

REPORT NO.

133



सत्यमेव जयते

PARLIAMENT OF INDIA
RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE

ONE HUNDRED THIRTY-THIRD REPORT

ON THE SUBJECT

JUDICIAL PROCESSES AND THEIR REFORMS

(Presented to the Rajya Sabha on 7th August, 2023)

(Laid on the Table of Lok Sabha on 7th August, 2023)



Rajya Sabha Secretariat, New Delhi
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* will be appended at a later stage.

COMPOSITION OF THE COMMITTEE
(Re-constituted w.e.f. 13th September, 2022)

1. Shri Sushil Kumar Modi — *Chairman*

RAJYA SABHA

2. Shrimati Vandana Chavan
3. Shri Mahesh Jethmalani
4. Shri Kanakamedala Ravindra Kumar
5. Shri Sanjay Raut
6. Shri Sukhendu Sekhar Ray
7. Shri K. R. Suresh Reddy
8. Shrimati Darshana Singh
9. Shri Vivek K. Tankha
10. Shri P. Wilson

LOK SABHA

11. Shri Manickam Tagore B.
12. Shri Kalyan Banerjee
13. Shri Pradan Baruah
14. Shri Venkatesh Netha Borlakunta
15. * *Vacant*
16. Shri Vinod Chavda
17. Shrimati Veena Devi
18. Shri Jasbir Singh Gill
19. Shri Choudhury Mohan Jatua
20. Shri Raghu Rama Krishna Raju Kanumuru
21. Shri Jyotirmay Singh Mahato
22. Shri Malook Nagar
23. Dr. Ramesh Pokhriyal "Nishank"
24. Shri Suresh Kumar Pujari
25. Shri A. Raja
26. Shri Omprakash Bhupalsingh *alias* Pavan Rajenimbalkar
27. Shri Upendra Singh Rawat
28. Shrimati Sandhya Ray
29. Shri Kuldeep Rai Sharma
30. Shri Mahendra Singh Solanky
31. Shri Rajan Baburao Vichare

SECRETARIAT

Shri P. Narayanan, Director
Shri Sammer Kapoor, Deputy Secretary
Shri Sunil Tripathi, Under Secretary
Shri Prabhakar Singh, Committee Officer

* *Vacant due to change in nomination of Shri Durai Murugan Kathir Anand w.e.f. 08.12.2022*

INTRODUCTION

I, Chairman of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorized by the Committee on its behalf, do hereby present the One Hundred Thirty-third Report on the Subject '**Judicial Processes and their Reforms**'. The subject was, inter-alia, identified and notified by the Committee in Parliamentary Bulletin Part-II No. 62570 dated 6th December, 2022.

2. The Committee heard the Secretary, Department of Justice on the subject in its meetings held on 22.12.2022 and 02.03.2023.

3. While considering the Subject, the Committee mainly relied upon the following documents/information:-

- (i) Background note on the subject furnished by the Department of Justice;
- (ii) Presentations made by the Secretary, Department of Justice in the meetings of the Committee;
- (iii) Replies to the Questionnaires on the subject furnished by the Department of Justice;
- (iv) Written replies furnished by the Department of Justice to the queries of the Members of the Committee raised during the meetings of the Committee;
- (v) Written submission made by Shri P. Wilson, member of the Committee;
- (vi) 229th and 230th Reports of Law Commission of India; and
- (vii) The Supreme Court Rules, 2013.

4. The Committee wishes to place on record its gratitude to the Department of Justice (Ministry of Law & Justice), Government of India for furnishing necessary information/documents and rendering valuable assistance to the Committee in its deliberations.

5. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

6. The Committee considered and adopted the Report in its meeting held on the 31st July, 2023.

New Delhi
7th August, 2023

SUSHIL KUMAR MODI
Chairman,
Department-related Parliamentary Standing
Committee on Personnel Public Grievances
Law and Justice

ACRONYMS

AOR	Advocates on Record
CCR	Case Clearance Rate
CJI	Chief Justice of India
COPILOT	Committee on Papers laid on the Table
DOJ	Department of Justice
HC	High Court
MOP	Memorandum of Procedure
NCRW	National Commission to Review the Working of the Constitution
NCRWC	The National Commission to Review the Working of the Constitution
NJDG	The National Judicial Data Grid
OBC	Other Backward Castes
SC	Supreme Court of India
SCC	Supreme Court Collegium
SCs	Scheduled Castes
STs	Scheduled Tribes

REPORT

1. Reforms in the Judicial Processes are an ongoing process. The Committee through its many reports in the past had been suggesting and recommending various reforms in our justice delivery system. The present report concerns the Higher Judiciary i.e. Supreme Court and High Courts, wherein the Committee has examined the following issues and has suggested some reforms:

- (i) Social Diversity in the appointment of Judges in the High Court and Supreme Court;
- (ii) Feasibility of Regional Benches of Supreme Court;
- (iii) Exploring the possibilities of increasing the retirement age of High Court and Supreme Court Judges;
- (iv) Vacations in the Supreme Court and High Courts;
- (v) Mandatory declaration of assets by the Judges of the Supreme Court and High Courts; and
- (vi) Preparation and publication of Annual Reports by the Supreme Court and High Courts.

2. Here it is pertinent to note that the Constitution has empowered the Supreme Court under Article 145 and High Courts under Article 225, to make rules to regulate its own procedure including its sittings. Though the Committee acknowledges its limitations on these issues, but it is also a fact that our courts are public institutions and they are not beyond the scrutiny of the Parliament. The scrutiny is not in terms of encroachment upon their powers but in terms of their functioning. However, any functioning of any public institution, be it Parliament or Judiciary or Executive, has to be within the four corners of law, and it should be in the public interest. Thus, the recommendations of the Committee on this subject are purely in the public interest; the Judiciary may look into them as *Vox populi*, the voice of the people.

I. SOCIAL DIVERSITY IN APPOINTMENT OF JUDGES IN THE SUPREME COURT AND HIGH COURTS

Constitutional Provisions

3. The Judges of the Supreme Court are appointed under Article 124(2), and Judges of the High Courts are appointed under Article 217(1) of the Constitution by the President. The ad-hoc Judges and the retired Judges for the Supreme Court are appointed under Articles 127(1) and 128 of the Constitution, respectively. The appointments of Additional Judges and Acting Judges for High Courts are made under Article 224 and appointments of retired Judges of the High Courts at sittings of High Courts are made under Article 224 (A) of the Constitution.

Present System of Appointment of Judges

4. At present the appointment of Judges of both the Supreme Court and High Courts is done by a 'Collegium' consisting of the Chief Justice of India and other senior most Judges of the Supreme Court. The entire process of appointment is governed by a Memorandum of Procedure (MOP) which lays down the detailed process and procedure of appointment of Judges to the Supreme Court and High Courts. Under the Collegium system of appointments, the recommendation for appointment to the Supreme Court and High Courts is made by the respective Collegium. The composition of the Collegium is as follows:

- (i) **Appointment of Judges in the Supreme Court-** The Supreme Court Collegium consists of the Chief Justice of India and the four senior-most puisne Judges of the Supreme Court.
- (ii) **Appointment of Chief Justice of High Court-** The Supreme Court Collegium consists of the Chief Justice of India and the two senior-most puisne Judges of the Supreme Court.
- (iii) **Appointment of Judge/ Additional Judge of High Court-** Initiation by the High Court Collegium consisting of the Chief Justice of the concerned High Court and the two senior-most puisne Judges of the High Court; and by the Supreme Court Collegium consisting of the Chief Justice of India and the two senior-most puisne Judges of the Supreme Court.

The present system of appointment of Judges and aspect of reservation in the Higher Judiciary

5. The appointment of Judges of the High Courts is made under Articles 217 and 224 of the Constitution of India, which do not provide for reservation for any caste or class of persons. However, the Government in their submission made before the Committee has informed that they have been requesting the Chief Justices of High Courts that while sending proposals for the appointment of Judges, due consideration be given to suitable candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, Minorities, and Women to ensure social diversity in appointment of Judges in High Courts.

6. As per MOP, initiation of a proposal for appointment of Judges in the Supreme Court vests with the Chief Justice of India, while initiation of a proposal for appointment of Judges in the High Courts vests with the Chief Justice of the concerned High Court. All the names recommended by High Court Collegium are sent with the views of the Government to the Supreme Court Collegium (SCC) for advice. Therefore, it is the primary responsibility of the Supreme Court Collegium and High Court Collegiums to address the issue of social diversity and social justice in the process of appointment to the constitutional courts by making recommendations of suitable candidates from the communities. Government, however, appoints only those persons as Judges of the Supreme Court and High Courts who are recommended by SCC.

7. The Government has informed that since there is no reservation in Higher Judiciary, no class/category-wise data is maintained by the Department of Justice. However, they have informed that based on the revised Performa for seeking information on recommendee Judges for elevation to the High Courts, as prescribed by the Supreme Court for all the High Courts in July 2017 as a part of the revised MoP, data has been compiled since 2018, which is given below. But as a disclaimer, the government has informed that the veracity of the data has not been cross-checked as no caste certificate is being sought at the time of appointment.

Social status of High Court Judges appointed since 2018

Sl. No.	Year	No. of Appointments	General	SC	ST	OBC	Women	Minority	N.A*
1.	2023	61	37	3	2	15	9	4	0
2.	2022	165	137	6	0	17	34	5	0

3.	2021	120	85	2	4	16	17	13	0
4.	2020	66	52	2	0	11	13	1	0
5.	2019	81	64	3	1	8	7	3	2
6.	2018	108	82	2	2	5	11	6	11
Total		601	457	18	9	72	91	32	13

* Not Available

ANALYSIS AND RECOMMENDATIONS OF THE COMMITTEE

8. The Committee during its deliberations on this issue was of the unanimous view that the representation of marginalized sections of the society, women and minorities in higher Judiciary is abysmally low. As the Collegium is responsible for making recommendations for appointment to the Higher Judiciary, the onus is on them to ensure adequate representation for those sections of society.

9. Underling the need to have diversity in the higher judiciary, one of the Members of the Committee, Shri P. Wilson has made the following observations:

"Judicial diversity is fundamental to the quality of judging. This poor representation of many social groups may mean their rights are not being properly safeguarded, and may eventually lead to the infringement and violation of their rights. People of this country are afraid that a very narrow, homogeneous group of Judges belonging to certain classes will not reflect the views and values of society as a whole, particularly on issues involving diverse, cultural and generational matters because they would require more perspectives, as the Judges would interpret and enforce law based on their own background. A more diverse judiciary is desirable because without one, the chances are greatly increased for violation of the rights on these under represented sections and could indirectly imply discrimination."

10. He has forcefully advocated that the diversity improves the quality of judgments and on the issue of 'merit' as the sole criteria for the selection of judges he has made the following observations:

"It has been observed that, sometimes, in order to deny diversity at the Bench, 'merit' is used as a proxy to justify the retention of a

particular class or community of persons as Judges. A judiciary that markedly fails to reflect the social composition of the nation possesses a serious constitutional challenge. A bench that reflects society is pivotal to fostering public confidence in the ability of the Courts to make sound, responsive decisions. For the public to perceive our Court system as impartial and accessible, the judiciary must reflect the diverse population affected by its decisions. On some level, we have been aware all along that there are hidden biases surrounding the society. It explains why people would appreciate a Bench that includes people more like them, who can appreciate their lived realities and listen with connection."

11. Some members of the Committee have, accordingly, demanded constitutional amendment for ensuring representation of SCs/STs/OBCs in the higher judiciary.

12. As per the data provided by the Government on the social status of the Judges of the High Courts and otherwise also, it can be seen that our higher judiciary suffers from a 'diversity deficit'. The representation of SCs, STs, OBCs, Women, and Minorities in the higher judiciary is far below the desired levels and does not reflect the social diversity of the country. In recent years there has been a declining trend in representation from all the marginalized sections of Indian society.

13. Though there is no provision for reservation in the judicial appointments at High Courts and Supreme Court level, the Committee feels that adequate representation of various sections of Indian society will further strengthen the trust, credibility, and acceptability of the Judiciary among the citizens.

14. The Hon'ble Supreme Court of India itself, in its judgment dated 06.10.1993 in the Supreme Court Advocates-on-Record Assn. v. Union of India (Second Judges Case) has inter-alia recorded the following:

"...Along with other factors, such as, proper representation of all sections of the people from all parts of the country, legitimate expectation of the suitable and equally meritorious Judges to be considered in their turn is a relevant factor for due consideration while making the choice of the most suitable and meritorious amongst them,

the outweighing consideration being merit, to select the best available for the apex court.”

15. Further, the Government has informed that the need for ensuring adequate representation has also been acknowledged by the Supreme Court Collegium, which while sending their comments on the draft MoP vide CJI’s letter dated March 2017 agreed to the following provision:

“Merit and integrity shall be the prime criteria for appointment of a judge in the High Court. As far as possible, representation shall be given to women and marginalized sections of society. However, in case of judicial officers, due weightage shall also be given to their inter-se seniority.”

16. Thus the Committee is of the view that while making recommendations for appointments to the Higher Judiciary, both the Supreme Court and the High Court's Collegiums should recommend an adequate number of women and candidates from the marginalized sections of the society including minorities. This provision should be clearly mentioned in the Memoranda of Procedure (MoP), which is presently under finalization.

17. Further, as of now, data related to the social status of High Court judges are available from 2018 onwards, the Committee recommends the Department of Justice find ways and means to collect such data in respect of all judges presently serving in the Supreme Court and High Courts. For doing this, if required, necessary amendments may be brought in the respective Acts/service rules of the judges.

II. FEASIBILITY OF REGIONAL BENCHES OF SUPREME COURT

18. As per Article 130 of the Constitution of India, the Supreme Court shall sit in Delhi or such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

19. In its 95th report dated 1st March, 1984, the Law Commission proposed the setting up of a Constitutional Division within the Supreme Court. Two years later in 1986, Supreme Court declared that it was never intended to be a regular Court of Appeal against orders made by the High Courts and the Sessions Courts or the Magistrates. It was created as an Apex Court for the purpose of laying down the law for the entire country and for that purpose it was given the extraordinary jurisdiction to grant special leave to appeal under Article 136 of the Constitution so that it could interfere whenever it found that the law was not correctly appreciated or applied by the lower courts or tribunals. The jurisdiction was also held to be available to correct a grave miscarriage of justice. More importantly, the Supreme Court held that every case, where the Apex Court finds some error, need not be entertained for otherwise, the Court would become a regular court of appeal and be reduced to a position where it will not be able to remedy any injustice at all, on account of the tremendous backlog of cases which will get accumulated.

20. Further, in 1988, the Law Commission of India reiterated its earlier recommendations where it had proposed the splitting of the Court into two divisions. While doing so the Law Commission gave an additional reason namely the handicap which the litigant from more distant parts of the Country like Tamil Nadu in the South, Gujarat in the West, and Assam and other States in the East face in the matter of accessing justice before the Supreme Court.

21. The Government has informed that the then Minister for Law & Justice on 30th July, 2007 requested the Chief Justice of India for comments/views of the Court on the recommendation of the Department-related Parliamentary Standing Committee on Personnel, Public grievance, Law & Justice on the Demands for Grants (2007-08), in its 20th Report, for establishing a Bench of the Supreme Court at least in Chennai on a trial basis and then in other parts of the country. Hon'ble (Retd.) Chief Justice of India, Shri K.G. Balakrishnan informed the then Minister for Law & Justice that the Full Court meeting held on 7th August, 2007 found no justification for deviating from its earlier

resolutions on the subject and unanimously resolved that the recommendation made by the Committee cannot be accepted.

22. Then the Law Commission in its 229th Report submitted on 5th August, 2009, once again recommended restructuring of the Supreme Court by setting up of a Constitution Bench at Delhi and Cession benches in four regions namely; Delhi, Chennai/Hyderabad, Kolkata, and Mumbai. Drawing support from the system prevalent in other countries like Italy, Egypt, Portugal, Ireland, the United States, and Denmark.

23. Again the then Minister for Law & Justice on 16th December, 2009 requested the then Chief Justice of India for comments/views of the Court on the recommendation of the 229th Report of the Law Commission. Yet again the Hon'ble (Retd.) Chief Justice of India, Shri K.G. Balakrishnan informed that the full Court meeting held on 18th February, 2010 found no justification for deviating from its earlier resolutions on the subject and unanimously resolved that the recommendation made by the Committee cannot be accepted.

ANALYSIS AND RECOMMENDATIONS OF THE COMMITTEE

24. During the deliberations of the Committee on this issue, there was near unanimity among the members to have regional benches at different locations in the country. However, some members were also of the view that with the ongoing push for e-courts/virtual courts in the country and rolling out of 5G infrastructure in the near future, this issue needs more careful examination.

25. On analyzing the practical benefits of establishing Permanent Regional Benches of Supreme Court, Shri P Wilson, one of the Members of the Committee observes as follows:

“Another benefit of establishing Permanent Regional Benches of Supreme Court is that the number of Judges on the Bench would increase. This would lead to speedy disposal of cases and clearing the backlog of pending cases. That apart, the Judge to Population ratio of the Apex Court would increase. Therefore, the establishment of Permanent Regional Benches of Supreme Court is the need of the hour”....

“...Further, the establishment of Permanent Regional Benches is also in the interest of the Judges themselves. At present there is intense competition among the Judges of the High Court to be elevated to the 34 seats on the Supreme Court, apart from the lawyers aiming for elevation directly from the Bar. Setting up of Permanent Regional Benches will increase the capacity and seats on the Supreme Court thereby paving the way for more meritorious and diverse Judges to be appointed to the Supreme Court”

26. On invoking the constitutional mandate under the Article 130 of the constitution on this issue, Shri Wilson has opined the following:

"The framers of the Constitution themselves understood that a time may come when the Supreme Court must sit at other places apart from Delhi. That is why Art. 130 reads that "The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time appoint." The use of the term "place or places" shows that the framers of the Constitution contemplated that the Court can sit in more than one place – obviously to ensure ease of access to citizens. There cannot be a higher purpose. Undoubtedly, therefore, it is expedient that in the interest of the administration of justice, and access to justice, which is a fundamental right, the Law Ministry must take forward this proposal with the Hon'ble Chief Justice of India."

27. As regard virtual courts as a substitute for the regional benches, Shri Wilson observes as following:

"Virtual courts are a boon for the lawyers and litigants alike and help the speedy disposal of cases. It has been observed that in many sections of the legal community, virtual courts are being portrayed as a substitute to the Permanent Regional Benches. However, Virtual Courts will not and cannot be a substitute for a full-fledged regional bench of the Supreme Court as the Registry is still located at Delhi. A litigant needs to have a physical presence/ AOR in Delhi for rectifying defects, listing of matters, filing process fees etc. and meeting of Advocate on record which will add to the litigation costs."

Virtual Courts have made the court-room accessible remotely but not the establishment."

28. On turning down of this demand of having regional benches by the full court of the Supreme Court inter alia citing adversely affecting the "country's unitary character" Shri Wilson has stated the following:

"As elected representatives, it is our duty to ensure that the convenience of the people we serve is put at the forefront. The will of the people cannot be found in the decision of the Full Court of the Supreme Court but only in the decision of Parliament, which is the voice of the people. The final say in this issue cannot be left to the decision of the Full Court of the Supreme Court because the administration of justice is still a subject over which the Parliament has legislative competence. In any case, the independence of the Judiciary will not be affected if Permanent Regional Benches are established. The Judges will still be selected as per the Memorandum of Procedure, which involves the collegium of the Supreme Court. The Chief Justice of India will continue to be the master of the roster and will presumably have full control to allocate Judges to these Permanent Benches. Hence, the apprehension that the establishment of Permanent Regional Benches will affect the unitary character of the Supreme Court is unfounded."

30. The Committee feels that the demand for having regional benches of the Supreme Court of India is about 'access to justice,' which is a fundamental right under the Constitution. There has been a long-standing demand for having regional benches of the Highest Court in the country for taking justice to the doorstep of the common citizen. The regional benches may also be seen as a solution to the overflowing caseload of the judiciary and to reduce the litigation cost to the common man.

31. The Delhi-centric Supreme Court causes a big hurdle for those litigants who are coming from far-flung areas of the country. First, there is a language problem for them, and then finding lawyers, the cost of litigation, travel, and staying in Delhi makes justice very costly.

32. This Committee has also been recommending for a long time on establishment of regional benches of the Supreme Court in the Country. The Committee still holds the view that the Supreme Court of India may invoke Article 130 of the Constitution for establishing its regional benches at four or five locations in the Country. The interpretation of Constitution and Constitutional matters may be dealt at Delhi and the regional benches may decide appellate matters. However, the appellate benches may not be made as another layer of the judiciary by treating their decisions as final.

III. EXPLORING THE POSSIBILITIES OF INCREASING THE RETIREMENT AGE OF HIGH COURT AND SUPREME COURT JUDGES

Constitutional position

33. Clause (1) of Article 217 of the Constitution of India provides that every Judge of a High Court shall hold office until he attains the age of sixty-two years. Clause (3) of Article 224 of the Constitution provides that no person appointed as an Additional or Acting Judge of a High Court shall hold office after attaining the age of sixty-two years.

34. The retirement age of High Court Judges, which was fixed at 60 years in the beginning, was revised to 62 years w.e.f. 5.10.1963 by the Constitution (Fifteenth Amendment) Act, 1963 pursuant to the increase in the retirement age of Central Government employees from 55 to 58 years w.e.f. 1.12.1962 on the recommendations of the Second Central Pay Commission, mainly relying upon the increase in life expectancy in India.

35. In the Chief Justices' Conference held in September, 2002 at New Delhi, a resolution was passed on raising the age of retirement of High Court Judges.

36. This Committee had also recommended in its 39th Report presented to the Parliament on 29.04.2010 for increasing the retirement age of Judges of High Courts from 62 to 65 to be at par with the retirement age of Judges of the Supreme Court.

Stand of Government on Increasing the retirement age of Judges

37. The then Chief Justice of India proposed for increasing the retirement age of High Court Judges on June 21, 2019. However, as of now, the Government has informed that there is no proposal to increase the retirement age of Judges, Additional and Acting Judges of the High Courts. They have further informed that any requirement for increasing the retirement age of High Court Judges in the future will be considered by the Government at an appropriate time in consultation with the various stakeholders. Therefore, the Government, as of now, does not feel the need to increase the retirement age of the High Court Judges.

38. The Government feels that the increase in the age of retirement of the High Court would bring parity in the retirement of Judges of the High Court and Supreme Court and would reduce attraction among High Court Judges for getting elevated to Supreme Court. The probable consequence of enhancing the age of High Court Judges could be that the High Court Judges may prefer to remain in High Courts being their Parent High Court either as Judges or as Chief Justices, in case the retirement ages of the Supreme Court and High Court Judges is the same. Supreme Court may lose good judicial talent coming into Supreme Court. Further, bringing parity in the retirement age of the Supreme Court and High Court Judges may result in consequential demand for an increase in the retirement age of the Supreme Court Judges. Many retired Judges of High Courts are appointed as members of Tribunals. An increase in the retirement age to 62 may deprive the tribunals of having Presiding Officer/Judicial Members from retired High Court Judges.

39. The Government has also submitted that it would be appropriate if the increase in retirement age is considered along with other measures to ensure transparency and accountability in the appointments to the Higher Judiciary and a concerted effort is made to fill up the existing vacancies.

40. According to them, any such increase may lead to a situation where there will be no regular vacancies for the post of High Court Judges for the enhanced years of service and the authorities would totally be deprived of the opportunity to recruit deserving and meritorious candidates from feeder channel i.e. Judicial Officers, Advocates. Enhancement of the age of retirement might extend benefits in terms of extended years of service in certain non-deserving cases and lead to non-performing and underperforming judges to continue. There will be no limit to it and in the future, there may be efforts to increase the age further. Besides this, other public agencies i.e. Tribunals, Commissions, etc. may also follow suit starting a chain reaction.

ANALYSIS AND RECOMMENDATIONS OF THE COMMITTEE

41. It is worthwhile to note that when life expectancy in the country was around 40 years in the 1960s, the age of retirement of judges was 62, and which has remained the same till date despite the life expectancy reaching 70 years in the country due to advancement in science and technology, medicine, better infrastructure, and life style. In fact, many retired Chief Justice of High Courts

and Judges are designated as Senior Advocates by the Supreme Court of India in the last few years, and many are healthy and mentally agile and still hold positions in Tribunals even after reaching 70 years of age. This shows that Judges upon retirement are keen on continuing to work in the legal field in one capacity or the other.

42. Time and again Members of this Committee have suggested that to deal with the issues of vacancy positions of judges and pendency of cases in the country working days of judges may be increased. The Members of the Committee in its previous reports have also suggested for increasing the age of retirement of judges of the judiciary to compensate for the large number of vacancies existing in High Courts. This Committee in its previous reports had accordingly recommended for raising the retirement age of High Court judges to 65 years.

43. The Committee feels that increasing the age of retirement of judges would not only help the judicial system but also the public at large, specifically the litigants before the Courts. The judicial system would be greatly benefited because a person with a wealth of experience under his or her belt by virtue of a long tenure in the High Court would continue to serve the High Court for a further period. The wealth of judicial experience gained over a decade or so in the High Court cannot be replaced by a newly elevated Judge. Longer tenures may also ensure the impartiality of Judges as often raised criticism is that Judges begin looking for post-retirement jobs in the last year of their service. Similarly, the litigant public would also be benefited, since the occurrence of vacancies would be less frequent and consequently, there would be Judges to hear and dispose of cases.

44. In the year 2000, the National Commission to Review the Working of the Constitution (NCRWC) also known as Justice M.N. Venkatachaliah Commission (2000) had also recommended for increasing the age of retirement Judges of the High Court and the Supreme Court of India. The Constitution (114th Amendment) Bill, 2010 was tabled to increase the age of High Court Judges to 65 years, however, this Bill could not be passed. Internationally, the age of retirement of Judges is well above the current age of 62 for High Courts and 65 years in the Supreme Court. The age of retirement of Judges in developed countries with good medical facilities and infrastructure is around 70

for the lower judiciary and 75 years to a lifetime for Supreme Court and Federal Judges. The retirement age of judges of the Supreme Court/Federal Courts of some of the developed democratic countries is as under:

- (i) **United States of America:** In the United States, there is no fixed retirement age for judges in the Supreme Court or the Federal Courts. Justices of the U.S. Supreme Court serve for life, but they can choose to retire voluntarily. Federal judges in the lower courts also serve for life, subject to good behavior. Still, they can take senior status at age 65 or older, which allows them to continue hearing cases with a reduced workload.
- (ii) **United Kingdom:** In the United Kingdom, the retirement age for judges in the Supreme Court is 70. However, judges appointed before April 1995 may continue to serve until the age of 75. The retirement age for judges in other courts, such as the High Court and the Court of Appeal, is generally 70.
- (iii) **Canada:** In Canada, the retirement age for judges in the Supreme Court is 75. The retirement age for judges in the Federal Court and Federal Court of Appeal is also 75.
- (iv) **Australia:** In Australia, the retirement age for judges in the High Court (the highest court) is 70. The retirement age for judges in other federal courts, such as the Federal Court and the Family Court, is also generally 70.
- (v) **Germany:** In Germany, the retirement age for judges in the Federal Constitutional Court (Bundesverfassungsgericht) is 68. However, judges can continue to serve beyond this age if their term of office has not expired. The retirement age for judges in other federal courts, such as the Federal Court of Justice (Bundesgerichtshof), is generally 67.

45. The Committee is also in agreement with the views of the government that if the increase in retirement age is considered it should be along with other measures to ensure transparency and accountability in the appointments to the Higher Judiciary and a concerted effort be made to fill up the existing vacancies. However, the apprehension of the government that an increase in the retirement age of judges will lead to similar demands from the civil servants is unfounded. Judges cannot be compared to any service under the government. Already many states have increased the retirement age of Doctors and

Professors due to their shortage. Such demands should be considered on a case-to-case basis.

46. Shri P Wilson, while stressing the need for Increasing the retirement age of High Courts and Supreme Court Judges has vociferously pointed out the following:

“One of the primary causes of delay in disposing of cases is the large number of vacancies in High Courts across the country. This situation is further worsened by the fact that when judges retire, appointment of new judges in their places is not immediate. The old Memorandum of Procedure for appointment of Judges states that the process of filling up of vacancies must commence six months prior to the expected date of retirement of High Court Judges, so that the vacancy is immediately filled upon retirement of a judge. However, due to various reasons, this process is not completed on time leading to large number of vacancies as stated above.

One of the ways in which this situation can be ameliorated is by increasing the age of retirement of High Court Judges from 62 to 65 years and Supreme Court Judges from 65 to 70. When the Constitution was originally enacted, Article 217(1) fixed the age of retirement of High Court Judges as 60 years. Subsequently, within 13 years, it was realized that the human body and mind do not become so incapacitated at the age of 60 that the Judge must retire at that age. Hence, by the virtue of the Constitution (Fifteenth Amendment) Act, 1962, the age of retirement was increased to 62 years. From 1963 onwards, the age of retirement has remained at 62 for High Court Judges. Over the past five decades, advancement in science and technology, medicine, better infrastructure and lifestyle has allowed Indians in other walks of life to be efficient, functional a work well up to the age of about 75 years. In fact, in the year 2016, 26 such retired Chief Justices and Judges of the High Court were designated as Senior Advocates by the Supreme Court and in the year 2018, 25 retired Chief Justices and Judges of various High Courts were designated as Senior Advocates by the Supreme Court. This shows that the Judges upon retirement are keen on continuing to work in the legal field in one capacity or the other. This is due to two reasons:

The mind of an intellectual who has worked tirelessly as a Judge of the High Court cannot remain idle at the age of 62 when much energy, enthusiasm and zeal is still left to contribute.

Judges need to continue working to maintain a good standard of living since their pensions are insufficient to maintain themselves and their families in urban cities”...

... “When Supreme Court judges upon retirement are functioning effectively as Chairman and Members of various important Tribunals where the workload is sometimes heavier, why do we assume they cannot continue functioning as Judge of the Supreme Court till 70 years of age?”

47. In view of the above observations the Committee feels that the age of retirement of judges needs to be increased in sync with the increase in the longevity and advancement in medical sciences leading to improved health of the population. The Committee accordingly, recommends that relevant Articles of the Constitution of India need to be amended and the age of retirement of Judges of the Supreme Court and High Courts may be increased appropriately.

48. However, while increasing the age of retirement for judges, the performance of Judges may be reassessed based on their health conditions, quality of judgements, number of judgments delivered etc. For this, a system of appraisal may be devised and put in place, by the Supreme Court collegium, before any judge is recommended for enhancement of their tenure.

49. Many stakeholders had also raised objections to the post-retirement assignments given to judges, and the Committee is accordingly, of the view that with the increase in the age of retirement of judges, the practice of post-retirement assignments to judges of Supreme Court and High Courts in bodies/institutions financed from public exchequer may be reassessed to ensure their impartiality.

IV. VACATIONS IN THE SUPREME COURT AND HIGH COURTS

Extant Constitutional/Legal Provisions

50. Vacations for the Supreme Court and various High courts are prescribed as per the rules framed by the respective courts for which they have been empowered under the provisions of the Constitution. The Supreme Court of India, in the exercise of the powers conferred on it under Article 145, the Constitution of India is empowered to make rules for regulating the Court's practice and procedures which include its sittings and vacations, etc.

51. Accordingly, the Supreme Court has framed the 'Supreme Court Rules, 2013 which was notified on 27.05.2014. Order II of Part I of the Supreme Court Rules, 2013 provides for sittings of the Supreme Court, length of summer vacation, and the number of holidays of the Court and also the Benches of the Hon'ble Judges during summer vacation and winter holidays. The Supreme Court Rules, 2013, inter-alia, provided that the period of summer vacation shall not exceed seven weeks and the length of the summer vacation and the number of holidays for the court and the offices of the court shall be such as may be fixed by the Chief Justice and notified in the official Gazette so as not to exceed one hundred and three days, excluding Sundays not falling in the vacation and during court holidays. The earlier rules i.e. Supreme Court Rules, 1966 provided for a period of summer vacation in the Supreme Court for 10 weeks. Accordingly, on an average the Supreme Court sits for 214 days a year.

52. Similarly, the duration of vacations in the High Court is regulated by the Rules/Procedures framed by the concerned High Court as per the powers vested unto High Courts under Article 225 of the Constitution of India to make rules of the Court regulating its practice & procedures including its sittings and vacations.

Present Status

53. As per the information provided by the Supreme Court of India to the Government, during the last three years, the average number of court working days of the Supreme Court were 224 (Year 2019), 217 (Year 2020), and 202 (Year 2021).

54. The High Courts generally enjoy 20 holidays in a year beside Christmas and winter holidays and summer vacations. According to the available information, all High Courts in the country normally have on an average 210 working days in a year.

55. In year 2009, the Law Commission in its 230th Report on “Reforms in the Judiciary – Some suggestions” has suggested that the number of working days must be increased considering the huge pendency of cases at all levels of judicial hierarchy. The Report recommended that the vacations in the higher judiciary must be curtailed by at least 10 to 15 days and the court working hours be extended by at least half an hour. The Report was duly forwarded by the Government to the Chief Justices of all High Courts to consider the suggestions for adoption.

Views of the Government

56. The Department of Justice, in their written submission before the Committee informed that previously in the year 2002-03, they had examined the matter of increasing the number of working days in Courts. In order to reduce the huge pendency prevailing in the High Courts, the Department requested all the High Courts to fix the period of vacations in such a way that the number of working days of High Courts generally do not fall below 222 days in a year. At present, as per the information available with the government, on an average High Courts function for 210 days.

57. The Department of Justice has stated that court vacations particularly summer vacations spanning 7 weeks (10 weeks prior to 2013) are customary practice continuing from colonial days. Vacations of Supreme Court and High Courts need to be relooked in a holistic way vis-à-vis the present practice in the higher courts of other countries as well as other constitutional institutions in the country and also in the context of existing huge pendency of arrears of cases and increased volume of fresh cases being instituted on regular basis.

ANALYSIS AND RECOMMENDATIONS OF THE COMMITTEE

58. The need for judicial vacations has been questioned time and again by various stakeholders considering the huge pendency of cases and long delays in disposing off the cases, there has been a demand to curtail long court vacations and revise the working hours of the court.

59. At the same time, it can also be seen that as far as the Supreme Court of India is concerned it has the highest caseload among the apex courts around the world and it also works the most. In terms of the number of judgments delivered too, with 34 judges, the Supreme Court of India is way ahead of others.

60. A comparative statement of working days of apex courts of some democratic countries during the calendar year 2020, compiled from the available calendars of the respective countries, is as follows:

Countries	Days marked as holidays	Months with no oral arguments	Number of sitting days
Australia	10	2	97
Bangladesh	84	1	180
India	94	1	190
Singapore	33	2	145
UK	1	2	189
United States	10	3	79

Source: Numbers pulled from calendars of respective apex courts.

61. During the deliberations on this issue, most of the members were of the opinion that the need of the hour is an efficient judiciary that is not only committed to meeting the needs and interests of the citizens but also communicates this commitment by modifying its practices to suit the needs of the country. The judiciary, therefore, needs to be sensitized from shutting down courts en masse for a couple of months a year.

62. Shri Vivek K. Tankha, one of the Members of the Committee expressed the following opinion on this issue:

"The point that I have always been raising is that vacations came as a concept from the British days, when Britishers used to go back to England to enjoy their holidays. My case is that there can be no vacation of a High Court or the Supreme Court. Judges can be on vacation; staff can be on vacation; a sovereign body does not go on vacation. That was an imperial concept or alien concept. So, if there is a way of refashioning it, let every judge be entitled to 'X' number of days of holidays, which he himself will decide. It could be spread over the year, while the court functions on all days, except on Saturdays and Sundays. This would mean that about 100 days would come back as court's working. And, if 100 days come back as

court's working, see the number of cases that would also get addressed and decided."

63. However, on the contrary, some of the members were of the view that in a profession that demands intellectual rigor and long working hours, for both lawyers as well as judges' vacations are much needed for rejuvenation.

64. Shri P. Wilson in his submission has expressed his opinion in the following manner on this issue:

" (a) layman does not understand that the Judges and lawyers do not stop working after Court hours. After Court hours, the Judges tend to dictation and correction of judgements, research, reading case files for the next day etc. Similarly, it is only during the vacation time that Judges get to pen judgements in complicated cases requiring elaborate judgements. That apart, in a highly stressful profession like legal profession, adequate mental and physical break is required to ensure that there is no strain on mental and physical health. Very few professions have such a constant level of stress on an everyday basis as lawyers and judges experience. Therefore, it would not be prudent to extend Court hours or reduce Court vacation days.

However, in my considered view the vacation courts a minimum number of judges can work by rotation and can sit on all days of the week, albeit in reduced numbers, hearing only urgent cases. This is because, often we see that judges of Vacation Courts sit from 10.30 am to as late as 9 or 10 pm and thereafter correct orders. If both sides counsel's are agreeable final hearing cases can also be listed and heard during the vacation."

65. Shri Mahesh Jethmalani expressed a similar sentiment on the issue stating that:

"As far as duration of holidays is concerned, you will see that the judges do a lot of work. The present Chief Justice of India wakes up at 3.30 in the morning. Judges are supposed to read hundreds of briefs and then they need time to give reasoned judgement. There is high amount of litigation. Please don't blame the judiciary for this. We have the most litigious population in the whole world and

we have the lowest number of Judges per litigant. We need more judges. Reducing holidays will cure everything will never be the answer. As we know the Supreme Court is doing a very good job, we have to find out the reasons with regard to the High Courts. There may be the question that they need to curtail holidays of the High Courts or there may be the question of increasing Bench strength, which has not yet been implemented, to be gone into by the judiciary or by the Government, or maybe it is due to lack of candidates. It may be simplistic thing to take away holidays and expect that litigation or arrears will go away. There are other reasons. Judges need holidays, the staff needs holidays. There is a large number of employees working in the courts. They also need holidays. Quality will suffer if you do not give them a break. You need good judgements. You need time to consider the rival arguments because often the Supreme Court or the High Courts deal with important Constitutional issues and a lot of thinking and input is involved in these cases. It is not that the Supreme Court judges are going to foreign countries in the holidays. Judges are also working and giving judgements in the vacation period."

66. The demand for doing away with vacations in the Courts emanates primarily due to two factors, one is the huge pendency of cases in our courts, and the other is the inconvenience faced by the litigants during the vacations of the courts. A common man holds a perception that despite having such huge pendency of cases their judges go on long vacations. Further during the vacations, the litigants have to suffer a lot despite having a handful of vacation courts/benches.

67. Though in this connection it may be noted that for the past few years, the pendency in the Supreme Court has remained static and in the year 2022 the disposal of cases was more than the number of cases instituted in that year. Thus it can be seen that as far as the disposal of cases is concerned, the performance of our Supreme Court is quite good. The problem lies with the legacy arrears of about 35000.

68. With regard to High Courts, the pendency is humungous. More than 60 lakh cases are pending as on date, which is a reason for deep concern. Though it is also a grim fact that almost all the High Courts have a very high level of vacancies. As on 31.12.2022 overall vacancies in the High

Courts stood at 30% of the sanctioned strength and in many of them had vacancies ranging from 40 - 50%. Thus vacations are not the only cause of high pendency in the higher judiciary.

69. Replying to the criticism of the Judiciary on vacations, the Chief Justice of India Shri DY Chandrachud, in one of his interviews given to the India Today recently, had inter alia stated the following:

“What people don’t know is, that most of the time in the vacation is spent on preparing judgements which you have kept in reserve because you’ve just no time during the week when you are working seven days just trying to keep ahead of the curve to deal with your cases”

He further stated that:

“It’s not just about the statistics. It’s about thinking through your cases. It’s about reading the law, reading about where the law is going in other jurisdictions, thinking about where you want our society to be in terms of the output which you are going to produce. So unless you give your judges time to introspect, reflect, think about the work which you are going to do, you are not going to have a quality of justice”

70. From the foregoing discussion it can be seen that vacations in the Judiciary are not the only factor for pendency. For reducing pendency there is a need to have a multipronged strategy. However, at the same time, it is an undeniable fact that vacations in the judiciary are a 'colonial legacy' and with entire court going on vacation *en mass* causes deep inconvenience to the litigants.

71. In this scenario, the Committee is of the view that the suggestion of the former Chief Justice of India Shri RM Lodha on court vacations, that instead of all the judges going on vacation, all at one time, individual judges should take their leave at different times through the year so that the courts are constantly open and there are always benches present to hear cases, should be considered by the Judiciary.

V. MANDATORY DECLARATION OF ASSETS BY THE JUDGES OF THE SUPREME COURT AND HIGH COURTS

Mandatory provision for Civil Servants to declare Assets

72. As per existing norms for the purpose of making a parity salaries admissible to the level of Secretary to the Government of India is used as a yardstick for determination of salaries of Judges of Supreme Court of India and High Courts. Therefore, it would be prudent to examine the extant provision regarding the declaration of Assets in the case of Civil Servants.

- (i) As per Rule 16(1) of the All India Services (Conduct) Rules, 1968, every person shall, where such person is a member of the Service at the commencement of these rules, on his first appointment to the Service, submit a return of his assets and liabilities regarding the movable, immovable and valuable property owned by him or inherited or acquired by him, either in his own name or in the name of any member of his family.
- (ii) As per Rule 16(2) of the All India Services (Conduct) Rules, 1968, every member of the Service shall submit an annual return giving full particulars regarding the immovable property inherited by him or owned or acquired by him, either in his own name or in the name of any member of his family.
- (iii) As per Rule 18(1)(i) of Central Civil Services (Conduct) Rules, 1964, every Government servant shall on his first appointment to any service or post submit a return to his assets and liabilities giving the full particulars regarding the movable, immovable and valuable property inherited by him, or owned or acquired by him, either in his own name or in the name of any member of his family.
- (iv) As per Rule 18(1)(ii) of Central Civil Services (Conduct) Rules, 1964, every Government servant belonging to any service or holding any post shall submit an annual return giving full particulars regarding the immovable property inherited by him or owned or acquired by him either in his own name or in the name of any member of his family.

Provisions for Judges of Supreme Court and High Courts to declaration of assets

- (i) As per the Supreme Court Judges (Salaries and Conditions of Services) Act, 1958 and the High Court Judges (Salaries and Conditions of

Services) Act, 1954 and rules framed thereunder, there is no provision to declare assets by Judges of Supreme Court and High Courts.

- (ii) Earlier, the Department of Justice had prepared a comprehensive Bill called "The Judicial Standards and Accountability Bill", with the aim to achieve the objectives of creating a statutory mechanism for enquiring into individual complaints against Judges of the High Courts and Supreme Court and recommending appropriate action, enabling declaration of assets and liabilities of Judges and laying down judicial standards to be followed by Judges. This Bill intended to replace the Judges Inquiry Act 1968 while retaining its basic features.
- (iii) On dissolution of 15th Lok Sabha, the Bill lapsed and was not presented thereafter.

73. "The Restatement of Values of Judicial Life" adopted by a full Court Meeting of the Supreme Court on 07.05.1997 lays down certain judicial standards which are to be followed by the Judges of the Supreme Court and the High Courts. As adopted by the Full Court of the Supreme Court in its meeting dated 07.05.1997 providing further to make it mandatory for every Judge of the Supreme Court and the High Courts including the Chief Justices, to make a declaration of his/her assets and liabilities at the time of appointment and thereafter in the beginning of every year.

74. Further, the Full Bench in its meeting dated 26.08.2009 decided to disclose the statement of assets submitted by Judges on the basis of Resolution dated 07.05.1997 to the public by putting it on the Supreme Court website.

75. Again the Full Court in its meeting dated 08.09.2009 resolved to put the declaration of assets in the Supreme Court website on or before 31.10.2009 and that is purely on a voluntary basis. Presently, the website of the Supreme Court shows that 55 number of Judges have so far uploaded their Assets Declaration with last updation done on 31st March, 2018. The 'Restatement of Values of Judicial Life' does not have any legal authority for its enforcement.

Views of the Government

76. Salaries & other service conditions of Supreme Court Judges/ Judges of High Courts are benchmarked as per the salary scale of the Secretary to the Government of India. Service Conditions & Conduct Rules of Civil Servants stipulate mandatory filing of annual returns of assets and the same can be made applicable to judges of Supreme Court/HCs.

77. Other Constitutional Authority like the Comptroller & Auditor General of India are uploading their latest assets declaration on the website under their Code of Ethics. The Council of Ministers also declares assets as per the Code of Conduct for Ministers issued by the Ministry of Home Affairs.

78. For the Judges of the Supreme Court of India and High Courts, there is a need to institutionalize the mechanism for regular filing of assets and uploading them in the public domain.

ANALYSIS AND RECOMMENDATIONS OF THE COMMITTEE

79. As a general practice, all constitutional functionaries and government servants must file annual returns of their assets and liabilities. The Supreme Court has gone to the extent of holding that the public has a right to know the assets of those standing for elections as MPs or MLAs. When so, it belies logic that Judges don't need to disclose their assets and liabilities. Anybody holding public office and drawing a salary from the exchequer should mandatorily furnish annual returns of their property.

80. As stated earlier, the full bench of the Supreme Court on 8th September, 2009 resolved to put the declaration of assets on the Supreme Court's website on or before 31st October, 2009, purely on a voluntary basis. However, till date, the website of the Supreme Court contains data with respect to 55 of former Chief Justices of India and Judges of the Supreme Court, with the last updation as on 31st March, 2018. So far as High Courts are concerned, presently only five High Courts have data on their website related to the declaration of assets by a few Judges of concerned High Courts.

81. During the deliberations of the Committee on this issue Shri P. Wilson, Member of the Committee has opined as under:

"Judges of constitutional courts routinely review and interfere with legislation, government policies and even award of tenders etc. by governments. While so, to ensure transparency and accountability it is the need of the hour to ensure that Judges are transparent about their assets and any disproportionate change there on. If the Minister who decides about awarding a tender has to disclose his assets, why not the Judge who decides if the Minister's decision is right or wrong? Both are public authorities discharging public functions."

Accordingly, he recommends the following:

"The present deadlock in the issue of the declaration of assets and liabilities of judges can be resolved only by Parliament by an amendment to the service conditions of the Judges. Considering the rights of litigants to know about their Judges, I am of the firm view that the Judges during their tenure in Higher Judiciary i.e. (High Court and Supreme Court) have to necessarily declare their assets and liabilities at every succeeding year and necessary law mandating to do the same has to be brought, by bringing suitable amendments to The Supreme Court Judges (Salaries and Conditions of Service) Act 1958, High Court Judges (Salaries and Conditions of Service) Act 1954..."

82. Declaration of assets by the Judges of the Higher Judiciary will only bring more trust and credibility into the system. As the last resolution of the Supreme Court on the declaration of assets by Judges on a voluntary basis is not complied with, the Committee recommends the Government to bring about appropriate legislation to make it mandatory for Judges of the higher judiciary (Supreme Court and High Courts) to furnish their property returns on an annual basis to the appropriate authority.

VI. PREPARATION AND PUBLICATION OF ANNUAL REPORTS BY THE SUPREME COURT AND HIGH COURTS

83. The Annual Report is an introduction of the activities and achievements of the Ministry/Department/Organization of the Government of India for the information of the General Public. It basically forms a public disclosure document published on an annual basis and generally hosted on the administrative Ministries' website for wider dissemination.

Position in respect of Ministries/Departments of Government of India

84. The requirement for preparation of Annual Reports of the Ministries/Departments has been stipulated in the "Manual for Handling Parliamentary Work in Ministries," the first edition of which was brought out by the then Department of Personnel & Administrative Reforms in July, 1973. The work was subsequently transferred to the M/o Parliamentary Affairs in 1976, which, Ministry then brought out the second edition of the Manual in 1989. The extant instructions relating to the publication of Annual Reports by the Ministries/Departments are contained in the Third Edition of the Manual published in June, 2004, by the Ministry of Parliamentary Affairs.

85. As per this Manual, the Departments are expected to prepare Annual Reports well in advance of the discussions of their Demands for Grants. The purpose of the Annual Report is to enable the Members of Parliament to appraise the performance of each Ministry/Department. The Annual Reports are usually made available to the Hon'ble Members after the presentation of the Budget, but before the Demands relating to a particular Ministry are discussed in the House. Annual Reports are also required to be made available to Members of Parliament simultaneously before the Demands for Grants are referred to the concerned Departmentally-related Standing Committees for their consideration. The Annual Reports of the Ministries/Departments of Government of India for the year 2022-23 reflects the actual data from 1st January, 2022 to 31st December, 2022 and provides projections or estimates for the period from 1st January, 2023 to 31st March, 2023. The Ministry/Department has to ensure that its Annual Report is released in the public domain only after the presentation of the Budget. The copies of the Annual Report are also to be forwarded to various authorities including Press Information Bureau to be made public.

Instructions regarding Annual Reports of Government Societies / Autonomous Bodies Receiving Grant-in-aid

86. The instructions of the Ministry of Finance, Department of Expenditure with reference to the provisions of the General Financial Rules, 2017 stipulate that the Autonomous Bodies/Government Societies receiving Grant- in-Aid are required to lay their Annual Reports and Audited Accounts before the Parliament within 9 months after the close of accounting year in accordance with the time frame as prescribed by COPLOT Committee of Rajya Sabha in its first report in 1976.

Private/Voluntary Organisation/Autonomous Bodies receiving Grant in Aid (Recurring & Non-Recurring)	Remarks
<ul style="list-style-type: none"> ▪ Recurring Rs.10 lakh to less than 50 lakhs; & ▪ Non-recurring – Rs.10 lakh to less than Rs.5 crore. 	Statement showing the quantum of funds provided to each organization and the purpose for which utilized; to be included in the Annual Report of the Administrative Ministry/Department, for the information of the Parliament.
<ul style="list-style-type: none"> ▪ Recurring Rs.50 lakh and above &; ▪ Non-recurring – Rs.5 crore and above. 	To be laid on the table of both the House of Parliament within 9 months of the close of the succeeding financial year of the Grantee Organisation.

POSITION IN RESPECT OF THE SUPREME COURT AND HIGH COURTS

Supreme Court of India

87. The Supreme Court of India publishes and displays its Annual Report on its website. Part 2 of its Annual Report contains the details of all the High Courts relating “Brief Introduction, Initiatives for the Judicial Year, Administrative Achievements, Technological Accomplishments, high-resolution photographs of High Court buildings and statistical details (staff Strength, Budget of the High Court, High Court Statistics and Subordinate Court Statistics).” On the request made by the Hon’ble Supreme Court of India, the High Court prepare its Annual Report, which is then forwarded to the

Hon'ble Apex Court. The Hon'ble Supreme Court, thereafter, publishes a consolidated Annual Report for the India Judiciary incorporating all the Reports received from the different High Court.

88. The publication of the Annual Report of the Supreme Court of India was started in the year 2003-04 and up to 2008-09. From the year 2009 to 2013, no annual report was published. The Annual Report 2014 was released in April, 2015 during the Chief Justice Conference-2015 as per the direction of the then Hon'ble Chief Justice of India, vide Order dated 17.11.2014 for resumption of publication of "Annual Report 2014" containing profiles of the Hon'ble Judges, an overview of the Supreme Court of India and its activities, information on other activities such as role in training and education, legal services, ADR and mediation, landmark Judgments and official publications etc. Since then, Annual Report is being published regularly.

89. A comprehensive Annual Report in the year 2015-16 of the "Indian Judiciary" as against the earlier practice of only compiling activities of the Supreme Court of India was published and released on 26.11.2016. This included separate Chapters on each High Court with details of Judges, sanctioned and vacant posts, Institutions, Disposal, and Pendency figures, etc. Similar details about Subordinate Courts were also included. The Annual Report is being published on this pattern since then.

High Courts

90. There are 25 High Courts, with some High Courts having territorial jurisdiction over more than one State/UT. About 50% of the High Courts prepare & publish Annual Reports and upload them on their websites. However, in the case of some High Courts, the Annual Activities are normally published in the form of an Annual Newsletter (in the case of the High Court of Manipur); in the form of Quarterly Court Magazine (in the case of Uttarakhand High Court); several yearly statements relating to (i) average time taken in disposal of case in High Court, (ii) yearly age-wise pendency position in High Court & Subordinate Court, (iii) Case Clearance Rate (CCR) in High Court & Subordinate Court, (iv) Staff strength, working strength, vacancy of Judicial Officers as well as infrastructure status (in the case of Patna High Court).

91. The Annual Reports by the respective High Courts are being prepared and published based on the administrative directions in the case of High Courts

of Gujarat, Himachal Pradesh, Madras, and Rajasthan which have emanated upon receipt of the reference dated 16.10.2015 from Shri D.V. Sadananda Gowda, the then Minister of Law & Justice, Govt. of India, wherein it was stated to be mentioned that an Annual Report of each High Court can play an essential role in highlighting the work of Judiciary as a public institution.

92. It may be pertinent to mention that the Annual Report of all High Courts which highlights the work of the Judiciary as a public institution is already reflected in the Annual Report of the Supreme Court and uploaded on its website, in public domain, for information of all concerned.

93. The Government of India's instructions on the preparation of Annual Reports and making them available to Members of Parliament is generally applicable to the executive. The Hon'ble Supreme Court of India and High Courts are Constitutional Entities.

94. Some of the High Courts are preparing and publish the Annual Reports based on administrative decisions issued by the respective High Courts. Currently, no specific rules are prescribing the manner of preparation and publication of Annual Reports by the High Courts.

95. The preparation and publication of Annual Reports play an essential role in highlighting the work of the Judiciary as a public institution as it records the court's performance in the Administrative as well as Judicial side through a document accessible to the public. While some High Courts have uploaded Annual Reports on their respective websites, the details on all the High Courts are already being depicted by the Hon'ble Supreme Court of India in its Annual Report.

Views of the Government

96. The Government of India believes that all the High Courts may be requested to bring out their Annual Reports and forward them to the Supreme Court of India. The same may be placed in the public domain by uploading it on their website also, if not being done presently, for easy accessibility to the people and broader dissemination of their activities and achievements.

ANALYSIS AND RECOMMENDATIONS OF THE COMMITTEE

97. While deliberating on this issue Shri P. Wilson, a member of the Committee referring to the Orissa High Court made the following submissions:

"The Orissa High Court set a new precedent in judicial accountability by publishing an annual report on its performance post-COVID. This is a notable public introspection exercise by the judiciary to ensure accountability of the court. The report provides a district-wise breakup of cases and the availability of judges. It contains a section explaining the reasons for delays and backlog at the level of the district judiciary. The tendency of higher courts to "stay" proceedings, the uneven distribution of cases amongst judges in trial courts, and the non-availability of witnesses due to transfers are among the major reasons cited by it for delays. The report also sheds light on the administrative functioning of the court. In addition to listing the judges on each administrative committee, the report acknowledges the work done by them). For instance, the committee that deals with the appeals by the employees of the district judiciary against orders passed by disciplinary authorities had 40 appeals, out of which it disposed of only 13 appeals. This is useful information if one wishes to assess the administrative workload of judges and the efficiency with which they discharge their tasks. Most High Courts do not share this information with ordinary citizens even if requests are made for the same under the RTI Act."

Underlining the need for every High Court to prepare and publish its Annual Report Shri Wilson made the following observations:

"Although, one may argue that the Supreme Court publishes an Annual Report regarding the performance of each and every High Court and District Court, publishing Annual Reports by each High Court can ensure a detailed and more comprehensive report on the performance of such Courts. The Annual Reports are a good indicator for analyzing the efficiency and efficacy of the Indian Judicial System. It could become a golden document in setting judicial standards and for assessing judges for elevation to the Supreme Court. This would not only maintain the quality of Judges

appointed but would also highlight the infirmities of the High Court as an institution."

98. The Committee notes that the preparation and publication of the Annual Report is like an appraisal of what that institution has done over the past year. There is no harm if each Court also, at the beginning of every year, takes stock of work that it had transacted last year. After all, Courts are also public institutions, and the preparation and publication of the Annual Report will highlight the work of the Judiciary and make it accessible to the public. The Supreme Court is already publishing its Annual Report also depicting the work done by all High Courts of the Country.

99. For High Courts, only some of them are publishing their Annual Report on their own volition, the others need to do the same. Accordingly, the Committee recommends the Department of Justice to approach the Supreme Court of India requesting them to issue necessary directions to all the High Courts to prepare and publish their Annual Reports regularly, on their respective websites. In this regard, the Supreme Court may suggest the items to be included in the Annual Report, so that there is uniformity in the Report to be prepared by different High Courts.

RECOMMENDATIONS/OBSERVATIONS - AT A GLANCE

SOCIAL DIVERSITY IN APPOINTMENT OF JUDGES IN THE SUPREME COURT AND HIGH COURTS

1. As per the data provided by the Government on the social status of the Judges of the High Courts and otherwise also, it can be seen that our higher judiciary suffers from a 'diversity deficit'. The representation of SCs, STs, OBCs, Women, and Minorities in the higher judiciary is far below the desired levels and does not reflect the social diversity of the country. In recent years there has been a declining trend in representation from all the marginalized sections of Indian society. (Para 12)

2. Though there is no provision for reservation in the judicial appointments at High Courts and Supreme Court level, the Committee feels that adequate representation of various sections of Indian society will further strengthen the trust, credibility, and acceptability of the Judiciary among the citizens. (Para 13)

3. The Hon'ble Supreme Court of India itself, in its judgment dated 06.10.1993 in the Supreme Court Advocates-on-Record Assn. v. Union of India (Second Judges Case) has inter-alia recorded the following:

"...Along with other factors, such as, proper representation of all sections of the people from all parts of the country, legitimate expectation of the suitable and equally meritorious Judges to be considered in their turn is a relevant factor for due consideration while making the choice of the most suitable and meritorious amongst them, the outweighing consideration being merit, to select the best available for the apex court." (Para 14)

4. Further, the Government has informed that the need for ensuring adequate representation has also been acknowledged by the Supreme Court Collegium, which while sending their comments on the draft MoP vide CJI's letter dated March 2017 agreed to the following provision:

"Merit and integrity shall be the prime criteria for appointment of a judge in the High Court. As far as possible, representation shall be given to women and marginalized sections of society. However, in case

of judicial officers, due weightage shall also be given to their inter-se seniority.” (Para 15)

5. Thus the Committee is of the view that while making recommendations for appointments to the Higher Judiciary, both the Supreme Court and the High Court's Collegiums should recommend an adequate number of women and candidates from the marginalized sections of the society including minorities. This provision should be clearly mentioned in the Memoranda of Procedure (MoP), which is presently under finalization. (Para 16)

6. Further, as of now, data related to the social status of High Court judges are available from 2018 onwards, the Committee recommends the Department of Justice find ways and means to collect such data in respect of all judges presently serving in the Supreme Court and High Courts. For doing this, if required, necessary amendments may be brought in the respective Acts/service rules of the judges. (Para 17)

FEASIBILITY OF REGIONAL BENCHES OF SUPREME COURT

7. The Committee feels that the demand for having regional benches of the Supreme Court of India is about 'access to justice,' which is a fundamental right under the Constitution. There has been a long-standing demand for having regional benches of the Highest Court in the country for taking justice to the doorstep of the common citizen. The regional benches may also be seen as a solution to the overflowing caseload of the judiciary and to reduce the litigation cost to the common man. (Para 30)

8. The Delhi-centric Supreme Court causes a big hurdle for those litigants who are coming from far-flung areas of the country. First, there is a language problem for them, and then finding lawyers, the cost of litigation, travel, and staying in Delhi makes justice very costly. (Para 31)

9. This Committee has also been recommending for a long time on establishment of regional benches of the Supreme Court in the Country. The Committee still holds the view that the Supreme Court of India may invoke Article 130 of the Constitution for establishing its regional benches at four or five locations in the Country. The interpretation of Constitution

and Constitutional matters may be dealt at Delhi and the regional benches may decide appellate matters. However, the appellate benches may not be made as another layer of the judiciary by treating their decisions as final. (Para 32)

EXPLORING THE POSSIBILITIES OF INCREASING THE RETIREMENT AGE OF HIGH COURT AND SUPREME COURT JUDGES

10. In view of the above observations the Committee feels that the age of retirement of judges needs to be increased in sync with the increase in the longevity and advancement in medical sciences leading to improved health of the population. The Committee accordingly, recommends that relevant Articles of the Constitution of India need to be amended and the age of retirement of Judges of the Supreme Court and High Courts may be increased appropriately. (Para 47)

11. However, while increasing the age of retirement for judges, the performance of Judges may be reassessed based on their health conditions, quality of judgements, number of judgments delivered etc. For this, a system of appraisal may be devised and put in place, by the Supreme Court collegium, before any judge is recommended for enhancement of their tenure. (Para 48)

12. Many stakeholders had also raised objections to the post-retirement assignments given to judges, and the Committee is accordingly, of the view that with the increase in the age of retirement of judges, the practice of post-retirement assignments to judges of Supreme Court and High Courts in bodies/institutions financed from public exchequer may be reassessed to ensure their impartiality. (Para 49)

VACATIONS IN THE SUPREME COURT AND HIGH COURTS

13. During the deliberations on this issue, most of the members were of the opinion that the need of the hour is an efficient judiciary that is not only committed to meeting the needs and interests of the citizens but also communicates this commitment by modifying its practices to suit the needs

of the country. The judiciary, therefore, needs to be sensitized from shutting down courts en masse for a couple of months a year. (Para 61)

14. The demand for doing away with vacations in the Courts emanates primarily due to two factors, one is the huge pendency of cases in our courts, and the other is the inconvenience faced by the litigants during the vacations of the courts. A common man holds a perception that despite having such huge pendency of cases their judges go on long vacations. Further during the vacations, the litigants have to suffer a lot despite having a handful of vacation courts/benches. (Para 66)

15. Though in this connection it may be noted that for the past few years, the pendency in the Supreme Court has remained static and in the year 2022 the disposal of cases was more than the number of cases instituted in that year. Thus it can be seen that as far as the disposal of cases is concerned, the performance of our Supreme Court is quite good. The problem lies with the legacy arrears of about 35000. (Para 67)

16. With regard to High Courts, the pendency is humungous. More than 60 lakh cases are pending as on date, which is a reason for deep concern. Though it is also a grim fact that almost all the High Courts have a very high level of vacancies. As on 31.12.2022 overall vacancies in the High Courts stood at 30% of the sanctioned strength and in many of them had vacancies ranging from 40 - 50%. Thus vacations are not the only cause of high pendency in the higher judiciary. (Para 68)

17. From the foregoing discussion it can be seen that vacations in the Judiciary are not the only factor for pendency. For reducing pendency there is a need to have a multipronged strategy. However, at the same time, it is an undeniable fact that vacations in the judiciary are a 'colonial legacy' and with entire court going on vacation *en mass* causes deep inconvenience to the litigants. (Para 70)

18. In this scenario, the Committee is of the view that the suggestion of the former Chief Justice of India Shri RM Lodha on court vacations, that instead of all the judges going on vacation, all at one time, individual judges should take their leave at different times through the year so that the courts are constantly open and there are always benches present to hear cases, should be considered by the Judiciary. (Para 71)

MANDATORY DECLARATION OF ASSETS BY THE JUDGES OF THE SUPREME COURT AND HIGH COURTS

19. As a general practice, all constitutional functionaries and government servants must file annual returns of their assets and liabilities. The Supreme Court has gone to the extent of holding that the public has a right to know the assets of those standing for elections as MPs or MLAs. When so, it belies logic that Judges don't need to disclose their assets and liabilities. Anybody holding public office and drawing a salary from the exchequer should mandatorily furnish annual returns of their property. (Para 79)

20. Declaration of assets by the Judges of the Higher Judiciary will only bring more trust and credibility into the system. As the last resolution of the Supreme Court on the declaration of assets by Judges on a voluntary basis is not complied with, the Committee recommends the Government to bring about appropriate legislation to make it mandatory for Judges of the higher judiciary (Supreme Court and High Courts) to furnish their property returns on an annual basis to the appropriate authority. (Para 82)

PREPARATION AND PUBLICATION OF ANNUAL REPORTS BY THE SUPREME COURT AND HIGH COURTS

21. The Committee notes that the preparation and publication of the Annual Report is like an appraisal of what that institution has done over the past year. There is no harm if each Court also, at the beginning of every year, takes stock of work that it had transacted last year. After all, Courts are also public institutions, and the preparation and publication of the Annual Report will highlight the work of the Judiciary and make it accessible to the public. The Supreme Court is already publishing its Annual Report also depicting the work done by all High Courts of the Country. (Para 21)

22. For High Courts, only some of them are publishing their Annual Report on their own volition, the others need to do the same. Accordingly, the Committee recommends the Department of Justice to approach the Supreme Court of India requesting them to issue necessary directions to all the High Courts to prepare and publish their Annual Reports regularly, on their respective websites. In this regard, the Supreme Court may suggest

the items to be included in the Annual Report, so that there is uniformity in the Report to be prepared by different High Courts. (Para 22)

RELEVANT MINUTES OF THE MEETINGS OF THE COMMITTEE*

* will be appended at a later stage.