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Role of subordinate judiciary in India in reducing back log of cases: A case study of district courts, Rupnagar, Punjab

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Abstract

The large number of pending cases in Indian courts has impaired the efficient working of judiciary and adversely affected the right of the citizen of speedy justice. Article 39A of the Indian Constitution imposes duty on the State to secure that the operation of the legal system promotes justice on the basis of equal opportunity and ensure that the same is not denied to any citizen by reason of poverty or other disabilities. Therefore our judicial system of is under an obligation to provide quick and inexpensive justice to the people. However, since the date of commencement of the constitution there is gradually increase in arrears of pending cases in various courts across the country. This paper aims to study the causes of the delay of cases in subordinate judiciary by way of empirical study conducted in District Court Complex, Rupnagar. This paper further discuss the challenges and difficulties faced by judiciary in reducing the backlog of cases and the efforts that have been carried out by the subordinate judiciary in reducing backlog of cases.

Keywords: Subordinate judiciary, backlog of cases, speedy trial, delay of cases, speedy justice

Introduction

Constitution of India provides for a three tier judicial systems in India which reflects the quest and aspiration of mankind for justice. The preamble of the Indian Constitution speaks of justice in all its forms: social, economic and political. Aggrieved Persons who have been deprived from their rights and suffered physically, mentally or economically, approach the Courts for redressal of their grievances. They approach the courts with great hope, as they believe that one day or the other they would get justice from the Courts^[1]. Further Article 39A of the Indian Constitution imposes duty on the State to secure that the operation of the legal system promotes justice on the basis of equal opportunity and ensure that the same is not denied to any citizen by reason of economic or other disabilities^[2]. Therefore, Our Justice Delivery System is under an obligation to deliver quick and inexpensive justice to people, without in any manner compromising the principles of fairness and equality^[3]. Right to speedy trial is an integral part of the principal of fair trial secured by the Indian Judiciary. The philosophy of Right to Speedy trial has grown and developed in over a period of many years^[4]. It is a concept which deals with disposal of cases as soon as possible so as to make the Judiciary more efficient and trustworthy^[5]. The main aim of Right to Speedy trial is to introduce Justice in the society. It also acts as a weapon to reinstate people's and society's faith in the judicial system. The right to a speedy trial was mentioned for the very first time the landmark document of English law- the Magna Carta. Article 21 declares that "no person shall be deprived of his life or personal liberty except according to the procedure laid by law"^[6].

¹ Justice Sobhag Mal Jain Memorial Lecture Delivered By Hon'ble Shri Y.K. Sabharwal, Chief Justice Of India On Delayed Justice, On Tuesday, The 25th July, 2006 (March 26, 2020, 11AM) https://highcourtchd.gov.in/sub_pages/left_menu/publish/articles/articles_pdf/Delayedjustice.pdf

² Constitution of India, Art. 39 A.

³ Justice Sobhag Mal Jain Memorial Lecture Delivered By Hon'ble Shri Y.K. Sabharwal, Chief Justice Of India On Delayed Justice, On Tuesday, The 25th July, 2006 (March 26, 2020, 11AM) https://highcourtchd.gov.in/sub_pages/left_menu/publish/articles/articles_pdf/Delayedjustice.pdf

⁴ Neeraj Tiwari, Fair trial vis-à-vis criminal justice administration: A critical study of Indian criminal justice system, Journal of Law and Conflict Resolution, Volume 2, Issue 4, 70 (2010).

⁵ Robert L. Misner, Speedy Trial: Federal and State Practice 111, 112 (2007).

⁶ Astha Sharma, Speedy Trial: Facilitation of Legal System, (April, 24, 2020, 1:35 PM)

<https://www.latestlaws.com/articles/speedy-trial-facilitation-of-legal-system-by-astha-sharma/>

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It is the human life that necessitates human rights. Being human and living in a civilized society organized with law and a system, it is imperative to ensure that every citizen lives a reasonable and dignified life. The very basic purpose of setting up the courts and a strong judicial system is to ensure justice to the victims of crimes^[7]. The constitution of India imposes considerable duty on the judicial system for providing legal mechanisms to deal with problem relating to imparting justice. The establishment of an independent judicial system, insertion of fundamental rights and directive principles of state policies further shows the dedication of our constitution makers in making the judicial system an effectual organ of state machinery on which people can show trust and hope of justice^[8]. While dealing with the bail petition in *Babu Singh v. State of UP*^[9], Justice Krishna Iyer observed- "Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial' whatever the ultimate decision. Speedy justice is a part of social justice since the community, as a whole, is concerned in the criminal being and finally punished within a reasonable time and the innocent being absolved from the inordinate suffering of criminal proceedings."

Time and again Indian courts interpreted Article 21 of the Indian constitution as to include right to get speedy justice for all^[10]. In *Hussainara Khatoun v. Home Secretary State of Bihar*^[11], Supreme Court held that "right to a speedy trial" is a fundamental right included in right to life and personal liberty enshrined in Article 21 of the Constitution. Comparing this right with American Constitution, Bhagwati, J., (as he then was) observed that, although, unlike the American Constitution speedy trial is not specifically mentioned as a fundamental right, it is implicit in the broad sweep and content of Article 21 of the Indian Constitution^[12].

Recently Supreme Court in *Moses Wilson v. Kasturba*^[13] expressed a deep concern that due to delay in disposing of cases people of this country started losing faith in judiciary. By referring to the media reports in some of the incidents of mob lynching and gunning down under trial prisoner outside Patna city civil court, and other incidents where people have taken law into their own hands, Supreme court observed, that this is because many people have started thinking that justice will not be done in the courts due to delay in court proceedings. This situation should be handled as soon as possible and the court directed concerned authorities to do the needful in the matter.

Emphasising the need of speedy trial Supreme Court again reinstated "that right to speedy trial is not only an important safeguard to prevent undue and oppressive incarceration, to minimise anxiety and concern accompanying the accusation and to limit the possibility of impairing the ability of an accused to defend himself but also there is a societal interest in providing a speedy trial."^[14] Taking into consideration

the Bhopal Gas Leak Tragedy^[15] in which many innocent people died Supreme Court observed that over 26 years had passed since the incident and still people were still suffering immensely in different spheres of life. Most people, even after 2 decades were involved in court cases trying to get compensation to restore normalcy to their lives. Another example of the delayed case would be the Babri Masjid case in which of the five title suits filed in the Ayodhya matter - the first was filed over sixty years ago by Gopal Singh Visharad. A Division Bench of 3 Judges of the Allahabad High Court pronounced the verdict on 24th September, 2010.

In this situation such as the ones mentioned above that shaken people's faith in the judicial system of the country and tempt them to take law into their own hands and commit acts that go against to society in many different ways. Therefore, speedy trial is not just important to retain people's faith but also to ensure peace and order in the society. Right to speedy trial is not just a fact or fiction. It is a constitutional reality that needs to be treated as such. It acts as a tool to reduce the increasing workload on the courts^[16].

Backlog of Cases at different Level:

According to official data available on National Judicial Data Grid (NJDG), a total of 32244875 cases are pending before various courts in India, of which 9028330 cases are civil in nature and 23216545 are criminal cases. Out of these cases 24064472 (74.63%) of total cases, 6612552 (73.24%) of civil cases and 17451920 (75.17%) of criminal cases are pending more than one year old. In State of Punjab a total number of 647386 are pending, of which 281293 cases are civil in nature and 366093 are criminal cases. As far as Rupnagar District is concerned there are total 17715 cases are pending, of which 9753 cases are civil in nature and 7962 are criminal cases. According to information provided by the National Judicial Data Grid there is total increase in backlog of cases up to 72.35% in last three years only I District Courts Rupnagar^[17]. The above data depicts a serious concern of backlog of cases. Due to this increasing backlog of pending cases litigants are greatly suffered as on one hand it enhanced the cost of the litigation and on other hand this inordinate delay often shakes the confidence of the ordinary litigants towards the judicial system as an effective institution of grievance redressed and grant of adequate relief.

Causes of Backlog of Cases

Various factors have been attributed for delay in disposal of cases in India. Some Important Cause of delay are following:

Shortage of judges

It has been considered a key reason for delay. The ratio of judges to population in India is abysmally low. The vacancies add to the cause list of existing courts thus further compounding the problem of delay. Frequent adjournment

⁷ Gordon DiGiacomo, Human Rights: Current Issues and Controversies 30-32 (2016).

⁸ Jatinder Kumar Das, Human Rights Law and Practice 53, 54 (2016).

⁹ AIR 1978 SCC (1) 579.

¹⁰ Yashomati Ghosh, Indian Judiciary: An Analysis of the Cyclic Syndrome of Delay, Arrears and Pendency, Asian Journal of Legal Education, Vol. 5, Issue 1, 22 (2017).

¹¹ AIR 1979 SC 1369.

¹² J.N. Pandey, Constitutional Law of India 289 (52nd ed. 2015).

¹³ AIR 2008 SC 379.

¹⁴ Ranjan Dwivedi vs C.B.I through the Director General, AIR 2012 SC 3217.

¹⁵ AIR 1989 SCC (2) 273.

¹⁶ Parteek Handa, Constitutional Right to Speedy Trial, (April, 17, 2020, 12.30 PM)

<http://www.legalservicesindia.com/article/571/Constitutional-Right-to-Speedy-Trial.html>.

¹⁷ https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard&state_code. (April 19, 2020, 1.30 PM).

over a long spans due to unfilled vacancies are irritating, thus prompting people to pay more money.

Lack of Judicial Alertness

The procedure prescribed in Civil Procedure Code, Criminal Procedure Code and in Law of Evidence confers vast powers on the judges to conduct trial fearlessly. However, usually they are reluctant to sit tight over the proceedings, especially in matters of adjournment. Many times this procedure is misused by the advocates for their personal and professional motives which results in pendency of cases for long time ^[18].

Inadequate Infrastructure

The another matter of concern which results in backlog of cases in courts is inadequate infrastructure of judiciary. Courts are inadequate in number for the proper administration of justice ^[19]. Speaking at the inaugural function of new state-of-art block of the Delhi High Court on 25th July, 2018, Chief Justice of India (CJI) Dipak Mishra said that “most of the subordinate courts in India lack basic infrastructure for judges, court staff, and litigants, which ends up contributing to arrears and backlog of cases” ^[20].

Abuse of Public Interest Litigation

The Power of the Supreme Court for the protection of the constitutional rights of the Citizens are of the widest amplitude which may involve taking of positive action with a view to securing enforcement of fundamental rights ^[21]. However, under the guise of PIL, many petitioners file frivolous PIL's for their personal and political motives which results in delay in deciding many important cases ^[22]. With more awareness of rights the number of new cases filed every year has outpaced the number of disposed of cases ^[23].

Lethargic Attitude of the Advocates

Time and again the courts in India have shown great concern over the lethargic attitude of lawyers especially in subordinate courts. In *Swaran Singh v. State of Punjab*, it has been observed by the Supreme Court that, “It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only that a witness is threatened, he is abducted, he is thrashed, he is done away with, or even bribed. There is no protection for him. By giving adjournments in a matter without any valid cause a court unwittingly becomes party to miscarriage of justice. A witness is then not treated with respect in the Court. He is pushed out from the crowded courtroom by the peon. He waits for the whole day and then he finds that the matter is adjourned” ^[24].

¹⁸ S.K. Agarwal, *Towards Improving Governance* 66 (2008).

¹⁹ Harish Narasappa, *Rule of Law in India: A Quest for Reason* 170 (2018).

²⁰ Soibam Rocky Singh, *Backlog of Cases Due to Lack of Judicial Infrastructure*, (April 20, 2020, 11.30 AM) <https://www.thehindu.com/news/cities/Delhi/backlog-of-cases-due-to-lack-of-judicial-infrastructure/article24515317.ece>

²¹ J.N. Pandey, *Constitutional Law of India*, 419 (54th ed. 2016).

²² Pranav Tripathi and Tripti Tripathi, *Delay Defeats Justice: Issue of Large Pendency of Cases In India Courts*, *International Journal of Legal Developments And Allied Issues*, Volume 2, Issue 6, 72 (2016).

²³ Roshni Sinha, *Examining pendency of cases in the Judiciary*. (April 19, 2020, 7.30 PM) <https://www.prsindia.org/theprsblog/examining-pendency-cases-judiciary>.

²⁴ AIR 2000 SC 2017

Frequent Transfer of Judges

To some extent frequent transfer of judges from one court to another also contributed to problem pendency of cases. When a judge is transfer he or she would take some time to settle in the new working environment which results in adjournment of case.

Empirical Study conducted in District Courts Rupnagar Research Hypothesis

Delay in disposal of cases in subordinate judiciary raises a serious question of the working of courts. This paper is carried out to investigate the research problem of huge backlog of cases in subordinate judiciary and in particular to test the hypothesis:

1. Backlog of cases in subordinate judiciary is a big hurdle in administration of justice.
2. Subordinate judiciary is successful in their efforts to reduce the backlog of cases.

Research Objectives

The study aims at examining and analysing the main causes in delay of disposal of cases in subordinate judiciary. In particular it examines:

1. To identify the main reasons for the backlog of cases in subordinate judiciary.
2. To analyse the role of subordinate courts to reduce the backlog of cases.
3. To identify the remedial measures that can be helpful in reducing the backlog of cases.

Research Methodology

The above discussion raises the serious concern of backlog of cases in subordinate judiciary. As this problem seems to be more practical in nature, for this purpose an empirical study was conducted at District Court Complex, Rupnagar, Punjab to evaluate the causes of delay in disposal of cases in subordinate judiciary.

Sample Size

The universe of the empirical study is advocates and litigants. For this purpose a questionnaire was given to 100 respondents. This sample size was divided into two groups advocates and litigants of 50 each.

Data Analysis

Feedback from advocates and litigants gathered from District Court Complex, Rupnagar is discussed and analysed in different scenarios, based on the various assessment parameters selected for the study. 100 respondents from District Courts Rupnagar (Advocates and Litigants 50 each) are chosen at random and filled the questionnaires. The feedback provided by the respondents on different parameters based on their practical experience is depicted in the shape of line graphs.

Area of Empirical test

The jurisdictional area for the purpose of ascertaining statistical data by way of empirical study is confined to the District Court Complex, Rupnagar, Punjab. The objective for confining the study to the District Court Complex, Rupnagar as a basis is that for a deeper in depth analysis of the problem it is always better to confine to a relatively smaller area as a basis. If the area is larger, then the conclusions of the study tend to be generalised in nature.

Moreover, a researcher is more firmly rooted when he has to conduct study among his own people, with whom he has affinity and with whom he can take the liberty of talking in a very informal manner.

Main reasons for Backlog of Cases

It was observed during the research (Figure 1.) that 42 percent advocates of District Courts Rupnagar were of the opinion That shortage of judges is the reason of Backlog of cases in subordinate judiciary. 40 percent were of the view that lethargic attitude of the advocates in subordinate courts is the main reason for backlog of cases. It was also observed that 30 percent of advocates had opted for technical issues and 30 percent had opted for lack of judicial alertness as major reason for huge backlog of cases. However 14 percent and 16 percent advocates were of the view that frequent transfer of Judges and inadequate infrastructure respectively are the reason for backlog of cases. On the other hand 76 percent litigants were of the opinion that shortage of judges is the main reason of Backlog of cases in subordinate judiciary. 36 percent were of the view that lethargic attitude of the advocates in subordinate courts is the main reason for backlog of cases. It was also observed that 18 percent of advocates had opted for technical Issues and 30 percent had opted for lack of judicial alertness as major reason for huge backlog of cases. However 26 percent and 18 percent advocates were of the view that frequent transfer of Judges and inadequate infrastructure respectively are the reason for backlog of cases

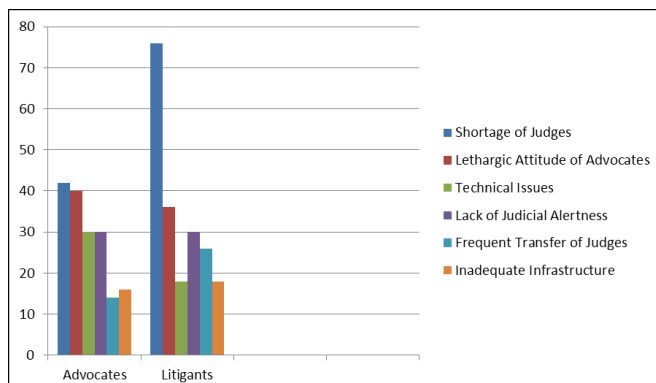


Fig 1: Reasons for Backlog of Cases

Measures for reducing the backlog of cases

The empirical research (Fig. 2) done by researcher depicts that 48 percent advocates of District Courts Rupnagar were suggested for the setting up more fast track courts for reducing the backlog of cases. 42 percent advocates were in favour of disposal of cases through Alternate Dispute Resolution/mediation, lok adalats, arbitration and conciliation. 20 percent advocates were in favour of setting up of e-courts and 38 percent were in favour of periodic monitoring by High Court as a measure to reduce the arrears of cases. However only 14 percent advocates suggested for the creation of special courts for reducing the backlog of cases. Whereas 70 percent litigants were suggested for the setting up more fast track courts for reducing the backlog of cases. 40 percent litigants were in favour of disposal of cases through Alternate Dispute resolution/mediation, lok adalats, arbitration and conciliation. 22 percent litigants were in favour of setting up of e-courts and 22 percent were

in favour of periodic monitoring by High Court as a measure to reduce the arrears of cases. However, only 14 percent litigants suggested for the creation of special courts for reducing the backlog of cases.

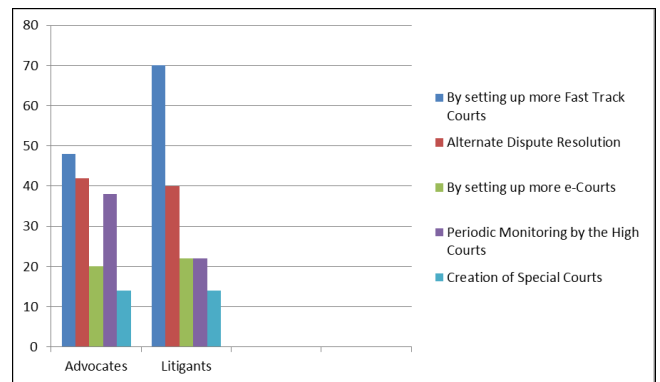


Fig 2: Measures for Reducing the Backlog of Cases

Efforts taken by the subordinate Courts to reduce the back log of cases

During empirical research advocates were asked about the efforts that have been taken by the subordinate Courts to reduce the back log of cases. (Fig. 3) 60 percent of advocates were of the opinion that compromise in petty cases is most successful effort that have been taken by the subordinate judiciary in reducing the back log of cases. 34 percent were of the view that promotion of Alternate Dispute Resolution Mechanism by the subordinate judiciary is also helpful in reducing the arrears of cases. It was also observed that 30 percent of advocates recognised that filling up of vacancies in subordinate judiciary in recent year is also results in reducing the pending list of cases and 26 percent were of the view that setting up fast track courts in special matters is also proved to be helpful in speedy disposal of cases. However only 5 percent were of the view that introduction of e-Courts have been results in reducing the backlog of cases. On the Other hand, 36 percent of litigants were voted in favour of compromise in petty cases, 44 percent of litigants were voted in favour of Alternate Dispute Resolution Mechanism, 22 percent litigants were in favour of filling up of vacancies in subordinate judiciary, 24 percent litigants were opined that setting up of fast track courts and only 5 percent litigants expressed the opinion that introduction of e-Courts are the efforts that have been taken by the subordinate courts to reduce the back log of cases.

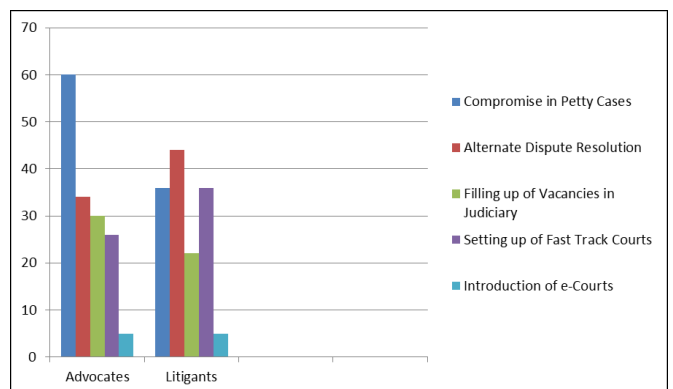


Fig 3: Efforts taken for Reducing the Back Log of Cases

How far subordinate judiciary is successful in reducing the back log of cases

During research it was found that (fig. 4) 70 percent advocates were of the view that subordinate judiciary is successful in their efforts to reduce the backlog of cases. Whereas 50 percent litigants were of the opinion that subordinate judiciary is successful in reducing the backlog of cases.

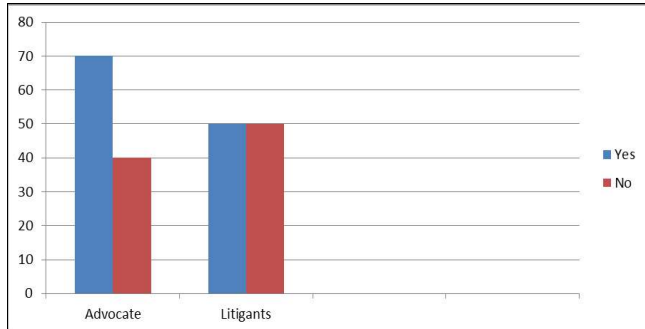


Fig 4: Success Ratio

Outcomes of Empirical Research

1. It was found during the research that shortage of judges in subordinate judiciary and lethargic attitude of advocates are the main reasons for back log of cases. However other factors technicalities of subject matter, lack of judicial alertness and frequent transfer of judges also results in back log of cases up to some extent.
2. Empirical research depicts that establishment of fast track courts and settlements of disputes through alternate dispute resolution mechanism are proved to be successful initiatives for reducing the backlog of cases. Besides these periodic monitoring by the High Court's upon the subordinate courts and setting up of e-courts also helps in speedy disposal of cases.
3. The research shows that till date subordinate judiciary has been taking various steps to reduce the backlog of cases. Out of which motivating the advocates and litigants for compromise in petty cases and promoting the disposal of cases through alternative dispute resolution mechanism are the main successful initiatives to reduce the back log of cases. In addition to this regularly filing of vacancies in subordinate judiciary in recent years and establishment of more fast track courts also contributed which end in reducing the backlog of cases to some extent.
4. The research also depicts that subordinate judiciary has succeeded in their efforts to reduce the backlog of cases to large extent.

Conclusion and Suggestions

It can be concluded from the above study that backlog of cases may be a big hurdle in the administration of justice as 'justice delayed is justice denied'. However, the finding of the above study depicts that as far as subordinate judiciary is concerned there has been a gradual decrease in back log of cases. Obviously the credit goes to the judges by whose efforts this change is now visible. However, one more thing must be kept in mind while deciding cases that 'justice hurried is justice buried' is equally true in this regard. Although the Constitution of India impose duty on the government and judges to provide speedy and inexpensive

justice to the citizens, it is possible only by the joint sincere efforts of all the stakeholders i.e. advocate, litigants, court officials and judges.

Suggestions

The researcher with the help of empirical study has analysed the main causes of backlog of cases. The researcher found that there are many reason for the backlog of cases in subordinate judiciary. The researcher has identified some basic factors which hamper the effective administration of justice. On the basis of the above study researcher has made some suggestions. If these suggestions are considered, the researcher is sure that it will help in reducing the back log of cases. These are as follow:

1. For reducing the backlog of cases time bound cases should not be adjourned without any effective hearing. Cases involving petty issues should be sent to mediation or lok adalat.
2. There should be more appointment of Judges in subordinate courts so that realistic ratio can be attained for such a large population. Proper training should be provided to the advocates, court staff and judges for speedy disposal of pending cases in time bound manner.
3. Apart from legal fraternity, other government officials who are part of administration of justice should be made accountable to act in time bound manner. In case of official witnesses like, police, doctors, inspectors, video conferencing should be promoted.
4. Judicial official should have some minimum experience as an advocate before appointment. Newly appointed judicial officers should not be assigned complicated cases till they have 5 years' experience as judicial officer.
5. Judges are required to strictly follow Civil Procedure Code, Criminal Procedure Code, and Evidence Act. Judicial discretion for adjournment of cases on frivolous grounds should be minimising.
6. Interim applications should be decided expeditiously so as to not cause delay in case.
7. More fast track special courts to be set up for special cases like, matrimonial issues, sexual offences, drug cases and service matters etc.
8. During research it was found that Summary trials are not disposed off as per the Limitation Act. So it is suggested that these trials should be disposed strictly as per Limitation Act.
9. Strict rules should be made and implemented for providing penalties on the advocates or litigants if they cause delay or get adjournment for their personal or vested interests.
10. Special courts with senior or retired judges should be established to dispose of cases pending for more than 10 years.

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