



## A Crippling Shortage

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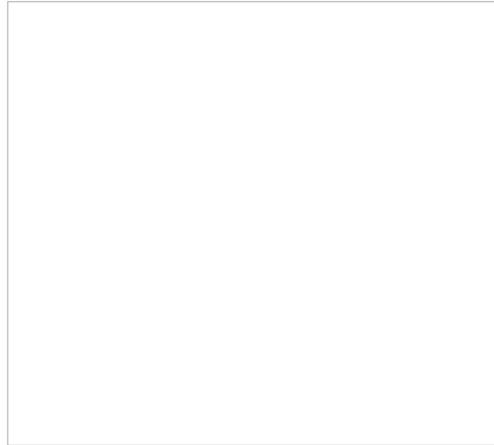
(The editorial is based on the article “A Crippling Shortage” which appears in The Hindu for 17th November 2018. It analyses the issues related to vacancies in subordinate courts.)

**According to recent data, there is a backlog of nearly 3.3 crore cases of which almost 2.84 crore cases belong in the subordinate courts.**

**Lack of human resource in judiciary attributes to the pendency of cases.** The Supreme Court had taken suo motu cognisance of more than 5,000 vacancies for subordinate judicial posts even as pendency touched crores.

The Supreme Court on 15th November pulled up various State governments and the administrative side of the High Courts for the delay in filling vacancies in subordinate judicial services.

A study released last year, by the [Vidhi Centre for Legal Policy](#) revealed that the recruitment cycle in most States far exceeded the time limit prescribed by the Supreme Court. This time limit is 153 days for a two-tier recruitment process and 273 days for a three-tier process. Most States took longer to appoint junior civil judges as well as district judges by direct recruitment.



### Facts & Figures

- In a five-page order earlier, the Supreme Court had recorded that there were a total of 22,036 posts in the district and subordinate judiciary, ranging from district judges to junior civil judges, across the States. It said 5,133 out of the 22,036 posts were vacant.
- **In the subordinate courts, vacancies have increased from 19% to 26% between 2006 and 2017.**
- As of 2017, subordinate courts have a vacancy of 26% (5,746) against a sanctioned strength of 22,474 judges.
- **The highest share of vacancies in the subordinate courts (where sanctioned strength is over 100 judges) is in Bihar where there is a vacancy of 46% (835 vacancies), followed by UP at 42% (1281 vacancies).**
- **The lowest vacancies are in West Bengal where there is a vacancy of 4% (40 vacancies), followed by Andhra Pradesh of 7% (66 vacancies).**

### Recruitment Procedure

- According to the Constitution, district judges are appointed by the Governor in consultation with the High Court.
- Other subordinate judicial officers are appointed as per rules framed by the Governor in consultation with the High Court and the State Public Service Commission.

### Structure of the Lower Judiciary

- The lower judiciary broadly comprises three cadres of judges. These include :
  - District Judge
  - Senior Civil Judge
  - Civil Judge (Junior Division)
- **These posts jointly include judges having civil as well as criminal jurisdiction even though they are termed Civil Judge (Senior Division)' and 'Civil Judges (Junior Division)'**.
- **The exact designation of posts under each of these cadres differs from state to state in their hierarchy and nomenclature.**
- At the district level, the District Court lies at the apex and is the appellate court for all civil and criminal matters. It also plays a supervisory role over other courts, such as those headed by Civil Judges (Senior Division) and Civil Judges (Junior Division).



### Reasons for Vacancies

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- Systemic defects in the appointment process most certainly contribute to vacancies in the lower judiciary. For example, **exams are not conducted frequently enough to fill vacancies as they arise and even when they are, High Courts are often unable to find enough meritorious candidates to fill the vacancies advertised.**
- **A sheer lethargic approach for conducting the appointment process on time is another reason for increasing vacancies.**
- Being late in the process of calling for applications, holding recruitment examinations and declaring the results, and, more significantly, finding the funds to pay and accommodate the newly appointed judges and magistrates is also one of the reasons.
- Unclear recruitment procedures, and difficulties in coordination between the High Court and State Public Service Commission, also frequently give rise to disputes and litigations surrounding recruitment, further stalling the process of recruitment.
- Little quantitative and qualitative data on the appointment process exists, and thus no impactful reform has emerged in the area.
- Moreover, it is found that the source of the problem often lay in poor infrastructure, from courtrooms to residences for judges.

### Issues Arising from Vacancies

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- **Increase in the pendency of cases** for long periods over the years results in an increase in the number of undertrials in prisons (accused prisoners awaiting trial). As of 2015, there were over four lakh prisoners in jails. Of these, two-thirds were undertrials (2.8 lakh) and the remaining one-third were convicted.
- Any failure to allocate the required human and financial resources leads to the **crippling of judicial work in the subordinate courts**. It also amounts to letting down poor litigants and undertrials, who stand to suffer the most due to judicial delay.
- Vacancies mean **more work for a district's remaining judges**. This forces judges to take up heavy workloads in an effort to compensate for the vacancy which reduces the efficiency of judges.
- Heavier caseloads due to vacancies meant they spent less time considering individual cases **raises troubling concerns about the quality of justice dispensed**.
- A **delay in resolving motions and hearing trials which lead to the pendency of cases** piling up is the most common impact of vacancies in the posts judges and court administrators.

## Way Forward

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- Public Service Commissions should recruit the necessary staff to assist these judges, while State governments should build courts or provide working space for them. The recruitment of judges to fill vacancies should also begin earnestly.
- A smooth and time-bound process of making appointments require a close coordination between the High Courts and the State Public Service Commissions. This coordination should be facilitated by the respective State Governments and High Courts as best as possible.
- Subordinate courts perform the most critical judicial functions that affect the life of the common man: conducting trials, settling civil disputes, and implementing the bare bones of the law. This is a very important area for justice and it, therefore, demands a massive infusion of both manpower and resources that should not be denied at all costs.

