

Budget Preparation & Fiscal Management for Administration of Justice

Course on Strengthening Fiscal and Administrative Protocols in
High Courts (NJA P-1267)

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Scheme of Presentation

- Administration of Justice is Core Sovereign Function
- System of Budget Allocation and Expenditures
- State of Budget Allocation and Expenditures
- Centrally Sponsored Schemes and Other Schematic Interventions
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Administration of Justice is Core Sovereign Function (Public Good)

Securing Justice to All Citizens

- The People of India have constituted India into a Sovereign State to secure to all its citizens: JUSTICE, social, economic and political;
- Sovereign State's primary function and responsibility is to secure social, economic and political JUSTICE by delivering public goods like law and order management, defence of the country, delivery of justice, macro-economic stability and currency management to all its citizens;
- Administration of Justice is one of the most important public good/service;
- Adjudication of disputes by Courts is the principal and effective mode of securing justice;
- Administration of justice as a public good has to be funded from the taxes collected by the Government and fees and other moneys collected by the Courts.

The Administration of Justice

- Both Union and State Governments have executive authority and responsibility for institutionalising and maintaining the system of courts for effective administration of justice;
- Union Government has jurisdiction concerning “constitution, organisation and powers of Supreme Court” and “the fees taken therein” (Article 77) and “constitution and organisation” of “the High Courts” (Article 78);
- From 1976, “administration of Justice; constitution and organisation of all courts, except the Supreme Court and the High Courts” is in the Concurrent List (Item 11A) conferring power on both the Union and States;
- Thus, both the Centre and the States have responsibility towards effective and adequate administration of justice in the country.

Constituents of Budget Demand for Effective Administration of Justice

- Justice can be delivered effectively, adequately and timely by a well functioning system of courts.
- In the present industrial and digital society, a well functioning system of courts require fiscal resources for 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, judgements 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.

System of Budget Allocation and Expenditure

Budget is allocated under specific Heads as per the Chart of Accounts

- There are separate 'Heads' in the Chart of Accounts for revenue expenditure, capital expenditure and loans and advances. The hierarchy under the Major Head runs into Sub-Major Head, Minor Head, Sub-Head, Detailed Head and Object Head.
- 2014 Administration of Justice is the Major Head for budgeting and accounting of revenue expenditure on this head. Revenue expenditures for different institutions like High Court and Civil and Sessions Courts are budgeted under typical Minor Head 102 High Court and 105 Civil and Sessions Court. Minor heads are common across Union and States governments.
- Specific expenditure on various inputs like salaries, wages, office expenses, domestic travel expenses are classified and provided for under what is known as Object Heads.

System of Expenditure Authorisation

- Government has to place ‘a statement of estimated receipts and expenditures’ (usually called budget) in the Lok Sabha or the State Legislature {Article 112 (1) and Article 202 (1)};
- Government does it in the form of estimated receipts and expenditure for each major head;
- 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)};
- After the demand for grants are approved, the authorisation to take funds out from the Consolidated Fund of India/State is obtained through the appropriation bill {Article 114 (1) and Article 204 (1)};
- Charged expenditures, which includes “salaries and allowances” of judges of Supreme Court and High Courts, and also administrative expenditure of Supreme Court and High Courts are not put to vote as part of the demand for grants and appropriation bill;
- No expenditure on any public goods and services can be incurred without the authorisation of Parliament/ State Legislature.

Classification of Expenditures

- Constitutional requirement is to distinguish estimates of expenditure to be made from the consolidated fund of the union/states on 'revenue account' and 'other expenditure' {Article 112 (2) and Article 202 (2)};
- Expression 'other expenditure' is principally taken to mean 'capital expenditure';
- India introduced a few new classifications of expenditure- plan and non-plan expenditures, development and non-development expenditures, new and maintenance expenditures and general, social and economic service expenditures;
- Administration of Justice is a general and non-development head of expenditure;
- It was also classified as a non-plan head of expenditure until the distinction between plan and non-plan expenditure was done away with in 2017.

Central Expenditure Budget and Accounts Documents

- Central Government prepares two documents to bring out all the expenditure budget information:
 - Expenditure Budget, and
 - Expenditure Profile
- 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.
- Detailed demands for grants for each head of expenditure are not part of the budget documents placed in the Parliament and released to the public by the Ministry of Finance.
- Detailed demand for grants for central government expenditure on administration of justice is prepared and is made available on the website of the Ministry of Law.
- Controller General of Accounts (CGA) prepares the finance and accounts of the central government under same system of the chart of accounts, which are published after the same are laid in the Parliament.

State Government Budget and Accounts Documents

- State Governments follow different practices;
- Most present budget information upto object heads in the budget documents themselves organised under different parts for revenue expenditures, capital expenditure and loans and advances;
- A different statement is usually presented for the Centrally Sponsored Schemes and allocations under different heads;
- State Government's finance and accounts are prepared by the respective accountant generals (unless taken over by the state governments) and released for public information after being placed in the state legislatures.

State of Budget Allocation and Expenditures

Central Budget Expenditure 2021-22

- Establishment expenditure of the Centre: Rs. 437.20 crore;
(tax tribunals Rs. 219.30 crore, Secretariat Rs. 217.70 crore)
- Central Sector Schemes/Projects: Rs. 138.82 crore;
(e-Courts Phase II- Rs. 98.82 crore)
- Other Central Sector Expenditure: Rs. 116.50 crore;
(NJA Rs. 11 crore, National Legal Services Authority Rs. 100 crore)
- Centrally Sponsored Schemes: Rs. 784.00 crore;
(Infrastructure facility for Judiciary- Rs. 776 crore)
- Other Grants/Loans/Transfers: Rs. 1169.00 crore;
(EVMs for Election Commission Rs. 1005 crore)
- Total: Rs. 2645.82 crore

Expenditure on Administration of Justice Primarily a States' Responsibility

- “Subordinate Courts” or the District Judiciary or Courts are provided for in the Part VI (The States) and the Chapter VI of the Constitution;
- District Courts are the principal instruments of discharging the public service of the delivery of justice;
- The provisions relating to appointment of district judges and other judges of the subordinate courts; salary, allowances and pensions of the subordinate courts confer responsibility of providing adequate funding on the Governor and thereby the state governments;
- Although legislative power of the Centre extends to subordinate judiciary after its inclusion in concurrent list, the expenditure on administration of justice, which is not charged expenditure, is primarily borne by the States.

Confirmed by CAG Report and Other Documents

- CAG publishes 'Combined Finance and Revenue Accounts' or 'CFRA' of the Union and the State Governments;
- This comes with a lag. Last CFRA available only for 2018-19, published on 12 April 2021;
- As per this statement, expenditure of the Union on Administration of Justice in 2017-18 was Rs. 989.22 crore, whereas the combined expenditure, along with States' expenditure, was Rs. 19803.58 crore. States together spent Rs. 18814.36 crore;
- States spent about 95% of the expenditure on administration of justice in the country;
- Amongst the states, UP incurred expenditure of Rs. 2164,23 crore in 2018-19, which was a little less than 11% of total expenditure under this head;
- There is no separate head for capital expenditure on administration of justice and it generally forms part of Capital Outlay on Public Works.

Analysis of Expenditure on Administration of Justice

- There are excellent set of information on fiscal expenditure on administration of justice in the reference material provided by NJA.
- The Memorandum submitted by the Department of Justice also brings out analytical information comprehensively. It confirms the pathetic state of state of filling of vacancies of Judges and subordinate staff, state of infrastructure- court buildings and residential building.
- Presentation made by K P Krishnan also highlights the irony of courts not utilising even this small allocation. Utilisation of 13th Finance Commission grant of Rs. 5000 crore only to the extent of 20% over its five-year implementation period confirms the rot in the system.
- Address by Chief Justice Ramanna while inaugurating Aurangabad Bench of Bombay High Court highlighting pathetic state of infrastructure is call which can be ignored only at the peril of denial of justice to citizens of India.

Centrally Sponsored Schemes and Other Schematic Interventions

Centrally Sponsored Schemes

- Centrally Sponsored Schemes provide central government grant for expenditures on the subjects primarily allocated to States in the Seventh Schedule;
- 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”;
- Implicitly using this provision, the Central Government has over the years built an empire of centrally sponsored schemes or the CSSs over almost every facet of States’ exclusive jurisdiction under the State List in the Seventh Schedule.

Central Sector and CSS Schemes

- Statement No. 3 in the Budget Profile 2021-22 at Sr. No. 64 indicates total budget provision for Ministry of Law (Rs. 2645.82 crore);
- Being a concurrent subject- central government budgets expenditure under both central sector and centrally sponsored schemes (CSS);
- Statement 4A provides provision for Centrally Sponsored Schemes. Infrastructure Facilities for Judiciary is included as a Core Scheme;
- Statement 4 B provides line item wise details for all Central Sector Schemes. Under demand 64 all the three central sector schemes- Action Research and Studies on Judicial Reforms, Designing Innovative Solutions for Holistic Access to Justice in India (DISHA) and e-Courts Phase II.

CSSs Take Over States' Responsibility and Financial Space

- Over the years, CSSs have become primary driver of expenditure in the functional space covered by respective CSS;
- 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;
- Central government does not provide full funding for the inputs and the outputs. It typically contributes a proportion (mostly 60% currently) for the quantum of inputs/outputs determined in accordance with the guidelines of respective CSS and the action plans approved for each of the state;
- In the process of availing the pot of money attached to CSSs, States have lost their freedom to budget for the scale, quality and timing of the underlying expenditure responsibility;
- Over the years, centre has come to see CSSs as the instruments to reach directly to people and, in the process, CSSs have become instrument of 'fiscal unionism'.

Central Sector Scheme- National Mission for Justice Delivery and Legal Reforms

- This Mission is run with 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;
- There was an expenditure of Rs. 209.42 crore in 2019-20 with e-Courts Phase II receiving bulk of the expenditure (Rs. 179.26 crore). No expenditure on second component of innovative solutions;
- Revised expenditure provision for 2020-21 is Rs. 215 crore, again primarily, for e-Courts (Rs. 180 crore);
- For 2021-22, combined allocation has been reduced to Rs. 139.82 crore with reduced provision of Rs. 98.82 crore for e-Courts, no provision for Action Research and a provision of Rs. 40 crores for the Innovative Solutions Component.

E-Courts Scheme seems to be losing steam

- There are three excellent papers describing the state of e-courts scheme
 - evolution with birth defects (Justice Bharuka- Technology and Timely Justice);
 - best defence of its execution (Atul Kaushik- Bringing the E to Judicial Efficiency- Implementing the e-Courts System in India);
 - Ambitious plan of phase II (E-Committee Supreme Court of India Policy and Action Plan Document: Phase II of E-Courts Projects 2014)
- A lot seems to have been done in terms of digitising information but there is still very little re-engineering of judicial process
- Scheme's impact on faster disposal of cases and reduction in pendency is not quite discernible;
- District judiciary still functions primarily in physical mode (also brought out in the Finance Commission Memorandum;
- A number of government services have been fully digitalised but courts are lagging behind.

CSS- Infrastructure Facilities for Judiciary

- This CSS provides grants/assistance under the Centrally Sponsored Scheme for Development of Infrastructure Facilities for Subordinate Judiciary in the States/UTs, with or without legislature;
- While there are two components- Gram Panchayats and Infrastructure Facility for Judiciary- it is the Infrastructure Facility component which receives almost the entire provision;
- For 2019-20, actual expenditure was Rs. 990 crore- 100% for Infrastructure component;
- Provision has been reduced to Rs. 593 crore in RE 20-21 from Rs. 762 crore in BE20-21;
- For 2021-21, budgetary provision has been kept at almost the last year's BE level at Rs. 784 crore.

Infrastructure Facilities for Judiciary Scheme has become completely routinised

- There is an excellent review of the journey, implementation performance and issues in the CSS- Infrastructure Facilities for Judiciary in the paper-*Budgeting Better for Courts- An Evaluation of the 7460 Crores Released Under the Centrally Sponsored Scheme for Judicial Infrastructure*.
- While the Central Government sought to provide additional funding for creation of basic physical infrastructure facilities- court rooms and residences for judicial officers, the scheme has not been able to achieve its objectives. It has always been behind the curve.
- A very ambitious agenda has been laid out in the *NCMS Baseline Report on Court Development Planning System (Infrastructure and Budgeting)- Report of the Sub-Committee of NCMS Committee Headed by Mr. Justice Badar Durrez Ahmed*, nothing much has actually come out.

CSS- National Mission for Safety of Women

- This CSS is meant to 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;
- Funds for this CSS are met from the Nirbhaya Fund;
- The scheme was initiated only in 2020-21 with the BE of Rs. 150 crore;
- Provision has been raised to Rs. 160 crore in RE20-21;
- For 2020-21, budgetary provision has been kept at Rs. 200 crore.

XV FC Recommendation

- XV Finance Commission noted that 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 were 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”;
- Finance Commission also rightly noted the harmful impact of acute pendency of economic cases in courts “taking a toll on the economy in terms of stalled projects, mounting legal costs, contested tax revenues and reduced investments”;
- Department of Justice had sent a proposal for grant of Rs. 19,312 crore for all States to build fast track courts, special fast-track courts for cases under POCSO Act and appropriate facilities in court complexes;
- FC recommended grants of Rs. 10,425 crore for fast-track courts for speedier justice delivery in cases of heinous crimes, civil cases of marginalised people, property taxes that are over five years old and economic offences as well as fast-track courts for POCSO cases;
- This recommended grant is a ‘sector specific grant’.

Action Taken on XV FC Recommendation

- Government, in the Action Taken Report placed in the Parliament on 1st February, said that “Government will give due consideration to sectors identified by the Commission while formulating and implementing existing and new Centrally Sponsored and Central Sector Schemes” for all the eight sector specific grants recommended by the XV FC, including for judiciary.
- Recommended grant is unlikely to be implemented as a specific FC recommended grant. Instead, the Government may increase outlays of the two CSSs already under implementation, by adding, if felt necessary, that some additional components need to be built in the existing schemes.
- Judiciary should work with the Government to get these allocations or wait for Budget 2022-23 to see what the Government does.

Structural Reforms for Better Budgeting and Expenditure Management

Existing System of Expenditure Planning and Monitoring is Dysfunctional

- India budgets on historical cost basis still- not only for Administration of Justice but every budget head;
- Current system provides for revenue expenditure at the existing level of expenditures for establishment- salary and allowances- and maintenance expenditures- office expenses, stationary, cleaning etc.;
- Governance related expenditures whether on Administration of Justice or on District Administration or Policing, are still considered “non-developmental” expenditures. This mindset considers such expenditures non-productive;
- States provide only miniscule amount of capital expenditure in their budgets; central government also is quite miser and episodic in its approach and allocation to governance expenditures;
- “Outcome budgeting”, “zero- based budgeting” or “performance budgeting” are only for public consumption. ;
- There is also no good organisation/ administrative support in the judicial system to do budget planning for district judiciary.

Five Imperative Needs of Judicial System

- Getting adequate number of well qualified judges, supported by rightly skilled court staff;
- Creating appropriate and functional physical and digital infrastructure for courts and housing of judges;
- Digitalisation of entire court processes, files, judgements, 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.

There are Three Major Pain Points

- There is no good finance, procurement and accounts system to assist High Courts- *High Courts works as Heads of Department and Budget Authorities in the state government scheme of things, but without any professional finance and accounts personnel;*
- There is no capital works planning and implementation system to help High Courts- *in planning for capital works and executing the same under the CSS- Infrastructure for Judiciary or under the state government schemes and budget for construction;*
- Programmes of e-Courts and other digital initiatives are not complete digital solutions (information flows for lawyers and to some extent for judicial monitoring) but *process flow, work digitalisation and case management is not getting right attention. It is information computerisation but not justice delivery computerisation.*

Setting the Goal

- Courts, especially the district and sub-district courts, exist for deciding the cases promptly and qualitatively;
- A clear goal need to be determined for this outcome and output (pendency can be a proximate though not final goal):
 - All cases to be decided in less than one year? or
 - Ensuring that there is no addition to the pending cases? or
 - Bringing down the pendency by 50% over 3 years?; or
 - All of these.
- Once the goal is set, while a lot can be achieved by digitalising and digitising the courts, a comprehensive study needs to be under, with the help of financial, human resources and public works experts to plan for the minimum number of courts needed to achieve the desired outcome, and the number of judges and court staff required to man the courts required;
- This exercise will lead to no of court buildings required to be constructed and renovated for establishing requisite number of courts and the funds needed to establish the requisite scale of courts, judges and staff and for operating the same efficiently and decently;
- There should be independent oversight of this entire process.

Planning for Revenue Budget

- Revenue budget is a relatively simpler exercise. Bulk of the revenue expenditures of the Courts is on salary and related establishment expenditure.
- Scale of pay and allowances are fairly stable and the database of judges and employees can throw up this number very easily.
- There is no need to do this planning bottom up in the current digital environment.
- There may be differences in the scale of maintenance requirement and some other items. These can be discussed with the state government and decided according to some objective criterion.
- In any case, the experience suggest that revenue budgets of administration of justice head remain generally under-utilised.
- Real task is to plan and recruit judges and other staff.

A Directorate of Judicial Finance and Accounts under each High Court

- Budgeting, allocating, monitoring funds under the head Administration of Justice and also for the Central Sector and CSS schemes of the Central Government and the State allocations for capital expenditure and for planning and making procurement, requires a professional structure;
- It would be advisable to create a state level Directorate of District and Subordinate Judiciary under the administrative control of High Courts
- This officer may be deputed at the Chief Accounts Officer level from the Government or a professional may be appointed;
- The officer should be designated as the Head of the Department and Budget Controlling Officer for planning for budget, undertaking capital expenditure;

Planning for Capital Budget

- This is somewhat a more convoluted situation.
- Let it be first established that the primary responsibility to provide capital budget for district court infrastructure and its digitalisation is that of the state governments.
- Once this is done, the High Courts and the State Government can jointly determine the requisite capital budget of three yearly and annual basis.
- For this determination, it should be the state government and high courts which should determine the normative design, normative cost and executing agency.
- Central Government may fix its normative cost and the proportion of the state government actual cost (it may choose minimum of the two) to provide grant to the states for both infrastructure and e-courts scheme.
- Rest of the cost would be borne from the state budget.

An Appropriate Organisation for Capital Works

- Considering the existing gaps and expanding needs of capital works for district and sub-district judiciary, an architectural and engineering structure under the High Courts appears quite necessary;
- There are several options- a corporation on the lines of police housing corporations can be created or the task of police housing corporations can be expanded to include judicial buildings and capital works or an engineering wing, headed by Chief Engineer, Superintending Engineer can be created under the control of High Court or such a unit can be created under the PWD dedicated for judicial infrastructure works;
- This organisation should be tasked for preparing standard design options for judicial buildings, plan and sanction building budgets and plans and supervise execution of works;
- National Authority for Infrastructure might not actually work.

Digitalisation of Courts

- Responsibility for timely delivery of justice is that of 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;
- 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;
- 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.

Real Task is Recruitment

- Primary reason for under-utilisation of revenue budgets is the inability of the system to recruit judges even for the posts created;
- This needs to given utmost attention;
- With the expansion of national law schools, there is excellent quality of young people studying law;
- Unfortunately, there is much lesser preference amongst them to become judges at the subordinate judiciary;
- This can be changed if the courts reinvent themselves in terms of digital environment, better infrastructure facilities, better employment terms and the like;
- Recruitment methods may need to be changed, including making campus recruitment, contract appointments etc. to attract this talent.

Focussing on Management Reforms could bring Real Benefits

- Present system of judicial administration is a throw-back on pre-industrial society and economy.
- Managerial innovations brought enormous gains in attaining better business outcomes. Judiciary did not adopt these processes.
- Digitalisation revolution is making every business and service re-engineer its process now for better efficiency, cost effectiveness and faster and better delivery of outcomes.
- Initiating a fundamental process re-engineering exercise and using modern management practices in judicial service can prove the real game-changer.

Getting the Budget

- This exercise of systemic improvements, which amounts to a literal zero base budgeting and business re-engineering, will throw up a budgetary requirement which will may be 2X or 3X of existing budgets;
- The case for higher budgeting can be established thereafter following budgetary processes and respecting constitutional provisions;
- A case can definitely be built as the public good which will come out of the more effective delivery of justice would be far greater for the additional expenditure than many other expenditures which are presently delivering;
- There should also be openness to consider ways to raise revenue from judicial processes- court fees, special charges for certain kind of judicial services etc.- to fund additional expenditures;
- 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.

Expenditure Management for Effective Utilisation

Effective Utilisation of Budgetary Resources

- The Directorate of Finance, Procurement and Accounts, with right delegations, can build a functional system for ensuring effective utilisation of budgetary resources;
- A good architectural cum engineering organisation would ensure effective utilisation of capital budget;
- More than budgeting, actual incurring of expenditure is quite a technical process. By making the entire process of expenditure digital, the district judiciary can be freed from these responsibilities to focus on their core competence of delivering justice;

National Level Composite Monitoring of Recruitment and Capital Expenditure

- There have been organisational planning and monitoring structures at Supreme Court level but these have been scheme specific;
- E-Courts Committee has guided and monitored e-Courts scheme and Infrastructure for Judiciary has been guided and monitored separately;
- Most preferred way to guide and monitor these schemes is to discuss them in CJs meet. Typically, a number of resolutions are passed.
- There are three key issues- recruitment of judges, court infrastructure and digitalisation of courts. At the core, all three matters are inter-linked.
- It might work better if Supreme Court were to set national ambition and goal with respect to all three and create a functional organisation with participation of Government and domain experts to plan and realise the ambition/goal.

Thanks and Best Wishes,
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