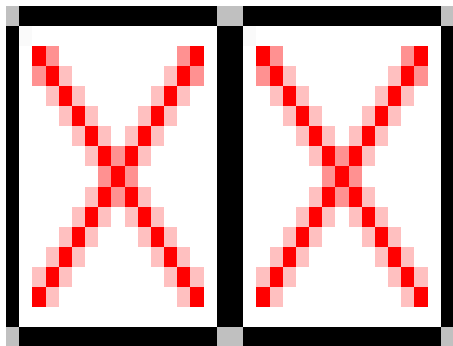


Judicial Role in Globalised Economy

The Crusader is back, now with a book that has exhaustively covered all aspects of the issue. This is a new book by Shiva Kant Jha who had been leading a one-man-army in the battle against the Indo Mauritius treaty in which the country had lost Crores of Rupees.



Shiva Kant Jha

, is a former Chief Commissioner of Income Tax. In 2000, he had successfully moved a public interest petition before the Delhi High Court, bringing before it his long and distinguished experience not only as a tax administrator but also as a legal practitioner in the Supreme Court Bar in such matters. In its judgement the High Court commended Jha for having “done a noble job in bringing into focus as to how the government has been losing crores and crores of rupees by allowing an opaque system to operate”.

But the Supreme Court overruled the Delhi High Court judgement. The Apex court had remarked that it was for Parliament to take the initiative to plug the loopholes.

Mr Jha had been a distinguished contributor to TIOL’s columns. The spirited fighter has now chronicled it all. **His battle against treaty shopping** is now a book for posterity and the present generation.

The book examines, in the context of the realities of a Globalised world with market supremacy, the role of the superior courts. It examines the Treaty Making power of the Central Government and makes certain valuable suggestions for bringing about changes in the procedure. It examines various aspects of the law of treaties with special reference to the Indo-Mauritius Double Taxation Avoidance Convention. It examines the paradigm shift in tax jurisprudence, and **explores the possibilities of PIL in revenue matters.**

The book would assist the judges and the lawyers in comprehending the trends of the time. The book would also be of interest to the economists, political scientists, sociologists and the social thinkers across the world in evolving their response to the problems they deal with in this shrinking world of increasing interdependence.

- Should the Judiciary be market-friendly?
- If dreams were to sell, there is no harm in being the largest buyer.
- The ways of the economic realm subvert the institutions of the political realm, through craft and corruption.
- Market forces have made humans the commodities on counter.
- Is the kiss of the market fatal, or wholesome, or both in varying measures?

Many such issues are addressed in the absorbing book. The book is a pathological study of our government, courts and parliament.

The book examines a number of legal and political issues of greatest importance in this phase of economic globalization. It is a product of wide and deep research over a good number of years. It draws on the rich repertoire of the author’s experience in conducting a PIL of greatest importance before the Delhi High Court and the Supreme Court. The issues have been examined with sensitiveness, which a national cause demands.

The book starts with a chapter called ‘Towards the Sponsored State’,

leaving the façade of the Nawab’s government intact to receive all the brickbats from his people for things getting wrong; in the other no such pretence was maintained, and power was directly assumed over the people who could see the targets of their wrath, or objects of their veneration straight within their sight.

In the chapter ‘**An Opaque System**’

, the Author studies the raw realities of our times, and exposes its opaque system of massive corruption and economic crimes. As “sunshine is the strongest antiseptic”, nothing is disliked more by the money-launderers, crooks, fraudsters and scamsters than transparency.

Even though he lost in the Supreme Court, the author believes that “The only institution which appears not yet to have lost its soul is our superior judiciary, the last resort for the flickering hope under our constitutional system”.

By subjecting even the apex Court to an effective constitutional accountability, there would be a real and most comprehensive Rule of Law. People would get rights to question the Olympus even if their fundamental rights are breached by none less than Zeus Himself.

There is an entire chapter on ‘Supreme Court on Treaty Shopping’, suggesting that our Supreme Court could not remove the shadow that fell between the idea and the reality. This Chapter examines critically the judicial conception which had led the Court to sustain the fraud of Treaty Shopping in Azadi Bachao case. It explores why a dissociation set in the judicial sensibility between moral vision and practical insight. It examines the flawed ideas of Rohtagi’s book Basic International Taxation which become the reason of the judgment.

It also states that neither comity nor rule of international law can be invoked to prevent a sovereign state from taking steps to protect its own revenue laws from gross abuse or save its own citizens from unjust discrimination in favour of foreigners.

There is a chapter on ‘CAG on the Treaty Shopping: An Expose Extraordinary’ examining the role of the CAG of India. The Chapter refers to the Report of the CAG (No 13 of 2005) relating to System Appraisals in the segment of Direct Taxes. The CAG has drawn attention to the misuse of the Double Taxation Avoidance Agreements.

And can a book of this kind be complete without a treatise on the PIL – that’s where Mr. Jha started. There is indeed a chapter, ‘Public Interest Litigation In Revenue Matters’ which deals with questions of administrative lawlessness in the tax administration. It was really a revolutionary step for the British courts to grant a locus standi to a public spirited person even in matters of revenue traditionally considered a sovereign function. The author had the honour of conducting one of the most important PILs in revenue matters before the Delhi High Court and the Supreme Court.

“**Yatoh Dharmahstatoh Jayah (Where dharma is; victory is surely there).**”

Gandhari in the Mahabharat

And may be a couple of warriors like Shiva Kant Jha.

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