# NATIONAL JUDICIAL ACADEMY


## Training Programme for Securities and Exchange Board of India (SEBI) Officers

## 10-12 October, 2022

## Programme Report

**Prepared by**

**Rajesh Suman & Krishna Sisodia, Faculty, National Judicial Academy**

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**[SE-17]**

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***Mr. Rajesh Suman, Asst. Professor***
***Mr. Krishna Sisodia, Law Associate***

The National Judicial Academy organized a "Training Programme for Securities and Exchange Board of India (SEBI) Officers" from 10th to 12th October, 2022. The participants were Adjudicating Officers (AOs) and their team members from SEBI.

The programme focussed on discussing skills in adjudication, appreciation of evidence including electronic evidence, disputes relating to securities and use of ICT in dispute resolution. The core thematic areas were Applicability of Principles of Natural Justice in Enquiries and Adjudication; Collection and Appreciation of Evidence including Electronic Evidence; Jurisdiction of Tribunals; Regulatory Action in Case of Companies Facing Liquidation and Insolvency; Imposition of Penalties: Exercise of Discretion by Adjudicating Officers; E-Filing, Digitization and Maintenance of Records; and Court & Case Management.

## Major Highlights and Suggestions

### Session 1: Applicability of Principles of Natural Justice in Enquiries and Adjudication
**Speaker: Justice S.C. Dharmadhikari and Dr. Justice Vineet Kothari**

The session was commenced by the Hon'ble Director, NJA by emphasizing the crucial role of SEBI in handling the priorities in trade and commerce. It was opined that the programme was designed to provide an understanding of the judicious approach towards decision making process. The session aimed to focus on administrative, procedural and jurisdictional principles, the mindset of the quasi judicial authority and the approach towards a particular problem. The assessment of subjective elements such as character, integrity and reputation of a person was discussed. It was highlighted that judicious approach towards such areas will form part of the discussion. It was further added that principles of natural justice and application of prejudice doctrine will also be discussed. The issue of not providing the relevant material in the notice itself and the T. Takano v. Securities and Exchange Board of India and Another 2022 SCC OnLine SC 210 was referred.

The speakers said that the first principle of natural justice is audi alteram partem i.e. you should hear a person whenever an adverse order is passed against the person. The notice should be precise and should mention all issues which will form part of proceedings and hearing. The judgments Balram Garg v. Securities and Exchange Board of India 2022 SCC OnLine SC 472 and Shri B. Ramalinga Raju v. Securities and Exchange Board of India 2017 SCC OnLine SAT 183 were referred. There should be effective participation of parties in the adjudication process. The order of adjudication officers should be fair and just. The hearing is the first stage then there should be application of mind or consideration of issues and objections.

The reason in order is another important element of natural justice. Reasons are the main crux of any order and they come with the application of mind. It was emphasised that for

opportunity of hearing to be effective it must address all issues of show cause notice and all objections raised by the parties. The show cause notice should be prepared keeping in mind all details of the case and preliminary inquisitorial groundwork will be required for that. So if the show cause notice is deficient, objections were not considered and order does not have reasons then the order will prone to be reversed.

The judgement Balram Garg v. Securities and Exchange Board of India 2022 SCC OnLine SC 472 was referred where the estrangement of the family members was not considered by SAT and the Supreme Court said that the fact of estrangement should have been considered. The application of natural justice principles in the adjudication process was discussed. The meaning of proceedings which involved continuity of the process was elaborated. The speakers then dwelt on the meaning of adversarial and inquisitorial system of adjudication.

The importance of natural justice in the exercise of quasi judicial powers by the adjudication officer was then elaborated. It was emphasised that parties should be made aware of the basis of show cause notice to them and communication to parties should be exhaustive. It was emphasised that adjudicators should be free from their biases in their functioning and should inspire confidence of the public in the functioning of the market. Adjudicators are not bound by procedures and technicalities but they must adhere to the principles of natural justice for ensuring fair adjudication. While imposing penalty the adjudicators should consider the relevant and crucial factors.

The principles of natural justice, double jeopardy and self incrimination were discussed by referring to the judgment Shri B. Ramalinga Raju v. Securities and Exchange Board of India 2017 SCC OnLine SAT 183. While explaining the difference between judicial and quasi judicial approach it was emphasised that there should be no surrender of jurisdiction and hearing by one and decision by another is a clear violation of the principle of natural justice. The pressure of media and various strategies to handle it were discussed. It was emphasised that pending cases should not be discussed with any person including seniors.

**<u>Session 2: Admissibility and Appreciation of Evidence</u>**
**Speakers: Justice S.C. Dharmadhikari and Dr. Justice Vineet Kothari**

The session was commenced with reference to the changing forms of evidence and intricacies of digital evidences. The session focussed on how the evidence generated through digital sources can be assessed by adjudicators. It was emphasised that methodology in the evidence laws in India is archaic and the evidentiary value of the digital evidence is still shaky. Section 65 B of the Indian Evidence Act has been adopted from the law of United Kingdom and it needs to be updated. The judgment Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020) 7 SCC 1 and definition of the word ‘proved’ in Section 3 of the Indian Evidence Act were referred. Then issues what is the method of collection and preservation of evidence, what is the source of evidence and whether it is legal, relevant and admissible evidence were addressed. The judgments Balram Garg v. Securities and Exchange Board of India 2022 SCC OnLine SC 472 and T. Takano v. Securities and Exchange Board of India and Another 2022 SCC OnLine SC 210 were referred. The procedure for examination of the witness and deriving inference from the demeanour of the witness were highlighted.

The importance of following principles of natural justice during admissibility and appreciation of evidence was explained to participants. The adjudicators are provided with lot

of materials by parties and adjudicators have to make enquiry to find out the material relevant to issues. Nature of the enquiry and allegation will determine the applicability of the principles of natural justice. The object and purpose of the adjudicatory process and purpose of the law i.e. aims and objective of the SEBI Act should be placed at the forefront. The adjudicators should not find fault with the law because judges only interpret the law and do not make the law. The nature of hearsay, oral and documentary evidence was discussed and the definition of evidence was explained. It was emphasised that evidence is something which give complete assistance for the search of truth of the matter. Various criteria for admissibility of evidence and their appreciation were discussed. The value of corroboration of evidence was explained to participants. The pitfalls of lengthy arguments and cross-examination and how to prevent them were discussed. The pragmatic approaches for expeditious disposal of cases were explained.

The collection and preservation of evidence in the process of investigation was discussed. It was highlighted that principles of evidence have to be followed during the process of adjudication. The requirement of the certificate under Section 65 B of the Indian Evidence Act was discussed. The issues in evidence i.e. what is proved, what is disproved and what is not proved were explained to participants. It was emphasised that adjudicators must appreciate the evidence keeping in mind the offence charged against the party. It was also emphasised that although the proceeding before the adjudicators are quasi judicial in nature but they should exercise their discretion in judicious manner. Regarding intervention by adjudicators in proceedings, the reference was made to the Section 165 of the Indian Evidence Act. The issue of how adjudicators can correct their mistakes was discussed and the concept of post decisional hearing was referred in this regard. It was emphasised that adjudicators should avoid postponing matters and it will avoid the pendency of cases for unreasonable period. The matter should be decided in continuity with the proceedings. The concept of preponderance of probability and reasonableness were discussed with regard to collection of evidence during investigation. The issue of non compliance of provisions by parties and not providing the relevant material during investigation was discussed and it was suggested that investigators should inform adjudicators about this and adverse inference against the offending party can be taken. It was emphasised that investigators have to take care of possibility and probability in the matter of evidence but the certainty part lies with the adjudicator. The situation where only circumstantial evidences are available in the offence relating to insider trading was discussed. The concept of reverse burden of proof was discussed in this regard and it was emphasised that SEBI must first show the foundational facts against the party and then only the party can be asked to explain their conduct.

**Session 3: Electronic Evidence: New Horizons, Collection, Preservation and Appreciation**

**Speaker: Mr. Harold D'Costa**

The session was commenced with discussion on standards for admitting the electronic evidence. The collection and preservation of the electronic evidence were discussed and various methods to assess the authenticity of the electronic evidence were explained. The issue how digital forensics can help adjudicators in understanding the nuances of electronic evidence was explained. The issue of root servers was discussed. It was highlighted that ICANN which keeps records of domain names is the organization which governs internet. There are only 13 root servers out of which 10 are in the United States and 1 is in Japan and 1 is in Switzerland. India does not have any root server. Then the issue regarding spoofed

messages by whatsapp was discussed. The messages in whatsapp are end to end encrypted and Whatsapp do not store messages on any server. The method to check the authenticity of Whatsapp messages was discussed. Various provisions of the Information Technology Act were discussed in this regard. The issue of identity theft and impersonation was highlighted. In the matter of messages by SMS it was informed to participants that company's servers keep messages only for a certain period. It is also claimed by companies that CDRs are stored only for one year whereas in reality they store CDRs for 10 years. The issue related to caller ID spoofing was discussed and the case of Jacqueline Fernandez was referred in this regard. The issues surrounding protection of private data were discussed and various ways to protect the data were highlighted. The selling of private data on internet was discussed.

The issue of assessing the authenticity of CDRs was highlighted. It was informed that there is possibility of editing of the CDRs documents. The case of Sheena Bohra was referred to in this regard. The issues related to spoofed email and false google map location were discussed. The collection of digital evidence and other steps involved in the investigation of cyber crimes were explained. It was emphasised that electronic evidences are volatile in nature and can be manipulated therefore adjudicators must consider the circumstantial evidences as well to arrive at the correct conclusion. Various tools which are used to manipulate electronic evidence such as Photoshop and Coral software were discussed. The analysis of hash value of the electronic evidence and its proper documentation were explained. The importance of maintaining integrity of the chain of custody of the electronic evidence was highlighted and the assessment of recording of date and time was discussed. It was emphasised that the moment a mobile is seized during investigation it should be put on flight mode. The importance of creating clone copies of the electronic evidence was discussed. The issue relating to IP address and their manipulation through VPN was highlighted. The case of tracking missing person through IP address was discussed. The use of dark web and various types of cybercrimes committed through it was highlighted. The use of crypto currency and block chain was discussed. It was emphasised that flow of money in dark web should be checked to gather information about cybercrimes.

**Session 4: Jurisprudential Charter of Tribunals: SAT, NCLT/NCLAT**
**Speakers: Mr. Jayant Mehta and Mr. Somasekhar Sundaresan**

The session commenced by highlighting the multifarious functions of SEBI. It was asserted that SEBI is a body corporate which performs legislative, executive and quasi-judicial functions. It was iterated that because of the amalgamation of these essential functions the Board exercises tremendous power. Therefore, it becomes extremely important to maintain objectivity in the functioning of such a quasi-judicial authority which is primarily responsible to repose the faith of the investors in the securities market.

Thereafter, on the issue of insider trading reference was made to the Prohibition of Insider Trading Regulations, 2015 and Prohibition of Fraudulent and Unfair Trade Practices Regulations, 2003. The case of ***SEBI v. Abhijit Rajan 2022 SCC OnLine SC 1241,*** was discussed wherein it was held that merely because a person was in possession of unpublished price sensitive information at the time of trading in securities does not qualify for the mischief of insider trading, unless it is established that there was an intention to take advantage of the information.

Further, the distinguishing features of judicial and quasi-judicial functions was highlighted in light of ***K.P. Verma v. State of Bihar* 1988 PLJR 1036,** which was referred in ***State of M.P. v. Anshuman Shukla (2008) 7 SCC 487,*** wherein it was held that "the modern sociological condition as also the needs of the time have necessitated growth of administrative law and administrative law tribunal. Executive functions of the State calls for exercise of discretion and judgment also and not a mere dumb obedience of the orders so that the executive also forms quasi-judicial and quasi legislative functions and, in this view of the matter, the administrative adjudication has become as indispensable part of the modern state activity. However, judicial process differs from administrative adjudicative process."

While deliberating on the applicability of principles of evidence in quasi-judicial proceedings the case of ***Regional Manager v. Pawan Kumar Dubey (1976) 3 SCC 334,*** was discussed wherein it was held that one additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied to similar facts. Further, the difference between standard of proof in civil and criminal cases was delineated.

While emhasising on the need for consistency in decision making by Adjudicating Officers of SEBI, the doctrine of *stare decisis* was expounded. It was opined that the rule of precedents may be considered as one of the greatest safeguards of rule of law and the most effective check on judicial arbitrariness and uncertainty. The principle of *stare decisis* is vital to the proper exercise of judicial function as it promotes reliance on judicial decisions. However, the criticism of the doctrine of *stare decisis* is that judgments are not computer outputs ensuing consistency and absolute precision but they are a product of human thoughts based on a given sets of facts, interpretation of the law and the changing needs of the society. Thus, it can be remarked that the doctrine of *stare decisis* is neither an inexorable command nor a mechanical formula of adherence to the latest decision, but is considered a principle of policy.

## Session 5: Regulatory Action in Case of Companies Facing Liquidation and Insolvency

**Speakers: Justice Debangsu Basak and Mr. Jayant Mehta**

The deliberations were initiated by outlining the object of the Insolvency and Bankruptcy Code, 2016 (IBC). It was iterated that IBC has been introduced as a single window to deal with insolvency and bankruptcy. The earlier framework for insolvency and bankruptcy was found to be inadequate and ineffective resulting in undue delays in resolution. It was stated that prior to the enactment of IBC, creditors of a legal entity were classified largely as unsecured, secured and statutory. Employees were considered at par with secured creditors by virtue of amendment to the Companies Act, 1956. Classification of creditors underwent a paradigm change under the Insolvency and Bankruptcy Code, 2016 which categorises them as financial and operational. In ***Swiss Ribbons Private Limited v. Union of India* (2019) 4 SCC 17,** such classification has been held to be valid. It was further held that in the instant case operational creditors were not discriminated against and Article 14 of the Constitution has not been infracted either on the ground of equals being treated unequally or on the ground of manifest arbitrariness. Since equality is only among equals, no discrimination results if it can be shown that there is an intelligible differentia which separates two kinds of creditors so long as there is some rational relation between the creditors so differentiated, with the object sought to be achieved by the legislation.

While expounding on the manner of dealing with the companies undergoing a Corporate Insolvency Resolution Process (CIRP), Chapter II of the Insolvency and Bankruptcy Code was elaborated and the following blueprint was provided:

- Insolvency application filed by financial creditor or operational creditor if default of debt of at least Rupees 1 crore
- Adjudicating Authority is National Company Law Tribunal (NCLT), jurisdiction based on address of registered office of corporate debtor
- If debt and default is proven, then corporate debtor initiates insolvency resolution process
- A Resolution Professional (RP) is appointed who has to complete the process in 180 days and he will be allowed a one time extension of 90 days only, else the corporate debtor will be liquidated
- Powers of the Board of Directors of the corporate debtor are suspended and RP represents the corporate debtor
- All employees are expected to cooperate with the RP
- A moratorium is imposed on all legal proceedings against the corporate debtor
- RP to invite claims by publishing a public announcement from creditors of the corporate debtor
- Based on claims received, a Committee of Creditors (COC) is constituted which generally comprises only of financial creditors who have voting share based on amount of claim admitted by RP
- RP is required to discharge functions like maintaining the corporate debtor as a going concern, managing the affairs of the corporate debtor, taking control and custody over assets and books and records of the corporate debtor, ensuring compliance of all laws and conducting the CIRP.
- RP to investigate if corporate debtor suffered from any preferential, undervalued, fraudulent or extortionist (PUFE) transactions and he should make application to NCLT for recovery of the amount
- RP to undertake valuation of assets of the corporate debtor
- RP to invite resolution plans from eligible persons and COC to approve the same
- If NCLT also approves the resolution plan, then CIRP ends

The time limit for mandatory completion of CIRP under Section 12(3) is a period of 330 days. However, extension of time can be granted in exceptional cases where only a short period is required for completion of the insolvency resolution process, and it would be in the interest of all stakeholders that the corporate debtor be put back on its feet and where the delay or a large part thereof is attributable to the tardy process of the Adjudicating Authority/Appellate Tribunal. Further, where the grace period of 90 days from the date of coming into force of the Amendment Act of 2019 is exceeded, there again the discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time as was held in ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta (2020) 8 SCC 531***. In ***Arcelor Mittal India Private Limited v. Satish Kumar Gupta (2019) 2 SCC 1,*** it was held that the time period taken in the litigation can also be excluded. In ***Indus Biotech Private Limited v. Kotak India Venture (Offshore) (2021) 6 SCC 436,*** it was held that admission of a petition by the Adjudicating Authority filed under Section 7 will trigger the status of the proceedings to be *in rem*. In ***Committee of Creditors of Amtek Auto Limited v. Dinkar T. Venkatsubramanian (2022) 4 SCC 754,*** it was held that the approved resolution plan has to be implemented at the earliest as per the mandate of the IBC.

Thereafter, on the issue of moratorium it was pointed that once moratorium comes into effect, Section 14(1)(a) expressly stops institution and continuation of pending proceedings against corporate debtors as was held in ***Alchemist Asset Reconstruction Company Limited v. Hotel Gaudavan Private Limited (2018) 16 SCC 94***. Therefore, authorities exercising jurisdiction under the provisions of the SEBI Act, Rules and Regulations cannot proceed against the

corporate entity undergoing the CIRP. By virtue of Section 238 of IBC which provides that the Code will override other laws, an Adjudicating Authority exercising powers under the provisions of the SEBI Act will not be able to determine the liability of the corporate debtor during the moratorium period. Once the National Company Law Tribunal makes a declaration under Section 13 of the Code in respect of a corporate debtor undergoing CIRP, moratorium commences. Moratorium shall have effect from the date of such order till the completion of the CIRP. Once the moratorium commences an institution of suits or continuation of pending suits or proceedings including execution of judgment, decree or order of Court, tribunal, arbitration or authority is prohibited.

Subsequently, the proceedings under which moratorium will apply was enunciated. The same includes:

- Order of Income Tax Appellate Tribunal. ***[Chitra Sharma v. Union of India (2018) 18 SCC 631]***
- Proceedings under Section 138/141 of the Negotiable Instruments Act against the corporate debtor itself. ***[P. Mohanraj v. Shah Brothers Ispat Private Limited (2021) 6 SCC 258]***
- Recovery of property by owner/lessor where such property is occupied by corporate debtor. ***[Rajendra K. Bhutta v. Maharashtra Housing and Area Development Authority and Another (2020) 13 SCC 208]***

Conversely, moratorium under Section 14 will not apply to the personal guarantor of a corporate debtor. [***State Bank of India v. V. Ramakrishnan (2018) 17 SCC 394]***

On the aspect of disgorgement by SEBI, it was iterated that Section 32A of IBC protects the new management of a corporate debtor from prosecution for0 past offences. It also protects the assets of the corporate debtor from prosecution for past offences in the event of change of management of the corporate debtor pursuant to a CIRP. Constitutional validity of this provision has been upheld in ***Manish Kumar v. Union of India (2021) 5 SCC 1***. Liability of the corporate debtor for all offences committed prior to the commencement of the CIRP, including offences based upon complaints under Section 2(d) of the Criminal Procedure Code ceases as was held in ***P. Mohanraj v. Shah Brothers Ispat Private Limited* (*2021) 6 SCC 258.***

Lastly, the issue of conflict between Section 238 of the IBC and 28A, SEBI Act was discussed. In view of the Non-obstante clause in Section 238 of the Code it was held by the Apex Court in ***CIT v. Monnet Ispat and Energy Limited*** (***2018) 18 SCC 786,*** it was held that the Code will override anything inconsistent contained in any other enactment including the Income Tax Act. The provisions of the Code will come into effect when there is moratorium declared and the corporate debtor is undergoing Corporate Insolvency Resolution Plan. Section 28A of the SEBI Act specifies the amount to be recovered in the event a person fails to pay the penalty imposed under the Act or fails to comply with any direction of the Board for refund of money or fails to comply with the direction of disgorgement order issued under Section 11B or fails to pay any fees dues to the Board. So long as such person is not undergoing a CIRP under the Code it does not enjoy any immunity from proceedings under Section 28A in relation to the Code. Therefore, it was opined that there is no conflict between the two provisions.

**Session 6: Imposition of Penalties: Exercise of Discretion by Adjudicating Officers**
**Speakers: Justice Debangsu Basak and Mr. Somasekhar Sundaresan**

The Session began by highlighting the objective of the Securities and Exchange Board of India Act, 1992 (hereinafter referred SEBI Act). It was opined that even though the Act has only IX chapters and 35 Sections, there are many regulations which have far reaching consequence on the functioning of listed companies.

Thereafter, the framework of penalties imposed by SEBI under Chapter VIA of the SEBI Act was discussed in light of ***SEBI v. Shriram Mutual Fund (2006) 5 SCC 361,*** wherein it was held that penalty is attracted as soon as contravention of the statutory obligation as contemplated by the Act and the Regulation is established and that "intention of the parties committing such violation" i.e. *mens rea* is wholly irrelevant. Further, it was clarified that Sections 15A to 15HA have to be read along with Section 15J in a manner to avoid any inconsistency or repugnancy and the provisions of one section cannot be used to nullify and obtrude another unless it is impossible to reconcile the two provisions as was held in ***SEBI v. Bhavesh Pabari (2019) 5 SCC 90***. It was further held that the conditions stipulated in the three clauses of Section 15J are not exhaustive and there can be circumstances beyond those which can be taken note of by the adjudicating officer while determining the quantum of penalty. It was emphasised that Section 15J of the SEBI Act has explained that the power to adjudicate the quantum of penalty under Sections 15A to 15E, clauses (b) and (c) of 15F, 15 G, 15H and 15 HA shall always be deemed to have been exercised under the provisions of Section 15J.

Further, the doctrine of proportionality was elaborated by discussing ***Om Kumar v. Union of India (2001) 2 SCC 386,*** wherein it was held that the doctrine of proportionality has been used by the courts to test legislative and administrative actions. It was further held that when a statute endows discretion upon an administrator, the scope of judicial review would remain limited. Interference is not permissible unless the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. It was opined that these principles have been consistently followed to judge the validity of administrative action. The quantum of penalty imposed under the SEBI Act and the regulations will therefore, be adjudged on the principle of proportionality.

Subsequently, judicial discretion was deliberated while referring various case laws. ***In R. v. Wilkes (1770) 4 Burr 2527,*** it was held that "discretion", when applied to a court of justice means discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful but legal and regular. In ***National Insurance Co. Ltd. v. Keshav Bahadur (2004) 2 SCC 370,*** it was held that the word "discretion" standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; therefore a discretion should not be arbitrary but a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore, where the Legislature concedes discretion it also imposes a heavy responsibility. In ***Dhurandhar Prasad Singh v. Jai Prakash University (2001) 6 SCC 534,*** it was held that discretion, undoubtedly, means judicial discretion and not whim, caprice or fancy of a judge. Powers of review cannot be invoked unless it is shown that there is error apparent on the face of the record. It was stressed that escalation of state functions, compelled legislature to confirm faster discretionary powers on the administration because it was not always possible to lay down standards and parameters for the exercise of administrative powers in a novel situation of complex state affairs. In ***Reliance Airport Developers (P) Ltd. v. Airport***

***Authority of India (2006) 10 SCC 1,*** the court held that "discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection: deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private -affections of persons".

Further, on the aspect of streamlining the penalty regime reining in the discretion of Adjudicating Officer (AO) certain parameters were highlighted:

- AO must exercise powers within the statute
- AO must take into consideration relevant materials for arriving at a decision
- AO must take into consideration the conflicting private rights and the object the statute seeks to achieve
- AO must decide the issues within a reasonable period of time
- AO's decision must conform to the principles of natural justice
- AO must pass a speaking order reflecting the reasons for arriving at a conclusion

**Session 7: E-Filing, Digitization and Maintenance of Records**
**Speakers: Justice Sunil Ambwani, Justice R.C. Chavan and Mr. Atul Kaushik**

The session commenced by expounding the phase-wise overview of the e-courts project. The first phase focused on enhancing the existing capacity with installation of hardware and creating infrastructure at all court complexes. Thereafter, in the second phase, scope of activities was enlarged owing to sufficient funding and initiatives were fortified. This manifests from the way the e-courts initiatives aided courts to continue to function during the pandemic. Emphasis was drawn to NJDG, judgments.ecourts, JustIS app, e-filing, paperless courts, video conferencing, live streaming which were considered to have accentuated access to justice. Prospectively, vision of the third phase of the e-Courts project was discussed and it was underscored that the third phase has typically absorbed the piecemeal objectives of the second phase. The proposed objectives of the third phase includes:

- Intertwining courts across the country;
- ICT enablement of the Indian judicial system;
- Aiding courts to augment judicial output, both qualitatively and quantitatively and to make the justice delivery system accessible, economical, transparent and accountable.

Thereafter, it was highlighted that the processes and procedures involved in justice delivery are of great importance to litigants, lawyers and SEBI. Archaic rules and procedures devised years ago and still being followed in courts can often be a stumbling block and prevent efficient justice delivery. The following objectives of Process Re-engineering exercise was expounded –

- To study the existing rules, processes, procedures and forms in use in courts
- To modernize the existing rules, processes, procedures and forms to make them litigant friendly and technology enabled
- To introduce new rules, processes, procedures and forms to avoid administrative delays and assist in expeditious disposal of cases
- To compile new rules, processes, procedures and forms and officially publish them for use in courts

Subsequently, chronological life cycle of a case from filing to disposal was elaborated as follows:

1. **Filing of a case:** The origin of a case in the legal system starts with its filing. The first step is to identify the number of copies to be filed, the font size of the printed material, formatting and line spacing, whether the case paperbook printing has to be one sided or two sided etc. It may also be examined whether filing an application in court by handing it over to the presiding judge at the time of arguments should be discouraged and instead a centralised filing counter may be mandated.

2. **Registration of the case into the system:** Every court has a register wherein all the cases filed are entered into the system at this stage. Earlier, this was done on a purely manual basis on a physical register. With the use of ICT enabled tools, the manual part of the process can be completely eliminated.

3. **Scrutiny of the cases:** From past experiences in most courts this process can be easily standardized. A checklist performa of possible objections which are often noted as part of the scrutiny process can be made available to lawyers and litigants at the time of filing of case or application.

4. **Listing of cases:** Ideally, once a case is filed; it ought to be listed before the court on the next working day or the day after. Existing procedures and rules can be modified to ensure this. This will obviate the necessity of filing a case as an urgent matter or an ordinary matter.

5. **Allocation of case:** Random and purely computer based allocation is the best way to prevent the possibility of bench shopping.

6. **Printing of cause lists:** Majority of courts now have done away with printed cause lists. Technology allows for cause lists to be directly pushed into the mobiles of litigants/lawyers. Rules requiring printing cause lists may be revisited.

7. **Preliminary hearing:** In most instances the litigant/applicant gets a notice issued unless there are preliminary objections which are such that the matter itself gets dismissed and/or is withdrawn. Also, interim and/or *ex parte* applications are usually heard and decided at this stage. Technology can help automate the steps involved in the process.

8. **Daily orders and judgments:** Courts may need to have a relook at the rules which mandate that all orders, whether substantive or not, be published on the website. Routine orders such as simple adjournments or non-effective orders having no impact on the parties need not be published, but intimated to lawyers and litigants. If existing rules do not provide for any flexibility on this aspect, process re-engineering exercise must be undertaken.

9. **Certified copies:** There is need to simplify the procedure for making available certified copies of orders and judgments, including the use of digital signatures for authentication. The supply of uncertified copies for private use may also be considered with appropriate disclaimers.

10. **Service of notice:** This has always been a huge problem faced by most courts. The CPC allows for service of notice through electronic means, however the same is rarely used.

11. **Payment of court fees:** Incentives should be provided for paying court fees by electronic means.

12. **Deposit and withdrawal of money:** There is always considerable difficulty faced by litigants when they are required to deposit money or to withdraw money that is already deposited. For example deposit of rent in landlord-tenant disputes, maintenance in matrimonial disputes, costs, diet money, expenses, batta from the court registry, witnesses travel expenses, etc. These procedures can be simplified to make it litigant/claimant friendly.

13. **Petty/small cause claims:** Often courts are clogged with petty cases including those related to traffic offences/NI Act etc. A similar class of cases may inundate SEBI. Special rules or procedures can be made to efficiently deal with such matters. Compounding of the offence or payment of fines through electronic means or moving the entire process online may be considered to reduce pressure on adjudicating authority.

It was suggested that the abovementioned pointers may serve as a basic tool for adjudicating authorities of SEBI to explore the various possibilities that technology provides in automating or facilitating efficient and quality adjudication. Subsequently, it may become a part of the process re-engineering exercise carried out by SEBI.

**Session 8: Court and Case Management**
**Speakers: Justice Sunil Ambwani and Justice R.C. Chavan**

The session was commenced with discussion on issues related to non service of processes and how technology has solved this problem. The National Service and Tracking of Electronic Processes [NSTEP] initiative of the E-Committee, Supreme Court was highlighted in this regard. The background of the process of digitization of court was discussed. It was highlighted that judiciary was riddled with different type of processes in different courts and the diversity in procedures and way of working was a big issue. Therefore the digitization of court processes was suggested in the year 2005. The government too welcomed the move towards digitization and suggested that when the entire government is going for digitization the courts too should be digitized. Mr. Montek Singh Ahluwalia, former Finance Minister agreed to finance the digitization of courts. The setting up of hardware infrastructure in courts across the country and change management through launching of Case Information System [CIS]-1 was described. The initiation of process reengineering for making uniform rules and processes and the problem of different nomenclature of cases in different high courts were discussed. It was observed that unless rules are changed the digitization will not be effective. There was lot of thought process involved for process reengineering. The lawyers were not ready to change as they were adapted to a particular mode of processes.

The initiation of core and periphery software system for e-courts project was discussed. It was decided during planning for the E-Courts project that the E-Courts project will be open source software system. The process of establishing infrastructure for storing the data of E-Courts project was explained. The government servers were too old and therefore new infrastructure was established for data storage with provision for backup system and disaster recovery system. The initiatives regarding Master Training Program were highlighted. The best judicial officers were selected and within a short span of time judicial officers in all courts were trained according to the requirement of E-Courts project.

Various features of the National Judicial Data Grid [NJDG] and how it helps in monitoring the pendency of cases were highlighted. The discussion then focussed on initiation of the process of digitalization of old records through scanning and how the scanning machines were arranged for scanning of current records and legacy files. The process of framing rules for e-filing, e-payment, live streaming and videoconferencing was discussed and benefits of digitalization were highlighted. The ecosystem approach and platform approach of the E-Courts Project Phase III was highlighted. Various features and benefits of E-Services app were explained. The E-Services app provides information to public about cases in courts. The use of artificial intelligence in courts and its limits were elaborated.

**Session 9: Challenges in Adjudication: Open House Discussion**
**Speakers: Justice Sunil Ambwani and Justice R.C. Chavan**

The discussion focussed on use of documents and evidence in virtual hearings in civil and criminal cases. It was emphasised that there should be rules regulating such situations. The issue related to physical attendance of expert witnesses in court was discussed and it was suggested that physical presence should be need based and preference should be given to virtual interaction. The issue related to physical presence of prisoners in court was also discussed. The issue of contempt of court in virtual hearing was discussed. The rules for preservation of documents and decrees were elaborated. The masking of documents or parts of documents and creation of codes were highlighted and examples of such techniques from family matter cases were shared with the participants. Some aspects of service of summons and notice were explained and provisions of the Code of Civil Procedure were referred. Various strategies for effective services of summons and notices were explained to participants. It was suggested that there should not be any prejudice to a party in the service of summons and notices and a simple procedural error in the order of service or manner of service should not vitiate the proceedings.

The mode of substituted services was discussed and it was suggested that in absence of the party on whose name the notice has been served, an adult member of the family can be served. However the servant will not be presumed as party. It was opined that the manner of service should not vitiate the proceedings. The main point which should be seen in the service of summons is that whether the other person has noticed the service of summon or not. Regarding sending of summons/notices through email it was suggested that if the sender has received the receipt then they should put into the record that receipt will be deemed to be an effective service of notice. The Section 88 (A) of the Indian Evidence Act regarding presumption as to electronic messages by courts was referred in this regard. When a presumption is raised and if it is founded on a fact then it is for the other party to demolish it or rebut it. It was suggested that before going ex-parte, the adjudicators should record that they adopted all available options to serve summon/notice. They should record that on the basis of this fact I am satisfied that service has been deemed to have been effected. So such findings must be recorded before going ex-parte. Therefore even if the SEBI rules are not covering such approach the adjudicators can adopt such approach because an approach which is reasonable, lawful and not prohibited, that approach is always permitted. Section 27 of the General Clauses Act was referred in this regard.

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