



## NOTE ON AGENDA FOR THE JOINT CONFERENCE OF CHIEF MINISTERS OF THE STATES AND CHIEF JUSTICES OF THE HIGH COURTS

The Joint Conference of Chief Ministers of the States and Chief Justices of the High Courts ('CM-CJ Conference'), is an excellent platform for the executive and judiciary to deliberate on the state of the judicial system and the steps to be taken for its efficient functioning. The expanse of the Conference is wide, and in its preceding editions, solutions for all levels of the judiciary have been mulled.

DAKSH has prepared this note with suggestions for topics that can be discussed at the Conference in 2019. The note also contains an annexure with a summary of the resolutions made in the Conferences of 2009, 2013, 2015, and 2016 categorised according to subject-matter.

### PAST CONFERENCES

The origin of the Chief Justices' Conference can be dated back to the early 1990s. Former Prime Minister, Late Shri P.V. Narasimha Rao chaired the Chief Justices' Conference of 1992 held at New Delhi on 18-19 September 1992 during the tenure of Hon'ble Justice (Retd.) Mr. Madhukar Hirralal Kania as the Chief Justice of India. One of the earliest joint CM-CJ Conferences seems to have been organised in 1993 under the Chief Justiceship of Justice M.N. Venkatachaliah.<sup>1</sup>

Our analysis of resolutions of the CJ-CM Conferences over the last 10 years (in 2009, 2013, 2015, and 2016) reveals that resolutions have been made repeatedly on certain subject-matters.

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<sup>1</sup> Manoj Mitta, 'Judiciary in India all for internal reforms but may take time to be implemented', *India Today* (31 January 1997), available at <https://www.indiatoday.in/magazine/nation/story/19970131-judiciary-in-india-all-for-internal-reforms-but-may-time-to-be-implemented-831792-1997-01-31>



Recommendations pertaining to establishment of new courts, improvement of infrastructure in High Courts as well as subordinate courts, strengthening the legal aid system, increasing strength of judges in High Courts as well as subordinate courts, training of judicial officers, and reforming IT processes, have been made several times since 2009. Some of these resolutions have repeated themselves, while others remain conspicuous by their absence e.g. reforms to the criminal justice system.

Consistently repeating resolutions raise questions about whether or not there has been effective implementation (or effective monitoring of implementation) of these resolutions. The scope of the agenda for each of these conferences can be expanded to discuss more forward-looking reforms. While technology has been an important agenda item in the previous editions of these Conferences, the expanse of technological reforms that can be recommended should be increased. The overarching sentiment should be one of ensuring a holistic approach to judicial reforms involving both the executive as well as the judiciary.

## PATHWAYS FOR THE FUTURE

We believe that this is a valuable forum for the executive and the judiciary to jointly deliberate on how the judicial system can be made to work more efficiently. To that end, we suggest the following crucial aspects that should be considered in this year's Conference:

1. Implementation of existing resolutions; and
2. Taking an integrated view of the justice system.

These aspects are discussed in detail below:

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### IMPLEMENTATION OF EXISTING RESOLUTIONS

Since 2009, the Conference has been resolving to set up a permanent mechanism for implementation of resolutions passed by the Chief Justices' Conference.<sup>2</sup> The Chief Justices do make a point of tracking the progress on implementation of the Resolutions passed in the immediately preceding Chief Justices' Conference. Based on information available on the websites of State-specific High Courts, we found that High Courts of Delhi, Meghalaya, Jammu and Kashmir, Sikkim, Punjab and Haryana, Manipur, and Gauhati have set up committees for monitoring the implementation of the resolutions passed in the CM-CJ Conferences. While

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<sup>2</sup> Detailed agenda items and resolutions of the Conference are available in the public domain only for the Conferences held between 2009 and 2016, and not before that.



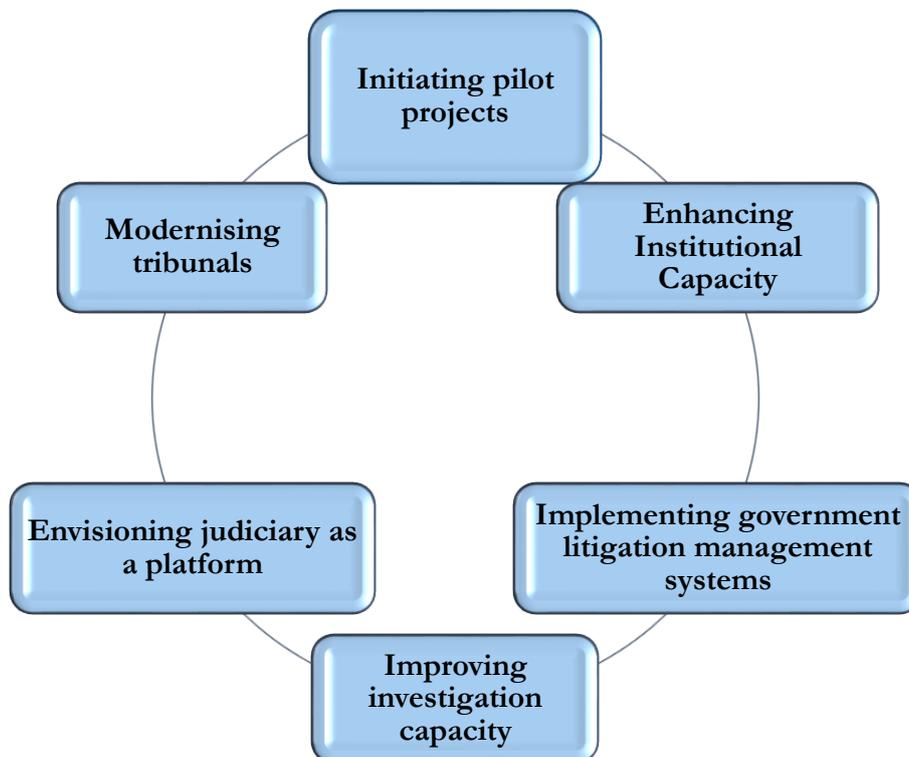
other High Courts might have also established Monitoring Committees, such information has not been updated on their websites which makes it hard to say, reliably, whether more such committees exist.

It is necessary that status reports on implementation of previous years' resolutions are discussed in detail so that these resolutions are not repeated in successive years, thereby paving way for newer subject-matters or tweaks necessary to make them effective are considered. High Courts should provide granular information on the extent of implementation in subordinate judiciary and also at the level of the High Court itself.

### **TAKING AN INTEGRATED VIEW OF THE JUSTICE SYSTEM**

The Conference can be ably used as a ground for advocating far-reaching judicial reforms. These reforms should be informed by two underlying thoughts – *first*, the effective functioning of the judicial system requires not just the judiciary but also the arms of the executive (such as investigative agencies, forensic labs, public prosecutors, government lawyers, and technology service providers) to reimagine the way in which they interact with each other, and *second*, judicial reform should be a function of contemporary times by making utmost use of technology.

To that end, DAKSH suggests that the following reform resolutions be taken up in the upcoming conference:



Each of these topics is discussed in detail below:

### Initiating Pilot Projects

High Courts should undertake pilot projects to initiate evidence-based reforms. Pilot projects help understand effectiveness of an intervention on a smaller scale before being rolled out on a larger scale. We recommend that pilot projects be initiated for:

#### PILOT PROJECTS FOR SUBORDINATE JUDICIARY

- Implementing case flow management;
- Process re-engineering;
- Using enhanced technology and predictive tools in court management;
- Scientific calculation of required strength of judicial and non-judicial staff.

Between 2017 and 2019, DAKSH successfully worked with the High Court of Delhi on the Zero Pendency Courts Pilot Project. The aim of this project was to identify causes of delay in disposal of cases, and develop norms for disposal timelines based on the subject-matter of cases. Such pilot projects can be conducted in other subordinate courts in the country as well so as to gain perspectives on case progress, and life-cycle of cases, and understanding which cases take the longest to conclude.

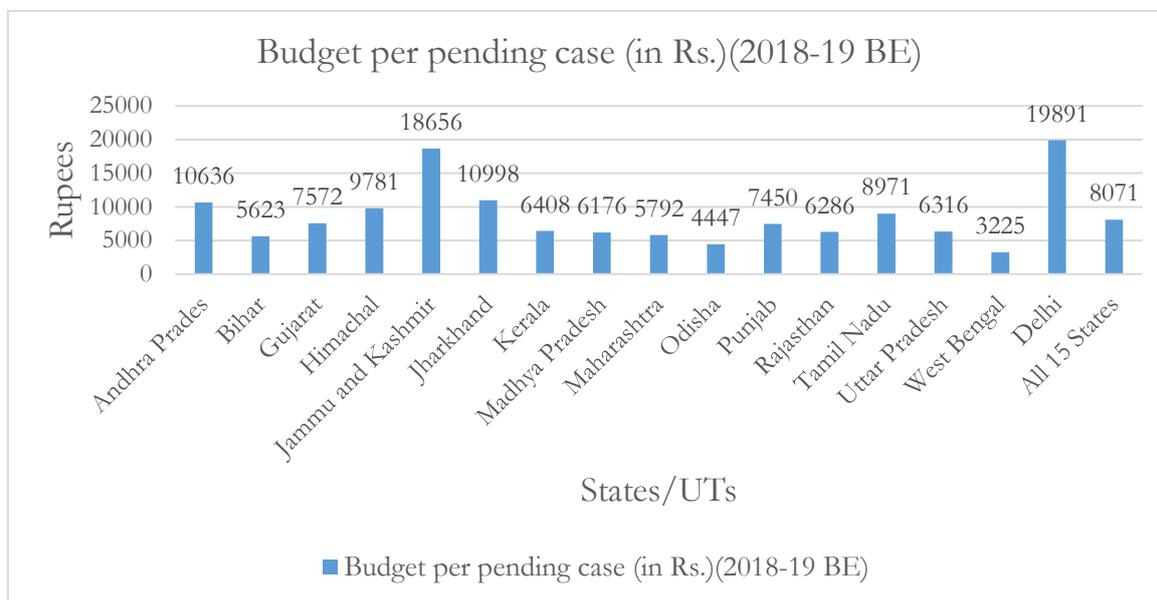
### Enhancing Institutional Capacity<sup>3</sup>

The judiciary is weighed down by shortages of human, technological, and financial resources. Budgeting processes and resource allocation mechanisms have failed to address the judiciary's needs. Fiscal imbalances, both vertical and horizontal indicate that the judiciary needs more effective assessments of its needs. **92%** of expenditure towards the judiciary came from State Governments (FY 2018-19), while **0.39%** of the combined Union and state budgets were

<sup>3</sup> The estimate of expenditures used here are from the DAKSH-CBGA Memorandum to the Fifteenth Finance Commission, December 2018 that can be accessed on DAKSH's website at: <http://dakshindia.org/wp-content/uploads/2019/06/Memorandum-on-Budgeting-for-Judiciary-in-India-from-CBGA-Website.pdf>.



allocated to judiciary in FY 2018-19. There is significant variation in the ratio of each State/ Union territory's budget compared to its workload, for 15 selected States/ Union territories, as depicted in the graph below:



[Source: Finance Statements of states; National Judicial Data Grid]

Budgetary support should be increased to enhance institutional capacity rather than merely infrastructure and operational expenditure. To that end, we recommend that the following steps be taken towards funding for the judiciary for capacity-building:

#### FUNDING FOR THE JUDICIARY FOR CAPACITY-BUILDING

- *Strengthen* budgeting practices to make it need-based and aligned with the vision for the judiciary;
- *Establish* a secretariat to oversee judicial appointments in subordinate courts;
- *Establish* permanent offices in the Supreme Court and High Courts to monitor performance, conduct research, and formulate policy;
- *Create* permanent state-level IT teams to train court staff and develop solutions, in each state.

We estimate that the above initiatives would cost about Rs.1,250 crores over 5 years across all states. This is only about 2% of the expenditure on judiciary over the same period at all levels of government.

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### Implementing Government Litigation Management Systems

The volume of government litigation constitutes a significant part of judicial workload. The Union Government and State Governments are the biggest litigants in courts in India. 46% of all cases pending in Indian courts name the Government as one of the parties.<sup>4</sup> Tracking the manner in which government litigation arises and progresses in courts can go a long way in ensuring that such litigation is brought to its conclusion efficiently and does not unduly clog the dockets of courts.

Keeping this fact in consideration, we recommend that steps be taken for managing government litigation more effectively. Governments should adopt a ‘minimal adjournment policy’, and also commit to timelines for filling vacancies in posts of public prosecutors and government lawyers.

The discussion on management of government litigation could include topics such as how it impacts the overall functioning as well as performance of courts, the nature of matters that are litigated, the performance of litigation management tools, practices, and systems, and state-level variations.

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### Improving Investigation Capacity

The executive as well as the judiciary needs to commit to timelines for rollout of an Interoperable Criminal Justice System (‘ICJS’). The ICJS will facilitate exchange of data between the various pillars of the criminal justice system. It will connect the courts (particularly, subordinate courts), the police, prisons, and forensic labs for effective exchange of information during investigation of crimes, and criminal trials. Investigation agencies and forensic labs would benefit from enhancement of support from governments in areas of **personnel** staffing and management, improved and updated **technology**, enhanced **infrastructure**, and allocation of **funds**.

Two specific areas that merit urgent attention are:

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<sup>4</sup> Action Plan to Reduce Government Litigation, Ministry of Law and Justice, 13 June 2017, available at <http://doj.gov.in/page/action-plan-reduce-government-litigation>.



- Enhancing mechanism for supply and use of Forensic Science Laboratory (FSL) reports

Significant delays are caused in criminal cases due to late delivery of FSL reports. Adequate staff, infrastructure and technology is required in the FSLs for timely generation of reports.

- Improving Prison Management System (PRISMS)

It was envisaged that PRISMS, an information management system, would be set up in each of the prisons – this system contains details of the accused and the convicts lodged in jails. However, this system has not been integrated in the day-to-day functioning of prisons.

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## **Envisioning Judiciary as a Platform – Build on e-Courts Phase II**

Various kinds of IT reforms have been recommended since 2009, some of which are in various stages of implementation. Most significantly, the eCourts Project (in Phase I and Phase II) was conceptualised on the basis of the ‘National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary – 2005.’

Significant progress has been made under Phase II of the eCourts project,<sup>5</sup> but effective implementation at the national level is still a concern. Phase II can serve as an essential step in transforming the judiciary into a platform. While Phase II of the eCourts Project is an essential step in the implementation of far-reaching IT reforms, we believe that this should not be taken as the ideal end in itself. Phase II of the Project should serve as an essential step in transforming the judiciary into a ‘platform’.

The core of a ‘platform’ is that the judiciary becomes natively digital and puts the citizen at the centre. A platform envisages that all processes which do not require parties to be heard by/before a judge can be conducted digitally. A next generation platform for the judiciary will put the citizen at the centre, improve access, and be forward-looking. All inputs, such as documents for filing before the court, evidence, etc, can be provided through a single digital point of access. For a major overhaul of IT procedures and building a next generation platform

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<sup>5</sup> Phase II aims at further computerisation as well as provisioning court complexes to be connected with jails, and desktop-based video conferencing to aid evidence collection and production of under-trial prisoners before courts.



for the judiciary, litigants should be able to invoke the jurisdiction of courts through online means. The platform not only facilitates judicial transactions online but also enables and assists litigants and citizens with providing relevant information.

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### **Modernising tribunals**

In the decades gone by, the number of tribunals in our judicial system have multiplied. Tribunals under the Union as well as State Governments play a crucial role in the dispensation of justice. However, tribunals in India have been plagued with problems similar to those which plague the regular courts. There is an urgent need to radically transform the manner of functioning of tribunals through the use of technology. The executive needs to commit to timelines for appointment of members, and ensure that well-qualified judicial and technical members get appointed.

Keeping in mind recent policy resolutions regarding reforming tribunals, particularly the ones made by the Law Commission in its report on Assessment of Statutory Frameworks of Tribunals in India (27 October 2017), the following reforms are crucial for tribunals:

- Impartial selection of members to tribunals

Selection of members of tribunals should be impartial. It should have minimal involvement of government agencies because the government is a party in typically several litigations.

- Uniformity in service conditions

There should be uniformity in the age of retirement, tenure, and conditions of services of members across tribunals.

- Better distribution of benches of tribunals

Tribunals should have benches in different parts of the country so as to ensure access to justice by people across geographical areas.

- Use of updated technology for better access to justice and efficient day-to-day functioning

Far-reaching IT reforms have been recommended for the subordinate judiciary in India, and several of these resolutions have been made at the CM-CJ Conferences themselves. These reforms should bring tribunals also within their fold.



**Authors:** Surya Prakash B. S., Programme Director, DAKSH, conceptualised, structured and reviewed the final draft of this note. Ritwika Sharma, Research Associate, collated and analysed the data, and drafted the note. Leah Verghese, Research Manager, reviewed drafts of the note. Gunjan Rathore, who was an intern at DAKSH, assisted with the data collection. The authors are thankful to Harish Narasappa for his comments.



ANNEXURE<sup>6</sup>

SUBJECT-MATTER OF THE RESOLUTION	RESOLUTIONS			
	2009	2013	2015	2016
Establishment of new courts	<ul style="list-style-type: none"> <li>- Family courts in each district</li> <li>- Additional courts for special judges (CBI)</li> <li>- Evening/morning benches in subordinate courts</li> <li>- Fast Track Courts (FTCs), FT Civil Courts, Gram Nyayalayas</li> <li>- Courts in jail (to be held by CJM/CMM)</li> </ul>	<ul style="list-style-type: none"> <li>- Continuation of morning/evening benches subject to decision of the concerned High Courts</li> <li>- FTCs wherever necessary (to deal exclusively with cases against women)</li> <li>- Juvenile Justice Boards, wherever not set-up.</li> </ul>	<ul style="list-style-type: none"> <li>- Continuation of Morning/Evening courts subject to decision of the concerned HC</li> <li>- FTCs for matters relating to offences against women, children, differently-abled persons, senior citizens, marginalized sections of society, and prevention of corruption cases.</li> </ul>	<ul style="list-style-type: none"> <li>- Special courts constituted to deal with CBI cases</li> <li>- Additional courts to ensure expeditious disposal of cases pertaining to women, marginalised segments, senior citizens, and differently-abled</li> <li>- Commercial courts, commercial division and commercial appellate division of high courts</li> </ul>
Addressing delays and pendency	--	State Governments to delegate the power to create temporary posts of staff to the HCs whenever average pendency in a subordinate Court increases.	<ul style="list-style-type: none"> <li>- Establishing of Arrears Committee at the High Court level;</li> <li>- Implementing a uniform nomenclature for the cases filed in all the HCs;</li> <li>- To do away with giving separate and independent number for various interlocutory applications filed in a particular case.</li> </ul>	<ul style="list-style-type: none"> <li>- Considering the urgent need to make judicial appointments in the High Courts to effectively address the problem of arrears in criminal and civil cases.</li> <li>- Constitution and working of Arrears Committee;</li> <li>- Reduction of arrears and ensuring speedy trial;</li> </ul>

<sup>6</sup> The agendas and resolutions of the CJ-CM Conferences of 2009, 2013, 2015, and 2016 are available on the website of the Supreme Court of India at: <<https://sci.gov.in/chief-justice-conference>> (accessed on 4 August 2019).



SUBJECT-MATTER OF THE RESOLUTION	RESOLUTIONS			
	2009	2013	2015	2016
				- Making Five plus Zero a reality
Improving infrastructure of courts	<ul style="list-style-type: none"> <li>- National Judicial Infrastructure Plan to be considered</li> <li>- State Governments to specifically consider the issue of supply of electricity to courts during working hours</li> </ul>	<ul style="list-style-type: none"> <li>- The High Courts may consider exploring the possibility of using solar energy in the Court complexes</li> <li>- Creating mechanism to ensure timely proposals for creation, furnishing, maintenance and development of infrastructure of Court buildings and residences.</li> </ul>	Funds from the Central Government for Infrastructure including court buildings, residences of the judges and maintenance.	<ul style="list-style-type: none"> <li>- Augmenting the infrastructure of subordinate courts</li> <li>- Use of renewable energy for court complexes</li> <li>- Differently-abled friendly complexes</li> <li>- Need for mechanism for review of infrastructure development</li> </ul>
Establishment of Vigilance Cells (VCs)	<ul style="list-style-type: none"> <li>- VCs in the HCs as well as each district</li> <li>- VCs to be under direct control of CJs of HCs</li> <li>- In the first instance, all complaints to be made to the CJ who will then forward it to the Vigilance Officer of a particular court</li> </ul>	--	<ul style="list-style-type: none"> <li>- The respective Chief Justices to write to the State Governments to strengthen the Vigilance Cells by creating more number of posts of Vigilance Officers and supporting staff.</li> <li>- The existing mechanism to be strengthened so that grievances are addressed in an effective and transparent manner.</li> </ul>	--
Strengthening of legal aid system	<ul style="list-style-type: none"> <li>- HCs to expedite adoption of the National Plan for</li> </ul>	<ul style="list-style-type: none"> <li>- Strengthening and popularizing of Alternate</li> </ul>	<ul style="list-style-type: none"> <li>- Strengthening and popularizing of Alternate</li> </ul>	<ul style="list-style-type: none"> <li>- Strengthening the legal aid programs i.e.</li> </ul>

SUBJECT-MATTER OF THE RESOLUTION	RESOLUTIONS			
	2009	2013	2015	2016
	<p>Mediation</p> <ul style="list-style-type: none"> <li>- More mediation centres to be established at the district level</li> <li>- CJI to nominate a committee to consider imparting training to the trainers and constituting a national panel of trainers for training mediators</li> <li>- CJs of HCs to appoint a Committee of Judges to monitor the legal aid system</li> </ul>	<p>Dispute Resolution (ADR) Systems, Lok Adalat, Mediation and Conciliation</p> <ul style="list-style-type: none"> <li>- Steps to be taken for setting up Mediation centres/A.D.R. Centres at the district level, where they are yet to be set up</li> <li>- Para-legal volunteers in the rural areas, and in particular women, be drawn from the community to man the centres.</li> </ul>	<p>Dispute Resolution System, Lok Adalat, Mediation and Conciliation</p>	<p>Alternative Dispute Resolution System; Lok Adalat; Mediation</p> <ul style="list-style-type: none"> <li>- Compliance with NALSA Regulations on Legal Aid Clinics, 2011 and the Free and Compulsory Legal Services Regulations, 2010</li> <li>- Legal awareness programmes are conducted in jails and juvenile homes</li> </ul>
Increasing strength of HC and subordinate judges	<ul style="list-style-type: none"> <li>- HCs to take immediate steps for filling up vacancies and adhering to the schedule laid down in <i>Malik Mazhar Sultan and Anr. Vs. Uttar Pradesh Public Service Commission and Ors., (2008) 17 SCC 703</i></li> <li>- Increase in the ratio of appointments to High Courts from amongst Judicial Officers to fifty per cent of the Judges'</li> </ul>	<ul style="list-style-type: none"> <li>- Creation of new posts of Judicial Officers at all levels along with support staff and requisite infrastructure to narrow down the judge population ratio; and filling up of vacancies at all levels</li> <li>- The posts of Law Secretary, Legal Remembrancer and Secretary, Legal Service Authority and the post of</li> </ul>	<p>The posts of Law Secretary, Legal Remembrancer and Secretary, Legal Service Authority and the post of Member Secretaries of the State Legal Services Authorities to be manned by officers of the District Judges' Cadre</p>	<ul style="list-style-type: none"> <li>- The Chief Justices to ensure that the Selection and Appointment Committees in the High Courts periodically monitor the process of filling up of vacancies in the District Judiciary</li> <li>- To ensure an increase in the cadre strength of the district judiciary commensurate with the needs of their states and in compliance with the</li> </ul>



SUBJECT-MATTER OF THE RESOLUTION	RESOLUTIONS			
	2009	2013	2015	2016
	strength of the concerned High Court instead of the present one-third	Member Secretaries of the State Legal Services Authorities to be manned by officers of the District Judges' Cadre		judgment of the Supreme Court in Brij Mohan Lal Vs Union of India and Malik Mazhar Sultan & Anr. Vs U P Public Service Commission & Ors.
Increase strength of staff in subordinate courts	--	--	--	Urgent steps be taken by the High Courts to ensure that posts of administrative staff in the District Judiciary are filled up at the earliest by centralising the process of recruitment
Salaries and emoluments of HC judges	--	<ul style="list-style-type: none"> <li>- Increase in the salary of the Judges of the High Courts.</li> <li>- Un-availed L.T.Cs. of the Judges of the High Court to be carried forward to the next year.</li> <li>- Free Units of electricity per month be enhanced from 10,000 units to 20,000 units.</li> <li>- Daily Allowance be increased from Rs.600/ to Rs.2,000/- per day</li> </ul>	Central Government to establish a National Judicial Pay Commission	--

SUBJECT-MATTER OF THE RESOLUTION	RESOLUTIONS			
	2009	2013	2015	2016
		- The retirement age of the Judges of the High Courts be enhanced to sixty-five years		
Training for judicial officers	The National Judicial Education Strategy prepared by the National Judicial Academy to be adopted	The High Courts may consider sending Judicial Officers in batches to IIMs for the purpose of imparting training on managerial skills.	Strengthening of judicial academies and introducing innovative methods for imparting training to judicial officers	Integration of National judicial academy and state judicial academies to ensure quality, responsiveness and timeliness
Improving service conditions	--	--	The High Courts will continue to strive for improving the service conditions	--
Augmenting post-retiral benefits of HC judges	--	<ul style="list-style-type: none"> <li>- The scheme sanctioned by the State of Andhra Pradesh to be adopted and followed in all the States, except where better benefits are already available</li> <li>- Retired High Court Judges and their spouses, will be entitled to the same medical benefits on the same pattern as are available to sitting High Court Judges.</li> </ul>	To constitute a Committee for recommending grant of minimum post-retiral benefits	--

SUBJECT-MATTER OF THE RESOLUTION	RESOLUTIONS			
	2009	2013	2015	2016
		- For pensionary benefits, ten years' practice as an advocate to be added as a qualifying service, for Judges elevated from the Bar.		
Financial autonomy for High Courts	Financial autonomy in regard to utilisation of funds for the purpose of providing infrastructure	--	- State Governments to provide necessary assistance to the High Courts for preparing budget estimates for the State Judiciary; - The State Governments to make budget allocations after considering the proposal sent by the respective High Courts	--
Production and use of electronic evidence	--	--	The High Courts to take necessary steps for framing Rules, issuing directions/guidelines in regard to production and use of electronic evidence.	The Chief Justices of the High Courts of Delhi and Punjab and Haryana to jointly constitute a Committee to frame Draft Rules to serve as models for adoption by the High Courts
Formation of All-India Judicial Services	Resolution passed	--	Uniform procedure for appointment of district judges: creation of a judicial service commission	--

SUBJECT-MATTER OF THE RESOLUTION	RESOLUTIONS			
	2009	2013	2015	2016
IT reforms	<ul style="list-style-type: none"> <li>- Modernisation and computerisation</li> <li>- establishment of E-courts</li> <li>- video conferencing facilities</li> </ul>	<ul style="list-style-type: none"> <li>- Strengthening computerisation of the Courts</li> <li>- Promoting e-filing and video conferencing</li> </ul>	<ul style="list-style-type: none"> <li>- Emulate the Karnataka High Court model of Computerization;</li> <li>- Printing of Cause Lists be dispensed with</li> <li>- the High Courts will take necessary steps for digitization of Court records including judicial matters and administrative files and amend the respective High Court Rules;</li> <li>- the State Governments to provide such financial assistance for computerization works undertaken by the High Courts</li> <li>- promote e-filing and video-conferencing in the existing Courts system.</li> </ul>	<ul style="list-style-type: none"> <li>- Establishment of E-courts;</li> <li>- Updation on National Judicial Data Grid;</li> <li>- Uniform nomenclature;</li> <li>- Cadre of technical manpower;</li> <li>- E-filing and Video Conferencing;</li> <li>- Scanning &amp; digitization</li> </ul>
Vesting of power to HCs for selection and appointment of judicial magistrates in the State	--	--	--	The Chief Justices to constitute, Special Cells in the High Courts with an officer in the rank of Registrar for assisting the Selection and Appointment Committee

SUBJECT-MATTER OF THE RESOLUTION	RESOLUTIONS			
	2009	2013	2015	2016
Effective integration of NCMS and SCMS	--	<ul style="list-style-type: none"> <li>- Establishment of NCMS in 2012</li> <li>- HC's to constitute sub-committees on lines of NCMS</li> </ul>	Implementation of National Management System	Effective integration of national court management systems and state court management systems
Utilisation of funds under the 14 <sup>th</sup> Finance Commission	--	--	--	Constitution of a Dedicated Cell for the utilisation of funds
Monitoring implementation of CJ conference resolutions and CJCM conference decisions	Setting-up of permanent mechanism for implementation of Resolutions passed by the Chief Justices' Conference	--	--	--