CHAPTER - 6
6. Analaysis and Interpretation of Data.

6.1 In chapter V we have seen how pendency of cases remained as it was though the staff was increased as suggested by Manudhane Study Group. What are the reasons for arrears? Information received from Judicial Officers i.e. C.J.J.D. and J.M.F.C. courts shows that in how many courts legal practitioners are following provisions of procedural laws for preparation and trial of suits, darkhasts as well as criminal cases. Not following procedural laws properly by the persons involved in judicature is one of the reason for arrears of cases in the court of C.J.J.D. and J.M.F.C. In this chapter data received from courts of C.J.J.D. and J.M.F.C. has been analysed and interpreted considering existing procedural laws and their impact of following them properly.

6.2 Regarding Suits.

Deciding of suits, and other civil cases is a judicial work. A Judicial proceeding can be decided only by a judge. Judicial work can not be handed over to ministeral staff. A judge has to discharge judicial work during court hours i.e. between 11 to 2 p.m. & 2.30 to 5.30 p.m. To increase disposal a judge has to utilise every minute of court hours. Judicial work depends upon advocate, parties and witness. If judge takes sit on dias at 11.00 A.M. but advocates do not attend the...
court till 12.00 a.m. in such situation the judge has to sit idle on dias. If advocates are present before court at 11.00 but parties or witness are not present before the court in that situation a judge has to sit on dias without work. If both parties, witness and advocates are present before court but any side applies for an adjournment in that situation a judge remains idle.

From aforesaid discussion it is seen that discharging judicial work is the joint task of parties, witness, advocates and judge. All three i.e. parties, witness and advocates of both parties have to attend the court with all preparation. If all three attend the court but either party is not prepared i.e. not having in possession of relevant documents in such situation party may not be in a position to start the case or evidence. So one fact is clear that unless parties and their advocates are prepared a civil case can not be conducted before a judge. Therefore preparation of parties and their advocates is must for the progress of a civil suit.

The word preparation includes following factors.

For advocates :-

- Pleadings.
- Documents.
- Relevant books of case laws.

For parties .

- Pleaders fees.
- Witnesses and their expenses.
- Necessary documents and instructions.

If any one factor is absent or not made available it results in the adjournment of case.
Code of Civil Procedural, contains various provisions for preparation and trial of suit. They are as follows.

- Preparation or drafting of plaint. (Order I, II, VI, VII)
- Institution of suit. Presentation of plaint. (Order IV)
- Issue of summons to defendants. (Order V)
- Appearance of defendants. Order – VIII
- Presentation of written statement.
- Filing of documents with written statement on which defence is based or filing list of documents with written statement.
- Production of documents by both parties relevant to their respective case or referred in pleadings. (Order – VIII)
- Discovery, Inspection and Interrogatories. If either party wants to inspect any document in possession of opposite party. (Order – XI)
- Admission or denial of documents and facts. Notice to admit facts or documents. Notice to produce documents. (Order – XII)
- Settlement of issues or framing of issues. (Order – XIV)
- Pronouncement of judgement when parties are not at issues. (Order – XV)
- Issue of summons to witness to attend the court to give evidence or to produce documents. Filing of list of witness by parties to whom they want to examine as witness to give evidence or to produce documents. (Order – XIV)
- Production of evidence by parties. (Order – XVIII)
- Hearing of argument.
• Delivery of judgement and preparation of decree. (Order-XX) If the procedural stages are not followed properly by parties and their advocates that results in unnecessary delay, which increases the life of litigation.
Effect of not following Order [ I, II, VI & VII Of C.P.C.]

Order I, II, VI and VII.

These orders provide the manner in which pleadings are to be made. How suit is to be framed? Who are to be joined as plaintiff or defendant? The facts within the special knowledge of party when they are to be pleaded. Pleadings are to be prepared as far as possible in forms provided in Appendix A in first schedule of CPC. Description of claim. Nature of property. Grounds of exemption from limitation Act. Cause of action when it arose. Whether it is continuous one or not is to be given?

If name or address of defendant is not given correctly it will take more time for service of summons.

If suit property is not described correctly as per of description given in public record in that case plaintiff has to amend the plaint that may delay the decision of case finally.

Order V

On presentation of plaint court has to issue summons to defendant. For that purpose plaintiff has to deposit requisite process fees provided under Bombay Court Fees Act. Similarly he has to supply requisite copies of plaint. If plaintiff fails supply requisite process fees in that case court will not issue summons to defendant. Similarly plaintiff pays requisite process fee but fails to supply copies of plaint for sending with the summons to defendant in that case also court will not issue summons to defendant till such copies are supplied.

This may increase life of litigation and also increase work of ministerial staff.
Filing of written statement by defendant.

Order VIII and V

As soon as summons is served to defendant he has to appear before court on the day fixed and file written statement within thirty days from the date of service of summons but shall not be allowed to file the same after ninety days.

G-1-1 The data received by the researcher shows that out of 642 courts not in a single court, defendant filed written statement within 30 days from the date of service of summons. The general practice is that on the day of appearance by defendant he files vakalatnama of his advocate and seeks time to file written statement. The data shows that defendant takes average three to six chances (average four to six months or more time) to file written statement.

This could happen due to non availability of relevant documents by defendant for preparation of written statement. In some cases defendant appears in the suit in person and seeks time to engage an advocate and court grants such time though there is no provision in CPC to grant time to engage an advocate. This type of tactics is followed by defendant or their advocates to prolong the litigation.

There are five types of summons provided in CPC. First schedule Appendix-B, Form No.1 to 5.

- Summons for disposal of suit. Form No.1
- Summons for settlement of issues. Form No.2
- Summons to appear in person. ---"--- No.3
- Summons in a summary suit. ---"--- No.4
- Summons for a judgement in summary suit. ---"--- No.5
Form No.1 is used in small cause suit.

Form No.2 is used in Regular suit calling upon defendant to file written statement & document in his possession on which he bases his defence.

Form No.3 is used in Regular Suit to procure presence of defendant in court with documents in his possession on which he bases his claim.

Form No.4 is used in summary suit

Form No.5 is used for a judgement in summary suit.

G-1-2 The data received by resercher in this regard shows that out of 642 civil courts not in a single court defendant filed list of documents with the written statement or documents on which he bases his defence.

Order XIII

Filing of written statement by defendant.

Production of documents on the stage of documents.

G-1-3 After filing written statement by defendant in a suit court has to keep a stage for production of original documents in court by parties. This stage is kept before framing issues. Data received by researcher in this regard from 238 courts shows that in 170 courts parties or their advocates did not file original documents in court on the stage of documents U/o XIII of C.P.C. Only in 68 courts parties or their advocates filed original documents in court on the stage of documents U/o XIII of C.P.C.
Framing of issues Order XIV

Order 14 Rule 1 of CPC provides framing of issues.

- Issues arise when a material proposition of fact or law is affirmed by one party and denied by other.

- Material propositions are those propositions of law or facts which a plaintiff must allege in order to show right to sue or a defendant must allege in order to constitute his defence.

- Each material proposition affirmed by one party, denied by the other shall form a subject of distinct issues.

- Issues are of two kinds. Issues of fact and Issues of law.

To frame issues a judge has to consider following materials.

- Pleadings - Plaint and written statement.

- Documents filed by both parties.

- Interrogatories and replies given to those interrogatories.

While framing issues a judge has to bear in mind provisions of sections 79 to 90 of Evidence Act, in general. Similarly he has to consider provisions of Article 233 & 335 of Hindu Law, if suit is for partition and separate possession by a Hindu. Provisions of sections 118 to 122 of the Negotiable Instruments Act 1881 (old) if suit is based on Negotiable instruments.

The data received by researcher from 211 courts shows that every judge has framed issues promptly. This is a good thing for judicature. A judge must be very careful in framing issues. He has to consider provisions of para 90 of Civil Manual while framing issues.
The data received by the researcher from 211 courts shows that every judicial officer has framed issues promptly on the stage of framing issues but the ratio of ready and unready matters of civil suits shows that it is below 50 %. In the opinion of researcher if information given by judicial officers is correct then the percentage of ready suits ought to be above 80 % of total pendency of suits.

**Settling date / filing list of witnesses by parties Order- XVI.**

After framing issues the court has to fix a date for filing list of witness by parties. Code of C.P. provides proforma of list of witnesses to be filed by parties (First schedule Appendix-H. Form No.2-A).

In this list both parties have to give names of witnesses to whom they want to examine as witnesses to prove their respective case. The filing of list of witnesses is mandatory and not discretionary.

If party wants to call its witnesses by issuing summons then concerned party has to apply to the court for the same and also to deposit requisite expenses in court.

Data received by researcher from 172 courts in this regard shows the number of courts in which parties filed list of witnesses on the stage of settling date. Out of 172 courts only in 44 courts parties or their advocates have filed list of witnesses in suits on the stage of settling date.

**Order - XII**

Before production of evidence by plaintiff or defendant, party to suit may in court give notice to admit documents or facts. Form of notice is given [First Schedule Appendix-C Form No.9] of CPC.

The purpose of giving such notice is to curtail oral evidence of parties. If certain facts or documents are admitted by other party the first party is not required to call witness to prove such facts or documents.
The data received by researcher in this regard from 201 courts shows that on an average only in 14% suits parties or their advocates are giving notice to admit facts or documents.

**Total number of Courts of C.J.J.D. and J.M.F.C. in the year 2000 were 642.**

Information received from 242 courts.

<table>
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<th>Sr. No.</th>
<th>Total number of courts</th>
<th>Parties filed list of documents with w.s.</th>
<th>Parties filed list of witnesses on the stage of S.D.</th>
<th>Parties filed documents on the stage of documents</th>
<th>Stage is kept for denial of documents</th>
<th>Notice to produce docu. or facts are given</th>
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<td>Yes</td>
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</tr>
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<td>3</td>
<td>%</td>
<td>0</td>
<td>100</td>
<td>26</td>
<td>74</td>
<td>29</td>
</tr>
</tbody>
</table>

- Parties or their advocates filed documents or list of documents with written statement in suits. Nil
- Parties or their advocates filed original documents in court on the stage of documents in suits. 29%
- Parties or their advocates filed list of witnesses on the stage of settling date in suits. 26%
- Notice to admit facts or documents are given in suits by parties or their advocates. 14%
- Courts keep stage for admission or denial of documents in suits. 42%
6.3 Consequences of not following provisions of order I to XVIII of CPC strictly and properly at relevant stages.

- Drafting of plaint.

If material facts are not given in plaint in respect of relationship between parties. Description of properties. The nature of transaction taken place between parties. The correct date of document in respect of which claim is made. In such case defendant may apply for better particulars U/0 6 Rule 5 of CPC on the date of his appearance. After filing such application by defendant plaintiff has to file his say to that application if he does not think it necessary to supply such better particulars. On receipt of say the judge has to hear both parties and order plaintiff to supply better particulars as sought or reject the application. Plaintiff takes time to supply such particulars on next date which delays filing of written statement by defendant which definitely delay subsequent stages of the suit and increase life of litigation.

Correct name, address, age and occupation of defendants in plaint.

Giving correct name, address, age and occupation of defendants in plaint is very necessary. If name of defendant, his father or surname is not written correctly in plaint it causes difficulty to bailiff to serve summons. If any one thing out of name, father's name or surname is not written correctly defendant may refuse to accept suit summons on this ground. The bailiff returned the summons unserved with an endorsement that name, age and address are not correct. On receipt of such summons court has to keep stage for supply of correct name or address of defendant. Plaintiff's counsel seeks time to supply the same on the ground that he wants to contact his client (plaintiff) if plaintiff is not attending court on each date of the suit or plaintiff sought time to collect necessary information in this regard. Non service of summons to defendant causes delay to subsequent stages, which increases life of litigation.

Issue of summons to defendants.

After registration of suit a judge has to pass order on plaint "issue summons to defendant for settlement of issues". For issue of summons to defendant plaintiff
has to pay requisite process fees and also supply necessary copies of plaint for sending the same to defendant with suit summons.

If requisite process fees are not paid by plaintiff then court can not prepare summons for sending to defendant. Similarly if plaintiff did not supply necessary copies of plaint court is unable to issue summons to defendant. It is duty of the advocate of plaintiff to see that requisite number of copies of plaint are attached with plaint at the time of its presentation. Delay in issue of suit summons to defendant causes delay the subsequent stages resulted to increase the life of litigation.

Appearance of defendant, to engage advocate, and filing of written statement.

As soon as summons is served on defendant he has to appear before court and file written statement within 30 days from the date of service of summons. Data received by researcher shows that on an average defendant takes three to six months or more time to present written statement. General grounds for adjournment for seeking time to file written statement are,

- Necessary documents are not made available hence written statement could not be prepared.

- Defendant could not collect necessary information hence written statement could not be prepared.

- Some other grounds put forth by advocates.

It is experienced that defendant tried to take as much time as possible to file written statement.

Many times it happens that defendant did not file written statement within time granted to him. In such situation court has to pass an order U/s 8 Rule 5 and 10 of CPC, that suit be proceeded further without written statement of defendant. If such order is passed then court has to pronounce judgement U/s 8 Rule 5 and 10 of CPC or suit is to be fixed for evidence of plaintiff. As no written statement is filed by defendant, plaintiff may not examine his all witness. After closing of evidence of plaintiff before delivery of judgement defendant use to presents written statement
with an application to permit him to file the same. Generally after obtaining say of plaintiff court allows defendant in the interest of justice to file written statement subject to some cost to be paid to plaintiff.

The tactics followed by defendant constrained court to revert the stage of judgement or argument to ‘filing of written statement’ which results in delay subsequent stages of suit and there by increases life of litigation.

Filing of documents by defendant in court along with written statement relied upon by him and in his possession

Defendant to state in whose possession those documents are on which reliance is placed by him.

Under order 8 rule 1-A of CPC it is duty of defendant to produce documents in court on which he bases his defence or relied upon. He has to file a list of such documents with written statement.

It is general practice that defendant does not file documents in court on which he bases his claim or relied upon. These documents are filed at the time of evidence of defendant. The purpose of filing these documents by defendant in court is two fold. That lets the plaintiff know that the defendant is in possession of such documents and they would help the judge at the time of framing issues because next stage after filing documents is framing issues.

If defendant discloses as to in whose possession documents are on which he relies upon gives idea to his opponent and court about the custody of documents. Other party may take inspection of such documents if necessary.

Non filing of documents or not filing of list of documents at the time of filing of written statement may cause surprise if they are filed at the time of evidence of defendant. By doing this plaintiff may not get an opportunity to rebut those documents.

If any document is filed by defendant in court at later stage of which plaintiff has no notice previously that may requires him to adduce further evidence in
rebuttal. This results to reverse the trial. If defendant files those documents or list of documents reversal of trial can be prevented.

Discovery And Inspection by Parties.

In any suit plaintiff or defendant by the leave of the court may deliver interrogatories in writing for examinations of opposite party. A party is entitled to deliver one set of interrogatories of such discovery may relate to facts of the case.

A party to suit may without filing any affidavit apply to the court for an order directing any other party to suit to make discovery on oath of the documents which are or have been in his possession or power relating to matter in question there in.

The purpose of discovery and inspection is to curtail oral evidence and there should be minimum issues left on which parties have to lead oral evidence to prove them. The discovery and inspection also save cost of the suit and time of the court.

Inspection of documents referred in pleadings or Affidavit.

Every party to suit shall be entitled at or before settlement of issues to give notice to other party, in whose pleadings or affidavit reference is made to any document or who has entered any document in any list annexed to his pleadings to produce such document for the inspection of the party giving such notice.

Non compliance of order of discovery, inspection of documents, its effect.

Where any party fails to comply with any order to answer interrogatories or for discovery or inspection of documents he shall, if he is plaintiff, be liable to have his suit dismissed for want of prosecution.

And

If he is defendant, to have his defence, if any struck out and to be placed in the same position as if he had not defended.
Admission.

A party to suit may give notice by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of other party.

The purpose of giving such notice is to curtail oral evidence and there should be minimum issues on which parties have to lead oral evidence. This results in decrease life of litigation and speed up of trial of suit.

Production of documents by parties at the stage of documents.

Order 13 of CPC, provides that parties or their pleader shall produce, on or before settlement of issues all documentory evidence in original where the copies there of have been filed along with the plaint or written statement.

If parties to suit have filed all original documents in court before settlement of issues they help judge to frame issues correctly. If all relevant original documents are filed on record picture of suit is clear. Parties are filing copies of documents (xerox or certified) copies and when time comes to prove them they say that originals are not available or they are in custady of some other person. Unless original documents are filed on record they cannot be proved. This results in delay to record evidence.

If parties are not having in possession or power original documents which are necessary for suit then they have to seek permission of the court to lead secondary evidence U/s 65 of Evidence Act, for that purpose concerned parties have to prima facia prove that originals can not be brought before court only in that circumstance court can grant permission to lead secondary evidence.

If this job is done by advocate of parties at proper stage of suit then there would be no delay in trial of suit. If it is not done then it would caused delay the subsequent stages of suit results to increase life of litigation.
Framing of issues / settlement of issues.

Settlement of issues or framing of issues is an important stage. This job is performed by a judge. At the time of framing issues a judge has to consider pleadings, documents and interrogatories. Framing of issues is the skill of judge. Casting of burden of particular issue on party is must. If issue is not correctly or properly framed at this stage parties may apply to the court after closing of evidence for recasting of issues. If issue is recasted and burden shifts from one party to another then it requires recording of additional evidence oral and documentry which delays trial of suit. While framing issues a judge has to decide whether suit can be disposed off by deciding preliminary issues. The preliminary issues may be.

- Issue of Jurisdiction (Pecuniary)
- Issue of Jurisdiction (Teritorrial)
- Issue of Jurisdiction (Spl.forum)
- Issue of limitation.
- Issue of improper valuation of suit.
- Issue of improper payment of court fees.
- Issue of non-joinder of necessary parties.
- Issue of non-disclosure of cause of action.
- Issue of tenability under specialAct / Mandatory notice.

If a judge is of the opinion that suit can be disposed off by deciding preliminary issue then he has to pass necessary order on the exhibit on which issues are framed and matter be put up for hearing on such preliminary issue. If a judge does not follow this procedare at proper stage then ready suit may become unready. If latar on any party applies for deciding prelimiry issue which delays the trial of suit. It further delays subsequent stages of suit and results in to increase life of litigation.
A judge has to see that every issue of fact so framed as to indicate on whom the burden of proof lies.

Every issue of law shall be so framed as to indicate the precise question of law to be decided.

When the question is whether a certain section of law applies, the issue should be framed in the words of that section e.g. if the question is whether a transfer should be set aside u/s 54 of the Provincial Insolvency Act, the issue should not be 'Is the transfer bogus and fraudulant'

Issues should be self contained. The framing of issues such as Is the sale liable to be set aside for the reasons stated by the defendant in written statement dated should be avoided.

Every issue should form a single question and as far as possible should be put in an alternative form.

No proposition of fact which is not itself material proposition but is relevant only as tending to prove a material proposition, shall be made the subject of an issue.

No question regarding admissibility of evidence shall be made the subject of an issue.

Settling date or Filing of list of witnesses

The stage of settling date require parties to file list of witness to whom they propose to examine to give oral evidence or to produce documents. A proforma is provided in CPC schedule First Appendix-H, form No 2-A. The purpose of filing list of witnesses by the parties to give notice to each other which evidence they want to produce during trial and from where such witnesses or evidence would be made available so that both the counsels of parties are in a position to get necessary instructions from their clients to cross examine witnesses effectively.

Data received by reasearcher shows that only in 26 % courts parties or their advocates filed list of witnesses in suits on the stage of settling date.
If parties do not want to examine more witnesses except themselves in that case it may not be necessary to file such list of witnesses. If parties file list of witnesses court know how many witnesses parties are going to examine by which a judge can manage his daily board at the time of fixing such suit for (hearing) evidence.

Parties can produce their witnesses by bringing them in court. If they want summons for procuring attendance of any witnesses then they have to apply to the court and also require to deposite requisite expenses of such witnesses.

Data received by researcher shows that parties or their advocates do not file list of proposed witnesses. This shows that advocates are not certain to whom they want to examine in support of their case. If advocates of parties go through issues they would get the idea how many witnesses they want to examine.

If no lists of witnesses are filed by parties in that event advocates use to examine witnesses one by one till their satisfaction or satisfaction of their clients. Irrelevent evidence may be recorded by doing so and material important evidence left. This may cause miscarriage of justice at the cost of clients and spending public (money) resources. An attesting witness who has been called by party to prove a document may be examined or cross examined for matters other than document. This consumes much time of court, which causes delay the trial.
6.4 Activeness of Judge while recording evidence

Hearing of suit examination of witnesses and recording evidence

On the date fixed for hearing a party having right to begin shall produce his evidence in support of the issues which he is bound to prove.

The other party shall then state his case and produce his evidence.

Where there are several issues the burden of proving some of which lies on one party. The party who has started its case evidence may at its option either produce its evidence on those issues or reserve it by way of answer to the evidence adduced by other party. In latter case the party, who has started its case may at its option either produce its evidence on those issues or reserve it by way answer to the evidence adduced by other party. In latter case the party who started the evidence on those issues after the other party has produced its all evidence.

If party to suit wishes to examine himself as witness then it shall produce itself in court before any other witness on its behalf has been examined.

The evidence of party or witnesses can be taken by examining it before court as examination in chief or examination in chief of witness shall be on affidavit U/o 18 Rule 4 & 5 of CPC. A controversy arose after amendment of CPC in 2002 in respect of order 18 rule 4 & 5 regarding recording of evidence in appealable and unappealable cases.

The Apex Court, set at rest that controversy in the case reported in 2003(3) Maharashtra law journal 841 Madhur Industries U/s Orient commerce.

The Apex Court observed that,

"Recording of evidence by way of examination in chief on affidavit. Considering intention of parliament in sub rule 4 of order 18 it have to be mean to all cases and not restricted to those cases where in an appeal lies." When the questionnaires circulated at that time C.P.C. was not amended.
In case of examination in chief on affidavit its copy is to be supplied to other side by the party who has called such witnesses.

On the same day examination in chief of witnesses is recorded be cross-examined by opponent. If examination in chief is given on an affidavit in that case next date be fixed for cross-examination of witness where examination in chief is filed in court.

The examination of a witness by the party who called him shall be called his examination in chief.

Cross-examination The examination of a witnesses by the adverse party shall be called as his cross examination.

Re examination The examination of witness subsequent to the cross examination by the party who called him shall be called his re examination.

While recording evidence the judge has to follow the provisions of section 135 to 165 of Evidence Act, chapter 10 of Civil Manual and order 18 of Code of Civil Procedure. While recording evidence in civil matters of witnesses by a judge he shall bears in mind provisions of para 255 and 256 of Civil Manual.

Para 255(4) reproduced here,

"A witnesses may be questioned in cross examination not only on the subject of enquiry but upon other subject, however remote for the purpose of testing the credibility, his memory, his means of knowledge or his accuracy. The moment it appears that a question is being asked which does not bear upon the issue or give promise of helping the court to estimate the value of witness’s testimony, it is duty of the court to interfere as well to protect the witness from what became an injustice or insult as to prevent the time of the court from being wasted. The court should also prevent any evidence being given to contradict a witnesses in contravention of section 153 of the Evidence Act."
Para 256 of Civil Manual states, that “it is essential that the presiding officer must take great interest and elicit such information as may be helpful in finding the truth. Particularly they should control the examination in chief, cross examination and examination of witnesses and try to check the tendency to prove and over prove unessential allegations, so as to prevent much time being taken up in eliciting and record in unessential particulars to which no reference can usefully be made in argument. They shall exercise control when questions that are uncalled for harassing or slanderous are put in cross examination”.

When remarks as to the demeanour of a witness are made it is convenient to enter then and their at the foot of his deposition or of the judge’s memorandum of his evidence.

When any question is objected to and the court disallows it or allows it to be put the objection and the court’s decision and the other particulars required by rule 11 of order XVIII (18) of CPC may be noted in the body of deposition memorandum of evidence.

To exercise control over examination in chief and cross-examination is the skill of the judge. Many time it is experienced that whenever advocate is prevented to put irrelevant question to witnesses he stops the examination in chief or cross examination on the ground that he wants to challenge the order of the court before appellate court for preventing him putting such question hence the matter be adjourned. This creates clash or disagreement between such advocate and the judge. Such advocate is seldom convinced even though provisions of Civil Manual are shown to him. He sings the song that he does not want to conduct case before that judge. If this type of incident happens morale of the judge is affected which affects the entire work of administration of justice for some period.

If such judge is doing exclusive civil work then it is very difficult for him to work fast. Judges may not resort to provisions of para 256 of Civil Manual to prevent clashes or disagreement between bench & bar and those are following them invite anonymous complaints from advocates against them to pressureise. Which results in recording irrelevant evidence by wasting public resources.
Researcher would like to cite few paras of case reported in,

AIR 2003 Rajasthan 74 Laxmandas V/s. Deojimal and others how trial court faces problem while recording evidence.

The instant revision has been filed against the order dated 19-08-1002, by which the incomplete examination-in-chief of a witness had been allowed to be completed by filing an affidavit.

The facts and circumstances giving rise to this case are that in the suit No.279/1993, Deoji Mai v. Laxman Das, the examination-in-chief of PW 8 Murli, was recorded but could not be completed for paucity of time on 16-3-2002. When he again appeared on 17-4-2002, some questions were asked in examination-in-chief, but there had been dispute as to whether such questions can be asked and the same could not be concluded. Same position remained on 16-5-2002, 20-5-2002 and 22-7-2002 and the remaining examination-in-chief was filed in the form of an affidavit by the plaintiff-respondent. The petitioner defendant sought time to argue on the acceptability of an affidavit for the purpose of concluding the examination-in-chief and ultimately the case was adjourned time and again as is evident from the order-sheets dated 8-7-2002, 6-8-2002 and 17-8-2002. The impugned order was passed on 19-8-2002 rejecting the objection of the petitioner-defendant and accepting the affidavit. Hence, this revision.

"It is in this view of the matter that the Code has been amended with effect from 1-7-2002 and O.17 R.1 of the Code puts an embargo on the power of the court to grant adjournments more than three times to a party in the trial court. Rule 2 there of further provides for imposition of cost while granting further adjournment. Therefore, the courts have to implement and give effect to the provisions of the amended code and should not adjourn the case, even on being asked by the party or advocate to adjourn the case, in violation of the said statuty provisions.

In view of the above, the revision is allowed. The impugned order dated 19-8-2002 is set-aside and the learned trial court is directed to record evidence u/o.18 rule 5 of the Code. In order to avoid further inordinate delay, the parties are directed to appear before the learned trial court on 13-9-2002 and on that date, it shall fix-up a date for recording further evidence in accordance with law and
conclude the trial expeditiously as the suit is pending for about a decade and no adjournment shall be granted to either of the parties unless there are compelling circumstances to do so. Petition allowed.*

Every judge is to face such type of incidence every day at the time of recording evidence.

If plaintiff closes his evidence he has to file a pursis stating that he has closed his oral evidence. Similarly if defendant closes his evidence he has to file a pursis that he has closed his oral evidence.

Once evidence of both side has been closed the suit has to be fixed for argument.

Hearing Arugument and Delivery of Judgement.

The Judge has to prounce judgement after the suit has been heard. If it is not possible for a judge to prounce judgement at once then he has to fix a date for prouncement of judgement and such date be communicated to the parties. It is made mandatory under C.P.C. for a judge to deliver judgement within thirty (30) days from the date on which trial of the suit was concluded. Once judgement is signed by a judge his job is over in respect that suit.
6.5 Execution Proceedings Judicial work.

Execution of money decree.

On presentation of execution application u/s 21 Rule 2 it has to be examined by A.S. in view of provisions para 349 of Civil Manual, if it is found accordingly then it is to be registered. After registration it has to be put up before a judge for passing first order. A judge has to go through the case papers and pass necessary order on (Exh-1) i.e. execution application.

If execution is filed within two years from the date of passing of decree then court can pass an order for attachment of moveable or immovable property of judgement debtor if execution is for recovery of money. If execution is filed after two years from the date of decree then court has to issue a notice u/s 21 Rule 22 of CPC on payment of P.F. by D.H.

Many times it appears that D.H. does not file list of property of J.D. with execution application which causes difficulty to court to pass order of attachment u/s 21 rule 43 of CPC. Unless list of property is filed court cannot pass order u/s 21 rule 43 of CPC. In such situation advocate of D.H. seeks time to file list of property of J.D which causes delay in execution of decree.

If court passes order of attachment of moveable property of J.D. a warrant is issued for such attachment. Such warrant has to be executed by bailiff of the court. For issue of warrant D.H. has to pay requisite process fees. If D.H. does not pay P.F. court cannot issue warrant of attachment which causes delay in execution of decree. To make attachment of moveable D.H. has to accompany with bailiff to take custody of attached property. To do this D.H. has to contact bailiff of the court when the latter is going to make attachment of property of J.D. If D.H. does not accompany with bailiff in such situation the bailiff can not make attachment which causes delay in execution of decree. The conduct of the D.H. prevents him from getting fruits of decree. If D.H. gets idea of these facts then he may get himself prepared to accompany with bailiff at the time of attachment.
On issue of attachment warrant if bailiff can not make attachment of moveable property of J.D. due to non availability of such property he has to submit his report to court in this regard.

On return of attachment warrant unexecuted D.H. has to take further steps for recovery of amount claimed in execution. D.H. has to apply to the court for attachment of immovable property of J.D. if any situated within the teritorial jurisdiction of executing court. It is experienced that when ever D H is unsuccessful in making attachment of moveable property of J.D. then only D.H. collects record of immovable property owns and possesed by J.D. If D.H. collects these documents at the time of filing of execution he would get the fruits of decree within a short time.

On filing of list of immovable property of J.D. court has to pass an order of attachment of such property u/o 21 Rule 54 of CPC. By such attachment J.D. is prevented from transferring his property. The attachment can be made by beating drum in the village. By fixing copy of warrant in village chawadi and in court premises.

After attachment of immovable property of J.D., if he fails to pay decreetal amount to D.H. the next step is to put the attached property in public auction. For this D.H. has to file a sale statement of such property in court mentioning there in its area, description, boundries, survey no, gat no, place where it is situated.

Interest of J.D. there in.

Charge if any kept on such property.

Its market value.

Portion which is to be sold for satisfaction of decree.

The sale statement must be verified by D.H. about its correctness.

On filing of sale statement by D.H. court has to call a sale date from Nazir, of the court on which date such auction is held. The first two bids are conducted at the
place where property is situated and final bid is held in court. The bailiff of the court has to call the bid from bidders at the place where immovable property is situated. He has to make record of those bids in the prescribed forms. Bailiff has to submit those papers before Nazir who has to forward them to the judge for final bid. On the day so fixed Nazir with the help of bailiff has to call final bid in court. The bid which is highest may be accepted. All relevant papers are placed before a Judge for accepting final bid. If the judge is satisfied that adequate price is being received in auction of the property sold. He may accept final bid. i.e. highest J.D. has to deposit entire auction amount in court or at least 1/4 amount of such bid and deposit remaining amount within 15 days from the date of such auction.

It is experienced that D.H. does not file sale statement with the execution application. He takes much time to file the same. If D.H. files all relevant documents with execution it would save time of the court and he would get fruits of the decree earliest.

If J.D. does not own immovable or moveable property but is having capacity to pay decreetal amount in such case decree for recovery of money is executed by putting J.D. in civil prison at the cost of D.H.

D.H. has to file an affidavit in court stating that J.D. has capacity to pay decreetal amount but he did not pay or refused to pay it. In stead of filing such affidavit by D.H. he can present himself for examination before court in this regard.

It is experienced that D.H. does not file affidavit at the time of filing execution application which delays recovery of amount in execution.

If court is satisfied that J.D. has capacity to pay decreetal amount but he fails to pay the same then it has to issue a notice to him U/o 21 Rule 37 of CPC calling upon him to show cause why he should not be put in civil prison in default of payment of decreetal amount. In spite of service of notice U/o 21 Rule 37 of CPC, if J.D. fails to pay decreetal amount then court can pass an order U/o 21 Rule 38 of CPC. A warrant for arrest of J.D. is issued. On arrest of J.D. he is produced before the judge. If J.D. fails to pay decreetal amount as such then he is put in civil prison.

To put J.D. in civil prison D.H. has to deposit subsistance allowance in the court as per prevailing rate. J.D. is put in civil prison for the period for which subsistance allowance is paid. From aforesaid discussion we can see how delay is being
caused for execution of money decree, and how this delay can be prevented if parties and their advocates follow provisions of C.P.C.

Considering total pendency of civil cases on 31.12.2000 out of these more than 50% cases are execution matters. This shows that execution work is neglected. It needs concentration. If advocates, litigants and Judicial Officer follow provisions of C.P.C. strictly and properly at relevant stages of execution then execution matters can be disposed of within short time.
6.5.2 Execution of decree for specific performance of contract (document)

Where a decree is for execution of a document and the J.D. neglects or refuses to obey the decree the D.H. may file execution application for execution of decree.

D.H. along with execution application has to file a draft of document of which execution is sought. It is experienced that D.H. does not file draft of a document at the time of filing of execution application. On presentation of execution application court has to issue notice to J.D. from whom such document has to be got executed. It is experienced that on receipt of notice by J.D. U/o 21 Rule 22 of CPC, he appears in court and sought time to file say. In most of the cases J.D. seeks time on the ground that he has filed an appeal against the judgement and decree passed against him. He further prays that the execution be stayed.

If J.D. files appeal, appellate court use to stay the execution till disposal of appeal. It takes near about 5 to 7 years averagly. Till appeal is decided finally executing court can not proceed with the execution for years to gether.

After disposal of appeal D.H. files draft of document in court. On receipt of such draft copy such draft is sent to J.D. with a notice to file his say. The J.D. takes time to file say or at some time he does not file say. If J.D. has filed its say and objected the draft of document then court has to decide those objections whether they are considered or rejected. If they are considered then D.H. has to make necessary correction in such draft.

A judge has to approve the draft of the document whether it is in accordance with the decree. If it is not then direct the D.H. to make necessary correction. After correction he has to approve it by passing necessary orders on draft of document on and on execution application to give direction to J.D. to execute document in favour of D.H.

In spite of order of court if J.D. fails to execute document in favour of D.H. as per direction given in decree, then judge has to appoint a commissioner to do ministerial act to execute document on behalf of court. Generally assistant
suprintendant of the court is appointed as commissioner to do the ministerial act on behalf of court.

Generally it is experienced that D.H. does not file draft of document at the time of filing of execution application which causes delay in execution of decree.
6.5.3 Execution of decree for specific performance and injunction.

A decree for specific performance or injunction can be executed by attachment of property of J.D. or by his detention in civil prison under order 21 Rule 32 of CPC.

To execute decree for specific performance or injunction D.H. has to file an affidavit with the execution application stating in which manner J.D. has disobeyed decree. D.H. should present himself before the court for examination in this regard. J.D. can cross-examine him if he desires so.

After considering material before court if it is satisfied that J.D. has disobeyed the decree and reluctant to comply it inspite of reasonable opportunity granted to him, then court may order that J.D. be detained in civil prison. Before issuing warrant of arrest D.H. has to deposit subsistance allowance in court.

Execution of decree for possession of immovable property.

Where a decree is for delivery of possession of immovable property the D.H. has to give all description of the property such as its number, area, and boundaries in the list of property. Not mentioning correct description or boundaries in the list of property creates an obstruction for delivery of possession.

From aforesaid discussion it is seen that if provisions of Civil Manual and CPC are not observed strictly how delay is caused in speedy disposal of cases i.e. suits and execution proceedings. As discussed earlier by the researcher that provisions of CPC, Civil Manual and other statutory provisions have not been followed by parties and their advocates. Judges do not compel them to follow these provisions. To compel parties and their advocates by the judges they require moral support from Hon'ble High Court and District Judge. If a judge tries to follow provisions of Civil Manual, CPC and other statutory provisions to speed up trial of the cases he invites complaints from parties or advocates. It is experienced that one party in a case does not want that case be disposed of early.
6.5.4 Execution of decree of partition and separate possession of immovable property subject to payment of revenue.

A decree for execution of immovable property subject to payment of land revenue is executed by the collector or other revenue officer subordinate to him. This type of decree can be executed U/o 20 Rule 18 sub rule 1 by revenue officer by sending precept u/s 54 of CPC to him.

Before January 2001 i.e. before decision of Civil Revision Application 989/2000 of 21-2-2001 by Bombay High Court reported in 2001(3) Maha Law J.53 Annasaheb Rajaram Magne v/s Rajaram Maruti Magne decree holder has to file an application in court which has passed the decree with a request to send precept to collector to effect partition of agricultural land and put each sharer in possession of respective share. Researcher would like to mention few relevant paras of above case law i.e. observation made by Hon'ble High Court.

"It is obligatory on the part of civil court to transfer papers to collector for effecting partition as per declaration made in the judgement. All further proceedings with respect to such decree are required to be taken up by and before the collector. As a matter of fact it was not necessary for the applicant, D.H., to move or make any application to the court to send necessary papers to the collector as per direction given in decree itself. An application even if made in the form of darkhast application with a prayer to send decree and papers to collector, was not an application in execution. It did not attract provision of limitation".

The Hon. High Court has given general directions to all civil court as under,

"By way of general directions all civil courts are directed to remit to the collector, within four months from the date of signing decree u/s 54 of CPC all the relevant papers of partition and separate possession of undivided estate assessed to the payment of revenue to the Govt. without there being any application or request or prayer for the same; so as to follow the mandate of section 54 of CPC. Any application seeking direction to send
necessary papers to the collector should be disposed of within 30 days from the receipt thereof of treating it as an application filed in disposed suit without opening any independant proceeding in this behalf. Such application be treated as a request to a judge or court to send necessary papers to collector for effecting partition of immovable property.
6.5.5 Execution of decree for partition of House

A decree for execution of immovable property which is not subject to payment of revenue can be executed by appointing commissioner u/o 26 Rule 13 of CPC.

On receipt of execution application from D.H. court has to call J.D. and D.H. to suggest name of person to be appointed as commissioner to propose partition of immovable property and to prepare a sketch with measurement of the property.

On receipt of commissioner report, court has to call objections from D.H. and J.D. if any and decide the same. If both parties present themselves before court it is convenient to the court to pass order justly. Parties can have a dialogue with the judge in open court about present situation of the property. On consideration of commissioner report, and after hearing parties and their advocates court has to pass a final decree stating specific actual portion shares of property to which plaintiff and defendant be put into possession. Thereafter a final decree is to be prepared.

By following provisions of CPC, Civil Manual and other statutory Acts, arrears of judicial work would be reduced and judicature could give speedy justice to litigants with the available resources. Similarly arrears of judicial, administrative and ministerial work could be overcome.
6.2.1 Regarding Criminal Cases

Judicial Work.

Trial of criminal cases [warrant and summons] by a magistrate is governed by chapter XVI, XVII, XIX, XX, XXI, XXII, XXIII, XXIV & XXV of Code of Criminal Procedure and chapter 3 of Criminal Manual.

Examination of charge sheet / complaint.

On presentation of charge sheet or complaint court has to examine it whether it is in accordance with chapter III paragraph 2 of Criminal Manual on the following points.

- Whether charge sheet or complaint is filed in the court having jurisdiction? (sections 177 to 189 of CrPC).

- Whether the chargesheet or complaint is filed within the prescribed period of limitation? (section 467 to 473 of CrPC)

- Whether sanction of any authority under the
  - Law for launching the prosecution is obtained?
  
  - If, yes, is it obtained at the prescribed point of time and from the prescribed authority?
  
  - Whether the original order of sanction or a copy of the same is produced as required by law?

- Whether names and addresses of complainant / accused and witnesses are properly mentioned?

- Whether accused is juvenile and as such is it necessary to deal with accused under Probation of Offender Act, 1958?
• Whether the identification marks of the accused are furnished in police cases?

• Whether the accused are arrested and released on bail before launching a prosecution? Whether the dates of his arrest and release are mentioned in the charge sheet complaint and the bail bonds if not already in custody of the courts, are attached to the case papers?

• Whether the accused is released by the court on bail before launching the prosecution:-
  
  • Whether the date of such release is mentioned in charge sheet and

  • Whether the bail papers are available in court record (attach the bail papers to the case)?

• Whether the first information report is received by the court (attach the FIR to the charge sheet)?

• Whether sets of legible copies of relevant papers are supplied for the use of the court and for delivery to the accused?

• Whether all items of muddemal property mentioned in the charge sheet / complaint are produced?

• Whether every item of muddemal property is properly and separately described and numbered in the charge sheet / complaint?

• Whether value of each item is properly mentioned

• Whether law expects the court to make any early action in respect of any item of muddemal property (e.g. sending to chemical analyst, food analyst, taking steps for preservation / disposal security) etc?

• Whether confession / dying declaration / statements of witnesses u/o 164 of Code of Criminal Procedure 1973 are recorded in the course of investigation?

  • Whether such original documents are produced?
• If not produced what is the reason assigned; for such omission;

• What steps are required to be taken by the court for obtaining these documents in custody?

• Whether the accused is

  • a juvenile offender?

  • a member a military person?

  • a person of unsound mind?

  • a deaf and dumb person?

  • a person who is required to be dealt with under the specific provision of law?

• Whether the relevant fact is mentioned in charge sheet/complaint?

• What steps are required to be taken by court in this context?

Every complaint/charge sheet (other than that for petty offence) should be examined with reference to points 1 to 12 and every complaint for petty offence should be examined with reference to points 1 to 4 and 10 to 12.

While examining charge sheet in respect of aforesaid points if any defect is found it has to be mentioned on charge sheet. After obtaining orders from the magistrate ask concerned investigation officer to comply it within stipulated time. If address of complainant, accused and witnesses are not given correctly or in complete it would make difficult to effect service of summons or warrants to them. On several occasions court has to issue summons to witnesses. If addresses of witnesses are not given then summons cannot be issued which delays the subsequent stages of trial of criminal case. It also consumes time of court and the Government personnel.
On taking cognizance of an offence a magistrate has to issue summons to accused directing him to appear before court to face the accusation. If accused was released on bail by police and notice was given to him by police regarding date on which they are going to present a charge sheet in court against him, in that case it may not necessary to issue summons to accused. Presence of accused must be recorded on charge sheet. Magistrate has to take cognizance of offence by passing order on charge sheet or complaint.

If accused is released on bail by court before filing charge sheet in that event the magistrate has to fix the case for framing charge / explaining particulars if the case is registered on police report u/s 173 of CrPC.

If it is a state warrant warrant case then case is fixed for evidence of prosecution before charge.

If it is a complaint (summons case) by private person then case is fixed for explaining particulars to accused u/s 251 of CrPC.

If it is a private complaint (warrant case) then case is fixed for evidence of prosecution witnesses before charge.
6.2.2 Framing of charge.

Once accused puts in his appearance before magistrate the next stage is framing charge or explaining particulars of offence. Charge is framed in warrant case whereas particulars are explained in summons case. Before framing charge or particulars copies of all case papers are to be supplied to accused u/s 207 of crpc. They are,

- Copy of police report u/s 173 of CrPC(chargesheet).
- Copy of first information report recorded u/s 154 of CrPC.
- Copies of statement of witnesses recorded u/s 162 of CrPC during the course of investigation.
- Copies of statement or confession recorded u/s 164 of CrPC.

The correct framing of charge is of considerable importance. As it gives the idea to the prosecution what facts they have to prove and also give notice to accused of the accusation he has to face during trial. While framing charge the magistrate has to give personal attention to this matter that charges are framed correctly and give all necessary particulars as prescribed in section 211 to 213 and 218 to 221 of Code of Criminal Procedure 1973. The form in which charge is framed is given in Form No.32 in schedule II of Code of Criminal Procedure 1973.

For framing charge by a magistrate presence of all accused is must. If there are more accused than one absence of one accused delays the stage of framing charge which results further delay in subsequent stages. This causes increase in life of litigation.

Data received from Judicial Officers by researcher shows that magistrates frame charges on the date of filing of charge sheets in 100 % cases.

This could be done if charge sheet is filed when accused are present on the date of filing of charge sheet. If this could be done 100 % then delay in trial can be
prevented. The information received from Judicial Officers if true then there should not be huge pendency of criminal cases. Once the charge is framed the case become ready as trial commences on the date of framing of charge..

The information received from Judicial Officers show total pendency of criminal cases on 31.12.2000 as under.

- Total pendency of criminal cases: 2,42,949
- Total ready criminal cases: 61,452
- Total unready criminal cases: 1,80,497

Unready matters means cases in which charge or particulars are not framed or accused are absent. A ready case become unready if accused remains absent on the date of hearing. As earlier stated by the researcher if magistrate frame charge on the date of presentation of charge then there should not be such huge pendency of unready matters.
6.2.3 Recording of evidence.

Once charge is framed then next stage is recording of evidence of prosecution witnesses. The number of witnesses depends upon the nature of charge levelled against accused. Prosecution generally has to prove various documents such as:

- Spot panchanama.
- Seizure panchanama
- Injury certificates.
- Complaint (FIR).
- Arrest panchanama.
- Charge sheet.

G-2-1 To prove these documents prosecution has to examine one or more witnesses for each document if they are not admitted by accused. The data received by researcher from 211 courts shows that practice giving of notice u/s 294 of CrPC by prosecution to accused is followed in 67 courts, i.e. 32 % courts only. Some times there is nothing incriminating in these documents against the accused yet they do not admit it. If these types of documents are admitted by accused then prosecution need not to examine witnesses on these documents and the evidence can be curtailed similarly time can be saved. It could speed up the trial of criminal cases.

G-2-2 To prove medical certificate by prosecution it is necessary for it to examine Medical officer/Doctor. The data received by researcher shows that in 211 courts total criminal cases pending, are 2,42,9,49 on 31.12.2000 out of which 62,276 are the cases relating to bodily injury (i.e.Hurt, Grievous hurt, Force, Criminal force, Assult). Percentage of these cases is 26 of total pending criminal cases.
The data received by researcher shows that out of 211 courts in 111 courts medical officers did not attend the court for evidence as they were transferred. Non attending courts by medical officers may be for various reasons. Where abouts of such medical officers are not known to court where they are presently serving. If prosecution fails to prove medical certificate in cases of hurt, grievous hurt, force criminal force and assault in such circumstance accused would get benefit of doubt to get the acquittal.

The possibility cannot be denied that medical officers are reluctant to come to court or due to work in hospital they may not able to leave the hospital for court or police have left the summons of medical officers with inward clerk of the hospital / dispensary which could not be reached to such medical officers.

Data received by researcher in this regard shows that out of 211 courts 105 courts keep a particular day for recording evidence of medical officers, i.e. 50% courts are of the opinion that a particular day is to be fixed for recording evidence of medical officers.

Method for recording evidence of police officer.

In every criminal case instituted on police report u/s 173 CrPC, it is necessary for the prosecution to examine police officer who has made investigation of the offence to prove guilt of the accused. Similarly it is necessary to examine police officer who has filed the chargesheet. These two officers may be the same or different. If the police officer is not examined that may weaken the prosecution case. The data received by researcher shows that out of 211 courts in 124 courts police officers did not attend the courts for evidence in State cases. The percentage of not attending courts by police officers who have been transferred is 58. So far as recording of evidence of police witness and expert witness is concerned we can see how it can be managed.

If medical officer [A] serving at place at [M] has 50 cases pending in court [B] if court issues summons to him to attend the court to give evidence in these 50 cases he has to attend the court 50 times from place [M] from place [B]
If this activity is organised properly how Medical Officer attends the court regularly and economically. If 7 cases of Medical Officers A are put up on particular day he can be examined in seven cases. This would save time of the court advocates, public prosecutor and accused. This helps to speed up trial of criminal cases.

Evidence of formal character on affidavit.

While making investigation by police they have to follow certain procedure or steps for completion of investigation and for filing charge sheet in court. The police officers those were involved for following these steps or procedure are cited as prosecution witnesses in the charge sheet. To prove the complete chain of investigation prosecution has to examine these witnesses before court, though their evidence is of a formal character.

Section 296 of Cr.P.C. provides evidence of any person of formal character may be given on affidavit such evidence is subject to all just exceptions can be read in evidence in any enquiry or trial or other proceedings under Cr.P.C. The prosecution or defence may call upon such person to examine as to the facts contained in affidavit with the permission of the court.

It is experienced that this practice is not followed by prosecution in any case. It happens that prosecution does not know "what is meaning of evidence of formal character". The evidence of formal character is not defined in Cr.P.C. The Apex Court, in case reported in 2001(8) S.C.C.578 explained the meaning of evidence of formal character.

The Apex Court held that,

"The normal mode of giving evidence is by examining witness in court. But that course involves quite often, spending of time of witness, the trouble to reach the court and wait till he is called by the court, besides all the strain in answering questions and cross questions in open court. It also involves costs which on many occasions are not small. The enabling provision of section 296 is thus departure from the usual mode of giving evidence. The object of providing such an exception is to help the court to get the time and
cost, besides relieving the witness of his trouble, when all that the said witness has to say in court relates only to some formal points.

Quite often different steps adopted by police officers during the investigation might relate to formalities prescribed by law. Evidence if necessary on those formalities, should normally be tendered by affidavit and not by examining all such policemen in court. If any party wishes to examine the deponent on the affidavit, it is open to him to make an application before the court that he requires the deponent to be examined and cross examined in court. When any such application is made it is duty of the court to call such person to the court for the purpose of being examined.

In the opinion of researcher following acts may be called as formal character.

- Registration of an offence at police station.
- Forwording of injured or victim or accused for medical examination.
- Person who has only filed charge sheet in court.
- Forwording prohibition sample to chemical analysier.
- Person making arrest of accused.

If procedure laid down in CrPC is followed strictly and properly it may decrease the life of criminal trial. It also helps speedy disposal of criminal cases.

To prove guilt of the accused prosecution may try to examine all witnesses those are mentioned in the list of witnesses in chargesheet. They are material or formal character? This results in recording bulky evidence. When there is no incriminating evidence against accused in such cases defence counsel declines to cross-examine such witness. In such situation evidence of such witness can be given on an affidavit.
Recording of statement of accused u/s 313 of Cr.P.C.

Once evidence of prosecution is finished court has to fix a stage for recording statements of accused u/s 313 of CrPC. The purpose of recording statements of accused is to give an idea to accused about the incriminating circumstances appearing against him. These statements are recorded in English and Marathi in warrant case and in only English in summons cases. This job is performed by a magistrate by giving dictation. If there are more accused in a case then each question is put to each accused separately. If there are more witnesses it will take much time to record statements. While recording statements u/s 313 by a magistrate bench clerk and stenographer are required to assist him. When language of the court is Marathi why court is recording statement of accused u/s 313 in English. Chapter 3 para 26-B of Criminal Manual do not provide recording of statement in English. To record statement of accused in English one clerk or stenographer required. Similarly another clerk required for recording statement in Marathi. In Criminal Manual it is stated that language of the court is Marathi except charge, order and judgement. When Criminal Manual does not provide to record statement of accused u/s 313 in English why courts are recording such statement in English.

There were 742 courts of J.M.F.C. in the State. If statement of accused u/s 313 of Cr.P.C. is recorded in Marathi only then we can save 742 day man power per day which can be utilised for clearing arrears of pendency of cases. Instead of utilising human resources efficiently courts are wasting them. This is the loss to the Nation.

From analysis and interpretation of data it is clear that if procedural laws are followed by persons involved in judicature problem of pendency of cases would be overcome without any financial implication.

From afore said discussion we have seen that how delay is caused if procedural laws i.e. Cr.P.C. and Evidence Act are not followed by Judicial Officers, Advocates and Public Prosecutors strictly at relevant stages of proceedings.
6.3.1 Microanalysis of Judicial work of Judicial Officers.

Judicial Work.

Judicial works including passing of orders, hearing interim applications and miscellaneous matters is to be performed by judicial officers during the court hours. Data received by researchers from 27 districts i.e., 211 courts of Civil Judge Junior Division and Judicial Magistrate First class, is at [Annexures B C ] of the thesis. Similarly, data relating to the infrastructure available to each court is collected from these courts and is given in the tables. The data shows that advocates are available in adequate numbers at each station. Similarly, typing machines and staff provided are also adequate, but why the disposal is not increased. Data received from various courts shows how many cases each court keeps on the daily board.

Civil Side

- Argument Average 1 to 3 cases.
- Evidence Average 10 to 30 cases.
- Hearing and Average 10 to 20 cases.
- Others Average 10 to 30 cases.

Criminal Side

- Argument Average 2 to 5 cases.
- Statement u/s. 313 of Cr.P.C. Average 2 to 7 cases.
- Evidence, and Average 15 to 100 cases.
- Others Average 25 to 100 cases.

Number of criminal cases show that their pendency is too large. In the year 1996 Apex court issued direction to dispose of cases categoriwise as per direction.
given in Common Cause Society Case. A compliance report was also sought by
the Apex Court, in this regard within 6 months from the date of issue of such
direction by it. In the direction such work is to be done regularly in future from the
date of issue of such direction but the data shows that no direction was followed by
courts of J.M.F.C. properly. Whether magistrates get time to attend each case.? Whether they keep more cases on daily board which unable them to go through the
each case? They are unable to see how many cases are covered by the Common
Cause Society Case judgement or Rajdeo Sharma’s Case judgment. What is to
be done to trace out such type of cases? There are number of stations at District
Head Quarter where thousand of criminal cases are pending but the problem is how
those cases are sorted out. Whether the magistrates should wait for further
direction from the Apex Court or High Court, to sort out these cases.? The
Common Cause Society Case, has taken a decade to decide that case. If, again
such case is filed for seeking a direction to dispose of the cases which are covered
by the Common Cause Society Case judgement or Rajdeo Sharma’s case
judgement, again it would take a decade. In the opinion of the researcher the trial
courts have cultivated a habit unless some information is sought by the appellate
court or High Court, they do no take care to send the same. This problem is created
due to lack of proper management in the judicature.

There is no proper management in the judicature at lower level. Whether
trial courts are using their court hours and office hours efficiently and properly for
judical and administrative work? The answer to this question is no. There is lack of
planning, orginizing, co-ordinating, but there is controlling by the District Judge and
the High Court. The District Judge is controlling the subordinate courts by calling
various statements monthly, quarterly, half-yearly and yearly. Similarly, the High
Court controls various courts on the basis of these statements. According to Civil
Manual chapter-29 there is a provision of inspection of each court by District Judge,
after one year and before one and half year. The inspection is made by the District
Judge and inspection note is forwarded to the High Court. If, there is any lacuna or
irregularities or illegalities that is removed by the concerned court within two months
from the date of receipt of inspection note.
On receipt of Mandhone Study Group Report. The High Court increased the staff but, inspite of increased staff no disposal of cases has increased. Norms of disposal fixed by the High Court in the year 1998 they are as under,

Norms fixed by High Court for disposal of various catagaory of cases by judicial magistrage first class (criminal side) :-

<table>
<thead>
<tr>
<th>Category</th>
<th>Workdone counted</th>
<th>No.of case</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. IPC/Other Act cases (Reg.)</td>
<td>2 days</td>
<td>1 case</td>
</tr>
<tr>
<td>2. IPC (Misappropriation)</td>
<td>4 days</td>
<td>1 case</td>
</tr>
<tr>
<td>3. Application u/s125 of Cr.PC</td>
<td>1.33 days</td>
<td>1 case</td>
</tr>
<tr>
<td>4. Summons case IPC</td>
<td>1 day</td>
<td>1 case</td>
</tr>
<tr>
<td>5. All other Acts</td>
<td>0.33 days</td>
<td>1 case</td>
</tr>
<tr>
<td>6. Case u/s.138 of N.I.Act</td>
<td>1 day</td>
<td>1 case</td>
</tr>
<tr>
<td>7. Municipal Application</td>
<td>0.40 day</td>
<td>1 appln.</td>
</tr>
<tr>
<td>8. Other Misc. Case (Contested)</td>
<td>0.10 day</td>
<td>1 appln.</td>
</tr>
<tr>
<td>9. Uncontested Matter</td>
<td>0.006 day</td>
<td>1 matter</td>
</tr>
</tbody>
</table>


A proceeding (from institution) till committal may be treated at per with disposal of contested regular criminal case.
Disposal by common judgement.

When a group of matters are disposed of by a common judgement credit equivalent to 25% of one contested disposal should be given per additional matters.

Extra weightage of disposal of bulky matters.

Credit equivalent to 1.5 times the normal credit for such matters be given, provided the Judicial Officer has to endorse a specific note while submitting the returns itself, and not when the remarks of inadequate are communicated regarding extra time consumption and thereof with supporting statistic, if any and such extra time requirement is certified the District and Sessions Judge.

Weightage for administrative work.

In all 6 days work per quarter (Four Monthly) is allowed for doing administration work to the Chief Judicial Magistrate, at station and principal Judge, at taluqua.

Definition of Contested Criminal Cases.

A criminal case which is compounded after full contest except statements of accused, arguments and judgement may be given credit = 50% of normal of contested disposal of similar type of criminal case.

Norms fixed by High Court for disposal of civil cases by Civil Judge Junior Division (Civil Side)

<table>
<thead>
<tr>
<th>Category</th>
<th>Disposal of case</th>
<th>Workdone</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Regular Civil Suit</td>
<td>1 suit</td>
<td>2 days</td>
</tr>
<tr>
<td>2 Small Cause Suit</td>
<td>1 suit</td>
<td>0.66 day</td>
</tr>
<tr>
<td>3 Final Decree Application</td>
<td>1 appln.</td>
<td>2 day</td>
</tr>
<tr>
<td>No.</td>
<td>Type of Application</td>
<td>Description</td>
</tr>
<tr>
<td>-----</td>
<td>----------------------------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>4</td>
<td>Misc. Appln. Requiring judicial enquiry</td>
<td>1 appln.</td>
</tr>
<tr>
<td>5</td>
<td>Misc. Appln. Not requiring judicial</td>
<td>1 appln.</td>
</tr>
<tr>
<td></td>
<td>enquiry</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Contested Darkhast</td>
<td>1 Darkhast</td>
</tr>
<tr>
<td>7</td>
<td>Uncontested Darkhast</td>
<td>1 Darkhast</td>
</tr>
<tr>
<td>8</td>
<td>Exparte Suit.</td>
<td>1 Suit</td>
</tr>
<tr>
<td>9</td>
<td>Interlocutory Applications</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Appln. u/o 26 of C.P.C.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Appln. u/o 6 R-17 of C.P.C.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Appln. u/o 38 R-5 of C.P.C.</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Standard Rent Application</td>
<td>1 appln.</td>
</tr>
<tr>
<td>11</td>
<td>Election Petition</td>
<td>1 petition</td>
</tr>
</tbody>
</table>

**Disposal by Common Judgement.**

When a group of matters are disposed of by common judgment, credit equivalent 25% of 1 contested disposal should be given per additional matter.

**Disposal of petty Old Matters.**

- **Disposal of More than 5 years**
  - Credit of 1.25 time norms be given to old matters

- **Disposal of more than 10 years**
  - Credit of 1.50 times norms be given to old matters
Extra weightage equivalent to 1.5 times a norms credit for such matters be given, provided the judicial officer, has endorsed a specific note while submitting return itself, and not when remarks of inadequate are communicated. Regarding extra time consumption and reasons thereof with supporting statistic if any and such extra time requirements is certified by District and Sessions Judge.

**Weightage for Administrative Work.**

In all 6 days weightage per quarter (Four Monthly) is allowed for doing administrative work to the Principal Civil Judge Junior Division, at the station.

Revised norms for assessment of the judicial work done by the judicial officer are being made as follows:

If the disposal in accordance with the norms prescribed, remarks **adequate** is given.

If the disposal exceeds the prescribed norms by 20% but below 1.5 times of the norms the remarks **satisfactory** is given.

If the disposal is equal to 1.5 times or more than half times or more that the remarks **noteworthy** is given.

If the inadequacy of disposal exceeds more than 25% then the remarks **gross inadequate** is given.

As per norms fixed by Hon High court a Civil Judge, has to dispose of 12 suits in a month, Judicial Magistrate First Class, has to dispose of 12 warrant cases or 24 IPC summons cases in a month. If he does more work then he would to receive remarks as stated above from Hon High Court, after submission of 4 monthly return.

Presently, some of the judicial officers have developed a tendency to dispose off the cases as per norms provided by the High Court. The judicial officer...
has to make the matters ready and dispose of them or he has to dispose of matters, which are already made ready by his predecessor. The easy way is to dispose of the matters those are ready. A judge use to make 12 suits ready and get them disposed of within a month or a magistrate makes 12 cases ready and get them disposed of within a month, so he would get adequate remarks from the High Court. The matters which are unattended remain as they were, because the judicial officers, those are taking interest to make ready old matters for that they have to go through bulky record and proceedings of the cases. They have to decide interim applications and make those matters ready. This is in respect of civil matters. If, the judicial officer is working on criminal side, he has to secure attendance of absconding accused by issuing warrants, show cause notices to surities, proclamation and forfeiture of suerty bonds. In old matters it is experienced that many times witnesses are not available and the matters remain as they are. Criminal Procedure Code, provided the mode when the accused is absconding.

If, a judicial officer remains busy in recording evidence for the whole day in such situation the matters are to be left to the clerk and those cases remain unattended. If, this happens throughout the years the arrears of old matters remains as they were. What is to be done? As earlier stated by researcher that the management techniques are not used in the judicature, properly similarly, the time management is not used in the judicature so far.

It is experienced that hard-working judicial officers take pain in making old matters ready for which they have to spend time by which they may not be able to give adquate disposal as per per norms prescribed by the High Court. The assessment of judicial officers is made on the basis of how many judgements he has delivered or how many cases he has disposed of during a particular period. There is no true or real or correct assessment of the work of judicial officers how much work he has done. Whether they have framed issues or framed charges, explained particulars or disposed of interim applications? These officers may suffer as they get themselves busy in making matters ready and receive inadequate remarks. In the opinion of the researcher the time has come that the assessment of a judicial officers is to be made how much work they are doing and not on the basis of how much cases they have disposed of or how many judgements they have delivered.
As no returns are called by the High Court, regarding how many matters a judicial officer has made ready. In the yearly and half-yearly statements only ready unready matters are shown. In the opinion of the researcher these statements can not make real (true) assessment of the work of a judicial officer. Hence the researcher is of the opinion that it is necessary that the assessment of work of the judicial officer is to be made considering how many unready matters he has made ready and disposed of alongwith the assessment how many judgements he has delivered. This assessment can be made by calling information from each C.J.J.D and J.M.FC. on following points.

No of cases put up on dormant file.

- No of cases disposed of in view of Common Cause Society, case judgement.
- No of cases disposed of in view of Rajdeo Sharma's case.
- No of summary cases, stopped u/s.258 Cr.P.C.
- No of cases in which charge / particulars are framed.
- No of cases in which charge / particulars are drafted.
- No of suits in which issues are framed.
- No of suits in which issues are drafted.
6.3.2 Disposal of cases in view of Common Cause Society

Case and cases stopped u/s. 258 of crpc.

Once case is registered in criminal court the next stage is taking of
cognizance by a magistrate and issue of process. On issue of process summons or
warrant is issued to accused. After appearance of accused before court next stage
is framing of charge or explaining particulars.

The data collected by researcher shows that total 2,42,949 criminal cases
were pending in various J.M.F.C. courts on 31.12.2000. Out of these 1,72,599 are
summary cases.

The data shows that only 7,557 summary cases were stopped by various
Society, case judgement total 2,660 cases were disposed of during the period
1.1.2000 to 31.12.2000. Total 1099 cases were put up on dormant files by various
magistrates. This shows that pendency of unready matters is more. As cases are
not made ready therefore provisions of Common Cause Society case or Rajdeo
Sharma’s case are not applicable to these cases.

Section 258 of Criminal Procedure Code, empowered magistrates to stop
proceeding in certain cases. The data collected by researcher shows that out of
1,72,599 summary cases only 1111 cases were stopped u/s. 258 of Cr.P.C. by
various magistrates during the period 1.1.2000 to 31.12.2000. This percentage is
.63 i.e. below 1. The direction given in Common Cause Society case and Rajdeo
Sharma’s case are applicable to the warrant as well as summons cases. But, the
provisions of these cases are made applicable in which trials have not commenced.
The framing of charge allows to commencement of trials in criminal cases. Once,
trial commences and if prosecution does not produce its witness in spite of
reasonable opportunity granted to it then magistrate can stop such proceeding. But,
data collected by reasearcher shows that magistrates are not following the direction
given by Apex Court.
6.3.3 Keeping cases on Dormont File.

Chapter 6 para 83 of Criminal Manual, provides category of cases are to be kept on dormant file.

'All cases, in which the accused of unsound mind and consequently unable to make a defence, or are absconding and can not be traced or served with warrants, summonses or notices for a period of one year or more from the date of receipt of the charge sheet or the complaint, should be placed on the dormant file by an order in writing of the Presiding Magistrate.'

Provided that no case shall be kept on the dormant file, if the judge or magistrate, as the case may be, after considering the police report or the information in his possession, is of the opinion that the accused is likely to be found within a reasonable time thereafter.

Provided further that cases under the

- Motor Vehicles Act.
- Cantonments Act.
- Indian Railways Act.
- The Bombay Police Act.
- The Bombay Public Conveyances Act.
- Municipal Acts, or
- Other Petty Cases.

Under such other Acts, as the High Court, may from time to time directs may be put on the Dormant File, by an order in writing by the magistrate, if the magistrate after two attempts of service, is of the opinion that it will not be possible to secure the attendance of the accused within a reasonable time.
All papers of dormant file should be sent to record room after expiry of one year from the date the case is put up on dormant file.

Non-cognizable cases before keeping them on dormant file on the ground that any of the accused person is / are absconding or can not be traced out procedure as prescribed in sections 82 and 83 whenever applicable in section 446 of the Cr.P.C. should invariably be followed.

To make case ready it is necessary to secure attendance of accused. The general procedure adopted by magistrate is whenever accused remains absent and defence counsel does not file an application for exemption of personal attendance of the accused issues warrant B.W. or N.B.W. against the accused. In exceptional cases magistrate follows the procedure to issue show cause notice to surlies why the surely bond should not be forefeited and its amount be recovered as accused had committed breach of the bond executed by him. If, this procedure is followed at the first instance whenever the accused remains absent the other accused takes lesson of this. If in few cases the magistrates follow practice to forefiet the bond, in remaining cases the attendance of the accused would be punctual which helps the court to make cases ready.

The data collected by the researcher shows that magistrates did not follow the provisions of Code of Criminal Procedure and Criminal Manual, which reasults in increasing arrears of criminal cases.

The result of pendency of arrears is two fold, victim can not get justice and accused has to suffer harassment. This is against spirit of Constitution of India and direction given by the Apex Court, from time to time.

The direction given in Common Cause Society, case and Rajdeo Sharma’s, case were to be followed in future also from the date of such direction but, the data collected by researcher shows that those directions are not followed by the magistrates.
6.3.4 Use of Management Techniques in day to day work by a Magistrate

The data received by researcher from 27 districts, shows that how each judicial officer is utilizing the court hours. The data is given in table no. [T-3] districtwise.

The court hours are 11 to 2 p.m. and 2.30 to 5.30 p.m. i.e. total 6 hours are available for judicial work and 1 hour for administration work 10.30 to 11.00 and 5.30 to 6.00 p.m.

The data received by researcher shows that sufficient number of advocates are available at each station. Each joint courts is provided staff 2 or 3 clerks and one stenographer. The principal court at each taluka is provided staff as suggested by Manudhne Study Group (i.e. first phase and second phase) so far.

The staff is adequate, sufficient number of advocates are available at each station. Why arrears could not be overcome? In the opinion of the researcher the arrears could not be overcome due to non-use of management techniques. A magistrate has to control his judicial activities and eliminate unnecessary activities.

Let us start with the presentation of the charge sheet by the police. It is experienced that charge sheets and complaint are not examined by assistant superintendent or concerned clerk of the court as per provisions of Criminal Manual, chapter 3 para 2 which creates a problem of arrears. Asstt. Supdt. is not legal expert and due to poor knowledge of language English he may not understand relevant provisions of Criminal Manual and sec. 173 of Cr.P.C how they are to be used at the time of examination of chargesheet or complaint.

The researcher has prepared a docket sheet, [Annexure A-6 ] This docket sheet is to be verified by investigating officer and APP. In case of private complaint, complainant and his advocate in respect of provisions of chapter 3 of Criminal Manual and sec. 173 of Cr.P.C. The docket sheet provides whether relevant provisions are complied or not? Thereafter, this docket sheet is to be checked by the A.S. or concerned clerk of the court then only the chargesheet should be registered. This docket sheet prevents / eliminates unnecessary activities and get done necessary activities through police or complainant.
This docket sheet saves time of the court and office. Generally, courts are receiving charge sheets whenever they are presented by police. It is experienced that there is a rush of filing of charge sheets in the month of March, June, September and December. Police use to get them accumulated for a quarter and then filed at the end of the quarter. Similarly, it happens regarding production of muddemal property in court by police. Due to rush asstt. supdt. or concerned clerk, is not in a position to examine charge sheets scrupulously / strictly in respect of provisions of chapter 3 of Criminal Manual and section 173 of Cr.PC.

Some charge sheets are filed with the accused but due to rush and non availability of time magistrate can not frame charge or particulars. This happens due to non use of management of time. Magistrate is not planning his activities. He can directs the police to file charge sheets on a particular date or he can directs the police to produce muddemal property in court on particular day.

In police department there is a regular quarterly inspection of each police station by Deputy Suprintendent. of police. Yearly inspection by Suprintendant of police and Deputy Inspctor General of police. Due to this to clear arrears police are handing over their arrears to the court. But, court can not hand over this arrears to any body. Courts have to absorb entire arrears thrown by police.

From, aforesaid discussion we have seen that how the arrears accumulate in courts due to ministrial staff.
6.3.5 Management of attendance of Medical Officers and Investigating Officers.

The data received by researcher from 211 courts shows that out of 211 courts in 144 courts APP followed provisions of Section 294 of Cr.PC. In 67 courts APPs did not follow provisions of section 294 of Cr.PC. Nodoubt, in criminal cases entire burden lies on prosecution to prove guilt of the accused. Magistrate may directs APP to give notice to accused u/s. 294 so that oral evidence may be curtailed which would save time of the court. By not calling witnesses in court it could save public money and time of litigants, public officers and court.

The data received by researcher shows that out of 2,42,949 pending criminal cases there were 62,276 cases of bodily injuries. To prove the guilt of the accused in these case prosecution has to examine medical officer to prove injury certificate. If, they are not examined then court will have to acquit the accused in these cases from the charges of bodily injuries.

The data received by reseacher shows that out of 211 courts in 111 courts medical officers did not attend the court for evidence as they are transferred. The magistrate adjourns the case to record the evidence of medical officer. Not attending court by medical officer may be due to thier reluctance or they might be prevented due to work in hospital or witness summons issued to them by court may not reached to them. If there are more number of cases of some medical officers and if they attend one case then court gets their whereabouts and issue summons to them whenever require. Once, summons is served to medical officer he has to attend the court.

Take an example that,

"Medical officer 'A' has 100 cases pending in court 'B'. He is presently working at place 'M'. 'A' has to come to court at place 'B' for 100 times to give evidence."

This results in wasting of time and money. If these activities are properly organised then it shows that how it would save time of court, medical officers and money of Government. How, it would help to speed up trial of criminal cases?
If, court fixes a particular day for recording evidence of medical officer then whenever witness summons is issued to medical officer, in such summons he be directed to attend court on particular day. It may be once, twice in week or fortnight. Keeping the appropriate number of cases on such day of that particular medical officer, the M. O. who requires to attend the court 100 times in 100 cases may requires to attend the court 10 times or less to give evidence in 100 cases.

Generally, medical officer, use to serve at one place approximately for 3 years or more. The bench clerk should keep a note for his information which date is given to particular medical officer, so that, he will give the same date to such M.O. in his other cases. The researcher had adopted this method while conducting criminal cases at various stations and got best result.

This practice can be followed in respect of medical officers who have been transferred. Similarly, the practise is also useful in respect of medical officers who are presently serving within the territorial jurisdiction of the magistrate. The magistrate while fixing such day should consult medical officers whenever they first time appear before him, so their convenience can be taken into consideration. By doing this patients would not cause inconvenience.

In rural area weekly bazar holds on various days except sunday. On weekly bazar day there may be a rush of patients in the hospital. If, magistrate keeps such weekly bazar day for recording evidence of medical officer it would cause inconvenience to the patients who are coming for the treatment in Govt. hospital by travelling long distance. This should be avoided as far as possible.

The same thing happens regarding police witnesses. The data received by researcher shows that in 58% courts the police witnesses did not attend the courts who have been transferred. The data shows that in 50% courts (magistrates) keep particular day for recording evidence of police witnesses.

In every case prosecution has to examine investigating officer and another police personnel who has filed chargesheet. If, these witnesses are not examined then accused would get benefit of non examination the witnesses.
If, we take an example that 50 chargesheets are filed by police officer ‘A’. The prosecution has to examine him by calling 50 times in the court for evidence. If, a particular day is fixed for recording evidence of police officer then such police witness may requires to attend the court 5 or 7 times. If, his cases are kept on 5 or 7 particular days then his evidence can be recorded on one day in 7 cases. To follow this practice bench clerk has to keep a note with him. When case of particular I.O. or police witness is fixed his other cases should be kept on such particular day.

Data received by researcher shows that, there were 2,42,249 criminal cases pending in various courts on 31.12.2000 in the State. We can imagine how much amount of the Government can be saved if we used proper management in judicature.
6.3.6 Management of work of filing of charge sheets/framing of charge and particulars

As discussed earlier by researcher that police use to file bundles of charge sheets at the end of quarter or month. Court can not direct, police how many charge sheets they have to file but it can ask how many charge sheets they can file on each day. The data received by researcher shows that each court which is entrusted with criminal work is receiving charge sheets averagely 2 or 3 per day. Instead of filing of 10 charge sheets on a day they can be asked to file these on 3 different days so that, magistrate can adjust [manage] his daily board by keeping various types of cases for utilizing court hours optimum.

Court can directs the police to give particular day to accused for appearance in the court at the time of giving notice to him, so in absence of accused charge sheet can be received by the court. Accused can have his appearance on the day given in a notice. By adopting this practise magistrate gets an idea in how many cases he has to frame charge or particulars. He can manage his daily board accordingly. Similary he can get the charges/particulars drafted whenever he gets spare time.
6.3.7 Management of Admission Cases.

Police file non-cognizable cases in court in which accused generally pleads guilty. These types of case are generally as under,

- Bombay Police Act.
- Bombay Shops and Establishments Act, and

Police use to file such cases alongwith the accused in court at about 2.00 p.m. Concerned clerk has to register them and after preparing particulars put them before the magistrate. This work starts at about 4.00 p.m.

As soon as accused pleaded guilty he has to pay a fine with the Nazir and obtain receipt. At many places situation of the court and the Nazir is such the Nazir, is occupying his sit in office far away from the J.M.F.C. court. There may be some exception to this. Unless court duty constable finishes his entire work of admission cases, he takes the accused in his custody. On completion of entire work of admission cases court duty constable takes procession of all convicted accused to the office of Nazir, for payment of fine at 4 p.m. Nazir, starts his work of receiving fine and issuing receipts.

Aforesaid activities can be managed by asking Nazir or senior clerk of cash and finance branch to sit in the court to receive fine amount and to issue receipts. By doing this there would be maximum work in minimum time. This practice is more useful at District Head Quarter whereever there are more criminal courts. All the criminal courts in consultation with each other get the timing fixed for each court.
6.3.8 Management of work of recording of evidence in criminal cases.

Researcher received information from magistrates regarding practice adopted by them for doing daily judicial work. This information is at table [T-3].

Three patterns were given.

Pattern- I

A) Callout all cases first at 11 a.m.
B) Sort out cases in which witnesses are present.
C) Then start recording evidence.
D) Adjourn cases in which witnesses are absent.
E) Takes cases according to serial numbers on daily board.

PATTERN- II

A) Callout all cases first at 11 a.m.
B) Start recording evidence till the end of the day.
C) Adjourn cases in which witnesses or accused are absent.

PATTERN- III

A) The practice is used by individual judicial officer.
The data received by researcher from 211 courts shows that most of the judicial officers have followed pattern I and II. Some of the judicial officers have followed all the three patterns.

Some of the judicial officers are in habit to ask parties and advocates to wait till 5.30 p.m. even though their matters are not to be taken by them. Best pattern for doing more work during the court hours can be as under

Callout accused witnesses, parties and advocates at 11.00 a.m.

Sort out cases in which witnesses or advocates are present.

Adjourned the matters in which applications for adjournment are received or matters those can not to be taken by the court.

Give dates in adjourned matters.

Start recording evidence at 11.15 hours.

Take admission matters at 2.30 p.m. After finishing admission matters do the remand works

Before starting evidence APP be asked on which point witness is to be examined. By this magistrate gets an idea about evidence which is to be adduced so he would try to curtail cross-examination relating to irrelavent matters.

"Whenever case is fixed for argument bench clerk be asked to fix flags by mentioning relevents exhibits on the proved docements.

- Charge sheet
- F.I.R
- Spot Panchanama
- Arrest Panchanama
- Seizors Panchanama
Bench clerk furthur be asked to arrange case papers chronologically. It would help the magistrate to read maximum in minimum time. This is nothing but management of time and file.
6.3.9 Management of work of issue of summons / warrant / notices.

Whenever magistrate passes order of issue of warrant against accused he shall put a [Red colour] paper flag in the file. If there are more accused than one in such case he shall write number of accused as mentioned in charge sheet by pencil so that concern clerk can do the needful without verbal communication with the magistrate.

If magistrate passes order of issue of show case notice to suerties then he shall put up a [Green colour] paper flag by mentioning name of suerty and number of accused by doing this concerned clerk can do the needful without verbal communication with the magistrate.
6.3.10 Management of work of muddemal clerk.

The muddemal clerk does not remain busy for the whole day. If his work is analysed then he remains busy on first two or three days of the month. Whenever he prepares balance sheet of muddemal and monthly statement. The numbers of prohibition muddemal is more in comparison with other cases. He has to enter final orders and date in register of final order and keep said muddemal separate in the rack. If average work of magistrate is considered regarding disposal of prohibitions and IPC cases they hardly go up to 25. For taking final entries in register for one case it requires hardly 10 or 15 minutes.

Out of 8 hours how much time he requires to do this work. Another important duty of muddemal clerk is to affix lables on muddemal articles as provided in Criminal Manual in chapter 6 para 69. He shall keep such property in relevant cubourd. Spare time muddemal clerk is wasted as it is not utilised properly. Spare time of muddemal clerk can be utilised by restructuring his duty list. He can be assigned work of issue of summons or warrants or other work which is in arrears.
6.4.1 Management of Judicial Work of a Civil Judge.

Recording evidence in civil suit.

The researcher called information from C.J.J.D. in respect of practice adopted by each judicial officer for doing daily judicial work. Two patterns were given.

- Call out cases first at 11.00 a.m.
- Sort out cases in which witnesses are present.
- Start recording evidence.
- Adjournd matters in which witnesses are absent.
- Take cases according to serial numbers.

Pattern - II

- Call out cases first at 11.00 a.m.
- Start recording evidence till the end of the day.
- Then adjourn the cases in which witnesses or parties are absent.

PATTERN - III

This is an individual practice which is adopted by judicial officer.

It is experienced that some of the judicial officers are in habit to ask parties and advocates to wait till 5 p.m. even though their matters are not taken by them. This may happen as parties and their advocates do not come before the court to say that their evidence is ready, it be recorded. In civil cases if evidence is not
ready of either party then it has to apply for adjournment under order - 17 of Code of Civil Procedure. If, concerned party does not move an application for adjournment the judge has to wait till it is filed. Some of the advocates are in habit that they wait till 5 p.m. so the court automatically adjourn their cases on the ground that court time is over. Some judicial officers adopt this practice to please the advocates neglecting provisions of order 17 of C.P.C.

Code of Civil Procedure, provides the mode under order - 17 Rule -3, what is to be done when either party fails to produce its evidence. Such conduct of advocates or their parties constrain the judge to remain idle for the whole day. He can not record the evidence nor he can do other work. Whenever he takes other work concerned advocates take a round in the court hall to show the judge that he is ready. When judge finishes his work and call the concerned advocates they do not turn up for a long time. Whenever at the end of the day judge decided to dispose of the suit according to R-3 of Order-17, the advocate enters in the court with their witness and say that “they are ready with their evidence since 11.00 a.m.” This is nothing but pressuring tactics adopted by the advocates. In view of case reported in shiwde seastane case amount to professional misconduct of advocate and liable for action by Bar Council.

Some of the advocates have cultivated the habit not to enter in the court hall unless they are called repeatedly. Some advocates file application for adjournment at 11.00 a.m. If, this practice is followed by the advocates the judge is certain at 11.30 a.m. how much work he is going to perform in the whole day and he may manages his board accordingly. If, this is the present situation how the judge can manage his time for the whole day.

As stated earlier by the researcher that the advocates and parties did not follow provisions of C.P.C. strictly at the relevant stage, therefore, civil litigations are pending and they can not be disposed of early.

In civil suit evidence is recorded in Marathi or evidence can be on affidavit unde order-18 rule 4 and 5 of C.P.C. In the opinion of the researcher this is best method. It would save the time of the party, advocates and court. But, advocates do not file examination in chief of witness on the first day of hearing and seek adjournments as many as they desire. This results in increasing the life of litigations.
The work of the court depends on judge, advocates and parties. To speed up trial of civil suit and other civil cases, it is necessary for parties to attend each date of the suit or other cases. For that it is necessary that such instruction be given in the suit summons or notice directing the defendant or N.A. that he should remain present on each date of the suit. If the court succeeds in doing so then there will be no delay in speedy trial.
6.4.2 Hearing of Temporary Injunction applications under order-39 rule-1 and 2.

Data received by researcher shows that the civil judge requires average time 3 to 7 months or more to dispose of temporary injunction applications. On going through Order-39 Rule-1 of Code of Civil Procedure, there is no provisions to fix the T.I. application for hearing. Rule-1 of Order-39 of Code of Civil Procedure, runs as under.

Rule-1 Cases in which temporary injunction may be granted where in any suit it is proved by affidavit or otherwise.

When Rule-1 of Order-39 provides that T.I. application should be decided on the basis of affidavits or otherwise. Whether, hearing includes otherwise. In the opinion of the researcher when rule does not provide to put up temporary injunction application for hearing why we are wasting time by hearing such application for years together. As soon as defendant files his affidavites in this regard the next stage is fixed by the court for passing order on temporary injunction application. As there is a delay in deciding T.I. the other stages of the suit automatically delays. As soon as T.I. application is decided aggrieved party goes in appeal and called R & P of the suit in appeal there after the matter became dead till the disposal of Misc. Appeal, by the appealate court. Whether it is necessary to stop this practice? The answer is yes, for administration of speedy justice.

Conclusion.

From above discussion we have seen after analysis and interpretation of collected data that how delay is caused if procedural laws that is Cr.P.C., C.P.C. Civil Manual & Criminal Manual and Evidence Act, are not followed by Judicial Officers, Advocates, Litigants and Public Prosecutors. We have also seen that if
judicature used proper management how trial of cases can be speeded up. To speed up trials of civil and criminal cases it is necessary to issue direction by the Hon'ble High Court to judicial officers and persons involved in the judicature. The next chapter presents the conclusions and recommendations made in this report.
Graph showing the number of courts in which provisions of order 8 is followed.

- Total number of courts: 642
- Information received from courts: 205
- Number of courts in which provisions of order 8 strictly followed: Nil
Graph showing number of courts in which parties or their advocates filed list of documents with the written statements.

- Total number of courts: 642
- Information received from courts: 205
- Number of courts in which parties or their advocates filed list of documents with written statements: 0
Graph showing number of courts in which parties or their advocates filed original documents in courts on the stage of documents.

- Total number of courts: 642
- Information received from courts: 240
- Number of courts in which parties or their advocates filed original documents in courts on the stage of documents: 70
Graph showing number of courts in which parties or their advocates filed list of witnesses on the stage of settling date.

Total number of courts. 642
Number of courts from which information received in this regard. 196
Number of courts in which parties or their advocates filed list of witnesses in courts on the stage of settling date. 68
Graph showing number of courts keep a stage for admission or denial of documents.

- Total number of courts: 642
- Number of courts from which information received in this regard: 201
- Number of courts keep a stage for admission or denial of documents: 84
Graph showing percentage of suits in which advocates gave notice to admit documents or facts.

Total number of courts. 642
Number of courts from which information received in this regard. 242
Number of suits in which advocates gave notice to admit documents or facts. In 14% suits
Graph showing number of courts in which APP followed provision of section 294 of Cr.P.C.

- Total number of courts: 642
- Number of courts from which information received in this regard: 211
- Number of courts in which APP followed provision of section 294 of Cr.P.C.: 67
Graph showing total number of pending criminal cases and cases related to bodily injuries as on 31.12.2000

- Total number of pending Criminal Cases as on 31.12.2000: 242949
- Total number of pending Criminal Cases as on 31.12.2000 related to bodily injuries: 62276
Graph showing number of courts in which Medical officers did not attend courts who have been transferred.

- Total number of courts: 642
- Information received from courts in this regard: 211
- Number of courts in which medical officers did not attend courts who have been transferred: 111
Graph showing number of courts keep particular days for recording evidence of medical officers.

- Total number of courts: 642
- Information received from courts in this regard: 211
- Number of courts which keep particular days for recording evidence of medical officers: 105
Graph showing total number of courts in which Investigating Officers did not attend courts who have been transferred.

- Total number of courts: 642
- Information received from courts in this regard: 211
- Number of courts in which Medical Officers did not attend the courts who have been transferred: 123
Graph showing number of courts which got their typewriters repaired through Government Stationary Department during the period 1996 to 2000.

- Total number of courts: 642
- Information received from courts: 211
- Number of courts which had got their typewriters repaired through stationary depot: 205