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Chief Patron

Hon'ble Mr. Justice
M. M. Kumar
Chief Justice

Judge-In-Charge

Hon'ble Mr. Justice
Mansoor Ahmad Mir

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Dynamics of Gender Justice : Crime against Women

Gender inequities throughout the world are among the most all pervasive though deceptively subtle forms of inequality. Gender equality concerns each and every member of the society and forms the very basis of a just society.

Crimes against women have existed invariably with time and place. Even periods of transformation have never been comfortable for them. Types and trends of crimes, however, kept changing with change in mind-set and techniques. Unfortunately, women were not only accorded a lower status in the society but they also came to be used as objects of enjoyment and pleasure. Its culmination has been their regular exploitation and victimization. On the continuation of this practice, exploiters became culturally violent, having opted violence as a way of life. Besides, there also developed situational and institutional violence against women along with the new demands of the time where they have to step out of the confines of their homes to earn a living. Thus, crime against women is an outcome of their long history of deprivation of socio-economic rights. Protection from harassment, oppression and discrimination has remained a distant goal to be achieved. All too often, universal human rights are wrongly perceived as confined to civil and political rights and not extending to economic and social rights, which may be of more importance to women. We must realize that civil and political rights and economic and social rights are integral and complementary parts of one coherent system of global human rights. Violation against women and men which have led to domination over and discrimination against

women and is a social mechanism by which the 'subordinate' position of women is sought to be perpetuated. Women suffer even today, though they constitute more than half of the world population.

Notwithstanding the enactment of the laws relating to dowry, rape, violence against women, the ground reality is rather distressing.

It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charge of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars.

[Abstracted from the speech delivered by Hon'ble Dr. Justice A.S. Anand, former Chief Justice of India published in a book 'Justice for Women' published by Universal Law Publishing Co. Pvt. Ltd.]

ACADEMY NEWS

1. Refresher course on "Juvenile Justice Act" for Sub-Judges and Munsiffs of District Jammu and Samba

and Refresher course on "Role and Sensitization of Referral Judges in Mediation" for Sub-Judges and Munsiffs of Srinagar, Bugam and Ganderbal at Srinagar

Under the guidance and patronage of Hon'ble the Chief Justice (Chief Patron) and Hon'ble Mr. Justice Mansoor Ahmad Mir, Judge Incharge, State Judicial Academy a refresher course on "Juvenile Justice Act" for Sub-Judges and Munsiffs of District Jammu and Samba was conducted on 8th of December, 2012 by the State Judicial Academy at Jammu

In his introductory remarks, Shri Abdul Wahid, Director, SJA informed the judges that the purpose of this refresher course is to update the knowledge of participants, sharpen their skills and sensitize them on their role to act as Juvenile Courts. He stated that Juvenile Justice Act is applicable in the State of Jammu and Kashmir. The powers under this Act are exercised by CJMs and Judicial Magistrates as Juvenile Courts. He highlighted the importance of Juvenile Courts and referred to their duties and responsibilities at the time when juvenile in conflict with law is brought before them during investigation by police and when after charge sheet is filed against them.



Judicial Officers attending the Refresher course

Shri Janak Raj Kotwal, Member, J&K Special Tribunal, Jammu acted as Resource person on the occasion. In his lucid and informative address, Shri Kotwal informed the judicial officers who

are to act as Juvenile courts in their respective jurisdiction about the various provision of the Act. He reminded the officers about their duties as a juvenile court when a delinquent juvenile is brought before them during investigation. He stressed that it is the duty of every juvenile court to ensure that the bail is granted to every juvenile irrespective of the nature of offence to have been committed by him and the bail can be withheld only in exceptional circumstances as envisaged in the relevant provision. A juvenile court has also to ensure that no juvenile is tried with non-juvenile and the trial is conducted summarily irrespective of the nature of offence. It was further stressed that every juvenile court has also to ensure that only the prescribed action as warranted under the legislation is taken against the juvenile at the conclusion of trial. Shri Kotwal also reminded the officers about the enabling rule for conducting an enquiry so as to determine the age of juvenile.

After his address, all the participants actively participated in the interactive session. During interactive session, participants got an occasion to share their experiences. The participants cleared various doubts lurking in their minds about the implementation and practicability of Juvenile Justice Act.

Similarly, a refresher course on “Role and Sensitization of Referral Judges in Mediation” for Sub-Judges and Munsiffs of Districts Srinagar, Bugam and Ganderbal was organized at High Court complex, Srinagar.

Shri Syed Javed Ahmed, Retd. District and Sessions Judge, Faculty Member of the State Judicial Academy acted as Resource person. Speaking on the topic, resource person said that the referral judges have an important role to play in order to bring the parties to the suit

into mediation by following mandate of law laid down in S. 89 and Order 10 of CPC read with the directions given by Apex Court in AFCON judgment. Various paras of the said judgment was brought to the knowledge of the participants and discussed threadbare during interaction.

All the participants took part in the deliberations with great interest. It was again impressed by resource person upon the judicial officers that the important directions given by Apex Court that even though actual reference to ADR is not mandatory but the process to ascertain whether the case is to go for ADR or not is very much necessary. That even reluctant parties to the lis are to be pushed into mediation, if the case is apparently fit for mediation process.

2. Refreshers course on “Sentencing and Bail” for Sub-Judges and Munsiffs of District Jammu and Samba and Refresher course on “Juvenile Justice Act ” for Sub-Judges and Munsiffs of Srinagar, Bugam and Ganderbal at Srinagar

A refresher course on the topic “Sentencing and Bail” for Sub-Judges and Munsiffs of District Jammu and Samba was conducted on 22nd of December, 2012 by the State Judicial Academy at Jammu.



Judicial Officers attending the Refresher course

The topic was introduced by Shri Abdul Wahid, Director, SJA Academy to the participants. He stated that purpose of the refresher course is to enable the

participants to update the legal knowledge and to sensitize them to changing demands of criminal administration of justice regarding sentencing and bail. He stated that it is our endeavour to identify the weaknesses and try to correct them. "Sentencing and Bail" are two vital components of administration of criminal justice. Giving punishment to wrongdoer is at the heart of criminal justice delivery, but in our country, it is the weakest part of administration of criminal justice. He stated that there are no legislative guidelines laid down to assist the court in meting out just punishment to accused, after he is convicted. It is the bounden duty of the courts to impose proper punishment depending upon the degree of criminality and desirability to impose such punishment as a measure of social necessity and as a means of deterring other potential offenders. He informed the participants that at present the principle of proportionality is the guiding factor for awarding the sentence. He also referred to latest case titled '*Soman v. State of Kerala*' in which Hon'ble Supreme Court laid down some guidelines for trial court to quantify "Just Sentence" for those guilty of offences. He exhorted the Judicial Officers to invoke the provisions of amended Section 545 (c) of CrPC at the time of awarding sentence. By virtue of amended provisions, the court upon conviction of accused can direct him to pay by way of compensation such amount, as may be specified in the order to the victim, who has suffered injury or loss. Further, court can also recommend awarding of compensation to the victim even in case which end in acquittal or discharge for their rehabilitation. Such quantum of compensation is to be awarded by District Legal Services Authority after preparation of scheme by the Government for providing funds for

compensation.

Shri Bansi Lal Bhat, Spl. Judge (Anti-corruption) for CBI cases acted as Resource person. He explained the officers in detail the concept of sentencing the offender and giving him simple or rigorous imprisonment after he is convicted of charges. He stated that judges should exercise discretion judiciously while awarding sentence to the offenders. The facts and circumstances, nature of crime, conduct of accused, mitigating and aggravating circumstances and all other attending circumstances are relevant consideration which should be kept in mind while imposing sentence on the accused. At the same time, perspective of victim of crime particularly, the agony and the suffering that he had undergone has also be kept in mind while adjudging the quantum of punishment. Learned Resource person also explained in detail the latest judgment of Hon'ble Supreme Court rendered in Soman's case. Principle of proportionality as a guiding factor for awarding sentence was reiterated. It was further observed in the case that sentence must commensurate with seriousness or gravity of offence. Consequence of criminal action can be relevant from both proportionality and deterrence stand point. On the topic 'Bail' participants were requested to follow the well settled principles which govern the refusal or grant of Bail as laid down by Apex Court from time to time.

During interactive session, various issues were highlighted by the participants and some doubts about the policy of Sentencing and Bail lurking in the minds of judicial officers were removed.

Simultaneously, a refresher course on the topic "Juvenile Justice Act " for Sub-Judges and Munsiffs of Districts Srinagar, Bugam and Ganderbal was

organized by the State Judicial Academy at High Court complex, Srinagar.

Shri Syed Javed Ahmed, Retd. District and Sessions Judge, acted as Resource person. Speaking on the topic, resource person traced its enactment to the different provisions of the Constitution including Article 15, 39, 45 and 47 which impose primary duty on the State to ensure that all needs of children are met and their basic human rights are protected. He stated that greater attention is required to be given to the children who are in conflict with law or those in need of care and protection. He reminded the officers of their duty as juvenile court when delinquent juvenile is brought before them during investigation. He also referred to the various judgments of Hon'ble Apex Court in which principles of law has been enunciated in respect of juvenile in conflict with law and urged the judges to strictly follow and implement those principles while dealing with juvenile. He emphasized the need of conducting the enquiry in respect of suspect juvenile so as to determine his age at the time of commission of offence. Such enquiry is to be conducted in a mode and manner provided under the Juvenile justice Act and rules framed thereunder.

NEWS AND VIEWS

SC : No norms on punishments to assist trial courts

Ever wondered why punishment for those guilty of similar offences varies from case to case, court to court and state to state in our justice delivery system?

The Supreme Court hit the nail on the head when dealing with a case of 31 deaths in Kerala from consuming spurious liquor in October 2000, a Bench

of Hon'ble Justice Aftab Alam and Hon'ble Justice Ranjana P. Desai said, "Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice."

"There are no legislative or judicially laid down guidelines to assist the trial court in meting out just punishment to the accused facing trial before it after he is held guilty of the charges," it said. Dealing with the case of spurious liquor that not only killed 31 but left 500 seriously ill, of which six lost their vision, in Kollam district, the court wondered whether the people convicted for culpable homicide under Section 304-II of IPC were sufficiently punished by a few years imprisonment and whether it was correct not to consider the effect of the crime on the population as a ground to impose longer jail term.

In the case '*Soman vs. State of Kerala*', the Bench considered the question: "Whether or not the social consequences of a culpable act and its impact on other people can be a relevant consideration for giving a heavier punishment, of course, within the limits fixed by the law?"

Justice Alam, writing the judgment for the bench, said, "In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness.

"In addition, quite apart from the seriousness of the offence, can the consequences of an offence be a legitimate aggravating (as opposed to mitigating) factor while awarding a sentence. Thus, to understand the

relevance of consequences of criminal conduct from a sentencing standpoint, one must examine whether such consequences enhanced the harmfulness of the offence; and whether they are an aggravating factor that need to be taken into account by the courts while deciding on the sentence.”

Having identified the components of sentencing structure, the Bench said manufacturer of spurious liquor could be given a higher sentence keeping in mind the fact that he had knowledge of its possible adverse consequences on human health, including death. The Bench of Justices Alam and Desai went on to **lay down a five points for the trial court to quantify "just sentence"** for those found guilty of offences:

- * Courts ought to base sentencing decisions on various different rationales - most prominent among which would be proportionality and deterrence.

- * Consequences of criminal action can be relevant from both a proportionality and deterrence standpoint

- * Sentence must be commensurate with seriousness or gravity of the offence.

- * One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.

- * Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable.

LEGAL JOTTINGS

Legal briefs from High Court of J&K

[Case No. LPA 38 of 2009

State of J&K & Ors. V. Prince Ahmad Khan

Date of decision: 09-07-2012

Coram: Hon'ble Mr. Justice M. M. Kumar, Chief Justice and Hon'ble Mr. Justice Hasnain Massodi, Judge]

Subject Index: Constitution of India - Article 16 - Constitution of J&K – Section 124 – Jammu and Kashmir Excise and Sales Tax (Subordinate) Service Recruitment Rules, 1991 : Schedule II thereto – Post of Stenographer – Recruitment thereto – Prescribed, by direct recruitment – Petitioner promoted on officiating basis. Petitioner a Junior Assistant subjected to Shorthand test by Department – Promoted on officiating basis as Stenographer against direct recruitment quota post – Grade of 1150-2050 released - Worked on officiating basis for 4 years – Pay re-fixed allowing him basic pay as Junior Assistant plus officiating allowance - Challenge thereto – Writ petition – Writ Court directing regularization of Petitioner as Junior Scale Stenographer – LPA filed - Order of Writ Court reversed.

Held: it is well settled that when a promotee officer is asked to officiate against a direct quota post then he cannot derive any benefit while working against a direct quota post till the time a promotee quota post in his own quota becomes available.

Further Held: There is no rule for promoting a person from the post of Junior Assistant to that of Stenographer. It is in the aforesaid context that the import of the order dated 05.06.1991 has to be understood, which in letter and spirit implied that in the administrative exigency the writ petitioner-respondent, who was working as Junior Assistant in the department and had qualified the test of stenography, was to officiate as Junior Scale Stenographer till the time selection is made by the Subordinate Services Selection Board.....Petitioner

respondent was never borne on the cadre of Stenographer or so to say Junior Scale Stenographer. In the absence of becoming member of the cadre, his appointment would *dehors* the rules and no benefit could be given to him. Moreover, he participated in the regular selection process held by Services Selection Board, but could not qualify.

Case relied upon: AEHQ/ISOs Sos (DP Association & Ors. v. Union of India, (2008)3 SCC 331; Dr. Ram Raj Ram v. State of Bihar, (1996)9 SCC 178.

[Case : HC(W) No. 112 of 2012

Masarat Alam Bhat v. State of J&K

Date of decision: 19-10-2012

Coram: Hon'ble Mr. Justice Virender Singh, Judge]

Subject Index : Writ of Habeas Corpus - Detention of detenu by District Magistrate, Srinagar under PSA quashed - Held : What is the nature of that FIR is not known to anybody. The basis for detaining the detenu under preventive detention is the registration of this FIR and all this forms part of his dossier, which is furnished by the police to the District Magistrate, Srinagar. How could detaining authority (District Magistrate, Srinagar) draw its satisfaction so as to come to the conclusion that detention of the detenu was imperative is not understandable. Detention order is not to be passed in a casual manner without looking at the complete material which is not made available to the Detaining Authority. From this, it can be safely inferred that when the Detaining Authority was not provided with the complete material, the detenu was certainly not provided with the same, enabling him to make an effective representation, thus, deprived of his valuable right as enshrined under Article 22(5) of the

Constitution of India and Section 13 of the Act of 1978. This vital flaw is also staring at the detention order so as to treat it as unsustainable - petition allowed - detenu released.

[Case : SWP No. 93 of 2011

Dr. Fayaz Ahmad Bhat v. State of J&K

Date of decision: 11-05-2012

Coram: Hon'ble Mr. Justice Mansoor Ahmad Mir, Judge]

Subject Index : Constitution of India - Art. 226, 14 and 16 - Post of professor - Selection Committee - Selectee's Husband, Respondent No. 5 - HOD & Member of Selection Committee - Petitioner having prior knowledge of this - voluntarily participating in selection process at the time of Interview of Respondent No. 6, wife - Respondent No. 5, Husband secluded - Result of Selection declared - Selection of Respondent No. 6 - Challenge thereto - Fraud, favouritism and *mala fide* alleged.

Held, having participated in the selection process - Petitioner precluded from questioning the selection process at a belated stage. When the petitioner knew that husband of respondent No. 6 being the Head of the Department of Zoology was a member of the Selection Committee, he did not raise his finger against the selection process from the date of commencement of selection process until it was finalized. Therefore, the petitioner is precluded from questioning the selection process at a belated stage after the results of the interview are made public - Writ petition dismissed.

The Apex Court judgments in Javid Rasool Bhat v. State of J&K, (1984)2 SCC 631; Ashok Kumar Yadav v. State of Haryana, (1985)4 SCC 417; Madan Lal v. State of J&K, AIR 1995 SC 1088 and

Dhananjay Malik v. State of Uttranchal, (2008)4 SCC 171 relied upon.

[Case : 561-A No. 167 of 2012 c/w Cr. Rev. No. 39 of 2012

Ajab Singh Wazir v. State of J&K

Date of decision: 11-05-2012

Coram: Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge]

Subject Index : Section 302/120-B RPC and Section 268 & 269 CrPC - Discharge/Framing of charge against accused in Session trial - Petitioners/accused sent up for trial by filing of 3rd supplementary challan by police - Principal District and Sessions Judge, Jammu framed charge against them under Section 302/120-B RPC - Revision filed against the order - treated as petition u/s 561-A CrPC by the Hon'ble High Court on the request of learned counsel for the petitioner.

Charges against two accused were framed primarily on the basis of two prosecution witnesses which were recorded in the year 2011 when the occurrence has taken place in the year i.e. 2006.

Hon'ble Court observed, "The trial before the Court of Sessions is to be conducted in accordance with the provisions of law as contained in Chapter XXXIII. Section 268 of CrPC provides that if upon consideration of the record of the case and documents submitted therewith and after hearing the submissions of the accused and the prosecution, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. Whereas Section 269 of the CrPC provides that if, after such consideration and hearing as aforesaid, Judge is of the

opinion that there is ground for presuming that the accused has committed an offence, then he has statutory obligation to order for framing of charges against the accused person. Legislatures in their wisdom have used two different expressions in Sections 268 and 269 of CrPC. Whereas while discharging an accused, learned Judge has to hold that there is no sufficient ground for presuming that offence has been committed by the accused, which would mean that there is literally not even a shred of evidence available on record which would enable the court to put the accused on trial.

For framing of charge in terms of Section 269 CrPC what is to be seen is that in the opinion of the learned Judge there is ground for presuming that accused has committed offence for which he is required to be charged and put on trial. It is on the basis of some evidence that the opinion is to be recorded by the learned Judge that there is ground for presuming that the accused has committed offence. This, otherwise, would mean that the investigating agency has brought before the learned trial Judge some evidence which, in his opinion, would result in framing of charges against the accused persons.

Held : On the basis of statement of two witnesses, opinion can be framed at pre-trial stage that there is ground for presuming that petitioner-accused have committed an offence u/s 302/120-B RPC - petition dismissed.

Jammu & Kashmir State Judicial Academy wishes all its esteemed Readers and well Wishers a very **Happy New Year - 2013.**

