

National Judicial Academy



P-1267: NATIONAL CONVENTION FOR SENIOR HIGH COURT JUSTICES: STRENGTHENING FISCAL AND ADMINISTRATIVE PROTOCOLS IN HIGH COURTS

6th & 7th November, 2021

Program Report

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The National Judicial Academy organized an online “National Convention for Senior High Court Justices: Strengthening Fiscal and Administrative Protocols in High Courts” during 6th & 7th November, 2021. The aim of the National Convention was to sensitize the senior most justices of the High Courts to the non-judicial functions associated with the office. The participants were the senior most High Court Justices (J-1 to J-3) nominated by the 13 High Courts of the country. The objective of the convention was to discuss critical areas concerning the administrative responsibilities and functions of Chief Justices of High Courts, especially the administrative protocols and the intricacies and nuances of the fiscal management and functionalities through deliberations and open house interactions enabling best practices in these areas.

Session 1: Administrative Functions of the Chief Justice

Session 1 commenced with the introductory remarks of the Hon’ble Director, NJA. The objectives of the convention and Session 1 were explained to the participants. It was stated that the first session is designed to understand the administrative functions of the Chief Justice as some participants may have the opportunity in the future to serve on the Bench as a Chief Justice and otherwise to assist the Chief Justice in some of the most important functions. Senior Justices help the Chief Justice in administrative function through various administrative committees and task-specific committees. Judicial leadership leads to administrative leadership as a Chief Justice. The pronouncement of judgments alone is not sufficient rather it is the collective effort of the High Court with the senior judges taking the lead and that should be the understanding to run the High Court as an institution. It was opined that the discussion aims to focus on such issues and address questions *viz.* "Should the Chief Justice delegate his power and if so then to what

extent?" and "If the powers are delegated then how senior judges will handle the mantle responsibly and respond to the challenges they have to face?"

Thereafter following important suggestions were put forward by the Speakers:

- The Chief Justice has to maintain independence of the judiciary consciously with separation of power and he is responsible for ensuring access to justice and fair and speedy dispensation of justice in the State. The role of Chief Justice is to oversee the entire State including judges, registry, staff, Bar of the High Court and the entire district judiciary. There are several institutions which are under his supervision including the State Legal Services Authority, the State Judicial Academy and in some States the Chief Justice is the ex-officio chancellor of the National Law School established therein.
- Time management is an extremely important function of the Chief Justice. The performance of judicial work should not be affected after becoming the Chief Justice. The time on the judicial side should not be reduced as the other judges and the bar immediately notice it leading to adversely impacting the authority of his office. Therefore, the Chief Justice has to be good in both i.e. judicial side and administrative side. On the judicial side also there are some special responsibilities on the Chief Justice viz. Public Interest Litigations and cases involving continuing mandamus etc. Thus demanding effective time management.
- Chief Justice's relations with the executive and the political establishment of the State is crucial. Some Chief Justices totally avoid meeting with the Chief Ministers and Governors. The meetings are essential for getting budget for sanctioning of posts and other bottlenecks which are required to be resolved. There must be an agenda for the meeting with the Chief Minister and the point of discussion should be sent to the Chief Minister before the meeting. These meetings should not be held privately and the Chief Justice should always have the law secretary and J1 and J2 Justices in the meeting.
- The Chief Justice should exercise restraint in attending public functions. He should refrain from discussions on any agenda or policy related to judiciary, pending matters and on issues in the judiciary in public functions.

- Each High Court has its own distinct custom and traditions and the Chief Justice should not disturb the long standing customs and traditions. The constitutional values, constitutional governance of the High Court and the District Judiciary and High Court Rules have to go together with the customs and traditions of the High Court.
- One of the important function of the Chief Justice is the constitution of benches and nominations on recusals. For the nomination of benches the Chief Justice must consider the competence, strengths and specialties and should regularly interact with judges to know about their expertise.
- The Chief Justice should be approachable, should meet judges regularly and should be in constant dialogue with them and duly acknowledge their advices. The Chief Justice should be a patient listener and should allow judges to speak more.
- There should be a standard operating procedure for the Chief Justice. The Chief Justice should ask the Registrar for the details of previous 100 full court meetings and to find out those practices, procedures and traditions which has taken shape of standard operating procedures. These standard operating procedures must be synthesized with the High Court Rules and then they can be adopted.
- The full court meetings should be organized regularly and there should be a calendar of full court meetings. The Chief Justice must devote sufficient time for the preparation of agenda of the full court meeting scheduling timelines for each agenda item. The Chief Justice should not attend the meeting with *ad hoc* preparation. No one should be allowed to speak in full court meeting at random and there should not be any cross talking. The mobile phones should not be allowed in the meeting hall. The Chief Justice too should not carry his/her mobile phone in the meeting. The discussion should be free and frank. However, a decorum is warranted viz. one should express his/her views with prior permissions of the chair. The Chief Justice should always be in control of the full court meeting. The resolution of the full court meeting should be drafted immediately to avoid future modifications and the minutes of the meetings should be immediately circulated. The full court meeting is meant for discussing policy issues only. Private matters should never be discussed in the full court meeting. The

Chief Justice should not go for voting unless the opinions are clearly divided. If the opinions are clearly divided then no dissent should be recorded. The day for the next full court meeting should be fixed in the ensuing meeting itself to avoid delay in organizing meetings.

- The administrative committee meetings are important and should be generally presided by the Chief Justice. The Rule Making Committee should have regular meetings to update rules according to the changing dynamics in areas such as ICT, ADR, gender justice, juvenile justice, human rights and directions issued by the Supreme Court. Developments in all these areas should be incorporated in the Rules and the Rules should match with the current ethos of the judiciary. The Rules must be circulated a month before the full court meeting and the comments of the judges should be invited to ensure that the precious time of the full court is not wasted. The comments should also be circulated before the full court meeting. The development of infrastructure for information technology in courts is very important and there should be young judges in the IT Committee. A time limit should be fixed while delegating any task to any committee.
- Regarding Collegium meetings the concern was raised on the situation of not holding collegium meeting unless the best names are available. Many deserving judges from the district judiciary lose opportunity because collegium meetings are not held regularly.
- Regarding the horizontal and vertical relation between courts, the issue of filling vacancy of judges was discussed. The Supreme Court has issued the directions regarding the monitoring of appointment of judges in All India Judges case and Mazhar Sultan case. Some of the High Courts were not observing the regular mechanism for appointment of judges. The Supreme Court is monitoring this process. All the High Courts should have one registrar who can compile all the directions of the Supreme Court and record the implementation of such directions and inform the Chief Justice that to what extent they have been followed. The Chief Justice is responsible and accountable for the appointment of judges.
- The appraisal and inspection of the work of judicial officers should be done regularly rather than occasionally and the inspection should not be disclosed before it takes place. The inspection must be

done incognito. Timely clearing of the Annual Confidential Reports and timely promotions are very crucial.

- The session was concluded by emphasizing that the relationship of tension and cooperation are maintained by indulging in the dignified communication between courts to reduce the frictions and the constructive criticism should be accepted. This is equally applicable in horizontal relationship management. Very often matters involving similar questions of facts and law have been adjudicated by different high courts producing widely differing results. It is a good practice to analyze the viewpoint taken by another High Court and then agree or disagree politely in judgments.

Session 2: Administrative Functions of the Chief Justice

The session 2 was commenced by highlighting the problems concerning the collaboration with other branches of the government. It was emphasized that persuading the government to allot land to the judiciary is challenging. Another issue was the realization of the budget and its full utilization and concern was expressed over High Courts surrendering fraction of unutilized budget.

Thereafter following important suggestions were put forward:

- The different models of administration in the High Courts and the Supreme Court were compared and it was explained that the High Courts are judge administered courts and the Supreme Court is registry administered court. It was opined that the judge administered courts are far better and far more effective.
- There is a difference between the perceived concept of independence of the judiciary and the collaborative effort required on the administrative side. The role of a judge is different on the judicial side and that on administrative side. On Judicial side judges ensure checks and balances on the other organs of the State but on the administrative side some amount of collaboration is necessary so far as finance and infrastructure is concerned. The situation of infrastructure in courts in Punjab & Haryana and Tamil Nadu was compared. The need for better infrastructure for Alternative Dispute Resolution mechanism was emphasized and consideration of future needs while building court infrastructure was discussed. There should be avoidance of piecemeal preparation of infrastructure requirements and there

should be proper planning of funding for better collaboration and results with the executive. The need for professional assistance in finance and budgeting was emphasized. The issue of lapse of funds because of lack of planning and utilization was discussed. The centrally assisted funding and its utilization was highlighted and it was emphasized that there should be proper planning for funds utilization. There should be continuous interaction with executive for ensuring seamless funding for courts, and there should be regular meetings of the Chief Minister, the Chief Justice, the Finance Secretary and senior judges. Impediments perceived at the bureaucratic level may be sorted out by judges in such meetings. The involvement of the Chief Justice in such matters is very crucial for timely planning and execution of the infrastructure projects for courts. The infrastructure for Bar should also be developed and potential of Bar in expeditious execution of infra-development should be considered. The example of Delhi where the Bar played an active role in the creation of infrastructure was referred.

- There should be efforts to reduce the atmosphere of hierarchy and the Chief Justice must make efforts to ensure that judges remain confident of their position. The Chief Justice should have open discussion with judges if there is a necessity of taking a right step for the High Court.
- The situation of having senior judges or the Chief Justice from other State in the collegium was discussed. Such situation pose a challenge in selecting candidates for judgeship as they are unfamiliar with the local Bar. The situation becomes complex if the Chief Justice and all the members of the collegium are from other States. In such situation the Chief Justice and the collegium members should consult persons from all quarters and take their inputs. The judges have to be little more careful in selecting candidates in such situation.

Session 3: Budget Preparation & Fiscal Management

The *third session* commenced with a brief overview of the budgeting. It was delineated that budgeting is a very important component of judiciary. It was emphasised that budgeting is an extremely important but neglected part of the justice delivery system. It was opined that judiciary should have its own financial resources with controlled finances. It was stressed that infrastructure is a major component for judiciary for

which funds are required. Proper utilization of the fund is an important facet of fiscal management and planning. The nature of judicial work from the point of view of the theoretical public economics and public policy framework was discussed. The constitutional provisions of budget and finance was underscored. Article 112 (3) & Article 202 (3) of the Constitution of India that creates expenditure charged to consolidated fund was discussed.

The book “*In Service of the Republic*” authored by Prof. Vijay Kelker published in 2020 was highlighted that classify public policy interventions based on four criteria’s viz. transaction intensity, discretion, stakes that involved in terms of interventions and the need of secrecy which is to be maintained. In judiciary there is a budget estimate in the Union budget as well parallel amount in the State budget. It was stated that the budget mechanism allows to revisit the budget estimate in the of the financial year in the name of revised estimate.

It was stated that as a generally rule, actual spending are lower than the revised estimate and which as a general rule are lower than the budget estimates. It was delineated that overall spending on judiciary is relatively low and often, even the budgeted allocations are not spent.

Elements of a good budget system were discussed including:

- 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.
- *India Justice Report 2019* was highlighted in reference to expenditure on administration of justice.

Essential elements for linking budgets 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

The Financial Sector Legislative Reforms Commission (FSLRC) led by Justice B.N. Srikrishna recommended Financial Sector Appellate Tribunal (FSAT) and the case of *Roger Mathew v. South Indian Bank Ltd.* (2020) 6 SCC1 was also discussed during the discourse. National Court Management System 2012 (NCMS), computerization of courts and the inclusion of court managers for effective court management were deliberated upon. The international experience of budgeting also formed part of discussion. It was opined that there should be an exclusive agency attached to the judiciary to support administrative functions and report directly to the Chief Justice. It was emphasized that such supervision and control by Chief Justice is essential for better and enhanced functioning of courts.

It was delineated that entire system of financial planning of a High Court lies within the jurisdiction of the respective High Court, and it was recommended that there should a two tier system of perfect budget estimation and revised estimation in the system.

It was suggested that for effective and good budgeting, synergy between judiciary and fiscal authorities is necessary. In-house capacity building was advocated to enrich the budget preparation and fiscal management in the Indian judiciary. It was suggested there should be a separate post for civil servants on deputation or retired civil servants on contractual basis to be appointed as Registrar (Finance) in High Courts.

Session 4: Budget Preparation & Fiscal Management

In the fourth session broad overview on the functions of the administration of justice was given. It was stated that the primary responsibility of the judiciary is to secure justice to the people of India which is also enshrined in the Preamble to the Constitution of India. It was stated that both Union and State Governments have executive authority and responsibility for institutionalizing and maintaining the system of courts for effective administration of justice.

It was stated that in the present industrial and digital society, a well-functioning system of courts require five broad heads of expenditures:

- i. Adequate number of well qualified judges, supported by rightly skilled court staff;
- ii. Equipped with appropriate physical and digital infrastructure for courts and housing of judges;
- iii. Digitalisation of entire court files, judgments and judicial process;
- iv. Non-judicial expertise and professionals for managing the non-judicial processes, infrastructure and data; and
- v. Research and development for modernising and expediting justice delivery.

It was stressed that there are separate 'Heads' with a hierarchy under the major head runs into sub major head, minor head, sub head, detailed head and object head in the Chart of Accounts for revenue expenditure, capital expenditure, loans and advances. Revenue expenditures for different institutions like High Court, Civil and Sessions Courts are budgeted under typical Minor Heads. Minor heads are common across Union and State Governments. Specific expenditure on various inputs like salaries, wages, office expenses, domestic travel expenses are classified and provided for under object head.

It was delineated that expenditure estimates have to be presented in the form of 'demand for grants' for the approval of Lok Sabha/ State Legislature {Article 113 (2) and Article 203(2) of the Constitution of India}. After the demand for grants are approved, the authorisation to take out funds from the Consolidated Fund of India/State is obtained through the appropriation bill {Article 114 (1) and Article 204 (1)}. However, charged expenditures, which includes "salaries and allowances" of judges of Supreme Court and High Courts, and administrative expenditure of Supreme Court and High Courts are not put to vote as part of the demand for grants and appropriation bill. It was emphasised that no expenditure on any public goods and services can be incurred without the authorisation of Parliament/ State Legislature. Classification of the expenditures was discussed in detail including planned and non-planned expenditures, development and non-development expenditures, maintenance expenditures and general, social and economic service

expenditures. It was highlighted that administration of justice is a general and non-development head of expenditure.

It was delineated that Central Government prepares two documents to bring out all the expenditure budget information: (a) Expenditure Budget and (b) Expenditure Profile. It was stated that expenditure budget presents line item wise actuals for the previous year, revised estimates for the current year and budget provisions for the next year. Expenditure profile presents expenditure information under different schematic and analytical heads. State Government budget and its accounts documents were also underscored. Central budget expenditure for the year 2021-22 was discussed. It was stressed that primarily State is responsible for the expenditure on administration of justice.

Combined Finance and Revenue Accounts of the Union and the State Governments published by Comptroller and Auditor General of India (CAG) was discussed during the discourse. It was emphasized that States spend about 95% of the expenditure on administration of justice.

Centrally Sponsored Schemes (CSS) was discussed and it was stated that CSS provides Central Government grant for expenditures on the subjects primarily allocated to States in the Seventh Schedule. The Centre does not have executive authority and the power to make laws on these subjects. However, Article 282 permits the “Union or a State” to make “any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.” It was opined that over the years, CSS have become primary driver of expenditure in the functional space covered by the respective CSS. It was stated that CSS 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 delineated that Central Sector Scheme is National Mission for Justice Delivery and Legal Reforms which includes three components- 1. Action Research and Studies on Judicial Reforms 2. Designing Innovative Solutions for Holistic Access to Justice in India (DISHA) and 3. e-Courts Phase II. It was stated that Central Sector Scheme provides grants/assistance under the CSS 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. It was emphasized that while the Central Government sought to provide additional funding for creation of basic physical infrastructure facilities like court rooms and residences for judicial officers, the scheme has not been able to achieve its objectives.

XV Finance Commission (FC) recommendation were discussed and it was underscored that XV FC noted the complaint of the Department of Justice complained that the States did not provide adequately for strengthening of judicial system even after the enhanced devolution following the recommendations of FC XIV. XV FC also noted that there are more than 3.2 crore cases pending in the courts, “causing undue delays in justice delivery” and “two thirds of the prison population are under trial prisoners who continue to be incarcerated due to disproportionate delay in trials.

It was stated that governance related expenditures whether for administration of justice, district administration, or policing are still considered non-developmental expenditures. This mindset considers such expenditures as non-productive. The lack of effective organisational/ administrative support in the judicial system for budget planning for the district judiciary was underscored. “Outcome budgeting”, zero based budgeting” or “performance budgeting” which are only for public consumption was also discussed during the discourse.

Five Imperative Needs of Judicial System were discussed *viz.*:

- Getting adequate number of well qualified judges, supported by skilled court staff;
- Creating appropriate and functional physical and digital infrastructure for courts and housing of judges;
- Digitalisation of entire court processes, files, judgments, record and information;
- Acquiring non-judicial expertise and professionals for managing the non-judicial processes, infrastructure and data; and
- Developing research and development for generating policy inputs for better laws and modernising and expediting justice delivery.

It was stated that responsibility for timely delivery of justice is that of the High Courts. Digitalisation of the entire process flow of cases and judicial management of the cases is the only way to ensure timely delivery of justice. It was suggested that 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 emphasized that High Courts have to be in charge of digitalisation of case management and justice delivery. For this, each High Court should hire a professional information technology management firm, and completely digitise and digitalise the district and subordinate courts. The lack of effective finance, procurement and accounts system, no capital works planning and implementation system to assist High Courts was highlighted. It was suggested that with the assistance of financial experts the budget estimates for the number of courts required to be constructed and renovated can be determined in order to achieve the desired outcome. It was also suggested that the compressive study of budget estimate for the number of judges and court staff to be appointed may also be made to make the system more robust.
