



# J&K SJA NEWSLETTER

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## Topic of the Month

### THE MISSION AND VISION OF INDIAN JUDICIARY

Anyone who has ventured to study the functioning of the Indian legal system must have been alarmed by the mounting arrears in our courts. It is said that there are more than two crore of pending cases in the Indian Courts.

It is common knowledge that more than seventy percent of the judicial work in India is being done by the District Judiciary. Naturally, the pendency should also be more in the District Courts.

Added to the mounting arrears is the inefficiency, delay, lack of public confidence and loss of credibility of the courts that have been mentioned as the major challenges facing the Indian Judiciary. Since the main chunk of the work and the consequent problems pertain to the District Judiciary, it is but natural for everyone to scrutinize the functioning of the District Judiciary.

One of the main causes for the lack of efficiency of our courts is attributed to the courts' reticence to change the inherited pattern of their working. This inertia still continues despite the compulsions of the Indian constitution, which envisions this institution to be an instrument for establishing a welfare state based on equal justice to all. Article 38 and 39A of the Indian constitution are worth quoting:

"Art. 38(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institution of the national life.

(2) The State shall, in particular, strive to minimize the

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inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst groups of people residing in different areas or engaged in different vocations.

Art.39A: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities"

It is a matter of concern that our District Judiciary does not give effect to the constitutional vision of justice. Justice Krishna Iyer had an occasion to advert to this situation in *Rajendra Prasad V. State of U.P.* (1979) wherein in the context of imposition of capital punishment he said thus:

"It is fair to mention that the humanistic imperatives of the Indian constitution, as paramount to the punitive strategy of the penal code, have hardly been explored by courts, in this field of life and death at the hands of the law. The main focus of our judgment is on this poignant gap in human rights jurisprudence within the limits of the penal code, impregnated by the constitution".

The situation was succinctly put by Justice Desai in the 117th Report of the Law Commission (1986) thus:

"On the enforcement of the constitution in January 1950, this system was expected to adapt itself to facilitate the transformation of Indian society into a nation and to become an effective instrument for carrying out the mandate of Art. 38. Judiciary being an important instrumentality for exercise of state judicial power, it had to shoulder the burden along with other wings to set up a welfare state in which justice-social, economic and political shall inform all the

institutions of national life. It must also shoulder the primary responsibility of eliminating inequalities in status, facilities and opportunities not only amongst group of people residing in different areas engaged in different vocations. It had the added responsibility of becoming a guardian angel for the protection of fundamental rights of the citizens. Thus, from a purely colonial institution operating more or less as a wing of law and order enforcement machinery, it was to become a sentinel on the qui vive"

However, our courts at the District level could not rise upto this expectations. As late as in 2006, the Supreme Court in the context of a criminal case commented upon the disposal of cases thus:

"In our opinion, criminal cases are decided on facts and on evidence rather than on laws and precedents" (Saira Bano @ Sultana Cr. App. No. 141 of 2006)

The net result of this practice, without having regard to the applicable law, has also been captured vividly by the Supreme Court in *Himmat Sukhdeo Wahurwagh V. State of Maharashtra*, (2009) 6 SCC 712, wherein after narrating the factors inhibiting proper conduct of proceedings in a trial, the court observed:

"In this pernicious state of affairs, the judge, gravely handicapped, has to apply his knowledge of the law and his assessment of normal human behavior to the facts of the case, his sixth sense, based on his vast experience as to what must have happened, and then trust God and good luck that he strikes home and comes to a right conclusion. To our mind, the last two are undoubtedly imponderables but they come into play in negotiating the judicial minefield. This is an undesirable fact, whether we admit it or not".

With respect, it has to be pointed out that the situation is not that disappointing as

it is made out to be. However, it has also to be mentioned that there is cause for disillusionment inasmuch as our courts go on deciding cases on the basis of facts without commanding to their aid the philosophy of the Indian constitution, and not utilizing the possibilities for innovation within the framework of the statutes. The powers cabined in the various provisions of the statutes have to be explored and exercised by the courts to achieve the constitutional vision of equal justice to all.

The Indian citizenry has become more aware of their rights enshrined in the constitution. People realize that it is the courts that can ensure protection of their rights. Naturally they have expectations from the courts. They tend to look up on the judiciary as an institution that can fulfill their aspirations. In the event of this not happening it is but natural that they may try to interrogate the functioning of the judiciary. It is therefore necessary for the Indian Judiciary to acquire and develop skills to discharge its constitutional obligations. If the courts fail to carry out this mission our Democracy would fail in achieving its vision.

*Article penned by Dr. K. N. Chandrasekhran Pillai,  
Director - National Judicial Academy, Bhopal.*

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## ACADEMY NEWS

### 1. Orientation Programme for PIO's on "Right To Information Act"

In order to update the knowledge of District Judges and other Judicial Officers with regard to their role and duty under the "J&K State Right of Information Act, 2009", J&K State Judicial Academy organized an orientation program on 24<sup>th</sup> of December, 2011 at High Court complex, Jammu. District and Sessions Judges from Jammu Head Quarter, District Samba, Kathua, Udhampur and Reasi apart from other



Resource person while addressing the participants

Judicial Officers posted at Jammu H.Q. participated in the program.

Shri S. K. Sharma, Information Commissioner, State Information Commission was the Resource person for the program.

In his lucid and thought provoking address, Sh. Sharma dwelt upon the various provisions of J&K Right to Information Act, 2009. Tracing the history for having such kind of legislation, Sh. Sharma said that in order to bring transparency in all the limbs of democratic set up has necessitated the enactment of such a legislation. He said that the democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold government and its instrumentalities accountable to the governed. Sh. Sharma informed the participants about their duties as PIOs and the various kind of problems with which they could be confronted with in discharge of their



Workshop in Session

duties as PIOs. He cleared the various expected queries with regard to the Act in the shape of a questionnaire. The participants had a healthy discussion with the Resource person by projecting various doubts lurking in their mind including some flaws in the Act also.

Speaking on the occasion, Sh. Suresh Kumar Sharma, Director, State Judicial Academy told the participants that this Act which has been enacted in order to bring transparency in the governance is a step towards fulfilling the dream of our father of Nation as this piece of legislation would enable the weakest and poorest of our country to have an access in all the acts of governance which in turn would make our democracy a participative democracy in its real sense.

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## 2. State Judicial Academy organises Interactive Session on Leadership



Resource person while addressing the participants

In order to serve as an organizational enrichment tool to enhance individual, team, and overall Court performance, and instill a fuller understanding of the purposes and responsibilities of Courts, an interactive session on leadership was organized by State Judicial Academy, at High Court Complex, Jammu. Sub-Judges and Munsiffs from Jammu Province participated in the session.

Sh. Parmodh Jain, IAS, Financial Commissioner Revenue, J & K, was the key Resource Person for the course. He said that leadership qualities, though, are innate to some extent, but can be developed and enhanced by training. He explained leadership process and individual and professional qualities of leadership, which are essential to build up and enhance the capabilities of organization. One must have vision and commitment and strive to achieve the goals. He delved on different styles of leadership and how the efficiency and productivity of an institution can be enhanced. And also how new techniques and skills in leadership are being used in different organizations to effectively enhance capabilities and capacities of human resources and systems to achieve optimum results.

Sh. Suresh Kumar Sharma, Director, State Judicial Academy, impressed upon the participants that they have a unique role to play as an arm of social revolution, besides dispensing justice; for which it is essential to develop leadership qualities. He said that if we are passionately committed to our duties as Judges, it itself would ensure quality.

Participants and resource persons engaged in a lively interaction on various aspects of leadership qualities and its application in strengthening judicial system.



Participants attending the session

## NEWS & VIEWS

### Why security for those who don't deserve: Supreme Court

The Supreme Court has expressed concern over the taxpayers' money spent on providing security to people who don't deserve it. An apex court bench headed by Justice G. S. Singhvi observed: "How much we are spending on the security of the people who don't deserve it?" The court made the observation while hearing a petition seeking its directions on the use of vehicles with beacon lights given to VIPs.

The judge said one can understand security given to the president, vice president, prime minister and Lok Sabha speaker but wondered why this was extended to others too.

*(HT/09-12-2011)*

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### Next year: Register marriage or get fined

Come next year and all newly weds will have to get their marriage registered, failing which they will be fined. The Delhi government has finalized a draft bill of the proposed Delhi Marriage Registration Bill after making all the necessary changes. It has now been sent to the Home ministry for an approval.

"In the draft bill proposed by us, we had made it mandatory for all the couples to be physically present while getting the registration done. However, the ministry wants to make it people-friendly and hence if the documents are properly attested and fulfill all the criteria, the couples won't have to be physically present at the spot," said a Delhi government official.

The official added that only if the Registrar of Marriage feels that there is a need for the married couple to be present

there, only then they will be called. "The draft will be approved by the ministry in a week's time and we will then place it in the Delhi Assembly for an approval," added an official.

Those failing to register their marriage within 60 days time will be fined a sum of Rs 1,000. Also, those who furnish false statements will be fined and imprisoned for three months.

The bill is being brought as per the directions of the Supreme Court (SC) that had asked the state governments and the Centre to introduce a legislation to make registration of marriages compulsory. "In 2006, the SC had ruled that all marriages must be registered, while hearing a petition regarding the plight of women deserted by their husband," said an official.

*(HT/09-12-2011)*

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### Demand compensation from builders for construction delays

Most agreements that you sign with builders stipulate a hefty rate of interest for delayed payments from your side. But search for a similar penalty clause for delays on the part of the builder in handing over possession, and you will find none. Fortunately, despite such one-sided clauses in the agreement, consumers can get compensation from builders for construction delays. Under the Consumer Protection Act, a consumer is entitled to compensation for any service that turns out to be 'deficient'. Since delays in the delivery of any service constitutes 'deficiency', one can demand compensation for such delays.

The Supreme Court in the landmark judgement in the case of Lucknow Development Authority vs MK Gupta, made it clear that "when possession of property is not delivered within the stipulated period,

the delay so caused is denial of service” and a consumer who is a victim of such delay is entitled to compensation.

Another important point that the SC made in this case was that compensation awarded by the consumer courts in such cases should serve the dual purpose of recompensing the individual while simultaneously bringing about a qualitative change in the attitude of manufacturers and service providers towards consumers.

In this case, the District Consumer Disputes Redressal Forum had awarded 18% interest on the ground that the builder was charging 18% for delayed payment from consumers.

While upholding this, the National Commission quoted two SC orders: In the case of *Sovintorg India Ltd vs State Bank of India*, (1999), the apex court had held that interest can be awarded in lieu of compensation or damages in appropriate cases. It can also be granted on equitable grounds.

(HT/3-12-2011)

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## LEGAL JOTTINGS

### LEGAL BRIEFS FROM SUPREME COURT

(Civil Appeal No(s). 9921-22 of 2011)

**Sunil Kr. Ghosh & others-Appellant(s) versus K. Ram Chandran & others-Respondent(s)**

**Date of Decision : 18-11-2011.**

**Judge(s): Hon'ble Mr. Justice P. Sathasivam and Hon'ble Mr. Justice Jasti Chelameswar.**

Subject Index: Ownership - of the factory - transfer of - dispute arose - Labour Department, Govt. of West Bengal refused to refer the dispute for adjudication by observing that the interests of the workmen are in no way affected due to

transfer of ownership - writ petition filed - the learned Single Judge directed the respondent-Management to pay retirement/retranchment benefits to the workers - hence, the appeals - whether the workmen are entitlement to the benefit of the order passed by the learned Single Judge of the High Court, particularly in the absence of any appeal or challenge before the higher forum by the management - the Supreme Court viewed that without consent, workmen cannot be forced to work under different management and in that event, those workmen are entitled to retirement/retranchment compensation in terms of the Act - the said order was passed by the learned Single Judge after hearing all the parties in the nature of mandatory directions to respondent Nos. 1 & 2, therefore, the respondent is directed to comply with the directions - appeal allowed - no costs.

\* \* \* \* \*

(Civil Appeal No. 8943 of 2011)

**Ibrahim-Appellant versus Raju & others-Respondent(s)**

**Date of Decision : 31-10-2011.**

**Judge(s): Hon'ble Mr. Justice G. S. Singhvi and Hon'ble Mr. Justice Ashok Kumar Ganguly.**

Subject Index: Motor Vehicles Act 1988 - section 166 - claim petition filed under - the appellant sustained serious injuries on the head, nose, back and lower region of abdomen including the pelvic region when the tempo in which he was travelling met with an accident - the Tribunal awarded Rs. 1,49,440/- as compensation to the appellant and the High Court enhanced the amount of compensation by a sum of Rs. 40,000/-

- appeal filed for enhancement of compensation - the appellant produced substantiative evidence to prove that as a result of accident he had suffered 8 grievous injuries including fracture of pelvis and he had to remain in the hospital for one month and a half and on account of grievous injuries, he was unable to continue his studies - the consequences which followed were extremely grave inasmuch as he lost all opportunities for making a career in future and also the prospects of the appellant's marriage are extremely bleak the Supreme Court viewed that the total compensation awarded to the appellant enhanced from Rs. 1,89,440/- to Rs. 6 lacs. with interest @ 6% p.a. on the enhanced amount - order modified - appeal allowed.

\* \* \* \* \*

**(Civil Appeal No. 8525 of 2011)**

**Malthesh Gudda Pooja-Appellant versus State of Karnatka & others-Respondent(s)**

**Date of Decision : 11-10-2011.**

**Judge(s): Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice H. L. Gokhale.**

Subject Index: Civil Procedure Code, 1908 - Rule 5 of Order 47 - High Court of Karnataka Rules, 1959 - Rule 5 of Chapter 3 - scope of - whether a Division Bench of the High Court, while considering a memo for listing an appeal restored for fresh hearing, on grant of application for review by a co-ordinate bench could refuse to act upon the order of review on the ground that the said order made by a bench different from the bench which passed the original order, granting review is a nullity and the original order stands - to consider - when a Bench other than the Bench which rendered the

judgement, is required to consider an application for review, there is every likelihood of some tendency on the part of a different bench to look at the matter slightly differently from the manner in which the authors of the judgement looked at it. Therefore if the Judges who made the order in regard to which review is sought continue to be the Judge of the court, they should hear the application for review and not any other Judges unless precluded by death, retirement or absence from the court for a period of six months from the date of application - the Supreme Court opined that when the appellant filed a memo for listing the writ appeal for hearing, he was not really seeking a judicial order for restoration but only a direction for fixing a date for hearing the writ appeal, therefore when a memo for posting was filed by one of the parties, the court, being bound by its final decision ought to have listed the writ appeal for hearing and could not have examined the correctness or validity of review order - impugned order set aside and the Writ Appeal is directed to be listed for final hearing - appeal allowed.

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**(Civil Appeal No. 9353 of 2011)**

**J & K Housing Board & other-Appellant(s) versus Kunwar Sanjay Krishan Kaul & others-Respondent(s)**

**Date of Decision : 4-11-2011.**

**Judge(s): Hon'ble Mr. Justice P. Sathasivam and Hon'ble Mr. Justice B. S. Chauhan.**

Subject Index: Jammu & Kashmir Land Acquisition Act, 1990 - section 4, 5-A, 9, 17-A - notification for taking possession of land for public purpose - was challenged - the High Court

allowed the petition of the respondents with liberty to file their objections afresh within 15

