

Memorandum to the Fifteenth Finance Commission on Budgeting for the Judiciary in India

December 2018



This independent non-commissioned work is based on a collaborative study by:

Centre for Budget and Governance Accountability (CBGA)

B-7 Extension/110A (Ground Floor), Harsukh Marg, Safdarjung Enclave, New Delhi-110029

Tel: +91-11-49200400/401/402; Email: info@cbgaindia.org

Website: www.cbgaindia.org

DAKSH

62/1, Palace Road, Vasanth Nagar, Bengaluru - 560052

Website: www.dakshindia.org

For more information about the study, please contact: Asadullah (asadullah@cbgaindia.org),
Surya Prakash B.S. (surya@dakshindia.org).

TABLE OF CONTENTS

Glossary of Key Terms	02
Executive Summary	03
Chapter 1: Budgeting and Expenditure for the Judiciary in India: Taking Stock	08
1.1 An Overview of the Major Gaps	08
1.2 Broad Trends in Union and State Government's Expenditure on the Judiciary	10
1.3 Inter-State Disparity in Public Expenditure on Judiciary	10
Chapter 2: Public Expenditure and the Performance of Judiciary: A Comparative Analysis of Six States	14
2.1 Trends and Patterns in Expenditure on Judiciary across States	14
2.2 Varying Priorities in the Judiciary Budget across States	15
2.3 Resource Share vs. Problem Share: How Do the States Fare	16
2.4 High Courts vs. Subordinate Courts: Burden of Pendency of Cases, Priorities in Budgets and Underutilisation of Budgetary Allocations	19
2.5 Relevance of Finance Commission for Course Correction in Financing of Judiciary in India	22
Chapter 3: Suggestions to the Fifteenth Finance Commission on Budgetary Allocations for the Judiciary	25
3.1 Proposed Initiatives	25
Reform and Research Offices	25
Secretariat for Judicial Appointments	25
Technological Initiative	26
Budgeting Practices Initiative	26
Pilot Projects	26
Modernisation of Tribunals	26
Concluding Observations	27
Annexures	29
Annexure A: Details of Resource Requirements and Costing for Reform and Research Offices	29
Annexure B: Details of Resource Requirements and Costing for Secretariat for Judicial Appointments	32
Annexure C: Details of Resource Requirements and Costing for the Technology Initiative	33
Annexure D: Details of Resource Requirements and Costing for the Budgeting Practices Initiative	34
Bibliography	36

GLOSSARY OF KEY TERMS

Alternative Dispute Resolution (ADR): Alternative Dispute Resolution (ADR) is the procedure for settling disputes without litigation, such as arbitration, mediation, or negotiation. ADR procedures are usually less costly and more expeditious.

Burden on the Judiciary: The burden on the Judiciary is here defined as the number of cases pending per judge/Court.

Gross Budgetary Expenditure: Total Budget Expenditure (public expenditure) through Budgets of States and Union Government within a financial year.

Judicial Infrastructure and Manpower: Judicial Infrastructure refers to courtrooms, court premises, libraries, court complexes, residential buildings, computer and related accessories while Judicial Manpower refers to Judges/Judicial Officers, administrative officers, clerks and other assistants required to perform justice delivery

National Judicial Data Grid (NJDG): National portal for public access to disseminate national and State, district and court-wise information about institution and disposal of previous month's cases and also cases filed by senior citizens and women in the total pendency. It also provides data on number of working judges across States and Districts of India.

Pendency: All cases instituted but not disposed of, regardless of when the case was instituted.

Subordinate Courts: Subordinate Court means all courts subordinate to the High Court, including court of Small Causes established under Act No. 9 of 1850 or Act No. 11 of 1865.

Vertical and Horizontal Inequality in Judiciary: Vertical Inequality here refers to inequality between Centre and all States taken together with respect to various indicators of outcomes and expenditure while Horizontal Inequality refers to differences across States in expenditure and outcomes.

EXECUTIVE SUMMARY

We have analysed the trends in Union and State governments' expenditure on the judiciary over a period of seven years, with a closer examination of selected states. Based on the inferences drawn from these trends, the report suggests interventions to improve judicial functioning, explains the budgeting processes necessary for better financing and ways to execute the same with proper planning and budget estimates of each of the proposed interventions.

Efficient Judiciary is Critical in Facilitating Growth- Economic Survey 2017-18 has highlighted the role of an efficient judiciary in facilitating economic growth, mainly through contract enforcement. The survey points out that India lags behind numerous other countries in this regard. According to the survey, recent efforts to improve contract enforcement have been encouraging, but the problem of pendency in the judiciary is a significant obstacle to economic investment and growth of the Indian economy.

OECD Survey Reveals Critical Role of Technology in Improving Judicial Performance- The survey refers to OECD research which reveals that while the effects on pendency of increasing overall spending on the Judiciary is not very apparent, it is clear that computerisation and the adoption of technology do lead to shorter case duration. This suggestion lends considerable support for both the proposed Budgeting Practices Initiative as well as the Technological Initiative. The Economic Survey supports the claim that funding for the judiciary needs to be revised with its needs and workload in consideration, and that a significant proportion of this must be directed towards technology.

I. Key Finding Based on the Analysis of Expenditure Data and the National Judicial Data Grid Information

States Share 90% of Financial Responsibility of Judiciary- The major chunk (92%) of all India judiciary financing is met through expenditure by State Governments while the share of Centre in total expenditure on judiciary is quite low (8%). The shares of States like Uttar Pradesh (16.2%) and Maharashtra (9.2%) are considerably more than the share of Union Government in total government expenditure on judiciary.

Low Priority of Judiciary in State & Union Budgets-The priority accorded to the judiciary in the Union Governments' budget is low as evident by the meagre proportion (0.08% of Union Budget) spent by the Union government on it. All States' spending on judiciary constitutes 0.61% all States' total spending. Total public spending on judiciary is less than 0.4% of the gross budgetary expenditure of Centre and States taken together. The effects of this are visible in measures of courts' performance.

Pending Cases are Increasing,: The situation in judiciary is alarming with the backlog of pending cases mounting to 3.3 crores. While 2.84 crores cases are pending in the Subordinate Courts, the backlog clogging the High Courts and Supreme Court (SC) are 43 lakh and 0.58 lakh cases, respectively.

45% of the Backlog of Cases is Concentrated in 5 States: According to the July, 2018 figures of the National Judicial Data Grid (NJDG), the five states which account for the highest pendency are Uttar Pradesh (61.58 lakh), Maharashtra (33.22 lakh), West Bengal (17.59 lakh), Bihar (16.58 lakh) and

Gujarat (16.45 lakh). Of all the pending cases, 60% are more than two years old, while 40% are more than five years old. In the Supreme Court, over 30% of pending cases are more than five years old.

Government Legislations also contribute to Increase in Institution and Backlog of Cases - The increase in the institution of cases is partly because of increase in the number of cases under Section 138 of the Negotiable Instruments Act and Section 498 A of the Penal Code and enactment of new legislations in the recent past e.g. the Protection of Women Against Domestic Violence Act, 2005, the Right to Information Act etc. account for bulk (close to 40% of the cases). Several reports and studies (Law Commission of India Report Number 213 on Fast Track Magisterial Courts for Dishonoured Cheque Cases, 2008) have noted the role of central legislations in increasing number of institution of cases without having any regard to costing and judicial burden.

Lack of Court Rooms as per the Subordinate Courts of India - A Report on Access to Justice, 2016 by the Centre for Research and Planning, Supreme Court of India (henceforth "Report on Subordinate Courts of India"), the lack of basic facilities for the judicial service delivery in Subordinate Courts is evident-as against the total sanctioned strength of 20,558 judicial officers, at the time of publication in 2016 (the sanctioned strength is 22,704 as of December 2017, as per the last Court News, published by the Supreme Court), only 15,540 court rooms were available in 2016.

Shortage of Residential Accommodation - There is also a glaring shortage of residential accommodation for judicial officers. As against the total sanctioned strength of 20,558 judicial officers, residence was available only for 12,020 judicial officers (58.5%) in 2016, thus, constituting a shortfall of residences for 8,538 (41.5%) judicial officers.

Shortage of Non-Judicial Staff, 20% of the Posts are Vacant - There is a massive shortage of non-judicial staff in Indian courts system. 1,72,641 staff members were available at the end of the year 2016, with a shortfall in manpower being to the tune of 41,775 resulting in a vacancy rate of 20% of the sanctioned post as per the Report on Subordinate Courts of India.

Disparity in Priorities of Judiciary in Budget across States - There is a marked disparity in the proportion of States' overall budgets that is allocated towards justice delivery. This ranges from as high as 2.69% for Delhi and 0.90% for Uttar Pradesh, to as low as 0.33% for West Bengal and 0.44% for Jammu and Kashmir.

Disparity in Pending Case Burden (per lakh of population) - The burden on the judiciary varies widely across States-against an all-India average of 2,342 pending cases per lakh of population, there are some states, such as Kerala, with as many as 3,821 pending cases per lakh of population, whereas some other states (e.g. Jharkhand) have pending cases as low as 1,216. This is likely to affect the rates of disposal in these States as the judiciary is overburdened (based on pendency figures of July 2018, NJDG).

Varying per Case Public Expenditure across States - There is considerable disparity across States with regard to the budget of the judiciary per pending case. The average budget per pending case across all States is Rs.8,071 per case. Values range from as high as Rs.19,891 for Delhi and Rs.18,656 for Jammu and Kashmir, to as low as Rs.3,225 for West Bengal and Rs.4,447 for Odisha.

The national average per-capita judicial budget in the year 2018-19 is Rs.189 with values ranging from

as high as Rs.643 for Delhi and Rs.338 for Himachal Pradesh, to as low as Rs.69 for West Bengal and Rs.97 for Bihar.

Inter-State Disparity in the Growth of Expenditure during the Fourteenth Finance Commission (FFC) Period- There is inter-State disparity in the growth of expenditure on the judiciary during FFC period- the budget increased by approximately 50% for Jharkhand, Kerala, Maharashtra, and Tamil Nadu, but almost doubled for Karnataka and Uttar Pradesh between 2015-16 and 2018-19.

Jharkhand and Kerala have similar population sizes, (population figures for each of the States here are based on population projections of Registrar General of India, 2006), but Jharkhand spent 0.58% of its budget on the judiciary in 2018-19, as compared to 0.70% in the case of Kerala, and Kerala's judicial budget is nearly double that of Jharkhand.

Disproportionality between Population Share and Share in Pending Cases across States- The degree of proportionality between States' shares in the population and their shares in the total number of pending cases and budget is reflected by the case of Uttar Pradesh. The State with 16% share in all India population, is the location of 21.2% of all pending cases, but only contributes to 16.2% of the total expenditure on the judiciary.

Inter-State Disparity in share of High Courts and Subordinate Courts across States- Subordinate Courts receive proportions of the judiciary budget ranging from 56% to 78%. Maharashtra and Jharkhand allocated higher proportion of their judiciary budget to Subordinate Courts, while the figures for Kerala and Karnataka are on the lower side.

Varying Average Expenditure per Subordinate Court- There is also significant variation between States with regard to the average expenditure per Subordinate Court, with it ranging from as high as Rs.335 lakhs for Delhi, to as low as Rs.72 lakhs for Punjab, and a national average of Rs.152 lakhs per Subordinate Court.

The analysis also yields evidence of an increase in judicial expenditure in absolute terms, as well as in terms of proportion of the combined budgets of the Union Government and the 29 State Governments. This is an encouraging development given that the judiciary has typically been inadequately funded in the past. However, an increase in resource allocation without sensitivity to the varying needs of the judiciary across different States could result in inefficiency. Also, an increase in resource allocation without accounting for the capacity of the judiciary to make use of it may not result in improvement in performance of judiciary.

Low Priority Given to Judiciary in Budgets Compromises Access to Justice- When comparing States' expenditure in different areas, multiple patterns of disparity between States with regard to expenditure towards justice delivery emerge. There is disparity in the proportion of their budgets that States are able to allocate towards expenditure on the judiciary. If this proportion is interpreted to be representative of the level of priority that a State government gives to the prioritisation of ensuring justice delivery, this disparity is a cause for concern as it compromises equitable access to justice.

Mismatch of Needs and Share of Judiciary in Budgets across States- We also had a closer look at the data pertaining to Jharkhand, Maharashtra, Kerala, Karnataka, Tamil Nadu and Uttar Pradesh. This reveals significant variation in the patterns of resource allocation towards the Judiciary over the last four

years; some States have increased expenditure by a much larger proportion than others, and absolute levels of expenditure in relation to population size varies drastically; a notable example is that of Kerala which spends almost twice as much as Jharkhand towards the Judiciary, despite being of similar size.

High Courts Get significantly larger amount of funds in Comparison to Subordinate Courts-

States show very different proportions of pendency and funding of the High Courts and the Subordinate Courts. High Courts receive much more funds per judge, on average, but also have much higher rates of cases pending per judge. There is a great degree of variation between States with respect to both the burden on and the budget for the judiciary. The same can be observed in patterns of growth in expenditure towards the courts, and in the differing relative proportions of the budget allocated to the Subordinate Courts and High Courts. Finally, we observe a significant degree of underutilisation of budgeted resources by these six States, most prominently, Uttar Pradesh and Maharashtra.

Horizontal & Vertical Disparity in Allocation of Overall Funds towards Judiciary-

Our analysis of the funding of the judiciary reveals that the proportions of budget for the judiciary by the Union and the States vary across time, as do their shares in the total contributions of funds to the judiciary. There are two dimensions of inequality in budgeting for the judiciary; the horizontal imbalance between States, and the vertical inequality that exists between the States and the Union Government, especially given the dependence of the Union Government on the Subordinate Judiciary to apply Union legislations.

Fifteenth Finance Commission (15th FC) as an Appropriate Platform to Address these Imbalances-

We identify the 15th FC as being the appropriate authority to redress this imbalance, given its mandate of reviewing and recommending the appropriate horizontal and vertical distribution of net proceeds of taxes between the Union and the States, based on an assessment of their requirements. The Finance Commission is well-positioned to do so given that it is required to address the long-term resource requirements of the Union and States, and to revise the recommended devolution of funds accordingly.

Inadequacy in Budgetary Practices and Necessary Reform Institution within Judiciary-

Our analysis brings out the inadequacies in the current budgetary practices in ensuring that the needs of the judiciary are appropriately met. Therefore, there is considerable scope for engagement of the Finance Commission in recommending practices and policy reforms which would rectify the current imbalances.

In this context, we have proposed five reforms in the institutional structure of the judiciary that are necessary to make an impact in the long term.

II. Proposed Reforms

The initiatives have been formulated to address the need for nation-wide reform of the budgeting processes for the judiciary; driven by independent and systematic empirical assessment of the needs of the judiciary at all levels. It is crucial that this incorporates the identification and adoption of appropriate modern administrative practices. Motivated by this, we propose the following reform measures to institute permanent change in the way resources are allocated to the judiciary:

1. The creation of Reform and Research Offices at the levels of the Supreme Court and High Courts, which would monitor the performance of the Judiciary, identify areas of improvement, and then devise and implement solutions, staffed by judicial officers and technical experts. One such office, at the High Court level is estimated to cost Rs.2,377 lakhs over a five-year period.

2. The creation of a Secretariat dedicated to judicial appointments, to carry out important tasks such as calculating the number of required judges based on current and anticipated future needs, and then conducting the process of screening and appointing candidates. This is estimated to cost Rs.1,127 lakhs over a five-year period.
3. The implementation of a technology initiative, with teams dedicated to the formulation and implementation of technological solutions to administrative problems, and training judicial staff in the use of technological tools. The cost of a single team is estimated to be Rs.564 lakhs over a five-year period.
4. The appointment of a team to develop appropriate budgeting practices for the Indian judiciary, which will be a one-time investment in developing practices that appropriately address the resource requirements of the judiciary. The cost of this initiative is estimated to be Rs.534 lakhs over a five-year period.
5. The implementation of pilot projects, at District Courts, Taluka-level courts, or individual courts, to test, prove, and refine the proposed reforms.
6. The application of the above reforms to tribunals which are administered by the Union/State governments.

The estimated cost of undertaking the four initiatives at any one location is Rs.46 crores, and the estimated cost of undertaking it in 25 States, the Supreme Court and the High Courts, would total to around Rs.1,200 crores.

Expected Outcomes of the Proposed Reforms - The proposed reforms would have a multiplier effect on improving the performance of the judiciary, both by ensuring appropriate resource allocation and by ensuring that the judiciary's capacity to make use of these resources is continually enhanced through the practices adopted.

Measures regarding the technological initiative and budgeting practices will strengthen current processes and make them more scientific. Measures regarding Reform Offices and the Secretariat for Judicial Appointments have been included by us so as to ensure that resources are available for High Courts that are willing to undertake them.

The proposed Research and Policy Reform Office is a permanent authority responsible for analysing the performance of the judiciary and formulating reforms necessary for improvement. The establishment and operation of this office would entail its own resource requirements, but the resulting improvement in the efficiency of the judiciary resulting from the implementation of proposed reforms would undoubtedly alter the judiciary's resource requirements.

The Secretariat for the appointment of judges has been identified by the judiciary as an urgent need, but the responsibility for adopting it lies with the executive. This is described in the order passed by the Supreme Court of India on the matter *Writ Petition (Civil) No. 13 of 2015 (Supreme Court Advocates-on-Record Association and Another versus Union of India)*, dated 5th November 2015. The order states that the formulation of the Memorandum of Procedure for the appointment of judges (and the inclusion of a provision for a Secretariat for this purpose) is within the executive domain, and it therefore must be issued by the Government of India on recommendation of the Chief Justice of India. Determining and appointing the required strength of judges is severely influenced by the process of resource allocation, as changing the strength of the judiciary entails assessing its performance and its needs and ensuring that it can be adequately supported by the resources at the judiciary's disposal.

Chapter 1

BUDGETING AND EXPENDITURE FOR THE JUDICIARY IN INDIA: TAKING STOCK

1.1 An Overview of the Major Gaps

Huge backlog of Pending Cases

Today, the Judiciary in India is struggling to dispose of a huge number of pending cases. Many eminent persons including successive Chief Justices of India have sounded the alarm on rising pendency at a time when the situation is almost getting out of hand with the backlog touching 3.3 crore cases. While 2.84 crore cases are pending in the subordinate courts, the backlog in the High Courts and Supreme Court (SC) is 43 lakh and 57,987 cases, respectively. Of all the pending cases, 60% are more than two years old, while 40% are more than five years old. In the Supreme Court more than 30% of pending cases are more than five years old.

Five States with the Highest Pendency account for 45% (1.45 Crores out of 3.3 Crores cases) of the Pending Cases

According to the National Judicial Data Grid (NJDG), the five states which account for the highest pendency are Uttar Pradesh (61.58 lakh), Maharashtra (33.22 lakh), West Bengal (17.59 lakh), Bihar (16.58 lakh) and Gujarat (16.45 lakh).

Insufficient number of Judicial Officers/Judges

The backlog of millions of cases at all tiers of the court system in India is testimony to the inadequacy of the legal apparatus in delivering fair and speedy justice. However, it is only a symptom and the remedy must address the root causes. Increasing the number of judges, setting up more courts, and simplifying procedures are recommended by Law Commissions and Conferences of Justice religiously but when it comes to implementation – it is always too little too late. There is a dearth of courts and judges and of even minimum facilities are not available.

27% of the Sanctioned posts of Judges/Judicial Officers are vacant

Judicial System in India is operating at substantially lower number of sanctioned posts of judicial officers. The situation is aggravated by vacant posts across different tiers of judiciary. In High Courts, 36.6% of the posts are vacant while for the Subordinate Courts, the proportion of vacancy is 26.4%.

Table 1: Vacant Positions of Judges/Judicial Officers at Various tiers (2018)

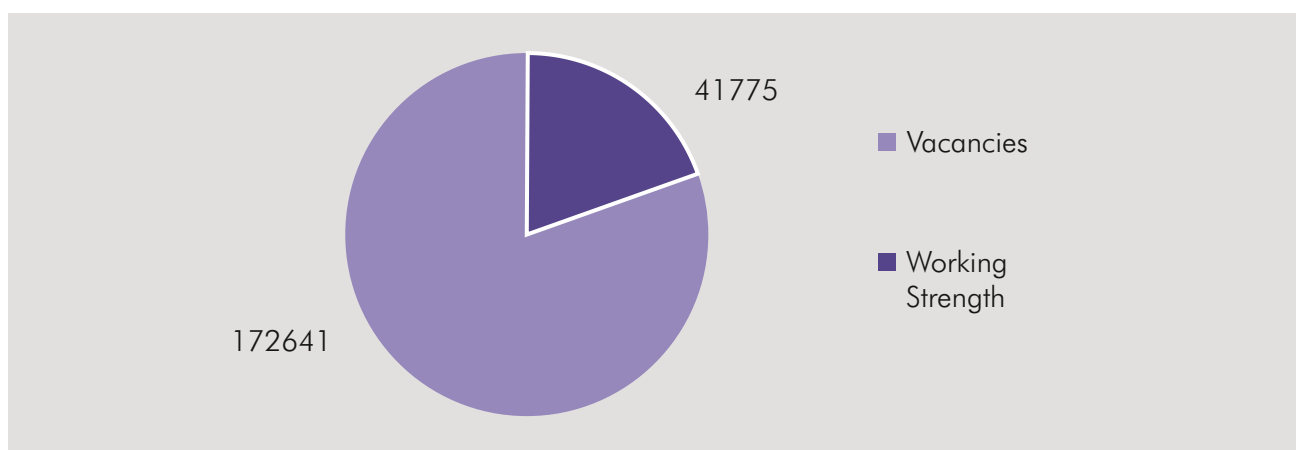
	Sanctioned	in Position	Vacancy	Vacancy (%)
Subordinate Judiciary	22,677	16,693	5,984	26.4
High Courts	1,079	684	395	36.6
Supreme Court	31	25	6	19.4
Total	23,787	17,402	6,385	26.8

Source: Parliamentary Questions, 244 Winter Session of Rajya Sabha (15th December to 05th January, 2018) Department of Justice; GoI, 2018.

20 % of the sanctioned posts of Non-Judicial Staff in the Courts system in India are lying vacant

Furthermore, there is a massive shortage of non-judicial staff in the Indian courts system, leading to delay in justice delivery and mounting pendency of cases. As against the total sanctioned strength of staff employees and officials (not judges) in courts, 1,72,641 staff members were available at the end of the year 2016. The shortfall in manpower is 41,775 (one-fifth of the total) which is depicted in Chart 1 below. These deficits are against the sanctioned positions and not in reference to the required manpower.

Chart 1: Staff Position in Subordinate Courts (2016)



Source: A Report on Access to Justice, 2016 by the Centre for Research and Planning, Supreme Court of India (henceforth "Report on Subordinate Courts of India").

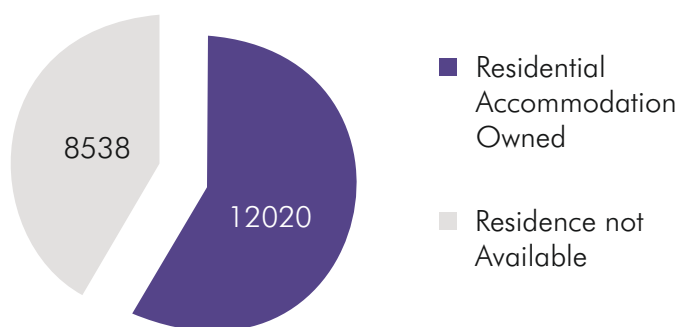
Shortage of Courtrooms in subordinate judiciary

As per the Report on Subordinate Courts of India, the problem of scarcity of human resource in the judiciary is coupled with the lack of basic facilities for judicial officers. As against the total sanctioned strength of 20,558 judicial officers, only 15,540 court rooms were available in 2016, resulting in a staggering shortfall to the tune of 24.41% of infrastructure.

Shortage of Residence for Judicial Officers

There is also a glaring shortage of publicly owned residential accommodation for judicial officers. As against the total sanctioned strength of 20,558 judicial officers' residence for 12,020 were available in 2016, constituting a shortfall of residences for 8,538 (41.5%) judicial officers as shown in Chart 2 below.

Chart 2: Infrastructure Gaps- Accommodation for Judicial Officers (2016)



Source: A Report on Access to Justice, 2016 by the Centre for Research and Planning, Supreme Court of India (henceforth "Report on Subordinate Courts of India")

1.2 Broad Trends in Union and State Government's Expenditure on the Judiciary

Judiciary in India is facing the glaring shortage of judicial resources (human resource, physical and technological) required to take care of increasing institution of cases and ever-escalating number of cases that are pending. Provisioning of these judicial resources require continuous increase in budget at both the Centre and States level. The following section examines the trends and patterns of expenditure by Centre and States using multiple indicators. We have analysed the States as per their per capita expenditure towards the judiciary, expenditure per pending case and expenditure per court. The priority accorded to the judiciary in State Budgets has been captured by the percentage of allocations towards judiciary in the total budgetary expenditure of each State.

The FFC had suggested that States spare additional resources (Rs.9,000 crores for all States taken together) from the additional resources allocated by the commission for judiciary. To assess whether the increased fiscal space is reflected in allocations towards the judiciary, we have compared the growth in allocation towards judiciary in 2018-19 Budget Estimate (BE) over 2016-17. The relative adequacy of expenditure on the judiciary by States has been captured by juxtaposing expenditure on the judiciary against population of the States and the pendency of cases in High Courts and Subordinate Courts.

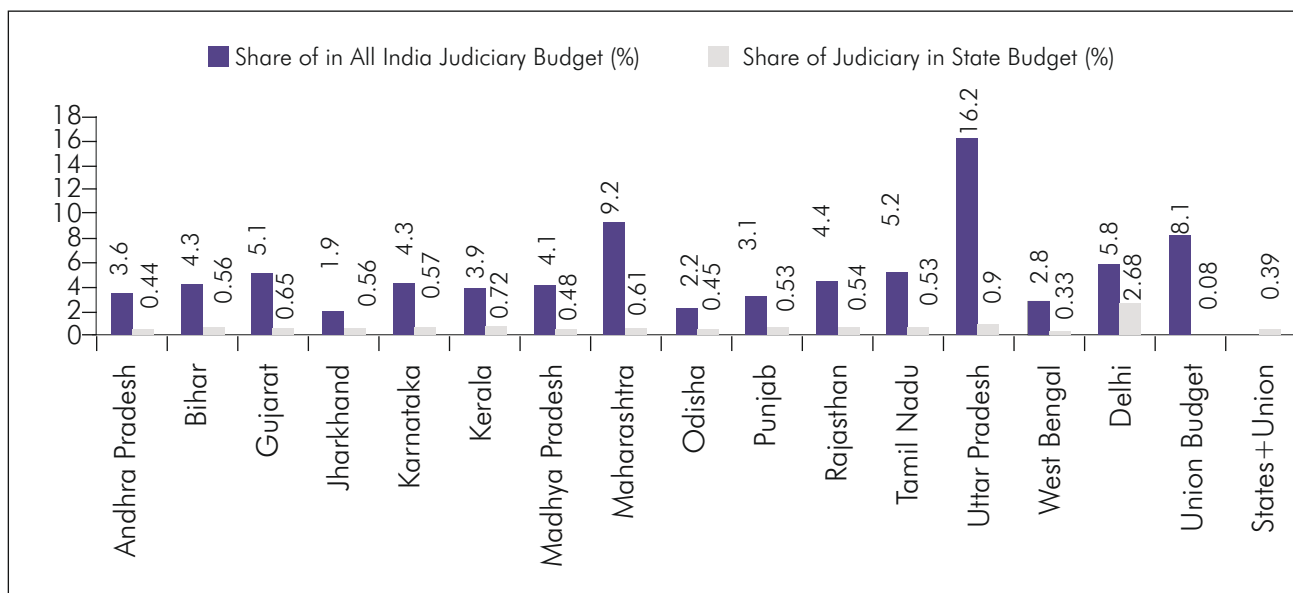
Expenditure on judiciary, by Union and State Governments taken together, has increased by 53% between 2016-17 and 2018-19. However, the major chunk (92%) of judiciary financing is carried out by State Governments. The share of the Union Government (8 %) is even less than the spending by States like Uttar Pradesh (16.2%) and Maharashtra (9.2%) in all India budget for judiciary.

The share of expenditure on the judiciary in government budget as a reflection of the priority accorded to the judiciary, paints an equally dismal picture. The share of Union Government's spending towards the judiciary as proportion of its total budgetary spending is 0.08% while all States' spending towards the judiciary constitutes 0.61% of all States' total spending. Total public spending on the judiciary is less than 0.4% of the gross budgetary expenditure of Centre and States taken together.

1.3 Inter-State Disparity in Public Expenditure on Judiciary

Analysis of the data pertaining to the States Governments' expenditure on justice delivery reveals significant variation in the budget expenditure that is earmarked for use by the judiciary. For instance, there is a marked disparity in the proportion of States' overall budgets that is allocated towards justice delivery. This ranges from as high as 2.69% for Delhi and 0.90% for Uttar Pradesh, to as low as 0.33% for West Bengal and 0.44% for Jammu and Kashmir. The detailed shares of major States are presented in Chart 3 below.

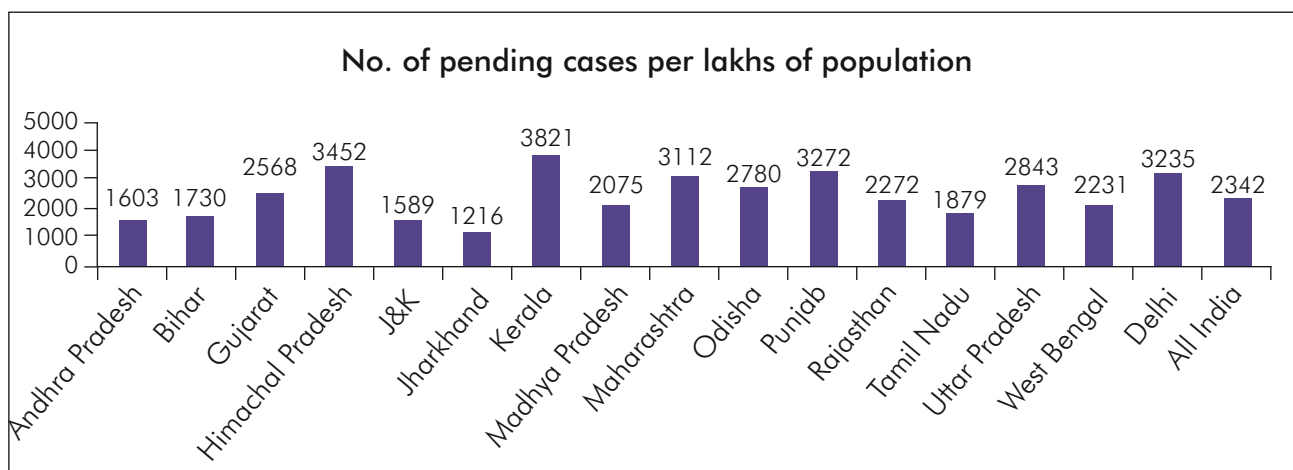
Chart 3: Share of States in Total Expenditure on Judiciary by All States and Union Government (% of Country's spending on Judiciary); Share of Budget devoted to Judiciary in Different States (% of Budget)



Source: Detailed Demand for Grants of Departments of Law of Various States, Budget at a Glance; Various State Budgets; Various Years; Union Budget Various Years

The burden of pending cases varies widely across States, which can be put into context by seeing this in relation to the population. As per figures from NJDG database accessed in July 2018, against an all-India average of 2,342 pending cases per lakh of population, there are states with as many as 3,821 pending cases per lakh of population e.g. Kerala, to as low as 1,216 in the case of Jharkhand. This is likely to affect the rates of disposal in these States, and the ensuing excess of institution of cases against cases disposed of in any given time interval. Further, States may require different levels of judicial expenditure in order to ensure similar rates of disposal and therefore equitable access to justice.

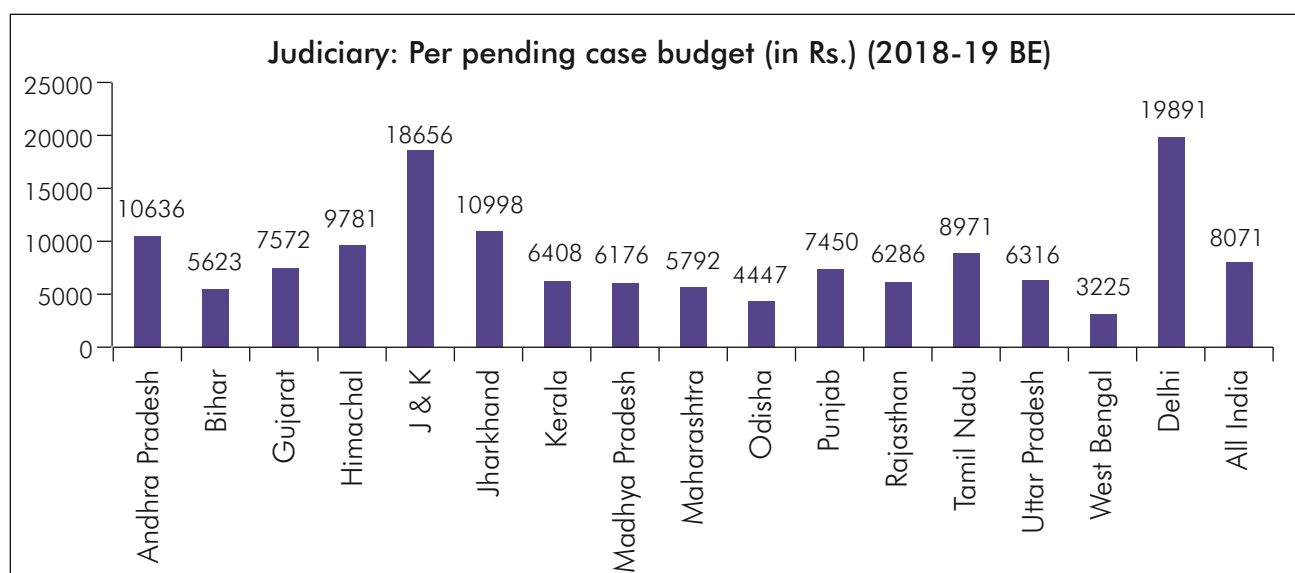
Chart 4: State-wise Pending Cases per lakhs of population in 2018



Source: Population Projections for India; Registrar General of India (2006); National Judicial Data Grid, SCI, July, 2018.

The variation between States' prioritisation of the judiciary and the way it can affect the performance of the judiciary become more apparent when framed against the burden on their courts. There is considerable disparity across States with regard to the budget of the judiciary per pending case. The average budget per pending case across all States is Rs. 8,071 per case. Values range from as high as Rs.19,891 for Delhi and Rs.18,656 for Jammu and Kashmir, to as low as Rs.3,225 for West Bengal and Rs.4,447 for Odisha. It is important to note that the relative priority given to funding of the judiciary, as a proportion of a State's budget, does not necessarily reflect the adequacy of the resources available to the judiciary in that State. Uttar Pradesh, for example, is among the States contributing a higher proportion of its budget towards the judiciary (0.90%); however, given the sheer volume of pending cases, it occupies one of the lower values when seen in terms of average budget per pending case (Rs.6,316). Chart 5 below presents figures of per pending case budgetary spending by major States in 2018-19 (BE).

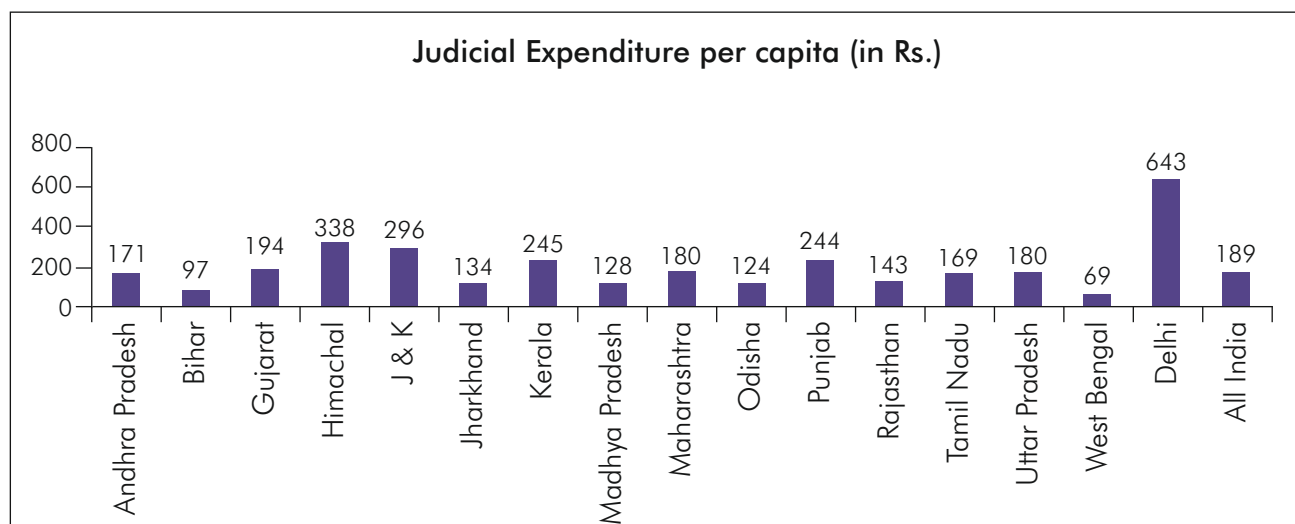
Chart 5: Budget Expenditure per Pending Case (in Rs.) in States



Source: Detailed Demand for Grants of Departments of Law of Various States, Budget at a Glance; Various State Budgets; Various Years; Union Budget Various Years; National Judicial Data Grid, SCI, July, 2018.

An alternative way of comparing State Governments' judicial budgets is the judicial expenditure per capita. The national average for per capita judicial budget in the year 2018-19 is Rs.189, including contributions of both the Union Government and the State Governments. There is considerable disparity along this measure as well, with values ranging from as high as Rs.643 for Delhi and Rs.338 for Himachal Pradesh, to as low as Rs.69 for West Bengal and Rs.97 for Bihar as shown in Chart 6 below. When these facts are considered with sensitivity to the need for equitable access to justice, it is apparent that inefficient and inconsistent budgeting procedures employed by the judiciary across different States contribute to unequal access to justice and therefore affect the rule of law and rights of litigants.

Chart 6: Judicial Expenditure per capita for selected States, 2018



Source: Detailed Demand for Grants of Departments of Law of Various States, Budget at a Glance; Various State Budgets; Various Years; Union Budget Various Years; Population Projections for India; Registrar General of India (2006)

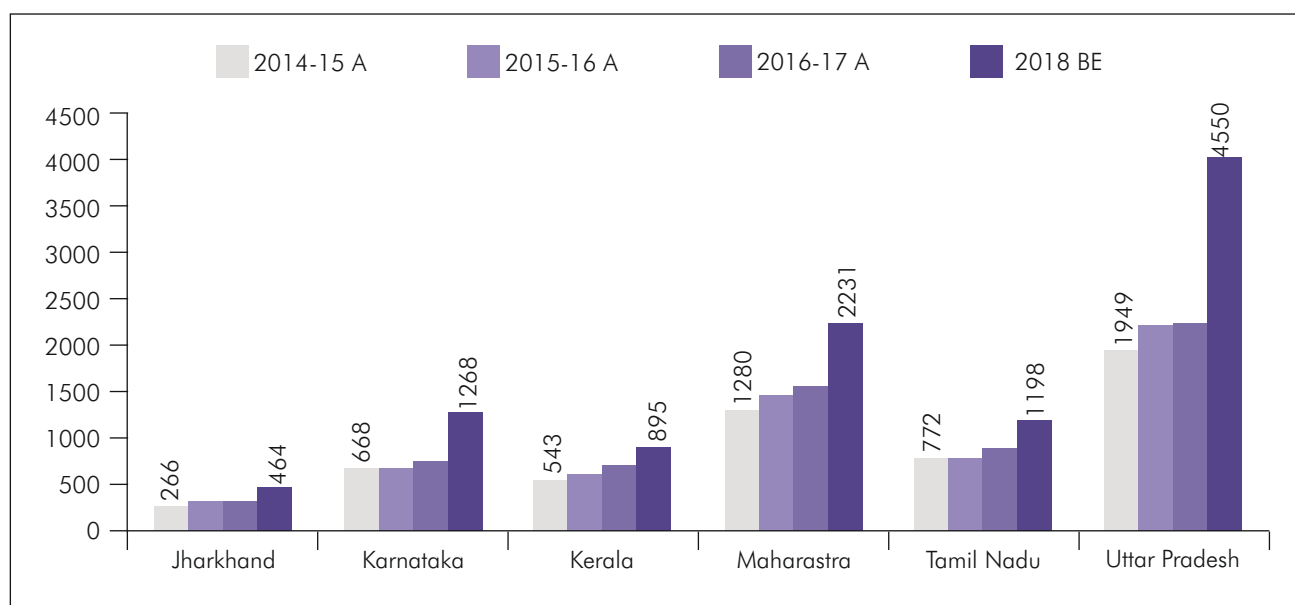
Chapter 2

PUBLIC EXPENDITURE AND THE PERFORMANCE OF JUDICIARY: A COMPARATIVE ANALYSIS OF SIX STATES

2.1 Trends and Patterns in Expenditure on Judiciary across States

Analysis of the data from Uttar Pradesh, Maharashtra, Jharkhand, Karnataka, Kerala, and Tamil Nadu reveals additional patterns of inter-State disparity of expenditure on the Judiciary. While expenditure on the Judiciary has increased considerably for these six States over the last three years, there is variation between them in terms of both absolute figures as well as the proportion by which this allocation has increased. The budget increased by approximately 50% for Jharkhand, Kerala, Maharashtra, and Tamil Nadu, but almost doubled for Karnataka and Uttar Pradesh between 2015-16 and 2018-19, as presented in Chart 7 below.

Chart 7: State-wise Trends in Total Budget of Judiciary during Fourteenth FC period



Source: Detailed Demand for Grants of Departments of Law of Various States, Budget at a Glance; Various State Budgets; Various Years

As may be noted from the table given below, States have increased their expenditure considerably; Uttar Pradesh and Karnataka have registered an increase in judicial expenditure of 81% and 73% respectively. Jharkhand, Maharashtra, Tamil Nadu and Kerala register lower but still notable increases of 50%, 44%, 35% and 27% respectively. It may be noted that Uttar Pradesh and Kerala are among the States which allocate relatively larger shares of their budget (0.90% and 0.72% respectively) towards the Judiciary, while for Jharkhand, Karnataka, Tamil Nadu and Maharashtra the figures are in a range of 0.50%-0.60%. These six States provision almost 41% of the all-India aggregate budget for judiciary, with Uttar Pradesh and Maharashtra being the largest contributors.

2.2 Varying Priorities in the Judiciary Budget across States

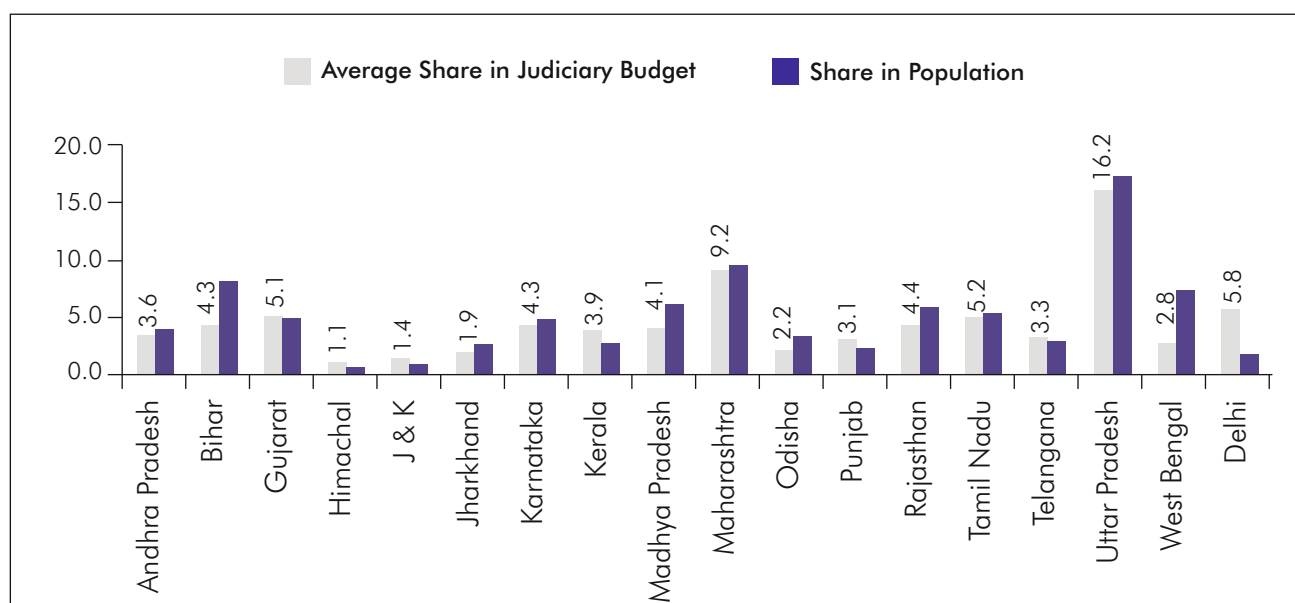
Table 2: State-wise growth in Judiciary budget and their share in State Budget

State	% Growth in 2018-19 BE over 2016-17 A, towards Judiciary	Average share of State in All India expenditure on Judiciary during last 3 years	% of State Budget spent on Judiciary, 2016-17 A	% of State Budget spent on Judiciary, 2018-19 BE	% of State Budget spent on Judiciary, 2016-17 to 2018-19 (average)
Jharkhand	50	1.9	0.52	0.58	0.56
Karnataka	73	4.3	0.49	0.66	0.57
Kerala	27	3.9	0.69	0.7	0.72
Maharashtra	44	9.2	0.6	0.61	0.61
Tamil Nadu	35	5.2	0.45	0.54	0.53
Uttar Pradesh	81	16.2	0.67	0.95	0.9

Source: Detailed Demand for Grants of Departments of Law of Various States, Budget at a Glance; Various State Budgets; Various Years; Union Budget Various Years; FRBM Statements (for GSDP and Total Budget).

Absolute expenditure figures, and the proportion of a State's budget that are assigned to judiciary vary significantly between States of similar population size. Taking the examples of Jharkhand and Kerala, both have similar population sizes, but Jharkhand spent 0.58% of its budget on the Judiciary in 2018-19, as compared to 0.70% spent by Kerala and Kerala's judicial budget is nearly double that of Jharkhand.

Chart 8: Share of States in All India Judiciary Budget and Population



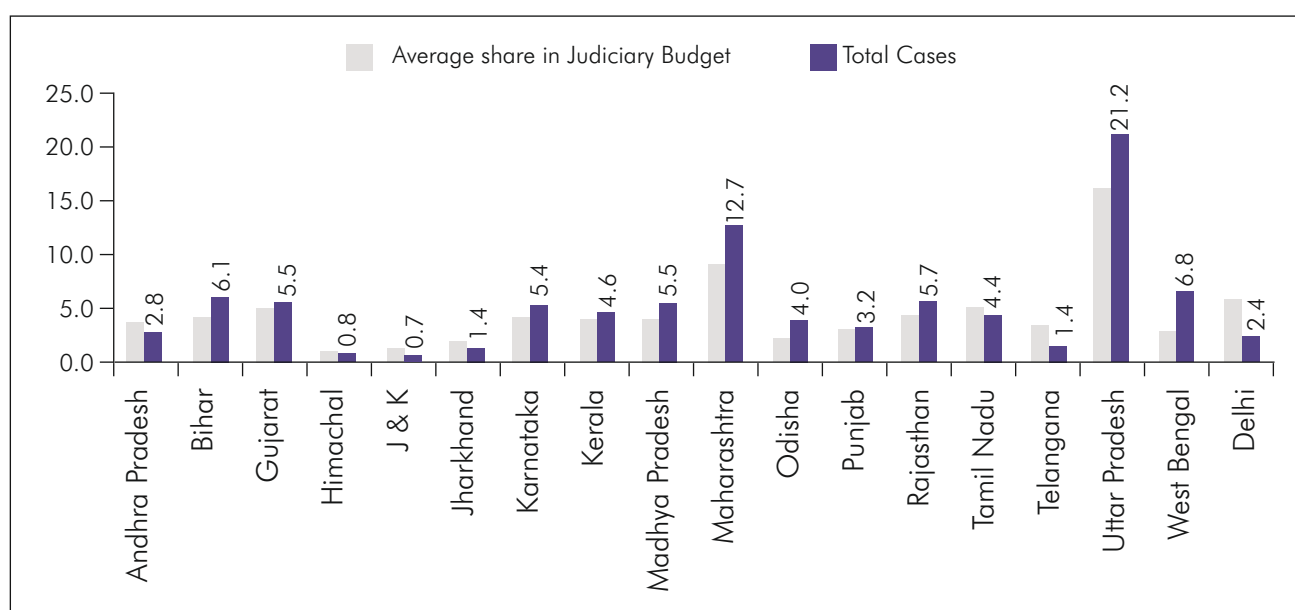
Source: Detailed Demand for Grants of Departments of Law of Various States, Budget at a Glance; Various State Budgets; Various Years; Population Projections for India; Registrar General of India (2006)

The data reveal a disproportionality between States' shares of the total population and their shares of the total Judiciary Budget. For some States, their proportion of the total population is greater than the proportion of their contribution to all-India expenditure on the judiciary, for example Bihar and Uttar Pradesh, as shown in Chart 8 above. Others actually have a greater share in the total expenditure on the Judiciary than in the total population, for example Himachal Pradesh and Kerala. There is also disproportionality between the contribution of Uttar Pradesh and Maharashtra to total expenditure towards justice delivery, and their share of total pending cases.

2.3 Resource Share vs. Problem Share: How Do the States Fare?

Disproportionality between shares in Cases and States' share in All India Budget for the Judiciary - As is shown in Chart 9 below, there is variation in the degree of proportionality between States' shares in the total Judiciary Budget and their shares in the total number of pending cases overall. Uttar Pradesh, for example, is the location 21.2% of all cases, but only contributes to 16.2% of the total expenditure on the Judiciary.

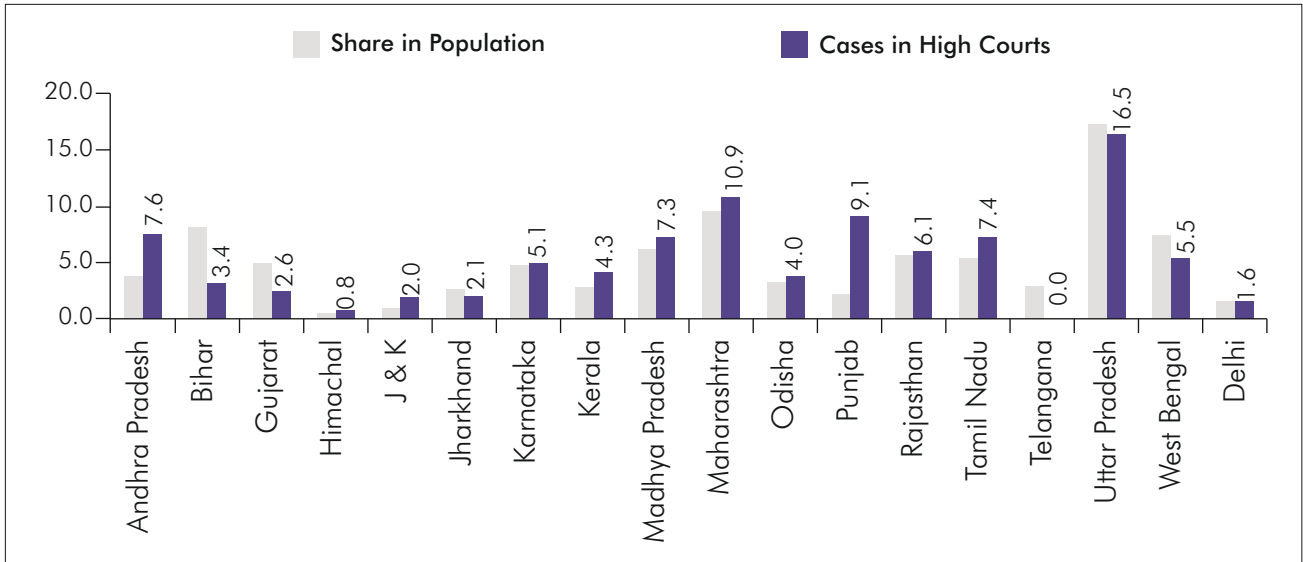
Chart 9: Share of States in Cases Pending at All India level and Judiciary Budget (in %)



Source: Detailed Demand for Grants of Departments of Law of Various States, Budget at a Glance; Various State Budgets; Various Years; NJDG July 2018 for number of cases pending.

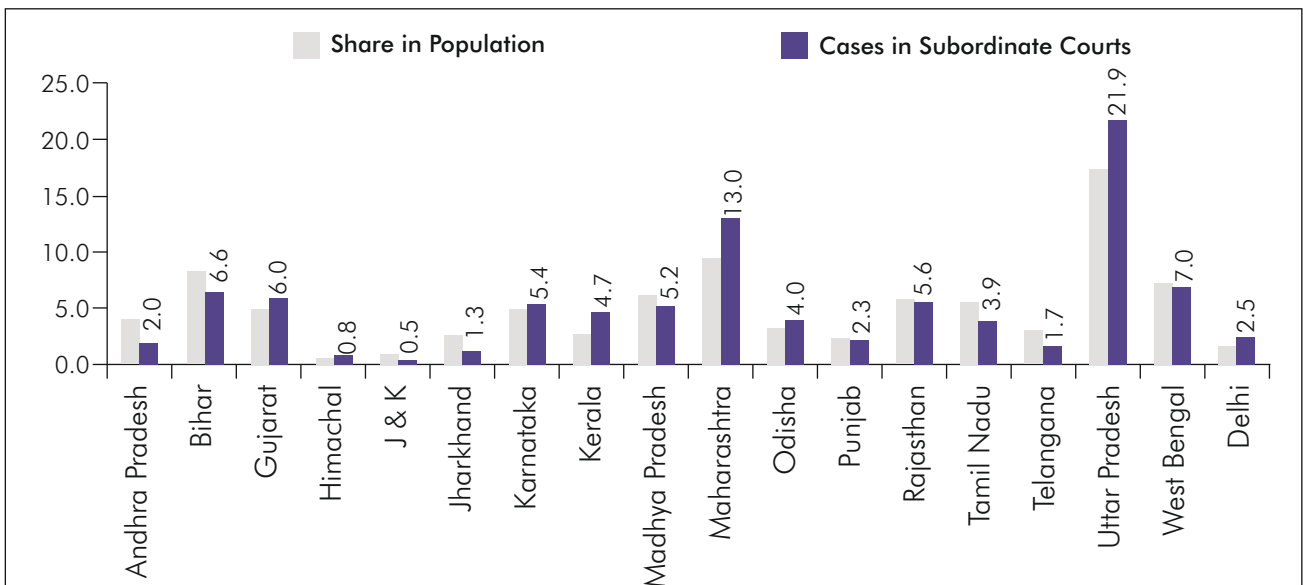
Shares of States in cases pending in High Courts and Subordinate Court, and in the total Population- There is disproportionality between the States' shares in the total number of pending cases in High Courts and Subordinate Courts, and the proportion of the total population that they constitute. This is shown in Chart 10 and Chart 11 below. It is apparent from these charts that Uttar Pradesh has a disproportionately low number of cases in the High Court, and excessive number of cases in Subordinate Courts (50% of the six States under discussion).

Chart 10: Share of each State in the total number of cases pending in High Courts, compared to the proportion of the All- India population in each State



Source: Population Projections for India; Registrar General of India (2006); NJDG July 2018 for number of cases pending.

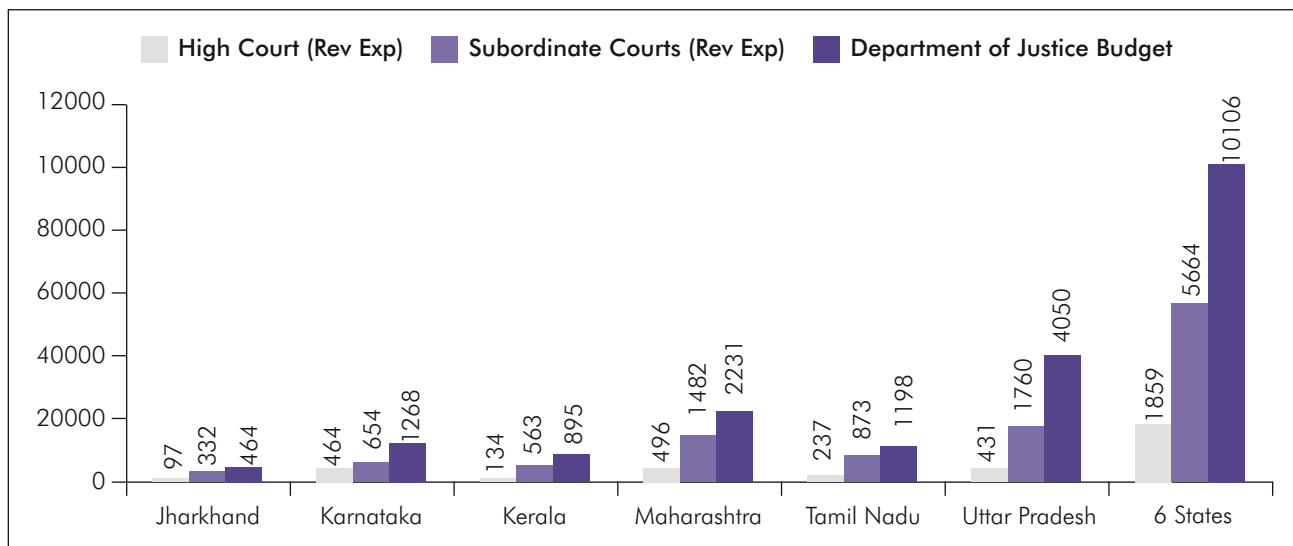
Chart 11: Share of States in Pending Cases in Subordinate Courts vis-à-vis their share in all India Population



Source: Population Projections for India; Registrar General of India (2006); NJDG July 2018 for number of cases pending.

Relative Shares of High Courts & Subordinate Courts in Budgets- These six states spent, as a percentage of their total expenditure on the judiciary, 56% on Subordinate Courts and 18% on High Courts as a percentage of their total expenditure on the Judiciary, with the rest of the budget being allocated to administrative needs and capital expenditure, grants-in-aid, the purchase of equipment, among other needs, for the year 2018-2019 as is given in the Chart 12 below. Note the overall higher budgets of Maharashtra and Uttar Pradesh, and the varying proportions of the States' total budget for the judiciary that is allocated towards the courts themselves, the rest being for other needs.

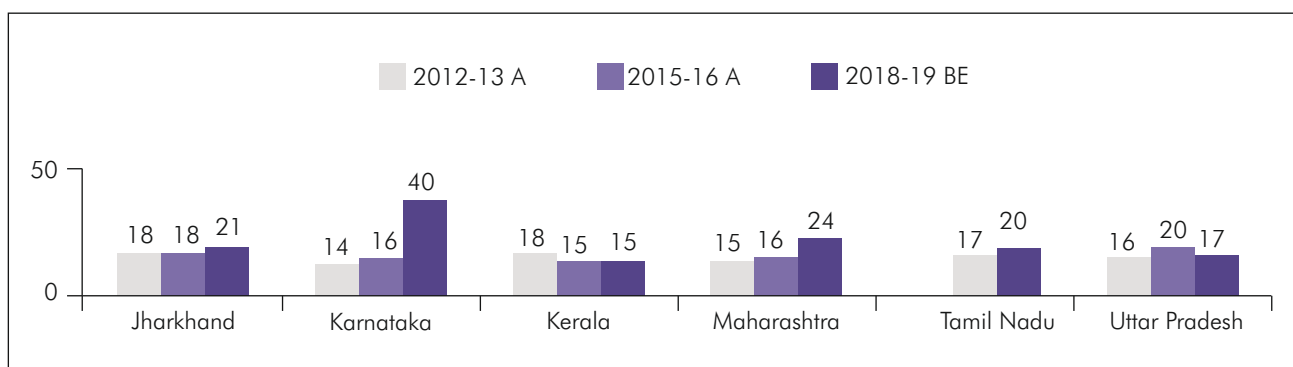
Chart 12: Components of Judiciary Expenditure (in Rs. crores)



Source: Detailed Demand for Grants of Departments of Law of Various States, Various State Budgets; Various Years.

For most of the States under study, the proportion of judiciary budget spent on the High Court ranges from 14% to 21%, Karnataka spends a considerably higher share of its judiciary budget on the High Court as compared to other states, in 2018-2019. This is shown in Chart 13 below.

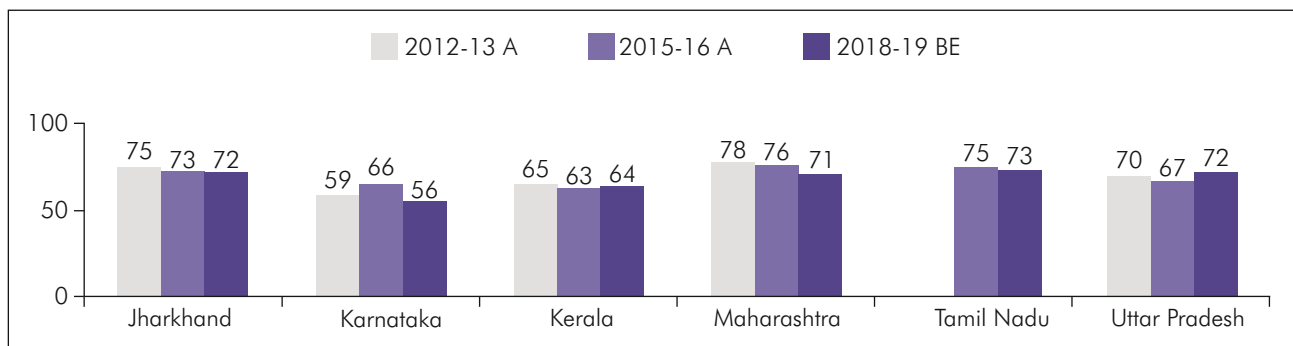
Chart 13: Share of High Courts in Judiciary Spending (in %)



Source: Detailed Demand for Grants of Departments of Law of Various States, Various State Budgets; Various Years.

Subordinate Courts receive a share of 56% to 78% of the judiciary budget allocated in each State. Maharashtra and Jharkhand allocated higher proportion of their judiciary budget to Subordinate Courts, while the figures for Kerala and Karnataka are on the lower side, as depicted in the chart 14 below.

Chart 14: Share of Subordinate Courts in Spending on Judiciary (in %)

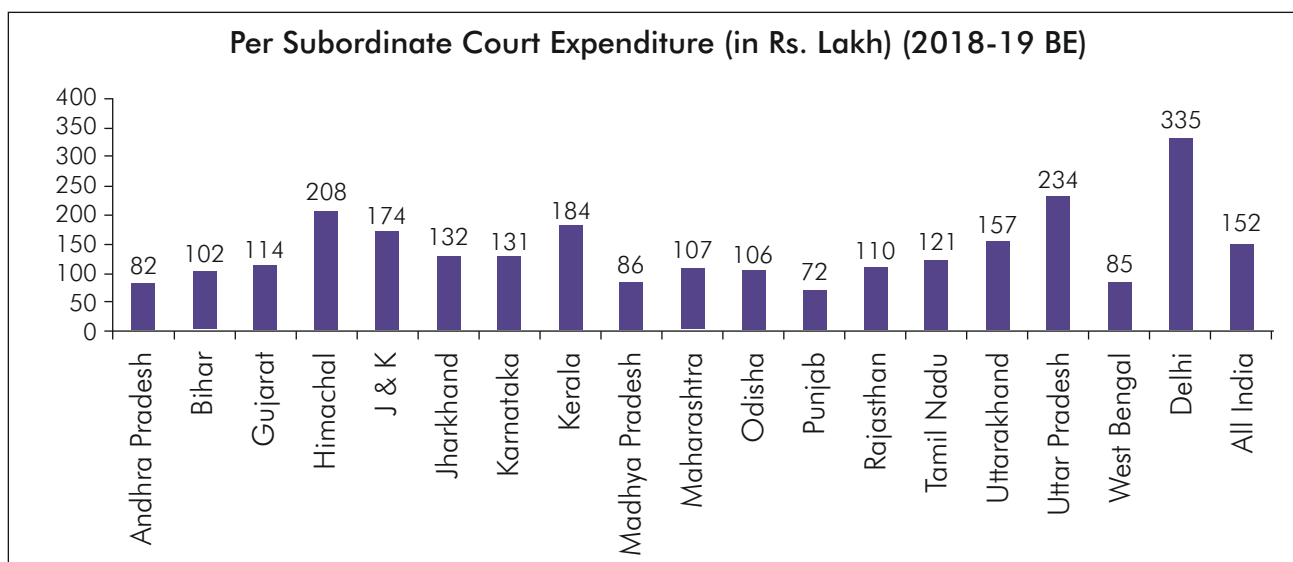


Source: Detailed Demand for Grants of Departments of Law of Various States, Various State Budgets; Various Years.

2.4 High Courts vs. Subordinate Courts: Burden of Pendency of Cases, Priorities in Budgets and Underutilisation of Budgetary Allocations

Average Expenditure per Court Establishment - There is also significant variation between States with regard to the average expenditure per Subordinate Court (budget for the Subordinate Courts divided by the number of court establishments), ranging from as high as Rs.335 lakhs for Delhi, to as low as Rs.72 lakhs for Punjab, with a national average of Rs.152 lakhs per Subordinate Court Establishment. This is shown in Chart 15 below.

Chart 15: Per Subordinate Expenditure (in Rs. lakh)

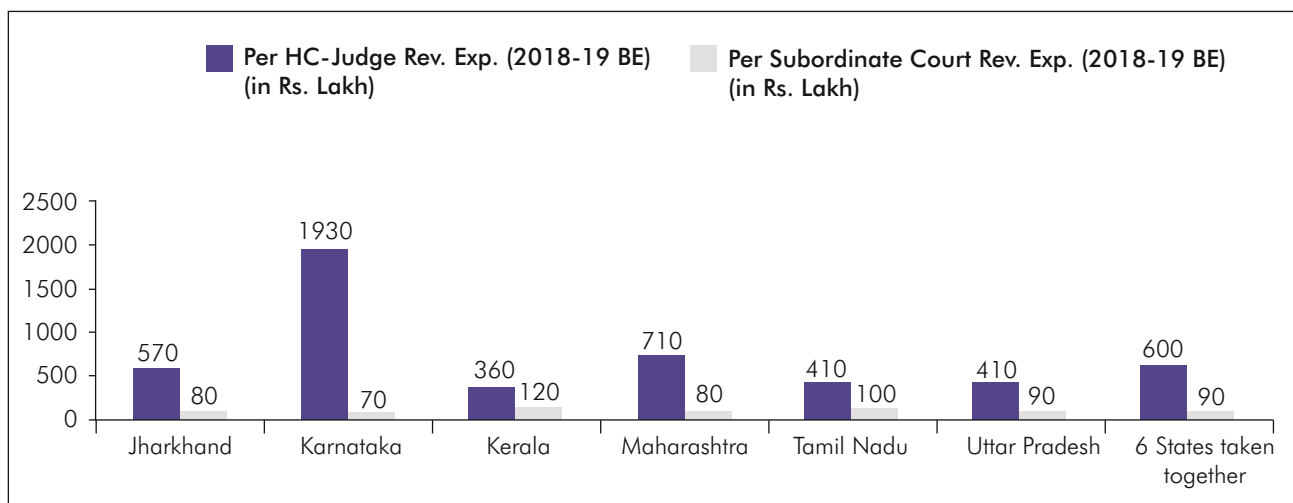


Source: Detailed Demand for Grants of Departments of Law of Various States, Various State Budgets; Various Years; Parliament Questions; Budget Session - 16 Lok Sabha, Session XIV (29.01.2018 to 06.04.2018); Department of Justice

Average Expenditure per Judge (Rs.)- The average expenditure per judge is much higher for High Courts than for Subordinate Courts; in case of these six States, expenditure per High Court judge is 6.7 times more compared to Subordinate Court judges, although there is considerable variation. However, the burden on judges, as measured by average number of cases per judge, is 3 times higher for Subordinate Court judges than for High Court judges, as an average for these six States, although Karnataka and Jharkhand have more extreme ratios. In the case of Karnataka this is because a large

number of judges' posts are vacant. This implies that High Courts have a higher workload per judge, but also have more resources in relation to judge strength. Remuneration (salary and allowances) of the Judges is reflected in the revenue expenditure of the department budget and it is pertinent to look into per judge revenue expenditure for High Courts and Subordinate Courts across States. The gaps in revenue expenditure between High Courts and Subordinate Courts and the relative case burden on High Courts and Subordinate Courts are shown in Chart 16 and Chart 17 below.

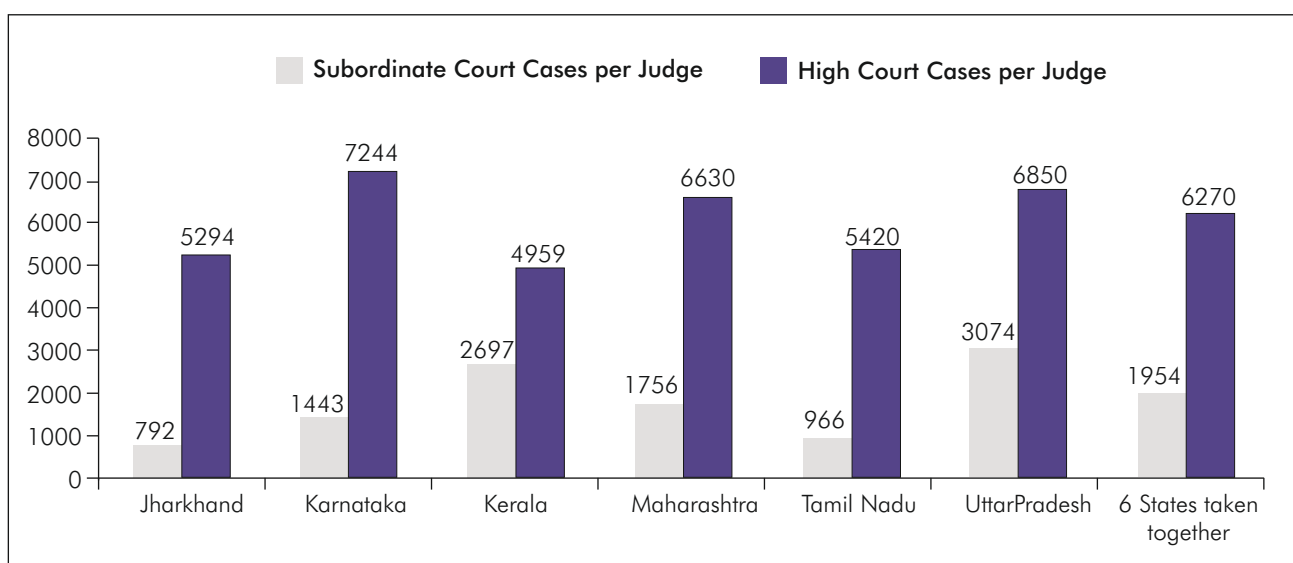
Chart 16: Comparison of Revenue Expenditure per judge, between High Courts and Subordinate Courts



Source: Detailed Demand for Grants of Department of Law, Justice of States, Various State Budgets; Various Years; Parliament Questions; Budget Session - 16 Lok Sabha, Session XIV (29.01.2018 to 06.04.2018); Department of Justice; Gol.

Case Burden per Judge

Chart 17: Comparison of case burden per judge, between High Courts and Subordinate Courts

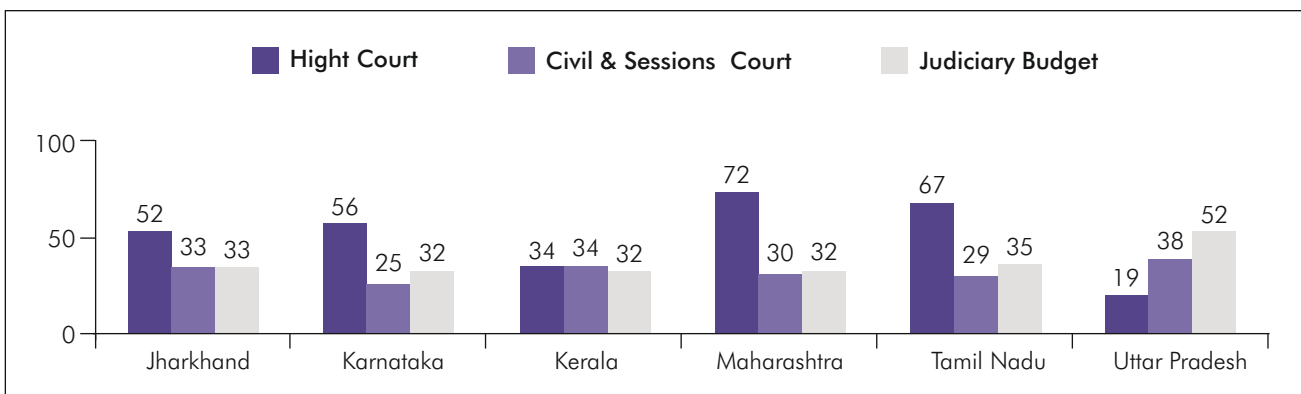


Source: Detailed Demand for Grants of Departments of Law of Various States, Various State Budgets; Various Years; Parliament Questions; Budget Session - 16 Lok Sabha, Session XIV (29.01.2018 to 06.04.2018); Department of Justice.

Growth in Budget: High Courts vs. Subordinate Courts

We observe markedly different patterns of growth in expenditure, with considerable variation across States. Jharkhand, Karnataka, Tamil Nadu and Maharashtra experienced increases in expenditure ranging from 52% to 72% for High Courts, and increases ranging from 32% to 35% for Subordinate Courts over these years. Kerala has increased spending on both levels of courts by 34%. Uttar Pradesh has increased spending on High Courts by 19 % and for Subordinate Courts by 38%, commensurate with the increase in overall government budgets. The case of Karnataka requires special mention for it has increased expenditure on High Courts by Rs.572 crores in 2018-19 and this sums the charged expenditure on judiciary through State Budget.

Chart 18: Growth rates of the components of the Judiciary Budget, for six States



Source: Detailed Demand for Grants of Departments of Law of Various States, Various State Budgets; Various Years.

2.5 Relevance of Finance Commission for Course Correction in Financing of Judiciary in India

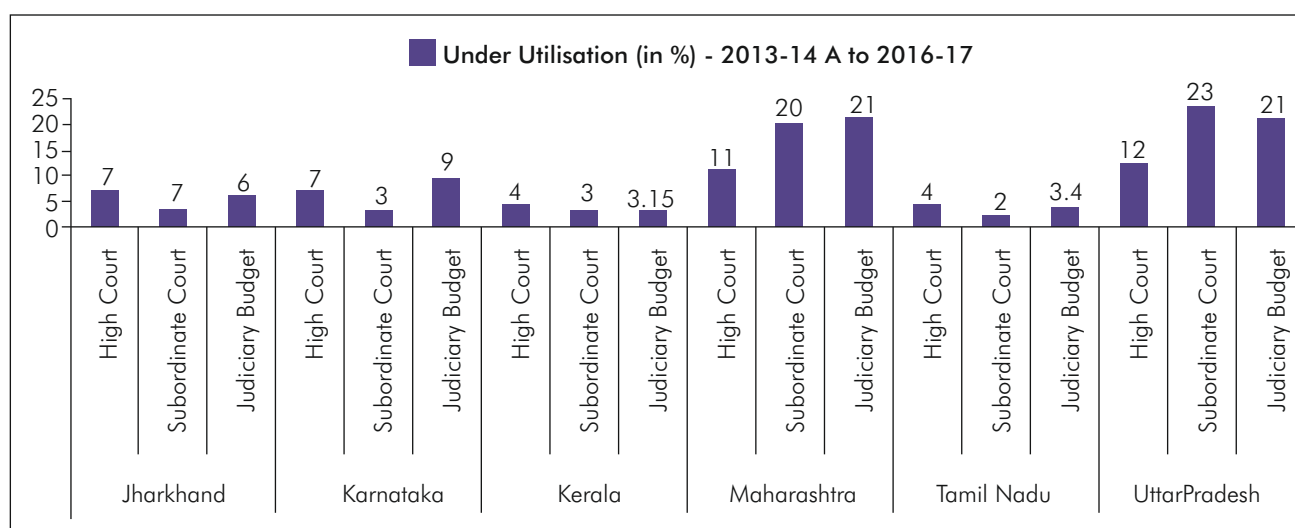
Our analysis of the funding of the judiciary reveals that the proportions of budgetary allocations for the judiciary by the Union and the States vary across time, as do their shares in the total contributions of funds to the judiciary. There are two dimensions of inequality in budgeting for the judiciary; the horizontal imbalance between States, and the vertical inequality that exists between the States and the Union Government, especially given the dependence of the Union Government on the Subordinate judiciary to apply Union legislations.

We therefore identify the 15th FC as being the appropriate authority to redress this imbalance, given its mandate of reviewing and recommending the appropriate horizontal and vertical distribution of net proceeds of taxes between the Union and the States, based on an assessment of their requirements. The Finance Commission is well-positioned to do so given that it is required to address the long-term resource requirements of the Union and States, and to revise the recommended devolution of funds accordingly.

Our analysis has shown the inadequacies in current budgetary practices in ensuring that the needs of the judiciary are appropriately met. An example in this regard is the underutilisation of the funds provided through the Thirteenth Finance Commission Grants (out of Rs.5,000 crores of allocation for the justice sector, Gol released Rs.2,068 crores out of which Rs.1,010 crores were spent). Therefore, there is considerable scope for engagement of the Finance Commission in recommending practices and policy reforms which would rectify the current imbalances. Indeed, there is a vicious cycle operating here so that

a small number of working judges are pre-occupied with disposing of cases pending before them and hence are unable to focus their attention on infrastructural deficits of the court system. The lack of judicial officers results in lack of proper planning for utilising available funds. This leads to delays in submitting Utilisation Certificates (UCs) which, in turn, results in withholding/confiscation of successive instalments of already budgeted funds. All these results in under-utilisation of funds, creating an erroneous impression within the bureaucracy that funds for the Judiciary are in excess. Hence, it is not productive to keep creating infrastructure when there aren't enough judges to use that infrastructure.

Chart 19: Under-utilisation of budgeted resources and its components for different States (in %)



Source: Detailed Demand for Grants of Departments of Law of Various States, Various State Budgets; Various Years

Vacancies in the judiciary adversely affect the rate of disposal of cases, since the workload of sitting judges increases correspondingly. Understaffing of administrative and clerical staff also leads to a backlog, which reflects the overall performance of the judiciary.

Budgets allocated for the judiciary have simply taken care of establishment costs, which essentially mean that funds cover salary, allowances, and minimum operational costs of the judiciary, and do not provide for capacity building. In effect, budgets have merely reinforced the status quo. Central schemes are the favoured route for capacity addition. Our study of six States suggest that about 90% of the total budget are absorbed in establishment and operational costs of the judiciary, leaving 10% of the budget for infrastructure development and systemic changes in the judiciary. This itself suggests that budget for the judiciary is grossly inadequate to provide infrastructure as well as human resource for eliminating the pendency of cases from the court system.

The process of budget preparation for judiciary is marred with inaccuracy in need assessment. This is primarily due to the lack of an established procedure for coordination between the judiciary and the executive, in relation to matters of resource allocation. The budgeting practices for different phases of E-Courts projects, flagship programme for infrastructure and digitalisation of courts reflects the problems

in budgeting exercise. The budget for E-Courts has been repeatedly and drastically revised, indicating imprecision in budgeting techniques. In 2007, the first phase of the E-Courts project was approved with a budget of Rs.442 crores, which was more than doubled and revised to Rs.935 crores in 2010. However, on the ground, it suffered from progressive under-spending. Subsequently, the budget for the second phase, estimated at Rs.1,670 crores was approved with a significant delay (Durrani et al.; <http://dakshindia.org>).

Besides the appointment of judges and the provisioning of requisite infrastructure, need based budgeting for courts and performance monitoring through dedicated wings may go a long way in improving the performance of the judiciary and reduction of pending cases. Annual budget proposal should be based on holistic information, including the number of expected incoming cases for a year by subject matter, the available personnel and material resources, other court performance information, including length of proceedings, number of pending cases, expected number of judicial decisions, etc. and an estimated budget that is necessary to realise these expected outputs. At the end of a budget year the management of the courts should prepare an annual report, outlining the utilised budget and court performance. (Durrani et al.; <http://dakshindia.org>)

Despite a recent surge in States' budgets for the Judiciary in the background of increased fiscal space available to States due to the Fourteenth Finance Commission Awards, we are unaware of the establishment of a budgetary need assessment wing or performance appraisal team in any of our study States. Without focusing on these key aspects of budgeting and performance, general increases in establishment expenditure of courts may not result in desired outcomes. Without prior planning and time frame of spending, allocated funds may remain un-utilised as has been the case with the Thirteenth Finance Commission allocations.

The Thirteenth Finance Commission had made a special grant of Rs.5,000 crores for the judiciary. However, with only 20% of it being spent, the grants were grossly under-utilised. This shows that mere lump-sum transfers to judiciary may not result in actual expenditure if there are other shortages (infrastructural, institutional and human resource related) afflicting the judiciary. This also demonstrates that an institution such as the Finance Commission must make grants that will support long term structural changes that will improve functioning of the judiciary. The lack of any special grants by the Fourteenth Finance Commission resulted in some states increasing their outlays, mostly for regular judicial operations.

In this context, we have proposed five reforms to the institutional structure of the judiciary that are necessary to make an impact in the long term. The primary goal of the measures suggested is to substantially improve the means by which the judiciary allocates resources. These reforms will help the judiciary build institutional capacity to assess its own needs and determine resources it requires, as well as the quantum. Each initiative will benefit from the appointment of experts from every field relevant to it. These include judicial officers as well as experts in the fields of budgeting, organisation, and information technology, among others.

Furthermore, these reforms not only address the primary concerns of inconsistent and sub-optimal budgeting for the judiciary in relation to the existing case burden, but also address other concerns pertaining to resource allocation. A key example of this is the task of calculating the appropriate strength of judges and non-judicial staff required. This task is currently performed by the registry staff who are

already overburdened with other responsibilities. In addition, the judiciary lack personnel appointed specifically for this purpose, and processes developed to make it more scientific.

As noted earlier, the reforms additionally enhance the efficiency with which the judiciary is able to use these resources. This is crucial because an increase in allocation towards it without increasing the capacity of the judiciary to adequately utilise these resources could have adverse consequences. By increasing the efficiency of the administrative component of the judiciary, it ensures that more of the available resources can be directed towards justice delivery rather than administrative tasks.

These will also result in a drastic improvement in the efficiency of the judiciary with regard to justice delivery, reducing backlog and therefore ensuring widespread and equitable access to justice. These reforms will improve efficiency of utilisation of resources, reducing the financial burden on the State and Union Governments in the medium to long term. Therefore, we recommend that the Fifteenth Finance Commission makes adequate grants to the judiciary so as to strengthen it, which would ultimately help rectify the disparities and injustices resulting from social and economic inequities.

Chapter 3

SUGGESTIONS TO THE FIFTEENTH FINANCE COMMISSION ON BUDGETARY ALLOCATIONS FOR THE JUDICIARY

The task of formulating reform measures to overhaul the system of budgeting and resource allocation for the judiciary is a complex one. This is largely due to the fact that multiple authorities have responsibilities and interests in judicial reform, ranging from the State Governments to the Union Government to the Supreme Court, High Courts, and Subordinate Courts. Given that 'administration of justice' is a subject belonging to the Concurrent List, the division of responsibility between State and Union level authorities with regard to Subordinate Courts is a particularly important consideration.

As noted in the previous section, the inadequacies of current processes of budget allocation for the judiciary also play a part in its functioning. The methods mentioned below involve the establishment of dedicated research teams, authorities and technological tools to overcome this. In order for these solutions to have a meaningful long-term impact, it is essential that they are established as a part of the judiciary itself given that these solutions are relevant to the processes and staff that serve the judiciary.

3.1 Proposed Initiatives

The following initiatives will complement each other to have a profound impact on the judicial system, and will ensure the development of sustainable processes that will dramatically improve efficiency. The specific details of staff required for each initiative and the costing details are provided in the Annexure to this memorandum.

- 1. Reform and Research Offices:** These offices would be appointed at the level of the Supreme Court and at each High Court. The teams in these offices would have appropriate expertise spanning the judicial system, policy, and technology, to systematically evaluate judicial performance and accordingly identify areas for reform, and then devise, implement and evaluate reforms and solutions.

The teams would consist primarily of judicial officers, who would have the judicial expertise and authority, and they would be supported by a team of technical experts in the fields of Organisational Development, Data Science, and Behavioural Science.

The teams' responsibilities, roles, and authorities must be well-defined in order to demarcate the boundary between their roles and those of the registry staff. It would also be essential to designate the appropriate authority for oversight, whether the Chief Justice of the Supreme Court, or a committee of judges for the High Courts.

The total cost of one such office over the Fifteenth Finance Commission period is estimated to be Rs.2,377 lakhs. Details regarding costing and other resources can be found in Annexure A.

- 2. Secretariat for Judicial Appointments:** The process of appointments to the judiciary involves multiple stages, from devising the procedures for appointments to calculating the required strength of judges based on current and future burdens of cases, to seeking, receiving, and evaluating potential candidates.

This Secretariat would reduce the burden on registry staff that currently bears the responsibility for

administrative tasks necessary to make judicial appointments. An example is the calculation of required judge strength.

The total cost of one such Secretariat over the Fifteenth Finance Commission period is estimated to be Rs. 1,127 lakhs. Details regarding the same can be found in Annexure B.

- 3. Technological Initiative:** The teams required to implement this initiative would include IT specialists to lead the development of technological solutions.

This initiative would train judicial staff in the use of technology. While this transformation is ongoing under the supervision of District Judges with assistance from the NIC, a dedicated State-level team with technological expertise should be established with the goal of formulating and implementing the tools and training required to address the needs of the judiciary.

It would also require the adoption of technological tools to streamline workflow: It is urgent that technological solutions to minimise paperwork and maximise efficiency, and the usage of automation and analytics to further streamline processes should be adopted.

The estimated cost of such a team at the High Court level Secretariat over the Fifteenth Finance Commission period is estimated to be Rs. 564 lakhs. Details regarding the same are provided in Annexure C.

- 4. Budgeting Practices Initiative:** Research must be conducted based on data (pertaining to expenditure, unemployment, crime records, and court data) to help identify present and future burden on the court, and therefore its need for resources.

Given that districts courts are under State-level jurisdictions but are responsible for matters involving both Central and State level legislation, there is also a need to ascertain the appropriate division of the costs involved in dealing with these matters, that are to be borne by the Union Government and the State Governments. This research would be conducted over a five-year period at the district level.

A six-member team would be established for this purpose at the High Court level, which would be able to work with organisations experienced with government budgeting if necessary.

The estimated cost of this initiative over the Fifteenth Finance Commission period is estimated to be Rs. 534 lakhs. This is detailed in Annexure D.

- 5. Pilot projects:** To test and refine the above four reforms, we propose that pilot projects be conducted in order to evaluate and observe their effects in practice. These projects may be conducted on a much smaller scale, as proofs of concept, and to better estimate their effects at the larger scale as well.

They may be conducted at the District level, Taluka Level, or even at the level of individual courts. This will establish that improving resource allocation based on the scientific assessment of the needs and performance the court will improve its ability to discharge its duties efficiently.

- 6. Modernisation of Tribunals:** Tribunals should be made party to the proposed reforms above (research, secretariat, technology, budgeting) either under the offices established at the State level, or under separate offices at both Union and State level.

The estimated cost of conducting the four initiatives at any one location is Rs. 46 crores, and the estimated cost of conducting it in 25 Courts, the Supreme Court and the High Courts, would total to around Rs. 1,200 crores.

CONCLUDING OBSERVATIONS

Obtaining justice in a timely manner is increasingly difficult as a consequence of mounting pendency in Indian courts. This has far reaching implications, from its impact on the lives of individuals to the broader social and economic impacts. Ultimately, the very strength of democracy in India depends on the ability of the judiciary to discharge its duties, and to thereby maintain rule of law and uphold human rights. This fact has long been recognised by members of the judiciary itself, as well as numerous other bodies and agencies, including the Law Commission and the Economic Survey.

As we reveal through our analysis, a key component of this problem is that the contributions of State and Union Governments to expenditure on judiciary do not reflect their populations' dependence on the judiciary. Unlike other planning and resource allocation decisions made by the State and Union Governments, budgeting for the judiciary does not account for the variation in each State's dependence on the system. The contribution of the Union must be revised considering the fact that the Union is dependent on the Subordinate Judiciary to enforce Union legislation.

In addition to this vertical inequality, the horizontal inequality between States in the adequacy of resource allocation to the judiciary, in relation to State populations and pendency in the Subordinate Judiciary, is another result of the inefficiency of current processes. Our examination of the problem at the court-level shows inter-State disparity in budgeted expenditure per judge, and in the number of pending cases in the docket, and there is drastic variation in the degree to which State budgets are split between High Courts and Subordinate Courts.

In addition to numerous Chief Justices of the Supreme Court, authorities ranging from the Thirteenth Finance Commission to the Law Commission have identified misallocation of resources as a major cause of this imbalance, as well as inefficiencies resulting from outdated or inefficient administrative procedures. The increase in the burden on the judiciary that results from new legislation also has not been accounted for. It is therefore unquestionable that there is an urgent need to reform processes of resource allocation to the judiciary. This requires evaluating the infrastructural and material needs of the judiciary and its human resource requirements.

It is with this perspective and understanding that we propose a multi-pronged approach to reforming the budgeting and resource allocation processes of the judiciary. The proposed initiatives would be conducted by experts spanning every relevant field but would be overseen by the judiciary itself. This enables the judiciary to transform itself from within, addressing every element of resource allocation such as performance appraisal, budgeting, development of technological solutions, and managing infrastructure and human resource requirements. A few of these roles are currently filled by the registry staff; they are unable to dedicate more time for other obligations, and they lack specialised training of subject matter experts in those fields.

The reforms outlined in this proposal would address these issues and would be significantly more effective than past attempts because they incorporate the appointment of qualified individuals for each staff requirement. The Budgeting Practices Initiative and the Technological Initiative, for example, streamline existing processes, ensure more efficient use of material resources, and introduce consistency and rigour

to the overall process of resource allocation. The proposed Research and Reform offices and the Secretariat for judicial appointments ensure that judiciary is able to systematically assess and project its current and future needs, respectively. The Reform Office also provides the judiciary with the capacity to initiate and implement reforms from within, based on its own assessment of the judiciary's performance.

Our proposal therefore addresses long-term inefficiencies and imbalances which hinder the effective functioning of the judiciary, essential pillar of democracy. It does so by ensuring that resources are allocated based on a thorough and scientific assessment of the needs and performance of the judiciary, and for this reason would be significantly more effective than previous lump-sum grants made with the same goal. This strengthens de-facto access to justice, a key human right, and also contributes to general socio-economic development, given its well-established link with rule of law. As the initiatives will have a multiplier effect when all are operational, the long-term gains for the judiciary will unquestionably outweigh the initial costs.

ANNEXURES

Annexure A: Details of Resource Requirements and Costing for Reform and Research Offices

One such office would require:

1. A dedicated team of Judicial Officers, consisting of the following:
 - a. 1 Reform Office Head (at the Joint Registrar level in Pay Band-4 of the 7th Pay Commission(PC))
 - b. 5 team members (at the Deputy Registrar level in Pay Band -4 of the 7th PC)
 - c. 10 Support team members (at the Assistant Registrar level/Deputy Controller of Accounts Pay Band 3 of the 7th PC)
2. A six-member external technical support team comprising experts hired on consultancy contract to advise and support the dedicated team. The external team would consist of the following:
 - a. 1 Senior Expert and 1 Expert each in three areas of research and reform including, Organisational Development, Data Science and Behavioural Science. The team would receive a consolidated monthly consultancy fee of Rs.1.5 lakh per Senior Expert and Rs.0.90 lakh per Expert.

To estimate expenditure on Reform Office personnel, we have taken the pay and allowance as per the Cabinet Decision in July 2017 with regard to Pay Scale of the Court Officers and Officials admissible under 7th P C.

Cost estimates of the external team are based on market rates. The detailed cost estimates are for one Reform Office at the Supreme Court or the High Court level, for the period of 15th Finance Commission.

The anticipated cost of setting up one such office is reflected in the table given below, with detailed heads of expenditure vis-à-vis salary, operational cost of research, analysis and capacity building, office rent and administration cost, travel, and one-off capital expenditure (including office furniture and laptops).

Particulars	Resource Required	Unit Cost per year (Rs. in lakh)					Cost of Resource over 15th FC period 2020-25	Total Cost over 15th FC period	Units
		2020-21	2021-22	2022-23	2023-24	2024-25			
At the Joint Registrar level PB-4 (37400-67000+10000)	Head	24.4	26.8	29.5	32.5	35.7	149	149	1
At the level of Deputy Registrar PB-4 (37400-67000+8700)	Team	21	23.1	25.4	27.9	30.7	128	640	5
At Asst Registrar level/Dy Controller of Accounts PB-3 (15600-39100 +7600)	Support team	13.7	15.1	16.6	18.3	20.1	84	839	10
For conducting our research and analysis towards reform	Operational costs (Research & Analysis and Capacity)								
	Data Scientist (Rs. 150,000 consolidates honorarium per month)	18	19.8	21.8	24	26.4	110	110	1
	Organisational Development Expert (Rs. 150,000 consolidates honorarium per month)	18	19.8	21.8	24	26.4	110	110	1
	Behavioural Scientist (Rs. 150,000 consolidates honorarium per month)	18	19.8	21.8	24	26.4	110	110	1
	Team consisting of 3 Members, with Rs. 90,000 Consolidated salary per month per member	10.8	11.9	13.1	14.4	15.8	66	198	3

Particulars	Resource Required	Unit Cost per year (Rs. in lakh)					Cost of Resource over 15th FC period	Total Cost over 15th FC period	Units
		2020-21	2021-22	2022-23	2023-24	2024-25	2020-25		
Capital Expenditure	Laptops and related equipment & services, costing Rs. 1,00,000 per head	22					22	22	1
	Furniture & related infrastructure, costing Rs. 50,000 per head	11					11	11	1
	Rental Cost of Reform Office (3000 sqft @ Rs. 30/sq ft.), costing Rs. 90000 per month	10.8	11.9	13	14.3	15.8	66	66	1
Travel etc.	Admin costs	20	22	24.2	26.6	29.3	122.1	122.1	1
	Total Cost							2377	

Source: Human Resource cost based on 7th PC Pay-Grade Matrix at different tiers

Note: The cost of the initiative may increase by 10-15 % if the salary structure is adjusted as per recommendations of the Second National Judicial Pay Commission (2018)

"PB" in the table above refers to "Pay Band"

Annexure B: Details of Resource Requirements and Costing for Secretariat for Judicial Appointments

The proposed Secretariat will have a dedicated team consisting of the following 8 members:

1. 1 Head (at the level of Joint Registrar in Pay Band-4 of the 7th PC)
2. 3 Senior Team Members (at the level of Deputy Registrar in Pay Band-4 of the 7th PC)
3. 5-member Support Team (at the level of Assistant Registrar/Deputy Controller in Pay Band-3 of the 7th PC).

This Team will consult Human Resource (HR) Specialists as and when required in order to adopt latest strategies and interventions for faster and smoother recruitment and selection processes. The cost for technical support can be sourced from the operational cost.

Particulars	Resource Required	Unit Cost per year (Rs. in lakh)					Cost of Resource over 15th FC period 2020-25	Total Cost over 15th FC period	Units
		2020-21	2021-22	2022-23	2023-24	2024-25			
At the Joint Registrar level PB-4 (37400-67000+10000)	Head	24.4	26.8	29.5	32.5	35.7	149	149	1
At the level of Deputy Registrar PB-4 (37400-67000+8700)	Team	21.0	23.1	25.4	27.9	30.7	128	384	3
At Assistant Registrar level/ Deputy Controller of Accounts PB-3 (15600-39100+7600)	Support team	13.7	15.1	16.6	18.3	20.1	84	419	5
Recruitment processes, vetting of candidates for appointment, handling complaints and technical input	Operational costs	25.0	27.5	30.3	33.3	36.6	153	153	1
Laptops and office equipment	Capex (Rs. 1,00,000 per head)	9.0					9	9	1
	Furniture & related infra (Rs. 50,000 per head)	2.0					2	2	1
Travel etc.	Admin costs	2.0	2.2	2.4	2.7	2.9	12	12	1
	Total Cost							1127	

Source: Human Resource cost based on 7th PC Pay-Grade Matrix at different tiers

Note: The cost of the initiative may increase by 10-15 % if the salary structure is adjusted as per recommendations of the Second National Judicial Pay Commission (2018)

"PB" in the table above refers to "Pay Band"

Annexure C: Details of Resource Requirements and Costing for the Technology Initiative

This initiative would require a team consisting of

1. 1 Joint Registrar level Official (at Pay Band Level 4) as Head and
2. 2 IT Specialists at the level of Deputy Registrar is proposed to spearhead transformation to technology enabled work of the courts.

The IT specialists can either be recruited on a regular basis or can be hired on contract.

Particulars	Resource Required	Unit Cost per year (Rs. in lakh)					Cost of Resource over 15th FC period 2020-25	Total Cost over 15th FC period	Units
		2020-21	2021-22	2022-23	2023-24	2024-25			
At the Joint Registrar level PB-4	Head	24.4	26.8	29.5	32.5	35.7	149	149	1
At the level of Deputy Registrar	(IT Specialists)	21.0	23.1	25.4	27.9	30.7	128	256	2
For technology, Communication & Capacity initiatives	Operational costs (Research & Analysis and Capacity)	20	22	24.2	26.6	29.3	122.1	122.1	1
	Capex: Laptops etc. (Rs. 1,00,000 per head)	3.0					3	3	1
	Office Furnitures & related infra (Rs. 50,000 per resource)	1.5					2	2	1
	Rental Cost of Office (800 sqft @ Rs. 30/sq ft.) (Rs. 60000 per month)	3.2	3.6	3.9	4.3	4.7	20	20	1
Travel etc.	Admin costs	2.0	2.2	2.4	2.7	2.9	12	12	1
	Total Cost							564	

Source: Human Resource cost based on 7th PC Pay-Grade Matrix at different tiers

Note: The cost of the initiative may increase by 10-15 % if the salary structure is adjusted as per recommendations of the Second National Judicial Pay Commission (2018)

"PB" in the table above refers to "Pay Band"

Annexure D: Details of Resource Requirements and Costing for the Budgeting Practices Initiative

A 6-member dedicated team is proposed to be set up under each of the High Courts. The team will include;

1. Research Coordinator (at the level of Administrative Officer (Judicial) in Pay Band-3 (15600-39100+6600) of the 7th PC),
2. Senior Research Officers (at the level of Court Officer/Reader/Sr.PA in Pay Band-2 (9300-34800+5400) of the 7th PC) and
3. 3 Research Associates (at the level of Assistant Librarian /Judicial Assistant/PA in Pay Band-2 (9300-34800+4200) of the 7th PC).

This team can engage and solicit technical support from organisations which have established credentials on research around government budgets and capacity building for effective budgeting practices.

Particulars	Resource Required	Unit Cost per year (Rs. in lakh)					Cost of Resource over 15th FC period 2020-25	Total Cost over 15th FC period	Units
		2020-21	2021-22	2022-23	2023-24	2024-25			
At the level of AO (Judicial) PB-3 (15600-39100+6600)	Research Coordinator	11.9	13.1	14.4	15.9	17.5	73	73	1
At the level of Court Officer/Reader/ Sr.PA PB-2 (9300-34800+5400)	Sr. Research Officers	9.5	10.5	11.6	12.7	14.0	58	117	2
At the level of Asst. Lib/ Judicial Asst./PA PB-2 (9300-34800+4200)	Research Associates	6.2	6.8	7.5	8.3	9.1	38	114	3
	Capacity building and Research support from external specialists	30.0	33.0	36.0	40.0	44.0	183	183	1
	Capital Expenditure Laptops etc (Rs. 1,00,000 per head)	6.0					6	6	1
	Office Furniture & related infra (Rs. 50,000 per resource)	3.0					3	3	1

Particulars	Resource Required	Unit Cost per year (Rs. in lakh)					Cost of Resource over 15th FC period 2020-25	Total Cost over 15th FC period	Units
		2020-21	2021-22	2022-23	2023-24	2024-25			
	Rental Cost of Office (1200 sq.ft.@ Rs. 30/sq.ft.) (Rs. 36000 per month)	4.3	4.8	5.2	5.7	6.3	26	26	1
Travel etc.	Admin costs	2.0	2.2	2.4	2.7	2.9	12	12	1
	Total Cost							534	

Source: Human Resource cost based on 7th PC Pay-Grade Matrix at different tiers

Note: The cost of the initiative may increase by 10-15 % if the salary structure is adjusted as per recommendations of the Second National Judicial Pay Commission (2018)

"PB" in the table above refers to "Pay Band"

SELECT BIBLIOGRAPHY

245th Report of Law Commission, "Arrears and Backlog: Creating Additional Judicial (wo)manpower"
LAW COMMISSION OF INDIA; 2014; (Ministry of Law, Government of India)

Subordinate Courts of India: A Report on Access to Justice 2016

NCMS Committee: Baseline Reports on National Framework for of Court Excellence and Human Resource Development.

The 77th Report of the Law Commission of India on "Delay and arrears in trial courts", November, 1978 (Ministry of Law and Justice, Government of India)

14th Report of the Law Commission of India on "Reform of Judicial Administration", Vol. I, 1958 (Ministry of Law, Government of India)

79th Report of the Law Commission of India on "Delay and Arrears in High Courts and other Appellate Courts", May, 1979 (Ministry of Law and Justice, Government of India)

121st Report of the Law Commission of India (method of review of judge strength at regular intervals), 1987

124th Report of the Law Commission of India - The High Court Arrears - A Fresh look, 1988; Report of The Arrears Committee (Three Chief Justices Committee : Kerala, Calcutta & Madras), 1989-90

Resolutions adopted at the Chief Justices' Conference: 2009, 2013, 2015, and 2016.

Report of the Seventh Central Pay Commission" (Ministry of Finance, Government of India, November, 2015). Available at: <http://7cpc.india.gov.in/pdf/sevencpcreport.pdf>.

Second National Judicial Pay Commission - Consultation Paper, 2018, Department of Justice (GoI)

Budget Session - 16 Lok Sabha, Session XIV (29.01.2018 to 06.04.2018
(http://doj.gov.in/sites/default/files/Eng-f_2.pdf)

Budget Session - 245 Session of Rajya Sabha (29th January to 06th April, 2018)

State Budgets (Detailed Demand of Grants of Department of law/ Justice of six Select States-Bihar, Jharkhand, Karnataka, Kerala, Maharashtra, Tamil Nadu & Uttar Pradesh for FYs 2016-17, 2017-18 & 2018-19

(http://doj.gov.in/sites/default/files/Eng_f_1.pdf)

<https://openbudgetsindia.org/organization/about/jharkhand>

<https://openbudgetsindia.org/organization/karnataka>

<https://openbudgetsindia.org/organization/about/kerala>

<https://openbudgetsindia.org/organization/about/maharashtra>

<https://openbudgetsindia.org/organization/about/tamil-nadu>

<https://openbudgetsindia.org/organization/about/uttar-pradesh>

<https://openbudgetsindia.org/organization/about/expenditure-union-budget>

Durrani et al-Judicial Budgets: From Financial Outlays to Time-bound Outcomes
(http://dakshindia.org/Daksh_Justice_in_India/32_chapter_05.xhtml#_idTextAnchor197)

Judicial performance and its determinants: a cross-country perspective-A Going for Growth, OECD,2013

Economic Survey, 2017-8, Gol

Report of the Technical Group on Population Projections- Population Projections for India and states 2001-2026; 2006; Office of the Registrar General and Census Commissioner, India

Parliamentary Questions, 244 Winter Session of Rajya Sabha (15th December to 05th January, 2018) Department of Justice; Gol, 2018.

Brief Note on Legislative, Policy and judicial initiatives for the expeditious delivery of justice prepared by the National Mission for Justice Delivery and Legal Reforms (2014) accessed at http://www.wbja.nic.in/wbja_adm/files/Brief%20Note%20on%20Legislative,%20Policy%20and%20judicial%20initiatives%20for%20the%20expeditious%20selivery%20of%20justice%20prepared%20by%20the%20National%20Mission%20for%20Justice%20Delivery%20and%20Legal%20Reforms.pdf



About CBGA

CBGA is an independent, non-profit policy research organisation based in New Delhi. It strives to inform public discourses through rigorous analysis of government budgets in India; it also tries to foster people's participation on a range of policy issues by demystifying them.

For further information about CBGA's work, please visit:
www.cbgaindia.org

Please visit the open data portal on budgets in India at:
www.openbudgetsindia.org



About DAKSH

DAKSH is a Bengaluru based civil society organization working on judicial reforms. We are studying the problem of pendency of cases in the Indian legal system with the aim of suggesting sustainable solutions based on quantitative research and empirical legal methods. We approach this from the perspective of judicial efficiency, process, administration and management. We are actively involved in research, implementation of solutions and advocacy relating to judicial reforms.

For further information about DAKSH's work, please visit:
www.dakshindia.org