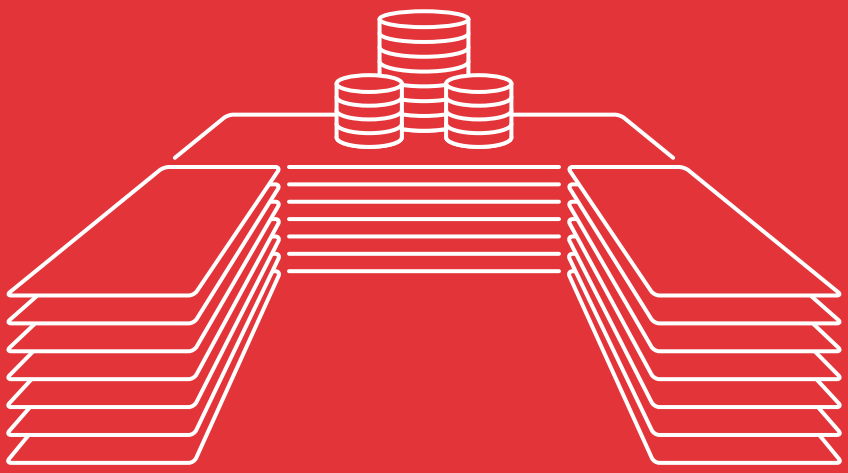
# Back to Basics:

## A Call for Better Planning in the Judiciary



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JALDI Justice, Access & Lowering Delays in India

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The errors, if any, rest with the authors.

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# Contents

# Introduction

A common trope in the discourse around judicial reforms in India, is that the problems of pendency and delay in litigation are attributable to lack of adequate funding for the Indian judiciary. This may have been true for most of Indian history except for the last decade where the Central Government has earmarked significant funds for the judiciary. Between a Centrally Sponsored Scheme ("CSS") for Judicial Infrastructure, a Central Sector Scheme for the e-courts project and a significant grant from the 13th Finance Commission, we estimated that a sum of approximately Rs. 15,000 crores have been allocated to the judiciary, most of it over the last decade, by the Central Government alone. Additional allocations have been made by the State Governments. Despite this huge infusion of funds, there has not been a significant change in the narrative around the Indian judiciary. The problem then is not merely a lack of funds. The lack of planning and management to ensure efficient utilisation of these funds is the bigger problem.

In this report, we try to dig deeper into the issues that are impeding effective planning and management of the judiciary across India.

We begin by providing an overview of the various Central Government schemes that have allocated funds to the judiciary and the key challenges faced in the execution of these schemes. As will be seen, significant funds have been allocated to the judiciary but these are complex schemes which require well thought out planning and coordination between multiple authorities spread across the executive and judiciary.

Second, we look at the issue of the financial autonomy of the judiciary in the context of the Indian Constitution. Time and again, Chief Justices of India have asked for greater financial autonomy without really outlining in detail the meaning of such a request. Some degree of financial independence for judges, is inherent in the definition of judicial independence. For example, as per the Constitution the emoluments of the higher judiciary can be fixed only by the Parliament and cannot be altered to their disadvantage. However, when it comes to expenditure of funds allocated to the judiciary for development of physical or digital infrastructure, the executive retains significant control in release of funds. The subsequent co-ordination that is required between the executive and judiciary to release funds is a recipe for delays and mismanagement. Devolving more financial powers to the judiciary may ensure more streamlined functioning but can judges then be held responsible for possible mismanagement in expenditure of funds or would that impede judicial independence? On some occasions, the financial autonomy argument has taken a different turn, especially when the higher judiciary has asserted its inherent powers to grab for itself the financial powers that were never given to it by the Constitution. The question that we try to answer over here is whether the judiciary has a valid claim to financial autonomy.

The third theme, we explore is the failure and mismanagement within High Courts when it comes to long term planning. We look at this issue on the basis of Court Development Plans ("CDP") that were supposed to be developed by all Chief Justices in 2013 laying out a five-year vision for their respective courts and also on the basis of information provided to us under the RTI Act. The key issue in this regard, is the manner in which judicial strength needs to be calculated because all resource allocations for the judiciary revolve around the number of judges that are being appointed. Only when a court has advance notice of the number of judges that are required by it in the near future, can it draw up plans for building additional courtrooms, residential complexes and hiring the support staff that is required by the judiciary. However, estimating the number of judges required by the judiciary is easier said than done. We conduct a deep dive into this issue to identify the key challenges in fine tuning a formula for calculating judges.

The fourth issue we examine is the lack of financial transparency and audits of judicial administration. As has been often repeated by Indian judges in their

bold pronouncements on the fundamental right to information and the RTI Act, sunlight is the best disinfectant. Yet most High Courts do not disclose their financial budgets and outlays. The lack of financial transparency of judicial administration makes it extremely difficult to understand the internal workings of the judiciary and the lack of audits makes it difficult to understand the problematic issues being faced by different High Courts. This a serious issue given the large amount of public funds being spent on judicial administration in India.

We hope that some of the issues raised in this report shift the conversation on judicial reforms from the lack of funding to the deeper, underlying issues that are impeding the expenditure of the funds that are already allocated to the judiciary.

# I

# Underfunded or Poorly Planned – A Bird's Eye View of the Financial Support Provided by the Central Government to the Judiciary

The judiciary in India is funded by the Central Government as well as the respective State Governments. However, the latter's funding has focused on recurring expenses such as salaries, allowances and general operational costs rather than long term capital investments. Historically, both the Central Government and the State Governments have been criticised for not providing enough funding for the judiciary.

In 2001, the National Commission to Review the Working of the Constitution stated that over the last 50 years, the Government has paid little attention to the state of infrastructure of the judiciary which is due to a lack of consultation with the Judges regarding the needs of the judiciary.[1]

This criticism can be traced back to the 14th report of the Law Commission in 1958 which stated that the State Governments earn more by way of court fees than what they are willing to spend on requests of judiciary for establishing additional courts and appointing personnel.[2] The 127th report of the Law Commission in 1988 remarked that the administration of justice was clearly on the back burner for the Government because no budget allocation was made for the same for the initial five year or annual plans.

With time, the Finance Commission, which decides on tax distribution between the Centre and the States and principles of public spending, made targeted recommendations for giving grants in aid to the judiciary. The 7th & 8th Finance Commissions in 1978 and 1984 respectively were the first to provide "nominal amounts" for construction of courts, additional subordinate courts, including staffing, etc.[3] The 11th Finance Commission in 2000 identified judicial administration as one of the sectors for which grants have to be upgraded. The Commission taking into account the high pendency in the district & subordinate courts, provided a grant of Rs. 502.90 crores for creating additional fast track courts specifically for disposing long-pending cases.[4] In 2010, the 13th Finance Commission made the highest budgetary allocation to the judiciary. The Commission gave a special grant of Rs. 5000 crores to be spent on morning/evening/courts, Lok Adalats, legal aid institutions, training of judicial officers and public prosecutors, judicial academies, court managers and heritage court buildings.[5] However, only an amount of Rs. 1479.95 crores was released of which only 31.86% was utilized.[6]

While it is encouraging that the judiciary has been an area of concern for the Finance Commission, the underutilization of funds is indicative of the fact that the Commission did not adequately assess the primary pain points of the state judiciaries. For example, the

[1] National Commission to Review the Working of the Constitution, *Financial Autonomy of the Indian Judiciary* [2001] <http://legalaffairs.gov.in/sites/default/files/Financial%20Autonomy%20of%20the%20Indian%20Judiciary.pdf> accessed 11 December 2019.
[2] Law Commission of India, *Reform of Judicial Administration,* (Law Com 14, Vol I, 1958) <http://lawcommissionofindia.nic.in/1-50/Report14Vol1.pdf> accessed 10 December 2019.
[3] Seventh Finance Commission, *Report* (1978) <https://fincomindia.nic.in/ShowContent.aspx?uid1=3&uid2=0&uid3=0&uid4=0>; Eighth Finance Commission, Report (1984) <https://fincomindia.nic.in/ShowContent.aspx?uid1=3&uid2=0&uid3=0&uid4=0> accessed 14 December 2019.
[4] Eleventh Finance Commission, *Report* (2000-2005) < http://www.tn.gov.in/tsfc/11threport.pdf> accessed 10 December 2019.
[5] Department of Justice, *"Improving Justice Delivery", Ready Reckoner on Thirteenth Finance Commission Grant, Government Orders and Guidelines issued by the Government of India* [2011] <https://doj.gov.in/sites/default/files/TFC-COMPENDIUM_0.pdf> accessed 11 December 2019.
[6] Thirteenth Finance Commission, *Allocation of Thirteenth Finance Commission Grants* [2011-2015] <https://doj.gov.in/sites/default/files/tfc_release_31.10.14%20%20%20%20B_2.pdf> accessed 11 December 2019.

Finance Commission allocated funds for evening courts and heritage court buildings when it is known that most states are struggling to build basic infrastructure like courtrooms. As reported by the Comptroller and Auditor General ("CAG"), although the Government of Kerala disbursed an amount for the establishment of 74 evening courts from the funds sanctioned by the 13th Finance Commission, the High Court found the same impractical since judicial officers were already overworked and established only 5 evening courts. The sanctioned amount was hence reallocated for establishment of Temporary Special Courts which were also delayed leading to the non-receipt of central assistance worth Rs. 47.2 crores.[7]

In the following years proposals were submitted by the Law Ministry to the 14th Finance Commission for the devolution of funds worth Rs. 9749 crores to the State Governments for the judicial sector. However, the Commission, recommended that the State Governments should use their "additional fiscal space provided by the commission in the tax devolution to meet such requirements".[8] Simply put, the Finance Commission declined to make any recommendations for the judiciary, most likely because the last round of allocations were substantially unspent.

Apart from the Finance Commission, the Planning Commission also initiated certain central sector schemes and a centrally sponsored scheme to add to the resources of the judiciary. The Centrally Sponsored Scheme for Development of Infrastructure Facilities for the Judiciary (the "Scheme") was introduced in 1993 to assist states in building judicial infrastructure, especially courtrooms and residential quarters for judicial officers.. The Scheme works on a sharing basis between the Centre & the States, i.e., the State Governments have to release a proportionate grant to the amount released by the Central Government.

Between FY 1993-94 & 2017-18, Rs. 6100.24 crores was released by the Central Government under this Scheme with a bulk of the allocation being made from the year 2011.[9] An additional Rs. 650 crores have been released for the FY 2018-19, and Rs. 710 crores is expected to be released in FY 2019-20.[10] However, in our recent report evaluating the Scheme, we discovered that there exist many loopholes in the design as well as implementation of the Scheme.[11]

One of the issues regarding the design of the Scheme is that the states, under the current format of Utilisation Certificates ("UCs"), do not have to provide specific information regarding the courtroom or residential complexes built under the Scheme. This has led to a lack of transparency regarding the outcomes of the Scheme.

A second issue is regarding the funds allocated by the Central Government under the Scheme. Apart from the issues of political sensitivities, it appears that central share is disbursed on the basis of the number of judges in the particular state rather than the shortage of courtrooms in that state.

Thirdly, there is a lack of a transparent mechanism for monitoring and evaluating the Scheme. The guidelines[12] prescribed by the DoJ require the setting up a three-tiered monitoring system at the district, state & central levels to ensure coordination between the judiciary & the executive; however in the absence of publicly available data regarding the functioning of these committees it is difficult to ascertain their influence on the operation of the Scheme.

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[7] Government of Kerala, *Report of the Comptroller and Auditor General of India on General And Social Sector* [March 2016] <https://cag.gov.in/sites/default/files/audit_report_files/Kerala_Report_No._5_Of_2017_On_General_And_Social_Sector.pdf> accessed 09 December 2019.

[8] ibid.

[9] Department of Justice, *Statement Giving Grants Released Under CSS for Infrastructural Facilities for Judiciary (as on 8 March 2018)* <https://doj.gov.in/sites/default/files/Statement.pdf> accessed 08 December 2019.

[10] Department Related Standing Committee on Personnel, Public Grievances, Law and Justice, *Ninety-Sixth Report, Demand for Grants (2018-19) of the Ministry of Law & Justice* [March 2018] 4 <https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/18/104/96_2018_6_17.pdf> accessed 09 December 2019.

[11] Chitrakshi Jain, Shreya Tripathy & Tarika Jain, *Budgeting Better for Courts: An Evaluation of the Rs. 7460 crores Released Under the Centrally Sponsored Scheme for Judicial Infrastructure* (Vidhi Centre for Legal Policy, August 2019) <https://vidhilegalpolicy.in/wp-content/uploads/2019/09/Budget-report_JudicialReform-2019.pdf> accessed 08 December 2019.

[12] Department of Justice, *Handbook on Revised Guidelines for the Implementation of Centrally Sponsored Scheme for Development of Infrastructure Facilities for Judiciary* [2018-19] 9 <https://doj.gov.in/sites/default/files/Handbook%20on%20Revised%20Guidelines%20of%20CSS1_0.pdf> accessed 08 December 2019.

Fourthly, the standard mechanism for certifying expenditure under the Scheme is the submission of UCs. However, the current format[13] of UCs is inadequate to capture the nuances of an infrastructure project.

Fifthly, as explained in our previous report, there appears to be no proper financial or professional audits of the projects under the Scheme making it difficult to assess the financial and material performance of states under the Scheme.

Apart from the CSS for Judicial Infrastructure, there is also the Central Sector Scheme launched for e-courts, which was meant to be a digitisation project aimed at all courts in India. A total amount of Rs. 2310 crores was released for the e-courts project under this Scheme between 2010 and 2019. This was directed towards the digitisation of district and taluka courts.[14] As detailed in an earlier report by our colleagues, the e-courts project ran into several delays, budget revisions, etc.[15] While the project has made significant strides, its true potential remains to be tapped.

The unutilised funds and the under-performing schemes point to inefficiency, rather than under-funding as the main problem. Many of these efficiencies are spread across stakeholders in the Central Government, State Governments and the High Courts. Taking a holistic look at these issues is necessary to understand that there will never be a silver bullet to solve the many issues contributing to the delays and backlogs within the Indian judiciary.

[13] Utilization Certificate format for Centrally Sponsored Schemes <https://mnre.gov.in/file-manager/UserFiles/format-for-utilization-certificate.pdf> accessed 26 December 2019.
[14] (n 10) 4
[15] Shalini Seetharam & Sumathi Chandrashekaran, *eCourts in India* (Vidhi Centre for Legal Policy, July 2016) <https://vidhilegalpolicy.in/2016/07/08/2016-7-7-ecourts-india/> accessed 26 December 2019.

# II

# Financial Autonomy of the Indian Judiciary

The dominant narrative on judicial reforms suggests that under-funding of the judiciary is one of the reasons for the pendency problem in India. This inefficiency of resources is attributed to the fact that the judiciary in India lacks adequate financial powers since it is dependent on the executive and legislature for funds. As a consequence multiple Chief Justices of the Supreme Court through statements made in public events have demanded greater financial autonomy for the judiciary so that it is able to administer justice more efficiently.[16] The Chief Justices' Conference in 2015 also passed a resolution to this effect.[17] However, none of these statements clarify the nature of financial autonomy that is being sought and the manner in which such autonomy would fit within the scheme of the Constitution.

In our opinion, the debate on financial autonomy for the judiciary, can be classified into three categories. The first is the power to determine the emoluments payable to judges and their court-staff. The second is the power to determine the budgetary allocations for the judiciary with respect to infrastructure and other capital investments. The third is the power of expenditure of funds that have been sanctioned by the legislature.

The key issues pertaining to each of these categories are explained below:

## A. The Power to Determine Emoluments Payable to Judges and their Court Staff

As per the Constitution, the power to determine salaries and allowances of the judges of the Supreme Court and High Courts lies with Parliament. This is usually done through periodic amendments to two legislations called the High Court (Salaries and Conditions of Services) Act, 1954 and the Supreme Court Judges (Salaries and Conditions of Services) Act, 1958. Once the quantum of payment is decided by Parliament, the monthly salaries and emoluments of these Judges is charged directly to the Consolidated Fund of India and the Consolidated Fund of the states (for High Court Judges) without the requirement of any parliamentary vote.[18]

With regard to the officers and servants of the Supreme Court and High Courts, who are to provide administrative support, Articles 146 and 229 of the Constitution make it clear that these courts have the power to regulate the affairs with regard to the officers and servants of the court. The Chief Justice of these courts are empowered to make rules laying down the service conditions for their staff. However, there is a proviso which makes the approval of the President/ Governor necessary when the rules made by the Chief Justice relate to financial matters like revision of salaries, pay scales, etc.[19]

[16] Utkarsh Anand, 'Nations Spending on Judiciary Have More Stable Governments, Says CJI Ranjan Gogoi' *News18* (19 June 2019) <https://www.news18.com/news/india/nations-spending-on-judiciary-have-more-stable-governments-says-cji-ranjan-gogoi-2193973.html> accessed 24 December 2019; 'Judiciary, Parliament Siblings Need for Institutional Dialogue: CJI' *The News Wire* (05 April 2015) <https://www.outlookindia.com/newswire/story/judicary-parliament-siblings-need-for-institutional-dialogue-cji/889746> accessed 24 December 2019.

[17] Resolutions Adopted in the Chief Justices' Conference [3rd and 4th April 2015] <http://wbja.nic.in/wbja_adm/files/Resolutions%20of%20Chief%20Justices%20%20Conferenc%202015.pdf> accessed 30 December 2019.

[18] The Constitution of India, 1950, Article 146; Article 229.

[19] In the Constituent Assembly Debates, the proposal which was adopted was to change the words 'in consultation with' to 'with the approval of', proposal was moved by Dr. Ambedkar.

The Constituent Assembly debates on Article 122 (which corresponds to Article 146 in the current text of the Constitution) reveal that two principles were to be balanced when it came to giving the Supreme Court and High Courts control over their staff and officers. The first was concerned with the independence of the judiciary, for the judiciary should have sufficient control over its own establishment to be independent of executive influence. The second involved concerns regarding financial accountability, for the salaries of the judicial establishment were drawn from the public exchequer and interests of the taxpayer had to be guarded.[20] It was argued during the debates that decisions which concern the expenditure of public funds cannot be made without considering the health of the economy and finances in the country and the Constitution makers were of the opinion that the executive was in a better position to determine the financial health of the country or the state.[21] There were opponents to this view who believed that making these rule making powers conditional on the approval of the President would destroy the independence of the judiciary.[22] Ambedkar however strongly felt that salaries, allowances and pensions payable to servants of the state should be uniform and it was conceivable that the Chief Justice might fix salaries which are different from those fixed for civil servants who are working in other departments.

Similarly, with regard to the emoluments payable to the judges and support staff of the district and subordinate judiciary, the Chief Justice of the High Court is consulted by the State Government before the promulgation or modification of judicial service rules under Article 233, 234 and 235 read along with Article 309 of the Constitution.

In the above context, it is not clear as to how the judiciary can be given more financial autonomy. At most, there may be a case for shifting the power of fixing the emoluments of the district and subordinate judiciary away from the Governor to the state legislature so as to replicate the system being followed by the higher judiciary. This would prevent the executive arm of the State Government from tinkering with the emoluments of these judges without legislative approval, although in all honesty, this does not currently appear to be a significant issue of concern.

## B. The Budgetary Allocations for the Judiciary

The second issue with regard to financial autonomy are the budgetary allocations made for the judiciary for items other than salaries such as physical or digital infrastructure or training programmes. This expenditure to create long term assets for the judiciary is usually referred to as capital expenditure while the expenditure towards salaries and other daily expenses is referred to as revenue expenditure.

The process for preparing the budgetary estimates begins within the High Courts.[23] The district courts submit their proposals to the High Court. Within the High Court, the budget estimate for the entire state judiciary is generally prepared by the Registrar[24] or administrative committee for budgets (consisting of about two to five judges[25]) as constituted by the Chief Justice. The final sign off on the proposal is generally given by the Chief Justice. Additionally, the High Courts also formulate the proposals for establishment of new courts and creation of new posts which are then sent to the state administrative departments for sanctioning. While getting the State Government's approval for revenue expenditure is not very difficult, there are known instances where proposal for capital expenditure such as construction of courtrooms or creation of additional posts, has run into resistance. These rejections could be due to a paucity of funds or because the State Government has different priorities with its limited budget.

In the above context, greater financial autonomy for the judiciary, could mean giving the power to the judiciary to forward its budgetary estimates directly to

[20] Alladi Krishnaswami Ayyar, Constituent Assembly Debates (27 May 1949). <https://www.constitutionofindia.net/constitution_assembly_debates/volume/8/1949-05-27> accessed 10 December 2019.
[21] Ibid
[22] ibid Das Bhargava
[23] Judicial Academy Jharkhand, *Courts- Staff- Registers- Legal Procedures: A Guide for District Judiciary* [2013] 28 <http://jajharkhand.in/wp/wp-content/uploads/2019/05/a_guide_for_district_judiciary.pdf> accessed on 10 December 2019.
[24] For Example: Uttar Pradesh Budget Manual declares the Registrar as the Head of the Department.
[25] NCMS Committee Report submitted to Supreme Court in Criminal Appeal No. 254-262 of 2014, *Imtiyaz Ahmad vs. State of UP & Ors.* <https://doj.gov.in/sites/default/files/NCMS%20Report_0.pdf> accessed 12 December 2019.

the state legislatures, as is done by the federal judiciary in the United States.[26] In the Indian context, given the fused nature of the state legislature and the executive, wherein the ruling party controls both the government and the legislature, it is doubtful if the legislature would ever disagree with the executive. However, the need to publicly debate the estimates of the judiciary in the legislature, is a better scenario than the present situation where the original estimates of the judiciary may not even reach the floor of the legislature for a public debate.

One workaround developed by the judiciary in this regard, is to pressure the government through judicial orders, especially through suo-moto public interest litigation. One of the first such cases was the *All India Judges' Association* case which had sought a revision in pay for the district and subordinate judiciary as well as improvements in judicial infrastructure, allocations of residential allocations to district and subordinate judges and guaranteed modes of conveyance for district and subordinate judges. The Supreme Court passed several directions in these cases, ranging from the creation of a National Judicial Pay Commission to orders relating to the provision of basic infrastructure for the district and subordinate judiciary as well as orders directing the creation of training academies for judges.

Not long after these orders were passed, various State Governments along with the Union of India filed a review petition.[27] The petition raised many objections to the specific directions given by the Court to improve the conditions of service for the district judiciary, chief amongst them was the incentive it would provide to the members of other state services to make such demands. In addition to these the UOI and State Governments raised some very important objections questioning the power of the Supreme Court to issue the impugned directions.[28]

The State Governments also opposed the direction for uniformity in service conditions, submitting that they were differently situated in terms of financial resources and implementing the directions of the court meant undertaking a very heavy financial outlay. They said that a mandatory direction which instructs them to allocate resources for court-determined activities impairs the competence of the executive and the legislature to prioritise developmental/non-developmental activities. Moreover, if a direction which requires spending from the consolidated fund of the state is to be issued by the Government, a necessary legislation would be carried out for relevant appropriation; State Governments objected to the judiciary issuing such directions.[29]

The Supreme Court rejected each of the general and specific objections raised by the UOI and the states. On the question of financial constraints raised by the State Governments, the Court said the objection was misconceived and that such a plea cannot be raised to discharge mandatory duties.[30] The Supreme Court has continuously passed directions under this case constituting ad hoc committees, revising the pay scales etc. which have provided ad hoc solutions to the problem. To what extent, these orders have actually been implemented is not yet clear as there has never been a comprehensive study on the enforcement of the orders passed in the *AIJA* cases.

Perhaps inspired by the Supreme Court even High Courts have initiated similar litigation. In a case before the Bombay High Court where the main question revolved around the state government's obligation to provide necessary infrastructure to the judiciary, the court held that "financial constraints is not a ground to deny permission for establishing new courts and denying essential infrastructure to all the courts".[31] The courts cite rights of speedy trial and legal aid to suggest that it is the state's duty to fund for courts and posts and entirely disregard the plea of financial constraints raised by State Governments.

In *Vihar Durve*[32] which is another case heard by the Bombay High Court, it was held that,

> "...when it comes to deciding on the proposal for the appointment of additional Judicial Officers or creating additional Courts or creating

[26] (n 1) [para 3.11].
[27] *All India Judges' Association v. Union Of India*, [1993] 4 SCC 288.
[28] ibid 291, 292 [1].
[29] ibid 292.
[30] ibid 16.
[31] ibid 136, 137; *Mumbai Grahak Panchayat v. State of Maharashtra & Ors.*, PIL No. 156 of 2011 (191) High Court of Bombay.
[32] *Vihar Durve v The State of Maharashtra & Ors.*, PIL No. 188 of 2015 High Court of Bombay.

> additional posts, the views of the High Court Administration will always have a primacy and it is the constitutional obligation of the State to ensure that additional Courts or additional posts as suggested by the High Court Administration are sanctioned as expeditiously as possible in as much as if there is a delay on the part of the state government, it may amount to violation of fundamental rights of the litigants under Article 21 of the Constitution of India."

Currently in an ongoing litigation initiated by the Supreme Court, it has directed that adequate infrastructure be made available to the judiciary and the vacancies in the post of judicial officers across states be filled according to timelines prescribed by the amicus in the case.[33]

The above cases could be treated as examples of courts trying to increase their financial autonomy in relation to matters involving the judiciary. Apart from the fact that the orders in this case faced resistance from the executive, it is not clear as to whether these orders were successfully implemented on the ground.

## C. The Devolution of Expenditure Authority to Chief Justices of High Courts

Once the budget for the judiciary is approved and voted upon by the legislature, the State Governments usually delegate certain financial powers to the Chief Justice. The procedure for these is usually listed in the budget manuals or the financial rules of the states. The Chief Justice then further sub-delegates power to the Registrar or the Administrative Committees comprising of judges. Such delegation is limited to specified amounts, which is not much when contrasted to the overall budget of the judiciary. There is little transparency in how such delegation actually works. We filed applications under the RTI Act with all the High Courts to enquire about the constitution of the budget committees within the High Court as well as the financial powers of the Courts.[34] Most High Courts failed to provide us with the requisite information.

From the few responses we received, we observed that the extent and mode of delegation of financial powers varies across different High Courts.

As can be seen in **Table 1,** the expenditure powers delegated to the High Courts are quite meagre. For any expenditure that is over and above these meagre limits, the approval of the state government will be required and the process can be time-consuming. In this regard, the judiciary may be justified in asking for more expenditure powers to be delegated to them so as to reduce their dependence on the government for making expenditure decisions with regard to money that has already been appropriated towards the administration of justice by the legislature. Increasing the financial delegation of powers may just increase the efficiency of judicial administration.

However, any such demand for increasing the amount of financial delegation to the judiciary should be accompanied with a call for greater financial accountability of the judiciary. This is easier said than done. Currently, accountability for most public expenditure is ensured through periodic audits considered by the CAG which are then placed before the Public Accounts Committee ("PAC") of the state legislatures, which consist of members of the state legislatures. Alternatively questions maybe asked of Ministers on the floor of the state legislatures.

If the higher judiciary wants more financial powers, it should be ready to appear before the PAC to justify its expenditure to elected representatives of the people. If this is not a viable option on the grounds that it would interfere with judicial independence, the judiciary must consider surrendering the financial and planning duties of the judiciary to an authority which can be summoned before the PAC. From a working paper of the NCRWC published almost two decades ago, it was quite clear that most state governments would not be ready to delegate more financial powers to the judiciary unless such an accountability measure is in place because if the judiciary is not ready to appear before the PACs, it will be the bureaucrats of the State Governments who will be summoned to give explanations for expenditures that they have not authorised.[35] The judiciary must therefore contemplate an arrangement wherein Chief Justices are willing to appear before

[33] *In Re: Filling Vacancies*, Suo Moto W.P. (Civil) No. 2 of 2018 SC (31 October 2018) 6.
[34] Filed by Chitrakshi Jain on 09 August 2019, Research Fellow at Vidhi Centre for Legal Policy. The replies are available with the authors on file.
[35] (n 1) [para 11.3].

PAC or alternatively to imagine a new administrative setup wherein the entire management and operation of the financial affairs of the judiciary is surrendered to a bureaucrat who is accountable to the State Legislative Assembly for the manner and purposes for which expenditure of public funds has been authorised.

| | |
|---|---|
| Allahabad | The Allahabad High Court currently does not have an "Expenditure Committee" and financial proposals are decided by the Chief Justice if they exceed Rs. 50,000/-. Registrar of the Allahabad High Court is listed in the UP Budget Manual as the Controlling Officer of the expenditure of the funds and can approve expenditure upto Rs 50,000/-[36] |
| Delhi | Committee for Finance and Budgeting and for Sanction of Contingent Expenditure and Writing Off Losses Exceeding Rs. 5,00,000/- which consists of two sitting judges.[37] Further, the Chief Justice has delegated the financial powers to incur contingent expenditure in the following way - Registrar General upto Rs. 50,000/- in each case, Joint Registrar upto Rs. 25,000/- in each case and Deputy Registrar upto Rs. 15,000/- in each case.[38] |
| Karnataka | The Karnataka High Court Administrative Expenditure Rules, 1989 empower the Chief Justice to undertake various expenditures upto certain monetary limits. The Chief Justice, for example, can create permanent posts carrying the scales of pay up to Rs. 29,600/-[39] and undertake expenditure upto Rs. 25 lakhs per annum for the purpose of entertainment at meetings and conferences.[40] The powers under the rules are subject to availability of funds "within the sanctioned budget allotment and to the general and procedural directions contained in the Karnataka Financial Code, Manual of Contingent Expenditure and other existing rules or orders". |
| Kerala | The government of Kerala has delegated financial powers upto Rs. 25,000/- to the Registrar. Any expenditure exceeding this amount has to be placed before the Finance Committee of the High Court which consists of three judges.[41] Similarly, the Registrar General is authorized to incur the following expenditure: non-recurring contingencies upto Rs.1,50,000/-, repair of existing buildings upto Rs. 15 lakhs at a time and AMC for services upto Rs. 15 lakhs per equipment.[42] |
| Meghalaya | The accounts section of the High Court prepares the budget estimate and forwards it to the state government. The Chief Justice has delegated the powers to undertake expenditures on different heads to the Registrar General subject to certain limits. For example, the Registrar General is authorized to undertake expenditure of Rs. 8,00,000/- for original works and Rs.1,00,000/- for petty construction works.[43] |
| Sikkim | The state government has delegated full financial powers of the High Court to the Chief Justice. The Chief Justice, in pursuance to this, sub-delegated this power to the Registrar, the Registrar General and the Puisne Judge to different monetary limits.[44] |
| Tripura | The Chief Justice of the Tripura High Court has ordered that any proposal from the district court which involves an expenditure of more than Rs. 5 lakhs will be approved by the Chief Justice, a proposal between Rs. 1 lakh and Rs. 5 lakhs will be approved by the Honourable Portfolio Judge and a proposal falling below Rs. 1 lakh will be approved by the Registrar General of the High Court.[45] |

**Table 1: Details of delegation of financial powers by eight State Governments to their respective High Courts. Source: Responses to RTI applications**

[36] Letter No: 2619/RTI/1337/2019/AHC dated 23 October 2019 from CPIO, Allahabad High Court.
[37] Circular No. 112/Estt./E1/DHC dated 31 January 2019 by Joint Registrar (Establishment), Delhi High Court.
[38] Order No. 609.Estt./E-1/DHC dated 18 August 2019 by OSD (Establishment), Delhi High Court.
[39] The Karnataka High Court Administrative Expenditure Rules, 1989, Rule 4, inserted vide The Karnataka High Court Administrative Expenditure (Amendment) Rules, 2013 (27 March 2013).
[40] The Karnataka High Court Administrative Expenditure Rules, 1989, Table II, Item 6, vide The Karnataka High Court Administrative Expenditure (Amendment) Rules, 2019 (28 May 2019).
[41] Proceedings dated 27 April 2017, Registrar General, Kerala High Court.
[42] Order No. GO (P) 94/2017/Fin. Dated 22/07/2017 by Finance (Expenditure-B) Department, Government of Kerala.
[43] Notification No. HCM.11/10/2014-Estt,/3163 dated 24 August 2016 by Registrar General, Meghalaya High Court.
[44] Letter NO 8099 dated 11 September 2019 from PIO, Sikkim High Court.
[45] Memo No. F. 44(11)(a)-HC/13-16/4960-73 dated 09 March 2019 by Registrar General of the High Court of Tripura.

# III

# Calculating the Number of Judges that are Required for the District and Subordinate Judiciary

The fundamental unit that dictates the funding for the district and subordinate judiciary is judge strength. The number of district and subordinate judges will influence the number of courtrooms that are built and the number of court staff that are hired to support the functioning of the judiciary. However, even after 75 years of independence, there appears to be significant confusion, within policy circles, on the appropriate methodology to be followed while calculating the strength of the district and subordinate judiciary. Further, there appears to be a wide gap between the policy debates in Delhi on the correct methodology to calculate judges and the actual manner in which High Courts calculate the number of district and subordinate judges required in their jurisdictions. Both of these issues are discussed in greater detail below.

## A. The Policy Debate Between the Law Commission and the National Court Management System (NCMS)

The policy debate regarding the appropriate methodology to calculate judge strength has focused on three methodologies: the population to judge methodology; the rate of disposal methodology and finally, the unit-system which is linked to performance indicators. Of these three, the first two are clearly flawed methodologies while the third methodology which holds most promise faces challenges due to unavailability of data.

In 1987, the 120th report of the Law Commission was the first to articulate the concern regarding the norms that govern the determination of judge strength. The Commission adopted a demographic approach to fixing the strength of judges. Correlating the judge strength with the general increase in population, the Commission recommended that judge to population be increased from 10.5 judges per million to 50 judges per million population.[46] The manner in which the Commission came to this figure is not at all clear. The Commission was of the opinion that if legislative representation and bureaucracy can be planned on the basis of population, the principle could be extended to the judges as well, for population is also a democratic unit.[47]

In 2014, the 245th report of the Law Commission of India, once again examined this issue of calculating the number of judges required. This time, the Law Commission dismissed the judge-population ratio as a method to compute judge strength, on the grounds that litigation rates varied across Indian society, with more prosperous and richer cities demonstrating a higher litigation rate than other cities.[48] Hence the Law Commission concluded that it was not possible to suggest a fixed ratio across the country.

The Law Commission then examined the time-based method, that is followed in countries like the United States of America to fix the judge strength. This methodology basically requires data on the time taken to dispose different case types to be used to calculate the number of judges required, based on the institutional and disposal rates over the previous years. While more accurate than the population to judge ratio, it is difficult to use this methodology in India given the lack of data in India on the time taken to dispose different case types. As a result, the Law Commission found this methodology unviable for the Indian context.

[46] (n 68) [para 9].
[47] (n 68) [para 15].
[48] Law Commission of India, *Arrears and Backlog: Creating Additional Judicial (wo)manpower*, (Law Com 245, 2014) <http://lawcommissionofindia.nic.in/reports/Report_No.245.pdf> accessed 10 December 2019.

Finally, this report of the Law Commission recommended the 'rate of disposal' method to calculate the number of judges required in India.[49] The method is based on the current disposals levels of the judges. It determines how many additional judges working at a similar level of efficiency would be required to equal the number of disposals to institutions in a one-year time frame.[50] For example, if there are ten judges disposing hundred cases in a year and the institution of cases every year is five hundred cases, another forty posts should be created to ensure all five hundred cases are being disposed in a year. It can be employed to compute the number of judges required to dispose the existing backlog and the number of judges required to ensure a further backlog is not created. The Commission recommended this method of calculation as opposed to other methods.[51]

The above approach of the Law Commission was criticised in a report of the National Court Management System ("NCMS"), which operates directly under the Supreme Court of India. According to the NCMS, the fundamental problem with the 'rate of disposal' approach was that it was unlikely to give relief to the overworked courts or raise the productivity of underworked courts. It was also possible, according to the NCMS, that the 'rate of disposal' methodology may unintentionally incentivise lower rates of disposal for lower rates of disposal would mean more judicial positions. The second and more significant criticism of the 'rate of disposal' approach was that it did not account for the complexity of individual cases since it treated all cases equally. For example, the time taken to decide a traffic offence would be significantly lesser than a case of murder with multiple witnesses. Despite these criticisms the Economic Survey for the year 2019 chose to rely on the rate of disposal methodology endorsed by the Law Commission to compute the number of judges required to eliminate backlog and tackle new filings.[52]

The NCMS acknowledged that a long-term strategy would need to incorporate data on 'number of judicial hours' required to dispose a caseload of each court and that such data was unavailable in India. In the interim, the NCMS proposed a 'weighted disposal method' which augments the disposal method endorsed by the Law Commission with the prevailing unit system formulated by High Courts to evaluate the judges of the district judiciary under their jurisdiction. The High Courts have established disposal norms for judges of the district judiciary.[53] These norms are derived from units which are allocated for disposal of different types of cases and reportedly, accommodate the complexity of different categories of cases.[54] There is little transparency in how different High Courts create the unit system. In theory however, it makes sense to use it, as suggested by the NCMS report, to calculate the number of judges required. For example, as per the illustration, provided by the NCMS, the number of units to be disposed by an Additional District Judge in Patna to qualify for a 'very good' rating is 678.5 units. Therefore, if the total caseload before that judge, calculated in units, is above this figure, it may be necessary to create new posts. The NCMS recommended that the trigger be set at 1.5 times the units required for a 'very good' rating. As per some of the illustrative examples provided by the NCMS, this methodology ends up recommending the creation of far fewer additional judges than when compared to the 'case disposal' system.

This interim approach was accepted by the Supreme Court and the Central Government, until the NCMS was able to formulate a long-term strategy.[55] It should however be mentioned that the Law Commission did briefly consider this unit-based approach in its 245th report but dismissed it on the grounds that the unit based system takes into account factors such as the age of the case since it was meant to incentivise disposal of certain cases. Similarly, if a judge disposes more cases of a certain type, bonus units are awarded to that judge. These are valid criticisms and it may

[49] ibid.
[50] ibid 24.
[51] The report considered Judge-Population, Judge Institution, Ideal Case Load Method and Time based Method and rejected them in favour of the Rate of Disposal Method.
[52] Ministry of Finance, Economic Survey 2018-2019, *Ending Matsyanyaya: How to Ramp up Capacity in the Lower Judiciary,* <https://www.indiabudget.gov.in/economicsurvey/doc/vol1chapter/echap05_vol1.pdf> accessed 26 December 2019.
[53] NCMS Committee Report submitted to Supreme Court in Criminal Appeal No. 254-262 of 2014, *Imtiyaz Ahmad vs. State of UP & Ors.* <https://doj.gov.in/sites/default/files/NCMS%20Report_0.pdf> accessed 12 December 2019 [p 7.21].
[54] ibid [para 24].
[55] *Imtiyaz Ahmad vs State Of U.P.& Ors.*, Criminal Appeal Nos. 254-262 of 2012 (43, 36).

# Timeline: Evolution of Discourse on Judge Strength

**1958** **Law Commission of India, 14th Report**
The report suggests that while the judge strength may be adequate to deal with current filings, thoroughly inadequate to deal with the pending old cases in the legal system, recommends that High Courts establish temporary additional courts without reference to State Governments.

**1978** **Law Commission of India, 77th Report**
Highlights inadequacy of judges as the fundamental reason for the delays in the legal system.

**1987** **Law Commission of India, 120th Report**
It was the first to articulate the concern regarding the norms that govern the determination of judge strength.
It recommended that judge to population be maintained at 50 judges per million population.

**2002** **Parliamentary Standing Committee, 85th Report**
It endorsed the demographic norm for calculation of judge strength after two decades of the publication of the Law Commission's 120th report.

***All India Judges' Association v Union of India***[56]
The court directs increase in judge strength at the level of the District Judiciary, in the first instance by filling up the existing vacancies followed by an increase in the sanctioned judge strength in a phased manner.

**2006** **Chief Justices Conference, March 9-10**
The conference resolved that Chief Justice will impress upon State Governments to increase the strength of District Judiciary as per the recommendations made by the 120th Law Commission Report, and the directions given by the Supreme Court in *AIJA* (2002).

**2007** *Malik Mazhar Sultan v UP Public Service Commission*[57]
Through an order passed under the case, the Supreme Court devises a process and a time schedule to be followed by the High Courts and State Governments for filling up judicial vacancies.

**2008** **Chief Justices' Conference, April 17-18**
It was resolved that High Courts will take steps for filling up judicial vacancies and adhere to the timeline prescribed by the Supreme Court in *Malik Mazhar Sultan*[58] for appointment of judges at the level of the District Judiciary.

**2009** **Chief Justices' Conference, August 14-15**
Reiterated the resolution passed in the 2008 conference and resolved that Chief Justices will make recommendations for increasing judge strength after considering the pendency and other relevant criteria.

**2012** ***Brij Mohan Lal***[59]
The Supreme Court directed that the judge strength at the level of the District Judiciary be increased by 10%.

**Advisory Council, National Mission for Justice Delivery and Legal Reforms**
The council passed a resolution that number of judges be doubled gradually over a period of five years.

***Imtiyaz Ahmad***[60]
The Supreme Court in an order dated 1st February 2012, asked the Law Commission to submit recommendations in relation to creation of additional courts to help in elimination of delays, speedy clearance of arrears and deductions in costs.

**2013** **Chief Justices' Conference, April 5-6**
It was resolved that to bridge the judge population ratio the Chief Justices will take steps to create posts of judicial officers and support staff, keeping in mind the directions given by the Supreme Court in the *AIJA case*[61] (2002) and *Brij Mohan Lal case*[62] (2012).

**2014** **Law Commission of India, 245th Report**
The Law Commission recommends adoption of rate of disposal method for calculating judge strength.

**2016** **NCMS Committee**
The committee submitted an interim report which recommends the adoption of weighted disposal method for calculation of judge strength. The method is based on the units prescribed by each High Court to evaluate the performance of judges. The committee acknowledged that the final methodology to be adopted would require data on judicial hours spent on different types of cases. The Supreme Court directed that the interim approach outlined by the NCMS committee be used to calculate judge strength till the final report is submitted.

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[56] n 27.
[57] *Malik Mazhar Sultan v. UP Public Service Commission & Ors.*, Civil Appeal Nos. 1867, 1868, 1869, 1870, 1871 and 1872 of 2006 (04 January 2007).
[58] ibid.
[59] *Brij Mohan Lal vs Union Of India & Ors.*, Transfer Case (Civil) 22 of 2001 (06 May 2002).
[60] n 55.
[61] n 27.
[62] n 60.

be necessary to study the unit system across all the High Courts in detail before adopting it as the basis of calculating judicial strength.

## B. The Actual Method of Calculation of Judge Strength in the Judiciary

Separate from the policy debate, happening in Delhi, on the appropriate methodology to calculate judge strength, is the issue of how different High Courts actually calculate the additional posts required every year. Since this information is not proactively disclosed, we filed applications under the RTI Act asking for two sets of information from each High Court.[63] In the first set, we asked all High Courts to provide us with copies of their Court Development Plans ("CDP") and Vision Statements which is a document that all High Courts were required to prepare pursuant to a resolution of the Chief Justices' Conference in 2013. The CDP was to cover, amongst other things, the strategy for human resource development for the High Court which includes the recruitment and training of judges, court staff and court managers and setting of measurable performance standards for judicial officers accompanied with a system for monitoring and enhancing the performance parameters.

In response to our RTI applications only a few High Courts provided us with copies of their vision statements and CDPs and it was evident from a reading of these documents that High Courts were following different methodologies to calculate judge strength.[64] **Table 2** illustrates the responses from the High Courts that provided us with the information[65]:

Since most High Courts had not provided us with copies of the CDPs and Vision Documents, we filed applications under the RTI Act with all the High Courts seeking the methodology followed in determining the judge strength for the district judiciary.[66] From responses given by the High Courts we found that High Courts[67] use different methodologies for calculating judge strength. The outline of the replies received are given in **Table 3**.

Most of the RTI replies reveal very little about the finer details of the methodology for calculating judge strength and are quite vague. Some of the replies, like those provided by the Delhi High Court are quite revealing, in that the court has claimed it has no criteria for calculation. The remaining replies, which cite pendency as the basis for creating new posts, do not provide enough information to judge the accuracy of the method in question.

We also filed RTI applications with High Courts asking them to provide to us the proposals they submitted to their respective state government, for the creation of new courts. From the replies provided by the Gujarat High Court, it is quite clear that no explanation is provided even to the state government to justify the creation of new courts.

Based on the information that we collected above, it would not be unreasonable to conclude that notwithstanding the policy discussions in the Law Commission and NCMS, most High Courts create new courts in an ad-hoc manner on the basis of past experience, instinct and guesswork.

The biggest impediment, to developing scientific methodologies to calculate the number of judges required by the district and subordinate judiciary, is the lack of quality data. This has been a recurrent theme since the 120th report of the Law Commission. Both the NCMS and the Law Ministry have come to similar conclusions that the lack of data has impeded future planning.[68] However as detailed in one of our other reports, the judiciary has not done enough to put in place well designed systems to collect accurate

[63] Filed by Shreya Tripathy on 20 February 2019, Research Fellow at Vidhi Centre for Legal Policy. The replies are on file with the authors.
[64] The High Courts of Bombay, Hyderabad, Jharkhand, Madhya Pradesh, Manipur, Orissa, Punjab & Haryana, Rajasthan, Tripura and Uttarakhand did not respond to our application under the Right to Information Act requesting for Vision Statements and Court Development Plans.
[65] Besides these Delhi, Gujarat, Kerala, Manipur, Meghalaya and Sikkim gave us their CDP and vision statements. However as these were silent on the aspect of required judge strength, these have not been mentioned in **Table 2**.
[66] Filed by Vaidehi Misra on 07 August 2019, Research Fellow at Vidhi Centre for Legal Policy. The replies are on file with the authors.
[67] Gujarat & Rajasthan High Courts rejected the RTI application on frivolous grounds. Allahabad & Andhra Pradesh High Courts did not respond to our application.
[68] Law Commission of India, *Manpower Planning in Judiciary: A Blueprint*, (Law Com 120, 1987) <http://lawcommissionofindia.nic.in/101-169/Report120.pdf> accessed 10 December 2019; n 57.

| High Court | Rationale for deciding judge strength as per Vision Statements |
|---|---|
| Allahabad | Rate of disposal method which leads to doubling the judge strength. |
| Calcutta | Judge-population method to double the judge strength. |
| Himachal Pradesh | As per directions received from the national mission and the joint conferences. |
| Karnataka | As per directions received from the national mission and the joint conferences. |
| Madhya Pradesh | Rate of disposal method which leads to doubling the judge strength. |
| Patna | Interim approach outlined in the NCMS in 2016. |

**Table 2: Rationale for deciding judge strength proposed by six High Courts in their Vision Statements. Source: Response to RTI Applications**

| High Court | Rationale for deciding judge strength in practice |
|---|---|
| Bombay | NCMS (*Imtiyaz Ahmad* case). |
| Calcutta | NCMS, judge population ratio and pendency. |
| Chhattisgarh | Information not maintained. |
| Delhi | No criteria for calculation. |
| Gauhati | Pendency per district. |
| Himachal Pradesh | New posts are created when new courts are established. |
| Jharkhand | Pendency. |
| Karnataka | New posts are created when new courts are established. |
| Kerala | When requests for new courts come up, the High Courts examines various factors like pendency, convenience of litigants, communication facilities, geographical layout etc and recommends new posts to the government |
| Madhya Pradesh | Rate of disposal. |
| Madras | New posts are created when new courts are established. |
| Meghalaya | No criteria for calculation. |
| Orissa | New posts are created when new courts are established. |
| Patna | Pendency per district. |
| Punjab & Haryana | Pendency. |
| Sikkim | Pendency. |
| Telangana | New posts are created when new courts are established. |
| Tripura | Sanctioned strength is increased by state government on the request of the High Court pursuant to the directions given by the Supreme Court, NLSA, CJ & CM Conferences. |

**Table 3: Methodology adopted in practice for deciding sanctioned judge strength by 18 High Courts. Source: Responses to RTI Applications.**

statistics in a systematic way.[69] As discussed in our earlier report, most High Courts lack professional statisticians despite having a Statistics Branch located within the Registry. With digitisation, the e-courts project was expected to generate better statistics. While the National Judicial Data Grid ("NJDG"), does provide better real time statistics than before, the accuracy of the data being generated through the NJDG is doubtful for reasons discussed elsewhere.[70] In any event, the NJDG does not generate more useful data, such as the time taken for disposing a case nor does it provide any means to judge the complexity of the pending cases. It only provides aggregate data. A few minor tweaks to the Case Information System ("CIS") which powers the e-courts system may make it possible to collect much more accurate data on time taken for different case types across different court types in India. One breathtakingly simple solution to collect time-based data was provided by two independent academics, who used 'display board data' on the Supreme Court website to inform advocates of the different matters being heard in different courtrooms, to generate the average time taken by the Supreme Court to hear different types of cases.[71] The technical infrastructure to collect such data is in place since most district courts have been networked under the e-courts project. Upgrading these systems to collect time-based data across courts would ensure localised solutions for different courts, which has been a long-standing request by academics.[72]

It is possible that the e-courts already has some features of such nature because Phase II of the e-courts project was supposed to include new tasks such as workflow/process automation as well as the means to conduct judicial performance evaluation.[73] In fact, some reports have indicated that e-committee has already launched a 'District Court Monitoring System' to evaluate the performance of the district judiciary.[74] Very little is known about these programs and the judiciary does not share the raw data that is generated through its e-systems. It would help if the judiciary adopted an 'open data' policy that would create a legal framework to share the data on the e-courts system with outsiders and experts who can aid the judiciary in its long-term planning process.[75]

[69] Prashant Reddy T., Tarika Jain, Chitrakshi Jain, Divij Joshi, Ameen Jauhar, Shreya Tripathy, Adrija Jayanthy & Malavika Rajkumar, *Open Courts in the Digital Age : A Prescription for an Open Data Policy* [Vidhi Centre for Legal Policy, November 20, 2019] <https://vidhilegalpolicy.in/2019/11/20/open-courts-digital-age> accessed 30 December 2019.

[70] ibid 17; National Judicial Data Grid, Disclaimer <https://njdg.ecourts.gov.in/njdgnew/?p=main/disclaimer> accessed 30 December 2019; Kshitiz Verma, Analyzing the HC-NJDG to understand the pendency in High Courts in India [2018] LawArXiv <https://osf.io/preprints/lawarxiv/xryj7/> accessed 27 December 2019; Shruti Naik, *Are judicial statistics just another sheet of paper in the pile?* [DAKSH, 2019] <http://dakshindia.org/are-judicial-statistics-just-another-sheet-of-paper-in-the-pile/> accessed 27 December 2019.

[71] Rahul Hemrajani and Himanshu Agarwal, *A Temporal Analysis of the Supreme Court of India's Workload* [2019] Indian Law Review Volume III Issue 2 <http://dx.doi.org/10.2139/ssrn.3417761> accessed 30 December 2019.

[72] Sudhir Krishnaswamy, Sindhu K Sivakumar & Shishir Bail, *Legal and Judicial Reform in India: A Call for Systemic and Empirical Approaches* [2014] Vol II, Journal of National Law University, Delhi <http://nludelhi.ac.in/download/publication/2015/Journal%20of%20National%20Law%20University%20Delhi%20Vol.2%202014%20(Complete%20Journal).pdf> accessed 08 December 2019.

[73] 'Approval for Phase II of eCourts Mission Mode Project' *Press Information Bureau*, Government of India (16 July 2015) <https://pib.gov.in/newsite/PrintRelease.aspx?relid=123318> accessed 27 December 2019; E-Committee Supreme Court of India, *Policy And Action Plan Document Phase II of the e-courts Project*, 6, 75, 84 <https://ecourts.gov.in/ecourts_home/static/manuals/PolicyActionPlanDocument-PhaseII-approved-08012014-indexed_Sign.pdf> accessed 26 December 2019.

[74] Siddharth Mandrekar Rao, 'District Courts: Another New Tool For An Age-Old Problem?' *Bloomberg Quint* (02 January 2019) <https://www.bloombergquint.com/law-and-policy/district-courts-another-new-tool-for-an-age-old-problem?fbclid=IwAR099cp8GKCAOF7w8k87rvSKEAA2ID92lB0orp3_LY_9n2XwAhNkMfZDomE> accessed 26 December 2019.

[75] See also (n 70).

# IV

# Financial Transparency and Accountability of the Judiciary

The discourse around judicial transparency has largely revolved around disclosures regarding judges' assets and judicial appointments. Little attention has been paid to transparency of judicial administration. It is important to have this conversation in order to ensure that the judiciary remains accountable to the people. Administrative transparency at the level of High Courts would demand publicity of the procedure as well as rationale based on which administrative decisions such as recruitments, transfers, procurement and audits are carried out by the High Courts for itself as well as the district judiciary that operates under its administrative control. In particular, it would include disclosures on annual budgetary planning, which clearly demarcate the budget estimates, sanctioned amounts and the expenditure. This has twofold advantages - first, the citizens remain well informed about the utilization of the public money and second, it will incentivise the judiciary to be more efficient in its planning and spending. As Justice Brandies once put it – "Sunlight is the best disinfectant".

The Supreme Court in its recent decision in the case of *Central Public Information Officer, Supreme Court of India vs. Subhash Chandra Agarwal*[76] held that the office of the CJI falls within the purview of the RTI Act and noted that:

> "The disclosure of information about the conduct of judges and their administration is necessary to ensure that the broader societal goals in the administration of justice are achieved. The disclosure of information can highlight areas where robust mechanisms of oversight and accountability are required. Lastly, the disclosure of information with respect to the judiciary also facilitates the self-fulfilment of the freedom of expression of individuals engaged in reporting, critiquing and discussing the activities of the court. The freedom of the press in exercising its role as a public watchdog is also facilitated by the disclosure of information."

Moreover, it held that "information concerning the accountability of officials, public expenditure, the performance of public duties, the handling of complaints, the existence of any wrongdoing by a public official, inefficiency in public administration and unfairness in public administration all possess public interest value, their relative strength to be determined on a case by case basis" and are thus factors that weigh in favour of disclosure.

It is thus apparent that when the courts as a public institution take financial decisions as a part of their administrative functions, these decisions are necessarily required to be disclosed to the public to foster the spirit of public debate and invite opinions for making the system more efficient.

As the convention goes, the decision regarding budgetary planning is taken by the registry or the committees of judges constituted by the Chief Justice of the High Court.[77] There is however little information available in the public domain as to the rationale that goes into preparing budget estimates for revenue and capital expenditure of the courts.

[76] *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*, Civil Appeal No. 10044 of 2010.
[77] Supreme Court, National Court Management Systems (NCMS): Policy and Action Plan [2012] <https://main.sci.gov.in/pdf/NCMSP/ncmspap.pdf> accessed 08 December 2019.

## A. Proactive Disclosure Under Section 4

The statutory recognition of this principle can be found in Section 4 (1) (b) (xi) of the RTI Act which mandates that all public authorities including High Courts are to publish and update information on 'the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made'. The Section further stipulates that the disclosures should aim to provide maximum information suo moto, in a manner which is easily accessible to the public, while taking into consideration the cost effectiveness and the local language of the area. The purpose of this section is to make it incumbent on public authorities to disclose as much information as they can so that citizens have to resort to filing applications minimally. In the context of the judiciary, this means that the High Courts should disclose all information regarding the budget allocation, expenditure and financial proposals on their website annually for itself as well as the agencies under its administrative control, such as, the district courts and the State Legal Service Authority. Additionally, each district court in its individual capacity should also make similar disclosures on its website or display board.

In an earlier report,[78] we studied the quality of disclosures made by the state judiciary under Section 4 and found that only 15 of the 24 High Courts which were surveyed had made any disclosures on the website. Out of these, only 10 had made any disclosure under clause (xi) of the Section regarding their budgets.[79] High Courts of Bombay, Himachal Pradesh and Uttarakhand have the overall best disclosures in this category with updated information on budget allocation and expenditure for the High Court as well as its agencies. Very few High Courts, like that of Bombay and Delhi, publish the budget statements for the previous years too, making it possible for a person to identify the increments or reductions and map out financial trends. High Courts of Allahabad and Jharkhand have made available outdated budget statements only and High Courts of Delhi, Jharkhand, Orissa and Punjab & Haryana do not make proactive budget disclosure regarding the agencies under their control. As far as separate disclosures by the district courts are concerned, the study found that only the district courts in Kerala and Punjab & Haryana make satisfactory disclosures under the RTI Act.

If one were to speculate on the reason for the inadequacy in disclosure of budget statements, there could be multiple possibilities. Perhaps the judicial officers do not take the mandatory requirements as seriously being applicable to them or maybe financial records are not being maintained in discernible consolidated formats which can be shared with the public. Irrespective of the reason, lack of updated budget statements for the courts mean that there is no way for the public to decipher exactly how much money is being spent on administration of justice under different sub-categories. Even though the budget outlays of the State Governments do provide the sanctioned amount under the budgeting head of 'Administration of Justice', these do not capture the actual amounts that were released to the courts and the final expenditure out of these amounts. Nor do they provide the amount that was surrendered by the courts back to the government on account of non-utilization.

In absence of the proactive disclosure, we filed RTI applications with each of the High Courts asking for copies of their budget statements for the period between 2014 and 2018. Most High Courts either did not reply or declined to share the information. Only the High Courts at Delhi, Gauhati, Karnataka, Kerala, Madras, Punjab & Haryana and Uttarakhand agreed to share the detailed information.[80]

## B. Audits

One significant way to ensure transparency, accountability and good governance is by carrying out independent audits of the public funds to ensure their efficient utilization. The Constitution has entrusted this duty on the office of the CAG which is required to carry out periodic audits of central and state accounts.

[78] Vaidehi Misra, Prashant Reddy T., Chitrakshi Jain, Tarika Jain & Shreya Tripathy, *Sunshine in the Courts: Ranking the High Courts on their Compliance with the RTI Act* (Vidhi Centre for Legal Policy, 08 November 2019])<https://vidhilegalpolicy.in/wp-content/uploads/2019/11/SitC_Digital_Final.pdf> accessed 12 December 2019.

[79] These were the High Courts of Allahabad, Bombay, Delhi, Himachal Pradesh, Jharkhand, Kerala, Madras, Orissa, Punjab & Haryana and Uttarakhand.

[80] Data visualized at our: *'Budgeting Better for Courts'*, JALDI- Justice, Access & Lowering Delays in India Portal <http://data.vidhilegalpolicy.in/dashboard/judicial_budgets/judicial-budgets.html> accessed 26 December 2019.

These reports are submitted to the President (or in the case of states, the governor) and laid before the legislature.[81] In India, as per the Constitutional Scheme, the control of the purse vests with the legislature, which means that it is responsible for allocating money to the different agencies of the state and monitoring the utilization of this money. The PAC of the legislature examines the accounts of the government as well as the audit reports prepared by the CAG.[82] The representatives of the Ministries appear before the PAC as witnesses to explain any irregularities or points of concerns which the CAG may have found its reports. This ensures that a proper mechanism is in place for checking the accounts of the state.[83]

Under Section 13 of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, it is the duty of the CAG to audit the expenditure from the Consolidated Fund of India and of each state. By virtue of Article 229, this includes the expenditure incurred on the administration of justice by the High Courts. While the CAG periodically audits the accounts of State Governments which includes the law departments, accounts of the money spent by the executive on the judiciary and legal service authorities,[84] such as on government schemes for modernization of courts, it seldom conducts financial audits of the judiciary as an independent agent of the state.[85]

To understand how independent audits of the High Courts are conducted, we filed RTI applications with all the High Courts, seeking copies of their audit reports for the years between 2013 and 2018.[86] Out of the 24 High Courts[87] with which we filed our applications, only 10 provided us with copies of their audit reports.[88] Almost all of these audit reports were prepared by the office of the Accountant General of the State which is part of the Indian Audit & Accounts Department under the CAG. The audit reports of the Karnataka High Court were prepared by the Audit Officer of the High Court itself.

What is more striking perhaps, is the reluctance of many High Courts to share their audit reports under the RTI Act. While the Calcutta High Court did not reply to the application, the Bombay High Court rejected the application stating that the information sought by the applicant was vague, unspecified and lacking in details as the particulars and nature of "audit" has not been specified in the application, besides raising other hyper-technical objections. Meghalaya High Court on the other hand stated that its registry did not have available audit reports with them and Patna High Court too denied having the information within its jurisdiction. Some of the other High Courts, such as Chhattisgarh, Madras, Orissa and Telangana simply refused to share the audit reports on the ground that audit reports per se are internal confidential documents of the Court or on the grounds that the reports do not have a relationship with public interest or public activity. Madras High Court further stated that "the observations in the report are to improve the institution and hence, the same become the personal information of the O/o the Registrar General" thereby being exempted under Section 8(1(j) of the RTI Act." The other High Courts including those of Delhi, Punjab and Haryana, also stated that as the audit reports for the periods had not been finalized, these could not be shared with the Applicant. In their responses, Punjab & Haryana, and Chhattisgarh High Courts relied on the decision of CIC in *Pradeep Gupta v The Principal Accountant General, Madhya Pradesh*.[89] In the said decision, it was acknowledged that an audit para cannot be disclosed before it is placed before the state legislature as it could lead to breach of privilege

[81] The Constitution of India, 1950, Article 151.
[82] Public Accounts Committee, Lok Sabha [May 2014] <http://164.100.47.194/our%20parliament/Public%20Accounts%20committee.pdf> accessed 12 December 2019.
[83] For Example: The Tamil Nadu Legislative Assembly Rules, 2012, Rules 203-210.
[84] National Legal Services Authority, *Annual Accounts of National Legal Aid Fund and Audit Report of the Comptroller and Auditor General of India* [2016-17] <https://doj.gov.in/sites/default/files/Annual%20Accounts%20of%20NALSA%20and%20Audit%20Report%20of%20CAG%20English%202016-17.pdf> accessed 12 December 2019.
[85] R Jagannathan, 'Sorry CJI Thakur, it is the judiciary that needs auditing, not Govt' *First Post* (02 March 2016) <https://www.firstpost.com/india/sorry-cji-thakur-it-is-the-judiciary-that-needs-auditing-not-govt-2652318.html> accessed 11 December 2019.
[86] Filed by Tarika Jain on 15 March 2019, Research Fellow at Vidhi Centre for Legal Policy. The replies are on file with the authors.
[87] We did not file RTI application with the High Court of Andhra Pradesh.
[88] These were the High Courts of Gauhati, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Rajasthan, Sikkim, Tripura and Uttarakhand.
[89] *Pradeep Gupta v. O/o the Principal Accountant General, Madhya Pradesh*, CIC/SM/A/2013/000740/SS <https://ciconline.nic.in/cic_decisions/CIC_SM_A_2013_000740_SS_M_129184.pdf> accessed 15 December 2019.

| High Court | Auditor | No. of Reports (2013-18) | Period of Audit |
|---|---|---|---|
| Assam | Office of AG | 3 | 2013-2016, 2016-17, 2017-18 |
| Gujarat | Office of AG | 1 | 2013-2015 |
| Himachal Pradesh | Office of AG | 1 | 2016-17 |
| Jharkhand | Office of AG | 1 | 2013-16 |
| Karnataka | Audit Officer, HC | - | Department wise reports from different years |
| Kerala | Office of AG | 2 | 2013-14, 2014-15 |
| Rajasthan | Office of AG | 1 | 2015 |
| Sikkim | Office of AG | 4 | 2011-14, 2014-15, 2015-16, 2016-17 |
| Tripura | Office of AG | 1 | 2012-13 |
| Uttarakhand | Office of AG | 2 | 2014, 2018 |

**Table 4: Overview of the frequency and periodicity of the audits conducted in 10 High Courts between 2013-2018. Source: Responses to RTI applications.**

of the state Legislature. However, even in this case, the copy of the inspection report prepared during the audit was given to the applicant under the RTI Act.

The fact that 14 High Courts failed to share their audit reports for the period of last five years is alarming as it paints a morbid picture of the transparency and accountability landscape of the High Courts. There is a definite sense of hesitation among PIOs towards sharing these documents. What is equally worrying is that for at least three High Courts, no audit reports whatsoever have been finalized in the last five years. While this is not necessarily a concern or a question regarding corruption in the institution, what it does highlight is a lack of check on the efficiency of the institution.

In the audit reports of the 10 High Courts that we received, we observed that there was disparity in the periodicity of the audits. For example, while High Court of Sikkim had separate audit reports for the years 2014 to 2017, Jharkhand High Court had only one audit conducted for the entire period of 2013 to 2016. Out of the five years for which data was sought, five High Courts had only one audit report prepared. These are High Courts of Gujarat (2013-15), Himachal Pradesh (2016-17), Jharkhand (2013-16), Rajasthan (2015) and Tripura (2012-13). Audit Officer of the Karnataka High Court conducted several audits of the High Court during this period which were specific to the different departments of the court. The details of the audit reports received are summarized in **Table 4**.

From **Table 4**, it is clear that there is a lack of consistency in conducting financial audits of the judiciary in a systematic manner. We have not ventured into any deliberations on the contents and findings of these reports, as for the purpose of this report as we wanted to restrict our focus on the larger issue of transparency measures taken by the High Courts for their finances. We believe that the availability of periodic audit reports is a sufficient measure to ensure the financial accountability of the institution.

# Conclusion

The reforms proposed for improving judicial efficiency have mostly relied on expansion of resources. While we are not arguing against expansion of resources, rather that such expansion be based on strong empirical foundations. So far the solutions in the form of Finance Commission grants and additional funds by the Centre for judicial infrastructure have been underwhelming and have left untouched the underlying causes of judicial inefficiency. The information deficit which has been partially bridged through the development of e-courts, needs to be addressed. Localised data on the functioning of the judiciary should be the basis for reforms that are directed towards the judiciary. The courts also need to build institutional capacity, to make their administrative performance better even if it means importing managerial talent from the government or the private sector. It is very clear to most stakeholders that the High Courts lack the skills to make long term plans for the judiciary and this is the single biggest cause for the backlogs and pendency being faced by the judiciary.

The manner in which such pleas for additional resources for the judiciary make their way into policy through judicial decisions also demands interrogation. The consultative platforms such as the National Mission for Justice Delivery and the Chief Justices and Chief Ministers Conferences should be made the sites of such deliberations and not courtrooms.

It is also becoming clear that at some point, there has to be a consensus amongst the judiciary on how exactly it is going to calculate the number of judges that it requires at the level of district and subordinate judiciary. There are too many methodologies and no consensus so far. This will be possible only if the judiciary puts in place better mechanisms to collect data. This can be easily accomplished by fine-tuning the e-courts system to capture better data. Additionally, the judiciary is fairly opaque when it comes to its own administrative functioning. The planning process will be enhanced if the judiciary is more transparent in the way it makes it administrative decisions. Respecting transparency will ensure better record keeping practices which will translate into better decision making. A transparent and effective process for allocation and utilization of resources strengthens judicial independence, especially at the lower levels.

Last but not the least, there is a serious need for introspection within the judiciary as well as the executive to assess whether the current structure for administration of justice in its constitutional scheme is failing to meet the demands of the system. Some of the options in this regard are to allow the judiciary to send its proposals directly to the legislature or perhaps increase the expenditure authority of the High Courts so as to lessen the amount of coordination required with the executive. However all of this will be possible, only if the judiciary is willing to make itself more accountable to the PAC.

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