

ASIAN DEVELOPMENT BANK

TAR: IND 37064

TECHNICAL ASSISTANCE

(Financed by the Government of the United Kingdom)

TO

INDIA

FOR

ADMINISTRATION OF JUSTICE

July 2003

CURRENCY EQUIVALENTS

(as of 10 June 2003)

Currency Unit	–	Indian rupee/s (Re/Rs)
Re1.00	=	\$0.0213
\$1.00	=	Rs46.84

ABBREVIATIONS

ADB	–	Asian Development Bank
DOJ	–	Department of Justice
TA	–	technical assistance

NOTES

- (i) The fiscal year (FY) of the Government ends on 31 March.
- (ii) In this report, "\$" refers to US dollars.

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I. INTRODUCTION

1. In line with the Tenth Five-Year Plan's focus on governance, including the need to decongest the courts and speed up sustainable delivery of and access to justice, the Government of India requested the Asian Development Bank (ADB) to provide technical assistance (TA) in 2003 for a sector and diagnostic study on administration of justice. A TA project on administration of justice was included in ADB's 2003 Country Strategy and Program for India. An ADB fact-finding mission visited New Delhi in April-May 2003 and had detailed discussions with the national and Delhi governments, members of the judiciary, and other stakeholders on the purpose and output, methodology and key activities, cost estimates and financing, implementation arrangements, and terms of reference of the TA.¹ The TA framework is in Appendix 1.

II. ISSUES

2. Under the Constitution, the Supreme Court is the apex court. The high courts are immediately subordinate to the Supreme Court in terms of judicial function. Among the union territories, only Delhi has a high court. The Constitution does not give the Supreme Court administrative control over the high courts. The high court's administrative control is vested in the chief justice of the high court, who can delegate such control to a registrar of the high court. Administrative control may, in turn, be delegated within the court registry. Subordinate civil courts generally include district courts, city civil courts, and small-causes courts. The subordinate criminal courts generally include session courts and courts of judicial and metropolitan magistrates. Special courts and tribunals and quasi-judicial forums also exist.²

3. The location and structure of the Delhi courts would enable a state-level analysis of legal and judicial sector needs if a sector and diagnostic study were conducted. First, since the Supreme Court and Delhi High Court are close to each other, Supreme Court initiatives' compatibility with the appellate jurisdiction of the Delhi High Court can be easily examined. Second, as the Delhi High Court has original side jurisdiction,³ examination of those experiences for the subordinate judiciary in Delhi is relevant. Third, as key parts of the executive branch of the national and Delhi governments and the Delhi courts are close to each other, they can easily and continuously monitor and review the study. Fourth, as the national and Delhi governments are close to each other, resource allocation processes for the Delhi courts can be easily and comprehensively analyzed.⁴ Fifth, the analytical expertise and experience of entities such as the Law Commission of India will also be important for the study.

4. The national Government, Supreme Court, and Delhi courts have attempted to reduce court congestion and delays through initiatives ranging from introduction of information technology to setting up fast-track courts. However, unlike the Supreme Court,⁵ high and

¹ The TA first appeared in *ADB Business Opportunities* (Internet edition) on 7 May 2003.

² Special courts include the Central Bureau of Investigation Court. Quasi-judicial forums include the Central Administration Tribunal, debt recovery tribunals, Telecom Disputes Settlement Tribunal, and Appellate Tribunal.

³ Not every high court has original side jurisdiction (meaning the hearing in the first instance of a matter over a particular pecuniary value).

⁴ While the salaries and administrative expenses of the Delhi High Court and subordinate courts are a charge on the Consolidated Fund of the State, all additional funds have to be voted by the State Assembly and coursed through the Law Department of the State. The national Government also has allocations, such as for the 1,734 fast-track courts, which are administratively allocated by the national DOJ.

⁵ As of 1 November 2002 the Supreme Court had only 24,381 pending cases, down by 80% from 104,936 on 31 December 1991.

subordinate courts have a large number of pending cases.⁶ While neither the Delhi High Court nor subordinate courts have the most cases pending, their numbers are substantial.⁷ While not unmanageable, they highlight the need for a sector and diagnostic study to set targets and realistic indicators to reduce delay. The courts, lawyers, and litigants also face the challenge of the magnitude of government litigation. These challenges make the Delhi court system an appropriate subject of a sector and diagnostic study.

III. THE TECHNICAL ASSISTANCE

A. Purpose and Output

5. The objectives of the TA are to help (i) reduce Delhi court congestion and (ii) develop sustainable improvements in delivery of and access to speedy justice. The TA will help the national Government carry out a sector and diagnostic study of the legal and judicial sector, focused on Delhi courts, lawyers, and citizens, to identify needs and measures to reduce court congestion and delays. Such measures will be capable of being pilot-tested and implemented in the Delhi court system.⁸

B. Methodology and Key Activities

6. The TA will comprise an empirical analysis of data collected from the national and Delhi governments, and the courts; and a review of secondary analyses, surveys, workshops, and consultations under three components. They will build on a review of the overall analysis of domestic initiatives and reports, and comparative international reports from other common-law jurisdictions; and make recommendations, including procedures and rules, to implement them.

1. Part A : Court Systems Modernization

7. The component is composed of the following subcomponents:

- (i) **Court Budget System.** Improve (a) sources and quantum of court budgets, revenue, and expenditure, including court fees, fines, and earmarked funds, and (b) preparation, planning, and management of such budgets, revenue, and expenditure.
- (ii) **Court Human Resource System.** (a) Identify administration needs, including staffing, performance, accountability, evaluation, professional court management, and training needs of registries and law clerks. (b) Improve case and docket management and alternate dispute resolution. (c) Identify judicial needs, including staffing, continuing education, performance, accountability, evaluation, benches, and assignments.
- (iii) **Court Infrastructure and Statistical Management System.** (a) Identify information technology needs and address attendant issues of phasing,

⁶ As of 31 March 2002 the various high courts had pending cases of 3.55 million, an increase of 30% from 2.65 million as of 31 December 1993. The subordinate courts had 20.75 million cases pending as of 31 December 2002.

⁷ As of 31 December 2002 the Delhi High Court had 91,132 pending cases, and Delhi subordinate courts had 689,832.

⁸ The Delhi courts to be examined under the sector and diagnostic study of the TA will include the Delhi High Court and selected Delhi civil and criminal subordinate courts, but not tribunals, and quasi-judicial forums.

coordination, and management.⁹ (b) Identify physical infrastructure needs, including court buildings and physical facilities for witnesses. (c) Identify the needs of a system of retrieval, collection, and reporting of judicial statistics, including case tracking, record keeping, case assignments, and classification under different court procedures, categories, and groupings.

2. Part B : Legal Profession Capacity Building

8. This component will examine (i) needs of legal and continuing legal education,¹⁰ and (ii) needs related to the governing regulations of the legal profession to provide and maintain quality legal services in Delhi.

3. Part C : Public Access to Justice

9. This component will recommend ways to improve marginalized litigants' access to justice by identifying the needs of (i) public information systems for legal rights, including legal literacy and empowerment; (ii) institutional systems for public access to courts, including administrative procedures to review reduction of government litigation, performance of government legal services and legal aid services, use of alternate dispute resolution to reduce government litigation, and use of paralegals; and (iii) procedures and rules required to implement the recommendations.

C. Cost and Financing

10. The TA is estimated at \$625,000, of which \$422,500 is the foreign exchange cost and \$202,500 equivalent is the local currency cost. The entire foreign exchange cost and \$77,500 equivalent of the local currency cost will be financed on a grant basis from the Government of the United Kingdom. The Government will provide a total of \$125,000 equivalent to finance part of the local currency costs to cover counterpart staff, office facilities, administrative support, and other expenses. The detailed cost estimates are in Appendix 2.

D. Implementation Arrangements

11. The executing agency for the TA will be the Department of Justice (DOJ), Ministry of Home Affairs. The national Government through the Ministry of Law and Justice (MOLJ), in consultation with the chief justice of India and chief justice of the Delhi High Court, will establish a steering committee of no more than five members to be chaired by a justice of the Supreme Court and including representatives of the Delhi High Court, national and Delhi governments, and a distinguished member of the bar to closely monitor, coordinate, undertake stakeholder consultations, and direct as necessary all activities under the TA. The composition of the steering committee will be undertaken in consultation with ADB. DOJ, through the national and Delhi governments, the courts, and, where necessary, the steering committee, will ensure that counterpart staff and all data and information are available to consultants to carry out the TA. A senior DOJ official will be designated as project director of an administration of justice unit for the TA. Apart from the unit, at least one senior official from the registry of the Delhi High Court

⁹ Phasing involves examination of court facilities, procedures, training, and sequencing that need to accompany the introduction of information technology; coordination, the compatibility of automation, for example, with the Supreme Court; and technology management, the most effective means of automation and information technology management.

¹⁰ The legal profession is a source of appointments to the bench for the high and subordinate courts (Article 217, Constitution of India; and Delhi Higher Judicial Service Rules 1970).

will be required to help the consultants. ADB and the national Government will implement the TA using a participatory approach, conferring with leading legal practitioners, judges, and other stakeholders who can and wish to contribute to the sector and diagnostic study.

12. All equipment will be procured in accordance with ADB's *Guidelines on Procurement*.

13. ADB will recruit a team to provide consulting services for a total of 37 person-months: 14.5 person-months by international consultants and 22.5 person months by domestic consultants. Expertise required will be in the fields of (i) court statistical and budget systems, (ii) professional court management and case management, (iii) court infrastructure and information technology systems management, (iv) judicial and legal education and training, and (v) access to justice. A firm will be recruited in accordance with ADB's *Guidelines on the Use of Consultants* and other arrangements satisfactory to ADB for engagement of domestic consultants, using the simplified technical proposal procedure. Quality-based selection will be used to choose the consulting firm. Outline terms of reference are in Appendix 3.

14. The consultants will prepare an inception report within 2 weeks of the start of consulting services. The report will include a time-bound work plan for TA implementation. An interim report will be submitted within 2.5 months from the start of consulting services. 3 weeks before the end of consulting services, a draft final report will be submitted to DOJ and the steering committee. The recommendations of the draft final report for the TA will be discussed in a tripartite meeting. The final report, incorporating the comments on the draft final report, will be prepared within two weeks of the tripartite meeting. The implementation period of the TA is 4.5 months. The TA is expected to start in October 2003 and be completed in March 2004.

IV. THE PRESIDENT'S DECISION

15. The President, acting under the authority delegated by the Board, has approved ADB administering technical assistance not exceeding the equivalent of \$500,000 to the Government of India to be financed on a grant basis by the Government of the United Kingdom for Administration of Justice, and hereby reports this action to the Board.

TECHNICAL ASSISTANCE FRAMEWORK

Design Summary	Performance Indicators/Targets	Monitoring Mechanisms	Assumptions and Risk
Goals <ul style="list-style-type: none"> Conduct a sectoral and diagnostic study identifying needs and establishing the analytical foundation for measures that can be pilot-tested and implemented to (i) reduce Delhi court congestion and (ii) develop sustainable improvements in delivery of and access to speedy and quality justice in Delhi courts 	<ul style="list-style-type: none"> A core team established with the capacity to implement the Delhi court pilot project Increased demand and momentum for administration of justice reforms with identified change agents 	<ul style="list-style-type: none"> Reports to the steering committee and the Department of Justice, Ministry of Home Affairs TA review missions Feedback from stakeholders 	<ul style="list-style-type: none"> The national Government, politicians, judiciary, and the legal profession are committed to and have reached consensus on specific measures Civil society stakeholders (such as legal journalists and academics) participate fully in the project
Purpose <ul style="list-style-type: none"> Identify needs and measures to modernize the court (i) budgets systems, (ii) human resources systems, and (iii) infrastructure and statistical management systems Identify needs and measures to build the capacity of the legal profession and improve public access to justice 	<ul style="list-style-type: none"> Accepted recommendations on court budget resources, including (i) sources and quantum of funds; (ii) preparation, planning, and management requirements; and (iii) procedures and rules Accepted recommendations on court human resources, including (i) performance, accountability, evaluation, and professional court management; (ii) case management and alternate dispute resolution; (iii) continuing education; and (iv) procedures and rules Accepted recommendations on court infrastructure, including (i) court information technology; (ii) physical infrastructure; (iii) court statistical system; and (iv) procedures and rules Accepted recommendations on professional capacity building, including (i) continuing legal education, and (ii) governing regulations of the profession 	<ul style="list-style-type: none"> Reports to the steering committee and the Department of Justice, Ministry of Home Affairs TA review missions Feedback from stakeholders 	<ul style="list-style-type: none"> The national Government, politicians, judiciary, and the legal profession are committed to and have reached consensus on specific measures Civil society stakeholders (such as legal journalists and academics) participate fully in the project

Design Summary	Performance Indicators/Targets	Monitoring Mechanisms	Assumptions and Risk
	<ul style="list-style-type: none"> Accepted recommendations on (i) information systems for public knowledge of legal rights; (ii) institutional systems for public access to courts; and (iii) procedures and rules 		
Outputs <ul style="list-style-type: none"> Report on modernization of court systems Report on legal profession capacity building Report on public access to justice 	<ul style="list-style-type: none"> Feedback from the national Government, judiciary, legal profession, and other stakeholders at the inception, interim, and final report stages and during review missions Clearance to publish final reports 	<ul style="list-style-type: none"> Report to the steering committee and the Department of Justice, Ministry of Home Affairs. TA review missions Feedback from stakeholders 	<ul style="list-style-type: none"> The national Government, politicians, judiciary, and the legal profession are committed to and have reached consensus on specific measures Civil society stakeholders (such as legal journalists and academics) participate fully in the project
Inputs <ul style="list-style-type: none"> TA resources (\$500,000) International consultants (14.5 person-months) Domestic consultants (22.5 person-months) Counterpart staff (\$50,000) Equipment (\$7,900) 		<ul style="list-style-type: none"> Reports to the Steering Committee and the Department of Justice, Ministry of Home Affairs. TA review missions Feedback from stakeholders 	<ul style="list-style-type: none"> The national Government, politicians, judiciary, and the legal profession are committed to and have reached consensus on specific measures Civil society stakeholders (such as legal journalists and academics) participate fully in the project

COST ESTIMATES AND FINANCING PLAN

(\$'000)

Item	Foreign Exchange	Local Currency	Total
A. Asian Development Bank Financing^a			
1. Consultants			
a. Remuneration			
i. International	255.0	0.0	255.0
ii. Domestic	0.0	67.5	67.5
b. Per Diem			
i. International	106.6	0.0	106.6
ii. Domestic	0.0	0.0	0.0
c. Travel: International Consultants	10.0	0.0	10.0
2. Communication, Reports, and Documents	3.0	0.0	3.0
3. Contract Negotiation	5.0	0.0	5.0
4. Equipment	2.9	0.0	2.9
5. Contingency	40.0	10.0	50.0
Subtotal (A)	422.5	77.5	500.0
B. Government Financing			
1. Local Counterpart Staff	0.0	50.0	50.0
2. Office Accommodation and Supplies	0.0	50.0	50.0
3. Administrative and Other Expenses	0.0	25.0	25.0
Subtotal (B)	0.0	125.0	125.0
Total	422.5	202.5	625.0

^aFinanced by the Government of the United Kingdom.

Source: Asian Development Bank estimates.

OUTLINE TERMS OF REFERENCE FOR CONSULTANTS

A. International Consultants

a. Team Leader/Court Human Resources Specialist (4.5 person-months)

1. With input from other members of the team of consultants, the team leader will undertake the following:
 - (i) overall responsibility for technical assistance implementation, including supervision and coordination of the work of all consultants in data collection, analysis and preparation of interim reports for each component of the TA, and their consolidation into a final report;
 - (ii) responsibility for design of consultations and consensus building for the steering committee and all stakeholders on the TA and the recommendations in the interim reports and the final report; and
 - (iii) responsibility for review of the work of other consultants, including identification of potential institutional constraints, adverse incentives, and procedural bottlenecks that could impede implementation of recommended measures and means of addressing them.
2. The team leader will have responsibility for the court human resources component, including the following:
 - (i) review of domestic initiatives and reports, and comparative international reports from other common-law jurisdictions;
 - (ii) data collection from the national and Delhi governments and courts, and analysis of empirical data on human resources management for the Delhi courts resulting in identification of needs, encompassing (a) court administration, including staffing, accountability, performance evaluation, incentives, professional court management, and training for court registries and law clerks, (b) case/docket management and alternate dispute resolution, (c) the judiciary, including staffing, continuing education, performance evaluation, accountability, incentives, benches, and assignments, taking into account the need for speed and quality of justice, and (d) rules and procedures addressing all of the above;
 - (iii) recommendations that can be pilot-tested and implemented to meet the Delhi court human resources needs identified under (ii) above to reduce court congestion and speed up delivery of and access to justice; and
 - (iv) building of consensus among stakeholders to support recommendations under (iii) above, and preparation of the interim and final reports.

b. Court Budget Systems Specialist (2.5 person-months)

3. With input from the relevant domestic consultant, the consultant will be responsible for the following:

- (i) review of domestic initiatives and reports, and comparative international reports from other common-law jurisdictions;
- (ii) collection of data from the national and Delhi governments and the courts, and analysis of empirical data on budget systems management for the Delhi courts, resulting in identification of needs, encompassing (a) budgetary allocations and other sources of revenue available to Delhi courts (such as court fees and fines) and methods of earmarking of funds, (b) preparation, planning, and management capacity regarding such budgets, revenue, and expenditure, and (c) rules and procedures addressing all of the above;
- (iii) recommendation of measures that can be pilot-tested and implemented to meet the Delhi court budget systems' needs identified under (ii) above to reduce court congestion and speed up delivery of and access to justice; and
- (iv) building of consensus among stakeholders for recommendations under (iii) above and preparation of the interim and final reports.

c. Court Infrastructure and Statistical Systems Specialist (2.5 person-months)

4. With input from the relevant domestic consultant, the consultant will be responsible for the following:
 - (i) review of domestic initiatives and reports, and comparative international reports from other common-law jurisdictions;
 - (ii) collection of data from the national and Delhi governments and the courts, and analysis of empirical data on court infrastructure and statistical systems management for the Delhi courts, resulting in identification of needs, encompassing (a) information technology phasing, coordination, and management, (b) physical infrastructure, including court buildings and physical facilities for witnesses, (c) case tracking, record keeping, case assignment and classification, and restatements of law which could result from this, (d) gender-disaggregated data, and (e) the rules and procedures addressing all of the above;
 - (iii) recommendation of measures that can be pilot-tested and implemented to meet the Delhi court infrastructure and statistical systems' needs identified under (ii) to reduce court congestion and speed up delivery of and access to justice; and
 - (iv) building of consensus among stakeholders for recommendations under (iii) above and preparation of the interim and final reports.

d. Legal Profession Capacity-Building Specialist (2.5 person-months)

5. With input from the relevant domestic consultant, the consultant will be responsible for the following:
 - (i) review of existing domestic initiatives and reports, and comparative international reports from other common law jurisdictions;

- (ii) collection of data from national Government, Delhi government and the courts and analysis of empirical data on legal profession capacity building for practice in the Delhi courts resulting in identification of needs, encompassing (a) continuing education for legal professionals, including judicial services and gender awareness, (b) governing regulations of the legal profession, and (c) the rules and procedures addressing all of the above;
- (iii) recommendation of measures that can be pilot-tested and implemented to meet the Delhi court infrastructure and statistical systems' needs identified under (ii) to reduce court congestion and speed up delivery of and access to justice; and
- (iv) building of consensus among stakeholders for recommendations under (iii) above and preparation of the interim and final reports.

e. Public Access to Justice Specialist (2.5 person-months)

- 6. With input from the relevant domestic consultant, the consultant will be responsible for the following:
 - (i) review of existing domestic initiatives and reports, and comparative international reports from other common law jurisdictions;
 - (ii) collection of data from national Government, Delhi government and the courts and analysis of empirical data on public access to justice in the Delhi courts resulting in identification of needs, encompassing (a) public information systems on legal rights, including legal literacy, empowerment, and gender-related rights, (b) institutional systems for public access to the courts, including administrative review procedures to reduce government department litigation, performance of government legal services, and legal aid services, and alternate dispute resolution to reduce government litigation, (c) use of paralegals and other justice assistants, and (d) the rules and procedures addressing all of the above;
 - (iii) recommendation of measures that can be pilot-tested and implemented to meet the public's need for access to justice identified under (ii) above to improve litigants' access to justice and legal aid, awareness and literacy programs, and other government services that help the public access to justice; and
 - (iv) building of consensus among stakeholders for recommendations under (iii) above and preparation of the interim and final reports.

B. Domestic Consultants

a. Court Human Resources Specialist (4.5 person-months)

- 7. The consultant will undertake the following:
 - (i) help the international consultant responsible for the court human resources subcomponent of the TA;

- (ii) help the international consultant collect all relevant domestic reports and data, conduct empirical analysis, and prepare the interim and final reports on court human resources; and
- (iii) help the international consultant conduct consultation with stakeholders and disseminate material.

b. Court Budget Systems Specialist (4.5 person-months)

8. The consultant will undertake the following:

- (i) help the international consultant responsible for the court budget systems subcomponent of the TA;
- (ii) help the international consultant collect all relevant domestic reports and data, conduct empirical analysis, and prepare the interim and final reports on court budget systems; and
- (iii) help the international consultant conduct consultation with stakeholders and disseminate material.

c. Court Infrastructure and Statistical Management Specialist (4.5 person-months)

9. The consultant will undertake the following:

- (i) help the international consultant responsible for the court infrastructure and statistical management subcomponent of the TA;
- (ii) help the international consultant collect all relevant domestic reports and data, conduct empirical analysis, and prepare the interim and final reports on court infrastructure and statistical management systems; and
- (iii) help the international consultant conduct consultation with stakeholders and disseminate material.

d. Legal Profession Capacity Building Specialist (4.5 person-months)

10. The consultant will undertake the following:

- (i) help the international consultant responsible for the legal profession capacity-building component under the TA;
- (ii) help the international consultant collect all relevant domestic reports and data, conduct empirical analysis, and prepare the interim and final reports on legal profession capacity building; and
- (iii) help the international consultant conduct consultation with stakeholders and disseminate material.

e. Public Access to Justice Specialist (4.5 person-months)

11. The consultant will undertake the following:

- (i) help the international consultant responsible for the public access to justice component of the TA;
- (ii) help the international consultant collect all relevant domestic reports and data, conduct empirical analysis, and prepare the interim and final reports on court public access to justice; and
- (iii) help the international consultant conduct consultation with stakeholders and disseminate material.