CHAPTER VI
DELAY IN UNDERTRIALS’ CASES: AN EMPIRICAL STUDY
OF PUNJAB DISTRICT COURTS

6.1 Introduction

The functionaries of the Criminal Justice like police, investigating agency, prosecution agency, defense lawyers and prison department of the Punjab as well as the judiciary contribute in diverse ways for the lingering trials of undertrials. Prison population over the years reveals a continuous gradation in the population of undertrials in the Punjab that has been evaluated in Chapter V of the present study. Reasons of delay in trial process of undertrials in Punjab courts have been defined and analyzed in the present chapter. A comprehensive study has been done through consolidated figures, collected from the selected district courts under study i.e. Amritsar, Gurdaspur, Jalandhar and Kapurthala. Every facet pertaining to undertrials’ conviction, release, acquittal, adjournments and pendency from the Appellate and Subordinate jurisdiction of the said four districts has been discussed. Institution, disposal and pendency relating civil and criminal cases have also been discussed from the selected courts. Data has been collected an quarterly basis of a year i.e. from April 1 to June 31(mid of the year) and October 1 to December 31 (end of the year) with the purpose of making comparative analysis of institution, disposal and pendency of Civil, Criminal and Undertrials’ cases among selected four courts. Simple random sampling method has been used to draw the samples.

For the purpose of this study, the collection of primary sources of information has been gathered through extensive field survey. Primary data has been collected directly from the selected district four courts. Questionnaires, Schedules, Observations, and Interview methods have been used for the said purpose. For accomplishing this onerous task, five set of questionnaires have been formulated;

- Police
- Judges
- Public Prosecutors

(Appendix I)
(Appendix II)
(Appendix III)
Lawyers (Annexure IV)

Prison Officials (Annexure V)

that have been attached at the end of the present study. Annexure V relating the prison staff of jails under study has been construed in the previous Chapter V. Interviews and schedules have been held by the researcher with the investigating officers, judicial officers, prosecution agency and the lawyers as per annexure I, II, III, IV and V from the time period of May 2011 to December 2014. Observations have been made from the year 2011 to 2014 by attending the court proceedings, visiting the jails and the problems and resentment of all the concerned functionaries of criminal justice system have been discussed in this Chapter. For the above said purpose;

1) *Four* investigating officers cum police officers of Station House Officers (SHOs) of different Police Stations have been contacted and interviewed as per annexure I. As the officers of SHO ranks usually play the role of investigating officer (I.O) during criminal trial processes in Punjab;

2) *Five* judicial magistrates of different ranks from the said four districts; (a) *one* Chief Judicial Magistrate (CJM); (b) *two* Additional Judicial Magistrates (ADJs); and (c) *two* Judicial Magistrates of First Class (JMICs); from the Amritsar district courts have been interacted as per the annexure II and their willingness and availability due to busy time schedule;

3) *Six* Public Prosecutors; *three* from Amritsar courts and *one* from each remaining three courts with having experience of 5 to 18 years interacted as per annexure IV, and;

4) *Forty* criminal lawyers from the selected four districts; *ten* from each district court, having 10 to 15 or 28 years experience in courts have been interacted and interviewed as per annexure IV.

5) *Four* selected Punjab jails’ population strength and the prison staff strength have been gathered and analyzed as per annexure V and elucidated in Chapter V.

Free legal aid cells’ staff of all the selected four district courts’ have been approached, and interacted with a view to collect the substantial information from them.
Additionally the figures from Lok adalat among these four district courts have been collected and the status of juvenile courts among these four courts has too been elucidated in the present chapter.

6.2 The Criminal Trial Process

The Procedure of Criminal Trial is governed by the *Criminal Procedure Code of 1973*. The *Indian Penal Code* defined each and every offence and prescribed punishment for it, while the Criminal Procedure Code laid the procedure for prosecuting the criminals. Most of the criminal trials follow a uniform set of procedures. Here is the procedure for criminal trial that generally takes place in both Subordinate (lower court and Session courts) and High courts of Punjab as well as India.

Though the term ‘Trial’ has not been defined in the *Cr.P.C*, however it is commonly understood as a judicial proceeding where evidences are allowed to be proved or disproved, in order to prove a person’s guilt or innocence. Before going further with the chapter, in order to understand the causes of delay in trial, it is necessary to understand the procedure of a criminal trial. The general criminal trial procedure construed in a simplest way by keeping in mind the objectives of the present empirical research. The basic stages of a Criminal Trial are discussed below as per followed by Indian as well as Punjab courts;

1) Registration of FIR

FIR stands for first information report which is lodged under *section 154 of the Criminal Procedure Code*. “The FIR is only the basis information which is made available to the police when a cognizable offence takes place”.¹

2) Investigation

FIR in a criminal case leads to investigation in the case where evidences are to be collected. “Investigation is conducted by the police and usually starts after the recording of First Information Report (FIR) in the police station. During this time, at any stage as decided by the investigating agency, accused person can be arrested”.²

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3) **Production of Accused**

“Police officer has to produce the person after his arrest within 24 hours before the concerned magistrate with record, after recording his statement. The prosecutor opens his case by describing the charge brought against the accused and stated by what evidence he proposed to prove the guilt of the accused”.

4) **Bail Hearing**

“It comes under judicial power of the magistrate to give bail in case of bailable offence and if it is non-bailable offence, it is the discretionary power of magistrate to give him bail on spot or allow the same after keeping him under-trial.

5) **Completion of Investigation**

Investigation leads an investigating officer to reach to a conclusion where a *charge sheet* has to be filed or a closure report has to be filed in the case. The court has to consider the evidence collected by the investigating agency. If the investigation result in discovery of an offence, a *chargesheet* is filed, otherwise a closure report is filed before the concerned court”.

Although *Section 167 CrPC* prescribes a statutory time frame for conclusion of investigation and filing of charge-sheet in the Code, failing which the accused in custody is liable to be released on bail. However, in actual practice, it has been seen that there is no time period of completing investigation and filing of *Chargesheet/Challan* in the Punjab courts. Study revealed that framing of charges takes 1-2 weeks minimum and 1-5 years of maximum time period in practice.

6) **Filing of Charge sheet**

“If the investigating officer finds out that a case is fit for trial or he finds out that a *prima facie* case can be made out, then he files a *chargesheet* in the case Under Section 228 of Criminal Procedure Code (Crpc).* The *chargesheet* is the brief summary of how an offence had been committed. What was the role of each person who was involved in the

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5 Section 228 of Criminal Procedure Code (Cr.P.C), (1973).
crime and the sections under which the investigating officer had charged all the accused. The charge sheet also contains the names of the person who were investigated but could not be charged due to lack of evidence in the eyes of the investigating agency.\(^6\)

This *charge-sheet* is called *challan* that is to be presented before the hon’ble court within 90 days period by the investigating officer as per provisions of *CrPC*. And if one more day passed over 90 days, magistrate has to give bail as a matter of right to the person accused as per provision under law. But it has been discerned during study that in practice, minimum time period taken for *challan* presentation is 2 days to 60 days and maximum time period is 1 year;

7) **Discharge**

If the judge considers after considering the record, documents and after hearing the submissions of the accused and the prosecution, that there is no sufficient ground for the case, he discharged the accused after recording the reasons for the same as per *Section 227*.

8) **Evidence of Prosecution**

After the charges have been framed against an accused\(^7\) the prosecution is required to produce before the court all the evidence collected by the investigating agency. It is to be noted that when the investigating agency produces the evidence before the court, the evidence has to be supplemented with the statement of the prosecution witnesses (PWs). For summoning of witnesses, minimum 2 months to maximum 5 years time period is taken in practice (in NDPS cases, if person is in custody, summons are send in 21 days and if person is on bail, summons are send between 2-3 months);

“The process of recording the statement of PWs is called *Examination-in-Chief*. The witnesses brought by the prosecution are expected to support the case presented by the prosecution and if they fail to do so, they are declared *hostile* and the prosecution may request the court not to rely on the statement of such a witness. In case the witness supports the case of the prosecution, the defense is entitled to *cross examine* the witness so that they could find out the discrepancies in the statement of the witness concerned.

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\(^7\) Section 228 of Criminal procedure Code(Cr.P.C), (1973).
If the defense succeeds in finding the discrepancies in the statement of the witnesses, they may ask the court not to rely on the statement of the said witness”.

It is important to mention here that as per Section 309 of the CrPC, it is provided that the proceeding shall be held as expeditiously as possible and in particular, when the examination of witnesses has once begun, the same shall be continued day-to-day until all the witnesses in attendance have been examined.

9) Statement of Accused

Section 313 of the Criminal Procedure code empowers the court to ask for an explanation from the accused if any. “The basic idea is to give ‘an opportunity of being heard’ to an accused and explain personally the facts and circumstances appearing in the evidence against him.

Under this section, an accused shall not be administered an oath and the accused may refuse to answer the questions so asked. The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him”.

10) Defense Evidence

“After the statement of the accused is over, the court applies its mind and tries to find out if the accused has committed any offence or not. If the court reaches the conclusion that no offence has been committed by the accused, he is acquitted. It must be noted that while acquitting an accused, the judge is expected to give reasons for acquitting the accused.

In cases of accused not being acquitted by the court, or if the defense wants, it is given an opportunity to present any defense evidence in support of the accused. The defense can also produce its witnesses and the said witnesses are cross examined by the prosecution”. In practice, 4 years to 6 years time period is taken in defense evidence or there is no time limit for it,
“In India, generally the defense does not provide defense evidence as the criminal justice system in India puts burden of proof on the prosecution to prove that a person is guilty of an offence beyond the reasonable doubt”.  

11) Arguments of Both Sides

This is the final stage of the trial. As per provisions of the CrPC, “the prosecution generally sums up its case against the accused. After the final arguments of the prosecution are over, the defense also presents its final arguments. After the final arguments of both the sides are over, the court generally reserves its judgment.

12) Judgment

After application of mind, the judge delivers a final judgment holding an accused guilty of offence or acquitting him of the particular offence. If a person is acquitted, the prosecution is given time to file an appeal and if a person is convicted of a particular offence, then date is fixed for arguments on sentence. Application can be moved by the defense counsel for suspension of sentence or to offer surety if the sentence is suspended as the case may be.

Here it is relevant to mention that the CrPC also contains detailed provisions for compounding of offences. It lists various compoundable offences under the Indian Penal Code (IPC), of which may be compounded by the specified aggrieved party without the permission of the court and that can be compounded only after securing the permission of the court. Compounding of offences brings a trial to an end”.  

In practice, judgment is given in 14 days’ time period to maximum six months of time period.

(i) Arguments on Sentence

“Once a person is convicted of an offence, both the sides present their arguments on what punishment should be awarded to an accused. This is generally done in cases which are punished with death or life imprisonment.

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12 Section 234 of Criminal Procedure Code (Cr.P.C), (1973).
13 Section 235 of Criminal Procedure Code (Cr.P.C), (1973).
(ii) Judgment with Punishment

After the arguments on sentence, the court finally decides what should be the punishment for the accused.

While punishing a person, the courts consider various theories of punishment like reformatory theory of punishment and deterrent theory of punishment. Court also considers the age, background and history of an accused and the judgment is pronounced accordingly”.  

6.3 Trial of Undertrials

As stated in a historic case of Common Cause 16;

It is a matter of common experience that in many cases where the persons are accused of minor offences punishable not more than three years or even less with or without fine, the proceedings are kept pending for years together. If they are poor and helpless, they languish in jails for long periods either because there is no one to bail them out or because there is no one to think of them. The very pendency of criminal proceedings for long periods by itself operates as an engine of oppression… Even in case of offences punishable for seven years or less with or without fine the prosecutions are kept pending for years and years together in criminal courts. In a majority of these cases, whether instituted by police or private complainants, the accused belong to poorer sections of the society who are unable to afford competent legal advice. Instances have also come before courts where the accused, who are in jail, are not brought to the court on every date of hearing and for that reason also the cases undergo several adjournments. It appears essential to issue appropriate directions to protect and effectuate the right to life and liberty of the citizens guaranteed by Article 21 of the Constitution.

“Though the judiciary is not responsible for many delays that occur, but in the public perception, it is the judiciary that is mainly responsible. Judiciary is mostly blamed without appreciating the real reasons. The judiciary, on its part, remains silent and refrains from conveying to the public that certain delays are beyond its control”. 17 On the basis of collected statistics, its analysis and from the interviews, interactions and discussions held with the functionaries of the Criminal Justice System of Punjab, the

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16 A Registered Society through its Director Vs Union of India and Others, 1996 AIR 1619.
following causes with various facts and findings rapport with delay of trial of Undertrials’ have been identified;

6.4 **Huge Pendency in Courts under Study**

Rising backlog in Judiciary is creating a huge problem, which is threatening the rule of law. It is often been a debatable issue that Indian judiciary would need centuries to clear the backlog of cases in the country. Massive backlog of cases in Judicial Courts is one of the reasons for delay in disposal of cases.

6.4.1 **Pendency of Criminal Cases among Courts Under Study**

6.4.1.1 **Pendency in Appellate Courts**

The following Table 6.1 shows the figures of four district courts as per their Appellate jurisdiction of two quarterly periods of a year.

<table>
<thead>
<tr>
<th>Table 6.1</th>
<th>Quarterly Institution, Disposal &amp; Pendency of Criminal Cases of Four Selected Appellate Courts¹⁸</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April-June</td>
</tr>
<tr>
<td>Courts</td>
<td>Prev. Balance</td>
</tr>
<tr>
<td>Amritsar</td>
<td>5545</td>
</tr>
<tr>
<td>Jalandhar</td>
<td>6372</td>
</tr>
<tr>
<td>Gurdaspur</td>
<td>5627</td>
</tr>
<tr>
<td>Kapurthala</td>
<td>2480</td>
</tr>
<tr>
<td>Total</td>
<td>20024</td>
</tr>
</tbody>
</table>

|           | October-December                                    |
| Amritsar  | 6364   | 303         | 6667                      | 239      | 1        | 6427           |
| Jalandhar | 6594   | 1171        | 7765                      | 510      | 623      | 6632           |
| Gurdaspur | 7317   | 1126        | 8443                      | 1013     | -        | 7430           |
| Kapurthala| 3367   | 215         | 3582                      | 152      | 2        | 3482           |
| Total     | 23642  | 2815        | 26457                     | 1914     | 626      | 23971          |

As per Table 6.1, consolidated number of criminal cases for disposal in the Appellate courts of Amritsar, Gurdaspur, Jalandhar and Kapurthala district Courts of the quarterly

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¹⁸ As per data collected from the statistics rooms of the selected four District Courts under study from the time period of April 30 to June 30 (2nd quarter) and October 1 to December 31(4th quarter) of a year.
periods of April 1 to June 30 was 2,50,60 and for October 1 to December 31, was 2,64,57. Previous balance of consolidated criminal cases for April to June quarter was 2,00,24 and 2,36,42 for October 1 to December 31. Institution during 2\textsuperscript{nd} quarter was 3,210 of new criminal cases and 2,815 during 4\textsuperscript{th} quarter of 2011. Out of which disposal in 2\textsuperscript{nd} quarter is merely 2,854 out of 2,50,60 cases for disposal in 2\textsuperscript{nd} quarter while in 4\textsuperscript{th} quarter that was merely 1,914, out of 2,64,57 criminal cases for disposal. Number of cases transferred to other courts in 2\textsuperscript{nd} quarter is 1,745 and in 4\textsuperscript{th} quarter were 626. The total criminal pendency among selected four Appellate courts during the 2\textsuperscript{nd} quarter was 2,04,31 and 2,39,71 in the 4\textsuperscript{th} quarter of a year respectively.

The total Criminal pendency in the Appellates Courts of Amritsar, Gurdaspur, Jalandhar and Kapurthala District courts during quarterly periods from April to June and October to December 31 was 4,40,02. Out of which maximum pendency has been found in Amritsar district courts, followed by the Jalandhar, Gurdaspur and Kapurthala district courts respectively.

\textbf{Table 6.2}

\textbf{Percentage of Criminal Pendency in Appellate Courts of Four District Courts\textsuperscript{19}}

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Amritsar</th>
<th>Jalandhar</th>
<th>Gurdaspur</th>
<th>Kapurthala</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Aggregate of old and new pendency/total pendency of that quarter of four courts</td>
<td>Aggregate of old and new pendency/total pendency of that quarter of four courts</td>
<td>Aggregate of old and new pendency/total pendency of that quarter of four courts</td>
<td>Aggregate of old and new pendency/total pendency of that quarter of four courts</td>
</tr>
<tr>
<td>April to June</td>
<td>5626/20431 = 27.53%</td>
<td>6669/20431 = 32.64%</td>
<td>5632/20431 = 27.56%</td>
<td>2504/20431 = 12.25%</td>
</tr>
<tr>
<td>October to December</td>
<td>6427/23971 = 26.81%</td>
<td>6632/23971 = 27.66%</td>
<td>7430/23971 = 30.99%</td>
<td>3482/23971 = 14.52%</td>
</tr>
</tbody>
</table>

The following \textit{Figures 6.1(a) and 6.1(b)} clearly demonstrate the pendency rate in Criminal cases in the four Appellate courts as per Table 6.2, during 2\textsuperscript{nd} quarter in \textit{Figure 6.1 (a)} and 4\textsuperscript{th} quarter in \textit{figure 6.1 (b)} respectively.

\textsuperscript{19} As per Table 6.1.
The pendency rate given in the above Figure 6.1 (a) shows that Jalandhar Appellate courts have the maximum pendency of Criminal cases in April, May, June months with 32.64%, then Gurdaspur Courts with 27.56%, Amritsar 27.53% and Kapurthala District courts with 12.05%.

Figure 6.1 (b)
Criminal Pendency Rate in Four Appellate Courts during 4th Quarter

20 As per Table 6.2.
21 As per Table 6.2.
Whereas *Figure 6.1 (b)* shows the maximum pendency in Gurdaspur Appellate courts with 30.99%, secondly in Jalandhar courts with 27.66% and then Amritsar with 26.81% and Kapurthala appellate courts with 14.52%.

### 6.4.1.2 Pendency in Subordinate Courts

The following Table 6.3 shows the figures of four district courts as per their Subordinate jurisdiction of two quarterly periods is concerned.

**Table 6.3**

*Quarterly Institution, Disposal & Pendency of Criminal Cases of Four Selected Subordinate Courts*  

<table>
<thead>
<tr>
<th>Courts</th>
<th>April-June</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th>October-December</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Previous Balance New - Old</td>
<td>Institution New - Old</td>
<td>For Disposal New - Old</td>
<td>Disposal New - Old</td>
<td>Pendency New - Old</td>
<td>Previous Balance New - Old</td>
<td>Institution New - Old</td>
<td>For Disposal New - Old</td>
<td>Disposal New - Old</td>
<td>Pendency New - Old</td>
<td></td>
</tr>
<tr>
<td>Amritsar</td>
<td>125745- 55593</td>
<td>12833- 2248</td>
<td>138578- 57841</td>
<td>8928- 2158</td>
<td>129650- 55683</td>
<td>133815- 52096</td>
<td>4917- 1398</td>
<td>138732- 53494</td>
<td>7974- 2584</td>
<td>130758- 50910</td>
<td></td>
</tr>
<tr>
<td>Jalandhar</td>
<td>71951- 32704</td>
<td>34726- 35562</td>
<td>106677- 68266</td>
<td>12267- 1384</td>
<td>92352- 66037</td>
<td>84450- 34714</td>
<td>7766- 1908</td>
<td>92216- 36622</td>
<td>11965- 1805</td>
<td>80251- 34817</td>
<td></td>
</tr>
<tr>
<td>Gurdaspur</td>
<td>52474- 19717</td>
<td>6223- 944</td>
<td>58697- 20661</td>
<td>6097- 833</td>
<td>52600- 19828</td>
<td>48869- 18077</td>
<td>1734- 590</td>
<td>50603- 18667</td>
<td>2110- 971</td>
<td>48493- 17696</td>
<td></td>
</tr>
<tr>
<td>Kapurthala</td>
<td>22043- 9083</td>
<td>2743- 422</td>
<td>24786- 9505</td>
<td>2875- 392</td>
<td>21911- 9011</td>
<td>23065- 8942</td>
<td>5114- 387</td>
<td>28179- 9329</td>
<td>5557- 466</td>
<td>22622- 8863</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>272213-117097</td>
<td>56525-39176</td>
<td>328738-156273</td>
<td>30167-4767</td>
<td>296513-231859</td>
<td>290199-113829</td>
<td>19531-4283</td>
<td>309730-118112</td>
<td>27606-5826</td>
<td>282124-112286</td>
<td></td>
</tr>
</tbody>
</table>

As specified in Table 6.3, the consolidated number of criminal cases in Subordinate courts of Amritsar, Gurdaspur, Jalandhar and Kapurthala District courts as per previous balance in April to June 2011 was 2,72,213 of new cases and 1,17,097 of old criminal cases. Total institution of criminal cases during this quarter was 5, 6,525 of new cases and 3, 9,176 of old cases. Disposal of criminal cases in Subordinate courts during this very quarter was 3,0,167 new cases, out of total cases for disposal 3,28,738 and 4,767 cases.

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22 As per data collected from the statistics rooms of the selected four District Courts under study from the time period of April 30 to June 30 (2nd quarter) and October 1 to December 31(4th quarter) of a year.
old cases out of 1,56,273 old criminal cases for disposal. In the said four Subordinate courts was total 2,96,513 new criminal cases and total 2,31,859 old criminal cases are pending during the time period of April to June.

Whereas in the 4th quarter of a year, number of criminal cases in previous balance was 2, 90,100 new and 1, 13,829 old cases with institution of new cases is 19,531 and 4,283 old cases. Number of disposal of cases during this quarter was 27,606 new and 5,826 old cases out of total cases for disposal of 3, 09,730 new and 1, 18,112 old cases. In these four Subordinate courts, the total new pending cases is 2, 82,124 and 1, 12,286 old criminal cases during 4th quarter.

In Subordinate courts of four choosen courts from the two quarterly time period, total 9,22,785 criminal cases were pending, average of which shows that 4,72,393 criminal cases were pending during each three months of a year in these four courts, whereas on average 2,20,01 criminal cases were pending in appellate courts of the selected four districts during two quarterly periods of the year 2011.

<table>
<thead>
<tr>
<th>Table 6.4</th>
<th>Percentage of Criminal Pendency in Subordinate Courts of Four District Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Amritsar</td>
</tr>
<tr>
<td>Time Period</td>
<td>Aggregate of old and new pendency/total pendency of that quarter of four courts</td>
</tr>
<tr>
<td>April to June</td>
<td>185333/528372=35.07%</td>
</tr>
<tr>
<td>October to December</td>
<td>181668/394410=46.06%</td>
</tr>
</tbody>
</table>

The following Figures 6.2(a) and 6.2(b) clearly demonstrate the pendency rate in Criminal cases in the four Subordinate courts as given in the Table 6.4, during 2nd quarter in Figure 6.1 (a) and 4th quarter in Figure 6.1 (b) respectively.

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23 As per Table 6.3.
In both *Figures 6.2 (a) and 6.2 (b)* according to the Table 6.4, Amritsar District courts have the maximum pendency rate of criminal cases in its’ Subordinate courts, that is 35.07% in April to June and 46.06% in October to December, while second comes Jalandhar Subordinate courts with 29.97% in 2\textsuperscript{nd} quarter and 29.17% during 4\textsuperscript{th} quarter.

\[\text{As per Table 6.4.}\]

\[\text{As per Table 6.4.}\]
Then Gurdaspur Subordinate courts comes at third with 13.70% during 2nd quarter and 16.78% in 4th quarter and lastly comes the Kapurthala courts with 5.85% during 2nd quarter and 7.98% during 4th quarter respectively.

- **Average Pendency Rate**

As per data collected according to the two quarterly periods among four districts courts of both appellate as well as subordinate courts, the average pendency rate of criminal cases has been calculated by the method of average pendency rate divided by 4 i.e. \( \frac{2,20,01 *4}{4\text{quarters in 1 year}} \) of Appellate courts was 8,80,04 and \( \frac{4,61,392.5 *4}{4\text{quarters in 1 year}} \) that was 18,45,570 in Subordinate courts, thus, in the period of three years, the average criminal cases’ pendency has been constituted to 26,40,12 i.e. \( (8,80,04*3\text{years}) \) in the Appellates courts and 55,36,710 i.e. \( (8,80,04*3\text{years}) \) in the Subordinate courts among these four district courts in next three years.

### 6.4.2 Pendency of Civil Cases among Courts Under Study

#### 6.4.2.1 Civil Pendency in Appellate Courts

Civil pendency in both Appellate and Subordinate courts of Amritsar, Jalandhar, Gurdaspur and Kapurthala District courts during two different quarterly periods of a year have been given in the Tables 6.5(a) and 6.5(b).

#### Table 6.5(a)

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Prev. Balance</th>
<th>Institution</th>
<th>For Disposal</th>
<th>Disposal</th>
<th>Transfer</th>
<th>Pendency/Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apr-June</td>
<td>35266</td>
<td>8996</td>
<td>44262</td>
<td>3745</td>
<td>2746</td>
<td>37791</td>
</tr>
<tr>
<td>Oct-Dec</td>
<td>39413</td>
<td>3751</td>
<td>43164</td>
<td>3102</td>
<td>600</td>
<td>39462</td>
</tr>
</tbody>
</table>

The Table 6.5(a) above clearly shows the total previous balance, total institution, total civil cases for disposal, total number of cases disposed off, total transferred cases and total civil pendency during 2nd quarter that is 3,52,66, 8,996, 4,42,62, 3,745, 2,746 and 3,7,791 respectively. And during 4th quarter, there is total 3,94,13 cases for previous balance, 3,751 for total institution, 4,31,64 for total disposal, 3,102 disposed of cases, 600 transferred cases and 3,94,62 number of civil cases pending in these four courts.

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26 As per data collected from the statistics rooms of the selected four District Courts under study from the time period of April 30 to June 30 (2nd quarter) and October 31 to December 31 (4th quarter) of a year.
Table 6.5(b)
Quarterly Institution, Disposal & Pendency of Civil Cases of Four Selected Subordinate Courts

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Apr-June</td>
<td>183040-65907</td>
<td>11507-6711</td>
<td>194547-72618</td>
<td>8888-4881</td>
<td>795-588</td>
<td>1,84,864-6,7,737</td>
</tr>
<tr>
<td>Oct-Dec</td>
<td>189291-68923</td>
<td>6442-2802</td>
<td>195763-71725</td>
<td>7065-7492</td>
<td>43-28</td>
<td>1,88,655-6,4,205</td>
</tr>
</tbody>
</table>

Table 6.5(b) clears the total number of cases falling in previous balance, institution, total number of cases for disposal, disposed off cases, transferred cases and pending cases of 2nd and 4th quarter of a year. The total pendency of Civil cases in four Subordinate courts including both new and old cases was 2,52,601 (by adding 1,84,864 and 6,7,737) in April to June months and during was 2,52,860 (by adding 1,88,655 and 6,4,205) in October to December.

The following Figure 6.3 shows the total civil pendency rate in Appellate and Subordinate courts of the four courts of Amritsar, Gurdaspur, Jalandhar and Kapurthala district courts during the 2nd and 4th quarter of a year.

Figure 6.3
Civil pendency in Both Appellate and Subordinate Courts of Two Quarterly periods

As per data collected from the statistics rooms of the selected four District Courts under study from the time period of April 30 to June 30 (2nd quarter) and October 31 to December 31 (4th quarter) of a year.
The above Figure shows that the average civil pendency in the Appellate courts of four district courts during April to June quarter (2nd quarter) was 48.91% and 49.97% in Subordinate courts during this period. Whereas during October to December quarter of (4th quarter), average civil pendency was 51.08% in Appellate courts and 50.02% in Subordinate courts that was more than the 2nd quarter.

In order to show the huge backlog of cases and pendency in Amritsar, Gurdaspur, Jalandhar and Kapurthala Appellate and Subordinate courts, it is worthwhile pointing here that the total number of civil cases for disposal in appellate and subordinate courts during the 2nd quarter was 3, 11,427 while number of pending cases during this very period was 2,90,392 in aggregate (total of civil pendency of appellate and subordinate courts of the 2nd quarter, merely in total period of three months. Then during 4th quarter, number of total civil cases for disposal was 3, 10,652 in these courts and 3, 02,322 civil cases were pending merely during October to December only.

These huge figures of civil pendency during two different quarterly periods are followed by abound number of criminal pendency in these courts too. Nevertheless, the backlog of number of criminal cases is much higher than the number of civil cases in these courts.

6.4.3 Average Disposal Rate of Civil and Criminal Cases in Punjab Courts

Figures 6.4 and 6.5 are having with average disposal rate of Criminal cases and Civil cases on the basis of data collected from four district courts (including both appellate and subordinate courts) of two different quarterly periods.

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As per Table 6.5(b).
The rate of disposal of criminal cases in Appellate courts of April, May, June months was 11.38% (i.e. number of disposal cases divided by the total number of cases for disposal), and the rate of disposal of cases from October to December months was 7.23%. Average of both quarters has been found out by dividing the total percentage of both quarters with 2, (i.e.18.62/2). Thus, 9.31% was the average of each quarter of year 2011. Further this average of each quarter has been multiplied with 4 (four quarters of a year) to get the average disposal rate that is 37.24%. In the similar way, the disposal rate of criminal cases of Subordinate courts has been found out as 7.20% of the quarterly period of April to June months and 7.81% as disposal rate of the quarterly period of October to December months, yearly average of which was 30.02% as shown in the above Figure 6.4.

Figure 6.5
Average Disposal rate of Civil Cases

Whereas civil cases were concerned as given in the following Figure 6.5, the disposal rate of Appellate courts was 8.46% in 2nd quarter and 7.18% in 4th quarter. The total disposal rate of both quarters was 15.64% that was further get divided by 2 and get 7.82% as the average rate of disposal of two quarterly periods of a year and this average rate was multiplied with 4 and get 31.29% as the average disposal rate of Civil cases of Appellate courts as per Figure 6.5. As far as the Subordinate courts were concerned, the disposal rate of civil cases in these courts was 5.15% of quarterly period of April to June months and 5.44% of October to December quarter. The total of both was 10.59% that get divided by 2 and makes 5.29% of disposal as the average of quarterly period 2011 and that average further makes the disposal rate of 21.18% by multiplying 10.59% with 4. The average rate of disposal of civil cases is shown in the Figure 6.5.
Thus, it has been derived from the both the above Figures 6.4 and 6.5 that disposal rate in Appellate courts of four district courts is comparatively high than the Subordinate courts of these four courts that is 37.24% in criminal cases and 31.29% in civil cases against the 30.02% in criminal cases and 21.18% in civil cases of subordinate courts. Thus, maximum pendency lied in the Subordinate courts with the minimum disposal rate. As per the growth rate of number of cases in Punjab courts, it has been found out that the institution rate is increasing but the disposal rate is not moving from its point of growth. The main cause for this situation is scarcity of judges at the Subordinate level.

❖ **Jurisprudential Aspect**

The judiciary is overburdened due to heavy workload on it. Judgment writers too in Punjab courts are suffering with workload of writing the excessive judgments. Most of the courts have only one judgment writer due to the shortage of staff. A judgment writer was earlier supposed to write two to three judgments per day. But due to the workload on judiciary, he has to now cop up with 8 to 10 judgments per day.

One of the competent Judicial Magistrate of First Class (JMIC) commented that there is no finality to the decision of Trial courts in India as well as in Punjab.²⁹ A chain remained always there towards finality of the decision in a trial case, that delays the trial. *Diagram 6.1* has been drawn to construe the hierarchy of moving of trial cases’ from one court to the other;

*Diagram 6.1*

**No Decisiveness of Trial Cases**

²⁹ As per elucidated by the judicial officers while interactions with researcher during her empirical work from May 2011 to December 2014.
Above diagram shows that a Trial case is instituted in the Session court firstly for its recommendation, and then it referred to Judicial Magistrate (JMIC- First Class) for litigation. After that it goes back to Session Court for recommendation on the decision. Session Court gives the final decision on a trial or criminal case because only the Session court inherent the criminal powers to deal a trial case. No other court has been given such criminal powers with it. But in many cases, from Session court it is referred to High court on a revision or for appeal against the Session Court’s decision and after that it gets transferred to the Supreme Court. In the last instance it comes back to the Session court for the final decision as the finality to a trial case’s decision is given by Session court only. But transfer of a trial case from one court to other consumed a lot of time and thus, delays the trial.

Judges on this point are of the views that the transfer of trial cases to the Supreme Court add further delay in deciding the criminal cases. The Trial Court’s powers are quite different than the Supreme Court’s powers. In Trial cases, the Session Court is the highest authority while the Supreme court is the highest Constitutional authority. “How a Constitutional authority can decide a Criminal case?” - the JMIC satires.

Like in first instance, all the facts and circumstances are clearly understood, known and dealt with by the trial courts or criminal courts, transfer of such cases to Supreme court to go through and understanding the fact again is a time consuming process that adds further delay to the trial. Putting up the file before the Trial court/Session Court again for the final decision further increase the unnessary delay and burden on the Subordinate judiciary.

The provision of appeal is also criticised by some of the judges. They are of the openion that if the law seekers can apply for revision on an order then why the provision for appeal is there? “The provision of appeal should be removed or amended accordingly as it delays the judicial process”, the judicial officers added.

The high number of institution, disposal, transfer and pendency in the Punjab courts causes delay in the disposal of cases and thus, increasing workload on judicial officers.
Until and unless the government does not increase the strength of judges by appointing new judicial officers, the gulf between the institution rate and disposal rate will be ever expanding and judicial officers will be burdened more and more.

6.4.4 Pendency of Undertrials’ Cases in District Courts under Study

The undertrials booked for petty offences have been the victims of apathy of police, prosecuting agency, prison authorities and judiciary. Majority of the undertrials have already served a major part of the sentence prescribed for the offence.

In Punjab courts, as per the data collected from Amritsar, Gurdaspur, Jalandhar and Kapurthala District Courts, the number of cases relating Undertrials is at very high proportions. Tables 6.6 (a) to 6.6 (d) showed the number of cases instituted and disposed off, relating Undertrials from urban(u) and rural(r) areas in which undertrials usually got convicted, released, acquitted or discharged and adjourned accordingly.\(^{30}\)

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\(^{30}\) As per data collected from Amritsar, Gurdaspur, Jalandhar and Kapurthala District Courts for two quarterly periods.
Table 6.6(a)

Undertrials’ Cases Pending in Amritsar District Courts for Two Quarterly Periods

<table>
<thead>
<tr>
<th>Time-period</th>
<th>Prev. Bal</th>
<th>Instituted</th>
<th>Convicted</th>
<th>Released</th>
<th>Discharged/Acquitted</th>
<th>Adjourned</th>
<th>Balance at End of month</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Urban</td>
<td>Rural</td>
<td>Urban</td>
<td>Rural</td>
<td>Urban</td>
<td>Rural</td>
<td>Urban</td>
</tr>
<tr>
<td>April-June</td>
<td>1387</td>
<td>1823</td>
<td>264</td>
<td>324</td>
<td>80</td>
<td>59</td>
<td>68</td>
</tr>
<tr>
<td></td>
<td>145</td>
<td>75</td>
<td>121</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1216</td>
<td>1822</td>
<td>1428</td>
<td>1822</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>3210</td>
<td>588</td>
<td>139</td>
<td>213</td>
<td>196</td>
<td></td>
<td>3250</td>
</tr>
<tr>
<td>Oct- Dec</td>
<td>1314</td>
<td>1493</td>
<td>170</td>
<td>228</td>
<td>89</td>
<td>71</td>
<td>110</td>
</tr>
<tr>
<td></td>
<td>196</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1266</td>
<td>1435</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>2807</td>
<td>398</td>
<td>160</td>
<td>296</td>
<td>48</td>
<td></td>
<td>2701</td>
</tr>
</tbody>
</table>

Table 6.6(b)

Undertrials’ Cases Pending in Jalandhar District Courts for Two Quarterly Periods

<table>
<thead>
<tr>
<th>Time-period</th>
<th>Prev. Bal</th>
<th>Instituted</th>
<th>Convicted</th>
<th>Released</th>
<th>Discharged/Acquitted</th>
<th>Adjourned</th>
<th>Balance at End of month</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Urban</td>
<td>Rural</td>
<td>Urban</td>
<td>Rural</td>
<td>Urban</td>
<td>Rural</td>
<td>Urban</td>
</tr>
<tr>
<td>April-June</td>
<td>813</td>
<td>1289</td>
<td>148</td>
<td>237</td>
<td>51</td>
<td>48</td>
<td>78</td>
</tr>
<tr>
<td></td>
<td>145</td>
<td>68</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>797</td>
<td>1265</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>2102</td>
<td>385</td>
<td>99</td>
<td>223</td>
<td>103</td>
<td></td>
<td>2062</td>
</tr>
<tr>
<td>Oct- Dec</td>
<td>622</td>
<td>1254</td>
<td>190</td>
<td>368</td>
<td>50</td>
<td>102</td>
<td>88</td>
</tr>
<tr>
<td></td>
<td>178</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>701</td>
<td>1292</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>1936</td>
<td>558</td>
<td>152</td>
<td>226</td>
<td>83</td>
<td></td>
<td>1993</td>
</tr>
</tbody>
</table>
### Table 6.6(c)

**Undertrials’ Cases Pending in Gurdaspur District Courts for Two Quarterly Periods**

<table>
<thead>
<tr>
<th>Time-period</th>
<th>Prev. Bal</th>
<th>Instituted</th>
<th>Convicted</th>
<th>Released</th>
<th>Discharged/Acquitted</th>
<th>Adjourned</th>
<th>Balance at End of month</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban</td>
<td>Rural</td>
<td>Urban</td>
<td>Rural</td>
<td>Urban</td>
<td>Rural</td>
<td>Urban</td>
<td>Rural</td>
</tr>
<tr>
<td>April-June</td>
<td>241</td>
<td>760</td>
<td>88</td>
<td>186</td>
<td>07</td>
<td>21</td>
<td>26</td>
</tr>
<tr>
<td>Total</td>
<td>1001</td>
<td>274</td>
<td>28</td>
<td>87</td>
<td>156</td>
<td>550</td>
<td>550</td>
</tr>
<tr>
<td>Oct- Dec</td>
<td>296</td>
<td>646</td>
<td>51</td>
<td>88</td>
<td>50</td>
<td>108</td>
<td>15</td>
</tr>
<tr>
<td>Total</td>
<td>944</td>
<td>139</td>
<td>158</td>
<td>46</td>
<td>16</td>
<td>304</td>
<td>304</td>
</tr>
</tbody>
</table>

### Table 6.6(d)

**Undertrials’ Cases Pending in Kapurthala District Courts for Two Quarterly Periods**

<table>
<thead>
<tr>
<th>Time-period</th>
<th>Prev. Bal</th>
<th>Instituted</th>
<th>Convicted</th>
<th>Released</th>
<th>Discharged/Acquitted</th>
<th>Adjourned</th>
<th>Balance at End of month</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban</td>
<td>Rural</td>
<td>Urban</td>
<td>Rural</td>
<td>Urban</td>
<td>Rural</td>
<td>Urban</td>
<td>Rural</td>
</tr>
<tr>
<td>April-June</td>
<td>184</td>
<td>285</td>
<td>77</td>
<td>98</td>
<td>22</td>
<td>31</td>
<td>47</td>
</tr>
<tr>
<td>Total</td>
<td>469</td>
<td>175</td>
<td>53</td>
<td>88</td>
<td>08</td>
<td>466</td>
<td>466</td>
</tr>
<tr>
<td>Oct- Dec</td>
<td>168</td>
<td>249</td>
<td>27</td>
<td>99</td>
<td>99</td>
<td>831</td>
<td>12</td>
</tr>
<tr>
<td>Total</td>
<td>417</td>
<td>171</td>
<td>930</td>
<td>22</td>
<td>118</td>
<td>388</td>
<td>388</td>
</tr>
</tbody>
</table>
In compliance with the number of cases relating the Undertrials in different four courts has been mentioned in the above given Tables from 6.6(a) to 6.6(d), it has been construed that the maximum number of cases of undertrials found in previous balance, institution, conviction, released, acquittal, adjourned and pendency in both quarters are in the Amritsar district courts, followed by the Jalandhar courts, Gurdaspur and Kapurthala district courts respectively.

Whereas the percentage of all various zones of Undertrials’ cases (by adding both urban & rural cases of Undertrials) of Amritsar, Jalandhar, Gurdaspur and Kapurthala District courts under two different quarterly periods as from April, May and October, November, December have been distinguished individually in the Table 6.7 below as per Tables 6.6(a) to 6.6(d).

<table>
<thead>
<tr>
<th>Courts</th>
<th>Time Period</th>
<th>Prev. Bal</th>
<th>Institution</th>
<th>Conviction</th>
<th>Release</th>
<th>Acquittal</th>
<th>Adjournments</th>
<th>Pendency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amritsar</td>
<td>Apr-June</td>
<td>3798</td>
<td>15.48%</td>
<td>03.65%</td>
<td>05.60%</td>
<td>5.16%</td>
<td>85.75%</td>
<td>85.75%</td>
</tr>
<tr>
<td></td>
<td>Oct-Dec</td>
<td>3205</td>
<td>12.41%</td>
<td>04.99%</td>
<td>9.23%</td>
<td>01.49%</td>
<td>84.27%</td>
<td>84.27%</td>
</tr>
<tr>
<td>Jalandhar</td>
<td>Apr-June</td>
<td>2487</td>
<td>15.48%</td>
<td>03.98%</td>
<td>08.96%</td>
<td>4.14%</td>
<td>82.91%</td>
<td>82.91%</td>
</tr>
<tr>
<td></td>
<td>Oct-Dec</td>
<td>2494</td>
<td>22.37%</td>
<td>06.09%</td>
<td>09.06%</td>
<td>03.32%</td>
<td>79.91%</td>
<td>79.91%</td>
</tr>
<tr>
<td>Gurdaspur</td>
<td>Apr-June</td>
<td>1275</td>
<td>21.49%</td>
<td>02.19%</td>
<td>06.82%</td>
<td>12.23%</td>
<td>43.13%</td>
<td>43.13%</td>
</tr>
<tr>
<td></td>
<td>Oct-Dec</td>
<td>1083</td>
<td>12.83%</td>
<td>14.58%</td>
<td>04.24%</td>
<td>01.47%</td>
<td>28.07%</td>
<td>28.07%</td>
</tr>
<tr>
<td>Kapurthala</td>
<td>Apr-June</td>
<td>644</td>
<td>27.17%</td>
<td>08.22%</td>
<td>13.66%</td>
<td>01.24%</td>
<td>72.36%</td>
<td>72.36%</td>
</tr>
<tr>
<td></td>
<td>Oct-Dec</td>
<td>588</td>
<td>29.08%</td>
<td>15.16%</td>
<td>03.74%</td>
<td>20.06%</td>
<td>65.98%</td>
<td>65.98%</td>
</tr>
</tbody>
</table>

As per Table 6.7 above, the maximum number of undertrials’ cases found in Amritsar district courts with 15.48% institution, 03.65% Conviction, 5.60% released undertrials, 5.16% acquittal, 85.75% adjournments and 85.75% pendency in the 2nd quarter (i.e during April to June) and 12.41% institution, 04.99% Conviction, 9.23% released undertrials, 01.49% acquittal, 84.27% was the adjournments as well as the pendency in the 4th quarter (i.e during October to December). Similarly, in Jalandhar district courts during 2nd quarter, the institution rate is 15.48%, conviction 03.98%, release 08.96%.

\[\text{As per Tables 6.6(a) to 6.6(d).}\]
acquittal 4.14%, adjournments and pendency rate is 82.91%; whereas during 4\textsuperscript{th} quarter of 2011, the institution rate is 22.37%, conviction is 06.09%, release 09.06%, acquittal 03.32%, adjournments and pendency rate is 79.91% in Jalandhar courts. In Gurdaspur district courts, the rate of institution during April to June 2011 is 21.49%, conviction 02.19%, release 06.82%, acquittal 12.23%, adjournments and pendency rate is 43.13% during the 2\textsuperscript{nd} quarter; while 12.83% institution, 14.58% conviction, 04.24% release, 01.47% cases are there in which undertrials get discharged and the adjournment and pendency ratio in Gurdaspur district courts during October to December is 28.07%. Kapurthala district courts are having the rate of institution of undertrials’ cases during 2\textsuperscript{nd} quarter is 27.17%, conviction rate of 08.22%, release 13.66%, acquittal 01.24%, and adjournments as well as pendency rate of 72.36%; whereas during the 4\textsuperscript{th} quarter, the same is of 29.08%, 158.16%, 3.74%, 20.06% and 65.98% respectively.

The study revealed that average pendency rate of two different quarterly periods of a year is maximum in Amritsar district courts with 85.11%, followed by the Jalandhar district courts with an average of 81.41%, Kapurthala district courts with 69.17% and Gurdaspur district courts with an quarterly average of 35.06%.

\textbf{Observations}

On account of ratio given in the above Table 6.7, it has been observed that in Amritsar, Gurdaspur, Jalandhar and Kapurthala district courts, percentage of adjourned and pending cases of undertrials is at the highest number. Rate of institution of cases come at second, in Amritsar as well as Jalandhar courts, ratio of released undertrials’ cases come at third, conviction rate at fourth and ratio of acquittal in undertrials’ cases come at the last that implies that the rate of acquittal/discharge of undertrials is at the minimum in Amritsar and Jalandhar district courts.

Albeit in Gurdaspur district courts, the rate of institution among Undertrials’ cases comes second after ratio of adjourned and pending cases. Third is the conviction rate among undertrials’ cases, fourth is the percentage of acquittal of undertrials’ cases and fifth and last is the ratio of released undertrials in Gurdaspur courts.
Whereas in Kaputhala district courts as per ratio given in the Table 6.7, besides rate of pendency and adjourned cases, the conviction rate is at the top due to highest percentage during 4<sup>th</sup> quarter of a year. Third is the ratio of instituted cases, fourth comes the ratio of cases of acquitted undertrials and fifth is the lowest ratio of released undertrials in Kapurthala courts like the Gurdaspur district courts.

6.4.4.1 *Average Percentage of Undertrials’ cases in 2<sup>nd</sup> Quarter*

*Figure 6.6(a)*

**Average Percentage of Undertrials’ cases during 2<sup>nd</sup> Quarter**

From different ratios of Undertrials’ cases in different courts and under different categories, it has been construed clearly that in all the four courts during April to June of a year, the average percentage (as per formula discussed earlier) of adjourned cases of Undertrials was at the highest ratio of 93.30%, that was followed by the percentage of instituted cases of undertrials with 20.96% in all the four courts as per given in the Figure 6.6(a) and (b). The percentage of cases in which undertrials got released held third in Amritsar and Jalandhar district courts only with 9.00%. Fourth was the acquittal rate of undertrials in these courts that was 6.82% and last come the rate of conviction that was 4.70% in these four courts in the given time period.
6.4.4.2 Average Percentage of Undertrials’ cases in 4th Quarter

Figure 6.6(b)

Average Percentage of Undertrials’ cases during 4th Quarter

As per Figure 6.6(b) above, the average percentage of pending cases as well as adjourned cases was 88.23% during October to December. Conviction rate was 22.93%, institution was 20.74%, release 10.32% and rate of acquittal was 4.32% in the four selected district courts of Punjab.

Observation

It has been observed that in Amritsar and Jalandhar district courts, the undertrials get acquitted in very few cases. Maximum undertrials get convicted under petty offences in Gurdaspur, Kapurthala, Jalandhar jails. The numbers of cases in which undertrials get convicted and released are too very low in number. That is the reason for high ratio of undertrials in jails.

6.5 Long Hearings & Undue Adjournments in Punjab Courts

Speedy trial is the prime objective of the Judicial Justice delivery System. Inordinate delay has become a common feature of Indian Legal System. Numbers of Steps have been taken but speed of trial is still a myth- not transformed into the reality. After analyzing the huge pendency in Punjab courts, hearings and adjournments of cases of the
undertrials have been explored. For this purpose the researcher has taken the assistance and help of “Dr. Kunwar Vijay Pratap Singh, IPS officer who has conducted a case study of 100 cases in his PhD thesis with a view to have first-hand knowledge of the problem. He has classified the 100 cases in four categories: 31 cases of Murder and other heinous crimes, 27 cases of NDPS, 20 cases of Crime against Women and 22 cases of Local and Special Acts in the year 2008. In all these cases, the accused were in the judicial custody in Amritsar Central jail till the completion of trial. In his study, some of the particulars in each case have been collected from prison records and average number of adjournments as well as average time period has been calculated category-wise and thereafter overall average has been calculated”.

<table>
<thead>
<tr>
<th>Crimes/Offences</th>
<th>Avg. No. of Hearings &amp; Adjournments</th>
<th>Avg. Duration to complete trial (in years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Murder, Kidnapping, Dacoity</td>
<td>39</td>
<td>3.0</td>
</tr>
<tr>
<td>2 NDPS</td>
<td>35</td>
<td>2.9</td>
</tr>
<tr>
<td>3 Crime against Women</td>
<td>31</td>
<td>1.9</td>
</tr>
<tr>
<td>4 Local &amp; Special Act</td>
<td>28</td>
<td>1.9</td>
</tr>
<tr>
<td><strong>Overall Average</strong></td>
<td><strong>34</strong></td>
<td><strong>2.6</strong></td>
</tr>
</tbody>
</table>

As stated in table 6.6 he has concluded that “on average 34 hearings and 2.6 years period has been taken to decide a case after framing the charges when accused was in custody. In murder and other heinous cases, it takes 39 hearings and 3 years period to complete the trial. The period of trial will further increase if one leaves the cases being tried in the fast track courts. Similarly NDPS cases are decided 35 hearings and 2.9 years delay despite the fact that special courts have been constituted to deal with these cases. Cases related with crime against women take average 31 hearings and 1.9 years to complete the trial. In this category, cases of dowry death, rape and marital cruelty have been included. In local and special cases, trials are completed in 1.9 years and after 28 hearings”.


“It implied that an undertrial inmate has to wait for average 2.6 years to get the final verdicts after framing of charges. Besides this, an undertrial has to remain in judicial remand for additional 90 days too”.

**Jurisprudential Aspect**

During the empirical study conducted by the researcher, the views of undertrials in jails, judicial magistrates, investigating officers/police, lawyers and public prosecutors’ have been taken. The questionnaire method has been used in order to take the views of different functionaries of Criminal Justice System.

Undertrials were of the opinion that trial should not take more than 6 months to conclude in the cases where accused are in the custody. The judicial officers and the prosecutors were of the opinions that the shortage of judges and non-appearance of witnesses are the main reasons behind inordinate delay in the trials.

The different criminal lawyers told the researcher that 70% of cases were pending in their offices due to undue adjournments in accordance with question 14 of annexure IV for the lawyers and the maximum adjournments are made on the stage of Evidence in a trial case as specified in question 21 of annexure IV. In line with question 14 of annexure III, the prosecution agencies were of the views that they occasionally take adjournments due to non production of accused in their cases. Whereas heeding question 12 of annexure IV, lawyers have admitted that they usually get adjournments on account of non production of accused in their cases. In compliance with question 26 of the same annexure IV, they have confessed that out of 150, 100 times they take adjournments on account of local strikes in their concerned district courts.

In conformity with question 20 of annexure II, the judicial officers were of the view that 8 out of 10 times, they usually inform their superiors in case of their taking leave. But it has been seen in practice that sometimes trial magistrates are on leave or on out station duty and intimation is not given to prosecution, police and witnesses. Because of this, everybody who comes to attend the proceeding of the court gets harassed. Such

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intimation has not been given to allied staff of the courts beforehand that also caused adjournments and thus, delay in trial process.

6.6  Role of Police & Investigating Agency in Punjab Courts

The machinery of Criminal Justice System is put into gear when an offence is registered and then investigated. A prompt and quality investigation is, therefore, the foundation of the effective Criminal Justice System. Police are employed to perform multifarious duties and quite often the important work of expeditious investigations gets relegated in priority. It is ample clear from the monitoring and outlook made by the researcher that the delay commences at the investigation stage. This particular stage of the investigation has lent itself to corrupt practices that need to be set highly corrected at the earliest. The role of corrupt police officers not only generates distrust among the people, but undermines the criminal justice system.

The detailed evaluation made by the researcher depicts the various roles being played by the police at different stages. The researcher has interviewed Station House Officer (SHO) ranked four police officers for this purpose as per question 1 of annexure I of the police officers. They were graduates as per question 2 of annexure I. According to question 3, while some of them have been directly appointed for their posts and some of them got the post on compassionate grounds. They were having the experience of 8 to 13 years in their posts as per question 4 of the annexure I. Role of police has further elaborated in the following aspects.

6.6.1 Non Appearance of Police Witnesses

It has been observed very keenly that the formal witnesses like Police Officers do not appear in the courts quite frequently; on the pretext of VIP duty, law and order arrangements and citing other reasons. Non-appearance of police witnesses in the courts delays the trial as cases are constituted by the police officers. “For every Indian VIP, there are three police personnel, while the common man on the street faces shortage of police personnel”. Our VIPS are being protected by an average of three policemen at the expenses of tax-payers.

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35 India has one of the lowest police-population ratio of 131.1 officers per 1,00,000 population (against the UN norms of 222).
As per question 15 of annexure I, the police officers were of the opinion that they have called upon app. 150 times for witness in courts. And they have not been appeared in 80-90% cases as witness as per question 16 of annexure I on grounds of VIP duty and personal excuses, they admitted. The study revealed that for 2 to 3 years on an average, the police officers do not appear as witnesses before the Hon’ble courts.

Due to undue pressure, lack of staff and corrupt practices, the Police and the I.O officers, under investigating process in trial cases are remained unable to play their role efficiently. One of the Additional District Judge (ADJ) from District courts and Juvenile Court stated- “I.Os are more responsible for judicial delay. Untill and unless cohersive methods are not used against them, they do not come for witness”.

Pointing out the seriousness of the issue, sometimes the approach of such witnesses seems “unacceptable”. Such a behavior reflects total lack of interest on the part of police machinery in efforts to produce themselves before the court moreover; the police is duty bound to produce all the necessary witnesses before the court on time to avoid the delay of the trial. This has become a usual practice to the police and needs to the corrected immediately.

6.6.2 Non Production of Undertrials

It is the primary responsibility and duty of the police to produce the undertrials before the trials courts on each hearing of the trial. But there are certain lapses and mismanagement on the part of the police for not producing undertrials on the particular hearing. Either they are not produced or produced so late that it frustrates the very purpose of ‘fair trial and speedy justice’.

Jail officials often blame the police for not sending escort on time. Many times escorts are not sent on the pretext of VIP duties and law and order arrangements. This is due to the district police authorities for not making available the police escorts on the ground of non-availability of manpower. In many districts, the sanctioned manpower is inadequate.

There is shortage of police staff strength that hindered the role of police too. “According to provision u/s 167 of Crpc, not less than a Sub Inspector can present a challan. But in all police Stations in Punjab, there is hardly a single Sub Inspector”. Further, usually

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36 About the shortage in Punjab police personnel, the competent Judicial Magistrate of 1st Class from District Courts Amritsar commented.
an I.O has the duty to present the challan in Punjab but due to lack of staff, he could not do so, resources disclosed. As per question 5 of annexure I, the Punjab police have not enough staff to present the challan in courts and for attending the court proceedings regularly. “The police in Punjab is for VIP duty only but not for law & order and investigation”- commented one of the JMIC.

As per question 14 of the annexure I, maximum undertrials have involved in cases of 420 IPC as per crime chart of last 10 years, in addition they get involved in cases of NDPS, section 307 and 326 of IPC etc. As per question 11 of annexure I, the maximum cases of undertrials get linger on the stage of filing chargesheet. Study revealed that duty to produce PWs (plaintiff witnesses) is of the SHO and the Public Prosecutors. But they often failed to do so. The Court proceedings get hampered in the absence of accused and in result the adjournments get ordered.

Study reveals that in Punjab, nothing less than 54 undertrials, on an average, daily fail to keep their date with the court. Available information suggests, as many as 4,921 could not be produces before the trial courts during three months ending December 2011. Justifying the non-production of the undertrials, DS Bains, principal secretary, Department of Home Affairs and Justice, has told the Punjab and Haryana High Court: “The prime reason behind the non-production of the undertrials is only the non-availability of police officials concerned on a particular day due to some emergent work”. 37

Non-production of case property is also an important reason responsible for delay in trial of cases. Case properties are normally kept in the ‘Malkhana’ (store) of Police Stations under the supervision and custody of Station Clerk. Case properties are not produced on time on many occasions and trials are delayed. 38 Sometimes case properties are handed over on ‘Superdari’ (bond) to the lawful claimants on the orders of the trial courts. The lack of police escorts has been one of the main reasons furnished by the jail authorities for not producing undertrials in court. As a result undertrials continue to languish in jail, without trial or conviction, but with the risk of torture and irreparable injustice. Such allocation of police forces towards VIP duties/political duties raises

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37 The Tribune, Chandigarh, Punjab, 10/01/2012.
serious concerns. This lack of Police Escorts is a substantial and adequate reason for delay in justice.

6.6.3 Delay in Investigation Process by Police/Investigating agency

Section 167 CrPC prescribes a statutory time frame for conclusion of investigation and filing of charge-sheet, failing which the accused in custody is liable to be released on bail. Certain State Governments have amended Section 167 CrPC.\(^{39}\) Thus; it is now a statutory requirement for the Investigating Officer to conclude the investigation within the prescribed time frame failing which the case is virtually lost. However, no such time frame has been prescribed for conclusion of trials in the Punjab.

The investigation process in criminal cases usually takes much long time because they are having the huge workload due to shortage in staff, VIP duties like political duties; at Nakaa, Dhanna, rallies and other law and order duties as well. As per question 12 of annexure I, the shortest period for challan presentation is 11 weeks and the maximum takes the 60 days to 2 years period. And they have no answer of question 13 as to shortest time period taken by them for completion of trial process in a case.

In the Indian system of Policing, investigation and law and order are dealt with by the same agency and it is difficult for the officers responsible for the maintenance of law and order to investigate the cases and pursue the same in the courts. The I.O is a SHO ranked officer as per the provisions of law. But in Punjab, the constable level police personnel are accomplishing all the process of Challan presentation before the courts in the absence of the required staff as per question 6 of annexure I. During interaction with some police officers of I.Os or SHO ranked, in accordance with question no.17 of annexure I, the police officials admitted that an I.O is responsible up to 80% for the delay in challan presentation in the court, while the P.Ps (public prosecutors) are liable up to 20%.

There are unexplained delays in submission of charge sheets by the police/investigating officer as the case may be. And these charge sheets run into thousands of pages that not only add delay in trials but also lead corruption. Commenting on inefficient and incapable

\(^{39}\) Particularly the Government of West Bengal has amended Section 167 CrP.C. to the effect that if investigation is not completed within the prescribed time frame, the Magistrate will not take cognizance of such offences.
investigating officers and long charge sheets, the CJM said, “The I.O throw the garbage (in the words of the judicial officer- ‘Koora’) of the case file after taking statement u/s 161 Crpc before the court and the State get escaped with having excuse that the defendant is been unable to trace out.”

The police officials told that the Article 36 of Punjab Police Act 2007 makes provisions for separation of investigation from law and order for effective crime investigation. But in practice, it is not implemented effectively. In compliance with question 21 of annexure I, the police officers admitted that investigation agency should be separate from the police agency as due to workload and many other duties to perform, they are not left with spare time to follow up a case and investigate it properly. The prosecution agencies were also of the view that investigating agency should be separate from the police agency in line with question 19 of the annexure III. Like the police, judicial officers and the prosecution agency, the lawyers were also in favour of separating the investigating agency from the police agency like in other countries as specified in question 28 of the annexure IV.

As for as reasons behind the slow investigation is concerned as per question 22, the police personnel were of the views that more workload on police staff (due to different roles to play), political influence and lack of staff cause the slow investigation and thus delay in investigation and trial too. Resources disclosed that behind over 1500 people who become the Proclaimed Offender (P.O), there are merely 5 police personnel’s staff to trace them out or to caught them.

One of the reasons for delay in investigation is that the investigating agencies do not follow the scientific methods of investigation. According to question 23 of the annexure I, the police authorities depends on oral witnesses usually than scientific investigations due to inefficient staff, lack of qualification among staff (as most of the constables are metric std.), lack of scientific training and most of all, due to the workload and number of duties to do/roles to play, the police authorities left with not enough time to make proper investigation.

Regarding the reasons for lack of scientific investigation, the investigating officers (I.Os) and Station House Officers (SHOs) were discussed that there is lack of training and
education among police escorts in Punjab as most of the police constables have done metric only. No scientific training has been given to police personnel in Punjab. Only one police training institution is there in Punjab that is in Chandigarh only.

Most of the officers admitted heeding question 24 of the annexure that they usually ignore to follow up the case when investigation has not been conducted with due care by the officer in charge. Further, they have also admitted regretfully that they are failed to provide security to witnesses appearing in courts due to lack of manpower, incomplete investigation following question 28 of annexure I. They provide security to witness only in case if witness comes to them personally for apprehension.

The police officers discussed with the researcher that approximately in every case, they used to ask for the police remand. But mostly the judges are in favour of ‘Judicial remand’ than the ‘Police remand’. It is the discretion power of the magistrate to give remand. It usually depends on how much recovery has to be done. This too has been considered as the most prevailing practice in courts that the police personnel do not appear in the court with the ‘police record’ on the particular date of hearing as maintained in question 14 of annexure I that too added delay in trial.

However, the things can only be effective when the verdicts and rules are implemented in letter and spirit. But the reality is that the things have been moving on according to the proverb- ‘same old same old’.

It is important to mention here that Punjab State claimed to have become the first state in the country to separate investigation functions from law and order duties. “The Bureau of Investigation (BoI) is going to bring all investigation staff from different units under a unified command. The move has been initiated by the State government as part of the police reforms and also to speed up tardy investigations across the state. The new wing was also needed as most police officers in Punjab, especially those directly involved or associated with investigations of various criminal cases, were found to be invariably stuck in VIP duties. New reform brings to an end the duality of role of police besides bringing more effectiveness into the investigation system.”

The Director General of police (DGP), Punjab, Sumedh Singh Saini said that the BoI would initially have 7,772 personnel (about 10% of the state police’s strength) on its rolls. He added the

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40 Hindustan Times, Chandigarh, 04/03/2015.
investigation staff at the police station level would comprise investigation units, pairvi units and woman staff and would work under the in charge, investigation. Saini stated that district and commissionerate-level wings would comprise the CIA (crime investigation agency) staff, the economic offences wing (EOW), crime against women wing, various police stations, the district crime records bureau (DCRB) and the district legal support unit. It will be headed at the district/commissionerate level by the superintendent of police/additional deputy commissioner of police (ADCP), investigation.

At the State headquarters, the new wing would comprise the BoI headquarters (earlier, crime wing), zonal offices, state cyber crime police station, state crime branch police station, EOW and the state crime records bureau (SCRB). The DGP stated that in the latest cadre review, the post of ADGP (crime) had been proposed for abolition and the new post of director, bureau of investigation, was being created. For this purpose, websites i.e. www.punjabpolice.gov.in and click 'Citizen Portal' and toll free phone 1800-180-2082 have been initiated to register the complaints, which have been started with four lines that would be increased as per pressure on the system. Separate rooms had been earmarked for the investigation staff at police stations and an amount of Rs 8 crore had been spent on the renovation of police stations, purchase of investigation officers' (IO) kits, and construction of toilets for women. Vehicles and IO kits had also been made available to the investigation wing so that it could commence its work independently.

The DGP said the new wing would also be equipped with mobile forensic evidence collection units, regional FSLs (forensic science labs), modern cyber crime unit, modern interview rooms as well as modern woman police stations in all districts”.

### 6.6.4 Vexatious Arrests and Corrupt practices among Punjab Police

“National Human Rights Commission of India has pointed out that unnecessary and unjustified arrests made by the Police and slow judicial process causing congestion of undertrial prisoners are the main causes of overcrowding in jails”.

Commensurate with question 9 to 11 of annexure II, the police officers got 150 complaints in a year, out of which only 20 get registered and no person get arrested out of

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41 Hindustan Times, Chandigarh, 04/03/2015.
42 The Tribune, Chandigarh, 16/03/2010.
those registered cases. Then the police officers revealed in accordance with questions 22 to 24 that they released or do not arrest maximum number of persons because of political influence. They have not get complaints against rich/inflential people and surprisingly, they have not arrest any of such persons even if got any complaint against them.

“In last five years i.e. since 2006 to April 2011, 1800 complaints against the Punjab police officials have been filed in the Punjab Police Head Quarter, Chandigarh. In all cases, the maximum complaints against Punjab Police were for being partial and doing favoritism. Besides these, allegations against police officials are for taking bribe, grabbing money through corrupt practicing and atrocities have been put up. One of the eminent officer told that 20 to 25 complaints against police officials get filed every month in Indian Vigilance cell (IVC cum HR).

Among the complaints filed in the last five years i.e. from 2007-2011, maximum 637 have been filed against the Jalandhar police, 476 against the Amritsar police, 450 against Ludhiana Police, 429 against Patiala police, 300 against Bathinda police, about 300 against Moga and Ferozepur police. In other cities, the complaints have been filed against police officials were 56 in Mansa, 48 Faridkot, 32 Sangrur, 29 Gurdaspur, 28 Mohali, 27 Ropar and 25 Barnala. According to the statistics available, 75% complaints out of them have been sorted out. In 2010, from Head constable and SHO ranked officers to SP ranked police officers have been questioned and thus, enquired. While against three dozen police employees, departmental actions have been taken.

6.7 Role of Judges and Trial Courts in Punjab

There has been a manifold increase in the number of civil and criminal cases and this increase has been subjected the trial court to extreme strains. If an evaluation is been made for the importance of role of the different functionaries who play their part in the administration of justice, the top position would necessarily been assigned to the trial court judges. Some of the major reasons for high pendency of cases in subordinate courts are poor judge-population ratio, prolonged litigation caused by lengthy procedures and shortage of judicial personnel. If timely justice is not provided to the sufferers it loses its

43 Dainik Jagran, Punjab, India, 22/05/2011.
44 Dainik Jagran, Punjab, India, 22/05/2011.
importance and destroys the essence of basic human rights. Speedy trial is the essence of Criminal Justice and there is no doubt that delays in trial itself is a denial of justice.

Study reveals that there are 14,000-odd trial courts judges have been psychologically impacted by the continuous struggle to fight over 2.77 crores pending cases. The Centre has agreed to conduct a study to find how these trial judges have been psychologically impacted. The heavy work load for a long period of time could cause psychological pressure on the judicial officers. In the present study five judicial magistrates have been contacted and thus, interacted. Their views and opinions have been discussed here as given in annexure II.

6.7.1 Shortage of Judges and overburdened judiciary

Shortage of courts and judges is one of the major reasons for delay in the trials of cases. There is gross inadequacy of judges to cope up the enormous pendency and new inflow of cases. A key reason for the pendency is there are simply not enough judges, not even enough to fill the vacancies that exist. “During the year 2013 the total working strength of the Judges in the High Court was 47 against the sanctioned strength of 68 with total shortage of 21 posts that amounts to 30.88% of shortage in judicial posts”.

Table 6.9

<table>
<thead>
<tr>
<th>Courts</th>
<th>Sanctioned Strength</th>
<th>Present</th>
<th>Shortage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amritsar</td>
<td>41</td>
<td>31 (+10 undergone training)</td>
<td>10</td>
</tr>
<tr>
<td>Jalandhar</td>
<td>28</td>
<td>22</td>
<td>6</td>
</tr>
<tr>
<td>Gurdaspur</td>
<td>26</td>
<td>14 (+5 undergone training)</td>
<td>7</td>
</tr>
<tr>
<td>Kapurthala</td>
<td>12</td>
<td>10 (+2 undergone training)</td>
<td>2</td>
</tr>
</tbody>
</table>

In conformity with the data collected from the four District courts of Punjab & Haryana High Court, 43 judges have been appointed against the sanctioned strength of 68 judges as on February 6, 2012, and thus, running with shortage of 25 High Court Judges (36.76%) in Punjab High Court, Chandigarh. As per figures given in the above Table 6.9, heeding question 2 of annexure II, in Amritsar District Courts, out of sanctioned strength

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of 41 judges, 31 judges were on duty while 10 have gone under judicial training, and thus, running short with 10 judicial officers. While in Jalandhar district Courts, there were 22 judges with sanctioned strength of 28 judges as on March 31, 2012, running short with 6 judicial officers. In Gurdaspur District Courts, 14 judges were present, 5 were gone under judicial training, against the sanctioned strength of 26 judges and running short with 7 judges. In Kapurthala District Courts, 10 were working officers, 2 were under training out of total sanctioned strength of 12 judges therein as on March 31, 2012 as shown in the above Table 6.9.

“During the interactions with judicial officers, resources disclosed that till July 2011, there were approximately 238 judicial officers against the sanctioned strength of 410 judges in Punjab Subordinate Courts”.

According to the Shetty’s Commission it has been held that the courts should be increase to 5 times the present number. But the vacancies are not filled by the time”, as disclosed one Additional District Judge(ADJ).

The researcher observed that as per the rule of High Court, an officer is supposed to deal not more than 500 files. If numbers of pending cases are more than three lakhs then Punjab requires at least 500 officers to deal with. The Chief Judicial Magistrate(CJM), from Amritsar district courts was with having 25-26 years experience in his profession in compliance with question 1 of the annexure II.

According to Punjab & Haryana High Court rules, there should not be more than 500 cases with one judicial officer. The framers of those rules were wiser enough to prescribe the time period of one year for disposal of criminal cases and two years’ for civil suits. But unfortunately, the number of cases pending before each court is more than 3000.

6.7.2 Long Cause Lists
The practice prevailed in some courts of fixing a number of cases on a day on which there is no reasonable chance of their being taken up for hearing have not been avoided. The average litigation in the cause lists of Amritsar, Gurdaspur, Jalandhar and Kapurthala

46 Justice A.S. Anand(the former Chief Justice of India) who has acknowledged and emphasized the need for increasing the number of Judges and improving infrastructure in the High Court and the subordinate courts. He cited the examples of several European countries such as Britain where the number of Judges per million of population ranges between 90 and 100. In India, however, this number is only 11, which was rather disappointing.

47 The Chief Judicial Magistrate(CJM), from Amritsar district courts with having 25-26 years experience in his profession has commented upon the backlog of cases on judiciary.
District courts of one week as per observed by the researcher was 70 to 85 cases in Amritsar, 55 to 72 cases in Jalandhar, 40 to 60 cases in Gurdaspur and 12 to 16 cases in Kapurthala courts per day.

Study reveals that if we take the average of cause lists of all districts of Punjab, it will be 60 to 70 cases per day which cannot be managed effectively by a single judge which is quite hard to be managed by a judicial officer. That is why sometimes Readers, Stenos, Ahalmds and other staff of the court perform the duties of a judge.

The researcher observes during her interactions with the judicial officers that 70% of cases are State cases that the officers have to deal with daily. Many courts spend more than an hour every day in calling certain cases called State cases, with a view to adjourn them for a future date. It has been observed during court proceedings that one or 1½ hours are daily get wasted on summoning accused in which usually dates are given. The time spent for this purpose can hardly be considered to put to any constructive use. The Judicial Magistrate of Ist Class (JMIC) from Amritsar Courts has construed that many unimportant works are done by the judges of Trial courts.

Mechanical work done is more than the paper work done by the judges like issuing of summons, calling witnesses. This power should be taken away from the judges. This is an unnecessary workload on the judicial officers- remarked the JMIC. Some productive work should be there.

“Surprisingly, only 10 holidays in a year are given to the Subordinate courts’ judges as per provisions of law and still the huge backlog of cases is there”, whimsically commented the Judicial Magistrate Ist Class (JMIC).

6.7.3 Disposal of Cases in Terms of Units

In order to assess the disposal of work by subordinate judicial officers, a standard has been prescribed by the Punjab and Haryana High Court. Different units have been prescribed for different units of cases with further sub division thereof, depending upon the manner of the case namely, whether contested, uncontested etc. It is with reference to these figures that the disposal of work by a particular judicial officer is evaluated.

Regarding this Unit system during an interaction with researcher, one of the JMIC, having 10-15 years experience in the said post, was dealing in 138 Crpc cases only from
Punjab & Haryana District Courts, stated that earlier judges had to earn 125 units for deciding the cases. Each different type of case has the different measuring units. So by deciding different cases in different numbers, judges have to earn 125 units. But due to the huge backlog of cases, that number of completing 125 units has now been increased to 200 units. “That results in an extra pressure on the judiciary”- he stated. One of the other Judicial Magistrate of Ist Class uttered “If the judges have to work for the unit system and for the sake of Trial, how the Speedy Trial could be possible”.

To accomplish their target of unit system, judges prefer to close the State cases by order. This is the only option left with the judges. Further the JMIC commits that “if backlog of cases is more and more, the chances of committing mistakes would be higher”.

Evening courts have been started in Punjab District courts during the time of present empirical work, the judicial officers were of the view that “The concept of ‘Evening Courts’ is now been starting in Amritsar District courts. Judges will have no rest. They will be unable to read case files and facts properly”. Judicial Magistrates sometimes after putting a date on a file observed later that that person must get released as he was innocent. But due to the work pressure and in hurry, they just skipped the pages of files and facts therein. Facts get skipped away from their mind and they realized later that that person should be acquitted if the file has been read carefully. And alas! Injustice occurred…

❖ Jurisprudential Aspect

In line with the interactions held during the present study, the views taken by the judicial officers have been discussed here in line with annexure II.

As per question 3 of the annexure II, regarding the time frame, no satisfactory answer has been provided by the judicial magistrates. In accordance with question 4, the judicial magistrates were of the opinion that they have heard cases as Duty Magistrates. Duty magistrates are those judicial officers who are ordered to deliver their duty as a Magistrate on particular holidays. In compliance with question 6 of annexure II, only Chief Judicial Magistrate has the ex-officio power of being the member of the Jail Committee to conduct courts inside jails. Heeding question 7 of the annexure II, Camp courts are being conducted in the jail once in a month. According to Chief Judicial
Magistrate (CJM), he has decided the last case in the camp court held in Amritsar Central Jail on 30/05/2012, in line with question 8 of annexure II.

The judicial officers revealed that 40 to 50 cases on average basis are referred to Free Legal Aid cells annually as per question 9 of the annexure II. Following question 12 of annexure II, no specific answer has been given by the judicial authorities regarding the conviction of an accused on account of non-representation of the counsel.

No witness has been provided the protection in Punjab courts in conformity with questions 13 and 14 of the annexure II. In conformity with question 15, the judicial magistrates have not got any complaint from female undertrials except in case of providing medical facilities to them in jail when they required so. They have not taken any sue motto action to ensure protection of rights of female undertrials according to question 16. Only in 2-3 cases they have issued warrants till date, in which warrants could be issued to ensure witness appearance in their court as stated in question 17. In Punjab courts, there is video conferencing system in the courts and all the judges have two days duties in that court as specified in question 18 and this system get followed in cases where challan has not been presented and the accused is in the custody as per question 19.

Regarding question 20, the magistrates told that they informed their superiors before taking casual leaves. District & Session judges and the court staff have been informed about their leaves. Following questions 23-24, the magistrates have never concluded trial ‘in absentia’ (in absence of accused). As far question 25 is concerned, they admitted that they have concluded the trial within stipulated time frame, enshrined in the Crpc in number of cases of petty offences. Though it has not been seen and observed by the researcher during her field work.

According to Additional District Judge, no time period is given for concluding a trial. Though earlier there is a time period of 8 to 10 days, but now no such period has been given under law.

Usually a judicial magistrate has closed 20-30 cases per year ‘by order” besides heinous crime in accordance with question 26. The judicial officers allowed bail, in case challan isn’t presented in the court in stipulated time period in compliance with question 27. But
judges have confessed that they have given no specific powers regarding presenting *challan* in the court. Only police officers have the power *u/s 167 Crpc* and public prosecutors, according to the judicial officers.

In conformity with *question 28*, the Chief Judicial Magistrate (CJM) said that they issue summons or bailable/non-bailable warrants or attach the property. Additional District Judge(ADJ) was of the view that the witnesses can be compelled by making time bound as per the provisions of law and the prosecution agency has the power to compel them for appearing in the court. Magistrate can only issue warrants in such cases. Heeding *question 29*, the measures to restrict delay tactics by advocates/Public Prosecutors, they were of the opinion that there is moral degradation among the advocates and the prosecution agency.

In addition, the errors committed by the Trial court judges who are not of the right caliber can sometimes be so crucial that they change the entire course of the trials and thus, the result is irreparable injustice and thus, delays the trial. Apart from that a rectification of the error by the appellate court can hardly compensate for the injustice resulted out from the error committed by the trial court. Some advocates discussed the grey area of the Judicial academies during the interactions with the researcher, where the fresh judges are sent for the judicial training. They were of the views that this academy is not playing the better role in dispensing justice speedily. The minds of the freshers get washed away in such academies. On insisting upon by the researcher, some advocates discussed some facts about the judicial academy. It has taught to the freshers during their judicial training that:

1) Not to allow bail in routine;
2) Not to grant remand in every case, irrespective of the fact that whether its is necessary or not in that case;
3) Not to grant stay to the other party without hearing;
4) In lower judiciary, to give conviction upto the maximum, irrespective of the fact that whether evidence is there on record or not, while in Superior courts, instructions are given for not to give conviction.
Some of the lawyers have even criticized the process of becoming a judicial officer/magistrate through the entrance test. They were of the view that without doing practice as a lawyer in civil/criminal matters in any district or High courts, how a person can hold such a post of high esteem and great responsibility of judicial system. This requires laying down the precise qualifications, experience, qualities and attributes that are needed in a good judge and also the prescription of objective criteria to apply to the overall background of the candidate. They were of the view that this is the only reason that we are not getting efficient judicial officers and thus, are unable to bring efficacy to our judicial system.

6.8 Non Service of Summons and Non-appearance of Witnesses in Courts

Non-service of summons is one of the other important reasons for delay in trials. It is the primary responsibility of the investigating agency (which is police) to ensure timely service of summons of the witnesses. According to question 12 and 13 of the annexure IV of lawyers, the advocates admitted that they get adjournments frequently for their cases on account of non production of accused before the court of trial. And the prosecution agency was of the view that they get adjournments occasionally for cases on account of non production of accused before the court of trial heeding question 14 of annexure III.

The prosecution mainly relies on the oral evidence of witnesses for proving the case against the accused. Study reveals that every police station has earmarked 3 to 4 officials for the purpose of services of summons. In Punjab they are known as ‘Tamili’. However the ‘Tamili’ found it difficult to ensure proper services of summons especially in the cases where witnesses belong to far flung areas. The researcher found during her interactions and discussions with the police officials and the jail inmates that in many cases Tamili keep sitting silently after grabbing money from the other party and does not serve the summons. 8 to 9 hearings in such cases have been passed away in the absence of servicing of summons. After this long gap, again he met that party, mint money from them and again does not do his duty and made fake excuses before the hon’ble courts about not serving the summons.

As specified in question 8 of the annexure IV, 80 to 90 cases in advocates’ offices were pending in which witnesses do not appear before the court and thus, trial got delayed.
Reasons for non appearance of witnesses in compliance with *question 9 of the annexure IV* were:

1) Intentional delay by the police witness when accused is in the custody of police and also when on VIP duties;
2) Casual approach on the part of prosecution agency;
3) Inefficient prosecution agency;
4) Inefficient judicial officers;
5) Workload on judiciary etc.

As far as prosecution agency is concerned, following *question 10 of the annexure III*, there were 30-35 cases in the offices of public prosecutors in which witnesses have not been appeared. And the reasons for non appearance of the accused as specified in *question 11 of annexure III*, according to public prosecutors are; 1) Absence of accused; 2) Non-appearance of witness due to shifting of them from their residency; 3) Due to compromise between the parties.

In conformity with *question 18 and 19 of the annexure IV*, it has been admitted by the advocates that when accused isn’t produced before court, the trial has been conducted by them preferably even in his absence in most of the cases through an application and in case, accused exempted by the court, then in presence of his counsel.

Delay in trial causes further delay as the complainants lose their interest because of excessive delay. Even the formal witnesses like police officials who are part of investigation lost their interest in the cases after their transfer from that district to other places and it is also difficult to serve summons upon them.

It has been observed that even after services of summons, witnesses do not turn up to join trials in the courts on many occasions. There is no hard and fast rule to compel the witnesses to attend the court proceeding. No witness protection system has been provided there according to *questions 13 and 14 of the annexure II* of the Judicial Magistrates.

Sometimes courts issue warrants to ensure attendance of witnesses but this is not common to each and every case. Many times tourists are the complainants who belong to other States and also other countries and it is very difficult to serve the summons in these
cases. In many cases witnesses belong to far flung areas and they do not prefer to come on specified date because of paucity of time and resources. It is a genuine grudge of the witnesses that they are not paid to reimburse their expenditure on travel and to stay for attending the court proceedings.

As study disclosed that unfortunately there is no dearth of witnesses who come to the courts and give false evidence with impunity. This is a major cause of failure of the system. “The procedure prescribed for taking action against perjury is as cumbersome as it is unsatisfactory. Many witnesses give false evidence either because of inducement or because of the threats to him or his family members. There is no law to give protection to the witnesses subject to such threats, similar to witness protection laws available in other countries.” Unfortunately the witnesses are treated very shabbily by the system. Nonetheless, there are no facilities for the witnesses when they come to the court and have to wait for long periods. Often their cross-examination is unreasonable and occasionally rude. They are not given their TA/DA promptly. The witnesses are not treated with due courtesy and consideration; nor are they protected. Witnesses are required to come to the court unnecessarily and repeatedly as a large number of cases are posted and adjourned on frivolous grounds”. No witness protection system is there in Punjab courts.

6.9 Role of the Prosecution Agency in Punjab Courts

Prosecutors are the Officers of the Court whose duty is to assist the court in the search of truth which is the objective of the Criminal Justice System. Any amount of good investigation would not result in success unless the institution of prosecution has persons who are of merit and who are committed with foundation of a well structure professional training. This important institution of the Criminal Justice System has been weak and somewhat neglected. Lack of strength of Additional District Attorneys (ADAs) and their non appearance in courts is one of the major causes of delaying trials. “Its recruitment, training and professionalism need special attention so as to make it synergetic with other institutions and effective in delivering good results”.

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48 As per recommendations of the Malimath Committee (2003), on Reforms of Criminal Justice System.
49 As per recommendations of the Malimath Committee (2003), on Reforms of Criminal Justice System.
As per data collected from four district courts under study\(^{50}\), the sanctioned strength of District Attorneys was in line with question 2 of annexure IV, the Amritsar courts were having 1 District attorney (DA) against the sanctioned strength of 2, 7 Deputy District attorneys (DDA) against sanctioned strength of 9 and 7 regular Deputy district attorneys (DDAs) and 12 district attorneys on contract basis against the sanctioned strength of 14 regular additional district attorneys (ADAs). Thus district attorney (DA) staff in Amritsar district courts has been reeling with the shortage of 50% in the posts of D.A, 22.23% D.D.As, and 58.24% in A.D.As posts in Amritsar district courts.

Among other district courts, the Jalandhar district courts, as per statistics available, was having 1 D.A, 3 D.D.As and 9 A.D.As that were on contract basis only, against the overall sanctioned strength of 20 district attorneys and running with overall shortage of 20%. Gurdaspur district courts has the total sanctioned strength of 9 attorneys but at present, the post of district attorney was laying vacant, while 4 D.D.As were there with 3 regular ADAs and thus, coping with shortage of 22.22%. Kapurthala district courts was having 1 D.A, no D.D.As and 4 ADAs (no information as to whether they were on regular or contract basis), against the sanctioned strength of 10, and thus having shortage of 50% in the district courts.

Lack of Additional District Attorneys (ADAs) and their non appearance in courts is one of the major causes of delaying trials. “ADAs/Public Prosecutors are not getting appointed in proper courts and they are not appearing skillfully in courts also”, commented one of the Additional District Judge. Following question 4 of annexure IV, one district attorney has only one to two courts to assist earlier but now due to work pressure on judiciary and shortage in strength of public prosecutors, one PP has to assist 2-4 courts now. Sources disclosed that 92 posts of ADAs in Punjab district courts have been filled recently and 28 more posts are to be filled soon.

One of the Additional District Judge (ADJs) from Amritsar district courts stated that incompetent Prosecution agency and the judicial agency is also liable for delaying the trial. “Public prosecutors are not competent”, the Additional District Judge admitted. As per question 14 of the same annexure, the prosecution agencies get adjournments

\(^{50}\) As per empirical study conducted from the years 2011 to 2014 in District courts of Amritsar, Gurdaspur, Jalandhar, and Kapurthala and their jails respectively.
occasionally, for the cases on account of non production of accused before the court of trial.

Public prosecutors and police officers both were of the opinion that undue adjournments get allowed by the trial courts on filthy grounds. Prosecutions were also of the view that on whichever stage there is absence of accused, the trial becomes linger on. There are 70-80 cases app. found in their offices that are fixed for evidence in conformity with question 15 of annexure III. In some cases, it has taken more than eight years to examine witnesses and thus, to record evidence.

The observations made by the researcher revealed that there is carelessness in filing the charge sheets in the courts. The prosecution agency cites a large number of witnesses in such cases, out of whom a majority are of official witnesses who stand transferred to other stations before the case reaches the stage of recording evidence. Thus, in result the prosecution takes much time in producing witnesses. “Delay in the presentation of challan cases by I.O has been made in connivance with the prosecution agency to mint the money from the accused.”

❖ **Jurisprudential Aspect**

While applying questionnaire method, the researcher recorded one of the Deputy District Attorney (Deputy DA), who has dealt in more than 1200 cases in his 16 years’ experience as a public prosecutor and five other District attorneys, with having 5 to 8 years’ experience as specified in question 1 of the annexure IV. They have been dealt in appx.300-500 criminal cases during the time period of 2011 to 2014, heeding question 5 of the annexure. On average, 65 % cases come to an end among those criminal cases during that period following question 6. The DDA has the oldest case pending in his office for trial is for more than 8 years ago in accordance with question 7 of the annexure. Reason behind the oldest pending case in opinion of most of the attorneys is the absence of accused in line with question 8 of the annexure. Among the fastest cases in public prosecutors’ offices they have fought for ever were decided in 5 to 6 months heeding question 9.

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51 One of the competent criminal lawyers, who is also the president of the advocates’ Bar Association construed in adequacy.
There are usually 20-25 cases in their office in which witnesses have not been appeared in compliance with *question 10 of the annexure III*. Regarding causes of non appearing of witnesses in the courts following *question 11 of annexure III*, they were of view that it has happened due to; (1) absence of accused in the court/not presenting accused by the police in the court, (2) non service of summons to witnesses due to shifting their place of residence and, (3) in most of cases, compromise has taken place between the parties. In harmony with *question 12 of the annexure*, there are appx.10 cases in their offices in which *challan* has not been presented before the court. In reasons for non-presenting the *challan* by I.O, heeding *question 13*, the attorneys have explained that; (1) on bail applications, court usually orders for a long period i.e. 3 months onwards; (2) in case of absconding of wanted witnesses and; (3) Transfer of investigating officer to other police station, *challan* presentation get delayed.

As claimed by various district attorneys, conviction has been made in 65% trial cases, while acquittal was only 35% in trials cases as specified in *question 17 of annexure III*. Approximately 70% in all the DDA’s offices were pending.

Appertaining with reasons for delay in trials heeding *question 20 of the same annexure*, the public prosecutors stated that delay occurs due to; (1) lack of public prosecutors (PPs), (2) shortage of Trial courts in Punjab and (3) shortage of allied staff in the courts like Stenos, Readers, And Police officers etc.

There were 297 posts of clerks in Punjab courts, out of which approximately 45% posts are vacant that add more workload on the comparatively low staff strength and causes delay in justice delivery system.

Whereas reasons for delay in Evidence are concerned in compliance with *question 21 of the annexure III*, the attorneys construed that (1) Non control of Prosecution agency over the Serving agency (that is under the police officers only); (2) delay tactics used by accused as well as the lawyers; (3) pressure of accused over the complainant party and; (4) transfer of material witnesses like doctors, police officers, bank employees’ etc. to remote areas, are responsible for the same.
6.10 Role of the Lawyers in Punjab Courts

Above discussion though clearly loads the situation against the prosecution, but that is only one party in the trial. On the contrary, the co-operation of the Defense Counsel is also necessary to review the delay in trial. During the interactions with 40 practicing lawyers, 10 from each selected district court as specified in question 1 of the annexure IV, the lawyers were having 23 to 28 years experience in their practice as criminal lawyers in Amritsar, Gurdaspur, Jalandhar and Kapurthala district courts. Research study has concluded that approximately 850-950 lawyers in Amritsar courts have been dealing in criminal and both civil and criminal cases, around about 350 Lawyers from Jalandhar courts, 300-325 lawyers in Gurdaspur courts, and about 40 criminal lawyers in Kapurthala courts have been practicing in criminal as well as trial cases following question 2 of the annexure IV.

The advocates usually filed 100 cases on average in a year as per question 3 of the annexure. The maximum oldest trial cases pending in their offices were 11 years to 18 years old in accordance with question 5 of the annexure IV and reason for delay in those trials was non production of evidence by the prosecution agency heeding question 6 of the annexure IV. In compliance with question 7 of annexure IV, relating fastest case in their offices, the minimum time period involved in a case was named State vs Jaspreet Singh’s case, under section 307, in March 2007. As per lawyer’s views, he got acquitted his client within mere 26 days but through Fast Track Court, Jalandhar District courts. In one another case named, State vs XYZ, one of the best criminal lawyers from Amritsar District courts has done a commendable job while convicting the accused in 2 months.

In conformity with question 9, regarding reason for non appearance of police witnesses in the courts, the lawyers were of the view that such delay occurs due to the casual approach on the part of prosecution agency. As only the prosecution agency has the authority over the police witnesses in the trial cases.

Challan has not been presented in 50-60 cases pending in their offices, keeping with question 10 of the annexure IV. The advocates construed that non-presenting of the challan by I.O has happened following question 11 due to (1) non completion of investigation by I.O in that case; (2) compromise between the parties; (3) Laxity on part
of the investigating officer; (4) delay in report from forensic lab in NDPS cases that is in Chandigarh.

In harmony with question 12 and 13, some advocates were of the view that they get adjournments for cases on account of non production of accused before the court of trial. All the advocates admitted that 60% of undertrials cases are pending in their offices for evidence heeding question 14 of the annexure IV. They also admitted that they do not take adjournments even if promised fee has not been paid to them in accordance with question 15 and they fought the cases even if promised fee isn’t paid to them as specified in question 17 of the annexure IV.

Although Section 167 CrPC prescribes a statutory time frame for conclusion of investigation and filing of charge-sheet in the Code, failing which the accused in custody is liable to be released on bail. However, in actual practice, it has been seen that there is no time period of completing investigation and filing of Chargesheet/Challan in the Punjab courts. As far as the time frame of each stage of a trial has been concerned as stated in question 16 of the annexure IV, the lawyers has construed that for (1) challan presentation- the minimum time period is 2 days to 60 days and maximum is 1 year; (2) for framing of charge-1-2 weeks and maximum 1-5 years; (3) for summons-minimum 2 months to maximum 1-5 years (in NDPS cases, if person is in custody, summons are send in 21 days and if person is on bail, summons are send between 2-3 months); (4) for evidence- 4 years to 6 years time period or no time limit is there, and; (5) for order- in NDPS cases, after arguments and defense arguments closed, order has been made within minimum period of 14 days. If defense arguments do not closed, then 4-6 months period has been taken to make order.

In line with question 18 and 19, annexure IV, if accused has not produced before court, the trial has been conducted by the lawyers in his absence through application but if accused has been exempted by the court, then trial has been conducted in presence of his counsel. In the opinion of defense counsel, in 60% of cases accused get acquitted according to question 20. Maximum cases of undertrials get linger on evidence stage as following 21 of the annexure IV. Like PPs, advocates were too of the opinion that maximum number of trial cases lingered due to absence of accused only. According to the advocates, no criminal case gets decided before 4 years of time period usually.
Hardly any advocate has filed an application on plea bargaining among four district courts as far as question 22 of the annexure is concerned. One or two advocates have filed this application in 1-2 cases only at initial stage and final stage of a case as per question 23 of annexure IV. In opinion of some advocates, plea bargaining has been accepted and in view of most of the advocates it has not been accepted by the judicial magistrate due to the ignorance regarding it as stated in question 24 of the annexure.

The lawyers confessed that in 1 to 2% of cases generally they have grudges against their opposite counsel as specified in question 27. The lawyers were of the view that they have referred 20% cases to special courts till date that too only in case of NDPS, Corruption cases, Motor Vehicle and Negotiable instruments cases, excepting IPC, heeding question 25 of the annexure IV.

The strikes made by the advocates’ for every now and then and sometimes for indefinite period too, irrespective of the seriousness of litigating parties’ grievances also added arrears of cases and further delays in disposal of trial cases. As per sampling conducted by the researcher in the districts of Amritsar, Gurdaspur, Jalandhar and Kapurthala and it has been found that on average 15 to 18 days in a year usually get wasted due to advocates ‘strikes. Out of 150, 100 times the advocates adjourn the cases because of local strikes in a year following question 26. Surprisingly, all the lawyers admitted that they know the fact that strikes by the lawyers for abstaining work has been declared illegal by the Supreme Court on asking by the researcher in harmony with question 29 of the annexure IV.

Resources disclosed that in minor offences, new amendment has been made on personal bond that in case where 2 or more persons are involved, release the one who filled bail bond. In cases where some persons don’t have surety for furnishing bail as claimed in question 30 of the annexure, the lawyers were of the view that he can deposit cash or can be release on personal bond.

In compliance with question 31 of the annexure, whereas reasons regarding delay in trials are concerned; the lawyers stated the following reasons;  

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52 ‘Many times defense advocates take undue adjournments just to delay the process of trial’, as pointed out by the public prosecutors.
1) Backlog of cases is high in the courts;
2) Shortage in strength of judges;
3) Non production of Undertrials before the courts on due dates;
4) Lack of separate Fast Track Courts in Punjab;
5) Lack of Special courts for IPC, Rent and Civil cases like NDPS, Corruption cases etc. as to deal with all Sections by one judicial officer becomes confusing for a judge;
6) Inefficient judicial officers;
7) Inefficient Public prosecutors;
8) Inefficient Process Service agency;
9) Casual approach of investigating agency;
10) Lack of staff and infrastructure in Punjab courts.

Many times, delay is also occurred due to the malafide intention on the part of the complainant to delay the trial. It has been seen during the field work by the researcher that in heinous crimes like rape cases, and even in other fake cases, compromises have been made between the parties for a huge amount of money. “Even in the murder cases u/s 302 IPC, eye witnesses grabbed money from the accused parties and get turned”, one of the prominent lawyers evaluated.

As far as ‘Reasons for delay in Evidence’ are concerned, heeding question 32 of the annexure IV, advocates were of the views that delay in evidence occurred because;

1) Frequent transfer of cases from one court to other. Time has been consumed in going through files, shifting of power from one court to other.
2) High number of adjoumments for which High Court and Punjab Government are liable for this.(6 months get wasted appr.)
3) PWs who are private witnesses do not apperaed intentionally in the courts
4) Shortage in staff of Serving agency.
5) Poor judicial system in Punjab.

Regarding liberalising the bail, in accordance with question 33 of the annexure IV, the lawyers were of the view that it is totally court’s discretion to allow bail or not. One of the competent and eminent lawyer abruptly remarked, “in bail and stay matters, the
conduct of the judges is such as if they are parting away a piece of land from their property”.

In many cases undue adjournments in criminal cases are made due to the Lawyers. Sometimes undertrials on bail do not appear on the date of trial on the pretext of illness or some urgent work. Many times they furnished false medical certificates. The situation gets worse where one undertrial is in judicial custody and his accomplice on bail adopts delay tactics in the same case. In many cases, accused adopt delay tactics to kill the time and win over the witnesses with intent to get acquitted. Witness requested the judges to hear their cases in their lawyers’ presence only.

Besides no sane man would approve their strikes in the situations like high backlog of cases, huge pendency in civil and criminal cases, at the most delay in justice. It is highly deplorable behavior of lawyers being condemned by all classes of people time to time. “Police and judges are the main pillars of disposing justice but the lawyers’ accountability is nowhere”.

6.11 Lack of Coordination among Different Functionaries of Criminal Justice System

In order to smooth the conduct of trials and speedy disposal of trials, it is necessary to have coordination between the organs of criminal justice system. In the Indian system of criminal justice administration, the following organs are important: 1. The Police; 2. The Judiciary (that includes prosecution and lawyers) and; 3. and the Prisons.

But it has been seen in practice that lack of coordination among these functionaries constitutes a major cause of delay in quick disposal of cases. Official witnesses, lawyers, and public witnesses attribute the delay to procedural complexities and absenteeism in one form or another. Defense lawyers and prosecution make their own contribution to the prolongation of trials. “The situation has further deteriorated after the separation of prosecution from the police leading to dilution in accountability and loss of effectiveness”.

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53 As stated by one of the Judicial Magistrate 1st Class (JMIC) from Punjab Courts, during an interaction with the researcher.

Disarray is found among the judiciary, police and the prison department as well. Judges blame the police, I.O, prosecution agency and the lawyers for delaying trials. On the contrary, the lawyers and the police agency/I.O agency targeted the judicial officers and public prosecutors for the same due to their inefficiency and ill will. The prosecution agency held the police, the accused and the lawyers responsible for delaying the justice in the similar way.

6.12 Other Legal Provisions in Punjab Courts

6.12.1 Free Legal Aid

“A person detained on a criminal charge is entitled to trial within a reasonable time or to release pending trial. It also lays stress upon quick trial and provision of bail. Article 39-A of the Constitution of India deals with the obligation of the State to provide Free Legal Aid to such accused prisoners both in the prison and outside who are unable to engage a lawyer”.

“The Legal Services Authority Act 1987 was enacted in pursuance of this provision and Legal Services Authorities were set up at National, State and District levels for the purpose of providing legal aid to the needy persons. At the district level, District and Sessions Judge has been made the chairperson of the District Legal Services Authority. One law officer of the rank of Assistant District Attorney is earmarked for the purpose of executing day-to-day functioning related with people in need of free legal aid”.

“Albeit Punjab Legal Services Authority has made it compulsory for officials of legal aid cells to visit jails at least once a week by the Assistant District Attorneys in order to provide legal advice to the jail inmates, collecting their applications and to submit them to the concerned courts. However, ground reality is far from the theoretical provisions made in the various enactments and directions”.

All the four district courts under the study have been facilitating the Legal Aid in their courts and concerned jails. As per data available for the present study, it has been seen that maximum number of cases referred to free legal aid cells are the criminal cases.

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55 Criminal Law Act (2005), note 6, principle 17.
56 Legal Services Authority Act (1987).
harmony with question 13 to 15 of the annexure V, in Amritsar District Courts for three years, around 508 cases have been referred to Free Legal Aid cells, out of which around 249 criminal cases get decided and thus, there were only 49.01% of decided cases while 50.99% cases were pending. In Jalandhar District courts, in last three years, 997 total cases have been referred for Free Legal Aid cell, out of which only 171 cases get decided with bill and 186 cases were pending that consumed only 18.65% of disposal.

In Gurdaspur District Courts, 37 cases were taken up in total from April to June quarter, out of which 34 criminal cases got decided i.e. 91.89%. While from October to December, out of total 57 taken up cases, all get decided out of which 55 were criminal cases i.e 96.49%. Free Legal Aid cell in Kapurthala District Courts has referred 781 total cases from last three years, out of which 177 get decided with bill, consuming 22.66% disposal rate and 604; i.e. 77.34% pendency rate of criminal cases.

Resources disclosed that the lawyers in Punjab courts, under Legal Aid cells who appeared with bill before the legal cell authorities, have completed the trials they have been dealing with and the lawyers who do not appear with bill have not get disposed off their cases. It is worthwhile pointed out here that the numbers of advocates not appearing with bill before the legal aid cell authorities in the four districts courts were comparatively very higher than the lawyers appearing with bill them.

The researcher found the advocates engaged under this provision do not pay proper attention during trial because of paucity of time and fewer honorariums. In the lower judiciary(Subordinate courts), most of the poor inmates who have been provided legal aid by the District Legal Services authority do not know even names of their advocates.

It has been observed during study that the legal aid cells in Punjab doing comparatively good job in High Court of Punjab & Haryana than in the District courts of Punjab. The counsels in High Court contact the parties under Legal Aid Cells themselves, take their fee, may be of small amount, litigate the cases and follow up the same with sincerity. The parties know their counsel names who litigate their cases in Punjab High court. Unfortunately, the disposal rate of cases through Free Legal Aid Cell is very lower in the Subordinate courts of Punjab. There is deficiency in legal aid system, especially for the juveniles too.
6.12.2 Plea bargaining

Plea bargaining is a new concept in the history of the Criminal Justice Administration of India. This concept has been brought into effect by Code of Criminal Procedure (Amendment) Act 2005 that came into effect from 11 January 2006. A new chapter XXIA has been inserted in Plea Bargaining (Sections 265 A to 265 L) to reduce pendency of cases in Courts.

Plea Bargaining is applicable to those offences for which punishment is up to a period of seven years. It is also defined as pre-trial negotiations between the accused and the prosecution during which the accused agrees to plead guilty in exchange for certain concessions. Another reason for introducing this concept is that most criminal courts are overburdened.

The judicial Magistrates and the lawyers, all were of the views that implementation of the plea bargaining remained unsuccessful in India as well as in Punjab. Neither the general people nor the litigants understand its concept properly, nor has it been implemented and obeyed by the judicial officers and other wings of the Criminal Justice System in proper way. In accordance with question 10 of the annexure II, no judicial officer has ever offered Plea Bargaining in his court in Punjab. As specified in question 11 of annexure II, among the five judicial officers that were interacted, the majority were of the view that no application has ever been presented to the courts concerning Plea Bargaining. Additionally, hardly any lawyers i.e. only 2% of lawyers out of 40 have filed any application regarding plea bargaining before the Hon’ble Court heeding question 22 of the annexure IV. And in cases, it has been filed, no outcome/result was found out of it. Neither the judges accepted that application, nor are they interested in it in line with question 23 & 24 of the annexure IV of lawyers, as discussed earlier.

During the incorporation of chapter of Plea Bargaining, the law framers failed to understand that how and to what extent the interest of justice should be protected to achieve the desired results. The period regarding pardon or reducing sentence of accused is not appropriate and once an accused intends to effect compromise with complainant or victim, as the case may be, he shall never be ready to suffer imprisonment even for a period of a single day.\footnote{As stated by the Chief Judicial Magistrate, during an interaction with the researcher in District Courts Amritsar.}
6.12.3 Lok Adalat

With the regular courts over-burdened, Lok Adalats can provide an alternative that can help manage this load. In Lok adalat, cases taken up generally in which parties come themselves before the court for settling their dispute with mutual consent. Research revealed that though undertrials’ cases are rarely involved in such adalat but criminal cases are there.

The following Tables 6.10(a) and 6.10(b) show the number of cases taken up and decided as per data collected in the Lok adalat of Amritsar, Gurdaspur, Jalandhar and Kapurthala district courts in 2nd and 4th quarter of a year.

Table 6.10(a)

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Table 6.10(b)

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<thead>
<tr>
<th>Courts</th>
<th>Cases Taken Up</th>
<th>Total</th>
<th>Cases Decided</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Civil</td>
<td>Criminal</td>
<td></td>
<td>Civil</td>
</tr>
<tr>
<td>Amritsar</td>
<td>334</td>
<td>1108</td>
<td>1442</td>
<td>207</td>
</tr>
<tr>
<td>Jalandhar</td>
<td>2602</td>
<td>936</td>
<td>3542</td>
<td>2269</td>
</tr>
<tr>
<td>Gurdaspur</td>
<td>1142</td>
<td>4684</td>
<td>5826</td>
<td>1069</td>
</tr>
<tr>
<td>Kapurthala</td>
<td>1560</td>
<td>2012</td>
<td>3572</td>
<td>1319</td>
</tr>
<tr>
<td>Total</td>
<td>5638</td>
<td>8740</td>
<td>14382</td>
<td>4864</td>
</tr>
</tbody>
</table>

The Tables 6.10 (a) and (b) as given above showed that number of criminal cases taken up in Lok adalat was higher than the number of civil cases. The average percentage of

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59 As per data collected from statistics rooms of Amritsar, Gurdaspur, Jalandhar and Kapurthala District courts during two quarterly periods of year.

60 As per data collected from the statistics rooms of the selected four District Courts under study during two quarterly periods of a year.
criminal cases got decided during quarterly period of a year in Lok adalat of selected four courts was 81.06%. As far as Criminal cases were concerned, 82.32% criminal cases got decided in April to June and 79.80% cases in October to December. Whereas the percentage of civil cases that got decided in April to June was 66.07% and 86.27% in October to December.

About the working of Lok adalat in Punjab, it has been observed that it is not much effected in Punjab. The lawyers, the judicial officers and the prosecution agency too were not satisfied with the working of Lok adalat in Punjab. One of the eminent lawyers commented, “Lok adalat is nothing, but simply an ‘eye wash’ for the purpose of putting up number of cases in courts”.

6.12.4 Camp Courts in Punjab

For the purpose of selecting cases to be taken in a Camp court, the Session judge of a district court send a notice to the concerned jail authorities for sending him a list of undertrials involved under petty offences in their jail, under different short time periods like 2 to 3 months or 6 months. That list when get prepared, send back to the Session court. Then with the permission of the Session judge, Chief Judicial Magistrate holds the camp court in that jail for speedy disposal of the cases of the petty offences. Camp courts in Punjab are also known as ‘Jail Courts’.

As far as Camp courts are concerned, they are held by the Chief Judicial magistrate (CJM) of the concerned district courts in Punjab jails generally once in a month that is on last Saturday or Sunday of every month, in line with question 9, annexure V of Jail authorities. The maximum undertrials’ cases are taken up under them that are involved under petty offences mainly under question 11 of annexure V.

In a camp court, for commensurate with data available, on average 48 cases get referred annually in the jails of Punjab as per question 10, annexure V, out of which 2-4 cases get decided per month. It implies that in aggregate of three years i.e. from 2011 to 2014, 180 cases get decided through camp courts.

In Camp courts of Punjab, undertrials’ cases get decided speedy and in scurry. Camp courts, no doubt, are playing comparatively good role in speedy disposing off the number

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61 As per the Observation method, Questionnaire and Schedule method have been accomplished in District courts and District jails of Punjab under study from May 2011 to December 2014.
of cases. But it has been seen in practice, that no regular camp courts are being held in Punjab jails. True to question 12 of annexure V, no specific answer has been provided by the jail authorities.

6.12.5 Juvenile Courts in Punjab

Juvenile Homes have not been found in all the districts courts in Punjab. Juvenile offenders in Punjab, when get apprehended have send to juvenile homes that is situated at Hoshiarpur of Punjab. Though Juvenile courts have been a part of the present empirical study, no data as to number of cases instituted and disposed off relating juvenile offenders has been accessible to the researcher in compliance with questions 21 and 22 of the annexure II for Judicial Magistrates from Amritsar, Gurdaspur, Jalandhar and Kapurthala district courts.

Resources disclosed that more and more children across Punjab are committing crimes with the incidence of juvenile crime of which ratio is increasing with every passing year. Highlighting its pitiable condition and functioning, the amicus curiae, Gurminder Singh, submitted a report in the Punjab and Haryana High Court giving exhaustive details of the non compliance of Juvenile Justice Act, by the Magistrates and members of Juvenile Justice Boards in the two states.62

Juvenile Court has been held once in a week in Punjab, that is on every Friday. Juvenile Board is consisted of three members; one chairperson and two other members. It is worth noting here that there is no juvenile court in every district court of the Punjab till submission of the thesis. It has been decided in the committee of the Juvenile Board of Punjab held in Feburary 2012 that juvenile courts will be established in all the districts courts of Punjab. But as per information available till writing of this thesis, no official juvenile court has been established in any courts of Punjab.

Thus, the abject and abysmal hardships faced by the undertrials during their trials in the judicial courts of Punjab have best gleamed in the present chapter. The courts, the police, prosecution agency, advocates and prison department all are responsible for their aberrant behavior in causing delay in speedy trials of undertrials. A critical analysis of key role of the police, prosecution agency, defense lawyers and prison department of the Punjab as well as working and implementation of Camp Courts, Lok Adalat, Free Legal Aid Cells,

and the aspect of Plea Bargaining has been evaluated in the specific way of their application in the present empirical study.\textsuperscript{63}

The issue of trials’ delay in case of undertrials is a cause of worry because a plethora of undertrials has been languishing in jails without trial, not in Delhi, Punjab & Haryana but throughout the India. Unfortunately, nothing much seems to have changed even during the intervening for decade and more.

Overcrowding in jails, overburdened judiciary due to abound backlog of cases in the courts is undermining the overall judicial system in many ways. The shortage of judges, the delay tactics by the police or investigating agency, the lawyers and the prosecution agency increase the chances of delay in trial. There is lack of coordination between the Centre, Judiciary & State Governments and also because the undertrials do not have anyone to stand as guarantors, nor assets to furnish as bail bonds, the poor continued to suffer in prisons. There have been cases where the amount of bail is disproportionally high.

On their part, the courts are also not without blame. Even though law requires that trials should be conducted from day to day till completed, in practice this rarely happens. Cases are adjourned for a couple of months at a time, which further aggravates delay. The provisions of Camp courts, Plea Bargaining, Lok Adalat and Free Legal Aid not be used and implemented effectively. Albeit indiscriminate arrests by the police, ignorance of legal rights by the undertrials, delay in trial procedure, reluctance of the courts to grant bail and inability to provide surety are some of the reasons that have led to the unnecessary detention of abounding undertrials in Punjab jails. Non-implementation of the existing legal provisions is a major reason for the large undertrial population lodged in prisons.

The fault is mainly of legal professionals. We ask for adjournments on the most flimsy grounds. If the Judge does not readily grant adjournment, he is deemed highly unpopular, I think it is the duty of the legal profession to make sure that it co-operates with the judiciary in ensuring that justice is administered speedily and expeditiously, it is a duty of which we are totally oblivious.

\textbf{M.N. Palkhiwala}\textsuperscript{64}

\textsuperscript{63} Empirical study has been conducted from the years 2011 to 2014 from Central and District jails of Amritsar, Gurdaspur, Jalandhar and Kapurthala and the respective District courts of the same.