The process involves putting on table the issues of dispute between the parties and then reach an amicable solution, with the help of the neutral mediator, which is satisfactory to all parties and results in resolution of the disputes.

SUGGESTIONS/RECOMMENDATIONS

The researchers have put in great thought over ways that may help the Indian judicial system to amicably resolve criminal wrongs that arise out of matrimonial disputes and have pondered upon the concept of mediation and how that can be made applicable in this situation after a person has accepted their guilt of committing the offence and applied for 'plea bargaining', if it is permissible in that case. The research paper tries to establish how the concept of 'plea bargaining' can further facilitate mediation in criminal cases. This, of course, will again require legislative activity to grant sanction to alternate means of dispute resolution being made applicable to the law of crimes.

Previously also, the Honourable Supreme Court had suggested that matrimonial disputes should be resolved amicably taking a note of the fact that some of these offences are non-compoundable and after a point of time, the victim generally settles the dispute and applies to higher courts to quash the proceedings earlier initiated. In fact, as has been reflected in the cases of *Sai Krupa D. v/s. State*[28]and *Sneha Parikh v/s. Manit Kumar*[29], the Supreme Court Mediation Centre has played a proactive role in resolving matrimonial disputes.

[27] Rosie A. Joseph, 'Plea Bargaining: a Means to an End' (Manupatra). Retrieved on 31.01.2019 at http://www.manupatra.com/roundup/326/Articles/Plea bargaining.pdf.
[28] 2014 (4) RCR (Criminal) 736
[29] Transfer Petition (Civil) No. 373 of 2017 decided on 16.01.2018

Since matrimonial disputes[30] are generally sensitive and emotional, sessions with a mediator who has been well-trained in the required skill set can make sure that the process does not focus only on the rights and obligations, but also takes into consideration the emotional needs of parties and interests that have long-term impact[31].

The advantages of the process of plea-bargaining were highlighted in the recommendations given by the Law Commission. It was pointed out that through implementation of plea-bargaining, the procedure will take lesser time to get completed which will relieve the parties from unnecessary anxieties, bring more certainty to an uncertain outcome and prove economical. Also, it was noted that the model of plea-bargaining which was being suggested would bring less misery in the form of lesser punishment against what the accused might be getting in case of a conviction after a full trial. An innovative idea of bringing mediation into the realm of criminal justice system after an accused submits an application for plea bargaining has been suggested by the researchers, albeit it requires legislative sanctions and enactments.

Finally, it has been opined by the researchers that the interests of the victim should be at the heart of the criminal justice system. If it is considered appropriate that informal modes of dispute resolution like victim-offender mediation, family group conferencing, etc. are better aimed at resolving the physical, psychological, emotional or economical harm that has been caused to the victim, these practices must be readily adopted keeping in mind the restorative and rehabilitative approaches.

[30] The terms 'matrimonial dispute', 'domestic violence', 'marital violence', 'marital cruelty' and 'cruelty by husband or his relatives' have been interchangeably used throughout the research as per the suitability of the text and keeping in mind the aspect under study. This has been done because of two reasons – firstly, foreign jurisdictions do not treat an offence the way Sec. 498A is imbibed and treated in our jurisdiction and mostly stick to the term 'domestic violence' while referring to such cases and secondly, the nature of offences under all the headings are more or less similar; the broader phenomenon being 'violence or cruelty against women'

[31] Kritika Vohra, 'Mediating Matrimonial Disputes in India Trends from the Bangalore Mediation Centre' (2017) 52 Economic & Political Weekly. Retrieved on 31.01.2019 at http://www.epw.in/journal/2017/52/special-articles/mediating-matrimonial-disputes-india.html.

/2017/NM

File No. N-17/49/2017– NM
Government of India
Ministry of Law and Justice
Department of Justice
****

Jaisalmer House,
26-Mansingh Road, New Delhi – 11.
Dated : 21st July , 2017.

To,
The Registrar Generals,
All High Courts

Subject: Draft Model Bill on Court Management Authority Bill, 2017.

I am directed to enclosed a copy of the draft model bill on the above mentioned subject forwarded by Dr. Kalpeshkumar L. Gupta Assistant Professor - Research, Gujarat National Law University, Gandhinagar for appropriate consideration please.

Yours faithfully,

21/7

(C.K. Reejonia)
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O/C

COURT MANAGEMENT AUTHORITY BILL, 2017

Draft Prepared by

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JUNE 22, 2017

COURT MANAGEMENT AUTHORITY BILL, 2017

ARRANGEMENT OF SECTIONS

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	CHAPTER 1 PRELIMINARY
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2	Definitions
	CHAPTER 2 NATIONAL COURT MANAGEMENT AUTHORITY
3	Composition of National Court Management Authority
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5	Term of Office
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COURT MANAGEMENT AUTHORITY BILL, 2017

An act to provide for integrated court management system in Indian Judicial System and constitution of National Court Management Authority, Regional Court Management Authority, National Judicial Exam Commission and appointment of Court Managers.

CHAPTER 1

PRELIMINARY

Section 1 – Short title, extent & commencement

(1) This act may be called the Court Management Authority Act, 2017
(2) It extends to whole of India.
(3) This Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provisions.

Section 2 – Definitions

(a) "Appropriate Government"

Appropriate Government in case of
i. National Court Management Authority is Central Government or the Union Territory administration, the Central Government.
ii. Regional Court Management Authority is State Government.

(b) "Court Management"

Court Management means all non-judicial aspects which help to render efficient and effective justice delivery system which includes Case Management, Human Resource Management, Information Technology Management, Infrastructure Management.

(c) "Court Manager"

Court Manager means the Court Manager appointed under Section 11.

(d) "Case Management"

Case Management means all managerial aspect which deals with cases from its institution to implementation.

(e) "National Judicial Exam Commission"

National Judicial Exam Commission means the National Judicial Exam Commission constituted under Section 13.

(f) "National Court Management Authority"

National Court Management Authority means the National Court Management Authority constituted under Section 3

(g) "National Court Management Academy"

National Court Management Academy means the National Court Management Academy established under Section 15.

(h) "Regional Court Management Authority"

Regional Court Management Authority means the Regional Court Management Authority constituted under Section 7.

CHAPTER 2

NATIONAL COURT MANAGEMENT AUTHORITY

Section 3 – Constitution of National Court Management Authority

(1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the National Court Management Authority to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.
(2) National Court Management Authority will be having its office at New Delhi.
(3) The National Court Management Authority shall consists of –
    a) Retired Chief Justice of India, Supreme Court of India……Chairperson
    b) 2 Retired judges, Supreme Court of India, High Courts…..Member
    c) Under Secretary – Ministry of Law & Justice…..Member
    d) Under Secretary – Ministry of Human Resource & Development…..Member
    e) Under Secretary – Ministry of Information Technology…..Member

f) Under Secretary – Ministry of Statistics & Programme Implementation…..Member
g) Academician…..Member
h) Jurist…..Member

(4) Chairperson and members shall be appointed by the President on the recommendation of a committee consisting of
a) The Prime Minister, who shall be the Chairperson of the committee
b) The leader of opposition in the Lok Sabha; and
c) A Union Cabinet Minister to be nominated by the Prime Minister

Section 4 – Functions

Followings will be the functions of National Court Management Authority,

1. Overall Management of Indian Judicial System which includes Case Management, Human Resource Management, Information Technology Management, Infrastructure Management.
2. Coordinate all activities mentioned in sub-section (1) will Regional Court Management Authority
3. Conduct All India Judges Exam with the help of National Judicial Exam Commission
4. Conduct All India Bar Exam with the help of All India Bar Exam Division
5. Conduct Training, Research & Development activities with the help of National Court Management Academy
6. National Court Management Authority will assist National Legal Service Authority and State Legal Service Authority constituted under Legal Services Authority Act, 1987 in their legal aid activities mainly in information technology, information dissemination, connecting Pro Bono Lawyers and people who seek legal aid from legal services authority.
7. Any other functions as may be decided from time to time.

Section 5 – Term of office

(1) The Chairperson & Members shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for appointment

Provided that chairperson and members shall hold office as such after he has attained the age of sixty-five years.

(2) The Chairperson & Members shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

(3) The Chairperson & Members, at any time, by writing under his hand addressed to the President, resign from his office.

Section 6 – Removal

(1) The Chairperson & Members shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made it to by the President, has, on inquiry, reported that the Chairperson or Members, as the case may be, ought on such ground be removed.

(2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Chairperson or Member in respect of whom a reference has been made to the Supreme Court under Sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Chairperson or any member if the Chairperson or a Member, as the case may be, -

a. is adjudged an insolvent ;or
b. has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or
c. engages during his term of office in any paid employment outside the duties of his office; or
d. is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body ;

CHAPTER 3

REGIONAL COURT MANAGEMENT AUTHORITY

Section 7 – Constitution of Regional Court Management Authority

(1) The State Government shall, by notification in the Official Gazette, constitute a body to be known as the Regional Court Management Authority to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The headquarters of the Regional Court Management Authority shall be at such place in the State as the State Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State.

(3) The Regional Court Management Authority shall consists of –

a) Chief Justice, Supreme Court of India or High Court……Chairperson
b) 2 Retired judges, Supreme Court of India or High Courts…..Member
c) Secretary – Department of Law & Justice…..Member
d) Secretary – Department of Human Resource & Development…..Member
e) Secretary – Ministry of Information Technology…..Member
f) Academician…..Member
g) Jurist…..Member

(4) Chairperson and members shall be appointed by the Governor on the recommendation of a committee consisting of
a) The Chief Minister, who shall be the Chairperson of the committee;
b) The Leader of Opposition in the Legislative Assembly; and
c) A Cabinet Minister to be nominated by the Chief Minister

Section 8 – Functions

Followings will be the functions of Regional Court Management Authority,

1. Overall Management of Judicial System in the state which includes Case Management, Human Resource Management, Information Technology Management, Infrastructure Management.
2. Coordinate all activities mentioned National Court Management Authority
3. Conduct recruitment process for the appointment of court managers.
4. Conduct All India Judges Exam with the help of National Judicial Exam Commission
5. Conduct All India Bar Exam with the help of All India Bar Exam Division
6. Assist National Legal Service Authority and State Legal Service Authority constituted under Legal Services Authority Act, 1987 in their legal aid activities mainly in information technology, information dissemination, connecting Pro Bono Lawyers and people who seek legal aid from legal services authority.
7. Any other functions as may be decided from time to time.

Section 9 – Term of office

(1) The Chairperson & Members shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for appointment

Provided that chairperson and members shall hold office as such after he has attained the age of sixty-five years.

(2) The Chairperson & Members, shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

(3) The Chairperson & Members may, at any time, by writing under his hand addressed to the Governor, resign from his office.

Section 10 – Removal

(1) The Chairperson & Members shall be removed from his office only by order of the Governor on the ground of proved misbehaviour or incapacity after the High Court, on a reference made it to by the Governor, has, on inquiry, reported that the Chairperson or Members, as the case may be, ought on such ground be removed.
(2) The Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Chairperson or Member in respect of whom a reference has been made to the High Court under Sub-section (1) until the Governor has passed orders on receipt of the report of the High Court on such reference.
(3) Notwithstanding anything contained in sub-section (1), the Governor may by order remove from office the Chairperson or any member if the Chairperson or a Member, as the case may be, -
    a. is adjudged an insolvent ;or
    b. has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude; or
    c. engages during his term of office in any paid employment outside the duties of his office; or
    d. is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body ;

CHAPTER 4

COURT MANAGERS

Section 11 – Court Managers

(1) Appropriate Government will appoint court managers in judicial and quasi-judicial bodies at central or state level as the case may be as per the requirement from time to time.

Section 12 – Qualification of Court Managers

(1) Followings will be qualification for appointment of a Court Manager

a. Must hold a degree of MBA or advanced diploma in general management.
b. Must have 5 years' experience/training in system and process management, IT systems management, HR management or financial system management.
c. Excellent communication skills.
d. Excellent computer application skills.
e. Minimum age will be 28 years and maximum 45.
f. Preference will be given to the candidates who holds degree in law.

(2) After the selection of court manager, candidates will undergo one month training at National Court Management Academy, Bhopal established under Section 15.

CHAPTER 5

NATIONAL JUDICIAL EXAM COMMISSION

Section 13 – National Judicial Exam Commission

(1) The National Court Management Authority shall constitute a body to be known as the National Judicial Exam Commission conducting All India Judicial Exam for subordinate judiciary in India.
(2) National Judicial Exam Commission shall consists of –
    a. Retired judge Supreme Court…..Chairperson
    b. 2 Sitting judges Supreme Court of India.....Members
    c. 2 Retired judges High Court…..Members

Section 14 – Functions

(1) National Judicial Exam Commission will conduct the All India Judicial Exam
(2) Regional Court Management Authority will coordinate exam in their respective states under overall supervision of National Court Management Authority.

CHAPTER 6

NATIONAL COURT MANAGEMENT ACADEMY

Section 15 – National Court Management Academy

(1) National Court Management Academy will be having its office at National Judicial Academy, Bhopal

Section 16 – Functions

Functions of National Court Management Academy will be as follows

(1) Conducting training programmes for Court Managers in India.
(2) Conducting research & development activities on Court Management.
(3) Any other activities incidental to objectives of the act.

CHAPTER 7

MISCELLANEOUS

Section 17 – Monitoring & Reporting

(1) The National Court Management Authority or The Regional Court Management Authority as the case may be, shall as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this act during that year and forward a copy thereof to the appropriate government.
(2) The National Court Management Authority shall prepare a consolidated report after receiving details from the Regional Court Management Authority.

Section 18 – Power to make rules by appropriate government

(1) Appropriate Government may make rules, issue guidelines, notifications in the official gazette to carry out the provisions of this act.

Section 19 – Power to remove difficulties

(1) If any difficulty arises in giving effect to the provision of this Act, the Central Government may, by order published in the official gazette, make such provisions not inconsistent with the provisions of this act as appear to it to be necessary or expedient for removal of the difficulty;
(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

THE FIRST SCHEDULE

[*See* sections 5(2) and 9(2)]

Form of oath or affirmation to be made by the Chairperson/Members of National Court Management Authority/Regional Court Management Authority

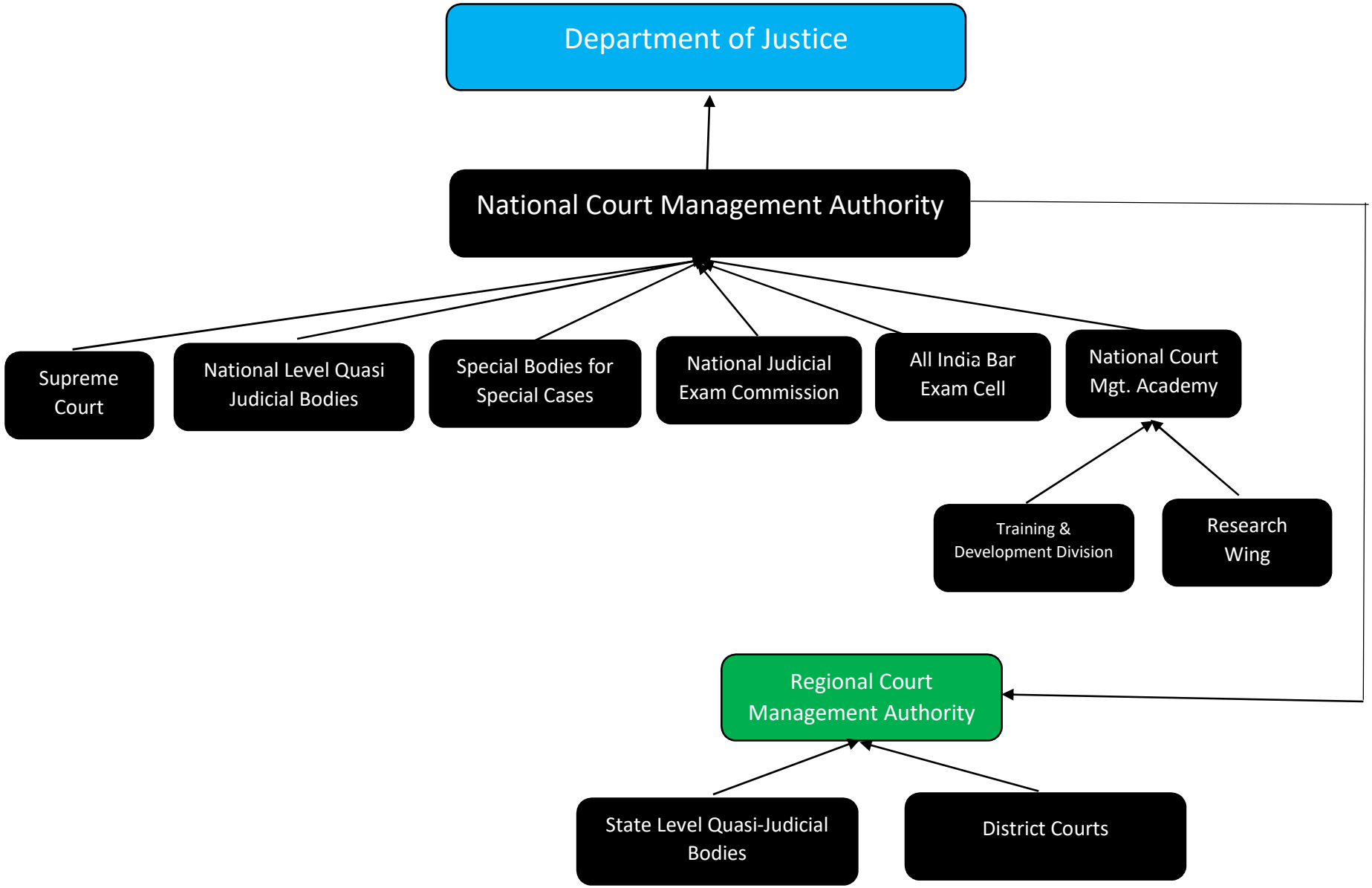
"I, ..., having been appointed Chairperson/Members

swear in the name of God

solemnly affirm

that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.".

Model of National Court Management Authority
Prepared by Dr. Kalpeshkumar L Gupta (Asst. Professor – Research)
kgupta@gnlu.ac.in



May 19, 2017

Model of National Court Management Authority
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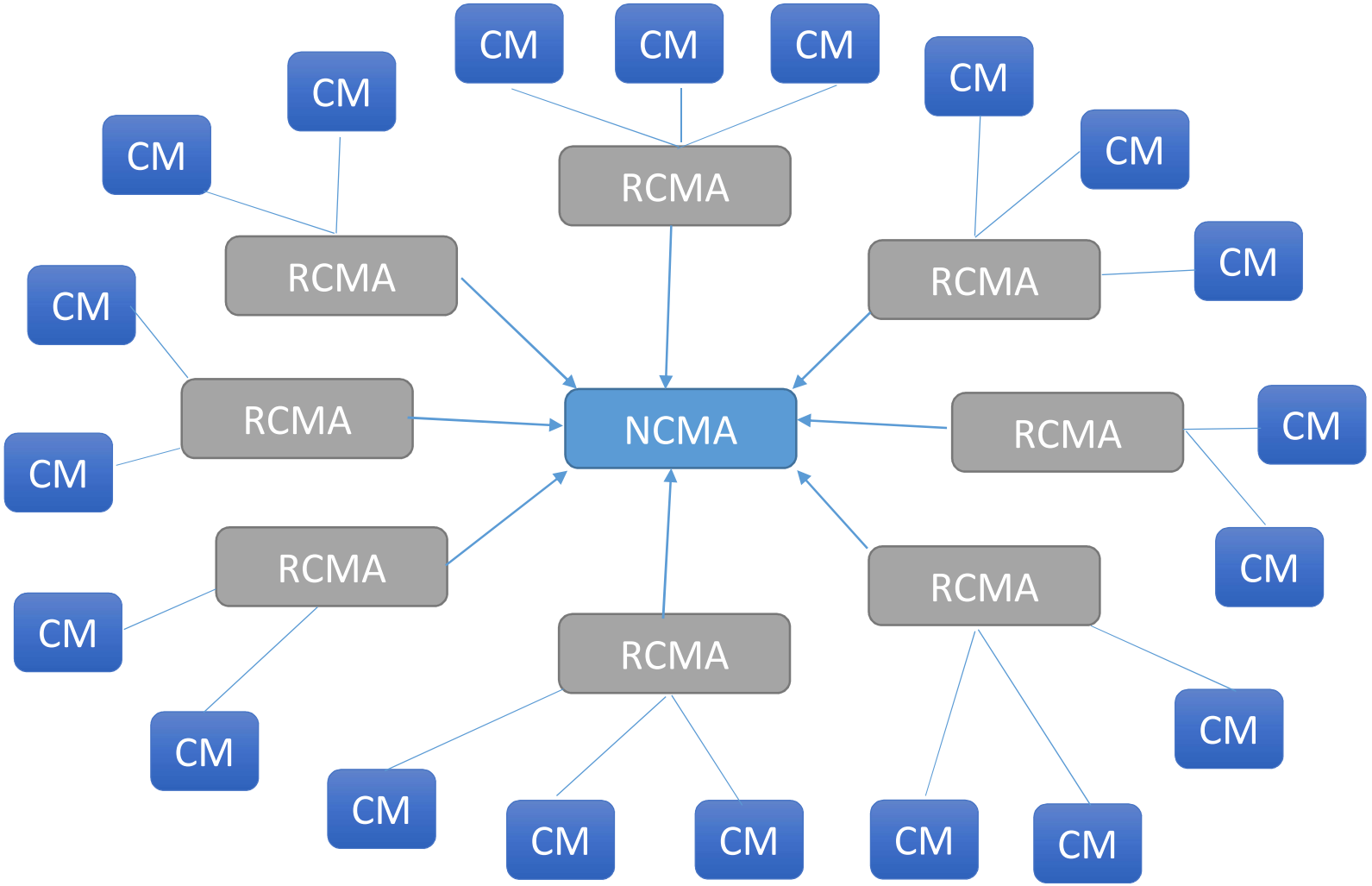
NCMA – NATIONAL COURT MANAGEMENT AUTHORITY
RCMA – REGIONAL COURT MANAGEMENT AUTHORITY
CM – COURT MANAGERS



May 19, 2017

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