SJA NEWSLETTER

Monthly Newsletter published by the
Jammu & Kashmir State Judicial Academy

Volume - 6, Issue 3 **March, 2013**

Contents

SUBSCRIPTION RATES

Single Copy : Rs. **20.00**
Annual : Rs. **240.00**
(Payment only through D.D. in favour of the Jammu & Kashmir State Judicial Academy)

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TOPIC OF THE MONTH

"Principles and the Concept of Law"

Once we identify legal principles as separate sorts of standards, different from legal rules, we are suddenly aware of them all around us. Law teachers teach them, law books cite them, legal historians celebrate them. But they seem most energetically at work, carry*ing* most weight, in difficult lawsuits like *Riggs* and *Henningsen*. In cases like these, principles play an essential part in arguments supporting judgments about particular legal rights and obligations. After the case is decided, we may say that the case stands for a particular rule (e.g., the rule that one who murders is not eligible to take under the will of his victim). But the rule does not exist before the case is decided; the court cites principles as its justification for adopting and applying a new rule. In *Riggs*, the Court cited the principle that no man may profit from his own wrong as a background standard against which to read the statute of wills and in this way justified a new interpretation of that statute. In *Henningsen*, the Court cited a variety of intersecting principles and policies as authority for a new rule respecting manufacturers' liability for automobile defects.

An analysis of the concept of legal obligation must therefore account for the important role of principles in reaching particular decisions of law. There are two very different tacks we might take:

(A) We might treat legal principles the way we treat legal rules and say that some principles are binding as law and must be taken into account by judges and lawyers who make decisions of legal obligation. If we took this tack, we should say that in the United States, at least, the "law" includes principles as well as rules.

(b) We might, on the other hand, deny that principles can be binding the way some rules are. We would say, instead, that in cases like *Riggs* or *Henningsen* the Judge reaches beyond the rules that he is bound to apply (reaches, that is, beyond the 'law') for extra-legal principles he is free to follow if he wishes.

One might think that there is not much difference between these two lines of attack, that it is only a verbal question of how one wants to use the word 'law'. But that is a mistake, because the choice between these two accounts has the greatest consequences for an analysis of legal obligation. It is a choice between two concepts of a legal principle, a choice we can clarify by comparing it to a choice we might make between two concepts of a legal rule. We sometimes say of someone that he 'makes it a rule' to do something, when we mean that he has chosen to follow a certain practice. We might say that someone has made it a rule, for example, to run a mile before breakfast because he wants to be healthy and believes in a regimen. We do not mean, when we say this, that he is bound by the rule that he must run a mile before breakfast, or even that he regards it as binding upon him. Accepting a rule as binding is something different from making it a rule to do something. If we use Hart's example again, there is a difference between saying that Englishmen make it a rule to see a movie once a week, and saying that the English have a rule that one must see a movie once a week. The second implies that if an Englishman does not follow the rule, he is subject to criticisms or censure, but the first does not. The first does not exclude the possibility of a sort of criticism - we can say that one who does not see movie is neglecting his education - but we do not suggest that he is doing something wrong just in not following the rule.

If we think of the Judges of a community as a group, we could describe the rules of law they follow in these two different ways. We could say, for instance, that in a certain state the Judges make it a rule not to enforce wills unless there are three witnesses. This would not imply that the rare judge who enforces such a will is doing anything wrong just for that reason. On the other hand we can say that in that state a rule of law requires Judges not to enforce such wills; this does imply that a Judge who enforce them is doing something wrong. Hart, Austin and other positivists, of course, would insist on this latter account of legal rules; they would not at all be satisfied with the 'make it a rule' account. It is not a verbal question of which account is right. It is a question of which describes the social situation more accurately. Other important issues turn on which description we accept. If Judges, simply 'make it a rule' not to enforce certain contracts, for example, then we cannot say, before the decision, that anyone is 'entitled' to that result and that proposition cannot enter into any justification we might offer for the decision.

*[Abstracted from a Book **"Taking Rights Seriously"** authored by **Ronald Dworkin** - Sommer Professor of Law and Philosophy at*

New York University and Jeremy Bentham Profession of Jurisprudence at University College London" Published by Universal Law Publishing Co. Pvt. Ltd.]

ACADEMY NEWS

Ubuntu Awareness-cum-Training Programme to Judicial Officers

Two Master Trainers namely Shri S.V. Yaragadda, District Judge- 14 and ASJ, Pune and Shri A.M. Bhandwar, 2nd Jt. CJJD & JMFC Nagpur, were deputed by e-Court Committee, Hon'ble Supreme Court of India, New Delhi, for imparting training to Judicial Officers of the State on 23rd and 24th February, 2013 at Jammu and on 2nd and 3rd of March, 2013 at Srinagar. The Training-cum-Awareness Programme on Ubuntu Linux Operating System was organized at State Judicial Academy Jammu and High Court wing Srinagar.

Master Trainers imparting Ubuntu Training

The Master Trainers explained in detail the concept, importance and methodology of change management. The features and benefits of Ubuntu Linux and its basic operating system were also explained in detail, Ubuntu Linux technical and operational, understanding its means and its utilization were given by the Master Trainers.

Training Programme in Session

At the end of the training session Officers were more than satisfied with the use and benefits of Ubuntu Linux Operating System. The use of the applications of Ubuntu Linux would indeed help the Judicial Officer to improve the performance in delivery of justice and in judicial administration. The Awareness-cum-Training Programme was informative and educative and Officers took keen interest in the training programme.

NEWS AND VIEWS

Five Judges appointed in High Court:

Jammu and Kashmir High Court got five new Judges raising the existing strength to 12 against the sanctioned 14 posts. The newly appointed judges were administered oath of office by Hon'ble Mr. Justice M.M. Kumar, Chief Justice in an impressive function held in the High Court lawns Jammu on 8th of March 2013. Hon'ble Mr Justice Ali Mohammad Magray & Hon'ble Mr. Justice Dhiraj Singh Thakur were appointed as permanent Judges whereas Hon'ble Mr. Justice Tashi Rabstan, Hon'ble Mr. Justice Bansi Lal Bhat and Hon'ble Mr. Justice Janak Raj Kotwal were appointed as Additional Judges of the High Court.

HON'BLE MR. JUSTICE M. M. KUMAR (CHIEF JUSTICE HIGH COURT OF J&K) ADMINISTERING OATH TO
(L to R): Hon'ble Mr. Justice Ali Mohammad Magray, Hon'ble Mr. Justice Dhiraj Singh Thakur,
Hon'ble Mr. Justice Tashi Rabstan, Hon'ble Mr. Justice Bansi Lal Bhat, Hon'ble Mr. Justice Janak Raj Kotwal

The oath-taking ceremony began with the reading of warrants of appointment of judges by the Registrar General, Mr. Suresh Kumar Sharma, and, thereafter, the newly appointed judges were administered the oath by Hon'ble the Chief Justice.

Earlier the formal notification for the appointment of the new judges was issued by the Union Ministry of Law and Justice a day before the oath taking ceremony. The notification and warrants of appointment issued by His Excellency the President of India were formally communicated to the High Court and the State Government, whereafter, His Excellency, the Governor of the State authorized Hon'ble the Chief Justice to administer the oath .

The oath ceremony was attended by all the Hon'ble Judges of the High Court, Hon'ble Mr. Justice Virender Singh, Hon'ble Mr. Justice Mansoor Ahmed Mir, Hon'ble Mr. Justice J.P. Singh, Hon'ble Mr. Justice Mohammad Yaqoob Mir, Justice Muzaffar Hussain Attar and Justice Hasnain Massodi. Number of ministers, including Mr. Ali Mohmmad Sagar, Mr. Mohammad Akbar Lone and Nawan Rigzan Jora, former High Court Judges Justice Syed Bashir-ud-Din, Justice G.Q. Parray, Justice Mohammad Yaseen Kawoosa, Justice O.P. Sharma, Justice G.D. Sharma, Justice G.L. Raina and Justice B.L. Bhat also attended the oath ceremony. The oath ceremony was also attended by members of Bar, Judicial Officers of Subordinate Courts of District Jammu, bureaucrats and Police Officers of the State.

Before His elevation Hon'ble Mr. Justice Ali Mohammad Magray was senior Additional Advocate General, His Lordship was standing counsel for various financial institutions like Power Development Department, Sher-i-

Hon'ble the Chief Justice and Hon'ble Judges on Dais during Oath Ceremony

Hon'ble Dignitaries witnessing the oath ceremony

Kashmir Institute of Medical Science for over 20 years.

Hon'ble Mr. Justice Dhiraj Singh Thakur was practicing at Jammu, His Lordship was senior standing counsel for various financial institutions and other Government / banking institutions.

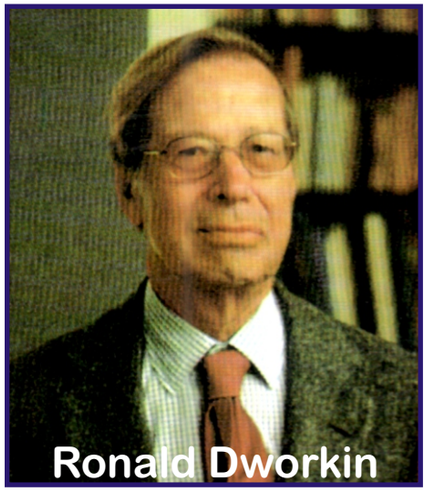
Hon'ble Mr. Justice Tashi Rabstan hails from Leh Ladakh, after completion of graduation in law His Lordship started practicing at Jammu wing of the High Court and also remained standing counsel for some government departments.

Hon'ble Mr. Justice B. L. Bhat and Hon'ble Mr. Justice Janak Raj Kotwal were two senior most District Judges. Before the elevation both their Lordships presided over some important Courts viz. Principal District & Sessions Judge, MACT, Special Judge Anti-Corruption Courts during their long service career of over 30 years.

Died:

Ronald Dworkin " Legal Philosopher"

By Guido Calabresi *



Ronald Dworkin was without question the leading legal philosopher of his generation. A 21-year-old Rhodes scholar, Dworkin, who died February, 14 at 81, arrived at Oxford in 1953. It was a great time for Oxford philosophy, and though Dworkin read law with unparalleled brilliance, he was more

interested in philosophy and was soon accepted by that faculty. Oxford's brightest and most noble became his friend. After completing legal studies at Harward, clerking for Learned Hand and briefly practicing law, he went to Yale Law School in 1962, contemporaneously with Robort Bork, with whom he occasionally co-taught, dazzlingly.

At Yale, Dworkin and his wife became stars in president Kingman Brewster's (moderately) radical and (very) chic firmament. More important, through the influence of colleagues like Alexander Bickel and especially Herry Willington, his view of law broadened. When in 1969 he succeeded H.L.A. Hart - who, breaking precedent, pursued him - as professor of jurisprudence at Oxford. Dworkin was already a world class scholar whose concept that law had to be based as much on fundamental moral principles as on formal rules became a hallmark. Continuing until his death, he wrote numerous truly seminal books and articles of pure scholarship. But particularly after moving to University College London and New York University Law School, he also became the epitome of the public intellectual, opining on all the issues of the day of ten in the New York *Review of Books*. Critics like Bork and Judge Richard Posner questioned his consistently liberal conclusions. But no one could deny the force, elegance and articulateness of his analyses.

* **Calabresi** is a senior U.S. Court of Appeals Judge and a former dean of Yale Law School

[Time Magazine : March 4, 2013]

LEGAL JOTTINGS

Legal briefs from High Court of J&K

[Case: CIMA No. 25 of 2011]

Oriental Insurance Co. Ltd. Versus Somnath & Anr.

Date of Decision: 14-09-2012

Coram: Hon'ble Mr. Justice M. M. Kumar, Chief Justice and Hon'ble Mr. Justice Mohammad Yaqoob Mir

Subject Index: State Consumer Protection Act - Section 24 - A, thereof - Limitation for filing a complaint before a Consumer Forum or Commission is 2 years, condonation of delay, **Held** reasons to be recorded in writing for the same.

Respondents residential buildings were insured by the appellant company - the buildings were set on fire by some unknown miscreants - FIR registered - When the Respondents were not indemnified by the Insurance Company, they filed a complaint before the J&K consumer Disputes Redressal Commission - the Commission allowed the claim and passed an award in favour of Respondents - Aggrieved thereby appeal came to be filed under section 17 of Consumer Protection Act mainly on the ground that the complaint filed before Commission was time barred as the same had been filed beyond a period of two years from the date of cause of action - Respondents took a plea that

when the petition is allowed by the Commission, the delay shall deemed to have been condoned keeping in view the peculiar circumstances of the case and in the background of extreme militancy and disturbed condition prevailing at that time .

Held : "In view of the specific rival pleadings vis-a-vis question of limitation, it is stated that in view of the law laid down by the Hon'ble Apex Court, learned commission was required to decide the question of limitation but in the impugned judgment it has been simply observed that in the year 2002 the claim was closed as "no claim". After that complainant approached Commission and filed the complaint on 22-06-2005. When it was so, admittedly complaint was filed after the prescribed period of two years. The Commission, therefore, was bound to address the issue by either condoning the delay for which reasons were to be recorded or otherwise to dismiss the complaint.

The question of limitation in the given set of circumstances, being the mixed question of fact and law, is better left, to be decided by the Commission. Case remanded back.

[*Case law followed : Kandimalla Raghivaiah & Co. V. National Insurance Co., (2009) SCC 768]*

SWP Nos.1008/2003 & 2034/2003

Dr. R. D. Vishwakarma v. U.O.I. & ors

Date of decision: 14.03.2013

Bench:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice and Honble Mr. Justice Dhiraj Singh Thakur, Judge

(Per M.M. Kumar, CJ)

Subject Index: Constitution of India: Article 311 Appellant working as Principal, Kendriya Vidyalaya Sangathan (KVS) Appointed as Assistant Commissioner, KVS, against direct recruitment post Terms & Conditions in the appointment order - Two years' Probation extendable upto three years - Joined on 08.04.1996 Assessment of Work & conduct Appellant advised to improve upon his performance during the remaining period Performance reviewed after two years - Period of probation extended upto 07.10.1998 Appellant informed on 06.10.1998, unable to show any marked improvement - Advised to improve his performance - Probation extended upto 07.04.1999 - Appellant's services terminated on 05.04.1999 Placed as Principal KVS Challenge to the order Grounds of Stigma and *mala fides* urged before Central Administrative Tribunal Tribunal held, discharge an order of termination simplicitor - No legal obligation to hold a regular departmental enquiry Order of Tribunal challenged in Writ Petition Question: whether the order of discharge is in fact an order of dismissal casting stigma and warranting an enquiry? Held: No.

Held: The concept of attaching stigma must emanate from the order of discharge itself and *ex-facie* the order should contain stigmatic words to attract the provisions of Article 311 of the Constitution. Remarks like want of application to banks work or lack of potential have been found to have been made in relation to the work of an employee and in the context of assessment on his work which would not amount to allegations of misconduct

casting any stigma on such an employee... When we examine the order dated 5th/6th April, 1999 *ex-facie* there is nothing which may show the original applicant-writ petitioner in bad light. All that the order of discharge indicates is that during the period of probation his services were being terminated in the light of para 3 (ii) of the letter of appointment. Even in the earlier letters dated 17.02.1998, 07.04.1998 & 06.10.1998 (supra, Annexures F, G & H), there is nothing to conclude that the order suffers from any stigma which may result into an opinion that the order is punitive in character and an enquiry was required to be held. Moreover, the original applicant-writ petitioner was yet to acquire any right to hold that post and in any case he was given back his post of Principal, KVS on which he presumably held a lien.

Judgments relied upon:

Shailaja Shivajirap Patil v. President, Hon'ble Khasdar UGS Sanstha, (2002) 10 SCC 394; Commandant 11th Battalion, A. P. Special Police (IR), Cuddapah, Cuddapah District v. B. Shankar Naik, (2003) 5 SCC 580; Union of India & ors. v. A.P. Bajpai, (2003) 2 SCC 433; Shamsher Singh & anr. v. State of Punjab, AIR 1974 SC 2192; Radhey Shayam Gupta v. U. P. State Agro Industries Corporation Ltd., (1999) 2 SCC 21; Ajit Singh v. State of Punjab, (1983) 2 SCC 217, State of U.P v. Kaushal Kishore Shukla, (1991) 1 SCC 691; and State of Punjab v. Sukhwinder Singh, (2005) 5 SCC 569.

[Case: LPASW No. 12 of 2012]

The J&K State Board of School Education V. Des Raj and Ors.

Date of Decision: 25-07-2012

Judge(s): Hon'ble Mr. Justice Virender Singh and Hon'ble Mr. Justice Mohammad Yaqoob Mir.

[Per Virender Singh, J]

Subject Index: Jammu and Kashmir Civil Service Regulations Volume - I - Rule 35 - AA (c) vis-a-vis - Alteration of Date of Birth - Respondent, a Government servant in Revenue Department filed a writ petition for correction in his date of birth in the records of Education Board after 31 years of service and at the time of superannuation - writ court directed the Board to hold an enquiry to ascertain exact date of birth of the respondent and than act accordingly - LPA filed by the Board - The Hon'ble Division Bench held as under: -

Held: " The relief claimed by the writ petitioner is on the ground of some mistakes and the period of limitation prescribed for filing suit for declaration to this effect is three years and the time which begins to run is when the mistake becomes known to the plaintiff. No doubt that for filing a petition under Article 226, no specific period for limitation is prescribed but delay is not an unbridled horse having no reins and it is left to whims of the petitioner to choose the time"

LPA allowed, impugned order set aside, writ petition dismissed.

Judgments relied upon:

State of Maharashtra v. Digamber, 1995(4) SCC 683; Gh. Rasool Lone v. State of J&K, 2009 AIR SCW 5262; Virender Choudhary v. BPC, 2009(1) SCC 297 and S.S. Balu v. State of Kerala, (2009) SCC 479.

Edited, Printed and published by Abdul Wahid, Director, Jammu & Kashmir State Judicial Academy
on behalf of the Jammu and Kashmir State Judicial Academy, High Court Complex, Jammu / Srinagar