

NATIONAL JUDICIAL ACADEMY



NATIONAL WORKSHOP FOR SENIOR HIGH COURT JUSTICES: STRENGTHENING FISCAL AND ADMINISTRATIVE PROTOCOLS IN HIGH COURTS [P-1241]

13TH & 14TH FEBRUARY, 2021

PROGRAMME REPORT

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OVERVIEW OF THE PROGRAMME

National Judicial Academy organised the two day online National Convention for Senior High Court Justices: Strengthening Fiscal and Administrative Protocols in High Courts on 13th and 14th February 2021 to sensitize prospective Chief Justices of the High Courts to associated non-judicial functions to their office. The programme discussed critical areas concerning the administrative responsibilities and functions of Chief Justices of High Courts, especially in the areas of administrative protocols and the intricacies and nuances of fiscal management and functionalities through deliberations and open house interactions enabling best practices in such areas.

DAY 1

Session 1 – Administrative functions of the Chief Justice

- Evolving standard operating procedures
- Intra-Court Operational Rigors: Developing SoPs
- Preparing the Agenda and Managing Consensus at Meetings
- Horizontal and Vertical Relation Management: Supreme Court, Other High Court

Session 2 - Administrative functions of the Chief Justice

- Collaboration with other branches - Union and State Executive: Budget, Infrastructure, Law & Order
- Time Management: Balancing Judicial and Administrative functions

DAY 2

Session 3 - Budget Preparation & Fiscal management

- Centrally Sponsored Schemes (CSS): Origin, Practices, Challenges & Opportunities
- Pre-budget planning: past utilization, current requirements, contingency; and estimates sector-wise

- Co-opting/Consulting Experts for Fiscal Planning and Budget Preparation

Session 4 - Budget Preparation & Fiscal management

- Designing action plan for utilization of fiscal resources
- Effective Utilization of Grants and Other Financial Resources: Monitoring Expenditure
- Quality Control in expenditure

DAY 1

SESSION 1	
Administrative functions of the Chief Justice	Resource Person(s)
Evolving standard operating procedures: <ul style="list-style-type: none">• Intra-Court Operational Rigors: Developing SoPs• Preparing the Agenda and Managing Consensus at Meetings• Horizontal and Vertical Relation Management: Supreme Court, Other High Courts	Hon'ble Dr. Justice D.Y. Chandrachud & Hon'ble Mr. Justice Navin Sinha

The two facets of learning for a judge was emphasized, namely substantive learning and institutional learning. It was emphasized that the real deficiency in the judicial system presently is due to the absence of institutional learning, i.e. judges determine their own relationship with the institution. When a judge is newly appointed, the conditions of appointment, conduct, language, interface with the bar and colleagues in the registry, infrastructure etc. are some important features for which there is need for some sort of Standardized and formal induction on best practices and evolved SOPs (Standard Operating Procedure). The advantages of developing such SoPs are (i) adherence to best practices; (ii) consistency in decision making process; and (iii) maintenance of institutional knowledge. It was pointed out that most High Courts and particularly the Supreme Court are largely Chief Justice driven, and the office of the Chief Justice is viewed as to be involved in highly individualized process of decision-making. In such a case, when a Chief Justice parts company with the High Court, it there is no institutional continuity. There is need to preserve the institutional knowledge in terms of what was done by a predecessor so as to allow the new Chief Justice to build on the same and lay down a vision or a blueprint or a roadmap contemplating the short, medium and long term goals. Further, some disadvantages of having such SoPs were also discussed in this regard

which are: (i) decreased flexibility by reducing or eliminating discretion; and (ii) it could be myopic and incapable of dealing with new situations. It was asserted that SoPs would be extraordinarily crucial in case of newly appointed judges for outlining best practices to engaging with the bar, patterns of behaviour expected of a judge etc. Many such features need to be enunciated as part of the SoP in order to effectively deliver what is expected of a judge.

It was further remarked that there is need to develop SoPs with respect to the use of appropriate language in judicial craftsmanship especially in cases involving women and relationship with the district judiciary. There is also a need to develop SoPs with regard to transfers and postings of the judicial officers, making room for the modalities to be followed in order to appreciate the grievances and representations made for a particular posting. It was also opined that listing of cases must follow some norms such as assignment on the basis of domain knowledge or expertise and not merely on the basis of seniority. Similarly, administrative judges also need to be assigned districts as per capacity and competence. There is need to bring in some element of specialization and merit within the judiciary itself. The discussion also stressed on the need to develop SoPs on planning, budgeting and finance.

There is need for deployment and use of technology for management of litigation and management of the district judiciary. In the absence of an SoP on the use of technology, its full potential cannot be realized. The discussion went on to explore the National Judicial Data Grid to indicate to the participating justices how they as Chief Justices can use the NJDG into managing litigation and infrastructure of the district judiciary in their respective States.

While dealing with the issue of how to bring about consensus at meetings, it was highlighted that there are always divergent view points in a High Court and therefore, the Chief Justice must ensure a sense of inclusion in the decision-making process. The session was concluded with the remark that whether a Chief Justice commands the respect of his colleagues, state government or the bar does not depend on how good an administrator he is but on the fact as

to how objective, fair and impartial judge he is. It was also suggested that a Chief Justice must ensure judicial sitting with as many judges as possible especially the junior judges as part of their duty to mentor the next generation of the High Court.

SESSION 2	
Administrative functions of the Chief Justice	Resource Person(s)
<ul style="list-style-type: none"> • Collaboration with other branches - Union and State Executive: Budget, Infrastructure, Law & Order • Time Management: Balancing Judicial and Administrative functions 	Hon'ble Dr. Justice D.Y. Chandrachud, Hon'ble Mr. Justice Sanjay Kishan Kaul & Hon'ble Mr. Justice Navin Sinha

The second session emphasized that on the essentiality of collaboration and continued interaction with the executive the Chief Justice has a major role to play in resolving the friction in terms of infrastructure, tactical management, funds etc. level. In cases of differences in perception of the judiciary and executive with respect to budget, infrastructure, law and order. The discussion further pertained to the availability, release and utilization of funds which at times have to be taken at the judicial side. Creation of a well-equipped infrastructure is an important aspect in the administration of justice. In this regard, it is important that committees be constituted to ensure that the issue of continuity does not arise in the long run. Also, when Chief Justices make committees, an endeavour must be made to ensure equitability. However, different judges have different capabilities both on the judicial as well as administrative side, hence, Chief Justices may seek to utilize them in a suitable manner to optimize potentials.

It was also pointed that one of the most important functions of the Chief Justice is to fill in the vacancies by appointing judges while maintaining balance between the judges appointed from the bar and the services. Also, while appointing judges there is need to have a broader

perspective by considering names from diverse fields of law including those practicing before the tribunals so as to have much more expertise and specialization at bench.

The discussion further stressed on the importance of court management in order to enhance the output of the judicial system. In this regard, the nuances of plea bargaining and alternative dispute resolution mechanism were also touched upon. The discourse accentuated that the ambit of case management is both procedural and substantive which requires infrastructural sensitivity. Since the overall functioning of a court depends heavily on the interplay between judges and administrative staff, it is important to set up a system capable of building a shared responsibility between the head of the court and the court administrator for the overall management of the office.

DAY 2

SESSION 3	
Budget Preparation & Fiscal management	Resource Person(s)
<ul style="list-style-type: none">• Centrally Sponsored Schemes (CSS): Origin, Practices, Challenges & Opportunities• Pre-budget planning: past utilization, current requirements, contingency; and estimates sector-wise.• Co-opting/Consulting Experts for Fiscal Planning and Budget Preparation	<p>Dr. K.P. Krishnan & Mr. Subhash Chandra Garg</p> <p><u>Chair:</u> Hon'ble Justice Madan B. Lokur</p>

In the third session the nature of judicial work was discussed. Examples with reference to tax administration, financial and regulation supervision and justice administration were emphasised. It was stressed that States cover more than 90 % of expenses on administration of justice. Articles 112 (3) and 202 (3) with reference to expenditure charged on the Consolidated Fund of each State were discussed. Sharing of charged expenditure by the States and Union on the total expenditure of judiciary was emphasized. *India Justice Report 2019* was discussed with reference to expenditure on administration of justice. It was emphasized that according to the said report 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, while in 1 State of the indicated, the growth rate was the same. It was stated that even though overall spending on judiciary is relatively low, most often even the budgeted allocations are not spent. Trends in Budget Estimates (BE), Revised Estimates (RE) and 'Actuals' for the Union and of some States were deliberated upon. Elements of a good budget system was discussed to include:

- 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; and
- Ex-post accountability for expenditure: Through routine release of statistics and periodic audits.

It was emphasized that smooth collaboration between judiciary and fiscal authorities will lead to good budgeting. Essential elements for linking budget to performance were discussed that includes:

- Well-defined goals and objectives
- Appropriate performance measures
- Identification and rectification of weaknesses and inefficiencies
- Regular, open and informative reporting systems

National Court Management System 2012 (NCMS), computerization of courts and the inclusion of court managers for effective court management was discussed. Further, international perspective on court management systems across the globe was discussed *viz.:*

- 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”; and
- Her Majesty's Courts and Tribunals Service (HMCTS) of UK.

For enhanced and better prospective budget preparation and fiscal management in the Indian judiciary, in-house capacity building was emphasized. It was suggested that positions may be created to rope in serving civil servants (on deputation) or retired civil servants on contractual basis as Registrar (Finance). There should be a separate agency accountable only to the judiciary, (which should support the judiciary in the administrative functions) and report directly to the Chief Justice. Such supervision and control by Chief Justice is essential for better

and enhanced functioning of the courts. Three types of capabilities viz. finance and planning, procurement and information systems were discussed.

It was recommended that general managerial cadre for the courts may also be created as judicial administrative service. It was emphasized that Administration (Finance, Procurement, Systems) should be geared towards linking inputs to output and outcomes. Even in core State functions, contracting out routine & procedural tasks to private parties can be beneficial. The recommendations of the financial Sector Legislative Reforms Commission (FSLRC) led by Justice Srikrishna, including the recommendation for the constitution of a Financial Sector Appellate Tribunal (FSAT) were discussed. The case of *Roger Mathew v. South Indian Bank Ltd* [(2020) 6 SCC1] was also discussed.

SESSION 4	
Budget Preparation & Fiscal management	Resource Person(s)
<ul style="list-style-type: none"> • Designing action plan for utilization of fiscal resources • Effective Utilization of Grants and Other Financial Resources: Monitoring Expenditure • Quality Control in expenditure 	<p>Dr. K.P. Krishnan & Mr. Subhash Chandra Garg</p> <p><u>Chair:</u> Hon'ble Justice Madan B. Lokur</p>

In Session 4, the functions of the administration of justice were discussed. It was stated that the State's primary job and responsibility is to deliver public goods like law and order management, defence of the country, delivery of justice, macro-economic stability and currency management. Administration and delivery of justice primarily is assigned to the States in the Seventh Schedule. Justice can be delivered effectively, adequately and timely by a well-functioning system of courts, supported and equipped with appropriate physical and soft infrastructure, with right number of judges and court personnel. It was emphasised that

availability of adequate court infrastructure, adequate number of judges and court personnel requires provision of optimum amount of capital and revenue budget.

Articles 112 (1), 112 (2), 113 (2), 202 (1), 202 (2), 114 (1), 203(2), 204 (1) and 282 of the Constitution of India were discussed. It was stated that the Central Government prepares two significant documents which brings together all the expenditure budgeting information in understandable manner i.e. expenditure profile and expenditure budget. Expenditure budget presents line item wise actuals for the previous year, revised estimates for the current year and budget provisions for the next year.

It was stated that Centrally Sponsored Schemes (CSS) provide Central Government grant for expenditures on the subjects primarily allocated to States in the Seventh Schedule. CSSs determine the items of expenditure, unit costs of expenditure, norms of expenditure, quantum of input to be financed and outputs to be created and tends to apply 'one size fits all' approach to 'expenditure budgeting' in the country. It was emphasised that "Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Courts" was in the State list of the Seventh Schedule until 1976. It is presently Item 11A in the Concurrent List. The "officers and servants of the High Court" are also part of the State List (Item 3, State List). District Courts are the principal instruments for discharging the public service in delivery of justice. It was emphasised that Central Government provides budgetary support for the subjects in the concurrent list through 'Central Sector Schemes' and in the State list through CSS.

'Central Sector Scheme' is 'National Mission for Justice Delivery and Legal Reforms' which includes three components- (i) Action Research and Studies on Judicial Reforms; (ii) Designing Innovative Solutions for Holistic Access to Justice in India (DISHA); and (iii) e-Courts Phase II. It was stated that Central Sector Scheme provides grants/assistance under the Centrally Sponsored Scheme for Development of Infrastructure Facilities for Subordinate

Judiciary in the States/UTs, with or without legislature. The Central Sector Scheme also provide grants/ assistance for setting up Fast Track Special Courts for expeditious trial and disposal of cases of rape and those pending under POCSO Act.

XV Finance Commission recommendations were discussed during the discourse. It was suggested to create a State level Directorate of Subordinate Judiciary or to make District Courts to be the Head of the Department for planning for budget, undertaking capital expenditure and assisting the High Court to make recruitment of judges and other court staff.

Suggestions were given to undertake a comprehensive study, (with the help of financial, human resources and public works experts) to plan for the number of courts required to be constructed and renovated in order to achieve the desired outcome. Moreover, number of judges and court staff required to operate the number of courts must be considered while planning. The study may also forecast a proposal of the funds that may be required to establish the requisite number of courts, judges and staff. Operating cost and such allied expenditures must be factored in too.

It was also suggested that there should be openness on considering ways to raise revenue from judicial processes *viz*; court fees, special charges for certain kind of judicial services etc. to fund additional expenditures. It was emphasized that a combination of normative expenditure requirement, established convincingly with credible outcome delivery and part sourced from revenue increase would be the best planning approach to achieve this most desirable public service. A good architectural-cum-engineering organisation is needed for effective utilisation of capital budget.
