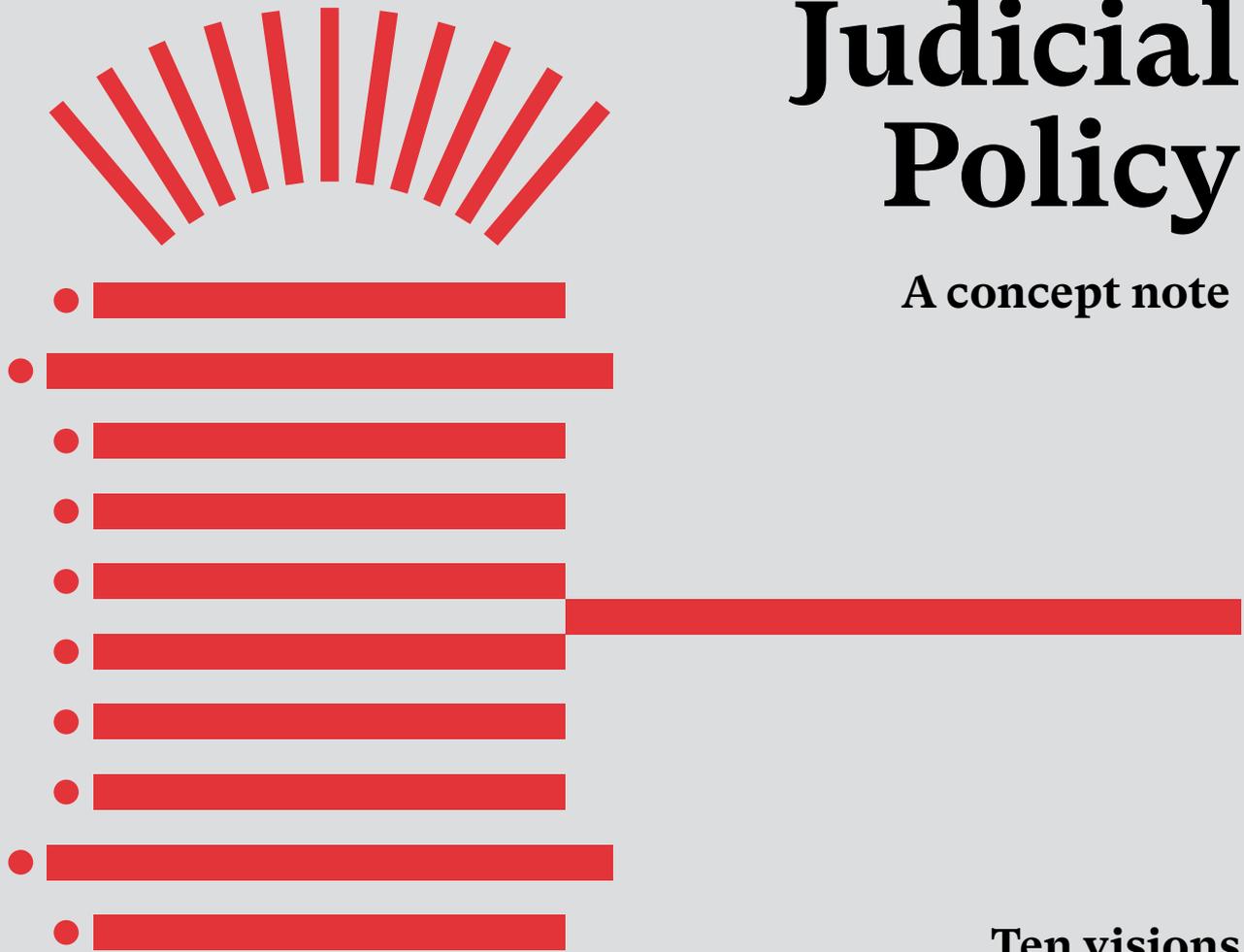


January 2022

# National Judicial Policy

A concept note



Ten visions  
for 2030

**JALDI** Justice, Access &  
Lowering Delays in India

**V | D | H |** Centre for  
Legal Policy

Draft for Consultation

**This report is  
an independent,  
non-commissioned  
piece of work by  
the Vidhi Centre for  
Legal Policy,  
an independent  
think-tank doing  
legal research to  
help make  
better laws.**

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## About the Authors

This Concept Note is authored by the JALDI (Justice, Access and Lowering Delays in India) Initiative at Vidhi Centre for Legal Policy. The authors are Deepika Kinhal (Lead), Vaidehi Misra (Senior Resident Fellow), Reshma Sekhar (Senior Resident Fellow), Chitrakshi Jain (ex-Senior Resident Fellow), Shreya Tripathy (Research Fellow), Apoorva (Research Fellow), Aditya Ranjan (Research Fellow), Jigar Parmar (ex-Research Fellow) and Arghya Sengupta (Founder and Research Director).

In 2017, Vidhi started JALDI as a multi-year mission to comprehensively study, understand and address the problem of judicial backlog and delays in India. Over the last few years, JALDI has produced over 40 reports and papers covering a diverse range of issues concerning India's justice delivery systems through rigorous doctrinal and empirical research. The present concept paper on National Judicial Policy is borne out of the collective experience and knowledge of JALDI fellows over the years, and encapsulates their shared aspiration to contribute towards building a 'litigant-centric' judiciary by 2030

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## Draft for consultation

This paper draws on the JALDI team's years of research on judicial reforms, to identify some critical and all pervasive issues that woe the judiciary. While they are, in some form, a culmination of our past research, this document is by no means the finish line of the journey. Instead, it aims to be a conversation starter for the judiciary to address its challenges and plan its future in a renewed way. We hope that this consultation paper brings people from the ecosystem together to further deliberate on how the judiciary can become more litigant centric by 2030. We therefore invite comments to transition this into its iterative and better informed version.

Designed by Kunal Agnihotri.

## PART 1

# The Concept

# A

## Background

The Indian legal system has been overwhelmed with caseload and consequent delay for more than 70 years. Records show that we inherited arrears from the colonial times and are still struggling to find effective solutions. Various bodies in the form of law commissions, arrears committees and specific committees of inquiry have been tasked with suggesting reforms that can rid the Indian legal system of pendency and delay. They have come in the form of supply side solutions seeking to increase capacity within the judiciary, demand side solutions to divert litigation to other forums and productivity-oriented solutions to improve the efficiency of various other actors involved in justice delivery.

While the issues and their solutions are widely circulated, little success is seen in their execution. This is in part due to the nature of the judicial administration envisaged under the Constitution and in others, the practices that have evolved overtime. The tiered judiciary with administrative autonomy vested in High Courts, the district judiciary being under the administrative control of the respective High Courts, the lack of financial autonomy with the judiciary and the coordination required with the executive, are part of the Constitutional framework that impose serious limitations upon the possibility of crafting holistic solutions for the entire judiciary. In addition to this Constitutional reality, what has exacerbated the institution's problems is the disaggregated nature of the internal framework for policy-making that has evolved overtime.

Reforms within the judiciary are usually initiated at the level of the Chief Justices in the Supreme Court and the High Courts. However, given the short tenure of most Chief Justices, they seldom have the capacity to embark on long-term reforms.<sup>1</sup> Further, there is no internal framework which obligates successive Chief Justices to continue with their predecessor's initiatives, resulting in several ill-executed or abandoned reform measures. These reforms initiated through the Chief Justices are usually dealt with by ad-hoc committees composed of judges, lacking in financial powers and legislative authority. Thus, these committees are entirely dependent on support by external authorities and factors to implement their recommendations, and delay in such support often results in wastage of precious judicial time even while the underlying issues remain unaddressed. Further, most of these ad-hoc committees seldom engage with relevant experts from outside the judiciary, and are almost entirely driven by judges who may or may not have the required expertise. Overall, this internal framework or the lack of robustness in it, has resulted in a piecemeal, inconsistent approach towards issues concerning judicial administration where individual issues are addressed unsatisfactorily and the interlinkages between them almost entirely ignored.<sup>2</sup>

A classic instance of the above is the method and manner in which the position of court managers was introduced in the High Courts and the District Courts.<sup>3</sup> Pursuant to multiple reports and judgments seeking specialisation in court administration, the 13th Finance Commission budgeted for the appointment of court managers to the tune of Rs. 300 crores for five years.<sup>4</sup> However, the lack of detailing as to the role of court managers and their position vis-a-vis the rest of court administration, the lack of clarity as to the financing of these positions beyond five years, rendered this intervention ineffective and cumbersome for all the stakeholders involved.<sup>5</sup> In the alternative, a long-term roadmap formulated in consultation with management experts and systems thinkers to introduce and integrate the position of court managers along with planning as to its financial implications could have resulted in positive and sustainable improvements in court administration.

An exception to the piecemeal reform approach described above was the judiciary's recent initiative in defining the role of technology in the judiciary. Given the exigencies created by the COVID-19 pandemic, the courts across India adopted technology solutions in a disaggregated manner to keep the system accessible. However, for a meaningful transition towards digital courts, such an approach would have been disastrous. It is for this reason that even while catering to the judiciary's immediate needs, the Supreme Court of India's eCommittee embarked on a parallel exercise to formulate a long-term vision for technology-led reforms in the

<sup>1</sup> Mihir R, 'The Average Tenure of a CJI is 1.5 Years' (*Supreme Court Observer*, 24 April 2021) <<https://www.scobserver.in/journal/the-average-tenure-of-a-cji-is-1-5-years/>> accessed 22 December 2021

<sup>2</sup> Pratik Dutta, Mehtab Hans and others, 'How to Modernize the Working of Courts and Tribunals in India' (*National Institute of Public Finance and Policy*, 25 March 2019) <[https://www.nipfp.org.in/media/medialibrary/2019/03/WP\\_2019\\_258.pdf](https://www.nipfp.org.in/media/medialibrary/2019/03/WP_2019_258.pdf)> accessed 22 December 2021

<sup>3</sup> Deepika Kinhal and Arunav Kaul, 'Revisit Policy on Court Managers' (*Deccan Herald*, 24 August 2018) <<https://www.deccanherald.com/opinion/perspective/revisit-policy-court-managers-689069.html>> accessed 22 December 2021

<sup>4</sup> Department of Expenditure, Ministry of Finance, Government of India, Utilization of grants-in-aid for improvement in Justice Delivery recommended by 13th Finance Commission by the States - Provision of Support to Court Managers (10 July 2013) <[https://doj.gov.in/sites/default/files/10%20flexibility%20fro%20support\\_0.pdf](https://doj.gov.in/sites/default/files/10%20flexibility%20fro%20support_0.pdf)> accessed 22 December 2021

<sup>5</sup> Arunav Kaul, 'Role of Court Managers in Indian Judiciary: Past, Present, and the Way Ahead' (*DAKSH*, August 2020) <<https://dakshindia.org/role-of-court-managers-in-indian-judiciary-past-present-and-the-way-ahead/>> accessed 22 December 2021

judiciary. The draft vision document<sup>6</sup> (the 'Vision Document'), prepared in consultation with the High Courts, indicates the intent to create a digital architecture for the entire judiciary catering to its present and future needs. However, as with any other ambitious project, a successful execution of this vision requires a robust and accountable governance framework. Else, albeit well-intentioned, the vision may fail to materialise in a way that can benefit all the stakeholders. Nonetheless, a step in the direction of vision driven policy making and engagement with external experts is commendable, and worth emulating in other aspects of the institution's functioning.

The Vision Document caters to a very small component of what makes the judiciary. The Indian judiciary has several perennial issues which cannot be resolved merely through technology. For instance, technology cannot help make a judge more sensitive to the plight of undertrials languishing in prisons for years without bail. That would require sensitisation training for judges at all levels of judicial hierarchy so that they become better protectors of human liberties. Such reforms are absolutely critical to transform our judiciary to meet the expectations of a litigant of 21st century India. However, the approach towards such reforms needs to be radically different from the ones adopted by the judiciary until now.

As a starting point, the judiciary needs to identify the various issues that affect it at the systems level and work towards building policy-level clarity so that internal stakeholders move on a clear, consistent path, and the external stakeholders know what to expect from the judiciary in the years to come. For instance, questions around whether the judiciary will introduce performance standards for judges, ensure transparency in appointments and transfers, optimise judicial time by creating a separate administrative cadre, prioritise diversity on the Bench, enable the use of vernacular languages in judicial administration, increase accountability amongst judges, apply Right to Information Act to the judges and all aspects of its administration etc., need to be identified as priorities at the systems level and thereafter, based on the stance the judiciary takes, detailed policies need to be framed around each of these issues. This will ensure that the judiciary moves on a well-defined path, making consistent progress towards achieving the visions it has laid out for itself.

So far, answers to difficult questions such as the ones raised above have emerged as a part of judicial decision-making. For instance, in Swapnil Tripathy vs. The Supreme Court of India,<sup>7</sup> the Supreme Court, while rightly holding that live-streaming court proceedings were part of the right of access to justice and necessary to ensure transparency, went ahead and even laid down guidelines for live-streaming as a part of its judgment. However, the technical feasibility and modalities of live-streaming should have been dealt with on the administrative side, in consultation with relevant experts. It is telling that even after 3 years since the judgment, live-streaming at the Supreme Court is yet to commence. This starkly illustrates how the lack of a framework to raise, deliberate upon and address issues concerning judicial administration has resulted in the judiciary dealing with them in its judicial capacity.

This concept paper aims to bring to attention this glaring vacuum within which policy-making for the judiciary is currently taking place and puts forth a case for a long-term vision driven policy-making for the judiciary, by the judiciary, in consultation with the right experts.

## B Precedents for long-term vision driven policy making

<sup>8</sup> Division for Sustainable Development Goals, 'The 17 Goals' (United Nations Department of Economic and Social Affairs, 2020) <<https://sdgs.un.org/goals>> accessed 13 December 2021

<sup>9</sup> Division for Sustainable Development Goals, 'The 17 Goals' (United Nations Department of Economic and Social Affairs, 2020) <<https://sdgs.un.org/goals>> accessed 13 December 2021

<sup>10</sup> Division for Sustainable Development Goals, 'The 17 Goals' (United Nations Department of Economic and Social Affairs, 2020) <<https://sdgs.un.org/goals>> accessed 13 December 2021

<sup>11</sup> National Institution for Transforming India, India Three Year Action Plan - 2017-18 to 2019-20 (1 August 2017) <[https://www.niti.gov.in/sites/default/files/2018-12/India\\_ActionAgenda.pdf](https://www.niti.gov.in/sites/default/files/2018-12/India_ActionAgenda.pdf)> accessed 20 December 2021

<sup>12</sup> National Institution for Transforming India, Strategy for New India @ 75 (November 2018) <[https://www.niti.gov.in/sites/default/files/2019-01/Strategy\\_for\\_New\\_India\\_2.pdf](https://www.niti.gov.in/sites/default/files/2019-01/Strategy_for_New_India_2.pdf)> accessed 20 December 2021

<sup>13</sup> Judicial Conference of the United States, 'Strategy Plan for the Federal Judiciary' (United States Courts, September 2020) <<https://www.uscourts.gov/statistics-reports/strategic-plan-federal-judiciary>> accessed 13 December 2021

<sup>14</sup> Department of Justice and Constitutional Development of the Republic of South Africa, Strategic Plan 2021-25 (2021) <<https://www.justice.gov.za/mtsf/dojcd-strat-2021-2025.pdf>> accessed 20 December 2021

<sup>15</sup> The Office of the Chief Justice of the Republic of South Africa, Strategic Plan for 2020/21 - 2024/25 (20 May 2020) <<https://nationalgovernment.co.za/units/view/28/office-of-the-chief-justice-ocj>> accessed 21 December 2021; The mission of the Office of the Chief Justice (OCJ) is to provide support to the Judiciary to ensure effective and efficient court administration services. The mandate of the OCJ is to provide effective administrative and technical support to the Chief Justice as the Head of the Judiciary and as Head of the Constitutional Court as well as to render administrative, operational and governance support to the Judiciary.

<sup>16</sup> The Judiciary of the Republic of Kenya, Judiciary Strategic Plan 2019 - 2023 (2019) <<https://www.judiciary.go.ke/download/judiciary-strategic-plan-2019-2023/>> accessed 20 December 2021

<sup>17</sup> The Judiciary of the Republic of Uganda, Strategic Plan 2016/17 - 2019/20 (2016) <<http://judiciary.go.ug/files/downloads/The%20Judiciary%20-%20Strategic%20Plan.pdf>> accessed 20 December 2021

<sup>18</sup> The Judiciary of Seychelles, Vision 2020: Judiciary Strategic Plan 2017 - 2020 (2017) <<http://www.judiciary.sc/wp-content/uploads/2020/01/judiciary-strategic-plan-2017-2020.pdf>> accessed 20 December 2021

<sup>19</sup> The Judiciary of Jamaica, Benchmarking The

Long term vision driven policy making is not a new phenomenon. In fact, it is currently driving reforms at national and international levels including in institutions with high levels of complexity and diversity. One classic instance of such policy making is the 2030 Agenda for Sustainable Development adopted by all United Nations Member States in 2015.<sup>8</sup> It provides a shared blueprint for peace and prosperity for people and the planet, now and into the future.<sup>9</sup> At its heart are the 17 Sustainable Development Goals (SDGs), which are an urgent call for action by all countries in a global partnership<sup>10</sup> to achieve the SDGs by 2030. At the domestic level, the NITI Aayog, the government's think tank, released a three-year action agenda in 2017,<sup>11</sup> to lay down the roadmap for India's development. In 2018, it released a Strategy for New India @ 75<sup>12</sup> which included a number of proposals for reforming governance.

The purpose of these documents is to provide a long-term vision and direction for the government. Long-term, holistic planning is crucial for the judiciary the same way it is necessary for the executive branch. In 2020, the Ministry of Human Resource Development released the National Education Policy as a comprehensive framework to guide the development of education in the country. Just like education is an important service that impacts the lives of all citizens, so is justice delivery. However, as highlighted above, holistic planning for the judiciary has so far not been given the importance it deserves. Even internationally, the idea of long-term vision driven planning for the judiciary is only now taking root.

Across the world, there are several jurisdictions which have recently adopted long-term strategic plans for their judiciaries in one form or the other. The table below identifies some of these efforts.

Jurisdiction	Type of policy	Time period	Policy formulated by
<b>United States of America</b> <sup>13</sup>	Strategic Plan for the Federal Judiciary	September, 2020	Judicial Conference of the United States
<b>South Africa</b>	1. Strategic Plan of the Department of Justice and Constitutional Development, South Africa <sup>14</sup> 2. Strategic Plan prepared by the Office of the Chief Justice <sup>15</sup>	1. 2021-2025 2. 2020-21 to 2024-25	1. Department of Justice and Constitutional Development, South Africa 2. Office of the Chief Justice
<b>Kenya</b> <sup>16</sup>	Judiciary Strategic Plan	2019-2023	Judiciary
<b>Uganda</b> <sup>17</sup>	Strategic Plan for the Judiciary	2016-17 to 2019-2020	Judiciary
<b>Seychelles</b> <sup>18</sup>	Vision 2020: Judiciary Strategic Plan	2017-2020	Judiciary
<b>Jamaica</b> <sup>19</sup>	Benchmarking the Future: Courting Excellence - Strategic Plan for the Jamaican Judiciary	2019-2023	Judiciary
<b>Nepal</b> <sup>20</sup>	4th Five Year Strategic Plan of the Judiciary	2019-2020 to 2023-24	Supreme Court of Nepal

<sup>6</sup> E-Committee, Supreme Court of India, Digital Courts Vision & Roadmap - Phase III of the eCourts Project (Draft, 2021) <<https://cdnbbsr.s3waas.gov.in/s388ef51f0bf911e452e8dbb1d807a81ab/uploads/2021/04/2021040344.pdf>> accessed 20 December 2021

<sup>7</sup> Swapnil Tripathy v Supreme Court of India, [2017] WP (Civil) No. 1232 <[https://main.sci.gov.in/supremecourt/2017/40426/40426\\_2017\\_Judgement\\_26-Sep-2018.pdf](https://main.sci.gov.in/supremecourt/2017/40426/40426_2017_Judgement_26-Sep-2018.pdf)> accessed 20 December 2021

Future: Courting Excellence - Strategic Plan for the Jamaican Judiciary 2019-23 (2019) <<https://supremecourt.gov.jm/sites/default/files/pdf/CMS-benchmarking-the-future%20.pdf>> accessed 20 December 2021

20 Supreme Court of Nepal, Fourth Five-Year Strategic Plan of Judiciary (2020) <<http://supremecourt.gov.np/web/assets/downloads/strategic/4th%20strategic%20plan%20of%20judiciary.pdf>> accessed 20 December 2021

21 Supreme Court of Florida, The Long Range Strategic Plan for the Florida Judicial Branch 2016-21 (2016) <<https://www.flcourts.org/content/download/216627/file/2016-2021-Long-Range-Strategic-Plan-Floridaweb.pdf>> accessed 20 December 2021

22 California Courts - The Judicial Branch of California, The Strategic Plan for California's Judicial Branch <[https://www.courts.ca.gov/documents/CAJudicialBranch\\_StrategicPlan.pdf](https://www.courts.ca.gov/documents/CAJudicialBranch_StrategicPlan.pdf)> accessed 20 December 2021

## C

# The need for a National Judicial Policy for the Indian judiciary

23 Mamta Kachwaha, *The Judiciary in India: Determinants of its Independence and Impartiality* (Ploom Foundation and The Centre for the Independence of Judges and Lawyers 1998) <<https://www.icj.org/wp-content/uploads/2013/06/India-judiciary-independence-CIJL-report-1998-eng.pdf>> accessed 20 December 2021

24 Mehal Jain, 'The Need of the Hour is the Indianisation of Our Legal System: Chief Justice NV Ramana' (*Live Law*, 18 September 2021) <<https://www.livelaw.in/top-stories/the-need-of-the-hour-is-the-indianisation-of-our-legal-system-chief-justice-nv-ramana-181912>> accessed 13 December 2021

25 Live Law, Full Text of the Speech Delivered by Hon'ble Chief Justice of India Shri Justice N.V. Ramana at the Inauguration of New Building of Odisha State Legal Services Authority in Cuttack (25 September 2021) <[https://www.livelaw.in/pdf\\_upload/speech-at-olsa-cuttack-25092021-401311.pdf](https://www.livelaw.in/pdf_upload/speech-at-olsa-cuttack-25092021-401311.pdf)> accessed 20 December 2021

The United States' Strategic Plan for the Federal Judiciary states the mission of the US Courts, identifies some core values and organises its strategies and goals around seven issues. Additionally, within the US, different states like Florida<sup>21</sup> and California<sup>22</sup> have their own strategic plans for the judicial branch. The South African approach not only lays out the key goals of the plan but also the commensurate risks along with mitigation strategies. What is common across these documents is a statement of the vision and mission that the judiciary will strive to achieve. Except for Kenya and Uganda, none of these plan documents go into the immediate financial implications. This indicates that these documents are meant to lay down the ideals that the judiciary will strive to achieve incrementally.

The Indian judiciary can take inspiration from these jurisdictions and come up with a policy that is well-suited to the Indian context, which will help it provide direction and structure to approach the crucial issues facing it.

One of the root causes for the present crises that the Indian judiciary faces is that it was designed by a colonial government, to subserve colonial interests and not to cater to the needs of the governed. The British rule in India was responsible for the development of the common law based legal system in India and the country's present judiciary more or less mirrors the judicial system evolved during colonial domination. The Charter of 1726 and subsequently the Charter of 1753 issued by the British Crown were important steps in establishing a proper judicial system in the towns of Madras, Bombay and Calcutta.<sup>23</sup> Continuous reforms were made to the structure and functioning of courts through the Regulating Act of 1773 and the Indian High Courts Act of 1861. It was the Government of India Act of 1935 that provided for the setting up of a Federal Court, which transformed into the Indian Supreme Court after the adoption of the Constitution in 1950. The current justice system, therefore, has its roots in the early British era in India and the last critical structural addition was made to it nearly 75 years ago.

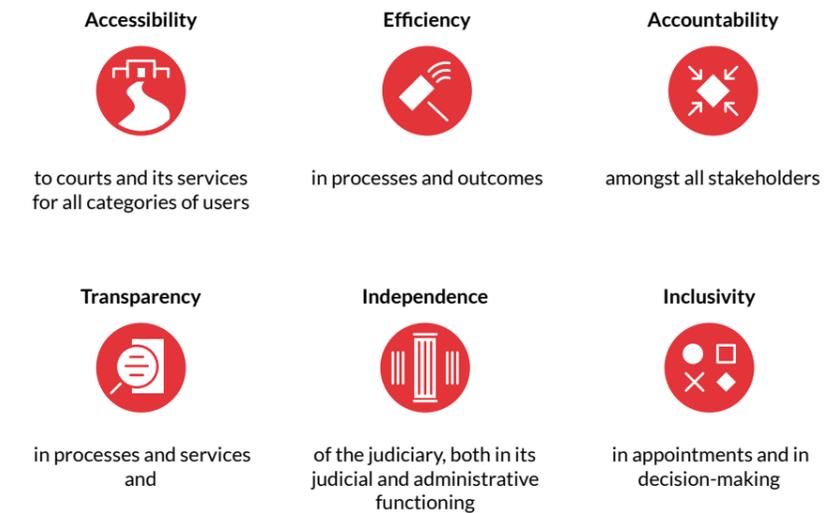
The evolution of Indian judiciary shows that its structure, design and functioning were intended to serve very different interests and socio-political realities. This was recognised in a recent speech by the Hon'ble Chief Justice of India, Justice N.V. Ramana. In his speech, the Chief Justice acknowledged that very often our justice delivery poses multiple barriers for common people, that the working and the style of courts do not sit well with the complexities of India, and that our system, practices, and rules being colonial in origin may not be best suited to the needs of the Indian population.<sup>24</sup> He also emphasised the need to drastically alter the legal framework to make the justice delivery mechanism people-friendly.<sup>25</sup>

The Chief Justice's statements project that there is ample intent within the judiciary to undergo a holistic transformation, shed its colonial ethos and move forward to meet the expectations of a 21st century Indian litigant. In line with this intent, the present concept-paper proposes that the Indian judiciary should now unapologetically move towards being 'litigant-centric'. Justice delivery as a service or making justice delivery systems 'litigant-centric' are relatively recent ideals which a judiciary designed by and for the colonial masters will never be able to provide for. There is now an undeniable recognition that the colonial justice system has outlived its purpose. Therefore, the time is now ripe for the judiciary to embark on an exercise to redefine and reinvent itself to suit the needs of an aspirational litigant of the 21st Century.

## D

# Towards a 'litigant-centric' judiciary

The grand vision for a 'litigant-centric' judiciary has various sub-components to it. For instance, unlike popular perception, a litigant is interested not just in quick resolution of disputes, although that is one of the key expectations from the judiciary; she is equally interested in the overall transparency of the system, accountability of judges, efficiency of processes and as an end result, a 'just' outcome. This indicates that the journey towards transforming the Indian judiciary from a colonial relic to being 'litigant-centric' should be guided by a set of core principles which will serve as a benchmark against which visions and policies can be developed. To this end, this concept paper identifies six principles that thread through the visions identified in the next part of the document. The six principles are:

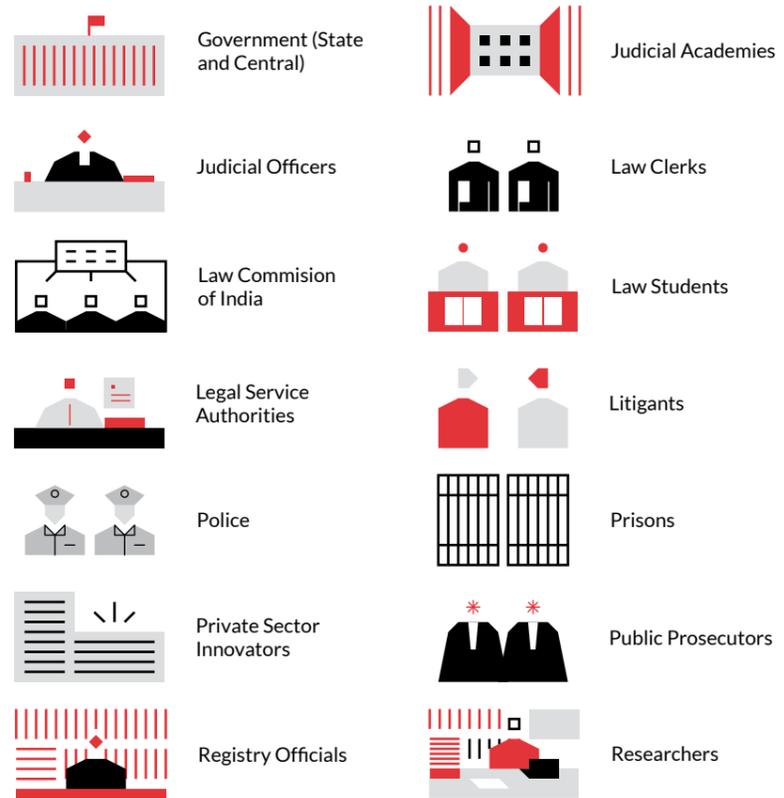


The above principles should guide the method and manner in which the judiciary formulates its long-term vision and the implementation framework.

In Part B to this paper, 10 visions have been identified, all geared towards the creation of a litigant centric judiciary for the 21st century. The visions are chosen based on the extent to which it falls within the judiciary's control and competence; admittedly, there are several ancillary systems which are not entirely within the judiciary's control, but are in dire need of reforms. For instance, it is recognised that the criminal justice system would significantly improve through police reforms. However, police and other law enforcement agencies are not directly under the control of the judiciary and hence, not listed as a vision for the purposes of this document.

Each vision caters to one or more of the above principles and also maps out the stakeholders that will be impacted as that vision is translated into reality. These stakeholders are:





It is recognised that there could be other stakeholders who could be indirectly affected by these reforms. However, only stakeholders who will be directly impacted by the visions have been considered for the purpose of this paper. These stakeholders have been mapped according to the principles as well as the three tiers of the judiciary (the Supreme Court, High Courts and the subordinate judiciary).

## PART 2

# The Visions

The journey towards building and transitioning to a litigant-centric judiciary can seem daunting. However, consistent progress driven by a clear vision will benefit stakeholders at every juncture of the journey, making it an overall rewarding endeavour. In the past, the path to this journey has been fragmented and hence the need for a long term policy for the judiciary, as explained in the previous section. Over the years, the judiciary's prioritisation of issues has often been responsive to social movements and interest driven petitions for change.<sup>26</sup> For instance, while a long way from ideal, the compelling movement behind the Right to Information Act, 2012 has compelled the judiciary to become more transparent over the years.<sup>27</sup> To ensure that these drivers of change are not always external, it would be prudent for the judiciary to identify clear visions keeping in mind the challenges that the judiciary is facing and anticipates to face in the future.

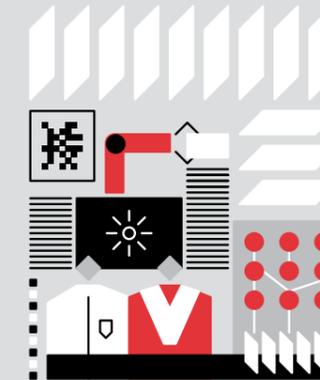
In this chapter of the concept paper, we identify ten visions for the Indian judiciary for the year 2030. These visions only intend to serve as a starting point for thinking about long-term policy driven judiciary and are not intended to be a consolidation of all the issues that presently persist. Every stakeholder interacting with the judiciary is, justifiably, bound to have a set of their own visions and priorities for the judiciary. The present visions do not intend to dismiss competing interests. Instead, we have articulated them with the goal of furthering the six core principles, identified previously, that we think the judiciary should centre—accessibility, accountability, transparency, efficiency and independence. We hope that such a presentation will also drive other actors in the ecosystem to discuss and publish their visions and collectively impel the judiciary to adopt a deliberated model which promotes long term planning.

The ten visions identified below are preceded with some context on why the judiciary is in need of reform in a specific area and hope to provide a compelling case for prioritising this vision. They thread through multiple issues that the judiciary is facing under the larger head of the vision. The context is followed by more specific vision components which identify targeted actions i.e. form sub-parts to the larger vision. Finally, the text identifies the stakeholders who will play a key role along with the key principles that the vision evokes.

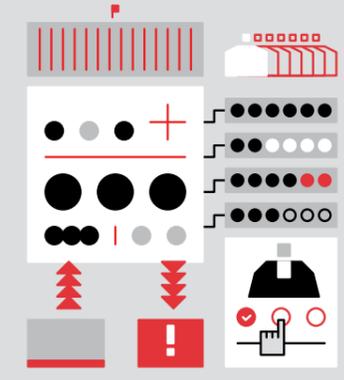
## In 2030 the Indian Judiciary must



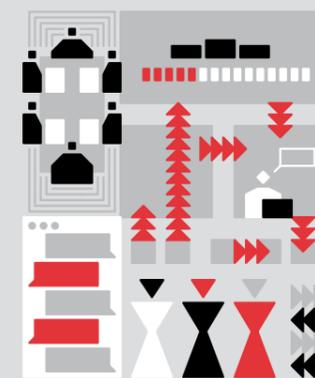
**VISION I**  
have modernised and accessible infrastructure



**VISION II**  
have an efficient administrative machinery



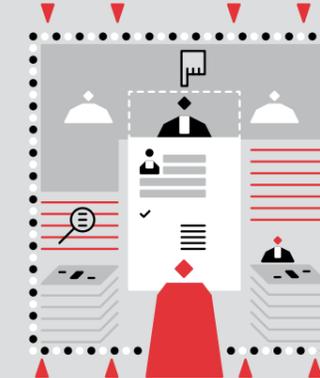
**VISION III**  
fully utilise its judicial capacity



**VISION IV**  
have better engagement with stakeholders and mechanisms to assess progress



**VISION V**  
have mechanisms to promote diversity and heterogeneity



**VISION VI**  
must protect and promote independence



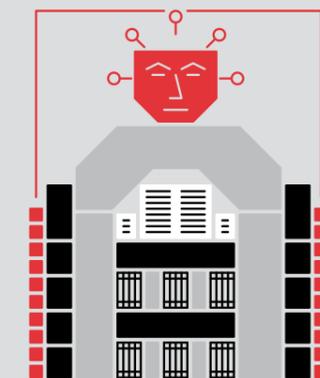
**VISION VII**  
must have accountability frameworks to monitor all stakeholders



**VISION VIII**  
uphold the ideals of an open judiciary



**VISION IX**  
have a robust framework for judicial education and training

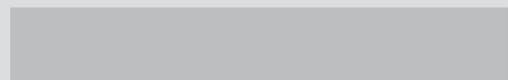
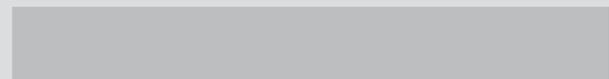
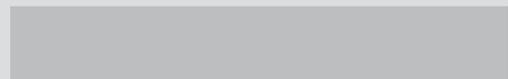
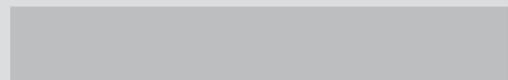
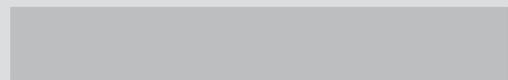
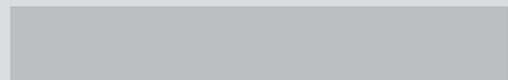
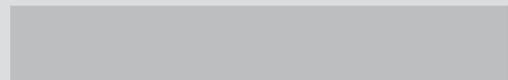
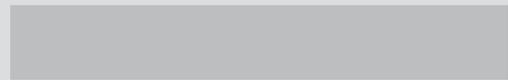
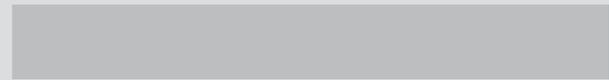


**VISION X**  
be driven by a humane, reformative and rights-oriented justice system

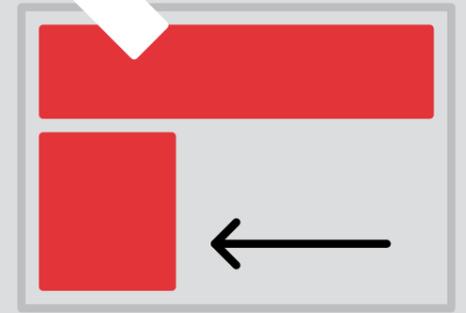
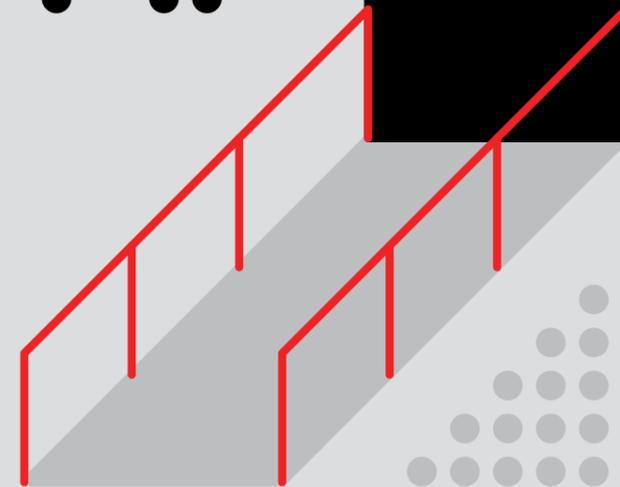
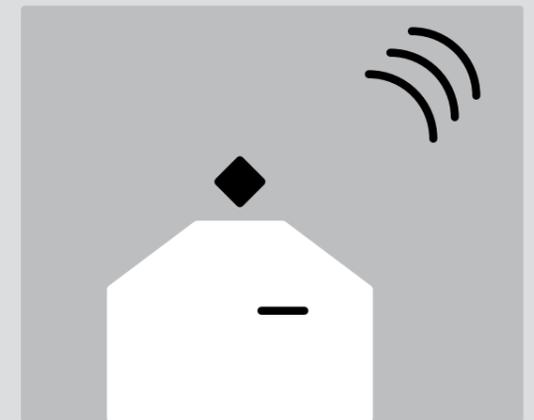
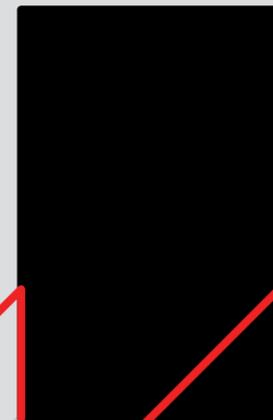
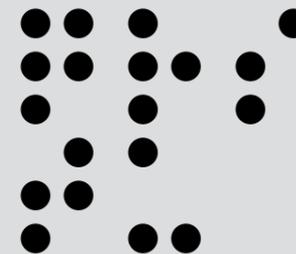
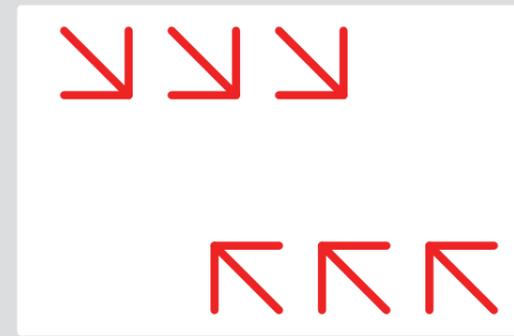
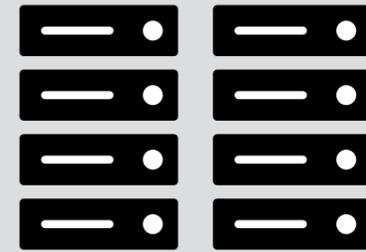
<sup>26</sup> Paul M. Collins, *Friends of the Supreme Court: Interest Groups and Judicial Decision Making* (OUP 2008) <<https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780195372144.001.0001/acprof-9780195372144>> accessed 21 December 2021; Andrew Puddephatt, 'Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws' (*World Bank Institute*, 2009) <[https://foiadvocates.net/wp-content/uploads/Publication\\_WBI\\_CivilSocATI.pdf](https://foiadvocates.net/wp-content/uploads/Publication_WBI_CivilSocATI.pdf)> accessed 21 December 2021

<sup>27</sup> Central Public Information Officer, *Supreme Court of India v Subhash Chandra Agarwal*, (Civil Appeal No. 10044 of 2010) <<https://indiankanoon.org/doc/101637927/>> accessed 17 December 2021

VISION I



*The Indian Judiciary*  
must have  
modernised  
and accessible  
infrastructure



## Status quo and present challenges

Anyone who has visited a court will correlate the key role that infrastructure plays in ensuring the quality of justice delivery.<sup>28</sup> With respect to all stakeholders within and outside the system, i.e. judges, court staff, Registry officials, litigants and advocates, the infrastructure plays a major role in facilitating or restricting participatory justice in courtrooms.<sup>29</sup> Historically, traditional designs for courthouses have reflected the authority vested in courts, and their prominent position in a 'rule of law' based society.<sup>30</sup> Over time, this has led to two primary results—the district judiciary receiving scant attention in court design by virtue of being the lowest tier in the judicial hierarchy, and the courts in the higher judiciary being designed in a manner to evoke awe and/or fear. The present status is that neither the district nor the higher judiciary are welcoming structures that bring confidence and comfort to an ordinary litigant.

Overall, the planning and execution of court infrastructure in India are ridden with several challenges. First, the design and construction of court infrastructure involves coordination between multiple actors which is made difficult due to the lack of existence of permanent governance structures. For instance, introducing changes to a court complex will require coordination between the executive side which includes the departments of law, finance and planning at both central and state levels and the judiciary which includes the District and High Courts along with registry officials through ad-hoc committees.

Second, quite often decisions are made without consultation with discipline specialists such as spatial and information architects, sound engineers and accessibility professionals. These specialists will be able to tailor the buildings and customise them for justice delivery. For instance, a sound engineer would be able to ensure that the acoustics in a courtroom facilitates good audio settings for the judges and counsels to hear each other clearly, both in the physical and virtual mode of functioning.

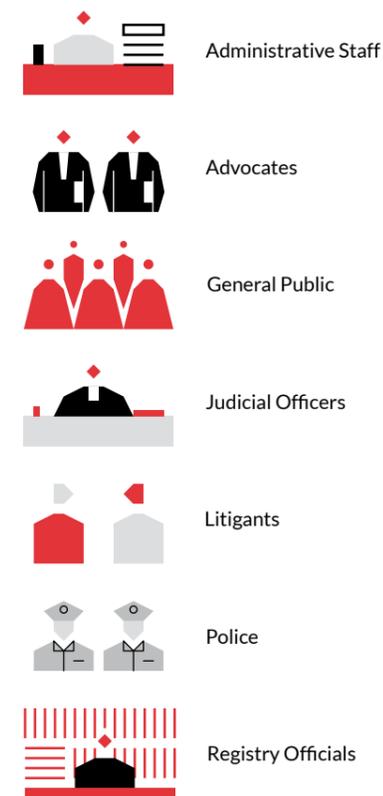
Third, there seems to be no updation of the policy framework that lays down the standards for court infrastructure. The last official document that laid down standards for court infrastructure in India is almost a decade old. In 2012, the National Court Management Systems (NCMS) Committee was set up by the Supreme Court to formulate the guidelines that can serve as a baseline or minimum standards for infrastructure of district judiciary.<sup>31</sup> While the committee set in place benchmarks for the utilities that a court must provide such as separate entrances, waiting areas, guide maps, ramps and tactile pavements, hygienic washrooms, electronic case display systems, etc., it did not touch upon certain important aspects such as universal design principles. However, a study of 665 district courts across India revealed that even the existing baselines laid down in the NCMS report have

not been implemented across most courts.<sup>32</sup> There is a need to update the report itself to reflect the evolving understanding of public infrastructure that caters to specific needs of women, specially abled persons, children and other such stakeholders who may come in contact with the judicial system. In light of this, it is indeed a welcoming move that the incumbent Chief Justice of India, N.V. Ramana has proposed the establishment of an umbrella body—National Judicial Infrastructure Authority of India to augment the state of court infrastructure in India.

Fourth, while the understanding of the term infrastructure has now expanded beyond 'brick and mortar' buildings to include technology related infrastructure, the digital transformation of courts has continued to face many roadblocks of their own. It is important that there be equality in the types of technology being provided (such as hardware, software, applications and platforms) and that it caters to all its different kinds of users (such as judges, litigants, registry officials and advocates). Improvement in digital infrastructure should also not be limited to just the hardware and back-end softwares but also include a rethink of its internal processes. There is a need for standardisation of processes such as collection, processing, storage and dissemination of personal data across case types and courts. Such standardisation should account for the heterogeneity of the judicial system across states. Streamlining of the process should also factor in standards and certifications for the e-courts initiatives from something basic such as uniform features in all courts' websites to back end process such as case nomenclature and standards for virtual hearings.

The next version of NCMS must cater to a hybrid model of courts where physical and virtual courts co-exist.

## Stakeholders Affected



## Vision components

The Indian Judiciary must

- have modernised court complexes that provide state of the art facilities to all users from the first point of interface till exiting the court complex. Such facilities will extend to digital infrastructure within the court and e-court services related to justice delivery.
- have experts from disciplines such as inclusive design, spatial design, information architecture, sound engineering, interior design, etc will be involved in development and implementation of court infrastructure.
- will be a permanent governance structure and a body in charge of conceptualising, coordinating and implementing state of the art court infrastructure. This body should be responsible for ensuring smooth communication between relevant state departments, the judiciary and various domain experts.
- ensure that all physical and digital spaces of courts are embedded with tools and services that make them inclusive and accessible across all genders, age groups, physical conditions, and disabilities.
- integrate and use technology in all applicable court processes to expedite justice delivery.
- standardise forms and templates used for data collection and lay down policies for the management, storage and dissemination of personal data.
- introduce a comprehensive scheme for renovation and maintenance of older, existing court complexes and align them with Universal Design principles. There must be an incentivisation mechanisms for rewarding District Courts that take initiative and improve the state of infrastructure.
- have annual infrastructure status reports and social audits by High Courts which include information on budgetary spends to be made publicly available.

## Principles Considered



28 Sumathi Chandrasekharan and Reshma Shekar, 'Our Courts Need To Be More Welcoming, Accessible, Purpose Driven' (*Outlook Magazine*, 3 February 2020) <<https://www.outlookindia.com/magazine/story/india-news-70-years-of-indian-judiciary-opinion-our-courts-need-to-be-more-welcoming-accessible-purpose-driven/302679>> accessed 13 December 2021

29 Linda Mulcahy, 'Architects of Justice: The Politics of Courtroom Design' (2007) 16(3) *Social and Legal Studies* 383 <[https://www.researchgate.net/publication/40877961\\_Architects\\_of\\_Justice\\_The\\_Politics\\_of\\_Courtroom\\_Design](https://www.researchgate.net/publication/40877961_Architects_of_Justice_The_Politics_of_Courtroom_Design)> accessed 21 December 2021

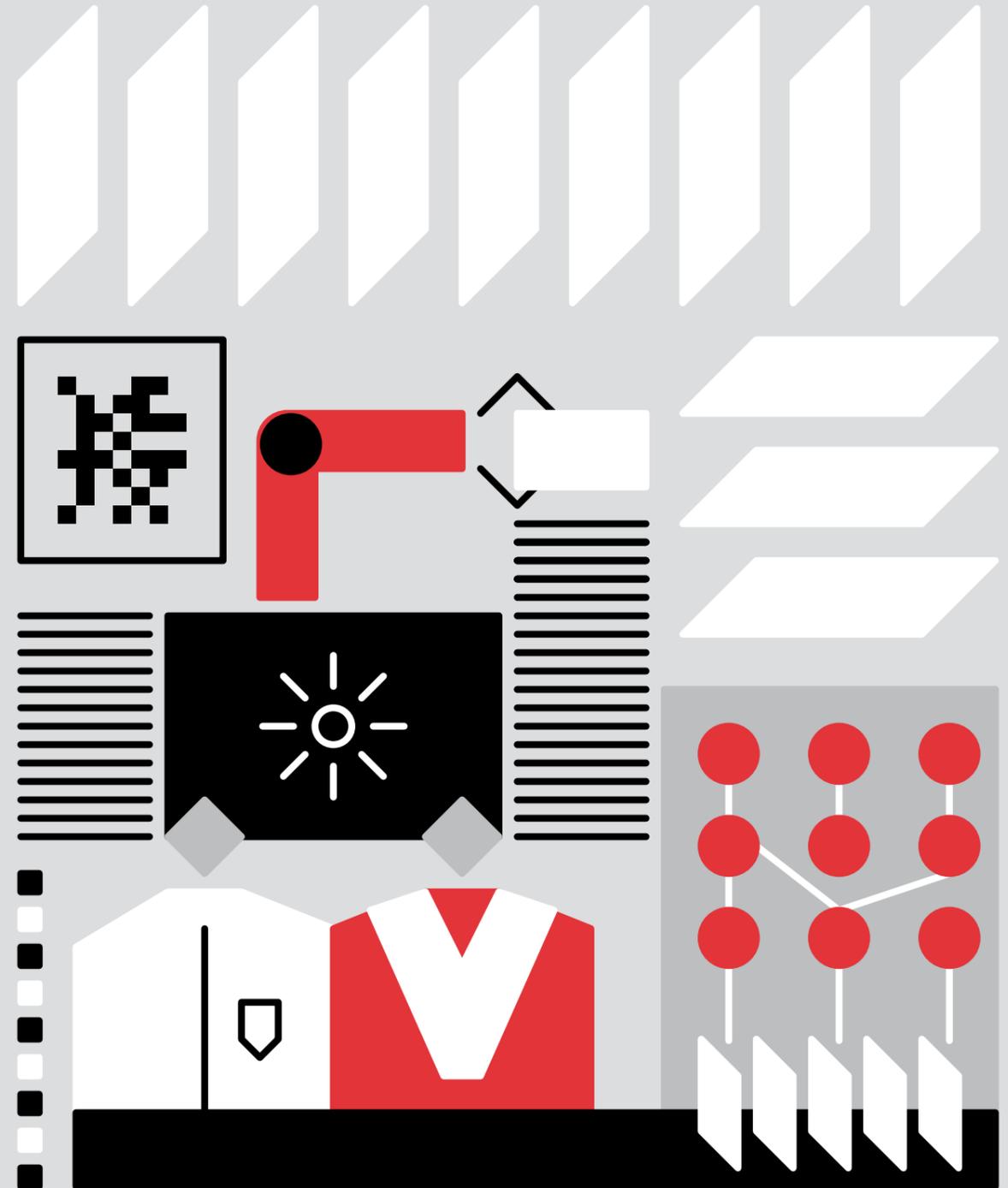
30 Reshma Sekhar, Shreya Tripathy and others, 'Reimagining Consumer Forums: Introducing a spatial design approach to court infrastructure' (*Vidhi Centre for Legal Policy*, 25 February 2021) <<https://vidhilegalpolicy.in/research/re-imagining-consumer-forums/>> accessed 21 December 2021

31 The Supreme Court of India, National Court Management System - Policy and Action Plan (27 February 2012) <<https://main.sci.gov.in/pdf/NCMSP/ncmspap.pdf>> accessed 21 December 2021

32 Reshma Sekhar, Sumathi Chandrasekharan and Diksha Sanyal, 'Building Better Courts' (*Vidhi Centre for Legal Policy*, 1 August 2019) <<https://vidhilegalpolicy.in/research/building-better-courts-surveying-the-infrastructure-of-indias-district-courts/>> accessed 13 December 2021

VISION II

*The Indian Judiciary*  
must have  
an efficient  
administrative  
machinery



## Status quo and present challenges

In the ultimate quest to deliver justice, the judicial system in India is supported by a huge administrative machinery. Unfortunately, however, this structure faces its own vast array of challenges which ultimately lead to inefficiencies and delays in justice delivery. If the often repeated goal of reducing delays has to be achieved, it is essential that more comprehensive measures are taken to reform the administrative machinery in the judiciary.<sup>33</sup>

Presently, there are multiple bottlenecks that exist. First, for instance, are the multiple internal practices, procedures and processes (hereinafter called 'processes') used by the administrative machinery i.e. the court registry. These processes are often established through long standing practices, many of which date back to the Judiciary's colonial history. While some have been institutionalised through manuals, practice and procedure rules, others remain undocumented. For instance, while some filing procedures are codified, such as through High Court Rules, others are often unsaid and require experience with Registry practices. Therefore, there is a need to exhaustively identify these processes, determine their relevance and consolidate them in a streamlined manner.

Second, with a further shift towards digitisation and the ad hoc introduction of technological interventions, the current administrative systems and processes have become even more complex and layered. For instance, there is potential that since the eCourts Project is led by the Supreme Court, it might fail to account for the peculiar difficulties that the respective High Courts and District Courts face in converting the mission to a reality. Such a problem can be traced back to initiatives that often follow a top down approach in execution.

As a result, the administrative workforce of the judiciary often engages in the duplication of work. Given the introduction of technology and the transition period that the judiciary is going through, processes are often structured for duplication to maintain credibility. For instance, while the Case Information System ('CIS') has been introduced nationwide, courts often still maintain physical records of documents. Similarly, while the process of digitisation of documents has commenced, court staff continue to use and upload pdfs, after printing them out. While there are efforts at the level of the Supreme Court to go completely paperless,<sup>34</sup> a complete shift for all courts, including the District Courts, which lack digital infrastructure, is an arduous task.

Therefore, as a precursor to this transition, the judiciary needs to identify interventions which have led to an increase in efficiency and those which continue to be bottlenecks. This needs to be complemented with a strong framework of feedback loops between policies that are created at the national level to ensure efficient implementation in courts across all levels of the judi-

cial hierarchy. Putting in place a robust feedback loop will also help in the re-engineering of existing practices that are complicated and time consuming.

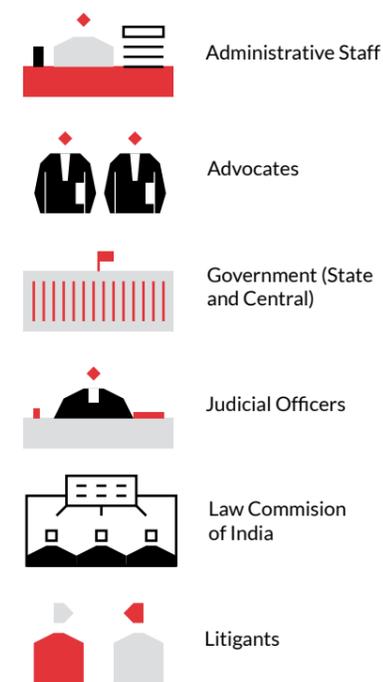
One of the critical forces that can expedite this increase in efficiency is the strategic and careful use of technology. For instance, technology can help with intelligent scheduling of cases, coordinate varying schedules of different participants in a case—litigants, lawyers, judges, witnesses and streamline various stages in the life-cycle of a case through time and outcome predicting assistance. Growth in various fields of technological innovation and artificial intelligence have shown that technology on these requirements already exists and is being harnessed in other fields with similar requirements. There is a lot of evidence that across the globe artificial intelligence is being used in multiple ways to automate and increase administrative efficiency.<sup>35</sup>

The introduction of any new technology or practice should also be accompanied with training for the administrative staff. Regular consultation with administrative staff will ensure that their experiences are factored in and any disincentive they may have in transitioning to these new solutions is addressed. For instance, NSTEP, an application used to expedite the delivery of summons is still unknown to many process servers.<sup>36</sup> To make NSTEP an attractive alternative, the entire summons process has to be re-thought and re-engineered keeping the realities of present bottlenecks, actors and competing incentives in mind.<sup>37</sup>

To ensure that the Registry is occupied by professionals, it is necessary for the staff to be well trained and have specific skill sets. The introduction of a cadre of administrative professionals that go through rigorous training and selection process will help the judiciary not only be more efficient but also open up more space for judges to focus on their judicial responsibilities.

Only with a comprehensive rethink of all its administrative processes can the judiciary optimise the use of its resources such as funds, judicial time and administrative capacity. Only then can the long standing goal of reducing judicial delay be achieved.

## Stakeholders Affected



## Vision components

The Indian Judiciary must

- have robust and continuous mechanisms to identify practices that increase efficiency and those which cause bottlenecks across various tiers of the judiciary.
- have mechanisms to identify practices and correspondingly find ways to omit duplication of administrative effort.
- have mechanisms that enable past and new initiatives and processes to be easily integrated.
- carefully and in a targeted way identify avenues where artificial intelligence
- have a phase-wise movement towards automation with careful consideration of effects on all users.
- introduce a comprehensive system of feedback loops to ensure that solutions are iterative and continuously adapt to change.
- be inclusive by consulting with administrative staff during the various stages of decision making.
- introduce a specialised administrative cadre through a rigorous selection process followed by comprehensive and continuous training.

## Principles Considered



33 'Principles for Judicial Administration' (National Center for State Courts, July 2012) <<https://www.americanbar.org/content/dam/aba/administrative/tips/Court%20Funding/Principles%20for%20Judicial%20Administration.pdf>> accessed 22 December 2021

34 Mehal Jain, 'Paperless Court Not Possible Without A Change In Mindset Of Bar and the Bench: Justice DY Chandrachud' (Live Law, 12 September 2021) <<https://www.livelaw.in/top-stories/justice-dy-chandrachud-on-paperless-courts-digitisation-bar-and-bench-181424#:~:text=He%20explained%20that%20a%20paperless,for%20facilitating%20the%20court%20proceedings>> accessed 13 December 2021

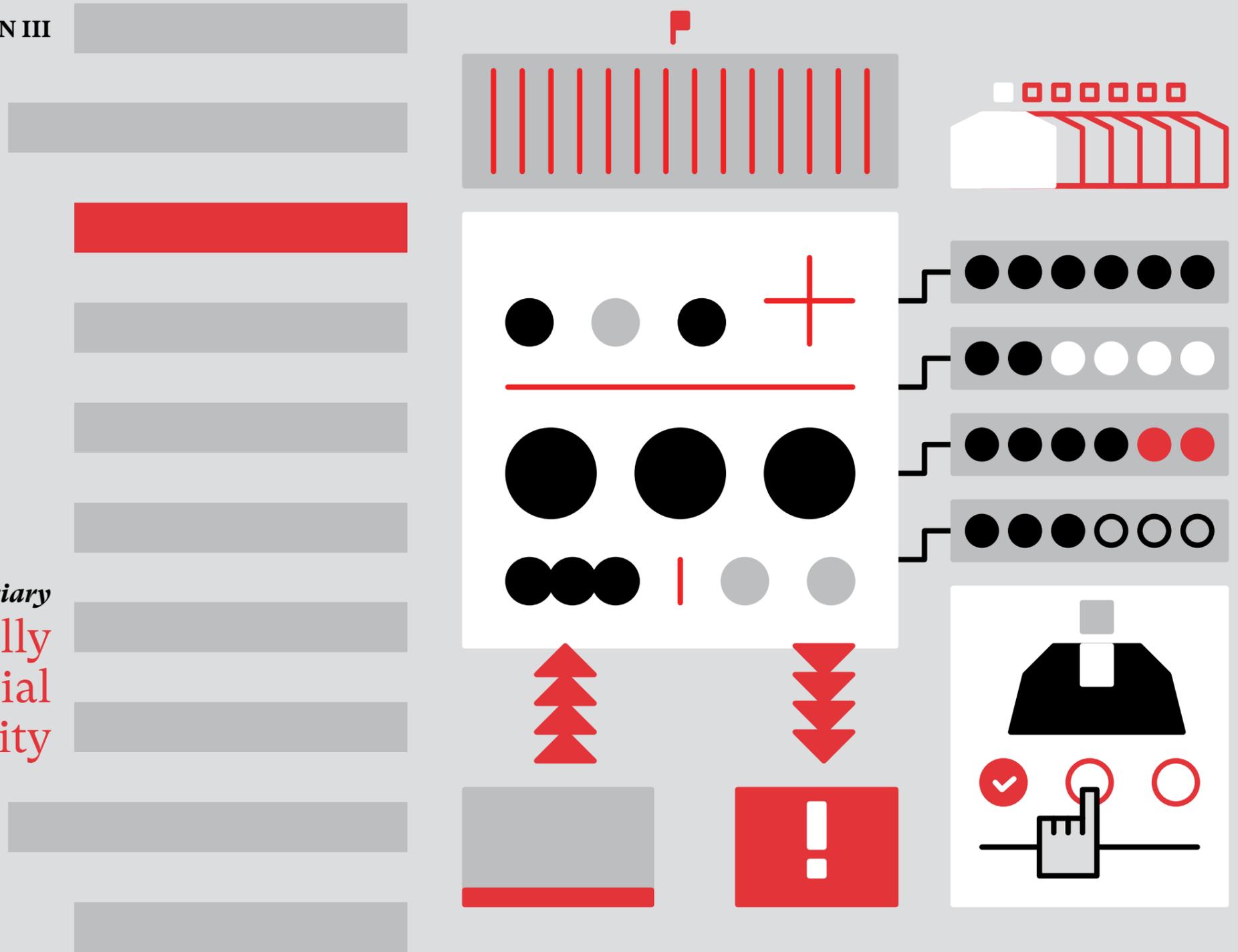
35 Ameen Jauhar, Vaidehi Misra and others, 'Responsible AI for the Indian Justice System - A Strategy Paper' (Vidhi Centre for Legal Policy, 15 April 2021) <<https://vidhilegalpolicy.in/research/responsible-ai-for-the-indian-justice-system-a-strategy-paper/>> accessed 13 December 2021

36 Vaidehi Misra, Aditya Ranjan and others, 'Summons in the Digital Age: ICT Integration in the Service of Summons' (Vidhi Centre for Legal Policy, 10 November 2020) <<https://vidhilegalpolicy.in/research/summons-in-the-digital-age-integrating-information-and-communication-technology-in-the-process-of-serving-summons/>> accessed 16 December 2021

37 Ibid

VISION III

*The Indian Judiciary*  
must fully  
utilise its judicial  
capacity



## Status quo and present challenges

The judiciary 'needs to fill its vacancies' is often touted as the panache of all solutions to problems concerning the judiciary. Over the years, as research in the field has shown, this notion regarding vacancies is based on a misunderstanding of both the problem as well as the solution. There are many problems which have limited the judge's ability to discharge her functions in an efficient and fair manner; they range from issues concerning the mode of recruitment itself, to lack of skill sets to manage workload, to lack of supportive resources in terms of staff, research facilities for judges. Only by addressing these through a multipronged strategy can the judiciary optimally use its judicial capacity.

At the most basic level, the processes which have been adopted to calculate the sanctioned strength of judges are shrouded in a fair degree of opacity.<sup>38</sup> As a result, identifying the gaps in the methodology or improving the same, has been extremely difficult. That said, limited research on the subject suggests that whatever is known as the methodology to identify the appropriate judicial strength for courts is not sufficiently scientific.<sup>39</sup> Thus, there is a need to revisit the very formula on which the required number of judges is calculated for different courts. Once there is clarity on the 'optimal' strength of judges, it is important for the judiciary to have a continuing, scientifically designed system to fill existing vacancies, pre-empt vacancies based on retirement dates, so as to ensure that the judicial work-load does not pile up due to vacancy.

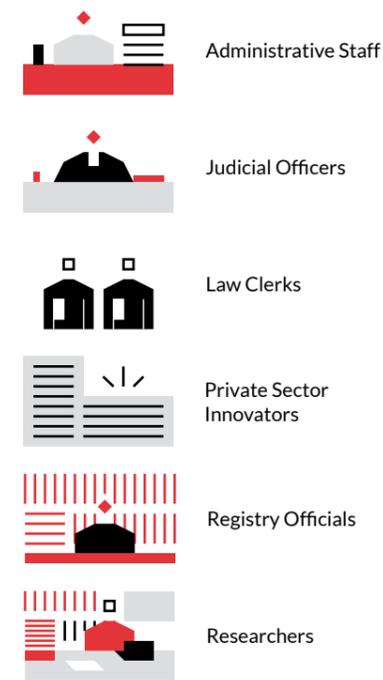
Once the vacancies are identified, the first point of contact for recruiting judges within the judiciary is through open examinations at the district court levels. While there may be noble intentions driving a law graduate to be a judicial officer, given the current pay scales, the judiciary is often not the choicest of offers for a promising law graduate.<sup>40</sup> Even post recruitment, the district judiciary is often not able to retain candidates on account of poor career progressions as majority of appointments at the High Court comes from the bar and not through elevations within the judiciary.<sup>41</sup>

Once inducted, judges often face challenges in maximising their time in performing their judicial responsibilities given their large workloads which might include charges across a few courts, participation in administrative committees and management of workload. As mentioned previously, there is hence a need for a specific administrative cadre of professionals who can reduce the workload of the judicial officers. This cadre will also help make processes more efficient given their expertise and knowledge base. Further, apart from a few ad hoc practices, judges in India, especially at the District Court levels do not get research support staff. Designated court staff consists of individuals like court masters and stenographers. Thus, there is a need to infuse more dedicated and expert actors within the present system to assist with administration and research.

There are some mechanisms such as ACRs and periodic reports that help the High Court supervise and monitor the district judges. One of the goals of such supervisory mechanisms is to help encourage better performance. However, unfortunately, there are currently no workable mechanisms for the judges to, at their own account, assess all their case related reports and identify ways in which they can improve their efficiency. This absence limits the judge's own capacity to maximise their time and resources.<sup>42</sup>

Therefore, in the long term it is desirable that the judiciary in coordination with the other wings of the state have a better, holistic and well monitored plan to help the judiciary maximise its capacity as opposed to just trying to fill in vacancies, that too in an ad hoc manner.

## Stakeholders Affected



## Vision components

The Indian Judiciary must

- adopt a consultative and scientific method to calculate the required number of judges in a court.
- have a scientific mechanism to anticipate judicial vacancy to enable better planning.
- have a judicial recruitment process for the district judiciary which attracts quality candidates and retains them through attractive career prospects.
- have a better coordination mechanism with the government to recommend and fill judicial vacancies.
- create systems that can help improve case-load and roster management.
- create structured channels of research support through quality clerks and tailored research tools.
- have self-assessment tools that can encourage judges to do better,
- adopt a scientifically designed system to evaluate judicial performance to lead to a more accountable judiciary in the long term.

## Principles Considered



<sup>38</sup> Chitrakshi Jain, Tarika Jain and others, 'Back to Basics: A Call for Better Planning in the Judiciary' (*Vidhi Centre for Legal Policy*, 27 March 2020) <<https://vidhilegalpolicy.in/research/back-to-basics-a-case-for-better-planning-in-the-judiciary/>> accessed 16 December 2021

<sup>39</sup> Ibid

<sup>40</sup> Press Trust of India, 'Lawyers Unwilling To be Judges, Higher Judiciary Losing Majesty: Gogoi' (*Business Standard*, 9 January 2020) <[https://www.business-standard.com/article/current-affairs/lawyers-unwilling-to-be-judges-higher-judiciary-losing-majesty-gogoi-118112901093\\_1.html](https://www.business-standard.com/article/current-affairs/lawyers-unwilling-to-be-judges-higher-judiciary-losing-majesty-gogoi-118112901093_1.html)> accessed 13 December 2021

<sup>41</sup> JALDI, 'Judicial Vacancies in India' (*Vidhi Centre for Legal Policy*, November 2019) <[http://data.vidhilegalpolicy.in/dashboard/judicial\\_vacancy/index.html](http://data.vidhilegalpolicy.in/dashboard/judicial_vacancy/index.html)> accessed 13 December 2021

<sup>42</sup> Vaidehi Misra and Satishwar Kedas, 'The Delhi High Court Roster Review: A Step Towards Judicial Performance Evaluation' (*Vidhi Centre for Legal Policy*, 18 February 2021) <<https://vidhilegalpolicy.in/research/the-delhi-high-court-roster-review-a-step-towards-judicial-performance-evaluation/>> accessed 21 December 2021



## Status quo and present challenges

<sup>43</sup> Shreya Tripathy, Chitrakshi Jain and Tarika Jain, 'Back to Basics: A Call for Better Planning in the Judiciary' (Vidhi Centre for Legal Policy, 27 March 2020) <<https://vidhilegalpolicy.in/research/back-to-basics-a-case-for-better-planning-in-the-judiciary/>> accessed 13 December 2021; Chitrakshi Jain, Shreya Tripathy and 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, 3 September 2019) <<https://vidhilegalpolicy.in/research/budgeting-better-for-courts-an-evaluation-of-the-rs-7460-crores-released-under-the-centrally-sponsored-scheme-for-judicial-infrastructure/>> accessed 13 December 2021

<sup>44</sup> Arti Raghavan, 'Restoring Public Trust In The Indian Judiciary Calls For More Scrutiny, Not Less' (*The Wire*, 7 October 2020) <<https://thewire.in/law/restoring-public-trust-in-the-indian-judiciary-calls-for-more-scrutiny-not-less>> accessed 13 December 2021

<sup>45</sup> E-committee, Supreme Court of India, Draft Model Rules for Live-Streaming and Recording of Court Proceedings (28 May 2021) <<https://ecommitteesci.gov.in/document/draft-model-rules-for-live-streaming-and-recording-of-court-proceedings/>> accessed 21 December 2021; E-committee, Supreme Court of India, Draft Vision Document for Phase III of eCourts Project (20 April 2021) <<https://ecommitteesci.gov.in/inviting-suggestions-on-the-draft-vision-document-for-phase-iii-of-ecourts-project/>> accessed 21 December 2021

<sup>46</sup> 'Judicial Reform Index', (American Bar Association) <[https://www.americanbar.org/advocacy/rule\\_of\\_law/publications/assessments/jri/](https://www.americanbar.org/advocacy/rule_of_law/publications/assessments/jri/)> accessed 22 December 2021

<sup>47</sup> Center of Excellence in Public Policy and Government, Indian Institute of Management Kashipur, Performance Indicators for Subordinate Courts and Suggestive Policy/Procedural Changes for Reducing Civil Case Pendency

Many of the issues that the judiciary faces are inherently structural. For instance, a persistent problem faced by the judiciary has been the lack of coordination between all its tiers, often resulting in some states and districts being blindsided during the decision-making processes. Thus, there is a dire need for structured mechanisms that can bridge the information asymmetry between the tiers of the judiciary, allow for representation, grievance redressal and encourage exchange of information. One of the areas which can benefit from this revised approach is the planning, budgeting, allocation and sanction of funds for the District Courts. It is probably on account of non-existence of mechanisms and coordination that the woe of judiciary in terms of budgeting has not been the lack of funds but its utilisation.<sup>43</sup> A more coordinated and responsive system would limit fiscal leakages and reliance on complex bureaucratic processes.

While there has been a conscious shift over the years to engage with external stakeholders and the general public in policy making, no mechanisms or practices seem to be baked into the judiciary's functioning. It is now taken for granted that the governments will put up bills and most policies for public consultation, but the same does not hold true for the judiciary. Rules of practice and procedure followed by High Courts should ideally receive and be amended in line with real time inputs sourced from the lived experience of its users i.e. litigants and lawyers. However, at present, no such mechanism exists with most of the policy-making being an internal exercise, to the extent that a large number of Rules applicable to individual High Courts are not even available in the public domain.

Presently, civic society struggles to find accessible entry points to engage with the judicial system given the opacity with respect to its policies and rules even in areas that impact litigants or the general public directly.<sup>44</sup> However, a shift has been noticed at least from the Supreme Court in this regard, post the pandemic, where it has opened two of its instrumental policy documents on the Third Phase of the eCourts Project and the draft Rules for live streaming, for public consultation and feedback.<sup>45</sup>

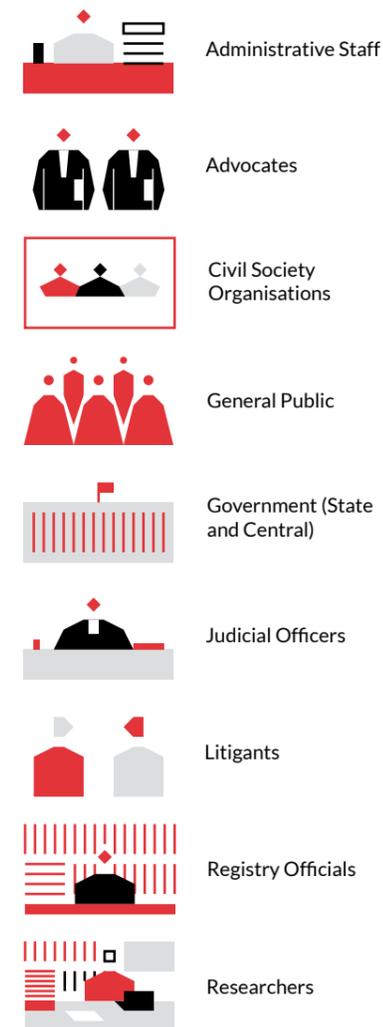
In line with the same approach towards engagement, the judiciary can benefit from the country's thriving civic society ecosystem which engages in research and works directly with the stakeholders; their expertise and resources have so far been underutilised. The judiciary can benefit from a more structured approach, engage and coordinate with all the actors that the issues are concerned with and even derive solutions in a collaborative manner.

Since a wide array of changes have, are and will be introduced in a vast system such as the Indian judiciary, there is also a need to continuously identify the impact of these engagements and how they are effecting change. Thus, change management systems which

identify certain progress indicators<sup>46</sup> and provide for feedback loops specific to the initiatives, need to be weaved into all small and big changes that are introduced in the system.<sup>47</sup> This will help take informed decisions in the future and keep the system agile.

(December 2017) <<https://doj.gov.in/sites/default/files/Final%20Report%20IIM%20Kashipur.pdf>> accessed 21 December 2021

## Stakeholders Affected



## Principles Considered



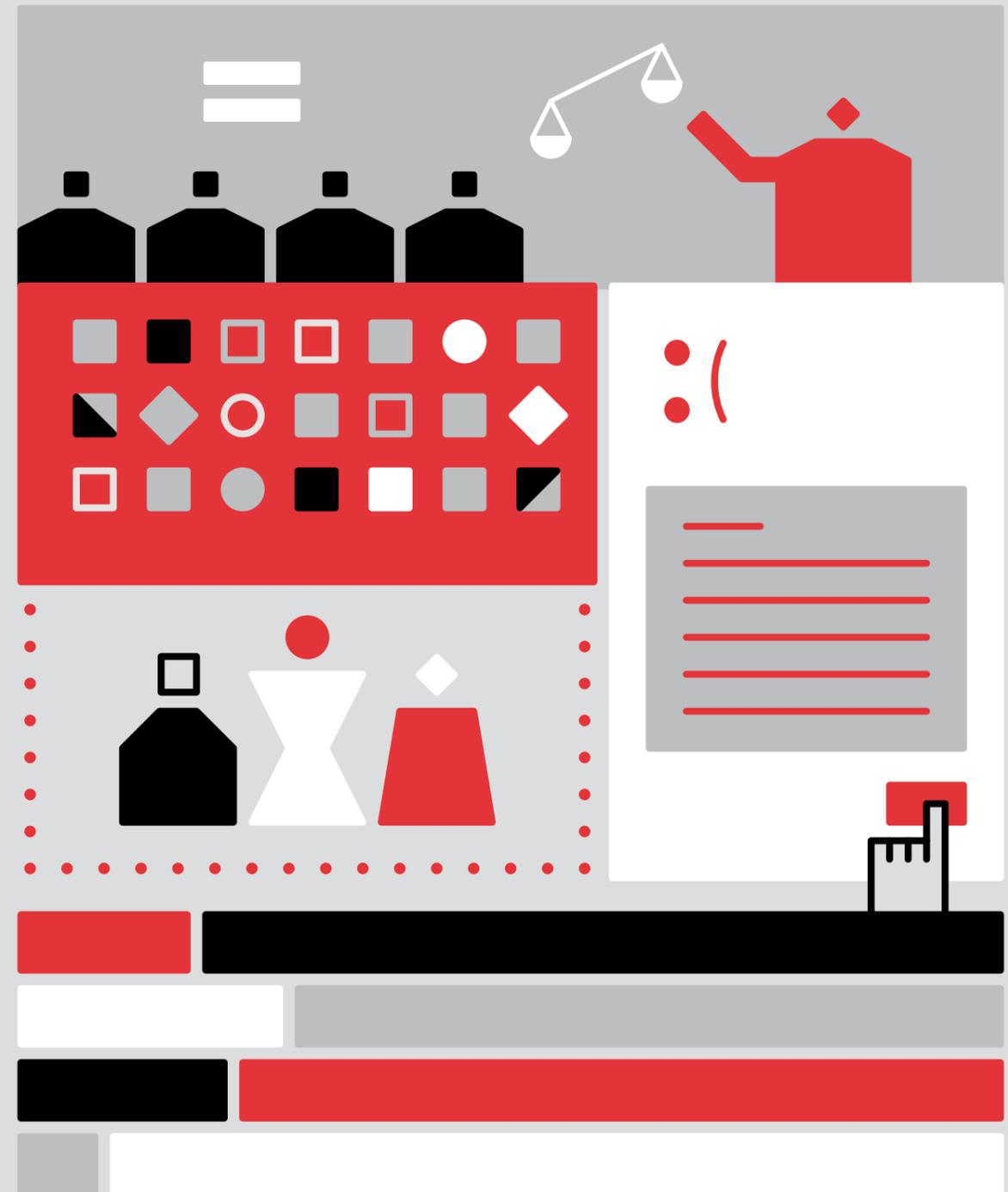
## Vision components

The Indian Judiciary must

- create a national platform, customised per state and district's requirement, for seamless exchange of information between administrative and judicial officers across states and different tiers of the judiciary.
- facilitate communication, address grievances and develop methods for representation through appointment of nodal and grievance redressal officers.
- streamline communication systems for processes that require coordination between the executive and the judiciary on matters such as budgeting, court infrastructure etc.
- live track of progress of e-courts initiatives within and across states.
- identify criteria and adopt practices to make national committees and task forces set up by the Supreme Court and High Courts more representative and inclusive.
- regularly convene judicial conferences and include civil society organisations in deliberations regarding current challenges and future requirements and planning.
- designate grievance redressal officer at the Registry to address all in-house feedback and grievances that will be directed to the right department/Ministry/section of the court.
- continuously engage with civil society through public consultation and open feedback for all upcoming judicial policies that impact them.
- utilise the resources, expertise and experience of civic society actors to introduce more informed solutions and prevent wastage of resources in reinventing the wheel.
- include both physical and digital access points to the justice system in the change management frameworks which includes feedback loops to keep the system agile and evolving.
- have progress indicators which can help informed decision making in the future.

VISION V

*The Indian Judiciary*  
must have  
mechanisms to  
promote diversity  
and heterogeneity



## Status quo and present challenges

48 Kate Malleson, 'Diversity in the Judiciary: The Case for Positive Action' (2009) 36 *Journal of Law and Society* 376 <<https://www.jstor.org/stable/25621979>> accessed 21 December 2021; Malia Reddick and others, 'Racial and Gender Diversity on State Courts, An AJS study' (2009) 48 *The Judge's Journal* <[http://www.judicialselection.us/uploads/documents/Racial\\_and\\_Gender\\_Diversity\\_on\\_Stat\\_8F60B84D96CC2.pdf](http://www.judicialselection.us/uploads/documents/Racial_and_Gender_Diversity_on_Stat_8F60B84D96CC2.pdf)> accessed 1 October 2021

49 Joy Milligan, 'Pluralism in America: Why Judicial Diversity Improves Legal Decisions about Political Morality' (2006) 81 *NYU L Rev* 1206 <<https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-81-3-Milligan.pdf>> accessed 21 December 2021

50 Utkarsh Anand, 'CJI calls for women's equal representation in judiciary' (*Hindustan Times*, 27 September 2021) <<https://www.hindustantimes.com/india-news/cji-calls-for-women-s-equal-representation-in-judiciary-101632696419660.html>> accessed 1 December 2021

51 Krishnadas Rajagopal, 'Supreme Court Collegium recommends 68 names for High Court judges in one go' (*The Hindu*, 3 September 2021) <<https://www.thehindu.com/news/national/supreme-court-collegium-recommends-68-names-for-high-court-judges-in-one-go/article36281208.ece>> accessed 1 December 2021

52 Utkarsh Anand, 'CJI calls for women's equal representation in judiciary' (*Hindustan Times*, 27 September 2021) <<https://www.hindustantimes.com/india-news/cji-calls-for-women-s-equal-representation-in-judiciary-101632696419660.html>> accessed 1 December 2021

53 Arijeet Ghosh, Diksha Sanyal and Nitika Khaitan, 'Tilting the Scale: Gender Imbalance in the Lower Judiciary' (*Vidhi Centre for Legal Policy*, 12 February 2018) <<https://vidhilegalpolicy.in/research/report-on-gender-imbalance-in-the-lower-judiciary/>> accessed 27

Diversity in any institution should be seen as a value worth pursuing as an end in itself. In the judiciary however, diversity has real, tangible benefits—it is indicative of the institution valuing individuals and groups previously marginalised,<sup>48</sup> instilling greater confidence in its ability to mete out justice and fostering a climate of equity for all sections of the society.<sup>49</sup>

Unfortunately however, the judiciary is lacking in diversity across all its tiers. Focusing on gender diversity for instance, after the recent appointment of three female judges in 2021, the Supreme Court now has four female judges, which is the highest ever representation (12%) of female judges in the Supreme Court. Similar trends can also be seen across High Courts in India with only 11.5% sitting judges being female.<sup>50</sup> The problem is even more visible in the latest set of recommendations, where only 10 female judges were recommended out of 68 new judges across 12 High Courts.<sup>51</sup> Even though time and again, there are demands for reservation for women in the judiciary upto 50 percent, the collegium itself appears to be reluctant to walk to talk in this regard.<sup>52</sup>

A persisting concern with respect to ensuring diversity within the judiciary is the lack of accessible data on this front. Data showcased above is limited to gender diversity in the Supreme Court and the High Courts; on the other hand, data with respect to the District Judiciary is extremely difficult to gather and analyse. In a 2018 study on the District Judiciary, a cumbersome methodology involving multiple researchers spending months on data gathering, revealed that only 27.6% of the judges across the District Judiciary were women.<sup>53</sup> A follow-up data-driven report<sup>54</sup> published in 2020 found that only 36.45% of women entered the Civil Judge (Junior Division) between 2007 and 2017. This number drastically falls at the level of District Judge (Direct Recruitment from Bar) where, for the same time period, only 11.75% of judges entering at this tier were women.

Apart from gender, the judiciary in India continues to not be representative vis-à-vis the other axes of difference. According to one report in 2016, only 18 of the 600 judges (3%) of the High Courts were Dalits.<sup>55</sup> While the exact issue for the lack of diversity may be hard to pinpoint, one of the reasons may be the lack of diversity in the pool from which the judges are being selected and the conditionalities involved in the appointment process. Additionally, one of the pool of candidates from which judges are being selected—the Bar, continues to lack in diversity, often dominated by upper-class, male advocates.<sup>56</sup>

Information regarding how pervasive the problem is also extremely difficult to determine and studies like the ones above are minimal. The cause for this can be attributed to the opacity in publishing statistics and information regarding transfers and appointments. For instance, the judiciary does not publish any statistics in

terms of gender, caste, class, geographical affiliation etc., of the judges being appointed across the various tiers. Similarly, the current system of appointment to the higher judiciary, through collegium resolutions, lacks detailing in terms of background of the judges.

To address these gaps in representation, there is a need for conscious decision-making to increase the number of women and other minorities within the judiciary. Conscious efforts must also be made to regularly publish this information in terms of statistical break-up of such diverse groups across the tiered judiciary. Only when a problem and the extent of it is identifiable through data, can it be resolved; the judiciary must take immediate steps to rectify the data-gap that currently exists with respect to its diversity.

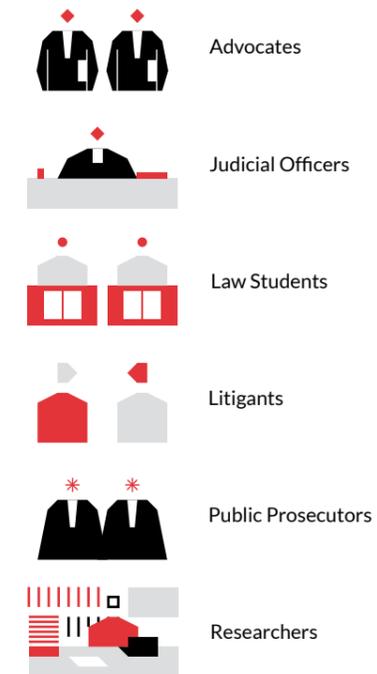
November 2021

54 Sumathi Chandrasekharan, Diksha Sanyal and others, 'Breaking through the Old Boys' Club' (2020) 55(4) *Economic & Political Weekly* <<https://www.epw.in/journal/2020/4/special-articles/breaking-through-old-boys%E2%80%99-club.html>> accessed 21 December 2021

55 Mohamed Imranullah, 'Judges Bat for Reservation in Higher Judiciary' (*The Hindu*, 19 January 2016) <<http://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/judges-bat-for-reservation-in-higher-judiciary/article8122200.ece>> accessed 27 November 2021

56 Alok Prasanna Kumar, 'Absence of Diversity in Higher Judiciary' (2016) 51(8) *Economic & Political Weekly* <<https://www.epw.in/journal/2016/8/law-society/absence-diversity-higher-judiciary.html>> accessed 21 December 2021

## Stakeholders Affected



## Vision components

The Indian Judiciary must

- 1** collate and publish aggregates and granular data on diversity within the judiciary and create a mechanism to regularly track any variations in diversity across gender, caste, class, geography, disabilities etc.
- 2** adopt policies that ensure better representation on parameters such as class, caste, gender, disability, geography, etc., across all tiers of the judiciary with continuing interventions such as diversity and inclusion training for judges and members of the Bar.
- 3** plan and execute initiatives aimed at increasing diversity at the Bar.
- 4** monitor and introduce grievance redressal frameworks to allow for easy reporting of discrimination on any of the above grounds and to track progress of policies and interventions made to increase diversity.
- 5** make targeted efforts to increase diversity in law schools.

## Principles Considered

Inclusivity



Transparency



VISION VI

*The Indian Judiciary  
must protect  
and promote  
independence*



## Status quo and present challenges

57 S.P. Gupta v. Union of India, AIR 1982 SC 149 <<https://indiankanoon.org/doc/1294854/>> accessed 21 December 2021

58 Author, 'Collegium System in the Indian Judiciary Needs to be Reformed for Greater Transparency and Accountability' (EPW Engage, 19 February 2020) <<https://www.epw.in/engage/article/collegium-system-indian-judiciary-needs-be>> accessed 21 December 2021

59 Supreme Court of India, Resolutions of Collegium <<https://main.sci.gov.in/collegium-resolutions>> accessed 21 December 2021

60 Supreme Court of India, Proposal for Appointment of Additional Judges of the Madhya Pradesh High Court as Permanent Judges of the High Court (4 December 2017) <[https://main.sci.gov.in/pdf/collegium/2017-December%204%20-%2018%20Pmt.%20\(2\)-MP\\_wm.pdf](https://main.sci.gov.in/pdf/collegium/2017-December%204%20-%2018%20Pmt.%20(2)-MP_wm.pdf)> accessed 21 December 2021

61 Alok Prasanna Kumar, 'Four Transfers and One Saving Grace' (Economic & Political Weekly, 19 October 2019) <<https://www.epw.in/journal/2019/42/law-and-society/four-transfers-and-one-saving-grace.html>> accessed 20 December 2021; Samanwaya Rautray, 'Justice Muralidhar's transfer timing raises eyebrows' (The Economic Times, 28 February 2020) <<https://economictimes.indiatimes.com/news/politics-and-nation/justice-muralidhar-transfer-timing-raises-eyebrows/articleshow/74367002.cms?from=mdr>> accessed 20 December 2021

62 C. Raj Kumar, 'Transforming Judicial Appointments for Transparency: Future of Collegium System' (Economic & Political Weekly, 28 November 2015) <<https://www.epw.in/journal/2015/48/appointments-judges/future-collegium-system.html>> accessed 20 December 2021

63 National Commission to Review the Working of the Constitution, A Constitution Paper on Financial Autonomy of the Indian Judiciary (26 September 2001) <<https://legalliaffairs.gov.in/sites/default/files/Financial%20Autonomy%20of%20the%20Indian%20Judiciary.pdf>> accessed 21 December 2021

To the layperson, the judiciary's requisite to be just and fair arises from one core value— independence. Recognising this, the judiciary's independence is protected under the basic structure of the Constitution and cannot be abrogated even through a constitutional amendment.<sup>57</sup> Independence is essential not only to protect the integrity of the judiciary but also to maintain the rule of law and keep a check on the other wings of the state i.e. the executive and legislature. However, over time, protecting this core value has faced a few challenges.

First, given that judges are the core functionaries of the judiciary, ensuring their appointment process is devoid of external influences is critical to instill confidence in the independence of the institution. However, unfortunately, the opacity in criteria used for the appointment and transfer of judges, especially in the higher judiciary, has given way to suspicions regarding the integrity of the process, and thereby the independence of the institution.<sup>58</sup>

A fundamental way to protect the independence of an institution such as the judiciary is to introduce transparency and accountability measures. To potentially address this, in 2017, the Supreme Court started publishing collegium resolutions.<sup>59</sup> Even though a commendable move, it has failed to achieve its objective of increasing transparency and trust, since these documents have spare reasoning, baring the frequent use of generic statements such as '*collegium has found the judgments of the above-named recommendees as very good/good/satisfactory and good and up to the mark/upto the mark*'.<sup>60</sup> At this juncture, the ordinary citizens are left with no option but to blindly rely on internal integrity of the Collegiums since there is no objective, accessible, mechanism to evaluate whether these decisions were influenced or motivated.<sup>61</sup> In the same vein, there are no structured mechanisms to identify if a judge who is recommended by the collegium has any conflict of interest.<sup>62</sup>

Second, there is a need for more independence in the judiciary's fiscal planning.<sup>63</sup> Detailed research on the subject has found that there are many causes of poor fiscal planning and utilization within the judiciary.<sup>64</sup> On account of the multiplicity of actors involved and complex processes, there are inordinate delays which limit the autonomy of the judiciary to make independent decisions. For instance, funds sanctioned for development of district court complexes require complex manoeuvring and coordination between the central government and state government and multiple departments within them. The complexity of the process eventually leads to the poor planning of estimates and uncertain goals to utilise funds. Bureaucratic inefficiencies such as delay in preparation of utilisation certificate and non-adherence to prescribed formats lead to multiple rounds of revision and the eventual underutilisation of funds.

Third, there is a need to introduce structured, long-term measures to prevent the influence of decision making by various actors including the press, the other wings of the state and individuals wielding influence. Today more than ever, the press has become an all-pervasive institution with many instances of rampant blitz of certain stories which capture public imagination.<sup>65</sup> In such circumstances, it is all the more necessary that the judiciary ensures that decision making is not influenced by media discourses and public sentiment, which can often be majoritarian. There is also a need to ensure there is non-partisan decision making especially keeping in mind the potential for post-retirement appointments and other forms of corruption.<sup>66</sup> Failing this, the integrity of the institution will continue to be challenged and the faith of the people in the justice system will continue to wane.

Finally, unlike lawyers and other legal professionals who can earn per hearing and progressively over time increase their charges exponentially, judges follow pay scales which many argue are far from optimal.<sup>67</sup> It is probably because of this reason that some advocates recommended for elevation to the bench give up their judgeship,<sup>68</sup> while other retired judges hope to join or re-join the bar after their retirement.<sup>69</sup> Many other judges, especially those retiring from the High Courts and Supreme Court seek to take up arbitrations where they can earn more in two hours than through a month of rigorous judicial service.<sup>70</sup> Therefore, it is critical that mechanisms be introduced to alter present pay scales and well thought out systems be introduced to prevent post retirement employment opportunities from influencing judicial decision making today.<sup>71</sup>

64 Chitrakshi Jain, Shreya Tripathy and 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, 3 September 2019) <<https://vidhilegalpolicy.in/research/budgeting-better-for-courts-an-evaluation-of-the-rs-7460-crores-released-under-the-centrally-sponsored-scheme-for-judicial-infrastructure/>> accessed 20 December 2021

65 Pamela Philipose, 'Backstory: Everything Wrong With the Media is Reflected in the Sushant Singh Rajput Coverage' (The Wire, 12 September 2020) <<https://thewire.in/media/back-story-indian-media-sushant-singh-rajput-coverage>> accessed 20 December 2021

66 Apoorva Mandhani, 'Ayodhya, Rafale and more - 5 big Ranjan Gogoi verdicts that worked in favor of Modi govt.' (The Print, 17 March 2020) <<https://theprint.in/judiciary/ayodhya-rafale-and-more-5-big-ranjan-gogoi-verdicts-that-worked-in-favour-of-modi-govt/382630/>> accessed 20 December 2021

67 Alok Prasanna Kumar, 'Why judges deserve a salary hike' (Livemint, 27 July 2015) <<https://www.livemint.com/Politics/DeL4ySeoTIXvbjplOLsKL/Why-judges-deserve-a-salary-hike.html>> accessed 20 December 2021

68 'Delhi High Court judge resigns, will go back as lawyer' (Hindustan Times, 1 September 2009) <<https://www.hindustantimes.com/delhi/delhi-hc-judge-resigns-will-go-back-as-lawyer/story-aEX5m2hZWkR6fDgLi6F2IL.html>> accessed 20 December 2021

69 Ashish Tripathi, 'SC designates seven ex-HC judges, 18 lawyers as senior advocates' (Deccan Herald, 11 December 2021) <<https://www.deccanherald.com/national/sc-designates-seven-ex-hc-judges-18-lawyers-as-senior-advocates-1059822.html>> accessed 20 December 2021

70 Dhananjay Mahapatra, 'A retired SC judge can get paid more in 2 hours than a serving one in a month' (Times Of India, 11 June 2021) <<https://timesofindia.indiatimes.com/india/a-retired-sc-judge-can-get-paid-more-in-2-hours-than-a-serving-one-in-a-month/articleshow/84307245.cms>> accessed 20 December 2021

71 Arghya Sengupta, 'After the judges retire: Time for a fresh look at sensitive judicial afternoons and evenings' (Times of India, 7 May 2019) <<https://timesofindia.indiatimes.com/blogs/toi-edit-page/after-the-judges-retire-time-for-a-fresh-look-at-sensitive-judicial-afternoons-and-evenings/>> accessed 20 December 2021

timesofindia.indiatimes.com/blogs/toi-edit-page/after-the-judges-retire-time-for-a-fresh-look-at-sensitive-judicial-afternoons-and-evenings/> accessed 20 December 2021

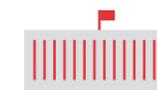
## Stakeholders Affected



Advocates



General Public



Government (State and Central)



Judicial Officers



Private Sector Innovators



Registry Officials

## Principles Considered

Accountability



Independence



Transparency



## Vision components

The Indian Judiciary must

1

publish the criteria used for the appointment and transfer of judges.

2

formulate a detailed set of rules and regulations to govern the determination of conflict of interest among the members of the collegium who are involved in the selection of judges.

3

introduce mechanisms to ensure greater accountability of the collegium.

4

have a streamlined mechanism for fiscal planning which ensures independence of the judiciary without resulting in poor planning or execution of the projects.

5

have a well established mechanism to protect judicial decision making from overwhelming public and media discourses.

6

consider the introduction of revised pay-scales for judges across all tiers of the judiciary.

7

self-regulate itself strictly to prevent judges from accepting certain categories of post-retirement benefits which perceivably affects the institution's integrity and independence.

8

have a system to prevent post-retirement opportunities for judges from influencing present day decision making.

VISION VII

*The Indian Judiciary*  
must have  
accountability  
frameworks  
to monitor all  
stakeholders



## Status quo and present challenges

The accountability of stakeholders within the justice system such as the lawyers, public prosecutors and judges is crucial to ensure that it is not only just and equitable in its functioning, but is also amenable to public scrutiny. However, in its present form, the system lacks mechanisms that can hold these stakeholders accountable towards the citizens. While the internal stakeholders mentioned in this section only include public prosecutors, judges, court staff and advocates, a comprehensive framework could account for other secondary actors as well, such as ADR providers, notary officers etc.

Lawyers play a critical public facing part in our justice system. However, they are limitedly regulated with voids in law for wrongful practices and deficiency in the service promised. In *DK Gandhi v M Mathias*,<sup>72</sup> the National Consumer Dispute Redressal Commission held that under the Consumer Protection Act, 1986, lawyers can be proceeded against for deficiency in service. In 2008, this order was challenged in the Supreme Court and is currently pending consideration. On the other hand, though the Advocate Act, 1961, empowers the Bar Council to conduct inquiry in cases of misconduct by the advocates, such a provision is targeted towards protecting the integrity of the profession rather than providing remedy to the aggrieved client.<sup>73</sup>

Further, the prosecution in India is riddled with executive interference. The less than glamorous status of the prosecution keeps the office away from public scrutiny. Further, non-uniform structure of the office across the state, lack of transparency in appointment of Public Prosecutors and Special Public Prosecutors<sup>74</sup> and the limited career progression avenues add opacity to the office. As a result of this, the instances of wrongful prosecution and politically driven actions by the prosecutors remain common in our justice system.<sup>75</sup>

Therefore, the judiciary must vigilantly act towards increasing accountability of the prosecution towards itself and the citizens. The judiciary must endeavour to create transparent systems for appointment of Public Prosecutors and establish a system for accountability in cases of wrongful prosecution. Even though the office of prosecution is under the executive's control, the judiciary can and must engage with the prosecution in a manner that quells fears of undue influence or corruption.

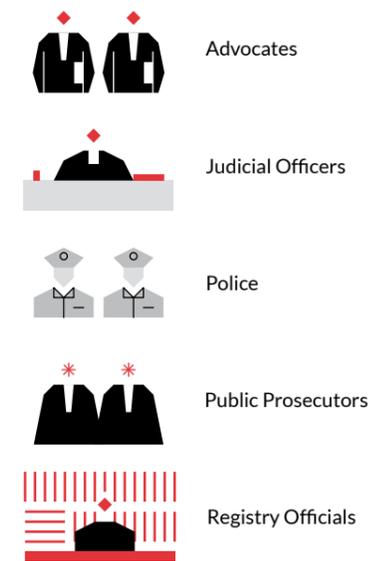
The most prominent of the stakeholders of the justice system are the judges themselves. While a system of annual confidential reports ('ACR's) has been introduced in the District Judiciary to assess performance of judges in this tier, these documents are confidential, limiting their accountability to only the higher judiciary and not the litigants.<sup>76</sup> The issue of lack of accountability amongst judges is magnified in the higher judiciary which has no such known mech-

anism, internal or external. Efforts made by civic society to remedy this situation has in the past also faced resistance and produced a chilling effect.<sup>77</sup>

A critical actor seldom spoken about during conversations of accountability are court appointed administrative staff. They are often the primary access point between the litigants or/and lawyers and the court. Since they are monitored and scrutinised internally by the in-charge judge and in the absence of litigant-facing grievance redressal mechanisms, they are not often audited for efficiency or even honesty. Currently, there exist no organised frameworks for grievances redressal or to give feedback in case of dissatisfactory service. This is worrying, since impediments caused by these actors can gravely affect an individual's access to quality and effective justice.

Therefore, it is necessary that the judiciary in collaboration with other wings of the state works towards creating robust frameworks of accountability through identification of best practices, model rules, necessary legislations, internal reform and court sanctions.

## Stakeholders Affected



<sup>72</sup> *DK Gandhi v M Mathias*, Revision Petition No. 1392/2006 (NCDRC) <<https://indiankanoon.org/doc/562637/>> accessed 21 December 2021

<sup>73</sup> Aditya Ranjan, 'Why Do Lawyers Enjoy Immunity Against Wrong Practices?' (*Vidhi Centre for Legal Policy*, 1 April 2020) <<https://vidhilegalpolicy.in/blog/why-do-lawyers-enjoy-immunity-against-wrong-practices/>> accessed 13 December 2021

<sup>74</sup> Chitrakshi Jain and Aditya Ranjan, 'Examining The Special Prosecution Needs Of Criminal Justice' (*The Outlook*, 9 September 2020) <<https://www.outlookindia.com/website/story/opinion-examining-the-special-prosecution-needs-of-criminal-justice/360054>> accessed 13 December 2021

<sup>75</sup> *Bablu Chauhan @ Dablu v State Government of NCT of Delhi*, 247 (2018) DLT 31 <<https://indiankanoon.org/doc/117931857/>> accessed 21 December 2021

<sup>76</sup> The High Court of Meghalaya, Annual Confidential Report of Judicial Officers (24 October 2019) <<http://meghalayahighcourt.nic.in/annual-confidential-report-format-judicial-officers-revised-acr-form-24102019?>> accessed 21 December 2021; Prof. Srikrishna Deva Rao, Dr. Rangin Pallav Tripathy and Eluckiaa A., Performance Evaluation and Promotion Schemes of Judicial Officers in India: A Comparative Report (, 2018) <<https://doj.gov.in/sites/default/files/Comparative%20Report.pdf>> accessed 21 December 2021

<sup>77</sup> *Surya Prakash Khatri v Madhu Trehan*, (2001) SCC OnLine Del 590 <<https://indiankanoon.org/doc/734756/>> accessed 21 December 2021

## Vision components

The Indian Judiciary must

- 1** facilitate greater accountability in police departments across the states.
- 2** hold lawyers accountable for deficiency in service through court sanctions and push for an established framework for resolution of disputes arising due to wrongful practices.
- 3** engage with the executive to ensure an independent office of prosecution in every state.
- 4** create a mechanism to ensure accountability of prosecutors in cases of wrongful prosecution.
- 5** allocate a budget to assist lawyers and prosecutors to be equipped with resources and technology to discharge their functions efficiently.
- 6** formulate rules and frameworks to continuously monitor performance of administrative staff and ensure grievances of end-users are addressed.

## Principles Considered



VISION VIII

*The Indian Judiciary*  
must uphold the  
ideals of an open  
judiciary



## Status quo and present challenges

Academic discourse emphasises that judicial independence and accountability are not inconsistent and should necessarily co-exist.<sup>78</sup> In this context, judicial transparency becomes a facet of accountability. India follows a system of open courts. However, physical access to courts is limited for ordinary citizens due to various reasons. It therefore becomes incumbent upon the courts to voluntarily disseminate information that serves public interest. At present, this is done in a piecemeal manner by courts across the country.

While the implementation of the e-Courts project has provided the necessary platform for courts to publish limited data and be accessible online, the utility of the platform can be significantly better. Many courts are yet to systematically and regularly publish their orders, judgements and notifications on their websites. Where some documents are uploaded, they are generally not machine readable and often not published consistently. This lack of publication of judicial documents limits the public, including individuals vested in the outcome of the case, from having access to information that pertains to them.

However, as with any other public information, there exists privacy concerns regarding vast amounts of data collected and available with the judiciary, especially in terms of judicial pleadings and sensitive documents. There is a need to draft an adequate privacy policy to protect sensitive information of individuals, especially in the case of vulnerable victims, minors, etc. It is commendable that efforts in this direction are already underway.

Some other processes that pertain to the internal functioning of the judiciary also continue to woe litigants. For instance, the opacity in case listing practices affect an individual's perception of a just and equitable judiciary; a litigant has limited means to understand the rules guiding allocation of cases to certain judges or delayed listing of cases. This also allows for the creation of a market, where some parties are able to manoeuvre these practices to get favourable listings.<sup>79</sup>

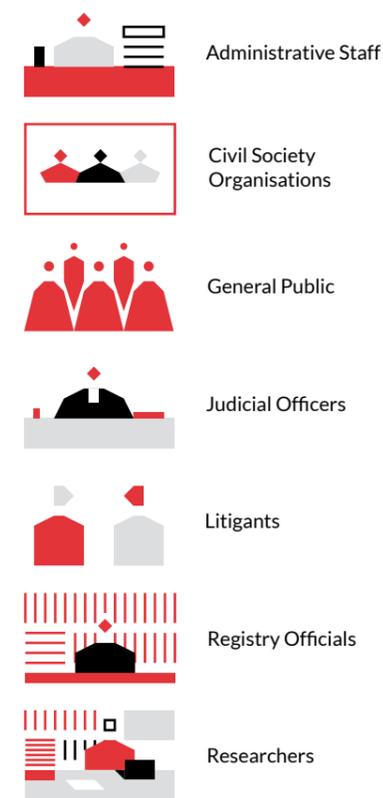
Apart from an individual's access to case-related information, even aggregated statistics have been limitedly published. While the Department of Justice, National Judicial Data Grid (NJDG) publish information pertaining to the judiciary, extensive research has time and again shown that this data is incomprehensive and even inaccurate at times.<sup>80</sup> Lack of holistic, detailed and scientifically curated datasets prevents different actors in the civic society and other legal service providers from using this data to conduct research and come up with tools that can further help democratise access to justice.

The judiciary's reluctance to share information also becomes evident in the context of the implementation of the Right to Information ("RTI") Act. While the RTI Act has been strengthened by the judiciary in its application to several public authorities, the Courts have

not been as stern in its application to themselves. The Courts have used their discretionary powers to frame RTI Rules that often complicate the process of filing RTI applications. Moreover, research<sup>81</sup> has shown that Courts tend to strictly abide by these Rules rejecting applications on grounds which can only be seen as contradictory to the spirit of the RTI Act. The research also shows that the quality of suo moto disclosures being made by the Courts under Section 4 of the RTI Act is inadequate with as many as nine High Courts not providing any disclosures at all.

Apart from requirements under the RTI Act, the hesitation of the judiciary to provide disclosures persists in other functions of the judiciary such as the process of appointment and disclosure of personal information. As the discourse around representation and diversity in the judiciary has developed over the years, the reluctance of the collegium to provide reasons for appointment or transfer of judges in the higher judiciary has also come to the fore.<sup>82</sup> A similar reluctance is often seen in providing proper disclosures regarding assets, relatives' income and assets, professional details, etc. These practices not only hamper the cause of transparency, they also give way to rumors and conspiracy theories ultimately affecting the citizenry's trust and confidence in the judiciary as an institution.

## Stakeholders Affected



## Vision components

The Indian Judiciary must

- regularly publish orders, judgments, notifications and other judicial documents in a machine-readable format while also addressing privacy concerns regarding sensitive personal information through a robust privacy policy.
- publish scientifically curated, accessible judicial databases with aggregates and granular statistics on performance of the courts across various parameters.
- equip itself for seamless live streaming of court proceedings while protecting privacy interests.
- ensure compliance with the RTI Act in letter and spirit, by making necessary amendments to the High Court RTI Rules.
- have better voluntary disclosures for judges and courts across all tiers of the judiciary with regular monitoring for accuracy and completeness.
- ensure the transparent adoption of artificial intelligence so that stakeholders have the opportunity to challenge its use and question the underlying biases which might compromise the promise of fairness and due process of law.
- reversal of judicial pronouncements that are transparency-backward.
- publish information about judges including judicial appointments, financial assets and statistics on performance across all tiers of the judiciary.

## Principles Considered

Transparency



<sup>78</sup> Arghya Sengupta, *Independence & Accountability of the Indian Higher Judiciary* (CUP 2019)

<sup>79</sup> Atul Dev, 'India's Supreme Court Is Teetering on the Edge' (*The Atlantic*, 29 April 2019) <<https://www.theatlantic.com/international/archive/2019/04/india-supreme-court-corruption/587152/>> accessed 20 December 2020

<sup>80</sup> Kshitiz Verma, 'Analyzing HC-NJDG Data to Understand the Pendency in High Courts in India' (LNMIIT Jaipur) <<https://osf.io/preprints/lawarxiv/xryj7/download>> accessed 20 December 2020

<sup>81</sup> Vaidehi Misra, Prashant Reddy and others, 'Sunshine in the Courts: Ranking the High Courts on their Compliance with the RTI Act' (*Vidhi Centre for Legal Policy*, October 2019) <[https://vidhilegalpolicy.in/wp-content/uploads/2020/06/SitC\\_Digital\\_Final.pdf](https://vidhilegalpolicy.in/wp-content/uploads/2020/06/SitC_Digital_Final.pdf)> accessed 20 December 2020

<sup>82</sup> Rangin Pallav Tripathy, 'Supreme Court Collegium and Transparency' (2021) 56 (22) *Economic & Political Weekly* <<https://www.nluo.ac.in/wp-content/uploads/2019/05/Rangin-Pallav-Tripathy-SC-Collegium-and-Transparency.pdf>> accessed 20 December 2020

VISION IX

*The Indian Judiciary*  
must have a robust  
framework for  
judicial education  
and training



## Status quo and present challenges

India follows the career judiciary model for the subordinate judiciary and the common law appointment method for judges at the High Courts and the Supreme Court. The importance of judicial education and training increased manifold with the Supreme Court's decision in the 2002 *All India Judges Association v. Union of India*,<sup>83</sup> where the mandatory Bar practice requirement as an eligibility criterion for a candidate to appear for the judicial services examination was struck down. To compensate for the removal of practice requirements, a one-year training in the judicial academy was made mandatory for entry level judicial officers. In India, the state judicial academies, supervised by the respective High Courts along with the National Judicial Academy carry out the critical task of educating and training judges. These academies have been around for more than a decade now, without much discourse around the issues plaguing them.<sup>84</sup>

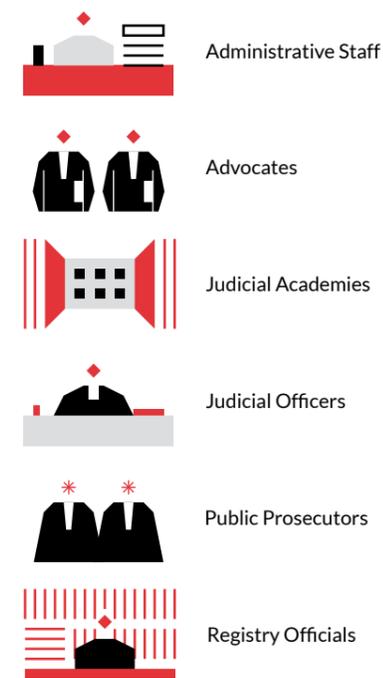
In a study,<sup>85</sup> it was found that the performance of these institutions, instead of being consistent and uniform, is entirely dependent on the vision and the will of the High Court judges in charge of them. Most academies are under strict control and supervision of the High Courts, affecting their independence and curtailing their ability to flourish as academic institutions. More often than not, district judges and retired high court justices are deputed to serve as chairpersons of these academies. It cannot be discounted that holding court and running an educational and research centre require entirely different sets of capabilities.

Several institutional challenges such as scarcity of faculty, lack of innovative use of pedagogy and absence of any incentive to imagine or implement better programmes impede quality judicial training.<sup>86</sup> The clinical training segment of the induction training, which should be the actual focus than any classroom training, involves a junior judge shadowing a senior judge for a certain period.<sup>87</sup> The senior judges have a daily docket of 30-50 cases with very little time to train a new judge. The Academies do not provide a basic checklist of what the focus of shadow training must be, resulting in non-uniformity and uncertainty. Although the judicial service rules in every state mandate that the newly appointed judges have to undergo a two-year probationary period, there are negligible instances of a probationer being turned out of service. While some states do not have any form of evaluation, as mandated by their respective judicial service rules, some judicial academies conduct a departmental examination at the end of their training period, which is reportedly a repetition of the judicial service recruitment examination.<sup>88</sup> The result obtained in this examination has no impact on the trainee's service career. This leaves little incentive to take the academy training seriously.

Continuing judicial education for judges, especially district and higher judiciary takes a back seat due to several reasons. Their extremely tight working sched-

ules, case-loads, central location of the academies in most states and the misconception that these tiers of judges do not need further training results in these judges being made part of seminars, conferences and workshops that serves as training for them.

## Stakeholders Affected



## Vision components

The Indian Judiciary must

- facilitate state judicial academies to function as independent research centres for the judiciary providing experiential learning that transforms an individual to an adjudicator.
- enable continuous judicial education for Higher and District Judiciary in order to stay abreast of the recent developments in law and policy; such programmes should be imparted through modes that are convenient and factor in their work volumes and availability.
- curate components of judicial training to include mandatory and cyclical programmes for Registry, judge's staff, advocates, public prosecutors, police officials, such that these programmes cater to their roles and responsibilities.
- onboard technology and education experts to create online knowledge repositories and training platforms that enable user login for attending classes, accessing information across state judicial academies along with interoperability of these platforms with other legal databases and knowledge sources such as SCCOnline, Manupatra, NJDG etc.
- facilitate curation of curriculum by academies and professionals from other disciplines along with jurists and judges so as to prepare well-rounded, empathetic judges.
- ensure existence of systems that help receive expertise through peers led learning, utilise resources and engage with civil society organisations and subject matter experts.
- provide funds and other resources to enable quality periodical training for judges through diverse means including online courses, offline seminars, simulation and experiential exercises to improve legal knowledge, digital skills, workload management techniques, and to develop empathy and sensitivity towards litigants.

## Principles Considered

Accountability



Efficiency



<sup>83</sup> *All India Judges' Association and Ors. v. Union of India*, (2002) 4 SCC 247 3 <<https://indiankanoon.org/doc/1245776/>> accessed 21 December 2021

<sup>84</sup> Prashant Reddy T., Reshma Sekhar and Vagda Galhotra, 'Schooling the Judges: The Selection and Training of Civil Judges and Judicial Magistrates' (*Vidhi Centre for Legal Policy*, December 2019) <<https://vidhilegalpolicy.in/wp-content/uploads/2019/12/JudicialAcademies.pdf>> accessed 21 December 2021

<sup>85</sup> Ibid

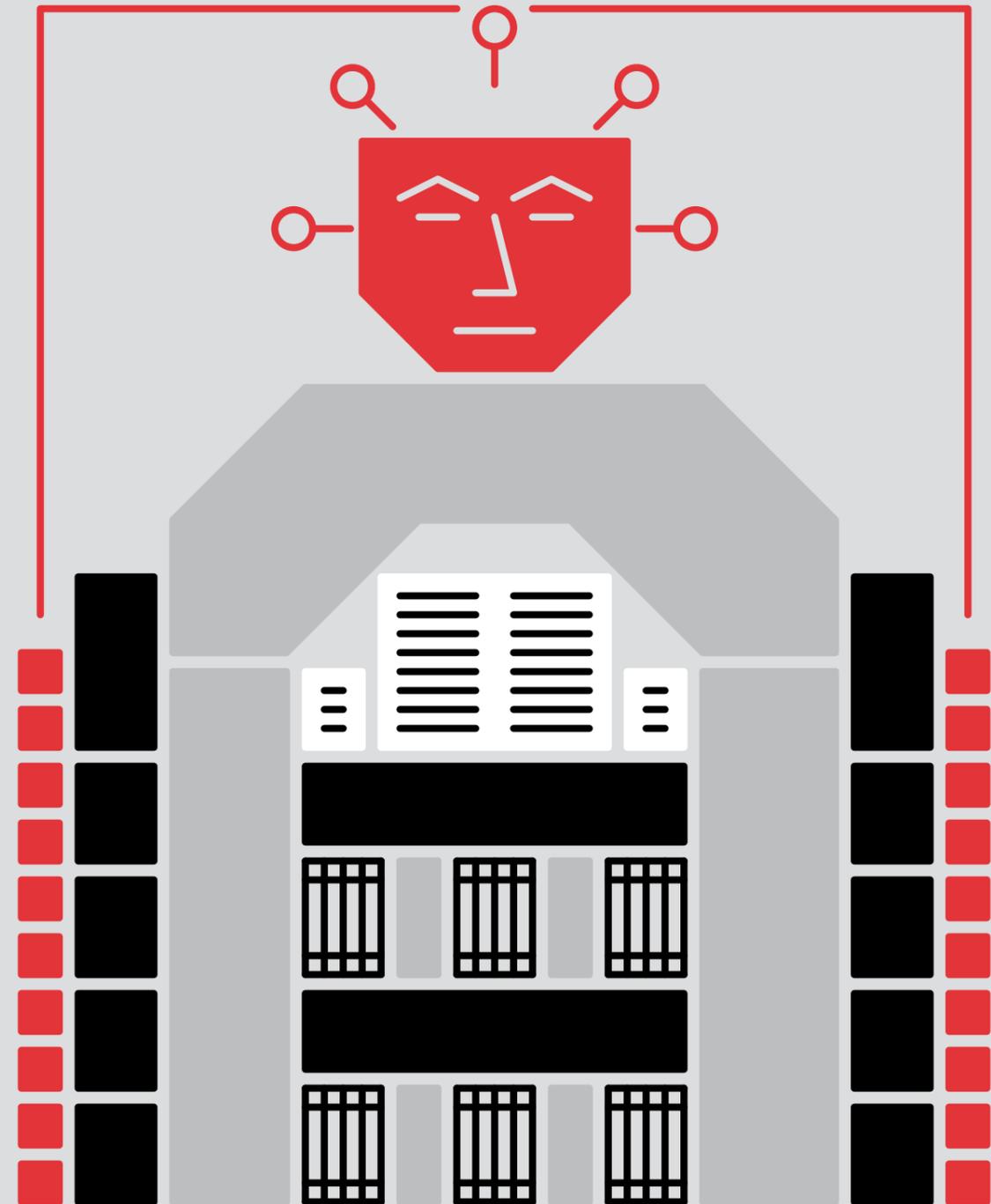
<sup>86</sup> Geeta Oberoi, 'Concerns on Nature and Duration of Inductions Trainings Offered to Magistrates in India' (2018) 2 *International Journal for the Rule of Law* 140; Geeta Oberoi, 'Limitation of Induction Trainings Offered to Magistrates by State Judicial Actors in India' (2018) 4 *Athens Journal of Law* 302 <<https://www.athensjournals.gr/law/2018-4-4-2-Oberoi.pdf>> accessed 21 December 2021

<sup>87</sup> N.R Madhava Menon, *Clinical Legal Education* (Eastern Book Co. 1998)

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VISION X

*The Indian Judiciary*  
must be driven  
by a humane,  
reformative and  
rights-oriented  
justice system



## Status quo and present challenges

A humane and reformatory justice system should be based on the principles of access to justice for all and reformation of the offenders. However, presently, the justice delivery system is full of elements designed towards punishment and retribution. A stark depiction of this is seen in the way prisons in India function—they are designed to be centres of punishment rather than a place for reformation of prisoners.<sup>88</sup> Even worse is the unabated incarceration of undertrials for long periods which turns the process itself into punishment for those engaging with the justice delivery system. As of the end of 2019, about 70 percent of inmates in prisons were undertrials.<sup>89</sup> Among these, more than a lakh were incarcerated for more than a year.<sup>90</sup> While granting bail was supposed to be the norm, it has rather been an exception in India.

Moreover, in recent years, there have been multiple instances where the courts have imposed excessively restrictive conditions for bail.<sup>92</sup> This includes prohibiting the use of social media and gag orders restricting the accused from making statements in the media.<sup>93</sup> These restrictive conditions are more frequent in politically sensitive cases and offences committed on social media. Such broad restrictions surpass reasonableness and infringe upon the rights of the accused.

Further, the judiciary also passes detention orders against the accused under Section 167 Criminal Procedure Code, 1973, in a rather routine and casual manner. As held in *Arnesh Kumar v State of Bihar*,<sup>94</sup> such orders have a significant impact on the rights of the accused and must be passed on the satisfaction of the Magistrate that arrest is necessary to prevent tampering of evidence or making inducement etc. Overall, the numbers and trends indicate that the judiciary continues to uphold the colonial ethos of punishment and retribution rather than reform.

A just and humane justice system is as much dependent on the judges as the lawyers. Therefore, Article 39 A of the Indian Constitution provides that the state should provide free legal aid “to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.” Despite this provision, free legal aid is hardly accessed by those who are eligible for it. Though almost 80 per cent of India’s over 1.3 billion population is eligible for free legal aid,<sup>95</sup> according to the India Justice Report 2019,<sup>96</sup> only 15 million people have benefited from legal aid services in the country since 1995. In recent years, there has been a significant increase in the number of beneficiaries, with over 1.2 million persons receiving legal aid and advice in 2019. However, legal services authorities remain afflicted with lack of infrastructure, poor case management, poor quality of legal aid lawyers and poor utilisation of central funds.<sup>97</sup> Thus, the system of legal aid needs careful study and revamping to ensure that the marginalised sections of society do not suffer injustice due to lack of or poor quality of legal aid.

It is recognised that the ancillary systems of prison, police, legal aid or other related systems, are beyond the judiciary’s direct control. However, in this, the judiciary can and must play a proactive role in ensuring that all facets of the criminal justice system—courts, prisons, police, prosecution and legal aid are geared towards reformatory justice.

<sup>89</sup> Bihar State Legal Services Authority, Prisons of Bihar - Status Report 2015 (2015) <[http://patnahhighcourt.gov.in/bslsa/pdf/UPLOADED/PRISON\\_COMPILED/2.pdf](http://patnahhighcourt.gov.in/bslsa/pdf/UPLOADED/PRISON_COMPILED/2.pdf)> accessed 21 December 2021

<sup>90</sup> National Crime Record Bureau, Prison Statistics India 2019 (2019) <<https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>> accessed 21 December 2021; See Vignesh Radhakrishnan and Sumant Sen, ‘Data | 70% prisoners in India are undertrials’ (*The Hindu*, 11 September 2020) <<https://www.thehindu.com/data/data-70-prisoners-in-india-are-undertrials/article32569643.ece>> accessed 13 December 2021

<sup>91</sup> Vignesh Radhakrishnan and Sumant Sen, ‘Data | 70% prisoners in India are undertrials’ (*The Hindu*, 11 September 2020) <<https://www.thehindu.com/data/data-70-prisoners-in-india-are-undertrials/article32569643.ece>> accessed 13 December 2021

<sup>92</sup> Thulasi K Raj, ‘Restricting Free Speech through Bail Orders’ (National Law School of India Review, 7 January 2021) <<https://nlsir.com/restricting-free-speech-through-bail-orders/>> accessed 11 January 2022

<sup>93</sup> See Sadaf Modak, ‘Sudha Bharadwaj likely to be released from jail today’ (*Indian Express*, 9 December 2021) <<https://indianexpress.com/article/cities/mumbai/special-nia-court-bail-conditions-sudha-bharadwaj-elgar-parishad-7662062/>> accessed 11 January 2022

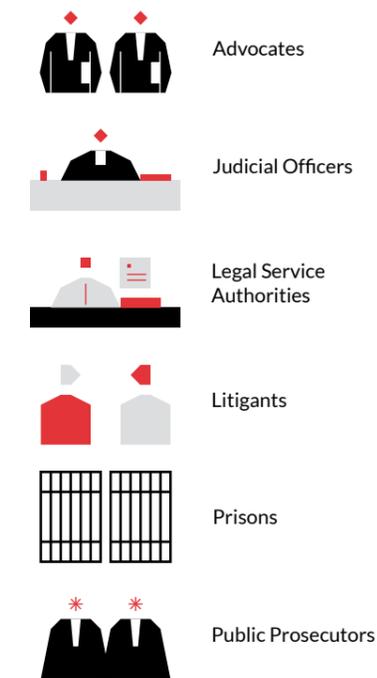
<sup>94</sup> *Arnesh Kumar v State of Bihar*, (2014) 8 SCC 273 <<https://indiankanoon.org/doc/2982624/>> accessed 21 December 2021

<sup>95</sup> Tata Trusts, India Justice Report 2020: Ranking States on Police, Judiciary, Prisons and Legal Aid (26 January 2021) <<https://www.tatatrusts.org/Upload/pdf/ijr-2020-overall-report-january-26.pdf>> accessed 13 December 2021

<sup>96</sup> Rintu Mariam Biju, ‘India Justice Report 2019: Only 15 million out of 1 billion eligible Indians provided legal aid services in last 14 years’ (*Bar and Bench*, 11 November 2019) <<https://www.barandbench.com/columns/india-justice-report-2019-15-million-out-of-1-billion-eligible-indians-provided-legal-aid-service>> accessed 13 December 2021

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## Stakeholders Affected



## Vision components

The Indian Judiciary must

**1**

regularly conduct sensitisation training for judges to enable them to adopt a rights oriented justice delivery approach based on the idea of reformation and not retribution.

**2**

ensure speedy trial in criminal cases and reduce percentage of undertrial inmates in prisons.

**3**

engage with legal services authorities to ensure quality legal aid to all those eligible for it.

**4**

ensure access to justice and an equitable justice system for vulnerable sections of the society.

## Principles Considered

Accessibility



## PART A

- 1 Abhinav Chandrachud, *An Independent, Colonial Judiciary: A History of the Bombay High Court during the British Raj, 1862–1947* (OUP 2015)
- 2 M.P. Jain, *Outlines of Indian Legal and Constitutional History* (LexisNexis 2014)

## PART B

### I. The Indian Judiciary must have modernised and accessible infrastructure

- 1 Dr. Rahela Khorakiwala, *From the Colonial to the Contemporary: Images, Iconography, Memories, and Performances of Law in India's High Courts* (Hart Publishing 2020)
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### II. The Indian Judiciary must have an efficient administrative machinery

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- 2 Shruthi Naik and Deepika Kinhal, 'Enabling judicial support staff key to speed up justice' (*Deccan Herald*, 12 August 2019) <<https://www.deccanherald.com/opinion/panorama/enabling-judicial-support-staff-key-to-speed-up-justice-753669.html>> accessed 17 December 2021
- 3 N. Sathiyamoorthy, 'Administration of Justice and Judicial Administration' (*Observer Research Foundation*, 25 August 2010) <<https://www.orfonline.org/research/administration-of-justice-and-judicial-administration/>> accessed 21 December 2021
- 4 Marco Velicogna, 'Justice Systems and ICT: What can be learned from Europe' (2007) 3 Utrecht Law Review 129 <<https://www.utrechtlawreview.org/articles/10.18352/ulr.41/gallery/41/download/>> accessed 21 December 2021

### III. The Indian Judiciary must fully utilise its judicial capacity

- 1 United Nations Office on Drugs and Crime, Resource Guide on Strengthening Judicial Integrity and Capacity (December 2011) <[https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709\\_ebook.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf)> accessed 21 December 2021

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### IV. The Indian Judiciary must promote diversity and heterogeneity

- 1 George H. Gadbois, *Judges of the Supreme Court of India: 1950–1989* (OUP 2016)
- 2 Robert P. Davidow, 'Judicial Selection: The Search for Quality and Representativeness' (1981) 31 Case Western Reserve Law Review 409 <<https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2347&context=caselrev>> accessed 21 December 2021
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### V The Indian Judiciary must have better engagement with stakeholders and mechanisms to assess progress

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### VI. The Indian Judiciary must protect and promote independence

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### VII. The Indian Judiciary must have accountability frameworks to monitor all stakeholders

- 1 Aman Trust, 'Public Prosecution in India: An Argument for Autonomy' (April 2005) <<http://amanpanchayat.org/wp-content/uploads/2018/01/public-prosecution.pdf>> accessed 21 December 2021
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### VIII. The Indian Judiciary must uphold the ideals of an open judiciary

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### X. The Indian Judiciary must be humane, reformative and rights-oriented philosophy to each of its functions

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