

Strengthening Fiscal & Administrative Protocols in High Courts

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Structure of presentation

- Nature of judicial work
- Budget and finance
- Administration & process reforms
- International experience
- Way forward for India

Public economics view of judiciary

The nature of judicial work

- Lant Pritchett's classification of wicked public policy problems (Kelkar & Shah 2020)
 - Transaction intensity
 - Discretion
 - Stakes
 - Secrecy
- Examples
 - Tax administration
 - Financial regulation & supervision
 - Justice administration

Budget & finance

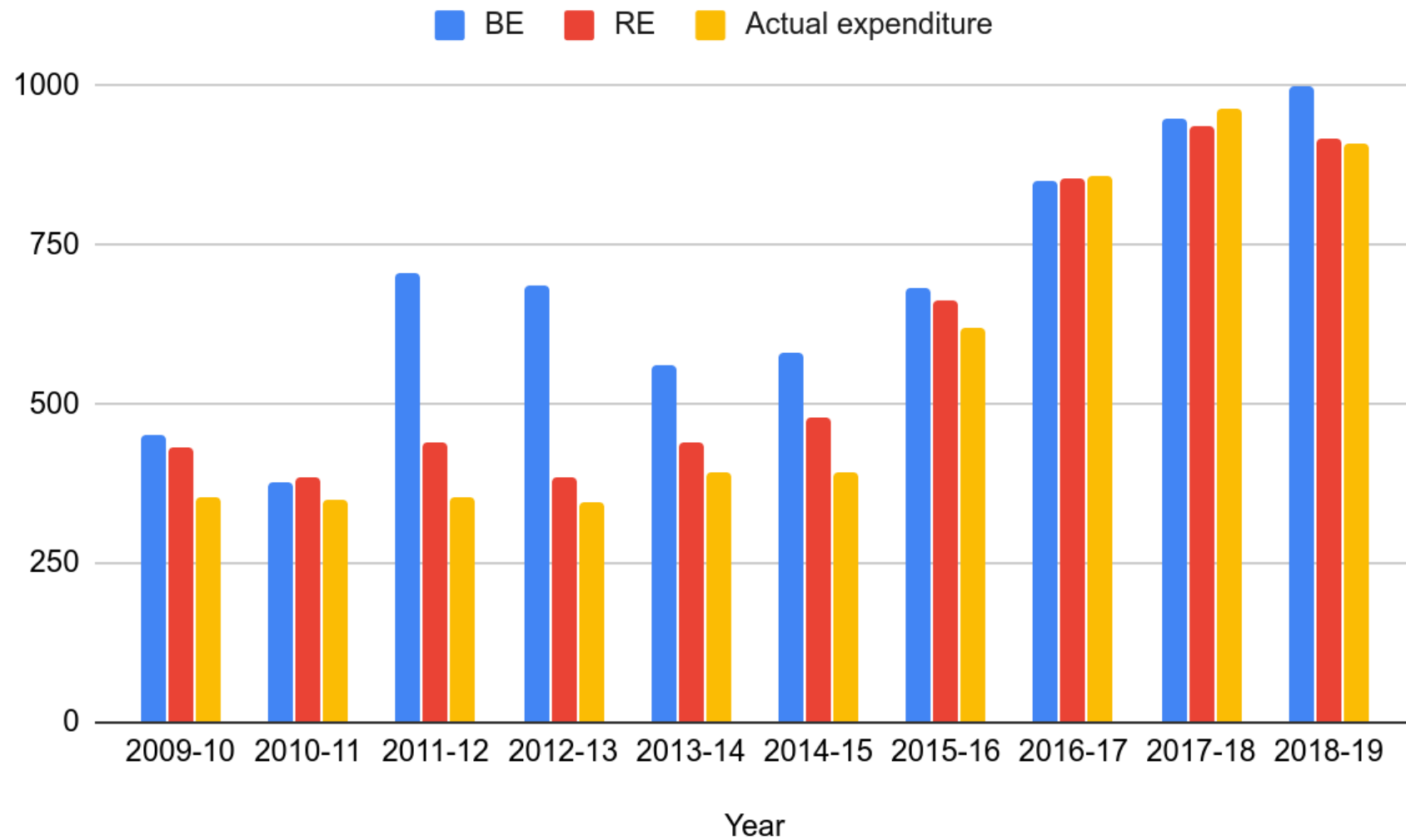
Financial independence of higher judiciary

- Article 112 (3) & Article 202 (3) create expenditure charged to CF
- Both contain clause on any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal
- Constitutional mechanism in place
- Share of charged expenditure in total expenditure on judiciary
 - States: 15-20 percent
 - Union: 20-25 percent
- States cover more than 90 % of expenses on administration of justice
- Courts have been intervening judicially in pay & pension issues of HC staff and judicial officers

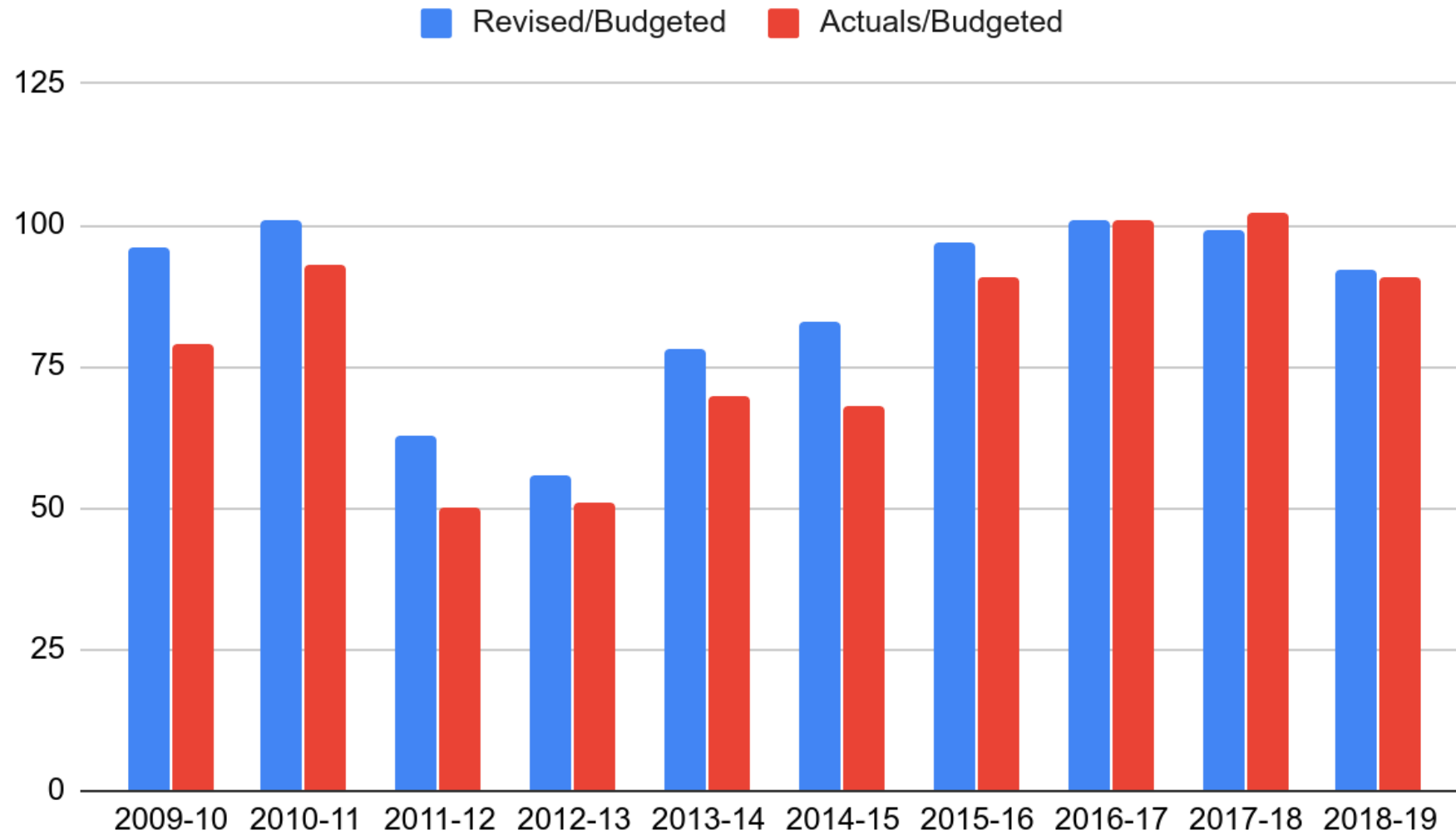
Expenditure on administration of justice

- India Justice Report 2019: studied 29 states/UTs
 - In 21 states/UTs, growth rate of expenditure on judiciary was lower than the growth rate of total expenditure
 - In 7 states/UTs, growth rate of expenditure on judiciary was higher than the growth rate of total expenditure
 - In 1 state, growth rate was the same
- Even though overall spending on judiciary is relatively low, most often even the budgeted allocations are not spent.
- Next few slides show trends in Budget Estimates (BE), Revised Estimates (RE) and 'Actuals' for the Union & some States
- Generally 'Actuals' lower than 'RE' which is lower than 'BE'

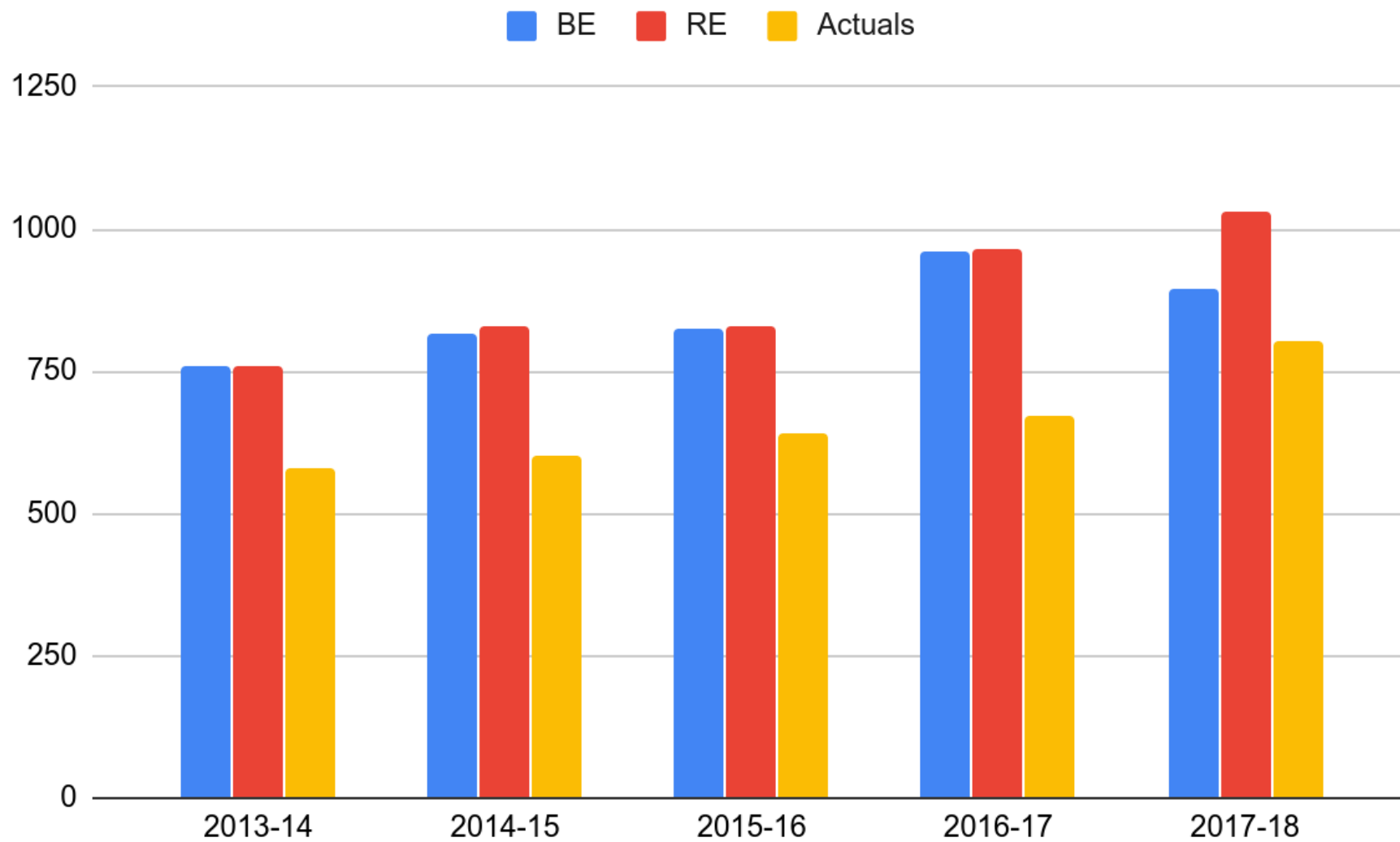
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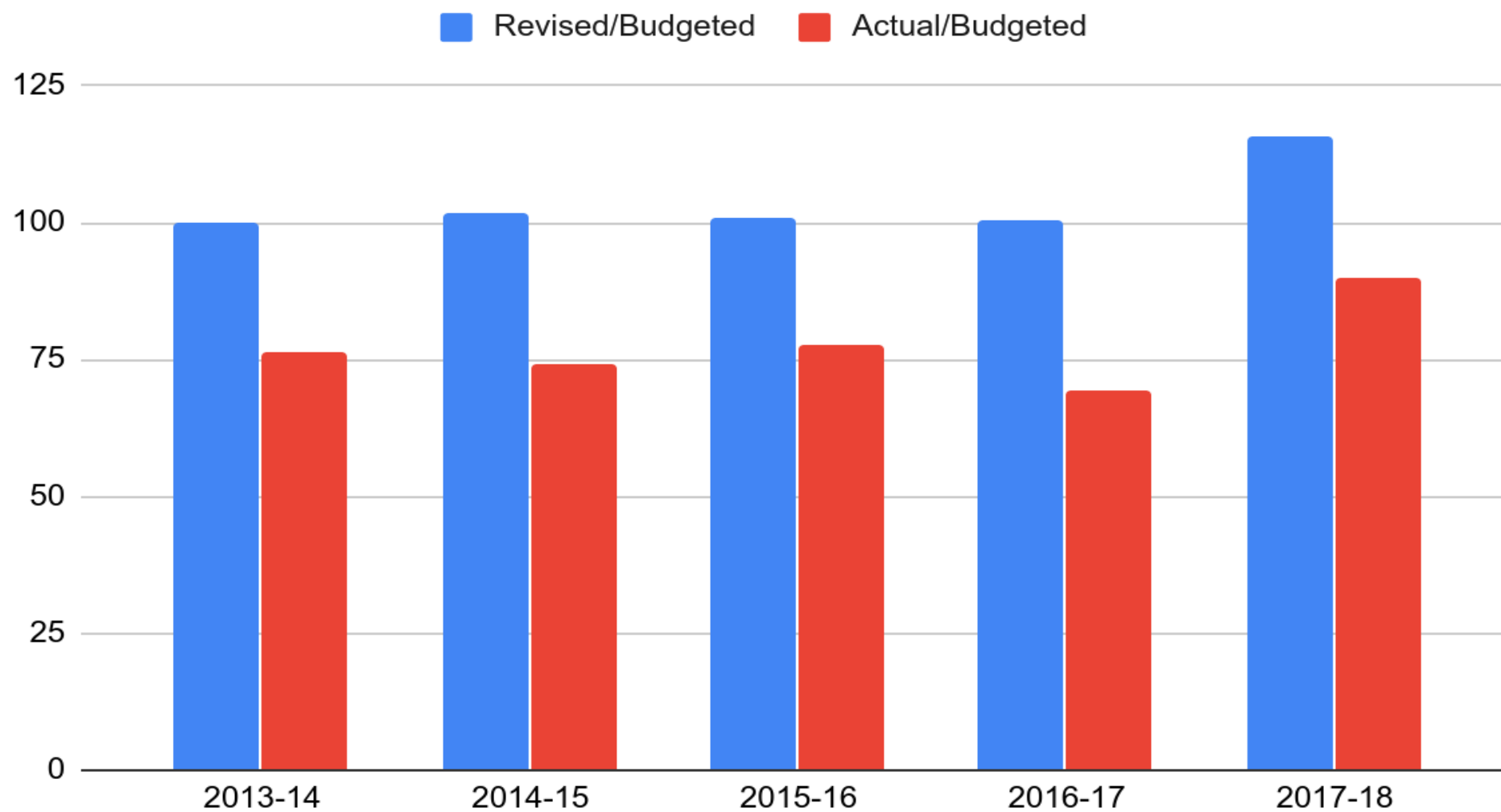
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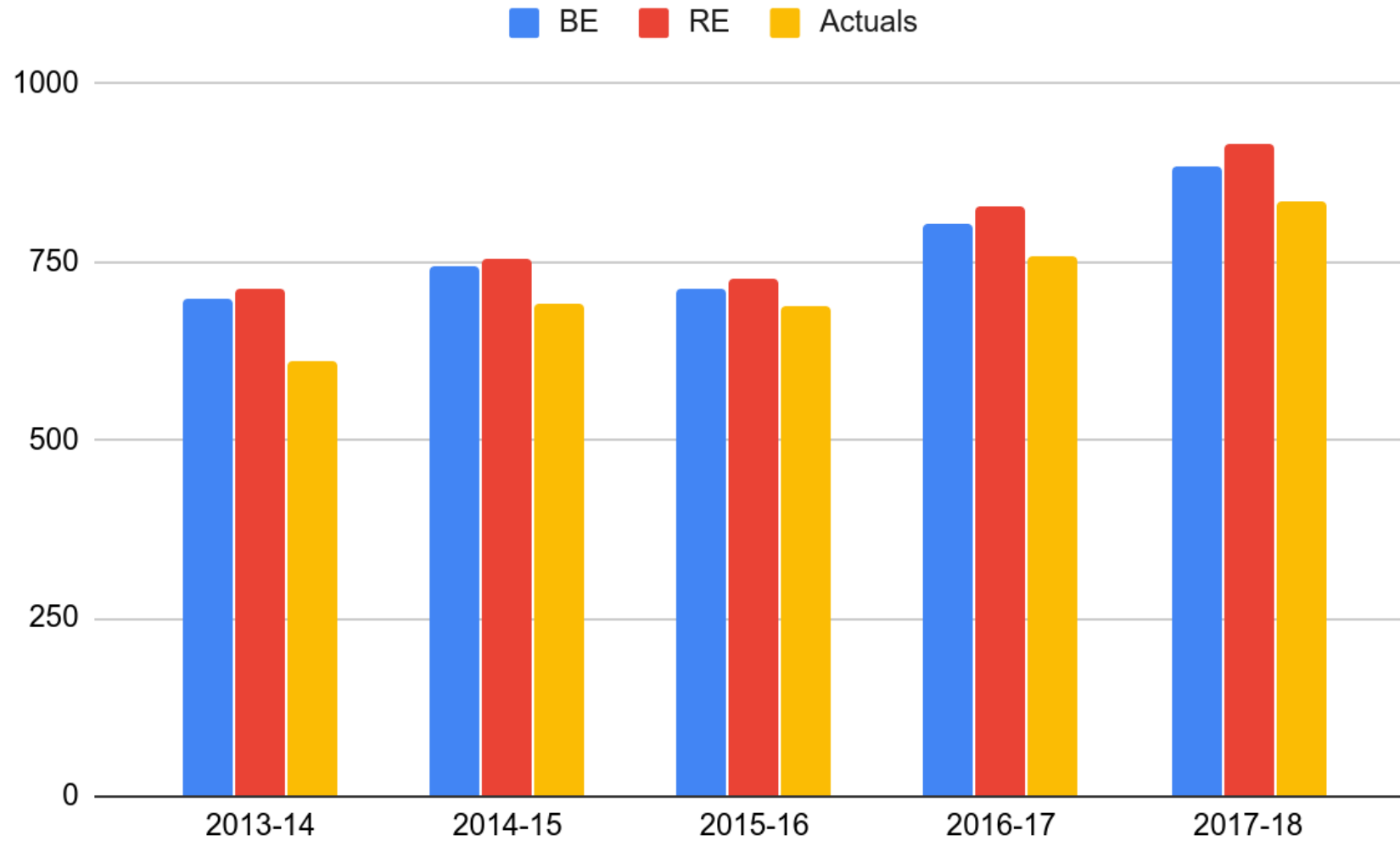
Bihar



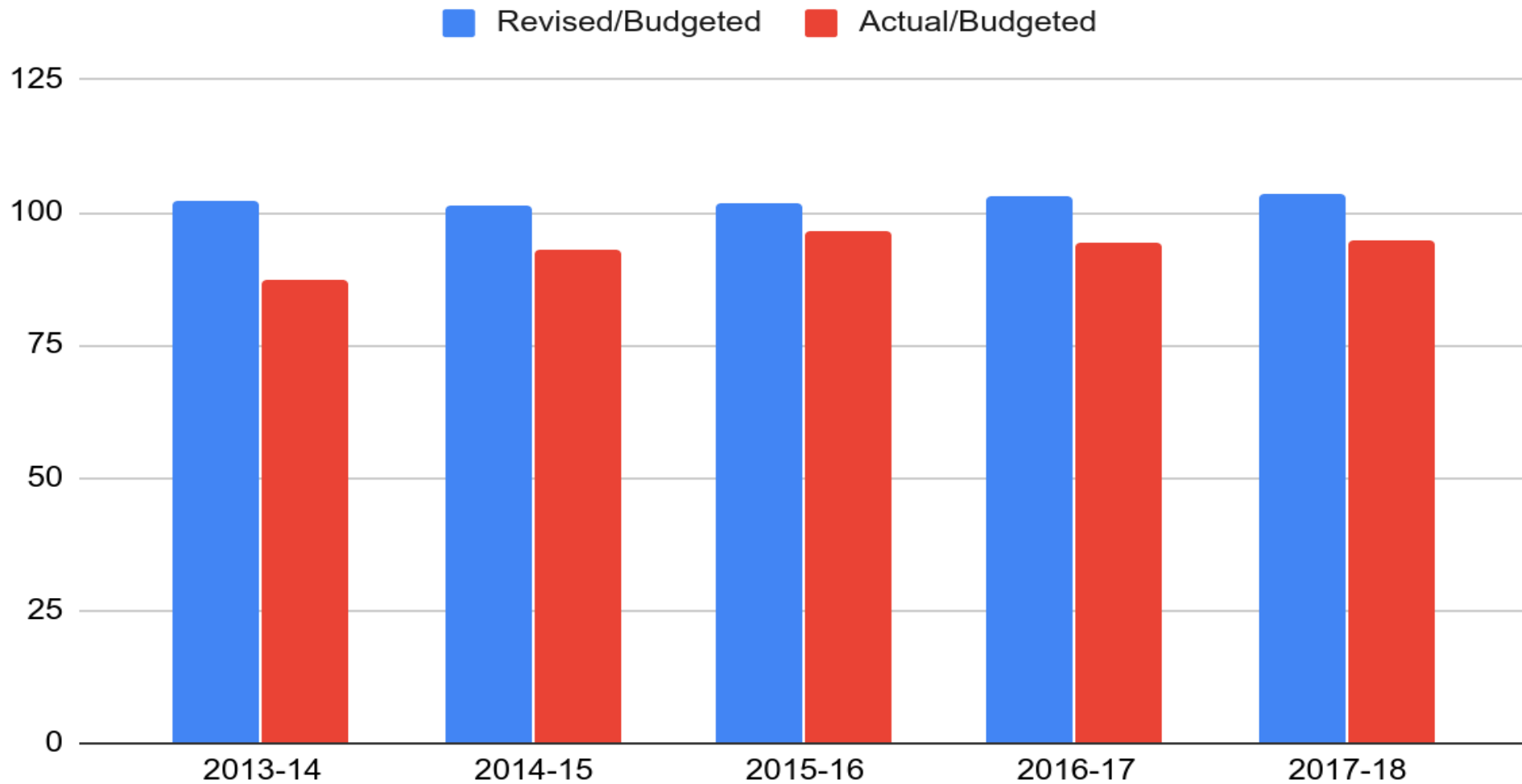
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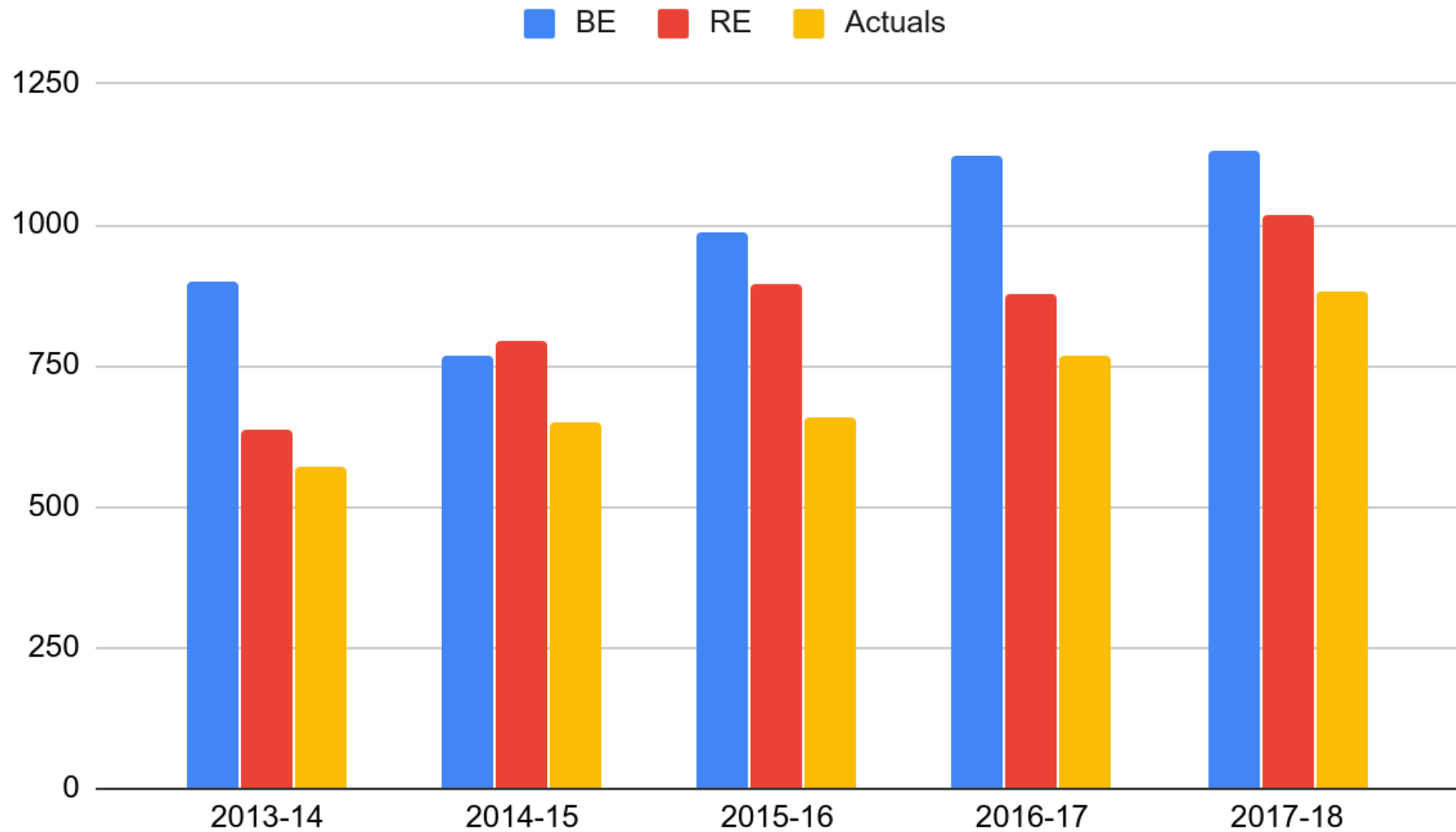
Karnataka



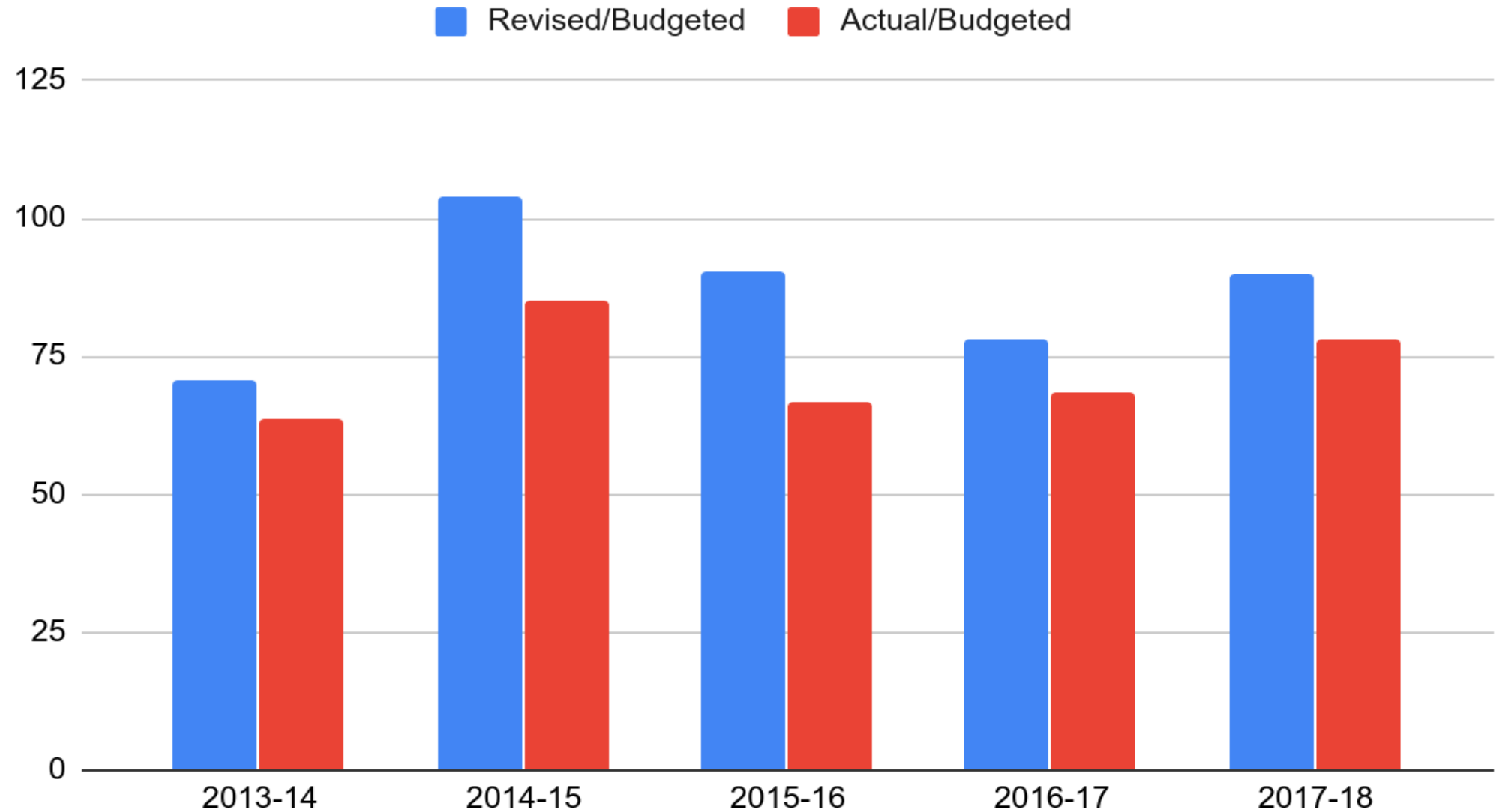
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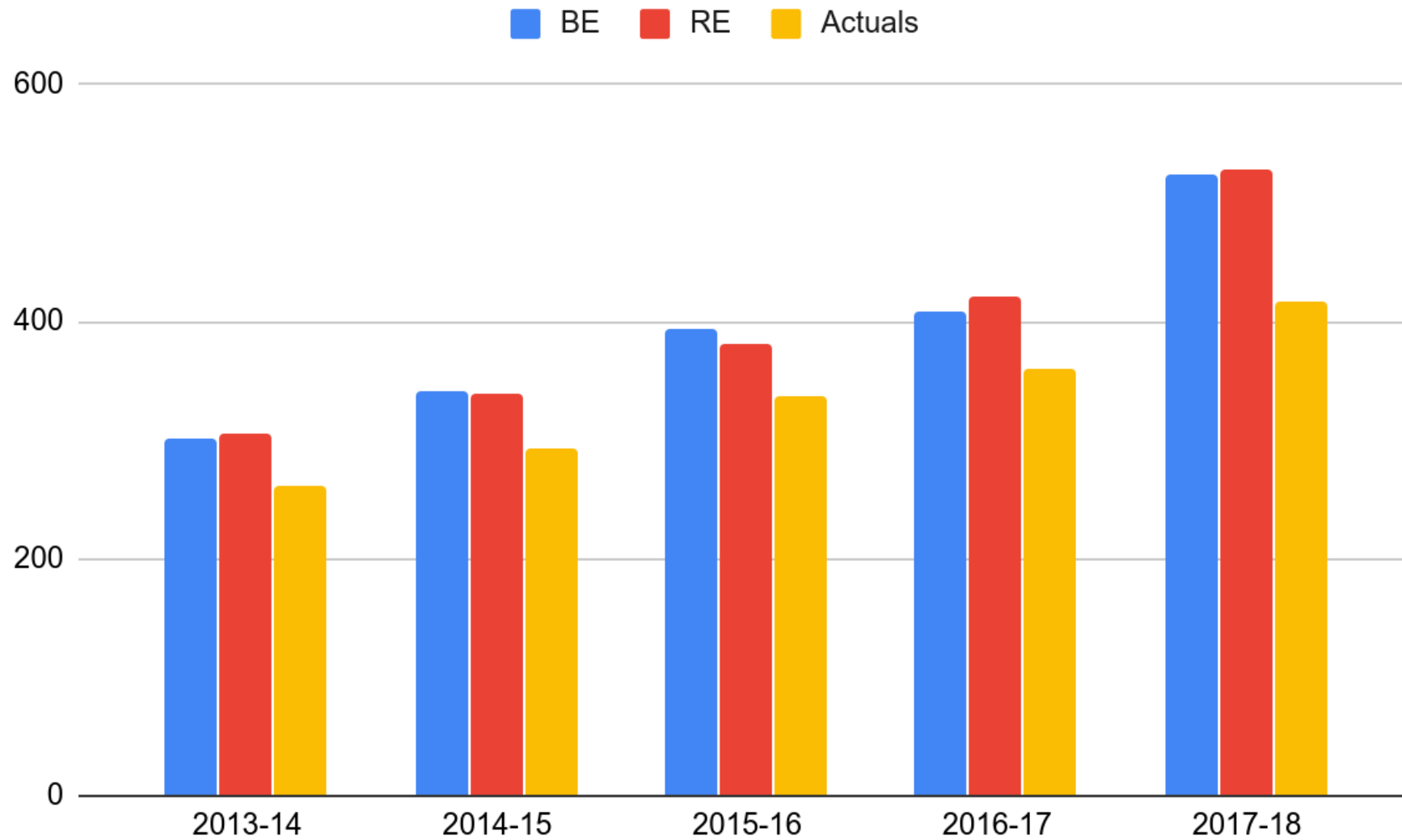
Gujarat



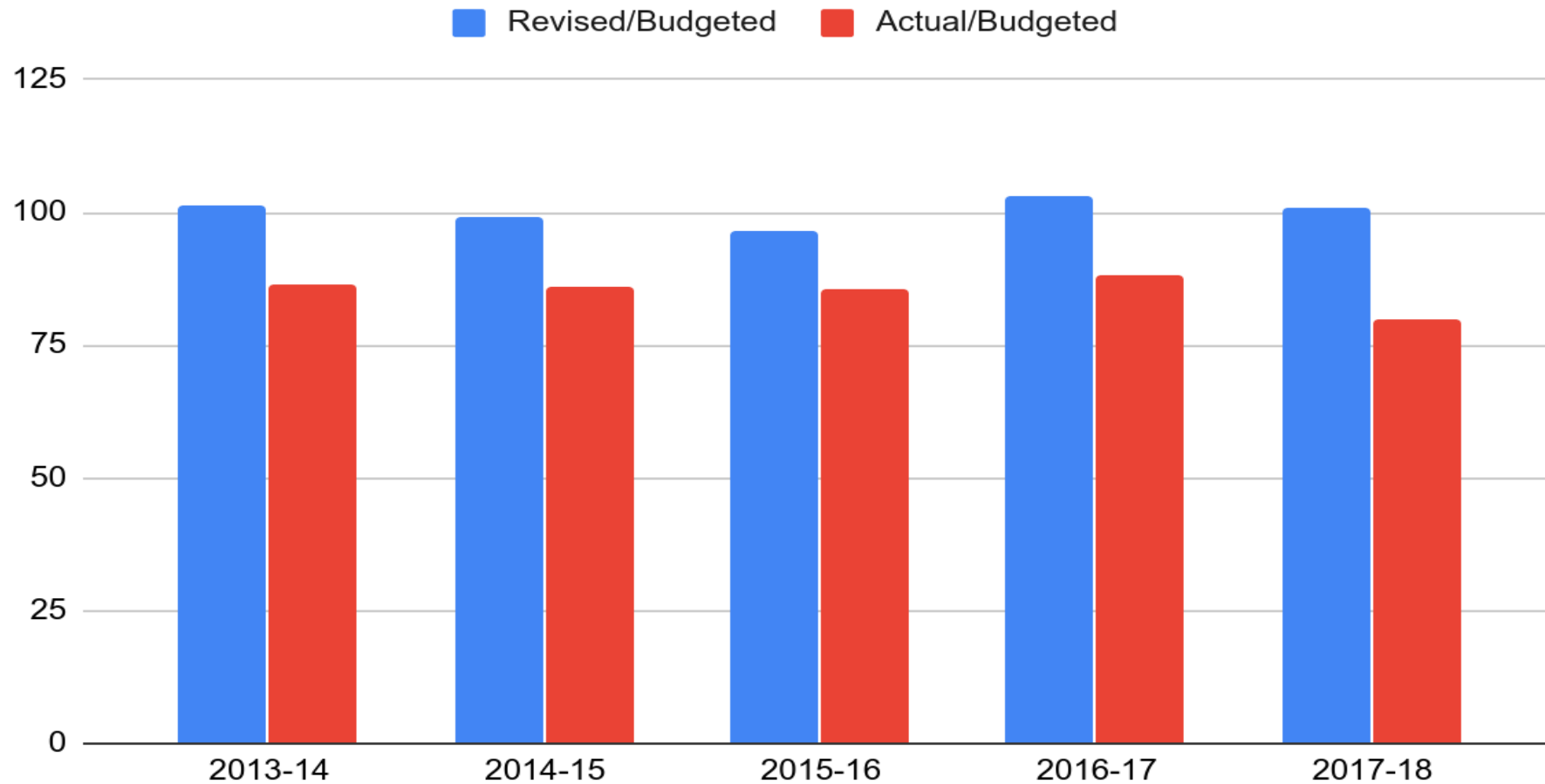
Gujarat



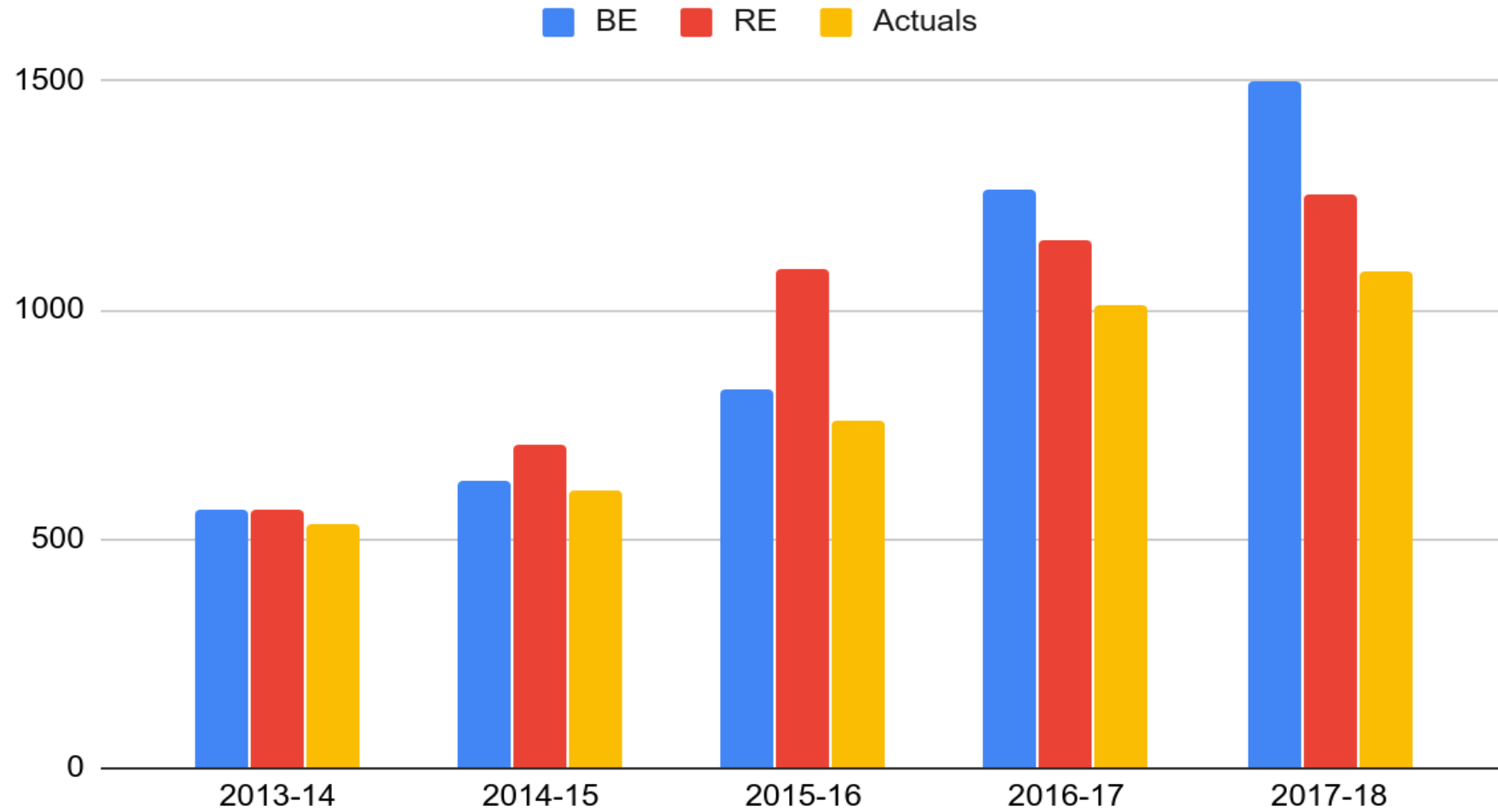
Odisha



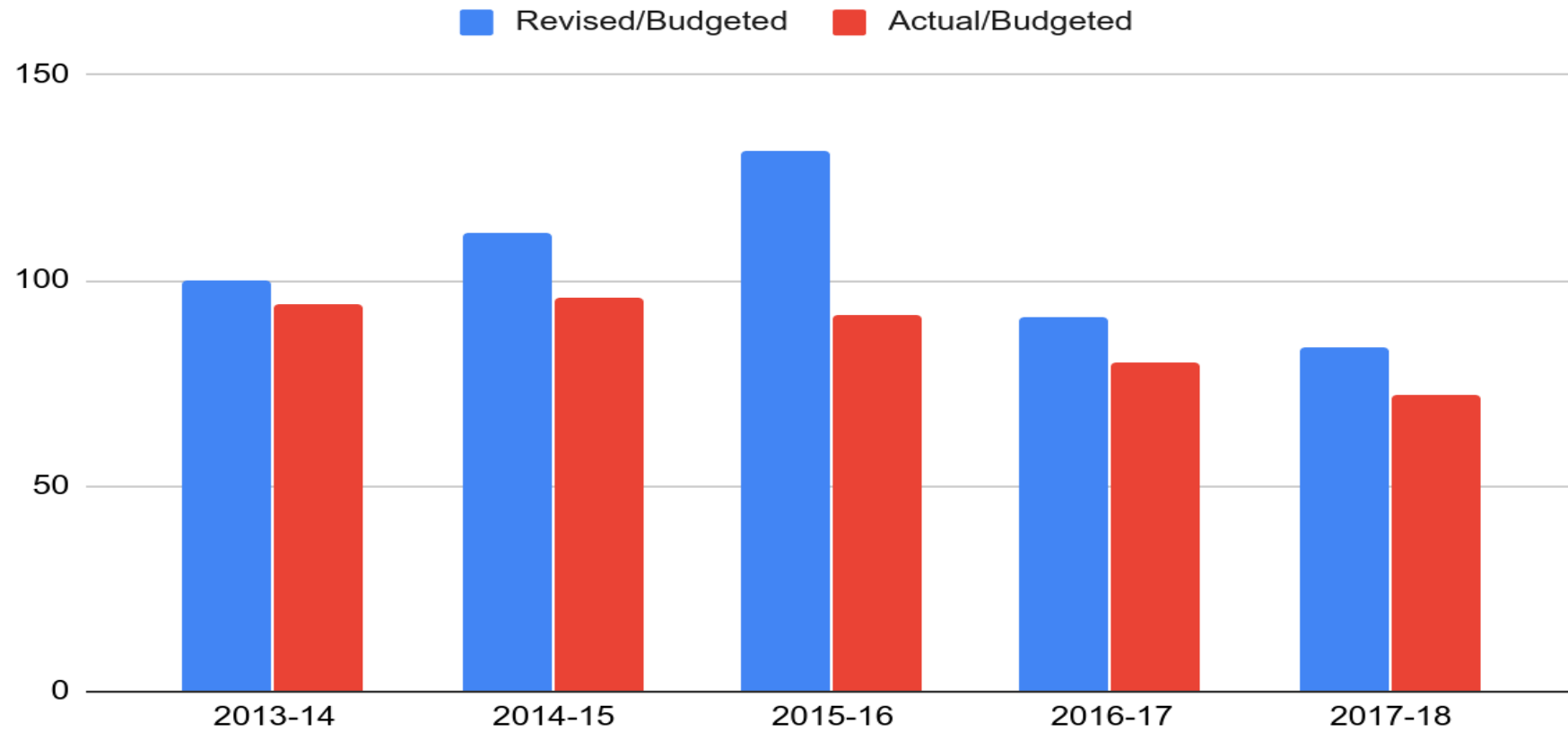
Odisha



Delhi



Delhi



Elements of a good budget system

- A budgeting and expenditure system requires
 - Medium-term planning: perspective on outputs and outcomes to be achieved, and expenditure required for those
 - Annual budgeting: detailed estimates of annual expenditure requirements, linking inputs to outputs
 - Expenditure control to ensure efficiency and integrity: systems to ensure funds are properly utilized
 - Ex-post accountability for expenditure: through routine release of statistics and periodic audits
- Is the current machinery available within the judiciary equipped to do this well?

Administration & process reforms

Lessons from successful countries (Webber 07)

- The environment for change
 - Support from judiciary is essential
 - An evolving process of systems improvements over many years
 - Collaboration between judicial and fiscal authorities
 - Gradually increasing focus on linking budgets with performance
- Essential elements for linking budgets to performance
 - Well-defined goals and objectives
 - Appropriate performance measures
 - Identification and rectification of weaknesses and inefficiencies
 - Regular, open and informative reporting systems

Initiatives till now & outcomes

- National Court Management System 2012
- Computerization as well as contractual court managers
- Two problems
 - Computerization without a deeper BPR exercise – the process design has been held intact, with superficial changes from paper-based processes to computer-based processes
 - Role of incumbents from the law fraternity in designing the computerization effort, who have a bias in favor of protecting status-quo

International experience

International experience

- Ireland Courts Services Act 1998 created “Courts Service” with a Board consisting of judiciary and executive nominees
- South Africa Superior Court Act 2013 created “Office of Chief Justice (OCJ)”
- Netherlands Judicial Organization Act 2002 created “Council for the Judiciary”
- Philippines Courts Reforms Act 2005 created similar agency
- Most famous is the UK experience – “HMCTS” Her Majesty's Courts and Tribunals Service

Her Majesty's Courts & Tribunals Service

- An agency of Ministry of Justice that operates on a partnership between Lord Chancellor (the counterpart of Minister of Law and Justice), the Lord Chief Justice (the counterpart of Chief Justice of India) and the Senior President of Tribunals.
- Lord Chancellor & Lord Chief Justice have agreed not to intervene (directly or indirectly) in day to day HMCTS operations.
- The responsibility of overseeing the leadership & direction of HMCTS entrusted with its Board & CEO responsible for the day-to-day operations and administration of the agency.

HMCTS functions

- . Functions of HMCTS
 - . Support (including infrastructure & resources) for administration of the business of courts and tribunals
 - . Infrastructure, including desktop and mobile computing as well as support for business applications
- . HMCTS is subject to directions of the judiciary in relation to the conduct of business of courts & tribunals in matters such as
 - . Listing
 - . Case allocation
 - . Case management

Way forward for India

Pathways for reform in India

- In-house capacity building
 - Internal administrative capacity is necessary even for contracting out tasks
 - Improve capacity in the registry
 - Experiment with different approaches in different states
- Contracting out routine, procedural tasks
 - Example of passport services in India
- A separate agency accountable to the judiciary
 - An agency to support the judiciary in the administrative functions, reporting to the Chief Justice.

Need for specialist talent

- Can any one be a judge?
- No
- Can any one be an administrator?
- No
- Can any one do complex procurement?
- No
- Can any one do finance and control?
- No

In house capacity building I

- Supervision and Control by Chief Justice is essential
- Three types of capabilities
 - Finance and planning
 - Procurement
 - Information systems
- Human resource strategy
 - Short to medium-term:
 - Create positions to get serving civil servants on deputation or retired civil servants on contractual basis: e.g. FA&CAO/Registrar (Finance)
 - Integrate the court managers with the senior personnel
 - Medium to long-term:
 - Create a general managerial cadre for the courts - judicial administrative service
 - Two parallel hierarchies: Registrar General (Judicial) and Registrar General (Administration)

In house capacity building II

- Helping Chief Justice supervise the administrative functions
 - Orientation training
 - Data reporting with summary statistics
 - Audit systems
- Administration (Finance, Procurement, Systems) should be geared towards linking inputs to output and outcomes
 - Chief Justice to decide the outputs he/she wants.
 - Administration with other specialists plans how to do it
 - The plan is approved by the Chief Justice.
- Pilots and experiments in smaller places

Contracting out routine tasks

- Even in core state functions, contracting out routine & procedural tasks to private parties can be beneficial
- Contracting out requires
 - Capability to design and implement a sound contract, so that the incentives are aligned properly
 - Identification of tasks that can be broken into specific, well-defined steps to be performed by an agent
 - Monitoring and management of risks on an ongoing basis
- Functions in the registry that can be contracted out

E-passport services

- Attempts to automate operations, decentralize collection of applications, open new passport offices, & introduce organizational reforms were not very successful
- Union Cabinet approved outsourcing of delivering front-end passport services, creating a centralized IT system & permitting private partner to levy a service charge under a PPP model
- Separation of *processing & decision making functions* in an appropriate manner
- Sovereign and fiduciary functions-verification of documents, police verification, decision on grant, revocation & impounding of passports, printing and dispatch of passports, are performed by GOI personnel

TCS duties

- Duties of TCS related to
 - Citizen interface activities
 - Token issuance & initial scrutiny of the application forms
 - Acceptance of fee & scanning of the documents, etc.
 - Call Centre & grievance handling, citizen portal
 - Infrastructure
 - Office networking, all hardware & software
 - Physical Infrastructure for all PSKs including interiors thereof
 - Data Centre, Disaster Recovery Centre & Central Printing Facility
 - Training
 - Application software, general computer skills, soft skills, and customer service & delivery

FSAT task force report

- **Financial Sector Legislative Reforms Commission** FSLRC led by Justice Srikrishna recommended FSAT
- Justice NK Sodhi led task force on re-engineering FSAT **Financial Sector Appellate Tribunal (FSAT)**
 - Understand the existing and emergent levels of load as well as the sources of cases – this is referred to as the case load
 - Anticipate whether and how the case load is likely to evolve in coming years
 - Undertake formal judicial impact analysis of each provision & amendment of the law, so as to understand its incremental contribution to the case load and
 - Initiate required increases in capacity, well ahead of time, so that capacity is in place before the surge in load

Reference for further reading

- *How to Modernise the Working of Courts and Tribunals in India*, Pratik Datta, Mehtab Hans, Mayank Mishra, Ila Patnaik, Prasanth Regy, Shubho Roy, Sanhita Sapatnekar, Ajay Shah, Ashok Pal Singh, Somasekhar Sundaresan. *NIPFP Working paper 258*, March 2019
- https://macrofinance.nipfp.org.in/PDF/icts_concept_note-2019.pdf

Roger Mathew versus South Indian Bank Ltd (2020)6SCC1

- Para 228 (vii) of majority judgement has issued a mandamus to carry out judicial impact assessment of all tribunals
- Para 105 of minority judgement suggests creation of a National Tribunal Commission & an All India Tribunal Service
- Para 108 of minority judgement refers to the need for adequate manning of tribunals with infrastructure & specialized staff
- Good opportunity to carry out a pilot with NJA in the lead
- NCLT & NCLAT likely fora for pilot

Conclusion & way forward

- Stock taking and diagnostics
- Constructive conversation & collaboration with the Executive
- Goal setting
- Prioritization
- In house capacity building
- Contracting and outsourcing
- Creation of a dedication agency
- Run pilots

Thanks

Q & A