J&K JUDICIAL ACADEMY e-NEWSLETTER

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From the Editor's Desk

"Modern India was built around the goal of removing the disparities in society. Project democracy is about providing a space for the participation of all. Participation will not be possible without social emancipation. Access to justice is a tool for social emancipation."

-Hon'ble Mr. Justice *N. V. Ramana, CJI in his address at the 1st All India District Legal Services Authorities Meet (30th-31st July, 2022)*

The Constitutional vision of justice is emphatically announced by the Preamble when it precepts Justice-social, economic and political, as the heart and soul of an equitable society. The solemn resolve by "We, the People" to constitute India as a welfare state, is further strengthened by the promise of Equality implicit in the provisions of the sacrosanct document, more particularly through Articles 14,21&39-A. In fact, both Justice & Equality thrive in an inescapable network of mutuality in as much as in the absence of equality, there will be a denial of justice and the progress of society will be an evasive concept and likewise, the reverse is true. When read in conjunction, both express a universal principle–a right to equal justice to be enjoyed by everyone. However, it is quite a predicament that the coexistence of both core constitutional values is difficult to establish in view of the innumerable and multifarious challenges in ensuring "Equal access to Justice" but fortunately, in our legal system, we have recognized the critical importance of access to equal justice for all and assigned it a much higher priority. The *sui generis* nature of the concept of access to justice is that it is a fundamental right in itself and is also the harbinger of other rights that have been either disregarded, infringed, or denied to most vulnerable social sections. In the backdrop of the recently concluded first All India District Legal Services Authorities Meet organized by National Legal Services Authority (NALSA) at New Delhi which was attended by over 1,200 delegates from across the nation, it would be apt to make reference to the yeoman's services being rendered by the multi-tier Legal Services institutions across all jurisdictions, in giving voice to the voiceless and constructively behooving its workforce to find sustainable solutions to the omnipresent challenges and constraints in the attainment of "equal access to justice for all"-which of late, has become nothing short of a war cry for its work army. The institutions are under a mandate to legally empower the marginalized and excluded sections through representation, literacy and awareness and bridging the gap between the benefits and beneficiaries under the various social security and welfare schemes. Strengthening the ADR mechanism including Lok Adalats is another important facet of their work objectives. As a way forward, NALSA is planning to have a unified process where legal aid defense counsel would be provided to poor

accused who cannot afford private lawyers and a streamlined "Ease of Justice" mechanism for ensuring effective and efficient justice delivery. The pertinent issue of undertrials languishing in jails and particularly those awaiting legal aid is to be pragmatically resolved through ambitious e-prison software, which in the words of Hon'ble Mr. Justice D.Y. Chandrachud, Chairman of the E-Courts Committee of the Supreme Court, would introduce technological solutions through API techniques in establishing interfaces to the exclusion of any third-party intervention in accessing data. Another useful takeaway from the deliberations, as stressed by Hon'ble Mr. Justice U.U. Lalit, Executive Chairman, NALSA is to engage youngsters, especially Law students in legal services activities for gaining first-hand experience.

Dr. Martin Luther King Jr. said, "The moral arc of the universe is long but it bends at the elbow of justice. He meant that even though justice may seem slow in coming, it will surely come. In context, the Legal services institutions, which were established under the statutory mandate of The Legal Services Authorities Act, 1987, are steadily pacing to deepen access to justice facilitating its permeability to all deprived sectors. As human resources in the cause, each one of us must be conscious that whatever directly affects an individual, indirectly affects communities and the nation as a whole. Therefore, notwithstanding the complexities in enabling and ensuring equitable, uniform and equal access to justice for all, individual and collective efforts of all stakeholders in the process must gallantly march in unison, to realize the Constitutional vision of inclusive Justice and growth of all.

LEGAL JOTTINGS

"The judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid. It must take into consideration the changing trends of economic thought, the temper of the times and the living aspirations and feelings of the people."

S. Murtaza Fazal Ali, J. In Pathumma v. State of Kerala, (1978) 2 SCC 1, para 5

CRIMINAL

SUPREME COURT JUDGEMENTS

Criminal Appeal No. 1132-1155 of 2022
Daxaben v. The State of Gujarat & Ors.
Decided on: July 29, 2022

Hon'ble Supreme Court Bench of Justices Indira Banerjee and V. Rama Subramanian observed that an FIR under Section 306 IPC cannot be quashed under Section 482 CrPC on the basis of settlement or compromise between parties since the offence falls in the category of heinous and serious offenses and are to be treated as a crime against society and not against the individual alone. It was observed, *"Heinous or serious crimes, which are not private in nature and have a serious impact on society cannot be quashed on the basis of a compromise between the offender and the complainant and/or the victim*".

Special Leave Petition (Criminal) No. 4634 of 2014
Vijay Madanlal Choudhary & Ors v. Union of India & Ors
Decided on: July 27, 2022

Hon'ble Supreme Court Bench of Justices A.M. Khanwilkar, Dinesh Maheshwari, C.T. Ravi kumar while upholding constitutionality of powers of Enforcement Directorate for arrest, search and seizure, attachment under the Prevention of Money Laundering Act, 2002 also upheld the constitutionality of reverse burden of proof (Section 24) and twin conditions of bail (Section 45). The two conditions under Section 45 are: (i)

Prosecutor is given opportunity to oppose the bail application and (ii) that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. In Nikesh Tarachand Shah vs. Union of India (2018) 11 SCC 1, the Supreme Court declared such conditions to be unconstitutional being violative of Articles 14 and 21 of the Constitution followed by an amendment in section 45 in the year 2018. *It was observed" The twin conditions declared as unconstitutional by this Court in Nikesh Tarachand Shah was in reference to the provision, as it existed at the relevant time, predicating application of Section 45 of the 2002 Act to only offences punishable for a term of imprisonment of more than three years under Part A of the Schedule of the 2002 Act and not even linked to the offences of money-laundering under the 2002 Act. The reasons which weighed with this Court for declaring the twin conditions in Section 45 (1), as it stood at the relevant time, unconstitutional in no way obliterated the provision from the statute book. Therefore, it was open to the Parliament to cure the defect noted by this Court and to revive the same provision as in the present form, post amendment Act 13 of 2018 with effect form 19.4.2018."*

Criminal Appeal No. Of 2022
Ghulam Hassan Beigh v. Mohammad Maqbool Magrey & Ors.
Decided on: July 26, 2022

Hon'ble Supreme Court Bench comprising Justices AM Khanwilkar, Abhay S Oka and JB Pardiwala observed that a trial court could not discharge the accused from murder charges merely relying on a Postmortem report indicating cause of death as "cardio-respiratory failure". It was observed, *"The post-mortem report, by itself, does not constitute substantive evidence. The doctor's statement in court is alone the substantive evidence"*. It was also observed that the question whether the "cardio-respiratory failure" had any nexus with the incident in question would have to be determined on the basis of the oral evidence of the eyewitnesses as well as the medical officer concerned i.e. the expert witness who may be examined by the Prosecution as one of its witnesses.

Criminal Appeal No. 1031 of 2022
Kanchan Kumari v. State of Bihar & Anr.
Decided on: July 25, 2022

Hon'ble Supreme Court Bench of Justices K.M. Joseph; J., Hrishikesh Roy reiterated that a peremptory direction affecting a third party cannot be issued in an anticipatory bail order. It was observed ""*We are convinced that the High Court has gone beyond what was needed for the disposal of the application under Section 438 Cr.P.C. What is impugned before us is not a mere observation. It is a peremptory direction affecting a third party. The adverse impact of the direction goes to the very livelihood of the appellant. It has also civil consequences for the appellant. Such a peremptory direction and that too, without even issuing any notice to the appellant was clearly unjustified.*", the bench observed while vacating the adverse directions."

Criminal Appeal Nos. 1001-1002 of 2022
Narcotics Control Bureau v. Mohit Aggarwal
Decided on: July 19, 2022

Hon'ble Supreme Court three-judge bench comprising CJI NV Ramana, Justices Krishna Murari and Hima Kohli observed that the expression "reasonable grounds" used in Section 37(1)(b) under NDPS Act would mean credible, plausible grounds for the Court to believe that the accused person is not guilty of the alleged offence. Referring to *Collector of Customs, New Delhi v. Ahmadalieva Nodira(2004) 3 SCC 549* and *State of Kerala and others Vs. Rajesh and others (2020) 12 SCC 122*, it was observed,*" To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section(1)*

of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail."

Criminal Appeal No. 950/2022
Barun Chandra Thakur v. Master Bholu & Anr.
Decided on: July 13, 2022

Hon'ble Supreme Court held that when the Juvenile Justice Board does not comprise a practicing professional with a degree in child psychology or child psychiatry, it would be obligated to take the assistance of experienced psychologists or psychosocial workers or other experts under proviso to Section 15(1) of Juvenile Justice (Care and Protection of Children) Act, 2015 (Act). Hon'ble Court referred to *Bachahan Devi v. Nagar Nigam, Gorakhpur* to observe that the word 'may' when used in legislation by itself does not connote a directory meaning. If in a particular case, in the interests of equity and justice it appears to the court that the intent of the legislature is to convey a statutory duty, then the use of the word "may" will not prevent the Court from giving it a mandatory color. It was accordingly observed,"*...we are of the view that where the Board is not comprising of a practicing professional with a degree in child psychology or child psychiatry, the expression "may" in the proviso to section 15(1) would operate in mandatory form and the Board would be obliged to take assistance of experienced psychologists or psychosocial workers or other experts. However, in case the Board comprises of at least one such member, who has been a practicing professional with a degree in child psychology or child psychiatry, the Board may take such assistance as may be considered proper by it; and in case the Board chooses not to take such assistance, it would be required of the Board to state specific reasons therefore."*

Criminal Appeal No. 1838, 1839 & 1840 of 2019
Ajmal v. The State of Kerala
Decided on: July 12, 2022

Hon'ble Supreme Court Bench comprising Justices Ajay Rastogi and Vikram Nath reiterated its views regarding considerations relevant for determining a culpable homicide amounting to murder and distinguishing it from the culpable homicide not amounting to murder. Hon'ble court referred to *Mohd. Rafiq vs. State of M.P (2021) 10 SCC 706.* wherein it was held *that* there is a subtle distinction of intention and knowledge involved in both the crimes. This difference lies in the degree of the act. There is a very wide variance of degree of intention and knowledge among both the crimes. Reference was drawn also from *Pulicherla Nagaraju @ Nagaraja Reddy v State of Andhra Pradesh (2006) 11 SCC 444*to list out the considerations that should weigh with courts, in discerning whether an act is punishable as murder, or culpable homicide, not amounting to murder," *The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances; (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body;(iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in*

the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention."

Cr. Appeal No. 938 of 2022
Indresh Kumar v. State of Uttar Pradesh
Decided on: July 12, 2022

Hon'ble Supreme Court bench comprising of Justice Indira Banerjee and Justice V. Ramasubramanian while setting aside an order of Allahabad High Court that granted bail to a man accused of rape and murder of eleven year as old girl held that statements under Section 161 of Cr.P.C. may not be admissible in evidence but are relevant in considering the prima facie case against an accused in an application for grant of bail in case of grave offence.

SLP (Crl) No. 5191 of 2021
Satender Kumar Antil v. Central Bureau of Investigation
Decided on: July 11, 2022

Hon'ble Supreme Court Bench of Justice Sanjay Krishan Koul and Justice M. M. Sundresh while emphasising the personal liberty of an individual observed that Section 41 and section 41 A of the Cr. P.C. are the facets of Article 21 of the Constitution of India and issued a series of directions, inter alia, considering the introduction of a separate enactment in the nature of the Bail Act so as to streamline the grant of bails. It was directed that the High Courts shall undertake the exercise of finding out the undertrial prisoners who are not able to comply with the Bail conditions and while insisting upon sureties, the mandate of section 440 of Cr.P.C. has to be kept in mind.

HIGH COURT OF J&K AND LADAKH JUDGEMENTS

CrlA(D) No. 14/2021
Vakil Ahmad Dar v. Union Territory of J&K
Decided on: July 25, 2022

Hon'ble Division Bench of High Court Of Jammu & Kashmir And Ladakh while deciding as to whether the appellant was entitled to be admitted to default bail / compulsive bail in terms of Section 167(2) of Cr.PC, 1973 on filing of the charge-sheet within the period of 180 days, observed that the right to default bail, as has been held by the judgments of the Apex Court of India, is not mere statutory right under the first proviso to Section 167(2) of the Criminal Procedure Code, but is part of the procedure established by law under Article 21 of the Constitution of India, which is, therefore, a fundamental right granted to an accused person to be released on bail, once the conditions of the first proviso to Section 167 (2) of CrPC are fulfilled and this right of grant of default bail becomes complete on expiry of the statutory period before a charge sheet is filed. So long as an application has been made for default bail on expiry of statutory period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2) of CrPC, kicks in and has to be granted.

CRMC No. 322/2018
M/s Beigh Construction Company Pvt. Ltd. and another v. M/s Amritanshu Infrastructure & Management Pvt. Ltd
Decided on: July 14, 2022

Hon'ble High Court of Jammu & Kashmir and Ladakh while deciding a petition challenging the complaint filed against under Section 138 of the Negotiable Instruments Act, 1881 before the court of learned Munsiff, Judicial Magistrate 1st Class, Jammu and also order dated 31.08.2017 vide which Judicial Magistrate

after taking the cognizance of the offence has issued process against the petitioners, reiterated the object of Section 138 of the Negotiable Instruments Act which is to infuse credibility to negotiable instruments. It was observed, *"09. The object of Section 138 of the Negotiable Instruments Act is to infuse credibility to negotiable instruments including cheques and to encourage and promote the use of negotiable instruments including cheques in financial transactions. The penal provision of Section 138 of the Negotiable Instruments Act is intended to be a deterrent to callous issuance of negotiable instruments such as cheques without serious intention to honour the promise implicit in the issuance of the same."*

CRM(M) No.280/2021
Fayaz Ahmad Sheikh v. Mushtaq Ahmad Khan
Decided on: July 15, 2022

Hon'ble High Court of J&K and Ladakh while considering the question whether prosecution for offence under Section 138 of the NI Act and offences under Section 406, 420 of IPC can be continued simultaneously against an accused on same set of facts, referred to *Maqbool Hussain v. State of Bombay, AIR 1953* SC 325 and *State of Bombay vs. S. L. Apte and anr. AIR1961 SC 578*, and discussed the issue of double jeopardy. Referring to *Sangeetaben Mahendrabhai Patel vs. State of Gujarat & anr. (2012) 7 SCC 621*, it was observed offences under Section 138 of the NI Act and Section 420 of IPC are distinct from each other because *the* ingredients of the two offences are different. It was observed, "*While in a prosecution under Section 138 of NI Act, fraudulent or dishonest intention at the time of issuance of cheque need not be proved but in a prosecution under Section 420 of IPC, such intention is an important ingredient to be established. For proving offence under Section 138 of NI Act, it has to be established that the cheque has been issued by the accused to discharge a legally enforceable debt or liability and the same has been dishonoured for insufficiency of funds etc. and despite receipt of statutory notice of demand, the accused has failed to pay the amount of cheque within the stipulated time. It is only when accused fails to make the payment within the stipulated time upon receipt of notice of demand that the offence under Section 138 of NI Act is made out against an accused. In the case of prosecution for the charge under Section 420 of IPC, these ingredients need not be proved by the prosecution. However, it has to be proved by prosecution that at the very inception i.e. at the time of issuance of the cheque by the accused, he had a dishonest intention. Thus, offence under Section 420 of IPC is made out at the time of issuance of the cheque itself which is not the case with offence under Section 138 of NI Act. Therefore, the two offences are distinct from each other and the principle of double jeopardy or rule of estoppel does not come into play."*

CRM(M) No. 269/2021
Kounsar Jan and Another v. Ishfaq Ahmad Lone
Decided on: July 01, 2022

Hon'ble Bench of High Court of Jammu & Kashmir and Ladakh, in the exercise of Inherent jurisdiction, enshrined under Section 482 CrPC in a petition seeking quashing of order passed by the Chief Judicial Magistrate, Pulwama reiterated that the maintenance proceedings instituted under Section 488 CrPC are primarily aimed at providing maintenance in a summary manner with a view to avoid vagrancy for the women and children. It was observed," *Further proceedings under the Section are of summary nature and in the said proceedings under the Section, standard of proof is not strict unlike matrimonial proceedings. The provision is a piece of social legislation. These objectives have to remain present to the mind of the courts while deciding applications for grant of maintenance under Section 488 CrPC."*

"Rule of Law is the basic rule of government of any civilized democratic polity. It is only through the courts that rule of law unfolds its contours and establishes its concept. For the judiciary to carry out its obligations effectively and true to the spirit with which it is sacredly entrusted the task, constitutional courts have been given the power to punish for contempt, but grater the power higher the responsibility."

C.K. Prasad, J. in H.G. Rangangoud v. State Trading Corpn. of India Ltd., (2012) 1 SCC 297, para 13

CIVIL

SUPREME COURT JUDGEMENTS

Civil Appeal No. 4978 of 2022
M/S Bhagwandas B. Ramchandani v. British Airways
Decided on: July 29, 2022

Hon'ble Supreme Court Bench comprising Justices KM Joseph and PS Narasimha while discussing the applicability of the Limitation Act when the right itself is extinguished observed that the provisions of the Limitation Act will not apply when a Statute extinguishes the right itself. It was observed that," *The procedural law governing the institution and adjudication of civil suits in India includes the Civil Procedure Code, 1908 as well as the Limitation Act, 1963. The Limitation Act is a branch of adjectival law and applies to all proceedings which it governs from the date of its enactment. There is however a well-established principle, which states that when the right itself is extinguished, the provisions relating to limitation have no application."*

Civil Appeal Nos. 6325-6326 of 2015
Mrs. Akella Lalitha v. Sri Konda Hanumantha Rao & Anr.
Decided on: July 28, 2022

Hon'ble Supreme Court bench comprising Justices Dinesh Maheshwari and Krishna Murari observed that a relief for which no prayer or pleading was made should not be granted and referred to *Messrs. Trojan & Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar AIR 1953 SC 235* and *Bharat Amratlal Kothari vs Dosukhan Samadkhan Sindh AIR 2010 SC 475* to further observe that if a Court considers or grants a relief for which no prayer or pleading was made depriving the respondent of an opportunity to oppose or resist such relief, it would lead to miscarriage of justice.

Civil Appeal No. 175 Of 2022
M/s R.D. Jain and Co. v. Capital First Ltd. & Ors.
Decided on: July 27, 2022

Hon'ble Supreme Court Bench comprising Justices MR Shah and BV Nagarathna while dismissing an appeal against the Bombay High Court judgment which observed that the Additional Chief Metropolitan Magistrate ("ACMM"), being invested with all the judicial powers of the Chief Metropolitan Magistrate, can be considered at par with the Chief Metropolitan Magistrate held that the District Magistrate, Chief Metropolitan Magistrate is not a persona designata for the purposes of Section 14 of the SARFAESI Act and further that the expression "District Magistrate" and the "Chief Metropolitan Magistrate" as appearing in Section 14 of the SARFAESI Act shall deem to mean and include Additional District Magistrate and Additional Chief Metropolitan Magistrate for the purposes of Section 14 of the SARFAESI Act. It was also observed, "*Thus, the Additional Chief Metropolitan Magistrate can be said to be at par with the Chief Metropolitan Magistrate in so far as the powers to be exercised under*

the Cr.PC are concerned. The Chief Metropolitan Magistrate in addition, may have administrative powers. However, for all other purposes and more particularly the powers to be exercised under the Cr.PC both are at par. Therefore, the Additional Chief Metropolitan Magistrate cannot be said to be subordinate to the Chief Metropolitan Magistrate in so far as exercise of judicial powers are concerned."

Writ Petition (Civil) No. 643/2015
All India Judges Association v. Union Of India & Ors.
Decided on: July 27, 2022

Hon'ble Supreme Court bench of Chief Justice of India NV Ramana, Justices Krishna Murari and Hima Kohli while emphasizing on the need to revise the pay structure for the judicial officers, ordered for implementation of the enhanced pay scale as recommended by the Second National Judicial Pay Commission with effect from January 1, 2016, and also directed the Center and the States to pay the arrears to the officers in 3 installments - 25% in 3 months, another 25% in next 3 months and balance by June 30, 2023. It was observed that it was imperative for the revision of the pay structure immediately since judicial officers were not covered by the Pay Commission constituted by the State and center.

Petition for Special Leave to Appeal (C) No. 10722/2022
M/S Tantia Constructions Limited v. Union Of India
Decided on: July 15, 2022

Hon'ble Supreme Court bench of Justices M. R. Shah and B. V. Nagarathna while hearing an SLP against the decision of the Calcutta High Court dismissing the petitioner's application under Section 11 of the 1996 Act for appointment of an arbitrator for resolution of dispute between the parties, observed that there cannot be two arbitration proceedings with respect to the same contract/transaction. It was observed," *Having heard the learned counsel for the petitioner, we are of the firm opinion that there cannot be two arbitration proceedings with respect to the same contract/ transaction. It is not in dispute that in the present case, earlier the dispute was referred to arbitration and the Arbitrator passed an award on whatever the claims were made. Thereafter, a fresh arbitration proceeding was sought to be initiated with respect to some further claims, may be after final bill. The same is rightly refused to be referred to arbitration in exercise of Section 11(6) of the Arbitration and Conciliation Act, 1996."*

Civil Appeal Nos. 3964-3965 of 2009
R.M. Sundaram @ Meenakshi Sundaram v. Sri Kayarohanasamy And Neelayadhakshi Amman Temple (Through Its Executive Officer) Nagapattinam, Tamil Nadu
Decided on: July 11, 2022

Hon'ble Supreme court Bench comprising Justice Ajay Rastogi And Justice Sanjiv Khanna observed that res judicata under Section 11 of the Code contains rules of conclusiveness of judgment, but for res judicata to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality. It was observed," Where the former suit is dismissed by the trial court for want of jurisdiction, or for default of the plaintiff's appearance, or on the ground of non-joinder or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letter of administration or succession certificate when the same is required by

law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation, or for failure to pay additional court fee on a plaint which was undervalued, or for want of cause of action, or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision, not being on the merits, would not be res judicata in a subsequent suit. The reason is that the first suit is not decided on merits."

Civil Appeal No. 4682 of 2022
Asha Rani Gupta v. Sri Vineet Kumar
Decided on: July 11, 2022

Hon'ble Supreme Court bench of Justice DineshMaheshwari and Aniruddha Bose has observed that a defendant cannot enjoy the property during the pendency of suit without depositing the amount of rent/ damages by merely denying the relationship of landlord- tenant/lessor-lessee. It was observed,"

"*In the context of the proposition of denial of title of the plaintiff and denial of relationship of landlord and tenant between the plaintiff and defendant, we may also observe that such a denial simpliciter does not and cannot absolve the lessee/tenant to deposit the due amount of rent/damages for use and occupation, unless he could show having made such payment in a lawful and bonafide manner. Of course, the question of bonafide is a question of fact, to be determined in every case with reference to its facts but, it cannot be laid down as a general proposition that by merely denying the title of plaintiff or relationship of landlord- tenant/ lessor-lessee, a defendant of the suit of the present nature could enjoy the property during the pendency of the suit without depositing the amount of rent/damages*"

Civil Appeal No. 2397 & 2398 of 2022
Delhi Development Authority v. Diwan Chand Anand & Ors.
Decided on: July 11, 2022

Hon'ble Supreme Court Bench comprising Justices MR Shah and BV Nagarathna observed that an appeal as a whole cannot be treated as abated merely for failure to substitute the legal representative of some of the respondents who died during pendency of the appeal and referred to *Venigalla Koteswaramman vs. Malempati Suryamba, (2021) 4 SCC 246* to hold that the Court has to examine if the right to sue survives against the surviving respondents.

Civil Appeal No. 4649 of 2022
Sriram Housing Finance and Investment India Ltd v. Omesh Mishra Memorial Charitable Trust
Decided on: July 06, 2022

Hon'ble Supreme Court observed that purchaser of the suit property from the decree holder is not entitled to file an application under Order XXI Rule 97 of Code of Civil Procedure Code, 1908 objecting to execution of the decree by the decree-holder. It was observed, *that" 15. On conjoint reading of the aforesaid provisions, it can be observed that under Rule 97, it is only the 'decree holder' who is entitled to make an application in case where he is offered resistance or obstruction by 'any person'. In the present case, as admitted by the appellant itself, it is a bona-fide purchaser of the property and not the 'decree holder'".*

HIGH COURT OF J&K AND LADAKH JUDGEMENTS

WP (C) No. 1853/2019
Virender Salgotra & Ors v. Union of India
Decided on: July 01, 2022

Hon'ble High Court of J&K and Ladakh while deciding upon the question whether the relation between the parties was that of Lessor and lessee or licensor and licensee the Hon'ble Court of J&K and Ladakh held that in order to determine whether a document is Lease or License

the true import of the document is required to be considered and mere use of word License or Lease in the agreement would not matter. It is the intention of the parties that is required to be considered. It was observed, *"For creation of lease deed there must be transfer of interest in the property whereas in case of licence, the licensee is only permitted to a particular act in or upon the property, which in absence of such authorisation is unlawful."*

"Social justice, equality and dignity of person are cornerstones of social democracy. The concept 'social justice', which the constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. 'Social Justice' is thus an integral part of 'justice' in the generic sense. Justice is the genus, of which social justice is one of its species. (...) The concept of social justice embeds equality to flavour and enliven practical content of 'life'. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of Law, therefore, is a potent instrument of social justice to bring about equality in results."

K. Ramaswamy, J. In Consumer Education & Research v. Union of India, (1995) 3 SCC 42, para 18 & 19

OATH CEREMONY FOR NEWLY ENROLLED ADVOCATES OF JAMMU PROVINCE

Jammu & Kashmir Judicial Academy organised 'Oath Ceremony' for newly enrolled advocates of Jammu Province who have been conferred with absolute

certificates to practice law on 16th July, 2022. The newly enrolled Advocates were administered Oath by Hon'ble Mr Justice Wasim Sadiq Nargal, Judge, High Court of Jammu & Kashmir and Ladakh in the presence of Mr. Shahzad Azeem, Director, Jammu and Kashmir Judicial Academy. On the occasion, newly enrolled advocates took oath to uphold the values of the Constitution of India, follow the commandments enshrined in the Advocates Act and to follow the rules of ethics, conduct and behaviour in letter and spirit. Enrolment certificates were also distributed among Advocates from various districts of Jammu province.

Hon'ble Mr Justice Wasim Sadiq Nargal, Judge, High Court of Jammu & Kashmir and Ladakh in his ceremonial address emphasised the significant role played by Lawyers in the history and advised the young entrants at the Bar to imbibe the exceptional qualities of great Advocates and legal stalwarts who steered the Indian freedom Movement and played a pivotal role in the polity of the country. He stated that Law is a noble calling and is about service and responsibility to serve and calls for finding real solutions to real problems with the satisfaction that justice has been served. He advised the young Advocates to discharge professional functions with utmost sincerity, commitment and dedication and emphasised that an Advocate must always be guided by highest standards of professional ethics in all pursuits of Justice and must commit the Oath taken to memory. He also underscored the importance of doing pro-bono work for doing meaningful work for clients in need and developing legal skills. He encouraged the young advocates to utilize time effectively and efficiently with the judicious use of technology and set work targets and constantly imbibe knowledge from the experience of senior colleagues and develop habit of reading good books and watching online knowledge based content for enhancing knowledge.

On the occasion, Director Judicial Academy addressed the advocates and encouraged them to uphold the values of the Constitution and faithfully discharge their duties. He described Advocates as active working partners with the judiciary who are enjoined with the extra-ordinary duty of always maintaining the dignity and sanctity of courts. He advised the newly enrolled advocates to inculcate and develop the skills of communication and management and adapt the latest technological trends and constant updation of knowledge to enhance productivity and efficiency.

One-day Refresher Training Programme on "Land Acquisition Laws and provisions relating to just compensation and Execution of Award"

J&K Judicial Academy organized One-day Refresher Training Programme on "*Land Acquisition Laws and provisions relating to just compensation* and *Execution of Award*" at Judicial Academy, Srinagar for District & Sessions Judges of Kashmir Province including those on deputation on 23rd July, 2022. Hon'ble Mr. Justice Muzaffar Hussain Attar, Former Judge, High Court of J&K was the resource person in the programme.

In his introductory address, Mr. Shahzad Azeem, Director J&K Judicial Academy underscored the importance of Land Acquisition Laws in industrializing and urbanizing economies where land has to be acquired by state agencies for the sake of development of infrastructure and expansion. He also underlined the pivotal role of the Judiciary while dealing with

litigation on land acquisition matters for providing larger justice to the people and maintaining the correct social and economic equilibrium in society.

In the Technical Sessions, Hon'ble Mr. Justice Muzaffar Hussain Attar educated the participants on key procedural aspects of laws governing land acquisition and discussed the concepts of fair compensation, rehabilitation, resettlement and other core issues in the process, in the light of provisions under the "The Right to Fair Compensation, Rehabilitation and

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An interactive session followed where the participants discussed the various aspects of the topic and raised queries which were satisfactorily settled by the resource person.

health of a judicial officer and understanding of stress and awareness regarding the subject, is necessary to manage it. She also cautioned against the overuse of technology which is a potent cause of stress aggravation and advised the participants to use techniques and mind training exercises including Yoga, Meditation and Sports activities for better stress management.

Dr. Zaid Wani, resource person in his special remarks described stress as a universal phenomenon with the judiciary facing performance-related pressures. He underscored the importance of observing coping mechanisms for minimizing stress situations and the risk of certain lifestyle diseases which are directly related to stress.

Mr. Shahzad Azeem, Director, J&K Judicial Academy welcomed the participants and gave an overview of the programme. He stated that a judicial officer is susceptible to all types of stressful situations and therefore immediate recognition, address, and redress of the issue is important including the adoption of practices and techniques, as prescribed by experts for ensuring the physical and psychological health of the person and the institution as a whole.

In the technical sessions, resource persons deliberated upon the meaning, types, causes of stress, and common stressors in the judiciary and also dealt with the physiological, emotional, cognitive, and behavioral aspects of stress management The concept of identification of common behavioral symptoms in stress and the practical approaches were also discussed in detail. The technical sessions were followed by an interactive session during which the queries of the participants were satisfactorily settled by the resource persons.

OATH CEREMONY OF NEWLY ENROLLED ADVOCATES OF KASHMIR PROVINCE

J&K Judicial Academy organized an 'Oath Ceremony' for newly enrolled advocates of Kashmir Province who have been conferred with absolute certificates to practice law on 30th July, 2022. The newly enrolled Advocates were administered the Oath by Hon'ble Ms Justice Sindhu Sharma, Judge, High Court of Jammu & Kashmir and Ladakh in the presence of Mr. Shahzad Azeem, Director, Jammu and Kashmir Judicial Academy. On the occasion, newly enrolled advocates took the oath to uphold the values of the Constitution of India, to follow the commandments enshrined in the Advocates Act, and follow the rules of ethics, conduct and behavior in letter and spirit.

Hon'ble Ms Justice Sindhu Sharma,

Judge, High Court of Jammu & Kashmir and Ladakh in her ceremonial address emphasized the significant position of the Advocates in society and also underscored the important role played by them in the justice delivery system. She encouraged the young Advocates to imbibe the values of hard work, punctuality, and ethics in their professional spheres. She advised them to make constant efforts to update their knowledge for enhancing efficiency.

Director, Judicial Academy addressed the advocates and described them as active working partners with the judiciary who are enjoined with the extra-ordinary duty of always maintaining the dignity and sanctity of courts. He encouraged them to uphold the values of the Constitution and faithfully discharge assigned duties and responsibilities to the best of their abilities.

On the occasion, Enrolment certificates were also distributed among Advocates from various districts of Kashmir province.

ADR – A FAST TRACK JUSTICE DELIVERY SYSTEM

Alternate Dispute Resolution (ADR) is an alternative to litigation; & involves arbitration, mediation, conciliation, negotiation and judicial settlement including LokAdalat. It is a non-adversarial method of dispute resolution i.e working together co-operatively to reach the best solution for everyone. For the last four decades there is much thrust on resolution of disputes through ADR methods. This is so because ADR is seen not merely as the most practical solution to a particular problem but also to prevent further disputes between the contesting parties.

As we all know Indian Courts are clogged with long unsettled cases. The prevailing scenario is that even after setting up more than a thousand fast track courts that have settled thousands of matters, the problem is far from being solved as pending cases are still piling up with pendency reaching 5 crore (approx). To deal with such a situation ADR can be a helpful mechanism. Moreover, it resolves conflict in a peaceful manner where the outcome is accepted by both the parties.

The Supreme Court and the Law Commission of India have also recognized the need for less formal alternative forums to help in securing speedy Justice. The object and reason for inserting Section 89 and Rules 1-A, 1-B and 1-C in Order X of the Code of Civil Procedure are given as under:

"With a view to implement 129 Report of the Law Commission of India and to make conciliation scheme effective, it is proposed to make it obligatory for the Court to refer the dispute after the issues are framed for settlement either by way of alternate or by way of arbitration, conciliation, meditation, judicial settlement, or through LokAdalat. It is only after the parties failed to get their disputes settled through any one of the alternate disputes resolution method that the suit shall proceed further in the court in which it was filed".

Historically speaking, Section 89 CPC as it stood earlier was repealed in the year 1940 but as there was no corresponding provision enabling the Civil Courts to refer the matter for arbitration, conciliation, judicial settlement including LokAdalat and meditation, the Parliament decided to insert the provision as it stands. Now the civil courts have been empowered to make reference of all civil cases to any one of the alternate dispute resolution mechanism.

The advantages of Alternative Dispute Resolution are:

- Less time consuming: people resolve their dispute in short period as compared to courts
- Cost effective method: it saves lot of money if one undergoes in litigation process.
- It is free from technicalities of courts, here informal ways are applied in resolving dispute.
- People are free to express themselves without any fear of court of law. They can reveal the true facts without disclosing it to any court.
- Efficient way: there are always chances of restoring relationship back as parties discuss their issues together on the same platform.
- It prevents further conflict and maintains good relationship between the parties.
- It preserves the best interest of the parties.
- It provides the opportunity to "expand the pie" through creative, collaborative bargaining and fulfill the interests driving the demands of the parties.

One of the objectives of Legal Services Authorities is to promote settlements of disputes through ADR mechanisms. J&K Legal Services Authority under the patronage of Hon'ble Mr. Justice Pankaj Mithal, Chief Justice, High Court of J&K and Ladakh& Patron-in-Chief, J&K Legal Services Authority and under the dynamic

guidance of Hon'ble Mr. Justice Ali Mohammad Magrey, Executive Chairman, J&K Legal Services Authority is striving hard to popularize the concept of ADR amongst the citizens in general & litigants in particular by organizing awareness programmes and holding LokAdalats. ADR has proven very successful in UT of J&K in clearing the backlog of cases at various levels of the judiciary. In 2021, 39 LokAdalats including 04 National LokAdalats were organized in which 1,75,009 cases were settled, whereas, in 2022, up till now 2,12,540 cases have been disposed of through LokAdalats.

I, therefore, impress upon the people of J&K more particularly the litigant public to explore the possibility of getting their disputes resolved through ADR mechanism. I would conclude with the works of Domitus Ulpain, a Roman jurist:

"Justice is the constant and perpetual will to allot to every man his due".

-Contributed by:
Mr. M.K. Sharma
(Member Secretary,
J&K Legal Services Authority)

CONSUMER SERVICES & E-BANKING

1.1 Introduction

Banking is now a thriving industry that places a high value on cutting-edge technology advancements. An essential and active role in the development of a country is played by banks. Any country's banking system needs to be efficient, effective, and disciplined in order to help the economy grow quickly. The Indian service industry underwent numerous transformations as a result of liberalization. Almost every aspect of human endeavour and life is being transformed by technological advancements. Banks and financial institutions around the world have been transformed by the use of information technology and communication networks. Electronic banking has added a layer of complexity to the banking industry. E-ease banking's of use has drawn in customers from around the world. Rural Indians now have access to banking services, and the corporate wing of those banks has gone global. A banker in India currently operates in a business climate that is in touch with the current global economy. Using the internet, most of our banking needs can be fulfilled wherever we are. Almost all banking services are now within walking distance of our homes thanks to this vehicle. Because of all of the new features made possible by digitization, there are also a plethora of new responsibilities for banks to shoulder. In order to be a banker, you must act as both a monarch and a servant simultaneously. He needs to be on the lookout for trouble, but he also needs to be devoted to his clients. His work is made more difficult by this double-team. Banks are now open 24 hours a day, seven days a week, thanks to the advent of electronic banking. Traditional bank branches are being phased out in favor of online and mobile banking. Internet banking has emerged as the biggest focus and targetable area. The customers are able to choose their banker from a number of banks offering a wide range of services and delivering quality service. Commercial banks in India are now becoming more customer-friendly and market-oriented. Internet banking is changing the banking industry and is having a significant impact on the banking relationship. Technology in the form of ATMs, Online banking, Telephone banking, Mobile banking, etc. is driving the banking industry's rapid expansion. As a result of technological advancement, this expansion would not have been conceivable without its backing. In addition, it will have a profound effect on our way of life in the years to come. All types of clients, from the tiniest individual account holder to huge

corporations, as well as non-customers in some circumstances, can now find the services they need at their local bank. The types and sizes of banks have a significant impact on the services they provide.

When the general public or a specific individual suffers a loss as a result of a decision, the rule of law is invoked. It's difficult for a bank to meet its legal responsibilities on one side, while also dealing with the challenges of modern technologies. The scope of e-banking, its advantages and disadvantages, and the services supplied by an e-banking system are examined in this study. Also, the dangers of E-banking are highlighted, as well as how the judiciary dealt with various e-banking frauds.

1.2 Evolution of E-Banking

E-banking is still in its infancy in terms of both breadth and idea. UK and US e-banking was established in 1920. Credit cards and computerised payments transfers made it widespread in the 1960s. In Europe and the United States, this concept of banking (internet banking) was first introduced in the 1980s. Banks and financial institutions performed extensive research to develop e-banking as we know it today. Banking at home is what they termed it. As early as 1983, the Nottingham Building Society, sometimes known as the Non-Banking Service, introduced Britain's first internet banking service. In the United States, the first online banking service was launched in 1994.

It is only in the last few years that e-banking has gained popularity in India. In 1990, ICICI Bank, Citibank, and IIDFC Bank launched the country's first internet banking system. India's government and central bank have adopted a number of measures to aid the growth of e-banking in the country. With effect from October 17th, 2000, the Indian government passed the IT Act, which legalised electronic transactions and other forms of electronic business. E-legal banking's and other requirements must be continuously reviewed by the Reserve Bank to ensure that it develops in a sound manner and that issues associated with e-banking do not constitute a threat to financial stability. It has been created by Dr. K.C. Chkrabarty and members from IIM, IDRBT, Banks, and the Reserve Bank of India under the chairmanship of Dr. K.C. Chkrabarty, which presents an illustrative road map for the increased use of IT in the banking sector. E-banking is one of numerous attempts taken by Indian commercial banks to deal with the increasing pressure from competition. In contrast to the fierce competition among public sector banks, the newly founded private and foreign sector ranks have been providing e-banking services from the outset. Automated Teller Machines (ATMs), electronic Fund Transfer (EFTs), credit cards, debit cards, smart carts, and mobile banking are just a few of the many services and products that Indian banks offer their consumers.

The Jammu and Kashmir Bank is solely responsible for the introduction of electronic banking in Kashmir Valley in 1999. In 1999, Jammu and Kashmir Bank signed an arrangement with IBA to connect its ATMs over a shared network in order to compete with other parts of the country. For its e-commerce initiatives, Jammu & Kashmir Bank partnered with Infosys Technologies in 2000. The Jammu and Kashmir Bank and American Express have teamed up to offer a credit card with a co-branded logo. The J&K Bank-AMEX Co. Branded Credit Card was launched in 2001 by Jammu and Kashmir Bank in accordance with an agreement with American Express bank. One of the most valuable aspects of the J&K Bank American Express Credit Card is the ability to transfer balances internationally, along with other benefits like membership points and emergency cash. In 2003, J&K bank partnered with Master Card International to produce the Global Access Card (an international debit

card). An ATM network partnership is formed in 2004 between Jammu and Kashmir and ICICI Bank. Both corporate and retail users can use the J&K Bank's net banking service. Customers must, however, have a computer or equivalent device linked to the Internet in order to use all of the e-banking services and features.

1.3 Nature and Scope of E-Banking

There are few developments that have had such a quick impact on the financial industry as the e-Banking revolution. Banks all across the world are refocusing their business strategies to take advantage of the new prospects afforded by e-Banking. Clients (both businesses and consumers) can easily compare the services supplied by numerous banks thanks to the market's complete transparency. The seeds of this revolution are sown in the fertile ground of Information and Communication Technology (ICT). Information technology advancements have reduced the cost of processing data, while the Internet has facilitated its transfer, allowing for change in the fundamental basis of banking. Electronic banking services, whether offered online or by other means, have proliferated rapidly over the world in recent years. E-Banking has an impact not just in industrialised economies, but also on countries with weak banking systems.

1.1.1 Meaning and Definition of E-Banking

E-banking has been practised in India for some time in the form of digital data stored on computers, credit and debit cards, Automated Teller Machines, Mobile Banking, Net banking, and internet banking. Internet or e-banking refers to the ability of any user with a computer and a browser to login to their bank's website and conduct any of the virtual banking services.

E-banking is defined in the legal language as banking activities accessed by the use of a computer, modems, and telephones.

E-banking is defined as a "acceptance of money from the public, for the aim of lending or investing money, which is drawable by check, draught, or otherwise, and banking utilising electronic means."

1.1.2 Features of E-banking

The main features of e-banking are-

- In e-banking, banking functions are carried by using internet facility.
- It removes the traditional geographical barriers as it could reach customers at different counters/jurisdictions.
- E-banking facilitates banking transactions at all time and on the day including holidays and Sundays.
- It provides several additional delivery channels which are more convenient and cost effective to both customer and the banker.
- It is based on science and technology i.e. use of electronic devices which saves time and energy of bankers and customer.
- Its special features lie in ensuring security of the transaction, customer's privacy and transparency of transaction

1.1.3 Advantages and Disadvantages

Banks and customers alike have benefited greatly from electronic banking. In the first place, banks that offer electronic banking services benefit from improved customer service and greater market responsiveness. Banks offering these services would be viewed as leaders in the field of technological innovation. Because of this, they 'd have a more positive brand image. Other advantages can be quantified based on their monetary value. Increasing profits for shareholders is at the heart of every business, and banks are no exception. Electronic banking services provide a perfect opportunity for profit maximisation. Customer advantages include significant time savings and cost savings, as well as increased comfort and convenience when using banking products and services.

Although e-banking system provides a numerous advantages to the customers but still prospecting e-banking users should

identify its few disadvantages as well. Even after; investing Heavily in e-banking awareness campaign and offering so many benefits through e-banking system, still it lacks in gaining trust factor among its customers.

Advantages of E-banking

Many financial institutions are now providing their customers with the option of doing their banking over the internet, which is beneficial to all parties involved. More and more people are embracing the convenience of online banking and the ability to conduct transactions without having to visit a branch. Internet banking has a number of advantages, including but not limited to, the following:

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- Customer's account is extremely accesses able with an online account. Customer can withdraw at anytime through ATMs that are now widely available throughout die country. Besides withdrawing cash customers can also have *mini* banks statements, balance inquiry at these ATM. Real-time account balances and information are available at the touch of a few buttons thus, making banking faster, easier and more efficient. In addition, updating and maintaining a direct account is easy since it takes only a few minutes to change the mailing address. Order additional checks and be informed for market interest rates. Banks are available 24 hours a day, seven days a week and they are only a mouse click away.
- All services that are usually available from the local bank can be found on a single website. Through Internet banking customer can operate his account while sitting in his office or home. There is no need to go to the bank in person for such matter. E-banking has also greatly helped in payment of utility bill now there is no need to stand in long queues outside banks for his purpose.
- Payment can be made online for the purchase of goods and services. The Growth of credit card usage also owes greatly to E-banking. Now a customer can shop worldwide without any need of carrying paper money with him.
- The rise of E-banking has made banks more competitive. It has also led to expansion of the banking industry, opening of new avenues for banking operations. The growth of E-banking has greatly helped the banks in controlling their Overheads and operating cost. Many repetitive and tedious tasks have now been fully automated resulting in greater efficiency, better time usage and enhanced control.
- Customers can avail e-banking facility from anytime, anyplace: therefore there is need to invest more and more on relevant infrastructure.
- Electronic banking has greatly helped the banking industry to reduce paperwork, thus helping them to move the paperless environment. The reach and delivery capabilities of computer networks, such as the Internet, are far better than any branch network.
- E-banking has made it easier for banks to keep track of their clientele. The bank can use this as a useful tool to design commercial packages that meet the needs of its customers. In order to increase the volume of credit creation, e-banking gives banks the opportunity to expand their customer base. Which results in better economic condition, besides all this E-banking has also helped in the documentation of the economic activity of the masses.
- E-banking has brought so many benefits to both the bank and the general public. E -banking has made it economically feasible to conduct business: Reduced bank operating costs, automated processes, faster credit decisions, and a

smaller minimum loan amount are all necessary for profitability.

Disadvantages of E-banking

Traditional money management can be replaced with the convenience of online banking, making it a no-brainer to do so. However, customers may not be aware of the potential risks associated with online banking. Consumers should weigh the benefits and drawbacks of online banking before making a commitment. The disadvantages of e-banking system are as follows:

- **Impersonal:** Absence of face to face interaction makes it very impersonal. Thus, customers who are more comfortable in dealing with people in physical bank setting that provide those personalized services rather than mechanical interaction; e-banking is not a good option for them.
- **Transaction Issues:** Sometimes a face-to-face meeting is required to complete complex transactions and address complicated problems. A traditional bank can host meetings and call in experts to solve a specific issue. Moreover, international transactions may be more difficult (or impossible) with some direct banks. If a customer deposits cash on a regular basis, a traditional bank with a drive-through window may be more practical and efficient.
- **Security Fraud:** People generally hesitate to have an online bank account due to the security risk involved in it. Although, it is not a big issue for banks providing e-banking services, as they prioritize security. To avoid security risk. Banks use the most advanced security system in protecting their websites.
- **Lack of Trust:** Still many customers do not trust online mode of service especially for money related transactions. Users who are not seasoned in e-banking feel very uncomfortable as they have doubt regarding the correctness of the transaction done by them online. As they require some kind of proof of transaction as receipt verify their transactions.
- **Difficult for First Timers**: For the beginners, it appears as a complex mode of service as customer find it complicated to navigate through bank's website. While opening an account online, bank's website requires a number of information and that seems time taking and inconvenient process to the first time users.
- Other disadvantages of e-banking are that if server is down the customer can't use the facility of e-banking and he must need computer or smart phone to use the service.

1.4 Services under E-banking

E-banking has helped banks retain their current customers, increase customer satisfaction, expand their market share, and reduce the costs of providing service to customers. Electronic platforms are becoming increasingly popular for delivering services. A faster and more efficient method of delivering services to customers is provided. Electronic banking allows banks to offer a wide range of services. Use of advanced technology has led to the shift from traditional banking methods to modem banking methods. Online banking, mobile banking, video banking, telephone banking, ATMs, plastic money, and so on are currently the most popular and useful technology-based banking methods. It's difficult to gauge the scope of these services, but we've made an effort by dividing them into the following groups.

1.4.1 Automated Teller Machines (ATM's)

Automated Teller Machines (ATM's) ATMs are electronic machines, which are operated by a customer himself to deposit or to withdraw cash from bank. For using an ATM, a customer has to obtain an ATM card from his bank. The ATM card is a plastic card, which is magnetically coded. It can be easily read by the machine. It can be used

for anytime, anywhere access to cash withdrawal of cash (available 24x7) and transfer of money from one account to another account. A customer with the help of ATM.s can check his/her last transactions and current balance. In addition to these, a mini statement can also be generated with the help ATM.s. Change of personal identification number of ATM/debit card can be made with ATM's etc.

1.4.2 Telephone Banking/Tele Banking/Phone Banking

Financial institutions offer this service to their customers so they can conduct banking transactions over the phone. Banks that only offer telephone banking services are referred to as Phone Banks. Through the use of cutting-edge telephone technology, they make banking more convenient for customers. Using telebanking, customers can access information about their savings, including the amount of current fixed deposits in their account balance, as well as their cheque book and most recent account statement. With the help of phone banking, customers can make transfers of money and request that the bank halt the payment of a specific check.

1.4.3 Internet Banking

Internet Banking Internet banking or online banking, as it is sometimes called, simply is an extension to traditional banking, which uses internet both as a medium for receiving instructions from the customers and also delivering services to them. Internet banking. as a medium of delivering the banking services to customers and as a strategic tool for the development of banking business, has gained wide acceptability in all developed nations and is quickly spreading in developing nations like India with more and more banks entering the fray. Internet Banking lets clients handle many banking transactions via their personal computer. For instance, one may use his/her computer/laptop/smartphone to view his/her account balance, request transfer between accounts and pay bills electronically. There are transactional and non - transactional applications of online banking services. Transactional applications include bill payments, wire transfers to third parties ,fund transfer between customer's transactional and savings account, Sale and purchase of investments, applications and transactions for loans and enrollment repayments and non--transactional applications are to analyzing recent transactions, downloading bank statements, viewing paid cheques, financial Institution, administration portfolio management of multiple users at different authority levels and Transaction approval process respectively.

1.4.4 Mobile Banking

It is possible to use a mobile phone to access mobile banking, which is a banking service provided via a mobile network and accessible via a mobile device. The short message service allows customers to conduct banking business without the necessity of placing a phone call (SMS). All banking transactions could be completed by pressing a few numbered buttons on the phone's keyboard. Mobile technology is widely accepted and accessible at a reasonable cost. Additionally, it is suited for banking and payment services, and offers a huge opportunity to provide financial services to everyone, regardless of where they live. Customers can access their account information, view their bank statements, and perform a variety of other transactions from the privacy of their own homes or workplaces. Mobile banking has a significant advantage over internet banking because it allows for banking at any time and from any location. To make a purchase from their account, customers do not need an internet connection. Customers can access their accounts while waiting for a bus, travelling, at home, or at the office using a mobile phone or tablet. Financial services can be provided and made available via mobile devices, which is

known as Mobile Banking.

1.4.5 Other Services

Information System:

General Information like interest rates, branch location, bank products and their features, loan and deposit features are provided in the bank website . T h e r e exist facilities for downloading various types of application forms like deposit application form, loan application form, etc. The communication is carried through email; otherwise the person seeking information need not disclose his identity. Also there is no possibility of any unauthorized person getting into production systems of the bank through internet.

Electronic Information Transfer System-

The system provides customer with specific information in the form of account balances, transaction details and statement of accounts. The information is still largely of the 'read only' format. Identification and authentication of the customer is through password. The information is fetched from the banks application system either in batch mode or off-line. The application systems c a n n ot directly access through the internet.

Fully Electronic Transactional System-

This system allows bi-directional capabilities. Transactions can be submitted by the customer for online update. This system requires high degree of security and control. In this environment, web server and application systems are linked to secure infrastructure. It comprises technology covering computerization, networking and security, interbank payment gateway and legal infrastructure. E-banking services can be availed for payment of bill, fund transfer. Credit card, railway and air ticket booking, investment, recharging phones and mobiles and shopping. Generally banks do not charge customers for providing certain services.

1.5 Risks or issues involved in E-banking

Commercial banking in India has become so intertwined with information technology that it can no longer be considered separate from it. IT advancements have also brought with them a new set of problems to solve. As those who stand to lose out in this scenario slow down and delay the introduction of distribution channels, the evolution of e-banking will not be free of conflict. Reserve of India defines fraud in the Report of RBI Working Group on Information Security, Electronic Banking, Technology Risk Management and Cyber Frauds which reads as under: "A deliberate act of omission or commission by any person, carried out in the course of a banking transaction or in the books of accounts maintained manually or under computer system in banks, resulting into wrongful gain to any person for a Temporary period or otherwise, with or without any monetary loss to the bank." The different types of frauds involved in the e-banking are:

1.5.1 Skimming

Another way to gain access to a customer's private information is to skim data from their credit or debit cards. It is one of the most common ways to illegally obtain a customer's credit card number. The criminals use skimmer devices, which are electronic devices, to decode the CVV number on the magnetic strip of the ATM card and record it on the fraudster's terminal. The thief now has all the information he needs to commit fraud, including the card numbers and the CVV codes. As far as fraudsters are concerned, this is a goldmine for making counterfeit cards.

1.5.2 Cyber Squatting

Cyber-squatting is the act of registering a famous domain name and then selling it for a fortune. Cyber Squatters register domain names identical to popular service providers" domains so as to attract their users and benefit from it. This is an issue that has not been covered in the IT Act, 2000.

1.5.3 Phishing

Phishing is an e-mail fraud method in which the perpetrator sends out legitimate looking email with an intention to gather personal and financial information from recipients. In this type of fraud, the messages appear to come from well-known and trustworthy web sites. Websites that are popularly and frequently spoofed by phishers include PayPal, EBay, MSN, Yahoo, Best-Buy and other bank websites. Customers are directed to a lookalike replica of the original institution's website. They click on the links to enter their information and remain unaware that fraud has occurred. The fraudster then can access the customer's online bank account and to the funds contained in that account.

1.5.4 SMS Spoofing

It is a relatively new technology which uses the short message service (SMS) available most mobile phones and personal digital assistants, to set who the message appears to come from by replacing the originating mobile number (Sender ID with alphanumeric text. Spoofing has both legitimate uses (setting the company name from which the message is being sent, setting your own mobile number or a product name) and illegitimate uses (such as impersonating another person, company, or product).

1.5.5 Money Laundering Risk

A common type of financial crime is Cyber Money Laundering. An example of this would be stealing the credit card numbers of a number of people and using them fraudulently to make purchases on their behalf, then transferring the money to your own account. Cyber financial fraud has given the word laundering a new meaning, and it denotes 'a process by which money from a criminal enterprise can be easily exchanged without leaving any trace of its origin.' The illegal downloading of funds while they are in transit is referred to as money laundering in this context. Hawala is a unique form of underground banking that is widely regarded as an extremely effective method of money laundering.

1.5.6 International Boundary Risk

Internet banking is totally based on information technology. So it can be operated from any place in any country. Since, it is difficult to check the application for a loan from a customer abroad as compared to familiar customer base. Acceptance of foreign currencies in payment of electronic money may be subject to market risk due to ups and down in forex rates.

1.5.7 Cyber Fraud

Banks are asking their customers to adopt newer service delivery electronic platforms like mobile, internet, ATM's for delivering service efficiently and further it helps in cost cutting. While the customers are becoming more tech-savvy and had started using electronic channels, the fraudsters are using newer ways of doing frauds by exploiting the loopholes in information technology systems and processes. There have been many frauds of low value where the fraudster has used software programs, malware attacks. Phishing, emailing and through SMS etc.

1.5.8 Holes

Hole is any defect in hardware, software or privacy policy that allows hackers to have unauthorized access to personal computers/ laptops/smart phones. The network tools that can be affected by holes are routers, server software, and operating system, firewalls and client.

1.5.9 ATM Frauds

There are two types of ATM frauds, one is trapping and another is Operational Fake ATMs. Trapping is simple and common fraud. Thieves do not need the credit debit smart card or the data. Thieves fix a device that causes notes to get stuck inside the dispensing machine. There is no way that the card-holder can know about the device from just looking at the machine outside. When the notes get stuck, the customer

probably walks away to complain. The thieves keep a watch. When enough number of customers has w a lk ed in to withdraw, they come in and 'clean' the ATM. The customer walk away to a n o t h e r ATM without knowing that amount (mentioned for 'withdrawal in ATM machine) has been deducted from his/her amount because he, she has not got that trapping also has resulted in a loss of millions of Euros in Europe alone. The Fraudsters install magnetic card readers and a hidden mirror opposite the keypad in an operational fake ATM. Occasionally, a small spy camera is tucked away to record the PIN. Credit and ATM cards can be hacked by these magnetic card reading devices. After trying to withdraw money from a phoney bank, customers are forced to walk away to find another ATM. Data from cards is being recorded by equipment attached to the ATM during this time. The PIN and card details for these cars are now in the hands of the fraudsters.

1.6 Judicial Response

The fraud, forgery and corruption is commonly found in exchange of services rely on Information and Technology and the absence of physical bank branches to provide these services to the customers. There is great increase in E-banking and M-banking. The virtual banking becomes very popular amongst the customers due to speed, convenience and round the-clock access. Frauds and corruption are on increase. Some of branches are: speedily expansions of foreign and private banks i.e., increase of number of branches, increase in volume of business, increase inn number of employee's number of customers and spread of operations. These are the contributing factors to the higher incidence of banks frauds and forgeries. The intensive use of Internet for e-Commerce, Cyber marketing and Commercial transactions-related communications have given rise to a number of fraudulent activities for which a person is held criminally liable. The judicial response to such cyber fraud is discernible from the leading Indian judgments banded down by the courts from time to time. Some of the cases are given below:

In the Pune Citibank Fraud case, four US customers were defrauded to the rune of 3.5 lakhs US dollars which were transferred by the fraudsters to bogus accounts. The defrauded customers complained that all fake accounts were opened in Pune and the money from their account was transferred to Pune account. Culprits gained the confidence of these unfortunate victims and obtained their Pin numbers and other account details, which they used to transfer money from victim's account into the accounts of members of the fraud gang. As a result, it was made mandatory that there is need for national ID and a national data base where a name can be referred to. Customer education is very important so that customers do not get taken for a ride. most banks are guilt of not doing this.

The Supreme Court's ruling in the Morgan Stanley's case has been instrumental in augmenting Business Processing Outsourcing (BPO) with a view to create a global safe deposit vault to halt data theft and improve India's prospects on outsourcing destination. The National Association of Software and Services Companies (NASSCOM) announced setting up of an independent watchdog Self-Regulatory Organization (SRO) in April. 2007 for setting out data security standards for the software industry with focus on global practices.

One of the important cases was ICICI Bank Phishing case. E-Mails, that are considered as the most convenient form of communication can bring some shocking surprises. Recently, few ICICI Bank customers in Mumbai, received an e-mail from someone who himself/herself posed as an official of the bank and asked for sensitive information like Internet login name and password of the account holder

and directed them to a web page which resembled with the official site page of the bank. The e-mail seemed so genuine that some users even clicked on the URL given in the mail to a web page that resembled the official site. When some customers wrote and asked to find out the purpose of the e-mail, the bank officials were left with no option except to register a complaint with the police. Such a scam is known as 'phishing.' It is actually a banking scam and a warning against which had been issued by many International banks including Citibank.

In ICICI Bank v. Ashish Agrawal, the appeal was filed against the order dated 27.07.2009 of the District Consumer Disputes Redressal Forum. Raigarh directing the appellant bank to pay '49,912.36, which was allegedly not withdrawn by him from his account and also '5,000 as compensation for mental agony and 3,000 as litigation cost to the respondent/complainant on account of deficiency in service, regarding maintenance of his bank account. The complaint was filed alleging deficiency of service on the part of the appellant bank as rupees '49,912.36 was withdrawn from his bank account, without his knowledge, using Internet banking. The State Commission vide its order dated 26.03.2010 allowed the appeal. The Commission observed that the respondent was negligent in giving information regarding password to a third person and deficiency of service could not be attributed on the part of the appellant bank, who taken all precaution to give every instruction to the customer and also authorized him to change his password as and when desired.

In the case of Rishi Gupta v. ICICI Bank Ltd., the complainant alleges that an amount. 3,00,000 was transferred from his account fraudulently through 15 transactions of 20,000 each. The District Forum vide order dated 21.06 .2010 dismissed the complaint. Hon'ble court in its order observed that in providing confidential details of his banking such as corporate ID, password etc., to a third party in response to an email purported to be issued by the opposite party bank, without verifying with the opposite party bank, the complainant had acted negligently and he cannot put the blame on the bank.

In M/s PACHISIA PLASTICS V. ICCI Bank Ltd. case the complaint was filed alleging deficiency of service on the part of opposite party (Bank) on the ground that an amount Rs. 1, 18,000 was debited from the account of the complainant through net banking out his authorization. The Forum vide order dated 11.07.009 dismissed the plaint on the ground that there was no deficiency of service on the pan of the bank. In the order dated 11.07.2009, it was observed that the burden lies on the burden that he has kept the code number (password for net banking) secret and that appeared to be a carelessness and negligence on the part of the complainant

In K Thagyarajan v. ICICI Bank case the complainant alleged that his internet bank account was breached and an amount of '77,000 was unlawfully transferred to another count by some unknown persons. The complainant has alleged deficiency 0f service on part of the opposite party bank and prayed for refund of the amount with inter and 3,00,000 to be awarded as compensation . The complaint was dismissed wide ordered 20.05.2010 on the ground that there was no deficiency of service on the pan of site party bank as the complainant had himself delivered the password and user id (for internet banking banking) to others.

In Smt. Vimala Varkey & Others the complainant was aggrieved that money was fraudulently transferred from her account maintained with opposite party No. 1 Bank to an account maintained with opposite party No. 2 Bank (ICICI Bank). The complainant alleged deficiency of service by opposite party No. 2 and had prayed for

reimbursement of the amount with interest. It was observed that complainant had, admittedly, herself disclosed her customer ID & PIN to a third in reply to a phishing mail and on the basis of such information the third party might have managed to transfer the amount. The terms and conditions, of opposite party No. 1 Bank, governing operation of Net Banking, stipulated that opposite party cannot be responsible for the loss sustained by the complainant in such transactions. The, therefore, dismissed the complaint vide its order dated 2.09.2008 on the ground there was no deficiency of service on the part of the opposite party bank . Therefore is need of the time to balance the interests of customers and that of banks and provide protection to banks against any fraudulent or negligent act of customer.

It has been observed that Indian judiciary is taking strong steps against newly emerged e- Banking frauds. These decisions of the Hon'ble Courts provide a sound ground for the growth of stringent provisions in cyber law against online financial frauds.

1.7 Conclusion:

Modern banking methods have replaced more traditional ones as a result of the widespread adoption of cutting-edge technology. Online banking, mobile banking, video banking, telephone banking, ATMs, plastic money, and so on are currently the most common and useful technology-based banking methods. Automating labor-intensive and paper-based processes, such as banking, has proven to be a valuable resource for increasing productivity, maintaining operational control, and lowering operating costs. Internet banking has made our lives easier and more convenient, allowing us to access high-quality service at the touch of a button. People's businesses became more efficient and time-saving as a result of these new technologies. However, there are some drawbacks or risks that come with the blessing. There has been an increase in fraud and corruption. In addition, the rapid expansion of foreign and private banks, such as the growth of branches, the volume of business, the number of employees, and the spread of their operations, are some of the reasons for this. Bank fraud and forgery is on the rise due to these and other factors. The Reserve Bank of India has also issued directions for the prevention of fraud and forgery in all banks and reporting systems to higher authorities, including the Central Bureau of Investigation (C.B.I.), Central Vigilance Commission (C.V.C.) and State Police, in order to stop these frauds from happening in the country. Judiciary decisions by the Supreme Court of India and other high courts, as well as by the State Consumer Redressal Forum and National Consumer Redressal Commission have all had an impact. The Indian judiciary appears to be taking a strong stance against new e-Banking frauds that have recently emerged. As a result of these decisions by the Hon'ble Courts, strict cyber law provisions against online financial frauds can grow.

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