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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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ACCESS TO JUSTICE FOR MARGINALIZED PEOPLE IN INDIA: NEED FOR REFORM IN SYSTEM OF LEGAL EDUCATION

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Abstract

Access to justice is the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances. In India a large population does not want to reach court in order to resolve its dispute due to complexity, time taking and expensive procedure. It takes very long time to finalize the case, sometimes it takes even whole life of the person. In this way only judgment can be given to the people and not the justice. In 1986 Supreme Court of India has also recognized speedy trial to be the fundamental right of the people. High cost of litigation is another most important because of which weaker section fails to approach the court rather they opt for settlement outside the court. Various steps has been taken in order to improve their situation. Legal Aid Clinics has been established in Law Schools to provide free legal aid to poor and backward peoples. But in reality these Legal Aid Clinics fails to serve this purpose because of less involvement of Students and Faculty in it.

In this paper author has discussed about some innovative ideas which can be adopted in order to make the procedure of justice delivery more efficient. In this paper author tried to compare the present situation of Indian Judiciary from foreign system of justice delivery. The researcher has also discussed the working of legal aid clinics of some main law schools and also the ideas to make it more efficient. This paper also contains the reasons for failure of legal aid clinics. This paper contains the idea that how law teachers can also be involved for some social work and their right to practice in court shall be restored. Each and every aspect of this idea has been discussed in detail in this research paper.

Figures of under trial cases in India:

According to National Judicial Data Grid (NJDG), about 3.3 crore cases are pending in Indian Courts while 2.84 crore cases are pending in the subordinate courts. About 43 lakh and 57,987 cases are pending in High Courts and in Supreme Courts respectively. The five states which account for the highest pendency are Uttar Pradesh (61.58 lakh), Maharashtra (33.22 lakh), West Bengal (17.59 lakh), Bihar (16.58 lakh) & Gujarat (16.54 lakh). Of all the pending cases 60% are more than 2 years old while 40% are more than 5 years old.¹

A large segment of the country's young population is in jail. 67% of the prisoners are under trials of which 47% are between the ages of 18-30. Out of this 67%, 66% belong to Schedule caste, 71% are below class 10 and 28% are illiterate. So weaker section whether by money or education is suffering more from the lengthy and time consuming procedure of court proceedings.²

In spite of this much of pending cases a large portion of population of India especially the lower and middle class does not opt to approach the court for resolving their disputes. A large population of India is not able to reach to the proper institutions for the resolving their disputes.

Reasons due to which people still avoid to approach the court:

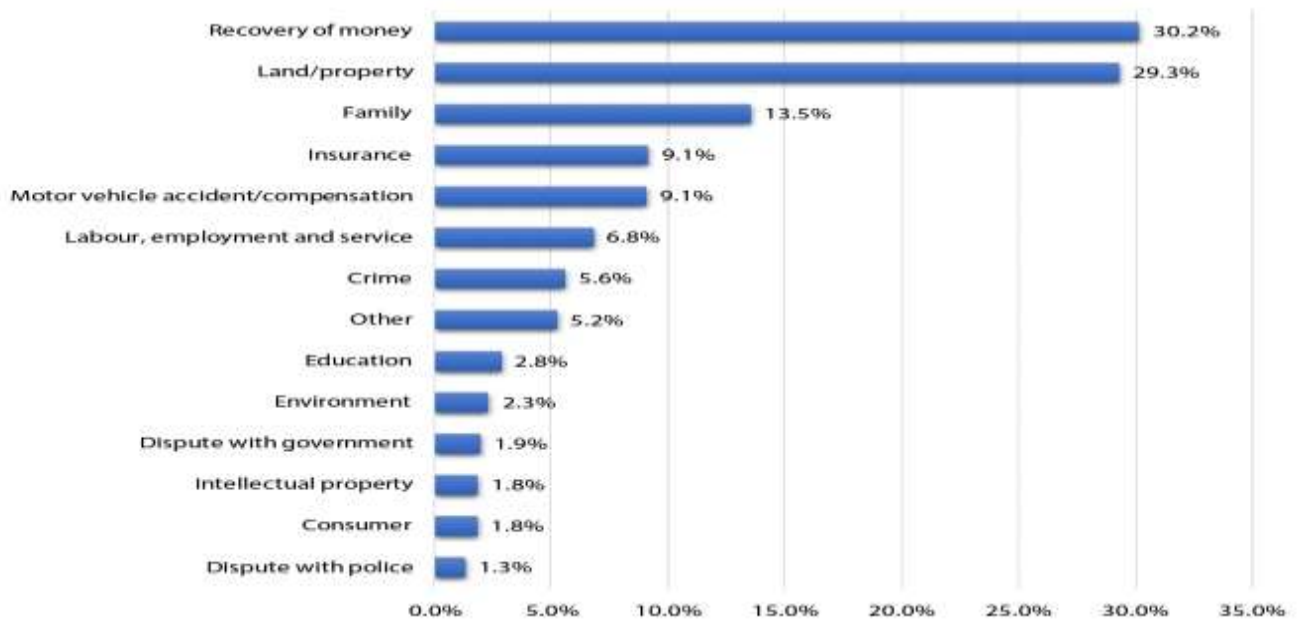
There are a lot of reasons because of which common people do not opt courts in order to get justice, and some main reasons are:-

- Indian justice system is too slow.
- Indian justice system is too complex.
- Indian justice system is too costly.

¹ <https://www.indiatoday.in/amp/india/story/backlog-cases-in-courts-pendency-figure>

²The Hindu, 07/10/2018

Nature of disputes (Past Five Years):



Recovery of money is the most prevalent dispute, at 30.2 per cent, closely followed by land or property related issues, at 29.3 per cent, followed by family related disputes at 13.5 per cent and followed by the other disputes.³

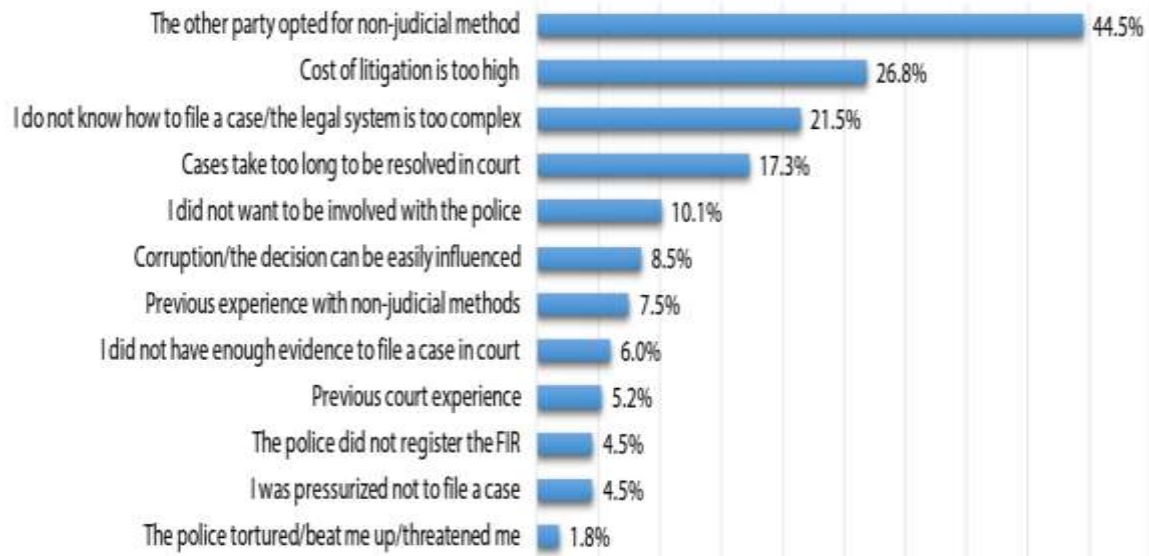
Where people approach if they have dispute:

Large number of people's i.e., about 74% prefers to approach to the Family and Friends for the information of dispute followed by the village elders and local political leaders. It is observed here that very less people's approach to Police, Lawyers and other Legal Authorities & this indicates the great failure of Legal Authorities since large number of peoples are failed to approach them.⁴

³ DAKSH, Access to Justice Survey, 2017

⁴ DAKSH, Access to Justice Survey, 2017

Reasons not opting for courts:

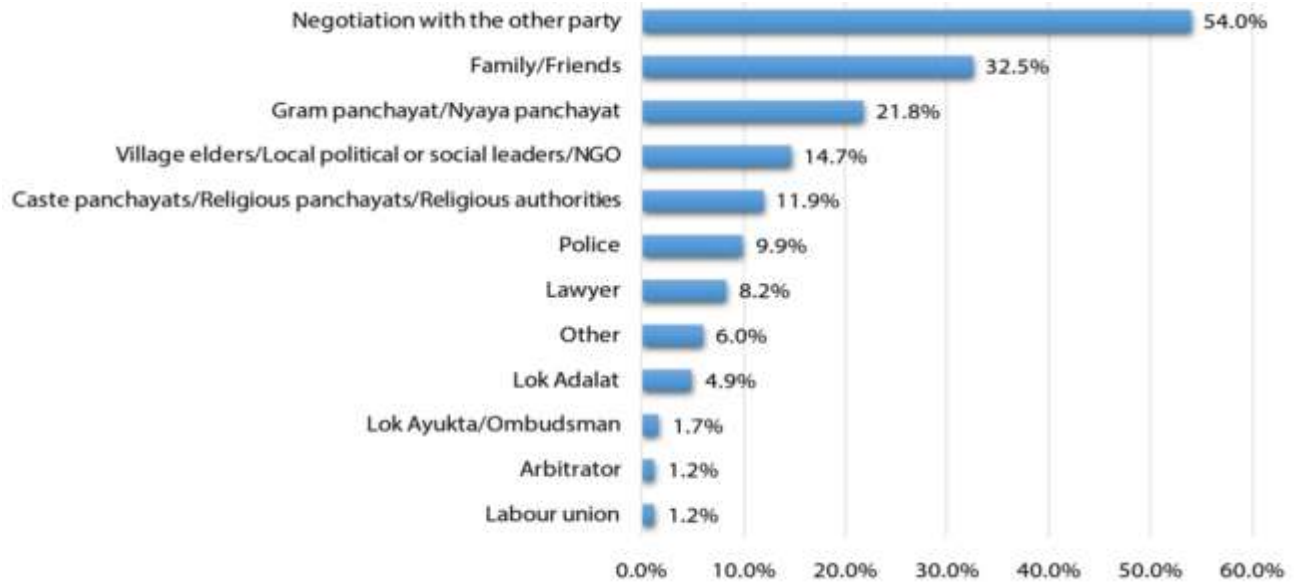


About 44.5% people don't approach to court because the other party opted for non-judicial method and about 26.8% don't approach to court because of high cost of litigation. This all the reasons because of which people don't opt to approach the court indicated the failure of justice delivery system of India. Soul reason for this is the complex, costly and time consuming process of court.⁵

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⁵ Ibid

Out of court Settlement:



Only 8.2% people approach to Lawyers for resolving the Dispute out side the court. This indicates that most of the people don't afford and don't believe on Lawyers and other Legal Authorities.⁶

Cost of Dispute:



This shows the direct and indirect cost of litigation as well as using non-court mechanisms. The cost

⁶ DAKSH, Access to Justice Survey, 2017

is found to be around 60 per cent higher for those who approach the courts.⁷

Why Do Courts Take So Long To Deliver Justice?

Securing justice is riddled with difficulties from the very start for the ordinary Indian. The procedural difficulties one faces in getting their case heard is a big contributor to the chaos in the system. From getting an FIR registered to going to a lower court which takes its own time to decide cases and maybe even the High Court or Supreme Court in case of dissatisfaction, means a case can take years to decide. Add to this the huge number of vacancies existing in the Courts, and the situation gets truly distressing.

The lack of manpower in the lower judiciary, aka the sessions court, is particularly problematic since a major chunk of pending cases is lying in the subordinate courts. While the wheels of judicial reform through the National Judicial Appointments Commission Act did spin in terms of a new system of recruitment of judges, it got stayed through a court order that is yet to take off again.

The deeper malaise, though, lies not just in the corruption in the system or the quality of workforce but the amount of resources the government earmarks for spending on judiciary. For the 2016 budget, only 0.2% of the budget was dedicated to the law ministry – one of the lowest allocations given to a law ministry in the world. In comparison to India, the United Kingdom allocates up to 1.4% of its budget and USA a whopping 4.3%.⁸

Establishment of Legal Aid Clinics in Law Schools:

Article 39A of the Constitution of India provides for free legal aid to the poor and weaker sections of the society and ensures justice for all. The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to provide free Legal Services to the weaker sections of the society and to organize LokAdalats for amicable settlement of disputes. Legal Aid Clinics has been also established in law schools to provide free aid and advice to every people.

⁷ DAKSH, Access to Justice Survey, 2017

⁸Why Do Indian Courts Take So Long To Deliver Justice?, available at:<https://www.youthkiawaaz.com/2017/02/indian-judiciary-failure-and-solutions/> (last visited on October 5, 2019).

Best Practices in India

The seven law schools selected for studying best practices engaged in variety of legal aid activities. A closer look at the programs undertaken by the seven colleges reveals that V.M. Salgaocar College and Jindal Law School are focused on Rural Good Governance as their primary focus through Legal Aid Cells. Symbiosis Law School has a unique program of providing Legal Aid by creating Legal Aid Fund and dedicating few lawyers to an adopted village. NUJS, West Bengal (which NUJS?) has several initiations in association with NGOs. Of late, National Law School, Bangalore seems to have lost its core Legal Aid programs. Indian Law Society, Pune had both in house and off campus Clinics. Students of JSS Law College, Mysore do a lot of legal literacy on their own initiation. Other initiations by these colleges such as Para-legal services, public surveys, community empowerment programs, implementation of Social Welfare Programs, Prison Clinics and Consumer Clinics have the potential of providing access to justice and could be replicated in different parts of the country.⁹

Failure of Legal Aid Clinics in Law Schools:

- Lack of participation of the students. The students are failing to take up the responsibility and the initiative to work for the good cause of providing legal help to the ones who are in need of it.
- The students are unaware of the events happening in their universities and even if they are aware, in some universities, they are not allowed to participate much into the legal aid cell.
- Lack of appropriate funds, disinterest in guiding the students and helping the students when required is a major problem in some institutions.
- Lack of importance given to the concept of legal aid cells. Legal aid is very important for the development of a nation. The legal institutions can play a great role in helping the ones who need legal help. However, they fail to realize the change they can bring in the society.¹⁰

Status of Law Professors in India

Under Rule 49 of the Bar Council of India Rules, an advocate shall not be a full time employee of any person, Government, firm, corporation or concern and on taking up such employment, shall

⁹A Study of Law School Based Legal Services Clinics, available at: https://www.in.undp.org/content/india/en/home/library/democratic_governance/a_study_of_law_schoolbasedlegalservicesclinics.html (last visited on October 10, 2019).

¹⁰ <https://www.lawoctopus.com/academike/legal-aid-and-legal-schools/>

intimate such fact to the Bar Council concerned and shall cease to practice as long as he is in such employment. Due to this reason law professors are confined to the lecture theatres only and so generally they do not participate in any social activities.

Law Professors and Bar Council of India:

Prof. **Shamnad Basheer** has written to the Bar Council of India (BCI) asking it to relax the rule barring legal academics from practicing in courts.

In his petition to the BCI, Prof. Basheer notes that **Rule 49** of *Chapter II of Part VI of Bar Council of India Rules*, which precludes full-time salaried employees from appearing in courts, seems to apply to legal academics as well. However, he argues, that on an interpretation of the rule, law teachers are not necessarily barred from practicing in courts.¹¹

The petition refers to the Bombay High Court judgment in **Brihan mumbai Mahanagarpalika v. The Secretary, Bar Council of Maharashtra and Goa**¹², wherein it delved into the rationale behind Rule 49. As per the petition, the Rule hinges on three salient aspects – independence of lawyers, potential conflict of duties qua employment, and ability to represent clients to the fullest possible extent.

On the point of advocacy to the fullest possible extent, the petition draws a parallel between Members of Parliament and legal academics practicing law. The Supreme Court judgment in **Ashwini Kumar Upadhyay v. Union of India**¹³, where MPs were allowed to practice in courts, is cited for this purpose. It is stated,

“Therefore, Rule 49 ought not to be interpreted to mean that one must necessarily devote all of his/her working hours to the practice of law. Rather, so long as the nature of the two professional pursuits do not pose a conflict serious enough to compromise one’s independence and autonomy, there ought to be no bar against the practice of law for legislators. This logic should extend to law teachers as well.”

¹¹ <https://barandbench.com/active-engagement-with-practice-enables-legal-shamnad-basheer-petition-to-bci/>

¹² 17 October, 2012

¹³ 25 September, 2018

Law Teachers in other countries:

According to Mr. Kales, the law teacher may practice in the giving of opinions to other lawyers upon legal problems submitted. But the law teacher's practice must not stop here. He must not be merely the man to be consulted for academic aid. That is only a more dignified stage of the authority digger. The law teacher must be the man who is sought as an advocate, - whose personal skill and power in swaying the mind of the court is in demand. The special field of practice of the law teacher should be in the appellate courts. He should have a practice as special counsel in preparing the printed briefs and arguments and the making of oral arguments before those courts. If, as is frequently the case, these appellate tribunals discourage oral arguments because of the wretched character of those which the bar is now offering, the law teacher should take advantage of the opportunity to make the better sort of oral arguments and to shine by comparison. The law teacher in his appellate court practice should always appear as special counsel.¹⁴

Best Practices in Foreign Law Schools¹⁵

The Clinical programs in the selected foreign countries are way ahead compared to the programs in India. In most of these Clinics, Legal Aid is provided by the students with the help of trained practicing lawyers. Most of the Law Schools have dedicated faculty for Clinical programs. Most of the Clinics provide academic credit to the students involved in Clinical programs. There seems to be seriousness in offering quality Legal Aid to the marginalized section of the people.

Clinical programs focusing on Legal Aid to the poor started in USA and India during 1960's, the Clinical programs in USA is way ahead compared to the programs in India. Initially the Clinical Programs in USA received Federal Grant and today most of the Law Schools in USA have well developed and institutionalized Clinics offering several legal services to the community. Similar findings emerged from other countries. In most of the countries, Legal Aid is provided by the Law Schools Clinics with the help of trained practicing lawyers. Most of the Law Schools have dedicated faculty for Clinical Programs.

¹⁴ Harvard Law Review, Vol.25, JSTOR

¹⁵A Study of Law School Based Legal Services Clinics, available at:

https://www.in.undp.org/content/india/en/home/library/democratic_governance/a_study_of_law_schoolbasedlegalservic esclinics.html (last visited on October 10, 2019).

Several initiations undertaken by these Clinics could be a role model for Indian Law Schools. Particularly, Street Law Programs and Community Clinics undertaken by Law Schools in USA and South Africa have a great potential in India.

What can be done to improve the situation?

To improve the present situation it is very necessary to take some drastic and imaginative steps. Some of them could be:

1. **Setting up fast-track courts and benches** to speed up pending cases.

Supreme Court, in 1986, had recognized speedy trial to be a fundamental right. In order to clear the long pending cases, Fast Track Courts were established in year 2000 in India. In year 2000 total 1734 FTCs were approved out of which only 1562 were functional by 2005. According to a recently released report by the Ministry of Law and Justice, Department of Justice on the 26th of June 2019, currently, there are 581 FTCs in the country that are functional. But it is clear from this analysis that motive behind establishment of FTCs did not achieved due to some reasons like inadequate court staff, improper physical and IT infrastructure.¹⁶

Proper Fast Track Courts are needed to be established in order to speed up the trial. Government should start by establishing few courts but with all the requirements fulfilled like enough staff, proper infrastructure and its own forensic lab with experienced team so that proceedings can take place with no interference.

2. **Implementing a strong reprimand for bringing up flippant cases** – This will not only ensure that the cases that come to the lower courts are valid but also those which can be worked on quickly. Moves such as the Supreme Court imposing fines for frivolous cases are a welcome step towards warding off unwanted petitions.¹⁷
3. **Decreasing the holidays of Courts-** In addition with every weekend there are many holidays available in our country. Some unnecessary holidays can be removed especially for courts.
4. **Modernization of courts-** Our courts should be fully digitized and technical experts should be brought in to streamline the whole process right from when a person files a case, to updating

¹⁶ Status of Fast Track Courts in India, available at: <https://legaldesire.com/status-of-fast-track-courts-in-india/> (last visited on October 10, 2019).

¹⁷Why Do Indian Courts Take So Long To Deliver Justice?, <https://www.youthkiawaaz.com/2017/02/indian-judiciary-failure-and-solutions/> (last visited on October 5, 2019).

it, to the final verdict. Using editors to simplify technically dense final judgments could also be another step.¹⁸

5. **Ensure stalling tactics are strongly reprimanded-** There is no great mystery to this modus operandi which not only piles up work in the court but also sadly is a reason for the rampant corruption present in the judiciary today. A panel which addresses this problem and gives out remedies is the need of the hour.¹⁹
6. **Revision of old laws and regulations-** More than a thousand of India's laws date back to the British Raj, some of which are mere loopholes in the workings of the court and thus must be done away with in order to ensure that justice can be served quickly and effectively.²⁰

The mess in the justice system only ends up harming the interests of the nation. That is why it becomes even more important for the government to solve this crisis. The success of Indian democracy, eventually, depends on this crucial intervention.

Findings & Suggestions

A new idea for the change:

Instead of Legal Aid Clinics government should establish the sub ordinate courts in Law schools and Universities. Just like Medical Colleges have Hospitals in their campus in the same way main law schools should also have the Courts its campus. Law Schools have highly qualified Law Professors who are expert in their field so they can prosecute and defend their cases in the best manner just like teachers of medical colleges act as Doctors and treat the patients. Since the government is already paying the Professors for their full time job so they can fight the cases free of cost. In present scenario Law Professors who write famous thesis and books for Advocates and Students remain very far away from the court proceedings. So, person with great knowledge and capacity fails to help common people. If subordinate courts are made in Law Universities then all the professors can easily participate in the court proceedings like teachers of Medical Colleges. A minimum amount of court fees can also be charged in these courts in order to pay the other working staff of the court.

¹⁸ Ibid

¹⁹Why Do Indian Courts Take So Long To Deliver Justice?, <https://www.youthkiawaaz.com/2017/02/indian-judiciary-failure-and-solutions/> (last visited on October 5, 2019).

²⁰ Ibid

Who shall be the Judges in these Courts of Law Schools?

Since in judiciary Judges are treated as God so their appointment must be done in very proper and efficient manner. Judges for these courts should also be appointed in the same manner as other judges are appointed through exams of Judicial Services.

Who shall Practice in these Courts of Law Schools?

In appropriate cases, senior students and postgraduate students who have already enrolled as lawyers, may be entrusted with the filing and conducting of the litigation in the courts free of cost. It should be made compulsory for the teachers of Law Schools to act as an Advocate in these courts for free of cost because government is already paying them for full time of employment.

Junior students shall act as intern, assistant and junior counsel under the law teachers, senior and postgraduate students. They should also take part in court proceedings so that they can learn the subjects in practical manner.

Whose cases shall be admitted in these Courts of Law Schools?

Since these courts will be free of cost or will be charging a minimum amount of fees so government can put any criteria like income of certain amount as a requirement to bring the cases in these courts.

Major Advantages of this Initiative

- **Speed up the trial-** Out of all pending cases large number of cases are pending in District Courts so the establishment of Sub ordinate courts in Law Schools will help to speed up the trial. If implemented in a proper manner, these courts can be proved to be more efficient than Fast Track Courts.
- **Will provide Justice to the weaker Section of the Society-** Economically backward population who usually do not opt to approach the court for resolving their disputes can easily approach the court because here the cost of litigation will be less or nil.
- **Right to Practice of Law Professors-** Right to practice as a Lawyer in Court for which the law professors are demanding and which has been banned by Rule 49 of Bar Council of India Rules will be restored by taking this initiative.
- **Efficient Utilization of Government's Money & Teacher's Energy-** Government pays very high salary to the professors for the full time employment but actually they use to take few

classes per day and they work for few hours only. As a result of this, payment of such a high salary does not serve its purpose and also energy and knowledge of a highly qualified Professor does not get utilized in the manner it should be.

- **Efficient way of learning for Students-** This will involve the students directly into the court proceedings. Students will be able to learn more efficiently because whatever they will study, they will see the application of that in various cases. This will improve the litigation and research ability of students.
- **Internships-** Students will not be needed to search for any internship because they will be getting this option in their own campus. So during holidays they can plan to do something more innovative or can do internships in higher courts. Purpose of internship is to train the students with practical knowledge but internship of few days only cannot serve this purpose.

Conclusion

In the present situation justice is not accessible to very large number of population especially in countries like India. With the steep growth in number of laws and the number of cases, the Courts are under great pressure. According to various survey reports very large number of cases are pending in Indian courts out of which maximum cases are in District courts. Large population of the country still do not approach the court due to complexity of procedure and high cost of litigation. This paper contains an innovative idea of establishing the sub ordinate courts in various law schools in the same way as Medical Colleges contain the Hospitals in their campus. This will improve the situation of pending cases as well as quality of education.