



# FISCAL AND BUDGETARY PLANNING FOR DISTRICT JUDICIARY

- PLANNING FOR THE NEXT FISCAL
  - INFRASTRUCTURAL ISSUES
- OPTIMAL UTILIZATION OF ALLOTTED FUNDS

# INTRODUCTION TO JUDICIAL SYSTEM

- 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.
- 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.
- **VERTICAL INEQUALITY:** 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.

## Contd.

- **HORIZONTAL INEQUALITY:** The 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. 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.
- The Budgeting Practices Initiative and the Technological Initiative, for example, streamline existing processes, ensure more efficient use of material resources, and introduce consistency and rigor to the overall process of resource allocation.

# MAJOR GAPS:

- 1. Huge backlog of Pending Cases**
- 2. Insufficient number of Judicial Officers/Judges**
- 3. Shortage of Courtrooms in subordinate judiciary**

# Contd.

## **PENDING CASES:**

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.

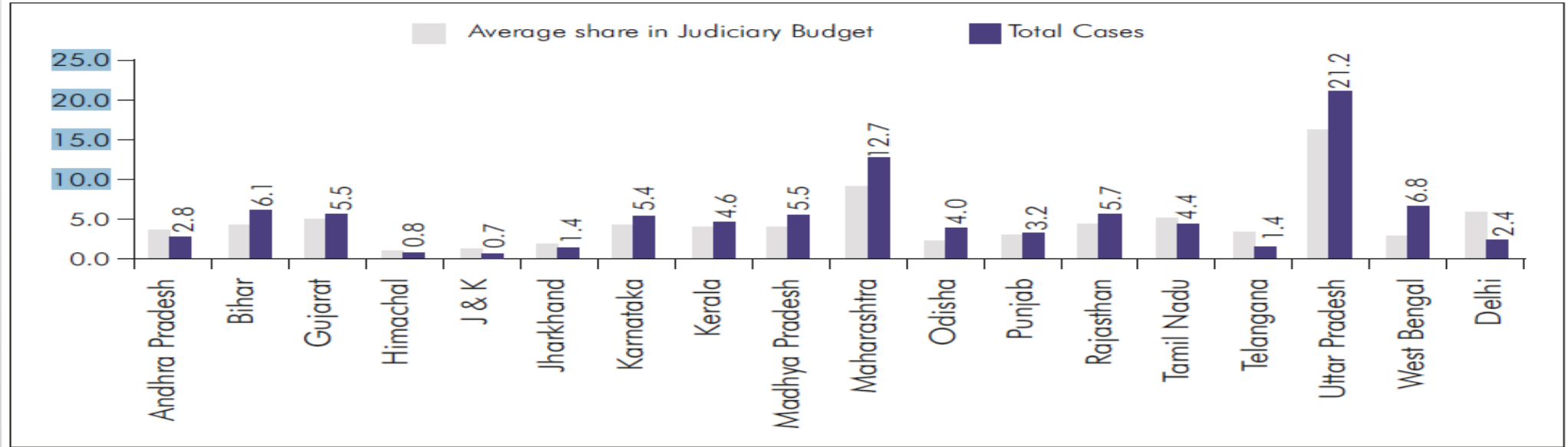
According to **the National Judicial Data Grid (NJDG)**, the five states which account for the highest pendency are Uttar Pradesh (61.58 lakh), Maharashtra (33.22 lakh), West Bengal (17.59 lakh), Bihar (16.58 lakh) and Gujarat (16.45 lakh).

## **INSUFFICIENT NUMBER OF 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. Increasing the number of judges, setting up more courts, and simplifying procedures are recommended by Law Commissions and Conferences of Justice.

The 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.

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



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

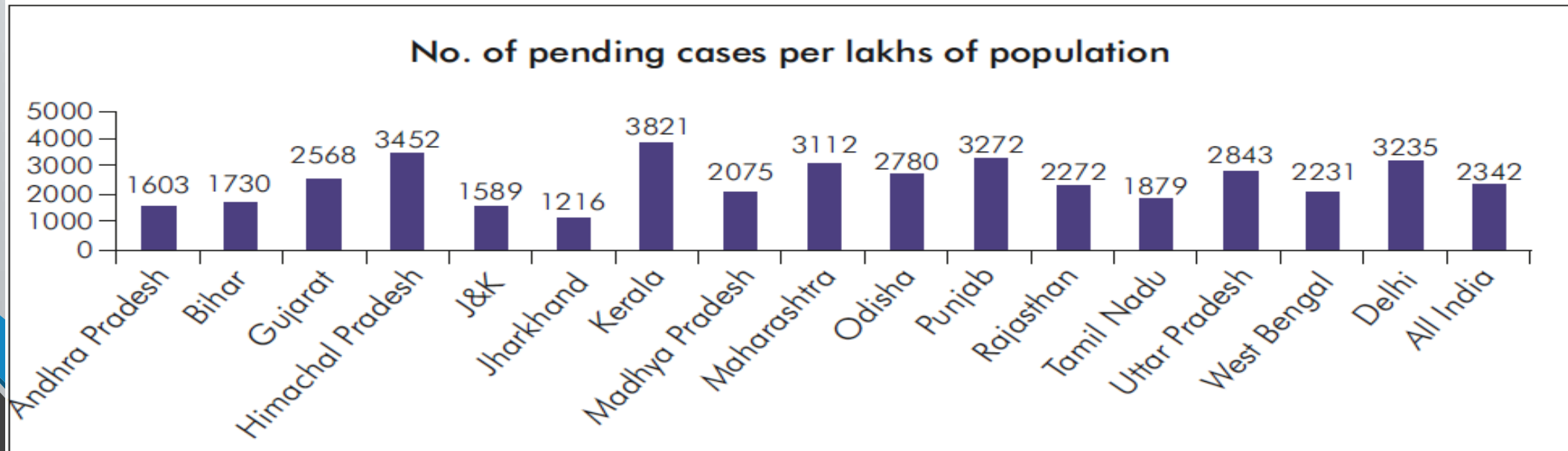
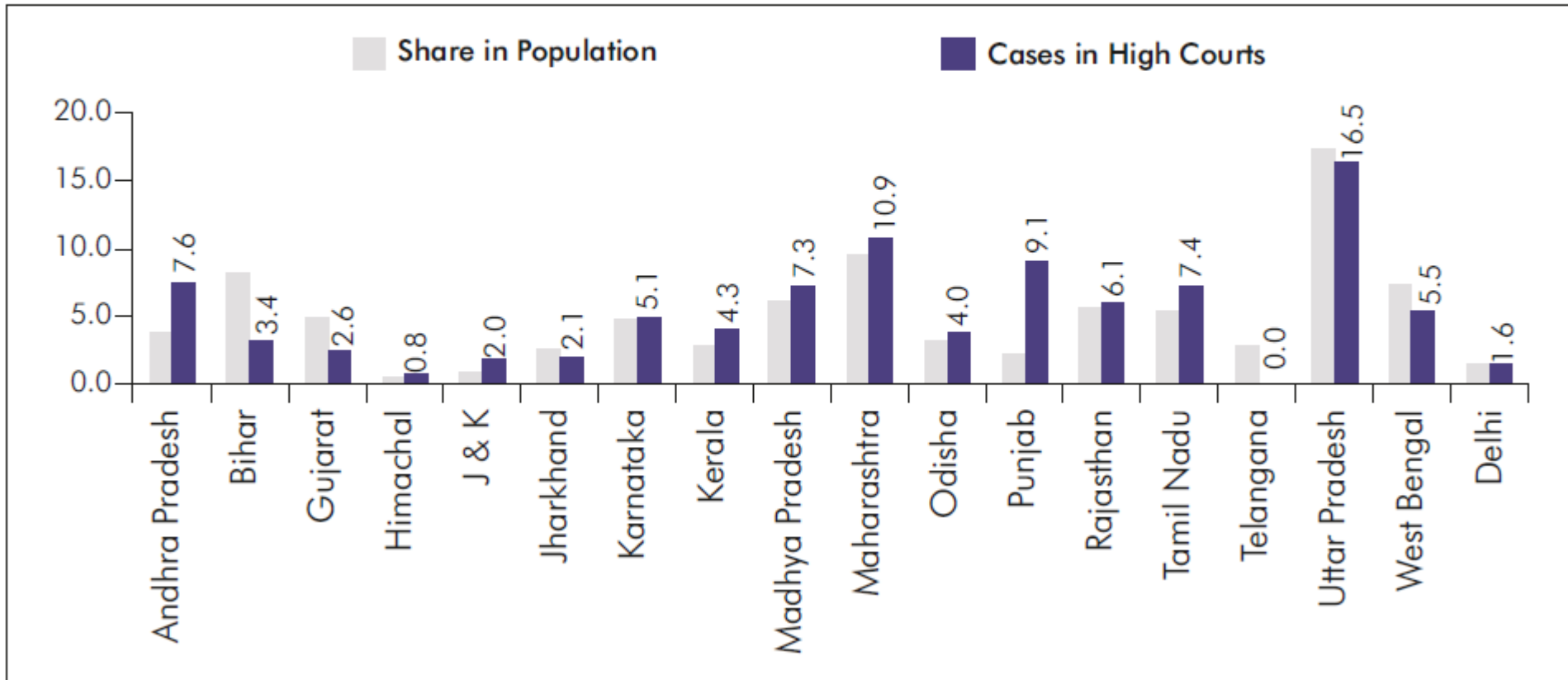


Chart 10: Share of each State in the total number of cases pending in High Courts, compared to the proportion of the All- India population in each State



# FUNDING THE JUDICIARY

- Resources are limited by definition, and the prioritization of their allocation creates competition among the different departments: allocating more funds to one department means allocating less funds to the others.
- When it comes to the judiciary, which is one of the three powers of the State, it must be independent, but its funding is in the hands of the other State powers, the executive or the legislative.
- The separation of powers' principle is crucial to avoid the concentration of power in one single branch, but the one who holds the **“power of the purse”** has some **“extra weapons”**, which could be used against the other branches. **“An effective power of the purse gives the legislature a powerful trump card when disagreements arise between it and other branches of government, one that is so potent that it can threaten judicial independence”** (Webb and Whittington 2004).



## Contd.

- According to the **European Network of Councils for the Judiciary (ENCJ)** guidelines, a funding mechanism based upon transparent criteria is necessary to maintain the independence of the judiciary, as long as the judiciary is closely involved in setting these criteria.
- Resources (personnel, salaries, buildings, operational costs, information technology, etc.) given to the judiciary must be consistent with the caseload and the citizens' legitimate expectation for an accessible, fair, and in reasonable time resolution of their conflicts, as well as prompt and effective decisions in criminal matters by the courts.
- The judiciary is not only a power of the State, but it uses public funds to deliver justice and enforce the rule of law, which is fundamental in a democratic society.

# GOOD BUDGETING: BETTER JUSTICE

- Setting the Budget is one of the most delicate issues a government has to cop with.
- There is a constitutional provision made for preparing District wise Budget and hence the required information is collected for each subordinate court and consolidated annual statement is being submitted to the legal department of the state.
- the Budget allocation criteria affect the extent to which resources and courts' performance are balanced. If efficiency and effectiveness are not balanced across the Country's courts, the budgeting system is not serving its purpose.

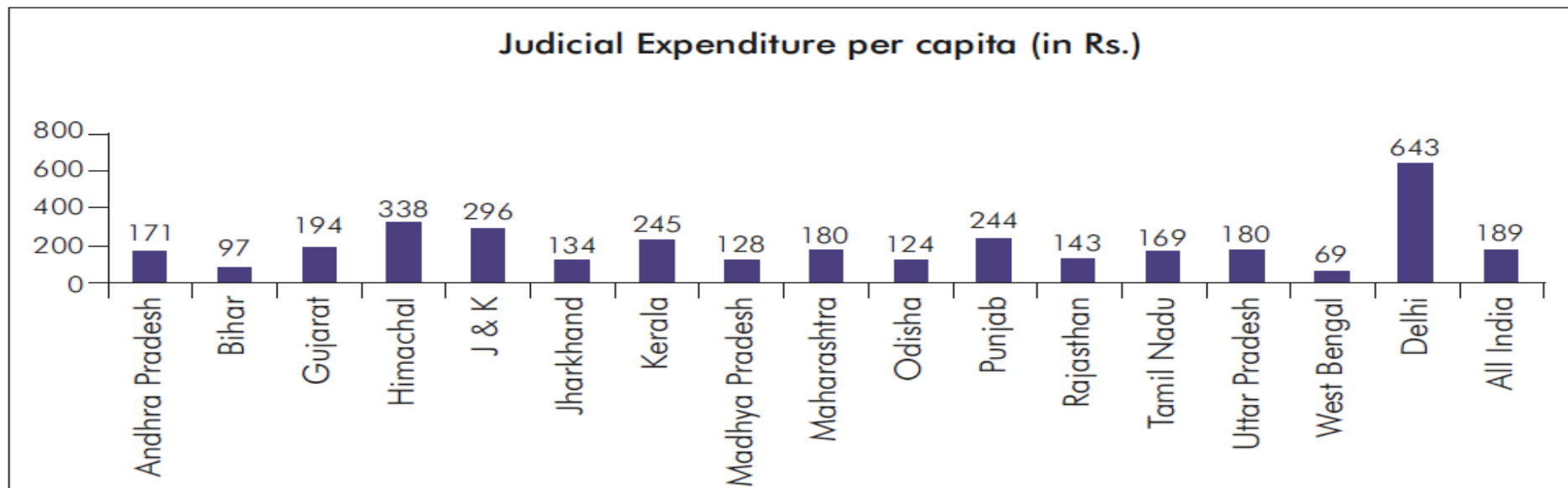
# BUDGET REFORM APPROACHES

- Countries have adopted different approaches to budgeting process reforms, but some common principles can be singled out. The main common principles applied are:
  - a) the use and integration of performance information into the budget process,
  - b) the improvement of government's planning and reporting framework,
  - c) the focus on goals and priorities,
  - d) a long-term approach,
  - e) the monitoring and measurement of results,
  - f) an attention to transparency,
  - g) the use of incentives,
  - h) the increasing of flexibility and accountability for public managers.

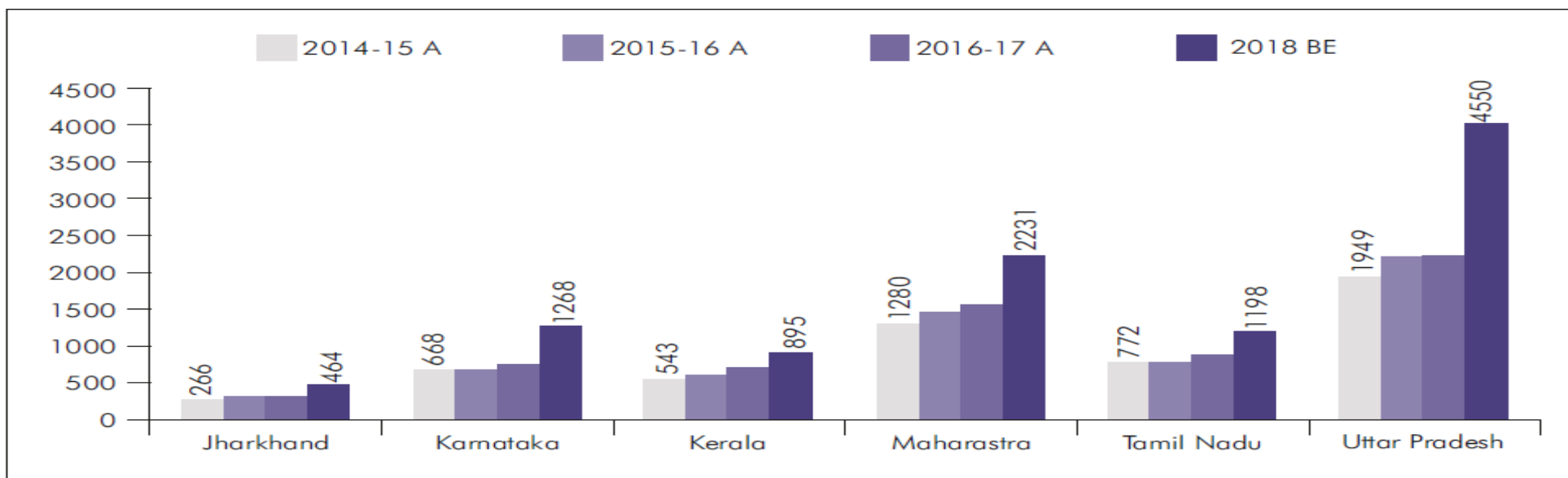
Contd.

- **Indicators used in the budgetary negotiations are:**
- **Productivity:** the number of decisions per judge, or the number of decisions per court personnel (calculated by dividing the number of decisions of a court by the number of judges or total staff working in that court);
- **Efficiency:** total court budget divided by the number of solved cases in that court;
- **Effectiveness:** the length of court proceedings.

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



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



# PLANNING FOR THE NEXT FISCAL

- To meet with the future financial requirement, the expenditures which are likely to occur are included along with the regular expense, while preparing information for the Annual Budget.
- The Budget is prepared for each financial year, in that actual expenditure and Revised Budget of the district for each financial year in consolidated manner is prepared and sent to the concerned Legal department.
- Information as to the annual financial requirement are called for from all the concerned branches dealing with financial matters and the same is complied and forwarded to the government in the prescribed format under different heads as Salaries; Office Expenses; Travelling Expenses; Medical Bills, etc.

## Contd.

- Operational Expenses like Electricity; Tele communications; Housekeeping; Maintenance of Equipment /Building also occur.
- By analyzing the previous year's unexpected expenses and the amount for the contingency budget is then increased or decreased accordingly.
- A Contingency Budget can be prepared every Financial Year to meet the unexpected expenses.
- The primary criteria in resource allocation may be the estimation of the weighted caseload (using weighted scores) for the following year, also taking into consideration the available resources, which are the basis for the budget negotiation process.

# INFRASTRUCTURAL ISSUES

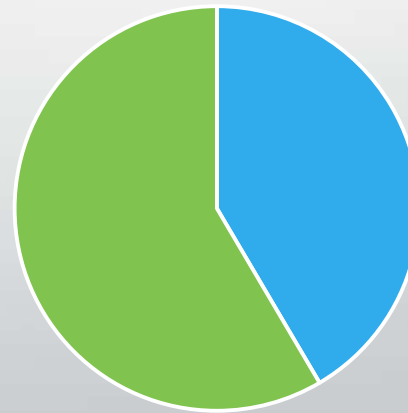
Court infrastructure is fundamental to improving justice delivery in the country.

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 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.

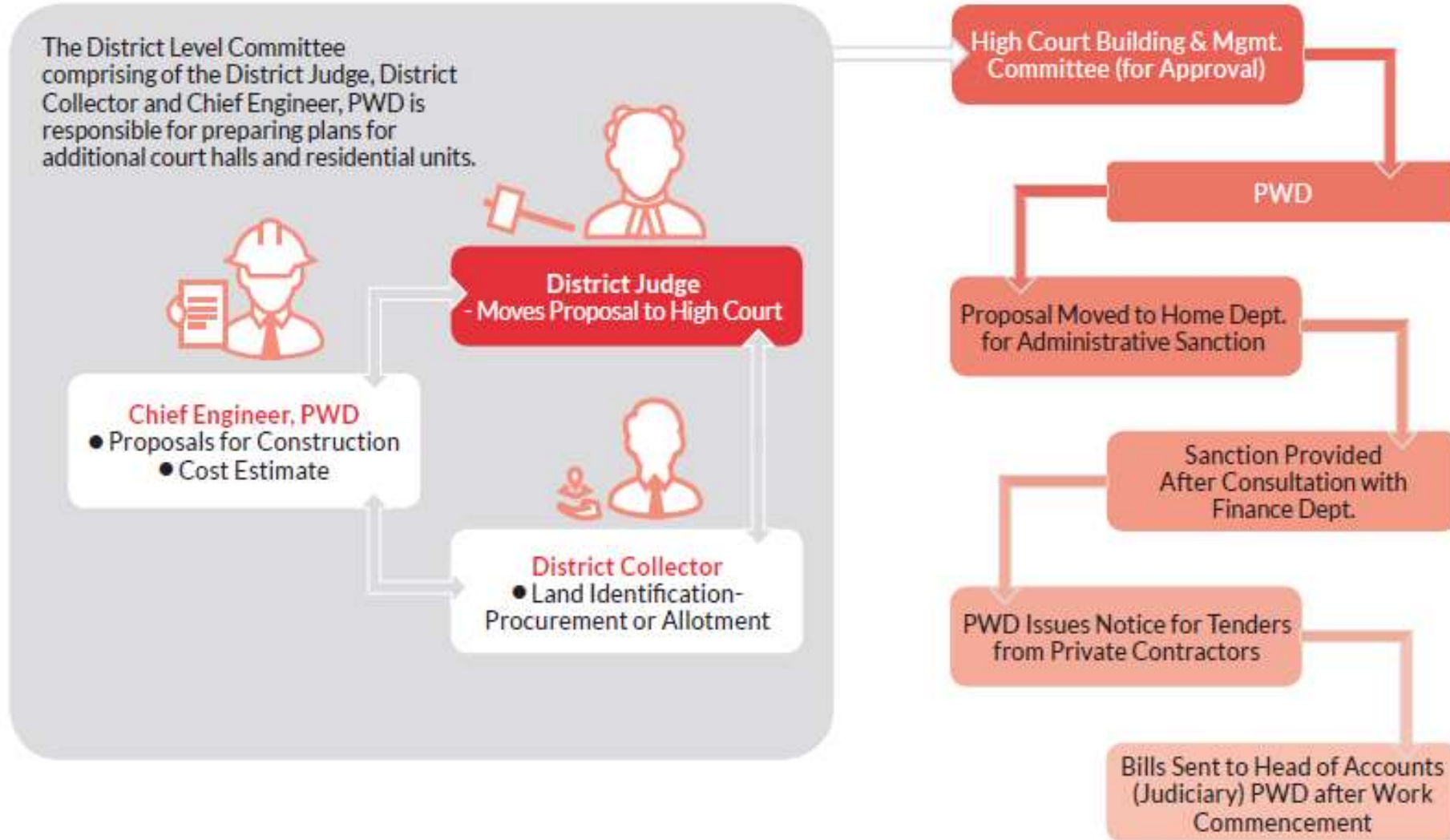
INFRASTRUCTURE GAPS



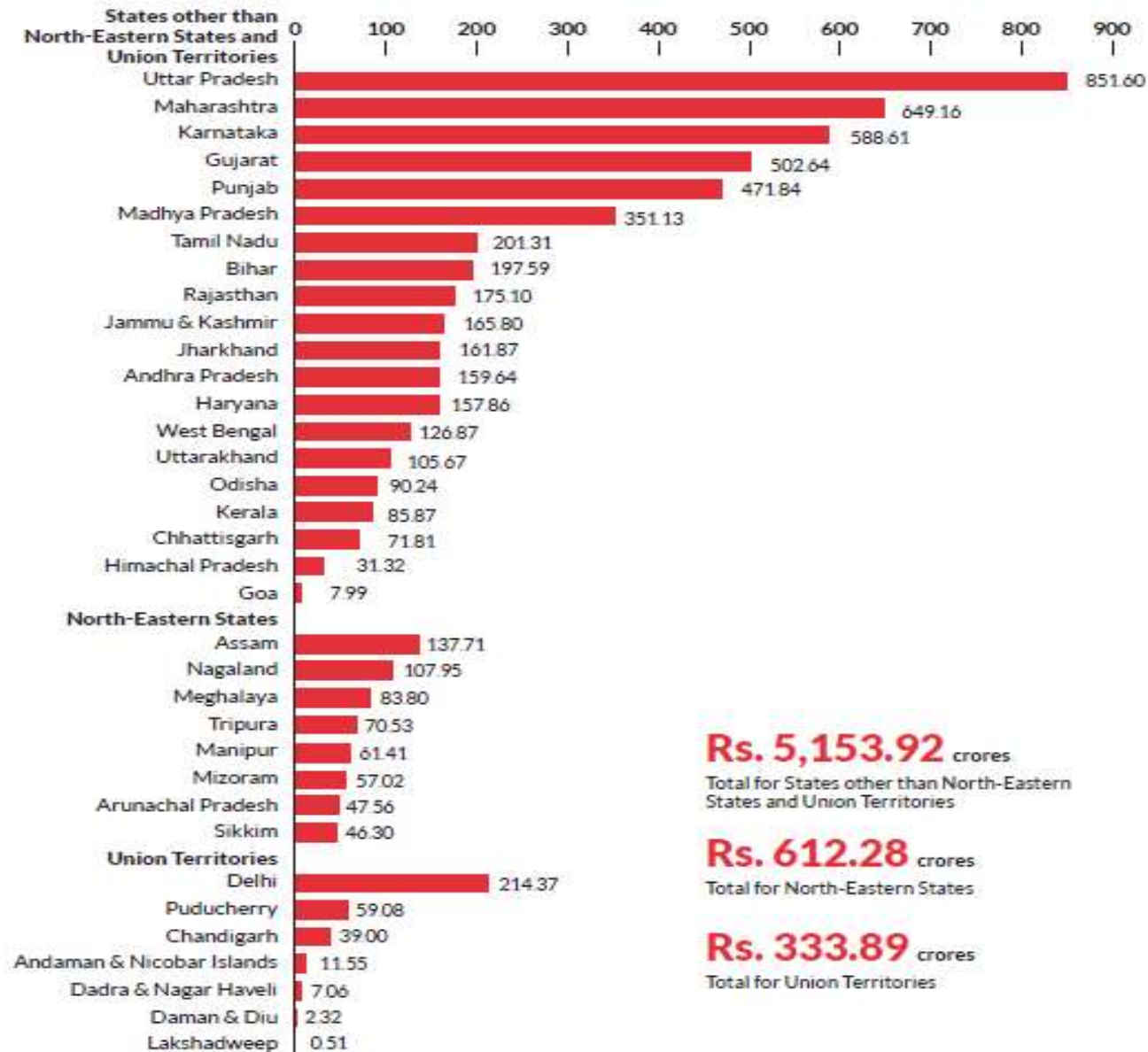
■ RESIDENTIAL ACCOMODATION OWNED ■ RESIDENCE NOT AVAILABLE ■ ■



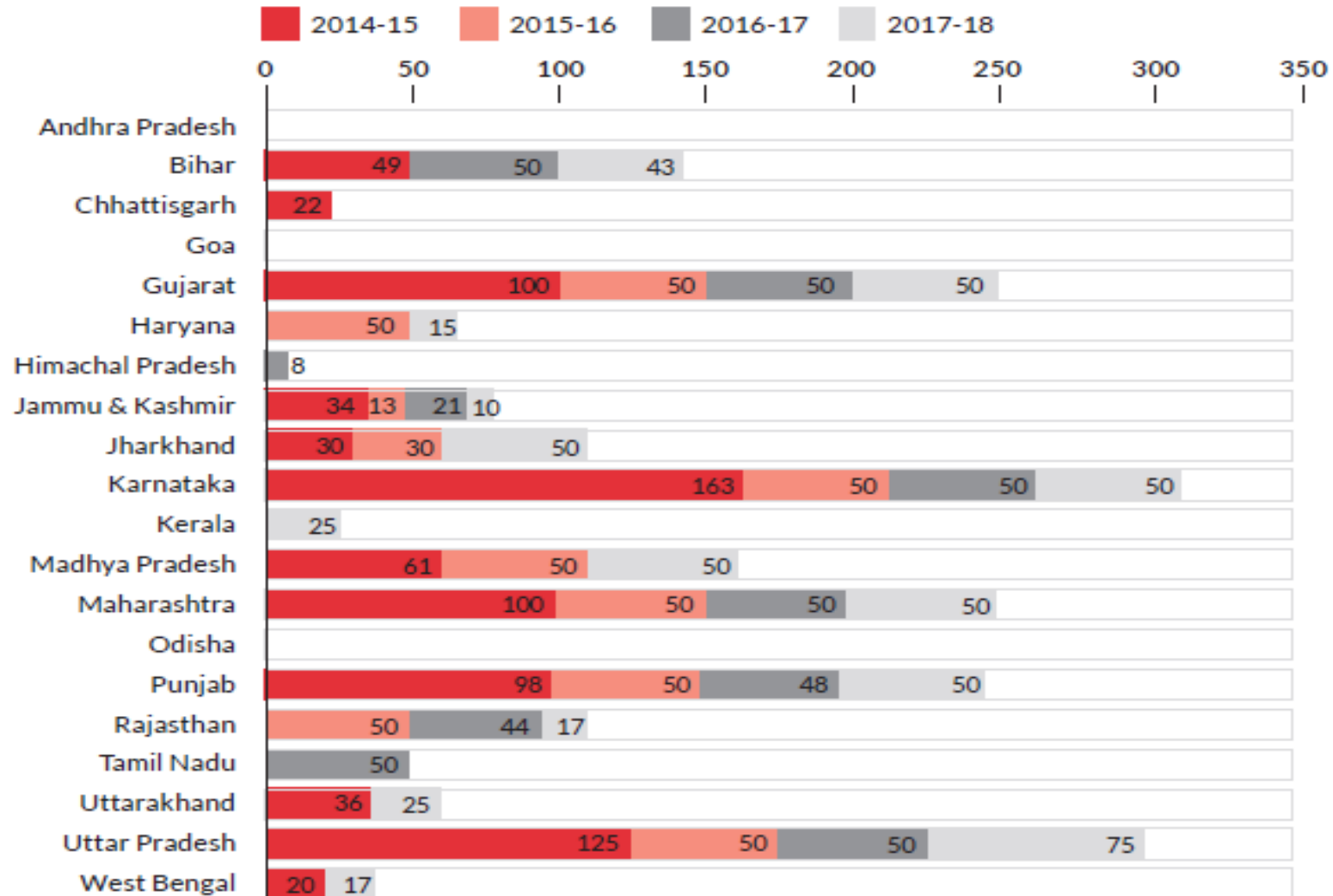
# Coordination Between Different Executive Departments & Judicial Functionaries



**Chart 2: State-Wise Central Share Released Between 1993-94 and 2018-19 (in Rs. Crores)**



## Chart 5: Central Share Released Since 2014-2015 (in Rs. Crores)



# Nyaya Vikas Portal

- To mitigate the challenges of financial accountability , the Central Government has designed a host of IT platforms such as the Central Plan Schemes Monitoring System (CPSMS), Public Finance Management System (PFMS) by which all transfers and sanctions to State Governments are recorded in a single database. Undoubtedly these systems provide for better record keeping of public accounts but these cannot track physical achievement of targets under this Scheme.
- In line with the trend towards e-governance platforms, the DoJ under orders from the Cabinet launched the Nyaaya Vikas Portal in 2018 to track the progress of the Centrally Sponsored Scheme (CSS) for Judicial Infrastructure.
- The recent developments such as the imposition of GST and rising cesses and surcharges have also compromised the fiscal position of State Governments considerably

# CHALLENGES FACED IN A BUDGETARY PROCESS

- Unexpected Office Expenses
- Change in Number of Courts
- Change in Number of Sanctioned Posts
- Uncertainty of Hike in Allowance
- To prepare Annual Budget as Department wise information for the entire district is sought to be submitted in a consolidated form, the process is very lengthy and time consuming.

## Contd.

- In case of requirement of outsourcing services, estimate may change.
- In case of increase or decrease in the retirement age of Staff members, estimate may change.
- In case of Sudden Death or Permanent Retirement, estimate may change.

# OPTIMAL UTILIZATION OF ALLOTTED FUNDS

- **Performance budgeting** is the systematic use of information about the outputs, results and/or impacts of public policies in order to inform, influence and/or determine the level of public funds allocated towards those policies in the budgetary context. It is a system where performance information is integrated in the budgeting process, and it relates organizational costs and organizational outputs, policies development and resource allocation, performance targets and resource appropriation, managerial discretion and accountability.
- Performance Budgeting can serve a number of purposes. From the citizens' point of view, a budgeting system that takes into account the performance of the different departments can enhance transparency and accountability, since it makes explicit the link between resources and results and enables the taxpayers to evaluate the proper use of public funds and the achievement of public goals.

**Table 1 – Classification of performance-based budgeting mechanisms**

	Purposes	Performance information	Link between Performance information and funding
<b>Program budgeting</b>	Allocative efficiency through expenditure prioritization	Output (and outcomes) achieved by programs, resources used to achieve results	Loose. Budget is mainly allocated about the program activities
<b>Zero-based budgeting</b>	Allocative efficiency through marginal prioritization techniques	Marginal cost and marginal benefits of decision packages	Loose. Budget is mainly allocated about the program activities
<b>Budget-linked performance targets</b>	Allocative and technical efficiency and effectiveness through target setting	Outputs and outcomes	Loose. Targets describe the level of performance expected at any given amount of money
<b>Agency – level budgetary performance incentives</b>	Better performance through incentives	Agencies' output and/or outcome.	Medium. Future funding is related to past performance, but not through a formula
<b>Formula funding</b>	Improve performance and allocative efficiency through a direct link between performance and funding	Output measures	Tight. Expected results are related to funding through an algebraic formula
<b>Purchaser-provider model</b>	Technical efficiency and performance through incentives (payment for results)	Output and cost measures	Very tight. The formula is $P \times Q$ (price per quantity of output) and it is related to actual results



# Contd.

- **Performance-based Budget models** have to be carefully implemented, taking into consideration the peculiarities of the judiciary. They have to be fine tune-up to avoid to “give absolute priority to productivity and figures, to the detriment of the quality of legal work”, or there is the high risk to result in dysfunctional behavior, if they are based upon imperfect performance measures.
- The change in budgeting approach can affect the organizational development-
  - **at National level:** change in the judicial system governance settings,
  - **at Court level:** e.g. the creation of a management board for each court, and
  - **at the Single Judge level:** e.g. changes in the case assignment system, pressure to increase productivity, individualistic or team oriented approach, commitment to the court.

In France, the budget of the judiciary is included in the “Mission Justice”. The Program has three objectives with Indicators, as to the following table shows.

<b>Objective 1</b>	<b>Improving quality and efficiency</b>
	Average processing time for each type of court
	Percentage of courts exceeding 15% the targeted average processing time
	Average processing time in criminal matter
	Solved civil cases by a judge
	Solved criminal cases by a judge
	Solved civil and criminal cases by a staff employee
	Court of appeal reversal rate
<b>Objective 2</b>	<b>Improving the efficiency of criminal justice response, the enforcement, and arrangements of criminal penalty</b>
	Percentage of criminal cases subject to an alternative to prosecution
	The average time for recording a judgment on the National Criminal Record
	Enforcement rate of suspended or effective prison sentences
<b>Objective 3</b>	<b>Modernizing the ordinary justice management</b>
	Average cost per criminal case
	Number of electronic filings to be dealt with by the registry and number of electronic filings from the police

## Contd.

- The indicators try to measure efficiency (productivity and expenses), effectiveness (speed of justice), and quality (reversal rates, enforcement, and alternative to prosecution). These indicators are integrated into the budget, and the annual performance plan is annexed to the Budget Law.
- This plan includes actions, costs, objectives, and results obtained and expected. However, these indicators are not directly linked to the number of financial and human resources granted to each court. Indicators are mostly used to evaluate if resources are efficiently allocated to programs and if actions are coherent with the objectives.
- In a performance-based budget, the specification of objectives, the setting of performance targets, and the measurement of performance are of paramount importance, because they can directly affect resources allocation, courts' organization, and judges' behavior.

# SUGGESTIONS FOR ASSESSMENT OF BUDGETARY PLANNING

- Preparing the estimated computerized module and sending it by email is a manual time consuming process and hence if any Software is made for budgetary provision, it would be easy for estimation.
- The expected main results of the budgeting process may be
  - a) ensuring transparency and accountability,
  - b) rationalizing the allocation of public expenditure,
  - c) prioritizing services of higher social value,
  - d) increasing efficiency and productivity.

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

- The inadequacies of current processes of budget allocation for the judiciary 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.

# Proposed Initiatives:

- a. 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.
- b. 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.
- c. 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
- d. 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.
- e. 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.
- f. Modernization 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.

# SOURCES

- [https://www.researchgate.net/publication/331012174:Funding the Judiciary: How Budgeting System Shapes Justice.](https://www.researchgate.net/publication/331012174:Funding%20the%20Judiciary%3A%20How%20Budgeting%20System%20Shapes%20Justice)
- 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”)
- Memorandum to the Fifteenth Finance Commission on Budgeting for the Judiciary in India December 2018
- Budget Report, Judicial Reform 2019
- Subordinate Courts of India: A Report on Access to Justice 2016
- Second National Judicial Pay Commission - Consultation Paper, 2018, Department of Justice (GoI)