

# **NATIONAL JUDICIAL ACADEMY**



**Workshop for Senior IRS (C& IT) Officers on ‘Adjudication  
Skills’ (SE-08)**

**March 15 & 16, 2019**

**PROGRAMME REPORT**

**Submitted by**

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## **OBJECTIVE OF THE WORKSHOP**

National Judicial Academy organised the workshop for senior IRS (C&IT) officers for capacity building in 'Adjudication Skills'. The workshop aimed to explore and understand the role of civil services in a democracy. The allocation of fields of legislation in our federal context; nuances in identification of ratio(nes) and the law of precedents, fundamentals of interpretation of fiscal statutes, elements of ethics professionalism and neutrality in process of adjudication, including at departmental adjudication; and the art, craft and science of drafting judgments were themes deliberated during the seminar. The workshop provided a platform to share views and experiences, assimilate best practices, to clinically enrich participant officers and accrete competence with efficient and stable outcomes.

In his brief introductory message, the Director NJA welcomed the participating officers from pan India and emphasized upon the need for training and the advantages of periodic revisits to the fundamentals to enrich and evolve the core professional competencies.

Participants were quizzed for the deeper understanding of the meanings and scope of 'adjudication' and 'skill' for contextual appreciation of the captioned subject matter of the instant workshop. The distinction and nexus between knowledge, wisdom and skilfulness was drawn as acquired information, its application and qualitative or best application.

## **RESOURCE PERSONS**

1. Hon'ble Mr. Justice Sanjiv Khanna Judge, Supreme Court of India
2. Hon'ble Dr. Justice B.S.Chauhan Former Judge, Supreme Court of India
3. Hon'ble Mr. Justice Kurian Joseph Former Judge, Supreme Court of India
4. Mr. Sanjaya Baru Former Secretary General, FICCI
5. Dr. Jayaprakash Narayan President Loksatta Party
6. Mr. Sujit Ghosh Advocate

## **Session 1**

**Theme: Role of Civil Service in Democracy**

**Speakers: Dr. Sanjaya Baru & Dr. Jayaprakash Narayan**

**Chair: Justice Kurian Joseph**

The session began by dispelling the prevalent myth that in a democracy it is the legislature, the judiciary or the executive functions which runs the civilized nation. Civil servants in its literal sense are servants and should not mistake assumption of being a master to execute government policies. They are qualified and skilled professions entrusted upon by the people of the country to serve the nation with responsibility and humility. Emphasizing the vitality and the role of civil services, it was highlighted that even in a feudal nation-state like China, the mandarin society historically nurtured a merit based executive system. Civil services manifests a merit founded hierarchical system historically even in Indian sub-continent. The balance between meritocracy and counter factors impacting the same in a functional democracy was critically analysed. It was vociferously opined that legitimacy of a democratic system is based on the efficiency of the civil services of a nation.

## **Session 2**

**Theme: The Constitutional Authority to Tax**

**Speaker: Mr. Sujit Ghosh**

**Chair: Justice Kurian Joseph**

The session was premised on the facts that the strength of the administration is drawn from the strength of the State, and the strength of the State depends on three important factors namely, 1) generation of revenue, 2) maintenance of law and order and 3) development in which the former two can be traced in traditional systems awhile the last is a third generation adaptation. It was alarmed that with the dropping of the states' ability to garner revenue and the adverse impact and fiscal deficit, the legitimacy of a state is in its decline. It was underscored that Jharkhand is the only State with no fiscal deficit. It was argued that even a buoyant private sector needs to grow on the notion of legitimacy of a state. Areas *viz.* taxation for revenue harvesting was discussed emphasizing the need of professionalism in tax administration system. The concerns and expectations of tax payers was dealt. The Constitutional principles

of equality and due process in taxation formed pretext of discussion citing relevant examples. The speakers argued that taxation policies should not be exclusively pivoted for gaining populism, since populism is often the manifestation of dropping legitimacy of a State. It was also discussed that rise in GDP may not be necessarily a factor for rise in development of a country. Taxation should never be done by a State dictate. The socio-economic impact of tax law was discussed with reference to Constitutional provisions was discussed (*viz.* Article 14, 19, 21 and 38). It was cited that tax is used as a regulatory tool to protect domestic market. It is countered by elasticity of demand e.g. taxation on cigarettes and alcohol. Pathologies of tax administration includes a) cost of administration, b) often tax payer is presumed to be a tax evader in India (in contrast to OECD wherein tax payer is regarded as a client), c) adjudicating authorities act as an investigatory agency thereby often violating due process, d) violation of natural justice *viz.* sham, protracted and unfair hearings.

### **Session 3**

**Theme: Ethics, Professionalism and Neutrality in Adjudication**

**Speaker: Justice Kurian Joseph**

**Chair: Dr. Justice B.S. Chauhan**

Discussions in this session rolled around themes which included “core judicial values in adjudication” and “ethical challenges in adjudication”. The participants were sensitized by projecting a short talk by Ms. Roopa Mudgil (IPS) to set the context. Contemplating the genesis and roots of “ethics”, it was examined as to whether it is genetic, acquired or can it be cultivated. One of the problems shared in the course was the systemic “distrust” prevalent in the bureaucracy. The intangible political alignment in civil services was identified as a factor which further depletes trust amongst the civil servants. A reference to Article 311 as a shield against malafide transfers etc. formed part of discussion. A brief history of genesis and development of tax law was laid down. The customary law relating to neutrality, rule of law and principles of natural justice was referred to understand the prevalence and evolution of these concepts in the Indian municipal legal system. The codification of natural law appropriately in the Constitution of India was discussed. The schools of natural law with inherent morality and positivism to ensure enforcement was discussed in context of ethics, professionalism and neutrality in adjudication. The significance and application of the Bangalore Principles were deliberated upon in detail. The bipolar perspectives of a taxpayer

and the taxing authorities on morality was discussed. The basic factors which State must consider before legislating and implementing a tax statute included: 1) Equity (in context of assessment by the State as to one's ability to pay taxes), 2) Certainty (awareness of the taxpayer), 3) Elasticity (*viz.* Flexibility in tax rates), 4) Expediency (assess the real necessity to tax), and 5) Multiplicity (whether its better than a single tax model).

#### **Session 4**

**Theme: Law of Precedents: Identifying the Ratio**

**Speaker: Justice Kurian Joseph**

**Chair: Dr. Justice B.S. Chauhan**

The speaker stressed on the relevance of precedents in adjudication, and stated that precedents prevent ambiguity in law and ensure certainty and predictability in judicial outcomes. Courts must nurture precedents as they constitute a source of law. Decisions of superior court is binding on the lower courts. Similarly, the decisions of the larger bench are binding on the smaller bench. Precedents must be adhered to except where the judgment is *per incuriam* or the facts of the earlier case are different from the facts in the present case. In cases where two High Courts' decisions differ on the same point of law, the decision of the supervisory High Court would be binding to all lower courts in the state. The speaker raised the issue as to why there is so much variance in judicial outcomes on the same question of law or on similar factual scenarios. The human factor in judicial decision making was held to be the reason for such variance as the perception of facts would alter the outcome. Machine made output of decisions by a bare reading of cases would not suffice as the judge as a person is able to perceive the situation, read between the lines, assess the unspoken issues in the case and decide accordingly. In dealing with conflicting judgments on an issue, the court can exercise its discretion and adhere to the precedent which provides a beneficial interpretation in favour of the assessee. However, in cases of interpretation of exemption notification, the interpretation in favour of the revenue must be adhered to.

#### **Session 5**

**Theme: Art, Craft and Science of Drafting Judgments**

**Speakers: Justice Kurian Joseph & Mr. Sujit Ghosh**

**Chair: Dr. Justice B.S. Chauhan**

The speaker dwelt on the provisions of Order 20 Rule 5 which specifies how a judgment is to be written and stressed on the recording of reasons in the judgment. Reasoning in a judgment is essential as it specifies the material in possession of the court which forms the basis of the decision. The reasoning is also necessary as it provides the aggrieved party with matter to base his appeal and also provides material to enable the appellate court to review the matter in appeal to verify the correctness of the decision of the lower court. The necessary skills for effective judgment writing were discussed at length and the speaker advised the participants to be conversant with the facts of the case, the principles of law applicable to the case and the relevant precedents. The participants were advised to give reasoned judgments as the reasoning is the most important contribution of the judge in the case, as the facts and law are contributed by others and the reasoning is the court's original contribution to the law. The reasons link the material on which the conclusions are based to the actual conclusion drawn. It was stated that if the advocate argues 2 out of 4 issues before the court, the judge should limit himself to the 2 argued issues and avoid with dealing with the unargued issues as the other party has not been given an opportunity to be heard on the said issues which is a necessary element of natural justice. The judgment must deal with every fact, issue, argument and precedent placed before the court to evidence the application of the judicial mind to every aspect of the case. The judgment is the calling card of every judicial officer as it evidences the approach, reasoning process of the judge and indexes one's personality. The speaker stated that the mere recording of pleadings of both parties would not amount to recording of reasons as the reasons are the result of the application of the mind of the judge to the facts, law and precedent and would be the conclusion that the court arrives to. Quoting all judgments referred to by the parties does not amount to consideration and dealing with the precedents by the court. Furthermore, merely stating that a judgment is distinguishable without giving reasons for such conclusion is a flawed method of judgment writing. The speakers stressed on organisation in judgment writing so that the judgment so that the judgment is written in a sequential manner, is coherent and easy to understand. The judgment can include a summary, table of contents and issue paragraph.

**Session 6**

**Theme: Variety of Taxes: The Federal Context**

**Speakers: Mr. Sujit Ghosh**

**Chair: Justice Sanjiv Khanna**

The speaker dwelt on the dual roles of a tax collector – as an investigator and as an adjudicator. As an investigator, a tax collector is required to decipher the facts in a case and as an adjudicator, he is required to hear the parties and decide the case. The speaker discussed the maxims of taxation elaborated by Adam Smith – certainty, continuity, convenience and consistency. The speaker also discussed Article 265 of the Constitution of India and stressed on the authority of law as a necessary element of a constitutionally valid tax, which means the levy and collection of tax must be authorised by a legislation and not by customs, circulars etc. The speaker distinguished between levy and collection of tax, and stated that levy refers to the charge or charging section which creates a liability and by itself it does not entitle to collect the tax. Collection of tax is based on the levy of tax under the charging section and assessment of liability. The speaker discussed the judgments of *Sales Tax Officer, Benares v. Kanhaiyalal* (1935) and *Mafatlal Industries v. Union of India* (1997) to highlight the doctrine of unjust enrichment in tax law. The speaker also discussed the *Jindal Stainless* case to stress that taxes do not constitute restriction on trade and commerce and that a high levy does not mean that the provision is unconstitutional. The guiding principles of good tax policy (equity and fairness, certainty, convenience, effectiveness of tax administration, information security, simplicity, neutrality, economic growth and efficiency, transparency, minimum tax gap, accountability and appropriate government revenues) as indicators of and guiding principles of tax policy were discussed and the participants were advised to ensure objectivity and neutrality in taxation. The speaker also discussed the constitutional authority of local self-government bodies to levy tax as delegates with their own revenue requirements. The speaker also dwelt on diversity as a canon of taxation.

**Session 7**

**Theme: Elements of Interpretation of Fiscal Statutes**

**Speakers: Justice Sanjiv Khanna & Mr. Sujit Ghosh**

**Chair: Dr. Justice B.S. Chauhan**

The speakers discussed the principles of interpretation of statutes and stressed that taxing statutes must be interpreted literally. In cases of interpretation of tax law, words should not be

omitted or added and it must be considered that the inclusion or omission of words in the provision has been done purposefully. It was stated that taxing statutes must be strictly interpreted except in cases where plain reading of the provision leads to absurdity. The section should not be read in isolation but should be read in harmony with the entire statute. The definition clause provides a guidance point or radar to interpret the provision. In case where the word has not been defined in the statute, assistance can be taken by reference to *pari materia* statute. On the issue of whether an amendment to a statute can be used to interpret other provisions of the statute, it was clarified that the amendment can only be used to interpret the law that was vague. Technical terms must be understood from technical sources or documents. The speaker distinguished between charging sections, procedural sections and exemption provisions and stated that while charging sections are to be strictly interpreted, procedural and exemption provisions have some degree of relaxation in interpretation.