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

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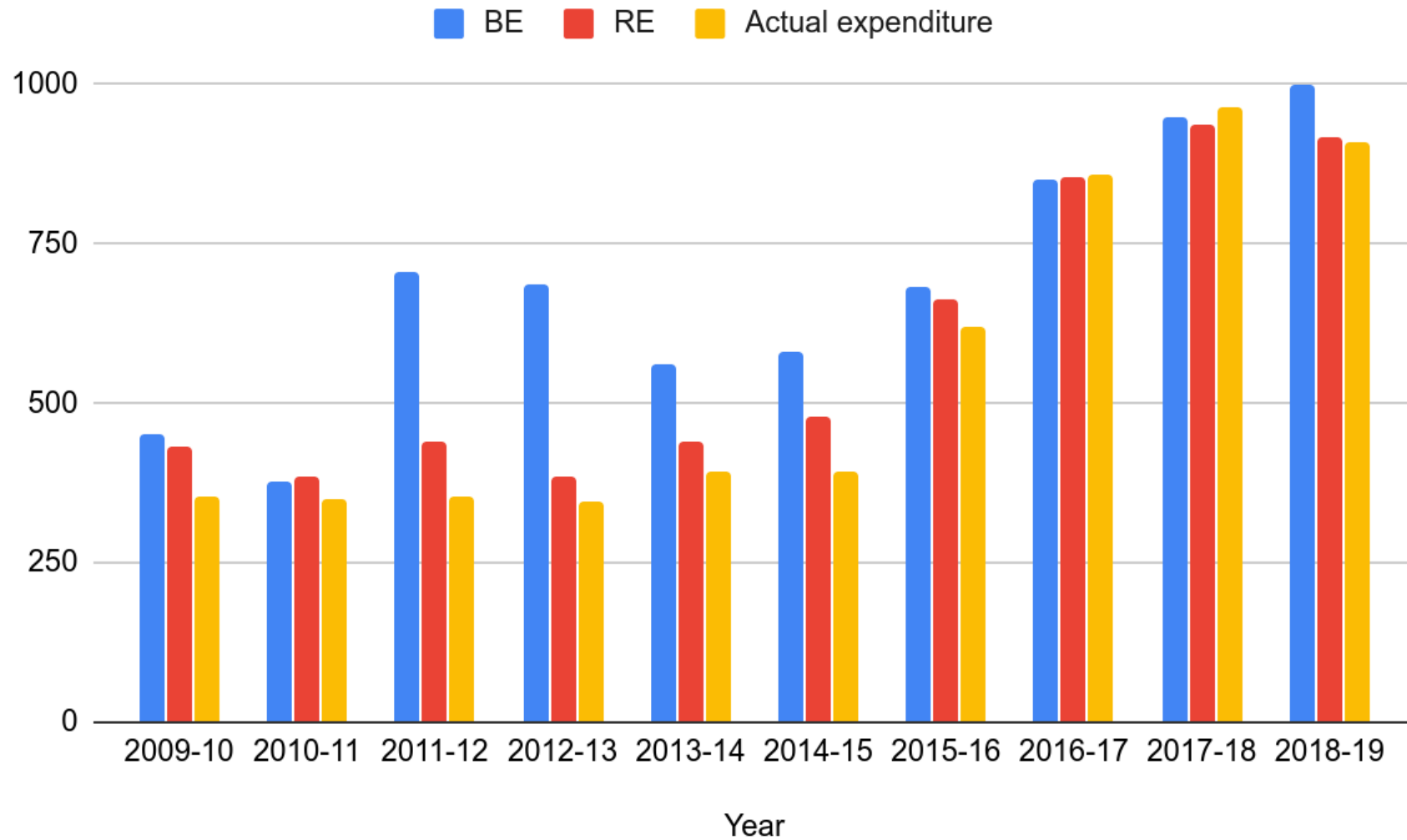 - Justice administration

Budget & finance

Finance and 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
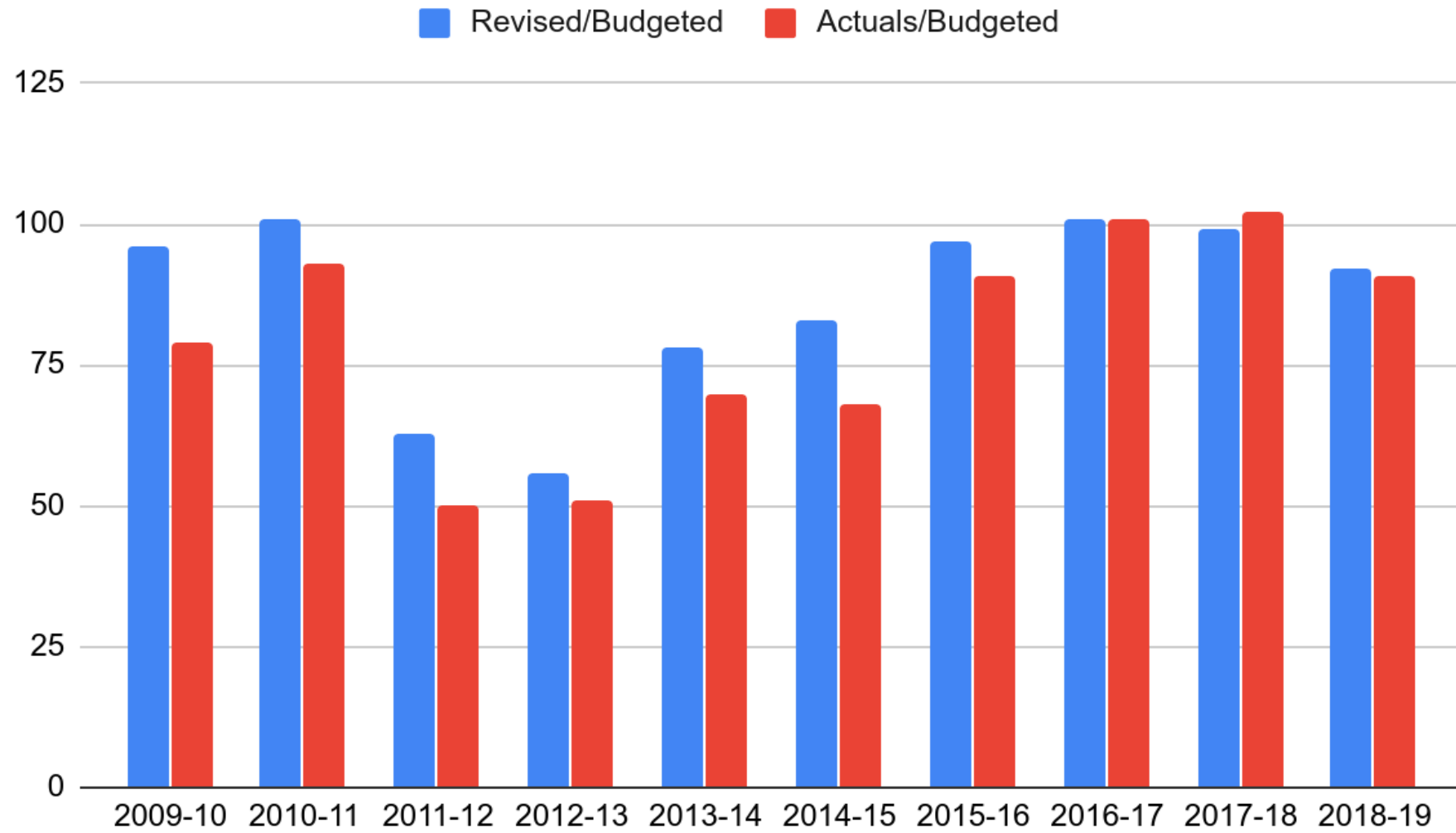
Expenditure on administration of justice

- 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'
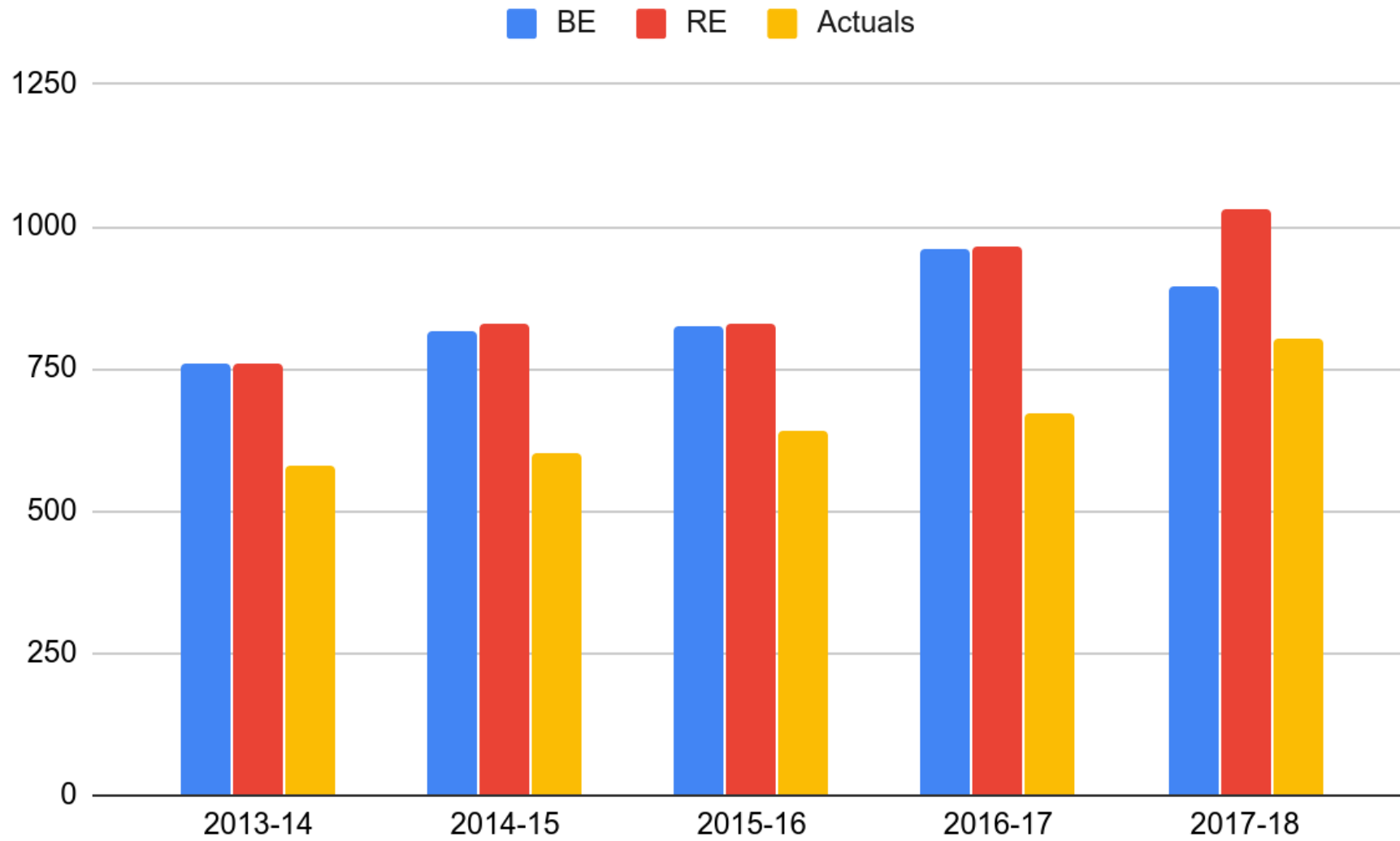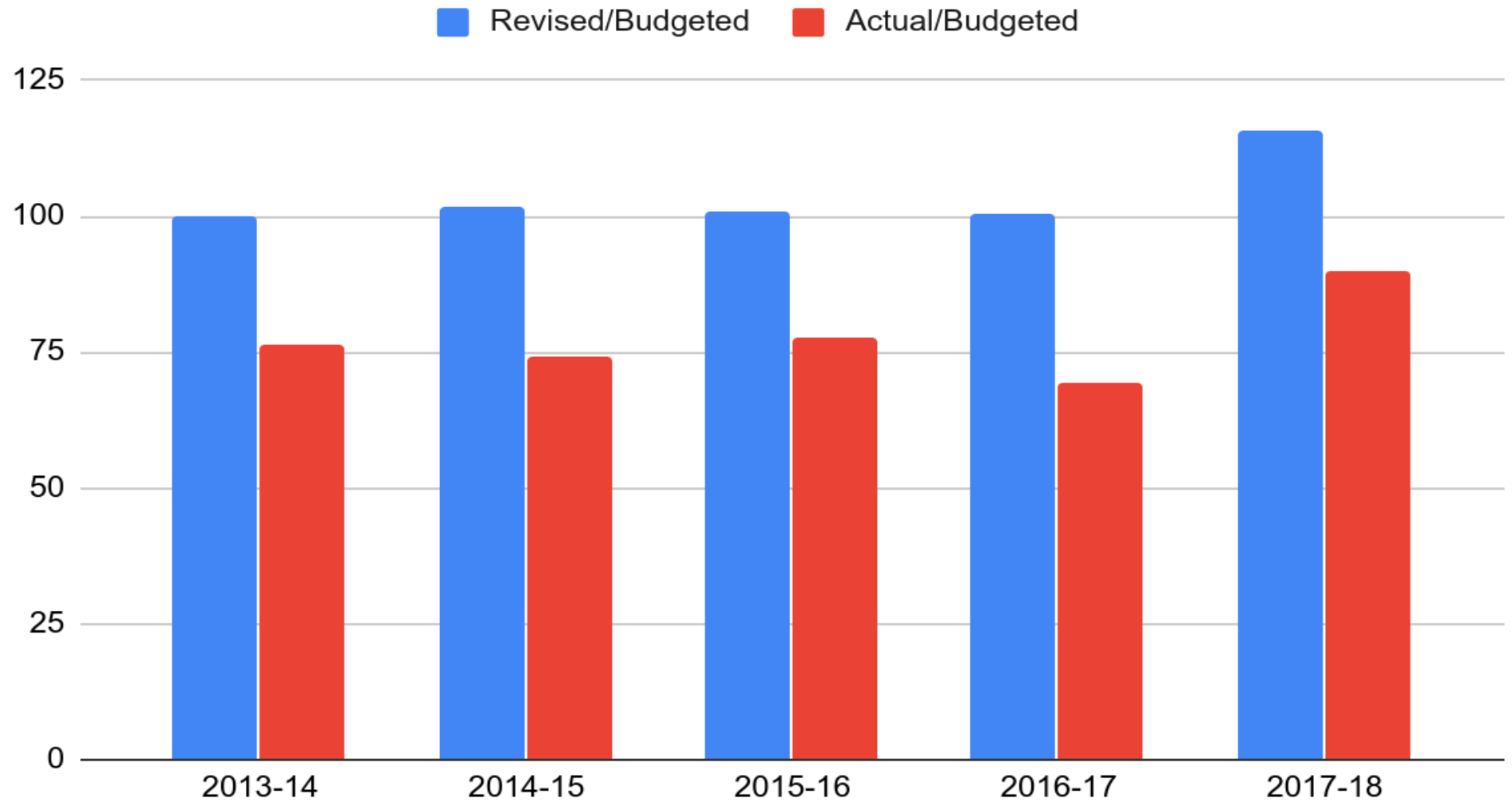- Both absolute and relative performance can be better

GOI

GOI

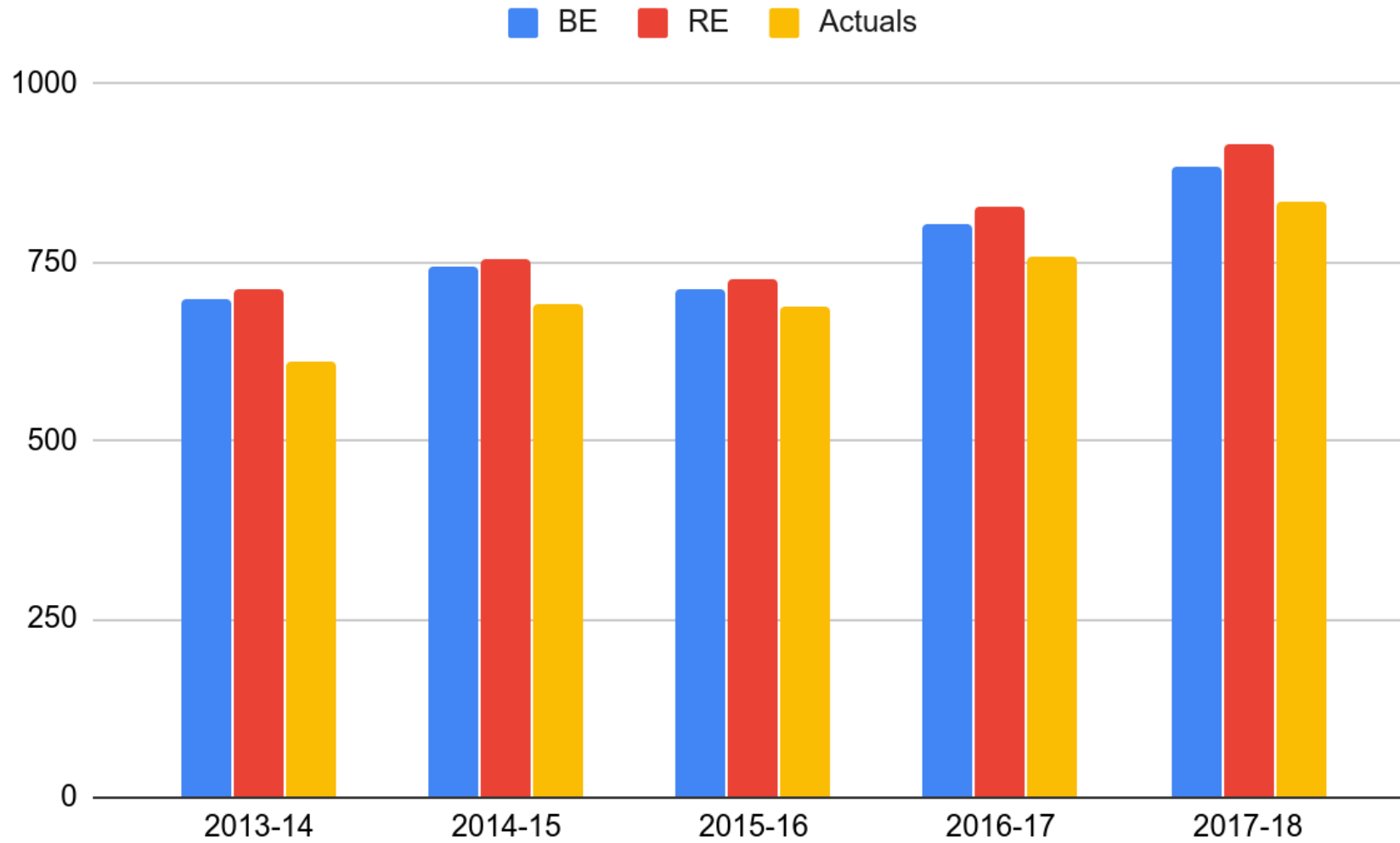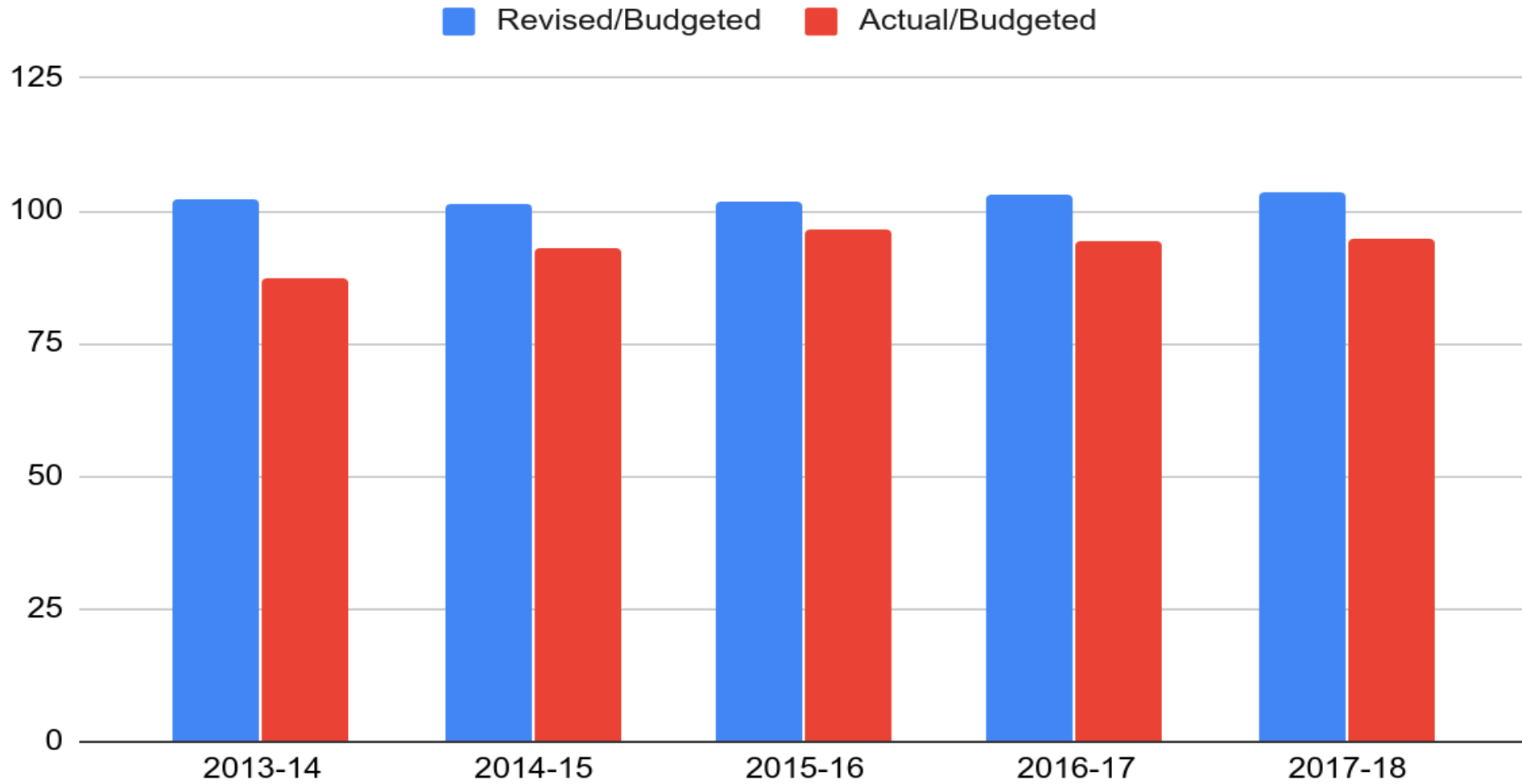# Bihar

Bihar

Karnataka

Karnataka

Gujarat
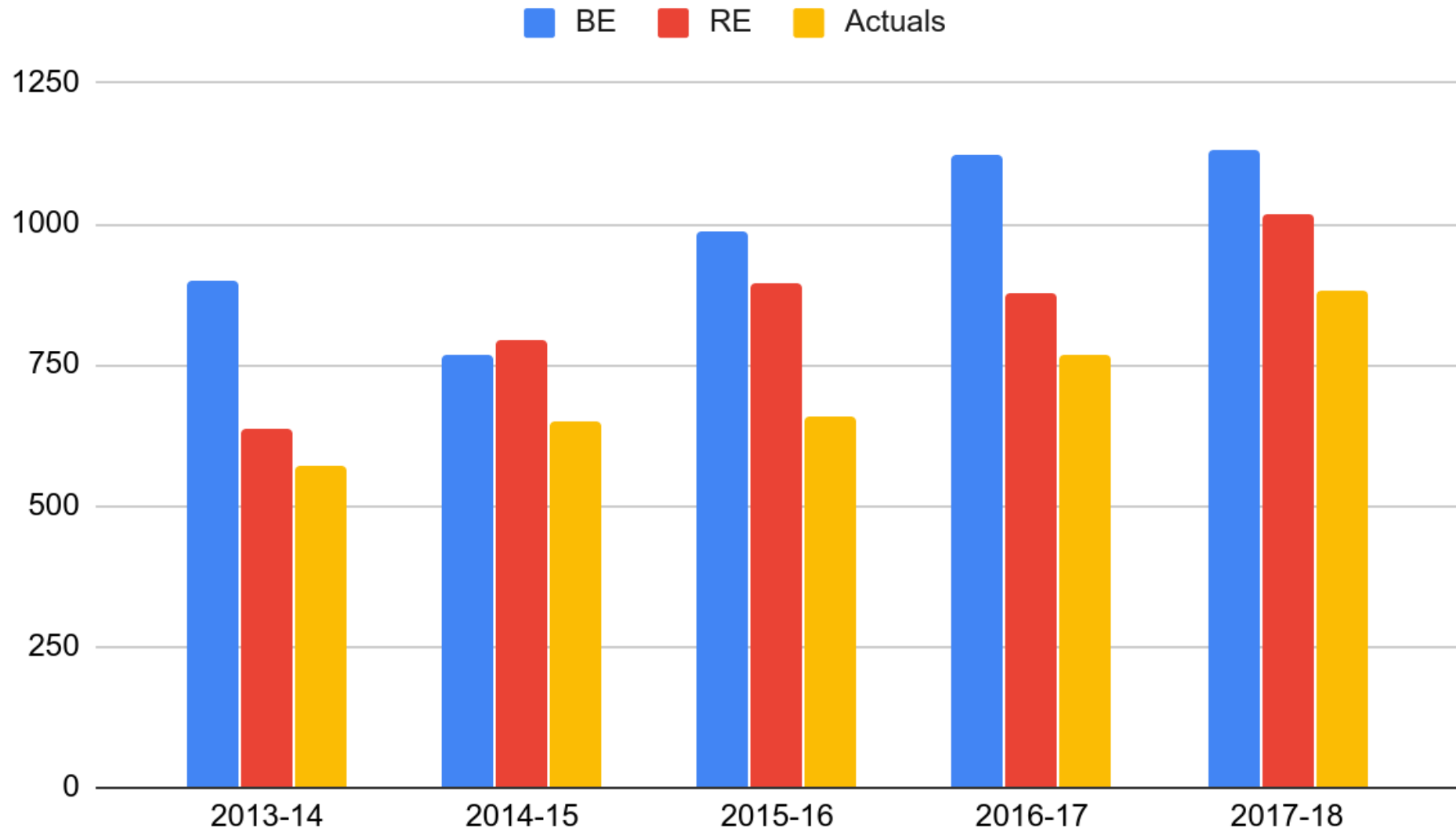
Gujarat
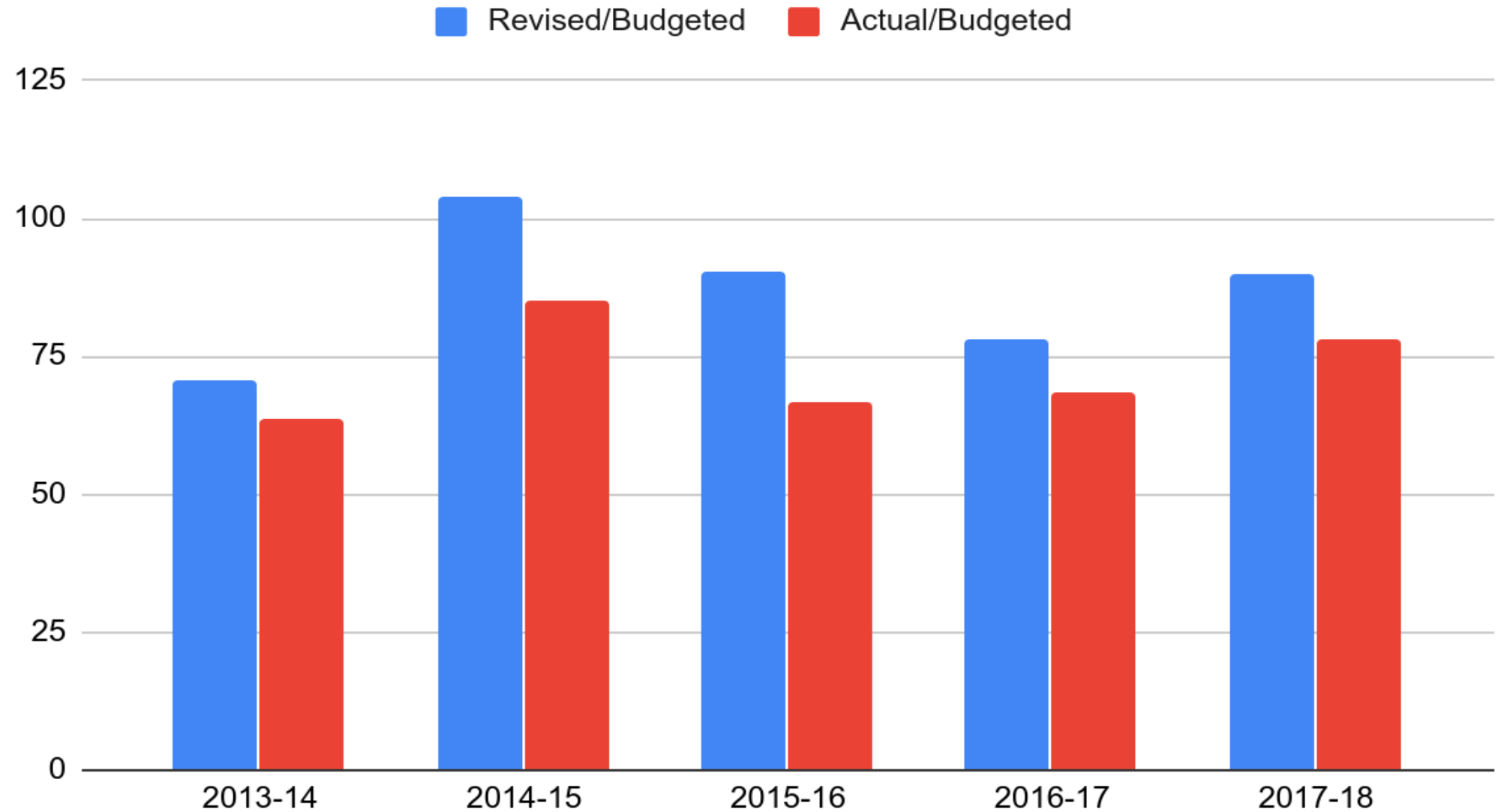
Odisha

Odisha

Delhi

Delhi

Legend: Revised/Budgeted (blue), Actual/Budgeted (red)

Years: 2013-14, 2014-15, 2015-16, 2016-17, 2017-18
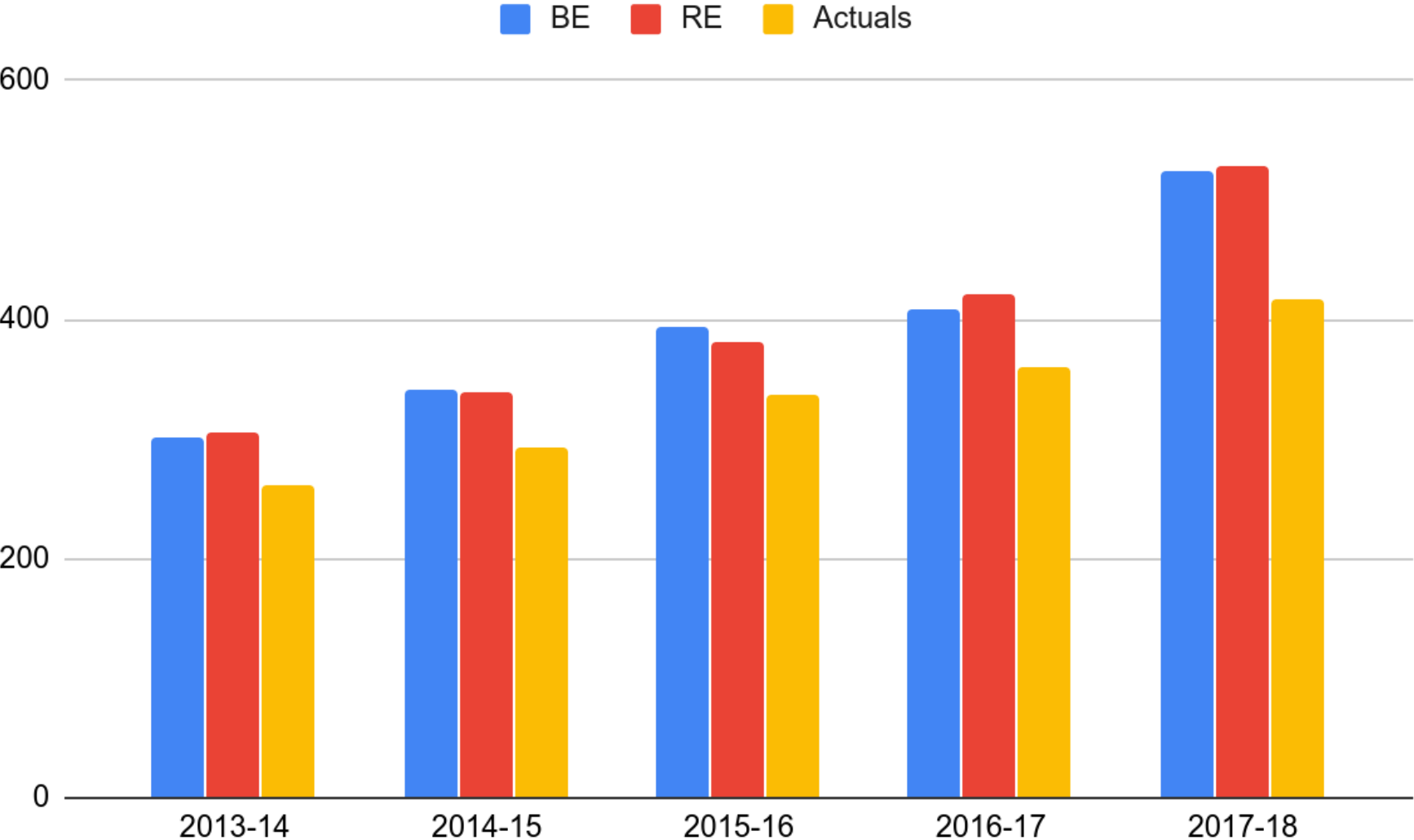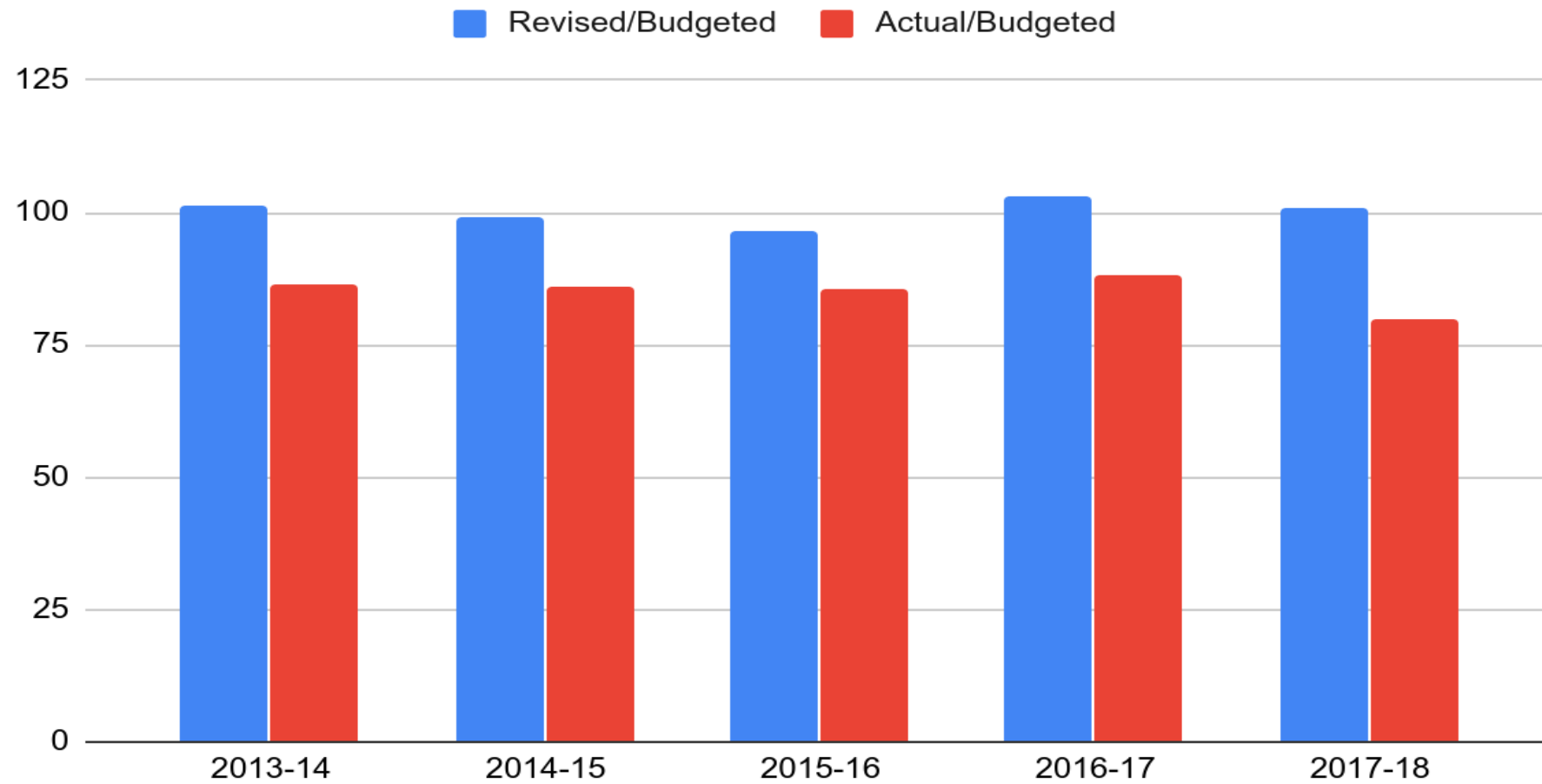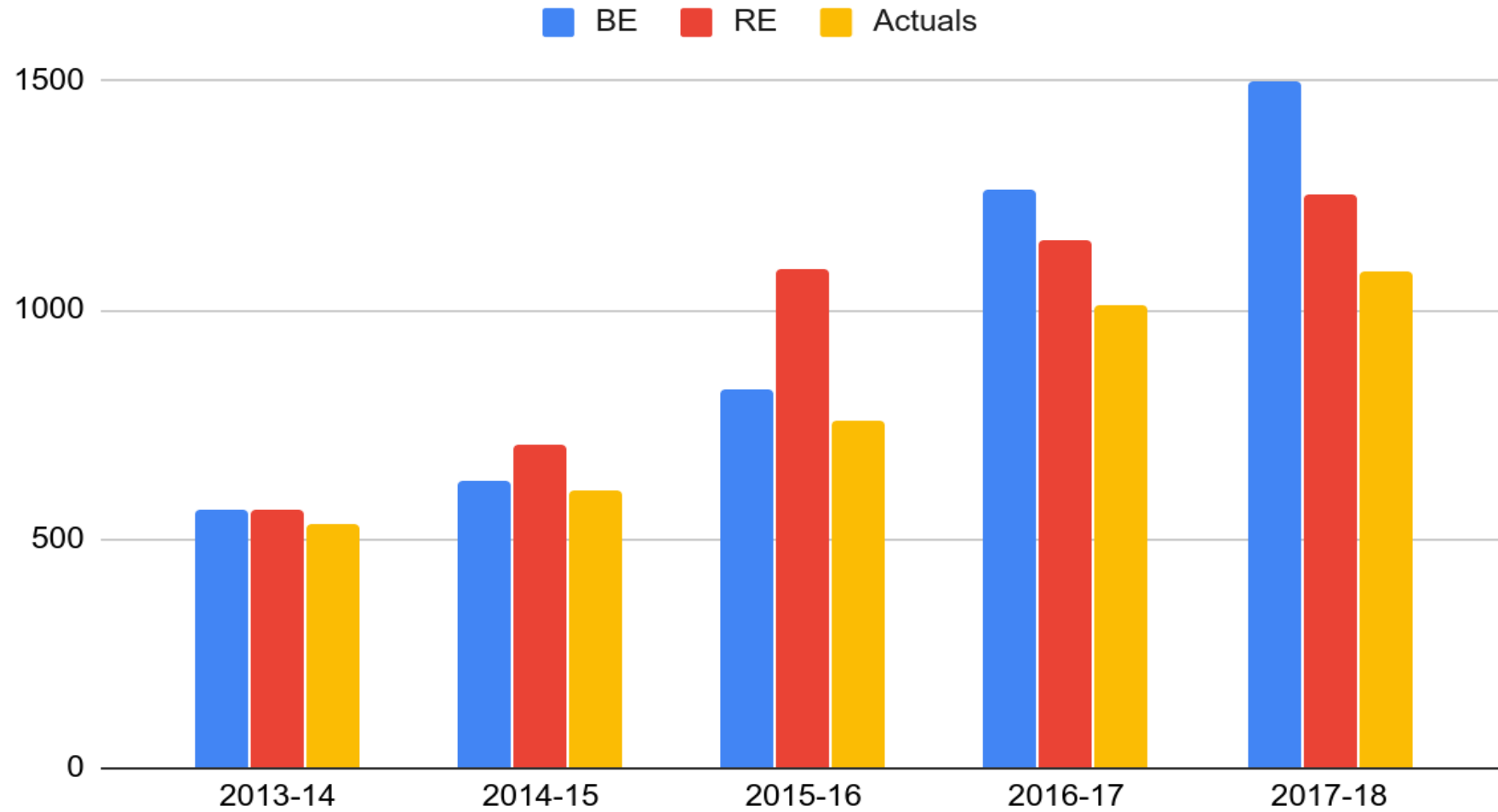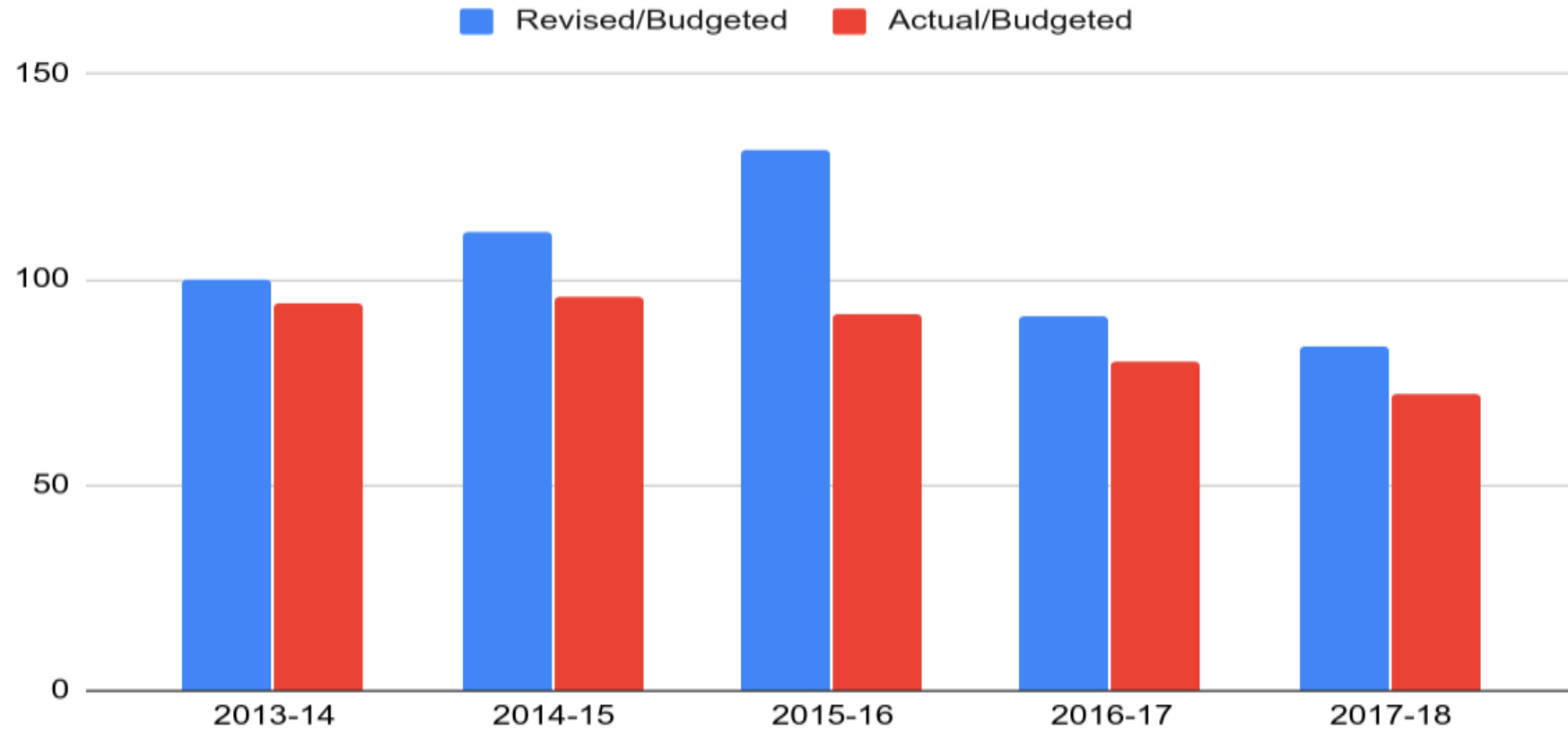
Administration & process reforms

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?

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 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 CJ (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 & 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

Lessons from successful countries

- 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

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
- GOI approved outsourcing of front-end passport services, creating a centralized IT system & 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 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

- FSLRC led by Justice Srikrishna recommended FSAT
- Justice NK Sodhi led task force on re-engineering 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

- 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- NJIC for example
- Run pilots

Thanks

Q & A