



J&K JUDICIAL ACADEMY

e-NEWSLETTER

Official Newsletter of Jammu & Kashmir Judicial Academy

Volume 5

Monthly

May 2022

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Contents

From Editor's Desk	1
Legal Jottings.....	2
Activities of Academy	9
Judicial Officers' Column.....	12

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From the Editor's Desk

It is empirically well established that adequate judicial infrastructure is cognate to judicial productivity, both qualitatively and quantitatively. In fact, an efficient and robust infrastructure system is intimately connected with the preambular precepts of equal and accessible justice which is pervasively embedded within the Constitutional matrix. The present-day challenges have expanded the conventional definition of judicial infrastructure to mean and include within its ambit, the physical premises of courts along with its ancillary structures as well as all other resources that are essential to ensure timely dispensation of justice, yet it is quite axiomatic that the existing infrastructure possessed by judicial institutions across the jurisdictions of the country is struggling to come to grips with the existing pendency of cases and the prodigious number of new litigations that add up to the figures every year. However, the incessant shortage of judicial infrastructure in correlation to the legitimate expectations vis-à-vis effective and efficient justice delivery is not a new development. For instance, insufficiency of physical infrastructure can be gauged from the fact that during the outbreak of pandemic, Courts were forced to opt for Virtual mode, but by an estimate only one third of Subordinate Courts were found to have proper digital facilities. As a sequel to the dearth of digital infrastructure, pendency of cases shot up many fold. To address the issue of infrastructural insufficiency, more particularly in the aftermath of India's economic liberalization, a Centrally Sponsored Scheme (CSS) for the development of infrastructure facilities for the district and subordinate Judiciary was brought into action in 1993-1994 which was devised to address the justice delivery needs by providing financial assistance. Similarly, in 2012, the National Court Management Systems Committee (NCMS) was created on the instructions of Hon'ble the Chief Justice of India in consultation with the Minister of Law and Justice, with the immediate aim of upgrading the court management systems. NCMS, in its report, noted links between deficient infrastructural facilities and the efficiency of the judicial system, which led to mounting arrears and delays in the judicial docket. The astronomical pace of the institution of litigation coupled with various critical factors has outpaced any actual or contemplated development in the infrastructural sector of the institution.

Recently, Hon'ble Mr. Justice N.V. Ramana, Chief Justice of India, while emphasizing the urgent need to overhaul the judicial infrastructure, has pitched the idea of a Special Purpose Vehicle in the form of a National Judicial Infrastructure Corporation, which will take control of the budgeting and infrastructure development of subordinate courts in the country. His Lordship while delivering the speech said "*Good judicial infrastructure for courts in India has always been an afterthought. It is because of this mindset that courts in India still operate from dilapidated structures making it difficult to effectively perform their function*". The proposed NJIC, which would include the Hon'ble the Chief Justice of India, Hon'ble Judges of the Supreme Court, and High Courts, finance secretaries of the Centre and concerned states can quickly address multitudinous hurdles and challenges confronting the effective execution of the vision and facilitate coordination amongst various bodies. Therefore, robust Judicial infrastructure is not only imperative for timely and quick delivery of Justice, but is equally important for foreign investment and economic growth of the Country. In the country's seventy-fifth year of independence, it is absolutely necessary that a state-of-the-art and functional judicial infrastructure is created, developed, maintained, and regularly augmented which will give true meaning to speedy, barrier-free and litigant friendly access to justice.

LEGAL JOTTINGS

"It is fundamental that if rule of law is to have any meaning and content, the authority of the court or a statutory authority and the confidence of the public in them should not be allowed to be shaken, diluted or undermined. The courts of justice and all tribunals exercising judicial functions from the highest to the lowest are by their constitution entrusted with functions directly connected with the administration of justice. It is that expectation and confidence of all those, who have or are likely to have business in that court or tribunal, which must ever be maintained so that the court/tribunal perform all their functions on a higher level of rectitude without fear or favour, affection or ill-will."

**K. Ramaswamy, J. In U.P. Sales Tax Service Assn. v. Taxation Bar Assn.,
(1995) 2 SCC 716, para II**

CRIMINAL

SUPREME COURT JUDGMENTS

Criminal Appeal No 430 of 2015
Jafarudheen & Ors v. State Of Kerala
Decided on: April 22, 2022

Hon'ble Bench of Justices SK Kaul and MM Sundresh while acquitting 4 persons affiliated to the National Development Front(NDF) in a case related to the murder of a member of the Communist Party of India(Marxist)(CPI(M)) in Kerala in 2002 set aside the verdict of the High Court which had reversed the acquittal of these 4 accused by the trial court and cautioned the courts in dealing with Section 27 recoveries as "one cannot lose sight of the fact that the prosecution may at times take advantage of the custody of the accused, by other means". Hon'ble Bench discussed the law relating to Section 27 recoveries and observed that the Court will have to be conscious of the witness's credibility and the other evidence produced when dealing with a recovery under Section 27 of the Evidence Act, 1872."Section 83 of the Evidence Act is an exception to Sections 24 to 26. Admissibility under Section 27 is relatable to the information pertaining to a fact discovered. This provision merely

facilitates proof of a fact discovered in consequence of information received from a person in custody, accused of an offense. Thus, it incorporates the theory of "confirmation by subsequent facts" facilitating a link to the chain of events. It is for the prosecution to prove that the information received from the accused is relatable to the fact discovered. The object is to utilize it for the purpose of recovery as it ultimately touches upon the issue pertaining to the discovery of a new fact through the information furnished by the accused. Therefore, Section 27 is an exception to Sections 24 to 26 meant for a specific purpose and thus be construed as a proviso."

Writ Petition (Crl) No 49 of 2022;
Ram Chander v. The State of
Chhattisgarh & Anr.
Decided on: April 22, 2022

Hon'ble Supreme Court Bench comprising of Justices Dr. Dhananjaya Y Chandrachud and Aniruddha Bose observed that a presiding officer of the sentencing court while giving opinion on a remission application should give adequate

reasons.

Inadequate reasons in the opinion of the presiding officer of the sentencing court would not satisfy the requirements of Section 432 (2) of the Code of Criminal Procedure.

Criminal Appeal No.632 of 2022

Jagjeet Singh & Ors v. Ashish Mishra @ Monu & Anr.

Decided on: April 18, 2022

Hon'ble Supreme Court bench comprising of Chief Justice of India, Justice N.V. Ramana and Justices Surya Kant and Hima Kohli held that a 'victim' as defined under Section 2 of the Code of the Criminal Procedure, 1973 has a right to be heard at every step post the occurrence of the offence, including the stage of adjudication of bail application of the accused and added that "where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing". The Hon'ble Bench was hearing a petition challenging order passed by the High Court of Judicature at Allahabad, Lucknow bench, whereby Respondent –accused had been enlarged on bail in a case under Sections 147, 148, 149, 302, 307, 326 read with Sections 34 and 120B of the Indian Penal Code, 1860 as well as Sections 3, 25 and 30 of the Arms Act, 1959. It was observed," 24. *A 'victim' within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a 'victim' has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that*

'victim' and 'complainant/informant' are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a 'victim', for even a stranger to the act of crime can be an 'informant', and similarly, a 'victim' need not be the complainant or informant of a felony.

Hon'ble Court also affirmed the right of an accused to seek bail and observed that no accused can be subjected to unending detention pending trial, especially when there is the presumption of innocence.

Special Leave to Appeal (Crl.) No. 3382/2022;

Mahesh Kumar Kejriwal & Anr v. Bhanuj Jindal & Anr

Decided on: April 18, 2022

Hon'ble Supreme Court Bench of Justices Dinesh Maheshwari and Aniruddha Bose observed that an accused cannot claim a blanket exemption from appearance in a case pertaining to the offense under Section 138 of the Negotiable Instruments Act. While dismissing the special leave petition preferred against the judgment of the High Court of Punjab and Haryana wherein the High Court dismissed his petition observing that there is no specific provision in the Cr.P.C., empowering the trial Judge concerned to, on all occasions give a blanket exemption to the accused from his making his personal appearance. It was observed, "*Having gone through the said decision, we are satisfied that the observations therein essentially co-relate with the facts of the said case. Moreover, even while observing that in appropriate cases the Magistrate can allow an accused to make even the first appearance through a counsel, this Court has also indicated that such discretion needs*

to be exercised only in rare instances and there ought to be good reasons for dispensing with the presence."

Criminal Appeal No.627 Of 2022

Kamatchi v. Lakshmi Narayanan

Decided on: April 13, 2022

Hon'ble Supreme Court Bench of Justices UU Lalit and PS Narasimha while setting aside a judgment of the Madras High Court which held that the Section 12 application ought to have been filed within one year of the acts of alleged domestic violence, has held that the limitation period prescribed under Section 468 of the Code of Criminal Procedure is not applicable for the filing of an application by an aggrieved woman under Section 12 of the Protection of Women from Domestic Violence Act, 2005. In the case at hand, the Section 12 application was filed by the aggrieved woman almost ten years after she had left her matrimonial home. Disapproving the High Court's approach, the Supreme Court held that a Section 12 application cannot be treated as an application in respect of an "offence". The offence under the Domestic Violence Act arises only under Section 31 when there is a violation of an order passed under Section 12. *'Filing of an application under Section 12 of the Act cannot be equated to lodging of a complaint or initiation of prosecution',* the Court observed. It was observed also, "15. Let us now consider the applicability of these principles to cases under the Act. The provisions of the Act contemplate filing of an application under Section 12 to initiate the proceedings before the concerned Magistrate. After hearing both sides and after taking into account the material on record, the Magistrate may pass an appropriate order under Section 12 of the Act. It is only the breach of such order which constitutes an

offence as is clear from Section 31 of the Act. Thus, if there be any offence committed in terms of the provisions of the Act, the limitation prescribed under Section 468 of the Code will apply from the date of commission of such offence. By the time an application is preferred under Section 12 of the Act, there is no offence committed in terms of the provisions of the Act and as such there would never be a starting point for limitation from the date of application under Section 12 of the Act. Such a starting point for limitation would arise only and only after there is a breach of an order passed under Section 12 of the Act.

Miscellaneous Application No. 1852/2019

Smruti Tukaram Badade v. The State Of Maharashtra & Anr

Decided on: April 08, 2022

Hon'ble Supreme Court bench comprising Justices D.Y. Chandrachud and Aniruddha Bose noted that apart from criminal cases, VWDCs should also be utilised and permission should be granted to record evidence of vulnerable witnesses in cases in civil jurisdictions, family courts, juvenile justice boards and Children's courts. The Bench accepted the suggestion made in the report submitted by Justice Gita Mittal in this regard. It was observed, "The use of VWDCs should, in addition to criminal cases, be allowed for other jurisdictions, including, civil jurisdictions, family courts, juvenile justice boards and Children's courts. Permission should be granted for recording the evidence of vulnerable witnesses in cases across all jurisdictions. This suggestion in the report is appropriate and is accepted." On January 11, 2022, the Court had expanded the definition of "vulnerable witnesses" while accepting the guidelines framed by the Delhi High Court and had

stated that the definition should include not just those below the age of 18 years but also other categories of vulnerable persons.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH JUDGEMENTS

Bail App No. 24/2022

Abdul Majeed Bhat v. UT of J&K

Decided on: April 20, 2022

Hon'ble High Court of Jammu & Kashmir and Ladakh in a petition seeking bail in a case arising out of FIR for offences under Section 8/15, 18 of the Narcotic Drugs and Psychotropic Substances, Act, registered with Police Station, Srigufwara, has discussed the import of Section 36A of NDPS Act and interplay of section 173 and Section 167 of Cr. P. C. Hon'ble Court, while referring to the provisions observed that if an accused has been detained in connection with investigation of a case for a period of more than 180 days in an offence under NDPS Act, he is entitled to be released on bail if he is prepared to and does furnish bail unless the Special Court has extended the period of detention during investigation of the case beyond 180 days. Referring to *Mr. Sayyad Mohammad @ Nasim v. State of Karnataka and another*, It was also stated that a charge sheet containing details specified in Section 173 of the Cr. P. C, if filed within the period prescribed under Section 167(2) is not vitiated or incomplete simply because the same was not accompanied by the FSL report. "13) Again, the Supreme Court in the case of *Dinesh Dalmia vs. CBI, (2007) 8 SCC 770*, has held that though ordinarily all documents should accompany the charge sheet but even if all documents have not been filed, the same would not vitiate filing of the same."

CRM(M) No.302/2021

**Bashir Ahmad Dar & Others ... Petitioner
(S) v. UT of J&K & Another**

Decided on: April 20, 2022

Hon'ble High Court of Jammu & Kashmir and Ladakh, in a petition challenging FIR No.47/2021 for offenses under Section 147, 451, 308, 506, 34 IPC of Police Station, Rajbagh, Srinagar reiterated the legal position that the mere fact that a complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available, is not by itself a ground to quash the criminal proceedings. It is only if it is shown that the complaint even if taken at its face value does not disclose the commission of any offence or if it is found that criminal proceedings have been initiated with malafides/malice for wreaking vengeance that the same can be quashed. Hon'ble Court referred to *Lalita Kumari vs. Government of UP, (2014) 2 SCC 1* to reiterate that in cases where there is abnormal delay/laches in initiating criminal prosecution, there has to be a preliminary inquiry before registering an FIR.



“Judges must administer law according to the provisions of law. It is the bounden duty of judges to discern legislative intention in the process of adjudication. Justice administered according to individual's whim, desire, inclination and anime notion of justice would lead to confusion, disorder and chaos.”

**Dr. Dalveer Bhandari, J. In Gurdev Kaur v. Kaki,
(2007) 1 SCC 546, para 2**

CIVIL

SUPREME COURT JUDGMENTS

Civil Appeal No. 2095 of 2022

**P. Ramasubbamma v. V. Vijayalakshmi
And Ors.**

Decided on: April 11, 2022

Hon'ble Supreme Court Bench comprising Justices M.R. Shah and B.V. Nagarathna allowed an appeal assailing the order of the Karnataka High Court, which set aside the order of the Trial Court granting decree for specific performance of agreement to sell and held that once the execution of agreement to sell and payment of advance substantial sale consideration is admitted by the vendor, there is nothing further required to be proved by the vendee in a suit for specific performance of agreement to sell. It observed, "5.2 *Once the execution of agreement to sell and the payment/receipt of advance substantial sale consideration was admitted by the vendor, thereafter nothing further was required to be proved by the plaintiff – vendee. Therefore, as such the learned Trial Court rightly decreed the suit for specific performance of agreement to sell. The High Court was not required to go into the aspect of the execution of the agreement to sell and the payment/receipt of substantial advance sale consideration, once the vendor had specifically admitted the execution of the agreement to sell and receipt of the advance sale consideration; thereafter no further*

evidence and/or proof was required."

Civil Appeal No. 2828 Of 2022

Saroja Ammal v. M Deenadayalan & Ors.

Decided on: April 08, 2022

Hon'ble Supreme Court Bench of Justices Hemant Gupta and V. Ramasubramanian while deciding an appeal filed by the original plaintiff against the judgment and decree of the High Court of Judicature at Madras in a second appeal, reversing the concurrent judgments and decrees of both the Courts below and thereby dismissing her suit for declaration of title and injunction reiterated that an absolute owner of a property is entitled to bequeath his properties by Will in favor of strangers."20. *Similarly the decision in Indra Sarma (supra) relied upon by the learned senior counsel for the first respondent, arose out of a question whether a live-in relationship would amount to a domestic relationship within the meaning of the said expression under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005. This decision will not take the first respondent anywhere, since the absolute owner of a property is entitled even to bequeath his properties in favour of strangers."*

SLP (Civil) No. 5301 of 2022

**State of Uttar Pradesh & Ors v. M/S
Satish Chand Shivhare And Brothers**

Decided on: April 04, 2022

Hon'ble Supreme Court Bench comprising of Justice Indira Banerjee and Justice AS Bopanna while considering an appeal against the order of the High Court wherein the Court had rejected an arbitration appeal on the ground that delay in filing an appeal filed by the State of Uttar Pradesh under Section 37 of the Arbitration and Conciliation Act is not condonable beyond 120 days observed that a court has no obligation to consider the merits of an appeal which is barred by limitation and no plausible cause for delay is shown. The Hon'ble bench also observed that the law of limitation binds everybody including the Government and a different yardstick for condonation of delay cannot be laid down because the government is involved. It was observed" 22. *When consideration of an appeal on merits is pitted against the rejection of a meritorious claim on the technical ground of the bar of limitation, the Courts lean towards consideration on merits by adopting a liberal approach towards 'sufficient cause' to condone the delay. The Court considering an application under Section 5 of the Limitation Act may also look into the prima facie merits of an appeal. However, in this case, the Petitioners failed to make out a strong prima facie case for appeal. Furthermore, a liberal approach, may adopted when some plausible cause for delay is shown. Liberal approach does not mean that an appeal should be allowed even if the cause for delay shown is glimsy. The Court should not waive limitation for all practical purposes by condoning inordinate delay caused by a tardy lackadaisical negligent manner of functioning."*

HIGH COURT OF JAMMU & KASHMIR AND LADAKH JUDGEMENTS

CM(M) No. 52/2022

Raja Banu and others v. Haji Mohammad Maqbool Nath & others

Decided on: April 19, 2022

Single Bench of Hon'ble High Court of Jammu & Kashmir and Ladakh, in a petition seeking quashing of Order passed by 1st Additional District Judge, Srinagar has explained the provision under Rule 17 of Order VI CPC and reiterated that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. Hon'ble Court referred to *Mahila Ramkali Devi and others v. Nand Ram (dead) through legal representatives and others reported in (2015) 13 SCC 132* and observed," *The object of the Rule is that the courts should try the merits of the cases that come before them and should consequently allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. Ultimately, courts exist for doing justice between the parties and not for punishing them, and they are empowered to grant amendments of pleadings in the larger interest of doing full and complete justice to the parties. Provisions for the amendment of pleadings are intended for promoting the ends of justice and not for defeating them."*

CRM(M) no.59/2022

Rajni Koul v. Surinder Kumar and another

Decided on: April 06, 2022

Single Bench of Hon'ble High Court of Jammu & Kashmir and Ladakh while deciding review petition observed that power of review can be exercised for correction of a mistake but not to substitute a view. Hon'ble Court also explained as to when an error ceases to be mere error, and become an error apparent on the face of the record. It was observed that if an error is not obvious and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record." 9. *Power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. It cannot be denied that the review is the creation of a statute. In the case of Patel Narshi Thakershi vs. Pradyuman singh ji Arjun singh ji, (1971) 3 SCC 844, the Supreme Court has held that power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record."*

CR No. 35/2013

Cadila Pharmaceuticals Ltd. and others v. Anil Dogra

Decided on: April 01, 2022

Single Bench of Hon'ble High Court of Jammu & Kashmir and Ladakh in a petition challenging the order dated 30.10.2012 passed by the learned Additional District Judge, Jammu whereby learned trial Court while framing the issues also decided a preliminary issue relating to jurisdiction of the trial Court to hear and decide the suit

which has been decided against the petitioners-defendants holding that the same was mixed question of fact and law explained the distinction between lack and inherent lack of jurisdiction. Hon'ble Court held that the defect of inherent lack of jurisdiction is of the highest degree and liable to be set aside at any stage of proceedings. It was observed, "8. *As per the well settled principle of law, the inherent lack of jurisdiction is when subject matter to be decided is wholly outside the jurisdiction of the court of law to render such decision, which if passed, is a nullity. This jurisdictional defect is of the highest degree and liable to be set aside at any stage of proceedings. In such a case the appellate court would interfere with the decree passed and will set aside it as such a decree is coram non-judice and void. There are catena of judgments regarding repercussions on suits under lack and inherent lack of jurisdiction. In the former case which is mostly related to a defect in territorial or pecuniary jurisdiction, the decision of the Court does not vitiate the decree and regard it as a nullity. However, in the latter case, which is mostly related to defect in subject matter, jurisdiction and decree passed in such case is compulsorily nullity and void ab initio."*



ACTIVITIES OF THE ACADEMY

One Day Workshop on “Land Acquisition Laws and Anti-Corruption Laws”

J&K Judicial Academy organized One Day Workshop for District & Sessions



Judges of Jammu Province including those on deputation on “Land Acquisition Laws and Anti-Corruption Laws” at Judicial Academy, Jammu on 23rd April, 2022. Hon’ble Mr. Justice Bansi Lal Bhat, Former Judge, High Court of J&K and Mr. Pawan Dev Kotwal, Former District & Sessions Judge were the resource persons in the programme.

Mr. Shahzad Azeem, I/C Director J&K Judicial Academy presented the welcome address and gave an overview of the programme. He underscored the importance of Land Acquisition Laws in a rapidly industrializing and urbanizing country like India where land has to be inevitably acquired by state agencies for the sake of development and expansion. He also underlined that the Anti-Corruption Laws serve the key purpose of combating the menace of corruption with the strategy of deterrence and punishment to the offenders.

In the first Technical Session, Hon’ble Mr. Justice Bansi Lal Bhat educated the participants on key procedural aspects of laws governing land acquisition & pertinently on “The Right to fair Compensation, Rehabilitation and Resettlement Act, 2013”. He discussed the

concepts of fair compensation, rehabilitation and resettlement and the import of judicial pronouncements on the practice and procedure of land acquisition. He also discussed the key provisions and aspects of Anti-Corruption laws and described the menace of corruption as not only a burden on the economy but as having a sinister impact on the foundations of the



society.

In the second technical session, resource person Mr. Pawan Dev Kotwal deliberated on the topic of Anti-Corruption Laws in detail. He dealt with the legislative background of the laws on the subject and elaborately explained the provisions and procedure involved in the trial of cases under the Prevention of Corruption Act.

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

One Day Awareness Programme on ‘Gender Sensitization at Workplace-Issues and Challenges’

High Court of J&K and Ladakh (Sexual Harassment Probe Committee) in association with J&K Judicial Academy and J&K Legal Services Authority at Judicial Academy Complex, Jammu organized one day awareness programme on “Gender Sensitization” for the members of Gender



Sensitization & Internal Complaints Committee (GSICC) and Gender Sensitization & Local Complaints Committee (GSLCC) of districts of Jammu province and district Leh. The programme was attended by the participants physically as well as through virtual mode on 28th April, 2022.

The awareness programme was inaugurated by Hon'ble Ms. Justice Sindhu Sharma, Judge, High Court of J&K and Ladakh. Mr. U.K. Jalali, Sr. Advocate, High Court of J&K and Ladakh, Mr. Shahzad Azeem, Director, J&K Judicial Academy, Mr. M.K. Sharma, Member Secretary, J&K Legal Services Authority, Prof. Vishav Raksha, Head Department of Sociology and Director, Centre for Women's Studies, University of Jammu and Ms. Swati Gupta, Civil Judge (Sr. Division) were the resource persons in the programme.

In her inaugural address, Justice Sindhu Sharma highlighted the importance of generating awareness on the pertinent issue of sexual harassment at workplaces and underscored the requirement of gender sensitization for both men and women. She also stressed that women in society are expected to perform multi-lateral roles, yet they have to face discrimination of various sorts in all walks of life. She also impressed that sustained confidence making efforts and preventive measures must be undertaken to ensure safety of women at workplaces.

Ms. Seema Khajuria Shekhar, Sr.

Advocate in her keynote address said that we must adopt a zero tolerance policy towards sexual harassment of women at workplaces. She highlighted the importance of understanding the concept of being Gender sensitive and reminded the members of Gender Sensitization & Internal Complaints Committee and Gender Sensitization & Local Complaints Committee of the crucial role to be played by them.

Mr. Shahzad Azeem, Director, J&K Judicial Academy presented the welcome address and gave an overview of the programme. He described Gender Sensitization as a stepping stone towards the construction of a socially balanced society and underpinned the importance of creating a gender sensitive environment for establishing and maintaining healthy and



safe performance oriented work culture.

Mr. M.K. Sharma, Member Secretary, J&K Legal Services Authority while proposing vote of thanks also underscored the effective use of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 which is possible through generation of awareness.

In the second session, resource person Prof. Vishav Raksha educated the participants on Gender issues including Gender discrimination. She also discussed the dimensions and types of sexual harassment at workplace and explained its concept in detail. She also explained the importance of prevention of Sexual

Harassment at workplace elaborately with the help of practical anecdotes.

In the third session, Ms. Swati Gupta, Civil Judge (Sr. Division) discussed Vishaka Guidelines and other important judicial



pronouncements with the help of PowerPoint presentation.

In the fourth session, resource person Mr. U.K. Jalali, Sr. Advocate elaborately discussed the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 and Gender Sensitization and Sexual Harassment of Women at High Court and sub-ordinate Courts of J&K (Prevention, Prohibition & Redressal) Regulations, 2016. He educated the participants regarding the procedure and mechanism which is to be followed while dealing with complaints of

sexual harassment within their respective jurisdictions.

In the fifth session, a mock inquiry exercise was undertaken by the participants who were given hypothetical case situations for practice and understanding as members of complaints committees. The mock exercise was followed by an interactive session during which the participants deliberated and discussed the various aspects of the subject topic and raised queries which were satisfactorily settled by the resource persons.



LEGAL SERVICES AND THE VISION OF JUSTICE

While the Preamble to the Indian Constitution promises to secure to all citizens, Justice-social, economic and political, Article 39(A) of the Constitution of India provides for free legal aid to the poor and weaker sections of the society, to promote justice on the basis of equal opportunity. Additionally, Articles 14 and 22(1) of the Constitution also make it obligatory for the state to ensure equality before law. Thus, Constitution of India enshrines Justice as the very basis of democracy in India.

To achieve the objectives of the Constitution of India, the erstwhile state of J&K vide Govt. Order No. 1223 dated 26.10.1987, constituted a Board called J&K State Legal Aid and Advice Board for providing free legal services to the weaker sections of the community. However, in the year 1997, the J&K State Legal Aid and Advice Board was repealed by Jammu and Kashmir Legal Services Authorities Act 1997, which provided for establishment of State Legal Services Authority, High Court Legal Services Committee, District Legal Services Authorities and Tehsil Legal Services Committees to provide free and competent legal services to the weaker sections of the society and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to ensure that the operation of the Legal System promotes justice on the basis of equal opportunities. In August 2019, the Parliament passed the J&K Reorganization Act 2019, which came into force on 30.10.2019, by which the state of J&K was

bifurcated into two Union Territories called UT of J&K and UT of Ladakh. By virtue of the same legislation, J&K Legal Services Authorities Act, 1997 was repealed and the Legal Services Authority Act 1987 (Central Act) came into force in the UTs of J&K and Ladakh. The UT of J&K has constituted the State Legal Services Authority vide notification dated 2nd of December, 2019.

The Legal Services Authorities Act is the pioneer enactment to achieve the noble objectives of the Constitution of India and other laws. The guarantee of equal justice is meaningless if the poor, illiterate or the weak persons cannot enforce their rights because of their poverty, illiteracy or weakness. Therefore, the first and foremost duty of all the stakeholders associated with legal services institutions is to empower the weaker sections of society by removing barriers to access to justice. J&K and Ladakh Legal Services Authorities is steadily on its progressive march of realizing the avowed constitution goals aimed at providing free and competent legal services to the weaker sections of the society.

Numerous steps, in the implementation of the provisions of the Constitution, have been taken to reach out to the target beneficiaries. During the year 2021, J&K and Ladakh Legal Services Authorities organized 4 National Lok Adalats and 36 Regular Lok Adalats for speedy and amicable settlement of disputes between the parties. In these Lok Adalats as many as 1,76,703 cases were disposed of and an amount of Rs. 303.50 cr. was settled as compensation. J&K and Ladakh Legal Services Authorities provided court-based legal assistance to 10,459 people belonging to marginalized sections of society by

providing free legal assistance. As many as 5,452 awareness camps were organized for educating the public in general, benefitting 1,96,679 people.

Though the responsibility of managing disasters primarily lies upon the State but the Legal Services Institutions had always been at the forefront to coordinate with the administration to reach out to the victims of disaster. On coming to know about the cloud bursts and flash floods in Kishtwar and Bandipora districts of J&K in the month of July 2021, the DLSAs Kishtwar and Bandipora constituted core groups, who reached on spot to help the victims of the cloud burst.

With the aim to provide legal services to the poor and marginalized, the Legal Services Authorities of J&K and Ladakh have established 289 Legal Aid Clinics in both UTs of J&K and Ladakh, almost on the lines of Primary Health Centers. These include 15 Legal Aid Clinics in all the jails of UT of J&K and Ladakh. The Legal Aid Clinics are regularly visited by the Panel Lawyers and PLVs for legal assistance to the needy including the jail inmates. J&K and Ladakh Legal Services Authorities have empanelled 710 lawyers and have engaged 572 PLVs for providing legal assistance to the marginalized sections. Apart from this, 208 Legal Literacy Clubs have been established in various schools and colleges across the UTs of J&K and Ladakh to boost legal literacy amongst the students.

J&K and Ladakh Legal Services Authorities are vigorously engaged in creating legal awareness by different modes including through electronic media in a program entitled “ *Kanoon aur Insaaf ki baat*”. The Secretaries of DLSAs deliver talks in this programme on different topics of

legal importance. In the year 2021, Forty (40) talks were delivered. The J&K Legal Services Authority has not lagged behind in addressing the concerns of senior citizens. It is managing the affairs of 4 Day Care and Recreation Centers for senior citizens at Srinagar, Jammu, Kathua and Samba.

In order to provide relief to the people in filing cases in the High Court through e-mode, J&K Legal Services Authority has established **14 Vidhik Seva Kendras**, including one each in the High Court wing of Jammu and Srinagar and remaining at district headquarters. The process of establishing Vidhik Seva Kendras in the remaining 08 districts is also underway.

Apart this, two helplines with no's. 1516 and 15100 (NALSA helpline) are manned by J&K and Ladakh Legal Services Authorities for addressing the issues of the needy promptly. Though a lot has been done to provide legal assistance to the needy but much still remains to be done.

“ The woods are lovely, dark and deep. But I have promises to keep, and miles to go before I sleep.”

Robert Frost

**-Contributed by:
Mr. M.K. Sharma
Member Secretary
J&K State Legal Services Authority**



BLOCKCHAIN TECHNOLOGY

In the recently concluded 11th Joint Conference of Chief Ministers of States and Chief justices of High Courts on 30th April 2022, Hon'ble Chief Justice of India, Justice

N.V. Ramana noted with concern the challenges of Indian Judicial System. The conference scheduled under the “Azadi Ka Amrit Mohotsav” events-the union’s flagship initiative commemorating 75 years of Indian Independence was attended by the Prime Minister of India and Law Minister UOI, Chief Ministers of various states, judges of Supreme Court and Chief Justices of all High Courts. One of the biggest challenges being faced is docket explosion and pendency problem. Hon’ble Chief Justice of India stated that Judiciary, Executive and Legislature must work together to tackle India’s judicial pendency problem. Hon’ble Chief Justice of India pointed out that the biggest litigant before the courts is none other than the Govt. itself or its departments as nearly in 50 % of litigation, Govt. is one party.

Hon’ble Prime Minister of India in his address referred to the use of digital technologies that have made the service of justice easier and more efficient. Hon’ble Prime Minister also said that the e-court project is being pursued in Mission mode and judicial infrastructure is being developed all over the country for arresting the growing pendency of cases. Both Chief Justice of India and Prime Minister stressed for filling of vacancies which are lying vacant at various levels.

Hon’ble Chief Justice of India stated that judges can’t be solely blamed for rising pendency. He urged the Govt. to fulfill its responsibilities so that citizens are not compelled to knock the doors of court for Redressal of their problems. No doubt that development of judicial infrastructure, filling of judicial vacancies at various levels and creation of new posts may help in reducing the pendency of cases but these

measures may not be sufficient for tackling the judicial pendency problem, keeping in view the number of cases instituted on daily basis and increasing sophistication of advanced technologies which continues to expose our digital content to the possibility of hacks, leaks and manipulation.

Blockchain technology or distributed ledger technology is latest technological advancement which besides having many use cases may help in fixing the pendency problem by minimising the disputes. Blockchain technology is a peer to peer public/private distributed, immutable ledger that maintains a record of all transactions occurring on the ledger. Such records are saved in a chain of units known as blocks. Each block of data is linked to previous block of data or chained together. Once the transaction is validated, the transaction or asset is immutable because it would be nearly impossible to change all records throughout the chain.

Characteristics of blockchain technology is that data is stored in distributed ledger, where no single entity is exclusively in charge. Data is immutable, which means that transactions, once recorded on the blockchain can’t be changed or deleted. Blockchain technology acts as a distributed and decentralized public ledger, which makes it highly secure and transparent as it is broadcasted publicly.

Having regard to the characteristics of the blockchain technology, it can be utilised for creating database of land records leaving almost no scope of disputes. Database of title documents such as sale deeds, gift deeds, will deeds, court decrees can also be created on blockchain, which again will leave no scope for tempering with the records. Once the documents are saved on

blockchain, they could be used as evidence and thereby saves the time consuming process of recording evidence. Similarly, Database of Deaths and births, census records of population, database of certificates and other database of citizens stored on blockchain can be effectively protected from any fraudulent activities, which in turn will minimize the disputes and resultantly the burden on judicial system.

Recently Government of Maharashtra issued 65000 (sixty five thousand) caste certificates in district Gadchiroli through blockchain system (Polygon blockchain). The system was put in place to rule out any duplication or forgery of caste certificates. (The Indian Express, 4.4.2022)

Blockchain technology can also help in preventing the financial frauds. Commercial litigation in India is largely based on reconciliation of ledger entries maintained by the parties. Difference in the ledger entries leads to the dispute, which can be

again neutralised by the use of Blockchain. Smart contracts can be initiated with the help of blockchain technology. Smart contracts are programs stored on blockchain, which run when predetermined conditions are fulfilled.

Blockchain technology can also be beneficial in minimising the disputes, which arise out of violation of intellectual property rights. Copyright, trade mark and digital assets can be stored on blockchain.

Blockchain technology is revolutionizing the internet and adoption of blockchain may be game changer in many facets of governance including the problem of docket explosion in judicial system.

-Contributed by:

Mr. Jahangir Ahmad Bakshi

Sub-Judge/ Special Mobile Magistrate

Budgam

