Judiciary Reforms in India

Selected Recommendations and Guidelines on 'Capacity' by various Law Commissions, Expert Committees and the Supreme Court of India

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"Everything has been said already, but as no one listens,
we must always begin again."

— Report of the Justice Malimath Committee on Reforms of Criminal Justice System (2003), quoting French thinker Andre Gide

"It is time to move beyond the vicious circle
of committees and reports."

— Prof. (Dr.) Ranbir Singh, Conference of National Initiative to Reduce Pendency and Delay in Judicial System (2018)

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Introduction

India's judiciary — the Supreme Court, 25 High Courts, and nearly 21,000 subordinate courts — are under enormous workload which has increased to 49 million in 2022. Persisting judge vacancies to the tune of 30% in the High Courts and 22% in the subordinate courts[1] and inadequate infrastructure (especially courtrooms) and non-judicial staff supported by insufficient budgets battle a continuous inflow of cases.

A year-on-year rise in pending cases at both the High Court and subordinate court levels, therefore, come as a surprise to no one acquainted with the workings of India's judicial system. While the Supreme Court congratulated itself for being able to dispose a greater number of cases than were instituted before it over one year[2] and the judiciary at large for being able to "control arrears" despite having only 19 judges per million of population[3], 59,266 ready cases are still pending before it four years later.[4] 5.7 million cases are pending before the High Courts and 41.71 million cases before the District Courts.[5]

The problems assailing India's judiciary are older than independent India. A committee was set up by the British rulers as early as 1924 to suggest reforms to deal with the pendency, delay and backlog of civil cases in India.[6]Every decade since the 1950s has seen the production of similar reports by the Law Commission of India (LCI) and other expert committees.

This compilation covers significant recommendations made by 13 of these reports along with other sources. 34 reports of the LCI were identified as dealing with judicial reform. Of them, 11 were selected for coverage based on their significance as reflected in current literature and to map the evolution in recommendations across decades:[7]

[1] p 89-91, *India Justice Report: Ranking States on Police, Judiciary, Prisons and Legal Aid* (2022)

[2] p 35, Justice (as he then was) Kurian Joseph, Inaugural Session, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)

[3] p 18, CJI (as he then was) Dipak Misra, Inaugural Session, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)

[4]*Summary: Types of Matters in Supreme Court of India*, Statistics, Supreme Court of India (2022)

[5] Homepage of the eCourts India Services https://ecourts.gov.in/ecourts_home/ (accessed 11 July 2022)

[6]*See Report of the Civil Justice Committee* (1924-1925)

[7] The apparent overrepresentation of LCI Reports in the list from the late 1980s is due to their specific nature, making them shorter but more numerous than Reports from other decades.

1. *Reforms of the Judicial Administration*, Volumes I and II of the 14th LCI Report (1958)
2. *Delays and Arrears in Trial Courts*, 77th LCI Report (1978)
3. *Delays and Arrears in High Courts and Other Appellate Courts*, 79th LCI Report (1979)
4. *Formation of an All-India Judicial Service*, 116th LCI Report (1986)
5. *Manpower Planning in Judiciary: A Blueprint*, 120th LCI Report (1987)
6. *A New Forum for Judicial Appointments*, 121st LCI Report (1987)
7. *The High Court Arrears — A Fresh Look*, 124th LCI Report (1988)
8. *The Supreme Court — A Fresh Look*, 125th LCI Report (1988)
9. *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th LCI Report (1988)
10. *Reforms in the Judiciary — Some Suggestions*, 230th LCI Report (2009)
11. *Arrears and Backlog: Creating Additional Judicial (Wo)manpower*, 245th LCI Report (2014)

Volumes I and II of the Report of the Arrears Committee ("First Justice Malimath Committee") (1989-1990) and speeches made by eminent judges and jurists at the Conference of the National Initiative to Reduce Pendency and Delay in Judicial System organised by the Supreme Court of India (2018) were covered in detail, as were guidelines laid down by the Supreme Court of India in *All India Judges' Association v Union of India* (1992)[8], *Anil Rai v State of Bihar*[9], *All India Judges' Association v Union of India* (2002)[10], *Malik Mazhar Sultan v Uttar Pradesh Public Service Commission (III)*[11] and *Imtiyaz Ahmad v State of Uttar Pradesh*[12]. Finally, some relevant points from the Report of the Committee on Reforms of Criminal Justice System ("Second Justice Malimath Committee") (2003) and the Report of the National Commission to Review the Working of the Constitution ("Justice Venkatachaliah Committee") (2002) have been included.

Recommendations from different sources have been boxed by theme and footnoted to reflect their sources and preceded by context and additional information.

[8] (1992) 1 SCC 119
[9] (2001) 7 SCC 318
[10] (2008) 17 SCC 703
[11] (2012) 6 SCC 502
[12] (2012) 2 SCC 688

Exclusions

The Reports coveredrange from generalised ones such as the 14th Report, which stretches over 1,200 pages, to highly specialised ones such as the 116th and 245thReports.The Reports deal with issues such as judicial independence (especially the method of appointments to the superior judiciary which, in later years, took the form of the collegium-versus-executive debate) and other ancillary issues not directly related to capacity. Recommendations relating to pay scales have also been excluded since they are outdated due to inflation (it suffices to say most LCI Reports supported an increase in the pay scale and service conditions to judges as well as to other court staff).[13] Such issues have been excluded from this compilation.

This compilation also does not study whether the recommendations were implemented or are feasible. For instance, some recommendations regarding the powers of the National Judicial Appointments Commission (NJAC) may no longer be sustainable since the Supreme Court's declaration of the NJAC as unconstitutional in the "Fourth Judges Case".[14]

Several LCI Reports under study also considered the prospect of setting up *Panchayats*and mobile courts. By and large, the Reports were in support of these measures owing to their convenience and freeing up the formal magistracy of petty cases[15], with some exceptions.[16] This compilation does not dwell on *Panchayats* and restricts itself to the three-tier formal judiciary.

While the 14th LCI Report opined that the trial judge should act as a conciliator in appropriate cases to bring about a compromise, thus rendering a separate mechanism for conciliation unnecessary[17], later sources recommended the setting up of conciliation boards[18] and the use of pre-litigation mediation by the *Lok Adalats* with cases being "diverted" from the Courts to Alternate Dispute Resolution (ADR).[19] Hence, ADR mechanisms have not been covered.

[13] For example, *see* para 83, p 195, para 22, pp 308-309 and paras 86-88, pp 197-198, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958) and para 11.4, p 40 and para 4.6, p 12, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)

[14]*Supreme Court Advocates-on-record Association v Union of India* (2016) 5 SCC 1

[15]*See* paras 27-28, p 787 and paras 19-22, pp 908-910, *Reforms of the Judicial Administration*, 14th Report (Vol II), LCI (1958)

[16]*See* para 8.28, p 101, *Report of the Arrears Committee* (Vol II) (1989-1990)

[17]para 38, pp 320-321, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

[18]paras 8.10-8.12, pp 29-30, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)

[19] pp 85-86 , Prof. (Dr.) N R Madhava Menon, Session IV, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)

Finally, recommendations for specialised courts or tribunals for certain fields (such as the Industrial Relations Commission for labour law[20] and administrative tribunals) are also excluded.

[20] para 8.46, pp 106-107, *Report of the Arrears Committee* (Vol II) (1989-1990)

Selected Recommendations on Human Resources

Determining Judge Strength

14th LCI Report (1958)	79th LCI Report (1979)	120th LCI Report (1987)	First Malimath Committee Report (1990)	The Supreme Court in 2002	245th LCI Report (2014)
Fix the permanent strength of every High Court based on arrears, reviewed every 2-3 years. Maintain the strength of the Court when judges are deputed to serve on Commissions of Inquiry for long periods.	High Courts must clear 25% of the backlog in a year. Appoint retired judges to Commissions of Inquiry rather than sitting judges. Adjust the cadre-wise strength of the Indian Judicial Service depending on the rates of disposal as reviewed every 5 years.	Increase the judge strength to 50 per million people in a decade.	Use a standard rate of disposal per judge per year (i.e. 800 main cases) or the national average to determine the adequate strength for each High Court.	Raise judge strength to 50 judges per million people in five years, possibly by 10 per million people every year.	Use the rate of disposal method to determine adequate strength by calculating the number of judges required to dispose of the existing backlog, preventing future backlog is not created and the number of institutions are maintained at the same level as disposals.

Recruiting Judges

14th LCI Report (1958)	116th LCI Report (1986) & 121st LCI Report (1987)	First Malimath Committee Report (1990)	The Supreme Court in 2002
Create an All-India Judicial Service (IJS) to supply 40% of the District Court cadre in every state. For the rest, 30% should be recruited from the Bar, and 30% on promotion from the State Judicial Services.	Constitute a National Judicial Service Commission (NJSC) for conducting the IJS examination and appointing Supreme Court judges. 40% of the IJS should be recruited directly by examination, 40% by promotion from state services and 20% from the Bar.	Empower the NJSC to not only appoint Supreme Court Judges and Chief Justices of High Courts but also High Court Judges. A high power committee should lay down the qualifications or attributes which High Court judges should possess, as well as the evidence necessary to satisfy these requirements. The selecting authority should record reasons with reference to these criteria.	75% of the District Judge cadrein every state should be filled by promotion of subordinate judges while 25%, from the Bar. Two-thirds of promotions should be based on merit-cum-seniority while 1/3rd of promotions (25% of total posts) should be based on an objective test.

Additional Judges for Arrears

14th LCI Report (1958)	77th LCI Report (1978)	124th and 125th LCI Reports (1988)	First Malimath Committee Report (1990)	Second Malimath Committee Report (2003)	245th LCI Report (2014) The Supreme Court in 2012
Establish temporary additional courts at all levels exclusively for disposing arrears.	Clear arrears within 3 years by appointing sufficient additional courts.	Reappoint retired judges with a reputation for efficiency to the High Court or Supreme Court for clearing heavy backlogs.	Clear arrears within 5 years. Increase the permanent judge strength even for clearing arrears; delete the provision for additional judges under Article 224.	Institute special courts headed by a reappointed retired judge under the 'Arrears Eradication Scheme' to dispose of summarily triable and petty offences expeditiously. Settle all compoundable cases though Lok Adalats.	Since the diligence of temporary judges is suspect, allocate new permanent recruits to dispose backlog over the next few years and thereafter to freshly instituted cases. For providing expeditious trials, create 10% of the total regular cadre as additional posts.

Filling Vacancies

14th LCI Report (1958)	121st LCI Report (1987)	125th LCI Report (1988)	The Supreme Court in 2008
Choose a judge's successor well ahead of time, with the successor immediately taking the place of her predecessor upon the latter's retirement	Initiate the proposal for filling the vacancy in a High Courtsix months before the predecessor's date of retirement.To prevent subjectivity in appointments and reduce delays, maintain a computerised record of every member of the Bar or member of the District Judiciary within the age of 35-40, noting their ability, knowledge and expediencyin dealing with or arguing cases.	Call upon the retiring judge to continue in his position *ad hoc* until his successor is appointed.	Follow a certain yearly timeline for filling vacancies in the District Judge cadre. The vacancies must account for existing vacancies, expected vacancies over the next year and an additional 10% for deaths, etc. An officer of the High Court must notify the Registrar-General of the Supreme Court of compliance with the timelines.

Court Staff

127th LCI Report (1988)	First Malimath Committee Report (1990)	Conference of the National Initiative to Reduce Pendency and Delay (2018)
Prescribe a minimum staff requirement at each level of the judiciary, determined scientifically. A Court Executive is necessary to ensure judges are not overburdened with administrative work.	Allow the High Courts to work out their own norms in regard to work turnover and staff requirement.	Appoint an independent cadre of court managers, with a Court Manager-General, Senior Court Manager, Court Manager and Case Manager, all possessing legal acumen. There should be a Senior Court Manager for subordinate courts with more than 30 courtrooms.

Selected Recommendations on Workload

Jurisdiction

14th LCI Report (1958)	79th LCI Report (1979)	125th LCI Report (1988)	First Malimath Committee Report (1990)
The Supreme Court's involvement under Article 136 of the Constitution should be restricted to cases of grave and real miscarriage of justice. However, a citizen should not be required to approach the High Court before approaching the Supreme Court for infringement of fundamental rights. The High Courts' jurisdiction may be broadened to allow a greater right of appeals from tribunals. The original civil jurisdiction enjoyed by some High Courts should be enhanced for the benefit of trade/commerce litigants.	The pecuniary appellate jurisdiction of District Judges should be raised in order to relieve High Courts of their burden.	The Supreme Court should be divided into two divisions – a Constitutional Division and an Appellate Division. The latter can sit in a different part of India so as to reduce the travel costs of litigants and questions of constitutionality can be heard in Delhi.	The jurisdiction of the District Courts to hear first appeals should be enhanced in pecuniary terms and reviewed every five years to be enlarged further if the circumstances justify it. The original civil jurisdiction enjoyed by some High Courts should be abolished.

Managing Cases

14th LCI Report (1958)	77th LCI Report (1978)	First Malimath Committee Report (1990)	Venkatachaliah Report (2002)
Quantitative tests for case disposal encourage courts to dispose light matters and set aside heavier ones.	Fixing of dates should be taken up by the presiding judges and not the Reader. The number of cases per day should be 25% more than can be reasonably disposed of in a day, since a few cases may go unheard due to unforeseen circumstances.	Benches should be allowed to function for a period of 3-6 months; before the expiry of the term of the Bench due care should be taken to ensure that no case allocated to that Bench is left out as part-heard.	A Judicial Council should be created at the apex and High Court levels to assist in the creation of district-wise plans for time-bound clearance of arrears. Within 5 years, there should be no case pending for one year or more.

Listing, Grouping and Assigning Cases

77th LCI Report (1978)	79th LCI Report (1979)	First Malimath Committee Report (1990)	Second Malimath Committee Report (2003)	245th LCI Report (2014)	Conference of the National Initiative to Reduce Pendency and Delay (2018)
Adopt, in other states, the Kerala Special List System, whereby cases are listed at the trial courts for a month by the tenth of the previous month, should be adopted in other states to prevent adjournments. Prioritisesessions cases.	Prioritise older cases by drawing daily lists for the High Courts from a continuous ready list based on date of filing. Also prioritise cases of the death sentence, *habeas corpus*, and matrimony and custody. Assign cases to judges as per their experience in different branches of law.	Classify cases based on subject. High Courts should have divisions (Civil, Constitutional, Criminal, Family etc).	In subordinate courts, one judge should not be assigned both civil and criminal cases. Trial courts in urban areas should have female judges who are assigned criminal cases relating to women.	Implement an automated system or designated counter for paying fines in police and traffic *challans* since they are usually uncontested but of a huge volume.	Group cases into fast-track, medium-track and long-track cases as per set timelines. Implement a computer system to monitor each case from filing till disposal and categorise cases based on urgency and priority. Judges should specialise and decide cases in their chosen area of law for at least five years.

Enhancing the Power of a Single Judge

79th LCI Report (1979)	124th LCI Report (1988)	125th LCI Report (1988)	First Malimath Committee Report (1990)
Assign regular first appeals to a division bench but others to single judges. Judgements in first appeals by a single judge should be final except where certificate or Special Leave Petition is granted. Empower a single High Court judge to hear all criminal appeals except involving death or life sentences.	Since the Supreme Court is within the public's reach through Special Leave Petitions, every matter should be heard by a single judge of the High Court except where statute provides for a division bench.	Implement the proviso to Order VII, Rule 1 of the Civil Procedure Code so that some decisions by single judges of the Supreme Court are final.	In High Courts, assign regular first appeals below a certain pecuniary limit to a single judge and others to a division bench. Disallow appeals against the decision of a single judge in writ petitions. Only certain cases such as habeas corpus writs, labour and fiscal cases, and PILs should be heard by a division bench.

Efficiency and Expediency of Procedures

14th LCI Report (1958)	79th LCI Report (1979)	125th LCI Report (1988)	First Malimath Committee Report (1990)
Munsif courts should dispose all cases in one year. Dispose criminal cases in three months from the date of apprehension. Deliver the judgment within a week of the hearing and within six weeks in cases of reserved judgments. It is not necessary to read the full judgment in open court but only the findings and final order. A second appeal should only be allowed on substantial points of law which are specified. Oral arguments should be restricted to relevant points. Firm action should be taken against absentee witnesses.	Hear arguments immediately after evidence. Retain oral arguments. Dismissing writ petitions without explanation causes issues when the case is later remanded. Hence, the reasons should be recorded.	Empower Supreme Court judges to dispose of cases without written opinions.	The reasons and decision should be pronounced simultaneously in court except in reserved judgments. It is insufficient to enumerate the points.

The Supreme Court in 2001	Venkatachaliah Committee Report (2002)	230th LCI Report (2009)	Conference of the National Initiative to Reduce Pendency and Delay (2018)
Any party to a reserved case may file an application for early judgment if the judgment is not delivered within three months, and for fresh arguments at another Bench if the delay is over six months.	Deliver judgments within 90 days from the conclusion of case in Supreme Courts and High Courts.	The length of oral arguments in any case should not exceed 1.5 hours unless it involves complicated questions of law or interpretation of the Constitution.	Do not grant adjournments unless as per Order 17 of the Code of Civil Procedure and in exceptional circumstances

Determining and Sanctioning Adequate Judge Strength

One oft-cited reason for India's mounting arrears is insufficiency of judges. Recommendations to tackle this in the early decades avoided laying down a strict number of required judges and left it to the High Courts or the executive to determine the adequate judge strength based on the arrears or institution. By the 1980s, however, most law commission reports had begun to recommend an increase in the sanctioned strength.Recently, the debate has taken a scientific turn towards how adequacy should be determined. The contours of this debate are discussed below.

The 14th LCI Report (1958) recommended that:

- The permanent strength of every High Court must be re-fixed periodically as per the number of arrears and reviewed every 2-3 years.[21]
- The cadre strength of judicial officers should be fixed after making due allowance for leave, promotion, deputation vacancies and training. Until the cadre strength is so fixed, the cadre strength must not be depleted for making ex-cadre appointments.[22]
- Where judges are deputed for out-of-court work likely to take substantial amounts of time (such as on Commissions of Inquiry for judicial inquiries into disputes or unusual occurrences), efforts must be made to maintain the strength of the Court.[23]
- The complex procedure whereby the recommendations of the Chief Justice of High Court to increase judge strength in a court under her first goes to the state government and then the Ministry of Home Affairs who in turn consult the Chief Justice of India should be replaced with a procedure involving only the two Chief Justices.[24]

As time has gone on later commissions found an increase in judges' strength unavoidable to maintain a higher disposal rate than the institution rate[25] and recommended that:

[21] para 54, pp 90-91, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[22] notes 4-5, p 160, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[23] para 7, pp 69, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[24] para 5, pp 65-66, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[25] paras 3.6, p 19, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)

- The strength of each High Court should be fixed and reviewed every three years based on the disposal and institution in the preceding three years.[26]
- Recommendation of the High Court for increase in judicial strength should receive prompt consideration from the State Government[27] and the strength should be sanctioned without delay.[28]
- The strength of High Courts should be such that one-quarter of the backlog to be cleared in one year.[29]
- The strength of the Indian Judicial Service should be varied cadre-wise depending on the workload, rate of disposal, arrears and average time taken in disposal of each State as reviewed by the President every 5 years.[30]
- Judicial officers should not be sent to non-judicial or quasi-judicial positions.[31]
- The Commissions of Inquiry Act should be amended to require the concurrence/consent of the Chief Justice of the court whose judge is being appointed to a Commission of Inquiry. The services of retired judges should be used for the appointment of Commissions rather than sitting judges except in exceptional circumstances.[32]

The production of the 120th Report in 1987 dedicated to manpower planning is indicative of the importance the Law Commission placed on determining judge strength. The Report questioned whether the norms underlying determination of judge strength have been publicly articulated or changed since Independence[33] and recommended that:

[26] para 2.11, p 58, *Report of the Arrears Committee* (Vol II) (1989-1990) and para 3.8, pp 19-20, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[27] para 9.12, pp 34-35, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[28] para 2.11, p 58, *Report of the Arrears Committee* (Vol II) (1989-1990)
[29] para 3.7, p 19, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[30] para 5.3, p 21, *Formation of an All-India Judicial Service*, 116th Report, LCI (1986)
[31] p 84, Prof. (Dr.) N R Madhava Menon, Session IV, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)
[32] paras 9.19-9.20, p 46, *Report of the Arrears Committee* (Vol I) (1989-1990)
[33] para 4, pp 1-2, *Manpower Planning in Judiciary: A Blueprint*, 120th Report, LCI (1987)

- The ratio of judges per one million of Indian population should be immediately increased from 10.5 to 50 in a process spread over five to ten years.[34]The resulting number of judges would match that as if were calculated based on the institution rate, pendency rate or both.[35]

The First Malimath Committee Report noted that manpower planning should keep in mind the need for the next 20 years and that justice administration should be made a plan subject.[36]The Report laid down the following norms to be used for determining judge strength:

- Five miscellaneous cases should be treated as equivalent to one main case.[37]
- Weightage of six times should be given for original suits and election petitions given the substantial judicial time they consume.[38]
- The rate of disposal per judge per year should be revised to 800 from 650 main cases given the trend of increase. This figure or the actual national average, whichever is higher, should be used to determine the strength of each High Court.[39]
- The Government of India should prepare a proper *pro forma* to be used by all the High Courts for furnishing information in regard to institution, disposal, pendency and weightage to standardise information collection.[40]

The Supreme Court in *All India Judges' Association v Union of India* (2002) directed that:

- The judge strength should be increased to 50 judges per million people within five years from the date of the judgement i.e. before 8 February 2006. Increasing the judge strength by 10 per million people every year could be a method to be adopted.[41]

[34] para 9, p 3, *Manpower Planning in Judiciary: A Blueprint*, 120th Report, LCI (1987)
[35] para 16, p 4, *Manpower Planning in Judiciary: A Blueprint*, 120th Report, LCI (1987)
[36] para 2.13 and 2.16, p 58-59, *Report of the Arrears Committee* (Vol II) (1989-1990)
[37] para 3.1, p 62, *Report of the Arrears Committee* (Vol II) (1989-1990)
[38] para 3.7, pp 63-64, *Report of the Arrears Committee* (Vol II) (1989-1990)
[39] para 3.11, p 65, *Report of the Arrears Committee* (Vol II) (1989-1990)
[40] para 3.12, p 65, *Report of the Arrears Committee* (Vol II) (1989-1990)
[41] para 25, *All India Judges' Association v Union of India* (2002) 4 SCC 247

The Supreme Court in 2012 directed the Law Commission to produce a report on the creation of additional courts and related matters like deriving a rational and scientific definition of "arrears" and "delays".[42] The result was the 245th Report.

The 245th Report found that while past reports compared the judge-to-population ratio prevailing in India to those in other countries, there is no objective number which we can use as a standard to determine whether the ratio of any State is adequate since filing not only *depends on population but also economic and social conditions.*[43] Likewise, there is no objective standard for judge-to-institution ratio since institution figures depend on the level of access to justice.[44] The ideal case load method – where the total caseload is divided by the 'ideal case load' per judge to determine the number of judges needed in total – is problematic since different types of cases require different amounts of judicial time.[45]While the time-based method, where the average time taken to decide a particular type of case and the number of cases of that type (pending and fresh) are taken into account across the types of cases within a court's jurisdiction to determine the required judicial time,is the most scientific, the information required to apply this formula is missing in India and is hence not feasible.[46]Hence, the Report recommended that:

- The rate of disposal method should be used to determine adequate judge strength.It involves calculating the number of judges required to dispose of the existing backlog and the number of judges required for ensuring that new filings are disposed of in a manner such that further backlog is not created. The average current rate of disposal is used to determine how many additional judges are required to maintain the number of institutions at the same level as the number of disposals.[47]

[42] para 57, *Imtiyaz Ahmad v State of UP* (2012) 2 SCC 688
[43] pp 19-20, *Arrears and Backlog: Creating Additional Judicial (Wo)manpower*, 245th Report, LCI (2014)
[44] pp 20, *Arrears and Backlog: Creating Additional Judicial (Wo)manpower*, 245th Report, LCI (2014)
[45] pp 20-21, *Arrears and Backlog: Creating Additional Judicial (Wo)manpower*, 245th Report, LCI (2014)
[46] pp 22-24, *Arrears and Backlog: Creating Additional Judicial (Wo)manpower*, 245th Report, LCI (2014)
[47] p 24, *Arrears and Backlog: Creating Additional Judicial (Wo)manpower*, 245th Report, LCI (2014)

Sanctioning Additional Judges for Clearing Arrears

Article 224 of the Constitution allows for the appointment of additional judges specifically for dealing with arrears.[48]Several LCI Reports have considered this, recommending as follows:

- There should be a proper mechanism for moving judges from places without arrears to where there is a demand.[49]
- Temporary additional courts should be established at all three levels (subordinate level, district level, and High Courts) exclusively for disposing arrears.[50]*Ad hoc* judges should be appointed by both the Supreme Court and the High Courts.[51]Additional judges appointed for clearing arrears should not be given current matters.[52]
- The number of additional courts should be so as to clear arrears within three years.[53] There must be some standard for the number of cases pending in a court and creation of additional courts whenever there is some indication that the number of cases will exceed that standard.[54]
- The High Courts should be empowered to create additional courts when they consider it justified without reference to the state governments since they are in a better position to do so than the latter, which was found not to fulfil this responsibility.[55]
- Retired judgeswith a reputation for efficiency and who have retired within three years should be utilised on the recommendation of the High Court for clearing heavy backlogs by reappointing them *ad hoc* under Article 224A without burdening them with administrative work. Those who retired from other High Courts can also be

[48] The definitions of terms like 'arrear', 'pendency' and 'backlog' by various Reports have been discussed in the chapter on case management.
[49] para 7.10.2, *Report of the National Commission to Review the Working of the Constitution* (2002)
[50] para 15, p 146, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[51] p 85, Prof. (Dr.) N R Madhava Menon, Session IV, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)
[52] para 57, p 9, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958) 2
[53] para 9.18, p 36, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[54] para 6.3, p 18, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[55] paras 22-23, pp 158-159, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

considered. The appointments should be normally for one year, to be extended by further periods of one year each, up to a total of three years.[56] Retired judges acting *ad hoc* should be paid the last salary drawn by sitting judges without deducting pension or gratuity.[57]

- Retired judges must be organised into benches of two each whose working hours can be earlier in the day while that of the current judges can be from noon so as to allow for the fuller utilisation of court infrastructure.There will be 3-4 benches of retired judges ineach High Court.Matters older than a certain age should be exclusively assigned to retired judges.[58]
- Similarly, at least 12 retired Judges of the Supreme Court could be called upon in 4 benches for clearing arrears.[59]
- Some of the serving officers can be asked to deal exclusively with old cases.[60]
- While special recruitment could be made from young members of the Bar who have practised for at least seven years, ultimately giving them posts of District and Sessions Judges, such judges should not be sent back to their practice after the arrears are cleared since it affects independence and could cause abuse of power.[61]

Support for the additional judges scheme is, however, not unanimous. The First Malimath Committee found it preferable to appoint permanent judges to deal with even arrears than appoint additional judges and recommended that:

- Arrears should be cleared in 5 years.[62] Permanent judge strength should be increased even for clearing arrears. The provision for additional judges under Article 224

[56] paras 9.13, p 35, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978), paras 3.12-3.13, p 21, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979) and paras 3.12-3.13, p 17, *The High Court Arrears — A Fresh Look*, 124th Report, LCI (1988)

[57] para 3.22, p 19, *The High Court Arrears — A Fresh Look*, 124th Report, LCI (1988)

[58] paras 3.18-3.19, p 18, *The High Court Arrears — A Fresh Look*, 124th Report, LCI (1988)

[59] para 4.12, p 22 and para 4.4, p 20, *The Supreme Court — A Fresh Look*, 125th Report, LCI (1988)

[60] para 9.17, p 36, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)

[61] para 9.16, p 35, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978) and para 3.9, p 20, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)

[62] para 2.12, p 58, *Report of the Arrears Committee* (Vol II) (1989-1990)

should be deleted. In exceptional circumstances, temporary needs can be met using the provisions of Article 224A.[63]

- The system of appointing Honorary Magistrates from the rank of retired members should be re-introduced to help clear the backlog.[64]

The Second Malimath Committee reiterated appointment of Honorary Magistrates[65] and proposed the creation of an Arrears Eradication Scheme:

- There should be a cell in the High Court whose duty is to collect information from all the subordinate courts with respect to arrears and identify which of them can be disposed of summarily (under section 262 of the Code of Criminal Procedure) and as petty cases (under section 206 of the Code of Criminal Procedure) and which can be compounded.[66]
- Courts should be constituted under the Arrears Eradication Scheme at each place based on the estimate of the Judge in charge, who is a retired judge known for expeditious trials. These courts shall dispose of cases based on priority and deal with summarily triable and petty offences expeditiously. All compoundable cases should be settled through Lok Adalats via the Legal Services Authority on a priority basis.[67]
- Once a case is posted for hearing at such a Court, it shall not be adjourned unless reasons are recorded in writing subject to payment of costs (to the other party or the victim compensation fund) and the amount of expenses of the witnesses.[68]

The 245thLCI Report expressed concerns about the diligence of additional judges since their appointments were on a short-term basis. It also found that the shift-system is opposed by the

[63] para 2.12, p 58, *Report of the Arrears Committee* (Vol II) (1989-1990)
[64] para 8.61, p 110, *Report of the Arrears Committee* (Vol II) (1989-1990)
[65] para 7.18, *Report of the National Commission to Review the Working of the Constitution* (2002)
[66] Note 92, p 286, *Report of the Committee on Reforms of Criminal Justice System* (2003)
[67] Notes 93-94 and 98, pp 286-287, *Report of the Committee on Reforms of Criminal Justice System* (2003)
[68] Note 97, p 287, *Report of the Committee on Reforms of Criminal Justice System* (2003)

Bar since it increases their working hours.[69] Having information that a decision to double the judge strength had been taken by the executive, the Report recommended that:

- The judges required for disposing the backlog over the next few years (required for the process of doubling the judge strength) can be taken from the new recruits and thereafter they can be appointed to freshly instituted cases.[70]

In a case challenging the Centre's ceasing of funding Fast-Track Courts (FTC), the Supreme Court directed in 2012 that:

- For providing fair and expeditious trials to all citizens, the states and the Centre had to create 10% of the total regular cadre as additional posts and fill these posts immediately.[71]
- Funds allocated by the 13th Finance Commission had to be reallocated to regularisation of FTC judges or creation of additional courts as directed. The burden of expenditure for creating additional courts was to be shared equally by the state and the Centre.[72]

[69] pp 24-25, *Arrears and Backlog: Creating Additional Judicial (Wo)manpower*, 245th Report, LCI (2014)
[70] pp 25-26, *Arrears and Backlog: Creating Additional Judicial (Wo)manpower*, 245th Report, LCI (2014)
[71] para 207.11, *Brij Mohan Lal v Union of India* (2012) 6 SCC 502
[72] paras 207.5 and 207.8, *Brij Mohan Lal v Union of India* (2012) 6 SCC 502

Recruiting Judges

Much debate has ensued about the process of appointing judges among the legislature and in front of the Supreme Court bench. The Law Commissions are no different, with even reports expressly meant to deal with arrears contributing recommendations on the appointing procedure intended to, in their view, reduce arrears by improving the quality of judges and quicken the process of appointment.

While one side of the debate is about whether appointments to the High Courts and the Supreme Courtshould be made by the executive, judges themselves or both, another side is about the process of recruiting judges at the District and subordinate levels, with several Reports supporting the creation of an "Indian Judicial Services" (IJS) along the pattern of the prestigious Indian Administrative Service whose members form the backbone of India's executive magistracy. This chapter covers recommendations relating to the recruitment of judges and, in particular, the creation of an IJS.

The 14th LCI Report (produced under the leadership of M C Setalvad, India's first and longest-serving Attorney-General and first Chairman of India's Bar Council), expressed reservations against an all-India cadre of judges, finding that it would disincentivise the Bar,which it visualised as being the "main recruiting ground"for judgeship in the future.[73]Yet, it supported the creation of an All-India Judicial Service, noting a "gulf in the status" of the judicial and the executive magistrate had been created once the former was separated from the Indian Civil Service and made a part of the state service.[74] It recommended as follows:

- Every state judiciary should be divided into Class I and Class II judges. 'Higher' (District and Sessions judges and 'Lower' (Munsif and subordinate judges) should comprise Class I and Class II judges respectively.
- 40% of the higher judiciary in every state should be drawn from the All-India Judicial Service following a national written competitive examination for law graduates without requiring a minimum period of practice. The examination must test practical

[73]paras 69 and 73, pp 98-100, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[74] para 7, p 164, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

skills such as drafting issues and writing judgements as well as a *viva voce* examination by a High Court judge.[75] This will ensure better calibre of young candidates.[76]

- Those selected from the IJS should undergo an intensive training of two years, with one year alongside IAS appointees,[77] and be posted as magistrates in states other than their own states to foster an all-India outlook.[78] IJS Officers should be promoted so as to reach the position of District and Sessions Judge in about 10 yearsand enjoy the same pay scale as IAS Officers.[79]
- 30% of the higher judiciary in every state should be recruited directly from the Bar with an upper age limit of 40 years and minimum practice of seven years. There is no need to provide them with training upon induction.[80] The rest 30% of the higher judiciary in every state should be promoted from the State Judicial Services.[81] The 40-30-30 rule may be varied for smaller states with fewer districts.[82]
- In all, one-third of the judges should be drawn from outside the state.[83]
- Meanwhile, members of the lower judiciary should be recruited from a competitive exam with an age limit of 30 years and no minimum period of practice required.Those selected should be provided with training of 6-12 months.[84]

The 77th LCI Report supported this scheme, recommending that the Government consider it seriously.[85] However, it recommended that the present system of insisting upon at least three years of practice at the Bar should be retained excepting law graduates employed in courts.[86]

[75] paras 35 and 38, pp 175-177, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[76] para 15, p 167, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[77] para 62, pp 184-185, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[78] para 61, p 184, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[79] para 65, p 186, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[80] paras 67 and 78, pp 187-188 and 193, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[81] para 67, pp 187-188, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[82] para 67, pp 187-188, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[83] para 74, p 100, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[84] para 50, p 181, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[85] para 9.6, pp 32-33, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)

The 116th LCI Report, specialised on the "Formation of an All-India Judicial Services", found that there was sufficient overwhelming support for an IJS[87] as well as scope for it Article 312(3) of the Constitution.[88]As per this Article, only posts equivalent to and above "District Judges" can be drawn from the IJS. "District Judge", however, is defined in Article 236(a) of the Constitution to include the Additional District Judge, Chief Judge of Small Causes Court, Chief Metropolitan Magistrate and so on.[89]

The Report responded to three prevailing points in opposition of the IJS scheme. The first point was that the IJS would pose linguistic barriers more severe and with worse effects than those experienced by IAS Officers posted outside their state owing to the very nature of a judge's work (listening to arguments, appreciating oral evidence, reading briefs and writing judgements). The Report noted that while the local language was indeed usually the language of the court at the district level, trilingual states such as Bombay and Madras in the past managed recruits from different parts of the state by requiring subordinate judges to pass exams in a second language (apart from their mother tongue) and even a third language after some years of service.[90]

On the second point, that promotional avenues of the members of the State Judicial Service would be severely curtailed, the Report stated that the posts of District and Sessions Judges have always been filled to some extent directly and not just from the lower courts. Those already in the state service could also sit for the IJS exam and the age bar would not apply to them.[91]

National Judicial Service Commission

The third point was that judicial independence would be affected since the IJS scheme would increase executive control on appointments. The Report stated in response that Article 235 only empowered the High Courts to exercise control over subordinate courts in matters apart from initial recruitment (such as promotion and disciplinary action). This control would continue, with

[86] paras 9.4-9.6, p 32-33, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[87] paras 3.1-3.3 and 5.1, pp 7-9 and 18-19, *Formation of an All-India Judicial Service*, 116th Report, LCI (1986)
[88] para 2.9, p 6-7, *Formation of an All-India Judicial Service*, 116th Report, LCI (1986)
[89] para 5.3, pp 20-21, *Formation of an All-India Judicial Service*, 116th Report, LCI (1986)
[90] para 3.4(A), pp 9-10, *Formation of an All-India Judicial Service*, 116th Report, LCI (1986)
[91] para 3.4(B), p 11, *Formation of an All-India Judicial Service*, 116th Report, LCI (1986)

High Courts making binding recommendations to the National Judicial Service Commission instead of the Governor.[92]

While it agreed with the 14th LCI Report's relevant recommendations in large part, this Report preferred that the larger share of judges be appointed by competitive examination and from service and not the Bar. It recommended that:

- A National Judicial Service Commission (NJSC) should be constituted by the President for the purpose of conducting the IJS examination. It must consist of, among others, a recently retired Chief Justice of India, one or two retired Supreme Court Judges, some retired High Court Chief Justices and Judges, two outstanding members of the Bar, the President of the Bar Council of India and two or three outstanding legal academics.[93]
- The members of the IJS should be recruited from three sources: 40% directly by competitive examination, 40% by promotion from State Judicial Services and 20% from members of the Bar.[94]
- The competitive examination should be held by the NJSC and distinct from the Civil Services Examination conducted by the UPSC.[95] It should be open to anyone under the age of 30 years who holds a degree in law with second class.[96] It should consist of a written test as well as an interview.[97]
- Those appointed by examination should be given two years' training: one in the academy and one to be spent sitting in the court with judges of different ranks for a few months each. They must be placed at a junior scale initially and under probation for two years and be required to pass a departmental exam by the NJSC as well as a

[92] para 3.4(C), p 12-13, *Formation of an All-India Judicial Service*, 116th Report, LCI (1986)
[93] para 5.14, pp 31-32, *Formation of an All-India Judicial Service*, 116th Report, LCI (1986)
[94] para 5.4, p 23, *Formation of an All-India Judicial Service*, 116th Report, LCI (1986)
[95] para 5.8, pp 25-27, *Formation of an All-India Judicial Service*, 116th Report, LCI (1986)
[96] para 5.5, pp 23-24, *Formation of an All-India Judicial Service*, 116th Report, LCI (1986)
[97] para 5.8, pp 25-27, *Formation of an All-India Judicial Service*, 116th Report, LCI (1986)

local language test to be held by the High Court.[98]They are expected to be elevated to the post of District and Sessions Judge after about seven years of service.[99]

- Promotions from the State Judicial Services should be open to members with at least ten years' service. It should be based on the results of a written test and *viva voce* examination by a committee consisting of two NJSC members and the Chief Justice of the concerned High Court.[100] They too should be placed under probation for two years, but placed at a senior scale as compared to those appointed through the IJS examination.[101]

- Recruitment from the Bar should be of members with at least seven years' practice and preferably ten years' practice. Those younger than 35 years should ordinarily not be selected. While the selection should be made by interview in the same manner as the State Judicial Service candidates, they should be placed under probation for one year and placed at a senior scale.[102]

- If the quota allotted to one of the three sources is unutilised, recruitment must be made from the remaining sources. Carry forward of vacancies must be avoided.[103]

The same Law Commission in its 121st Report laid out the following recommendations for the setting up of the NJSC:

- The NJSC must be created comprising 11 experts (including the Chief Justice of India, who must "unquestionably" be its Chairperson, three senior most puisne judges of the Supreme Court, the Union Minister of Law and Justice, the Attorney-General of India and an "outstanding law academic").[104]

[98] para 5.12-5.13, pp 29-31, *Formation of an All-India Judicial Service*, 116th Report, LCI (1986)
[99] para 5.10, pp 28, *Formation of an All-India Judicial Service*, 116th Report, LCI (1986)
[100] para 5.6, pp 24-25, *Formation of an All-India Judicial Service*, 116th Report, LCI (1986)
[101] para 5.6, pp 24-25, *Formation of an All-India Judicial Service*, 116th Report, LCI (1986)
[102] para 5.7, p 25, *Formation of an All-India Judicial Service*, 116th Report, LCI (1986)
[103] para 5.4, p 23, *Formation of an All-India Judicial Service*, 116th Report, LCI (1986)
[104] paras 7.8-7.10, p 42, *A New Forum for Judicial Appointments*, 121st Report, LCI (1987)

- The NJSC must be responsible for appointing Judges of the Supreme Court and High Courts. Additionally, it must be tasked with the conduction of exams for the proposed Indian Judicial Service.[105]
- The NJSC's recommendations must be binding on the President.[106]
- The NJSC must co-opt the Chief Justice of the High Court in which the vacancy has occurred as well as the Chief Minister of the State where the High Court is vacated.[107]
- The NJSC must devise its own mechanism for accepting recommendations.[108]
- Progressively, the hierarchy of the subordinate courts in the country should be brought down to a two-tier of subordinate judiciary under the High Court.[109]

Three years later, the Constitution (67th Amendment) Bill, 1990 sought to institute the National Judicial Commission. While the Bill ultimately lapsed with the dissolution of the Lok Sabha, the First Malimath Committee recommended in the meanwhile that:

- The National Judicial Commission should not only be tasked with the appointment of Supreme Court Judges, Chief Justices of High Courts and transfer of High Court Judges but also the appointment of High Court Judges.[110]
- A high power committee should be constituted to lay down the qualifications and attributes which candidates for High Court judgeship should possess, as well as the evidence or material necessary to satisfy these requirements. The selecting authority should record reasons with reference to these criteria.[111]

The Supreme Court refrained from issuing any particular directions on the question of an IJS since the matter was not "seriously pressed for" in the case of *All India Judges' Association v*

[105] paras 7.8-7.10, p 42, *A New Forum for Judicial Appointments*, 121st Report, LCI (1987)
[106] paras 7.15-7.16, p 45, *A New Forum for Judicial Appointments*, 121st Report, LCI (1987)
[107] para 7.11, pp 42-43, *A New Forum for Judicial Appointments*, 121st Report, LCI (1987)
[108] para 7.14, pp 44-45, *A New Forum for Judicial Appointments*, 121st Report, LCI (1987)
[109] para 7.18, *Report of the National Commission to Review the Working of the Constitution* (2002)
[110] para 7.8, p 85, *Report of the Arrears Committee* (Vol II) (1989-1990)
[111] Note 68, p 281, *Report of the Committee on Reforms of Criminal Justice System* (2003)

Union of India (1992) and especially since it would also require Constitutional and Service Rules amendments. It nevertheless noted the necessity of the All-India Judicial Service as proposed by the 14th LCI Report and suggested that the government to investigate the feasibility of an IJS for the "health of the judiciary throughout the country".[112]

The Supreme Courtlater considered several recommendations of the First National Judicial Pay Commission (FNJPC) set up under the Chairmanship of Justice K J Shetty and directed that:

- 75% of posts in the Higher Judicial Service (that is, the District Judge Cadre) should be filled by promotion of subordinate judges while 25%, from the Bar (through a written and oral examination) as suggested by the Justice Shetty Commission. However, the promotion of subordinate judges to the Higher Judicial Service should be based on an objective test (to sit for which five years' minimum service is required). Two-thirds (50% of total posts) of promotions should be based on merit-cum-seniority while 1/3rd of promotions (25% of total posts) should be based on the results of the objective test whose rules are to be devised by the High Courts.[113]
- The requirement of three years' experience to enter the judicial service (implemented pursuant to the 1993 *All India Judges' Association* case) should be done away with as recommended by the Justice Shetty Commission. Experience showed that a young law graduate with three years' experience would not find judicial service attractive enough. However, a training of at least one year and preferably two years should be imparted to fresh recruits into the judicial service.[114]

While Law Commissions decades ago had found that there was a lack of qualified jurists in India for appointment to judgeship, the Justice Venkatachaliah Commission Report in 2002 found the scenario had changed. Seeing the lack of representation of members of the Bar and "distinguished jurists" among judges, it recommended that:

[112] para 12, *All India Judges' Association v Union of India* (1992) 1 SCC 119
[113] paras 27-28, *All India Judges' Association v Union of India* (2002) 4 SCC 247
[114] para 32, *All India Judges' Association v Union of India* (2002) 4 SCC 247

- Suitably meritorious persons from the Bar and distinguished jurists should be appointed to judgeship in greater numbers than at present[115]

[115] para 7.3.9, *Report of the National Commission to Review the Working of the Constitution* (2002)

Filling Vacancies

Every Report under study noted that vacancies created by retirement, death or other reasons at all levels persisted for months or even years. Taking the number of regular cases a judge must dispose per year as 650[116] or 800[117] denotes the huge loss of court working days and potential disposal of cases that result from unfilled vacancies. The date of retirement of each Judge being known (since India has prescribed ages of retirement for judges, unlike, say, the United States) means successors can be chosen ahead of the retirement itself. It was recommended that:

- A judge's successor ought to be chosen well ahead of time with the successor immediately taking the place of her predecessor upon the latter's retirement.[118]
- The proposal for filling the vacancy should be initiated 6 months before the vacancy arising due to retirement and immediately in case of vacancies arising due to death or resignation.[119]
- Recruitment examinations should be conducted on time and recruits should be taken in and given training promptly.[120]

Vacancies also occur when additional strength is sanctioned but not appointed. The 121st LCI Report noted that a "few years [were] spent in making the appointments by which time there is again a piling up of arrears necessitating a revision of the maximum strengths".[121] This Report suggested the creation of the NJSC to balance the quick filling of vacancies with selecting meritorious, honest and independent judges.[122]It recommended that:

- To prevent subjectivity in appointments and reduce delays, the Ministry of Law and Justice should maintain a computerised record of every member of the Bar or member

[116] para 3.10, p 18, *A New Forum for Judicial Appointments*, 121st Report, LCI (1987)
[117] para 3.11, p 65, *Report of the Arrears Committee* (Vol II) (1989-1990)
[118] para 6, p 66, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[119] para 7.17, p 45, *A New Forum for Judicial Appointments*, 121st Report, LCI (1987) and para 3.10, p 20, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[120] p 84, Prof. (Dr.) N R Madhava Menon, Session IV, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)
[121] para 4.9, pp 25-26, *A New Forum for Judicial Appointments*, 121st Report, LCI (1987)
[122] para 6.1, p 34, *A New Forum for Judicial Appointments*, 121st Report, LCI (1987)

of the District Judiciary (within the age of 35-40). In the latter's case, every judgement should be scientifically analysed with regard to ability, speed, knowledge of law and rationality and this must be fed into the record.[123]

- Likewise, in the former's case, every case in which he appears may be analysed using his arguments from the judgments and other columns might record his personality, behaviour before the Bench and so on.[124]

The 125th Report suggested a stop-gap solution to the problem of vacancies:

- The retiring judge should be called upon (with his consent) to continue in his position as an *ad hoc* judge until his successor is appointed.[125]
- Since vacancies are filled in chronological order, there is no question of the CJI dragging on successions with a view towards favouritism towards some judges while allowing other judges to be succeeded quickly.[126]

In the 2002 *All India Judges' Association v Union of India* case, the Supreme Court directed that vacancies in all subordinate courts must be filled by April 2003.[127] In the 2008 *Malik Mazhar Sultan v UPPSC (III)* case, the Supreme Court directed as follows:

- The number of vacancies in various posts of the District Judge cadre should be notified by 31 March and the date of joining should be 31 October (2 January for new recruits), following the detailed timelines for each stage of the process as set out by the Supreme Court. The vacancies are to be calculated taking into account existing vacancies and future vacancies that may arise within one year due to retirement as well as 10% of sanctioned posts due to possible promotion, death or otherwise.[128]

[123] para 8.4, pp 46-47, *A New Forum for Judicial Appointments*, 121st Report, LCI (1987)
[124] para 8.5, p 47, *A New Forum for Judicial Appointments*, 121st Report, LCI (1987)
[125] paras 3.6-3.7, p 16, *The High Court Arrears — A Fresh Look*, 124th Report, LCI (1988) and para 4.3, pp 19-20, *The Supreme Court — A Fresh Look*, 125th Report, LCI (1988). This was also supported by Justice (as he then was) Kurian Joseph (pp 35-36, Inaugural Session, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)).
[126] para 4.8, p 21, *The Supreme Court — A Fresh Look*, 125th Report, LCI (1988)
[127] para 25, *All India Judges' Association v Union of India* (2002) 4 SCC 247
[128] para 7, *Malik Mazhar Sultan v UPPSC (III)* (2008) 17 SCC 703

- The Chief Justice of every High Court is requested to constitute a committee of 2-3 judges to monitor and oversee that the timelines for selection and appointment are met every year. A special cell with an officer of the rank of Registrar can be constituted to assist the committee for complying with meeting the timelines. This officer would have to notify the Registrar-General of the Supreme Court of the filling up of vacancies each year.[129]
- While the High Courts and state governments would be at liberty to apply to the Supreme Court for variation in the timelines due to unforeseen circumstances, the timelines are to be followed until a different schedule is permitted.[130]

[129] paras 9-10, *Malik Mazhar Sultan v UPPSC (III)* (2008) 17 SCC 703
[130] para 17, *Malik Mazhar Sultan v UPPSC (III)* (2008) 17 SCC 703

Age of Appointment and Retirement and Post-Retirement Opportunities

Sourceshave attempted to balance experience and stability against the weakening of mental capacity in recommending retirement ages. The age of retirement recommended for subordinate judges has risen from 58 years in 1958[131] to 60 years in 2002[132] subject to certain directions[133] and 62 years in 2014.[134] Meanwhile, the ages of retirement for High Court judges and Supreme Court judges have always hovered between 62[135]-65 years[136]and 65[137]-68 years[138] respectively,with one recommendation to fix the maximum age of appointment of Supreme Court judges at 55 years to provide for at least ten years' tenure leading to "continuity of approach".[139]

In 2018, (then) Justice Kurian Joseph opined at a Conference that the retirement age of the High Court and Supreme Court Judges should be increased to 70 years so as to get the "full benefit of their experience and expertise".[140] Notably, however, the Supreme Court had ruled previously that the ages of retirement of judges at three levels must be in appropriate progression without overlap between two levels.[141]

- This recommendation of the 14th LCI Report's found much support in later reports: Articles 128 and 220 of the Constitution should be amended to disallow Supreme Court and High Court judges from practising or taking up post-retirement government employment as it affects judicial independence.[142]

[131] paras 100 and 102, pp 213-214, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

[132] paras 24-26, *All India Judges' Association v Union of India* (2002) 4 SCC 247

[133]In an order on 24 August 1993, the Court modified this direction to provide that the extension until 60 years was not automatically available to all but only to those whom appropriate Committees of High Court Judges found to have the potential for "continued useful service" after the age of 58 years.

[134] Note 3, p 54, *Arrears and Backlog: Creating Additional Judicial (Wo)manpower*, 245th Report, LCI (2014), subject to the direction of the Supreme Court in 1993 (see

[135] paras 24-26, *All India Judges' Association v Union of India* (2002) 4 SCC 247

[136] para 42, pp 84-85, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958) and para 7.3.10, *Report of the National Commission to Review the Working of the Constitution* (2002)

[137] paras 24-26, *All India Judges' Association v Union of India* (2002) 4 SCC 247

[138] para 7.3.10, *Report of the National Commission to Review the Working of the Constitution* (2002)

[139] para 14-16, pp 37-38, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

[140] p 36, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)

[141] para 26, *All India Judges' Association v Union of India* (2002) 4 SCC 247

[142] paras 29 and 49-51, pp 46 and 87-88, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

Appointing Chief Justices

Finding that the Chief Justice of a court must possess qualities such as administrative competence and ability to judge personalities (to allocate cases and appoint judges), the 14th LCI Report in 1958 recommended:

- It should not be a "matter of course" that the senior most puisne judge becomes the next Chief Justice. The appointment of the Chief Justice must depend on merit … The Chief Justice of India need not be a Judge of the Supreme Court but may be a Chief Justice of the High Court or even a member of the Bar.[143]
- The Chief Justice of India should have a tenure of at least five to seven years.[144]

The question of whether the Chief Justice of a court should be selected based on only seniority or merit as well was answered differently after the infamous supersessions of Supreme Court Judges Shelat, Grover, Hegde and Khanna in the 1970s. The First Malimath Committee Report recommended:

- It should be made a statutory rule (by amending Article 124(2) proviso 2) that the senior most Judge of the Supreme Court shall be ordinarily made the Chief Justice of India. If he is not, reasons should be recorded in writing. This is to avoid arbitrariness and situations of supersession.[145]

Given the decrease in tenure of Chief Justices of India over the years due to an increase in judge strength, Prof. (Dr.) N R Madhava Menon opined that:

- The Chief Justice of India should have a tenure of at least one year so as to contribute significantly to justice administration.[146]

[143] para 18, p 40 and para 25, p 76, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[144] para 17, pp 38-39, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[145] paras 7.19-7.20, pp 87-90, *Report of the Arrears Committee* (Vol II) (1989-1990)
[146] p 85, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)

Supervising and Controlling Courts

The 14th LCI Report, which had a chapter dedicated to the supervision and control of subordinate courts, recommended that:

- The judiciary should be separated from the executive in all states and not only a few[147] i.e. placed under the control and supervision of the High Courts and not the state government to promote independence and avoid magistrates being compelled to put aside judicial work to attend to executive duties. Moreover, scrutiny by a High Court judge is only possible if the judiciary is under the control of the HC and not the state government.[148]
- Until the judiciary has not been separated from the executive, a District Magistrate (Judicial) should be appointed in such states to supervise the criminal magistracy.[149] In such states, there should be division of work such that some officers are given only magisterial work and others only executive work.[150]

Other recommendations for continued supervision of the subordinate courts are:

- Continuation of the practice where subordinate courts have to file periodical reports to the High Court detailing institution, pendency and disposal.[151]
- Time limits for the completion of arguments and delivery of judgments should be set by the High Courts. Monthly returns should be filed by the subordinate courts to the High Court (after consolidation by district judges) explaining why these time limits were not adhered to (if so). Such returns should be examined by High Court judge(s) and not the Registrar.[152]

[147] paras 15-16, pp 856-857, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[148] para 1, p 776 and para 109, pp 216-217, *Reforms of the Judicial Administration*, 14th Report (Vol II), LCI (1958)
[149] para 31, pp 241-242, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[150] para 18, pp 782-783, *Reforms of the Judicial Administration*, 14th Report (Vol II), LCI (1958)
[151] para 7, pp 231-232, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[152] para 11, p 233, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

- Subordinate courts should be inspected by the District Judge at least once a year while District and Sessions courts should be inspected by the High Courts at least once in two years.[153] The inspecting judges should provide instructions for improvement and reduction of delays.[154]
- The District Judge should pay surprise visits to different courts and take action against officers who are unpunctual[155]
- One High Court Judge should be made in charge of each district for one or two years to ensure clearance of arrears.[156]Annual targets should be set for the subordinate judiciary and bi-monthly or quarterly performance review should be conducted.[157]
- Every judicial officer should be required to maintain a daily diary of her judicial work.[158] Recognition of a judicial officer's out-of-turn work should be circulated by the district judge to all judicial officers to motivate others.[159]
- There should be a Periodical Annual Judicial Conference among the District Judge, the judges subordinate to him, and the senior pleaders of the district to address the issues affecting these courts.[160]

The Second Malimath Committee Report recommended that:

- The Chief Justice of the High Court and the Supreme Court should be conferred with powers to take corrective measures against their colleagues for aberrations in conduct since the impeachment process is otherwise difficult.[161]

[153] para 21, p 238, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958) and para 9.9, p 34, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[154] para 22, pp 238-239, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[155] para 13.14, p 47, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[156] para 9.10, p 34, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[157] p 24, CJI (as he then was) Dipak Misra, Inaugural Session, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)
[158] para 16, p 235, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[159] para 26, p 240, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[160] para 25, pp 239-240, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[161] pp 279-280, *Report of the Committee on Reforms of Criminal Justice System* (2003)

The Justice Venkatachaliah Commission Report recommended a process[162] for taking action on complaints against High Court and Supreme Court Judges:

- A committee comprising the Chief Justice of India and two senior most puisne Judges of the Supreme Court should be formed under the National Judicial Commission exclusively empowered to examine complaints of deviant behaviour and incapacity against Supreme Court and High Court Judges.
- If it finds the matter is serious enough, it shall refer it to a committee constituted under the Judges' (Inquiry) Act, 1968. This committee must be a permanent committee with a fixed tenure of four years constituted by the President in consultation with the Chief Justiceof India and not an *ad hoc* committee.
- The report of this committee should be submitted to the Chief Justice of India, who will place it before a committee of seven senior-most judges of the Supreme Court. The committee shall decide whether the findings are proper, charges are established and serious ("proved misbehaviour") or whether a warning, changes in allotment of work to him or transfer should be sufficient ("deviant behaviour not amounting to misbehaviour"). If the committee recommends removal, the judge by convention should demit office himself. Else, the matter shall be placed before Parliament to effect impeachment. No judge shall participate in any proceeding affecting him.

[162] para 7.3.8, *Report of the National Commission to Review the Working of the Constitution* (2002)

Jurisdiction

The 14th LCI Report recommended varying the jurisdiction of High Courts and subordinate courts with respect to several issues and Acts, such as the Code of Civil Procedure, the Special Marriage Act and the Religious Endowment Act to lessen the load on the High Courts.[163]

On the jurisdiction of the Supreme Court, the 14th LCI Report emphasised that the Constitution-makers did not intend to render the Supreme Court "a general court of criminal appeal"[164] but instead that its jurisdiction in matters of criminal appeal was restricted under Article 134 of the Constitution. Noting the necessity to protect the prestige of the High Court as the highest court of criminal appeal in the state, it recommended that:

- The involvement of the Supreme Court under Article 136 of the Constitution should be restricted to cases of "grave and real miscarriage of justice."[165]

Neither the 14th nor the 125th LCI Report wished to reduce the jurisdiction enjoyed by the Supreme Court under the Constitution. The 14th LCI Report rejected the notion that a citizen was required to approach the High Court under Article 226 of the Constitution before approaching the Supreme Court under Article 32 in respect of infringement of fundamental rights.[166] However, the Report noted that appeals against decisions by special tribunals in labour matters were increasingly brought to the Supreme Court under Article 32 since the jurisdiction of High Courts under Article 226 was too narrow in this regard. The latter only quashed tribunal decisions in cases of error of law *prima facie* or contravention of the principles of natural justice but could not give their own decisions. Thus, it recommended:

- Tribunals of appeal or a broadened jurisdiction of the High Courts to allow a greater right of appeal from special tribunals should be provided.[167]

[163] *See* pp 276-277 and 295-296, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[164] para 35, p 49, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[165] para 36, p 50, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[166] para 2, p 32, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[167] para 39, p 51, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

Meanwhile, the 125th Report noted that the Supreme Court of India possibly enjoyed the widest jurisdiction in the world, including the novel jurisdiction "hitherto not enjoyed by any court system in any country" of having original jurisdiction to grant relief in case of violation of fundamental rights.[168]It "hoped" the crisis of arrears would not force its hand to recommend the setting up of many Supreme Courts with equal powers as inherently mentioned under Article 32(3) of the Constitution.[169] Instead, it borrowed a recommendation from the 95th LCI Report:

- The Supreme Court should be divided into two divisions – a Constitutional Division and an Appellate Division.[170]
- The latter can sit in a different part of India so as to reduce the travel costs of some litigants and questions of constitutionality can be heard by the full Bench in Delhi.[171]

The 125th Report noted that the creation of a National Court of Appeal (leaving only Constitutional and public law matters to the Supreme Court) was supported by a Constitution Bench in *Bihar Legal Support Society v. Chief Justice of India and Another* (1986) 4 SCC 767.

On the writ jurisdiction of the High Courts, the 14th LCI Report recommended:

- The High Courts' writ jurisdiction has served a very useful purpose and should not be restricted. Instead, the strength of the HCs should be increased wherever necessary to enable them to deal with the extra work of writ petitions expeditiously.[172]
- Writ petitions should be carefully scrutinised at the admission stage and granted only in proper cases. They should be disposed of within six months of their institution[173]

Likewise, several Reports recommended a raise in district courts' pecuniary jurisdiction:

- The pecuniary appellate jurisdiction of District Judges should be raised in order to relieve High Courts of their burden. It should be ensured that the requisite judges,

[168] para 1.3, p 1, *The Supreme Court — A Fresh Look*, 125th Report, LCI (1988)
[169] para 5.5, p 26, *The Supreme Court — A Fresh Look*, 125th Report, LCI (1988)
[170] para 1.12, p 4, *The Supreme Court — A Fresh Look*, 125th Report, LCI (1988)
[171] para 4.17, p 23, *The Supreme Court — A Fresh Look*, 125th Report, LCI (1988)
[172] para 5, p 658, *Reforms of the Judicial Administration*, 14th Report (Vol II), LCI (1958)
[173] para 9, p 664, *Reforms of the Judicial Administration*, 14th Report (Vol II), LCI (1958)

staff and infrastructure are in place before introducing this measure.[174] However, a uniform pecuniary figure for the whole country is not suitable in this regard.[175]

- The pecuniary jurisdiction of district judges should be increased in comparison to and not in consonance with the pecuniary jurisdiction of the higher courts.[176]
- The jurisdiction of the District Courts to hear first appeals should be enhanced in pecuniary terms and reviewed every five years to be enlarged further if the circumstances justify it.[177] A regular first appeal should be given a date for the final hearing only if it is not summarily dismissed[178]
- The pecuniary limit up to which no second appeal shall lie should be enhanced by amending section 102 of the Code of Civil Procedure.[179]

On the question of the original civil jurisdiction enjoyed by the High Courts of Calcutta, Madras and Bombay, the 14th LCI Report recommended its continuation with an increased pecuniary standard (below which city civil courts would have jurisdiction), noting the benefit of this original jurisdiction for litigants from trade and commerce backgrounds.[180] However, the First Malimath Committee recommended that the original civil jurisdiction enjoyed then by six High Courts should be abolished, with the strength of judges and staff in the civil courts being suitably augmented before the provision is implemented.[181]

[174] para 18.7, p 72, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[175] para 18.8, p 72, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[176] para 61, pp 93-94, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[177] para 3.11, p 18, *Report of the Arrears Committee* (Vol I) (1989-1990)
[178] para 3.17, p 20, *Report of the Arrears Committee* (Vol I) (1989-1990)
[179] para 4.14, p 26, *Report of the Arrears Committee* (Vol I) (1989-1990)
[180] para 6-7 and 12, pp 114-115 and 118, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[181] paras 1.21-1.23, p 13, *Report of the Arrears Committee* (Vol I) (1989-1990)

Working Days and Vacations of the Courts

Several sources recommended an increase in working days of the Courts:

- The courts should have at least 200 working days per year with five hours' judicial work per day which it not diverted to administrative work or dictating judgments.[182]
- The sitting hours of each High Court and the Supreme Court may be increased by half an hour each day or the total number of working days by 21 days per year by the High Court considering the views of the Bar, translating to 231 and 206 working days per year respectively.[183]
- Casual absence for more than 14 days a year, absenting without prior intimation, court days being lost on account of strike, keeping cases part-heard and inordinate delay in pronouncing judgments should be self-corrected by judges.[184]
- Saturday hearing of criminal appeals and jail appeals in which legal aid counsels have been provided has provided encouraging results and may be explored, especially for criminal appeals pending more than ten years subject to the consent of counsels of both parties. Likewise, the summer vacation hearing of criminal appeals where the convict has been in jail for five years or more after obtaining consent of both counsels may be explored further.[185]

To prevent the loss of working days due to lawyers' strikes, it was recommended that:

- Lawyers must not strike under any circumstances and must follow the Supreme Court decision in *Harish Uppal (Ex-Capt) v Union of India* (2003) 2 SCC 45.[186]

[182] para 64, p 95, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

[183] paras 9.11-9.13, pp 43-44, *Report of the Arrears Committee* (Vol I) (1989-1990), note 4, para 2.1, pp 35-37, *Reforms in the Judiciary — Some Suggestions*, 230th Report, LCI (2009) and note 90, p 286, *Report of the Committee on Reforms of Criminal Justice System* (2003)

[184] para 9.4, pp 41-42, *Report of the Arrears Committee* (Vol I) (1989-1990)

[185] pp 19-20, CJI (as he then was) Dipak Misra, Inaugural Session, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)

[186] note 7, para 2.1, pp 35-37, *Reforms in the Judiciary — Some Suggestions*, 230th Report, LCI (2009)

- To prevent strikes and picketing, a Courts Consultative Committee should be set up by every High Court comprising the Chief Justice and the three senior most puisne Judges, the Advocate-General, the Minister of Justice of the State Government, the President and Secretary of the High Court Bar Association and a nominee of the Bar Council of the State to be nominated by the Chief Justice to deal with all problems save those regarding appointment of judges.[187]
- The membership of the Committee should be for a period of three years and meetings can be convened at the option of the Chief Justice or any two members.[188]
- Such a committee can also be replicated for the Supreme Court.[189]

[187] paras 4.5-4.7, p 21, *The High Court Arrears — A Fresh Look*, 124th Report, LCI (1988)
[188] para 4.8, p 21, *The High Court Arrears — A Fresh Look*, 124th Report, LCI (1988)
[189] para 4.10, p 21, *The High Court Arrears — A Fresh Look*, 124th Report, LCI (1988)

Court Staff

The efficiency of a court not only depends on the speed at which judges are able to clear cases, but also the support provided by court staff and other personnel such as Public Prosecutors and police staff in the relevant stations.

While the 127th LCI Report recommended that a minimum staff requirement at each level of the judiciary has to be prescribed since the states do not follow any scientific method to determine the staffing requirements[190], the First Malimath Committee Report left it up to the High Courts to work out their own norms in regard to work turnover and staff requirement.[191]

Several sources have made recommendations regarding court management:

- No court should be allowed to be without a presiding officer; there should be a reserve to meet contingencies.[192]
- The 13th Finance Commission had allocated funds for the appointment of Court Managers, but only two or three courts have made such appointments.[193]
- There should be an independent cadre of court managers, with a Court Manager-General, Senior Court Manager, Court Manager (with 2 juniors) and Case Manager (with 2 juniors). There should be a Senior Court Manager for subordinate courts with more than 30 courtrooms.[194]
- Court Managers should possess legal acumen. However, consensus could not be reached whether court managers should have a background in law[195]or should be trained in business schools only with a special focus on Court Management.[196]

[190] para 3.20, pp 41-42, *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th Report, LCI (1988)
[191] para 9.22, p 47, *Report of the Arrears Committee* (Vol I) (1989-1990)
[192] note 6, p 160, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[193] p 34, Justice Madan Lokur, Inaugural Session, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)
[194] pp 44-45, Justice D B Bhonsale, Session I, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)
[195] pp 44-45, Justice (as he then was) D B Bhonsale, Session I, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)

- The appointment of a Court Executive is necessary given that judges cannot be overburdened with administrative work.[197] She will ensure that the court management policies formulated by the judiciary are implemented. She must be highly qualified and possess management skills and knowledge of the structure of the judicial system and legal procedures, as well as relevant technology.[198]
- Training should be provided to the staff recruited on general qualifications. Minimum qualifications should be increased.[199] A National Judicial Centre can be created under the NJSC for training court staff, including Court Executives.[200]
- A secretariat should be created in every High Court for processing cases for timely appointments, promotions and transfers based on objective criteria and methods.[201]

Additionally, Reports have recommended that:

- There should be a sufficient number of public prosecutors in each district to deal with cases called in different courts simultaneously.[202]
- There must be at least two Additional Public Prosecutors in every criminal court[203]
- Adequate police constables should be attached to each police station exclusively to attend to the work of each court such as serving summons and securing attendance of prosecution witnesses/accused and not for other police work.[204]

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[196] pp 45-46, Prof. (Dr.) M P Singh, Session I, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)

[197] paras 3.26-3.27, pp 46-47, *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th Report, LCI (1988)

[198] para 3.28-3.29, pp 47-48, *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th Report, LCI (1988)

[199] para 3.22, pp 43-44, *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th Report, LCI (1988)

[200] para 3.30, p 48, *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th Report, LCI (1988)

[201] p 87, Prof. (Dr.) N R Madhava Menon, Session IV, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)

[202] para 18.14, p 74, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)

[203] para 6.6, p 32, *Report of the Arrears Committee* (Vol I) (1989-1990)

[204] para 6.10, p 32, *Report of the Arrears Committee* (Vol I) (1989-1990)

Infrastructure

Similarly, adequate court buildings and courthouses are necessary. The LCI Reports find that a lack of courthouses is often cited as a reason for not filling the sanctioned strength of judges.The 127th LCI Report found that many courts are functioning out of buildings wholly unsuited for the purpose such as old hospitals and even erstwhile royal stables with courtrooms divided by curtains.[205] While the Eighth Finance Commission recommended that all courts be located in *pucca* Government buildings and allocated funds for it to twelve States, work had not begun even years later.[206]Recommendations on judicial infrastructure include:

- 210 additional courtrooms are required based on the Eighth Finance Commission's calculation in 1984 by dividing the difference between pendency and institution by annual disposal figures of each state.[207]
- There should be a phased programme for building courthouses with funds from state governments since courts earn surpluses from revenues of judicial administration.[208] The proposed National Judicial Centre can be entrusted with developing standardised court infrastructure.[209]
- Increase in number of High Court Judges should be accompanied by an increase in the number of courtrooms, chambers and libraries of law books.[210]

It is also imperative in the interest of judicial independence that judges should maintain austerity and not be deterred by fear or favour to any litigants (such as who may be their landlords).[211] Thus, the following recommendations and directions were made:

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[205] paras 3.2-3.4, pp 22-24, *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th Report, LCI (1988)

[206] para 3.5, pp 25-26, *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th Report, LCI (1988)

[207] para 3.6, pp 26-28, *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th Report, LCI (1988)

[208] para 122, p 222, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

[209] para 3.30, p 48, *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th Report, LCI (1988)

[210] para 3.17, p 22, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)

[211] para 45, *All India Judges' Association v Union of India* (1992) 1 SCC 119

- Given their routine transfers, judges should not be at the mercy of landlords who often form partnerships with local lawyers to pressurise judges.[212] The percentage of judges provided with government accommodation should be at least 80%.[213]
- There should be uniform provision of an official residence to judges[214] as well as allowance for a residential small office and a small law library to enable study outside court hours.[215]
- Provision should be made for the independent transport of the Chief Judicial Magistrate since he is a touring officer.[216]
- Common transport should be provided for stations with more than four judicial officers to travel to and from the Court so that that they are not forced to travel with litigants and lawyers[217]. There should be a vehicle for every five officers. In stations with less than four officers, travel allowance should be provided.[218]

[212] para 3.12, pp 35-36, *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th Report, LCI (1988)
[213] para 3.13, p 36, *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th Report, LCI (1988)
[214] para 34, *All India Judges' Association v Union of India* (1992) 1 SCC 119
[215] paras 29-31, *All India Judges' Association v Union of India* (1992) 1 SCC 119
[216] para 39, *All India Judges' Association v Union of India* (1992) 1 SCC 119
[217] para 39, *All India Judges' Association v Union of India* (1992) 1 SCC 119
[218] para 40, *All India Judges' Association v Union of India* (1992) 1 SCC 119

Managing Cases

Solving the problem of delays and arrears has always required a precise understanding of the terms. The 14th LCI Report noted that there should be uniformity in what is considered 'current' versus 'pending'.[219]The 245th LCI Report sought to take this further. It noted:

- The terms pendency, delay, arrears and backlog should be defined as follows. Pendency refers to all cases instituted and not disposed, regardless of date of institution. Delay refers to a case that has been in the system longer than the normal disposal time a case of that type should take. Arrears refer to unwanted delays. Backlog refers to the difference between institution and disposal in one year.[220]Pendency Clearance Time thus refers to the pendency at the end of a year divided by the disposal that year. It indicates the amount of time it would take if no new cases were instituted.[221]

- The Supreme Court in *Ramachandra Rao v Karnataka* (2002) 4 SCC 578 held that mandatory time limits could not be prescribed for case clearance but that non-binding guidelines could be useful. Such guidelines have been prescribed by past Law Commissions but based on *ad hoc* prescriptions rather than empirical analysis.[222]

- Methods such as the practical assessment approach and "case-specific time tables" should be adopted for determining 'timeliness' in the first place.[223] The practical assessment approach involves comparing patterns of filing, disposal, case-length and pendency across courts, enabling the identification of outliers as unwarranted delays, and hence, arrears. Using "case-specific time tables" to be fixed by the presiding judge for each case towards the start of proceedings was advocated by the Supreme Court in *Ramrameshwari Devi v Nirmala Devi* (2011) 8 SCC 249.

[219] para 7, pp 231-232, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

[220] para 1, p 3, *Arrears and Backlog: Creating Additional Judicial (Wo)manpower*, 245th Report, LCI (2014). This is more scientific than the approach taken by previous reports. For example, the First Malimath Committee Report defined arrears (para 2.12, p 58) as main cases pending for over two years.

[221] p 15, *Arrears and Backlog: Creating Additional Judicial (Wo)manpower*, 245th Report, LCI (2014)

[222] pp 3-6, *Arrears and Backlog: Creating Additional Judicial (Wo)manpower*, 245th Report, LCI (2014)

[223] pp 7-8, *Arrears and Backlog: Creating Additional Judicial (Wo)manpower*, 245th Report, LCI (2014)

The 14th LCI Report was ahead of its time in noting that quantitative tests for case disposal are self-defeating since they encourage courts to dispose light matters and set aside heavier ones.[224]

Apart from grouping and listing of cases (covered shortly), recommendations on case management have revolved around planning and the use of technology:

- A computer system must be developed to report each step of every case. This information must then be put to processing to enable controlling cases, calendaring and reducing backlogs, while reducing the need and space for paper records.[225]
- There should be a mechanism to monitor the progress of each case from filing till disposal and to categorise cases on the basis of urgency and priority.[226] Pending cases in this mechanism should be cross-checked with the physical database to identify the cases which the parties are still interested in pursuing.[227]
- A Judicial Council and attached Administrative Offices should be created at the apex and High Court levels by statute. They should assist in the creation of plans for time-bound clearance of arrears, prescribing district-wise annual targets. Within 5 years, there should be no case pending for one year or more.[228]
- The District Judge should redistribute work to ensure no subordinate court is overburdened.[229]
- The strategy of reducing pendency in a phase wise manner pertaining to old cases and those older than 5 years has been successful and should be explored further.[230]

Fixing dates is another area that several Reports have dealt with. They recommended:

[224] para 5, p 231, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

[225] paras 3.33-3.34, pp 49-50, *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th Report, LCI (1988)

[226] p 24, CJI (as he then was) Dipak Misra, Inaugural Session, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)

[227] p 28, Justice (as he then was) RanjanGogoi, Inaugural Session, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)

[228] para 7.13.5, *Report of the National Commission to Review the Working of the Constitution* (2002)

[229] note 10, p 160, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

[230] p 75, CJI (as he then was) Dipak Misra, Session IV, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)

- Fixing of dates should be taken up by the presiding judges and not the Reader.[231]
- The number of cases per day should be 25% more than can be reasonably disposed of in a day, since a few cases may go unheard due to unforeseen circumstances.[232]
- Benches should be allowed to function for a period of 3-6 months; before the expiry of the term of the Bench due care should be taken to ensure that no case allocated to that Bench is left out as part-heard.[233]

On listing, the 77th and 79th Reports recommended:

- Adoption of the Special List System in force in Kerala may be considered for trial courts in other states.[234] Under this system, a special list of fully ready cases is prepared at the beginning of one month for the whole of the next month. For each day, only two suits will be posted (one to be the oldest suit and the other to be a lighter suit). This list is to be published by the 10th so as to allow 3-7 weeks' notice to every lawyer, therefore providing no scope for requesting adjournment except for compelling causes. Alternatively, there can be weekly (instead of daily) posting such that three suits are listed per week where the caseload is not that heavy.
- Sessions cases should be given precedence over all others and should continue on a day-to-day basis. They should not be postponed unless unavoidable.[235]
- The situation of old cases getting older while new cases receive priority should be avoided.[236] Older cases should be given preference.[237]Hence, a continuous ready list should be maintained at the High Court according to the date of institution, from which the daily list should be drawn strictly in that order and cases should be taken up serially day by day. However, some cases should be prioritised owing to their nature

[231] para 6.1, p 18, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[232] para 6.2, p 18, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[233] para 8.9, p 35, *Report of the Arrears Committee* (Vol I) (1989-1990)
[234] para 6.11, pp 21-22, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[235] appx II, pp 87-90, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[236] paras 7.1, p 42, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[237] para 8.8, p 35, *Report of the Arrears Committee* (Vol I) (1989-1990)

e.g. death sentence cases, *habeas corpus* cases, cases pursuant to whose orders other proceedings have been stayed, matrimonial and custody cases, motor vehicles act cases, succession cases, election matters, labour disputes evictions and criminal appeals and revisions.[238]

On grouping, the recommendations are three-pronged:

First, that suggests a chronological grouping of cases; second, that suggests a field-based grouping of cases; and three, that judges should be assigned cases in their specialisation of law.

Recommendations for a chronological grouping of cases are as follows:

- Cases should be grouped as per set timelines into fast-track, medium-track and long-track cases.[239]
- Old infructuous matters and interlocutory appeals which stand even after the main cases are disposed of, should be traced using technology and disposed of quickly.[240]

Recommendations for a field-based grouping of cases are as follows:

- A broad classification of cases based on subject should be made. The particular category under which a case falls should be indicated on the docket.[241]
- The cases filed on similar points should be clubbed together using technology and disposed of on a priority basis.[242] Appeals involving points which have been settled by authoritative decisions since filing should be listed in one batch for disposal.[243]

[238] paras 7.9-7.11, pp 43-44, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[239] p 87, Prof. (Dr.) N R Madhava Menon, Session IV, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)
[240] Note 2, para 2.1, pp 35-37, *Reforms in the Judiciary — Some Suggestions*, 230th Report, LCI (2009)
[241] paras 8.1-8.3, p 34, *Report of the Arrears Committee* (Vol I) (1989-1990)
[242] Note 2, para 2.1, pp 35-37, *Reforms in the Judiciary — Some Suggestions*, 230th Report, LCI (2009)
[243] para 7.6, p 43, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979) and para 8.4, pp 34-35, *Report of the Arrears Committee* (Vol I) (1989-1990)

- Matters such as criminal cases where the accused are in jail, matrimonial cases, maintenance cases, cases relating to admission in educational courses and cases against interlocutory orders should be prioritised.[244]
- Cases of certain kinds have an element of urgency and must hence receive prompt attention[245] such as relating to matrimony, eviction, motor accidents and succession. There must be sufficient judicial officers to deal with these categories of cases.[246]
- Traffic and police challans do not require much judicial involvement as they are typically uncontested but are of a huge volume and hence cumulatively take up much judicial time. An automated system or a designated counter for the payment of fines can free up valuable time.[247]
- Writ petitions involving the same questions of law should be grouped together.[248]
- Time limits should be set to dispose technical pleas by all courts since they take up nearly 40% of judicial time.[249]

Recommendations for assigning judges cases in their specialisation of law are as follows:

- It would be suitable if Article 216 could be amended to follow the English model of having several divisions such as Civil, Criminal, Constitutional, Exchequer, Family etc in the High Courts. This experiment may first be tried in the Bombay, Calcutta and Madras High Courts.[250]
- Court specialisation is a universal practice and should be explored. Cases should be assigned to judges with experience in the particular branches of law.[251]As is done in

[244] para 8.7, p 35, *Report of the Arrears Committee* (Vol I) (1989-1990)
[245] para 10.2, p 37, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[246] para 10.7, pp 37-38, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[247] pp 18-19, *Arrears and Backlog: Creating Additional Judicial (Wo)manpower*, 245th Report, LCI (2014)
[248] para 16.17, p 64, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[249] p 94, CJI (as he then was) Dipak Misra, Inaugural Session, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)
[250] para 8.67, p 111, *Report of the Arrears Committee* (Vol II) (1989-1990)
[251] paras 7.12-7.13, p 45, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)

Germany, Judges could specialise in their chosen area and continue in that area for at least five years without being transferred to another area.[252]

- Criminal work is highly specialised and to improve the quality of justice only those in the Supreme Court and High Court who have expertise in criminal work should be appointed and posted by the Chief Justice to benches to deal exclusively with criminal work (constituting a separate criminal division). Such judges should normally continue dealing with criminal cases until they demit office.[253]
- In subordinate courts, where there are more judges of the same cadre at the same place, the same judge must not be assigned both civil and criminal cases.[254] Meanwhile, in urban areas where there are several trial courts, some courts should have lady judges who should be assigned criminal cases relating to women.[255]
- Separate Special Traffic Courts presided over by recent law graduates (for example, for three year periods) should be created for contested cases. However, where there is a chance of imprisonment, regular Courts should hear the matter.[256]

[252] p 84, Prof. (Dr.) N R Madhava Menon, Session IV, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)
[253] Note 65, p 281, *Report of the Committee on Reforms of Criminal Justice System* (2003)
[254] Note 66, p 281, *Report of the Committee on Reforms of Criminal Justice System* (2003)
[255] Note 67, p 281, *Report of the Committee on Reforms of Criminal Justice System* (2003)
[256] pp 18-19, *Arrears and Backlog: Creating Additional Judicial (Wo)manpower*, 245th Report, LCI (2014)

Efficiency and Expediency of Procedures

At a 2018 Conference, Justice A K Sikri of the Supreme Court *stated quite optimistically that*procedural timelines provided in the Code of Civil Procedure were sidelined by courts in the interest of delivering substantive justice (and not due to a lack of capacity or integrity).[257]While his call to balance quantitative, speedy justice with qualitative justice is compelling, merely increasing capacity will not reduce arrears unless the increase in capacity translates to more cases processed by the justice system.

Recommendations for ensuring speedy processing of cases set timelines for each stage in the procedure or the entire case, or suggest ways to improve the speed of these stages.

Some timelines recommended for entire cases are as follows:

- Preliminary steps such as discovery, filing and framing will inevitably take time.[258] However, timelines of one year for all cases before the Munsif court, 1.5 years before the subordinate judge's court, six months for regular contested appeals in district courts and three months for small cause suits should be adhered to.[259]Civil appeals in subordinate courts should be disposed of within 6-9 months of their institution.[260]
- Criminal cases, given their urgency, should be tried speedily. Committal proceedings should be complete within six weeks from the date of apprehension of the accused. The case should be disposed by the magisterial courts in two months or by the Sessions Court in three months from the date of apprehension, as the case may be. The judgment must be delivered within a week of the hearing. Criminal appeals and revisions in the Sessions Court and the High Court should be disposed within two months or six months since institution respectively.[261]

[257] p 43, Justice (as he then was) A K Sikri, Session I, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)
[258] para 3, p 129, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[259] paras 5-6, p 130, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[260] para 18.12, p 73, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[261] paras 5-6, p 130 and para 9, p 232, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

Civil Procedure

Recommendations on civil procedure encompass those on pre-trial procedure, summons, issuing of judgments, adjournments, executing of decrees, appeals and revisions and oral arguments.

Recommendations on pre-trial procedure include:

- The elaborate pre-trial procedure followed in the United States is not suitable for India.[262]
- The time taken in scrutiny of the plaint (that is, between filing of the plaint and registering of the suit) should not exceed one week.[263]
- Pleadings should be drafted by lawyers and not clerks and should not be very lengthy containing much irrelevant matter.[264]
- Orders 7 and 8 of the Code of Civil Procedure should be followed, ensuring that the plaint and the defendant's written statement are filed on the prescribed dates.[265]
- Order 10 of the Code of Civil Procedure should be put to proper use for examining parties before framing issues. This reduces the need for production of evidence since examining leads to many admissions that do not require further evidence.[266]

Recommendations relating to summons include:

- Long delays occur in the service of summons. Summons should be issued both in the ordinary way (through the server) and by postage (required by Order 5, Rule 19A of the Code of Civil Procedure) and the court should act on whichever is effected first.[267]
- Full use should be made of Order 5, Rule 20 CPC for substituted service where the court is satisfied that service cannot be effected in any other way.[268]

[262] para 43, p 324, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[263] para 4.1, p 11, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[264] para 3, pp 297-298, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[265] paras 5.1 and 5.6, pp 13-14, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[266] para 5.7, p 14, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[267] para 4.3, p 11, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978) and para 24, pp 310, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

Recommendations relating to adjournments include:

- Adjournments should not be granted merely to suit the convenience of the parties.[269] Adjournments of listed cases must not be granted unless absolutely necessary and as per the provisions of Order 17 Code of Civil Procedure.[270] Exemplary costs should be imposed for seeking adjournments on flimsy grounds[271] Even where adjournments are granted, they should not be to several months later.[272]

- Order 1, Rule 8 of the Code of Civil Procedure which permits representative suits (allowing suit or defence of a suit on behalf of others) where there is a very large number of defendants having the same interest in the suit should be utilised to prevent adjournments on the basis that summons was not effected to one of them.[273]

- Summons must direct the defendant to file a written statement by a certain date and if he fails to do so, the matter may be dealt with *ex parte*. The court must be strict in granting adjournments for filing written statements.[274]

- The Government must generally be given 3 months' from the date of the summons for filing a written statement.[275]

- The Court must insist on arguments being heard immediately after the evidence is concluded.[276] Experience shows that it takes much less time because if arguments are advanced after a long interval the entire case would have to be reread.[277]

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[268] para 4.4, p 11, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978) and para 25, p 311, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

[269] para 66, pp 337-338, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

[270] note 1, para 2.1, pp 35-37, *Reforms in the Judiciary — Some Suggestions*, 230th Report, LCI (2009), paras 8.20-8.21, pp 37-38, *Report of the Arrears Committee* (Vol I) (1989-1990), paras 7.7-7.8, p 43, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979) and para 6.9, pp 20-21, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)

[271] p 87, Prof. (Dr.) N R Madhava Menon, Session IV, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)

[272] paras 7.7-7.8, p 43, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)

[273] para 4.5, p 11, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)

[274] paras 8-10, pp 300-302, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

[275] para 13, p 303, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

[276] para 82, pp 345-346, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

[277] paras 7.1-7.2, p 23, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)

- The Bar must be divided into senior and junior advocates based on the former's ability, status and reputation.[278] There must be a restriction on the work that may be done by a senior (disallowing him from drafting notices, pleadings, affidavits and appearing in Court without being briefed by a junior). This will lessen adjournments caused by concentration of work among senior advocates.[279]

- A convention should be established that once a counsel has commenced the arguments, no other counsel should, in the midst of the hearing, be permitted to take over since this wastes time in repetition of arguments. This should also not be a reason to grant adjournments.[280] An advocate's absence without reasonable cause should be deemed misconduct and the Bar Council should be intimated.[281]

Recommendations relating to the issuing of judgments include:

- In the trial courts, judgments should be delivered within two weeks of the close of the hearing.[282] Order 20, Rule 1 of the Code of Civil Procedure should be complied with regarding the time within which judgment is to be pronounced.[283]

- In the Supreme Court and High Courts, judgments should be delivered within 90 days from the conclusion of the case. If this is not done, the case must immediately be listed for the court to fix a specific date for the pronouncement of the judgement.[284]

- When a court reserves a judgment, it should specify the date of delivery of the judgment during adjournment.[285]Reserved judgments should ordinarily be pronounced within six weeks of the conclusion of the arguments. If this is not done

[278] para 36, p 569, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[279] para 37, p 570, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[280] para 9.7, p 43, *Report of the Arrears Committee* (Vol I) (1989-1990)
[281] para 9.6, p 42, *Report of the Arrears Committee* (Vol I) (1989-1990)
[282] para 85, p 347, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[283] paras 7.7-7.8, pp 24-25, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[284] para 7.10.5, *Report of the National Commission to Review the Working of the Constitution* (2002)
[285] para 84, pp 346-347, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

within three months, the Chief Justice must post the case for delivering the judgment in open court or withdraw it and post it for disposal before an appropriate Bench.[286]

- Long judgments are unnecessary in appeals dismissed summarily.[287] Concise and coherent judgments are a public resource in their own sense and save judicial time.[288]

However, the Reports were not unanimous on all points. While the 14th LCI Report recommended that it is not necessary to read the full judgment in open court but only the findings on the issues and the final order[289], others disapproved of the practice of pronouncing only the operative portion of the order while reserving the judgment for being pronounced later, stating that reasons and decision should be given should be simultaneously. However, in reserved judgments, it would suffice if the operative part is read out.[290]

Similarly, while the 125th LCI Report recommended that Supreme Court Judges must be empowered to dispose of cases without written opinions as is done in the US (where only a few disposed cases are given reasoned orders)[291], the First Malimath Committee Report disagreed, stating a brief judgment should be rendered and it would not be sufficient to enumerate the points made and say that the provisions are not attracted.[292]

In *Anil Rai v State of Bihar* (2001) 7 SCC 318, the Supreme Court laid down the following guidelines for eradicating the evil of keeping judgments as reserved for long periods of time leading to the judges forgetting the nuances of law or evidence[293]:

- The Chief Justice of the High Courts should direct the Registry to note the date of reserving the judgement and the date of pronouncing it in the Register itself. The Court Officers/Readers should furnish a list of cases where the judgments were reserved that month but are not pronounced at the start of every month.

[286] para 8.27, p 39, *Report of the Arrears Committee* (Vol I) (1989-1990)
[287] para 18, p 392, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[288] p 80, Justice (as he then was) RanjanGogoi, Session IV, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)
[289] para 87, p 348, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[290] paras 8.25-8.28, pp 38-39, *Report of the Arrears Committee* (Vol I) (1989-1990)
[291] para 4.19, pp 23-24, *The Supreme Court — A Fresh Look*, 125th Report, LCI (1988)
[292] paras 8.23-8.24, p 38, *Report of the Arrears Committee* (Vol I) (1989-1990)
[293] para 10, *Anil Rai v State of Bihar* (2001) 7 SCC 318

- If any case is reserved and the judgement is not pronounced for over two months, the Chief Justice should draw the Bench's attention to the matter.
- If the judgement is not pronounced within three months of reserving it, any party to it may file an application for early judgement. Such an application shall be listed before the concerned Bench within two days (barring non-working days).
- If the judgement is not delivered within six months, any party to it may move an application before the Chief Justice to withdraw the case and make it over to any other Bench for fresh arguments. It is open to the Chief Justice to grant such a prayer or to pass any other order as appropriate.

Recommendations relating to the execution of decrees include:

- Courts do not pay attention to execution because it does not count towards the standard disposal. One solution is to have a quarterly statement from each judicial officer giving statistics about the cases in which there was full or partial satisfaction of the decree and in which there was not.[294]
- The work of execution is generally entrusted to *Nazirs*. Their work should be supervised by a judicial officer.[295]
- Again, Order 20, Rule 6A of the Code of Civil Procedure which lays down fifteen days as the ordinary time between judgment and decree should be complied with.[296]
- Judicial officers should take an active interest in execution and set aside a specific time for it: at least half an hour each day for uncontested execution applications and half a day for contested work.[297]

Several recommendations were laid down regarding appeals and revisions:

[294] para 11.3, p 39, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[295] paras 11.4, p 40, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[296] paras 7.7-7.8, pp 24-25, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[297] para 59, p 457, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

- The current scheme of right of appeal should continue, with the first appeal on facts and/or law and second appeal on a substantial question of law.[298] The power of admitting appeals should not be delegated to the Registrar/her Deputy[299]

- However, a second appeal should only be admitted if the appellate court feels that the decision of the lower court on the point of law is erroneous and not just because it raises a question of law.[300] The appellate court must be empowered to admit a second appeal only on specified points of law and must be required to specify these points.[301]

- Appeals are often accorded low priority. Appellate and revisional courts should ensure that appeals/revisions are disposed of within a reasonable period.[302]

- Courts below the High Court should earmark some days every month exclusively for disposing civil appeals. A particular judge or judges should be assigned exclusively to the task of hearing appeals for stated periods. If this period is of three months, or more, an officer may be posted exclusively for their disposal.[303]If the workload does not permit this, the number of appellate courts in the district should be increased.[304]

- Records of the lower courts should be sent promptly and parties at the High Court should be intimated on receipt of the records.[305]Sending of records in revisional cases should be restricted to cases where the High Court expressly so directs by amending section 115(3) of the Code of Civil Procedure.[306]

- The appellants in first civil appeals should file copies of the documents (such as plaint, written statement, decree sheet, memorandum of appeal, documents and

[298] para 4.9, p 24 and para 4.11, p 25, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[299] para 14, p 391, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[300] para 12, p 390, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[301] para 16, pp 391-392, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[302] para 13.6, p 47, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[303] para 32, pp 399-400, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[304] para 18.11, pp 72-73, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[305] paras 5.16-5.17, p 30, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[306] para 5.14, p 30, *Report of the Arrears Committee* (Vol I) (1989-1990)

depositions) within four months of the receipt of the record.[307] Within two weeks of this, the copies thereof should be supplied to the respondent's counsel.[308]

- Appellants should be charged by the court for including unnecessary documents.[309]
- The papers relating to a second appeal may be circulated, for the purpose of deciding whether to admit it, to a Judge outside court hours.[310]
- The office should note all the defects in an appeal within seven days, following which the appellant should be directed to cure these defects within 15 days (extendable for another 15 days), failing which the appeal should be placed before the court.[311]Judges should read the memorandum of appeal and the judgement of the lower court outside court hours.[312]Judgements on appeals should as far as possible be delivered within a fortnight of the conclusion of the hearing unless the matter is reserved[313] and in any case, should not exceed one month.[314]
- Courts should scrutinise revision applications at the stage of admission.[315]All revisions in which stay orders have been granted should be disposed of within 2-3 months.[316]
- The subordinate courts must provide a periodical return showing the cases which have been held up due to the pendency of revision petitions.[317]
- The record of the trial court should be sent back within ten days of the judgement in appeal or revision cases or remand cases.[318]

[307] para 5.20, p 31, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[308] para 5.21, p 32, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[309] para 5.26, p 32, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[310] para 15, p 391, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[311] para 5.6, p 28, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[312] para 42, pp 403-404, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[313] para 49, pp 406-407, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[314] para 6.27, p 40, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[315] para 25, pp 425-426, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[316] para 11, pp 419-420, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[317] Note 5, p 429, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[318] para 13.7, p 48, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)

- Doing away with oral arguments in appeals is not favoured since it may result in a miscarriage of justice[319], but a concise statement of arguments before the commencement of the oral arguments is recommended.[320]

Early LCI Reports took a conservative approach to restricting oral arguments. They recommended that:

- It is inadvisable to introduce the United States' "briefs" system in India since judges are accustomed to unrestricted oral arguments.[321] Instead, hearing time may be reduced by avoiding a rereading of the entire record of all the stages of the case through so far and judges confining the hearings to the relevant points and preventing prolix.[322] An opening must only be insisted upon in cases where the court feels a need for it.[323] Counsel should exchange a list of authorities they propose to cite, before the date of the hearing.[324]
- There is a tendency to "over-prove" allegations of fact. Unnecessarily long depositions should be avoided; however, it is not possible to devise rules to this end. It is left to the sense of the Bar and the Bench.[325] Practices such as citing needlessly large number of authorities and reading lengthy passages should be avoided.[326]

However, the 124th LCI Report criticised this approach, calling oral arguments the "ugliest feature" of India's court procedure[327] since it leads to a huge waste of judicial time and contributes to mounting costs of litigation. This Report, along with later Reports equally critical of oral arguments, recommended that:

- Written submissions, including the list of precedents and relevant paragraphs to be relied upon, should be submitted to the court from both parties. The briefs should be

[319] para 6.24, p 40, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[320] para 6.19, p 38, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[321] para 16, p 472, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[322] para 18, pp 473-474, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[323] paras 67-68, pp 338-339, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[324] para 19, p 474, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[325] para 6.4, pp 18-19, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[326] paras 7.3-7.4, pp 23-24, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[327] para 4.12-4.17, pp 21-22, *The High Court Arrears — A Fresh Look*, 124th Report, LCI (1988)

circulated to the members constituting the Bench, who will specify the time allocated to each side for oral arguments in advance.[328] Reference to the list of precedents in the oral arguments should be avoided, with the court not permitting it.[329]

- The Chief Justice of India should identify a number of cases in which oral arguments can be totally dispensed with and the Supreme Court must also be empowered to dispense with oral arguments and insist upon written briefs. Special Leave Petitions which can be admitted without oral arguments can be admitted by circulation and those needing arguments should have a hearing of maximum 30 minutes. The Court must prescribe the time for final hearing in advance and strictly adhere to it.[330]
- The length of oral arguments in any case should not exceed 1.5 hours unless it involves complicated questions of law or interpretation of the Constitution.[331]
- In all, written arguments should be made the basis for mainstream advocacy thereby limiting the time consumed by oral arguments.[332]

Miscellaneous recommendations relating to civil procedure are as follows:

- In original trials, production of further documents should not be allowed at the stage of hearing except in exceptional circumstances to be recorded in writing.[333]
- Questions of relevancy and admissibility of documents should be decided as and when they arise.[334]
- Courts should encourage the larger use of affidavit evidence for simple and incontrovertible facts.[335] Affidavit evidence (deposed in accordance with Order 19 of

[328] para 4.21, p 22, *The High Court Arrears — A Fresh Look*, 124th Report, LCI (1988)
[329] para 4.22, pp 22-23, *The High Court Arrears — A Fresh Look*, 124th Report, LCI (1988) and para 8.15, p 36, *Report of the Arrears Committee* (Vol I) (1989-1990)
[330] para 4.18, p 23, *The Supreme Court — A Fresh Look*, 125th Report, LCI (1988)
[331] Note 5, para 2.1, pp 35-37, *Reforms in the Judiciary — Some Suggestions*, 230th Report, LCI (2009)
[332] p 87, Prof. (Dr.) N R Madhava Menon, Session IV, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)
[333] para 29, pp 313-314, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[334] para 35, pp 318-319, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[335] para 75, p 342, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)

the Code of Civil Procedure) is desired over oral evidence in cases of facts or evidence of a formal nature.[336]

- Original proceedings should not be stayed where appeals and revisions lack substance or are not bonafide.[337]

Criminal Procedure

Delays in criminal procedure should especially be eliminated because criminal cases hinge on oral rather than documentary evidence and memory of witnesses/victims fades with time.[338]At the same time, the presumption of innocence should not be relaxed with a view to ultimately reduce delays or pendency.[339]Recommendations on criminal procedure are as follows:

- Absence of witnesses is one of the main reasons behind delays in criminal cases. Firm action should be taken against recalcitrant witnesses (under sections 485A and 487 of the Code of Criminal Procedure) and those who absent themselves despite service of summons.[340] At the same time, a witness protection law should be enacted.[341]
- A witness should be paid adequate travelling allowance. This should be paid on the day she comes to the court even if the case is adjourned without examining her.[342]
- A record of the witnesses summoned for a date and reasons for sending any of them back without examination should be recorded so as to reduce this phenomenon.[343] The judge should be held accountable by the High Court for granting unnecessary adjournments, thus requiring the witness to appear again and again.[344]

[336] para 6.9, pp 20-21, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[337] para 101, pp 355-356, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[338] para 12.1, p 41, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[339] para 10, p 837, *Reforms of the Judicial Administration*, 14th Report (Vol II), LCI (1958)
[340] paras 8-11, pp 778-780, *Reforms of the Judicial Administration*, 14th Report (Vol II), LCI (1958)
[341] note 81, p 284, *Report of the Committee on Reforms of Criminal Justice System* (2003)
[342] note 80, p 284, *Report of the Committee on Reforms of Criminal Justice System* (2003) and para 6, pp 777-778, *Reforms of the Judicial Administration*, 14th Report (Vol II), LCI (1958)
[343] para 12.2, p 41, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[344] note 82, p 284, *Report of the Committee on Reforms of Criminal Justice System* (2003)

- A later Report recommended that witnesses summoned should be examined on the same date either by the judge or if it is not possible, by the Commissioner or Officer of the Court appointed for the purposes from among retired District Judges or judicial officers of the cadre of District Judges.[345]
- The evidence of experts (ss 291-293 CrPC), including DNA experts may be received under affidavit as far as possible.[346]
- Where there are a large number of accused and one absents himself on the day of hearing, the trial court should consider directing representation by counsel.[347]
- Cases with possibility of death sentence should receive priority over all others.[348]
- The Supreme Court noted that the power to order stay of investigation and trial is a very extraordinary power and is to be exercised sparingly only to prevent an abuse of the process. The High Court should make it a point to dispose of such proceedings within 6 months of the date the stay order is issued.[349]
- All cases with a punishment of three years and below should be made triable by summary procedure by amending section 262(2) of the Code of Criminal Procedure.[350] The power to exercise summary powers should be expanded to all Judicial Magistrates First Class. All petty cases should be dealt with as prescribed in section 206(1) Code of Criminal Procedure and the classification should be expanded to those with a fine value of INR 5,000 from INR 1,000.[351]

Recommendations on criminal appeals and revisions are as follows:

[345] para 8.17, p 37, *Report of the Arrears Committee* (Vol I) (1989-1990)
[346] note 83, p 284, *Report of the Committee on Reforms of Criminal Justice System* (2003)
[347] para 12.13, p 45, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[348] para 12.16, p 45, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)
[349] para 55, *Imtiyaz Ahmad v State of UP* (2012) 2 SCC 688
[350] note 73, p 283, *Report of the Committee on Reforms of Criminal Justice System* (2003)
[351] notes 72, 75, pp 282-283, *Report of the Committee on Reforms of Criminal Justice System* (2003)

- Criminal appeals in the High Courts should be disposed of within six months.[352] Criminal appeals in the Sessions Courts and Magistrate Courts should be disposed of within a maximum of two months.[353]
- Similarly, criminal appeals and revisions should be disposed of within 6 months[354] and a single judge of the High Court should be empowered to finally dispose all criminal revisions except in cases of sentences of death or life imprisonment.[355]
- Sessions judges should be empowered to finally dispose revision cases except those against orders of acquittal or enhancement of sentence.[356]
- In criminal cases, summons be served in time and a strict system of supervising summons service be instituted to prevent delays arising thereof.[357]

Writ Petitions

Finally, recommendations relating to writ petitions are as follows:

- To avoid delay in the disposal of writ petitions from service where the respondent is a Government Department, The Advocate-General or the Central Government Standing Counsel should accept notice on behalf of the Government.[358]
- Similar to the recommendations on civil procedure, writ petitions should be required to be accompanied by a chronological statement of the necessary facts[359] and a concise note of arguments should be filed in writ petitions (except *habeas corpus*)[360]

[352] para 18, p 803, *Reforms of the Judicial Administration*, 14th Report (Vol II), LCI (1958)
[353] para 25,p 809, *Reforms of the Judicial Administration*, 14th Report (Vol II), LCI (1958)
[354] para 3, p 821, *Reforms of the Judicial Administration*, 14th Report (Vol II), LCI (1958)
[355] para 5, p 826, *Reforms of the Judicial Administration*, 14th Report (Vol II), LCI (1958)
[356] para 6, p 826, *Reforms of the Judicial Administration*, 14th Report (Vol II), LCI (1958)
[357] Notes 7-8, p 788, *Reforms of the Judicial Administration*, 14th Report (Vol II), LCI (1958)
[358] para 16.5, p 62, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[359] para 16.7, p 62, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[360] para 16.14, p 63, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)

- Dismissing writ petitions at the preliminary stage by a one-word ('dismissed') order causes delay as the case is later remanded. Hence the HC while dismissing should record a short order giving reasons.[361]
- If counter-affidavits are not filed within three months of the date of service of notice of admission, the case should be listed nevertheless and the respondent should not then be allowed to file a counter-affidavit without special permission of the court.[362]

[361] para 16.8, p 62, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[362] para 16.11, p 63, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)

Enhancing the Power of a Single Judge

To effectively double case clearance, several sources have recommended awarding certain powers enjoyed by Division Benches to Single Judge Benchesof the High Court.[363]Specifically:

- While regular first appeals from subordinate courts to High Courts should be placed before a Division Bench in order to accord plurality of minds,[364] other appeals may be heard by single judges.[365]A later Report recommended that regular first appeals with a subject-matter value below a certain pecuniary limit should be disposed of by a Single Judge and others by a Division Bench.[366]

- Judgements in first appeals by a single Judge should be final except where certificate or Special Leave Petition is granted.[367] Appeals to a Division Bench of a High Court against the appellate decision of a single Judge of the same High Court should be abolished by amending section 100A of the Code of Civil Procedure and other specified local laws.[368] Similarly, there shall be no appeal against the decision of a single Judge of the High Court rendered in the exercise of the writ jurisdiction.[369] However, appeals can lie against the decisions of single judges on the original side.[370]

- Second appeals and civil revision petitions need only be heard by a single Judge.[371] Only certain categories of cases such as *habeas corpus* writs, cases arising under fiscal laws and labour legislations, and public interest litigations (PIL) cases should be identified by the High Court as deserving to be heard by a Division Bench.[372]

[363] para 43, p 404, *Reforms of the Judicial Administration*, 14th Report (Vol I), LCI (1958)
[364] para 11.4, p 53, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[365] para 11.7, p 54, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[366] para 3.16, p 19, *Report of the Arrears Committee* (Vol I) (1989-1990)
[367] para 11.3, p 53, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[368] paras 2.3-2.4, p 15, *Report of the Arrears Committee* (Vol I) (1989-1990)
[369] para 2.5, pp 15-16, *Report of the Arrears Committee* (Vol I) (1989-1990)
[370] para 11.9, p 54, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979)
[371] para 8.12, p 36, *Report of the Arrears Committee* (Vol I) (1989-1990)
[372] para 2.8, p 16, *Report of the Arrears Committee* (Vol I) (1989-1990)

- No paper books need be prepared in criminal appeals to be a heard by a single Judge as the original records would be readily available for the judge.[373]
- A single High Court Judge should be empowered to dispose of all criminal appeals except those where sentences of death or life imprisonment have been passed.[374]

The 124th LCI Report once again took a more radical approach, recommending that:

- Division Benches were required when the Privy Council were not within the reach of the public but now the Supreme Court is within the public's reach under Article 136 of the Constitution. Hence, Division Benches should be done away with and every matter should be heard by a single Judge of the High Court except where statute provides to the contrary.[375]
- The Supreme Court had used its power under Article 145 of the Constitution to frame a proviso to Order VII, Rule 1 of the Code of Civil Procedure to allow its single Judges to give final decisions in certain cases, but this rule has not been implemented despite being approved by the President and thus becoming operational in 1983. It should be implemented.[376]

[373] para 6.7, p 32, *Report of the Arrears Committee* (Vol I) (1989-1990)

[374] paras 21-22, pp 806-807, *Reforms of the Judicial Administration*, 14th Report (Vol II), LCI (1958) and para 14.6, p 58, *Delays and Arrears in High Courts and Other Appellate Courts*, 79th Report, LCI (1979) and para 6.2, p 31, *Report of the Arrears Committee* (Vol I) (1989-1990)

[375] para 4.27, p 23-24, *The High Court Arrears — A Fresh Look*, 124th Report, LCI (1988)

[376] para 3.12, pp 16-17, *The Supreme Court — A Fresh Look*, 125th Report, LCI (1988)

Budgets

Every LCI Report covered expressed, in some fashion, the need for allocation of greater funds to justice administration. Some noted that the government could not shirk its responsibility towards dispensation of justice citing financial constraints.[377] Leaving aside exact figures recommended since inflation means they must be periodically revised, some conclusions and recommendations of the Reports regarding financial support to the judiciary are as follows:

- Expenditure on administration of justice must be treated as plan expenditure.[378]
- The financial allocations to the courts with respect to some heads come from the Consolidated Fund of India and in others are based on decisions of the current legislature. The lack of "power of purse" to the judiciary is evidence of its lack of independenceand a direct violation of the spirit of the Constitution.[379]A failure of the state to uphold its duties of setting up adequate courts and placing adequate funds at their disposal may permit a *mandamus* to be issued to the state but this cannot be a solution in all cases.[380]
- Instead, the National Judicial Service Commission (NJSC) must be entrusted with determining the financial needs and budgets of the courts under a new body of its own called the "Finance Consultative Committee", comprising of the Chief Justice of India or Chief Justices of the High Courts as relevant, Administrative Judges and Administrative Officers of the High Court and Secretaries from the Ministries of Finance and Law and Justice.The budget proposed by the Supreme Court and High Courts must be referred to this Committee which will provide a space for the Ministries to discuss and approve the budget.[381]

[377] para 13.16, p 48, *Delays and Arrears in Trial Courts*, 77th Report, LCI (1978)

[378] para 4.10, p 21, *The Supreme Court — A Fresh Look*, 125th Report, LCI (1988)

[379] para 4.6, pp 60-61, *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th Report, LCI (1988)

[380] paras 4.10-4.13, pp 66-70, *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th Report, LCI (1988)

[381] paras 4.14-4.15, pp 71-72, *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th Report, LCI (1988)

- Similarly, a Judicial Council and attached Administrative Offices was recommended to be set up at the apex and High Court levels by statute to prepare plans and budget proposals. Such a budget proposal shall be submitted to the state executive, and, after finalisation, presented in the state legislature.[382]

- The extent to which court fees can cover the expenses of the court has been decreasing steadily and in a few years it would only contribute to a very small percentage of covering expenses.[383] This is probably because there has been no *pro rata* increase in the court fee or fines with respect to inflation since (then) 1860. Fee and fine amounts have to be revaluated periodically.[384]

- The 'haves' (commercial litigants and industrialists) enjoy the benefit of the High Courts' writ jurisdiction and have their cases heard for months on end while paying a nominal fee claiming a violation of a fundamental right (such as the right to profession), while the 'have-nots' (workers, tenants, seekers of maintenance etc) are left without any time for their grievances to be redressed by the court. To group them together as one class for the purpose of fees violates the equality doctrine of classification. Instead, those who can afford must pay a court fees that accounts not only for the day-to-day expenses (depending on the number of judges hearing their case) but also capital (building) depreciation and a 10% surcharge to account for no court fees by the have-nots.[385]

- Centre should also allocate funds for subordinate courts; the entire burden should not be on state governments.[386]

[382] paras 7.7 and 7.8.1, *Report of the National Commission to Review the Working of the Constitution* (2002)

[383] para 5.9, pp 81-84, *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th Report, LCI (1988)

[384] paras 5.12 and 5.13, pp 85-87, *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th Report, LCI (1988)

[385] paras 5.15 and 5.18, pp 88 and 94-95, *Resource Allocation for Infrastructural Services in Judicial Administration (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint)*, 127th Report, LCI (1988)

[386] para 7.8.2, *Report of the National Commission to Review the Working of the Constitution* (2002)

- The Supreme Court directed that what is collected as court fee should be spent on justice administration and not as general revenue for the state (given that the income from court fees then exceeded the expenditure on justice administration).[387]

- Pursuant to the Supreme Court's guidelines in *All India Judges' Association v Union of India* (1993) 4 SCC 288, the First National Judicial Pay Commission was set up under Justice K J Shetty. The recommendations of the Commission was challenged in *All India Judges' Association v Union of India* (2002) 4 SCC 247. The Supreme Court disagreed with the Commission's recommendation of the Centre's exchequer sharing in the burden of increased judicial expenditure as a result of adopting the Commission's recommendations and clarified that the entire extra expenditure must be borne by the states.[388]

[387] para 54, *All India Judges' Association v Union of India* (1992) 1 SCC 119
[388] para 23, *All India Judges' Association v Union of India* (2002) 4 SCC 247

Miscellaneous

Some miscellaneous recommendations are as follows:

- Any proposed legislation should be preceded by an adequate investigation by the executive as to the real need of such law including with the setting up of Select Committees. The task of legislative drafting should be entrusted to highly specialised experts who qualify after being provided academic training of a high order in the field of draftsmanship.[389]
- The Supreme Court directed that in 1992 that an in-service training institute at the Central and state/UT level should be set up within a year.[390] Intensive training should be imparted not only at induction but at frequent intervals.[391]
- The Supreme Court directed in 2012 that the decisions of the Chief Justices' and Chief Ministers' Conference shall be placed before the Cabinet of the Centre/State which would be the sole authority with powers to accept, modify or decline these decisions based on objective and valid reasons. No decision of the Conference could be rejected or declined or varied at any bureaucratic level of the Centre or the State.[392]
- State Governments must set up proper machinery to scrutinise proposals for appeals against acquittals to prevent frivolous appeals by the State.[393]
- A Research Division should be created in every High Court headed by competent researchers instead of judicial officers to investigate and devise methods to improve the efficiency of the courts, including technological developments.[394]

[389] paras 9.31-9.34, pp 49, *Report of the Arrears Committee* (Vol I) (1989-1990)
[390] para 57, *All India Judges' Association v Union of India* (1992) 1 SCC 119
[391] Note 64, p 281, *Report of the Committee on Reforms of Criminal Justice System* (2003)
[392] paras 207.6-207.7, *Brij Mohan Lal v Union of India* (2012) 6 SCC 502
[393] para 6.5, p 32, *Report of the Arrears Committee* (Vol I) (1989-1990)
[394] pp 86-87, Prof. (Dr.) N R Madhava Menon, Session IV, *Conference Proceedings of National Initiative to Reduce Pendency and Delay in Judicial System* (2018)

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