

# Expenditure Planning, Budget Allocation and Management of Finances for Administration of Justice in India

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# The function of Administration of Justice

- State's primary job and responsibility is to deliver public goods like law and order management, defence of the country, delivery of justice, macro-economic stability and currency management;
- Delivery of Justice is one of the most important public good/service, which is captured in budget and account head "Administration of Justice";
- Administration and delivery of justice primarily is assigned to the states in the seventh schedule;
- Justice can be delivered effectively, adequately and timely by a well functioning system of courts, supported and equipped with appropriate physical and soft infrastructure and right number of judges and court personnel;
- Availability of adequate court infrastructure and number of judges and court personnel require provision of optimum amount of capital and revenue budget.

# 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)}**;
- Expenditure estimates have to be presented in the form of ‘demand for grants’ for the Lok Sabha/ State Legislature to approve **{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 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, which is the head of expenditure (no 2014 for revenue expenditure) for estimates and accounts of public expenditure on administration and delivery of Justice is a general, non-development and non-plan (until 2017) head of expenditure.

# Deciphering Central Expenditure Budgeting

- **Central Government prepares two documents which brings together all the expenditure budgeting information in understandable manner:**
  - **Expenditure Profile and**
  - **Expenditure Budget**
- Detailed demands for grants are not part of the Budget Documents placed in the Parliament and released to the public on the budget day. These are placed at the websites of respective Ministries and Departments.
- **Expenditure Budget presents line item wise actuals for the previous year, revised estimates for the current year and budget provisions for the next year;**
- This is done at the minor head/schematic level. Object head details are available only in detailed demands for grants.

# Expenditure Profile is the Key to Budget Information

- Presents summarised total budget provisions for all the Ministries and Departments;
- Provides provision for all Centrally Sponsored Schemes;
- Provides line item wise details for all the items of expenditure service for central government under as Central Sector Schemes;
- Also provides details of remaining expenditures as 'Other Central Expenditures' and 'Other Transfers';
- Also provides valuable summarised information on allocation 'under object head for creation of capital assets', a statement on 'subsidies and subsidy related schemes', 'allocation for welfare of scheduled castes', 'allocation for welfare of scheduled tribes' and so on.

# 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.

# 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'.



# 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;**
- **“Administration of Justice; constitution and organisation of all courts, except the Supreme Court and the High Courts” was in the State list of the Seventh Schedule until 1976. It is presently item 11A in the Concurrent List. The “officers and servants of the High Court” are also part of the State List (item 3, State List).**
- 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;
- Accordingly, the Expenditure on administration of justice is primarily borne by the States.

# Central Government Supplements Expenditure

- **Central Government provides budgetary support for the subjects in the concurrent list through 'central sector schemes' and in the state list through 'centrally sponsored schemes';**
- Central Government also provides funds for this purpose as grants recommended by the Finance Commissions;
- As 'administration of justice' was a non-developmental and thus a non-plan item of expenditure, for long no plan grants were provided for this purpose;
- While there is nothing in the Article 282 to restrict the central government to provide grant directly to any organisation, including district courts, the established practice is to route the funds for the institutions and offices of the state governments through the states;
- Central government primarily supplements budget provisions for subordinate judiciary and administration of justice.

STATEMENT No. 15- DETAILED STATEMENT OF REVENUE EXPENDITURE BY MINOR HEADS- *contd...*

(Figures in lakhs represent Charged Expenditure)

Heads	Actuals for the year 2018-19				Actuals for 2017-18	Percentage Increase (+)/ decrease (-) during the year	
	Committed		Scheme				Total
	State Fund	State Fund	Central Assistance (including CSS/CS)				
1.	2.	3.	4.	5.	6.	7.	
<b>Expenditure Heads (Revenue Account) - contd.,</b>							
<b>A - General Services-<i>contd.,</i></b>							
<b>(a) - Organs of State-<i>contd.,</i></b>							
<b>2013 - Council of Ministers-</b>							
101 - Salary of Ministers and Deputy Ministers	....	10,87.49	....	....	10,87.49	11,11.71	
104 - Entertainment and Hospitality Expenses	....	10.12	....	....	10.12	8.62	
108 - Tour Expenses	....	4,07.11	....	....	4,07.11	3,28.09	
800 - Other expenditure	....	6,50.83	....	....	6,50.83	5,43.75	
<b>Total, 2013'</b>	<b>....</b>	<b>21,55.55</b>	<b>....</b>	<b>....</b>	<b>21,55.55</b>	<b>19,92.17</b>	
<b>2014 - Administration of Justice-</b>							
102 - High Court	....	2,83,33.35	....	....	3,41,14.51	3,19,95.98	
105 - Civil and Session Courts	....	57,81.16	....	....	11,29,78.22	10,17,92.52	
106 - Small Causes Courts	....	11,25,63.06	....	4,15.16	51,61.16	45,58.92	
107 - Presidency Magistrate's Courts	....	51,61.16	....	....	50,98.18	48,65.88	
108 - Criminal Courts	....	50,98.18	....	....	58,25.85	55,12.70	
110 - Administrators General and Official Trustees	....	58,25.85	....	....	1,09.38	1,08.96	
111 - Official Assignees	....	1,09.38	....	....	2,71.41	2,64.85	
113 - Sheriffs and Reporters	....	2,71.41	....	....	1,90.34	1,28.39	
114 - Legal Advisers and Counsels	....	1,90.34	....	....	1,74,27.52	1,59,65.68	
800 - Other expenditure	....	1,74,27.52	....	....	1,07.03	1,17.61	
911 - <i>Debit</i> - Recoveries of Overpayments	....	1,03.03	4.00	....	(-) 1,82.45	+ 1067.31	
<b>Total, 2014'</b>	<b>....</b>	<b>2,85,23.69</b>	<b>....</b>	<b>....</b>	<b>18,11,00.15</b>	<b>16,52,95.86</b>	
<b>2015 - Elections-</b>							
102 - Electoral Officers	....	29,94.54	....	....	29,94.54	31,14.45	
103 - Preparation and Printing of electoral rolls	....	1,17,71.29	....	....	1,17,71.29	96,81.36	
105 - Charges for conduct of election to Parliament	....	87,16.67	....	....	87,16.67	13.55	
						+64229.67	

A typical revenue budget presentation –Head 2014

# Typical Expenditure Account

- This is the screen shot of the Finance and Accounts prepared by the Accountant General and placed in the State Assembly with the recommendation of the CAG;
- Head 2014 is for revenue expenditure budgeting and accounts for Administration of Justice;
- Separate minor heads for High Court, Civil and Sessions Court and other classes of courts;
- Provision for district judiciary is minor head 105;
- Expenditure is primarily provided by the state government (Rs. 1125.63 crore) with only Rs. 4.15 crore coming from the central government as part of the CSS/CS scheme;
- Expenditure in 2018-19 is 10.99% higher than the expenditure of Rs. 1017.93 crore in 2017-18.
- Capital expenditure head is 4014, but there is no specific provision for capital expenditure under this head in Maharashtra accounts for year 2018-19

# National Expenditure on Administration of Justice

- 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 2017-18;
- As per this statement, expenditure of the Union on Administration of Justice in 2017-18 was Rs. 1033.72 crore, whereas the combined expenditure, along with States' expenditure, was Rs. 16893.14 crore. States together spent Rs. 15859.42 crore;
- States spent about 94% of the expenditure on administration of justice in the country.

# 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.

# 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.

# CSS- National Mission for Safety of Women

- This second **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 1<sup>st</sup> 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.

# Existing System of Expenditure Planning is Sub-Optimal

- Current system provides for revenue expenditure at the existing level of expenditures for establishment- salary and allowances- and maintenance expenditures- stationary, cleaning etc.;
- Miniscule amount of capital expenditure is provided out of expected CSS funds and new courts to be established as per budget announcements;
- There is no “zero- based budgeting” or “performance budgeting”;
- **There is also no good organisation/ administrative support in the judicial system to do budget planning for district judiciary- the registry of high courts typically act as the state level Directorate;**
- There is also no good organisation for planning and undertaking capital works and manpower recruitment.

# Drastically Reform Judicial Administration System

- **Create a state level Directorate of Subordinate Judiciary or District Courts to be the Head of the Department for planning for budget, undertaking capital expenditure and assisting the High Court to make recruitment of judges and other court staff;**
- Determine the intended outcome and output of the public service of delivery of justice e.g. output goal in terms of no net increase in pending cases, or bringing down the pendency in the state by 50% over 5 years;
- **Undertake a comprehensive study, with the help of financial, human resources and public works experts to plan for the number of courts needed to achieve the desired outcome, number of judges and court staff required to man the number of courts required, 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;**
- This study should bench mark the requirements with international, national and state standards for judges, staff, court buildings, other infrastructure and dignified operation of judicial system for delivery of justice;
- There should be independent oversight of this entire process.

# Planning for Budget

- This Study, amounting to a literal zero base budgeting, will throw up a budgetary requirement which will may be 2X or 3X of existing budgets;
- **The case for higher budgeting should 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;
- **Moreover, there should be openness on considering 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.**

# Effective Utilisation of Budgetary Resources

- A good functional system of an integrated Departmental and Office structure is needed with right delegations to the Heads of Department and Heads of Office supported with financial advisers for ensuring effective utilisation of revenue budgetary resources;
- **A good architectural cum engineering organisation is needed for effective utilisation of capital budget;**
- More than budgeting, actual incurring of expenditure is quite a technical process. With entire process of expenditure becoming digital, knowledge of working in information technology mode is also quite necessary. Expenditure decisions relating to procurement and paying contractors for works also require different sets of skills. Freeing a large number of district judiciary from these responsibilities and embedding appropriate technically strong accounts, engineering and procurement specialists will help;
- All this can be built in the appropriate state and district level organisations.

# Immediate Issues

- There is big gap between the posts of judges sanctioned and posts of judges for which budgetary provision is being made. Ostensibly, these posts are not filled up. The system of recruiting judges need to be reformed and streamlined to fill up these positions. Similarly, the positions of court staff need to be filled up.
- There is a large gap between the court buildings required in the country and the court buildings available. The CSS for Judicial Infrastructure is meant for bridging this gap. A dialogue with the Central Government to raise the allocation of the CSS, using if necessary the grant recommended by the XV Finance Commission, to fund all the required court buildings, appears justifiable;
- Two existing CSSs and the recommended sector specific scheme of the XV FC are all intended to fund requisite district court infrastructure. Instead of focussing on 'fast-track courts', 'fast-tracking creation of requisite judicial infrastructure' should become the focus of judicial and government attention.

# Medium Term Issues

- Planning an appropriate administrative structure of the Department and Offices for planning and utilising revenue budget and building an appropriate architectural and engineering organisation for undertaking capital works;
- Undertaking a zero based budgeting exercise using outcome/output performance budgeting for determining the requisite number of court buildings, other software, judicial officers, court staff and other maintenance expenditure;
- Undertaking a financing study for sourcing the additional expenditure budget requirement by raising revenues and additional budgetary provisions;
- National and state consultations for a fit for purpose district judicial system.



Thanks and Best Wishes,  
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