Justice M.Jagannadha Rao, (Retd.)
Chairman of the Task Force on
Judicial Impact Assessment

New Delhi
15th June, 2008

Dear Sri Bhardwaj ji,

On behalf of the Task Force on 'Judicial Impact Assessment', I am happy to submit our Report on the subject in the light of the Terms of Reference contained in the Notification of the Government of India dated 15th February, 2007. Our Committee consisting of myself, Prof. Dr.N.R.Madhava Menon, Prof. Dr.Mohan Gopal, Prof. T.C.A.Anant deliberated over the last 14 months and during this period, we had to consult several experts in Social Sciences, Economics and Statistics. The task of identifying and suggesting methodologies for Judicial Impact Assessment became quite difficult because we are doing it for the first time in India. Therefore, we appointed two Study teams, one headed by Prof. Subhashish Gangopadhyay & Mr.Arnab Kumar Hazra at Delhi and the other headed by Prof. Dr.T.Krishna Kumar, Mr.Holla and Mr.Anil Suraj at Bangalore. They gathered statistics of court-data from the Subordinate courts in Orissa, Andhra Pradesh and Karnataka with reference to the extra-case loads added to the Subordinate courts by reason of the enactment of various statutes or likely to be added to the Courts by new Bills. It was found that the methodologies have necessarily to be different for different statutes/Bills depending upon the subject matter of legislation and the sections of society upon which they impact.

We have stated that, in view of Entry 11-A of the Concurrent List, the Central Government must bear the financial burden of the additional case-loads that get added to the Subordinate courts by virtue of Acts/Bills of Parliament on subjects in the Union list and Concurrent List and not leave the financial burden to the State Governments. We have also stated that the Central Government must establish additional courts under Act 247 of the Constitution for administering Central Laws made under the Union List and provide funds in respect of case- loads arising out of Central Laws made under the Concurrent List too. Nearly 340 Central Legislations referable to the Union List and Concurrent List are being administered by the Courts established by the State Governments. We have also said that the Planning Commission and Finance Commission must make adequate provision in consultation with the Chief Justice of India, for realization of the basic human rights of 'access to justice' and 'speedy justice' both civil and criminal. The present allocations of 0.071%, 0.078% and 0.07% of the Plan outlay in the 9th , 10th and 11th Plans are wholly insufficient.

We have suggested locating a 'Judicial Impact Office' at Delhi under the Department of Justice, for estimating the extra case load and extra expenditure on the Courts to be met by the Central Government on account of Central Legislation on subjects in the Union List and Concurrent List. It will be headed by a sitting Judge of the Supreme Court nominated by the Chief Justice of India, with a Governing Body which includes Secretaries of the Department of Justice, Finance and the Law Secretary.

Likewise, there will have to be Judicial Impact Office under the State Governments in the States/Union Territories (having a separate Legislature) to estimate the extra case load and extra expenditure on the Courts to be met by the State Governemnts/Union Territories for enforcement of State Laws in the State List and Concurrent List. The State

(Contd).

M. Jagannadha Rao

Impact Office will be headed by the Chief Justice of the High Court and have a Governing body which includes the Secretary in charge of Courts, the Law Secretary and the Finance Secretary.

This is on the model of the National Judicial Academy at Bhopal.

There will be permanent staff including social scientists, economists, lawyers, statisticians & academicians and those with Judicial background, in these impact offices. The administrative head will be a Secretary to the Government of India or State Government, as the case may be. These Offices can consult outside experts or expert bodies or other NGOs, having experience in social sciences, statistics, economics, law and Judicial administration.

We hope that with the setting up of these Judicial Impact Offices, a big gap in the planning and budgetary system for Courts will be filled. We have indeed devoted a full chapter on Planning and Budgets for Courts, institutional independence of Judges, separation of powers and 'inherent power' of the Judiciary to seek adequate finances.

We fervently hope that once the Supreme Court of India approves the Report with such modifications as it may suggest, a new era of proper Planning and Budgeting will be put in place for the Judicial Administration of the country for the advantage of better 'access to justice' and 'speedy justice' and that the Judiciary will get a proper and adequate share in the financial resources of the Country based on the advance 'Judicial Impact Assessments' made by these Judicial Impact Offices.

Prof. Mohan Gopal who is out of the country at the moment is not available for signing this Report.

With regards,

Yours sincerely,

M. Jagannadha Rao

(Justice M.Jagannadha Rao)

To

Shri H.R.Bhardwaj
Hon'ble Minister for Law & Justice,
Government of India,
New Delhi.

INDEX TO CONTENTS

Volume I

Volume II – Annexures

CHAPTER I
INTRODUCTORY

The Hon'ble Supreme Court of India in **Salem Advocates Bar Association (II)** Vs **Union of India**: **(2005) 6 SCC 344 (AIR 2005 SC 3353),** for the first time, considered the question of the need for "Judicial Impact Assessment" in our country. The Supreme Court issued the directions on 2nd August 2005 on the basis of a Report (Report No.1) submitted to it by a Committee consisting of one of us (Justice M.Jagannadha Rao), Sri Arun Jaitley, former Minister for Law & Justice, Sri Kapil Sibal, presently Minister for Science & Technology, Sri D.V.Subba Rao, former Chairman of the Bar Council of India and Sri C.S.Vaidyanathan, Senior Advocate, Supreme Court. In that Report to the Supreme Court, the above said Committee suggested as follows:-

> "Further, there must be 'judicial impact assessment', as done in the United States, whenever any legislation is introduced either in Parliament or in the State Legislatures. The financial memorandum attached to each Bill must estimate not only the budgetary requirement of other staff but also the budgetary requirement for meeting the expenses of the additional cases that may arise out of the new Bill when it is passed by the legislature. The said budget must mention the number of civil and criminal cases likely to be generated by the new Act, how many courts are necessary, how many judges and staff are necessary and what is the infrastructure necessary. So far in the last fifty years such judicial impact

assessment has never been made by any legislature or by Parliament in our country".

After referring to the above observations of the Committee, the Supreme Court of India directed as follows (para 50) :

> "Having regard to the constitutional obligation to provide fair, quick and speedy justice, we direct the Central Government to examine the aforesaid suggestions and submit a report to this Court within four months.

Pursuant to the above observations of the Supreme Court, the Government of India, Ministry of Law and Justice, (Legislative Department) issued the notification F.No.10(11)2000-Leg.-III on 15th Feb, 2007 (published in the Gazette of India, Extraordinary, Part I Sec.1, No.39 dated 15-2-2007) as follows:

> "As per the directions of the Hon'ble Supreme Court in **Salem Advocates Bar Association Vs Union of India** in regard to Judicial Impact Assessment *vide* the Court's order dated 2-8-2005, a Task Force is hereby constituted for examining the feasibility of Judicial Impact Assessment in India.
>
> **2.** The Task Force shall consist of the following Members:-
>
> (i) Sri Justice M.Jagannadha Rao, former Judge of Supreme Court and formerly Chairman, Law Commission of India ... Chairman

(ii) Prof.(Dr) N.R.Madhava Menon, former Director of the National Judicial Academy, Bhopal. … Member

(iii) Prof. (Dr) Mohan Gopal, Director of the National Judicial Academy, Bhopal. … Member

(iv) Sri T.C.A. Anant, Member Secretary of the Indian Council of Social Science Research. … Member

(v) Dr.B.A.Agrawal, Addl.Secretary, Legislative Department. … Member Secretary

Permanent Invitees:

(i) Secretary, Department of Legal Affairs,
(ii) Secretary, Legislative Department
(iii) Finance Secretary

3.Terms of Reference:- *The Task Force has been appointed with the following Terms of Reference -*

(i) To suggest the methodology to assess the likely impact of legislation of the courts and also an appropriate framework so that every Bill introduced in Parliament be accompanied by a Judicial Impact Assessment.

(ii) To suggest ways and means of preparation of Judicial Impact Assessment.

(iii) To make an assessment of financial requirements so that the Financial Memorandum attached to each Bill reflects the budgetary requirements for meeting the expenses of additional cases (civil and criminal) which may arise in case the Bill is passed by the Legislature.

(iv) To recommend the content for initiating a training program for laying down the foundation for the expertise to prepare Judicial Impact Assessment.

(v) *To suggest any other measures for assessing the increase of the work load on the courts on passing of a new legislation.*

4.The Task Force will hold its meeting at any place to be decided by the Chairman.

5.The Task Force shall evolve its own procedure.

… ...

8.The Task Force would submit its report to the Government within six months from the date of its Constitution so as to enable the Government to clarify its stand before the Supreme Court".

Subsequently, after its constitution, the Task Force considered, in its various meetings, the need for gathering data from courts in regard to impact of existing laws on court dockets and also the need for such data for the purpose of projecting the likely impact of some of the Bills, if enacted into law, on the Courts. For that purpose, the Task Force decided to appoint different teams consisting of well-known and reputed social scientists and statisticians to help the Task Force in recommending methodologies for Judicial Impact Assessment. Collection of data required considerable time. Meanwhile, the Legislative Department had to approach the Department of Justice, Ministry of Home Affairs, for funding these studies. In view of these developments, the Task Force sought extension of

ten months for the purpose entrusting the studies to different teams of social scientists and statisticians.

The Government of India, Ministry of Law and Justice, Legislative Department, then extended the time, by its Notification F.No.10(11) 2000-Leg-III dated 7-9-2007 (published in Gazette of India, Extraordinary, Part I Sec.1 No.263 dated 7-9-2007) by ten more months from 15-02-2007 i.e., in all sixteen months, and substituted Sri Ramesh Abhishek, Joint Secretary, Department of Justice, as Member-Secretary, in the place of Sri B.A. Agrawal and stated that the secretarial assistance would be provided by the Department of Justice of the Ministry of Law and Justice.

In the meantime, the Task Force started its work and had several meetings leading to the appointment of two teams of social scientists and statisticians, one at Bangalore and another at Delhi, as mentioned in Chapter III.

CHAPTER-II

Judicial Impact Assessment Introduced into India

The concept of Judicial Impact Assessment, which was accepted in several other countries, came to be introduced into our thinking in India only very recently in 2002. The credit for doing so goes entirely to Sri T.K.Viswanathan, presently Secretary, Legal Affairs Department, Ministry of Law and Justice. He brought this concept to the fore in an important contribution to one of our leading newspapers on 20th November, 2002 (The Hindu), under the title "Judicial Arrears – Thinking outside the Box". At that time, he was Member-Secretary of the Law Commission of India. (The Article was placed before the Chief Justices' Conference 4th & 5th September, 2004 in the Supplementary Paper Book, pp. 69 to 72).

Thereafter, these concepts were placed before the Supreme Court in the Ist Report of the Committee referred to in Chapter I in **Salem Advocates Bar Association case.** As already stated, the Supreme Court in its judgment dated 2nd August 2005 wanted consideration of this concept and directed the Government of India to examine it. Thereafter, the Government of India appointed the present Committee on 15th February 2007. As Mr.Viswanathan had referred to various aspects of the concept, the Task Force has thought it appropriate to refer to the points mentioned in that article in some detail.

Mr.Viswanathan stated that just like 'Banquo`s ghost haunting Macbeth', the problem of judicial arrears continues to confront us with no solution in sight. In spite of the best efforts made by the Government and the Judiciary to address this challenge, the problem appears to persist. While there is no doubt that the number of courts and the manpower of the judiciary requires to be increased, the cause of the increased flow of

litigation crowding the dockets has to be identified, if this problem has to be addressed in a meaningful way, he said.

To identify the root cause of the problem, the question is to find out from where the litigation flow has increased. To find an answer to that question, information is required about the number of Acts enacted by legislatures and the number of cases instituted under the various provisions of these Acts, in the courts. While the number of Acts may be ascertained from the statute book, the number of cases filed under their provisions of the particular law may not be readily available. Unless a database containing such details is available, it will be difficult to identify the cause.

(i) <u>Brief historical concept:</u>

Mr. *T.K. Viswanathan* started his article by referring to the famous address of Justice Warren Burger, Chief Justice of the U.S. Supreme Court in 1972, on the "State of the Judiciary". In that lecture, the learned Chief Justice for the first time referred to the need for studying the impact of the legislation on the judicial dockets in the American Courts. The need for pinpointing the sources of the increasing flow of litigation prompted Warren Burger to call for "Judicial Impact Statements" as a tool to assist the Federal Judiciary in "rational planning for the future with regard to the burdens of the courts". Thereafter, the Congressional Budget Act 1974 established a Congressional Budget Office to estimate the budgetary impact of legislative proposals with a view to assess whether any proposed legislation was likely to increase or decrease or have no effect on the burden of the courts. In a related development, the National Academy of Sciences established the National Research Council for the purposes of estimating the changes in workloads that the courts would experience with the adoption of new legislation. The Federal Courts Study Committee,

created by Congress through the Federal Courts Study Act 1988, recommended in 1990 that an "Office of Judicial Impact Assessment" should be created in the 'Judicial branch'. The American Bar Association also passed a resolution in 1991 calling upon each State legislature and the United States Congress to mandate by legislation, the preparation of Judicial System Impact Statements to be attached to each Bill or Resolution that affects the operations of State or Federal courts; and also to establish a mechanism within its budgeting process to prepare Judicial System Impact Statements determining the probable costs and effects of each Bill or Resolution that has an identifiable and measurable effect on the dockets, work loads, efficiency, staff and personnel requirements, operating resources and currently existing material resources of appellate, trial and administrative law courts. In 1992 the Wisconsin Judicial Conference Resolution cited the overpowering need for the State legislature to recognize the workload burden being placed on the Judiciary when passing legislation and endorsed the creation of Judicial Impact Statements by the State legislature also to measure and expose the effect of State legislation on the Judiciary. These efforts revealed a very important trend which identified that in addition to State legislation, another important source of workload for State courts was Federal legislation. Many Bills adopted in Congress impacted the State courts and thus there was additional demand on State resources.

(ii) Parliamentary Legislation adds to the burden on the State Courts in addition to the burden of enforcing the State Legislation :

Mr. Viswanathan pointed out that we have also a similar problem whereby Central legislation creates extra burden on the State Courts in India. Therefore, we have much to learn from the U.S experience in this

regard since under our legal system no separate courts are envisaged for trial of disputes arising from the Central Acts except for a few special laws. So every law enacted by Parliament adds to the burden of the State courts and since the subject of

> "**administration of justice, constitution and organization of all courts except the Supreme Court and the High Courts**"

falls within entry 11A of the Concurrent List of the VII Schedule of the Constitution of India, the major brunt of the workload is borne by the courts established and maintained by the State Governments. In addition to the workload created by the Parliamentary legislation, the courts will have to manage the large amount of litigation generated from the laws enacted by the respective State legislatures. As the Statute Book gets cluttered with more and more Acts, more and more litigation is generated thereby adding to the burden of the courts.

(iii) <u>Constitutional provisions in Article 117 (3) and Art. 207(3) relating to Financial Memorandum attached to Bills:</u>

He then referred to Clause (3) of Article 117 of the Constitution. That clause provides that if, every Bill which is enacted and brought into operation involves expenditure from the Consolidated Fund of India, it shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill. The rationale for this requirement is that the President must know before hand what will be the additional financial burden which will be imposed upon the Exchequer by virtue of the proposed enactment. In addition to this Constitutional safeguard, under the respective provisions of the Rules of Procedure and Practice of Business in the House of the People and the Council of States, every Bill is required to be accompanied by a Financial Memorandum

which spells out in detail the recurring and non-recurring expenditure which is likely to be incurred from the Consolidated Fund of India, if the Bill is enacted into law. If no expenditure is involved from the Consolidated fund of India, then there is no need for a Financial Memorandum to accompany a Bill. Because of this, instances where expenses are to be borne by the State Governments due to the litigation which may likely arise by virtue of some provisions in the Parliamentary enactment, like the creation of new offences, will escape attention of the lawmakers and the public since they are not expenses incurred out of the Consolidated Fund of India.

(iv) <u>Distinction between expenditure on Consolidated Fund Of India and other expense to be borne by the sponsoring Ministries:</u> (See also Chapter-V)

The expenditure that may be incurred for the purposes of the "Supreme Court" and the "High Courts" is charged upon the Consolidated Fund of India. It may be argued that the expenditure for the purpose of the "Subordinate Courts" is not so charged. But, there is no problem in as much as, whenever any Bill introduced into Parliament or the State legislature impacts on the burden of the Subordinate Courts, though the expenditure cannot be shown as charged on the Consolidated Fund of India, it is one of the basic principles of constitutional procedure that the sponsoring Ministry must estimate the expenditure likely to be incurred for the enforcement of the law, once the Bill is enacted and that expenditure must include the expenditure needed for the purpose of the Subordinate Courts.

This principle was emphasized by Mr. Viswanathan, who is the foremost legal expert in the Law Ministry. He stated that even where recommendation of the President is sought under clause (3) of Article 117

and a Financial Memorandum is attached to the Bill presently, the likely increase in the workload of the courts and the consequent increase in the financial expenditure is not given any importance by the Ministries sponsoring the legislation. Under clause (3) of Article 207 of the Constitution a similar legal position prevails with respect to Bills introduced in the State Legislatures. Further, where any authority or agency is created under the proposed legislation, *the expenses for its establishment and maintenance is provided for from the budget of the sponsoring Ministry. Even so, today no provision is being made for the likely impact on the courts due to the enactment of the legislation*. In order to highlight the likely increase in the work load of the courts, when a Bill is introduced in Parliament or in the State Legislature, the accompanying Financial Memorandum should clearly reflect the likely increase on the burden of the State Exchequer due to increase in the workload upon the courts relatable to the proposed legislation. Quantification of costs of prospective litigation may pose a problem but it not insurmountable as the experience in U.S shows. *The additional expenditure to meet the workload so generated should be allocated at the time of enactment of the legislation itself from the budget of the Ministry sponsoring the legislation. This will go a long way in improving the financial resources of the judiciary which is short of funds.* He states that moreover, the practice of attaching Judicial Impact Statement will reveal the hidden costs associated with the operation of the legislation in terms of court resources.

(v) Courts' data bases must reflect the enactment under which the cause of action for any case has arisen:

One of the very important suggestions made by Sri Viswanathan is that the Courts' database systems must be improved and that, at any rate,

these must refer to the particular enactment under which the cause of action for the case has arisen.

The public has a right to know what to expect from the court system. If there is delay in the disposal of cases, then they are entitled to know the reasons for the same. The enormous burden imposed upon the judiciary by the increased inflow of litigation caused by new legislation is not readily visible to the general public and the judiciary gets the major blame for judicial backlogs. If the Lord Chancellor's practice of publishing ***the Judicial Statistics Annual Report*** is followed in our country, the image of the judiciary will be enhanced to a great extent. The said Report describes in detail the criminal and civil business of the courts in England and Wales. The Report also provides a commentary on the trends revealed by the statistics. The Courts in U.S also annually publish such reports containing information about flow of cases. To publish such Reports, designing a judicial database is urgently required in our country. Details like the number of cases filed daily, *the section of the Act under which the cause of action is invoked*, the advocates appearing for the parties, whether the case is a criminal or a civil case etc are not available readily. Entering such details at the point of institution of every case will yield a rich judicial database which can be used to identify the judicial workload and manage the problem of arrears. (*However, since the publication of this article, High Courts and the Supreme Court and the E-Committee for the Courts have been gathering statistics and publishing them periodically but much remains to be done as will be clear from the studies of experts annexed to this Report of the Task Force*).

Numbers cannot talk, but they can reveal**.** Mathematicians have developed an entire field namely statistics which is dedicated to getting answers out of numbers. It facilitates collection of data and *projection of*

future demands which may be made upon any system. Medical statistics has evolved as a science of its own which gives an insight into the prevalence of diseases and the measures which can be taken to prevent them. Similarly, *Judicial Statistics* can help us discover patterns in litigation both quantitatively and qualitatively and it will also help us to effectively address the problem of judicial arrears. *Till now a strong case based on statistical data indicating the sources of litigation flowing from new legislation which is choking the judicial system, is yet to be made by the judiciary for demanding its legitimate share in the allocation of budgetary funds.* Measuring the impact of legislation on the courts must become a subject of academic and scholarly interest. Agenda to meet the challenge of Judicial Arrears should focus on treating the source of the problem rather than on treating the symptoms. Viewed in this context Judicial Impact Statements may hold the key for solving the problem of judicial arrears.

As stated earlier, the above article of Sri T.K. Viswanathan was the basis of the Report No.1 submitted by the Committee consisting of one of us (Justice M. Jagannadha Rao), Sri Arun Jaitley, Sri Kapil Sibal, C.S. Vaidyanathan and Sri D.V. Subba Rao to the Supreme Court of India in the ***Salem Advocates Bar Association*** case, referred to in Chapter-I and it was on that basis that the Supreme Court issued directions resulting in the appointment of this Task Force on Judicial Impact Assessment, by the Government.

CHAPTER III

PROCEDURE ADOPTED BY THE TASK FORCE

After the constitution of the Task Force on 15th February 2007, the Committee had several meetings as follows:

1. First Meeting on 4th, 5th & 6th April 2007 at Delhi
2. Second Meeting on 16th & 17th April, 2007 at Delhi
3. Third Meeting on 3rd & 4th May 2007 at Delhi
4. Fourth Meeting on 27th June 2007 at Delhi
5. Fifth Meeting on 22nd August 2007 at Delhi
6. Sixth Meeting on 24th September 2007 at Delhi
7. Seventh Meeting on 17th November 2007 at Delhi (Seminar)
8. Eighth Meeting on 29th February, 2008 at Hyderabad
9. Ninth Meeting on 14th May, 2008 at Delhi
10. Tenth Meeting on 3rd June, 2008 at Delhi

During some of these meetings, the Committee invited Justice G.C. Bharuka, former Judge of the Karnataka High Court and Chairman of the E-Committee for Judiciary appointed by the Government of India, Dr. K.N.Chandrasekaran Pillai, Director, Indian Law Institute, Justice Madan Lokur, Judge, Delhi High Court, Smt. Dr. Usha Ramanathan of New Delhi, Prof. Dr.T.Krishna Kumar of Bangalore, Prof. Asha Bajpai of Mumbai and Prof. Subhashis Gangopadhyay, and Sri Arnab Kumar Hazra and others.

At the initial meetings, the Task Force considered the need for seeking the help of study groups consisting of social scientists and statisticians for the purpose of gathering empirical data from subordinate Courts, studying and analyzing the same and suggesting methodologies for

making judicial impact assessment. The study groups could also make use of the data available with the E-Committee. They could make at least two types of studies: (1) finding out the impact of recent legislations on the Court dockets and (2) finding out the probable impact of some future legislations which presently are at the stage of Bills before the legislature. In the former case, the study groups, after finding out the number of cases already added to the Court systems, could retrospect and go back into time to the stage of the Bills and find out what methodologies could have given them the best estimate of the number of cases which actually got added. In the latter case, the study groups could find out how many new cases fresh Bills would be generating if passed into law by the Legislatures.

For the purpose of these studies, the Committee invited Prof. Dr. T.Krishna Kumar of Bangalore, Prof.Subhashis Gangopadhyay of New Delhi, and Prof.Asha Bajpai of Mumbai. The Committee also invited Dr.K.N.Chandrasekaran Pillai, Director, Indian Law Institute, New Delhi Justice G.C.Bharuka, former Judge of the Karnataka High Court and the then Chairman of the E-Committee, New Delhi and Dr.Ms.Usha Ramanathan. The suggestions of all these eminent persons were invited in the context of the work entrusted to the Task Force. Various suggestions were made by these distinguish invitees. They were very much interested and eager to help the Task Force particularly in view of the novel type of work before it.

During the discussions, it was felt that there would always be some enactments which had no impact on the judicial system in terms of numbers. There would be others which had only a marginal impact, yet some others may have medium impact and some which have major impact on the system. There are also situations where a new amendment to an existing law could generate a large number of court cases. For example, after Section 138 was introduced, by way of amendment, to the Negotiable

Instruments Act, 1938, by which cheque bouncing was made an offence, nearly 25 lakh cases have been added to the Courts, as stated in the recent speech of Chief Justice of India at Thiruvananthapuram on 26th April 2008. In fact, Section 138 was itself amended at particular stages making the offence a compoundable one and making other changes and these amendments resulted in a sudden increase in the number of cases. It was also suggested during the discussions that a study could be made of the impact of Section 89 of the Code of Civil Procedure, 1908, which was introduced into the Code by way of an amendment with effect from 1.7.2002. Under the said amendment, it became mandatory for any civil court to compel the parties to choose one or other of alternative dispute mechanisms such as arbitration, conciliation, mediation, judicial settlement or Lok Adalats. This would require additional time to be spent by the Judicial Officers at the stage of completion of pleadings, and appointment of Conciliators and Mediators after giving them training and evolving a procedure for payment of adequate remuneration to them. Then, there could also be a study as to the impact of the new system of "Plea-Bargaining" introduced by way of amendment into the Code of Criminal Procedure, 1973. There could also be a study on the impact of the Domestic Violence Act. Then there is the 'Gram Nyayalaya Bill' which is supposed to create a large number of courts at the grass root level to deal with simple civil cases where the value of the subject matter is less than Rs.1.00 lakh or where the offences to be tried are those for which the maximum punishment is less than one year. Various other Statutes and Bills were discussed.

During the discussions, the Committee examined the Financial Memoranda attached to several Bills presented before Parliament under Art.117(3) of the Constitution of India to find out what the Union Government stated with regard to funding the implementation of the laws,

once the Bills become law. It was found that, whether the Bill was one falling under the Union List or the Concurrent List of Schedule-VII of the Constitution of India, it was invariably stated that the expenditure on the court system on account of the passing of law would be borne by the State Governments.

After discussions during the meetings, initially, three groups were set up, one to be headed by Prof.T.Krishna Kumar at Bangalore, another to be headed by Dr. Subhashis Gangopadhyay at Delhi and yet another by Prof. Asha Bajpai at Mumbai. They were requested to select appropriate Acts or Bills for which they could conduct studies at these places. Prof. Asha Bajpai, after going back to Mumbai expressed her inability to conduct studies due to personal reasons. Prof. Krishna Kumar, suggested that he may also consider taking up a legislation made by the Karnataka Legislature, such as 'the Karnataka Development Act'. Therefore, ultimately there were only two study teams. They were promised all help from the Task Force for collection of data from the subordinate courts. They were requested to submit financial proposals indicating the subjects upon which they would conduct studies.

The two study teams selected some enactments/Bills and thereafter, submitted financial proposals for being processed by the Government.

The Task Force was informed that the funding for the purposes of these studies would be coming from the Justice Department in the Home Ministry rather than from the Law Ministry. The proposals were then forwarded to the appropriate Ministry. While these financial proposals were being examined, the study groups, after noticing that the expected data was not available with the E-Committee, felt that new empirical studies had to be physically conducted directly from the courts by engaging separate teams for that purpose. Therefore, they submitted fresh proposals for additional finances. The initial proposals were first

processed and thereafter, the subsequent proposals were approved by the Task Force and were also submitted to the concerned Departments for processing.

In the mean time, the two groups started studies, one at Bangalore headed by Prof. T.Krishna Kumar, and the other headed by Sri Subhashis Gangopadhyay and Mr.Arnab Kumar Hazra to study the courts at Delhi, Bhubaneshwar, Andhra Pradesh and other places. The Chairman of the Task Force wrote to the Chief Justices of various State High Courts requesting them to issue orders to the concerned Courts for allowing the study teams to gather statistical data from the court records. The Task Force is thankful to the Chief Justices, Registrar- General, and District Judges for allowing these study groups to gather the necessary information from the Courts. Sri Ramesh Abhishek, Joint Secretary in the Department of Justice also wrote to the Home Secretaries of various State Governments and senior Police Officers in those States, to enable the study groups to gather information from the Police Stations or other Departments dealing with criminal justice. The Task Force is also thankful to the respective Home Secretaries and other Officers who came forward to help the study groups in gathering information.

The two study groups and their respective teams visited the trial courts in Bangalore, Delhi, Bhubaneshwar, Andhra Pradesh and other places, perused the court records or the police records, as the case may be, and gathered vast information and data, they studied and analyzed the data and came forward with methodologies for estimating judicial impact assessment. These studies will be discussed separately in this Report.

CHAPTER – IV

PLANNING AND BUDGETING FOR COURTS

(Separation of Powers and Inherent Power of Judiciary)

The Task Force has felt it necessary to have a separate Chapter on "Planning and Budgeting for the Courts" in as much as the proposed exercise of Judicial Impact Assessment is a part of it and helps in planning and budgeting for the Courts.

Planning and Budgeting for Courts is today a very specialized branch upon which there is enormous literature. Linked with this question is the doctrine of "Separation of Powers" as between the Legislature, the Executive and the Judiciary. The question is as to what extent the Judiciary, for the purpose of protecting its independence can, as an institution, have a role in planning and budgeting for the Judicial branch. This is called "Institutional Independence". Question also arises as to whether it is open to the Executive or the Legislature to allocate meagre or negligible resources, which are insufficient for the satisfactory functioning of the Judicial branch. As a general principle of the doctrine of separation of powers, it is accepted that it is not open to any one of the three branches to underestimate the needs of the other branches so as to make it difficult for those branches to discharge their constitutional obligations satisfactorily. As a result, American Courts have developed the "Doctrine of Inherent Powers" under which the Judiciary could pass orders seeking funds from the Executive and the Legislature so as to meet its constitutional obligations in a reasonable way. It is proposed to discuss these aspects in this chapter.

GENERAL:

(i) PLANNING FOR COURTS:

It is proposed to first discuss general aspects relating to planning and budgeting for Courts and later come to the questions as to planning and budgets in India.

There are several books dealing with Court Planning, Budgeting and Management. One of the earliest books is the "*Handbook of Court Administration and Management*" (1993) by Mr. Steven H. Hayes & Mr. Cole Blease Graham Jr. The book consists of 25 Chapters contributed by leading Jurists and Judges and Planners, who are specialized in Court related issues. Another book is "*Judicial Administration, Text and Readings"* (1971) by Mr.Russel R. Wheeler & Mr. Howard R. Whitcomb. There is another book by Caral Baar, titled 'Separate but Subservient: Court Budgeting in America' (1975). There are various other recent books on the subject, "Creating the Judicial Budget-The Unfinished Reform" by Robert W. Tobin (2004); and "Comprehensive Legal and Judicial Development" edited by Rudolf V.Van Puegmbroeck.

There is another book, published under the auspices of the World Bank i.e., "Good Budgeting, Better Justice: Modern Budget Practices for the Judicial Sector" by David Webber (full text is available on Internet – http://209.85.175.104/search?q=cache:vDgH6s_11_MJ:siteresources.worldbank.org/INTLAWJ...) see also article on "Budgeting for State Courts: The Perceptions of Key Officials Regarding the Determinants of Budget Success" – (*Justice System Journal*, January 1, 2003) *http://www.highbeam.com.*

The subject of financial support for the Judiciary in general and in various countries, USA, UK, Canada, Australia, New Zealand, Germany,

Japan etc, has been exhaustively dealt with in the Consultation Paper by one of us (Chairman of the Task Force Mr. Justice M. Jagannadha Rao), written by him for the National Commission to Review the Working of the Constitution (2001). (See Part-II in ncrw@nic.in). The Consultation Paper also contains Chapter-IX on "Planning for Courts". In that Chapter, relevant literature on planning and budgets for Courts was elaborately discussed.

Theodore J. Fetter of the Administrative Office of the Courts of New Jersey, Trenton, New Jersey, in his article 'Planning for Court Management' (Chapter-24 of Hayes of Hand Book of Court Administration and Management, pp.483 to 496) states as follows:

> "Court systems are inherently fragmented organizations. They are composed of different components, each acting according to its own perspective, instinct, preference, or yes, its own plan. Prosecutors and defenders, independently elected clerks, stat and local court managers, chief judges, and local funding bodies – all these elements make up the court systems of most jurisdictions in the United States." (p.483).
>
> "…Even where conscious or formal planning does occur, it may be planning for just one or only a few of the components involved. ……"
>
> "Further, courts are usually reactive, not proactive organizations. Courts ordinarily do not reach out to get their business; litigants come to courts because of their own needs and not because the courts have made known their availability. … Also courts do not generally change the way in which they conduct their business; such organizational changes are more often the result of legislation or the unplanned (and sometimes unintended) result of case law or economic trends." (pp.483, 484)

Theodore J. Fetter says (pp.484-495) that regardless of limitations, court planning retains at least four vital uses.

(A) Budget and Resource Allocation;
(B) Review of Performance;
(C) Sharing Goals;
(D) Response to Particular Issues.

After elaborating the above uses, he deals with the question "How to carry out planning in the Courts?" and refers to the following methodologies:

(A) Steps in Strategic Planning,

(i) Mission,
(ii) Environment,
(iii) Strengths and Weakness,
(iv) Values of Stakeholders,
(v) Goals,
(vi) Alternative Strategies,
(vii) Action Steps,
(viii) Evaluation.

(B) Other Points of Court Planning:

(i) Role of the Supreme Court or Board of Judges,
(ii) Incremental Approach
(iii) Ongoing Implementation

Finally, he concludes (pp495-496) as follows:

"Planning in the public sector, and specifically in the courts, is more complex and difficult than in the corporate world. … Planning enables the court to project a clear vision of it needs and its attempts to meet them. It enables all the fragmented groups that have some part of the responsibility for successful operation to come together on an approach. It allows all the persons involved to have a sense of contribution. And it gives the system's leaders a tool for resource allocation and performance evaluation. Courts

should undertake planning efforts not because they are easy to do, but because they are hard to do without."

In an article on 'Long Range Court Planning techniques' published in (1993) 68 South California Law Review, (quoted in Justice Rao's Consultation Paper), reference is made to various types of statistical analysis, projections, graphs etc., which can lead to macro as well as micro planning. Reference is made to PPBS "Planning, Programming-Budgetary System". Planning precedes budgeting. It determines the organizations' goals and sets the priorities. Then programming examines the ways of achieving goals and evaluates them before deciding which way to take. Finally, budgeting decisions become largely secondary, being the process of assuring that the resources are placed in the correct areas. (para 9.10)

Planning is a structured and conscious process to define and revise goals, to asses and to determine strategies and implementation methods. But if planning for such administrators, it can be of no help. Planning must be done by the personal participation of Judges and they must be involved and share the planning process. Just as the Director's of a company cannot stand aloof from the corporate management. Judges can neither avoid nor keep aloof from the planning and court management processes. (para 9.11)

(ii) BUDGETING FOR COURTS:

We have already referred to some books on this subject of 'Budgeting for the Courts' under the previous heading, "Planning".

Hayes states, in Part-VI of his Book, under the heading "Budgeting in the Courts" that, "Budgets embody the priorities of key decision makers and serve as barometers of the success or failure of performers in shaping policy outcomes in court organization and activity. …

today's court reformers and judicial administrators appear to understand the importance of budgeting, even if they persist in stony opposition to budgetary politics." (p.313)

Ronald M. Stout, Jr. of the New York State Office of Court Administration, Troy, New York says in Chapter 15 of Hayes Book, "Unified Court Budgeting" (p.315) that, "Budgeting has been viewed as one of the most important decision-making process in government. … Budgeting is the process by which decisions are made concerning the scope and level of activity of every component of government." There are two requirements in budgeting, firstly, funds must be made available through appropriations by the legislatures before any expenditures by executive, judicial, or legislative bodies may be made to perform their functions. Secondly, appropriations must be made on a regular basis, either annually or biannually. Surveys by Court Administrators found that the development of state financing and budgeting was the most frequently identified change that would improve court management. Improved management through budgeting has also been cited as necessary to maintain the independence of the judiciary. … Therefore, an improved budgeting process is important for both the substance and the management of the judiciary. Four functions of the budgetary process which are pertinent to funding court systems are as follows:

(1) Allocating resources to achieve objects,
(2) Holding operating agencies accountable for efficient and effective use of resources,
(3) Controlling expenditures,
(4) Providing leverage to force effective and efficient management.

The author then discusses the subject under four headings:

(A) The Role of Budgeting,
(B) The Budget Process,

(C) Uses of Budgeting, and
(D) Applications in Court Management.

In an article "Court Finances and Unitary Budgeting" by Geofrey C. Hazard Sr. Prof. Yale Law School (See R.Wheeler's book, p.110) reference is made to the 'inherent power doctrine' under which American Courts started giving directions on the judicial side to the executive for budgetary grants. Pros and cons of 'inherent power' doctrine are also examined. Various systems of budgeting and their advantages are discussed. He says (p.123) that the Courts' oldest method of raising revenue – charging fees for their services – is now substantially unavailable and unavailing. Clearly, this is so in criminal cases – where accused are mostly without money. (see para 9.12 of Justice Rao's Consultation Paper).

Budget Procedures in various countries, namely, USA, United Kingdom, Australia, Canada and other countries and in India are referred to in Chapter – III to VIII of Justice Rao's Consultation Paper and Chapter-XI refers to proposals for Constitutional Amendment or Legislation in Parliament. (p.773-820)

(iii) Judicial Independence & Doctrine of Separation of Powers:

It is now well settled that "Judicial Independence" of Judges does not merely means the independence of the Judge while dealing with adjudication of cases without interference from the executive or the legislature, but also refers to the "institutional independence" of Judges. One of the important aspects of institutional independence is the duty of the State to see that Judges are not over-burdened with unreasonable case loads and that they are not under continuous pressure to decide a larger number of cases than are expected according to reasonable and average

standards of satisfactory disposal of cases. Having a very heavy case load on one's court registry will obviously put pressure on the Judge resulting in not giving a reasonable hearing to the cases before him and not rendering fair justice. A very heavy docket sometimes puts the Judge in undue pressure to dispose of more cases than is reasonably possible and this results in the Judge not considering the real issues involved in the case. It is well known that "justice hurried is justice buried". If the Judge does not give a proper hearing or conduct a trial in a proper manner, the litigants will lose faith in the system. Further, such hasty disposals only increase the burden of the appellate court.

The doctrine of separation of powers requires that the judicial branch, which has "neither the purse nor the sword" in Hamilton's words, should be allowed proper resources for its functions. Access to justice, civil as well as criminal for the rich and poor alike is today recognized as one of the basic human rights and access to speedy justice is a part of it and both are important facets of Arts.14 and 21 of the Constitution of India. In that context it is the duty of the Executive and the Legislature to create the proper and necessary environment and infrastructure to allow the Judiciary to discharge its obligations to meet the demands of access to justice and speedy disposal of cases.

(iv) Inherent powers of the Judiciary to seek financial resources (US):

It is in the above context that American courts have developed the theory of "Inherent Powers of the Judiciary" to issue directions to the Executive for grant of necessary finances for conducting its normal affairs and also to meet the demands of access to justice and speedy

justice. Though this power has to be used sparingly and in exceptional cases, it is important to note that there exists such a principle.

Prof. David J Saari of the American University, Washington DC in his article 'Separation of Powers, Judicial Impartiality, and Judicial Independence: Primary Goals of Court Management Education' (see Chapter 7 of Hayes' Book) as follows on the principle of inherent powers of Courts to direct the Executive for proper funding: (p.148)

> "**Inherent Powers:** The American Courts are on the global vanguard of judicial branches examining the inherent powers doctrine (Friesen, Gallas, and Gallas, 1971). 'As state judicial selection systems move from patronage toward merit, the inherent powers doctrine gains impetus' (Friesen, Gallas, and Gallas, 1971: 67). The doctrine of inherent powers based on constitutional or statutory necessity allows courts to acquire by judicial order the means needed to function. **Each branch has inherent powers to stop the others from shutting it down.** This logic, an extension of the separation of powers doctrine, is now being tested more fully. Litigation over the orders of the judiciary has spread since 1963, and this is a healthy sign. The judiciary may survive. Judges, Third Circuit v. Wayne County 386 Michigan 1, 190 NW2d 228 (1971); see also 59 ALR 3d 548 (1974)."

Recently, in March 2002, Chief Justice Kay McFarland of the Kansas Supreme Court stated that the Judiciary has "inherent power to do that which is necessary to enable it to perform its mandated duties.

In one of the best articles on the subject (*Judicature*, 1st July 2004), 'Judicial Independence, the power of the Purse, and inherent Judicial Powers' by Prof. Keith E. Whittington of the Department of Politics,

Princeton University and Mr. G. Gregg Webb, a student of Stanford Law School,(http://www.highbeam.com/DocPrint.aspx?DocId=1P3:749831421) the entire subject of inherent power of the Courts to seek financial resources has been dealt with by referring to various cases of the Courts from time to time. Initially started with a Judge of the Pennsylvania Supreme Court in 1888 stating that the Judge had the authority to draw directly on the public purse to cover such 'contingent expenses of the court' such as payment for the jurors' lodgings, and provide for 'emergencies' that require the prompt and efficient action of the court, without the usual deliberation and consent of the relevant legislative body. Some States Supreme Court issued directions for funds for operating a courthouse elevator, for chairs and carpets for a courtroom and courthouse air conditioning. In the elevator case the Indiana Supreme Court observed as follows:

> "Courts are an integral part of the Government and entirely independent, deriving their powers directly from the constitution, in so far as such powers are not inherent in the very nature of the judiciary. A court of general jurisdiction, whether named in the constitution or established in pursuance of the provisions of the constitution, cannot be directed, controlled, or impeded in its functions by any of the other Departments of the Government. The security of human rights and the safety of free institutions require the absolute integrity and freedom of action of courts."

Later on, the jurisdiction was expanded to direct general budgetary funding necessary for the courts. Under the heading 'expanding doctrine', Prof. Whittington and Mr. Webb state as follows:

> "The doctrine of inherent judicial power licenses the courts to take necessary actions to fulfill their constitutional functions, even when those actions are not specifically authorized by either constitutional text or legislative statute. Inherent Judicial power operates as an implicit "necessary and proper' clause to the establishment of the judiciary as an independent and equal branch of Government. In its most minimal guise, the doctrine empowers judges to control and manage their own courtrooms-for example, by punishing contempt of court, excluding photographers from the courtroom, or appointing counsel for criminal defendants. In its more muscular form, the doctrine authorized judges to protect themselves and their functions from the neglect or interference of the other braches of Government. It thus operates both as an implication and guarantor of judicial independence."

Recently, due to cuts in budgets, California and Oregon Judiciary reacted by restricting operating hours. Arizona and South Carolina closed down drug courts; California started releasing prisoners; Alabama and New Hampshire suspended jury trials; and Kansas and Oklahoma imposed cuts in attorneys who assist the poor; and Oregon closed the courts to the public on Fridays. (Cost of Justice: Funding State Courts – *Judicature, Jan.1, 2005, by Prof. Dawn Clark Netsch, Northwestern University School of Law and Chair of AJS).* *http://www.highbeam.com*. It was also pointed out by the author, that it is very important that,

> "Courts don't control their case-loads; they take what comes to them. They are required to take on new services and new obligations. Omnibus crime bills get passed, money is sent to police and prosecutors, courts take the increased cases but get no

additional monies to operate. So that is another reality that we wanted to take into account."

In a famous statement by Mr. Wallace P. Carson, Jr. in the article, "What Judges say about state court funding and judicial independence" (*Judicature, Jan.1, 2005) (http://www.highbeam.com)* it is stated as follows:

"Judicial independence is public property; it belongs not just to judges and courts but to every citizen."

In this context it is worthwhile referring to the case of *Cuomo vs. Wachtler*, in which Judge Wachtler, Chief Judge of the New York State Federal Court sued Governor Mario M. Cuomo in the State Supreme Court, (1990-93) charging that the budget cuts by the Governor undermined the prompt administration of justice. The basis for the suit was that the judiciary had an inherent right and power to compel reasonable and necessary funding for court operations.

Ultimately, the four month old legal battle was settled between the Judge and the Governor, (at the intervention of the legislature and the executive), the former agreeing to drop the law suit and the later committing himself and the State Legislature to provide enough money in the next financial year to restore the State Court to their former strength. It was also agreed that an outside auditor other than the State Comptroller be allowed to review the Court's books as requested by the Governor. The Chief Judge thereafter said that the settlement would enable the Court to reemploy 471 employees who had been laid off due to budget cuts. These cuts resulted in a severe backlog in the civil courts, particularly, in New York city, where almost 1/3rd of the

State Supreme Court's Civil Court rooms were closed and small clients court sessions were reduced from four nights a week to one. Under the agreement the courts not only got protected from cuts in the next fiscal year but were also to receive $19 million increase in the judiciary budget from its then level of $874 million.

Earlier, the Supreme Court of Pennsylvania ordered the State of Philadelphia in 1986 to appropriate more than $ 1.4 million per its Court of Commonpleas (Commonwealth ex rel Carroll vs. Tate, 274 A.2d. 193). The Pennsylvania Supreme Court also construed the unification provision in the State Constitution to require state financing of Trial Courts. The Court observed that in order to--

> "protect itself from the other branches, the judiciary must possess the inherent power to determine and compel payment of those sums of money which are reasonable and necessary to carry out its mandated responsibilities, and its powers and duties to administer justice."

It was also held that the Courts were held entitled to whatever funds were 'reasonably necessary' for 'the efficient administration of justice' and that,

> "The deplorable financial conditions in Philadelphia must yield to the constitutional mandate that the judiciary shall be free and independent and able to provide an efficient and effective system of justice."

The Kansas judiciary invoked the inherent judicial power in the midst of the budget process for fiscal year 2003. On 8th March 2002, Chief Justice McFarland in her order directed imposition of an "emergency surcharge" on existing court fees to be paid into a fund separate from the

state treasury and available 'only for judicial branch expenditures'. She exercised the inherent powers doctrine. She stated that,

> "The simple truth is the judicial branch cannot perform its constitutional and statutory duties with such a shortfall in function"

even though,

> "Courts are the last bulwark of freedom as guaranteed by the Bill of Rights and a fully functioning court system is essential to the American way of life."

In this case, the peculiar position was that the legislatures congratulated the Chief Justice for the above action.

See also County of Allegheny vs. Commonwealth of Pennsylvania, A.2d. (Opinion, dated December 7, 1987). See also other cases like Beckert vs. Warren 1981, Pa Carrol vs. Tate 442Pa 1971. See in this context pp.122 and 123 of Russel R. Wheeler on Judicial Administration 1977. See also the remarks of Justice Brennan of Australia (1992) 67 ALJR 1 at 16, and also(1994) 6 Aust LJ. 14 at 22.

Michael D. Planet of the Superior Court of King County, Seattle, Washington in his article "Future Directions in the Practice of Court Management" (Chapter 25 of Hayes' book) states (p.505) as follows:

> "Protecting and promoting the independence of the judicial branch will be a priority for courts in the future. Courts in the aggressive in asserting their inherent powers. Independence in financing will be emphasized, and the discretion of judicial decision-making authority will be promoted."

So far as the manner in which the Indian Supreme Court has exercised the "Inherent Powers" doctrine, it is dealt with separately under a separate heading lower down in this Report.

(v) <u>International Perceptions on granting sufficient Budgets to the Judiciary in consultation with the Judicial Branch:</u>

In the famous Syracuse Draft Principles on independence of the Judiciary formulated by a Committee of Jurists and the International Commission of Jurists at Syracuse, Sicily on 25th-29th May, 1981 it is stated in Arts.24 1n3 25 as follows:

> **"<u>Financial Provisions</u>**:
>
> Art. 24: To ensure its independence the judiciary should be provided with the means and resources necessary for the proper fulfillment of its judicial functions.
>
> Art. 25: The budget of the judiciary should be established by the competent authority in collaboration with the judiciary. The amount allotted should be sufficient to enable each court to function without an excessive workload. The judiciary should be able to submit their estimates of their budgetary requirements to the appropriate authority.
>
> **Note: An inadequate provision in the budget may entail an excessive workload by reason of an insufficient number of budgeted posts, or of inadequate assistance, aids and equipment and consequently be the cause of unreasonable delays in adjudicating cases, thus bringing the judiciary into discredit."**

The International Bar Association adopted at its 19th Biennial Conference held in New Delhi, October 1982, the recommendations made by Dr. Prof. Shimon Shetreet, Professor of Hebrew University, Jerusalem, Israel. The recommendations concerned the Minimum Standards of Judicial Independence known as 'Delhi Approved Standards' (Published later in CIJL Bulletin No.11, p.53 and CiJL Bulletin, 23, Jan, 1989, p.18). Para 10 reads as follows:

> "10. It is the duty of the State to provide adequate financial resources to allow for the due administration of justice."

Again in the Universal Declaration on the Independence of Justice as adopted in the World Conference of the Justices, Montreal on 5-10 June, 1983 (CIJL Bulletin Vol.12, October 1983, p.27) dealt with independence of International and National Judges. Paras 2.41 and 2.42 read as follows:

> " 2.41. It shall be a priority of the highest order for the State to provide adequate resource to allow for the due administration of justice, including physical facilities appropriate for the maintenance of the judicial independence, dignity and efficiency, judicial and administrative personnel; and operating budgets.
>
> 2.42. The budget of the courts shall be prepared by the Competent Authority in Collaboration with the Judiciary. The Judiciary shall submit their estimates of the budget requirements to the appropriate authority."

The 7th UN Congress on the Prevention of Crime and the Treatment of Offenders held at Milan in August-September 1985

adopted, among others, in para 7 (CIJL Bulletin, No.16, October 1985 p. 53 and CIJL, Bulletin No.23, April 1989, p. 109) as follows:

> "7. It is the duty of each Member State to provide adequate resources to enable the Judiciary to properly form its function."

The Lusaka Seminar on the independence of Judges and Lawyers held in November 1986 (CIJL Bulletin, Vols. 19-20, October, 1987, p.97) said in para 23, 24, 49 stated that the Judiciary must have a greater say in allocation of funds for the Judiciary. It was stated:

> "**Resources.**
>
> 23. The executive shall ensure that the Courts are adequately supplied with Judicial Officers and supporting staff.
>
> 24. The Courts should, as far as possible, make use of the modern aids to simplify and accelerate court proceedings, and government should be ought to provide, as far as possible, adequate funds for the Judiciary for this purpose."
>
> …..
>
> Administration of the Courts.
>
> 49. …. … Conditions should therefore be created whereby the judiciary has a greater say in the allocation of funds for the judiciary.

At the conference of International Commission of Jurists held at Caracus, Venezuela, January, 1989 (CIJL Bulletin, No.23, April 1989 and CIJL Bulletin 25-26, Oct. 1990, p.22). it was recommended as follows:

"Procedure 5: In implementing principles 7 and 11 of the Basic Principles, States shall pay particular attention to the need for adequate resources for the functioning of the Judicial system, including appointing a sufficient number of Judges in relation to case-loads, providing the Courts with necessary supporting staff and equipment, and offering Judges appropriate personal security, remuneration and emoluments."

Dr. L.M. Singhvi, pursuant to the UNESCO's proceedings, submitted his final report at the 38th session of the UN Sub-Commission and referred to his draft declaration on the Independence and Impartiality of the Judiciary etc. Para 33 reads as follows:

Para.33: It shall be a priority of the highest order for the State to provide adequate resource to allow for the due administration of Justice, including physical facilities appropriate for the maintenance of Judicial Independence, dignity and efficiency; judicial and administrative personnel; and operating budgets.

Para.34: The budget of the Courts shall be prepared by the competent authority in collaboration with the Judiciary having regard to the needs and requirement of Judicial administration.

In the sixth conference of Chief Justices of Asia and Pacific at Beijing on 19.8.1995 it was stated as follows in Arts.36 and 37, 41 and 42:

Judicial administration:

Art. 35……..

Art. 36: The principal responsibility for courts administration including appointment, supervision and disciplinary control of administrative personnel and support staff must vest in the Judiciary, or in a body in which the Judiciary is represented and has an effective role.

Art. 37: The budget of Courts should be prepared by the Courts or a competent authority in collaboration with the Judiciary having regard to the needs of judicial independence and administration. The amount allotted should be sufficient to enable each court to function without an excessive workload.

….

Art. 41. It is essential that Judges be provided with the resources necessary to enable them to perform their functions.

Art. 42: When economic restrains make it difficult to allocate to the court system, facilities and resources which judges consider adequate to enable them to perform their function. The essential maintenance of the Rule of law and the protection of human rights nevertheless require that the needs of the Judiciary and the court system be accorded a high level of priority in the allocation of resources."

INDIA

(vi) PLANNING AND BUDGETS FOR COURTS IN INDIA:

Having dealt with the general aspects of planning and budgeting for the Courts, we shall now briefly refer to the position in India.

Budget preparation for the Courts in India is quite important. There has not been any proper planning for providing necessary financial support for the Judicial Administration in this country, at the official level of the Government. In fact, until the E-Committee was constituted, and the Supreme Court started publishing a Quarterly Report, there has not been an accurate and up to date record of the number of cases filed or pending in all the courts in the country. The database of the E-Committee must also be studied by appropriate Departments of the Government to find out what data is existing and what further data is necessary. E-Committee gets the data presently from all the High Courts which alone maintain some data relating to the cases, which are pending or disposed of in the various subordinate Courts falling under the jurisdiction of each High Court. The Quarterly reports published by the Supreme Court contain statistics about pendency and disposal of cases in all Courts, namely, the Supreme Court, the High Courts and the Subordinate Courts. The nature of the data collected could be improved and one of the important suggestions of Sri T.K. Viswanathan, (see Chapter-II) is that the Registry of all the Courts must maintain a record of the particular statute which is sought to be enforced by the parties in each case. Unless this information is stored, it is not possible to find out judicial impact of any particular piece of legislation. In the two studies, annexed to this Report, Prof. T. Krishna Kumar and Mr. Hazra have suggested several new types of data to be recorded in the trial and appellate courts, which, according to them are absolutely necessary for the Judicial Impact Assessment.

(vii) Mounting Arrears of cases and meagre financial support - Entry 11-A of Concurrent List and Art. 247 not given effect to by the Central Government:

It is well known that as of today, there are more than 2.50 crores of cases (25 million) pending in our Subordinate Courts, about 35 lakh cases

pending in the High Courts (3.5 million) and are being administered by about 13000 Judicial Officers in the trial courts, about 700 Judges in the High Courts and 26 Judges in the Supreme Court of India. It is equally well known that while we have around 13 Judges per million population, advanced democracies have around 100 to 150 Judges per million. Even going by the ratio between the number of cases and the number of Judges, we perhaps have the highest ratios in the world. Trial Judges have between 50 to 100 cases listed before them everyday. There are Magistrates, particularly in Cities, who have more than 10,000 cases in each of their courts. There have been lot of studies both by the Law Commission of India, several Committees and recommendations by the Chief Justice of India and by the periodic Conferences of Chief Justices of the High Courts. There have been studies by research scholars published in various journals and speeches delivered by several Judges across the country on the problem of arrears. It will be difficult to go into these details in this Report. Suffice it to say, that the problem of arrears has arisen over a period of three to four decades for not increasing the number of courts resulted in the increase in the pendency of cases. The filings were more than the disposals.

Further, the Central Government has not established sufficient number of courts for administering Central Laws falling under subjects listed in the Union List and Concurrent List of Schedule-VII of the Constitution of India and the entire burden of administering the Central Laws has been thrown upon the courts established by the State Governments. In 1976, the subject of

"Administration of Justice, Constitution and Organization of all Courts, except the Supreme Court and the High Courts"

was brought into the Concurrent List under a new Entry 11-A. By virtue of this amendment, it is obvious that the responsibility became that of the Union Government and the State Governments. But practically, nothing has been done by the Union Government by way of financial support to the Subordinate Courts, compared to the magnitude of the problem.

Further, under Art.247 of the Constitution of India, the Union Government has power to establish additional courts for the purpose of administering Central Laws. Hardly, any courts have been established by the Central Government to administer 340 or more Central Acts, arising out of the subjects mentioned in the Union List and Concurrent List, as pointed out by the Justice Jagannatha Shetty Commission.

In addition, the allotment for the Judiciary in the Five-Year Plans has been meagre. In the last two Five-Year Plans, the allocation was 0.071%, 0.078% and in the present Plan it is 0.07 %. With such small allocations for the judiciary, it is not clear how the situation can be improved.

(viii) Disposals by the Judiciary do not acquire adequate publicity in the media and elsewhere:

Institution & Disposal of cases from 1999 to 2006: Statistics about the filings and disposals in all Courts and their analysis:

Statistics of court cases have to be viewed not only from the point of view of **pendency** of cases but also from the point of view of the huge **disposals** by a fewer number of Judges and also taking into account the average number of the cases which any Judge can reasonably dispose of, maintaining the needed quality of justice. **We shall analyze the statistics as published in the 'Court News' by the Supreme Court of India.**

(I) Supreme Court: During the years 1999 to 2006, the disposal of cases is as follows:-

Year	Institution		Total	Disposal		Total	Pendency		Total
	Admission	**Regular**		**Admission**	**Regular**		**Admission**	**Regular**	
1999	30,795	**3,888**	34,683	30,847	**3,860**	34,707	6,964	**13,370**	20,334
2001	32,954	**6,465**	39,419	32,686	**6,156**	38,842	8,856	**13,866**	22,722
2002	37,781	**6,271**	44,052	36,903	**5,536**	42,439	9,734	**14,601**	24,335
2003	42,823	**7,571**	50,394	41,074	**6,905**	47,979	11,483	**15,267**	26,750
2004	51,362	**7,569**	58,931	47,850	**7,680**	55,530	14,995	**15,156**	30,151
2005	45,342	**5,198**	50,540	41,794	**4,416**	46,210	18,543	**15,938**	34,481
2006	55,402	**6,437**	61,839	51,584	**4,956**	56,540	22,361	**17,419**	39,780
Jul, 2007							25,215	**18,513**	43,728

It will be seen that between 1999 to 2006, there is an increase of about 90% in the filing of cases in the Supreme Court due to various reasons including the increasing number of disposals in the High Court. The regular cases have also increased by 70%. Over all pendency has gone up by 100% including admission matters. Of course, the strength remains at 26.

(II) High Courts: During the period 1999 to 2006, the disposal of cases, both civil and criminal, is as follows:-

Year	Civil Cases			Criminal Cases			Total		
	Institution	Disposals	Pendency at the end of the year	Institution	Disposal	Pendency at the end of the year	Institution	Disposals	Pendency at the end of the year
1999	8,16,912	7,12,482	23,53,453	3,05,518	2,67,992	4,04,353	11,22,430	9,80,474	27,57,806
2000	7,95,007	7,35,301	23,87,526	3,21,615	2,83,700	4,47,552	11,16,622	10,19,001	28,35,070
2001	8,74,125	7,96,228	24,65,423	3,41,301	2,97,370	4,91,483	12,15,426	10,93,598	29,56,906
2002	9,32,186	8,42,646	25,54,963	4,02,016	3,43,900	5,32,085	13,34,202	11,86,546	30,87,048
2003	9,88,449	9,82,580	25,60,832	3,96,869	3,67,143	5,61,811	13,85,318	13,49,723	31,22,643
2004	10,16,420	8,63,286	28,11,382	4,32,306	3,75,917	6,13,077	14,48,726	12,39,203	34,24,459
2005	10,82,492	9,34,987	28,70,037	4,60,398	4,03,258	6,51,246	15,42,890	13,38,245	35,21,283
2006	10,82,667	9,79,275	29,68,662	5,07,312	4,71,327	6,86,191	15,89,979	14,50,602	36,54,853

Between 1999 and 2006, the total institution in the **High Courts** has gone up from 11.22 lakhs in 1999 to 15.89 lakhs in 2006. Disposal has gone up from 9.80 lakhs in 1999 to 14.50 lakhs in 2006. Over all pendency in the High Courts has gone up from 27.57 lakhs to 1999 to 36.54 lakhs in 2006. Criminal cases in the High Courts are less and the civil cases are more whereas, in the Subordinate Courts, it is the reverse.

(III) Subordinate Courts: During the period 1999 to 2006, the disposal of cases, both civil and criminal, is as follows:-

Year	Civil Cases			Criminal Cases			Total		
	Institution	Disposals	Pendency at the end of the year	Institution	Disposal	Pendency at the end of the year	Institution	Disposals	Pendency at the end of the year
1999	33,02,042	32,17,516	70,20,973	94,29,233	91,77,244	1,34,77,427	1,27,31,275	1,23,94,760	2,04,98,400
2000	31,70,521	31,86,753	69,25,913	96,43,398	94,51,770	1,33,38,454	1,28,13,919	1,26,38,523	2,02,64,367
2001	33,73,469	31,40,099	72,11,809	1,00,64,701	93,54,812	1,42,02,763	1,34,38,170	1,24,94,911	2,14,14,572
2002	33,85,715	33,42,653	72,54,871	1,11,59,996	1,01,77,254	1,51,85,505	1,45,45,711	1,35,19,907	2,24,40,376
2003	31,70,048	31,21,978	73,02,941	1,16,35,833	1,08,74,673	1,59,46,665	1,48,05,881	1,39,96,651	2,32,49,606
2004	36,97,242	37,26,970	70,42,245	1,18,88,475	1,08,57,643	1,76,24,765	1,55,85,717	1,45,84,613	2,46,67,010
2005	40,69,073	38,66,926	72,54,145	1,31,94,289	1,24,42,981	1,84,00,106	1,72,63,362	1,63,09,907	2,56,54,251
2006	40,13,165	40,19,383	72,37,496	1,18,09,666	1,19,75,308	1,78,42,122	1,58,22,831	1,59,94,691	2,50,79,618

A bird's eye view of the last 3 columns of the above table in respect of the Sub-ordinate courts is as follows:

Year	Institution	Disposals	Pendency at the end of the year
1999	1,27,31,275	1,23,94,760	2,04,98,400
2000	1,28,13,919	1,26,38,523	2,02,64,367
2001	1,34,38,170	1,24,94,911	2,14,14,572
2002	1,45,45,711	1,35,19,907	2,24,40,376
2003	1,48,05,881	1,39,96,651	2,32,49,606
2004	1,55,85,717	1,45,84,613	2,46,67,010
2005	1,72,63,362	1,63,09,907	2,56,54,251
2006	1,58,22,831	1,59,94,691	2,57,13,770

In the **Subordinate Courts,** the annual filing of 1.27 Crores in 1999 has now gone up to 1.58 crores in 2006 while the disposals have gone up from 1.24 Crores in 1999 to 1.59 Crores in 2006. Over all pendency has gone up from 2.04 Crores in 1999 to 2.57 Crores in 2006.

Analysis of the above data:

From the general data given above, culled out from 'Court News' published by the Supreme Court of India and from other data separately available in respect of civil and criminal cases, the following conclusions have been arrived at: ('Delayed Justice' by Justice Y.K.Sabharwal in his 'Justice Sobhagmal Jain Memorial Lecture' 25th July, 2006) :-

> "Thus, annual institution in the High Courts as well as in the Subordinate Courts exceeds disposal in civil as well as criminal cases.
>
> The figures would also show that the disposal of civil and criminal cases in the **High Court** rose from 9,80,474 in the year 1999 to 13,38,245 in the year 2005, the cumulative increase being 36%. However, the institution increased at a faster speed from 11,22,430 to 15,42,890 in the year 2005, the cumulative increase being 37%. Consequently, the pendency increased from 27,57,806 at the end of 1999 to 35,21,283 at the end of year 2005.
>
> Analysis of the figures would show that in the **Subordinate Courts**, the disposal of the civil and criminal cases increased from 1,23,94,760 in the year 1999 to 1,63,09,90 in the year 2005, the cumulative increase being 32%, but again the institution increased more rapidly from 1,27,31,275 in the year 1999 to 1,72,63,362 in the year 2005

and cumulative increase being 36%. As a result, the pendency which stood at 2,04,98,400 cases at the end of year 1999 rose to 2,56,54,251 at the end of 2005".

If the filings and disposals are both in excess of one crore but, at the same time, the annual filings are in excess of the annual disposals by a few lakhs, the pendency is bound to increase year after year and if the number of Courts are not correspondingly increased over a period of 20 years or more to neutralize the annual increase, the pendency is bound to increase to more than two crores, as it actually happened. It will be seen that the existing strength in the High Court and Subordinate Courts has not been able to curtail the annual excess in the pendency of cases and, therefore, it is obvious that the strength must be raised to such a level which will neutralize the arrears as well as the annual increases both in the High Courts and Subordinate Courts.

I had earlier pointed out (see Judicial Backlog: Strategies and Solutions: Vol.1 Journal of the National Judicial Academy page 82 at page 85) after analyzing the data for the period **1985 to 2003**, as follows:-

> **"Thus, it can be seen that cases have increased faster than the increase of judicial officers. For instance the increase in cases between 1985 and 2003 is 84% while the increase in the judicial officers during the same period was (from 9,232 to 13,000) has been only 40%".**

(ix) Commission for Review of the Constitution of India (2002)

The Commission for Review of the Constitution of India headed by Justice M.N. Venkatachalaiah had made various recommendations for constituting **Judicial Councils** which will prepare budgets with help of experts. The Commission also stated that the Planning Commission and

the Finance Commission must made adequate allocations for the Judiciary. So far little has been done in providing necessary financial support for the Judiciary. (see http://lawmin.nic.in/ncrwc/finalreport/v1ch7.htm)

The National Commission considered the remedies in Chapter-VII of its Report which deals with the Judiciary and in the Chapter containing summary of recommendations, it was recommended as follows:

> " (129) A 'Judicial Council' at the apex level and Judicial Councils at each State at the level of the High Court should be set up. There should be an Administrative Office to assist the National Judicial Council and separate Administrative Offices attached to Judicial Councils in States. These bodies must be created under a statute made by Parliament. The Judicial Councils should be in charge of the preparation of plans, both short term and long term, and for preparing the proposals for annual budget.
>
> (130) The budget proposals in each State must emanate from the State Judicial Council, in regard to the needs of the subordinate judiciary in that State, and will have to be submitted to the State Executive. Once the budget is so finalized between the State Judicial Council and the State Executive, it should be presented in the State Legislature.
>
> (131) The entire burden of establishing subordinate courts and maintaining subordinate judiciary should not be on the State Governments. There is a concurrent obligation on the Union Government to meet the expenditure for subordinate courts. Therefore, the Planning Commission and the Finance

Commission must allocate sufficient funds from national resources to meet the demands of the State judiciary in each of the States.

(x) Plans for Budget of the Subordinate Judiciary:

The plans for the budgets of the Subordinate Judiciary in India consist of plans made by State High Courts in the various States, supplemented by funds allocated in the Five Year Plans and in non-plan expenditure. But there is no systematic planning of the budgeting requirements. Law Commission Reports and a number of other resolutions in conferences, seminars and workshops have dealt with the need for planning and proper budgeting. While developed countries have more than 100 to 150 courts per million population, we have hardly 13 or 14 courts per million population. Assuming that population is not a proper index, even going by the number of cases pending, the number of courts are far below the requirement. We have more than 2.50 crores (25 million) cases in our subordinate Courts, and around 13,000 Judicial Officers in the said Courts, which figure is hardly sufficient. The numbers of criminal cases are far more than the civil cases.

(xi) Supreme Court of India has been exercising "Inherent Powers" doctrine to issue directions to the Executive for securing more courts and facilities:

The Supreme Court of India has been issuing several directions to the Executive since 1992 for providing necessary infrastructure and funds for the judicial offices, courts and judiciary in general. These directions are squarely referable to the doctrine of "Inherent Powers" referred to earlier as developed by the Courts in U.S.

In **All India Judges' Assn. vs. Union of India**, AIR 1992 Supreme Court 165=1992(1) SCC 119, Supreme Court gave a number of directions for appointment of Pay Commission for fixing scales of pay for the judicial officers, residential accommodation, working library at the residences, transport vehicles, and the establishment of In-service institutes. It was also directed that income from court fees should be spent on administration of justice. In **All India Judges' Assn. vs. Union of India** AIR 1993 Supreme Court 2493=1993(4) SCC 288, the Supreme Court held that it could give directions to the Executive and the Legislature to perform their obligatory duties. The earlier directions were reiterated. Thereafter, the Supreme Court continued to monitor the implementation of the above directions in **All India Judges' Assn. vs. Union of India** 1994(4) SCC 727.

In **All India Judges' Assn. vs. Union of India** 2002(4) SCC 247, further directions were given for implementation. It was also directed that in as much as the judge-population ratio was between 10.5 to 13 per million population, the executive should increase the number to 50 judges per million population in 5 years.

Further, pursuant to the directions given by the Supreme Court in **All India Judges' Assn. vs. Union of India** AIR 1992 Supreme Court 165 and in a latter judgment in the same case reported in AIR 1993 Supreme Court 2493, the Government of India appointed the First National Judicial Commission on 21-03-1996 for fixing the pay scales and rationalizing them. The Commission was headed by Justice K.Jagannadha Shetty, former Judge of the Supreme Court. The Commission submitted its Report in November 1999 and thereafter, it was implemented by the Government consequent to further directions by the Supreme Court.

(The Jagannadha Shetty Commission also referred to the judgment of the Canadian Supreme Court which too appointed a Commission to look into the salaries of the officers of the judicial department).

The Supreme Court gave directions for establishment of fast track courts in **Brij Mohan Lal vs. Union of India** AIR 2002 SC 2096=2002 (5) SCC 1. The Supreme Court gave further directions for continuance of the fast track courts in **Brij Mohan Lal vs. Union of India** 2004 (11) SCC 244 for construction of court rooms or taking premises on lease. Further directions were given in **Brij Mohan Lal vs. Union of India** on 31-03-2005.

The directions given by the Supreme Court in the **Salem Advocates Bar Association** case, from time to time, including the directions to bring in judicial impact assessments, can also be traced to the "Inherent Powers" doctrine.

(xii) <u>Second Report of the Parliamentary Standing Committee (2004)</u>

In the Second Report of the Parliamentary Standing Committee (2004) presented to the both Houses of Parliament on 26th August 2004, it is stated in Para-76 that the Department of Justice was created in 1971 under the Ministry of Law & Justice, though the Budget is presented by that Ministry, the administrative control rests with the Ministry of Home Affairs. The Union Home Secretary is concurrently Secretary of Department of Justice. Till 1992-93, it is stated that the budget of the Department of Justice was salary oriented. From 1993 onwards, the Demands of the Department included provision for the Centrally Sponsored Scheme (CSS), relating to infrastructure facilities for the judiciary and the National Judicial Academy. From 2001-02 onwards, a pilot project for computerization of City Civil Courts in four Metropolitan Cities was started. From 2002-03 specific allocations were made for

setting up Family Courts and for reconstruction or extension of High Court buildings. Under the CSS, a provision for 50% non-recurring plan expenditure on Family Courts was made and was continued in 2004-05. Total non-plan budget for 2003-04, 2004-05 was Rs.297 crores and Rs.270 crores respectively and total amount towards CSS, computerization was Rs.105 crores and Rs.140 crores respectively. Out of Rs.142.70 crores for the Department of Justice, Rs.140 crore is meant for plan expenditure and Rs.2.70 crore for non-plan expenditure. Out of plan outlay of Rs. 140 crores, Rs.100 crores is allocated to CSS for the Judiciary including Family Courts (vide Para 78-80 of the Report).

It appears from Para 83 of the above report, that the Committee on Home Affairs has been reiterating since 1995, either to make Department of Justice an independent Department or to merge its budget within budget of the Ministry of Home Affairs. The Committee was informed that these functions will continue under the administrative control of the Department of Justice with the Home Ministry. A separate provision was made for 1734 Fast Track Courts on the basis of the recommendations of the XI Finance Commission for the period 200-2005, By 23rd July 2004, 1488 courts became functional and disposed of 4.83 lacs out of 10.30 cases transferred to them. Subsequently, the Supreme Court gave directions for continuance of the Fast Track Courts. (para 83-85 & 89 of the Report)

(xiii) <u>Supreme Court Judgment in 'Second All India Judges' Case' on Five year Plan:</u>

A question whether the judiciary has been included as a plan subject by the Planning Commission was raised before the Supreme Court of India in the 'Second All India Judges' Case' 1993(4) SCC 288. The Supreme Court observed (p.310) as follows:

"We now understand the Judiciary has been included as a Plan subject by the Planning Commission."

It appears from the above statement before the Supreme Court of India that prior 1993 the Judiciary was not made allocations under the Plans I to VIII. We shall now refer to the extremely small allocations made for the Judiciary during the VIII, IX and X Plans.

(xiv) Plan Allocations:

In 1977, the Constitution was amended (42nd Amendment Act of 1976) bringing in Art.11-A to the Concurrent List of the Constitution of India for the subjects of "Administration of Justice: constitution and organization of all courts, except the Supreme Court and the High Courts".

The Centre's plan investment started in the Eighth Five Year plan 1992-97 in compliance with the direction of the Supreme Court of 1993, Rs.110 crores was granted for judicial infrastructure such as construction of Courts. An equal amount was spent by the States. In Ninth Plan, Rs.385 crores was spent by the Centre and States made a matching contribution. This was 0.071% of the Centre's Ninth Plan expenditure of the total expenditure of the Ninth Plan of Rs.5,41,207 crores.

During the Tenth Plan (2002-07), the allocation for Justice is Rs.700 crores, which is 0.078% of the total Plan outlay of Rs.8,93,183 crores.

In the Eleventh Plan (2008-13) the allocation for Justice is 0.07% of the plan outlay.

Certain allocations by Central Government:

During the Tenth five year plan period (2002-2007), Rs. 630 crores were expended towards the Centrally Sponsored Scheme relating to development of infrastructure facilities for the Judiciary; Rs. 64.40 crores

for the computerization of the High Courts; Rs.5.60 crores for the National Judicial Academy, in all Rs.700.00 crores.

For the Fast Track Courts, under the non-plan expenditure grants were released to the States during the Tenth plan period. Up to 2004-05 the Ministry of Finance released Rs.426.13 crores, the Justice Department released Rs.100.00 crores for 2005-06, and same Department released Rs.102.93 crores for 2006-07, in all Rs.629.06 crores. During the Eleventh plan period, for 2007-08 Rs.57.2 crores were released.

For Family Courts, the Department of Justice released under the Tenth Plan for the period 2002-2007 Rs.8.20 crores under the plan, Rs.2.72 crores under the non-plan expenditure. Under the Eleventh plan for the year 2007-08, Rs.50.00 lakhs were released under the plan, and Rs.1.94 crores under the non-plan.

(xv) <u>Deficiencies in Budget Procedure in India:</u>

Till 1993, no provision was made for expenditure of the Judiciary, in the Five Year Plans. It was only after the **Second Judges'** case that some provision was started in the light of the observations of the Supreme Court that even thereafter, the provision was very meager as comparatively requirement, as pointed out above. Further, the Centrally sponsored schemes required the States make an equal matching grant. Where, some States were not able to provide the matching grant, even the Central grant lapsed.

In the States, the High Courts would prepare their budget requirements to the State Governments. These are prepared by the Registrars-General of the respective High Courts, who are generally drawn

from the Subordinate Judiciary at the rank of District Judges. Obviously, these officers are not well experienced in making budgetary estimates. Either they should be imparted sufficient knowledge and training on budgeting systems or we must bring some officers on deputation from Finance Departments in the State Governments or from the Audit & Accounts Departments of the Government of India.

(xvi) Recent Resolution of the Chief Justices' Conference (April, 2008) for taking help of retired Accountants General and other experts for preparing Court budgets:

It appears that in the recent Chief Justices' Conference (April, 2008) a resolution was passed by Chief Justices under the Chairmanship of the Chief Justice of India that the High Courts should seek the help of professionals in the matter of preparation of budget estimates. It was accepted that lack of expertise on the part of the High Court officials in the matter of preparation of budgets, the Subordinate Judiciary is not able to get adequate funds. It was resolved that, "budgets be prepared on scientific basis with the help of competent professionals and whenever required, consultants may be engaged for the purpose." It was felt that budgetary demands in the High Courts sent to the State Governments should be supported by appropriate data and reasons. The budgetary demands should neither be artificially inflated nor should they be inadequate to meet the objectives and targets set out for the relevant financial year. It is also felt that the High Courts could borrow services of qualified and experienced members of the Indian Audit and Accounts service or the State Accounts Services for the purpose and that these experts should work under the control of the Registrar-General of the High

Court not only for the budgetary exercise but also in relation to regulation and control of the expenditure of the High Courts as well as Subordinate Courts. For the present, if competent professionals and consultants are engaged, the Registrar-General should be in-charge of the budgetary exercise (Times of India, New Delhi, 20th April 2008, p.14).

...

CHAPTER – V

Distinction between Financial Provision by Sponsoring Ministries and Provision in Financial Memorandum (Arts.117 & 207)

It is necessary to recognize the distinction between financial support from the concerned Ministries, which sponsor the Bills and the financial support that is the Financial Memorandum attached to the Bill under Arts.117 and 207 respectively for Parliament and State Legislatures. (A brief reference to this aspect was made in Chapter-II). For the purpose of understanding this distinction, it is necessary to refer to the relevant provisions of the Constitution of India.

Article 117 of the Constitution of India makes "Special provisions as to financial Bills" submitted before the Parliament. It reads as follows:

> "**Art.117 (1).** A Bill or amendment making provision for any of the matters specified in sub-causes (a) to (f) of clause (1) of article 110 shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States:
>
> Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.
>
> **(2).** A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides

for the imposition, abolition, remission, alteration, or regulation of any tax by any local authority or body for local purposes.

(3). A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

Article 207 of the Constitution of India makes " Special provisions as to the financial Bills." It reads as follows:

Art.207. (1). A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 199 shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such pro0vision shall not be introduced n Legislative Council:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2). A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any legal authority or body for local purposes.

(3). A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of a

State shall not be passed by a House of the Legislature of the State unless Governor has recommended to that House the consideration of the Bill."

It will be seen, Clause (3) of Art.117 and Clause (3) of Art.207 that whenever a Bill introduced in Parliament or State Legislature, involves, if enacted and brought into operation, expenditure from the Consolidated Fund of India or the Consolidated Fund of the State, as the case may be, there must be a specific recommendation from the President, otherwise, Bill cannot be passed.

Under Art.112 (3) (d) (i) & (iii) it is stated that the expenditure on the salaries, allowances, and pensions payable to or in respect of Judges of the Supreme Court and pensions payable to or in respect of Judges of the High Court, where the High Court exercises jurisdiction, (which includes any area included in the territory of India), shall be charged on the Consolidated Fund of India.

Under Art. 202 (3)(d) the expenditure in respect of salaries and allowances of Judges of High Courts is charged on the Consolidated Fund of the State.

Therefore, the Financial Memorandum attached to the Bills presented to Parliament or the State Legislatures should reflect the expenditure for the Supreme Court and the High Courts respectively under Arts.117 and 207 and will not reflect the expenditure of the Subordinate Courts. That would mean that to the extent any new legislation impacts on the burden of the "Supreme Court" and "High Courts", the Financial Memorandum should reflect the same. It may be by way of writs, original petitions, civil cases, tax cases or civil and criminal appeals or revisions.

The question then is as to who should make the financial provision for meeting extra load on the "Subordinate Courts"?

It is clear that if the legislation is introduced in Parliament by any particular Ministry of the Central Government, (i.e., the sponsoring Ministry) must make provision for the anticipated expenditure for implementation of the Bill, if enacted and brought into force. Likewise, where the Bill is introduced in the State Legislature by any State Ministry, that sponsoring Ministry must make provision for the anticipated expenditure for implementation of the Bill, if enacted and brought into force. This is the constitutional procedure as indicated by the Law Secretary, Mr. T.K. Viswanathan as stated in Chapter-II of this Report. Further, this procedure accords with the scheme of the Constitution under which subjects on which Parliament can legislate are referred to List-I of VII Schedule of the Constitution of India, subjects on which State Legislatures can legislate are referred to in List-II of the said Schedule and subjects on which the Parliament as well as the States can legislate are referred to in List-III of the same Schedule. It is, therefore, obvious that the expenditure on the Subordinate Courts where Parliament legislates on subjects in List-I should be borne by the Union Government, where the law is made by the State Legislature on subjects in List-II, such expenditure should be borne by the State Government, and so far as legislation on the subjects in List-III is concerned, where the legislation is brought in by the Parliament such expenditure must borne by the Union Government and where such legislation is brought in by State legislature, such expenditure must be borne by the State Governments. In as much as these expenditures relate to the sharing of the burden of the additional cases by the Subordinate Courts, the concerned sponsoring Ministry, be it the Ministry of the Central Government or the State Government, that Ministry must

bear the expenditure on the Subordinate Courts and make adequate provision in advance, for meeting the expenditure.

The Task Force has, as already stated, examined a number of Financial Memoranda attached to Central Bills presented in Parliament but invariably it is stated that in the expenditure on the Courts will be borne by the State Governments. This is the procedure adopted whether the Bill relates to a subject in List-I or in List-III. This is contrary to the scheme of the constitution. For example, the introduction of Sec.138 into the Negotiable Instruments Act, which is an Act referable to Entry 46 of List-I of VII Schedule, has given rise to 25 lakh cases (2.5 million) and the entire burden to deal with these cheque bouncing cases on the criminal side has been thrown upon the Courts established by the State Governments. There are many such examples if we take each Entry in List-I separately.

Under Art. 247 of the Constitution is provided that Parliament may by law, provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to the matter enumerated in the Union List. No courts at the Subordinate level, worth mentioning, have been established by the Central Government to deal with litigation, civil and criminal, arising even out of laws made by Parliament on subjects in List-I. Further, Art. 247 is in addition to the responsibility of the Central Government to establish courts for the enforcement of the laws made by the parliament on the subjects referred to in the Concurrent List.

Coming to the obligation of Central Government in relation to laws made on the subjects in the Concurrent List (List-III), the position after the 42nd Amendment of 1976 to the Constitution, under which the subject of

> "Administration of Justice: constitution and organization of all Courts except Supreme Court and the High Courts"

was brought to List-III as Entry-11A, has not been given effect to by the Union Government. Earlier, before the Amendment of 1976, this subject was in Entry-3 of the State List (List-II). It is obvious that once the subject is shifted List-II to List-III, the Union Government has to bear the additional financial burden that falls on the State by virtue of Central Legislation made on a subject in List-III.

The Commission for Review of the Constitution of India (as stated earlier) and the Jagannath Shetty Commission have also made similar observations as to the responsibility of the Central Government for providing funds for establishment of subordinate courts to administer laws made under the Union List and the Concurrent List.

In this context, it is not permissible for the Union Government to fall back upon the proviso to Art.73(1) of the Constitution of India. That Article only deals with the extent of Executive power of the Union Government in the absence of legislation and specifies the jurisdiction of the Central and State Executives. As the Article requires some interpretation, we shall refer to that Article which reads as follows:

> "**Art.73.(1)** Subject to the provisions of this Constitution, the executive power of the Union shall extend—
>
> (a) to the matters with respect to which Parliament has power to make laws, and
>
> (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State… to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution."

We may, in this context, also refer to Article 298. That Article states that the Executive power of the Union and of each State shall extend to the carrying of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose, provided that

(a) the said executive powers of the Union shall, insofar as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and

(b) the said executive powers of each State shall, insofar as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.

The purpose of the proviso below clause(1) of Art.73 is that the Central Government should not exercise Executive powers in relation to the matters referred to in the entries in the Concurrent List in order to avoid conflict of orders of the Central Government and the State Government in this area. The said proviso has no relevance while dealing with the question of Central Government funding the subordinate courts established by the State Government, where the subordinate courts are implementing the laws made by the Parliament on subjects in the Concurrent List.

While it is true that Art.73 states that the Executive power of the Central Government will not extend to a subject in the Concurrent List unless such Executive power is conferred by the Constitution or by law made by the Parliament, the present issue does not relate to the exercise of Executive power by the Central Government in the sphere of the subjects enumerated in the Concurrent List. Here we are concerned with the consequences of Central Legislation on the subjects in the Concurrent List which throw burden on the Courts established by the State Governments. The simple point is that Central Government cannot make such laws without providing adequate budgetary support from the Central Government. Therefore, the proviso below clause(1) of Art.73 is wholly irrelevant in that context and cannot be interpreted to absolve the Central Government from providing funds necessary for implementation of Central laws on subjects in the Concurrent List.

Further, in view of Entry-11A of List-III introduced by the 42nd Amendment of 1976, the responsibility which belonged to the State Governments under Entry3 of List II has been shifted to Concurrent List. Therefore, the Union Government must bear the

financial burden of the Subordinate Courts in respect of cases arising out of Central Laws, whether made on subjects in List I or List III. In our view, that is the proper interpretation of Article 73. Further, the opening words of Article 73(1), namely, "Subject to the provisions of this Constitution" are sufficiently wide to make us refer to Entry 11A of List-III.

Therefore, as stated above, the sponsoring Ministry, be it the Central or the State Ministry concerned, must bear the additional financial burden of the Subordinate courts. The Central Government must bear the expenditure of the Subordinate Courts arising out of litigation from statutes made by Parliament on subjects referred to in List I and List III. The State Governments must bear the expenditure of the Subordinate Courts arising out of statutes made by the State Legislature on subject referred to in List II and List III. The present system under which the Union Executive is throwing the entire financial burden of enforcing of Central Laws made under List I and List III is contrary to the provisions of the Constitution of India and the constitutional scheme.

* * *

CHAPTER VI

U.S. Experience, Theory & Practice, and how the Judicial Impact Office came to be located within the Judiciary:*

(i) Historical aspect:

"In his 1972 address on the state of the judiciary, Chief Justice Warren Burger called for judicial impact statements as a tool to assist the federal judiciary in 'rationally planning for the future with regard to the burdens of the courts. Congress could, he said, require them, in similar fashion to environmental impact statements, to accompany all proposed legislation that would likely create new cases in the federal courts. He pointed to the Criminal Justice Act of 1964 and the Bail Reform Act of 1966 as well motivated statutes that had unintended consequences on the federal courts' ability to administer criminal justice.

Chief Justice Burger's address generated a wave of interest in judicial impact assessment at both the federal and state levels. Federal court caseload data at the time showed that civil actions under statutes had increased from 13,427 filings and 23% of the civil caseload in statistical year 61 to 43.750 filings and 47% of the civil caseload in statistical year 71. Several research projects were initiated during the late 1970s. The

---

*At the Conference on "Assessing the Effects of Legislation on the Workload of the Courts: Papers and Proceedings" held at the Federal Judicial Center, Washington, 1995, a number of articles were published by Scholars and Social Scientists and the same has been published by the Federal Judicial Center. The publication runs into 117 pages in Six Chapters viz., I-Introduction; II-Background; III-Policy Session; IV-Theory Session; V-Applied Session, and VI-Summary and Endnotes. (This Chapter and the next Chapter are based upon the said publication exclusively.) We have also bodily lifted several passages from the papers for purposes of our research. **The entire Report is available at 'www.books.google.co.in/book 2 isbn =0788149911 '**

most comprehensive of these was conducted under the auspices of a National Academy of Sciences (NAS) grant, which charged the Panel on Legislative Impact on Courts to evaluate 'the feasibility of estimating the changes in workloads that courts would experience with the adoption of new legislation.' The panel reached two conclusions in its 1980 report. It found that, as proposed by Chief Justice Burger, the application of judicial impact assessment to all legislation that might create new cases in the courts was not feasible because the empirical and theoretical tools necessary for such across-the-board forecasts were not yet available. Importantly, however, the panel also determined that the process did seem feasible 'if a more modest view was taken' of the goals of judicial impact assessment, employing it only 'in selected instances' for specific legislative proposals.

In the wake of this report, interest faded in judicial impact assessment at the federal level. One possible explanation for this decline in interest is that at the federal level, judicial impact assessment became tied up in a larger effort to forecast caseloads primarily for the purpose of anticipating future judgeship needs. In fact, much of the discussion in the NAS report explicitly assumed that judicial impact assessments would be used for this purpose. When it became apparent that across-the-board judicial impact assessments were not tenable, their usefulness within this larger effort was compromised, and interest waned.

At the state level, however, judicial impact assessment remained the subject of continued, if sporadic, attention for two reasons. First, following the 'more modest' approach suggested in the NAS report, states used these assessments to forecast the judicial impact of selected legislation only. Second, state judiciaries were less reluctant than their federal counterpart to use judicial impact statements to communicate with

their legislatures in order to influence policy. As a result, during the 1980s judicial impact assessment continued to develop and spread in the states.

Recently, because of a new focus on planning and legislative-judicial relations in the federal and state judiciaries, there has been a renewed interest in judicial impact assessment at all levels of Government. At the national level, the Federal Courts Study Committee recommended in its 1990report that 'an Office of Judicial Impact Assessment should be created in the judicial branch.' Subsequently, such an office was created in the Administrative Office of the U.S. Courts. Also in 1991 the American Bar Association called on Congress and each state legislature to establish mechanisms within their budgeting processes to generate judicial impact statements for each bill or resolution potentially affecting the federal or state courts.

At the state level, in 1989 and 1990 the NCSC and the National Conference of State Legislatures cosponsored a project called "The Future of the State Courts: Legislature-Judicial Partnership.' One part of this project focused on the use of judicial impact statements as communication and problem-solving mechanisms between the first and third branches. According to NCSC surveys of state and federal court administrative offices, judicial impact assessment had proved valuable in reducing unanticipated burdens on the court system, improving communication, and fostering a sense of legislative-judicial cooperation. In August 1992, the NCSC began a separate project for the Conference of State Court Administrators. The project, funded by the State Justice Institute, was to develop and test a process for measuring the impact of federal legislation on the state courts. The final report from this project was released in August, 1994."

In 1967, Wisconsin became the first state to require fiscal estimates on bills affecting Government costs. But these were different from judicial impact assessment statements.

In 1970, California became the first state to produce judicial impact statements. Chief Justice Warren Burger proposed the adoption of judicial impact statements in his address to the Federal Judiciary in 1972. This subject became a priority in the Justice Department's Office for improvements in the Administration of Justice under President Carter. During the late 1970s and early 1980s, this was the subject of academic and scholarly interest. In 1990, the Federal Courts Study Committee proposed an office of Judicial Impact Assessment.

In 1991, Chief Justice Rehnsquist of the US. Supreme Court created a separate office to deal with Judicial Impact Assessment pursuant to the recommendations contained in 203 page report of a Committee established by Congress proposing major reductions in the workload of Federal Judges.

(ii) <u>Four Questions:</u>

In his opening remarks, William W. Schwarzer of the Federal Judicial Center posed four questions. (i) To what extent can the courts plan for caseload trends associated with particular causes of action? (ii) Which forecasting methods are the most accurate for this purpose? (iii) How should we construct our data-collection activities in the future to facilitate these forecasts? (iv) When does Congress need an evaluation of potential court workload impact in its deliberations on proposed legislation, and how can the information provided by these evaluations be communicated most effectively?

(iii) <u>Theoretical aspects of judicial impact assessment:</u>

We shall initially refer to the contents of the article "Inter-branch Communication, the Next Generation" by Mr. Shirley Abrahamson, then Judge, Wisconsin Supreme Court and Gabriel Lessard of the National Economic Development and Law Center, Oakland, California.

The three branches, the Legislature, the Executive and the Judiciary are functionally intertwined insofar as the judicial impact of legislation is concerned. While Executive/Legislature may introduce and pass legislation, the same shifts to the civil courts very soon for the enforcement of the rights and obligations created by the law, or where the law relates to control of crime, more criminal cases may land in the criminal courts. Such loss may assert individuals, entities, corporate bodies and even the State.

It is the duty of the other Branches to preserve the Judicial Branch's ability to keep pace with the growing workload by providing adequate funding to the Courts and also improving the quality of the statutory enactments so that minimum issues as to interpretation of law may arise.

Judicial impact statements had their genesis in the example provided by environmental impact statements (Keeth Boyum and Samuel Crislov), Judicial Impact Statements, what's needed? what's possible? (66 *Judicature 137*-September/October, 1982*)* These statements can be prepared not only for proposed legislation but also for pending legislation, for example, it was so decided by the Judicial Conference of Wisconsin in October 1992. There are also examples of impacts of proposed legislation that cannot necessarily be reduced to dollars and cents due to modification in court procedures, increased numbers of *pro se* litigants and changes in the responsibilities of personnel. Initially, it was also realized that there

was lack of necessary data bases for generation of these statements and as to information should be gathered and how it could be gathered. Further, some information may be available with the Legislature, some with the Executive or its entities, such as prosecution offices, law enforcement offices and correctional institutions. The most frequently used measure of judicial impact has been the estimation of the change in the fiscal expenditure. Initially, in Wisconsin, attempts were made to produce, what were called, fiscal notes. For example, in response to proposed legislation that would require an un-emancipated minor girl to obtain parental consent before an abortion the Director of State Courts filed a statement that the court burden would increase and additional Judges/Staff would be required as also counselors, guardians-ad-liten, intake workers, witnesses and transcripts. No particular amount of expense was indicated in these fiscal notes. However, while the District Attorney said that it was not possible to give a monetary estimate, the State Public Defender estimated increase in costs from $160,000 to $410,000. On the other hand, the Department of Health and Social Services estimated the increase by over $10 million. Therefore, there was large variation in the different estimates. It was then considered to draw from the experience of States for preparing judicial impact statements rather than such vague fiscal notes. In this context, the following issues were identified:

> "1. The fiscal estimate should be objective and not politicized. It should be estimated "accurately, factually, dispassionately, and objectively". It need not endorse the proposed Bill nor opposite nor concern itself with its merits or public policy. The Legislature should not be allowed to distrust the agency which makes the estimate. Fiscal estimates can be important ammunition for both

the proponents and opponents of proposed a legislation, within the Legislature. It may also have political consequences.

Whoever prepares the statements, develops expertise and a cumulative data base. Those with access to information analyzing pending legislation, especially in the form of "challenge-restraint" data, have the capacity to shape the debate.

2. A neutral body, not being part of the Judiciary or the Executive but consisting of Judges, Members of the Executive and Social Scientists could be constituted for developing expertise and fastly advising how much budget would be required for enforcing the new legislation. (This aspect will be dealt with in greater detail in a separate chapter).

3. The development of judicial impact statements is a time consuming, expensive and inexact process. The methods employed in developing fiscal estimates vary widely. The need for detail, specificity in the methodology and the time factor do not go together. Sometimes the Legislature may wants to estimate in a week and this may well nigh be impossible. The quality of estimates would suffer if sufficient time is not given. This suggests that judicial impact statements should be used only in a limited way and perhaps only for "Select Bills".

4. To be effective, such statements must be kept current as Bills are moving through the legislative process and must be revised as and when the Bills are processed and the draft Bills are changed or modified at various stages of the debate.

5. To the extent that the data can be collected, retained and analyzed, these statements have the capacity to become more

sophisticated over time. Wisconsin does not unfortunately continue impact assessment once the Bill becomes law but this is a serious omission. A data base containing the history of actual impacts of enacted legislation could be used to improve the accuracy of projections and to streamline the process of developing impact statements.

6. Judicial Impact Statements will not be effective unless they are put to use. Statements must be develop in ways that ensure their usefulness to – and use by – legislators, the legislative staff, Judges and judicial administrative personnel. Since part of making them useful is by making them available, impact statements should be widely distributed and be readily accessible to potential users.

7. Measuring impact of legislation is only part of the picture. We must strive to minimize the unintended impacts that may result in deficiencies in draft legislation."

Federal Courts Study Committee has developed a check-list of frequently occurring ambiguities in statutory drafting with a view to avoiding mistakes in the future in the matter of drafting.

Researchers must evaluate the accuracy of previous judicial impact assessments and use those data to refine subsequent forecasts. Justice Abrahamson said "Try to determine where you may have gone wrong and then add that into what you do in the future". The purpose is to do better with retrospective analysis. We also need statistical analysis that stretches across the entire system.

We shall next refer to the article of Prof. Samuel Krislov of the Department of Political Science, University of Minnesota, in his article, "Caseloading in the Balance".

Existing case loads must be projected to anticipate future needs. As with any enterprise, the growth of demand requires new capital expenditure and personnel. So extrapolation of "consumer" needs is required. Auto regressive models of a relatively simple sort modify to include basic changes such as operation growth, will usually approximate reality in the short run. So indeed will be is simplest form of approach – straight line projection of past caseloads in most instances.

Projecting trends from the past seems to work *ceteris paribus*. But if one uncertain about the nature of parameters, one is equally uncertain about the nature of the parameters, one is equally uncertain about when these unknown factors have altered. It is easy enough to offer explanations after the fact when the predictions fail, but it is the future, not the past, that such efforts are aimed at.

New developments have effects that transcend predictions about caseload. But numbers alone, even when correctly projected, are only the beginning of the enquiry. Since cases are not born free and equal, projectors try to estimate case types and the court time required for each type. This complicates matters by making the projective tasks a multiple one with intricate calculations at each type of case.

(In the Indian context, a suit for money based on a negotiable instrument may be simple for a court to deal with in a short time, whereas a suit for dissolution and accounts of a partnership or a suit for partition and accounts in relation to immovable property or a suit on mortgage may take a very large amount of time. A criminal trial in respect of a minor offence may take a smaller time for disposal than a trial in a murder case involving a large number of witnesses. A first appeal in a civil case or in a criminal case before an appellate court may take longer time than a second appeal or a revision application).

This complicates matters by making the projective task a multiple one with intricate calculations as to each type of case plus an appropriate average time for each type. Changes in frequency of case types over time or even more elusive.

As pointed by Friedman and Percival (10 Law and Society Review 267 (1976) and 15 Law and Society Review 823 (1980-81), and demonstrated by a generation of studies (including especially that of Wayne McIntosh, the evolution of issue-areas follows patterns of social development. The caseload time projections are, therefore, force to move towards the approach of theorists.

Attempting to understand caseload as a function of social conditions involves studies over time or cross-sectional studies in new jurisdictions or sometimes both.

Finally, we are challenged to assess the impact of new factors, especially legislation on caseloads. The normal method is simply to find out the closest known parallel and to substitute that known pattern with the new one.

Sociologists of law have argued that litigation can be chartered as a function of frequency of interactions and propensity to litigate. A society becomes more complex and less integrated, disagreements or more likely to arise. Efforts to coordinate the rise to caseloads with sociological factors have been tried with only modest success. (see Samuel Cirslov, 'Theoretic Perspective of Caseload Studies, a Critique and a Beginning in Empirical Theories about Courts', pp.7-50). This is not surprising. There are good data available here and there but definitions of cases and their classifications are none the less, subjective and change with the times.

But actual requirement is also limited by costs of litigation, access to courts, time involved with the proceedings and need for lawyering, and they must also calculate the potential value of the case and their own expenditures of time and effort.

Issues change as society changes, so that straight-line projection may become hazardous, if not foolhardy.

The evolution of new causes of action is particularly problematic. Civil rights issues for women and minorities have regularly produced more cases in the Federal Courts than originally predicted. There have been some other statutes likely "black-lung" and the "lemon-law" which produced less cases than anticipated.

Why did these predictions fail? One reason could be that the "basic assumptions" may be incorrect. Second major error could be the flow of unexpected events. Societies adjust court caseloads when they see that courts are swamped. Increasing demand for Court services coupled with the declining public resources have greatly elevated the significance predicting and explaining court caseload trends. Projection of future caseloads are vital in planning and constructing new court facilities, budgeting the operational costs, assessing staff requirements and generally meting the demand for court services. Despite the increased need for accurate caseload trend research, little agreement exists as to "what specifically causes variation in caseloads over time or how these changes should be properly modeled?".

Most attempts to explain caseload variances have been based on the theory that caseload development is dependent exclusively on factors external to the court structure, such as population, income and economic development. Within this frame work, caseload and research has been oriented towards identifying relevant explanatory variables, obtaining

accurate measures or proxy measures of these variables, and then co-relating these with caseload.

The external approach studying caseloads ignores the internal determinants of caseload variance, namely, court organizations and management.

It has been apparent that any complete discussion of caseload variance must not only include local environmental measures but must also consider the reaction of a given court system to changes in its external environment. Courts are no longer considered passive actors in the management of their caseloads. An economic and/or population pressures create demand for more court services, the court system will and must react to these pressures and alter its behaviour to best accommodate demand. Caseloads are then explained as the result of a complex and interactive relationship between environmental or external pressures and a given court system's internal response to these pressures, which feeds back upon the demand for court services.

Litigation is a function of the level of disputes. Criminal cases are a function of the overall crime rate, divorce rates are a function of marital strife. It is a simple thesis modified by intervening factors that have not been systematically assessed, such as expansion of constitutional rights, changes in court procedure, the availability and cost of legal services and the level of legal certainty within a particular issue area. As such, the overall caseload growth should not be *lineary* but rather *curvi-linear* in shape with rate of growth fluctuations that are possibly cyclical, rather than monotonic. Attempts to model caseload variation will be complex. A common factor in these approaches is the concept that courts are generally passive and that factors external to the system determine caseloads. Court

caseloads do not consistently increase or behave in a predictable manner. Both environmental factors and internal development shape caseloads.

After a decade and half, the National Academy of Sciences Committee of US stated that they were neither empirically nor theoretically in command of an approach. Caseloads were theoretically too much to be captured by monotonic equations according to Mr. Frank Munger.

Reference is made to *Durkheimian* notions as producing relatively simple equations (Joseph Sanders, 24 Law and Society Review 24 (1990). The formula reads thus:

$$\text{Caseload } (t+1) = \frac{\text{Caseload } (t) \times \text{Transactions } (t+1)}{\text{Transactions } (t)}$$

An increase in transactions due to societal complexity results in increase in rate and number of caseloads. Since societal transactions are innumerable, operation increase is used as a crude surrogate but this appearing to be unjustifiable, some other surrogate like per capita income is introduced. Then other considerations lead to a different formula as stated below.

$$\text{Caseload } (t+1) = \frac{\text{Caseload } (t) \times \text{Population } (t+1)}{\text{Population } (t)} \times \frac{\text{Economic Indicators } (t+1)}{\text{Economic Indicators } (t)} \times \frac{\text{Litigation Trend } (t+1)}{\text{Litigation Trend } (t)}$$

Toharia found that modern era cases did not multiply as rapidly as population. But, quasi legal actions absorbed an increasing number of cases. He reasoned that increasing social specialization affords competitive shopping and cheaper substitutes for court system. Thus, there is a denominator that cuts into those matters as well. For want of a better

term, it is designated as 'access costs'. Toharia's is a *curvi-linear* pattern of caseloads. His Spanish data established a shift in the growth rate of cases due to notorial actions.

The suggestion that either type of structure will go in some smooth-curved way is extremely doubtful at best. Further more, what is measured is a difference of costs between two resolution processes. That difference would often be decisive (resulting in lumping rather than accretionary shifts). Now the equation would read:

$$\text{Caseload } (t+1) = \frac{\text{Caseload } (t)}{\text{Population } (t)} \times \frac{\text{Population } (t+1)}{\text{Economic Indicator } (t)} \times \frac{\text{Economic Indicators } (t+1)}{\text{Litigation Trend } (t)} \times \frac{\text{litigation trends } (t+1)}{\text{Priced Out Cases}}$$

But, it is stated that Toharia's adjustment opens up a Pandora's Box. Causes of Litigation are socially as well as economically defined. An exogenously defined equation in which law products called "cases" are generated by an external world requires not a simple, but a complex corrective. Cases are subtracted or added not merely because developmentally cheaper institutions arise, but for many other complex motives. Courts influence loads by restricting access, as to legislatures. Lawyers' fee go up (or even down) in related but not determined ways. The diversion equation seems complex as the original basic one.

New causes of action may be generated by legislation, court decisions on the flow of events. Lawyers' fees may drop in absolute terms, or alternative decision structures may become less popular.

This part of the equation, then, would resemble the decremental equation, except that it adds rather than subtracts numbers.

Robert Kagan's work (The Routinisation of Debt Collection: an essay on social change and conflict in the courts, 18 Law & Society

Review, 323, (1984)) demonstrated that declining industries easily generated increased litigation as new legal problems arose. Studies of Friedman and Percival showed that case distribution correlated both case evolution from divergent social issues and cases processed differently by courts. (Lawrence Friedman & Robert Percival, A Tale Of True Courts : Litigation in Alameda and San Benito County, 10 Law & Society Rev.267 (1976)).

The combined effort of the literature is to strike at the core of the equation. In some sense, increased social interaction likely breeds more disputes. But, these disputes are processed to be a complexity of 'naming, blaming, claiming' in which one dispute may be processed as thousands of claims and thousands of disputes handled in a single case. The case producing mechanism as too many contortions of its own to suggest that the problem is merely one of cleaning up the data.

Krislov finally states in his article that a continuation of practical caseload and theoretical efforts are necessary. "*Pursuit of practical objectives with weak or non-existent theory is not unknown in the physical sciences"*, as stated by Nobel Laureate Richard Feynman. So caseloaders need offer no apologies if they proceed on ad hoc efforts to project, as closely as possible, and to fine-tune their 'adhockery' with new and innovative adjustments and refinements. If it does not work, the richest theory will not solve it. Therefore, planners might as well start with the simplest of models and work that way to move to complex ones. As pointed out by Frank Munger, data can be cleaned up to permit over time analysis, identify case types and eliminating or validating sharp data changes indicting real events. The most important need is for us to understand when and why case types change. The continued improvement in cross-rate complication of data may be proved to be the most useful development of all, as it avoids greater variability, which often permits

teasing out of relationships. Cross-cultural studies must be supported in spite of its vexatious political and administrative variations.

Krislov says that the 'most significant funding of Justice Departments major grant for developing a model in narrower and narrower terms, still could not develop a consistent predictive model. The task is a great one and the modest efforts of trial and error involving simple one-step projections on limited issues seem more in keeping with what we know. A data bank of what has been tried and how well it has fared, might supplement these modest goals.

(iv) <u>Practical aspects developed by the judicial impact office in USA:</u>

In an article "Development and Ongoing Operations" by Ms. Nancy Potok, Chief, Judicial Impact Office, Administrative Office of the U.S. Courts, states that between 1970-1989, judicial impact statements were prepared either by the Judiciary or by the Congress. But it was not done on a routine basis. The results were not published within a formalized, consistent framework. Only in 1989, the Director of the Administrative Office of U.S. Courts (working under the Judicial Conference of U.S.) allowed the analysis to proceed in a cohesive, systematic and easily recognizable and usable manner. In 1990, the Federal Courts Study Committee, a congressionally mandated blue-ribbon commission studying the Judiciary, reaffirmed the need for impact analyses of legislative proposals. In March 1991, as part of a major reorganization resulting from passage of the Administrative Office Personnel Act, the Judicial Impact Office was established and Ms. Nancy Potok was appointed as its Chief.

In her article, Ms. Potok states how the Judicial Impact Office tried to formulate its procedures on the practical side. Initially, judicial impact statements were prepared both in respect of "proposed and enacted

legislations" and also arising out of initiatives of the Executive branch, in order to determine how they affected the Federal Judiciary. This included the effect on 'Court Operations, workload, the number of cases filed in the courts, and Federal jurisdictional questions'. The impact statements quantified these effects and contain 'estimates' of the 'resources, both dollars and people', that would be needed by the Judiciary to implement the proposals.

Sometimes, a Bill is identified as likely to have an impact on the Judiciary based on the Bill's contents or sometimes as requested by the Members of the Judicial Conference of US (which consists of 27 Judges headed by the Chief Justice of U.S. Supreme Court, Federal Appellate Judges and District Judges) or the Chairman of the Judicial Conference Committees (consisting of Judges) or others.

Substantive information was gathered by the Judicial Impact Office staff from experts located both within and outside the Judiciary. Within the Administrative Office of the Judiciary, the Department of program and statistics and the office of the General Counsel, an in depth analysis was conducted on the basis of the available information as also on the basis of their knowledge of court operations and programs. The Federal Judicial Center also contributed to this analysis. Further, information may be available with Executive Branch (such as the Department of Justice), State and local Courts, Legislative staff and the relevant issue – advocacy groups who could convey the said information to the Judicial Impact Office. Comparisons were also made if possible, with similar legislation that had already been analyzed by that office. If there are conflicting views on the impact of the proposals analyzed, the said office tried to resolve these differences.

Finally, in conjunction with the Budget division of the Administrative office (i.e., of the Judicial Conference), the Judicial Impact Office started developing the resource costs or savings (staff and dollars) associated with the changes in workload and any other activities arising from the legislation. Separate breakdown costs for the various components of civil and criminal cases was developed, using the average workload measurement formulae, personnel ratios, and current fiscal year budgets, including any supplemental appropriations. The office tried to develop and standardize costing methods for various types of cases.

The Judicial Impact Office then assembled a draft Judicial Impact Statement incorporating the analysis and associated resource costs or savings. Each statement contained detailed assessments of both the potential and probable effects of each relevant section of the legislation. Sources information, explanations of any analytical assumptions, and other factual data used within the analysis were also provided. The draft was reviewed by the Experts, who contributed to the analysis, comments were incorporated and a final impact statement was then presented to the Director of Administrative Office of the Judiciary for transmission to the Judicial Conference, Members of the Congress and the Congressional Staff. The entire process would take 'anywhere from a few days to a few months', depending upon the complexity of the proposal that would be analyzed and the time that would be available.

Throughout, the Judicial Impact Office would maintain objectivity and impartiality. The views would not represent or inclined a position either supporting or opposing a particular proposal. Even when the Judicial Conference of US had taken a particular position on a Bill, that position would be briefly described in a separate section of the impact statement.

The Judicial Impact Office has also been working very hard so that it is not perceived as either advocating or criticizing the subject analyzed. Thus a separation is maintained between the Legislature and the Judiciary. This is kept in mind to establish credibility of the analysis. The office may not in all cases support the position taken by the Judicial Conference.

Members of the Judicial Conference and the Congress are provided with the judicial impact statements in US.

The Judicial Impact Office has been constantly refining its data collection, impact assessment methodology, and analytical assumptions underpinning its caseload and resource estimates. The Office is comparing projections and estimates contained in impact statements made on the Bills enacted a few years ago with what has actually occurred since the enactment. This will enable it to compare projections against actual changes in caseloads to determine the accuracy of these projections.

The Office is also working with the Administrative Office of the Judicial Conference and the statistics divisions to determine ways to enhance current data collection so as to improve its current baseline assumptions and caseload estimates. It meets users of impact statements to learn how it can improve its products and make it user-friendly, informative and more credible.

Ms. Potak finally says that carrying out judicial impact analysis is an "evolutionary process". We learnt from the experience of the past and hope to improve for the future.

(v) Debate in US on the independence of the Judicial Impact Office and how the U.S. Judicial Impact Office came to be located within the judiciary

One of the important problems faced by those interested in establishing a Judicial Impact Office was to keep it independent and

outside the Judiciary as well as the Legislature. This became important in as much as if it was a part of any of the two Branches, the other Branch could think that the estimate of cases as well as budget requirements represented the views of the Branch within which it was established.

This aspect has been discussed in two articles. The first is by Justice Shirley S. Abrahamson, Judge, Wisconsin Supreme Court and Prof. Gabrielle Lessard, Skadeen Fellow of Law Center, Oakland, California, in the following manner.

Initially, this raised the question whether the days of assessment could be within the Legislature so that the Legislature may readily accept the figures. But, on the other hand, it was located within the Judiciary, the advantage would be that the Judges and the Judicial staff would be able to give the necessary data and information for assessment. Further, in the absence of data, anecdotal evidence by Judges may also be useful. But if the Office was located within the Judiciary, the Legislature may view the estimates with suspicion. Therefore, for sometime there was a view that the Judicial Impact Office could be jointly established by both the Legislature and the Judiciary, so as to avoid inter-branch rivalry or suspicion. Court staff could act in a supporting capacity to such an entity providing information from court records and performing technical evaluations (see Pal Nejelski, 'Judicial Impact Statements: Ten critical questions we must not overlook' 66 Judicature, 123 (September, October 1982) at p.129). The above author suggested that members of the Judiciary and Social Scientists would create synergy skills. He stated that social scientists might err in developing very elaborate and superficially convincing models that do not take into account the reality of the law or its administration, while lawyers without a qualitative sense may overlook important problems. Best simulations are done by persons knowledgeable

in both legal procedures and substance, as well as those having social science qualifications.

While it is probably feasible to establish and maintain a permanent body of such persons by way of legislation, within every Branch of Government, a central resource group might be created to assist the Legislature, Executive Agencies and the Judiciary, in preparing important statements, since such a Central Agency would be independent of either Branch. Further, such an Agency could be perceived as being more objective.

The second article is by Prof. Charles Gardner Geyh, Associate Professor of Law, Widener University, titled "Overcoming the Competence/Credibility Parados in Judicial Impact Assessment: The Need for an Independent Office of Interbranch Relations", in which the events are discussed chronologically.

It was felt that if the Judicial Impact Office was located within the Judiciary, other branches could suspect the data as well as the estimates. Congress may not take the figures seriously and may think that Judiciary is self-interested in projecting such estimates, though the figures themselves may not be completely overlooked. Similarly, in the offices located within the Legislature, it could be perceived as not acting favourably towards the Judiciary.

However, it is accepted in certain quarters that Judges could be trusted and they would be accurate. By virtue of their past accomplishments and present stations, their views have an aura credibility that compensates, to some extent, for their lack of political power. At the same time, the more aggressively Judiciary advocates potentially controversial positions that coincide with its institutional self interest, the greater the risk that this aura of credibility will become marred. From this

it follows the Judicial Impact Assessments produced by the Judiciary alone are at risk of being called into question whenever the estimated impact is great enough to become an issue of political significance, to the extent that the Legislature perceives it to be in the Judiciary's self-interest to exaggerate judicial impact. The resulting paradox is that the Judiciary, by virtue of its expertise and access to relevant information, may be in sole possession of judicial impact data, critical to intelligent legislative decision making. At the same time, the Judiciary, by virtue of appearing self-interested and being insufficiently powerful politically, risks being ignored if it acts alone in providing such information. In other words, what makes the judiciary a uniquely competent source of information also makes it an insufficiently credible source.

It was felt that the impact assessment office be neutral and not viewed as bias. Even assuming that what "this competence/credibility paradox suggests is the need for an entity close to, at independent of the Judiciary, to participate in the impact assessment process." There was a need to find a "trusted intermediary".

At one stage, the Federal Courts' Study Committee recommended for the creation of an Office of Judicial Impact Assessment (OJIA) within the judiciary. The said Study Committee was created by Federal Courts Study Act 1988. Under that Act, the Committee must consist of 15 Members selected by the Chief Justice to conduct various studies including one relating to "long range plan for the judicial system". It was given fifteen months time. The Committee's Chairman, Justice Joseph Weis Jr. constituted three sub-committees of which one sub-committee was headed by Justice Richard Posner. In June 1989, this sub-committee recommended the creation of an Office of Judicial Impact Assessment. It recommended that the OJIA be "an independent, supporting agency within

the legislature". One of the tasks of that office would be "to predict what kinds of cases are likely to arise under the particular legislation". But in July 1989, several Judges raised objections as to why the office should be located within the legislature and it was felt that at some point of time, tenured officials of the Office could start projecting points of view to the judiciary which could not be accepted. Some other Judges also raised questions of competence. They said that an entity completely divorced from the Judiciary would be insufficiently attuned to the needs of the third Branch. Further, if the agency was suspect, its job to gather data from the Judiciary could be hampered. No doubt, the advantage could be that at least half of the legislatures might give greater credibility to the Agency if located within the legislature.

When the Committee met in November 1989, the recommendation to locate the Agency within the Congress got difficult. In its place the recommendation for an agency within the judiciary was passed with the chances of its being self-interested still remaining.

In November 1989, the Committee considered the proposal that the OJIA be located within the Federal Judicial Center rather than in the Judicial Branch. It was said that the:

> "advantage of placing this office in the center is that it would be separate from operational entities and thus would be more likely to be perceived as being an objective entity rather than an advocate agency".

However, the Administrative Office of the Judicial Conference objected to the office being located within the Federal Judicial Center and wanted that this responsibility should remain with the judicial branch, "since impact assessments are currently being made for the Conference by the Administrative Office, which has first hand familiarity with these matters".

In February 1990, the Committee accepted the view that the OJIA should not be under the Federal Judicial Center but that it should be with the Judiciary. Fore out of the fifteen members of the Committee dissented and wanted it to be located within the Congress.

The question was whether 'competence' would override the issue of 'credibility'. The Posner Sub-Committee still persisted in supporting the location of the OJIA in the Congress. But at this juncture, there were certain unexpected controversies between the Congress and the Judiciary, one of which related to how many Judgeships should be created. These controversies turn the tide in favour of the OJIA being located within the Judicial branch, though at one stage there was also a view that it could be an independent agency of interbranch relations as suggested earlier by Paul Nejelski in his 'Judicial Impact Statements; Ten crucial questions we must not overlook', 66 Judicature 123 at p.130 (September, October 1982).

Prof. Charles Gardner Geyh, however, recommended creation of an agency independent of both judiciary and legislature but should be an interbranch office with a rotating membership comprised of representatives of all three branches and possibly the Bar as well. But its functions as visualized by him were limited to scrutinizing the impact assessments made by the judiciary and either to recommend acceptance, modification or rejection thereof. Obviously, he did not want to contemplate an agency which would itself gather data, analyze the same and make projections.

It was at this stage that ultimately it was decided that the Judicial Impact Office should remain with the Judiciary under the Administrative Office of the Judicial Conference of US., and Nancy Potok became its first Chief.

* * *

CHAPTER – VII

(i) JUDICIAL IMPACT ASSESSMENT METHODOLOGY – APPRAISAL OF TWO CASE STUDIES

BY MR. HAZRA & DR. KRISHNA KUMAR

Judicial Impact Assessment (JIA) is defined to mean the additional resources which the judiciary might need to handle litigation generated by new legislation. JIA is different from judicial budgeting though it is related to it and is to be eventually integrated with it by an institutionalized process of budget planning, Court management and judicial statistics production.

JIA is obviously a novel, complex technique yet not in vogue in most countries. Therefore, the methodology for JIA is not standardized for being adopted straightaway. The basic problem is the non-availability of the required data on judicial management and performance at different levels throughout the country. A second difficulty is the lack of an organization capable of collating and analyzing information, researching on independent variables and making realistic estimates through economic models and statistical interpretation. This does not mean that the methodology is not available. It only suggests that JIA is a process to be continuously developed over a period of time based on empirical evidence interpreted in the context of judicial demands and performance. In short, it is a trial and error method by a dedicated team of experts drawn from law, judiciary, economics, statistics and public administration.

In USA, it began in 1974 with the Congressional Budget Office trying to estimate the budgetary impact of legislative proposals which included an assessment of the likelihood of increase or decrease or no

effect on the burden of Courts. In 1990, the Federal Courts Study Committee, created by the Congress through the Federal Courts Study Act, 1988 recommended that an office of Judicial Impact Assessment be created in the judicial branch. The Judicial Conference also resolved that legislatures even of States should recognize the workload burdens placed on the judiciary when passing legislations at the State level. The move was backed by the American Bar Association as well. Thus, the American experience on JIA began with a legislation followed by the establishment of an independent office and expert groups working constantly to improve methods of judicial performance, workload assessment, judicial budgeting and judiciary management. It offers some lessons on Indian initiatives in this regard.

(ii) <u>Few Preliminary Steps in Development of JIA Methodologies</u>:

Assuming that the methodology is provided, the immediate question is who is going to do it. Obviously, it cannot be the job of each and every ministry or department initiating legislation as it requires a lot of judicial data and multiple expertize on judicial administration and litigant disposition. Creating a special cell in the justice department or law ministry may also not help unless that office has constant interaction with the judges and judicial administrators. So, the first step in JIA methodology is to establish a joint mechanism of the Judiciary and the Executive at the national and state levels either in the High Courts/Supreme Court or at the Department of Justice/Law staffed by well-trained social science research personnel, Court administrators and financial experts.

The next step is creating multiple data bases on a variety of relevant indicators gathered from Courts, prosecutors, government pleaders, finance offices and legislative departments. While in some places, some data is available, in others it has to be generated. With computerization of Court records and modernization of case and Court management, hopefully very soon a lot of relevant data will become available. However, a lot more may be required which can be organized once the systems are in place, computerization gathers momentum and old mind sets get changed.

The third step, of course, is to identify the right type of people from the judiciary, the government and the academia to act as the core team in mounting and managing the JIA systems in a co-ordinated, scientific and professional manner. The team has to be in place for a five to ten year period to be able to develop and institutionalize the gathering, analyzing and interpreting of the relevant data for judicial impact assessment. They should, in turn, train the supporting staff at the Central and State levels to generate judicial statistics, help prepare judicial budgeting and recommend workload data to the appropriate ministries seeking fresh legislation.

In the above scheme of things, the two pilot studies of Prof. T. Krishna Kumar & Ors on JIA with reference to Arbitration and Conciliation Act, 1996 and Karnataka Municipal Corporations Act, 1976, as well as of Dr. Hazra & Ors on JIA with reference to Negotiable Instruments Act, 1881 (and the amendments of 2002) and Criminal Procedure Code (Amendment) Act, 2006 will provide the possible initial steps and a roadmap in JIA methodologies' development.

(iii) Three fold pattern of Judicial Impact through legislation:

Impact of legislation on Court workload happens in any one of three ways – operationally, substantively and through Courts' own interpretation of law procedure. If law changes (adds or deletes) Court structure and procedures, there is direct impact on Court administration and financing (e.g., Section 89 of C.P.C. or Chapter XII-A of Cr. P.C.). Again, if causes of action are extinguished or added on to the substantive law of the country, the workload will vary as it may wipe out existing sources of litigation or generate new ones. Finally, when courts interpret laws by giving expansive or narrow meanings to words and phrases in Statutes, the impact on workload becomes inevitable (expansive interpretation of 'locus standi' did contribute to most PIL cases)

Judicial impact is also classified as tangible and intangible of which the tangible alone is measurable through the methodologies proposed.

(iv) Understanding the Judicial Process for Developing Quantitative Models:

For objective quantitative assessment, one has to understand the many ways in which judiciary works to produce the results it has been turning out. Only when they are identified, classified and interpreted can one make inferences based on such data.

On the other hand, one must be able to classify and group legislations based on identifiable attributes and characteristics. It is only then the two could be matched to project judicial impact of particular groups of legislations, leaving margins for adjustment for legislations with unique characteristics.

While doing the above two-fold exercise, one has to take account of changes in society, regime modifications and people's disposition which further complicates the process.

In the above context, two ways of building models are proposed. Firstly, formulate average output of the entire judiciary for calculating the impact assessment. Secondly, choose the most efficiently run unit of the judicial set up and based on its productivity, calculate the impact assessment. Both have its own advantages and pit falls. For example, depending upon the class of legislations, the same organization may have differential outputs. Therefore, it is suggested that one must define the judicial output as a "weighted" average of cases, the "weights" being determined on the basis of complexity or otherwise of the case.

Given the above dimensions in the development of JIA methodologies, it is necessary to have periodic surveys on public perception of legal processes and remedies, socio-economic factors having a bearing on litigation, efficiency-inefficiency factor in workload, technology impact on workload etc.

It is on such a background that one can intelligently apply the quantitative models to determine JIA. Once evolved, the methodologies can be different for different types of legislations, such as civil, criminal, matrimonial, economic or other.

Finally, it is suggested that the models developed and the data on which they are based may be presented in a conference of the potential users and those who are involved in generating the data in the system.

This will help to verify and test the methodology and enhance its credibility. The conference can be extended with a training exercise to those who are expected to work under the system using the methodology.

(v) <u>The Hazra Study</u>:

The study examines substantive changes in two laws, one relating to changes in the Negotiable Instruments Act in 2002 and the other the changes proposed in the Criminal Procedure Code (for recording statements of witnesses by Magistrates).

It assumes, as all economists do of human behaviour, that the plaintiff's filing decision is based on the cost of doing so being less than the expected benefit. Raising the probability that the plaintiff will win can induce more cases and therefore greater workload. Raising the chances of recovery induces the defendant to commit fewer illegal acts. Similarly, the law will be broken if the benefits of breaking the law is higher than the costs of conforming to it, including the risk of punishment. This is the demand side approach to the problem which is the preferred approached in JIA. Demand for litigation is explained through behavioural theory which, in economics, treats laws, like prices or as incentives for desired behaviour.

A multi-pronged approach is necessary in JIA methodology as a lot depends on Court strength, court productivity, court statistics, court technology systems all of which condition access to justice through courts. For example, by enhancing legal and management capacities of judicial personnel, a supply side solution can be evolved to improve productivity.

Hazra Study proposes two approaches to assess operational impact resulting from substantive changes in legislation. The first involves macro aggregates as variables in the model and then running an empirical test or regression analysis so as to demonstrate the correlation at specified significant levels. Thereafter, this model is used for prediction or forecasting. The second approach is to develop a litigation model at a micro or individual level and then, aggregating it using variables that are endogenous. Among these two approaches in developing a JIA methodology, the authors used the micro-level approach to develop a litigation model from the demand side. The approach has its basis in game theory.

Based on available literature on the litigation model, the study points to three variables which determine the filing of complaints: the cost of filing a complaint, the expected value of the claim and the existence of court congestion. A risk-neutral plaintiff will bring suit if, and only if, his/her estimate of the expected benefit of the trial judgement exceeds his/her estimate of the expected legal costs including the congestion costs he/she will bear. Of course, it is important to define the marginal litigant on whom the study is based. Since the opportunity cost of the time spent in Courts as a litigant is not the same across litigants, it is the marginal litigant which defines the equilibrium. The study then proceeds to build a mathematical model accommodating the different variables to develop an equation capable of prediction in similar situations. It is then applied in different scenarios of differing variables to draw out modifications in the model proposed. On a random sampling test of cases generated under the amended Negotiable Instruments Act in an Orissa Court, several interesting findings on workload impact have emerged.

(vi) The Krishna Kumar Study:

The Krishna Kumar study followed a slightly different methodology. First of all, it tried to make a Demand estimation statistically based on the computerized data already available in the Karnataka High Court on the two selected legislations. In this regard, it took into account a number of parameters including similarity of laws, perspectives of people involved (through questionnaire) and other demand determining factors.

The study then moved into estimating the judicial resources required based on a variety of data on the judicial productivity. In this regard, it worked out judicial time taken per case at different stages and the number of judges required.

At the next stage, the study looked at the financial implications and budget impact due to increase in judge strength.

A significant outcome of the study is the immediate need for a judicial data base for which a detailed step by step recording of facts and figures has been recommended. This includes information on law, court, judge, lawyer, litigant, remedy asked, resources used at each stage etc. The need for continuous monitoring by an office of Judicial Administration was felt necessary and therefore, the study proposed an all India Organizational Structure to follow up the JIA Methodology.

It is appropriate to repeat the recommendation of the study in its own words:

“In order to facilitate the implementation of the suggested methodology, the following organizational structure is recommended:

A. Establish an Office of Courts Administration (OCA), with central office being located in the Supreme Court of India, with Branches in each of the High Courts of India. This office must be entrusted with advisory and support services to the Indian courts on matters such as judiciary information data base management, judiciary planning and budgeting, assisting the National Law Commission, liaison services between the legislative, executive, and judiciary branches of government.

B. For research and training on judiciary administration, management and policy the services of the following organizations may be used.
   1. National Judicial Academy
   2. State Judicial Academies
   3. Indian Law Institute
   4. National Law Schools of India, and similar reputed legal educational and research entities.

C. In order to get scientific credibility to the procedure suggested and for its wide acceptance, the existing judiciary database needs to be supplemented by adding a few more data entries as suggested above in the electronic database and obtaining information from primary surveys of potential litigants, and judicial consensus obtained through Delphi technique.

In order to provide a statutory mandate to implement the suggested methodology, as a part of budgeting process, it is recommended that suitable amendments be made to the Finance Act to make it mandatory to allocate financial resources for a Judiciary budget within a narrow margin of the suggested budget(to maintain judicial independence). However, in

order to justify that status, the judiciary budget must be prepared in a scientifically credible fashion and the method proposed here can be used for that purpose.

It is noted that any central act will create caseloads on the courts within various states. As law and order is a state subject, the responsibility to meet the judiciary expense lies with the states. One of the reasons for backlogs in the courts could be due to the state governments not having enough financial resources due to limited taxation powers. In view of this, the Supreme Court may consider asking the 13th Finance Commission to devise a suitable formula to allocate central funds to states to meet the requirements. The methods suggested in this report can be used to develop such formulae."

(vii) <u>Assessing Litigation Demand</u>:

According to Prof. Krishna Kumar, there are two different methods that can be employed to elicit information for estimating the demand for litigation. One is conducting systematic national legal surveys, similar to the national health survey. Since litigation is dependent on awareness of laws (rights), accessibility of court processes, and affordability of risks and costs, these information can be gathered through these surveys. They can also elicit information on perceived benefits and costs of certain provisions of law, and on perceived opportunity cost of taking an issue to court etc.

Another way of estimating this demand is through an economic experiment conducted prior to designing or drafting any new legislation. Methods of experimental economics are used for auctioning the bandwidth by the telecommunications regulatory authority. In addition to such

experiments, one may use historical data on the number of cases filed and relate them to some socio-economic and demographic data through a regression and see if a demand forecasting model can be obtained. This is a general broad methodology independent of the data on judiciary production processes.

The problem of estimating the number of cases generated by a new legislation is similar to the problem of estimating the number of people who are likely to buy a new model of a car. A car has different attributes such as size/space, engine capacity, pick up speed, fuel consumption etc. and demand forecasting for new cars is developed by treating a new car as different combinations of those attributes. Any legislation has, likewise, a few attributes such as creation of new rights or withdrawal of existing ones, change of procedures, enhancement of benefits or costs etc. These attributes are assessed with the help of judiciary experts to predict people's choices in different socio-economic strata and certain patterns identified accordingly. One can then determine as to which type the new legislation under review belongs. Between the judiciary experts and social researcher/statisticians one can work out the methodology for JIA.

A more credible though complex methodology is to seek a multiple phase process to get data on the production of judiciary services in order to calculate the total resource cost of handling all the new cases generated by a legislation. This will require detailed categorization of production types for different types of legislation, estimation of the input-output co-efficients, estimation of judiciary resource requirements for the given number of cases and finally assessing financial resources needed. This JIA methodology requires multiple judicial impact data bases including legal

surveys data, case history data, expert opinion survey data, judicial budget data and available secondary data.

The two pilot studies conducted by Krishna Kumar have experimented with the above-mentioned methodology and demonstrated its viability provided the data are forthcoming from the judicial establishment. In fact, it aims to bringing modern business process management tools to the judiciary for Total Quality Management in Indian judiciary. For this the study recommends lot of revisions in data base management and institutional structure for it.

The key recommendations of the study are as follows:

"(i) The existing judicial data base requires many changes as proposed to meet the specific requirement of JIA.

(ii) Supplementary data such as legal survey data eliciting attitudes and perceptions, legal experimentation data on litigant behaviour, and secondary data on potential litigants should be collected and made part of the extended data base for improved JIA methods.

(iii) A new Office of Court Administration be created in Supreme Court and High Courts to facilitate JIA, judicial budgeting and research and development activities in the judicial branch. OCA to be staffed with an interdisciplinary team drawn from law, judiciary, economics, statistics, computer science, sociology and management.

(iv) National Judicial Academics and State judicial academies be enlisted for supporting research and training in judicial budgeting, JIA and judicial management.

(v) The Finance Act may be amended to make mandatory allocation of financial resources worked out under an Act which may be called a Judiciary Budgeting and Management Act. Supreme Court may consider asking the 13th Finance Commission to devise a suitable formula to allocate Central funds to States to meet the requirements for enforcing central laws. The methodology for JIA proposed in the study can help develop such formulae."

Summarizing the position, both the studies highlight the fact that judicial impact assessment is not a formula to be applied mechanically for all legislations but rather is a process by which the impact can be determined in different scenarios. The key point which emerges is that there is no uniform methodology to be followed for making an assessment. The impact will depend on the character of the proposed legislation e.g. whether it involves only procedural changes or only creation or modification of substantive entitlements and rights or combinations of both. The process would involve a number of different types of exercises. This would include the creation and maintenance of a database relating to 'cases,' and their passage through the court system, the utilization of judicial and non-judicial resources during this passage and of conducting surveys and other studies to elicit the views of the populace to law, law enforcement and litigation. Thus if we were to take a look at the two studies together we realize that any agency which tasks of doing judicial impact assessment would need to be able to combine a variety of social science skills, knowledge of law and statistical techniques.

The two studies bring out different facets of the problem of judicial impact assessment. The study by India Development Foundation of Mr. Hazra highlights the importance of doing analytical modeling on the

citizens' respect for law, the decision to litigate and their willingness to look for alternative solution to their disputes. Such an analytical model would need to be combined with empirical models to estimate costs at the macro level. A key point they bring out is that purely empirical supply side approaches to court congestion and litigation are not very successful unless they account for these perceptional dimensions as well.

The study by Prof. Krishna Kumar compliments this work by further developing the empirical modeling side and demonstrating that trying to developing "service production functions" of judicial decisions requires far more data than is currently available. They note that such data can easily be gathered though it would require that the process of judicial data collection be done involving statisticians and economists as well, as they would highlight different elements of data than are currently collected for purposes of court procedures and judicial decision at present. Thus in my view taking a look at both these studies it is clear that if we are to undertake judicial impact assessment it is important to establish an institution which can do the following:

1. To work with the judiciary to ensure that necessary information for such an exercise can be gathered without hindering the task of judicial decision making and the inherent powers and rights of the court.

2. It would also need to draw upon the resources and skills of academics from different social science disciplines including management, sociology, statistics, compute science and law.

3. Finally as these would also need if provided for in budgets this body must be capable of working in close consort with both the central and state executives.

The other information in the two case studies are illustrations of some of the approaches we will need to develop in such an office of judicial assessment. The key message we need to emphasize is that such an assessment can be done though there is no magic bullet which will do so immediately.

* * *

CHAPTER - VIII

JUDICIAL IMPACT OFFICES IN INDIA

In the light of the discussion contained in Chapters I to VI, the question arises as to the constitution of Judicial Impact Offices in India and as to their functions.

(i) Parliamentary Legislation & (ii) State Legislation:

The Task Force first considered the question of judicial impact assessments in respect of Parliamentary Legislation and came to the conclusion that the Judicial Impact Office must necessarily be located in Delhi. It will study the impact of Parliamentary Legislation on courts.

The question then arose as to the position of judicial impact assessment in relation to State legislation. It was brought to the notice of the Task Force that the Supreme Court of India has issued notices to all the States in the ***Salem Advocates Bar Association*** case on the question of judicial impact assessment. Therefore, the Task Force felt that it could also deal with the location of such Judicial Impact Offices in the States. Obviously, such State offices must be located at the State capitals. Where the High Courts are located in a place different from the State capitals, we are of the view that the Judicial Impact Offices must be located at the places were the High Courts are located. So far as Union Territories which have a separate legislature like the National Capital Territory at Delhi or the Legislature at Pudicherry, these Offices may be located separately at the places where the Legislatures are located.

The next important issue is as to whether the Judicial Impact Offices should be part of the Judiciary or part of the Executive/Legislature. The Task Force considered the issue in depth, keeping in view the extensive debate in the U.S. as referred to in Chapter-VI. The Committee mainly

considered whether the offices should be part of the Judiciary or the Executive as it was of the opinion that the impact offices need not be located within the Legislative Secretariat.

As between the Judiciary and the Executive, the Committee felt that the choice must be made keeping pragmatic and practical considerations in mind.

The Committee noticed that the bulk of the data required for judicial impact assessment to be made before a Bill is enacted into law, may have to be gathered by studying cognate legislations already in force. The necessary data in that behalf would obviously be available only with the Courts. So far as the data required in respect of cases generated by a Bill after its enactment is concerned, the data will again be available from the Courts only. Further, a lot of information can be gathered from the Judicial Officers and Lawyers as well as NGOs.

At the same time, it was also felt that Judicial Officers have various judicial and administrative functions and they are more concerned with the backlog of cases and their disposals. They may not find adequate time to manage the Judicial Impact Offices. Further, the management of these Offices requires special skills of management which all Judicial Officers may not necessarily possess. But then, if the Offices are located within the Government, the Judiciary may not be willing to accept the projections of cases as being impartial or as having been made by those who are conversant with litigation. Further, if the Offices are located within the Executive, it has to frequently obtain orders from the Chief Justice of the High Court or the Full Court to enable the Executive to gather the necessary data from the Subordinate Courts.

The Committee then considered that all these problems can be solved if the Judicial Impact Office for Parliamentary Legislation is

brought within the purview of the Department of Justice but is, at the same time, headed by a sitting Judge of the Supreme Court of India nominated by the Chief Justice of India and likewise, the Judicial Impact Offices for State Legislation may be placed within the purview of the State Governments but headed by the Chief Justice of the concerned High Court. In that event, the Officers of the Judicial Impact Offices will not find any difficulty in obtaining the necessary data from the Subordinate Courts or the High Court or the Supreme Court. We are thus recommending the dual involvement of both the Executive and the Judiciary.

It was also felt that, as in the case of the National Judicial Academy, Bhopal, the Secretaries of Government in the Departments of Law, Home and Finance & Planning could also be associated with the Impact Offices both at Delhi and in the States. Unless the Secretaries are actively associated with the Judicial Impact Offices, it will be difficult to obtain funds from the Ministries concerned which sponsor the legislation both at the Centre and the States. It was, therefore, felt that Secretaries of the Central Government or the State Government, as the case may be, of the above level, must be Members of the Governing Body of the Impact offices both at the Centre and in the States. In fact, a similar set up in the National Judicial Academy, Bhopal is working very well, the Chief Justice of India is heading the Academy and the Secretaries to Government of India are in the Governing Body. The Academy is within the purview of Department of Justice, Government of India.

So far as the general administration of the Judicial Impact Offices at Delhi and in the States / Union Territories is concerned, we are of the view that they must be under the administrative control of a senior officer of the rank of Secretary to the Government of India, so far as the Impact Office at Delhi is concerned and again by a senior officer of the rank of Secretary in

the State Governments / Union Territories so far as they are concerned. This is again on the pattern of the National Judicial Academy,Bhopal.

The Judicial Impact Offices must have permanent staff as well as consultants. The permanent staff must be drawn from among those having good qualification and expertise in the practice of law, academic aspects of law, social sciences, economics, judicial administration, statistics and budgeting. Only a combination of experts in each of these branches can help in the collection, analysis of data, selection of methodologies and projection of fresh court cases. Only those who have the necessary aptitude for research must be selected and appointed. Further, it will become necessary to consult outside experts in social sciences, economics and statistics. In addition, sometimes the impact offices will have to entrust the work to expert study groups or NGOs., for the purpose of collection of data, analysis, selection of methodology and projection of cases.

Methodologies, as pointed in Chapter-VII, cannot be the same for all Bills or Statutes. A Methodology for estimating prospective case loads may be good for a particular Bill or Statute but may not be suitable for other Bills or Statutes. Over a period, staff of the Impact Offices must develop sufficient expertise to innovate new Methodologies which are suitable for different types of Bills/Statutes.

In order to facilitate the proper collection of data, we recommend that there should be a Manager (Court Information Technology) in each Principal District Court so that he can be in-charge of organizing and collection of all types of court data that may be required by the Judicial Impact Offices. We are making this recommendation in as much as the regular staff of the courts have enough work and will not be able to constantly interact with the Impact Offices, take note of their requirements,

seek that information from the litigants, lawyers or court records and present the data so collected, to the Impact Offices. The study teams whose study reports are appended to this Report would disclose that enormous data has to be collected at the stage of filing of the case in the Court, and such data is necessary to enable the Impact Offices to make a proper analysis, suggest a proper methodology and make proper projections of the cases that may be added to the court dockets. Each High Court would have to pass orders requiring the lawyers or litigants to furnish the data in all its various aspects, by filling up the various columns of a *pro-forma.*

As in US, the Judicial Impact Offices must not only project, at the stage of the Bill, the number of new cases that may be added to the courts, but they should also verify whether their projections were exaggerated or below the estimate and this can be done after the legislation is passed. Therefore, the Impact Offices must also study the impact on the courts after the legislation is passed and not merely rest content with the projections made before the legislation is passed.

Once these projections of fresh cases are made, the average amount of time required to dispose of those cases has to be computed by applying some rational formula which converts the number of extra hours into how many additional judges, staff and infrastructure that is required. One such methodology has been worked out by Justice Bharuka, former Head of the E-Committee:

(iii) Justice Bharuka's methodology in respect of Judicial time:

"METHODOLOGY FOR ASSESSING ADDITIONAL CASELOAD ARISING OUT OF A NEW LEGISLATION

The proposed methodology requires for basic information namely, the estimated additional cases likely to be created by the new legislation;

(i) number of judicial days which are required to be consumed by an Indian court in the prevailing fact situation; and,
(ii) how many additional courts are required to cope up with the requirement of additional judicial days.

Prevailing situation:

In India, generally the subordinate courts function for 240 days ('judicial days') in a year. Further, on each day, the judges work for 5 hour ('judicial hours'). Every new case consumes judicial time at pre-hearing stage as also post-hearing stages. Pre-hearing stages include institution, removal of defects, registration, issuing of summons, filing of defence. Hearing commences with framing of issues. Post-hearing stages include recording of evidence, arguments and delivery of judgment. Time is also consumed in entertainment and disposal of interlocutory applications as also due to frequent adjournments.

Proposed Method:

It can safely be presumed that, by and large, the cases arising out of new legislations would not involve too complicated issues like the traditional civil litigation. Therefore, in the total lifespan of such cases, they may consume ten judicial hours that is two judicial days. If the said method is followed, then, for every one thousand new cases, the existing judicial system requires fifteen additional courts. The said method can be said to be true for new criminal cases as well."

The Task Force is of the view that the expenditure both capital as well as recurring, so far as the Judicial Impact Office at Delhi dealing with Parliamentary legislation is concerned, should be borne by the Central Government and likewise, the expenditure so far as these offices at the States level is concerned, should be borne by the respective States.

A question was considered whether the entire scheme must be brought into force by way of Parliamentary Legislation under Entry-11A of the Concurrent List. It was felt that initially, the scheme should be brought about by an Executive Order issued by the Department of Justice in the Central Government. The Executive Order could provide for the establishment of these offices at the Centre and State level. Subsequently, after finding out how the scheme is working out, it may be considered whether the Judicial Impact Offices should be incorporated as Societies under the Societies Registration Act as done in the case of National Judicial Academy. It may be that ultimately after sufficient experience is gained, we may think of Central Legislation, if need be.

The scheme will naturally provide for all other incidental matters relating to the Judicial Impact Offices.

We trust and hope that the Executive Orders which may be issued from time to time in respect of these Offices will fill up the need of acquiring proper budgetary support for the Courts. We are sure that inasmuch as the scheme is coming up consequent to the directions of the Supreme Court of India, and will be monitored by the Supreme Court, there will be no difficulty in implementing the scheme from time to time.

* * *

CHAPTER IX

SUMMARY OF RECOMMENDATIONS

1. Judicial Impact Assessments must be made on a scientific basis for the purpose of estimating the extra case-load which any new Bill or Legislation may add to the burden of the Courts and the expenditure required for adjudication of such cases must be estimated by the Government and adequate budgetary provision must be made therefor.

2. Such impact assessments must be made in respect of Bills that are introduced in Parliament as well as Bills introduced in the State legislatures.

3. The Government of India, in view of Entry-11A of the Concurrent List and Art.247 of Constitution of India and the general scheme of the Constitution, must have such assessments made and make necessary financial provision, at the stage of the Bills, for implementation of Central laws in respect of subjects in the Union List or the Concurrent List (of the VII Schedule of the Constitution of India), in the Courts. The State Governments should not be made to bear the financial burden of implementing Central laws passed under the Union List or Concurrent List, through the Courts established by the State Governments.

4. The State Governments must likewise make adequate financial provision for meeting the expenditure of the Courts, at the stage of the Bills, for the implementation of the Laws to be made by the State Legislature with respect to subjects in the State List and Concurrent List.

5. Central Government must establish additional courts under Art. 247 of the Constitution of India for implementation of Central laws made in respect of subjects in the Union List or in respect of pre-constitutional laws referable to subjects enumerated in the Union List. In addition, the Central

Government must establish additional Courts at its expense for implementation of Laws made by the Parliament in the Concurrent List in view of Entry-11A of the Concurrent List.

6. The expenditure on the courts in respect of fresh cases that may be added to the "Supreme Court" and the "High Courts" by new laws must be reflected in the Financial Memoranda attached to the Central Bills under Clause (3) of Art. 117 or attached to the State Bills under Clause (3) of Art. 207 of the Constitution of India, as required by the respective Rules of Business.

7. The expenditure in respect of fresh cases that may be added to the "Subordinate Courts" must be provided and met by the respective Central or State Ministries which sponsor the Bills in Parliament or in the State Legislatures, as the case may be.

8. The High Courts must take the assistance of experts in planning, budget and finance for the purpose of preparing their budgetary demands for the High Courts as well as the Subordinate courts.

9. The Central Government may also consider the various recommendations made by the Commission for Review of the Constitution, such as the constitution of Judicial Councils, preparation of budgets and appropriation of the funds for the courts.

10. The Planning Commission and the Finance Commission must, in consultation with the Chief Justice of India, allocate sufficient funds for the Judicial Administration in the Country, particularly in regard to the infrastructure, expenditure on judicial officers and staff in the Subordinate Courts and the High Courts to realize the basic human rights of 'Access to Justice' and 'Speedy Justice'.

11. There must be constituted a Judicial Impact Office at Delhi to deal with the assessment of the probable number of cases and computing probable extra expenditure on courts in respect of the implementation of Central Bills/ Legislation on subjects in the Union List and the Concurrent List.

12. There must be Judicial Impact Offices constituted at the level of the States located at the State capitals for assessment of the probable number of cases and computing the probable extra expenditure on the Courts in respect of implementation of the Laws made by the State Legislature in respect of subjects in the State List and the Concurrent List. Where the High Courts are not located at the State Capitals, the Judicial Impact Offices must be located at the place of the seat of the High Court. In respect of Union Territories which have a separate legislature, the Impact Offices must be located at the place of the seat of the Legislature.

13. The Judicial Impact Office at Delhi to be established for purposes of Parliamentary Legislation must be under the purview of the Department of Justice, headed by a sitting Judge of the Supreme Court nominated by the Chief Justice of India and the Members of the Governing Body must include the Secretaries to the Government of India in-charge of the Department of Justice, the Law and Finance, on the model of the set up in respect of the National Judicial Academy, Bhopal.

14. The Judicial Impact Offices at the level of the States/Union Territories must be within the purview of the State Governments but must be headed by Chief Justice of the High Court concerned and the Governing Bodies must likewise include the Secretaries to the respective State Governments, who deal with Justice, Law and Order, Courts, Finance etc.

15. So far as the general administration of the Judicial Impact Offices at Delhi and in the States / Union Territories is concerned, we are of the view

that they must be under the administrative control of a senior officer of the rank of Secretary to the Government of India, so far as the Impact Office at Delhi is concerned and again by a senior officer of the rank of Secretary in the State Governments / Union Territories so far as they are concerned. This is again on the pattern of the National Judicial Academy, Bhopal.

16. The Judicial Impact Offices must have permanent staff of experts in Law (both theory and practice), judicial administration, economics, social sciences and statistics, who could efficiently deal with collection of data from the courts, lawyers, Judges and other Departments of Government (like Police and Social Welfare) and who could suggest methodologies for projection of the caseloads and convert the same into number of Judge-hours and estimate the expenditure for the extra Judges, staff and infrastructure.

17. The Judicial Impact Offices must also be empowered to consult outside experts in economics, social sciences, statistics etc., and seek the help of reputed NGOs, who have experience in data collection and projecting caseloads.

18. The Judicial Impact Offices must have other supporting staff and infrastructure for the purpose of effectively discharging their duties.

19. The expenditure for establishing the Judicial Impact Office for Parliamentary legislation at Delhi must be borne by the Central Government and the expenditure for establishing these offices at the level of the States/Union Territories must be borne by the State Government/Union Territory concerned.

20. The Judicial Impact Offices must not only estimate, at the stage of the Bills, the probable number of cases that may freshly be added to the Courts but must also look into the factual position after the enactment of

the laws and find out whether their earlier estimates were exaggerated or were under – estimated, and take corrective measures from time to time.

21. A special cadre of Manager (Court Information Technology) may be created, one for each District, to be part of the Principal District and Sessions Court so that that Officer could exclusively be in charge of the data collection from all the sources mentioned above and also see that the lawyers/litigants fill up the prescribed pro-forma that may require various types of information to be furnished in respect of each case, at the stage the case is filed into court.

22. While estimating the number of cases that may be added to the court dockets, the Judicial Impact Offices must not only take into account the cases filed in the trial courts, but also those filed in the appellate courts, the High Courts and the Supreme Court of India by way of appeals, revisions or original petitions or by what ever nomenclature they are described.

23. The Chief Justices of the respective High Courts or where need be, the Committees of the High Court or the Full Court must pass necessary orders/resolutions to enable the Judicial Impact Offices to obtain the necessary data from the courts and judicial officers. Likewise, the Secretaries of the concerned Department of the Union or State Government or the heads of any other body or institution or entity must issue directions to enable the Judicial Impact Offices to obtain necessary data from Government Departments or the bodies or institutions or entities. Likewise, members of the public, lawyers and litigants, academicians, faculty members, law students, NGOs and all others must cooperate to furnish the necessary data to the Judicial Impact Offices and offer their suggestions.

24. The Judicial Impact Office at Delhi and the Offices at the State/ Union Territory levels must exchange their views and interact, share

experiences and develop various methodologies that may be required for projection of cases and publish them.

25. All the Judicial Impact Offices may conduct workshops, seminars and conferences at least once in a year to share common experiences, obtain guidance from experts in economics, social sciences, statistics and law and publish the gist of the deliberations.

26. After successfully establishing Judicial Impact Offices as stated above at various levels for a few years, it may be considered at a later stage whether these offices could be converted into societies under the Societies Registration Act but still continue to be under the Government Departments as stated above. At a much later stage, the question may be considered whether there should be Central legislation under Entry-11A of the Concurrent List in respect of the Judicial Impact Offices at the Central level and at the level of the States/ Union Territories.

Justice Shri M.Jagannadha Rao
(Chairman)

Prof. N.R.Madhava Menon
(Member)

Dr. Mohan Gopal
(Member)

Date 15th June 2008
New Delhi.

Prof. T.C.A.Anant
(Member)