

NATIONAL JUDICIAL ACADEMY



**NATIONAL CONVENTION FOR SENIOR HIGH COURT JUSTICES:
STRENGTHENING FISCAL AND ADMINISTRATIVE PROTOCOLS IN
HIGH COURTS [P-1250]**

25th April and 8th May, 2021

Programme Report

The National Judicial Academy organized the second phase of the online National Convention for Senior High Court Justices for Strengthening Fiscal and Administrative Protocols in High Courts on 25th April and 8th May, 2021. The Convention was conceived to sensitize prospective Chief Justices of the High Courts to the non-judicial functions associated with the office. It also engaged the participant judges in discussion on 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.

Session 1 – Administrative functions of the Chief Justice

The session was initiated by stating that administrative functions are an integral part of the responsibilities of a Chief Justice. It was opined that the Chief Justice as the leader of the court should always lead by example. It was emphasized that it is the duty of the Chief Justice to infuse punctuality and discipline among the judges. Moreover for guiding and managing the court, developing a spirit of bonhomie and camaraderie is essential. It was opined that the Chief Justice be receptive to suggestions from the companion judges of the High Court. The Chief Justice should endeavor to understand the history, conventions and traditions of the High Court to which he is appointed and should take them into consideration. It was also opined that every High Court should have a standard operating procedure so that the newly appointed Chief Justice has some guidance regarding the functioning of the court. It was suggested that the National Judicial Academy should develop a Standard Operating Procedure which can be utilized in each high court subject to the local requirements. Emphasis was also placed on the necessity to harness talent from the available pool of resources. It was stated that a Chief Justice is under constant gaze and criticism and hence should be careful in their language while interacting with colleagues as well as during judicial dispensation. It was also stated that the Chief Justice has a very significant role *vis-a-vis* the

subordinate judiciary and should overview that the inspections are undertaken effectively and objectively. It was also suggested that the chief justice could initiate various schemes and plans for the benefit of the litigants and witnesses.

It was opined that the allocation of the various administrative committees should be undertaken in such a manner that the best talent is part of the committee and should not be based on hierarchy alone. The setting of agenda in full court meetings was also the subject of discussion and it was opined that issue pertaining to the scope of powers of the Chief Justice should never be put before the full court. The agenda items in the full court meeting should be restricted to those mentioned in the rules of the High Courts. Moreover, it should be limited to policy guidelines and issues relating to particular judges should not be put forth for discussion. Furthermore, discussion of personal matters or mudslinging should not be allowed in such meetings and the Chief Justice should intervene to maintain the discipline of the meeting. It was cautioned that the Chief Justice should never delegate his power to chair the meeting. Further, it was stated that all records should be kept before the judges while undertaking disciplinary action. It was suggested that several issues can be solved by discussing it over lunch or tea. The judges were also cautioned against mixing administrative and judicial matters and it was advised that administrative matters should never be taken up on the judicial side.

Various issues regarding transfer and posting of judicial officers were discussed and it was suggested that transfer and posting should be undertaken based on declared policy without any nepotism. It would keep the judiciary motivated since it would assure the judicial officers that extraneous circumstances do not affect their transfers or postings. However, genuine reasons should be accepted in certain cases for transfers and posting. It was also stressed that the vigilance committee should be composed of judges of impeccable integrity with experience in service law

and criminal law. Moreover, representation of women judges should not be restricted to select committees based on gender considerations. It was also opined that there should be equal gender representation of women in the registry, staff and judicial officers. The marginalized communities should also be adequately represented. It was also suggested that judicial academies should be made robust and vibrant so that the best training is provided to the judicial officers and staff.

Session 2 - Administrative functions of the Chief Justice

It was opined that the Chief Justice plays a pivotal role in judicial administration and undertakes collaboration with the executive for smooth functioning of the justice system apparatus in the state. It was highlighted that the recommendation of names for appointment to High Court is a very integral part of the administrative function of the Chief Justice and it should be undertaken promptly. The participants were cautioned that judicial work of the Chief Justice should never be affected due to administrative responsibilities. It was stated that the primary role of a Chief Justice is to provide judicial leadership. The Chief Justice should not be a recluse and should interact with his colleagues and the bar so that there is continuous flow of information. The Chief Justice should undertake macro management and should analyze the disposal of cases to ascertain the problem areas.

It was stated that budget formulation is a critical area in administration of justice which requires a major overhaul. It was highlighted that there is no dedicated budget cell in many high courts. Currently, the financial allocation are made on a historical basis since the department concerned does not have the requisite expertise. It was suggested that infrastructure studies can be undertaken to determine the requirements of the state since many states have an infrastructure problem. It was

opined that an audit of the infrastructure facilities could be undertaken which should provide details of the sanctioned funds, date of sanction, expenditure incurred and the proposed date of completion. It should also involve assessment of disaster management and fire safety facilities in the court complexes. It was highlighted that the concept of separation of power entails separation only of judicial power, since collaboration with the executive is integral on the administrative side. It was opined that regular meetings with the administration are very essential and it was suggested there should be periodic review meeting between Chief Justice, Registrar General and Law Secretary.

It was stated that sometimes law and order issues also arise which should be dealt strongly. The lawyers should never be allowed to breach law or affect the smooth functioning of the courts. The Chief Justice should take the bar into confidence to control such situations. The judge should have an open mind but he should not be influenced by populist demands. Furthermore, the Chief Justice should be a neutral arbiter of the any situation and should never be swayed by parochial considerations.

Session 3 - Budget Preparation and Fiscal Management

It was emphasized that the existing structure should be strengthened for the benefit of litigants, judiciary and lawyers. It was opined that the problem of fiscal management in the judiciary involves three main issues – preparation of appropriate budget; adequate funding/allocation by the government and proper utilization of budget. The above problems are interlinked since they are related to dearth of planning and formulation of goals. The planning of the budget includes ascertainment of the needs of the judiciary and the amount required to meet such needs. It was

stated that the judiciary faces certain challenges subsequent to the preparation of the budget which includes delay in disbursement of funds. The concept of 'wicked problems of public policy' was discussed and it was stated that justice administration fulfills all its prerequisites. The concept of charged expenditure was also discussed. It was shown that growth rate of expenditure on judiciary was lower than the growth rate of total expenditure in majority of the state budgets. Thereafter, budget estimates (BE), revised budget (RE), actual budget of various states were displayed to portray that actual expenditure of the governments is usually less than the budget estimates. Thereafter the elements of good budget system were highlighted which include medium term planning with emphasis on outcomes and outputs sought to be achieved; annual budget planning; expenditure controls for efficiency and periodic audits. It was advised that statistics related to expenditure should be released at periodic intervals for strengthen accountability. It was also highlighted that in computerization of the Indian judiciary no deeper Business Process Reengineering (BPR) exercise was undertaken and there was only automation of existing processes.

The creation of agencies for undertaking non- judicial work of the judiciary in various jurisdictions across the world was discussed .The example of HMCTS (Her Majesty Courts and Tribunals Service) of the United Kingdom was highlighted which performs various administrative functions for the judiciary. It was opined that the budgets should be linked to performance which can be undertaken through well-defined goals, appropriate performance measures; rectification of weakness and inefficiencies and presence of informative reporting systems. The suggestions for reform included in-house capacity building by enhancing the internal administrative capacity; strengthening and improving the capacity of the registry and contracting out procedural tasks. It was also suggested that a separate agency to support the judiciary in the administrative functions

reporting to the Chief Justice can be created. It is emphasized that in house capacity building of three type of capabilities i.e. finance and planning; procurement; information system are required to be enhanced. It was opined that under the short to medium term strategy the judiciary can recruit serving or retired civil servants for the post of Registrar (Finance) or FA (CAO) and integrate the court managers with the senior personal. For the medium to long term, it was proposed that a general managerial cadre for the courts can be created. Moreover, two parallel hierarchies may be created Registrar General (Judicial) and Registrar General (Administration) to assist the Chief Justice in his functioning. It was also suggested that routine and procedural tasks can be contracted out similar to the system in passport services.

Session 4 - Budget Preparation and Fiscal Management

It was highlighted that the judiciary is afflicted by four major issues i.e. huge vacancies of judicial officers; absence of adequate infrastructure facilities; inability to digitize judicial processes and obsolete laws. It was stated that one of the primary responsibility of the state is administration of justice which is a public good. It was also stated that the earlier the expenditure for the judiciary came under the non-plan expenditure but now the distinction of plan and non-plan expenditure has been removed. Currently, the majority of the expenditure on the judiciary is incurred by the state government. Subsequently, the central sector schemes and centrally sponsored schemes run by the central government were also discussed with examples. The speaker also gave a brief overview of the recommendations of the 15th Finance Commission for the judiciary and the various heads under which budget for Ministry of Law and Justice has been allocated under the central budget for 2021-22. The system of budget authorization was also explained in brief during the course of the session.

It was stated that interface with the government is required for receiving adequate budget for human resources, infrastructure and digitization. It was opined that the existing system of capital expenditure, planning and monitoring is sub-optimal with no “zero-based budgeting” or “performance budgeting”. The main reason for the problem was the absence of the institutional system with skilled personnel for finance, procurement and account system to assist the high courts. The judicial officers does not have the required expertise to deal with budgeting. It was opined that the precious time of judges should be spent in delivering justice rather than managing and preparing budgets. There should be designated budget and finance officer. It was suggested that a Directorate of Judicial Finance and Accounts under each High Court should be created which will handle accounts and audit. It was also suggested that either a professional or an officer from the Government may be deputed at the Chief Accounts Officer level.

It was emphasized that there is absence of planning and implementation of capital works. Hence, it was suggested that a dedicated structure should be created for the purpose of planning, designing, budgeting, supervising and managing the capital works apart from interacting and coordinating with the state government for budget. The several options which were suggested include creation of corporation similar to police housing corporations; expanding mandate of police housing corporations to include judicial buildings and capital works; engineering wing under the control of High Court or a unit under the PWD dedicated for judicial infrastructure. It was also opined that digitization of entire processes of cases is important and a national template for data and information aspects of cases can be made under the supervision of Supreme Court, in active consultation with the High Courts.

It was suggested that goal should be set for the purpose of disposal of cases within a pre-determined time frame and reduction of pendency. Moreover, a comprehensive study should be undertaken to ascertain the minimum number of courts needed to achieve the desired outcome, and the number of judges and court staff required. Thereafter planning for revenue and capital budget was also discussed. It was opined that undertaking the suggested improvements would lead to a multifold increase in existing budget and therefore various initiatives can be undertaken to raise revenue from judicial processes- court fees, special charges for certain kind of judicial services etc. to fund additional expenditures. It was also recommended that there should be a National level organization with respect to recruitment, infrastructure and digitalization involving participation of Government and domain experts. It was also suggested that there should be a planning and monitoring agency involving the chief justice with oversight mechanism at the state level.
