

CHAPTER IV HOME AND VIGILANCE DEPARTMENT

Implementation of Government initiatives in Judicial system

Highlights

A Performance Audit of the Implementation of Government initiatives in Judicial system in Kerala was conducted focussing mainly on the award of Thirteenth Finance Commission (ThFC) Grant to Kerala. The Performance Audit revealed under-utilisation of ThFC grant, foregoing of eligible share from Government of India, etc.

Evening Courts could not be set up as planned and establishment of Special Judicial First Class Magistrate Courts was delayed.

(Paragraph 4.6.2.1)

Failure on the part of Government of Kerala to issue orders to include direct recruitment also as one of the modes of appointment of Court Managers resulted in delay in their appointment and restricted their services to the period 2014-15 to 2016-17.

(Paragraph 4.6.2.2)

Failure to set up adequate Alternate Dispute Resolution Centres had resulted in poor utilisation of funds leading to lapse of ThFC grant to the extent of ₹13.31 crore.

(Paragraph 4.6.2.6)

Clearance of cases filed in the Lok Adalats was lower than the target set by the ThFC.

(Paragraph 4.6.2.7)

The request of the High Level Monitoring Committee to expand the base of beneficiaries among the marginalised sections by suitably enhancing the income limit for availing legal aid was not complied with by Kerala State Legal Services Authority.

(Paragraph 4.6.2.8)

The State did not avail GOI assistance of ₹134.91 crore under the Centrally Sponsored Scheme for Development of Infrastructure facilities for Judiciary.

(Paragraph 4.6.3.3)

4.1 Introduction

The Justice Delivery Mechanism in the country comprises different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. They form a hierarchy with the Supreme Court of India at the top, followed by High Courts of respective States, District/Chief Judicial Magistrate Courts, Subordinate Courts and Munsiff/Judicial First Class Magistrate Courts at the bottom. There were 1.67 lakh court cases pending in

the High Court and 14.83 lakh pending in the Subordinate Courts as on 31 December 2016 in Kerala.

To improve the Justice Delivery Mechanism, the Thirteenth Finance Commission (ThFC) allocated ₹140.05 crore (2010-11 to 2014-15) on nine initiatives as mentioned below:

1. Operation of Morning/Evening Courts.
2. Establishment of Alternate Dispute Resolution Centres and training of mediators/conciliators.
3. Enhancing support to Lok Adalats
4. Legal Aid to the marginalised people
5. Training of Judicial Officers
6. Setting up of State Judicial Academy
7. Training of Public Prosecutors
8. Creation of posts of Court Managers
9. Maintenance of Heritage court buildings.

Government of India (GOI) additionally released ₹26.68 crore for development of infrastructure facilities and ₹6.41 crore under the e-Courts project to provide designated services to litigants, lawyers and the judiciary by computerisation of district and subordinate courts. Initiatives such as providing free legal aid to the poor, weak and marginalised sections of the society, conducting Lok Adalats, etc., were implemented by Kerala State Legal Services Authority (KELSA).

4.2 Organisational set up

The Registrar General is the Chief Administrative Officer of the High Court. He occupies in the office of the High Court, a position analogous to that of Chief Secretary to Government in the State. The Law Department oversees the activities of the KELSA. The Director General of Prosecution (DGP), who reports to the Home Department, streamlines the conduct of prosecution work before the Magistrate Courts for and on behalf of the State and monitors the performance of the prosecution working in various Magistrate Courts. Besides, there are 89 District/Additional District Courts, 18 Chief Judicial Magistrate Courts, 98 Munsiff Courts, 155 Judicial/Special Judicial First Class Magistrate Courts and 118 Special Courts⁴⁴ whose judicial and administrative activities are monitored by the High Court.

4.3 Audit Objectives

The Performance Audit was conducted to see whether:

- the initiatives funded by ThFC/GOI/GOK were undertaken and implemented effectively;

⁴⁴ Special Courts include Family Courts, Motor Accident Claims Tribunal (MACT), Sub Courts, Special Courts for SC/ST, Honorary Special Magistrate of Second Class Courts, Evening/Morning/Temporary/Special Courts, etc.

- the grants received from ThFC/GOI/GOK were fully utilised to improve judicial infrastructure; and
- adequate infrastructure and manpower was made available to facilitate delivery of Justice.

4.4 Audit Criteria

The audit findings were benchmarked against the criteria derived from the following:

- Guidelines laid down by the ThFC as well as by GOI and GOK including Perspective/Yearly Action plan of implementing agencies
- Norms laid down by the Supreme Court of India and the National Legal Services Authority
- GOK Orders, Circulars and proceedings of various Committees to review the progress of utilisation of the ThFC/GOI/GOK funds

4.5 Scope and methodology of Audit

We conducted Performance Audit of the “Implementation of Government initiatives in Judicial system” in Kerala covering the period from 2010-11 to 2015-16 from May to August 2016 focussing mainly on the award of ThFC to Kerala for ‘Improving Justice Delivery’. Besides, we assessed the effectiveness of utilisation of grants received from Government of India (GOI) for setting up of e-Courts and grants received from GOI/Government of Kerala (GOK) on development of Infrastructural facilities for the judiciary as these supplemented the objectives of the ThFC allocation.

Four out of 14 districts in the State were selected for audit. While Ernakulam district was selected directly since the High Court and Headquarters of other implementing agencies like the KELSA and DGP were situated there, the districts of Thiruvananthapuram, Thrissur and Malappuram were selected by using Probability Proportionate to Size Without Replacement sampling method with number of pending cases (**Appendix 4.1**) in the district as on 31 March 2016⁴⁵ as the criteria.

Relevant records in the offices of the Registrar General of the High Court, KELSA, District Legal Services Authority (DLSA), DGP and lower courts in the test checked districts were scrutinised during audit. Audit methodology included gathering of evidence by scrutiny of files/records, issue of Audit Enquiries/Questionnaires, physical verification to test check the accuracy of replies to questionnaires, etc. An Entry Conference was held on 20 May 2016 with the Additional Chief Secretary (Home and Vigilance Department), Registrar General of High Court and other officers from the Home and Law Departments. An Exit Conference was held on 14 December 2016 with the Additional Chief Secretary (Home and Vigilance Department), Registrar General of High Court and other officers from the Home and Law Departments, during which the audit findings were discussed in detail and responses were also recorded.

⁴⁵ Details of pending cases obtained from the National Judicial Data Grid

4.6 Audit findings

Financial assistance of ₹140.05 crore allocated to the State by the ThFC for the period 2010-11 to 2014-15 was spread over three Offices viz. Office of the Registrar General of High Court, KELSA and DGP.

The component wise release and utilisation of the ThFC assistance is given in the table below. Details of other assistance obtained from GOI/GOK which supplemented the grant received from the ThFC are exhibited in relevant paragraphs.

Table 4.1: Component wise release/utilisation of ThFC grant during 2010-11 to 2015-16

(₹ in crore)					
Sl. No.	Name of Component	Implementing Agency	ThFC allocation	GOI Release	Utilisation
1.	Morning/Evening Courts	High Court	67.42	20.23	12.95
2.	Training to Judicial Officers		6.74	2.69	6.24*
3.	State Judicial Academy		15.00	4.50	14.55*
4.	Court Managers		7.61	2.28	3.60*
5.	Heritage Court Buildings		12.13	3.64	2.94
6.	Alternate Dispute Resolution Centres	KELSA	19.02	5.71	7.21*
7.	Lok Adalat		1.80	0.81	1.98*
8.	Legal Aid		6.29	1.62	1.65*
9.	Training to Public Prosecutors	DGP	4.04	1.61	3.73*
TOTAL			140.05	43.09	54.85

* Excess fund utilised was met by GOK from its own funds

(Source: ThFC recommendation, GOI Release orders and Utilisation Certificates)

4.6.1 GOK could not avail ThFC assistance of ₹96.96 crore

As seen from the table, GOK availed only ₹43.09 crore against an allocation of ₹140.05 crore by the ThFC on improvement in Justice Delivery Mechanism. The ThFC guidelines envisaged the release of ₹140.05 crore allocated to GOK, in five equal instalments in two tranches every year during 2010-11 to 2014-15. The first instalment (2010-11) of ₹28.01 crore was fully released by GOI. In order to obtain the second instalment, ThFC guidelines required that, the State should formulate State Litigation Policy (SLP)⁴⁶ and utilise 50 per cent of the first instalment. The SLP, which was to be formulated by March 2011, was formulated only in December 2011. Due to the delay of nine months in formulation of SLP and failure to utilise 50 per cent of the first instalment, first tranche of the second instalment amounting to ₹14.01 crore receivable in June 2011 was released in January 2012. We noticed that, out of the second tranche of ₹14 crore due for 2011-12, the State received only ₹1.07 crore belatedly in 2013-14 for two components viz. Training of Judicial Officers and Training of Public Prosecutors. Since the desired level of utilisation of the grants already released could not be achieved in time by the implementing agencies, GOI did not release further instalments. The State had to forego ThFC assistance of ₹96.96 crore as shown below.

⁴⁶ The State Litigation Policy was intended to ensure the conduct of responsible litigation with a view to reduce Government litigation in courts, reduce average pendency time from 15 years to three years and to manage and conduct litigation in a cohesive, coordinated and time bound manner and ensure that good cases are won and bad cases are not needlessly persevered with.

Table 4.2: ThFC - Allocation, Release and Utilisation

(₹ in crore)

Year	GOI Allocation	GOI release	Utilisation	Progressive Utilisation	Non-released amount
2010-11	28.01	28.01	0.00	0.00	0.00
2011-12	28.01	14.01	2.11	2.11	14.00
2012-13	28.01	0.00	6.32	8.43	28.01
2013-14	28.01	1.07	13.81	22.24	26.94
2014-15	28.01	0.00	16.35	38.59	28.01
2015-16	0.00	0.00	16.26	54.85	0.00
TOTAL	140.05	43.09	54.85		96.96

(Source: Data from ThFC recommendations, GOI release order and implementing agencies)

- GOK could not avail ThFC assistance of ₹96.96 crore against the allocation of ₹140.05 crore.
- At the close of the ThFC period (March 2015), the utilisation was only ₹38.59 crore against ₹43.09 crore received.
- Utilisation in the extended period of 2015-16 was ₹16.26 crore including the unspent balance of ₹4.50 crore of ThFC release.
- GOK additionally spent ₹11.76 crore from its own funds, which GOI confirmed (July 2015) as not eligible for reimbursement as the ThFC award period had expired (March 2015).

We observed that, a High Level Monitoring Committee (HLMC) comprising the Secretaries of Finance, Home, Law, Public Works Department (PWD), DGP, Registrar General of High Court, Member Secretary of the State Legal Services Authority and the Director of the State Judicial Academy was tasked with regular monitoring of the progress made in implementation of Perspective and Annual Plan. Though HLMC pointed out (February, July and September 2012) the slow pace of utilisation of funds and directed to accelerate the pace of utilisation, the same was not adhered to by the implementing agencies. Consequently, GOK could not avail ThFC grant of ₹96.96 crore.

4.6.2 Implementation of Thirteenth Finance Commission initiatives

The audit observations on the quality of expenditure incurred on the various initiatives of the ThFC award *vis-à-vis* the objectives are given in the following paragraphs.

4.6.2.1 Operation of Morning/Evening/Special Courts

The ThFC provided for setting up Morning/Evening/Shift/Weekend/Mobile/Special Magistrate Courts in order to clear the backlog of petty cases and to relieve pressure on Judicial system. This was envisaged as a temporary measure to be implemented with a clear target for disposal of cases. These courts were to utilise the services of regular judicial officers on payment of additional compensation or retired officers. The High Court of Kerala had also framed the “Evening Courts (Kerala) Rules, 2011” for the constitution and regulation of functioning of the Evening Courts in the State. Against an

allocation of ₹67.42 crore by the ThFC for operation of Morning/Evening Courts during 2010-11 to 2015-16, GOK could avail only ₹20.23 crore, out of which only ₹12.95 crore was utilised.

As per the revised Perspective Plan 2010-11 to 2014-15 and Annual Action Plan of the High Court 2010-11 and 2011-12, 116 Evening Courts were targeted to be set up in the State to dispose of 12,93,600⁴⁷ cases during the ThFC award period. GOK initially sanctioned (February 2010) five⁴⁸ out of 74 proposed Evening Courts which functioned during 2011-12 to 2015-16. Even though it accorded sanction (February 2012) for the creation of the remaining 69 courts, these were not made functional since the High Court considered that the Evening Courts were not successful in the State. Consequent on GOI permitting State Governments (January 2012) to set up Temporary/Special Courts with the funds earmarked for setting up of Evening Courts with the objective of clearing the backlog of cases, the HLMC recommended to GOK (September 2012) to accord sanction for the establishment of 27⁴⁹ Special Judicial First Class Magistrate (JFCM) courts for three years subject to the condition that all appointments were temporary and building for the purpose should be taken on temporary basis. Accordingly, GOK accorded (November 2012) Administrative Sanction (AS) for establishment of 27 Special JFCM Courts in the State on temporary basis utilising the funds under the component 'Evening Court'. However, the 27 Special JFCM Courts started functioning only during the last months of the ThFC award period (June 2014 to March 2015).

On seeking the reasons for the delay in setting up the Special JFCM Courts, the High Court stated (May 2016) that, GOK accorded AS (November 2012) for establishing 27 Special JFCM Courts in the State without specifying the locations of the courts or the staff pattern required. It was not possible to commence the courts on the basis of a Government Order alone till the locations and staff pattern for the courts were specifically sanctioned by the Government. Based on the locations specified by the High Court (July 2013) along with the necessary staff pattern, GOK accorded sanction for establishing 27 Special JFCM Courts in May 2014 only.

The inability of GOK to utilise the grants already released by GOI resulted in the State foregoing ThFC assistance of ₹47.19 crore during 2010-11 to 2014-15.

GOK stated (September 2016) that, the delay caused was not wilful and was due to administrative issues. The reply was not tenable as better coordination would have enabled early setting up of these Courts facilitating more disposal of cases.

Recommendation 1: GOK and High Court may consider setting up Evening Courts to the extent possible for disposal of petty cases.

⁴⁷ As per the Perspective Plan of the High Court each Evening Court was to dispose of 280 cases in a month and 3360 cases annually. Thus, the total cases to be disposed of was calculated as 12,93,600.

⁴⁸ Thiruvananthapuram, Kollam, Ernakulam, Thrissur and Kozhikode

⁴⁹ Ernakulam (16), Kollam (5), Kozhikode (1), Thiruvananthapuram (4) and Thrissur (1)

4.6.2.2 Creation of post of Court Managers

The ThFC provided for appointment of Court Managers (CM) to assist judges for performing their administrative duties which would allow them more time for their judicial functions. The State was also allocated ₹7.61 crore for appointment of a professionally qualified CM in each judicial district and two for the High Court. Against the allocation, GOK received ₹2.28 crore during 2010-11 to 2011-12. GOK sanctioned (November 2011) 16 posts of CMs (one in each of the 14 judicial districts and two in the High Court), subject to the condition that the posts would be filled by deployment from Government offices or on deputation. This was contrary to clarification issued by GOI (March 2011) that the courts, besides resorting to direct recruitment could also fill up posts of CMs through deputation from employees of Government/PSUs/Government and semi-Government Autonomous Bodies/Government Law Universities and Government Colleges. Thus, GOK excluded direct recruitment as a mode of appointment to these posts.

Consequent on its inability to make appointments to the posts of CMs on deputation basis, the High Court requested (June 2012) GOK to issue revised orders providing for their appointment through direct recruitment also. GOK then issued fresh order (March 2013) incorporating ‘direct recruitment’ as the mode of appointment of CMs if suitable candidates were not available through deployment/deputation.

Thus, posts of CMs were filled up through direct recruitment only in August 2014 though these posts were sanctioned by GOK as early as in 2011. Out of the 16 posts sanctioned, only 11 persons joined duty (August 2014) (nine in Judicial districts⁵⁰ and two in High Court). Though the ThFC award period had expired (March 2015), GOK accorded sanction (January 2015) for the continuance of CM for a further period of one year limiting the expenditure to the already released ThFC amount. GOK further extended (March 2016) the tenure of CMs till March 2017.

We observed that, failure on the part of GOK to issue orders to consider direct recruitment also as one of the modes of appointment of CMs resulted in delay in their appointment and restricted their services to the period 2014-15 to 2016-17. The delay in appointment of CMs also resulted in GOK foregoing ThFC assistance of ₹5.33 crore.

Recommendation 2: GOK may consider appointment of Court Managers on permanent basis in all Judicial districts and High Court to assist Judges to effectively perform their administrative duties.

4.6.2.3 Conservation of Heritage Court Buildings

The ThFC earmarked ₹12.13 crore to GOK for the restoration and conservation of Heritage Court Buildings in the State. Ten pre-independence buildings identified by the High Court were approved (May 2011) by the HLMC for conservation and maintenance under the scheme. While the Directorate of Archaeology was engaged for the restoration and maintenance

⁵⁰ Ernakulam, Kollam, Kottayam, Kozhikode, Manjeri (Malappuram), Palakkad, Pathanamthitta, Thiruvananthapuram and Thrissur

work of four court buildings (March 2012⁵¹ and September 2013⁵²) at an estimated cost of ₹5.89 crore, the HLMC decided (July 2013) to entrust six⁵³ works to M/s. Hindustan Prefab Ltd., a GOI enterprise, under the guidance of the Directorate of Archaeology. This was done since Directorate of Archaeology intimated GOK (July 2013) that they could carry out the conservation work of four court buildings only, due to the large number of protected monuments under their care, combined with the limited number of technical staff in the structural conservation wing. Even though HLMC decided to entrust the remaining six works to M/s. Hindustan Prefab Ltd. in July 2013, GOK accorded AS only in September 2014 after obtaining proposals from the High Court in May 2014. Consequent to the request of the HLMC (December 2014) not to take up any work which could not be completed within the ThFC period 2010-11 to 2014-15, the High Court deferred (January 2015) the six works proposed to be entrusted to M/s. Hindustan Prefab Ltd.

All the four conservation works entrusted to Directorate of Archaeology were under various stages of implementation (December 2016). On seeking reasons from the Directorate of Archaeology about the slow progress in completion of work, we were informed (May 2016) that, the court buildings were never handed over to them completely for executing the work and instead they were allowed to work for stipulated time only. It was further observed that, GOI did not release ₹8.49 crore to GOK out of ₹12.13 crore earmarked for the scheme, due to delay in execution of work and delayed submission of UC. The advance of ₹2.94 crore (50 per cent of the AS amount) released to the Directorate of Archaeology for taking up the work on four court buildings was fully utilised and the Directorate of Archaeology submitted a claim (March 2016) for release of the balance estimated amount of ₹2.50 crore. As the period of the ThFC has already expired in March 2015, the possibility of obtaining further GOI assistance to meet the remaining 50 per cent of the payment (₹2.50 crore) due to the Directorate of Archaeology was remote.

Thus, even after lapse of more than four years from taking up the work, the renovation work of four court buildings was yet to be completed and the work on remaining six court buildings was not taken up, which resulted in lapse of ThFC assistance of ₹8.49 crore.

4.6.2.4 Training of Judicial Officers

The ThFC identified capacity building as a critical need and recognised that induction training as well as in-service training of judicial officers needed to be accelerated. We observed that, during 2010-11 to 2015-16, 93 training programmes were conducted in the State to train 3610 judicial officers at an expenditure of ₹6.24 crore. This included induction training offered to all the 186 Munsiff Magistrates appointed during the period 2010-11 to 2015-16 apart from training 17 newly appointed District Judges.

⁵¹ Ram Mohan Palace, Ernakulam

⁵² District Courts at Thiruvananthapuram and Alappuzha and the Chief Judicial Magistrate Court at Alappuzha

⁵³ District Court Ernakulam, Additional District Court North Paravur, Chief Judicial Magistrate Court Manjeri, Chief Judicial Magistrate Court Kozhikode, Additional District Court Thalassery and Chief Judicial Magistrate Court Thalassery

Table 4.3: Training of Judicial Officers - Allocation, Receipt and Utilisation
(₹ in crore)

Year	ThFC Allocation	GOI Receipt	Utilisation
2010-11	1.348	1.35	0.00
2011-12	1.348	0.67	1.16
2012-13	1.348	0.00	0.77
2013-14	1.348	0.67*	0.99
2014-15	1.348	0.00	1.81
2015-16	0.000	0.00	1.51
TOTAL	6.740	2.69	6.24

* Second tranche of 2011-12 received in 2013-14

(Source: ThFC recommendation, GOI release order and UCs)

We observed that, GOK failed to obtain the third and subsequent instalments of ₹1.35 crore each, due for the period from 2012-13 to 2014-15 from GOI despite the expenditure exceeding the stipulated 100 per cent of the first instalment of 2010-11 and 60 per cent of the second instalment of 2011-12. It was also seen that, GOK additionally spent ₹3.55 crore on the component from its own funds during 2011-12 to 2015-16 which would not be reimbursable by GOI, as the ThFC award period had lapsed.

4.6.2.5 Setting up of State Judicial Academy

The State Judicial Academy is the principal training institution in the State which offers training to Judges. Based on the allocation of the ThFC, GOK provided ₹15 crore during 2010-11 to 2014-15 for the construction of a building to establish the State Judicial Academy.

Land for the construction of the State Judicial Academy was handed over by GOK to the Director of the State Judicial Academy in September 2011. GOK accorded Administrative Sanction (March 2012) for the construction of the building and the work was awarded to M/s. Hindustan Prefab Ltd. at a total cost of ₹15 crore for completion by July 2014.

We noticed that, the ThFC had released only ₹4.50 crore during 2010-11 to 2011-12 with no further release of funds during 2012-13 to 2014-15. It was observed that, expenditure was incurred on the component from 2012-13 onwards. GOK was required to spend at least ₹3.90 crore out of the total GOI release of ₹4.50 crore to become eligible for second tranche of second instalment for the year 2011-12. We noticed that, despite GOK spending ₹6.93 crore (March 2014) and becoming eligible to obtain the grant, it failed to receive further instalments of grant from GOI. It was seen that, apart from seeking GOI assistance while forwarding UC for the period April 2013 to September 2014 (November 2014) and for the period April 2014 to March 2015 (March 2015), it was only in June 2015 that GOK requested for release of further grant from GOI. The request of GOK was turned down by GOI citing that the UC for the year 2014-2015 was belatedly submitted on 31 March 2015 and the ThFC award period had lapsed by then. As of March 2016, the expenditure was ₹14.55 crore. Due to belated submission of claims by GOK, the expenditure of ₹10.05 crore incurred against the allocation of ₹15 crore could not be got reimbursed from GOI.

We further observed that, even though the newly completed building was inaugurated in January 2016 and taken over by the Kerala Judicial Academy as per the directions of the High Court in June 2016, failure to obtain sufficient staff and adequate infrastructure resulted in the building remaining idle (September 2016).

The Kerala Judicial Academy stated (August 2016) that, shifting of the campus to the new building would be done on getting sufficient staff and required infrastructure like furniture, data servers, smart classrooms, digital library, etc., and after obtaining orders from the Hon'ble High Court of Kerala. It was also informed that, request for providing staff was pending with the Government.

4.6.2.6 Establishment of Alternate Dispute Resolution Centres and training of Mediators/Conciliators

In order to reduce the pressure on the court system, ThFC allocated ₹19.02 crore for establishing Alternate Dispute Resolution (ADR) Centres and training of mediators/conciliators in the State. The responsibility for setting up of ADR Centres and training of mediators was assigned (March 2011) to KELSA by the GOI. Administrative Sanction was accorded (March 2011) by GOK for the establishment of ADR Centres during 2010-11 to 2014-15 at a cost of ₹19.02 crore. Against the ThFC release (2010-11 to 2014-15) of ₹5.71 crore, the expenditure on construction of buildings for ADR Centres and training to mediators during the period 2010-11 to 2015-16 was ₹7.21 crore⁵⁴.

Even though KELSA decided to set up 17⁵⁵ ADR Centres in the State, only seven⁵⁶ ADR Centres were taken up for construction of which, six were completed and one at Kottayam was progressing (May 2016).

The Law Secretary, GOK cited (December 2016) reasons such as non-availability of land, identified land not getting transferred from Government, abnormally high estimate amount and delayed receipt of sanction from Archaeological Survey of India, for not taking up the work on remaining 10 ADR Centres. In the test checked districts, while one ADR Centre each was set up in Thiruvananthapuram, Ernakulam and Thrissur, there was no ADR Centre in Malappuram district.

Thus the failure to set up ADR Centres led to foregoing ThFC grant of ₹13.31 crore (March 2015) besides failing in attaining the objective of reducing the pressure on the court system.

Recommendation 3: GOK/High Court may set up adequate number of ADR Centres to reduce pressure on court system.

⁵⁴ ₹6.48 crore on setting up of ADR Centres and ₹0.73 crore on training of mediators

⁵⁵ One ADR in each district (14), one additional ADR Centre each in Mavelikkara, North Paravur and KELSA Headquarters at Ernakulam

⁵⁶ Thiruvananthapuram, Ernakulam, Alappuzha, Kannur, Mavelikkara, Thrissur and Kottayam

4.6.2.7 Performance of Lok Adalats

The disposal of legal disputes at pre-litigative stage by the Lok Adalats⁵⁷ provides expense-free justice to the citizens of the country. It also saves courts from additional and avoidable burden of petty cases, enabling them to devote their court-time to more contentious and old cases. As per the Perspective Action Plan of KELSA for the implementation of ThFC recommendations, 62 court centres in Kerala were to conduct 310 Lok Adalats per year (five Adalats in each court centre per year). These Lok Adalats were to dispose of an average of at least 62000 cases every year at the rate of 200 cases⁵⁸ per Adalat, per year. Thus, during the period 2010-11 to 2014-15, 1550 Lok Adalats were to be held in the State to dispose 3.10 lakh cases. Besides, the Perspective Plan also provided for conduct of 10 Mega Adalats⁵⁹ per year at the High Court level. An amount of ₹0.81 crore was released by GOI for Lok Adalat, against which GOK budget provision of ₹1.98 crore was fully utilised by the implementing agency.

Year wise details of Mega Adalats/Lok Adalats held in the State utilising the ThFC grant during the years 2010-11 to 2015-16 are given in **Table 4.4**.

Table 4.4: Details of cases disposed through Mega/Lok Adalats

Year	Target set by KELSA for conducting Mega/Lok Adalats	Actual no. of Mega/Lok Adalats held	Target set for disposal of cases (derived from ThFC recommendation)	Target set by KELSA for disposal of cases	Actual no. of cases referred	Actual no. of cases disposed	Percentage of disposal with respect to cases referred	Amount incurred (₹ in lakh)
2010-11	320*	Nil	62000	36000*	Nil	Nil	Nil	Nil
2011-12	640	2324	62000	72000	74292	16856	22.69	24.87
2012-13	320	2769	62000	36000	91253	19450	21.31	37.00
2013-14	320	3554	62000	36000	148507	63150	42.52	58.89
2014-15	630	3188	62000	49500	358620	150097	41.85	66.39
2015-16	630	350	0	49500	41653	14561	34.96	10.53
TOTAL	2540	12185	310000	243000	714325	264114	36.97	197.68

* Not included in total figure as figures of 2011-12 include unachieved target of 2010-11 (Source: Data obtained from KELSA)

We observed that, against the target set by ThFC for disposal of 3.10 lakh cases by 1550 Lok Adalats, KELSA conducted 12185 Lok Adalats which could dispose only 2.64 lakh cases against 7.14 lakh cases referred. The performance of these Lok Adalats was not satisfactory when seen against the fact that the percentage of disposal of cases referred to it was only 36.97 per cent as shown in the table. Thus, each Lok Adalat could dispose of an average of only 22 cases⁶⁰ against the target of 200 cases recommended by the ThFC.

GOK confirmed (December 2016) that, 264114 cases were successfully settled against the target of 243000 cases set by KELSA. The reply was not tenable in

⁵⁷ Lok Adalat is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/compromised amicably. It is one of the Alternative Dispute Resolution mechanisms and has been given statutory status under the Legal Services Authorities Act, 1987.

⁵⁸ The ThFC provided ₹100 crore for conducting Lok Adalats targeting an annual disposal of 15 lakh cases in India during 2010-15. This allocation was for 1500 court locations all over India with five Adalats in each location per year. Thus, we calculated the number of cases to be disposed of per Lok Adalat as 200 cases per year. (i.e. 15 lakh cases / 1500 Court locations / 5 Adalats per Court Location per year = 200 cases per Adalat per year)

⁵⁹ In Mega Adalat large number of cases in different categories are settled/compromised amicably by constituting more number of Adalat benches when compared to ordinary Lok Adalat.

⁶⁰ Actual cases disposed/Adalats conducted i.e. 264114 / 12185 = 21.67 rounded to 22 cases per Adalat

view of the fact that, against the target of 200 cases set for disposal in each Lok Adalat by the ThFC, the target set by KELSA worked out to an average of only 96 cases per Lok Adalat. Even against the lower target of 96 cases set by KELSA, each Lok Adalat, on an average disposed only 22 cases. GOK also stated that, the lower target was fixed considering the manpower available in the District Legal Services Authorities and Taluk Legal Services Centres. Thus, the action plan set forth by KELSA was not designed to achieve the ThFC target of clearing 3.10 lakh cases.

4.6.2.8 Legal Aid to weaker sections

Parliament enacted the Legal Services Authorities Act, 1987 to enable establishment of Legal Services Authorities for providing free and competent legal services to weaker sections of the society to ensure that opportunities for securing justice were not denied to any citizen by reason of economic or other disabilities. The National Legal Services Authority and Kerala State Legal Services Authority have the responsibility to provide legal services to eligible persons. Provision of Legal Aid was an important measure provided under the ThFC to assist the marginalised sections to access the justice system and also to reduce the number of undertrials in prisons. During 2010-11 to 2015-16, KELSA was allocated with an amount of ₹6.29 crore by ThFC for this purpose. Legal assistance was provided to 59755 persons against the target of 25000 set by KELSA during 2011-12 to 2015-16, including 12521 undertrials in the State at an expenditure of ₹1.65 crore from the ThFC grant.

It was noticed that, the HLMC in its meeting (July 2012) requested KELSA to expand the base of beneficiaries⁶¹ by suitably enhancing the income limit for availing legal aid and directed to send proposal to Law Department to enhance the income ceiling for availing legal aid. We observed that, the request of the HLMC was not complied with by KELSA.

KELSA admitted (November 2016) that, no proposals were sent to the Law Department to enhance the income limit. It was also stated that, income limit was ₹25,000 for 11 years which was increased in two short intervals i.e. to ₹50,000 in 2009 and then Rupees one lakh in 2011 and that legal aid was given to more than the targeted people even with the current income limit. The reply (December 2016) of KELSA was not tenable in view of the fact that the HLMC had desired to expand the base of beneficiaries by suitably enhancing the income limit and it was not for KELSA to override the suggestion of the HLMC. GOK stated (December 2016) that, a proposal to expand the base of beneficiaries by suitably enhancing the income limit for availing legal aid will be placed in the next meeting of KELSA.

4.6.3 GOI grants other than ThFC grants

4.6.3.1 Setting up of Gram Nyayalayas

The Parliament enacted Gram Nyayalayas Act, 2008 to provide to the citizens access to justice at their doorsteps and to ensure that opportunities for securing justice were not denied to any citizen. It was envisaged that, a Judicial Officer

⁶¹ The income limit of Rupees one lakh fixed by KELSA determines the eligibility to obtain free legal aid.

not less than the rank of a First Class Judicial Magistrate would be appointed as the Judge, who would travel from place to place to provide speedy, affordable and substantial justice to the people of rural areas.

Administrative Sanction was accorded (March 2011) for the establishment of Gram Nyayalayas in 30 Blocks in the State with the required staff pattern. GOK, in exercise of the powers conferred under the Act, notified (April 2012) the Gram Nyayalayas (Kerala) Rules, 2012.

We noticed that, after five years of the sanction, only three⁶² out of 30 Gram Nyayalayas had been established as on 31 March 2016.

The High Court attributed (September 2016) the delay in establishing Gram Nyayalayas to inability to identify suitable accommodation for their functioning. However, High Court stated (December 2016) that, 29 of the 30 Gram Nyayalayas had since started functioning in the State.

4.6.3.2 Uploading of data in e-Courts portal and National Judicial Data Grid (NJDG)

As part of National e-Governance Plan (NeGP), e-Courts Project was implemented (July 2007) to provide speedy, qualitative and cost-effective justice by meaningful and effective use of Information and Communication Technology (ICT). The action plan of e-Courts project provided for creating a National Judicial Data Grid (NJDG) for warehousing all the critical data concerning the functioning of the Indian courts. It was envisaged that, web technology operating through intranet in a fully secured digital environment with authorised user facilities would facilitate user connectivity between courts, Judges and court staff. The Data Centre would be used for feeding the pendencies, filings, stages, disposals and nature and age of cases for devising policies pertinent for carrying out the delay reduction programs of the system.

It was observed that, 45 courts (9.3 per cent) out of the 484 courts (November 2016) in the State were not uploading any data into the e-Courts portal and NJDG due to absence of requisite hardware and software. Certain Magistrate Courts were not uploading pending case data on petty cases into e-Courts portal and NJDG, despite possessing e-Courts hardware, software and other requisite facilities. This had resulted in variation between e-Courts portal data and actual data available with the courts. The details of pending cases in courts in the four test checked districts *vis-à-vis* data available in NJDG are given below:

⁶² Parassala (Thiruvananthapuram), Chadayamangalam (Kollam) and Nedumkandam (Idukki)

Table 4.5: Details of pending cases in test checked districts against data available in NJDG

Name of District	Total number of courts	Number of pending cases as on 31.03.2016 as per NJDG [#]	Number of cases actually pending in courts as on 31.03.2016 [#]
Thiruvananthapuram	56	138573	220463
Ernakulam	72	65608	256809
Thrissur	36	85979	124364
Malappuram	26	53811	53651
TOTAL	190	343971	655287

[#] Excluding cases pending in Family Courts

(Source: Data obtained from NJDG, District Courts, CJM Courts and Motor Accident Claims Tribunal)

The above table indicates the difference in figures between NJDG data and actual pending figures in selected districts. In Thiruvananthapuram district, a variation of 81890 cases was noticed while in Ernakulam and Thrissur districts, the difference was 191201 and 38385 respectively. However, in Malappuram district, the data uploaded to the NJDG portal was 53811 against the actual 53651. The failure to populate the NJDG portal with accurate data and reconcile the same would adversely affect the planning process and the interests of the various stakeholders. While agreeing with audit observations, the GOK stated (January 2017) that, delay in entries/omission occurred with respect to data entry of petty cases and that deficiency of court staff in the Magistrate Courts affected the data entry of pending cases and caused replication of data on NJDG.

4.6.3.3 Loss of GOI assistance on Development of Infrastructure Facilities for the Judiciary

To address the inadequacy of infrastructure in Subordinate Courts which was identified as an obstacle for speedy delivery of justice, the Department of Justice has been implementing a Centrally Sponsored Scheme (CSS) for ‘Development of Infrastructure Facilities for the Judiciary’ since 1993-94 with Central/State funding pattern of 50:50. A modified CSS was introduced by GOI (July 2011), whereby it increased its share of assistance to 75:25 from 2011-12 onwards. During 2015-16, GOI reduced its share of funding to 60:40 between the Centre and the State.

Accordingly, construction of 35 court buildings and eight residential accommodations for judicial officers during 2011-12 to 2015-16 was proposed by GOK under this scheme at a projected cost of ₹215.45 crore (GOI - ₹161.59 crore, GOK - ₹53.86 crore).

As of March 2016, works to the tune of ₹88.24 crore were executed by GOK, for which it was eligible for reimbursement of ₹61.53 crore from GOI. We observed that the GOK was able to obtain only ₹26.68 crore from GOI, thereby foregoing the balance eligible amount of ₹34.85 crore.

We examined the reason for non-receipt of eligible balance fund from GOI. It was seen that, GOK had received ₹14.99 crore from GOI during the year 2012-13 but a defective UC was submitted (June 2014) to GOI stating that

₹10.08 crore was utilised and the balance was 'Nil'. GOI directed (August 2014) GOK to provide UC for the unspent balance of ₹4.91 crore. Despite GOK requesting (September 2014 and March 2015) PWD to furnish UC for the balance amount of ₹4.91 crore, the UC was submitted to GOK only on 21 March 2016 after a lapse of two years, which was forwarded to GOI on 31 March 2016, even though the amount was spent in 2013-14 itself. We observed that, the initial defective submission of the UC and delay in submission of rectified UC by PWD had resulted in non-reimbursement of ₹34.85 crore from GOI.

We further examined the physical status of works undertaken under the scheme. It was seen that, out of 35 court buildings and eight residential accommodations undertaken under this scheme, 21 court buildings remained incomplete (August 2016). In the test checked districts, out of 16 works undertaken, only four works were found to have been completed.

Thus, laxity of PWD/GOK in timely submission of UC resulted in non-reimbursement of ₹34.85 crore from GOI. Moreover, the opportunity of setting up infrastructure facilities for 21 courts was also lost, as only 14 courts were covered till now, which led to foregoing of GOI assistance of ₹134.91 crore⁶³.

Recommendation 4: Government should ensure timely utilisation of grant released and submission of UCs to GOI to avoid lapse of Finance Commission awards and other central assistance.

4.7 Conclusion

GOK could not avail ThFC assistance of ₹96.96 crore from the grants released by GOI due to delay in utilisation of funds, submission of UCs to GOI, setting up of Evening/Special JFCM Courts, non-completion of civil works, etc. Clearance of cases filed in the Lok Adalats was lower than the target recommended by the ThFC. The request of the High Level Monitoring Committee to expand the base of beneficiaries among the marginalised sections by suitably enhancing the income limit for availing legal aid was not implemented by KELSA. Laxity of GOK in timely submission of valid UCs for grants obtained from GOI on 'Development of Infrastructure Facilities for the Judiciary' had resulted in the State failing to obtain reimbursement of ₹34.85 crore from GOI, besides foregoing GOI assistance of ₹134.91 crore.

⁶³ ₹161.59 crore - ₹26.68 crore = ₹134.91 crore