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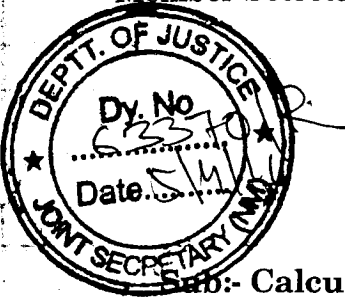
**SUPREME COURT OF INDIA
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Dated : 1st April, 2016



Ajay Agrawal
Member Secretary, NCMS Committee

**Sub:- Calculation of required judge strength for Subordinate Courts-
with reference to Criminal Appeal Nos. 254-262 of 2014, Imtiyaz
Ahmad Vs. State of U.P & Ors. pending in Supreme Court of India.**

Hon'ble Sir,

I am under directions of the Chairperson, NCMS Committee, to forward herewith a copy of final Report of the NCMS Committee submitted to Hon'ble Supreme Court of India in Criminal Appeal No. 254-262 of 2014, Imtiyaz Ahmad Vs. State of U.P & Ors. The Report has been approved by Shri Hiranya Borah, Deputy Director General, Social Statistics Division, Govt. of India & Member, NCMS Committee, from a statistical point of view. The Report was placed before, and seen by, Hon'ble Chairperson of the Advisory Committee of NCMS.

This is pursuant to the directions of the Hon'ble Supreme Court requesting NCMS Committee to examine the recommendations made by the Law Commission of India and to furnish NCMS recommendations to the Hon'ble Court on the subject.

This is for your kind information and perusal, please.

Yours faithfully,

Ajay Agrawal

(Ajay Agrawal)

Member Secretary, NCMS Committee
& Additional Registrar

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*Mrs. Shoghe
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Shri Anil Kumar Gulati
Joint Secretary,
Department of Justice & Mission Director,
National Mission for Justice Delivery &
Legal Reforms, Room No. 12, Jaisalmer House,
26, Man Singh Road, New Delhi - 110 011.

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Note for Calculating Required Judge Strength For Subordinate Courts for Submission to the Hon'ble Supreme Court of India as per its directions to NCMS in Imtiyaz Ahmad vs. State of U.P. & Ors. (Criminal Appeal No: 254-262 of 2012)

Introduction

1. In an order of the Hon'ble Supreme Court of India dated 20/8/2014 in Imtiyaz Ahmad vs. State of U.P. & Ors. [Criminal Appeal No: 254-262 of 2012], the Hon'ble Supreme Court directed as follows:

"We also consider it proper to request National Court Management Systems Committee to examine the recommendations made by the Law Commission of India and to furnish their recommendations to this Court on the subject. A copy of this order as also a copy of the recommendations received from the Law Commission of India shall be forwarded to the Member Secretary of the National Court Management System Committee for doing the needful."

2. As directed by the Hon'ble Supreme Court of India, the recommendations of the Law Commission of India were placed before and discussed in detail by the first meeting of the National Court Management Systems Committee (NCMS) held after receipt by the Secretary General of the Supreme Court Order on 27/8/2014 (NCMS meeting held on November 22, 2014). On the basis of the discussion at the NCMS Committee meeting, a draft submission of NCMS to the Hon'ble Supreme Court was prepared. The said draft was submitted to Senior Member of the NCMS Advisory Committee for approval before finalization. During this review process it was felt that the draft report may also be discussed with the Chairperson of the Law Commission of India before it is finalized. Accordingly, a meeting was held on 22 July, 2015 between Chairperson, Law Commission of India, Sri. Venkataramani, Senior Advocate and Member, Law Commission and other officials of the Law Commission of India, and Chairperson and Member Secretary, NCMS Committee to discuss the NCMS draft comments on the Law Commission proposal. At that meeting, following detailed discussion, the Chairperson of the Law Commission requested that a comparison be made of estimates of required judge strength for a few sample subordinate courts calculated according to the Law Commission methodology as well as the proposed NCMS methodology. Accordingly, data for sample subordinate courts was sought from four Hon'ble High Courts. Based on the data received, required judge strength was

calculated for four subordinate courts each from Bihar and Maharashtra using both the NCMS proposed methodology and the Law Commission methodology. This calculation is placed as Annexures 1 and 2. In light of the Hon'ble Chairperson of the Law Commission of India having demitted office, the calculation for sample courts requested by the then Hon'ble Chairperson of the Law Commission of India was sent vide letter dated 12 September, 2015, to the Member Secretary, Law Commission of India and to Shri. R. Venkataramani, Senior Advocate. The attached tables have been subsequently updated.

I. Methodology for Computing Adequate Judge Strength Proposed by Law Commission of India

- 3. The Law Commission of India proposes a **"Rate of Disposal Method"** to assess judge strength required for subordinate Courts. The Law Commission says that its proposal is intended for a limited purpose: "to clear the *backlog* of cases as well as to ensure that new *backlog* is not created. The Law Commission says that, under this method, two concerns would be addressed: (a) There is a large existing *backlog* of cases; and (b) number of judges required for ensuring that new filings are disposed of in a manner that further *backlog* is not created" (page 26a). Thus, avoiding "backlog" is the central - and sole - objective of the methodology for computing adequate judge strength recommended by the Law Commission.
- 4. The Law Commission defines "backlog" as the "difference between institution and disposal". By this definition, the Law Commission in effect sets the goal of ensuring that there are no pending cases at the end of each review period (say, at the end of each calendar year).

II. Rate of Disposal Methodology: Some Questions

- 5. The Rate of Disposal Methodology raises a number of concerns that require careful consideration. Some of these concerns are also recognized by the Law Commission.

(A) Definition of Backlog is problematic

- 6. As noted above, the Law Commission defines "backlog" as the "difference between institution and disposal".
- 7. This definition does not allow for the fact that every case requires a reasonable period for its disposal based on the nature

of the dispute involved. Under this definition, even cases filed towards the end of the year must be disposed before the end of the year to eliminate backlog (correspondingly, courts will have the full year to dispose of cases filed at the beginning of the year).

8. For example, the definition of backlog used in the widely accepted "International Framework for Court Excellence" developed jointly by the Australasian Institute of Judicial Administration, Australia, the Federal Judicial Center of the U.S. Supreme Court, the National Centre for State Courts of the U.S. and the Subordinate Courts of Singapore is as follows: *"Percentage of cases in the court system longer ("older") than established timeframes."*
9. The Law Commission appears not to incorporate established timeframes in its definition of backlog because there are currently no established timeframes available in our system. This is a valid point. However, a definition of backlog without reference to established time frames is virtually unimplementable because it would be impossible for courts to dispose of cases that are filed only a few weeks - or even days - prior to the end of the specified reference period. This alone would ensure that *there would always be a backlog that simply cannot be eliminated.*

(B) Proposed Methodology may unintentionally incentivize lowering of disposal; and will not give relief to overcrowded courts

10. The Rate of Disposal Methodology is unlikely to give relief to courts that are grossly overloaded, or raise the productivity of courts that are underworked. It is not designed to improve productivity. It does not concern itself with judge to case ratios.
11. An unintended consequence of the Rate of Disposal Methodology may be to provide an incentive to *lower* rates of disposal - because the lower the rate of disposal the greater the number of additional judicial positions the court will be able to get through the Rate of Disposal Methodology. This may be illustrated with reference to the Law Commission's assessment of judge strength needed for the States of Jharkhand and Kerala (states with almost identical population - Jharkhand with 3.29 crores and Kerala with 3.33 crores).

State	Institution (2012)	Rate of Disposal (2012)	Current Judge Strength (2012)	Number of new judges required to clear backlog in 3 years as per Rate of Disposal Method	Number of judges after the increase proposed by the Rate of Disposal Methodology	Per judge case load against pendency at the end of 2014 after increase proposed by Rate of Disposal Methodology
Higher Judicial Service						
Kerala	1,56,335	1139.9	128	42	170	
Jharkhand	26,363	164.3	110	65	175	
"Subordinate" Judicial Service						
Kerala	8,42,578	2683.4	259	57	316	
Jharkhand	90,166	388.8	261	191	452	
"Judge Case Ratio after Increase proposed under Rate of Disposal Method (for All Subordinate Courts)."						
Kerala						4213 cases per judge (Pendency of 13,31,558 divided by total of 486 judges after increase)
Jharkhand						503 cases per judge (Pendency of 3,15,484 divided by total of 627 judges after increase)

(C) The disposal method does not give "weightage" to cases depending on their nature and complexity -- all types of cases are treated at par

12. The Rate of Disposal Methodology treats all cases as equivalent in terms of judicial resources required for their disposal. For example, it treats a traffic citation case and a complex bomb blast case as having the same value in terms of required judicial

strength required for their adjudication. This is a serious flaw in the methodology.

(D) The Rate of Disposal Methodology does not take into account reasonableness of work load of judges

- 13. Any assessment of judge strength must also take into account the maximum permissible reasonable work load for a judge before fatigue – physical and mental – may start to impair the quality of his work. A judge should not be expected to safely work more than about 10 hours a day five days a week so that he/she has adequate time for rest as well as time to attend to urgent and unavoidable personal commitments.

(E) Proposed Approach is limited to Backlog Reduction: What is Needed is a Scientific Methodology to Assess Required Judge Strength to deal with Backlog as well as flow of new cases.

- 14. The clearance of backlog is not the sole or central basis for determining judge strength. NCMS's work on the National Framework for Court Excellence based on careful study of international experience would suggest that judge strength needs to be assessed against several other critical parameters such as:

- (i) Case Clearance Rate. The number of cases disposed of expressed as a percentage of institution.
- (ii) On-Time Disposal Rate. The percentage of cases resolved or otherwise finalized within established timeframes.
- (iii) Pre-Trial Custody. The average elapsed time criminal defendants are jailed awaiting trial.
- (iv) Trial Date Certainty. The proportion of important case processing events (trials) that are held when first scheduled.

(F) Proposed Approach Does Not Make Any Substantial Departure from Past approaches that have not yielded desired results.

- 15. The Rate of Disposal Methodology is substantially identical to the methodology that has been used by the Government of India to calculate the the required strength of Permanent Judges in a High Court.

16. The current approach of the Government is to calculate the required judge strength by dividing the average institution of Main Cases during the last five years by the National Average or the Average Rate of Disposal of Main Cases per Judge per Year in that High court, whichever is higher. Similarly, the required strength of Additional Judges in a High Court is reviewed, and calculated by dividing the number of Main Cases pending over two years by the National Average or the Average Rate of Disposal of Main Cases per Judge per Year in that High court, whichever is higher. This methodology has proved to be inadequate for assessing judge strength of High Courts in a realistic manner, and has resulted over the years in grossly inadequate expansion of required High Court strength. The current method of calculating judge strength of High Courts is not scientific or robust, nor has it produced desired results of pendency reduction:

- (i) Not a single high court has been able to eliminate backlogs even where vacancies are non-existent or very low (say 0% to 20%).
- (ii) Effective Judge strength has not expanded adequately to meet rising inflow of cases.
 - a. In the last five years the number of new cases filed into High Courts across India has increased by 24%, and pendency by 32%. Yet, effective judge strength has increased only by 8.5%.
 - b. Only 49 judges have been added to the effective strength of High Courts in five years in the whole country to deal with 3.72 lakhs additional new cases (at an average of 7591 cases per new judge) and 7.2 lakhs additional pendency (at a rate of 14,693 cases per new judge).
- (iii) The work load of High Court judges and their output have significantly increased in the last five years (a phenomenal 32% increase in disposal from a baseline that was already too high in terms of judge-case ratio).

III. Proposed NCMS Approach for Assessing Judge Strength of Subordinate Courts

- 17. In the long term, the judge strength of subordinate courts will have to be assessed by a scientific method to determine the total number of "judicial hours" required for disposing of the case load of each court (as is being done in the proposed new approach for evaluating the required strength of High Courts). This will require gathering required data and calculating required judicial hours.
- 18. In the interim, a proposed approach for assessing the judge strength of Subordinate Courts is proposed below, in broad outline. If approved in principle, further operational details can be worked out.
- 19. This interim approach augments the disposal rate method of the Law Commission with the prevailing "unit system" of High Courts to attribute "weightage" to cases based on their nature and complexity.
- 20. What is proposed is a "weighted" disposal approach - disposal weighted by the nature and complexity of cases in local conditions.

A. The Unit System

- 21. High Courts have established and are implementing disposal "norms" for subordinate court judges. These norms are based on "units" allocated for disposal of various types of cases. The units vary depending on the nature and complexity of types of cases.
- 22. Units vary from State to State for similar cases, reflecting local conditions that affect the time taken for disposal of cases. Sessions cases for murder for example, will not have a similar "unit weightage" in all states - because in some states these cases may take significantly longer than in other states due to local cultural, institutional and geographical conditions.
- 23. Units may also be allocated to non-judicial work required of judicial officers, such as administrative work, as appropriate for different levels of the judicial hierarchy.
- 24. Judges are required to dispose of cases as needed to meet prescribed "units". Their performance is rated from "excellent" (or equivalent) and "very good" to "unsatisfactory" (or equivalent) depending on the number of units they achieve in disposal.

Assumptions of complexity of cases, efficiency and quality are also therefore implicit in the unit system.

B. Applying The Unit System To Assess Required Judge Strength

(i) NUMBER OF JUDGES REQUIRED TO DISPOSE OF THE ANNUAL "FLOW" OF NEW CASES (" BREAK EVEN")

- 25. Every court should calculate *in units* its average *annual* filing over the previous five years for all types of cases.
- 26. Divide the *annual* filing units above by the number of annual units required to be disposed of by a judge for VERY GOOD performance.
- 27. This will give for each court, the number of judges required to ensure "break even", i.e., disposal equals the number of *new cases filed* every year in that court.

(ii) NUMBER OF JUDGES REQUIRED FOR DISPOSAL OF BACKLOG OF CASES

- 28. First, every court should calculate *in units* its "backlog", i.e., the number of cases of all categories pending for more than the maximum time standard set by it for disposal (e.g., three years).
- 29. Second, a suitable time period may be established within which this "backlog" should be cleared (e.g. 5 years).
- 30. Third, divide the total backlog in units by the number of years within which it has to be cleared (e.g., 5 years). This will give the required *annual* disposal of "backlog".
- 31. Fourth, divide the required annual disposal of backlog by the number of annual units required to be disposed of by each judge (units required for VERY GOOD performance).
- 32. This gives the number of judges required to dispose of "the backlog" within the prescribed time frame .
- 33. The judge strength so assessed should be monitored annually.
- 34. Needless to say, it will be desirable that unit systems are rationalized and strengthened with as much uniformity of approach across the country as feasible, addressing variations and limitations of systems currently in place.

(iii) TOTAL NUMBER OF JUDGES REQUIRED FOR ACHIEVING "BREAK EVEN" PLUS "DISPOSAL OF BACKLOG"

35. Add the number of Judges required for "break even" to the number of Judges required for disposal of backlog, as determined above.

(iii) TRIGGER FOR CREATION OF NEW COURTS

36. When for any court, the total number of units required to be disposed annually ("breakeven" plus backlog, if any) is greater than 1.5 times the disposal norm for a "very good performance" judge, a new court would need to be created.

CONCLUSION

37. A comparison of the additional judge strength required for Maharashtra and Patna sample courts as per the Law Commission and NCMS methodologies respectively is as follows (further details underlying the calculations are in Annexures 1 and 2).

COMPARISON OF ADDITIONAL JUDGE STRENGTH UNDER NCMS AND LAW COMMISSION METHODOLOGIES

BIHAR

Court	Additional No. of Judges as per Law Commission Methodology	Additional No. of Judges as per NCMS Methodology (Rounded of)
ADJ Patna Sadar(Urban)	9	2
ADJ, Barh (Rural)	5	1
Civil Judge (Sr. Div, Patna Sadar (Urban)	15	7
Civil Judge (Sr. Div, Barh (Rural)	12	3
TOTAL	41	13

COMPARISON OF ADDITIONAL JUDGE STRENGTH UNDER NCMS AND LAW
COMMISSION METHODOLOGIES

MAHARASHTRA

Court	Additional No. of Judges as per Law Commission Methodology	Additional No. of Judges as per NCMS Methodology(Rounded up)
District and Sessions Judge, Nashik (Urban)	2	2
District and Sessions Judge, Ichalkaranji, Kolhapur(Rural)	1.5	1
Civil Judge (Sr. Div, Pune (Urban)	1.5	2
Civil Judge (Sr. Div), Paranda, Osmanabad (Rural)	2	2
TOTAL	7	7

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Mohan Gopal

Prof. Dr. G. Mohan Gopal
Chairperson,
National Court Management Systems Committee

**CALCULATION OF JUDGE STRENGTH (SUBORDINATE JUDICIARY)
LAW COMMISSION METHODOLOGY
BIHAR**

Court Type	Institution in the year 2014 (Number of Cases) (AI)	Disposal in the year 2014 (Number of Cases) (ARD)	Number of Judges required for Breakeven (Disposal of Annual Institution) ((AI/ARD)	Increase of Judge Strength required for Breakeven $BEJ = (AI/ARD) - 1$		Size of Backlog (Number of Cases pending as on 31.12.2013) (B)	Increase of Judge Strength required for clearing Backlog in 3 years $AJBK = (B/ARD)/3$		Total Increase of Judge Strength Required (Col F+ Col I)
					Round off figure			Round off figure	
ADJ Patna Sadar(Urban)	193	66	2.92	1.92	2	1442	7.28	7	9
ADJ, Barh (Rural)	47	64	0.73	-0.27	0	1034	5.39	5	5
Civil Judge (Sr. Div, Patna Sadar (Urban)	1002	101	9.92	8.92	9	1786	5.89	6	15
Civil Judge (Sr. Div, Barh (Rural)	244	46	5.30	4.30	4	1099	7.96	8	12

**CALCULATION OF JUDGE STRENGTH (SUBORDINATE JUDICIARY)
NCMS METHODOLOGY
BIHAR**

IT SYSTEM METHOD

Column	1	2	3	4	5	6	7	8	9
Court	Annual Filing in terms of Units in the calendar year 2014	Total Backlog (Pendency of Cases in Units as on 31.12.2013)	Desired time period in which backlog units to be cleared (No. of years)	Units required to be disposed of each year to clear backlog (Column 2/3)	Total units to be disposed of each year (to achieve (i) "break even" of annual filing; and (ii) required annual disposal of backlog) (col 1+ col 4)	Units required to be disposed by one Judge for "Very Good" grade in one year	Proposed Trigger for creation of a new court (1.5 times X disposal norm for "Very Good" grade in one year)	Units, if any, in excess of Trigger (col 5-Col 7)	Additional Number of Judges, if any, required to bring case load of court below trigger (col 8/ Col 7)
ADJ Patna Sadar(Urban)	998	8201	5	1640.2	2638.2	678.5	1017.75	1620.45	1.59
ADJ, Barh (Rural)	293.5	7686.78	5	1537.356	1830.856	678.5	1017.75	813.11	0.80
Civil Judge (Sr. Div, Patna Sadar (Urban)	6194	9123.5	5	1824.7	8018.7	687.35	1031.03	6987.68	6.78
Civil Judge (Sr. Div, Barh (Rural)	2406	7016	5	1403.2	3809.2	687.35	1031.03	2778.18	2.69

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Annexure-2

CALCULATION OF JUDGE STRENGTH (SUBORDINATE JUDICIARY)
LAW COMMISSION METHODOLOY
MAHARASHTRA

Court Type	Institution in the year 2014 (AI)	Disposal in the year 2014 (ARD) (Number of Cases)	Number of Judges for Breakeven (AI/ARD)	Additional number of Judges required for Breakeven BEJ = (AI/ARD)-1		Number of Cases pending as on 31.12.2013 (Backlog) (B)	Number of Judges required for clearing backlog in 3 years AJBK=(B/ARD)/3		Additional Number of Courts Required
					Round off figure			Round off figure	
District and Sessions Judge, Nashik (Urban)	1553	667	2.33	1.33	1.50	666	0.33	0.5	2.00
District and Sessions Judge, Ichalkaranji, Kolhapur(Rural)	795	626	1.27	0.27	0.50	1081	0.58	1.0	1.50
Civil Judge (Sr. Div, Pune (Urban)	287	506	0.57	-0.43	0.00	1968	1.30	1.5	1.50
Civil Judge (Sr. Div), Paranda, Osmanabad(Rural)	799	530	1.51	0.51	0.50	1690	1.06	1.0	2.00

CALCULATION OF JUDGE STRENGTH (SUBORDINATE JUDICIARY)
NCMS METHODOLOY
MAHARASHTRA

SYSTEM METHOD

Column	1	2	3	4	5	6	7	8	9
Court	Annual Filing in terms of Units in the calendar year 2014	Total Backlog (Pendency of Cases in Units as on 31.12.2013)	Desired time period in which backlog units to be cleared (no of years)	Units required to be disposed of each year to clear backlog (Column 2/3)	Total units to be disposed of each year (to achieve (i) "break even" of annual filing; and (ii) required annual disposal of backlog) (col 1+ col 4)	Units required to be disposed by one Judge for "Very Good" grade in one year	Proposed Trigger for creation of a new court(1.5 times X disposal norm for "Very Good" grade in one year)	Units, if any, in excess of Trigger (col 5- Col 7)	Additional Number of Judges, if any, required to bring case load of court below trigger (col 8/ Col 7)
District and Sessions Judge, Nashik (Urban)	1148.4	762.9	5	152.58	1300.98	354.85	532.28	768.71	1.44
District and Sessions Judge, Ichalkaranji, Kolhapur(Rural)	580.7	1398.3	5	278.66	859.36	354.85	532.28	327.09	0.61
Civil Judge (Sr. Div, Pune (Urban)	570	4274.9	5	854.98	1424.98	354.85	532.28	892.71	1.68
Civil Judge (Sr. Div), Paranda, Osmanabad(Rural)	1158.8	2530.3	5	506.06	1664.86	354.85	532.28	1132.59	2.13