



SJA e-NEWSLETTER

Official Newsletter of Jammu & Kashmir State Judicial Academy
(For internal circulation only)

Volume 2

Monthly

July 2019

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From the Editor's Desk

The Procedural Laws, either Civil or Criminal, inherently provide for expeditious disposal of the cases coming up before the courts. There are expressed provisions in these procedural laws mandating that a case is to be disposed of in a timely manner. Continuation of trial on day-to-day basis once the court starts taking evidence, is also prescribed. However, the difficulty in compliance of these provisions is practical rather than any weakness in the procedures. The courts are burdened with workload which is bound to create backlog. With all the best intensions and best of the efforts, it becomes difficult for a court to conduct trial of many cases simultaneously on day-to-day basis. Multifarious functions of a Judge and ever increasing backlog of cases impedes the flow of justice. The procedures have been put in place with an objective to achieve Constitutional vision of access to justice, expeditious disposal of the cases and effective rendering of justice to the litigating parties. Still it is difficult to live upto the Constitutional expectations for variety of reasons.

No doubt people repose faith, trust and confidence in the Judicial Institution but over-dependence on the judicial processes is not good for health of the Judicial Institution. There needs to have in place mechanisms which may act as pressure-valves to take out the undesired steam out of the judicial processes. Alternative Dispute Redressal (ADR) Mechanism has to act as pressure valve. It is not always necessary that every litigation which comes to the court must see the finality of judicial processes and the final seal of the court. Majority of litigation, especially the civil remedies, must be settled through ADR Mechanism. Obviously there are many serious matters which essentially require adjudication by the courts but there are large number of trivial and simple nature of cases which can be settled through ADR Mechanism, if serious thought is given to adopting such mechanism. ADR processes are, now, by and by becoming mainstream and thus can be termed as 'Appropriate Dispute Resolution' mechanism. The need is only to identify the kind of cases or the nature of litigation which can be taken out of the litigative traffic and diverted to the service road of ADR system. This would allow the courts to deal with the serious business, thereby ensuring expeditious and quality disposal.

CRIMINAL

“Criminals have no religion. No religion teaches violence and cruelty-based religion is no religion at all, but a mere cloak to usurp power by fanning ill feeling and playing on feelings aroused thereby. The golden thread passing through every religion is love and compassion. The fanatics who spread violence in the name of religion are worse than terrorists and more dangerous than an alien enemy.”

Dr. Arijit Pasayat, J. in *Zahira Habibullah Sheikh v. State of Gujrat*, (2004) 4 SCC 158, para 19

**Criminal Appeal No. 1411 of 2013
State of Madhya Pradesh v.
Kalicharan & Ors.
Decided on May 31, 2019**

Hon’ble Supreme Court reiterated that even a single blow on the vital part of body may attract the offence under section 302 IPC.

However, in the facts and circumstances of the case, more particularly that it was a case of free fight, the weapon used by the accused was a ‘Farsa’, and that he caused the injury on the vital part of the body i.e. head which proved to be fatal, and the evidence on record, the offence was held to be the one under section 304 Part I of the IPC, and not under section 304 Part II of the IPC.

**Criminal Appeal No. 855 of 2019
Sasikala Pushpa and others v. State of Tamil Nadu
Decided on May 07, 2019**

Hon’ble Supreme Court held that the court must satisfy itself that “it is expedient in the interest of justice”, before proceeding to make a complaint regarding commission of an offence referred to in Section 195(1)(b) Cr.P.C. The language in Section 340 Cr.P.C. shows that such a course may be adopted only if the interest of justice requires, and not in every case.

Mere incorrect statement in the ‘vakalatnama’ would not amount to creating a forged document. And it cannot be the reason for exercising the jurisdiction under Section 340 Cr.P.C. for

issuance of direction to lodge the criminal complaint against the appellants.

The facts involved in this case were that there were allegations of signing of ‘vakalatnama’ at a place other than the one shown in that, and also of forged signatures of appellants on the same which were admitted by them to be their signatures.

Hon’ble Court noted that it had held in the judgment (2017) 1 SCC 117, that before proceeding under section 340 Cr.P.C., the court has to be satisfied about the deliberate falsehood on a matter of substance, and there must be a reasonable foundation for the charge, while also observing that some inaccuracy in the statement or mere false statement may not invite a prosecution. The following extract from the said judgment has been reproduced:-

“6. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Section 199 and 200 of the Penal Code, 1860 (45 of 1860) (hereinafter referred to as “IPC”); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interest of justice to initiate an inquiry into the offences of false evidence

and offences against public justice and more specifically referred to in Section 340 (1) CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See K.T.M.S.Mohd. V. Union of India (1992) 3 SCC 178). The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case.”

CRAA No. 13/2008

State of J&K v. Shamsher Hussain

Decided on June 7, 2019

(High Court of Jammu & Kashmir)

Accused tried for offence under section 304-A RPC for rash and negligent driving convicted by the Trial Court. In appeal against the sentence, the Court of Sessions acquitted the accused. Criminal revision preferred by the State challenging the order of acquittal.

Held that mere Proof of “High Speed” may not be sufficient to prove offences under section 279, 337, 338 and 304-A RPC. The prosecution is also required to prove that the offending vehicle was driven in a rash or negligent manner. There should be a direct nexus between death/injuries caused with Rash and Negligent Act. Finding of the appellate court is not perverse on that count.

CRAA No. 990011/2007

State of J&K v. Zakir Hussain & Others

Decided on June 7, 2019

(High Court of Jammu & Kashmir)

Accused tried by Judicial Magistrate 1st Class in offences under sections 382, 379, 332 RPC and Section 6 of Forest Act, and Acquitted for lack of sufficient evidence. Acquittal challenged in the appeal.

Held that without there being a clear evidence to the effect that the place from where the timber was removed was a demarcated forest, offence under section 6 Forest Act cannot be said to have been committed. Other offences not proved beyond reasonable doubt. Accused entitled

to acquittal. Judgment of Trial Court upheld.

CRMC No. 273/2015

Mohan Lal Raina v. Indu Raina & Another

Decided on June 7, 2019

(High Court of Jammu & Kashmir)

Residents order passed by the Magistrate in terms of section 23 of Protection of Women from Domestic Violence Act, 2010 challenged on the grounds that it was not a shared household and that the wife had been staying at matrimonial house Una Himacha Pradesh.

Held that the definition of shared household includes the place where the aggrieved person lives or at any stage has lived in a domestic relationship. In this case the wife having resided after her marriage in the shared household, has rightly been given residence order.

CRAA No. 35/2018

State v. Vijay Kumar & Another

Decided on June 4, 2019

High Court of Jammu & Kashmir

Accused tried for commission of offence under section 302/34 RPC acquitted by the Trial Court. Judgment of acquittal challenged on the ground that there is non-appreciation of the evidence by the Trial Court.

Held that Trial Court has rightly analyzed from the evidence that the two eye witnesses relied upon by the prosecution can not be believed and there statements are doubtful on the count that their statements in terms 164-A CRPC where recorded before Magistrate more than two years after the occurrence, regarding which there was no plausible explanation from Investigation Officer. Further evidence of the prosecution not leading to unimpeachable character of the evidence. Acquittal held to be lawful.

CRAA No. 35/2013

Nirmal Singh & Another v. State of J&K

Decided on May 30, 2019

(High Court of Jammu & Kashmir)

Appellants tried for commission of offence under section 8/20 NDPS Act convicted and sentenced by the Trial Court. Conviction and sentence challenged by appellants on the grounds of non-appreciation of evidence and violation of mandatory provisions of NDPS Act.

Held that there has been no violation of the provisions under sections 42, 43, 52, 55 and 57 of NDPS Act. The case pertained to search of a truck and seizure of narcotic substance and search of person is not involved, as such no violation of section 42. Further held that search and seizure not vitiated by mere fact that the seizure memo is not prepared on prescribed CFSL form. Even though there is statutory stipulation of filling up of CFSL form, but not filling of the form is not fatal.

CRAA No. 37/2008

State v. Sanjay Kumar

Decided on: May 30, 2019

(High Court of Jammu & Kashmir)

Accused tried for offence under section 15 of NDPS Act acquitted by the Trial Court for lack of evidence as to conscious position of narcotic substance. Acquittal upheld by the Hon'ble High Court, holding that the prosecution is required to prove conscious possession of

the accused of the narcotic substance. In this case contraband was found behind refrigerator in the shop which did not belong to the accused. The prosecution failing to establish the ownership of the shop and the conscious possession of the accused. Accused held entitled for acquittal.

CRMC No. 74/2010

Vikas Sethi v. Rajeiv Singh

Decided on May 30, 2019

(High Court of Jammu & Kashmir)

Accused indicted for commission of offence under section 420 of RPC, in a complaint filed by the respondent. Challenge on the ground that the contents of complaint only make out a civil liability. Hon'ble High Court accepted the contention that only civil liability arises from the circumstances pleaded in the complaint. No criminal liability is made out as there is nothing on record to establish that from the very inception when the agreement was made between the parties for supply and fitting of aluminum sheets and glass, the intention of accused was deceitful. Mere fact that there had been some defects in the supplied material, would not give rise to criminal action.



CIVIL

“Systemic slow motion (...) must claim the nation’s immediate attention towards basic reformation of the traditional structure and procedure if the Indian Judicature is to sustain the litigative credibility of the community.”

V.R. Krishna Iyer, J. in Trustees of Port of Bombay v. Premier Automobiles Ltd., (1974) 4 SCC 710, para 2

Civil Appeal No. 412 of 2016

Shewantabai v. Arun and another

Decided on May 28, 2019

Hon'ble Supreme Court held that the genuineness of the Will cannot be doubted merely because the testator

executed the same in favour of the neighbor.

Civil Appeal No. 784 OF 2010

Thulasidhara & another v. Narayanappa & others

Decided on May 1, 2019

Hon'ble Supreme Court reiterated the law laid in the case of Kondiba Dagadu Kadam v. Savitribai Sopan Gujar, (1999) 3 SCC 722, that the High Court cannot substitute its own opinion in the Second Appeal under Section 100 of the CPC, for that of the First Appellate Court, unless it finds that the conclusions drawn by the lower Court were erroneous being :

- (i) Contrary to the mandatory provisions of the applicable law; OR
- (ii) Contrary to the law as pronounced by the Apex Court; OR
- (iii) Based on inadmissible evidence or no evidence.

It is further observed by, as laid down Court in the aforesaid decision that if First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal. It is further observed that the Trial Court could have decided differently is not a question of law justifying interference in Second Appeal.

MA No. 243/2013
National Insurance Company Ltd. v. Rukhsana Begum & Others
Decided on: June 7, 2019
(High Court of Jammu & Kashmir)

Petition filed in terms Section 166 of Moto Vehicles Act by Legal representatives of deceased driver/owner of the vehicle, later on treated to be one filed under section 163-A, decided by the tribunal and award passed in favour of the legal representatives of the deceased. Award challenged on the grounds that tort-feasor is not entitled to seek compensation on account of his own fault and that petition under section 166 cannot be converted into one under section 163-A.

Held that conversion of petition from

section 166 Moto Vehicles Act to 163-A, in the facts and circumstances of the case is not illegal, more so when the order so passed by the tribunal was not challenged. Further held that in view of the fact that income of the deceased has been proved to be not more than Rs. 40,000/- per annum, he is covered section 163-A, and as such the dependants of the deceased can seek compensation. The Insurance company is held liable to pay the compensation.

MA No. 113/2016
Oriental Insurance Company Ltd. v. Tarsen Lal and Another
Decided on: June 4, 2019
(High Court of Jammu & Kashmir)

Claim petition filed by the injured in an accident involving a tractor, decided in favour of the claimant. Insurance company challenged the award of compensation on two counts; one that the driver was not in position of valid and effective driving license, and second that the claimant was gratuitous passenger in the offending tractor, as such is not entitled to any compensation from the insurance company.

Held that the driver in possession of driving license with LMV endorsement, as such was legally entitled to drive a tractor. Further held that the evidence on record establishes that the claimant was a labourer by the owner of the tractor, as such was not a gratuitous passenger. Insurance company saddled with liability to pay compensation.

OW 104 No. 73/2015
Susheel Kumar & Others v. Krishan Lal
Decided on: June 4, 2019
(High Court of Jammu & Kashmir)

Decree for eviction passed by the Trial Court on the ground of building and re-building, confound by the appellate courts. Construction of building completed by the landlord. Execution filed by landlord seeking fixation of fair rent. Tenant resisted the petition on the ground

that fair rent can be fixed only in terms of Section 8 of Houses & Shops Rent Control Act, 1966.

Held that section 13(3) read with section 11(h) excludes the power of Rent Controller in fixation of fair rent, where eviction has been sought on the ground of building or re-building. Thus the executing court is empowered to fix fair rent.

CSA No. 31/2013

Vidya Lal & another v. Kulbhushan Kumar and others

Decided on: May 28, 2019

(High Court of Jammu & Kashmir)

Trial Court and 1st appellate court decreed the suit for injunction simplicitor, holding the plaintiff in possession of the property regarding which there was un-registered lease document.

Held that both the courts below have rightly decreed the suit merely on the count of settled position. Section 17 and Section 49 of Registration Act, read conjointly, have ht effect that un-registered lease deed cannot be taken as evidence of its contents and the terms and conditions settled therein. The document however can be considered only for

collateral purpose to find out the nature of possession.

OW 104 No. 105/2016

Kasturi Lal & Another v. Babu Lal & Others

Decided on: May 28, 2019

(High Court of Jammu & Kashmir)

The Trial Court decided interim application against the plaintiff, with respect to lended property claimed to be jointly obtained by the parties on lease from Dharmarth Trust. Trial Court held that the plaintiff has failed to establish his possession as is reflected in the revenue documents. Appellate court upheld the order in appeal filed by plaintiff.

Held by Hon'ble High Court that the courts below have taken a wholistic view of the matter in coming to a conclusion that the plaintiff had not establish a prima facie case in regard to that portion of land where the construction activity was commenced by the defendant. More so the interest of the plaintiff is protected by the Trial Court by asking the defendant to furnish undertaking that in the event of plaintiff succeeding in the case, he will not claim any right over the constructed

Activities of the Academy

One Day Training Programme on “Land Laws and Bar of Jurisdiction of Civil Courts” organised by State Judicial Academy

On 20th June 2019, Jammu & Kashmir State Judicial Academy organised One Day Training Programme on “Land Laws and Bar of Jurisdiction of Civil Courts”, for Sub-Judges of Kashmir Province. Mr. Nisar Hussain Gilani, KAS, Retired Assistant Commissioner Revenue and Mr. Mushtaq Ahmad Maqdoomi, Advocate were the resource persons in the training programme.

Mr. Nisar Hussain Gilani spoke on the historical perspective and development of land laws in the State of J&K. While giving the historical account of

the implementation of modern settlement operations in the State, Mr. Gilani recalled the great contribution of Sir Walter Lawrence during Maharaja's regime. He said that work done by Sir Lawrence is unparallel and even today with modern tools, is difficult to replicate. Mr. Gilani also apprised the participants about the gradual progress made in bringing land laws to the present status. He gave an overview of the Land Revenue Act,

Agrarian Reforms Act and various other legislations concerning land matters. He also gave an account of powers and functions of the officers and authorities constituted under various land laws.

Mr. Mushtaq Ahmad Maqdoomi, Adv.



Spoke on the topic of jurisdictional aspects in the suits coming up before the civil courts pertaining to land matters. He deliberated upon various provisions of different legislations concerning bar of jurisdiction of the civil courts and told that bar of jurisdiction cannot be readily inferred. Only in those matters where revenue officers are specifically empowered to exercise powers and functions, jurisdiction of civil court would be barred. Mr. Maqdoomi also dealt with few other ancillary and incidental matters with which courts are confronted with while deciding matters concerning land.

Director, State Judicial Academy conducted the proceedings in the training programme and at the end of the programme thanked the resource persons and the participating judicial officers for useful interactions and deliberations.

Training Programme on Cyber Law organised by State Judicial Academy at Leh

On 20th June, 2019, Jammu & Kashmir State Judicial Academy (SJA) organised a training programme on Cyber Law in which Judicial Officers, Public Prosecutors, Prosecuting Officers, Investigating Officers and Advocates from the district Kargil &

Leh participated. Justice Tashi Rabstan, Judge High Court of Jammu & Kashmir inaugurated the training programme. In his address Justice Tashi Rabstan exhorted the participants to constantly engage in the learning activities to sharpen the skills for professional excellence. He said that Cyber Law is the emerging field and is going to play a very important component of justice delivery system. As such, it is incumbent on all the lawyers to update knowledge to keep pace with the changing legal scenario. Justice Tashi Rabstan highlighted the need to have greater knowledge about the Cyber Law and various aspects concerning the law enforcement agencies, prosecuting agencies and the courts of law. He said that a serious challenge is posed by the unscrupulous persons, threatening the economic and social order of the country. Having knowledge of laws relating to information and computer technology and the security regime connected with it shall be of immense help for proper safeguard against the ill effects of the technology.

On the initiative of Governing Committee of State Judicial Academy, renowned expert on Cyber Law Dr. Pavan Duggal, Advocate, Supreme Court of India (through video conferencing) and Dr.



Savita Nayyar, Assistant Professor, Department of Law, University of Jammu and S. Gurcharan Singh, faculty CDTI, Chandigarh conducted the programme. Dr. Savita has been teaching Cyber Law to the students since few years. Issues concerning all the spheres of Cyber Law which include electronic evidence, cyber crimes and cyber forensics were touched upon and the participants got to know about the wide sphere and intricacies of the Cyber Law during the programme.

Dr. Pavan Duggal talked about the overview of Cyber Law, Cyber Space, Cyber Technology & Cyber Security. He discussed the latest legal position on Cyber Law, as also the emerging legal trends in the International arena.

Dr. Savita Nayyar dealt with salient aspects of Indian Cyber Law enacted as Information Technology Act, 2000 alongwith Rules framed thereunder, and cyber crimes relating to women. S. Gurcharan Singh dealt with different aspects of Cyber Law and electronic evidence from the perspective of their applicability to the judicial proceedings in the courts of law, investigating agencies and prosecuting wings. He also elaborated upon the brighter and darker side of the

internet. He highlighted the upcoming challenges and opportunities with which the courts of law, investigating agencies and the prosecution shall be confronted with in near future. He also demonstrated the technical aspects of the Cyber Technology and the Cyber Security. He apprised the participants of the need to have in place optimum security scenario, especially while conducting online banking and monetary transactions.

The speakers also discussed whole gamut of case law concerning important issues coming up before the courts of law.

Participants in the programme interacted with the experts and posed various questions on the topic. They felt satisfied having been updated in their knowledge of law on the subject and requested the Judicial Academy to organise regular programmes of current importance.

J&K State Judicial Academy organises orientation Programme on Negotiable Instruments Act

On June 30th 2019, J&K State Judicial Academy organised one day orientation programme on 'Trial of complaints under section 138 Negotiable



Instruments Act' at J&K State Judicial Academy, Mominabad.

The opening address was presented by Justice Ali Mohammad Magrey, Chairman, Governing Committee, J&K State Judicial Academy. In his speech, Justice Magrey said that the aim of the programme is to sensitize the Judicial Magistrates of Kashmir province to gain experience from resource persons and get sensitized about special requirements of the provisions of law dealing with the subject.

"Justice delivery system is a challenge in changing societies and updated judicial education with lot experiences will help the Magistrates in delivering the justice and such are the programmes which help our budding judicial officers to gain the knowledge and share their own experiences on one platform," he added.

On the occasion, Mohammad Shafi Khan, Retired District and Sessions Judge presented an overview of provisions of Negotiable Instruments Act dealing with Trial of Complaints of Cheque Dishonour. He elaborated upon the provisions of law dealing with cases of Cheque Dishonour.

In technical session, chaired by Mohammad Yousuf Wani, District &

Sessions Judge, Ganderbal listened from Trial Magistrates about their experiences and difficulties encountered by them in handling Cheque Dishonour Complaints. He also talked about procedural and Jurisdictional aspects of Cheque Dishonour matters.

At the end of the programme a Panel Discussion was held on Compounding of Offences and other incidental issues.

Director J&K State Judicial Academy, Rajeev Gupta, conducted the programme and in the end thanked resource persons for their valuable inputs, and the Judicial Magistrates of Kashmir Province attending the Training Program.



Section 89 of Civil Procedure Code provides for various modes of Alternative Dispute Resolution viz. Arbitration, Conciliation, Mediation, Judicial Settlement and Lok Adalat. Matters can be appropriately dealt under any of the said modes of settlement. However, difficulty arises as to identifying the suitable mode for particular fact situation. This issue has been dealt and settled in "Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) LTD, (2010) 8 SCC 24. Guidelines have been laid by Hon'ble Supreme Court as to identifying the suitable mode of resolution of disputes. The sum and substance of what the court discussed elaborately is stated as under:

"...Know the dispute; exclude unfit cases; ascertain consent for arbitration or conciliation; if there is no consent, select Lok Adalat for simple cases and mediation for all other cases, reserving reference to Judge-assisted settlement only in exceptional or special cases."

Then, the Supreme Court went on categorizing the cases, considered suitable or not suitable for ADR process. It was observed that the following categories of cases are normally considered to be not suitable for ADR process having regard to their nature:

(i) Representative suits under Order 1 Rule 8 CPC which involve public interest or interest of numerous persons who are not parties before the court. (In fact, even a compromise in such a suit is a difficult process requiring notice to the persons interested in the suit, before its acceptance).

(ii) Disputes relating to election to public offices (as contrasted from disputes between two groups trying to get control over the management of societies, clubs, association, etc.)

(iii) Cases involving grant of authority by the section after enquiry, as for example, suits or grant of probate or letters of administration.

(iv) Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion etc.

(v) Cases requiring protection of sections, as for example, claims against minors, deities and mentally challenged and suits for declaration of title against the Government.

(vi) Cases involving prosecution for criminal offences."

The Supreme Court also proceeded to enumerate the cases (whether pending in civil courts or special tribunals), suitable for ADR processes. Such cases are classified under five broad headings:-

- i) All cases relating to trade, commerce and contracts;
- ii) All cases arising from strained relationship, such as matrimonial cases;
- iii) All cases where there is a need for continuation of the pre-existing relationship, such as disputes between neighbour and members of societies;
- iv) All cases relating to tortious liability, including motor accident claims; and
- (v) All consumer disputes

Guidelines have also been laid for the trial courts to work on employing the ADR modes, thus:

"31. We may summarize the procedure to be adopted by a court under section 89 of the Code as under :

a) When the pleadings are complete, before framing issues, the court shall fix a preliminary hearing for appearance of parties. The court should acquaint itself with the facts of the case and the nature of the dispute between the parties.

b) The court should first consider whether the case falls under any of the category of the cases which are required to be tried by courts and not fit to be referred to any ADR processes. If it finds the case falls under any excluded category, it should record a brief order referring to the nature

of the case and why it is not fit for reference to ADR processes. It will then proceed with the framing of issues and trial.

c) In other cases (that is, in cases which can be referred to ADR processes) the court should explain the choice of five ADR processes to the parties to enable them to exercise their option.

d) The court should first ascertain whether the parties are willing for arbitration. The court should inform the parties that arbitration is an adjudicatory process by a chosen private forum and reference to arbitration will permanently take the suit outside the ambit of the court. The parties should also be informed that the cost of arbitration will have to be borne by them. Only if both parties agree for arbitration, and also agree upon the arbitrator, the matter should be referred to arbitration.

e) If the parties are not agreeable for arbitration, the court should ascertain whether the parties are agreeable for reference to conciliation which will be governed by the provisions of the AC Act. If all the parties agree for reference to conciliation and agree upon the conciliator/s, the court can refer the matter to conciliation in accordance with section 64 of the AC Act.

f) If parties are not agreeable for arbitration and conciliation, which is likely to happen in most of the cases for want of consensus, the court should, keeping in view the preferences/options of parties, refer the matter to any one of the other three other ADR processes : (a) Lok Adalat; (b) mediation by a neutral third party facilitator or mediator; and (c) a judicial settlement, where a Judge assists the parties to arrive at a settlement.

(g) If the case is simple which may be completed in a single sitting, or cases relating to a matter where the legal principles are clearly settled and there is no personal animosity between the parties (as in the case of motor accident claims), the court may refer the matter to Lok

Adalat. In case where the questions are complicated or cases which may require several rounds of negotiations, the court may refer the matter to mediation. Where the facility of mediation is not available or where the parties opt for the guidance of a Judge to arrive at a settlement, the court may refer the matter to another Judge for attempting settlement.

(h) If the reference to the ADR process fails, on receipt of the Report of the ADR Forum, the court shall proceed with hearing of the suit. If there is a settlement, the court shall examine the settlement and make a decree in terms of it, keeping the principles of Order 23 Rule 3 of the Code in mind.

(i) If the settlement includes disputes which are not the subject matter of the suit, the court may direct that the same will be governed by Section 74 of the AC Act (if it is a Conciliation Settlement) or Section 21 of the Legal Services Authorities Act, 1987 (if it is a settlement by a Lok Adalat or by mediation which is a deemed Lok Adalat). This will be necessary as many settlement agreements deal with not only the disputes which are the subject matter of the suit or proceeding in which the reference is made, but also other disputes which are not the subject matter of the suit.

(j) If any term of the settlement is ex facie illegal or unforceable, the court should draw the attention of parties thereto to avoid further litigations and disputes about executability.”

**—Mr. Mohammad Ashraf Bhat,
Sub-Judge, Bijbehara**



Three Day Induction Training Programme on Mediation organised by Mediation And Conciliation Committee, High Court of J&K



“Mediation emerging as a viable alternative for conflict resolution”

On June 27-29, 2019 High Court of Jammu and Kashmir in collaboration with Mediation and Conciliation Committee High Court of J&K supported by Government of J&K on Thursday inaugurated “Three-day Induction Training Programme on Mediation for Judges and Lawyers.”

The judicial officers who spoke on the occasion said that mediation is emerging as an effective tool for conflict resolution and the need of the hour is to play an active role in making the mediation a success and a viable alternative.

The purpose of the training programme is to impart training to the judges and lawyers so that they can be excellent mediators that would ultimately help them in mediation and conflict resolution.

Chief Justice High Court of Jammu and Kashmir, Justice Gita Mittal threw light on various aspects of mediation and said that mediation is emerging as an effective and alternative tool for dispute resolution and said that single handed approach cannot be adopted for handling all kinds of disputes.

Chief Justice said that mediation

centres are not only for removing the burgeoning problem of judiciary but they also meet the inherent needs of society and community. Justice Mittal said that mediation centres enable the resolution of disputes in the manner the disputing parties desire and also said that Judicial officers have to evolve mechanism to determine the cases for referral to the mediation centres.

About the progress made in mediation in the state of Jammu and Kashmir, Chief Justice expressed her resolve to bring the mediation centres of the state at par with the rest of the country to ensure access to justice for all.

Justice Mittal said that it is her endeavor to keep pace with other developments in the rest of the country in terms of judicial sectors and expressed her satisfaction over the support from government and the work legal services authorities have been doing on this front. About the training programme, Justice Mittal said they have undertaken these training sessions in Jammu and Kashmir and lawyers should encourage and support the process of mediation because their support is critical for the entire process.



Chief Justice Gita Mittal also exhorted upon the lawyers and judicial officers to treat this training session as a serious business and see this as an opportunity to enhance their knowledge level in terms of mediation and conciliation.

About the expansion of the mediation programme, she said that it is high time to introduce mediation habits at school level so that we will have a peace building habit at a younger age and train children as mediators. Chief Justice also lauded the efforts of the state judiciary in terms of the digitization of the services like digital signatures back-ups, SMSs and other digital services.

Chairman, Mediation and Conciliation Centre, Justice Dhiraj Singh Thakur in his keynote address highlighted the need and importance of the subject and said that mediation centres will play a critical role in timely delivery of justice as courts have been inundated by the huge inflow of litigations.

Hon'ble Mr. Justice Thakur lauded the efforts of Chief Justice in bringing the mediation centres to the door steps of the public. He said that there was hardly any policy to impart training to the mediators and the training programmes like this is a step in the right direction.

While throwing light on the various legal aspects, Justice Thakur also said that mediation process reduces cost and time

of litigants and the disputing parties accept the judgment of mediators with consensus and without any remorse.

In his welcome address, Justice Rashid Ali Dar gave an insight about the goals and objectives of the programme and said that mediation centres will only be successful by imparting training to referral judges. He said that mediation and conciliation is the hallmark of the civilization and the establishment of mediation centres is an important aspect of conflict resolution.

Principal District and Sessions Judge Srinagar, Abdul Rashid Malik while speaking on the occasion gave an idea of mediation process and threw light on the exhaustive role it could play in dispute resolution mechanism.

The other dignitaries present on the occasion include Advocate General D.C. Raina, Secretary Law Department Achal Sethi, Registrar General High Court Sanjay Dhar, Director J&K State Judicial Academy and other officers of the Registry.

Renowned Resource Persons, including senior advocate Mr J.P. Singh, senior advocate, Mr. Sudhanshu Batra, advocate Ms. Veena Ralli, Advocate Mr. Anuj Agarwal who are well known in the country as mediators and advocates conducted the working sessions on different aspects of mediation.