LAW COMMISSION OF INDIA

ONE HUNDRED TWENTIETH REPORT

ON

MANPOWER PLANNING IN JUDICIARY: A BLUEPRINT

JULY, 1987

This report essentially deals with the problem of judicial manpower planning, an area that has been generally ignored in India's planned development. Although there have been debates in Parliament and in public concerning the scandalous delays in judicial administration, and the previous Law Commissions have examined the problem, these exercises have not given the necessary impetus for a comprehensive restructuring of judicial administration in India.[1] We must ask a simple question: Why?

2. The answer to this question is at once inescapably both political and technical. Politically the Indian State since the colonial period has self-consciously under-staffed the judiciary. After the independence, too, this colonial situation has been allowed to continue, with the result that the Union of India endorsed it before Judge Keenan of the New York District Court in the Union Carbide litigation.[2] Despite this self-consciousness, no major initiative has resulted.

3. Commission does not wish to use the word 'political' only in the sense of criticising the Government of India or the various States. The Commission wishes to use the word 'political' broadly as including the overall lack of attention to this problem on the part of political parties, free press, social activists and the Bar. None of these groups have shown any effective will to campaign for adequate manpower planning for the Indian Judiciary, even while using the services of the Judiciary quite effectively for their own purposes from time to time. It must also be added that Judges of the High Courts and the Supreme Court of India, sitting or retired, have also not lent their weight to this constitutional cause in any major way. In other words, adequate reorganisation of the Indian Judiciary is at the one and the same time everybody's concern and, therefore, nobody's concern.

4. The technical reason simply is that the developing science of manpower planning has not attracted the attention of policy opinion makers in the field of administration of justice in India. All reorganisation proposals are basically patch work, ad hoc, unsystematice solutions to the problem.[3] In our opinion, the relevant questions are as folows:

(a) On what principles since independence, have decisions been taken concerning the appropriate strength in each cadre of the Judiciary?

(b) Have these principles or norms ever been publicly articulated?

(c) Have they changed over the last four decades, and, if so, through what kind of discourse?

(d) For example, how many new offences have been created by laws enacted by Parliament and State Legislatures in last 40 years? Does the Justice Department keep the proportional increase in the workload of courts in mind and propose any corresponding increase in the strength of the Judiciary while proposing new penal offences?

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1. M.P. Jain, outlines of Indian Legal History, 254– 256 (1981).
2. U. Baxi, Mass Disaster and Multinational Liability : The Bhopal Case, 1961 (1986).
3. See U. Baxi, The Crisis of Indian Legal System, 58—83 (1982).

Please note that the same kind of questions need to be asked in relation to regulatory laws.

(e) The burden of judicial administration does not merely increase by the norms enunciated through only the Legislature. We may have situations where the Justices of the Supreme Court also created new norms of law through power to declare binding law under article 141 of the Constitution of India. In relation to these, is there any profile being taken by the Law Ministry of the Union and the States? And does this profile enter in manpower planning for the Judiciary?

6. These illustrative questions would indicate, no doubt the lamentable fact that after four decades of independence, we have not been able to organise even the minimum level of information on the basis of which concrete proposals for judicial manpower planning may take place. There are no attempts at comparative study of this situation either. We have never asked the question, for example, how in a small country like Hungary, there will be as many as 70 Justices in the Supreme Court as compared to a grudging number of 25 in the Indian Supreme Court. Both in terms of territory and population and the overall profile of the legal system, there are marked differences between Hungary and India. Similarly we have never addressed ourselves adequately to a behavioural study of the Indian legal profession and systematically examined practices which are inimical to development of sound administration of justice in India. Occasional pointers to these practices are indeed available in the official and non-official literature, but they in no case amount to an adequate scientific analysis.

6. The Commission has a feeling that absence of hard technical information and analysis has reinforced, if not generated, a tacit indifference to the situation by all concerned including the judicial administration. The Commission itself is in no position, given the fact of its present structure, to provide this kind of technical analysis only on which sound programme of change can be envisaged. Of course, the Commission has done the next best thing and elicited extensive opinion of those knowledgeable in the field and the general public. But we must admit that, all said and done, this is a very poor substitute for sound scientific analysis.

7. It has to be realised that judicial services are a crucial aspect of the services that the modern Indian State should provide to its citizens. In order to reinforce this obligation, the Constitution was specifically amended in 1976 to provide article 39A as a major Directive Principle of State Policy. This directive principle should have immediately raised the question concerning the manpower planning of judicial services but this question is now being put forth, through the labour of the Commission, a whole decade after the constitutional duty has been inscribed by the amendment. What general approaches should we take to the problem is the first major question?

8. This question can, of course, be approached from several perspectives. First, we may try to correlate the general increase in population rate with the question of the number of Judges in all cadres. In regard to political representation in Parliament, the demographic factor has been

frozen to the levels of population as at 1971 [See article 81(3)]. India has today only 10.5 Judges per million population; Australia, which had roughly ten million population in 1975, had 577 Judges giving an average of 41.6 Judges per million population; Canada with her 1,812 Judges with a population of roughly 25 million as of 1973, had the rate of 75.2 Judges per million population; England with 2,504 Judges for roughly 50 million people in 1973 had the rate of 50.9 Judges per million population and the United States with three times less population than India has 25,087 Judges as at 1981 giving an average of 107 Judges per million of population.[4] This information filed by the Union of India expert Prof. Marc Gallanter has been endorsed by the Union of India. Clearly the total Judge strength of 7,675 is grossly inadequate for India.

9. Given the overall resource constraints, it is not possible for us even to suggest that we immediately rise to a total Judge strength of 25,087 which the U.S. commanded as of 1981. But certainly there is strong justification for the recommendation that we increases immediately the present ratio from 10.5 Judges per million of Indian population to at least 50 Judges per million of Indian population. We recommend accordingly.

10. It is difficult to envisage that the Judge strength can be raised five-fold within a short span. The process will have to be spread over a period of five years but in any case it should not exceed ten years. The national investment of the increase in number of Judges year to year may have to be worked out on a rough approximation. This exercise would not be difficult keeping in view the figures supplied in the Appendix. The Commission would not be able to work it out to the last paise. The exercise must be divided into two parts, namely, expenses on the salaries and perquisites of Judges and the corresponding increase in the administrative staff and infrastructural facilities. As the expense of the High Court and subordinate judiciary is charged on the Consolidated Fund of the State, it would be appropriate to leave it to each State to work out the rise in expenditure.

11. This would, of course, raise the question of the ultimate optimum number of Judges. The Commission recommends that by the year 2,000, India should command at least the ratio that the U.S. commanded in 1981, i.e., 107 Judges per million of Indian population. The inter se distribution of the enhanced number among various cadres State-wise would ordinarily proceed on the basis of population in each State and the institution of cases.

12. Appendix I (1) to this Report sets out the expenditure incurred on Judges, staff and other miscellaneous items on the Supreme Court of India for the year 1984-85. Appendix I (2) gives similar information with regard to all the High Courts. Appendix I(3) sets out the total tax receipts of each State for the year 1981-82 and the expenditure incurred on State judiciary. It will appear at a glance that expenditure on judiciary forms an infinitesimally small portion of tax receipts of each State which again includes receipts from court fees, which must at any rate be exclusively spent on administration of justice. It is time to re-think whether expenditure on administration of justice can ever be called non-plan expenditure. At some point of time, this will have to be dealt with.

4. *Supra* note 2 at 208.

But even on a traditional interpretation, our recommendation will not raise expenditure so high as to be grudged.

13. It might be said that it is too gross a quantitative expansion and that it is far too expensive. Both these objections are unfounded but, in fact, it costs the nation far more to maintain the present ratio of Judges to its population. The Commission is not able to precisely quantify the costs but these costs can be easily quantified under the following heads:

(a) the total costs to the exchequer by stay orders of public revenue measures per each decade;

(b) the human rights and dignity costs to people in custody assessed notionally in terms of the right to compensation for unauthorised detention at Rs. 50,000 per unit;

(c) see the costs of litigation both to State and private parties;

(d) the overall costs of maintenance of law and order; and

(e) all declining respect for the rule of law.

14. There are ways and means of even quantifying what appear initially as intangible costs but when this kind of exercise is done, it will become clear that the nation pays far more exhorbitant costs through the lack of adequate manpower planning than a reasonable investment in the judicial services.

15. As to the possible accusation that the working out of the ratio of Judges strength per million of Indian population is a gross measure, the Commission wishes to say that this is one clear criterion of manpower planning. If, legislative representation can be worked out, as pointed out earlier, on the basis of population and if other services of the State—bureaucracy, police, etc.—can also be similarly planned, there is no reason at all for the non-extension of this principle to the judicial services. It must also be frankly stated that while population may be a demographic unit, it is also a democratic unit. In other words, we are talking of citizens with democratic rights including the right to access to justice which it is the duty of the State to provide.

16. An additional criterion that can be used to quantify the much needed judge strength is either or both the litigation rate (i.e., the number of cases and petitions instituted per annum since independence) or the rate of pendency. National thinking, coupled with the present position of inflow and pendency in the Supreme Court of India, is based on these measures. Taking either as a measure, it can safely be estimated on the conservative side, that you would need a minimum increase in the judge strength from the present 7,675 to 40,357, increasing the ratio of judges per million of population from 10.5 to 50.

17. This investment may look a more attractive proposition than the one that we recommend, namely, a planned overall increase in the ratio of judges per one million of population. But if both the litigation and pendency rates are computed bearing in mind the next 20 years, the overall order of investment and the nature of manpower planning would not be substantially different. The Commission submits this report as interim first report on the issue of reorganisation of the Indian Judiciary

Its second report, proceeding on this basis, will deal with the method of judicial appointments; its third report will deal with the problem of resource allocation for bureaucratic and infrastructural services to judicial administration including the use of computer technology for its modernisation and the fourth report will explore ways and means for recomfiguration of the legal profession.

18. It is very much hoped by the Commission that this first interim report will invoke sufficient parliamentary, public and specialists discussion in order to assist a viable and comprehensive manpower planning for the Indian Judiciary.

Sd/-
(D.A. DESAI)
(CHAIRMAN)

Sd/-
(S.C. GHOSE)
MEMBER

Sd/-
(V.S. RAMA DEVI)
MEMBER SECRETARY

NEW DELHI, DATED THE 31ST JULY, 1987.

Appendix I (1)

EXPENDITURE INCURRED ON THE SUPREME COURT OF INDIA DURING THE YEAR 1984-85

Salary of Judges	Salary of establishment	Other administrative expenditure	Total
15,20,000	1,36,24,000	47,57,000	1,99,01,000

Appendix I (2)

STATEMENT OF EXPENDITURE ON THE HIGH COURTS AND THEIR ESTABLISHMENTS, INCLUDING MISCELLANEOUS EXPENSES
(All figures are as on 31st March, 1985—for the year 1984-85)*

	Expenditure on salaries of of Judges	Expenditure on salaries of staff.	Expenditure on adminis-trative matters	Total
Allahabad . . .	30,49,000	2,59,55,000	43,75,000	3,33,79,000
Andhra Pradesh .	1,67,88,300	37,80,300	—	2,05,68,600
Bombay . . .	31,20, 570	26,05,11,815	24,59,564	26,60,91,949
Calcutta . . .	28,48,310	1,84,03,329	25,44,334	2,37,95,973
Delhi	19,78,300	1,10,45,700	27,09,300	1,57,33,800
Guwahati . . .	14,75,639	65,01,589	20,17,927	99,95,155
Gujarat	15,92,117	75,55,351	24,87,528	1,16,34,996
Himachal Pradesh . .	3,72,728	27,93,372	18,24,915	49,91,015
Jammu and Kashmir .	3,66,300	17,03,700	13,07,000	33,77,000
Karnataka . . .	17,60,109	1,45,18,876	27,53,013	1,90,31,998
Kerala . . .	10,94,731	68,76,175	11,98,476	91,69,382
Madhya Pradesh . .	1,22,93,927	includes staff expen-diture also.	24,11,821	1,47,05,748
Madras	18,38,000	1,47,05,000	—	1,65,93,000
Orissa . . .	7,21,680	48,41,846	13,13,462	68,76,988
Patna	21,40,950	1,32,07,250	41,65,000	1,95,13,200
Punjab & Haryana . . .	14,67,629	1,47,11,195	23,02,709	1,84,81,533
Rajasthan . . .	8,41,250	66,90,750	20,91,000	96,23,000
Sikkim . . .	1,90,832	7,86,704	4,08,782	13,81,318

*Enquiry made by the Ministry of Law and Justice on the questions of court fees, rationalisation and relationships.

Appendix I (3)

STATEMENT OF RECEIPTS AND EXPENDITURES

S. No.	State	State tax receipts 1981-82 (Rs. in lakhs)	Expenditure on judiciary 1981-82 (Rs. in lakhs)
1	2	3	4
1	Andhra Pradesh	63280	101
2	Assam	8966	213
3	Bihar	30286	843
4	Gujarat	58777	669
5	Haryana	27091	214
6	Himachal Pradesh	3567	126
7	Jammu & Kashmir	4995	125
8	Karnataka	50787	914
9	Kerala	36634	606
10	Madhya Pradesh	38772	644
11	Maharashtra	125708	1339
12	Manipur	15	26
13	Meghalaya	486	24
14	Nagaland	436	36
15	Orissa	14771	326
16	Punjab	37691	346
17	Rajasthan	27095	531
18	Sikkim	285	14
19	Tamil Nadu	62843	876
20	Tripura	362	70
21	Uttar Pradesh	62686	1413
22	West Bengal	51274	869
23	Andaman & Nicobar Islands	43	6
24	Arunachal Pradesh	32	—
25	Chandigarh	2145	144
26	Dadra & Nagar Haveli	12	1
27	Delhi	28390	251
28	Goa, Daman & Diu	1980	33
29	Lakshadweep	2	3
30	Mizoram	N.A.	N.A.
31	Pondicherry	1749	26

1. Enquiry made by the Ministry of Law & Justice on the question of Court Fee, rationalisation and relationships.