

National Judicial Academy, Bhopal



REPORT

National Convention for Senior High Court Justices: Strengthening Fiscal and Administrative Protocols in High Courts

[P-1206]

15 & 16 February, 2020

Sumit Bhattacharya & Paiker Nasir

Program coordinator & Research Fellow
National Judicial Academy, Bhopal

***National Convention for Senior High Court Justices:
Strengthening Fiscal and Administrative Protocols in High
Courts [P-1206]***

15th & 16th February, 2020

PROGRAMME REPORT

**Programme Coordinators - Sumit Bhattacharya & Paiker Nasir, Research Fellow,
National Judicial Academy, Bhopal**

A two day “National Convention for Senior High Court Justices: Strengthening Fiscal and Administrative Protocols in High Courts” was organised at the Academy for the first time. The National Convention sought to sensitize prospective Chief Justices of the High Courts to the non-judicial functions associated with the office. The objective of the Convention was to discuss critical areas concerning the administrative responsibilities and functions of Chief Justices of High Courts, especially in areas of “Administrative Protocols” and the intricacies and nuances of “Fiscal Management and Functionalities” through deliberations enabling garnering of best practices therein. The emphasis was on facilitating deliberations through clinical analysis of the selected themes in the proposed area(s) of deliberations; and identifying best practices for efficient administration. For operational conveniences the 25 High Courts were split into two groups of 12 and 13 High Courts. The first group of 12 High Courts represented by 26 nominated justices (J1 - J3) participated in the convention.

Justice Sanjay Kishan Kaul, Justice Aniruddha Bose, Dr. V. Bhaskar (IAS) Retd. and, Dr. K. P. Krishnan (IAS) Retd., guided the sessions as “Resource Persons”.

Session-wise Programme Schedule

Day-1

Session 1 - Chief Justice of the High Court.

Session 2 - Chief Justice: Tactical Leadership.

Session 3 - Open House Discussions on the Themes of Sessions 1 & 2.

Day-2

Session 4 - Pre Budget Planning & *Travaux Préparatoires*.

Session 5 - Budgeting: Issues & Challenges.

Session-1

Theme - Chief Justice of the High Court.

Proposed areas for discussion

- ✓ *Primus inter pares.*
- ✓ Constitution of Committees.
- ✓ Selection of Registrars.
- ✓ HR Management - Horizontal & Vertical.
- ✓ Balancing tradition and change: motivating a shift from organisational inertia.
- ✓ Time Management: Balancing Judicial and Administrative functions.

Speakers: Justice Sanjay Kishan Kaul, Justice Aniruddha Bose.

The session started with a brief overview of the role of a Chief Justice of a High Court (*hereinafter* CJ) as (s)he assumes the responsibility. The session was structured to cover three important areas *viz.* Office of CJ (assumption, functioning and administration); Collegium system & General Administration of a High Court by CJ.

The advantages and the disadvantages of the convention of having the CJ (the judicial head in a federal structure) from outside the State was examined. It was accentuated that, one of the distinct advantages of having a CJ from other than the parent High Court is, it drives in neutrality to the ecosystem. Which in turn eliminates many local issues, mistrusts, myths and disbeliefs.

The meaning and essence of *Primus inter pares* was discussed. It was underscored that leading by example is one of the tenets of realizing the maxim. One of the exemplary roles depicted by the first amongst the equal is by mobilising the collegiate to get the long pending cases disposed, rope-in discipline by maximizing the efficient working during the judicial work hours etc.

While highlighting the importance of communication, it was pointed, that the seclusion from society sometimes may make the CJ (who essentially is a judge and a human) occasionally tentatively unrealistic while discharging their administrative role. This is the reason why a CJ must develop a multi layered and diverse information resources, to garner inputs. Moreover, seeking views of former CJs to the designated High Court was advised. Sharing the experiences of the CJs at peer to peer level and of the senior judges in the Supreme Court who had once served the specific High Court and had been elevated from the High Court, or who find their roots in the High Court (as parent High Court) may turn to be of significant advantage. A new CJ must develop credibility in the Collegium, bench, and the bar. An informal talk over a cup of tea or coffee was reiterated as one of the best platform to break ice and establish communication.

While discussing the constitution of various committees by the CJ it was opined that, such constitutions may be of various categories *viz.* notified committees and un-notified committees. It was emphasized that it need not be made a convention to constitute committees stereotypically by making the senior-most judge its head, thereby adopting or aligning to a distributive mode, wherein the senior-most gets into almost every committee. CJs must consider constituting committees on the basis of expertise and domain knowledge of a particular High Court judge. Such indulgence would induce, sense of parity, responsibility and accountability ensuring better deliverables.

Addressing the issues relating to selection of Registrars for various functions of the High Court Registry, it was insisted that merit-cum-seniority must be considered. It was also reiterated that judicial work is the core job of a judge and hence, a judge should not be retained in the hard core administrative work of the registry beyond the conventional period of ~ 3 years of tenure. The same was presumed to have detrimental impact on the cumulative assessment of one's judicial work accounting while considering for future career prospects.

The role of CJ in the "Human Resources Management" (*hereinafter* HR mgt.) was discussed under three major categories i.e. ministerial staff management; registry management and management of the judicial officers. Moreover, CJs role in skill development, case management and space management were also discussed. It was emphatically stated that it is the task of a CJ to identify and extract by motivation the best from everyone in the team. Spotting the talent and recommending the potential candidates for elevation is a core HR mgt aspect of a CJ. It was also opined that CJ may not keep accumulating and pending the list of such names in order to send a consolidated single list. Instead it is advisable to send smaller lists of such recommendations on a regular basis. This was argued to be a best practice, since the procedural delay caused by the ministry in executing and acting upon a particular list, does not stalls the recommendation of the subsequent list indefinitely.

Divergent views over process and responsibilities of recruitment was aired. A school of thought supported that recruitment must be done by experts in the job while the others were of the view that the process must not be outsourced.

Session-2

Theme - Chief Justice: Tactical Leadership.

Proposed areas for discussion

- ✓ *Taking the charge – Comprehending the eco-system.*
- ✓ *Evolving intra-court operational rigors: Developing “Standard Operating Procedures” (SoPs).*
- ✓ *Relationship Management; Vertical and Horizontal: with Supreme Court and High Courts.*
- ✓ *Chief Justice’s (Full Court) meetings/ conferences: Preparing the agenda and managing consensus.*
- ✓ *Collaboration with other branches - Union and State Executive: Budget, Infrastructure, Law & Order, etc.*

Speakers: Justice Sanjay Kishan Kaul, Justice Aniruddha Bose.

This session focused on the tactical aspects of the role of an incumbent CJ. Taking the discussion forward from the last session the best practices about comprehending the new eco-system of the High Court was discussed. The importance of evolving “standard operating procedures” to draw in intra-court operational rigours was discussed. The intrinsic role of a CJ to develop core competencies in the administrative side of the High Court and to develop and agenda based functioning of the High Court especially in the “Full Court” and the various Committee meetings was insisted.

The challenge of handling issues of holding back a collegium recommendation by the Government of the day was floated again and discussed. The quantum of case pendency, delay, promotions and transfer related issues were highlighted and debated while discussing the administrative role of a CJ. Whereas, promotion and development of qualitative judgment writing, difference between reactive and reflective judgment writing, mentoring of young and latent talent were discussed as intrinsic to the judicial side expectation from a CJ. It was urged that the senior justices must inculcate the good practices of brief and effective judgment writing exemplifying the use of minimum and necessary reliance of precedence. The menace of ghost judgment writing mal practices must be identified and weeded out by the “Full Court” under the guidance of a dynamic CJ.

The challenge of “poly-vocalism”, wherein the several judges of a High Court assumes and place self-interest before the interest of the institution i.e. the High Court was discussed. It was urged to be incumbent on the CJ to take control over such a situation and endeavour to integrate the institution as a whole.

It was aired that the CJ in his role may like to moderate the existing functioning of the State Judicial Academies by overseeing that, an institute of such importance should not be underutilized by their mundane pedagogy of imparting “legal education” instead of focusing more on disseminating “judicial education”. CJs may endeavour to empower the judicial academies with a proper mix of both judicial and academic faculties rather than making the

space a parking space exclusively for judicial officers. CJs must endeavour to persuade academically inclined retired High Court justices to lead the judicial academies in order to nurture “judicial education” amongst the serving judges. The State Judicial Academies may be made a platform for the meeting and exchange of the ideas and best practices of the High Court justices and the judges from the subordinate judiciary.

Moreover, the delegates exhibited scepticism over the appointments and functioning of bodies viz. tribunals etc. wherein it was opined that barring a few domains viz. tax matters, intellectual property issues etc. most of the tribunals do not necessarily require a super specialist (technical domain expertise) as a member. It was argued that since majority of *lis* before the tribunals normally involve issues relating to general of principles of law, and therefore on a majority occasion does not warrants hyper-technical interventions. It was argued that evaluation of value of sustaining such fora is needed, because not only they are focal of a sizable quantum of appeals to the High Courts adding to further pendency and protraction of issues as against finality and settlement; the tribunal are not subjected to supervision of High Courts under Article 235. The recent judgment of apex court *Roger Mathew v. South Indian Bank Ltd.*, (2018) 16 SCC 341 was cited, wherein majority judgment has issued a mandamus to carry out judicial impact assessment of all tribunals.

Session-3

Theme - Open House Discussions on the Themes of Sessions 1 & 2.

Chaired by: Justice Sanjay Kishan Kaul, Justice Aniruddha Bose.

This session furthered the interactions amongst the participating justices on the points referred in the preceding two sessions.

Session-4

Theme - Pre Budget Planning & *Travaux Préparatoires*.

Proposed areas for discussion

- ✓ *Pre-budget planning: past utilization, current requirements, contingency; and estimates sector-wise.*
- ✓ *Co-opting experts to prepare budget estimates.*
- ✓ *liaisoning with the executive branch.*
- ✓ *Negotiation & prioritization.*
- ✓ *Designing action plan for utilization of fiscal resources.*

Speakers: Dr. V. Bhaskar (IAS) Retd., Dr. K. P. Krishnan (IAS) Retd.

The session was schematically divided wherein the types of budgets *viz.* personal; Governmental; and High Court budgeting was explained. It was followed by understanding the sources of funding the State judiciary. A real-time specimen analysis of the budget estimates of Telangana State (FY 2019-20) was performed. The limitations and pitfalls in the budgeting process were broadly outlined and the curative and prophylactic best practices were discussed as action-plans. It was recognized that this is one such domain which demands expert intervention. While examining the reason(s) as to why a proposed budget is disallowed or downsized, disarray of communication as to what has been demanded and what is understood to have been demanded; or the significance of an item of demand as (mis)understood by the government; or clarity, relevance and justification of a proposed demand, revealed a serious infirmity or fracture. Understanding of the intricacies of a budgetary process was underscored to be of paramount importance for the CJ or the team of judges authorised for budgeting.

Discussing the budgeting and financial framework, the sources of State funding and the channels of fund distribution by States was discussed. Examining the sources of State Judiciary it was explained that the funding to State flows from the following five sources: a) State Government's regular budget; b) State Government Schemes; c) Centrally Sponsored Schemes (CSS); d) Finance Commission Grants to state governments; and e) Re-appropriations. The channels of funding was discussed to include a) Law department; b) Social Welfare Department *viz.* Special Criminal Courts for offenses against SCs etc. c) Labour Department *viz.* Labour Courts, Industrial Tribunals etc.; d) Tribunals (respective State Govt. Departments) *viz.* Wakf Tribunal, Cooperative Tribunal, Transport Appellate Tribunal, Commercial Tax Appellate Tribunal etc.; and e) Government of India support through respective Central Ministries *viz.* Debt Recovery Tribunal (DRT), National Company Law Tribunal (NCLT), Central Administrative Tribunal (CAT) etc.

The art and craft of converting a definitive “no” to an affirmative “yes” was narrated to be the name of the game in a growing, demanding and constrained economy of a nation. The role of

a CJ to endeavour and “grab a bigger pai” from the State budget under a competing governmental system *inter se* was averred, especially under a persistent milieu of delay, defy and deny.

It was highlighted that the States share of the financing of judiciary nationally is as high as ~ 92% as compared to a mere ~8% of the remaining coming from the Union. Quantum of share of a few States *viz.* U.P. and Maharashtra are much higher than the Union contribution and collectively constitutes more than a quarter of the total budget. However, judiciary suffers a low priority in State & Union Budget accounting for a mere 0.08% of the Union budget, and 0.61% of the States’ expenditure. The perpetual and gross negligence in allocation of funds to this vital pillar of Government has rendered an adverse impact in the justice delivery system of the country. Disparity in allocation of budget ranges from 2.69% (Delhi) to a meagre 0.33% (West Bengal). The intra State variance of fund distribution between High Courts and Subordinate Judiciary was shown to range from (44:56)% to (22:78)%. It was unanimously proposed to have a collective representation of budget proposal to the Union and States after a pan India High Court (stakeholder) meeting on budgeting.

It was asserted that High Court being a Constitutional Court, the State Government is obliged to sanction a budget so proposed. A denial or defiance of the proposal *stricto sensu* may amount to interference with the judicial independence. To which it was intervened by the chair by urging that in a constrained economy the above assumption of the principle of law may not be practicable to attract literal interpretation. Instead, a more reasonable approach may be to assert as to why the particular items so proposed in a budget is necessary for the smooth functioning of the judiciary. Reasonable conviction was thereby insisted.

Best practices of budget preparation and the commonly encountered fault lines were discussed. It was pointed out that the National Court Management System Committee (NCMSC) policy document exclusively commented about the rather rudimentary and archaic processes adopted by High Courts in preparation of budgets. NCMS went on to further comment, that it is routine for the clerical staff to pick up yester year demands for funds and grants and mechanically forward the same to the Government annexing signature of the authorized District Judges in the Districts or Registrar General of the High Courts. “Most of the Judicial Officers are not proficient in the art of planning and preparation of Budgets so that the Budget meets the requirements for the next year and is neither excessive nor short. Need of expert assistance at these levels is matter of consideration.”

A critical analysis of the failure modes were discussed including, a) significant amount of unutilized surrenders, b) Top-down approach of budget formulation, c) an *ad hoc* and flat mechanical increase in the last years’ budget *viz.* ~ 15% in addition to, d) extremely poor accountability, monitoring and reporting of utilization, e) constrained implementation of various schemes etc.

Session-5

Theme - Budgeting: Issues & Challenges.

Proposed areas for discussion

- ✓ Centrally Sponsored Schemes (CSS): Origin, Practices, Challenges & Opportunities.
- ✓ Generating professionally structured demands: Issues and practices. Auditing "Failure Modes".
- ✓ Fiscal discipline & procedural rigor.
- ✓ Quality Control in expenditure

Speakers: Dr. V. Bhaskar (IAS) Retd., Dr. K. P. Krishnan (IAS) Retd.

The session focused on exploring issues and challenges facing budgeting process. The session commenced by probing into the constitutional mandate for judicial independence, envisaged under Article 112 (3), Article 202 (3) and Article 229 (3) of the Constitution of India which creates certain judicial expenditures charged to the consolidated funds. It was highlighted that the percentage share of the charged expenditure of judiciary as against the total expenditure is:

- i) 15 to 20 % in case of States; and
- ii) 20 to 25 % in case of Union.

Elements of a good budget system were discussed. A few best practices highlighted on the point included:

- i) Medium-term planning, which lays down a perspective on outputs and outcomes to be achieved and anticipated expenditure for achieving the same.
- ii) Annual budgeting which must include detailed estimates of annual expenditure requirements, linking inputs to outputs.
- iii) Expenditure control mechanism to ensure systemic efficiency and integrity. A robust system to ensure proper and timely utilization of funds.
- iv) Ex-post accountability for expenditure, through routine release of statistics and periodic audits.

An analysis of the current status of Indian judiciary was briefly touched upon to infer that, one of the achievements is National Court Management System 2012. Computerization of the huge network of courts and an attempt to contractually appoint court managers to scale up system management is yet another pace forward. However, it was pointed out that computerization without a deeper Business Process Reengineering (BPR) exercise, seems to have held intact the process design in one hand, but only .with superficial changes from paper-based processes to computer-based processes. Yet another issue seems to be the inherent bias of the process designers (who are from the legal fraternity), appear to exhibit extreme caution and reluctance to dilate from *status quo*, resulting into process conservatism.

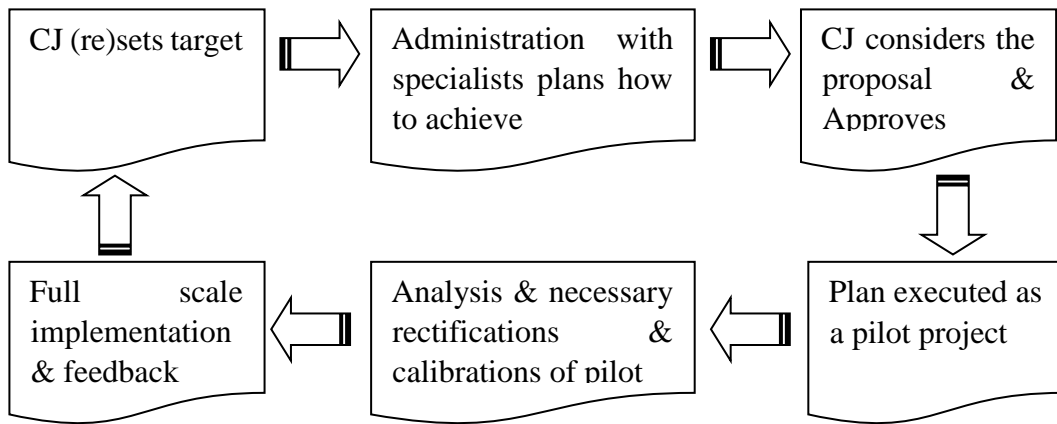
Discussing on change management it was suggested that a gradual but assured evolution of system improvements is the key. CJ must drive a collaborative culture between judicial and fiscal experts and authorities. Moreover, a gradual calibration to increasing focus on linking budgets with performance was underscored. Essentials of a performance linked budget were discussed including:

- i) SMART objectives and well defined goals.
- ii) Suitable inbuilt tools to measure deliverables and performance.
- iii) Identification and rectification of failure modes, interstices, process leaks, infirmities etc.
- iv) Robust system of feedback mechanism.
- v) Open reporting system.

It was emphasized that driving judicial reforms is long overdue. A few initiatives which the CJ may oversee to ensure fiscal and overall administrative rigor may include:

- i) In-house capacity building.
Typically three kinds of capacity building essential for a High Court for the aforementioned purposes were identified as: Finance and planning, Procurement, and Information systems. The CJ under his/her supervision may strategize temporal “Human Resource” planning viz. Short – Medium Term plans and Medium – Long Term plans. In the Short – Medium Term plan the CJ under his direct supervision may attempt to create positions for Financial Analysts and/or CAO (FA & CAO) as Registrar (Finance), by deputing serving civil servants or by hiring the services of retired civil servants as consultants on contract. Moreover, the “Court Managers” may be integrated to enable such offices. While the Medium – Long Term plan may consider for opting a general managerial cadre for the courts - judicial administrative service. Two dedicated and parallel hierarchy viz. Registrar General (Judicial) and Registrar General (Administration) may be made operational as a long term plan.
- ii) Contracting out / Out-sourcing routine, procedural tasks. Apprehensions and unreasonable myths of contracting out (mundane and non-core) judicial work, leading to clustering and process quagmire must be given a farewell to adopt decentralization. It was emphasized as an important take-away for a CJ to consider, as the same would iron-out creases of inefficiency and unproductively. The success story of “e-passport seva” by the Ministry of External Affairs and the outsource partner TCS was cited as an indigenous and equivalent scenario. The caveats of an outsourcing contract operating upon and involving high value information system were discussed. The process would require, capability to design and implement a sound contract, so that the incentives are aligned properly. Next in priority may be identification of tasks that can be broken into specific, well defined steps to be performed by the assigned agent; and monitoring and management of risks on an ongoing basis were highlighted as factors to be considered to enable a smooth and seamless transition between the contracting parties.

iii) A separate agency accountable to the judiciary. An agency to support the judiciary in the administrative functions, reporting to the CJs. Administration (Finance, Procurement, Systems) should be geared towards linking inputs to output and outcomes. A Standard operating Process (SoP) may be worked out, wherein:



The convention closed with topical queries and peer to peer model of experience sharing, along with expert interventions.